

## Chapter 5

# Rules and Policies

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### 5.1.1 Notice of Commission Approval - Ontario Amendment Instrument Amending NI 45-106 Prospectus and Registration Exemptions

**NOTICE OF COMMISSION APPROVAL**  
**ONTARIO AMENDMENT INSTRUMENT**  
**AMENDING**  
**NATIONAL INSTRUMENT 45-106**  
**PROSPECTUS AND REGISTRATION EXEMPTIONS**

#### **Making of Amendment Instrument**

On September 14, 2005, National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**) came into force in Ontario and all other CSA jurisdictions.

On November 29, 2005, the Commission made as a rule under the *Securities Act* (Ontario) (the **Act**) an amendment instrument (the **Amendment Instrument**) that will amend NI 45-106.

The Amendment Instrument will amend NI 45-106 in Ontario only. The securities regulatory authorities in other CSA jurisdictions have issued blanket orders to address the subject matter of the Amendment Instrument.

#### **Delivery of Amendment Instrument to Minister**

The Commission delivered the Amendment Instrument to the Minister responsible for the oversight of the Commission on December 8, 2005. If the Minister approves the Amendment Instrument, it will come into force 15 days after the Amendment Instrument is approved. If the Minister does not approve or reject the Amendment Instrument, or return it to the Commission for further consideration, by February 6, 2006, it will come into force on February 21, 2006.

#### **Substance and purpose of Amendment Instrument**

The Amendment Instrument amends the exemption for reinvestment plans in section 2.2 (the **DRIP Exemption**) of NI 45-106 in Ontario.

The DRIP Exemption replaced the exemption for reinvestment plans set out in OSC Rule 45-502 *Dividend or Interest Reinvestment and Stock Dividend Plans* (the **Predecessor Ontario DRIP Rule**), which was revoked upon the coming into force of NI 45-106.

#### *DRIP Exemption*

Subject to certain conditions, the DRIP Exemption provides for an exemption from the dealer registration requirement for a trade by an issuer, or by a trustee, custodian or administrator acting for or on behalf of the issuer, to a security holder of the issuer if the trade is permitted by a plan of the issuer and is:

- (i) a trade in a security of the issuer's own issue if dividends or distributions out of earnings, surplus, capital or other sources payable in respect of the issuer's securities are applied to the purchase of the security *that is of the same class or series* as the securities to which the dividends or distributions are attributable; or
- (ii) a trade in a security of the issuer's own issue if the security holder makes optional cash payments to purchase the security of the issuer *that is of the same class or series* of securities described in paragraph (a) that trade on a marketplace.

The DRIP Exemption also provides for an exemption from the prospectus requirement for a distribution in the circumstances described above.

*Same Class Condition*

The DRIP Exemption contains a condition that securities purchased pursuant to a reinvestment plan or a cash payment option must be of the same class or series as the securities to which the dividends or distributions paid are attributable (the **Same Class Condition**).

In contrast, the Predecessor Ontario DRIP Rule did not contain the Same Class Condition. It was available for trades by an issuer or administrator of the issuer in a security of the issuer's own issue of any class or series provided that the trade was under a dividend or interest reinvestment plan of the issuer.

The Same Class Condition has proven problematic for certain types of reinvestment plans.

*Amendment Instrument*

The Amendment Instrument will remove the Same Class Condition from the DRIP Exemption in Ontario.

**Authority for Amendment Instrument**

The following provisions of the Act provide us with authority to make the Amendment Instrument:

- paragraph 143(1)8 authorizes us to provide for exemptions from the registration requirements under the Act or for the removal of exemptions from those requirements; and
- paragraph 143(1)20 authorizes us to provide for exemptions from the prospectus requirements under the Act and for the removal of exemptions from those requirements.

In addition, clause 143.2(5)(b) of the Act permits us to make the Amendment Instrument without publishing the Amendment Instrument for comment.

**Questions**

Please refer your questions to:

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**Text of Amendment Instrument**

The Amendment Instrument is published in Chapter 5 of the Bulletin.

**Date: December 9, 2005**

**NATIONAL INSTRUMENT 45-106  
PROSPECTUS AND REGISTRATION EXEMPTIONS  
ONTARIO AMENDMENT INSTRUMENT**

1. Section 2.2 of National Instrument 45-106 *Prospectus and Registration Exemptions* is amended in Ontario by adding the following after subsection (1):
  - (1.1) In Ontario, paragraphs (a) and (b) of subsection (1) are to be read as follows:
    - (a) a trade in a security of the issuer's own issue if dividends or distributions out of earnings, surplus, capital or other sources payable in respect of the issuer's securities are applied to the purchase of the security, and
    - (b) subject to subsection (2), a trade in a security of the issuer's own issue if the security holder makes optional cash payments to purchase the security of the issuer that trades on a marketplace.