

## Chapter 5

# Rules and Policies

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### 5.1.1 Amendments to OSC Rule 45-502 Dividend or Interest Reinvestment and Stock Dividend Plans, OSC Rule 45-503 Trades to Employees, Executives and Consultants and Rescission of OSC Rule 72-501 Prospectus Exemption for First Trade Over a Market Outside Ontario

#### AMENDMENTS TO ONTARIO SECURITIES COMMISSION RULE 45-502 DIVIDEND OR INTEREST REINVESTMENT AND STOCK DIVIDEND PLANS

##### PART 1 AMENDMENTS

##### 1.1 Amendments - Rule 45-502 Dividend or Interest Reinvestment and Stock Dividend Plans is amended by

- (a) adding the definition ““MI 45-102” means Multilateral Instrument 45-102 Resale of Securities.”;
- (b) deleting section 1.2;
- (c) deleting clause 3.1(a)(ii) and substituting for that clause
  - “(ii) an issuer other than a reporting issuer and the class of securities is listed and posted for trading, traded, or quoted, on
    - (A) Bourse de Montréal Inc.,
    - (B) the TSX Venture Exchange Inc.,
    - (C) the New York Stock Exchange, Inc.,
    - (D) the American Stock Exchange LLC,
    - (E) Nasdaq National Market,
    - (F) Nasdaq SmallCap Market,
    - (G) the London Stock Exchange plc, or
    - (H) a successor to any of the entities listed in subclauses (A) through (G); and”;
- (d) deleting clauses 3.1(b)(ii) and (iii) and substituting for those clauses
  - “(ii) at the time of the trade, residents of Canada
    - (A) did not own directly or indirectly more than 10 percent of the outstanding securities of the class or series; and
    - (B) did not represent in number more than 10 percent of the total number of owners directly or indirectly of the class or series.”;
- (e) deleting section 4.1 and substituting for that section
  - “4.1 **Restrictions on First Trade of Securities Distributed under Section 2.1 or 3.1** - If a security was distributed under an exemption from the prospectus requirement in section 2.1 or 3.1, the first trade in that security is subject to section 2.6 of MI 45-102.”;
- (f) deleting Part 5; and
- (g) renumbering Part 6 as Part 5, section 6.1 as section 5.1, Part 7 as Part 6 and section 7.1 as section 6.1.

**PART 2 EFFECTIVE DATE**

**2.1 Effective Date** - These Amendments come into force on December 1, 2002.

**AMENDMENTS TO ONTARIO SECURITIES COMMISSION RULE 45-503  
TRADES TO EMPLOYEES, EXECUTIVES  
AND CONSULTANTS**

**PART 1 AMENDMENTS**

**1.1 Amendments** - Rule 45-503 Trades to Employees, Executives and Consultants is amended by

- (a) adding the definition ""convertible security" means a security of an issuer that is convertible into, or carries the right of the holder to purchase or otherwise acquire, or of the issuer to cause the purchase or acquisition of, a security of the same issuer;"
- (b) adding the definition ""exchangeable security" means a security of an issuer that is exchangeable for, or carries the right of the holder to purchase or otherwise acquire, or of the issuer to cause the purchase or acquisition of, a security of another issuer;"
- (c) deleting the definition "foreign-listed issuer" and substituting for that definition ""foreign-listed issuer" means an issuer any of the securities of which are listed and posted for trading, or traded, on the American Stock Exchange LLC, the New York Stock Exchange, Inc. or the London Stock Exchange plc or quoted on Nasdaq National Market or Nasdaq SmallCap Market or a successor to any of those entities;"
- (d) deleting the definition of "hold period";
- (e) deleting the definition of "listed issuer" and substituting for that definition ""listed issuer" means an issuer any of the securities of which are listed and posted for trading, or traded, on the Toronto Stock Exchange, the TSX Venture Exchange Inc., or Bourse de Montréal Inc. or a successor to any of those entities;"
- (f) adding the definition ""MI 45-102" means Multilateral Instrument 45-102 Resale of Securities;"
- (g) adding the definition ""multiple convertible security" means a security of an issuer that is convertible into, or exchangeable for, or carries the right of the holder to purchase or otherwise acquire, or of the issuer to cause the purchase or acquisition of, a convertible security, an exchangeable security or another multiple convertible security;"
- (h) deleting the definition "underlying security" and substituting for that definition ""underlying security" means a security issued or transferred, or to be issued or transferred, in accordance with the terms of a convertible security, an exchangeable security or a multiple convertible security.";
- (i) deleting subsection 1.2(5) and substituting for that subsection

“(5) In this Rule, references to “current” and “former” refer to the status at the time of a trade by the individual employee, the individual executive and, in the case of a consultant, the status of the individual consultant or the consultant’s company or consultant partnership.”;
- (j) deleting subsection 1.2(7) and substituting for that subsection

“(7) In this Rule, an issuer is considered to have a *de minimis* Canadian market with respect to a class or series of securities of the issuer if, at the relevant time, residents of Canada

  - (a) did not own directly or indirectly more than 10 percent of the outstanding securities of the class or series; and
  - (b) 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.”;
- (k) deleting section 2.4 and substituting for that section

**2.4 De Minimis Registration Exemption for Trades by Employees, Former Employees, Consultants, Former Consultants and Administrators** - Section 25 of the Act does not apply to a trade by an employee, former employee, consultant or former consultant of an issuer (including a personal representative of, or a beneficiary under, the estate of any of these individuals), or an employee administrator of an issuer on behalf of an employee, former employee, consultant or

former consultant (including a personal representative of, or a beneficiary under, the estate of any of these individuals), in a security of the issuer's own issue, if

- (a) in the case of a trade by a former employee, former consultant or administrator on behalf of a former employee or former consultant (including a personal representative of, or a beneficiary under, the estate of any of these individuals), the security, or in the case of a trade of an underlying security, the convertible security, exchangeable security or multiple exchangeable security, was distributed to the former employee, former consultant or administrator of the issuer under an exemption from the prospectus requirement in section 2.2, 5.1 or 8.1;
  - (b) the issuer was not a reporting issuer at the time of the acquisition of the security, or in the case of an underlying security at the time of the acquisition of the convertible security, exchangeable security or multiple exchangeable security;
  - (c) at the time of the acquisition of the security, or in the case of an underlying security at the time of the acquisition of the convertible security, exchangeable security or multiple exchangeable security, the issuer had a *de minimis* Canadian market for the security; and
  - (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.";
- (l) deleting paragraph 3.2(a) and substituting for that paragraph
- "(a) in the case of the issue of a security as an incentive,
- (i) prior shareholder approval has been obtained for the incentive or the incentive plan under which the incentive is being issued, including any amendments thereto, if the incentive or the incentive plan, in each case together with all of the issuer's other previously established or proposed incentives or incentive plans, could result, at any time, in
    - (A) the number of shares reserved for issuance under stock options granted to related persons exceeding 10 percent of the outstanding issue,
    - (B) the issuance to related persons, within a 12 month period, of a number of shares exceeding 10 percent of the outstanding issue,
    - (C) the number of shares reserved for issuance under stock options granted to any one related person and the related person's associates exceeding five percent of the outstanding issue, or
    - (D) the issuance to any one related person and the related person's associates, within a 12 month period, of a number of shares exceeding five percent of the outstanding issue, or
  - (ii) prior shareholder approval has been obtained for the incentive or the incentive plan under which the incentive is being issued, irrespective of whether any amendments are made subsequent to shareholder approval, if
    - (A) the incentive or the incentive plan, in each case together with all of the issuer's other previously established or proposed incentives or incentive plans, could result, at any time, in
      - I. the number of shares reserved for issuance under stock options granted to related persons exceeding 10 percent of the outstanding issue,
      - II. the issuance to related persons, within a 12 month period, of a number of shares exceeding 10 percent of the outstanding issue,

- III. the number of shares reserved for issuance under stock options granted to any one related person and the related person's associates exceeding five percent of the outstanding issue, or
  - IV. the issuance to any one related person and the related person's associates, within a 12 month period, of a number of shares exceeding five percent of the outstanding issue, and
- (B) the amendments made subsequent to the shareholder approval could not result in the number of shares reserved for issuance, or issued with a 12 month period, exceeding the applicable percentage referred to in clause (A).
- (m) deleting clause 3.3 (b)(ii) and substituting for that clause
- "(ii) at the time of the trade, the issuer has a *de minimis* Canadian market for the security; and";
- (n) deleting section 3.5 and substituting
- "3.5 **De Minimis Registration Exemption for Trades by Executives, Former Executives and Administrators** - Section 25 of the Act does not apply to a trade by an executive or former executive of an issuer (including a personal representative of, or a beneficiary under, the estate of any of these individuals), or an executive administrator of an issuer on behalf of an executive or former executive (including a personal representative of, or a beneficiary under, the estate of any of these individuals), of a security of the issuer's own issue, if
- (a) in the case of a trade by a former executive or an executive administrator on behalf of a former executive (including a personal representative of, or a beneficiary under, the estate of a former executive), the security, or in the case of a trade of an underlying security, the convertible security, exchangeable security or multiple exchangeable security, was distributed to the former executive or executive administrator of the issuer under an exemption from the prospectus requirement in section 3.1, 3.2, 3.3, 5.1 or 8.1;
  - (b) the issuer was not a reporting issuer at the time of the acquisition of the security, or in the case of an underlying security at the time of the acquisition of the convertible security, exchangeable security or multiple exchangeable security;
  - (c) at the time of the acquisition of the security, or in the case of an underlying security at the time of the acquisition of the convertible security, exchangeable security or multiple convertible security, the issuer had a *de minimis* Canadian market for the security; and
  - (d) the trade is made through
    - (i) an exchange, or a market, outside of Canada, or
    - (ii) to a person or company outside of Canada.";
- (o) deleting section 7.1 and substituting for that section
- "7.1 **Removal of Certain Exemptions for Trades of Securities of Certain Companies** – The exemption contained in section 2.1 of Ontario Securities Commission Rule 45-501 Exempt Distributions is not available for a trade in a security of a subsidiary company of an employee or an executive, or a consultant company, if the company has acquired securities under an exemption contained in this Rule and at the time of the trade holds the securities, unless a trade of the securities acquired by the company to the purchaser would have been permitted under section 9.1.
- (p) deleting subsection 8.1(2);
- (q) deleting section 9.1 and substituting for that section
- "9.1 **Restrictions on First Trades of Securities Distributed under Exemptions in Rule**
- (1) If a security is distributed to a person or company, other than an associated consultant or an investor consultant of the issuer of the security, under an exemption from the prospectus

requirement in section 2.2, 3.1, 3.2, 3.3, 5.1 or 8.1, the first trade in that security is subject to section 2.6 of MI 45-102.

- (2) If a security was distributed to an associated consultant or investor consultant of the issuer of the security under an exemption from the prospectus requirement in section 2.2, 5.1 or 8.1, the first trade in that security is subject to section 2.5 of MI 45-102.
- (3) If a convertible security, exchangeable security or multiple convertible security was distributed to an associated consultant or investor consultant of the issuer of the underlying security under an exemption from the prospectus requirement in section 2.2, 5.1 or 8.1, the first trade in the underlying security is subject to section 2.5 of MI 45-102.
- (4) If the trade is a trade referred to in section in section 6.1 or section 8.1, the trade is not subject to the prospectus requirement.”; and

- (r) deleting Part 10 and substituting for that Part

#### “PART 10 - ISSUER BID EXEMPTIONS

10.1 **Issuer Bid Exemptions** - Sections 95, 96, 97, 98 and 100 of the Act, section 203.1 of the Regulation and Rule 61-501 Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions do not apply to the acquisition by an issuer of securities of the issuer from an employee, former employee, executive, former executive, consultant or former consultant of the issuer, or an administrator of the issuer on behalf of an employee, former employee, executive, former executive, consultant or former consultant to fulfil withholding tax obligations in respect of the employee, former employee, executive, former executive, consultant or former consultant of the issuer, or as payment of the exercise price of a stock option by the employee, former employee, executive, former executive, consultant or former consultant of an issuer, or an administrator of the issuer on behalf of the employee, former employee, executive, former executive, consultant or former consultant if

- (a) in the case of an acquisition from a former employee, former executive, former consultant or an administrator of the issuer on behalf of a former employee, former executive or former consultant, the security, or in the case of an underlying security, the convertible security, exchangeable security or multiple exchangeable security, was distributed to the former employee, former executive, former consultant or an administrator of the issuer under an exemption from the prospectus requirement in section 2.2, 3.1, 3.2, 3.3, 5.1 or 8.1;
- (b) the acquisition is made in accordance with the terms of a service provider plan that specifies how the value of the securities acquired by the issuer shall be determined;
- (c) in the case of securities acquired as payment of the exercise price of a stock option, the date of exercise of the option is chosen by the option holder; and
- (d) the aggregate number, or, in the case of debt securities that are convertible securities, exchangeable securities or multiple exchangeable securities, the aggregate principal amount, of securities acquired by the issuer within a 12 month period under this section does not exceed five percent of the outstanding securities of the class or series at the beginning of the period.”

#### PART 2 EFFECTIVE DATE

2.1 **Effective Date** - These Amendments come into force on December 1, 2002.

**RESCISSION OF ONTARIO SECURITIES COMMISSION RULE 72-501  
PROSPECTUS EXEMPTION FOR FIRST TRADE OVER A MARKET  
OUTSIDE ONTARIO**

**PART 1 RESCISSION**

**1.1 Rescission** - Rule 72-501 Prospectus Exemption for First Trade Over a Market Outside Ontario is rescinded.

**PART 2 EFFECTIVE DATE**

**2.1 Effective Date** - This rescission comes into force on December 1, 2002.