



**BC Notice 2017/05**

**Notice of Revocation and Replacement of BC Instrument 72-503**  
*Distribution of Securities outside British Columbia*

**Substance and purpose**

Today, the British Columbia Securities Commission revoked and replaced BC Instrument 72-503 *Distribution of Securities outside British Columbia* (BCI 72-503). This instrument provides exemptions from the prospectus requirement to facilitate distributions by issuers located in BC to purchasers outside of BC.

**Background**

Under securities legislation in BC, when an issuer distributes securities from BC, it must comply with the prospectus requirement of the *Securities Act* or rely on an exemption from that requirement. BC Interpretation Note 72-702 *Distribution of Securities to Persons Outside British Columbia* provides guidance on whether a distribution is made from the province.

As capital markets become more international, cross-border transactions are becoming more frequent. We have heard that requiring a prospectus in BC adds time and cost to cross-border transactions that may not be justified when there are no purchasers in BC and the issuer is complying with other securities laws. Under the new BCI 72-503, we are providing exemptions to reduce this time and cost. There are three exemptions: a private placement exemption, a public offering exemption, and a testing of the waters exemption.

**Prospectus exemptions**

*Private placement exemption*

The private placement exemption is a streamlined version of the prospectus exemption that was previously in BCI 72-503. The key conditions of the private placement exemption are:

- the distribution must be made to a person not resident in BC
- the issuer must comply with the securities law requirements in the jurisdiction where the purchaser is resident
- the first trade is subject to resale restrictions

*Public offering exemption*

The key conditions of the public offering exemption are:

- the distribution must be made either
  - to a purchaser that is not resident in Canada, or
  - on or through the facilities of an exchange or market outside Canada provided the issuer or selling security holder have no reason to believe that the purchaser is resident in Canada
- in connection with the distribution, the issuer must have
  - an effective registration statement under U.S. federal securities laws, or

- a document similar to a final prospectus that has been receipted or otherwise approved in accordance with the securities laws of a foreign jurisdiction
- the issuer must provide the Commission with notice of the transaction either by filing the foreign prospectus on SEDAR if the issuer is a reporting issuer or by otherwise filing an exempt distribution report

*Testing of the waters exemption*

The testing of the waters exemption will allow BC-based issuers to use the U.S. testing of the waters provisions in order to ascertain interest in a U.S. public offering. The exemption is subject to the following key conditions:

- the oral and written communications are
  - made with a person that is not resident in Canada;
  - permitted under the U.S. testing of the waters provisions in section 5(d) of the U.S. *Securities Act of 1933*
- the issuer complies with the securities law requirements in the jurisdiction where the purchaser is resident

**Companion Policy 72-503CP**

The new Companion Policy 72-503CP *Distribution of Securities outside British Columbia* provides guidance on using BCI 72-503.

**Questions**

You may refer questions to:

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Brenda M. Leong  
Chair