

Ontario Securities Commission

Rule 45-501

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OSC RULE 45-501

ONTARIO PROSPECTUS AND REGISTRATION EXEMPTIONS

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PART 1
DEFINITIONS AND INTERPRETATION

Definitions

1.1 In this Rule

"bank" means a bank named in Schedule I or II of the *Bank Act* (Canada);

"Canadian financial institution" means

- (a) an association governed by the *Cooperative Credit Associations Act* (Canada) or a central cooperative credit society for which an order has been made under section 473(1) of that Act, or
- (b) a bank, loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services cooperative, or league that, in each case, is authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada;

"debt security" means any bond, debenture, note or similar instrument representing indebtedness, whether secured or unsecured;

"director" means

- (a) a member of the board of directors of a company or an individual who performs similar functions for a company, and
- (b) with respect to a person that is not a company, an individual who performs functions similar to those of a director of a company;

"eligible foreign security" means a security offered primarily in a foreign jurisdiction as part of a distribution of securities in either of the following circumstances:

- (a) the security is issued by an issuer
 - (i) that is incorporated, formed or created under the laws of a foreign jurisdiction,
 - (ii) that is not a reporting issuer in a jurisdiction of Canada,
 - (iii) that has its head office outside of Canada, and
 - (iv) that has a majority of the executive officers and a majority of the directors ordinarily resident outside of Canada;
- (b) the security is issued or guaranteed by the government of a foreign jurisdiction;

"entity" means a company, syndicate, partnership, trust or unincorporated organization;

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

- (a) a chair, vice-chair or president,
- (a.1) a chief executive officer or chief financial officer,
- (b) a vice-president in charge of a principal business unit, division or function including sales, finance or production, or
- (c) performing a policy-making function in respect of the issuer;

"NI 45-106" means National Instrument 45-106 *Prospectus Exemptions*;

"permitted client" has the same meaning as in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

"person" includes

- (a) an individual,
- (b) a corporation,
- (c) a partnership, trust, fund and an association, syndicate, organization or other organized group of persons, whether incorporated or not, and
- (d) an individual or other person in that person's capacity as a trustee, executor, administrator or personal or other legal representative;

"Schedule III bank" means an authorized foreign bank named in Schedule III of the *Bank Act* (Canada);

"spouse" means an individual who

- (a) is married to another individual and is not living separate and apart, within the meaning of the *Divorce Act* (Canada), from the other individual, or
- (b) is living with another individual in a marriage-like relationship, including a marriage-like relationship between individuals of the same gender;

"subsidiary" means an issuer that is controlled directly or indirectly by another issuer and includes a subsidiary of that subsidiary.

Affiliate

1.2 For the purpose of this Rule, an issuer is an affiliate of another issuer if

- (a) one of them is the subsidiary of the other, or
- (b) each of them is controlled by the same person.

Control

1.3 For the purpose of this Rule, a person (first person) is considered to control another person (second person) if

- (a) the first person beneficially owns or, directly or indirectly, exercises control or direction over securities of the second person carrying votes which, if exercised, would entitle the first person to elect a majority of the directors of the second person, unless that first person holds the voting securities only to secure an obligation,
- (b) the second person is a partnership, other than a limited partnership, and the first person holds more than 50% of the interests of the partnership, or
- (c) the second person is a limited partnership and the general partner of the limited partnership is the first person.

Registration requirement

1.4 (1) An exemption in this Rule from the dealer registration requirement or from the prospectus requirement, that refers to a registered dealer is only available for a trade in a security if the dealer is registered in a category that permits the trade described in the exemption.

(2) In this Rule, an exemption from the dealer registration requirement is deemed to be an exemption from the underwriter registration requirement.

(3) In this Rule, an exemption from the dealer registration requirement or from the prospectus requirement that refers to a registered adviser is only available for a trade in a security if the adviser is registered in a category that permits the adviser to act as an adviser in the circumstances described in the exemption.

PART 2 PROSPECTUS EXEMPTIONS

Government incentive security

2.0 The following are prescribed as government incentive securities under subsection 73.5(1) of the Act:

1. a security, or unit or interest in a partnership that invests in a security, that is issued by a company and for which the company has agreed to renounce in favour of the holder of the security, unit or interest, amounts that will constitute Canadian exploration expense, as defined in subsection 66.1(6) of the ITA, Canadian development expense, as defined in subsection 66.2(5) of the ITA, or Canadian oil and gas property expense, as defined in subsection 66.4(5) of the ITA, or
2. a unit or interest in a partnership or joint venture that is issued in order to fund Canadian exploration expense, as defined in subsection 66.1(6) of the ITA, Canadian development expense, as defined in subsection 66.2(5) of the ITA, or Canadian oil and gas property expense, as defined in subsection 66.4(5) of the ITA;

Government incentive security

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

2.1 (1) For the purpose of section 73.5 of the Act, the prospectus requirement does not apply to a distribution of a government incentive security by an issuer or a promoter of an issuer of a security of the issuer, if all of the following apply:

- (a) in the aggregate in all jurisdictions in Canada, not more than 75 prospective purchasers are solicited resulting in sales to not more than 50 purchasers,
- (b) before entering into an agreement of purchase and sale, the prospective purchaser has been supplied with an offering memorandum that includes information
 - (i) identifying every officer and director of the issuer,
 - (ii) identifying every promoter of the issuer,
 - (iii) giving the particulars of the professional qualifications and associations during the five years before the date of the offering memorandum of each officer, director and promoter of the issuer that are relevant to the offering,
 - (iv) indicating each of the directors that will be devoting his or her full time to the affairs of the issuer, and

- (v) describing the right of action referred to in section 130.1 of the Act that is applicable in respect of the offering memorandum,
- (c) the prospective purchaser has access to substantially the same information concerning the issuer that a prospectus filed under the Act would provide and,
 - (i) because of net worth and investment experience or because of consultation with or advice from a person that is not a promoter of the issuer and that is a registered dealer or registered adviser under the Act, is able to evaluate the prospective investment on the basis of information about the investment presented to the prospective purchaser by the issuer or selling security holder, or
 - (ii) is an executive officer or director of the issuer or of an affiliate of the issuer or a spouse or child of a director or executive officer of the issuer or of an affiliate of the issuer,
- (d) the offer and sale of the security is not accompanied by an advertisement and no selling or promotional expenses have been paid or incurred for the offer and sale except for professional services or for services performed by a registered dealer under the Act, and
- (e) the promoter, if any, has not acted as a promoter of any other issue of securities under this exemption within the calendar year.

(2) For the purpose of determining the number of purchasers or prospective purchasers under paragraph (1)(a), a corporation, partnership, trust or other entity is counted as one purchaser or prospective purchaser unless the entity has been created, or is being used, primarily for the purpose of purchasing a security of the issuer, in which event each beneficial owner of an equity security of the entity or each beneficiary of the entity, as the case may be, is counted as a separate purchaser or prospective purchaser.

Government incentive security distributed under section 2.1

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

2.2 The prospectus requirement does not apply to a distribution of a security that was previously distributed under the exemption in section 73.5 of the Act, or a predecessor exemption to section 73.5 of the Act, if each of the parties to the trade is one of the not more than 50 purchasers referred to in the exemption or predecessor exemption.

Commodity futures option or contract

This provision will not be cited in any Appendix of National Instrument 45-102 *Resale of Securities*. These securities are free trading.

2.3 (1) The prospectus requirement does not apply to a distribution of a commodity futures option or commodity futures contract by a hedger through a dealer.

(2) For the purposes of subsection (1), the terms "commodity futures option", "dealer", "commodity futures contract", and "hedger" have the same meaning as in the CFA.

2.4 [Repealed]

2.5 [Repealed]

2.6 [Repealed]

Execution Act

**This provision will not be cited in any Appendix of National Instrument 45-102
Resale of Securities. These securities are free trading.**

2.7 (1) The prospectus requirement does not apply to a distribution of a security by a sheriff under the *Execution Act* if

- (a) there is no published market in respect of the security,
- (b) the aggregate acquisition cost to the purchaser is not more than \$25,000, and
- (c) each written notice to the public soliciting offers for the security, or giving notice of the intended auction of the security, is accompanied by a statement substantially as follows:

These securities are speculative. No representations are made concerning the securities, or the issuer of the securities. No prospectus is available and the protections, rights and remedies arising out of the prospectus provisions of the Securities Act (Ontario) including statutory rights of rescission and damages, will not be available to the purchaser of these securities.

(2) For the purposes of subsection (1), "published market" means, for a security, any market on which the security is traded if the prices at which it has been traded on the market are regularly published in a newspaper or a business or financial publication of general and regular circulation.

Distributions in mutual fund securities to corporate sponsored plans

**This provision will not be cited in any Appendix of National Instruments 45-102
Resale of Securities. These securities are free trading.**

2.8 The prospectus requirement does not apply to a distribution by a person of

- (a) a security of a mutual fund, if the security is sold to a pension plan, deferred profit sharing plan, retirement savings plan or other similar capital accumulation plan maintained by the sponsor of the plan for its employees, and
 - (i) the employees deal only with the sponsor in respect of their participation in the plan and the purchase of the security by the plan, or
 - (ii) the decision to purchase the security is not made by or at the direction of the employee; or
- (b) a security of a mutual fund that
 - (i) is administered by a trust corporation registered under the *Loan and Trust Corporations Act*,
 - (ii) consists of a pool of funds that
 - (A) results from, and is limited to, the combination or commingling of funds of pension or other superannuation plans registered under the ITA, and
 - (B) is established by or related to persons that are associates or affiliates of or that otherwise do not deal at arm's length with the promoters of the mutual fund except the trust corporation that administers the fund, and

- (iii) is managed, in whole or in part, by a person who is registered or who is exempt from registration under the Act.

Distributions to existing security holders

2.9 (1) In this section,

“announcement date” means the day that an issuer issues an offering news release;

“investment dealer” has the same meaning as in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

“listed security” means an equity security of an issuer of a class listed on the Toronto Stock Exchange, the TSX Venture Exchange, the Canadian Securities Exchange or the Aequitas NEO Exchange;

“offering material” means a document purporting to describe the business and affairs of an issuer that has been prepared primarily for delivery to and review by a prospective purchaser so as to assist the prospective purchaser to make an investment decision in respect of securities being sold in a distribution under this section;

“offering news release” means a news release of an issuer announcing its intention to conduct a distribution under this section;

“record date” means the date determined by an issuer that intends to conduct a distribution under this section that is at least one day prior to the announcement date;

“warrant” means a warrant of an issuer that entitles the holder to acquire a listed security or a fraction of a listed security of the same issuer;

“unit” means a listed security and a warrant.

(2) The prospectus requirement does not apply to a distribution by an issuer of a listed security or a unit of its own issue to a security holder of the issuer purchasing as principal if all of the following apply:

- (a) the issuer
 - (i) is a reporting issuer in at least one jurisdiction of Canada with a class of listed securities, and
 - (ii) is not an investment fund;
- (b) the issuer has filed in each jurisdiction of Canada in which it is a reporting issuer all periodic and timely disclosure documents that it is required to have filed in that jurisdiction as and when required
 - (i) under applicable securities legislation,
 - (ii) pursuant to an order issued by the regulator or securities regulatory authority, or
 - (iii) pursuant to an undertaking to the regulator or securities regulatory authority;
- (c) the issuer has issued and filed an offering news release describing in reasonable detail the proposed distribution, including, without limitation,
 - (i) the minimum and maximum number of securities proposed to be distributed under this section and the minimum and maximum aggregate gross proceeds of the distribution,
 - (ii) the proposed principal uses, including estimated dollar amounts, of the gross proceeds of the distribution, assuming both the minimum and maximum offering, and

- (iii) a description of how the issuer intends to allocate securities;
 - (d) subject to applicable securities laws, the issuer permits each person who, as of the record date, held a listed security of the issuer of the same class and series as the listed securities to be distributed under this section to subscribe for securities in the distribution;
 - (e) the purchaser has represented in writing to the issuer that the purchaser held at the record date, and continues to hold, a listed security of the issuer of the same class and series as the listed securities to be distributed under this section;
 - (f) the issuer or any salesperson acting on behalf of the issuer in connection with a distribution under this section does not reasonably believe that the representation of the purchaser, referred to in paragraph (e), is untrue;
 - (g) either:
 - (i) the purchaser has obtained advice regarding the suitability of the investment and, if the purchaser is a resident of a jurisdiction of Canada, that advice is from a person registered in that jurisdiction as an investment dealer, or
 - (ii) the aggregate of the acquisition cost to the purchaser of securities to be purchased from the issuer under the distribution, when added to the acquisition cost to the purchaser of all other securities of the issuer acquired in reliance on this section in the 12-month period immediately preceding the distribution, does not exceed \$15,000.
- (3)** The issuer must represent to the purchaser in the subscription agreement that
- (a) the issuer's "core documents" and "documents", as those terms are defined in section 138.1 of the Act, do not contain a misrepresentation, and
 - (b) there is no material fact or material change related to the issuer which has not been generally disclosed.
- (4)** A distribution of listed securities or units by an issuer under subsection (2) must not result in an increase of more than 100 percent in the number of outstanding listed securities of the same class.
- (5)** The exemption in subsection (2) is not available for a distribution of a listed security if the class of listed security has been suspended from trading for failure to comply with the ongoing requirements of the applicable exchange.
- (6)** Part XXIII.1 of the Act applies to a security distributed under this section.
- (7)** Other than the subscription agreement, any offering material prepared in connection with a distribution under this section must be filed with the securities regulatory authority by the issuer no later than the day that the offering material was first provided to a potential purchaser.

PART 3 REGISTRATION EXEMPTIONS

Application

- 3.0** Part 3, except for sections 3.3 and 3.4, does not apply.

Removal of registration exemptions - market intermediaries

3.01 (1) Subject to subsection (2), the exemptions from the dealer registration requirement under the following sections are not available for a market intermediary except for a trade in a security with a registered dealer that is an affiliate of the market intermediary:

- (a) section 3.1 [*Government incentive security*],
- (b) section 3.2 [*Government incentive security traded under section 3.1*]
- (c) section 3.4 [*Security of a co-operative*],
- (d) section 3.5 [*Membership share of a credit union*], and
- (e) section 3.6 [*Security of a credit union*].

(2) Subsection (1) does not apply to a trade in a security by a lawyer or accountant if the trade is incidental to the principal business of that lawyer or accountant.

Government incentive security

3.1 (1) The dealer registration requirement does not apply to a trade by an issuer or a promoter of an issuer in a security of the issuer that is a government incentive security, if

- (a) in the aggregate in all jurisdictions in Canada, not more than 75 prospective purchasers are solicited resulting in sales to not more than 50 purchasers,
- (b) before entering into an agreement of purchase and sale, the prospective purchaser has been supplied with an offering memorandum that includes information
 - (i) identifying every officer and director of the issuer,
 - (ii) identifying every promoter of the issuer,
 - (iii) giving the particulars of the professional qualifications and associations during the five years before the date of the offering memorandum of each officer, director and promoter of the issuer that are relevant to the offering,
 - (iv) indicating each of the directors that will be devoting his or her full time to the affairs of the issuer, and
 - (v) describing the right of action referred to in section 130.1 of the Act that is applicable in respect of the offering memorandum,
- (c) the prospective purchaser has access to substantially the same information concerning the issuer that a prospectus filed under the Act would provide and,
 - (i) because of net worth and investment experience or because of consultation with or advice from a person that is not a promoter of the issuer and that is a registered dealer or registered adviser under the Act, is able to evaluate the prospective investment on the basis of information about the investment presented to the prospective purchaser by the issuer or selling security holder, or
 - (ii) is an executive officer or director of the issuer or of an affiliate of the issuer or a spouse or child of a director or executive officer of the issuer or of an affiliate of the issuer,
- (d) the offer and sale of the security is not accompanied by an advertisement and no selling or promotional expenses have been paid or incurred for the offer and sale except for professional services or for services performed by a registered dealer under the Act, and

(e) the promoter, if any, has not acted as a promoter of any other issue of securities under this exemption within the calendar year.

(2) For the purpose of determining the number of purchasers or prospective purchasers under paragraph (1)(a), a corporation, partnership, trust or other entity is counted as one purchaser or prospective purchaser unless the entity has been created, or is being used, primarily for the purpose of purchasing a security of the issuer, in which event each beneficial owner of an equity security of the entity or each beneficiary of the entity, as the case may be, is counted as a separate purchaser or prospective purchaser.

Government incentive security traded under section 3.1

3.2 The dealer registration requirement does not apply to a trade in a security that was previously traded under the exemption in section 3.1, or a predecessor exemption to section 3.1, if each of the parties to the trade is one of the not more than 50 purchasers referred to in the exemption or predecessor exemption.

Commodity futures option or contract

3.3 (1) The dealer registration requirement does not apply to a trade in a commodity futures option or commodity futures contract by a hedger through a dealer.

(2) For the purposes of subsection (1), the terms "commodity futures option", "dealer", "commodity futures contract", and "hedger" have the same meaning as in the CFA.

Security of a co-operative

3.4 The dealer registration requirement does not apply to a trade in a security issued by a corporation to which the *Co-operative Corporations Act* applies.

Membership share of a credit union

3.5 The dealer registration requirement does not apply to a trade in a membership share of a credit union within the meaning of the *Credit Unions and Caisses Populaires Act, 1994*.

Security of a credit union

3.6 (1) The dealer registration requirement does not apply to a trade in a security issued to its members by a credit union to which the *Credit Unions and Caisses Populaires Act, 1994* applies.

(2) The dealer registration requirement does not apply to a security issued to its members or the members of its member credit unions by a league to which the *Credit Unions and Caisses Populaires Act, 1994* applies.

**PART 4
[REPEALED]**

**PART 5
OFFERING MEMORANDUM**

Application

5.1 This Part only applies to a distribution made in reliance on an exemption from the prospectus requirement in

- (a) section 73.3 of the Act or a predecessor exemption to section 73.3 of the Act [*Accredited investor*],
- (b.1) section 2.5 of NI 45-106 [*Family, friends and business associates*],
- (b) section 73.4 of the Act or a predecessor exemption to section 73.4 of the Act [*Private issuer*],
- (c) [Repealed]
- (d) section 2.8 of NI 45-106 [*Affiliates*],
- (d.1) section 2.9 of NI 45-106 [*Offering Memorandum*],
- (e) section 2.10 of NI 45-106 [*Minimum amount investment*],
- (f) section 2.19 of NI 45-106 [*Additional investment in investment funds*],
- (f.1) section 5 of Multilateral Instrument 45-108 Crowdfunding [*Crowdfunding prospectus exemption*], if the eligible crowdfunding issuer is a reporting issuer, and
- (g) section 73.5 of the Act or a predecessor exemption to section 73.5 of the Act [*Government incentive security*].

Right of action for damages and right of rescission

5.2 (1) The rights referred to in section 130.1 of the Act apply in respect of an offering memorandum delivered to a prospective purchaser.

(2) Despite subsection (1), the rights referred to in section 130.1 of the Act do not apply in respect of an offering memorandum delivered to a prospective purchaser in connection with a distribution made in reliance on the exemption from the prospectus requirement in section 73.3 of the Act or a predecessor exemption to section 73.3 of the Act [*Accredited investor*] if the prospective purchaser is

- (a) a Canadian financial institution or a Schedule III bank,
- (b) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada), or
- (c) a subsidiary of any person referred to in paragraphs (a) and (b), if the person owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of that subsidiary.

Description of rights in offering memorandum

5.3 If a seller delivers an offering memorandum to a prospective purchaser in connection with a distribution to which the rights referred to in section 130.1 of the Act apply, the rights must be described in the offering memorandum.

Alternative compliance with description of rights in an offering memorandum

5.3.1. (1) If a seller delivers an offering memorandum to a prospective purchaser that is a permitted client in connection with a distribution of an eligible foreign security, the requirement in section 5.3 to disclose the rights referred to in section 130.1 of the Act will be considered to have been satisfied if a specified disclosure statement is made in one of the following:

- (a) the offering memorandum;
- (b) a document delivered to the permitted client which accompanies, but is not part of, the offering memorandum;
- (c) a written notice that:
 - (i) has been delivered to the permitted client by a registered dealer or an international dealer that proposes to make future distributions of securities to the permitted client; and
 - (ii) which contains a statement to the effect that the disclosure will apply to all future distributions.

(2) For the purpose of subsection (1), a specified disclosure statement must be in the following form or a substantively similar form:

- (a) if the statement is made in a document referred to in paragraph 1(a),

Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if the offering memorandum (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province or territory for particulars of these rights or consult with a legal advisor;
- (b) if the statement is made in a document referred to in paragraph (1)(b) or (1)(c),

If, in connection with a distribution of an eligible foreign security as defined in Ontario Securities Commission Rule 45-501 Ontario Prospectus and Registration Exemptions, we deliver to you an offering document that constitutes an offering memorandum under applicable securities laws in Canada, you may have, depending on the province or territory of Canada in which the trade was made to you, remedies for rescission or damages if the offering memorandum (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by you within the time limit prescribed by the securities legislation of your province or territory. You should refer to any applicable provisions of the securities legislation of your province or territory for the particulars of these rights or consult with a legal advisor.

Delivery of offering memorandum

5.4 (1) If an offering memorandum is provided to a prospective purchaser, the seller must deliver to the Commission a copy of the offering memorandum or any amendment to a previously delivered offering memorandum within 10 days of the date of the distribution.

(2) The requirement in subsection (1) does not apply to an offering memorandum prepared and filed with the Commission in accordance with section 2.9 of NI 45-106.

Exemption from Listing Representation Requirements

5.5 Subsection 38(3) of the Act does not apply to any representation made in an offering memorandum in connection with a distribution of an eligible foreign security if all of the following apply:

- (a) each purchaser of the security is a permitted client;
- (b) the representation does not contain a misrepresentation;
- (c) the representation is made in compliance with the by-laws and rules of the exchange or quotation and trade reporting system referred to in the representation.

Application

5.6 Sections 5.3.1 and 5.6 do not apply if a prospectus has been filed with a Canadian securities regulatory authority in connection with the distribution.

PART 6 REPORTING REQUIREMENTS

Report of exempt distribution

6.1 (1) An issuer that distributes its own securities must file a report if it makes the distribution under

- (a) section 73.5 of the Act or a predecessor exemption to section 73.5 of the Act [*Government incentive security*], or
- (b) section 2.9 [*Distributions to existing security holders*].

(2) The issuer must file the report no later than 10 days after the distribution.

Required form of report of exempt distribution

6.2 (1) The required form of report under paragraph 6.1(1)(a) [*Report of exempt distribution*] is Form 45-106F1 *Report of Exempt Distribution*.

(2) The required form of report of exempt distribution under paragraph 6.1(1)(b) [*Report of exempt distribution*] is Form 45-106F1 *Report of Exempt Distribution*.

**PART 7
EXEMPTION**

Exemption

7.1 The Director may grant an exemption to Part 6, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

**PART 8
TRANSITION AND EFFECTIVE DATE**

8.1 [Repealed]

Effective date

8.2 This Rule comes into force on the later of the following:

- (a) September 28, 2009;
- (b) the day on which sections 5 and 11, subsection 12(1) and section 13 of Schedule 26 of the *Budget Measures Act, 2009* are proclaimed in force.