

5.1.2 Changes to Companion Policy 72-503 Distributions Outside Canada

CHANGES TO COMPANION POLICY 72-503 DISTRIBUTIONS OUTSIDE CANADA

1. *Companion Policy 72-503 Distributions Outside Canada is changed by this Document.*

2. *Part 2 is changed by*

- (a) *replacing the heading “Resale” with “Resales subject to Restricted Period”;*
- (b) *adding the following before the heading “The Multijurisdictional Disclosure System”:*

Resales of Securities under Section 2.7 of the Rule

For the purposes of section 2.7 of the Rule, in determining the percentage of the outstanding securities of the class or series that are directly or indirectly owned by residents of Canada and the number of owners directly or indirectly that are residents of Canada, an issuer should use reasonable efforts to

- (a) determine securities held of record by a broker, dealer, bank, trust company or nominee for any of them for the accounts of customers resident in Canada;
- (b) count securities beneficially owned by residents of Canada as reported on reports of beneficial ownership; and
- (c) assume that a customer is a resident of the jurisdiction or foreign jurisdiction in which the nominee has its principal place of business if, after reasonable inquiry, information regarding the jurisdiction or foreign jurisdiction of residence of the customer is unavailable.

Lists of beneficial owners of securities maintained by intermediaries under SEC Rule 14a-13 under the 1934 Act or other securities law analogous to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* may be useful in determining the percentages referred to in the above paragraph.

There is no requirement to place a legend on the securities in order to rely on the exemption in section 2.7 of the Rule.

The exemptions in subsections 2.7(1) and 2.7(2) of the Rule permit the resale of securities of an issuer in a *bona fide* trade outside of Canada. The exemptions are each subject to a condition that the trade is made through an exchange or a market outside of Canada, or to a person or company outside of Canada.

In the Commission’s view, selling security holders who wish to rely on the exemption may not take steps to sell in Canada by either (1) pre-arranging with a buyer that is a resident of Canada and settling on an exchange or a market outside of Canada or (2) selling securities to a person or company outside of Canada who the selling security holder has reason to believe is acquiring the securities on behalf of a Canadian investor. A selling security holder engaged in activities to sell or create a demand for the security in Canada would not be able to rely on the exemptions in section 2.7 of the Rule. This view is reinforced by the anti-avoidance provision in section 2.9 of the Rule.

As with all prospectus exemptions, a person relying on an exemption has to satisfy itself that the conditions to the exemption are met.

Resales of Securities under Section 2.8 of the Rule

The definition of “foreign issuer” in section 2.8 of the Rule uses the terms “directors” and “executive officers”. The term “director” is defined in the *Securities Act* (Ontario) and generally means a director of a company or an individual performing a similar function or acting in a similar capacity for any non-corporate issuer.

For a non-corporate issuer, an executive officer is a person who is acting in a capacity with the non-corporate issuer that is similar to that of an executive officer of a company.

In order to rely on section 2.8, a selling security holder will have to determine if the issuer is a foreign issuer on the distribution date. In some cases, the issuer will provide that information to investors at the time of the offering, perhaps in representations in subscription agreements or in offering materials. If the issuer doesn’t

provide that information, a security holder can determine whether an issuer is a foreign issuer by using the information disclosed in the issuer's most recent disclosure document containing that information that is publicly available in a foreign jurisdiction or the offering document provided by the issuer in connection with the distribution of the security that is the subject of the resale. A security holder may rely on this information unless the security holder has reason to believe that it is not accurate.

The term "ordinarily reside" is used to clarify that when an executive officer or director has a temporary residence outside of Canada, such as a vacation home, the executive officer or director would not generally be considered to reside outside of Canada for the purposes of the definition of foreign issuer.

There is no requirement to place a legend on the securities in order to rely on the exemptions in section 2.8 of the Rule.

The exemptions in subsections 2.8(2) and 2.8(3) of the Rule permit the resale of securities of an issuer in a *bona fide* trade outside of Canada. The exemptions are each subject to a condition that the trade is made through an exchange or a market outside of Canada, or to a person or company outside of Canada.

In the Commission's view, selling security holders who wish to rely on the exemptions may not take steps to sell in Canada by either (1) pre-arranging with a buyer that is a resident of Canada and settling on an exchange or a market outside of Canada or (2) selling securities to a person or company outside of Canada who the selling security holder has reason to believe is acquiring the securities on behalf of a Canadian investor. A selling security holder engaged in activities to sell or create a demand for the security in Canada would not be able to rely on the exemptions in section 2.8 of the Rule. This view is reinforced by the anti-avoidance rule in section 2.9 of the Rule.

As with all prospectus exemptions, a person relying on an exemption has to satisfy itself that the conditions to the exemption are met..

3. These changes become effective on June 12, 2018.