

Chapter 6

Request for Comments

6.1.1 Proposed Amendments to OSC Rule 45-502 and OSC Rule 45-503, and Proposed Rescission of OSC Rule 72-501

NOTICE OF PROPOSED AMENDMENTS TO RULE 45-502 DIVIDEND OR INTEREST REINVESTMENT AND STOCK DIVIDEND PLANS

AND

RULE 45-503 TRADES TO EMPLOYEES, EXECUTIVES AND CONSULTANTS

AND

PROPOSED RESCISSION OF RULE 72-501 PROSPECTUS EXEMPTION FOR FIRST TRADE OVER A MARKET OUTSIDE ONTARIO

Substance and Purpose of Proposed Amendments and Proposed Rescission

Most of the proposed amendments and the proposed rescission are consequential amendments resulting from the implementation of Multilateral Instrument 45-102 Resale of Securities ("MI 45-102") published in final form in this Bulletin. Rule 45-502 Dividend or Interest Reinvestment and Stock Dividend Plans ("Rule 45-502") was published in the Ontario Securities Commission Bulletin (1998) 21 OSCB 2685. Rule 45-502 provides exemptions from the registration requirement and the prospectus requirement of the Act for trades by an issuer or an administrator of the issuer under a dividend or interest reinvestment plan of the issuer or the cash payment option of a dividend or interest reinvestment plan or a stock dividend plan. The purpose of the proposed amendments are to (i) update stock exchange references and resale conditions to correspond to MI 45-102; and (ii) delete the restrictions on first trades in Rule 45-502 and substitute a section that cross refers to section 2.6 of MI 45-102.

Rule 45-503 Trades to Employees, Executives and Consultants ("Rule 45-503") was published in the Ontario Securities Commission Bulletin at (1999) 22 OSCB 117. Rule 45-503 provides exemptions from the registration requirement and the prospectus requirement for trades by an issuer or an administrator of an issuer to employees, executives or consultants and for trades by employees, executives, consultants or an administrator of the issuer on behalf of employees, executives or consultants. Most of the proposed amendments to Rule 45-503 are consequential amendments resulting from the implementation of MI 45-102. Other amendments reflect discretionary relief granted by the Commission since implementation of that rule or clarify language in Rule 45-503. The purpose of the proposed amendments are to (i) update definitions and resale conditions

to correspond to MI 45-102; (ii) expand the exemptions from the registration requirement to include a broader group of trades outside Canada; (iii) amend the exemptions from the registration requirement and the prospectus requirement for trades by a non-listed issuer to executives and administrators so that shareholder approval is not required for immaterial amendments to incentives or incentive plans; (iv) delete the restrictions on first trades in Rule 45-503 and substitute a section that cross refers to sections 2.5 and 2.6 of MI 45-102; and (v) add issuer bid exemptions.

Rule 72-501 Prospectus Exemption for First Trade over a Market Outside Ontario ("Rule 72-501") was published in the Ontario Securities Commission Bulletin at (1998) 21 OSCB 3873. Rule 72-501 provides an exemption from the prospectus requirement for first trades in securities distributed under a prospectus exemption if there is a *de minimis* market in Ontario for the securities traded and the securities are traded through an exchange or specified market outside Ontario. The Commission proposes to rescind Rule 72-501 as it is no longer necessary because section 2.14 of MI 45-102 grants the relief provided by Rule 72-501.

Summary of Proposed Amendments

Rule 45-502

Section 1.1 of the proposed amendments to Rule 45-502

- (i) adds a definition of MI 45-102 and deletes the interpretation of "special relationship" as the term would no longer be used in Rule 45-502;
- (ii) amends the exchange and market references in clause 3.1(a)(ii) to correspond to the terms used in the "qualified market" definition in MI 45-102;
- (iii) deletes clauses 3.1(b)(ii) and (iii) and substitute a *de minimis* market test that corresponds to section 2.14 of MI 45-102;
- (iv) deletes the restrictions on first trades in section 4.1 and substitutes a section that cross refers to section 2.6 of MI 45-102; and
- (v) amends section 5.1 to impose an obligation on an issuer to make disclosure to the Commission of the trade under section 2.1 or 3.1 of Rule 45-502.

Rule 45-503

Section 1.1 of the proposed amendments to Rule 45-503

- (i) adds definitions of "convertible security", "exchangeable security", "MI 45-102" and "multiple convertible security", amends the definitions of "foreign-listed

- issuer", "listed issuer" and "underlying security" and deletes the definition of "hold period";
- (ii) deletes the interpretation of "special relationship" as that term would no longer be used in Rule 45-503;
 - (iii) amends the interpretation of the *de minimis* market in subsection 1.2(7) and substitutes an interpretation that corresponds to the *de minimis* market condition in section 2.14 of MI 45-102;
 - (iv) expands the exemption from the registration requirement in section 2.4 to include trades by an employee, former employee, consultant or former consultant or an employee administrator on behalf of an employee, former employee, consultant or former consultant over an exchange or market, or to a person or company, outside Canada;
 - (v) amends the exemptions from the registration requirement and prospectus requirement in section 3.2 for trades by a non-listed issuer to executives to not require shareholder approval for immaterial amendments to incentives or incentive plans;
 - (vi) expands the exemption from the registration requirement in section 3.5 to include trades by an executive, former executive and an executive administrator on behalf of an executive or former executive over an exchange or market, or to a person or company, outside Canada;
 - (vii) deletes the restrictions on first trades in Part 9 and substitutes a section that cross refers to sections 2.5 and 2.6 of MI 45-102;
 - (viii) adds an issuer bid exemption in section 10.1 for the acquisition of securities by an issuer from an employee, former employee, executive, former executive, consultant or former consultant or an administrator on behalf of an employee, former employee, executive, former executive, consultant or former consultant to fulfill withholding tax obligations or as payment of the exercise price of a stock option; and
 - (ix) deletes sections 10.1 and 10.2 and substitutes sections 11.1 and 11.2 that impose an obligation on an issuer to make disclosure to the Commission of a trade under section 2.2, 3.1 or 3.2 and on a person or company making a control person distribution under section 5.1 to make disclosure to the Commission of the trade. Unlike clause 72(5)(b) of the Act, sections 2.5 and 2.6 of MI 45-102 do not impose a resale condition that the disclosure has been made.

Rule 72-501

It is proposed that Rule 72-501 be rescinded as it is no longer necessary because the relief granted by that rule has been included in section 2.14 of MI 45-102.

Authority for the Proposed Rules

The following sections of the Act provide the Commission with authority to make proposed Rules 45-502 and 45-503 and to

rescind Rule 72-501. Paragraph 143(1)8 of the Act authorizes the Commission to make rules that, among other things, provide for exemptions from the registration requirement of the Act. Paragraph 143(1)20 of the Act authorizes the Commission to make rules that, among other things, provide for exemptions from the prospectus requirement of the Act. Paragraph 143(1)28 authorizes the Commission to make rules that, among other things, regulate issuer bids. Paragraph 143(1)48 authorizes the Commission to make rules that specify the conditions under which any particular type of trade that would not otherwise be a distribution shall be a distribution.

Alternatives Considered

The Commission considered whether to impose the restrictions on resale of securities acquired under Rule 45-502 or Rule 45-503 in MI 45-102 rather than in Rules 45-502 and 45-503. The Commission determined that that would not be workable given that the implementation date of the amendments to Rules 45-502 and 45-503 will be later than November 30, 2001, the proposed effective date of MI 45-102.

As noted above, the Commission expects that there will be a period of time between the date MI 45-102 becomes effective and the date the amendments to Rules 45-502 and 45-503 become effective. During this period the restrictions in Rules 45-502 and 45-503 on first trades of securities distributed under those rules will not be the same as the resale restrictions in MI 45-102. In order for the shorter restricted periods and seasoning periods reflected in MI 45-102 to be applicable to securities distributed under Rules 45-502 and 45-503, persons or companies must apply to the Commission for discretionary relief.

Staff of the Commission will recommend that relief be granted under Rules 45-502 and 45-503 in accordance with MI 45-102 prior to the implementation of the amendments to Rules 45-502 and 45-503. Once Rules 45-502 and 45-503 have been amended, the resale restrictions in MI 45-102 will be applicable.

Unpublished Materials

In proposing these amendments and rescission, the Commission has not relied on any significant unpublished study, report or other material.

Anticipated Costs and Benefits

The principal benefit of proposed amendments to Rules 45-502 and 45-503 will be to shorten the restricted period and seasoning period applicable to securities acquired under dividend or interest reinvestment or stock dividend plans and by employees, executives and consultants and to make the periods consistent with those imposed by MI 45-102 on securities acquired under other prospectus exemptions.

There are no additional costs associated with proposed Rules 45-502 and 45-503.

Regulations to be Amended

The proposed amendments and rescission do not require any regulations to be amended.

Comments

Interested parties are invited to make written submissions with respect to the proposed Rules and proposed rescission. Submissions received by December 13, 2001 will be considered.

Submissions should be made in duplicate to:

John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
Suite 800, Box 55
Toronto, Ontario M5H 3S8

A diskette containing the submissions (in DOS or Windows format, preferably WordPerfect) should also be submitted. Comment letters submitted in response to requests for comment are placed on the public file and form part of the public record, unless confidentiality is requested. Although comment letters requesting confidentiality will not be placed on the public file, freedom of information legislation may require the Commission to make some letters available. Persons submitting comment letters should therefore be aware that the press and members of the public may be able to obtain access to any comment letters.

Questions may be referred to:

Jean-Paul Bureaud or Margo Paul
Ontario Securities Commission
(416) 593-8131 or (416) 593-8136
jpbureaud@osc.gov.on.ca
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Proposed Amendments and Proposed Rescission

The text of the proposed amendments and proposed rescission follows.

September 14, 2001.

AMENDMENTS TO ONTARIO SECURITIES COMMISSION RULE 45-502 DIVIDEND OR INTEREST REINVESTMENT AND STOCK DIVIDEND PLANS

PART 1 AMENDMENTS

- 1.1 Amendments** - Rule 45-502 Dividend or Interest Reinvestment and Stock Dividend Plans is amended by
- (a) adding the following definition "'MI 45-102" means Multilateral Instrument 45-102 Resale of Securities;";
 - (b) deleting section 1.2;
 - (c) deleting clause 3.1(a)(ii) and substituting for that clause
 - "(ii) an issuer other than a reporting issuer and the class of securities is listed and posted for trading, traded, or quoted, on
 - (A) Bourse de Montréal Inc.,
 - (B) the Canadian Venture Exchange Inc.,
 - (C) the New York Stock Exchange,
 - (D) the American Stock Exchange,
 - (E) Nasdaq National Market,
 - (F) Nasdaq SmallCap Market,
 - (G) the London Stock Exchange Limited, or
 - (H) a successor to any of the entities listed in subclauses (A) through (G); and";
 - (d) deleting clauses 3.1(b)(ii) and (iii) and substituting for those clauses
 - "(ii) at the time of the trade, residents of Canada
 - (A) did not own directly or indirectly more than 10 percent of the outstanding securities of the class or series; and
 - (B) did not represent in number more than 10 percent of the total number of owners directly or indirectly of the class or series.";
 - (e) deleting section 4.1 and substituting for that section

"4.1 Restrictions on First Trade of Securities Distributed under Section 2.1 or 3.1 - If a security was distributed under an exemption from the requirement in section 53 of the Act in section 2.1 or 3.1, the first trade of

that security is subject to section 2.6 of MI 45-102."; and

- (f) deleting section 5.1 and substituting for that section

"5.1 **Disclosure** - An issuer shall make disclosure to the Commission of the trade under section 2.1 or 3.1 in accordance with this Part."

PART 2 EFFECTIVE DATE

- 2.1 **Effective Date** - These Amendments come into force on ! , 2002.

AMENDMENTS TO ONTARIO SECURITIES COMMISSION RULE 45-503 TRADES TO EMPLOYEES, EXECUTIVES AND CONSULTANTS

PART 1 AMENDMENTS

- 1.1 **Amendments** - Rule 45-503 Trades to Employees, Executives and Consultants is amended by
- (a) adding the definition "'convertible security' means a security of an issuer that is convertible into, or carries the right of the holder to purchase or otherwise acquire, or of the issuer to cause the purchase or acquisition of, a security of the same issuer;"
 - (b) adding the definition "'exchangeable security' means a security of an issuer that is exchangeable for, or carries the right of the holder to purchase or otherwise acquire, or of the issuer to cause the purchase or acquisition of, a security of another issuer;"
 - (c) deleting the definition "foreign-listed issuer" and substituting for that definition "'foreign-listed issuer' means an issuer any of the securities of which are listed and posted for trading, or traded, on the American Stock Exchange, the New York Stock Exchange or the London Stock Exchange Limited or quoted on Nasdaq National Market or Nasdaq SmallCap Market or a successor to any of those entities;"
 - (d) deleting the definition of "hold period";
 - (e) deleting the definition of "listed issuer" and substituting for that definition "'listed issuer' means an issuer any of the securities of which are listed and posted for trading, or traded, on The Toronto Stock Exchange Inc., the Canadian Venture Exchange Inc. or Bourse de Montréal Inc. or a successor to any of those entities;"
 - (f) adding a definition "'MI 45-102" means Multilateral Instrument 45-102 Resale of Securities;"
 - (g) adding the definition "'multiple convertible security' means a security of an issuer that is convertible into, or exchangeable for, or carries the right of the holder to purchase or otherwise acquire, or of the issuer to cause the purchase or acquisition of, a convertible security, an exchangeable security or another multiple convertible security;"
 - (h) deleting the definition "underlying security" and substituting for that definition "'underlying security' means a security issued or transferred, or to be issued or transferred, in accordance with the terms of a convertible security, an exchangeable security or a multiple convertible security.";

- (i) deleting subsection 1.2(5) and renumbering subsection 1.2(6) as subsection 1.2(5);
- (j) deleting subsection 1.2(7) and substituting for that subsection

"(6) In this Rule, an issuer is considered to have a *de minimis* Canadian market with respect to a class or series of securities of the issuer if, at the relevant time, residents of Canada

- (a) did not own directly or indirectly more than 10 percent of the outstanding securities of the class or series; and
 - (b) did not represent in number more than 10 percent of the total number of owners directly or indirectly of securities of the class or series.";
- (k) deleting section 2.4 and substituting for that section

"2.4 De Minimis Registration Exemption for Trades by Employees, Former Employees, Consultants, Former Consultants and Administrators - Section 25 of the Act does not apply to a trade by an employee, former employee, consultant or former consultant of an issuer, or an employee administrator of an issuer on behalf of an employee, former employee, consultant or former consultant, of a security of the issuer's own issue, if

- (a) in the case of a trade by a former employee, former consultant or administrator on behalf of a former employee or former consultant, the security, or in the case of a trade of an underlying security, the convertible security, exchangeable security or multiple exchangeable security, was distributed to the former employee, former consultant or administrator of the issuer under an exemption from the requirement of section 53 of the Act in section 2.2, 5.1 or 8.1;
- (b) the issuer was not a reporting issuer at the time of the acquisition of the security, or in the case of an underlying security at the time of the acquisition of the convertible security, exchangeable security or multiple exchangeable security;
- (c) at the time of the acquisition of the security, or in the case of an underlying security at the time of the acquisition of the convertible security, exchangeable security or multiple exchangeable security, the issuer has a *de minimis* Canadian market for the security; and

(d) the trade is made

- (i) through an exchange, or a market, outside of Canada, or
- (ii) to a person or company outside of Canada.";

- (l) deleting paragraph 3.2(a) and substituting for that paragraph

"(a) in the case of the issue of a security as an incentive,

- (i) prior shareholder approval has been obtained for the incentive or the incentive plan under which the incentive is being issued, including any amendments thereto, if the incentive or the incentive plan, in each case together with all of the issuer's other previously established or proposed incentives or incentive plans, could result, at any time, in

(A) the number of shares reserved for issuance under stock options granted to related persons exceeding 10 percent of the outstanding issue,

(B) the issuance to related persons, within a 12 month period, of a number of shares exceeding 10 percent of the outstanding issue,

(C) the number of shares reserved for issuance under stock options granted to any one related person and the related person's associates exceeding five percent of the outstanding issue, or

(D) the issuance to any one related person and the related person's associates, within a 12 month period, of a number of shares exceeding five percent of the outstanding issue, or

- (ii) prior shareholder approval has been obtained for the incentive or the incentive plan under which the incentive is being issued, irrespective of whether any amendments are made subsequent to shareholder approval, if

(A) the incentive or the incentive plan, in each case together with all of the issuer's other previously established or proposed incentives or incentive plans, could result, at any time, in

1. the number of shares reserved for issuance under stock options granted to related persons exceeding 10 percent of the outstanding issue,
 2. the issuance to related persons, within a 12 month period, of a number of shares exceeding 10 percent of the outstanding issue,
 3. the number of shares reserved for issuance under stock options granted to any one related person and the related person's associates exceeding five percent of the outstanding issue, or
 4. the issuance to any one related person and the related person's associates, within a 12 month period, of a number of shares exceeding five percent of the outstanding issue, and
- (B) the amendments made subsequent to the shareholder approval could not result in the number of shares reserved for issuance, or issued with a 12 month period, exceeding to a greater extent the applicable percentage referred to in clause (A).
- (m) deleting clause 3.3 (b)(ii) and substituting for that clause
- "(ii) at the time of the trade, the issuer has a *de minimis* Canadian market for the security; and";
- (n) deleting section 3.5 and substituting
- "3.5 *De Minimis* Registration Exemption for Trades by Executives, Former Executives and Administrators - Section 25 of the Act does not apply to a trade by an executive or former executive of an issuer, or an executive administrator of an issuer on behalf of an executive or former executive, of a security of the issuer's own issue, if
- (a) in the case of a trade by a former executive or an administrator on behalf of a former executive, the security, or in the case of a trade of an underlying security, the convertible security, exchangeable security or multiple exchangeable security, was distributed to the former executive or administrator of the issuer under an exemption from the requirement of section 53 of the Act in section 3.1, 3.2, 3.3, 5.1 or 8.1;
 - (b) the issuer was not a reporting issuer at the time of the acquisition of the security, or in the case of an underlying security at the time of the acquisition of the convertible security, exchangeable security or multiple exchangeable security;
 - (c) at the time of the acquisition of the security, or in the case of an underlying security at the time of the acquisition of the convertible security, exchangeable security or multiple convertible security, the issuer had a *de minimis* Canadian market for the security; and
 - (d) the trade is made through
 - (i) an exchange, or a market, outside of Canada, or
 - (ii) to a person or company outside of Canada.";
- (o) deleting section 9.1 and substituting for that section
- "9.1 Restrictions on First Trades in Securities Distributed under Exemptions in Rule
- (1) If a security was distributed to a person or company, other than an associated consultant or an investor consultant of the issuer of the security, under the exemption from the requirement of section 53 of the Act in section 2.2, 3.1, 3.2, 3.3, 5.1 or 8.1, the first trade of that security is subject to section 2.6 of MI 45-102.
 - (2) If a security was distributed to an associated consultant or investor consultant of the issuer of the security under the exemption from the requirement of section 53 of the Act in section 2.2, 5.1 or 8.1, the first trade of that security is subject to section 2.5 of MI 45-102.
 - (3) If a convertible security, exchangeable security or multiple convertible security was distributed to an associated consultant or investor consultant of the issuer of the underlying security under the exemption from the requirement of section 53 of the Act in section 2.2, 5.1 or 8.1, the first trade of the underlying security is subject to section 2.5 of MI 45-102.";

(p) adding Part 10 Issuer Bid Exemptions;

"10.1 Issuer Bid Exemptions - Sections 95, 96, 97, 98 and 100 of the Act, section 203.1 of the Regulation and Rule 61-501 Insider Bids, Issuer Bids, Going Private Transactions and Related Party Transactions do not apply to the acquisition by an issuer of securities of the issuer from an employee, former employee, executive, former executive, consultant or former consultant of the issuer, or an administrator of the issuer on behalf of an employee, former employee, executive, former executive, consultant or former consultant to fulfil withholding tax obligations in respect of the employee, former employee, executive, former executive, consultant or former consultant of the issuer, or as payment of the exercise price of a stock option by the employee, former employee, executive, former executive, consultant or former consultant of an issuer, or an administrator of the issuer on behalf of the employee, former employee, executive, former executive, consultant or former consultant if

- (a) in the case of an acquisition from a former employee, former executive, former consultant or an administrator of the issuer on behalf of a former employee, former executive or former consultant, the security, or in the case of an underlying security, the convertible security, exchangeable security or multiple exchangeable security, was distributed to the former employee, former executive, former consultant or an administrator of the issuer under an exemption from the requirement of section 53 of the Act in section 2.2, 3.1, 3.2, 3.3, 5.1 or 8.1;
- (b) the acquisition is made in accordance with the terms of a service provider plan that specifies how the value of the securities acquired by the issuer shall be determined;
- (c) in the case of securities acquired as payment of the exercise price of a stock option, the date of exercise of the option is chosen by the option holder; and
- (d) the aggregate number, or, in the case of debt securities that are convertible securities, exchangeable securities or multiple exchangeable securities, the aggregate principal amount, of securities acquired by the issuer within a 12 month period under this section does not exceed five percent of the

outstanding securities of the class or series at the beginning of the period.";

(q) renumbering Part 10 as Part 11;

(r) deleting sections 10.1 and 10.2 and substituting for those sections

"11.1 Disclosure

- (1) An issuer shall make disclosure to the Commission of the trade under section 2.2, 3.1 or 3.2 in accordance with this Part.
- (2) The person or company making the distribution shall make disclosure of the control person distribution under section 5.1 in accordance with this Part.

11.2 Details of Disclosure - The disclosure referred to in section 11.1 shall be made by disclosing the date of the trade, the number of securities purchased and the purchase price paid or to be paid, in

- (a) an information circular or take-over bid circular filed under securities legislation; or
- (b) a letter filed by a person or company and certifying that the person or company has knowledge of the facts contained in the letter."

(s) changing the references to sections 10.1, 10.3 and 10.4 in sections 10.3, 10.4 and 10.5 to sections 11.1, 11.3 and 11.4, respectively;

(t) renumbering sections 10.3, 10.4 and 10.5 as sections 11.3, 11.4 and 11.5, respectively; and

(u) renumbering Part 11 as Part 12, section 11.1 as section 12.1, Part 12 as Part 13 and section 12.1 as section 13.1.

PART 2 EFFECTIVE DATE

2.1 Effective Date - These Amendments come into force on ! , 2002.

**RESCISSION OF
ONTARIO SECURITIES COMMISSION RULE 72-501
PROSPECTUS EXEMPTION FOR FIRST TRADE OVER A
MARKET
OUTSIDE ONTARIO**

PART 1 RESCISSION

- 1.1 Rescission** - Rule 72-501 Prospectus Exemption for First Trade Over a Market Outside Ontario is rescinded.

PART 2 EFFECTIVE DATE

- 2.1 Effective Date** - This rescission comes into force on September 14, 2002.