

# 2003 BCSECCOM 567

## Headnote

Relief from the requirement to send an information circular by prepaid mail, subject to certain conditions

## Exemption Order

### GenSci Regeneration Sciences Inc.

#### Section 155 of the *Company Act*, R.S.B.C. 1996, c. 62

## Background

- ¶ 1 GenSci Regeneration Sciences Inc. (GenSci) applied for an exemption from the requirement in section 154 of the *Company Act* to send an information circular in connection with an arrangement to every member whose proxy is solicited, at the member's latest address as shown on the register of members (the delivery requirement).

## Representations

- ¶ 2 GenSci represents that:
1. it is organized under the laws of British Columbia and has its head office in Irvine, California;
  2. it is a reporting issuer in British Columbia and is up to date with all its filings under the *Securities Act*, R.S.B.C. 1996, c. 418, and the *Company Act*;
  3. it emerged from United States Chapter 11 bankruptcy protection on August 1, 2003, but its material subsidiary, GenSci OrthoBiologics, Inc., which operates most of its business, is still under United States Chapter 11 bankruptcy protection;
  4. it proposes to call an extraordinary general meeting (the meeting) to obtain its members' approval to a proposed plan of arrangement (the arrangement) with IsoTis S.A., for which purpose it will prepare an information circular (the information circular);
  5. the cost of complying with the delivery requirement to send over 4,321 copies of the information circular, estimated to exceed 250 pages in length, would be prohibitive;

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6. it will mail to its members the required notice of meeting, a summary (the summary) of the information circular and a form of proxy (together, the meeting materials);
7. the information circular will include the information and documentation statutorily required to be sent to members in connection with the meeting;
8. it will file the information circular with the Commission, and with certain other provincial securities regulators, via SEDAR, and will post the information circular on its website, designated in the notice of meeting;
9. the summary will contain a succinct and clear outline of the arrangement, with references to where and how the full text of the information circular may be accessed electronically;
10. it will mail a copy of the information circular, free of charge, to a member, if the member requests it;
11. the availability of the information circular through an internet website is functionally equivalent to delivering it in accordance with the delivery requirement because it addresses the elements of notice, access and non-corruption of documents in the delivery process; and
12. posting the information circular on its website will substantially reduce the waste and expense of printing and mailing it to its members.

### **Order**

¶ 3 Because in the circumstances of this case there is adequate justification for so doing, the Commission orders, under section 155 of the Company Act, that GenSci is exempt from the delivery requirement, provided that:

1. it sends the meeting materials to its members by prepaid mail,
2. the notice of meeting states that the information circular is available to its members electronically or, by request, in printed form;
3. it provides its members with access to the information circular
  - (a) electronically, through the website designated in the notice of meeting; or
  - (b) in printed form, free of charge, on request to GenSci; and

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4. the information circular posted on its website is identical in its content to the printed form.

¶ 4 August 14, 2003

Noreen Bent  
Acting Director