Farris Partner, James Hatton features in the April 15 edition of The National Post

Cardiome hits potential $1B home run

Merck pact could be Canada's largest of its kind

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Vancouver's Cardiome Pharma Corp. inked a licensing deal last week with Merck & Co., Inc., which has the potential to be worth $1-billion if all the milestones are met, making it the largest licensing deal ever involving a Canadian life-sciences company, says James Hatton, the lawyer at Farris, Vaughan, Wills & Murphy, who helped negotiate the deal.

The Vancouver lawyer worked with Anke Kramer, an in-house lawyer for Merck, and Barbara Kosacz of Cooley Godward Kronish of Palo Alo, Calif., to get the job done.

The deal, which flew under the radar last week, will see Merck pay US$60-million up front and provide a $100-million line of credit. There's an additional $300-million in clinical milestone payments and $340-million in commercial milestones along with tiered royalties if all goes well with the commercialization of the drug vernakalant, which is being investigated as a treatment for atrial fibrillation, an abnormal heart rhythm.

He (Hatton) says his delicious site is a "pretty good resource" for those working on licensing deals and he often receives kudos from fellow professionals for his efforts.

About 5.5 million patients are treated each year for atrial fibrillation in seven industrialized countries, according to documents supporting the licensing announcement.

Mr. Hatton is no stranger to biotech licensing deals. In fact, he uses the social networking site: www.delicious.com/JamesHatton/agreement to bookmark 820 biotech licensing agreements that are publicly disclosed in securities filings. Simply click on the deal and users are taken to the page where the document can be viewed. He says his delicious site is a "pretty good resource" for those working on licensing deals and he often receives kudos from fellow professionals for his efforts.

"There used to be not that many available," he says. "They're not easy to find, even if you know they are out there."

"It's a tough time for companies like Cardiome to raise money...companies have to look for a creative solution. It's the first time a company like Merck has made a loan without strings attached." - James Hatton

Cardiome's deal with Merck, which took a scant seven weeks to structure, comes at a time when many Canadian life sciences companies are struggling. They're running low on cash and the capital markets are essentially closed. Fortunately, though, big pharma companies are looking to fill their pipelines as existing patents expire and they are stepping into the financing void.

"It's a tough time for companies like Cardiome to raise money," he says, and companies have to look for a "creative solution."

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About James Hatton

James is a commercial solicitor with 20 years of experience assisting companies to exploit the value of their intellectual property assets, focussing on licensing and related transactions. He is the partner responsible for the Technology Group at Farris.

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He said the line of credit Merck is providing is an example. "It's the first time a company like Merck has made a loan without strings attached," he says.

He adds the up-side potential of this deal, which is $1-billion, is almost double the next largest licensing deal Canada has seen. That involved Merck and Neuromed Inc., a 2006 deal that he says offered $25-million up front and a possible upside of $475-million.

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He says even though big pharma companies have the money to do deals they are a "little more risk averse." Nonetheless, he says, "it's the busiest I have ever been in my practice."

"There's financial pressure" and everybody knows that smaller life-science companies "are starting to feel the pinch on cash flow. There's lots of deals in the pipeline."

Cheryl Reicin, a biotech lawyer at Torys, says "there's this unquenchable need for cash," and "some of these companies are being forced to license earlier."

"It's the busiest I have ever been in my practice." - James Hatton

While that would normally lead to lower prices, it's not happening because big pharma companies are providing a buffer by competing for the deals that are out there, so "prices are still being kept at a healthy level."

It's also opening the doors to venture capital firms that are willing to take on the risk of developing a drug that may fizzle out. She says VCs can provide a viable alternative to biotechs that don't want to license till they have advanced their drug further, but who can't tap capital markets.

One of her clients, Zoticon Bioventures of Philadelphia, has stepped in to fill the void in a number of recent deals, including earlier this year, where it brought together some Canadian angel investors and provided $55-million in series C financing to Sopherion Therapeutics LLC, which is developing Myocet, used in relation to cancer therapies. According to BioWorld Today, it's the largest biotech venture capital deal to close this year.

She says VC money is a viable option for biotechs. "A number of companies are saying we don't want to go to pharmas, our preference is still to hold out."

"There are still deals getting done, they are just getting down a little more cleverly, and a little more judiciously," Ms. Reicin says. "You have to think a little bit outside the box. There was a formulaic way of raising money for biotechs in the past. Those traditional routes are now very, very limited. It requires a little more creativity."