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The Alberta Securities Commission Expands Prospectus Exemptions for Distributions Outside Alberta

The Alberta Securities Commission (“**ASC**”) has updated [ASC Rule 72-501 *Distributions to Purchasers Outside Alberta*](#) (the “**New Rule**”) and its related companion policy to facilitate cross-border investment by reducing regulatory hurdles associated with offerings by Alberta issuers to investors outside of Alberta. The New Rule is effective August 31, 2018.

The New Rule sets out a broader range of prospectus exemptions available to Alberta issuers in connection with the sale of securities into foreign jurisdictions. In addition, the New Rule introduces exemptions for marketing activities, the resale of securities, and dealer registration requirements associated with distributions outside Canada.

[New Exemptions to the Prospectus Requirement](#)

The New Rule allows Alberta-based issuers to more easily access foreign capital without the burden of preparing a prospectus. The following is a summary of the new prospectus exemptions now available:

Foreign Public Offerings Exemption

The New Rule provides an exemption from the prospectus requirement for a public offering of securities in the United States or a “specified foreign jurisdiction”. This exemption is available on the issuance of a security where the issuer has filed a registration statement in the United States and/or filed an offering document that qualifies or registers the public offering in accordance with the securities laws of a “specified foreign jurisdiction”. A “specified foreign jurisdiction” means Australia, France, Germany, Hong Kong, Italy, Japan, Mexico, The Netherlands, New Zealand, Singapore, South Africa, Spain, Sweden, Switzerland, United Kingdom and any other member country of the European Union.

Concurrent Alberta Prospectus Exemption

If an issuer distributes securities to purchasers outside of Canada in compliance with disclosure requirements (or applicable exemptions to such requirements) under securities laws of such jurisdiction, and is concurrently distributing securities to purchasers in Alberta pursuant to a final prospectus filed with the ASC, the New Rule provides for a new prospectus exemption for the distributions to purchasers outside of Canada.

Canadian Reporting Issuer Exemption

If the issuer is a reporting issuer in any jurisdiction of Canada, the New Rule provides for an exemption to the prospectus requirements where securities are issued to a person or company outside Canada and the issuer has materially complied with the foreign disclosure requirements of the jurisdiction where the investor is located.

Canadian Non-Reporting Issuer Exemption

The New Rule provides for a prospectus exemption for an issuer that is not a reporting issuer in any jurisdiction of Canada where such issuer distributes securities to a person or company outside of Canada and the issuer has complied with disclosure requirements under the securities law of the jurisdiction where the investor is located, or the distribution is exempt in that jurisdiction from such requirements.

The Offering Memorandum Exemption

In addition to the various new prospectus exemptions for distribution outside of Canada, the New Rule also provides for more harmonious application of the offering memorandum exemptions available in other jurisdictions of Canada. Pursuant to the New Rule, a prospectus exemption is available to issuers who distribute securities to residents of Canada, other than Alberta, if the issuer is materially compliant with the offering memorandum requirements of that province (under section 2.9 of National Instrument 45-106 *Prospectus Exemptions*) and the purchaser certifies in the subscription agreement that they are not a resident of Alberta.

Resale of Securities

The resale of securities issued under the Foreign Public Offerings, Concurrent Alberta Prospectus and Canadian Reporting Issuer exemptions are not subject to any restrictions under the New Rule.

The resale of securities issued under the Canadian Non-Reporting Issuer Exemption and the Offering Memorandum Exemption are subject to a hold period under Canadian Securities laws.

However, the New Rule provides exemptions from the prospectus requirements for the resale of securities issued by non-reporting issuers where the resale is made through an exchange or market outside Canada or to a person outside Canada and the issuer has a minimal connection to Canada:

- residents of Canada do not own more than 10% of the outstanding securities of that class or series and did not represent in number more than 10% of the total number of owners of securities of that class or series; or
- the issuer is a "foreign issuer", being an issuer that is not organized under Canadian law, does not have a head office in Canada and the majority of the executive officers or directors of which ordinarily reside outside of Canada.

Marketing Activities Outside Canada

The New Rule permits the marketing and advertising of the distribution of securities pursuant to a foreign prospectus provided no solicitation is made, and no advertisement is directed, to a prospective purchaser resident in Canada and the issuer materially complies with the disclosure requirements of the securities laws where the foreign investor is located.

Dealer Registration Exemptions for Foreign Distributions

The New Rule also contains an exemption from the dealer registration requirement under Alberta securities laws for certain foreign dealers with respect to distributions to investors outside Canada, provided the dealer, amongst other requirements, principally operates in the United States, Canada or a “specified foreign jurisdiction” and is registered or permitted under applicable foreign law to act as a dealer on such distribution.

We are pleased to offer advice in connection with the New Rule.

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a cautionary note

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