

2.2.3 Ontario Instrument 48–503 Temporary Exemption from Certain Provisions of Ontario Securities Commission Rule 48-501 Trading during Distributions, Formal Bids and Share Exchange Transactions

Ontario Securities Commission

***Temporary exemption from certain provisions of Ontario Securities Commission Rule 48-501
Trading during Distributions, Formal Bids and Share Exchange Transactions***

The Ontario Securities Commission, considering that to do so would not be prejudicial to the public interest, orders that effective on November 25, 2020 Ontario Instrument 48–503 *Temporary exemption from certain provisions of Ontario Securities Commission Rule 48-501 Trading during Distributions, Formal Bids and Share Exchange Transactions* is made.

November 25, 2020

“D. Grant Vingoe”

“Timothy Moseley”

Authority under which the order is made:

Act and section: *Securities Act*, subsection 143.11(2)

Ontario Securities Commission

**Ontario Instrument 48–503
*Temporary exemption from certain provisions of Ontario Securities Commission Rule 48-501
Trading during Distributions, Formal Bids and Share Exchange Transactions
(the Order)***

Definitions

1. Terms defined in the *Securities Act* (Ontario) (**OSA**) and Ontario Securities Commission Rule 48-501 *Trading during Distributions, Formal Bids and Share Exchange Transactions* (the **Rule** or **Rule 48-501**) have the same meaning in this Order.

Background

2. Rule 48-501 places trading restrictions on issuer-restricted persons and dealer-restricted persons in respect of a transaction covered by the Rule.
3. Specifically, Rule 48-501 restricts bids for, and purchases of, a security that is the subject of a transaction covered by Rule 48-501. Rule 48-501 is intended to prevent market manipulation with respect to activity that can raise the market price of a restricted security with the goal of improving the likelihood of success of a transaction covered by the Rule.
4. The restrictions under the Rule are absolute and apply even where there is no intent to manipulate the market price of the restricted security. The restrictions may inhibit insiders who are issuer-restricted persons from complying with the issuer’s minimum security-holding requirements for officers and directors. This is a particular concern in at-the-market offerings, where the restricted period under Rule 48-501 may prohibit issuers from buying restricted securities altogether for an indefinite period.
5. In order to address the burden caused by an open-ended prohibition on purchases, the exemptive relief contemplated by this Order has been granted previously in the context of individual applications for exemptive relief. The Commission considers the granting of such relief to be routine.
6. In all cases, the securities were deemed to be highly liquid under Rule 48-501 and the restrictions placed on certain insiders by Rule 48-501 were found to be disproportionate to the benefits of applying Rule 48-501.
7. Under subsection 143.11(2) of the *Securities Act* (Ontario) (**OSA**) if the Commission considers that it would not be prejudicial to the public interest to do so, the Commission may, on application by an interested person or company or on its own initiative, make an order exempting a class of persons or companies, trades, intended trades, securities or derivatives from any requirement of Ontario securities law on such terms or conditions as may be set out in the order, effective for a period of no longer than 18 months after the day on which it comes into force unless extended pursuant to paragraph (b) of subsection 143.11(3) of the **OSA**.
8. Recognizing the burden caused by the restrictions on trading and by the cost of and effort required for applications for exemption from Rule 48-501 in circumstances where exemptive relief has previously been granted, the Commission is

satisfied that, subject to the conditions of this Order, it would not be prejudicial to the public interest to provide, on an interim basis, exemptions to allow certain issuer-restricted persons to purchase restricted securities on the same terms as prior exemptive relief.

Order

9. Consequently, this Order provides for the temporary exemption listed below.
10. An exemption from Rule 48-501 is granted in respect of a purchase of a restricted security during an issuer-restricted period by a director or officer who is an issuer-restricted person, provided that:
 - (a) the director or officer is neither a control person of the issuer nor of the selling security holder of the restricted security;
 - (b) the director or officer is not otherwise acting jointly or in concert with
 - (i) the issuer nor the selling security holder of the restricted security;
 - (ii) an affiliated entity of the issuer nor of the selling security holder of the restricted security; or
 - (iii) a control person of the issuer nor of the selling security holder of the restricted security;
 - (c) the restricted security is offered pursuant to an at-the-market distribution of equity securities under the shelf prospectus procedures prescribed in Part 9 of National Instrument 44-102 *Shelf Distributions*; and
 - (d) the restricted security is a highly-liquid security.

Effective date and term

11. This Order comes into effect on November 25, 2020 and will cease to be effective on the date that is 18 months after the date of this Order.