

Note: [15 Apr 2021] – The following is a consolidation of ASC Rule 72-501. It incorporates the changes to this document that came into effect on April 15, 2021. This consolidation is provided for your convenience and should not be relied on as authoritative.

ALBERTA SECURITIES COMMISSION RULE 72-501
DISTRIBUTIONS TO PURCHASERS OUTSIDE ALBERTA

Definitions

1. In this Rule

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

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

“Eurobond market” means a market for Eurobonds regulated by the International Capital Market Association;

“exchangeable security” 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;

“foreign prospectus” means a prospectus, registration statement or substantially similar disclosure document required to be filed or furnished with a securities regulatory authority in a foreign jurisdiction in connection with the distribution to the public of securities in that foreign jurisdiction;

“foreign underwriter” means a person qualified under the laws of a jurisdiction outside of Canada to act as an underwriter;

“multiple convertible security” has the same meaning as in National Instrument 45-102 *Resale of Securities*;

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

“underlying security” has the same meaning as in National Instrument 45-102 *Resale of Securities*; and

“underwriter certificate requirement” means the requirement to include a certificate of an underwriter in a prospectus, as set out in each of the following, as applicable;

- (a) subsection 5.9(1) of National Instrument 41-101 *General Prospectus Requirements*;

- (b) item 21.1 of Form 44-101 F1 *Short Form Prospectus*;
- (c) item 8 of section 5.5 of National Instrument 44-102 *Shelf Distributions*;
- (d) item 7 of subsection 3.2(1) of National Instrument 44-103 *Post Receipt Pricing*.

Foreign public offering under prospectus or registration statement in a foreign jurisdiction

2. The prospectus requirement does not apply to the distribution of a security 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 final offering document in the specified foreign jurisdiction.

Foreign distribution with concurrent final prospectus in Alberta

3. The prospectus requirement does not apply to a distribution of a security to a person or company outside Canada if both of the following apply:
 - (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 in which the investor is located, or the distribution is exempt in that jurisdiction from such disclosure requirements;
 - (b) concurrent with the distribution, the issuer of those securities has filed a prospectus with the Executive Director of the Commission, and a receipt has been issued for a final prospectus in accordance with Alberta securities laws.

Foreign distributions by reporting issuers

4. 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 both of the following apply:
 - (a) the issuer has materially complied with the disclosure requirements applicable to the distribution under the securities law of the jurisdiction outside Canada in which the investor is located, or the distribution is exempt in that jurisdiction from such requirements;
 - (b) the issuer is a reporting issuer in a jurisdiction of Canada immediately preceding the distribution.

Foreign distributions by non-reporting issuers

5. 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 in which the investor is located, or the distribution is exempt in that jurisdiction from such requirements.

Eurobond offerings

6. The prospectus requirement does not apply to a distribution by an issuer of a non-convertible debt security to a person or company outside Canada if all of the following apply:
 - (a) the debt has been accepted for listing or quotation on a Eurobond market outside Canada;
 - (b) the issuer has materially complied with the disclosure requirements applicable to the distribution under the securities law of the jurisdiction outside Canada in which the investor is located, or the distribution is exempt in that jurisdiction from such requirements;
 - (c) the securities to be distributed are initially issued in temporary form and are exchangeable for definitive securities only after the 40th day following completion of the distribution and provided that the holder of securities has certified that it does not hold the securities on behalf of a resident of the province.

Distributions under the offering memorandum exemption

7. 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 Alberta if all of the following apply:
 - (a) the purchaser is a resident of a jurisdiction of Canada, other than Alberta;
 - (b) the purchaser certifies in the subscription agreement or similar document that the purchaser is not a resident of Alberta and the issuer does not believe, and has no reasonable grounds to believe, that the certification is false;
 - (c) the issuer has materially complied with the terms of the exemption from the prospectus requirement in section 2.9 [*offering memorandum*] of National Instrument 45-106 *Prospectus Exemptions* then in force in the jurisdiction of Canada in which the purchaser is resident.

Exemption for marketing activities outside Canada

8. The prospectus requirement does not apply to a solicitation, advertisement or other act in furtherance of a distribution under a foreign prospectus that occurs prior to securities being issued pursuant to the foreign prospectus if all of the following apply:
- (a) no solicitation is made respecting a security of the issuer to a prospective purchaser resident in a jurisdiction of Canada, except pursuant to an exemption from the prospectus requirement;
 - (b) no advertisement respecting a security of the issuer is directed at a resident of a jurisdiction of Canada, except pursuant to an exemption from the prospectus requirement;
 - (c) the issuer has materially complied with the disclosure requirements applicable to the distribution under the securities law of the jurisdiction outside Canada in which the investor is located, or the distribution is exempt from such requirements.

Underwriter certificate requirement for foreign public offering under prospectus

- 8.1 The underwriter certificate requirement does not apply to a foreign underwriter of a distribution of securities by prospectus if all of the following apply:
- (a) the securities are distributed to purchasers resident outside of Canada;
 - (b) either
 - (i) each purchaser of the securities represents in writing to the issuer or the foreign underwriter that the purchaser is not resident in Canada, or
 - (ii) the foreign underwriter has agreed with the issuer in writing that it will not, to the best of the foreign underwriter's knowledge, after reasonable inquiry, distribute securities to a purchaser resident in Canada;
 - (c) no advertisement or solicitation in furtherance of the distribution is undertaken by the foreign underwriter in Canada;
 - (d) the foreign underwriter has agreed with the issuer in writing that it will distribute the securities in compliance with the securities law of the jurisdiction outside Canada applicable to the foreign underwriter and each purchaser of the securities distributed by it.

Exchange or market outside Canada

9. For the purposes of this Rule 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.

First trades in securities of a non-reporting issuer distributed under a prospectus exemption

10. (1) The prospectus requirement does not apply to the first trade of a security distributed under an exemption from the prospectus requirement if all of the following apply:

- (a) the issuer of the security
 - (i) was not a reporting issuer in any jurisdiction of Canada on the distribution date, or
 - (ii) is not a reporting issuer in any jurisdiction of Canada on the date of the trade;
- (b) at the distribution date, after giving effect to the issue of the security and any other securities of the same class or series that were issued at the same time or as part of the same distribution as the security, residents of Canada
 - (i) did not own directly or indirectly more than 10 percent of the outstanding securities of the class or series, and
 - (ii) 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;
- (c) the trade is made
 - (i) through an exchange, or a market, outside of Canada, or
 - (ii) to a person or company outside of Canada.

(2) The prospectus requirement does not apply to the first trade of an underlying security if all of the following apply:

- (a) the convertible security, exchangeable security or multiple convertible security that, directly or indirectly, entitled or required the holder to acquire the underlying security was distributed under an exemption from the prospectus requirement;
- (b) the issuer of the underlying security
 - (i) was not a reporting issuer in any jurisdiction of Canada on the distribution date, or
 - (ii) is not a reporting issuer in any jurisdiction of Canada on the date of trade;

- (c) the conditions in paragraph (1)(b) would have been satisfied for the underlying security at the time of the initial distribution of the convertible security, exchangeable security or multiple convertible security;
- (d) the condition in paragraph (1)(c) is satisfied.

First trades in securities of a non-reporting foreign issuer distributed under a prospectus exemption

11. (1) In this section

“executive officer” means, for an issuer, an individual who is

- (a) a chair, vice-chair or president,
- (b) a chief executive officer or a chief financial officer, or
- (c) in charge of a principal business unit, division or function including sales, finance or production and that fact is disclosed in any of the following documents:
 - (i) the issuer’s most recent disclosure document containing that information that is publicly available in a foreign jurisdiction where its securities are listed or quoted;
 - (ii) the offering document provided by the issuer in connection with the distribution of the security that is the subject of the trade;

“foreign issuer” means an issuer that is not incorporated or organized under the laws of Canada, or a jurisdiction of Canada, unless any of the following applies:

- (a) the issuer has its head office in Canada;
- (b) the majority of the executive officers or directors of the issuer ordinarily reside in Canada.

(2) The prospectus requirement does not apply to the first trade of a security distributed under an exemption from the prospectus requirement if all of the following apply:

- (a) the issuer of the security was a foreign issuer on the distribution date;
- (b) the issuer of the security
 - (i) was not a reporting issuer in any jurisdiction of Canada on the distribution date, or
 - (ii) is not a reporting issuer in any jurisdiction of Canada on the date of the trade;

- (c) the trade is made
 - (i) through an exchange, or a market, outside of Canada, or
 - (ii) to a person or company outside of Canada.
- (3) The prospectus requirement does not apply to the first trade of an underlying security if all of the following apply:
 - (a) the convertible security, exchangeable security or multiple convertible security that, directly or indirectly, entitled or required the holder to acquire the underlying security was distributed under an exemption from the prospectus requirement;
 - (b) the issuer of the underlying security was a foreign issuer on the distribution date;
 - (c) the issuer of the underlying security
 - (i) was not a reporting issuer in any jurisdiction of Canada on the distribution date, or
 - (ii) is not a reporting issuer in any jurisdiction of Canada on the date of trade;
 - (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.

Anti-avoidance

- 12. (1) The prospectus exemptions in sections 2, 3, 4, 5, 6 and subsections 10(1), 10(2), 11(2) and 11(3) are not available with respect to any transaction or series of transactions that is part of a plan or scheme to avoid the prospectus requirement in connection with a distribution or other trade to a person or company in Canada.
- (2) The prospectus exemption in section 7 is not available with respect to any transaction or series of transactions that is part of a plan or scheme to avoid the prospectus requirement in connection with a distribution to a person or company in Alberta.

Exemption from the dealer registration requirement

- 13. The dealer registration requirement does not apply to a person or company in connection with a distribution of a security 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 this Rule or by another exemption from the prospectus requirement under Alberta securities laws;

- (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 Alberta, 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 Alberta except in accordance with Alberta Blanket Order 31-530 *Trades and Advice to US-Resident Clients: Dealer and Adviser Registration Exemptions*, an exemption from the registration requirement under this Rule or another exemption from the registration requirement under Alberta securities laws;
- (f) the person or company is not registered in any jurisdiction of Canada in the category of dealer.

Issuer exemption from the dealer registration requirement

14. 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 this Rule or another exemption from the prospectus requirement under Alberta securities laws if one or both of the following apply:
- (a) the trade is made through or to a person or company that is relying on an exemption from the registration requirement under this Rule or another exemption from registration requirement under Alberta securities laws;
 - (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.

Resale restrictions

15. (1) The first trade in a security issued pursuant to section 5 or section 7 of this Rule is a distribution unless the conditions specified in section 2.5 of National Instruments 45-102 *Resale of Securities* are satisfied.
- (2) The first trade in a security issued pursuant to section 6 of this Rule is a distribution unless at least 40 days have elapsed from the date of issue of the security.

Report of exempt distribution

16. (1) An issuer, other than an investment fund, that relies on the exemptions in any of sections 4, 5, 6 or 7 of this Rule must file a Form 45-106F1 *Report of Exempt Distribution* no later than 10 days after the distribution.
- (2) An issuer that is an investment fund must file the report required under subsection (1) not later than 30 days after the end of the calendar year in which the distribution occurred.
- (3) Despite subsection (1) and (2), a report in Form 45-106F1 *Report of Exempt Distribution* filed in respect of a distribution under section 4, 5 or 6 of this Rule is not required to contain the information required by any of the following;
- (a) Item 7(c) to Form 45-106F1 which includes the Schedule 1 to Form 45-106F1 (CONFIDENTIAL PURCHASER INFORMATION);
 - (b) The third column in Item 7(f) and Item 7(g) to Form 45-106F1;
 - (c) Item 8 to Form 45-106F1;
 - (d) Item 9 to Form 45-106F1 which includes the Schedule 2 to Form 45-106F1 (CONFIDENTIAL DIRECTOR, EXECUTIVE OFFICER, PROMOTER AND CONTROL PERSON INFORMATION).

- (4) An issuer is not required to file the report required under subsection (1) for a distribution of a security if a report has been filed by another issuer for the distribution of the same security.

Exemption

17. The Commission or Executive Director may grant an exemption from this Rule, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

Repeal

18. Alberta Securities Commission Rule 72-501 *Distributions to Purchasers Outside Alberta* is repealed.

Effective date

19. This Rule comes into force on August 31, 2018.

[as amended on April 15, 2021]

**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