

1.1.2 OSC Notice of General Order – Ontario Instrument 48-503 Temporary Exemption from Certain Provisions of Ontario Securities Commission Rule 48-501 Trading During Distributions, Formal Bids and Share Exchange Transactions

Notice of General Order

Ontario Securities Commission

Ontario Instrument 48-503

Temporary Exemption from Certain Provisions of Ontario Securities Commission Rule 48-501 Trading During Distributions, Formal Bids and Share Exchange Transactions (the Order)

Under Ontario Securities Commission Rule 48-501, *Trading During Distributions, Formal Bids and Share Exchange Transactions (Rule 48-501 or the Rule)*, trading restrictions are placed on issuers and selling shareholders and their affiliates, insiders and dealers acting as underwriters, dealer managers or in a similar capacity in respect of a transaction covered by the Rule.

The Order provides temporary relief from certain regulatory requirements under the Rule for certain insiders of issuers involved in a distribution. This relief is tailored to circumstances where exemptive relief is currently routinely granted.

Description of the Order

Rule 48-501 restricts bids for, and purchases of, a security that is the subject of a transaction covered by Rule 48-501. Rule 48-501 is intended to prevent market manipulation, specifically activity in the public markets, that can raise the market price of a restricted security with the goal of improving the likelihood of success of a transaction covered by the Rule.

The restrictions on issuer-restricted persons under Rule 48-501 are broader than are restrictions on dealer-restricted persons. This is a particular concern in at-the-market distributions (**ATM Distributions**), where the restricted period under Rule 48-501 is indefinite and thus, there is a disproportionate burden on directors and officers of issuers who may need to purchase the issuer's securities in the open market to meet the issuer's minimum security-holding requirements.

The Order provides that exemptive relief from Rule 48-501 is granted in respect of a purchase of a restricted security during an issuer-restricted period by a director or officer who is an issuer-restricted person, provided that: in respect of a purchase of a restricted security during an issuer-restricted period by a director or officer who is an issuer-restricted person:

- (a) the director or officer is neither a control person of the issuer nor of the selling security holder of the restricted security;
- (b) the director or officer is not otherwise acting jointly or in concert with
 - (i) the issuer nor the selling security holder of the restricted security;
 - (ii) an affiliated entity of the issuer nor of the selling security holder of the restricted security; or
 - (iii) a control person of the issuer nor of the selling security holder of the restricted security;
- (c) the restricted security is offered pursuant to an at-the-market distribution of equity securities under the shelf prospectus procedures prescribed in Part 9 of National Instrument 44-102 *Shelf Distributions*; and
- (d) the restricted security is a highly-liquid security.

Reasons for the Order

In order to address the burden on issuers and insiders of issuers, the exemptive relief contemplated by the Order has been granted previously in the context of individual applications for exemptive relief. In all cases, the securities were deemed to be highly liquid under Rule 48-501 and the restrictions placed on certain insiders by Rule 48-501 were found to be disproportionate to the benefits of applying Rule 48-501 to prevent manipulative trading activity. This exemptive relief is now considered routine.

In recognition of the burden caused by the application of Rule 48-501 in certain contexts and the associated costs of applications for exemption from the Rule that is routinely granted, the Commission has determined that it would not be prejudicial to the public interest to grant this temporary relief.

Day on which the Order ceases to have effect

The Order comes into effect on November 25, 2020 and will cease to be effective on the date that is 18 months after the date of the Order.