

# Auxilium Pharmacauticals' bid to merge with Canadian biotechnology company QLT

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Torys acted as counsel to Auxilium with a team that included Sharon Geraghty, Cornell Wright, Catherine De Giusti and Miranda Callaghan (corporate/M&A), Corrado Cardarelli and Andrew Silverman (tax), Dany Assaf and Rebecca Moskowitz (competition), Mitch Frazer and Lynne Lacoursière (pension and employment), Tyson Dyck (environmental) and Teresa Reguly (IP).

On June 26, 2014, Auxilium Pharmaceuticals, Inc. (Auxilium) and QLT Inc. (QLT) announced that they entered into a definitive agreement under which Auxilium planned to merge with QLT, in a deal valued at US\$850 million.

Under the terms of the agreement, a wholly-owned subsidiary of QLT would merge with and into Auxilium. QLT would remain incorporated in British Columbia, Canada, and would be renamed "New Auxilium." Shareholders of Auxilium would receive 3.1359 QLT shares for each Auxilium share, subject to certain adjustments. When completed, Auxilium shareholders would own approximately 76% of the combined entity on a fully diluted basis, and current QLT shareholders would own approximately 24%, subject to certain adjustments.

The transaction, which was unanimously approved by the Boards of both companies, was subject to certain conditions and approvals, including regulatory approvals in the U.S. and Canada, if necessary, the approval of both companies' shareholders, consents under Auxilium's senior secured credit facility required as a result of the transaction or, in lieu of such consents, the refinancing of such facility, receipt of an opinion of counsel to Auxilium that "New Auxilium" should not be treated as a U.S. domestic corporation for U.S. federal income tax purposes, and other negotiated closing conditions.

On Sept. 17, 2014, Auxilium reported that it had received an unsolicited, non-binding proposal from Endo International plc (Endo) to acquire all of the outstanding shares of Auxilium common stock at a price of US\$28.10 per share in cash and Endo stock, subject to due diligence, financing and other conditions. Upon its review of the proposal, Auxilium's Board of Directors unanimously determined that the offer was not superior to the terms of its existing merger agreement with QLT.

On October 9, 2014, after receiving a revised offer from Endo, Auxilium announced the termination of its proposed agreement with QLT, in accordance with the terms of the merger agreement, in favour of the new offer, in which Endo would acquire all of the outstanding shares of common stock of Auxilium for a per share consideration of US\$33.25 in a cash and stock, in a deal valued at US\$2.6 billion. The transaction, which is expected to close in the first half of 2015, is subject to the approval of Auxilium's stockholders, regulatory approval in the U.S. and certain other jurisdictions, as well as other customary closing conditions.

[QLT](#) is a Canadian-based biotechnology company focused on developing innovative orphan ophthalmology products.

[Auxilium](#) is a fully integrated specialty biopharmaceutical company focused on developing and commercializing innovative products for specialist audiences.

Further information can be found on Auxilium's [website](#) and on [theglobeandmail.com](#).

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