

## RULE 5

### OWNERSHIP OF DEALER MEMBER SECURITIES

#### Dealer Member Debt, Restrictive and Limited Participation Securities

- 5.1. A Dealer Member or [holding company](#) of a Dealer Member which proposes to borrow money on terms whereby the principal amount matures or is renewable or extendible at the option of the Dealer Member or the [holding company](#) to a date more than 12 months after the borrowing shall provide the Corporation with notice of the terms of the borrowing prior to the making of the borrowing.
- 5.2.
- (1) No Dealer Member or [holding company](#) of a Dealer Member shall issue without the prior approval of the Corporation:
    - (a) A security representing [subordinated debt](#);
    - (b) A [restrictive security](#); or
    - (c) A [limited participation security](#).
  - (2) No Dealer Member or [holding company](#) of a Dealer Member shall enter into any agreement to issue [subordinated debt](#) in the future without prior approval of the Corporation.
- 5.2A.
- (1) A Dealer Member who has received Corporation approval for the issuance of [subordinated debt](#) pursuant to Rule 5.2, shall immediately notify the Corporation of any change in the amount of the funds advanced under the resulting [subordinated debt](#) agreement.
  - (2) A Dealer Member shall require approval of the Corporation prior to any repayment of funds owed pursuant to a [subordinated debt](#) agreement.

#### Changes in Dealer Member Ownership

- 5.3. Prior written notice shall be given to the Corporation of the issue or transfer of any securities, or a legal or beneficial interest therein, of a Dealer Member or of a [holding company](#) of a [Dealer Member corporation](#), other than securities of a class in respect of which there is public ownership pursuant to a distribution thereof in accordance with Rule 5.9(a), (b) or (d), and other than in respect of the issue or transfer of indebtedness of a [Dealer Member corporation](#) or [holding company](#) of a [Dealer Member corporation](#) that is not [subordinated debt](#), a [restrictive security](#) or a [limited participation security](#).
- 5.4.
- (1) Dealer Members shall seek District Council approval of any transaction that:
    - (a) Permits an [investor](#), alone or together with its associates and affiliates, to own a significant equity interest in the Dealer Member; or
    - (b) Permits an [investor](#), alone or together with its associates and affiliates, to own special warrants or any other securities that are convertible, at any time in the future, to a significant equity interest in the Dealer Member.
  - (2) For the purposes of this Rule 5.4, a significant equity interest means the holding of:

- (a) [Voting securities](#) carrying 10 percent or more of the votes carried by all [voting securities](#) of the Dealer Member or of a [holding company](#) of a Dealer Member;
  - (b) 10 percent or more of the outstanding participating securities of the Dealer Member or of a [holding company](#) of a Dealer Member; or
  - (c) An interest of 10 percent or more of the total equity in the Dealer Member.
- (3) Notwithstanding paragraph (1), the legal representatives of a deceased person who had been approved by the applicable District Council as the owner of a significant equity interest may continue as such registered holder or to hold such interest for such period as the applicable District Council may permit.
- 5.5. No Dealer Member or [holding company](#) of a [Dealer Member corporation](#) shall own, directly or indirectly, any securities issued by another Dealer Member or [holding company](#) of a [Dealer Member corporation](#) without the prior consent of the applicable District Council, except for the ownership of securities in connection with the ordinary course of the activities of the securities business.
- 5.6. No [industry investor](#) shall own securities issued by a Dealer Member or a [holding company](#) of a [Dealer Member corporation](#) other than the Dealer Member in respect of which the [investor](#) is approved or a [holding company](#) of such [Dealer Member corporation](#), unless:
- (a) those securities are of a class in respect of which there is public ownership pursuant to a distribution thereof, in accordance with Rule 5.9(a), (b) or (d), or
  - (b) the Dealer Member is an [affiliate](#) or a [related company](#) of the Dealer Member in respect of which the [investor](#) is approved; or
  - (c)
    - (i) the investment does not represent a significant equity interest,
    - (ii) the Corporation has been notified of the relationship,
    - (iii) the Corporation has been provided with evidence that the other member's recognized [self-regulatory organization](#) does not object to the relationship and
    - (iv) the Dealer Member, in respect of which the [industry investor](#) is approved, has been notified of the investment and does not object to the investment.

For the purposes of this Rule 5.6, significant equity interest shall mean an investment that is 10% or more of any class of issued equity or voting shares.

#### **Public Dealer Member Ownership**

- 5.7. A [Dealer Member corporation](#) or the [holding company](#) of a [Dealer Member corporation](#) may permit public ownership of its securities (other than its restrictive securities) but only with the prior approval of the applicable District Council which approval shall be given only if the applicable District Council is satisfied that the [Rules](#) of the Corporation including this Rule 5 are being, and will continue to be, complied with. In considering the application for approval, the applicable District Council may review an opinion of legal counsel and such other evidence as it considers appropriate. In granting its approval hereunder, the applicable District Council may impose such conditions and require such

undertakings as it considers appropriate from any person to ensure continued compliance with the [Rules](#) of the Corporation.

- 5.8. Any Dealer Member or [holding company](#) of a [Dealer Member corporation](#) which has permitted public ownership of its securities shall, regardless of the statute under which it is incorporated, appoint and maintain an audit committee in accordance with the provisions of the *Canada Business Corporations Act* which relate to audit committees. A Dealer Member or [holding company](#) of a Dealer Member may be exempted from the requirements of this Rule 5.8 by the applicable District Council in its discretion and on such terms and conditions as the Council may determine.

#### **Public Distribution of Dealer Members' Securities**

- 5.9. A [Dealer Member corporation](#) or a [holding company](#) of a [Dealer Member corporation](#) that intends to permit public ownership of its securities may effect the distribution thereof:
- (a) Through a [qualified independent underwriter](#) on a firm underwriting basis in accordance with usual commercial practice, with a prospectus or equivalent document containing the information required by applicable securities legislation and, subject to the concluding portion of Rule 5.9(b), the [Dealer Member corporation](#) may participate as a member of the selling group in a distribution under this Rule 5.9(a);
  - (b) Through a [qualified independent underwriter](#) on an agency or best efforts basis, or through the issuing corporation (or, where the issuing corporation is a [holding company](#), through its [subsidiary](#) Dealer Member) effecting the distribution, with a prospectus or equivalent document containing the information required by provincial securities legislation and with Rule 5.10 being also applicable in the circumstances thereby contemplated; a [Dealer Member corporation](#) or a [holding company](#) shall be deemed to be effecting the distribution of its own securities if more than 25 per cent of the distribution is made by the [Dealer Member corporation](#) or its subsidiary [Dealer Member corporation](#) to customers of the corporation or the subsidiary [Dealer Member corporation](#);
  - (c) By private sale, but the provisions of Rule 5.11 shall apply in the circumstances thereby contemplated; or
  - (d) By some other procedure permissible under Rule 5.12.
- 5.10. A [Dealer Member corporation](#) or [holding company](#) of a [Dealer Member corporation](#) underwriting a public distribution of its own voting or participating securities pursuant to Rule 5.9(b), or effecting such a distribution on an agency or best efforts basis through another underwriter, shall provide as part of the prospectus or equivalent document hereby required, summaries of not less than two separate valuations of its securities prepared by independent underwriters or chartered accountants qualified to prepare the same (and participation in the distribution shall not disqualify an underwriter from preparing a valuation), but this requirement shall not apply if securities with identical attributes to those being distributed have been listed and posted for trading on a stock exchange operated by one of the self-regulatory organizations for not less than six months prior to the date the distribution commences.
- 5.11. Where voting or participating securities are distributed by way of private sale under Rule 5.9(c) to investors whose ownership thereof is permissible only by reason of the provisions of this Rule 5 concerning [public ownership of securities](#), the distribution shall be permitted only if arrangements satisfactory to the applicable District Council (which arrangements

shall include the execution of an agreement by each [investor](#) limiting his resale of the securities) are made to preclude the development of a public trading market in the securities unless and until:

- (a) The issuing [Dealer Member corporation](#) or the [holding company](#) of a [Dealer Member corporation](#) has published information concerning its affairs that is at least equivalent to what would have been included in a prospectus under [applicable](#) securities legislation, which information shall include valuations as described in Rule 5.10 unless securities of the Dealer Member or [holding company](#), as the case may be, with identical attributes, have been listed and posted for trading on a stock exchange operated by one of the self-regulatory organizations, for not less than six months prior to the date of publication of the information;
- (b) From the date of publication of the information in (a) and until the date the public trading market develops, the [Dealer Member corporation](#) or [holding company](#) has complied with the timely disclosure requirements applicable to listed corporations; and
- (c) After the date the public trading market develops, the [Dealer Member corporation](#) or [holding company](#) is required by law to comply with the timely disclosure requirements applicable to listed corporations.

5.12. A [Dealer Member corporation](#) or a [holding company](#) of a [Dealer Member corporation](#) may distribute its securities through a transaction such as a take-over bid or an amalgamation that will create a public trading market in such securities, but only if:

- (a) The [Dealer Member corporation](#) or [holding company](#) publishes information concerning its affairs that is at least equivalent to what would have been included in a prospectus under applicable securities legislation, which information shall be published in accordance with arrangements satisfactory to the applicable District Council as to:
  - (i) The stage in the transaction at which prospectus-type information will be provided;
  - (ii) The [securities commission](#) that will be responsible for reviewing and commenting on the information;
  - (iii) The persons to whom the prospectus or similar document will be distributed;
  - (iv) The rescission or withdrawal rights to be made available if the document contains a material inaccuracy; and
- (b) If the securities are participating or [voting securities](#), the information referred to in Rule 5.12(a) shall include valuations as described in Rule 5.10 unless the applicable District Council concludes that such information is not necessary having regard to circumstances such as, for example, that the terms of the transaction were arrived at through arm's length negotiations;

But the requirements of (a) and (b) shall not apply if securities of the [Dealer Member corporation](#) or [holding company](#), with identical attributes, have been listed and posted for trading on a stock exchange operated by one of the self-regulatory organizations for not less than six months prior to the date of the transaction.

- 5.13. The provisions of [Rules](#) 5.9 to 5.12, inclusive, apply, with necessary changes, to a secondary distribution of securities issued by a [Dealer Member corporation](#) or a [holding company](#) of a [Dealer Member corporation](#) if the securities are derived from a [control position](#) or the distribution will result in the creation of a public trading market.

#### **Dealer Member Advisory and Related Activities**

- 5.14. No Dealer Member shall permit the acquisition by any customer account over which the Dealer Member has discretionary authority of securities issued by the Dealer Member or the [holding company](#) of the Dealer Member. This prohibition applies notwithstanding any consent obtained from the customer and whether the securities are in the course of distribution or are being traded in the secondary market.
- 5.15. Solicitations by a [Dealer Member corporation](#) as to transactions in securities issued by it or a [holding company](#) of the [Dealer Member corporation](#),
- (a) Are, subject to Rule 5.14, permitted in the course of a distribution made with a prospectus or other document containing disclosure as required by the relevant securities legislation and this Rule 5 and in making private sales that qualify as a private placement under the relevant securities legislation;
  - (b) Are prohibited in the course of a distribution not described in Rule 5.15(a) and are prohibited as to secondary market trading, but nothing herein prohibits a Dealer Member from carrying out an unsolicited order for such securities;

And, for greater certainty, nothing herein prevents a [Dealer Member corporation](#) from accepting securities issued by it or a [holding company](#) of the [Dealer Member corporation](#) as securities for a margin account.

- 5.16. A [Dealer Member corporation](#) shall not issue research reports or opinion letters as to participating or [voting securities](#) issued by it or a [holding company](#) of the [Dealer Member corporation](#).
- 5.16A. A Dealer Member or a [related company](#) of a Dealer Member or a partner, director, officer, employee or associate of either of them shall be deemed not to have breached any provision of Rules 5.9 to 5.16, inclusive, in connection with any trade or activity if conducted in compliance with any securities legislation or rule, policy, directive or order of any [securities commission](#) which specifically applies to the trade or activity.

#### **Approvals**

- 5.17. Application for any approval or exemption required by this Rule 5 shall be made to the Corporation in such form as the Board of Directors may from time to time prescribe and giving such other information as may be required by the [Rules](#). The Corporation shall forthwith forward an application for approval or exemption to the Board of Directors or the applicable District Council as this Rule 5 may require. The applicant for approval or exemption may be required to pay such fees as the Board of Directors may from time to time direct. A person approved or granted an exemption for the purpose of this Rule 5 and the Dealer Member or [holding company](#) in respect of which he is approved or exempted shall report in writing to the Corporation within ten days of the event any change in the information submitted pursuant to the application for approval or exemption including, without limitation, any required information with respect to criminal or bankruptcy proceedings pertaining to such person.
- 5.18. The Board of Directors or the applicable District Council, as the case may be, shall have power in its discretion to approve or refuse an application for approval or exemption or to withdraw any approval or exemption theretofore granted.