

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

POST-EFFECTIVE AMENDMENT NO. 1  
TO  
FORM S-1  
ON  
FORM S-3

REGISTRATION STATEMENT  
UNDER  
THE SECURITIES ACT OF 1933

FENNEC PHARMACEUTICALS INC.

(Exact name of registrant as specified in its charter)

British Columbia, Canada

(State or other jurisdiction of  
incorporation or organization)

20-0442384

(IRS Employer  
Identification No.)

PO Box 13628, 68 TW Alexander Drive  
Research Triangle Park, NC 27709  
(919) 636-4530

(Address, including zip code, and telephone number,  
including area code, of registrant's principal executive offices)

Rostislav Raykov  
Chief Executive Officer  
Fennec Pharmaceuticals Inc.  
PO Box 13628, 68 TW Alexander Drive  
Research Triangle Park, NC 27709  
(919) 636-4530

(Name, address, including zip code, and telephone  
number, including area code, of agent for service)

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Approximate date of proposed sale to the public: From time to time after the effective date of this registration statement, as shall be determined by the selling stockholders identified herein.

If any of the securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415 under the Securities Act of 1933 check the following box:

If this Form is filed to register additional securities for an offering pursuant to Rule 462(b) under the Securities Act, please check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(c) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

If this Form is a post-effective amendment filed pursuant to Rule 462(d) under the Securities Act, check the following box and list the Securities Act registration statement number of the earlier effective registration statement for the same offering.

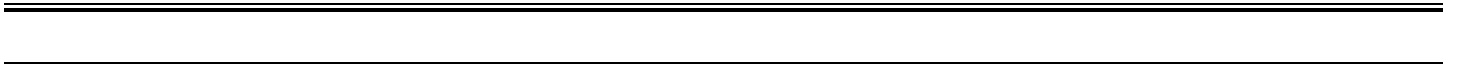
Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company" and "emerging growth company" in Rule 12b-2 of the Exchange Act. (Check one):

- Large accelerated filer
- Accelerated filer
- Non-accelerated filer
- Smaller reporting company
- (Do not check if a smaller reporting company)
- Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 7(a)(2)(B) of the Securities Act.

The registrant hereby amends this registration statement on such date or dates as may be necessary to delay its effective date until the registrant shall file a further amendment which specifically states that this registration statement shall thereafter become effective in accordance with Section 8(a) of the Securities Act of 1933 or until the registration statement shall become effective on such date as the Commission, acting pursuant to said Section 8(a),

may determine.



#### EXPLANATORY NOTE

On August 10, 2017, the registrant filed a registration statement with the Securities and Exchange Commission (the "SEC") on Form S-1 (Registration No. 333-219884), which was amended by Pre-Effective Amendment No. 1 to Form S-1 filed with the SEC on August 31, 2017, and declared effective by the SEC on September 18, 2017 (as amended, the "Form S-1"), to register for resale by the selling stockholders identified in the prospectus up to 11,943,214 of the registrant's common shares, including 1,383,331 shares issuable upon the exercise of outstanding warrants, to be sold by the selling stockholders identified in the prospectus.

This Post-Effective Amendment No. 1 to Form S-1 on Form S-3 is being filed by the registrant to convert the Form S-1 into a registration statement on Form S-3, and contains an updated prospectus relating to the offering and sale of the shares that were registered for resale on the Form S-1.

All filing fees payable in connection with the registration of the common shares covered by the registration statement were paid by the registrant at the time of the initial filing of the Form S-1.

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The information in this prospectus is not complete and may be changed. The selling stockholders identified in this prospectus may not sell securities under this prospectus until the registration statement filed with the Securities and Exchange Commission is effective. This prospectus is not an offer to sell these securities, and it is not soliciting an offer to buy these securities in any state where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED APRIL 12, 2018

PROSPECTUS



**FENNEC PHARMACEUTICALS INC.  
11,943,214 COMMON SHARES**

The selling stockholders identified in this prospectus are offering on a resale basis 11,943,214 of our common shares pursuant to this prospectus, including 1,383,331 shares issuable upon the exercise of outstanding warrants. We will not receive any of the proceeds from the sale by the selling stockholders of the common shares. Upon any exercise of the warrants by payment of cash, however, we will receive the exercise price of the warrants.

The selling stockholders may sell or otherwise dispose of the common shares covered by this prospectus in a number of different ways and at varying prices. We provide more information about how the selling stockholders may sell or otherwise dispose of the common shares covered by this prospectus in the section entitled "Plan of Distribution" on page 18. Discounts, concessions, commissions and similar selling expenses attributable to the sale of common shares covered by this prospectus will be borne by the selling stockholders. We will pay all expenses (other than discounts, concessions, commissions and similar selling expenses) relating to the registration of the shares with the Securities and Exchange Commission.

Our common shares are listed on the Nasdaq Capital Market under the symbol "FENC" and on the Toronto Stock Exchange under the symbol "FRX." On April 11, 2018, the last reported sale price of our common shares on the Nasdaq Capital Market was \$13.95 per share.

**Investing in our common shares involves a high degree of risk. You should review carefully the risks and uncertainties described under the heading "Risk Factors" beginning on page 5 of this prospectus, and under similar headings in any amendment or supplements to this prospectus or as updated by any subsequent filings with the Securities and Exchange Commission that are incorporated by reference herein.**

**NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED OF THESE SECURITIES OR DETERMINED IF THIS PROSPECTUS IS TRUTHFUL OR COMPLETE. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.**

The date of this Prospectus is [\_\_\_\_\_], 2018.

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## ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement that we have filed with the Securities and Exchange Commission (the “SEC”) pursuant to which the selling stockholders identified herein may, from time to time, offer and sell or otherwise dispose of the common shares covered by this prospectus. You should not assume that the information contained in this prospectus is accurate on any date subsequent to the date set forth on the front cover of this prospectus or that any information we have incorporated by reference is correct on any date subsequent to the date of the document incorporated by reference, even though this prospectus is delivered or common shares are sold or otherwise disposed of on a later date. It is important for you to read and consider all information contained in this prospectus, including the documents incorporated by reference herein, in making your investment decision. You should also read and consider the information in the documents to which we have referred under the captions “Where You Can Find Additional Information” and “Information Incorporated by Reference” in this prospectus.

We have not authorized any dealer, salesman or other person to give any information or to make any representation other than those contained or incorporated by reference in this prospectus. You must not rely upon any information or representation not contained or incorporated by reference in this prospectus. This prospectus does not constitute an offer to sell or the solicitation of an offer to buy any of our common shares other than the common shares covered by this prospectus, nor does this prospectus constitute an offer to sell or the solicitation of an offer to buy any securities in any jurisdiction to any person to whom it is unlawful to make such offer or solicitation in such jurisdiction. Persons who come into possession of this prospectus in jurisdictions outside the United States are required to inform themselves about, and to observe, any restrictions as to the offering and the distribution of this prospectus applicable to those jurisdictions.

We further note that the representations, warranties and covenants made by us in any agreement that is filed as an exhibit to any document that is incorporated by reference into this prospectus were made solely for the benefit of the parties to such agreement, including, in some cases, for the purpose of allocating risk among the parties to such agreement, and should not be deemed to be a representation, warranty or covenant to you. Moreover, such representations, warranties or covenants speak only as of the date when made. Accordingly, such representations, warranties and covenants should not be relied on as accurately representing the current state of our affairs.

All references in this prospectus to “Fennec,” the “Company,” “we,” “us,” “our,” or similar references refer to Fennec Pharmaceuticals Inc. and its subsidiaries, except where the context otherwise requires or as otherwise indicated.

## CAUTIONARY NOTE REGARDING FORWARD-LOOKING STATEMENTS

This prospectus and the documents we have filed with the SEC that are incorporated by reference in this prospectus contain forward-looking statements within the meaning of Section 27A of the Securities Act of 1933, as amended (the “Securities Act”), and Section 21E of the Securities Exchange Act of 1934, as amended (the “Exchange Act”). These forward-looking statements may concern possible or anticipated future results of operations or business developments. These statements are based on management’s current expectations or predictions of future conditions, events or results based on various assumptions and management’s estimates of trends and economic factors in the markets in which we are active, as well as our business plans. Words such as “expects”, “anticipates”, “intends”, “plans”, “believes”, “seeks”, “estimates”, “projects”, “forecasts”, “may”, “should”, variations of such words and similar expressions are intended to identify such forward-looking statements. The forward-looking statements may include, without limitation, statements regarding product development, product potential, regulatory environment, sales and marketing strategies, capital resources, operating performance, or the closing of this offering. The forward-looking statements are subject to risks and uncertainties, which may cause results to differ materially from those set forth in the statements. Forward-looking statements should be evaluated together with the many uncertainties that affect our business and our market, particularly those discussed under “Risk Factors” below, as well as any amendments to such risk factors reflected in our subsequent filings with the SEC. Forward-looking statements include, but are not limited to, statements about:

- our expectations regarding the use of our existing capital resources;
- our efforts to pursue collaborations with other companies and third parties;
- the timing and success of our planned preclinical studies with animals and clinical trials with humans;
- our ability to enroll patients in our clinical trials at the pace that we project;
- whether the results of our trials will be sufficient to support domestic or foreign regulatory approvals for our product candidate;
- our ability to obtain and maintain regulatory approval of our product candidate;
- the benefits of the use of our product candidate;
- our ability to successfully commercialize our product candidate if approved;
- the rate and degree of market acceptance of our product candidate;
- our ability to maintain, or recognize the anticipated benefits of, Orphan Drug Designation for our product candidate;
- our ability to protect our intellectual property;
- our corporate and development strategies;
- our expected results of operations;
- our anticipated levels of expenditures;
- the nature and scope of potential markets for our product candidate; and
- our ability to attract and retain key employees.

Forward-looking statements are not guarantees of future performance, and actual results may differ materially from those projected. The forward-looking statements are representative only as of the date they are made, and the Company assumes no responsibility to update any forward-looking statements except as required by law.

This prospectus supplement contains estimates, projections and other statistical data made by independent parties and by us relating to market size and growth, the incidence of certain medical conditions and other industry data. These data, to the extent they contain estimates or projections, involve a number of subjective assumptions and limitations, and you are cautioned not to give undue weight to such estimates or projections. Industry publications and other reports we have obtained from independent parties generally state that the data contained in these publications or other reports have been obtained in good faith or from sources considered to be reliable, but they do not guarantee the accuracy or completeness of such data. While we believe that the data from these industry publications and other reports are generally reliable, we have not independently verified the accuracy or completeness of such data. These and other factors could cause results to differ materially from those expressed in these publications and reports.

We may from time to time provide estimates of the potential United States and foreign market for our product candidate. These estimates are based on a number of factors, including our expectation as to the number of patients with a certain medical condition that would potentially benefit from our product candidate. While we have determined these estimates based on assumptions that we believe are reasonable, there are a number of factors that could cause our expectations to change or not be realized. See “Risk Factors.” It is possible that the ultimate market for our product candidate will differ significantly from our expectations due to these or other factors and, therefore, investors should not place undue reliance on such estimates.

## PROSPECTUS SUMMARY

*This summary description about us and our business highlights selected information contained elsewhere in this prospectus or incorporated by reference into this prospectus. It does not contain all the information you should consider before investing in our common shares. Important information is incorporated by reference into this prospectus. To understand this offering fully, you should read carefully this entire prospectus, including the sections titled "Risk Factors" and "Cautionary Note Regarding Forward-Looking Statements," together with the additional information described under "Information Incorporated by Reference."*

### Company Overview

We are a biopharmaceutical company focused on the development of PEDMARK<sup>TM</sup> (a unique formulation of Sodium Thiosulfate ("STS")) for the prevention of platinum-induced ototoxicity in pediatric cancer patients.

We have not received and do not expect to have significant revenues from our product candidate until we are either able to sell our product candidate after obtaining applicable regulatory approvals or we establish collaborations that provide us with up-front payments, licensing fees, milestone payments, royalties or other revenue. We reported a loss of approximately \$7.0 million (including a non-cash loss on derivative liabilities of \$0.13 million) for the year ended December 31, 2017, and reported a net loss of approximately \$2.8 million (which included a non-cash gain on derivative liabilities of \$0.05 million) for the year ended December 31, 2016. At December 31, 2017, we had an accumulated deficit of approximately \$121.4 million.

We incorporated under the Canada Business Corporations Act ("CBCA") in September 1996. Effective on August 25, 2011, we continued from the CBCA to the Business Corporations Act (British Columbia) (the "Continuance"). The Continuance was approved by our shareholders at our June 2011 Annual and Special Meeting and by resolution of our Board of Directors on August 10, 2011. We have three wholly-owned subsidiaries: Oxiquant, Inc. and Fennec Pharmaceuticals, Inc., both Delaware corporations, and Cadherin Biomedical Inc., a Canadian company. With the exception of Fennec Pharmaceuticals, Inc., all subsidiaries are inactive.

Our principal executive offices are located at PO BOX 13628, 68 TW Alexander Drive, Research Triangle Park, NC 27709. Our telephone number is (919) 636-4530. Our website is [www.fennecpharma.com](http://www.fennecpharma.com). Information contained in our website does not constitute part of this prospectus.



## The Offering

The selling stockholders identified in this prospectus are offering on a resale basis a total of 11,943,214 shares of our common stock, including 1,383,331 shares issuable upon the exercise of outstanding warrants.

|  |  |
|--|--|
| Common shares offered                            | 11,943,214 shares  |
| Common shares outstanding before the offering(1) | 18,464,706 shares  |
| Common shares outstanding after the offering(2)  | 19,848,037 shares  |
| Use of proceeds                                  | We will not receive any proceeds from the sale of the common shares by the selling stockholders, except for the warrant exercise price paid for the shares offered hereby that are issuable upon the exercise of certain warrants. See “Use of Proceeds” on page 5 of this prospectus. |
| Risk Factors                                     | Investing in our common shares involves a high degree of risk. See “Risk Factors” on page 5 of this prospectus.  |
| Dividend Policy                                  | Our board of directors does not intend to declare cash dividends on our common shares for the foreseeable future.  |
| Exchange Listing                                 | Our common shares are listed on the Nasdaq Capital Market under the symbol “FENC” and on the Toronto Stock Exchange under the symbol “FRX.” On April 11, 2018, the last reported sale price of our common shares on the Nasdaq Capital Market was \$13.95 per share.                   |

- (1) Based on the number of shares outstanding as of April 11, 2018, not including shares issuable upon exercise of outstanding warrants and options to purchase our common shares.
- (2) The increase in shares outstanding after the offering assumes the issuance of 1,383,331 shares offered hereby that are issuable upon the exercise of outstanding warrants held by the selling stockholders.

We will bear the fees and expenses relating to the offering.

## **RISK FACTORS**

Investing in our common shares involves a high degree of risk. You should carefully review the risks and uncertainties set forth in the documents that are incorporated by reference into this prospectus, including the risks and uncertainties described under the heading “Risk Factors” in our most recent Annual Report on Form 10-K before deciding whether to purchase any of the common shares being offered. The risks described in these documents are not the only ones we face, but those that we consider to be material. There may be other unknown or unpredictable economic, business, competitive, regulatory or other factors that could have material adverse effects on our future results. If any of these risks actually occurs, our business, financial condition, results of operations or cash flow could be seriously harmed. This could cause the trading price of our common shares to decline, resulting in a loss of all or part of your investment. Please also read carefully the section above entitled “Cautionary Note Regarding Forward-Looking Statements.”

## **USE OF PROCEEDS**

We will not receive any of the proceeds from the sale of the common shares by the selling stockholders. Certain of the shares offered hereby are issuable upon the exercise of outstanding warrants. Upon exercise of such warrants we will receive the applicable cash exercise price paid by the holders of the warrants.

## SELLING STOCKHOLDERS

This prospectus covers the resale by the selling stockholders identified in the table below of 11,943,214 common shares, which includes 1,383,331 common shares issuable upon the exercise of warrants held by certain selling stockholders as indicated in the table below. The selling stockholders acquired the common shares and warrants to purchase common shares pursuant to the following transactions:

- our April 2010 private placement of common shares and warrants to purchase common shares;
- our November 2013 private placement of common shares and warrants to purchase common shares;
- our February 2016 private placement of warrants to purchase common shares issued in lieu of payment for investor services rendered;
- our May 2016 private placement of common shares; and
- our June 2017 private placement of common shares.

| Selling Stockholder             | Shares beneficially owned before offering (1) | Number of outstanding shares offered by selling stockholder | Number of shares offered by selling stockholder upon exercise of warrants | Percentage beneficial ownership after offering (2) |
|---------------------------------|---|---|---|--|
| Southpoint Master Fund, LP (3)  | 3,997,214                                     | 3,997,214   | -   | nil  |
| Essetifin SpA (4)               | 3,225,694                                     | 2,931,579   | -   | 1.6%   |
| 683 Capital Partners, LP (5)    | 971,352                                       | 262,499   | 104,166   | 3.3%   |
| Robert Butts                    | 768,592                                       | 768,592   | -   | nil  |
| Manchester Explorer, L.P. (6)   | 1,250,000                                     | 625,000   | 625,000   | nil  |
| JEB Partners, L.P. (7)          | 416,666                                       | 208,333   | 208,333   | nil  |
| James Besser (8)                | 166,666                                       | 83,333  | 83,333  | nil  |
| Morgan Frank (9)                | 166,666                                       | 83,333  | 83,333  | nil  |
| Varana Capital Focused, LP (10) | 135,920                                       | 93,750  | -   | 0.2%   |
| venBio Select Fund LLC (11)     | 1,105,999                                     | 712,500   | -   | 2.1%   |
| 2B LLC (12)                     | 37,500  | 37,500  | -   | nil  |
| The Sonic Fund II, LP (13)      | 375,000                                       | 375,000   | -   | nil  |
| Acuta Opportunity Fund, LP (14) | 52,500  | 52,500  | -   | nil  |
| Acuta Capital Fund, LP (15)     | 197,500                                       | 197,500   | -   | nil  |
| Kenneth Marks                   | 6,250   | 6,250   | -   | nil  |
| John Grimley (16)               | 83,333  | -   | 83,333  | nil  |
| Overall LLC (17)                | 250,000                                       | 125,000   | 125,000   | nil  |
| Rodney & June Baber (18)        | 20,833  | -   | 20,833  | nil  |
| Aranea Partners, Inc. (19)      | 119,700                                       | -   | 50,000  | 0.4%   |

- (1) Based on 18,464,706 of our common shares outstanding as of April 11, 2018. Beneficial ownership is determined in accordance with Rule 13d-3 under the Exchange Act, and includes any shares as to which the stockholder has sole or shared voting power or investment power, and also any shares which the stockholder has the right to acquire within 60 days of the date of this prospectus, whether through the exercise or conversion of any stock option, convertible security, warrant or other right. The indication herein that shares are beneficially owned is not an admission on the part of the stockholder that it is a direct or indirect beneficial owner of those shares.
- (2) Post-offering percentage ownership calculations assume that all common shares being offered under this prospectus are sold.
- (3) Southpoint Master Fund, LP, 1114 Avenue of the Americas, 22<sup>nd</sup> Floor, New York, New York 10036. Southpoint Capital Advisors LP serves as the investment manager for Southpoint Master Fund, LP and Southpoint GP, LP serves as the general partner of Southpoint Master Fund, LP. Southpoint Capital Advisors LLC serves as the general partner of Southpoint Capital Advisors LP and Southpoint GP, LLC serves as the general partner of Southpoint GP, LP. John S. Clark II serves as managing member of both Southpoint Capital Advisors LLC and Southpoint GP, LLC. Each of the foregoing disclaims beneficial ownership of the shares reported in the table above except to the extent of its or his pecuniary interest therein.
- (4) Essetifin SpA, Via Sudafrica 20, Rome, RM 00144, Italy. Dispositive power over the shares owned by Essetifin SpA is shared by Enrico Cavazza, Silvia Cavazza, Francesca Cavazza, Martina Cavazza Preta, and Paolo Cavazza.
- (5) 683 Capital Partners, LP, 3 Columbus Circle, Suite 2205, New York, New York 10019. The number of shares beneficially owned includes 104,166 common shares issuable upon exercise of warrants. 683 Capital Management, LLC, as the investment manager of 683 Capital Partners, LP, may be deemed to have beneficially owned the 971,352 shares of Common Stock beneficially owned by 683 Capital Partners, LP. Ari Zweiman, as the Managing Member of 683 Capital Management, LLC, may be deemed to have beneficially owned the 971,352 shares of Common Stock beneficially owned by 683 Capital Management, LLC.
- (6) Manchester Explorer, L.P., 3 West Hill Place, Boston, MA, 02114. James Besser and Morgan Frank hold shared dispositive power over the shares owned by Manchester Explorer, L.P. The number of shares beneficially owned includes 625,000 common shares issuable upon exercise of warrants.
- (7) JEB Partners, L.P., 3 West Hill Place, Boston, MA, 02114. James Besser and Morgan Frank hold shared dispositive power over the shares owned by JEB Partners, L.P. The number of shares beneficially owned includes 208,333 common shares issuable upon exercise of warrants.
- (8) The number of shares beneficially owned includes 83,333 common shares issuable upon exercise of warrants.
- (9) The number of shares beneficially owned includes 83,333 common shares issuable upon exercise of warrants.
- (10) Varana Capital Focused, LP, 205 East 42<sup>nd</sup> Street, 14<sup>th</sup> Floor, New York, NY 10036. Phillip Broenniman, Verana Capital, LLC and Varana Capital Focused, LP hold shared dispositive power over the shares owned by Varana Capital Focused, LP.
- (11) venBio Select Fund LLC, 120 West 45<sup>th</sup> Street, Suite 2802, New York, NY 10036. venBio Select Advisor LLC and Behzad Aghazadeh hold shared dispositive power over the shares owned by venBIO Select Fund LLC.
- (12) 2B LLC, 17-20 Whitestone Expressway, Ste. 403, Whitestone, NY 11357. J. Darius Bikoff and Rony Kalina hold shared dispositive power over the shares owned by 2B LLC.
- (13) The Sonic Fund II, LP, 400 Hobron Lane #3709, Honolulu, HI 96815. Lawrence Kam holds dispositive power over the shares owned by The Sonic Fund II, LP.
- (14) Acuta Opportunity Fund, LP, 1301 Shoreway Road, Suite 350, Belmont, CA 94002. Richard Lin holds dispositive power over the shares owned by Acuta Opportunity Fund, LP as Managing Member of its general partner, Acuta Capital Partners, LLC.
- (15) Acuta Capital Fund, LP, 1301 Shoreway Road, Suite 350, Belmont, CA 94002. Richard Lin holds dispositive power over the shares owned by Acuta Capital Fund, LP as Managing Member of its general partner, Acuta Capital Partners, LLC.
- (16) The number of shares beneficially owned consists of 83,333 common shares issuable upon exercise of warrants.
- (17) Overall LLC, 29 Commonwealth Avenue, 4<sup>th</sup> Floor, Boston, MS 02114. Andrew Davis holds dispositive power over the shares owned by Overall LLC. The number of shares beneficially owned includes 125,000 common shares issuable upon exercise of warrants.
- (18) Rodney and June Baber hold the shares jointly as tenants in common. The number of shares beneficially owned consists of 20,833 common shares issuable upon exercise of warrants.
- (19) Aranea Partners, Inc., 43 Orchard Lane, Colts Neck, NJ 07722. Ryan Aldridge holds dispositive power over the shares owned by Aranea Partners, Inc. The number of shares beneficially owned includes 50,000 common shares issuable upon exercise of warrants.

## MATERIAL UNITED STATES AND CANADIAN FEDERAL INCOME TAX CONSEQUENCES

### Material U.S. Federal Income Tax Considerations

The following is a general summary of certain U.S. federal income tax considerations applicable to a U.S. Holder (as defined below) arising from and relating to the acquisition, ownership, and disposition of our common shares. This summary is for general information purposes only and does not purport to be a complete analysis or listing of all potential U.S. federal income tax considerations that may apply to a U.S. Holder arising from and relating to the acquisition, ownership, and disposition of our common shares. In addition, this summary does not take into account the individual facts and circumstances of any particular U.S. Holder that may affect the U.S. federal income tax consequences to such U.S. Holder, including, without limitation, specific tax consequences to a U.S. Holder under an applicable income tax treaty. Accordingly, this summary is not intended to be, and should not be construed as, legal or U.S. federal income tax advice with respect to any U.S. Holder. This summary does not address the U.S. federal alternative minimum, U.S. federal estate and gift, U.S. state and local, and non-U.S. tax consequences to U.S. Holders of the acquisition, ownership, and disposition of our common shares. In addition, except as specifically set forth below, this summary does not discuss applicable tax reporting requirements. Each prospective U.S. Holder should consult its own tax advisors regarding the U.S. federal, U.S. federal alternative minimum, U.S. federal estate and gift, U.S. state and local, and non-U.S. tax consequences relating to the acquisition, ownership and disposition of our common shares.

No legal opinion from U.S. legal counsel or ruling from the Internal Revenue Service (the “IRS”) has been requested, or will be obtained, regarding the U.S. federal income tax consequences of the acquisition, ownership, and disposition of our common shares. This summary is not binding on the IRS, and the IRS is not precluded from taking a position that is different from, and contrary to, the positions taken in this summary. In addition, because the authorities on which this summary is based are subject to various interpretations, the IRS and the U.S. courts could disagree with one or more of the conclusions described in this summary.

### **General**

#### *Authorities*

This summary is based on the Code, Treasury Regulations (whether final, temporary, or proposed), published rulings of the IRS, published administrative positions of the IRS, the Convention Between Canada and the United States of America with Respect to Taxes on Income and on Capital, signed September 26, 1980, as amended (the “Canada-U.S. Tax Convention”), and U.S. court decisions that are applicable, and, in each case, as in effect and available, as of the date of this document. Any of the authorities on which this summary is based could be changed in a material and adverse manner at any time, and any such change could be applied retroactively. This summary does not discuss the potential effects, whether adverse or beneficial, of any proposed legislation.

#### *U.S. Holders*

For purposes of this summary, the term “U.S. Holder” means a beneficial owner of common shares acquired pursuant to this prospectus that is for U.S. federal income tax purposes:

- an individual who is a citizen or resident of the United States (as determined under U.S. federal income tax rules);
- a corporation (or other entity treated as a corporation for U.S. federal income tax purposes) created or organized in or under the laws of the United States or of any political subdivision of the United States;
- an estate, the income of which is subject to U.S. federal income taxation regardless of its source; or
- a trust that (i) is subject to the primary supervision of a court within the United States and the control of one or more U.S. persons for all substantial decisions or (ii) has a valid election in effect under applicable United States Treasury Regulations to be treated as a U.S. person.

An individual may be a resident for U.S. federal income tax purposes in any calendar year if the individual was present in the United States for at least 31 days in that calendar year and for an aggregate of at least 183 days during the three-year period ending with the current calendar year. For purposes of this calculation, all of the days present in the current year, one-third of the days present in the immediately preceding year, and one-sixth of the days present in the second preceding year are counted. Residents are taxed for U.S. federal income tax purposes as if they were U.S. citizens.

*Non-U.S. Holders Not Addressed*

For purposes of this summary, a “non-U.S. Holder” is a beneficial owner of common shares that is not a U.S. Holder and is not a partnership for U.S. federal income tax purposes. This summary does not address the U.S. federal income tax consequences to non-U.S. Holders of acquiring, owning, and disposing of common shares. Each prospective investor should consult a professional tax advisor with respect to the U.S. federal income, U.S. alternative minimum, U.S. federal estate and gift, U.S. state and local, and non-U.S. tax consequences of acquiring, owning, and disposing of our common shares.

*Certain U.S. Holders Not Addressed*

This summary does not address the U.S. federal income tax considerations applicable U.S. Holders that are subject to special provisions under the Code, including, but not limited to, U.S. Holders that:

- are tax-exempt organizations, qualified retirement plans, individual retirement accounts, or other tax-deferred accounts;
- are financial institutions, underwriters, insurance companies, real estate investment trusts, or regulated investment companies;
- are broker-dealers, dealers, or traders in securities or currencies that elect to apply a mark-to-market accounting method;
- have a “functional currency” other than the U.S. dollar;
- own common shares as part of a straddle, hedging transaction, conversion transaction, constructive sale, or other arrangement involving more than one position;
- acquired common shares in connection with the exercise of employee stock options or otherwise as compensation for services;
- hold common shares other than as a capital asset within the meaning of section 1221 of the Code (generally, property held for investment purposes);
- are partnerships or other “pass-through” entities for U.S. federal income tax purposes (or investors in such partnerships or entities);
- own, have owned, or will own (directly, indirectly, or by attribution) 10% or more of the total combined voting power of the outstanding shares of your company;
- are U.S. expatriates or former long-term residents of the United States;
- have been, are, or will be residents or deemed to be residents in Canada for purposes of the Income Tax Act (Canada) (the “Tax Act”);
- use or hold, will use or hold, or that are or will be deemed to use or hold common shares in connection with carrying on a business in Canada;
- are persons whose common shares constitute “taxable Canadian property” under the Tax Act; or
- have a permanent establishment in Canada for the purposes of the Canada-U.S. Tax Convention.

U.S. Holders that are subject to special provisions under the Code, including, but not limited to, U.S. Holders described immediately above, should consult their own tax advisors regarding the U.S. federal income, U.S. federal alternative minimum, U.S. federal estate and gift, U.S. state and local, and non-U.S. tax consequences of acquiring, owning, and disposing of our common shares.

**The following summary is not a substitute for careful tax planning and advice. U.S. Holders of common shares are urged to consult their own tax advisors concerning the U.S. federal income tax consequences of the issues discussed herein, in light of their particular circumstances, as well as any considerations arising under the laws of any foreign, state, local, or other taxing jurisdiction.**

#### **General Rules Applicable to the Ownership and Disposition of Common Shares**

A U.S. Holder that receives a distribution, including a constructive distribution, with respect to a common share will be required to include the amount of such distribution in gross income as a dividend (without reduction for any Canadian income tax withheld from such distribution) to the extent of the current and accumulated “earnings and profits” of the Company, as computed for U.S. federal income tax purposes. A dividend generally will be taxed to a U.S. Holder at ordinary income tax rates. (See, however, the exception discussed below for individual and other non-corporate U.S. Holders, which may allow such holders preferential rates when the Company has terminated PFIC status.) To the extent that a distribution exceeds the current and accumulated “earnings and profits” of the Company, such distribution will be treated, first, as a tax-free return of capital to the extent of a U.S. Holder’s tax basis in the common shares and thereafter as gain from the sale or exchange of such common shares. However, the Company may not maintain the calculations of its earnings and profits in accordance with U.S. federal income tax principles, and U.S. Holders may have to assume that any distribution by the Company with respect to the common shares will constitute ordinary dividend income. Dividends received on common shares by corporate U.S. Holders generally will not be eligible for the “dividends received deduction.” Provided that (1) the Company is eligible for the benefits of the Canada-U.S. Tax Convention or (2) the common shares are readily tradable on a United States securities market (and certain holding period and other conditions are satisfied), dividends paid by the Company to non-corporate U.S. Holders, including individuals, will be eligible for the preferential tax rates applicable to long-term capital gains for dividends unless the Company is classified as a PFIC in the tax year of distribution or in the preceding tax year. The dividend rules are complex, and each U.S. Holder should consult its own tax advisors regarding the application of such rules.

Upon the sale or other taxable disposition of common shares, subject to the PFIC rules below, a U.S. Holder generally will recognize capital gain or loss in an amount equal to the difference between the U.S. dollar value of cash received plus the fair market value of any property received and such U.S. Holder’s tax basis in such common shares sold or otherwise disposed of. A U.S. Holder’s tax basis in common shares generally will be determined initially by the holder’s U.S. dollar cost for the common shares (with adjustments provided under the PFIC rules below). Subject again to the PFIC rules, gain or loss recognized on such sale or other disposition generally will be long-term capital gain or loss if, at the time of the sale or other disposition, the common shares have been held for more than one year.

Preferential tax rates currently apply to long-term capital gain of a U.S. Holder that is an individual, estate, or trust. There are currently no preferential tax rates for long-term capital gain of a U.S. Holder that is a corporation. Deductions for capital losses are subject to significant limitations under the Code. If the Company is determined to be a PFIC, any gain realized on the common shares could be ordinary income under the rules discussed below.

#### **General Rules Applicable to the Ownership and Disposition of Common Shares**

##### *PFIC Status of the Company*

If the Company were to constitute a “passive foreign investment company” under the meaning of Section 1297 of the Code (a “PFIC,” as defined below) for any taxable year during a U.S. Holder’s holding period, then certain potentially adverse rules may affect the U.S. federal income tax consequences to a U.S. Holder as a result of the acquisition, ownership and disposition of common shares. We have not made the analysis necessary to determine whether or not we are currently a PFIC or whether we have ever been a PFIC. There can be no assurance that we are not, have never been or will not in the future be a PFIC. No opinion of legal counsel or ruling from the IRS concerning the status of the Company as a PFIC has been obtained or is currently planned to be requested. The determination of whether any corporation was, or will be, a PFIC for a tax year depends, in part, on the application of complex U.S. federal income tax rules, which are subject to differing interpretations. In addition, whether any corporation will be a PFIC for any tax year depends on the assets and income of such corporation over the course of each such tax year and, as a result, cannot be predicted with certainty as of the date of this document. Accordingly, there can be no assurance that the IRS will not challenge any determination made by the Company (or any subsidiary of the Company) concerning its PFIC status in any taxable year. Each U.S. Holder should consult its own tax advisors regarding the PFIC status of the Company and each subsidiary of the Company.

In any taxable year in which the Company is classified as a PFIC, a U.S. Holder will be required to file an annual report with the IRS containing such information as Treasury Regulations and/or other IRS guidance may require. IRS Form 8621 is currently used for such filings. In addition to penalties, a failure to satisfy such reporting requirements may result in an extension of the time period during which the IRS can assess a tax. U.S. Holders should consult their own tax advisors regarding the requirements of filing such information returns under these rules, including the requirement to file an IRS Form 8621 annually.

The Company generally will be a PFIC for a taxable year if, for such year, (a) 75% or more of the gross income of the Company is passive income (the “PFIC income test”) or (b) 50% or more of the value of the Company’s assets either produce passive income or are held for the production of passive income, based on the quarterly average of the fair market value of such assets (the “PFIC asset test”). “Gross income” generally includes all sales revenues less the cost of goods sold, plus income from investments and from incidental or outside operations or sources, and “passive income” generally includes, for example, dividends, interest, certain rents and royalties, certain gains from the sale of stock and securities, and certain gains from commodities transactions.

Active business gains arising from the sale of commodities generally are excluded from passive income if substantially all (85% or more) of a foreign corporation’s commodities are stock in trade or inventory, depreciable property used in a trade or business, or supplies regularly used or consumed in the ordinary course of its trade or business, and certain other requirements are satisfied.

For purposes of the PFIC income test and PFIC asset test described above, if the Company owns, directly or indirectly, 25% or more of the total value of the outstanding shares of another corporation, the Company will be treated as if it (a) held a proportionate share of the assets of such other corporation and (b) received directly a proportionate share of the income of such other corporation. In addition, for purposes of the PFIC income test and PFIC asset test described above, and assuming certain other requirements are met, “passive income” does not include certain interest, dividends, rents, or royalties that are received or accrued by the Company from certain “related persons” (as defined in Section 954(d)(3) of the Code) also organized in Canada, to the extent such items are properly allocable to the income of such related person that is neither passive income nor income connected with a U.S. trade or business.

Under certain attribution rules, if the Company is a PFIC, U.S. Holders will generally be deemed to own their proportionate share of the Company’s direct or indirect equity interest in any company that is also a PFIC (a “Subsidiary PFIC”), and will generally be subject to U.S. federal income tax on their proportionate share of (a) any “excess distributions,” as described below, on the stock of a Subsidiary PFIC and (b) a disposition or deemed disposition of the stock of a Subsidiary PFIC by the Company or another Subsidiary PFIC, both as if such U.S. Holders directly held the shares of such Subsidiary PFIC. In addition, U.S. Holders may be subject to U.S. federal income tax on any indirect gain realized on the stock of a Subsidiary PFIC on the sale or disposition of common shares. Accordingly, U.S. Holders should be aware that they could be subject to tax under the PFIC rules even if no distributions are received on the common shares and no redemptions or other dispositions of common shares are made.

#### *Default PFIC Rules Under Section 1291 of the Code*

If the Company is a PFIC for any tax year during which a U.S. Holder owns common shares, the U.S. federal income tax consequences to such U.S. Holder of the acquisition, ownership, and disposition of common shares will depend on whether and when such U.S. Holder makes an election to treat the Company and each Subsidiary PFIC, if any, as a “qualified electing fund” or “QEF” under Section 1295 of the Code (a “QEF Election”) or makes a mark-to-market election under Section 1296 of the Code (a “Mark-to-Market Election”). A U.S. Holder that does not make either a QEF Election or a Mark-to-Market Election will be referred to in this summary as a “Non-Electing U.S. Holder.”

A Non-Electing U.S. Holder will be subject to the rules of Section 1291 of the Code (described below) with respect to (a) any gain recognized on the sale or other taxable disposition of common shares and (b) any “excess distribution” received on the common shares. A distribution generally will be an “excess distribution” to the extent that such distribution (together with all other distributions received in the current tax year) exceeds 125% of the average distributions received during the three preceding tax years (or during a U.S. Holder’s holding period for the common shares, if shorter).

Under Section 1291 of the Code, any gain recognized on the sale or other taxable disposition of common shares (including an indirect disposition of the stock of any Subsidiary PFIC), and any “excess distribution” received on common shares or deemed received with respect to the stock of a Subsidiary PFIC, must be ratably allocated to each day in a Non-Electing U.S. Holder’s holding period for the respective common shares. The amount of any such gain or excess distribution allocated to the tax year of disposition or distribution of the excess distribution, or allocated to years before the entity became a PFIC, if any, would be taxed as ordinary income at the rates applicable for such year (and not eligible for certain preferred rates). The amounts allocated to any other tax year would be subject to U.S. federal income tax at the highest tax rate applicable to ordinary income in each such year. In addition, an interest charge would be imposed on the tax liability for each such year, calculated as if such tax liability had been due in each such year. A Non-Electing U.S. Holder that is not a corporation must treat any such interest paid as “personal interest,” which is not deductible.



If the Company is a PFIC for any tax year during which a Non-Electing U.S. Holder holds common shares, the Company will continue to be treated as a PFIC with respect to such Non-Electing U.S. Holder, regardless of whether the Company ceases to be a PFIC in one or more subsequent tax years. A Non-Electing U.S. Holder may terminate this deemed PFIC status by electing to recognize gain (which will be taxed under the rules of Section 1291 of the Code discussed above), but not loss, as if such common shares were sold on the last day of the last tax year for which the Company was a PFIC.

#### *QEF Election*

A U.S. Holder that makes a timely and effective QEF Election for the tax year in which the holding period of its common shares begins generally will not be subject to the rules of Section 1291 of the Code discussed above with respect to such common shares. A U.S. Holder that makes such a QEF Election will be subject to U.S. federal income tax on such U.S. Holder's pro rata share (based on its ownership Common Stock) of (a) the net capital gain of the Company, which will be taxed as long-term capital gain to such U.S. Holder, and (b) the ordinary earnings of the Company, which will be taxed as ordinary income to such U.S. Holder. Generally, "net capital gain" is the excess of (a) net long-term capital gain over (b) net short-term capital loss, and "ordinary earnings" are the excess of (a) "earnings and profits" over (b) net capital gain. A U.S. Holder that makes a QEF Election will be subject to U.S. federal income tax on such amounts for each tax year in which the Company is a PFIC, regardless of whether such amounts are actually distributed to such U.S. Holder by the Company. However, for any tax year in which the Company is a PFIC and has no net income or gain, U.S. Holders that have made a QEF Election would not have any income inclusions as a result of the QEF Election. If a U.S. Holder that made a QEF Election has an income inclusion, such a U.S. Holder may, subject to certain limitations, elect to defer payment of current U.S. federal income tax on such amounts, subject to an interest charge. If such U.S. Holder is not a corporation, any such interest paid will be treated as "personal interest," which is not deductible.

A U.S. Holder that makes a timely and effective QEF Election with respect to the Company generally (a) may receive a tax-free distribution from the Company to the extent that such distribution represents "earnings and profits" of the Company that were previously included in income by the U.S. Holder because of such QEF Election and (b) will adjust such U.S. Holder's tax basis in the common shares to reflect the amount included in income or allowed as a tax-free distribution because of such QEF Election. A U.S. Holder that makes a QEF Election generally will recognize capital gain or loss on the sale or other taxable disposition of common shares.

A U.S. Holder may make a timely QEF Election by filing the appropriate QEF Election documents (currently IRS Form 8621) at the time such U.S. Holder files a U.S. federal income tax return for such year. If a U.S. Holder does not make a timely QEF Election for the first year in the U.S. Holder's holding period in which the Company is a PFIC, the U.S. Holder may still be able to make an effective QEF Election in a subsequent year if such U.S. Holder meets certain requirements and makes a "purging" election to recognize gain (which will be taxed under the rules of Section 1291 of the Code discussed above) as if such common shares were sold for their fair market value on the day the QEF Election is effective. If a U.S. Holder makes a QEF Election but does not make a "purging" election to recognize gain as discussed in the preceding sentence, then such U.S. Holder shall be subject to the QEF Election rules and shall continue to be subject to tax under the rules of Section 1291 discussed above with respect to its common shares. If a U.S. Holder owns PFIC stock indirectly through another PFIC, separate QEF Elections must be made for the PFIC in which the U.S. Holder is a direct shareholder and the Subsidiary PFIC for the QEF rules to apply to both PFICs.

A QEF Election will apply to the tax year for which such QEF Election is timely made and to all subsequent tax years, unless such QEF Election is invalidated or terminated or the IRS consents to revocation of such QEF Election. If a U.S. Holder makes a QEF Election and, in a subsequent tax year, the Company ceases to be a PFIC, the QEF Election will remain in effect (although it will not be applicable) during those tax years in which the Company is not a PFIC. Accordingly, if the Company becomes a PFIC in another subsequent tax year, the QEF Election will be effective and the U.S. Holder will be subject to the QEF rules described above during any subsequent tax year in which the Company qualifies as a PFIC.

The Company: (a) will make available to U.S. Holders, upon their written request, information as to its status as a PFIC, and (b) for each taxable year in which the Company is a PFIC, provide to a U.S. Holder, upon written request, such information and documentation that a U.S. Holder making a QEF Election with respect to the Company is reasonably required to obtain for U.S. federal income tax purposes. The Company may elect to provide such information on its website. However, U.S. Holders should be aware that the Company cannot assure that it will provide any such information relating to any Subsidiary PFIC. Because the Company may own shares in one or more Subsidiary PFICs at any time, U.S. Holders will continue to be subject to the rules discussed above with respect to the taxation of gains and excess distributions with respect to any Subsidiary PFIC for which the U.S. Holders do not obtain the required information. Each U.S. Holder should consult its own tax advisors regarding the requirements for, and procedure for making, a QEF Election with respect to the Company and any Subsidiary PFIC.

A U.S. Holder makes a QEF Election by attaching a completed IRS Form 8621, including a PFIC Annual Information Statement, to a timely filed United States federal income tax return. However, if the Company does not provide the required information with regard to the Company or any of its Subsidiary PFICs, U.S. Holders may not be able to make a QEF Election for such entity and, unless they make the Mark-to-Market Election discussed in the next section, will continue to be subject to the rules of Section 1291 of the Code discussed above that apply to Non-Electing U.S. Holders with respect to the taxation of gains and excess distributions.

#### *Mark-to-Market Election*

A U.S. Holder may make a Mark-to-Market Election only if the common shares are marketable stock. The common shares generally will be “marketable stock” if the common shares are regularly traded on (a) a national securities exchange that is registered with the Securities and Exchange Commission, (b) the national market system established pursuant to section 11A of the Securities and Exchange Act of 1934, or (c) a foreign securities exchange that is regulated or supervised by a governmental authority of the country in which the market is located, provided that (i) such foreign exchange has trading volume, listing, financial disclosure, and surveillance requirements, and meets other requirements and the laws of the country in which such foreign exchange is located, together with the rules of such foreign exchange, ensure that such requirements are actually enforced and (ii) the rules of such foreign exchange effectively promote active trading of listed stocks. If such stock is traded on such a qualified exchange or other market, such stock generally will be “regularly traded” for any calendar year during which such stock is traded, other than in de minimis quantities, on at least 15 days during each calendar quarter. The Company expects that the common shares will meet the definition of “marketable stock,” although there can be no assurance of this, especially as regards the required trading frequency.

If a U.S. Holder that makes a Mark-to-Market Election for any taxable year with respect to its common shares, it generally will not be subject to the rules of Section 1291 of the Code discussed above with respect to such common shares for such taxable year. However, if a U.S. Holder does not make a Mark-to-Market Election beginning in the first tax year of such U.S. Holder’s holding period for which the Company is a PFIC and such U.S. Holder has not made a timely QEF Election, the rules of Section 1291 of the Code discussed above will apply to dispositions of, and certain distributions on, the common shares.

A U.S. Holder that makes a Mark-to-Market Election will include in ordinary income, for each tax year in which the Company is a PFIC, an amount equal to the excess, if any, of (a) the fair market value of the common shares, as of the close of such tax year over (b) such U.S. Holder’s adjusted tax basis in such common shares. A U.S. Holder that makes a Mark-to-Market Election will be allowed a deduction in an amount equal to the excess, if any, of (a) such U.S. Holder’s adjusted tax basis in the common shares, over (b) the fair market value of such common shares (but only to the extent of the net amount of previously included income as a result of the Mark-to-Market Election for prior tax years).

A U.S. Holder that makes a Mark-to-Market Election generally also will adjust its tax basis in the common shares to reflect the amount included in gross income or allowed as a deduction because of such Mark-to-Market Election. Upon a sale or other taxable disposition of common shares, a U.S. Holder that makes a Mark-to-Market Election will recognize ordinary income or ordinary loss. Any such ordinary loss, however, is limited to exceed the excess, if any, of (a) the amount included in ordinary income because of such Mark-to-Market Election for prior tax years over (b) the amount allowed as a deduction because of such Mark-to-Market Election for prior tax years. Losses that exceed this limitation are subject to the rules generally applicable to losses provided in the Code and Treasury Regulations, with the result that they will be capital losses for most U.S. Holders.

A U.S. Holder makes a Mark-to-Market Election by attaching a completed IRS Form 8621 to a timely filed United States federal income tax return. A Mark-to-Market Election applies to the tax year in which such Mark-to-Market Election is made and to each subsequent tax year, unless the common shares cease to be “marketable stock” or the IRS consents to revocation of such election. Each U.S. Holder should consult its own tax advisors regarding the requirements for, and procedure for making, a Mark-to-Market Election.

Although a U.S. Holder may be eligible to make a Mark-to-Market Election with respect to the common shares, no such election may be made with respect to the stock of any Subsidiary PFIC that a U.S. Holder is treated as owning, because such stock is not marketable. Hence, the Mark-to-Market Election will not be effective to avoid the application of the default rules of Section 1291 of the Code described above with respect to deemed dispositions of Subsidiary PFIC stock or excess distributions from a Subsidiary PFIC to its shareholder.

#### *Other PFIC and Related Rules*

Under Section 1291(f) of the Code, the IRS has issued proposed Treasury Regulations that, subject to certain exceptions, would cause a U.S. Holder that had not made a timely QEF Election or Mark-to-Market Election to recognize gain (but not loss) upon certain transfers of common shares that would otherwise be tax-deferred (e.g., gifts and exchanges pursuant to corporate reorganizations). However, the specific U.S. federal income tax consequences to a U.S. Holder may vary based on the manner in which common shares are transferred.

Certain additional adverse rules may apply with respect to a U.S. Holder if the Company is a PFIC, regardless of whether such U.S. Holder makes a QEF Election. For example, under Section 1298(b)(6) of the Code, a U.S. Holder that uses common shares as security for a loan will, except as may be provided in Treasury Regulations, be treated as having made a taxable disposition of such common shares.

Special rules also apply to the amount of foreign tax credit that a U.S. Holder may claim on a distribution from a PFIC. Subject to such special rules, foreign taxes paid with respect to any distribution in respect of stock in a PFIC are generally eligible for the foreign tax credit. The rules relating to distributions by a PFIC and their eligibility for the foreign tax credit are complicated, and each U.S. Holder should consult with its own tax advisors regarding the availability of the foreign tax credit with respect to distributions by a PFIC.

If U.S. Holders of common shares or U.S. Holders that are treated as constructively owning common shares, each owning 10 percent or more of the Company’s equity by vote (“10-percent Shareholders”) own in total more than 50 percent of such equity by either vote or value, the Company will be treated as a controlled foreign corporation (“CFC”). For the Company’s taxable year ending December 31, 2018 and subsequent years, and for taxable years of U.S. Holders ending with or within such years, the test for a 10-percent Shareholder will be whether the holder owns 10 percent of the Company’s equity by vote or value (i.e., not only by vote). If the Company is a CFC, a 10-percent Shareholder would be treated, subject to certain exceptions, as receiving a deemed dividend at the end of each taxable year of the Company in an amount equal to its pro rata share of the Company’s “subpart F income.” Among other items, and subject to certain exceptions, “subpart F income” includes dividends, interest, certain rents and royalties, certain gains from the sale of stock and securities, and certain gains from commodities transactions. Thus, it is likely that, if the Company were treated as a CFC, some of its income would be subpart F income. If, for any period, the Company were treated as a CFC and a U.S. Holder were treated as a 10-percent Shareholder therein, the Company would not be treated as a PFIC with respect to such U.S. Holder for such period.

The PFIC and CFC rules are complex, and each U.S. Holder should consult with its own tax advisors regarding the PFIC and CFC rules and how they may affect the U.S. federal income tax consequences of the acquisition, ownership, and disposition of common shares.

#### **Additional Considerations**

##### *Additional Tax on Passive Income*

Certain U.S. Holders that are individuals, estates or trusts (other than trusts that are exempt from tax) will be subject to a 3.8% tax on all or a portion of their “net investment income,” which includes dividends on the common shares and net gains from the disposition of the common shares. Further, excess distributions treated as dividends, gains treated as excess distributions under the PFIC rules discussed above, and mark-to-market inclusions and deductions are all included in the calculation of net investment income.

Treasury Regulations provide, subject to the election described in the following paragraph, that solely for purposes of this additional tax, distributions of previously taxed income will be treated as dividends and included in net investment income subject to the additional 3.8% tax. Additionally, to determine the amount of any capital gain from the sale or other taxable disposition of common shares that will be subject to the additional tax on net investment income, a U.S. Holder who has made a QEF Election will be required to recalculate its basis in the common shares excluding QEF basis adjustments.

Alternatively, a U.S. Holder may make an election which will be effective with respect to all interests in a PFIC for which a QEF Election has been made and which is held in that year or acquired in future years. Under this election, a U.S. Holder pays the additional 3.8% tax on QEF income inclusions and on gains calculated after giving effect to related tax basis adjustments. U.S. Holders that are individuals, estates or trusts should consult their own tax advisors regarding the applicability of this tax to any of their income or gains in respect of the common shares.

#### *Receipt of Foreign Currency*

The amount of any distribution paid to a U.S. Holder in foreign currency, or on the sale, exchange or other taxable disposition of common shares, generally will be equal to the U.S. dollar value of such foreign currency based on the exchange rate applicable on the date of receipt (regardless of whether such foreign currency is converted into U.S. dollars at that time). A U.S. Holder will have a basis in the foreign currency equal to its U.S. dollar value on the date of receipt. Any U.S. Holder who converts or otherwise disposes of the foreign currency after the date of receipt may have a foreign currency exchange gain or loss that would be treated as ordinary income or loss, and generally will be U.S. source income or loss for foreign tax credit purposes. Different rules apply to U.S. Holders who use the accrual method of tax accounting. Each U.S. Holder should consult its own U.S. tax advisors regarding the U.S. federal income tax consequences of receiving, owning, and disposing of foreign currency.

#### *Foreign Tax Credit*

Subject to the PFIC rules discussed above, a U.S. Holder that pays (whether directly or through withholding) Canadian income tax with respect to dividends paid on the common shares generally will be entitled, at the election of such U.S. Holder, to receive either a deduction or a credit for such Canadian income tax. Generally, a credit will reduce a U.S. Holder's U.S. federal income tax liability on a dollar-for-dollar basis, whereas a deduction will reduce a U.S. Holder's income that is subject to U.S. federal income tax. This election is made on a year-by-year basis and applies to all foreign taxes paid (whether directly or through withholding) by a U.S. Holder during a year.

Complex limitations apply to the foreign tax credit, including the general limitation that the credit cannot exceed the proportionate share of a U.S. Holder's U.S. federal income tax liability that such U.S. Holder's "foreign source" taxable income bears to such U.S. Holder's worldwide taxable income. In applying this limitation, a U.S. Holder's various items of income and deduction must be classified, under complex rules, as either "foreign source" or "U.S. source." Generally, dividends paid on the common shares should be treated as foreign source for this purpose, and gains recognized on the sale of common shares by a U.S. Holder should be treated as U.S. source for this purpose, except as otherwise provided in an applicable income tax treaty, and if an election is properly made under the Code. However, the amount of a distribution with respect to the common shares that is treated as a "dividend" may be lower for U.S. federal income tax purposes than it is for Canadian federal income tax purposes, resulting in a reduced foreign tax credit allowance to a U.S. Holder. In addition, this limitation is calculated separately with respect to specific categories of income. The foreign tax credit rules are complex, and each U.S. Holder should consult its own U.S. tax advisors regarding the foreign tax credit rules.

#### *Backup Withholding and Information Reporting*

A U.S. Holder that is an individual (and, to the extent provided in future regulations, an entity), may be subject to certain reporting obligations with respect to common shares if the aggregate value of these and certain other "specified foreign financial assets" exceeds \$50,000. If required, this disclosure is made by filing Form 8938 with the IRS. Significant penalties can apply if a U.S. Holder is required to make this disclosure and fail to do so. In addition, a U.S. Holder should consider the possible obligation to file online a FinCEN Form 114—Foreign Bank and Financial Accounts Report, as a result of holding common shares in certain accounts. Holders are urged to consult their U.S. tax advisors with respect to these and other reporting requirements that may apply to their acquisition of common shares.

Payments made within the U.S., or by a U.S. payor or U.S. middleman, of dividends on, and proceeds arising from the sale or other taxable disposition of, common shares will generally be subject to information reporting and backup withholding tax, at the rate of 28%, if a U.S. Holder (a) fails to furnish such U.S. Holder's correct U.S. taxpayer identification number (generally on Form W-9), (b) furnishes an incorrect U.S. taxpayer identification number, (c) is notified by the IRS that such U.S. Holder has previously failed to report properly items subject to backup withholding tax, or (d) fails to certify, under penalty of perjury, that such U.S. Holder has furnished its correct U.S. taxpayer identification number and that the IRS has not notified such U.S. Holder that it is subject to backup withholding tax. However, certain exempt persons generally are excluded from these information reporting and backup withholding rules. Backup withholding is not an additional tax. Any amounts withheld under the U.S. backup withholding tax rules will be allowed as a credit against a U.S. Holder's U.S. federal income tax liability, if any, or will be refunded, if such U.S. Holder furnishes required information to the IRS in a timely manner.

The discussion of reporting requirements set forth above is not intended to constitute a complete description of all reporting requirements that may apply to a U.S. Holder. A failure to satisfy certain reporting requirements may result in an extension of the time period during which the IRS can assess a tax and, under certain circumstances, such an extension may apply to assessments of amounts unrelated to any unsatisfied reporting requirement. Each U.S. Holder should consult its own tax advisors regarding the information reporting and backup withholding rules.

**THE ABOVE SUMMARY IS NOT INTENDED TO CONSTITUTE A COMPLETE ANALYSIS OF ALL TAX CONSIDERATIONS APPLICABLE TO U.S. HOLDERS WITH RESPECT TO THE ACQUISITION, OWNERSHIP, AND DISPOSITION OF OUR COMMON SHARES. U.S. HOLDERS SHOULD CONSULT THEIR OWN TAX ADVISORS AS TO THE TAX CONSIDERATIONS APPLICABLE TO THEM IN THEIR OWN PARTICULAR CIRCUMSTANCES.**

#### **Material Canadian Federal Income Tax Considerations**

##### **Non-Residents of Canada**

The following portion of the summary is generally applicable to a U.S. Holder. Special rules, which are not discussed in this summary, may apply to a U.S. Holder that is an insurer that carries on an insurance business in Canada and elsewhere.

##### **Disposition of Common Shares**

Upon the disposition by a U.S. Holder of common shares in our Company, the U.S. Holder will not be subject to tax under the Tax Act in respect of any capital gain realized unless the common shares disposed of constitutes "taxable Canadian property" of the U.S. Holder and the U.S. Holder is not entitled to relief under an applicable tax treaty or convention. Common shares will generally not constitute "taxable Canadian property" of such U.S. Holder unless at any time in the preceding 60 months both of the following statements were true: (a) the U.S. Holder, together with either (i) persons with whom the U.S. Holder does not deal at arm's length or (ii) partnerships in which the U.S. Holder or a person in (a) directly or indirectly hold membership interests, held shares and/or rights to acquire shares representing 25% or more of the issued shares of any class of our capital stock; and (b) more than 50% of the fair market value of our common stock was derived directly or indirectly from one or any combination of (i) real or immovable property situated in Canada, (ii) Canadian resource properties, (iii) timber resource properties, and (iv) options in respect of, or interests in, or for civil law rights in, property described in any of (i) to (iii).

U.S. Holders whose common shares constitute "taxable Canadian property" should consult their own tax advisors for advice having regard to their particular circumstances.

### **Dividends Paid on Common Shares**

Dividends paid, credited or deemed to have been paid or credited on our common shares held by a U.S. Holder will be subject to a Canadian withholding tax under the Tax Act at a rate of 25% of the gross amount of the dividends, subject to reduction by any applicable tax convention. Under the tax convention between Canada and the United States (the "Tax Treaty"), the rate of withholding tax on dividends generally applicable to U.S. Holders who beneficially own the dividends is reduced to 15%. In the case of U.S. Holders that are corporations that beneficially own at least 10% of our voting shares, the rate of withholding tax on dividends generally is reduced to 5%. So-called "fiscally transparent" entities, such as United States limited liability companies, or LLCs, are not entitled to rely on the terms of the Tax Treaty, however a member of such entity will be considered to have received the dividend directly and to benefit from the reduced rates under the Tax Treaty, where the member is considered under U.S. taxation law to have derived the dividend through that entity and by reason of the entity being a fiscally transparent entity, the treatment of the dividend is the same as its treatment would be if the amount had been derived directly by the member. Members of such entities are regarded as holding their proportionate share of our common shares held by the entity for the purposes of the Tax Treaty.

## PLAN OF DISTRIBUTION

We are registering the common shares issued to the selling stockholders to permit the resale of these common shares by the holders of the common shares from time to time after the date of this prospectus. We will not receive any of the proceeds from the sale by the selling stockholders of the common shares. Upon any exercise of the warrants by payment of cash, however, we will receive the exercise price of the warrants. We will bear all fees and expenses incident to our registration of the common shares.

The selling stockholders may sell all or a portion of the common shares beneficially owned by them and offered hereby from time to time on any national securities exchange or quotation service on which the common shares may be listed or quoted at the time of sale, in the over-the-counter market or in transactions otherwise than on these exchanges or systems or in the over-the-counter market and in one or more transactions at fixed prices, at prevailing market prices at the time of the sale, at varying prices determined at the time of sale, or at negotiated prices. The selling stockholders may use any one or more of the following methods when selling common shares:

- ordinary brokerage transactions and transactions in which the broker-dealer solicits purchasers;
- block trades in which the broker-dealer will attempt to sell the shares as agent but may position and resell a portion of the block as principal to facilitate the transaction;
- purchases by a broker-dealer as principal and resale by the broker-dealer for its account;
- an exchange distribution in accordance with the rules of the applicable exchange;
- privately negotiated transactions;
- settlement of short sales entered into after the effective date of the registration statement of which this prospectus is a part;
- broker-dealers may agree with the selling stockholders to sell a specified number of such shares at a stipulated price per share;
- through the writing or settlement of options or other hedging transactions, whether such options are listed on an options exchange or otherwise;
- a combination of any such methods of sale; and
- any other method permitted pursuant to applicable law.

The selling stockholders also may resell all or a portion of the common shares in open market transactions in reliance upon Rule 144 under the Securities Act of 1933, as amended (the "Securities Act"), as permitted by that rule, or Section 4(a)(1) under the Securities Act, if available, rather than under this prospectus, provided that they meet the criteria and conform to the requirements of those provisions.

In connection with sales of the common shares, the selling stockholders may enter into hedging transactions with broker-dealers or other financial institutions, which may in turn engage in short sales of the common shares in the course of hedging in positions they assume. The selling stockholders may also sell common shares short and if such short sale shall take place after the date that this prospectus is declared effective by the Commission, the selling stockholders may deliver common shares covered by this prospectus to close out short positions and to return borrowed shares in connection with such short sales. The selling stockholders may also loan or pledge common shares to broker-dealers that in turn may sell such shares, to the extent permitted by applicable law. The selling stockholders may also enter into option or other transactions with broker-dealers or other financial institutions or the creation of one or more derivative securities which require the delivery to such broker-dealer or other financial institution of shares offered by this prospectus, which shares such broker-dealer or other financial institution may resell pursuant to this prospectus (as supplemented or amended to reflect such transaction). Notwithstanding the foregoing, the selling stockholders have been advised that they may not use shares registered on this registration statement to cover short sales of our common stock made prior to the date the registration statement, of which this prospectus forms a part, has been declared effective by the SEC.

The selling stockholders may, from time to time, pledge or grant a security interest in some or all of the warrants or common shares owned by them and, if they default in the performance of their secured obligations, the pledgees or secured parties may offer and sell the common shares from time to time pursuant to this prospectus or any amendment to this prospectus under Rule 424(b)(3) or other applicable provision of the Securities Act, amending, if necessary, the list of selling stockholders to include the pledgee, transferee or other successors in interest as selling stockholders under this prospectus. The selling stockholders also may transfer and donate the common shares in other circumstances in which case the transferees, donees, pledgees or other successors in interest will be the selling beneficial owners for purposes of this prospectus.

To the extent required, the common shares to be sold, the names of the selling stockholders, the respective purchase prices and public offering prices, the names of any agents, dealer or underwriter, any applicable commissions or discounts with respect to a particular offer will be set forth in an accompanying prospectus supplement or, if appropriate, a post-effective amendment to the registration statement that includes this prospectus.

Under the securities laws of some states, the common shares may be sold in such states only through registered or licensed brokers or dealers. In addition, in some states the common shares may not be sold unless such shares have been registered or qualified for sale in such state or an exemption from registration or qualification is available and is complied with.

There can be no assurance that any selling stockholder will sell any or all of the common shares registered pursuant to the registration statement, of which this prospectus forms a part.

Each selling stockholder and any other person participating in such distribution will be subject to applicable provisions of the Exchange Act, and the rules and regulations thereunder, including, without limitation, Regulation M of the Exchange Act, which may limit the timing of purchases and sales of any of the common shares by the selling stockholder and any other participating person. Regulation M may also restrict the ability of any person engaged in the distribution of the common shares to engage in market-making activities with respect to the common shares. All of the foregoing may affect the marketability of the common shares and the ability of any person or entity to engage in market-making activities with respect to the common shares.

We will pay all expenses of the registration of the common shares, including, without limitation, Securities and Exchange Commission filing fees and expenses of compliance with state securities or "blue sky" laws reasonably agreed to in writing by us; *provided, however*, that each selling stockholder will pay all underwriting discounts and selling commissions, if any, and any legal expenses incurred by it.



## LEGAL MATTERS

Certain legal matters in connection with the shares of common shares have been passed upon for us by the law firm of LaBarge Weinstein LLP, Ottawa, Ontario. LaBarge Weinstein LLP has not received a direct or indirect interest in our company or has ever been a promoter, underwriter, voting trustee, director, officer or employee of our company. Nor does LaBarge Weinstein LLP have any contingency based agreement with us or any other interest in or connection to us.

## EXPERTS

The consolidated financial statements of the Company for the year ended December 31, 2017 appearing in our Annual Report on Form 10-K for the year ended December 31, 2017, have been audited by Haskell & White LLP, independent registered public accounting firm, as set forth in their report incorporated herein by reference in reliance upon the authority of such firm as experts in accounting and auditing.

The consolidated financial statements of the Company for the year ended December 31, 2016, appearing in our Annual Report on Form 10-K for the year ended December 31, 2017, have been audited by Deloitte LLP, independent registered public accounting firm, as set forth in their report incorporated herein by reference in reliance upon the authority of such firm as experts in accounting and auditing.

## WHERE YOU CAN FIND ADDITIONAL INFORMATION

We have filed with the SEC a registration statement under the Securities Act with respect to the shares of common stock being offered by this prospectus. This prospectus does not contain all of the information in the registration statement and its exhibits. For further information about us and the common stock offered by this prospectus, we refer you to the registration statement and its exhibits. Statements contained in this prospectus as to the contents of any contract or any other document referred to are not necessarily complete, and in each instance, we refer you to the copy of the contract or other document filed as an exhibit to the registration statement. Each of these statements is qualified in all respects by this reference.

You can read our SEC filings, including the registration statement, over the Internet at the SEC's website at <http://www.sec.gov>. You may also read and copy any document we file with the SEC at its public reference facilities at 100 F Street, NE, Washington, D.C. 20549. You may also obtain copies of these documents at prescribed rates by writing to the Public Reference Section of the SEC at 100 F Street, NE, Washington, D.C. 20549. Please call the SEC at 1-800-SEC-0330 for further information on the operation of the public reference facilities.

We are subject to the information reporting requirements of the Exchange Act, and are required to file reports, proxy statements and other information with the SEC. These reports, proxy statements and other information are available for inspection and copying at the public reference room and web site of the SEC referred to above. We also maintain a website at [www.cymabay.com](http://www.cymabay.com), at which you may access these materials free of charge as soon as reasonably practicable after they are electronically filed with, or furnished to, the SEC. The information contained on, or that can be accessed through, our website is not a part of this prospectus. Investors should not rely on any such information in deciding whether to purchase our common stock. We have included our website address in this prospectus solely as an inactive textual reference.

## INFORMATION INCORPORATED BY REFERENCE

We are allowed to incorporate by reference information contained in documents that we file with the SEC. This means that we can disclose important information to you by referring you to those documents and that the information in this prospectus is not complete and you should read the information incorporated by reference for more detail. Information in this prospectus supersedes information incorporated by reference that we filed with the Commission prior to the date of this prospectus, while information that we file later with the SEC will automatically update and supersede the information in this prospectus.

We incorporate by reference the documents listed below and any future filings we will make with the SEC under Section 13(a), 13(c), 14 or 15(d) of the Exchange Act (i) after the date of the initial filing of the registration statement of which this prospectus is a part and prior to effectiveness of such registration statement, and (ii) from the date of this prospectus but prior to the termination of the offering of the securities covered by this prospectus (other than Current Reports or portions thereof furnished under Item 2.02 or 7.01 of Form 8-K):

- Our Annual Report on Form 10-K for the fiscal year ended December 31, 2017, filed with the SEC on March 28, 2018;
- Our Current Reports on Form 8-K filed with the SEC on March 23, 2018 and March 28, 2018; and
- the description of our capital stock contained in our Registration Statement on Form 8-A filed with the Commission on September 11, 2017 (File No. 001-32295), including any amendment or report filed for the purpose of updating such description.

We will provide without charge to each person, including any beneficial owner, to whom this prospectus is delivered, upon his or her written or oral request, a copy of any or all documents referred to above which have been or may be incorporated by reference into this prospectus, excluding exhibits to those documents unless they are specifically incorporated by reference into those documents. You can request those documents from the Corporate Secretary, Fennec Pharmaceuticals Inc., at 68 TW Alexander Drive, Research Triangle Park, NC 27709. You may also contact the Corporate Secretary at (919) 636-4530.

You should rely only on the information incorporated by reference or provided in this prospectus. We have not authorized anyone to provide you with different information. You should not assume that the information in this prospectus is accurate as of any date other than the date on the front of this document. Any statement contained in a document incorporated in this prospectus will be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained in this prospectus modifies or supersedes that statement. Any statement that is modified or superseded will not constitute a part of this prospectus, except as modified or superseded.

Copies of the documents incorporated by reference may also be found on our website at [www.fennecpharma.com](http://www.fennecpharma.com). Except with respect to the documents expressly incorporated by reference above which are accessible at our website, the information contained on our website is not a part of, and should not be construed as being incorporated by reference into, this prospectus.

11,943,214 COMMON SHARES



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PROSPECTUS

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, 2018

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**PART II**  
**INFORMATION NOT REQUIRED IN PROSPECTUS**

**Item 14. Other Expenses of Issuance and Distribution**

The following table sets forth the various costs and expenses in connection with the sale and distribution of the securities registered under this Registration Statement. All amounts shown are estimates except the Securities and Exchange Commission registration fee.

|                                  | <b>Amount paid or<br/>to be paid</b> |
|----------------------------------|--------------------------------------|
| SEC Registration Fee*            | \$ 9,758                             |
| Printing and Edgarizing expenses | \$ 2,500                             |
| Legal fees and expenses          | \$ 50,000                            |
| Accounting fees and expenses     | \$ 10,000                            |
| Transfer agent                   | \$ 7,500                             |
| Stock certificates               | \$ 5,000                             |
| Miscellaneous                    | \$ 10,000                            |
| <b>Total</b>                     | <b>\$ 94,758</b>                     |

\* All filing fees payable in connection with the registration of the common shares covered by the registration statement were paid by the registrant at the time of the initial filing of the Form S-1.

**Item 15. Indemnification of Directors and Officers.**

***Business Corporations Act (British Columbia)***

Division 5 of Part 5 of the *Business Corporations Act* (British Columbia) provides that a corporation may (a) indemnify an eligible party against all eligible penalties to which the eligible party is or may be liable and (b) after the final disposition of an eligible proceeding, pay the expenses (not including judgments, penalties, fines or amounts paid in settlement of a proceeding) actually and reasonably incurred by an eligible party in respect of that proceeding.

An “eligible party” means an individual who (a) is or was a director or officer of the corporation, (b) is or was a director or officer of another corporation (i) at a time when the other corporation is or was an affiliate of the corporation, or (ii) at the request of the corporation, or (c) at the request of the corporation, is or was, or holds or held a position equivalent to that of, a director or officer of a partnership, trust, joint venture or other unincorporated entity.

An “eligible proceeding” means a proceeding in which an eligible party or any of the heirs and personal or other legal representatives of the eligible party, by reason of the eligible party being or having been a director or officer of, or holding or having held a position equivalent to that of a director or officer of, the corporation or an associated corporation (a) is or may be joined as a party, or (b) is or may be liable for or in respect of a judgment, penalty or fine in, or expenses related to, the proceeding.

A corporation must, after the final disposition of an eligible proceeding, pay the expenses actually and reasonably incurred by the eligible party in respect of that proceeding if the eligible party (a) has not been reimbursed for those expenses, and (b) is wholly successful, on the merits or otherwise, in the outcome of the proceeding or is substantially successful on the merits in the outcome of the proceeding.

A corporation may pay, as they are incurred in advance of the final disposition of an eligible proceeding, the expenses actually and reasonably incurred by an eligible party in respect of that proceeding, provided the corporation first receives from the eligible party a written undertaking that, if it is ultimately determined that the payment of expenses is prohibited, the eligible party will repay the amounts advanced.

Notwithstanding any of the foregoing, a corporation must not indemnify an eligible party or pay the expenses of an eligible party if any of the following circumstances apply:

- if the indemnity or payment is made under an earlier agreement to indemnify or pay expenses and, at the time that the agreement to indemnify or pay expenses was made, the corporation was prohibited from giving the indemnity or paying the expenses by its memorandum or articles;
- if the indemnity or payment is made otherwise than under an earlier agreement to indemnify or pay expenses and, at the time that the indemnity or payment is made, the corporation is prohibited from giving the indemnity or paying the expenses by its memorandum or articles;
- if, in relation to the subject matter of the eligible proceeding, the eligible party did not act honestly and in good faith with a view to the best interests of the corporation or the associated corporation, as the case may be; or
- in the case of an eligible proceeding other than a civil proceeding, if the eligible party did not have reasonable grounds for believing that the eligible party's conduct in respect of which the proceeding was brought was lawful.

If an eligible proceeding is brought against an eligible party by or on behalf of the corporation or by or on behalf of an associated corporation, the corporation must not (a) indemnify the eligible party in respect of the proceeding or (b) pay the expenses of the eligible party in respect of the proceeding.

A corporation may purchase and maintain insurance for the benefit of an eligible party or the heirs and personal or other legal representatives of the eligible party against any liability that may be incurred by reason of the eligible party being or having been a director or officer of, or holding or having held a position equivalent to that of a director or officer of, the corporation or an associated corporation.

### Articles

Our Articles provide that, subject to the *Business Corporations Act* (British Columbia), the Company must indemnify an eligible party and their respective heirs and personal or other legal representatives against all eligible penalties to which such eligible party is or may be liable. The Company must, after the final disposition of an eligible proceeding, pay the expenses actually and reasonably incurred by such person in respect of that proceeding. Each eligible party is deemed to have contracted with the Company on this term. The Articles also provide that the Company may indemnify any person, subject to any restrictions in the *Business Corporations Act* (British Columbia).

Our Articles defines the following terms: (1) an "eligible penalty" means a judgment, penalty or fine awarded or imposed in, or an amount paid in settlement of, an "eligible proceeding"; (2) an "eligible party" means a director, former director or alternate director of the Company; (3) an "eligible proceeding" means a legal proceeding or investigative action (whether current, threatened, pending or completed), in which an eligible party or any of the heirs and personal or other legal representatives of the eligible party, by reason of the eligible party being or having been a director or alternate director of the Company (a) is or may be joined as a party, or (b) is or may be liable for or in respect of a judgment, penalty or fine in, or expenses related to, the proceeding; and (4) "expenses" has the meaning set out in the *Business Corporations Act* (British Columbia).

Our Articles provide that the Company may purchase and maintain insurance for the benefit of any person (or his or her heirs or legal personal representatives) who is or was a director, alternative director, officer, employee or agent, or held or holds such position or a position equivalent to the foregoing (each, an "insured party") with respect to (i) the Company; (ii) a corporation at a time when the corporation was an affiliate of the Company; (iii) at the request of the Company, served in such capacity with respect to a corporation, partnership, trust, joint venture or other unincorporated entity, against any liability that may be incurred by him or her acting in such capacity.

We maintain liability insurance policies regarding our directors and officers against certain liabilities that they may incur in such capacities.

Insofar as indemnification for liabilities arising under the Securities Act may be permitted to directors, officers or persons controlling us pursuant to the foregoing provisions, we have been informed that in the opinion of the Commission such indemnification is against public policy as expressed in the Securities Act and is therefore unenforceable.

**Item 16. Exhibits.**

Reference is made to the information contained in the Exhibit Index filed as part of this Registration Statement, which information is incorporated herein by reference pursuant to Rule 411 under the Securities Act.

**Item 17. Undertakings.**

(a) The undersigned registrant hereby undertakes:

(1) to file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) to include any prospectus required by section 10(a)(3) of the Securities Act of 1933;

(ii) to reflect in the prospectus any facts or events arising after the effective date of this registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in this registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Commission pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) to include any material information with respect to the plan of distribution not previously disclosed in this registration statement or any material change to such information in this registration statement.

(2) that, for the purpose of determining any liability under the Securities Act of 1933, each such post-effective amendment shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(3) to remove from registration by means of a post-effective amendment any of the securities being registered which remain unsold at the termination of the offering.

(4) that, for purposes of determining liability under the Securities Act of 1933 to any purchaser:

(i) each prospectus filed by the registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(ii) each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5) or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii) or (x) for the purpose of providing the information required by section 10(a) of the Securities Act shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof; provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date.

(b) The undersigned registrant hereby undertakes that, for purposes of determining any liability under the Securities Act of 1933, each filing of the registrant's annual report pursuant to section 13(a) or section 15(d) of the Securities Exchange Act of 1934 (and, where applicable, each filing of an employee benefit plan's annual report pursuant to section 15(d) of the Securities Exchange Act of 1934) that is incorporated by reference in the registration statement shall be deemed to be a new registration statement relating to the securities offered therein, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof.

(c) Insofar as indemnification for liabilities arising under the Securities Act of 1933 may be permitted to directors, officers and controlling persons of the registrant pursuant to the foregoing provisions, or otherwise, the registrant has been advised that in the opinion of the Securities and Exchange Commission such indemnification is against public policy as expressed in the Securities Act of 1933 and is, therefore, unenforceable. In the event that a claim for indemnification against such liabilities (other than the payment by the registrant of expenses incurred or paid by a director, officer or controlling person of the registrant in the successful defense of any action, suit or proceeding) is asserted by such director, officer or controlling person in connection with the securities being registered, the registrant will, unless in the opinion of its counsel the matter has been settled by controlling precedent, submit to a court of appropriate jurisdiction the question whether such indemnification by it is against public policy as expressed in the Securities Act of 1933 and will be governed by the final adjudication of such issue.

## SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized in the City of Durham, State of North Carolina, on April 12, 2018.

Fennec Pharmaceuticals Inc.

By: /s/ Rostislav Raykov  
Rostislav Raykov  
Chief Executive Officer, Director

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated

| <u>Signature</u>  | <u>Capacity</u>   | <u>Date</u>    |
|---|---|----------------|
| <u>/s/ Rostislav Raykov</u><br>Rostislav Raykov                       | Chief Executive Officer, Director<br>(Principal Executive Officer)      | April 12, 2018 |
| <u>/s/ Robert Andrade</u><br>Robert Andrade                           | Chief Financial Officer<br>(Principal Financial and Accounting Officer) | April 12, 2018 |
| <u>*</u><br>Chris A. Rallis   | Director  | April 12, 2018 |
| <u>*</u><br>Marco Brughera  | Director  | April 12, 2018 |
| <u>*</u><br>Khalid Islam  | Director  | April 12, 2018 |
| <u>*</u><br>Adrian Haigh  | Director  | April 12, 2018 |
| <u>* /s/ Rostislav Raykov</u><br>Rostislav Raykov<br>Attorney-in-Fact |   |                |



## EXHIBIT INDEX

The following is a complete list of exhibits filed as part of this Registration Statement, which are incorporated herein.

| <b>Exhibit No.</b>   | <b>Description</b>   | <b>Location</b>   |
|----------------------|--|---|
| <a href="#">4.1</a>  | <a href="#">Notice of Articles dated August 25, 2011</a>   | <a href="#">Exhibit 3.2(i) to the Form 8-K of the Company filed August 26, 2011</a>           |
| <a href="#">4.2</a>  | <a href="#">Articles dated August 25, 2011</a>   | <a href="#">Exhibit 3.2(ii) to the Form 8-K of the Company filed August 26, 2011</a>          |
| <a href="#">4.3</a>  | <a href="#">Notice of Alteration dated September 3, 2014</a>   | <a href="#">Exhibit 3.1 to the Form 8-K of the Company filed September 9, 2014</a>            |
| <a href="#">4.4</a>  | <a href="#">Shareholder Rights Plan Agreement dated June 27, 2017 between Fenec Pharmaceuticals Inc. and Computershare Trust Company of Canada</a> | <a href="#">Schedule B to the Management Proxy Circular of the Company filed May 24, 2017</a> |
| <a href="#">5.1</a>  | <a href="#">Opinion of LaBarge Weinstein LLP</a>   | <a href="#">Filed herewith</a>  |
| <a href="#">23.1</a> | <a href="#">Consent of Haskell &amp; White LLP, Independent Registered Public Accounting Firm</a>  | <a href="#">Filed herewith</a>  |
| <a href="#">23.2</a> | <a href="#">Consent of Deloitte LLP, Independent Registered Public Accounting Firm</a>   | <a href="#">Filed herewith</a>  |
| <a href="#">23.3</a> | <a href="#">Consent of LaBarge Weinstein LLP</a>   | <a href="#">Contained in Exhibit 5.1 to this Registration Statement</a>                       |

A Business Law Firm

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K2K 3G4

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April 12, 2018

Fennec Pharmaceuticals Inc.  
PO Box 13628, 68 TW Alexander Drive  
Research Triangle Park, NC 27709

Ladies and Gentlemen:

**Re: Fennec Pharmaceuticals Inc. - Post-Effective Amendment No. 1 to Form S-1 on Form S-3**

We have acted as counsel to Fennec Pharmaceuticals Inc., a corporation incorporated pursuant to the laws of British Columbia (the "Company"), in connection with a Post-Effective Amendment No. 1 to Form S-1 on Form S-3 on or about the date hereof with the Securities and Exchange Commission (the "Registration Statement") for the purpose of converting the registration statement on Form S-1 (Registration No. 333-219884), which was amended by Pre-Effective Amendment No. 1 to Form S-1 filed with the SEC on August 31, 2017, and declared effective by the SEC on September 18, 2017 (as amended, the "Form S-1") registering the resale of 11,943,214 common shares comprised of 10,559,883 issued and outstanding common shares (the "Outstanding Shares") and 1,383,331 common shares (the "Warrant Shares") issuable upon the exercise of outstanding warrants ("Warrants") into a registration statement on Form S-3.

In rendering this opinion, we have examined: (i) the Articles of the Company, as amended; (ii) certain resolutions of the Board of Directors of the Company evidencing the corporate proceedings taken by the Company to authorize the issuance of the Shares, Warrants and Warrant Shares, and (iii) such other documents as we have deemed appropriate or necessary as a basis for the opinion hereinafter expressed.

In rendering the opinion expressed below, we assumed the legal capacity of natural persons signing or delivering any instrument, the authenticity of all documents and records examined, the conformity with the original documents of all documents submitted to us as copies, and the genuineness of all signatures.

Based upon and subject to the foregoing, and such legal considerations as we deem relevant, we are of the opinion that:

1. The Outstanding Shares have been duly authorized by appropriate corporate action and are validly issued, fully paid and non-assessable.
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2. The Warrants have been duly authorized by appropriate corporate action and are valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except to the extent that enforcement thereof may be limited by (a) bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium, or other similar laws now or hereafter in effect relating to creditors' rights generally and (b) general principles of equity (regardless of whether enforceability is considered in a proceeding at law or in equity).

3. The Warrant Shares have been duly authorized by appropriate corporate action, and when issued and delivered against payment therefor upon due and proper exercise of the Warrants, the Warrant Shares will be validly issued, fully paid and non-assessable.

The foregoing opinion is based solely on the present laws and applicable regulations of the Province of British Columbia and the laws of Canada in force therein. We express no opinion as to matters involving the laws of any other jurisdiction.

We hereby consent to the filing of this opinion as an Exhibit to the Registration Statement and to references made to this firm in the Registration Statement and all amendments thereto. In giving such consent we do not thereby admit that we are included in the category of persons whose consent is required under Section 7 of the *Securities Act of 1933*, as amended, or the rules and regulations promulgated thereunder. The opinions set forth in this letter are based upon the facts in existence and laws in effect on the date hereof and we expressly disclaim any obligation to update our opinions herein, regardless of whether changes in such facts or laws come to our attention after the delivery hereof.

Yours truly,

**LaBarge Weinstein LLP**

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**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We hereby consent to the incorporation by reference in the Post-Effective Amendment No. 1 to Form S-1 (Registration No. 333-219884) on Form S-3 of Fennec Pharmaceuticals Inc. (the "Company") of our report dated March 28, 2018 relating to the consolidated financial statements, which appear in the Annual Report on Form 10-K for the year ended December 31, 2017.

HASKELL & WHITE LLP

Irvine, California  
April 12, 2018

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**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in this Post-Effective Amendment No. 1 to Form S-1 on Form S-3 of our report dated March 29, 2017 relating to the consolidated financial statements of Fennec Pharmaceuticals Inc. (the “Company”) (the report expresses an unqualified opinion and includes an explanatory paragraph relating to the conditions and events that raise substantial doubt on the Company’s ability to continue as a going concern) appearing in the Annual Report on Form 10-K of the Company for the year ended December 31, 2017. We also consent to the reference to us under the heading “Experts” in the prospectus included in such registration statement.

/s/ Deloitte LLP

Chartered Professional Accountants  
Licensed Public Accountants  
Ottawa, Canada

April 12, 2018

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