

Ontario Securities Commission

Rule 72-503

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**OSC RULE 72-503
DISTRIBUTIONS OUTSIDE CANADA**

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PART 1 DEFINITIONS

Definitions

1.1 In this Rule,

"convertible security" has the same meaning as in National Instrument 45-102 *Resale of Securities*;

"distribution date" has the same meaning as in National Instrument 45-102 *Resale of Securities*;

"exchangeable security" has the same meaning as in National Instrument 45-102 *Resale of Securities*;

"FINRA" means the self-regulatory organization in the United States of America known as the Financial Industry Regulatory Authority;

"multiple convertible security" has the same meaning as in National Instrument 45-102 *Resale of Securities*;

"specified foreign jurisdiction" means a jurisdiction listed in Appendix A of this Rule; and

"underlying security" has the same meaning as in National Instrument 45-102 *Resale of Securities*.

PART 2 EXEMPTIONS FROM THE PROSPECTUS REQUIREMENT

Distribution Under Public Offering Document in Foreign Jurisdictions

2.1 The prospectus requirement does not apply to a distribution of securities to a person or company outside Canada if, at the time of the distribution, one or both of the following apply:

- (a) the issuer has filed a registration statement in accordance with the 1933 Act registering the securities in connection with the distribution, and that registration statement is effective;
- (b) the issuer has filed an offering document that qualifies, registers, or permits the public offering of those securities in accordance with the securities laws of a specified foreign jurisdiction and, if required, a receipt or similar acknowledgement of approval or clearance has been obtained for the offering document in the specified foreign jurisdiction.

Concurrent Distribution under Final Prospectus in Ontario

2.2 The prospectus requirement does not apply to a distribution of securities to a person or company outside Canada if,

- (a) the issuer of the securities or the selling security holder has materially complied with the disclosure requirements applicable to the distribution under the securities law of the jurisdiction outside Canada, or the distribution is exempt from such requirements; and
- (b) the issuer of those securities has filed with the Commission, and a receipt has been issued for, a final prospectus qualifying a concurrent distribution of the same class, series or type of securities to purchasers in Ontario in accordance with Ontario securities law.

Distributions by Reporting Issuers

- 2.3** The prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a person or company outside Canada if,
- (a) the issuer has materially complied with the disclosure requirements applicable to the distribution under the securities law of the jurisdiction outside Canada, or the distribution is exempt from such requirements; and
 - (b) the issuer is a reporting issuer in a jurisdiction of Canada immediately preceding the distribution.

Distributions by Non-Reporting Issuers

Refer to Appendix D of National Instrument 45-102 Resale of Securities. First trades are subject to a restricted period on resale.

- 2.4** The prospectus requirement does not apply to a distribution by an issuer that is not a reporting issuer in a jurisdiction of Canada of a security of its own issue to a person or company outside Canada if, the issuer has materially complied with the disclosure requirements applicable to the distribution under the securities law of the jurisdiction outside Canada, or the distribution is exempt from such requirements.

Exchange or Market Outside Canada

- 2.5** For the purposes of sections 2.1, 2.2, 2.3 and 2.4, a distribution made on or through the facilities of an exchange or market outside Canada is a distribution to a person or company outside Canada if neither the seller nor any person acting on its behalf has reason to believe that the distribution has been pre-arranged with a buyer in Canada.

Anti-avoidance

- 2.6** The prospectus exemptions in sections 2.1, 2.2, 2.3 and 2.4 are not available with respect to any transaction or series of transactions that is part of a plan or scheme to avoid the prospectus requirements in connection with a distribution to a person or company in Canada.

First Trades in Securities of a Non-Reporting Issuer Distributed under a Prospectus Exemption

- 2.7(1)** The prospectus requirement does not apply to the first trade of a security distributed under an exemption from the prospectus requirement if
- (a) the issuer of the security
 - (i) was not a reporting issuer in any jurisdiction of Canada on the distribution date, or
 - (ii) is not a reporting issuer in any jurisdiction of Canada on the date of the trade;
 - (b) at the distribution date, after giving effect to the issue of the security and any other securities of the same class or series that were issued at the same time as or as part of the same distribution as the security, residents of Canada
 - (i) did not own directly or indirectly more than 10 percent of the outstanding securities of the class or series, and

- (ii) did not represent in number more than 10 percent of the total number of owners directly or indirectly of securities of the class or series; and
 - (c) the trade is made
 - (i) through an exchange, or a market, outside of Canada, or
 - (ii) to a person or company outside of Canada;
- (2)** The prospectus requirement does not apply to the first trade of an underlying security if
 - (a) the convertible security, exchangeable security or multiple convertible security that, directly or indirectly, entitled or required the holder to acquire the underlying security was distributed under an exemption from the prospectus requirement;
 - (b) the issuer of the underlying security
 - (i) was not a reporting issuer in any jurisdiction of Canada on the distribution date of the convertible security, exchangeable security or multiple convertible security, or
 - (ii) is not a reporting issuer in any jurisdiction of Canada on the date of the trade;
 - (c) the conditions in paragraph (1)(b) would have been satisfied for the underlying security at the time of the initial distribution of the convertible security, exchangeable security or multiple convertible security; and
 - (d) the condition in paragraph (1)(c) is satisfied.

First Trades in Securities of a Non-Reporting Foreign Issuer Distributed under a Prospectus Exemption

2.8 (1) In this section

"executive officer" means, for an issuer, an individual who is

- (a) a chair, vice-chair or president,
- (b) a chief executive officer or a chief financial officer, or
- (c) in charge of a principal business unit, division or function including sales, finance or production and that fact is disclosed in any of the following documents:
 - (i) the issuer's most recent disclosure document containing that information that is publicly available in a foreign jurisdiction where its securities are listed or quoted;
 - (ii) the offering document provided by the issuer in connection with the distribution of the security that is the subject of the trade;

"foreign issuer" means an issuer that is not incorporated or organized under the laws of Canada, or a jurisdiction of Canada, unless any of the following applies:

- (a) the issuer has its head office in Canada;
- (b) the majority of the executive officers or directors of the issuer ordinarily reside in Canada.

(2) The prospectus requirement does not apply to the first trade of a security distributed under an exemption from the prospectus requirement if all of the following apply:

- (a) the issuer of the security was a foreign issuer on the distribution date;
- (b) the issuer of the security

- (i) was not a reporting issuer in any jurisdiction of Canada on the distribution date, or
 - (ii) is not a reporting issuer in any jurisdiction of Canada on the date of the trade;
 - (c) the trade is made
 - (i) through an exchange, or a market, outside of Canada, or
 - (ii) to a person or company outside of Canada.
- (3)** The prospectus requirement does not apply to the first trade of an underlying security if all of the following apply:
- (a) the convertible security, exchangeable security or multiple convertible security that, directly or indirectly, entitled or required the holder to acquire the underlying security was distributed under an exemption from the prospectus requirement;
 - (b) the issuer of the underlying security was a foreign issuer on the distribution date;
 - (c) the issuer of the underlying security
 - (i) was not a reporting issuer in any jurisdiction of Canada on the distribution date, or
 - (ii) is not a reporting issuer in any jurisdiction of Canada on the date of trade;
 - (d) the trade is made
 - (i) through an exchange, or a market, outside of Canada, or
 - (ii) to a person or company outside of Canada.

Anti-avoidance

2.9 The prospectus exemptions in subsections 2.7(1) and (2) and 2.8(2) and (3) are not available with respect to any transaction or series of transactions that is part of a plan or scheme to avoid the prospectus requirements in connection with a trade to a person or company in Canada.

PART 3

EXEMPTION FROM THE DEALER AND UNDERWRITER REGISTRATION REQUIREMENTS

Exemption from the Dealer and Underwriter Registration Requirements

3.1 The dealer registration requirement and the underwriter registration requirement do not apply to a person or company in connection with a distribution of securities to a person or company outside Canada if all of the following apply:

- (a) the distribution is qualified by a prospectus filed in a jurisdiction of Canada or is exempt from the prospectus requirement under Part 2 of this Rule or by another exemption from the prospectus requirement under Ontario securities law;
- (b) the head office or principal place of business of the person or company is in the United States of America, a specified foreign jurisdiction or a jurisdiction of Canada;
- (c) if the distribution is made to a purchaser located in the United States of America,

- (i) the person or company is registered as a broker-dealer with the SEC, is a member of FINRA and materially complies with all applicable conduct and other regulatory requirements of U.S. federal securities law, state securities law of the United States of America and FINRA rules in connection with the distribution; or
- (ii) the person or company is exempt from registration as a broker-dealer with the SEC and materially complies with all applicable regulatory requirements of U.S. federal securities law in connection with the distribution;
- (d) if the distribution is made to a purchaser located in a specified foreign jurisdiction,
 - (i) the person or company
 - (A) is registered under the securities legislation of the specified foreign jurisdiction in a category of registration that permits it to carry on the activities in that jurisdiction that registration as a dealer would permit it to carry on in Ontario, and
 - (B) materially complies with all applicable dealer registration requirements and other broker-dealer regulatory requirements of the specified foreign jurisdiction in connection with the distribution; or
 - (ii) the person or company is exempt from registration in the specified foreign jurisdiction and materially complies with all applicable securities regulatory requirements of the specified foreign jurisdiction in connection with the distribution;
- (e) the person or company does not carry on business as a dealer or underwriter from an office or place of business in Ontario except in accordance with Ontario Securities Commission Rule 32-505 *Conditional Exemption from Registration for United States Broker-Dealers and Advisers Servicing U.S. Clients from Ontario*, an exemption from the registration requirement in this Rule or another exemption from the registration requirement under Ontario securities law;
- (f) the person or company is not registered in any jurisdiction of Canada in the category of dealer.

Issuer Exemption from the Dealer and Underwriter Registration Requirements

3.2 The dealer registration requirement does not apply to an issuer in connection with a distribution of securities to a person or company outside Canada that is qualified by a prospectus filed in any jurisdiction of Canada or that is exempt from the prospectus requirement under Part 2 of this Rule or another exemption from the prospectus requirement under Ontario securities law if one or both of the following apply:

- (a) the trade is made through or to a person or company that is relying on the exemption in section 3.1 or another exemption from registration under Ontario securities law;
- (b) the trade is made in accordance with the dealer and underwriter registration requirements of the investor's jurisdiction and the issuer is not otherwise registered in any jurisdiction in Canada in the category of dealer.

**PART 4
REPORT OF DISTRIBUTION OUTSIDE CANADA**

Report of Distribution outside Canada

4.1 An issuer that relies on an exemption in section 2.3 or 2.4 must electronically file a report of trade with respect to the distribution as required by Form 72-503F *Report of Distributions Outside Canada* and its instructions.

Filing Deadline

4.2 (1) An issuer, other than an investment fund, must file the report required under section 4.1 on or before the tenth day after the distribution date.

(2) An issuer that is an investment fund must file the report required under section 4.1 not later than 30 days after the end of the calendar year in which the distribution occurred.

Investment Funds

4.3 An issuer that is an investment fund is not required to file the report under section 4.1 if the seller electronically files a Form 45-106F1 not later than 30 days after the end of the calendar year in which the distribution occurred that also includes the required information set forth in Form 72-503F *Report of Distributions Outside Canada* and its instructions.

Distributions by more than one issuer of a single security

4.4 An issuer is not required to file a report of trade under section 4.1 for a distribution of a security if a report has been filed by another issuer for the distribution of the same security.

**PART 5
EXEMPTION**

Exemption

5.1 The Director may grant an exemption from Part 4, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

**PART 6
EFFECTIVE DATE**

Effective Date

6.1 This Rule comes into force on March 31, 2018.

APPENDIX A
SPECIFIED FOREIGN JURISDICTIONS

1. Australia
2. France
3. Germany
4. Hong Kong
5. Italy
6. Japan
7. Mexico
8. The Netherlands
9. New Zealand
10. Singapore
11. South Africa
12. Spain
13. Sweden
14. Switzerland
15. United Kingdom of Great Britain and Northern Ireland
16. Any other member country of the European Union