

## Chapter 5

# Rules and Policies

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### **5.1.1 OSC Rule 72-503 Distributions Outside Canada**

#### **ONTARIO SECURITIES COMMISSION RULE 72-503 DISTRIBUTIONS OUTSIDE CANADA**

*The text box in this Rule located above section 2.4 refers to National Instrument 45-102 Resale of Securities. The text box does not form part of this Rule.*

#### **PART 1 DEFINITIONS**

##### **Definitions**

###### **1.1 In this Rule,**

“distribution date” has the same meaning as in National Instrument 45-102 *Resale of Securities*;

“FINRA” means the self-regulatory organization in the United States of America known as the Financial Industry Regulatory Authority; and

“specified foreign jurisdiction” means a jurisdiction listed in Appendix A of this Rule.

#### **PART 2 EXEMPTIONS FROM THE PROSPECTUS REQUIREMENT**

##### **Distribution Under Public Offering Document in Foreign Jurisdictions**

###### **2.1 The prospectus requirement does not apply to a distribution of securities to a person or company outside Canada if, at the time of the distribution, one or both of the following apply:**

- (a) the issuer has filed a registration statement in accordance with the 1933 Act registering the securities in connection with the distribution, and that registration statement is effective;
- (b) the issuer has filed an offering document that qualifies, registers, or permits the public offering of those securities in accordance with the securities laws of a specified foreign jurisdiction and, if required, a receipt or similar acknowledgement of approval or clearance has been obtained for the offering document in the specified foreign jurisdiction.

##### **Concurrent Distribution under Final Prospectus in Ontario**

###### **2.2 The prospectus requirement does not apply to a distribution of securities to a person or company outside Canada if,**

- (a) the issuer of the securities or the selling security holder has materially complied with the disclosure requirements applicable to the distribution under the securities law of the jurisdiction outside Canada, or the distribution is exempt from such requirements; and
- (b) the issuer of those securities has filed with the Commission, and a receipt has been issued for, a final prospectus qualifying a concurrent distribution of the same class, series or type of securities to purchasers in Ontario in accordance with Ontario securities law.

##### **Distributions by Reporting Issuers**

###### **2.3 The prospectus requirement does not apply to a distribution by an issuer of a security of its own issue to a person or company outside Canada if,**

- (a) the issuer has materially complied with the disclosure requirements applicable to the distribution under the securities law of the jurisdiction outside Canada, or the distribution is exempt from such requirements; and
- (b) the issuer is a reporting issuer in a jurisdiction of Canada immediately preceding the distribution.

## Distributions by Non-Reporting Issuers

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

- 2.4** The prospectus requirement does not apply to a distribution by an issuer that is not a reporting issuer in a jurisdiction of Canada of a security of its own issue to a person or company outside Canada if, the issuer has materially complied with the disclosure requirements applicable to the distribution under the securities law of the jurisdiction outside Canada, or the distribution is exempt from such requirements.

## Exchange or Market Outside Canada

- 2.5** For the purposes of sections 2.1, 2.2, 2.3 and 2.4, a distribution made on or through the facilities of an exchange or market outside Canada is a distribution to a person or company outside Canada if neither the seller nor any person acting on its behalf has reason to believe that the distribution has been pre-arranged with a buyer in Canada.

## Anti-avoidance

- 2.6** The prospectus exemptions in sections 2.1, 2.2, 2.3 and 2.4 are not available with respect to any transaction or series of transactions that is part of a plan or scheme to avoid the prospectus requirements in connection with a distribution to a person or company in Canada.

## PART 3 EXEMPTION FROM THE DEALER AND UNDERWRITER REGISTRATION REQUIREMENTS

### Exemption from the Dealer and Underwriter Registration Requirements

- 3.1** The dealer registration requirement and the underwriter registration requirement do not apply to a person or company in connection with a distribution of securities to a person or company outside Canada if all of the following apply:

- (a) the distribution is qualified by a prospectus filed in a jurisdiction of Canada or is exempt from the prospectus requirement under Part 2 of this Rule or by another exemption from the prospectus requirement under Ontario securities law;
- (b) the head office or principal place of business of the person or company is in the United States of America, a specified foreign jurisdiction or a jurisdiction of Canada;
- (c) if the distribution is made to a purchaser located in the United States of America,
  - (i) the person or company is registered as a broker-dealer with the SEC, is a member of FINRA and materially complies with all applicable conduct and other regulatory requirements of U.S. federal securities law, state securities law of the United States of America and FINRA rules in connection with the distribution; or
  - (ii) the person or company is exempt from registration as a broker-dealer with the SEC and materially complies with all applicable regulatory requirements of U.S. federal securities law in connection with the distribution;
- (d) if the distribution is made to a purchaser located in a specified foreign jurisdiction,
  - (i) the person or company
    - (A) is registered under the securities legislation of the specified foreign jurisdiction in a category of registration that permits it to carry on the activities in that jurisdiction that registration as a dealer would permit it to carry on in Ontario, and
    - (B) materially complies with all applicable dealer registration requirements and other broker-dealer regulatory requirements of the specified foreign jurisdiction in connection with the distribution; or

- (ii) the person or company is exempt from registration in the specified foreign jurisdiction and materially complies with all applicable securities regulatory requirements of the specified foreign jurisdiction in connection with the distribution;
- (e) the person or company does not carry on business as a dealer or underwriter from an office or place of business in Ontario except in accordance with Ontario Securities Commission Rule 32-505 *Conditional Exemption from Registration for United States Broker-Dealers and Advisers Servicing U.S. Clients from Ontario*, an exemption from the registration requirement in this Rule or another exemption from the registration requirement under Ontario securities law;
- (f) the person or company is not registered in any jurisdiction of Canada in the category of dealer.

#### **Issuer Exemption from the Dealer and Underwriter Registration Requirements**

- 3.2** The dealer registration requirement does not apply to an issuer in connection with a distribution of securities to a person or company outside Canada that is qualified by a prospectus filed in any jurisdiction of Canada or that is exempt from the prospectus requirement under Part 2 of this Rule or another exemption from the prospectus requirement under Ontario securities law if one or both of the following apply:
- (a) the trade is made through or to a person or company that is relying on the exemption in section 3.1 or another exemption from registration under Ontario securities law;
  - (b) the trade is made in accordance with the dealer and underwriter registration requirements of the investor's jurisdiction and the issuer is not otherwise registered in any jurisdiction in Canada in the category of dealer.

### **PART 4 REPORT OF DISTRIBUTION OUTSIDE CANADA**

#### **Report of Distribution outside Canada**

- 4.1** An issuer that relies on an exemption in section 2.3 or 2.4 must electronically file a report of trade with respect to the distribution as required by Form 72-503F *Report of Distributions Outside Canada* and its instructions.

#### **4.2 Filing Deadline**

- (1) An issuer, other than an investment fund, must file the report required under section 4.1 on or before the tenth day after the distribution date.
- (2) An issuer that is an investment fund must file the report required under section 4.1 not later than 30 days after the end of the calendar year in which the distribution occurred.

#### **Investment Funds**

- 4.3** An issuer that is an investment fund is not required to file the report under section 4.1 if the seller electronically files a Form 45-106F1 not later than 30 days after the end of the calendar year in which the distribution occurred that also includes the required information set forth in Form 72-503F *Report of Distributions Outside Canada* and its instructions.

### **PART 5 EXEMPTION**

#### **Exemption**

- 5.1** The Director may grant an exemption from Part 4, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

### **PART 6 EFFECTIVE DATE**

#### **Effective Date**

- 6.1** This Rule comes into force on March 31, 2018.

**APPENDIX A – SPECIFIED FOREIGN JURISDICTIONS**

1. Australia
2. France
3. Germany
4. Hong Kong
5. Italy
6. Japan
7. Mexico
8. The Netherlands
9. New Zealand
10. Singapore
11. South Africa
12. Spain
13. Sweden
14. Switzerland
15. United Kingdom of Great Britain and Northern Ireland
16. Any other member country of the European Union

**FORM 72-503F**  
**REPORT OF DISTRIBUTIONS OUTSIDE CANADA**

**Instructions:**

1. An issuer that is required to complete this Form must do so through the online e-form available at <http://www.osc.gov.on.ca>.
2. Security codes: Wherever this form requires disclosure of the type of security, use the following security codes:

Security code	Security type
BND	Bonds
CER	Certificates ( <i>including pass-through certificates, trust certificates</i> )
CMS	Common shares
CVD	Convertible debentures
CVN	Convertible notes
CVP	Convertible preferred shares
DEB	Debentures
FTS	Flow-through shares
FTU	Flow-through units
LPU	Limited partnership units
NOT	Notes ( <i>include all types of notes except convertible notes</i> )
OPT	Options
PRS	Preferred shares
RTS	Rights
UBS	Units of bundled securities ( <i>such as a unit consisting of a common share and a warrant</i> )
UNT	Units ( <i>exclude units of bundled securities, include trust units and mutual fund units</i> )
WNT	Warrants
OTH	Other securities not included above ( <i>if selected, provide details of security type in Item 7d</i> )

**1. Full name, address and telephone number of the Issuer.**

a) Full name of issuer

b) Head office address

Street address	<input type="text"/>	Province/State	<input type="text"/>
Municipality	<input type="text"/>	Postal code/Zip code	<input type="text"/>
Country	<input type="text"/>	Telephone number	<input type="text"/>

**2. Type of security, the aggregate number or amount distributed and the aggregate purchase price.**

Types of securities distributed						
<i>Provide the following information for all distributions of securities relying on an exemption in section 2.2, 2.3 or 2.4 of the Rule on a per security basis. Refer to section 2 of the Instructions for how to indicate the security code. If providing the CUSIP number, indicate the full 9-digit CUSIP number assigned to the security being distributed.</i>						
Security code		CUSIP number (if applicable)	Description of security		Number of securities	Canadian \$
Single or lowest price	Highest price	Total amount				

Details of rights and convertible/exchangeable securities						
<i>If any rights (e.g. warrants, options) were distributed, provide the exercise price and expiry date for each right. If any convertible/exchangeable securities were distributed, provide the conversion ratio and describe any other terms for each convertible/exchangeable security.</i>						
Security code	Underlying Security code	Exercise price (Canadian \$)		Expiry date (YYYY-MM-DD)	Conversion ratio	Describe other terms (if applicable)
		Lowest	Highest			

**3. Date of distribution(s).**

Distribution date						
<i>State the distribution start and end dates. If the report is being filed for securities distributed on only one distribution date, provide the distribution date as both the start and end dates. If the report is being filed for securities distributed on a continuous basis, include the start and end dates for the distribution period covered by the report.</i>						
Start date				End date		
YYYY	MM	DD	YYYY	MM	DD	

4. **State the name and address of any person acting as dealer or underwriter (including an underwriter that is acting as agent) in connection with the distribution(s) of the securities.**

Dealer and underwriter information

Full legal name

Street address

Municipality

Province/State

Country

Postal code/Zip code

Telephone number

Website

(if applicable)

**5. Certification**

Certification

*Provide the following certification and business contact information of an officer, director or agent of the issuer. If the issuer is not a company, an individual who performs functions similar to that of a director or officer may certify the report. For example, if the issuer is a trust, the report may be certified by the issuer's trustee. If the issuer is an investment fund, a director or officer of the investment fund manager (or, if the investment fund manager is not a company, an individual who performs similar functions) may certify the report if the director or officer has been authorized to do so by the investment fund.*

*The certification may be delegated, but only to an agent that has been authorized by an officer or director of the issuer to prepare and certify the report on behalf of the issuer.*

*The signature on the report must be in typed form rather than handwritten form. The report may include an electronic signature provided the name of the signatory is also in typed form.*

Securities legislation requires an issuer that makes a distribution of securities under certain prospectus exemptions to file a completed report of exempt distribution.

By completing the information below, I certify, on behalf of the issuer/investment fund manager, to the securities regulatory authority or regulator, as applicable, that I have reviewed this report and to my knowledge, having exercised reasonable diligence, the information provided in this report is true and, to the extent required, complete.

Name of issuer/investment  
fund manager/agent

Full legal name

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Family name

First given name

Secondary given names

Title

Telephone number

Email address

Signature

Date

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YYYY

MM

DD