

5.1.2 Amending Instrument for OSC Rule 45-501 Ontario Prospectus and Registration Exemptions

**AMENDING INSTRUMENT FOR
OSC RULE 45-501 ONTARIO PROSPECTUS AND REGISTRATION EXEMPTIONS**

1. OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* is amended by this Instrument.

2. The Rule is amended by adding the following section:

2.9 Distributions to existing security holders

(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..

3. Section 6.1 is deleted and replaced with the following:

- 6.1 Report of exempt distribution – (1) An issuer that distributes its own securities must file a report if it makes the distribution under
- (a) section 2.1 [*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..

4. Section 6.2 is deleted and replaced with the following:

6.2 Required form of report of exempt distribution – (1) The required form of report under paragraph 6.1(1)(a) [*Report of exempt distribution*] is Form 45-501F1.

(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*..

5. This instrument comes into force on February 11, 2015.