

ALBERTA SECURITIES COMMISSION

ORDER

Citation: Re Australis Capital Inc., 2020 ABASC 116

Date: 20200713

Australis Capital Inc.

Background

1. The Alberta Securities Commission (the **Commission**) has received an application from Roger Sykes, 1703469 Alberta Ltd. (**1703469**), Green Therapeutics, LLC (**Green Therapeutics**), Duke Fu and Amy Fu (collectively, the **Filers**) for an order pursuant to section 151(a) of the *Business Corporations Act* (Alberta) (the **ABCA**) exempting the Filers from the requirements of section 150(1)(b) of the ABCA in connection with the meeting (the **Meeting**) of the shareholders of Australis Capital Inc. (**Australis**) next following the issuance of this order (the **Exemption Sought**).

Interpretation

2. Terms defined in the *Securities Act* (Alberta) or in National Instrument 14-101 *Definitions* have the same meaning in this order unless otherwise defined.

Representations

3. This order is based on the following facts represented to the Commission by the Filers:
 - (a) Australis is a corporation incorporated under the ABCA and is a reporting issuer in each jurisdiction of Canada.
 - (b) The common shares of Australis (the **Shares**) are listed on the Canadian Securities Exchange.
 - (c) 1703469 is a corporation incorporated under the ABCA and is not a reporting issuer in any jurisdiction of Canada.
 - (d) Green Therapeutics is a limited liability company formed under the laws of Nevada and is not a reporting issuer in any jurisdiction of Canada.
 - (e) Roger Sykes is an individual residing in Alberta and Duke Fu and Amy Fu are each individuals residing in Nevada, U.S.A.
 - (f) The Filers may be considered to be acting jointly or in concert (within the meaning of applicable Canadian securities legislation).

- (g) As of July 7, 2020,
- (i) 130,588 Shares were held by 1703469;
 - (ii) 795,423 Shares were held by Green Therapeutics;
 - (iii) 1,132,500 Shares were held by Roger Sykes;
 - (iv) 4,936,294 Shares were held by Duke Fu; and
 - (v) 3,542,779 Shares were held by Amy Fu,
- constituting 10,537,584 Shares over which the Filers exercise control or direction, representing approximately 6.2% of the outstanding Shares based on 170,761,297 issued and outstanding Shares as at July 2, 2020, as stated by Australis in its management's discussion and analysis for the years ended March 31, 2020 and 2019.
- (h) None of the Filers are in default of securities legislation in any jurisdiction of Canada.
- (i) The Filers wish to communicate with the holders of Shares (the **Shareholders**) in advance of the Meeting to solicit such Shareholders' proxies in respect of business to be transacted at the Meeting. The Filers wish to conduct the solicitations by public broadcast, speech or publication (the **Public Solicitation**) without sending a dissident's proxy circular to each of the Shareholders.
- (j) The Filers also wish to communicate with 15 or fewer Shareholders (the **Non-Public Solicitation**) in advance of the Meeting to solicit such Shareholders' proxies in respect of business to be transacted at the Meeting. The Filers wish to conduct the Non-Public Solicitation without the use of public broadcast, speech, publication or the sending of a dissident's proxy circular.
- (k) Section 150(1)(b) of the ABCA provides that no person (as defined in the ABCA) shall solicit proxies unless a dissident's proxy circular is provided to each shareholder whose proxy is solicited.
- (l) Section 150(2) of the ABCA provides that section 150(1)(b) of the ABCA does not apply to a corporation that has 15 or fewer shareholders entitled to vote at meetings of shareholders.
- (m) Paragraph 9.1(2)(b) of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) requires that a person or company that solicits proxies from registered holders of voting securities of a reporting issuer must, in the case of a solicitation other than by or on behalf of management of the reporting issuer, send an information circular to each registered securityholder whose proxy is solicited.

- (n) Subsection 9.2(2) of NI 51-102 provides that paragraph 9.1(2)(b) does not apply to a solicitation if the total number of securityholders whose proxies are solicited is not more than 15 (the **15 Securityholder Exemption**). In determining the total number of securityholders, subsection 9.2(3) of NI 51-102 provides that two or more persons or companies who are joint registered owners of one or more securities are considered to be one securityholder.
- (o) Subsection 9.2(4) of NI 51-102 provides an exemption (the **Broadcast Exemption**) to a person or company, other than management of a reporting issuer or a person or company acting on behalf of management, from the requirement to send an information circular to each registered securityholder of a reporting issuer if:
 - (i) the solicitation is made to the public by broadcast, speech or publication;
 - (ii) soliciting proxies by broadcast, speech or publication is permitted by the laws under the reporting issuer's incorporating legislation and the person or company complies with the requirements of such laws as they pertain to the broadcast, speech or publication; and
 - (iii) the person or company has filed the information specified in paragraph 9.2(4)(c) of NI 51-102 and included the information specified in subparagraphs 9.2(4)(c)(i) to (iii) in the broadcast, speech or publication.
- (p) Subsection 9.2(6) of NI 51-102 provides that the Broadcast Exemption does not apply to a person or company that is nominating or proposing to nominate, at the time of the solicitation, an individual for election as a director, unless the person or company soliciting proxies files an information circular or other document containing the information required by Form 51-102F5 *Information Circular* in respect of the proposed nominee and the solicitation refers to that information circular or other document and discloses that the information circular or other document is available on SEDAR.
- (q) The ABCA does not contain provisions similar to the 15 Securityholder Exemption or the Broadcast Exemption.

Decision

4. The Commission orders that the Exemption Sought is granted, provided that the Filers comply with all of the following:
 - (a) the Public Solicitation complies with the requirements of paragraphs 9.2(4)(a), (c) and (d) and subsection 9.2(6) of NI 51-102;

- (b) the Non-Public Solicitation is made to not more than 15 Shareholders (provided that for such purposes, two or more persons or companies who are joint registered owners of one or more Shares are considered to be one Shareholder); and
- (c) a copy of this order is provided to Australis.

“original signed by”

Timothy Robson
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Alberta Securities Commission