

Ontario Securities Commission

Rule 56-501

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**OSC RULE 56-501
RESTRICTED SHARES**

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PART 1 DEFINITIONS AND APPLICATION

Definitions

1.1 In this Rule

"CDN issuer" means an issuer, other than a reporting issuer, any of the equity shares of which are quoted on the CDN system, if the shares are not listed or quoted on any other published market;

"CDN system" means the trade reporting and quotation system for over-the-counter trading operated by The Canadian Dealing Network Inc.;

"class" includes a series of a class;

"common shares" means equity shares to which are attached voting rights exercisable in all circumstances, irrespective of the number or percentage of shares owned, that are not less, on a per share basis, than the voting rights attaching to any other shares of an outstanding class of shares of the issuer, unless the Director makes a determination under section 4.1 that the shares are restricted shares;

"control person" means, with respect to an issuer, any person, company or combination of persons or companies holding a sufficient number of any securities of that issuer to affect materially the control of that issuer, and any holding of any person, company or combination of persons or companies holding more than 20 per cent of the voting rights attached to all of the outstanding voting securities of an issuer shall, in the absence of evidence to the contrary, be deemed to affect materially the control of that issuer;

"equity shares" means shares of an issuer that carry a residual right to participate in the earnings of the issuer and, upon the liquidation or winding up of the issuer, in its assets;

"minority approval" means approval of a proposed reorganization or stock distribution given at a meeting of shareholders of an issuer called to consider the reorganization or stock distribution by a majority of the votes cast by holders of voting shares and, if required by corporate law governing the issuer, by a majority of the votes cast by holders of a class of shares voting separately as a class other than, in both cases, the votes attaching at the time to securities held directly or indirectly by affiliates of the issuer and securities held directly or indirectly by control persons of the issuer;

"non-voting shares" means restricted shares that do not carry the right to vote generally, except for a right to vote that is mandated in special circumstances by law;

"preference shares" means shares to which are attached a preference or right over the shares of any class of equity shares of the issuer, but does not include equity shares; "reorganization" means

- (a) the creation of a class of shares that are restricted shares, either directly or through the creation of a class of subject securities, including by way of
 - (i) an amendment to an issuer's constating documents,
 - (ii) a resolution of the board of directors of an issuer setting the terms of a series of shares of the issuer, or
 - (iii) a restructuring, recapitalization, reclassification, arrangement, amalgamation or merger, or
- (b) if the issuer has one or more classes of restricted shares outstanding, an amendment to an issuer's constating documents to increase

- (i) the per share voting rights attached to an issuer's common shares without at the same time making a proportionate increase in the per share voting rights attached to an existing class of restricted shares of the issuer, or
- (ii) the number of common shares authorized;

"restricted share term" means each of "non-voting shares", "subordinate voting shares", "restricted voting shares" and every other term designated by the Director under subsection 4.1(2);

"restricted shares" means

- (a) equity shares that are not common shares, and
- (b) equity shares determined to be restricted shares under subsection 4.1(1);

"restricted voting shares" means restricted shares that carry a right to vote subject to a restriction on the number or percentage of shares that may be voted by a person, a company or any combination of persons and companies, except to the extent the restriction or limit is permitted or prescribed by statute and is applicable only to persons or companies that are not citizens or residents of Canada or that are otherwise considered as a result of any law applicable to the issuer to be non-Canadians;

"stock distribution" means a distribution of restricted shares or subject securities, or securities that are directly or indirectly convertible into or exercisable or exchangeable for restricted shares or subject securities, whether in conjunction with a reorganization or otherwise, other than

- (a) a distribution of previously unissued restricted shares by way of stock dividend in the ordinary course to shareholders instead of a cash dividend if at the time of distribution there is a published market for the restricted shares, or
- (b) a stock split that takes the form of a distribution of previously unissued restricted shares by way of stock dividend to holders of the same class of restricted shares if at the time of distribution there is a published market for the restricted shares and the distribution is part of a concurrent distribution by way of stock dividend to holders of all equity shares under which all outstanding equity shares of the issuer are increased in the same proportion;

"subject securities" means shares that have the effect, or would have the effect if and when issued, of changing a class of outstanding equity shares into restricted shares;

"subordinate voting shares" means restricted shares that carry a right to vote, if there are shares of another class of shares outstanding that carry a greater right to vote on a per share basis; and

"U.S. issuer" has the meaning set out in National Instrument 71-101 Multijurisdictional Disclosure System.

Application

1.2 (1) This Rule does not apply to

- (a) shares of mutual funds;
- (b) shares that carry a right to vote subject to a restriction on the number or percentage of shares that may be voted or owned by persons or companies that are not citizens or residents of Canada or that are otherwise considered as a result of any law applicable to the issuer to be non-Canadians, but only to the extent of the restriction; or

- (c) shares that are subject to a restriction, imposed by any law governing the issuer, on the level of ownership of the shares by a person, company or combination of persons or companies, but only to the extent of the restriction.

(2) [Repealed]

(3) Sections 2.3 and 3.2 do not apply to an issuer distributing securities in accordance with National Instrument 71-101 Multijurisdictional Disclosure System.

(4) Section 2.3 does not apply to an issuer if as of a date not more than seven days before the date that the issuer finalizes the final offering document or information circular being used in connection with the stock distribution or reorganization, the issuer expects that the number of shares of each class of equity shares of the issuer held by registered holders whose last address as shown on the books of the issuer is in Ontario or beneficially owned by persons or companies in Ontario will be less than two percent of the outstanding shares of the class after giving effect to the proposed stock distribution or reorganization.

(5) Section 3.2 does not apply to an issuer if,

- (a) as of a date not more than seven days before the date that the issuer finalizes the final offering document or information circular; or
- (b) as of a date not more than seven days before completion of the stock distribution if there is no offering document or information circular;

the issuer expects that the number of shares of each class of equity shares of the issuer held by registered holders whose last address as shown on the books of the issuer is in Ontario or beneficially owned by persons or companies in Ontario will be less than two percent of the outstanding shares of the class after giving effect to the proposed stock distribution.

PART 2 DISCLOSURE REQUIREMENTS

2.1 [Repealed]

Dealer and Adviser Documentation

2.2 (1) If restricted shares and the appropriate restricted share term, or a code reference to restricted shares or the appropriate restricted share term, are included in a trading record published by The Toronto Stock Exchange, the TSX Venture Exchange, the Canadian Securities Exchange or Aequitas NEO Exchange Inc., the appropriate restricted share term shall be included in

- (a) any confirmation sent in accordance with section 36 of the Act in respect of transactions in restricted shares;
- (b) any statement of transactions or security positions sent by a registered dealer to a customer that refers to restricted shares; and
- (c) all recommendations, selling documents and other literature prepared by or on behalf of a registered dealer or adviser and published by a registered dealer or adviser or sent by a registered dealer or adviser to a customer or potential customer that refer to restricted shares.

(2) Despite subsection (1), a registered dealer or adviser may use an abbreviation for the restricted share term in confirmations and statements of transactions or security positions if an explanation of the abbreviation is given in the document.

Minimum Disclosure in Offering Documents

2.3 (1) A rights offering circular or offering memorandum for a stock distribution,

- (a) prepared for a reporting issuer or a CDN issuer;
- (b) prepared for an issuer that will, upon or in connection with the filing of the document, become a reporting issuer; or
- (c) that refers to an issuer intending to become a CDN issuer concurrently with or following completion of the stock distribution or reorganization

shall comply with the following requirements:

1. Each class of securities that is or may become restricted shares shall be referred to using a term or a defined term that includes the appropriate restricted share term.
2. No shares may be referred to by a term or a defined term that includes "common", or "preference" or "preferred", unless the shares are common shares or preference shares, respectively.
3. The description on the front page of the document, if any, showing the number and class or classes of restricted shares being distributed shall include the appropriate restricted share term in the same type face and type size as the rest of the description.
4. A detailed description shall be included, and a summary, if a summary is mandated by Ontario securities law or is otherwise included, shall be cross-referenced to the detailed description, describing
 - (i) the voting rights attached to the restricted shares that are the subject of the stock distribution or reorganization or that will result from the stock distribution or reorganization either directly or following a conversion, exchange or exercise, and the voting rights, if any, attached to the shares of any other class of shares of the issuer that are the same or greater on a per share basis than those attached to the restricted shares that are the subject of the stock distribution or reorganization or that will result from the stock distribution or reorganization either directly or following a conversion, exchange or exercise;
 - (ii) any significant provisions under applicable corporate and securities law that do not apply to the holders of the restricted shares that are the subject of the stock distribution or reorganization or that will result from the stock distribution or reorganization either directly or following a conversion, exchange or exercise, but do apply to the holders of another class of equity shares, and the extent of any rights provided in the constating documents or otherwise for the protection of holders of the restricted shares; and
 - (iii) any rights under applicable corporate law, in the constating documents or otherwise, of holders of restricted shares that are the subject of the stock distribution or reorganization or that will result from the stock distribution or reorganization either directly or following a conversion, exchange or exercise, to attend, in person or by proxy, meetings of holders of equity shares of the issuer and to speak at the meetings to the same extent that holders of equity shares are entitled.
5. If holders of restricted shares do not have all of the rights referred to in paragraphs 4(i), (ii) and (iii), the detailed description and summary referred to in paragraph 4 shall include, in bold-face type, a statement of the rights the holders do not have.

6. Restricted shares shall be separately identified on any balance sheet contained in any financial statements unless there is only a one-line reference in the balance sheet to "capital", "shareholders' capital", "share capital", "equity capital" or a like term.

(2) Despite paragraph 2 of subsection (1), a document referred to in subsection (1) may, in one place only in the document, describe the restricted shares by the term used in the constating documents of the issuer, to the extent it differs from the appropriate restricted share term, if the description is not on the front page of the document and is in the same type face and type size as that used generally in the document.

(3) [Repealed]

PART 3 WITHDRAWAL OF PROSPECTUS EXEMPTIONS

3.1 [Repealed]

Prospectus Exemptions Not Available

3.2 (1) The prospectus exemptions under Ontario securities law are not available for a stock distribution of securities of

- (a) a reporting issuer or CDN issuer;
- (b) an issuer if the issuer will become a reporting issuer as a result of the stock distribution; or
- (c) an issuer if it is represented in any offering documentation used in connection with the stock distribution that the issuer intends to become a CDN issuer concurrently with or following completion of the stock distribution;

unless

- (d) either
 - (i) the stock distribution received minority approval, or
 - (ii) all of the conditions set out in subsection (2) are satisfied, and
- (e) the information circular in connection with the shareholders' meeting held to obtain minority approval for the stock distribution or each reorganization carried out by the issuer related to the restricted shares that are the subject of the stock distribution,
 - (i) included, if known after reasonable inquiry,
 - (A) the name of each affiliate of the issuer that is or was a beneficial owner of securities of the issuer and the number of securities beneficially owned, directly or indirectly, by the affiliate as of the date of the information circular;
 - (B) the name of each control person and the number of securities beneficially owned, directly or indirectly, by the control person as of the date of the information circular; and
 - (C) a statement of the number of votes attaching to the securities that are or were not to be counted for the purpose of the approval, and
 - (ii) if mailed after the coming into force of this Rule, described the purpose and business reasons for the use of the restricted shares or subject securities.

- (2)** The conditions are as follows:
1. Each reorganization carried out by the issuer related to the restricted shares that are the subject of the stock distribution received minority approval.
 2. At the time of each reorganization referred to in paragraph 1, the issuer was either a reporting issuer in any jurisdiction or a CDN issuer.
 3. If any proposed uses for the restricted shares were described in the information circular sent to shareholders in connection with the shareholders' meeting held to approve a reorganization referred to in paragraph 1, the reason for the stock distribution is not inconsistent with those uses.
- (3)** Subsection (1) does not apply to a stock distribution if
- (a) the reorganization took place before December 21, 1984, or
 - (b) the stock distribution is
 - (i) of securities of an issuer that was a private company immediately before the completion of the stock distribution; or
 - (ii) a subsequent distribution by an issuer described in clause (i) of securities of the same class that were the subject of the stock distribution described in clause (i).

PART 4 DETERMINATIONS AND EXEMPTIONS

Determination of Status

4.1 (1) The Director may determine that equity shares of an issuer are restricted shares for purposes of this Rule, if one of the following factors is present:

1. There is another class of shares that, in view of the consideration and time at which the shares were or are being issued, carries a disproportionate vote per share relative to the equity shares.
2. The conditions of the equity shares, the conditions of other classes of shares or the issuer's constating documents have provisions that tend to nullify or significantly restrict the voting rights or voting interests of the equity shares.
3. There is another class of equity shares, the shares of which are entitled to participate in earnings or assets to a substantially lesser extent, on a per share basis, than the extent to which the first class of equity shares is entitled to participate.

(2) If the Director determines that equity shares are restricted shares, the Director may also determine the appropriate restricted share term to be used to designate the shares, taking into account the voting attributes attached to the shares and the term that will best describe the attributes.

Exemption

4.2 The Director may grant an exemption to this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.