

6.1.2 Proposed OSC Rule 72-503 Distributions Outside Canada and Proposed Companion Policy 72-503 Distributions Outside Canada

SECOND NOTICE AND REQUEST FOR COMMENT

PROPOSED OSC RULE 72-503 *DISTRIBUTIONS OUTSIDE CANADA* AND
PROPOSED COMPANION POLICY 72-503 *DISTRIBUTIONS OUTSIDE CANADA*

June 29, 2017

Introduction

On June 30, 2016, the Ontario Securities Commission (**we** or the **Commission**), published the following for comment:

- Proposed Ontario Securities Commission Rule 72-503 *Distributions Outside of Canada* (the **2016 Proposed Rule**), including proposed Form 72-503F *Report of Distributions Outside of Canada* (the **2016 Proposed Form**), and
- Proposed Companion Policy 72-503 *Distributions Outside of Canada* (the **2016 Proposed Companion Policy**)

(together, the **2016 Proposal**)

The 2016 Proposal was intended to replace “Interpretation Note 1 *Distributions of Securities Outside Ontario*”¹ (**Interpretation Note**) and to provide a regime for the distribution and resale of securities outside Canada. The comment period expired on September 28, 2016, and we received 15 comment letters.

Subsequent to the publication for comment of the 2016 Proposal, the Canadian Securities Administrators (the **CSA**) decided to publish for comment proposed amendments to National Instrument 45-102 *Resale of Securities* and proposed changes to Companion Policy 45-102 *Resale of Securities* (the **Proposed 45-102 Amendments**).

The Proposed 45-102 Amendments address many of the concerns expressed by market participants regarding the resale of securities outside Canada under section 2.14 of NI 45-102. In the interests of harmonizing resale regimes across the CSA for outbound securities, we are proposing to remove the resale provisions from the 2016 Proposed Rule. We have also proposed a number of additional changes in response to comments that we received on the 2016 Proposal.

2017 Proposal

Concurrent with the CSA’s publication of the Proposed 45-102 Amendments, we are publishing the following for a comment period of 90 days:

- Revised Proposed Ontario Securities Commission Rule 72-503 *Distributions Outside Canada* (the **2017 Proposed Rule**), which includes Proposed Form 72-503F *Report of Distributions Outside Canada* (the **2017 Proposed Form**),
- Revised Proposed Companion Policy 72-503 *Distributions Outside Canada* (the **2017 Proposed Companion Policy**), and
- Consequential Amendment to OSC Rule 11-501 *Electronic Delivery of Documents To The Ontario Securities Commission* (the **Consequential Amendment**)

(together, the **2017 Proposal**)

The 2017 Proposal is intended to modernize and replace the Interpretation Note, bringing greater certainty to cross-border activities in Ontario. The 2017 Proposed Companion Policy provides updated interpretive guidance and re-articulates key aspects of the Interpretation Note regarding when the prospectus requirement does not apply to a distribution of securities to an investor outside Canada. For those seeking greater certainty, the 2017 Proposed Rule provides explicit exemptions that are intended to: (i) preserve current cross-border practices; and (ii) respond to the challenges that issuers and intermediaries face in determining whether a prospectus must be filed or an exemption from the prospectus requirement must be relied on in connection with a distribution of securities to an investor outside Canada.

¹ Interpretation Note 1 was published in connection with the Notice of Repeal of OSC Policy 1.5 *Distribution of Securities Outside of Ontario*, (March 25, 1983) 6 OSCB 226.

Authority for the 2017 Proposed Rule and the Consequential Amendment

The following provisions of the *Securities Act* (Ontario) (the **Act**) provide the Commission with authority to adopt the 2017 Proposed Rule:

- Paragraph 143(1)8 authorizes the Commission to make rules providing for exemptions from the registration requirements under the Act and for the removal of exemptions from those requirements.
- Paragraph 143(1)20 authorizes the Commission to make rules providing for exemptions from the prospectus requirements under the Act and for the removal of exemptions from those requirements.
- Paragraph 143(1)48 authorizes the Commission to specify the conditions under which any particular type of trade that would not otherwise be a distribution shall be a distribution.

Paragraph 143(1)39 authorizes the Commission to make rules respecting the media, format and preparation of all documents governed by the Act. This provides the authority for the Consequential Amendment.

Alternatives Considered

The Commission considered the options of:

- maintaining the Interpretation Note,
- amending the Interpretation Note, or
- adopting the 2016 Proposal.

In light of comments received on the 2016 Proposal, together with the CSA's publication of the Proposed 45-102 Amendments, we believe that the 2017 Proposal will improve the efficiency of Ontario participants' cross-border capital raising activities.

Unpublished Materials

In proposing the 2017 Proposal, the Commission has not relied on any significant unpublished study, report, decision or other written materials.

Anticipated Costs and Benefits

The principal benefit of the 2017 Proposed Rule and the 2017 Proposed Companion Policy will be to provide regulatory certainty to Ontario market participants. The Commission anticipates that this regulatory certainty will reduce overall costs for Ontario issuers seeking to raise capital outside Ontario. The costs associated with the 2017 Proposed Rule and the 2017 Proposed Companion Policy will be

- the costs of analyzing the new exemptions and guidance provided to determine whether or not an Ontario prospectus or reliance on another prospectus exemption is required,
- the costs of preparing and filing the 2017 Proposed Form for outbound private placements.

In the view of the Commission, the benefits of the 2017 Proposed Rule, including the 2017 Proposed Form, and the 2017 Proposed Companion Policy outweigh the costs.

Annexes

This Notice contains the following Annexes:

- Annex A – list of commenters, summary of comments and responses
- Annex B – the 2017 Proposed Rule, which includes the 2017 Proposed Form
- Annex C – the 2017 Proposed Companion Policy
- Annex D – the Consequential Amendment

Request for Comments

The Commission welcomes your comments on the 2017 Proposed Rule, including the 2017 Proposed Form, and the 2017 Proposed Companion Policy.

How to Provide Your Comments

You must provide your comments in writing by September 27, 2017. If you are not sending your comments by email, you should also send an electronic file containing the submissions (in Windows format, Microsoft Word).

Please send your comments to the following address:

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
Email: comments@osc.gov.on.ca

The Commission will publish written comments received unless the Commission approves a commenter's request for confidentiality or the commenter withdraws its comment before the comment's publication.

Questions

Please refer your questions to:

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ANNEX A

PROPOSED OSC RULE 72-503 *DISTRIBUTIONS OUTSIDE CANADA*

LIST OF COMMENTERS AND SUMMARY OF COMMENTS AND RESPONSES

No.	Commenter	Date
1.	Dentons Canada LLP	September 21, 2016
2.	Irish Stock Exchange	September 27, 2016
3.	Stikeman Elliot LLP	September 28, 2016
4.	Torys LLP	September 28, 2016
5.	Canada Pension Plan Investment Board, OMERS Administration Corporation and Ontario Teachers' Pension Plan Board	September 28, 2016
6.	Blake, Cassels & Graydon LLP	September 28, 2016
7.	Investment Industry Association of Canada	September 28, 2016
8.	Davies Ward Phillips & Vineberg LLP	September 28, 2016
9.	Alternative Investment Management Association	September 28, 2016
10.	Borden Ladner Gervais LLP	September 28, 2016
11.	Invesco Canada Ltd.	September 28, 2016
12.	Osler Hoskin & Harcourt LLP	September 28, 2016
13.	AUM Law	September 28, 2016
14.	The Securities Industry & Financial Markets Association	October 5, 2016
15.	Private Capital Markets Association of Canada	October 7, 2016

No.	Subject	Summarized Comment	Response
GENERAL COMMENTS			
1	Necessity of the 2016 Proposed Rule	<p>Thirteen of fifteen comment letters received were generally supportive of change and expressed the view that a new framework is necessary. For example, one commenter stated that the 2016 Proposed Rule "will provide much greater certainty for market participants and represents a practical regulatory framework which will facilitate Ontario based issuers conducting legitimate capital raising activities outside of Canada". Another stated that the 2016 Proposed Rule addresses many of their concerns with the offshore distributions regime and is "a vast improvement" over the current regime. However, all thirteen commenters recommended various modifications and amendments to the 2016 Proposed Rule, which are further addressed in this summary.</p> <p>One commenter suggested that the 2016 Proposed Rule may not be necessary because the commenter had not experienced challenges applying the Interpretation Note. This commenter expressed the view that section 127 of the <i>Securities Act</i> (Ontario) provides sufficient latitude</p>	<p>We thank all commenters for their input. We agree with most commenters that a new framework is necessary and recognize the opportunity to make improvements to the 2016 Proposed Rule. The 2017 Proposed Rule published for comment by the Commission reflects many of the modifications and amendments suggested by the commenters.</p>

Request for Comments

No.	Subject	Summarized Comment	Response
		for the Commission to regulate transactions taking place outside Ontario.	
2	Application to other Canadian jurisdictions	Three commenters suggested that exemptions in the 2016 Proposed Rule should apply to any trade outside Ontario, not just outside Canada. This would help address the continued uncertainty regarding the application of Ontario securities law to distributions of securities to investors resident in another Canadian province or territory.	Extending the application of the proposed exemptions to any trade outside of Ontario, not just outside Canada, raises issues in connection with the operation of the passport system and the Canadian Securities Administrators' (CSA) approach to multi-jurisdictional distributions. As such, the suggested change is beyond the scope of this OSC-only initiative.
3	Harmonization	Three commenters recommended that the 2016 Proposed Rule be adopted as a National Instrument so as to harmonize offshore offering regimes across Canada.	<p>We are balancing the need to bring greater certainty to Ontario's offshore offering regime with the importance of harmonization across Canada. While the CSA continues to take different approaches to the application of the prospectus requirement to primary distributions of securities outside Canada, the CSA is in the process of revisiting the resale regime under National Instrument 45-102 <i>Resale of Securities</i> (NI 45-102). Concurrent with the publication for comment of the 2017 Proposed Rule, the CSA is publishing for comment proposed amendments that relate to section 2.14 of NI 45-102.</p> <p>Although the proposed NI 45-102 amendments are not as broad as the selling security holder exemptions that we had proposed under sections 2.3 and 2.4 of the 2016 Proposed Rule, we believe the CSA amendments address many market participant concerns with the application of section 2.14 of NI 45-102. We have removed the resale provisions from sections 2.3 and 2.4 of the 2017 Proposed Rule in support of the goal of harmonizing resale regimes across Canada.</p> <p>The proposed amendments to NI 45-102 includes a proposed amendment to Appendix D of NI 45-102 to add an exemption from the prospectus requirement under section 2.4 of the 2017 Proposed Rule.</p>
4	Co-existence with the proposed Cooperative Capital Markets Regulatory System	<p>Three commenters raised the issue of what would happen to the 2016 Proposed Rule in the context of the Cooperative Capital Markets Regulatory System (CCMRS) initiative.</p> <p>One commenter sought clarification as to whether the Cooperative Capital Markets Regulatory Authority would adopt proposed CMRA Policy 71-601 <i>Distribution of Securities to Persons Outside CMR Jurisdictions</i> (Proposed CMR 71-601) or whether CMR 71-601 would be amended to follow the approach of the 2016 Proposed Rule.</p>	While we recognize commenters' preferences, we are not in a position to comment on the instruments that may be adopted under the CCMRS initiative. We anticipate that all comments received in response to Proposed CMR 71-601, the 2016 Proposed Rule and the 2017 Proposed Rule will be considered under the CCMRS initiative.

No.	Subject	Summarized Comment	Response
		Four commenters noted that the 2016 Proposed Rule is much more consistent with the current practice of Ontario market participants than is CMR 71-601. These commenters expressed the view that the 2016 Proposed Rule should form the basis of any regulation addressing foreign distributions under the CCMRS.	
5	Application to investment funds	One commenter stated that the 2016 Proposed Rule should not apply to investment funds. Fund units are typically purchased and redeemed directly from the fund so the commenter reasoned that there would be little chance of “flow back”. The commenter further suggested it was unnecessary to bring foreign distributions by funds into the ambit of 2016 Proposed Rule because funds conduct all their activities through investment fund managers who are already registered with the OSC.	We agree that trades by conventional mutual funds to foreign investors would not generally trigger concerns regarding “flow back” to Ontario investors where the foreign investor’s only source of liquidity is a right to redeem the security back to the investment fund. However, we have not carved out investments funds from the application of the 2017 Proposed Rule. The 2017 Proposed Rule does not deem any particular issuances to be distributions, but rather provides codified exemptions to market participants that need more certainty in connection with a particular transaction. We believe it is appropriate to make these cross border exemptions available to fund managers that wish to use them.
PART 1 OF 2016 PROPOSED RULE			
6	s. 1.1 – “designated foreign jurisdiction”	<p>Three commenters did not object to limiting the exemptions in sections 2.1 and 3.1 to a list of foreign jurisdictions, but were critical of using the definition of “designated foreign jurisdiction” in National Instrument 71-102 <i>Continuous Disclosure and Other Exemptions Relating to Foreign Issuers</i>. That list is under-inclusive, out of date and could be expanded without negatively impacting the integrity of Ontario’s capital markets as it excludes many jurisdictions which have similar prospectus disclosure regimes to Canada.</p> <p>In addition to EU member states, commenters specifically suggested including the following jurisdictions: Austria, Belgium, Brazil, China, Denmark, Iceland, India, Israel, Liechtenstein, Luxembourg, Norway, Republic of Ireland, South Korea, Switzerland, and Thailand.</p> <p>One commenter suggested that a list is unnecessary because it is not the Commission’s role to ensure that foreign investors receive the same disclosure as investors within Ontario.</p> <p>One commenter suggested that an issuer would be unlikely to subject itself to equivalent prospectus requirements simply for the purposes of conducting indirect distributions into Canada. The commenter suggested adding guidance to the 2016 Proposed Companion Policy clarifying that the list is not intended to be limited only to those jurisdictions whose disclosure requirements meet a minimum standard.</p>	<p>We have replaced the definition of “designated foreign jurisdiction” with the definition of “specified foreign jurisdiction”. In doing so, we have added member countries of the European Union to the definition.</p> <p>We have not reflected all of the commenters’ suggestions in Appendix A of the 2017 Proposed Rule and currently only list those jurisdictions in the definition of “designated foreign jurisdiction” and any other member country of the European Union. We are comfortable with the jurisdictions listed at this time. We note that any distributions to a person or company in a jurisdiction not listed in Appendix A may be effected in reliance on the exemption in subsection 2.3 of the 2017 Proposed Rule (if the issuer is a reporting issuer) or the exemption in subsection 2.4(1) of the 2017 Proposed Rule (if the issuer is not a reporting issuer). If the issuer is not a reporting issuer, the only difference is that the first trade of the securities will be a deemed distribution under Appendix D of NI 45-102.</p> <p>We have also added guidance to the 2017 Proposed Companion Policy that we would be prepared to consider applications for exemptive relief in respect of distributions in foreign jurisdictions not listed in Appendix A of the 2017 Proposed Rule. We may consider amendments to Appendix A of the 2017 Proposed Rule in the future.</p>

No.	Subject	Summarized Comment	Response
PART 2 OF 2016 PROPOSED RULE			
7	Co-existence with NI 45-102	<p>Two commenters expressed concern that Part 2 of the 2016 Proposed Rule is inconsistent with the resale rules in NI 45-102.</p> <p>One commenter asked the OSC to make it clear that trades exempt under the 2016 Proposed Rule would similarly be exempt under NI 45-102.</p>	We have removed the exemptions for selling security holders from the sections 2.3 and 2.4 of the 2017 Proposed Rule. Please refer to our response to comment 3, above.
8	Meaning of “to a person or company outside of Canada”	One commenter recommended recasting the requirement to sell to “a person or company outside of Canada” as a requirement that the Canadian resident selling security holder has no reason to believe that the buyer is a Canadian person or company.	We have added guidance to the 2017 Proposed Companion Policy that we think an issuer or selling security holder meets the requirement to sell to “a person or company outside Canada” if the issuer or selling security holder has no reason to believe that the purchaser is a Canadian person or company.
9	Sales over foreign exchanges	<p>Several commenters recommended that trades executed on foreign exchanges that are not pre-arranged should be deemed to be made “to a person or company outside of Canada”. Given that the identity of the buyer is often not readily ascertainable, the provision would be unduly burdensome as drafted.</p> <p>Several commenters suggested section 2.4 be revised to provide that the first trade of securities distributed under section 2.4 (1) would not be deemed a distribution if made through an exchange or a market located outside Canada. This would align with section 2.14 of NI 45-102 and reflect the reality that most purchasers on foreign exchanges may be presumed to be located outside Canada.</p> <p>One commenter stated that it is inconsistent to allow unrestricted resale of securities initially acquired in offshore offerings without allowing for unrestricted resales in corresponding circumstances by Canadian investors. As such, first trades of securities initially acquired by Canadian investors under an exemption should not be considered a distribution if the trade is to a person outside Canada, if the trade has not been pre-arranged with a buyer in Ontario and less than 45% of the trading in that class of security over the prior fiscal year took place on or through the facilities of a designated Canadian exchange.</p> <p>One commenter noted that the 2016 Proposed Rule does not address the issues faced by institutional investors who wish to dispose of foreign securities pursuant to section 2.14 of NI 45-102, due to the 10% Canadian ownership threshold. The exemption in section 2.4 of the 2016 Proposed Rule is not sufficient as currently drafted due to the imposition of resale restrictions contemplated by subsection 2.4(2). An additional exemption should be added to the 2016 Proposed Rule to allow trades in securities of an issuer</p>	<p>We have added section 2.5 to the 2017 Proposed Rule to provide that 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.</p> <p>Please refer to our response to comment 3, above.</p>

No.	Subject	Summarized Comment	Response
		<p>incorporated or organized under the laws of a foreign jurisdiction to a person or company outside Canada or through a foreign exchange, provided that the issuer is not a reporting issuer in any jurisdiction of Canada.</p>	
10	Compliance with foreign laws	<p>Two commenters characterized the condition that an issuer or selling security holder complies with foreign laws as the extra-territorial application of Ontario securities law and advocated for complete removal of the condition.</p> <p>Three commenters expressed concerns with the application of the requirement in practice. Two commenters noted the difficulty in confirming compliance with foreign securities law, which would require costly legal opinions or due diligence. One commenter noted that minor, technical breaches could disqualify an issuer or selling security holder from relying on the exemption. One commenter suggested that the exemptions should be conditioned on the issuer or selling security holder being subject to foreign securities law. Another commenter suggested that the exemptions should be conditioned on the distribution being effected pursuant to foreign securities law. Another commenter suggested that the exemptions should be conditioned on the issuer's actual knowledge at the time of the distribution that reasonable steps had been taken to ensure compliance with foreign securities law.</p>	<p>Minor or technical breaches of foreign securities law should not result in the unavailability of the 2017 Proposed Rule's exemptions. However, material non-compliance with the requirements of foreign law in connection with a distribution effected pursuant to foreign securities law would undermine a key rationale for the exemptions in the 2017 Proposed Rule and may impugn the integrity of Ontario capital markets. We have revised the exemptions to clarify that the condition requires "material" compliance with foreign securities law.</p> <p>We have also added guidance to the 2017 Proposed Companion Policy that an issuer or selling security holder will have materially complied with the requirements of a foreign securities law if the issuer or selling security holder has taken reasonable steps to ensure the distribution is effected in accordance with the securities laws of the foreign jurisdiction.</p>
11	s. 2.1 (b) – Distribution Under Public Offering Document in Foreign Jurisdictions	<p>Two commenters suggested changes to the condition in paragraph 2.1(b) of the 2016 Proposed Rule that the issuer has filed a document "similar to a final prospectus". One commenter suggested removing the language because it could be interpreted to mean that the foreign offering document must meet the standard of an Ontario prospectus. In the alternative, the commenter suggested adding guidance to the 2016 Proposed Companion Policy that the offering document must be a document that is publicly filed and that a private offering document that is not publicly filed would not qualify for the exemption. The other commenter thought that the language may be interpreted to require the issuer to undertake an analysis of whether the foreign offering document meets the standard of an Ontario prospectus. The commenter suggested adding guidance to the 2016 Proposed Companion Policy that the language means a "public offering document" and, so long as "a receipt or similar acknowledgement of approval has been obtained" from the foreign jurisdiction, the foreign offering document is presumed to be "similar to a final prospectus."</p> <p>One commenter proposed adding issuers who have filed a document similar to a final prospectus with a stock exchange in a designated foreign jurisdiction for which approval has been obtained.</p>	<p>We have revised the condition in paragraph 2.1(b) of the 2017 Proposed Rule to state that the issuer has filed, and if applicable, a receipt or similar acknowledgement of approval or clearance has been obtained for, an offering document that qualifies, registers, or permits, as applicable, the public offering of those securities in accordance with the securities laws of a "specified foreign jurisdiction".</p>

No.	Subject	Summarized Comment	Response
		As such, the following language should be added: "or permitting the distribution of the securities in the designated foreign jurisdiction".	
12	s. 2.2 (b) – Concurrent Distribution under Final Prospectus in Ontario	One commenter suggested that this section of the 2016 Proposed Rule is unnecessary, because if an issuer files a prospectus in Ontario to qualify the distribution of securities to an investor outside Canada, then the issuer would be complying with the prospectus requirement anyway. The commenter further stated it was unclear whether an underwriter would be required to sign such a prospectus.	The condition under paragraph 2.2(b) of the 2017 Proposed Rule requires the filing of a prospectus in Ontario in connection with a distribution in Ontario that is concurrent with the foreign distribution to which the exemption in section 2.2 applies. If, for example, an issuer files an initial public offering prospectus in Ontario and, concurrently, sells the same class of securities under a private placement in the United States, the exemption in section 2.2 of the 2017 Proposed Rule could apply to the U.S. private placement. In this case, the prospectus filed in Ontario would not qualify the securities distributed to foreign purchasers in reliance on the exemption in section 2.2.
13	s. 2.3 – Distributions by Reporting Issuers	One commenter questioned why an issuer would have to be a reporting issuer for four months preceding a distribution, other than to substantiate the basis on which the subsequent resale of those securities is permitted back into Canada. The commenter suggested that if that was the intention, then section 2.3 should be removed and a new paragraph (c) added to section 2.4, which would allow resale of securities distributed pursuant to subsection 2.4(1). This new paragraph (c) should also state that the first trade of securities distributed pursuant to subsection 2.4(1) is not a distribution if the issuer of the securities is and has been a reporting issuer for the 4 months preceding the date of the trade.	Rather than make the changes suggested by the commenter, we have revised the condition in paragraph 2.3(b) of the 2017 Proposed Rule, which in the 2016 Proposed Rule required the issuer to have been a reporting issuer in a jurisdiction for the four months immediately preceding the distribution. The condition now only requires that the issuer is a reporting issuer at the time of the distribution.
14	s. 2.4 – co-existence with s. 2.6 of NI 62-104	One commenter suggested that a first trade of securities distributed under section 2.4 should not be deemed a distribution if it is made in the normal course as per section 2.6 of National Instrument 62-104 <i>Take-Over Bids and Issuer Bids (NI 62-104)</i> .	We have removed the resale exemptions from the 2017 Proposed Rule and refer commenters to the CSA's proposed amendments relating to section 2.14 of NI 45-102.
15	s. 2.4 – application of "safe harbor" rule	One commenter requested that we add a fifth exemption based on Rule 904 of Regulation S in the <i>Securities Act of 1933</i> of the United States of America (the "safe harbor" rule).	Please refer to our response to comment 9, above.
PART 3 OF 2016 PROPOSED RULE			
16	General comments	<p>Several commenters expressed the view that Part 3 should be deleted in its entirety because it is unnecessary and will cause uncertainty.</p> <p>One commenter suggested that Part 3 implies Ontario registration requirements apply when non-Canadian dealers exclusively trade with investors resident outside Canada. This may deter these dealers from undertaking such activity.</p>	The exemptions in Part 3 have been included to address situations where i) an issuer takes the position that the sale of securities to foreign purchasers is a distribution for the purposes of Ontario securities law, and ii) where a foreign dealer involved in the distribution maintains an office or place of business in Ontario or otherwise conducts significant activities in connection with the distribution in Ontario.

No.	Subject	Summarized Comment	Response
		<p>One commenter proposed that Part 3 be amended to reference other analogous foreign requirements as some foreign jurisdictions do not have dealer registration requirements.</p> <p>One commenter requested that the language be broadened so that an entity relying on a registration exemption in a specified foreign jurisdiction can also rely on the exemption in section 3.1 of the 2016 Proposed Rule. Words to the effect of “the person or company is registered, exempt from registration, or otherwise permitted, under the securities legislation” should be added to paragraphs 3.1(b) and (c).</p>	<p>The policy rationale for these exemptions is similar to the policy rationale underlying the exemptions in Ontario Securities Commission Rule 32-505 <i>Conditional Exemption from Registration for United States Broker-Dealers and Advisers Servicing U.S. Clients from Ontario (OSC Rule 32-505)</i>.</p> <p>We have amended the exemption in section 3.1 so that an entity that is exempt from registration in the United States of America or a specified foreign jurisdiction may also rely on the exemption.</p> <p>As stated in the 2017 Proposed Companion Policy, the provision of exemptions in the 2017 Proposed Rule is not, by itself, determinative of whether Ontario securities law would otherwise apply to a distribution outside Canada or activities related to the distribution.</p>
17	Application to investment fund managers	<p>One commenter expressed the view that Part 3 implies investment fund managers would be required to comply with its obligations as a dealer for all foreign investors in its domestic funds irrespective of any dealer requirements and obligations which may be in place in the foreign jurisdiction in which an investor resides. The Commission should clarify this.</p>	<p>Unless an exemption is otherwise available, registered firms and registered individuals in Ontario are expected to comply with the requirements of Ontario securities law applicable to registrants regardless of where the investor is located. The know-your-client and suitability obligations in Part 13 of National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)</i> are principles-based and require a registrant to take reasonable steps to know the client and make a suitability determination. A registrant's determination of how to satisfy these obligations may include a consideration of the comparable requirements, if any, that may apply in the investor's home jurisdiction and the investor's reasonable expectations in this regard.</p>
18	Corresponding issuer exemption	<p>One commenter recommended that we add a corresponding issuer exemption as per section 8.5 of NI 31-103. Without this an issuer may be deemed to have triggered the registration requirement in Ontario if it distributes its securities outside Canada through a person or company that is not registered or exempt from registration in Canada, but is otherwise registered or exempt in the non-Canadian jurisdiction where the issuer makes the distribution.</p> <p>The same commenter suggested that we should not impose a registration requirement on issuers that directly distribute their securities in a non-Canadian jurisdiction without market intermediaries, such as dealers or advisers, provided that the issuer is complying with the non-</p>	<p>We have added a new exemption in section 3.2 of the 2017 Proposed Rule for an issuer that might otherwise be considered to be in the business of trading (through, for example, frequent offerings) if the offering 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.</p> <p>As noted in the responses above and below, Ontario registration requirements apply to registerable activity conducted in Ontario, regardless of where the investor is located. In our view, the new exemption for issuers in section 3.2 of the 2017 Proposed Rule</p>

No.	Subject	Summarized Comment	Response
		Canadian jurisdiction's registration and prospectus requirements. The commenter requests that the OSC provide guidance on the interaction between the Ontario business trigger and local registration requirements.	should address any concerns with the application of duplicative Canadian and foreign requirements.
19	Co-existence with OSC Rule 32-505	One commenter stated that Ontario registration requirements should not apply when an Ontario-registered dealer acts on behalf of a foreign market participant who is in compliance with foreign requirements. Absent market integrity concerns, the foreign jurisdiction should be responsible for foreign investor protection and Ontario registration requirements should not apply. This should take a form similar to OSC Rule 32-505.	Unless an exemption is otherwise available, registered firms and registered individuals in Ontario are expected to comply with the requirements of Ontario securities law applicable to registrants regardless of where the investor is located. Many of the requirements in NI 31-103 are principles-based and require a registrant to take reasonable steps to comply with these requirements. In these cases, a registrant's determination of how to satisfy these requirements may include a consideration of the comparable requirements, if any, that may apply in the investor's home jurisdiction and the investor's reasonable expectations in this regard. Other requirements, such as books and records requirements, should apply to a registrant regardless of the location of the investor.
20	Registration requirements of designated foreign jurisdictions	<p>One commenter requested that paragraph (a) be deleted and paragraph (c) be amended to refer to the registration requirements of any foreign jurisdiction, not just designated jurisdictions. This would be consistent with the rest of the 2016 Proposed Rule and would not unduly limit an issuer's choice of dealer or underwriter in the foreign jurisdiction.</p> <p>Two commenters proposed that the registration exemption be extended to dealers registered in any foreign country, not just "designated foreign jurisdictions". This would put it in line with the international dealer exemption in paragraph 8.18(2)(a) of NI 31-103.</p> <p>Two commenters expressed the view that the exemption should not be limited to the jurisdictions in NI 71-102 as the purpose of NI 71-102 is to assess the adequacy of continuous disclosure regimes, not dealer registration regimes.</p> <p>Two commenters stated that requiring foreign dealers to be in compliance with all applicable dealer requirements is a highly exacting standard and could lead to unintended results. As such, a requirement for "sufficient compliance" should be inserted instead.</p>	<p>As noted above, we have replaced the definition of "designated foreign jurisdiction" with the definition of "specified foreign jurisdiction". We have reflected the commenters' suggestions in Appendix A of the 2017 Proposed Rule.</p> <p>A rationale for the exemption from the dealer and underwriter registration requirement is that the person or company is in material compliance with the dealer and underwriter requirements in the investor's home jurisdiction. Although the definition of designated foreign jurisdiction in NI 71-102 may have originally been based on an assessment of foreign jurisdictions that have adequate continuous disclosure regimes, the securities regulatory regimes in these jurisdictions also generally contemplate certain basic registration and business conduct regimes for intermediaries.</p> <p>The international dealer exemption in paragraph 8.18(2)(a) of NI 31-103 includes a number of conditions that are not included in the 2017 Proposed Rule, including a condition that the international dealer deal only with permitted clients (institutional investors). We have not included these additional conditions in the Rule and believe that it would be more appropriate to align the exemptions in Part 3 with the exemptions in Part 2.</p>

No.	Subject	Summarized Comment	Response
			We have changed references to “compliance” to “material compliance”. Please refer to our response to comment 10, above.
PART 4 OF 2016 PROPOSED RULE			
21	Necessity of reporting requirement	Several commenters proposed that the reporting requirement be eliminated as it may increase compliance costs without providing any material benefit: the information will be available to the Commission via continuous disclosure documentation.	We note that issuers that are not subject to continuous disclosure obligations may rely on the 2017 Proposed Rule’s exemptions. The data reportable on the 2017 Proposed Form is limited in scope and is intended to provide the Commission with information regarding cross-border activities that will help inform efficient and effective policy-making in the future.
22	Certification requirement	Several commenters expressed concern that dealers may refuse to act as dealers on reportable distributions if the certification language is not clear that a signing individual is doing so in his or her official capacity without personal liability.	We have changed the certification language in the 2017 Proposed Form. The CSA has proposed amendments to the report of exempt distribution in NI 45-106. The revised certification language in the 2017 Proposed Form is consistent with those proposed amendments. The certificates in the 2017 Proposed Form will be aligned with the approach ultimately adopted by the CSA under NI 45-106.
23	Application to investment funds	Three commenters recommended that funds be excluded from the 2016 Proposed Rule’s reporting requirement as it is unnecessary and would result in onerous duplication. Under National Instrument 45-106 <i>Prospectus Exemptions (NI 45-106)</i> funds are currently permitted to file reports of exempt distributions on an annual basis that reflect distributions in all jurisdictions. Further, as investment fund managers are already registered by the Commission, the Commission could request this information on an as-needed basis.	We have added subsection 4.2(2) to the 2017 Proposed Rule to provide that an issuer that is an investment fund may file the report not later than 30 days after the calendar year. We have also added section 4.3 to the 2017 Proposed Rule to provide that an issuer that is an investment fund may also satisfy the reporting requirement by filing a consolidated Form 45-106F1 that includes the information required by the 2017 Proposed Form.
24	Co-existence with NI 45-106	One commenter questioned the policy rationale for reporting trades which, if they had taken place in Ontario, would not need to be reported. An exemption should be available in circumstances where an issuer is required to report an offshore distribution on the 2016 Proposed Form without a corresponding report under NI 45-106. One commenter requested that the Commission clarify whether it considers the exemptions in the 2016 Proposed Rule to be the only exemptions that may be applicable to distributions outside Ontario.	We have not made the suggested change. An issuer may choose to rely on an applicable exemption under NI 45-106 as an alternative to the exemptions in the 2017 Proposed Rule in connection with a distribution outside Canada. An issuer is not required to file the 2017 Proposed Form if it is relying on, and satisfies any applicable conditions of, another exemption from the prospectus requirement.
25	Obligation of issuer not dealer	One commenter stated that the reporting obligation should be an obligation of the issuer and not the foreign dealer.	Under section 4.1 of the 2017 Proposed Rule, an issuer, not the foreign dealer, is subject to the requirement to file the 2017 Proposed Form.
26	Disclosure of purchaser information	One commenter stated that in no circumstance should the final version of the 2016 Proposed Form require disclosure of purchaser information.	The 2017 Proposed Form does not require disclosure of purchaser information.

No.	Subject	Summarized Comment	Response
27	Filing fees	One commenter stated that a filing fee for the 2016 Proposed Form would be inappropriate.	We have not proposed to add the 2017 Proposed Form to OSC Rule 13-502 Fees and thus a fee will not be payable when filing the 2017 Proposed Form.
PART 1 OF 2016 PROPOSED COMPANION POLICY			
28	Distributions made in accordance with the Interpretation Note	Two commenters requested we add a fourth paragraph to the Statement of Principle confirming that distributions which would have been in accordance with the Interpretation Note would also be in accordance with the Statement of Principle. This would ensure that there is no disruption of current Ontario market practice resulting from the adoption of the 2016 Proposed Rule.	We have not made the suggested change. Please refer to our response to comment 30, below.
29	Connecting factors to Ontario	<p>One commenter stated that only connecting factors with Ontario that bear on flow back risk are relevant in assessing whether an offshore trade is a distribution. Clarifying language to this effect should be included in the Statement of Principle. This is because Ontario's prospectus requirement is for the protection of Ontario investors not foreign investors.</p> <p>Another commenter stated that the jurisdiction of the purchaser's residence should be the most significant connecting factor in determining whether prospectus exemptions apply to a distribution. This will result in the highest degree of predictability and the fairest application of investor protection as well as reducing the scope for regulatory arbitrage.</p>	<p>We have not made the suggested change. The "connecting factors" and "real and substantial connection" tests are judicial tests that are applied by courts and tribunals to determine questions of jurisdiction and the parameters of jurisdiction. We are of the view that determination of the Commission's jurisdiction should be left to the courts and tribunals, applying relevant case law to the facts of a particular transaction.</p> <p>Please also refer to our response to comment 30, below.</p>
30	Continuing uncertainty - Generally	<p>Two commenters expressed the view that the guidance in the 2016 Proposed Companion Policy suggests that issuers still need to determine whether the sale of securities outside Canada constitutes a "distribution" and does not provide any greater certainty or clarity for issuers than the Interpretation Note did. The Commission should provide additional guidance to assist market participants in determining when a distribution would occur.</p> <p>A second commenter expressed concern that the certainty provided by having specific exemptions under the 2016 Proposed Rule is compromised by language in the 2016 Proposed Companion Policy which implies that compliance with the conditions of the exemptions may not be sufficient in all cases.</p> <p>A third commenter supported the need for a "bright line rule" and opposed the reintroduction of the Interpretation Note language throughout the 2016 Proposed Companion Policy; in particular, language suggesting that issuers must still take "reasonable steps" to ensure there is no "flow back" of securities to Ontario undermines the certainty which comes with a "bright line rule". In the absence of certainty there is a risk that some</p>	<p>We have made certain revisions to the Statement of Principle in the 2017 Proposed Companion Policy in response to commenters' concerns. In particular, we have clarified that the Statement of Principle and guidance regarding whether securities have "come to rest" outside Canada do not constitute conditions to the availability of the exemptions from the prospectus requirement in the 2017 Proposed Rule.</p> <p>The Statement of Principle articulates the Commission's view of when the Ontario prospectus requirement applies to a distribution of securities outside Canada. Market participants do not need to rely on the exemptions in the 2017 Proposed Rule if they conclude that the Ontario prospectus requirement does not apply to a distribution of securities outside Canada because the securities have come to rest outside Canada. To assist in applying the Statement of Principle, we have added some illustrative examples of reasonable steps that participants may take to ensure the securities come to rest outside Canada.</p>

No.	Subject	Summarized Comment	Response
		<p>market participants will fall back on the Interpretation Note for guidance.</p>	<p>Market participants who have difficulty in applying the Statement of Principle or choose not to conduct an analysis may instead rely on the 2017 Proposed Rule exemptions, provided that the distribution is not part of a plan or scheme to avoid the prospectus requirement in connection with a distribution to a person or company in Canada.</p>
31	<p>“Come to rest” and “flow back”</p>	<p>Three commenters recommended we remove the guidance on “come to rest” from the 2016 Proposed Companion Policy and distance the policy underlying the 2016 Proposed Rule from the guidance on “flow back” in the Interpretation Note.</p> <p>These terms are based on concepts which many market participants struggled with under the Interpretation Note. These terms do not make sense in the context of exemptions which are premised on the existence of factors that are intended to mitigate any harm to Ontario investors if the securities do “flow back”. The policy goal of the 2016 Proposed Rule should be to ensure sufficient disclosure to act as a substitute for a Canadian prospectus rather than to prevent “flow back”. In any event, the risk of “flow back” is small.</p>	<p>Please refer to our response to comment 30, above.</p>
32	<p>“Reasonable Steps”</p>	<p>Almost all commenters expressed concerns regarding the “reasonable steps” language in the 2016 Proposed Companion Policy.</p> <p>Many commenters suggested the term be deleted because it could significantly limit the utility of 2016 Proposed Rule by reintroducing uncertainty.</p> <p>Other commenters contrasted the 2016 Proposed Companion Policy language with the Interpretation Note and stated that the 2016 Proposed Companion Policy does not list any examples of “reasonable steps” nor does it provide any connecting factors that may determine what would be “reasonable” in a given circumstance. These commenters also thought that the term introduces uncertainty but, rather than removing the term, recommended that a set of guiding examples or principles should be included.</p> <p>Three commenters suggested that the term is inconsistent with sections 2.1, 2.2, and 2.3 of the 2016 Proposed Rule because these provisions allow for resale of securities without a prospectus requirement.</p> <p>Several commenters recommended that the term be deleted and replaced with suitable anti-avoidance language.</p>	<p>Please refer to our response to comment 30, above.</p> <p>We have added section 2.6 to the 2017 Proposed Rule, which provides that the prospectus exemptions in sections 2.1 through 2.4 are not available with respect to any transaction or series of transactions that is part of a plan or scheme to avoid the prospectus requirements in connection with a distribution to a person or company in Canada.</p> <p>We have also added guidance to the 2017 Proposed Companion Policy that the Commission expects market participants will not use the 2017 Proposed Rule’s exemptions as a means to intentionally circumvent the application of Ontario prospectus requirements through indirect distributions into a jurisdiction of Canada. The 2017 Proposed Rule’s exemptions are intended only for distributions being made in good faith outside Canada, and not as part of a plan or scheme to conduct an indirect distribution to a person or company in Canada.</p>

No.	Subject	Summarized Comment	Response
PART 2 OF 2016 PROPOSED COMPANION POLICY			
33	General comments	According to two commenters, the Commission's ability to address possible abuses of the 2016 Proposed Rule's exemptions is adequately covered by "The Integrity of the Ontario Capital Markets and the Jurisdiction of the Commission" in Part 1 of the 2016 Proposed Companion Policy.	Please refer to our responses to comments 30 and 32, above.
34	Concurrent Distribution under Final Prospectus in Ontario	<p>One commenter recommended we delete the second and third paragraphs in this section of the 2016 Proposed Companion Policy because the paragraphs suggest that an Ontario-filed prospectus could qualify an offering of securities to a foreign investor. This commenter expressed the view that an Ontario prospectus filed in respect of an offshore offering would qualify any flow back of securities into Ontario, but would not qualify the initial offering to foreign investors because the initial offering would not itself be a "distribution" under Ontario securities laws. To allow an issuer to file an Ontario prospectus qualifying an offshore distribution, additional exemptions and guidance is necessary.</p> <p>One commenter stated that Ontario issuers and underwriters should not be required to extend the protections of Ontario securities law to foreign purchasers. The commenter also pointed out that it was unclear whether the use of an Ontario prospectus would require a dealer in a foreign jurisdiction to sign a certificate of underwriter.</p> <p>According to another commenter, the 2016 Proposed Companion Policy should make it clear that the number or amount of securities referred to in an Ontario-filed prospectus may include securities that are concurrently being offered to investors outside Ontario and are therefore not qualified by the Ontario filed prospectus.</p>	<p>While the 2017 Proposed Rule exempts an issuer or selling security holder from the requirement to file an Ontario prospectus qualifying an offering to foreign purchasers, it does not prevent them from doing so. That is, an issuer or selling security holder may choose to file a prospectus in Ontario to qualify such a distribution and provide the statutory protections of Ontario securities law to foreign investors.</p> <p>If an issuer chooses to file a prospectus in Ontario to qualify the distribution of securities to an investor outside Canada, the prospectus should clearly state whether or not it also qualifies the distribution of securities to an investor outside Canada, recognizing that purchasers of Ontario prospectus-qualified securities may be entitled to certain rights and investor protections under the Act.</p> <p>An investor should be able to readily ascertain at the time of purchase whether they are acquiring securities under the prospectus and are therefore entitled to statutory rights for the purposes of Ontario securities law. Accordingly, if an issuer does not intend the prospectus to qualify the distribution of securities to purchasers outside Canada, the prospectus should include a statement to this effect.</p>
35	Statutory Protection for Foreign Investors	<p>Several commenters expressed concern that the 2016 Proposed Companion Policy implies statutory protection will be extended to foreign investors. Language to this effect should be removed as it is not clear that the Commission has the legal authority to do so.</p> <p>Two commenters suggested that extending statutory rights to foreign investors would conflict with the multijurisdictional disclosure system (MJDS) and could have significant implications for both public offerings under the MJDS and foreign private placements.</p>	<p>In our view, an issuer or selling security holder may elect to file a prospectus in Ontario to qualify a distribution to foreign purchasers and to provide the statutory protections of Ontario securities law to foreign investors. See also our response to comment 34, above.</p> <p>Nothing in the 2017 Proposed Rule or the 2017 Proposed Companion Policy is intended to affect the guidance in section 4.3 of Companion Policy 71-101CP to National Instrument 71-101 <i>The Multijurisdictional Disclosure System</i>.</p>

ANNEX B

**PROPOSED ONTARIO SECURITIES COMMISSION RULE
72-503 DISTRIBUTIONS OUTSIDE CANADA**

The text box in this Rule located above section 2.4 refers to National Instrument 45-102 Resale of Securities. This text box does not form part of this Rule.

**PART 1
DEFINITIONS**

Definitions

1.1 In this Rule,

“distribution date” 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; and

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

**PART 2
EXEMPTIONS FROM THE PROSPECTUS REQUIREMENT**

Distribution Under Public Offering Document in Foreign Jurisdictions

2.1 The prospectus requirement does not apply to a distribution of securities to a person or company outside Canada if, prior to the issuance or resale of the securities, 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 has become 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 offering document in the specified foreign jurisdiction.

Concurrent Distribution under Final Prospectus in Ontario

2.2 The prospectus requirement does not apply to a distribution of securities to a person or company outside Canada if,

- (a) in connection with the distribution, the issuer of those securities or the selling security holder has materially complied with the securities law requirements of the jurisdiction outside Canada; and
- (b) prior to the issuance or resale of the securities, the issuer of those securities has filed with the Commission, and a receipt has been issued for, a final prospectus qualifying a concurrent distribution of the same class, series or type of securities to purchasers in Ontario in accordance with Ontario securities law.

Distributions by Reporting Issuers

2.3 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,

- (a) in connection with the distribution, the issuer has materially complied with the securities law requirements of the jurisdiction outside Canada; and
- (b) the issuer is a reporting issuer in a jurisdiction of Canada immediately preceding such distribution.

Distributions by Non-Reporting Issuers

Refer to Appendix D of National Instrument 45-102 Resale of Securities. First trades are subject to a restricted period on resale.

- 2.4 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, in connection with the distribution, the issuer has materially complied with the securities law requirements of the jurisdiction outside Canada.

Exchange or Market Outside Canada

- 2.5 For the purposes of sections 2.1, 2.2, 2.3 and 2.4, 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.

Anti-avoidance

- 2.6 The prospectus exemptions in sections 2.1, 2.2, 2.3 and 2.4 are not available with respect to any transaction or series of transactions that is part of a plan or scheme to avoid the prospectus requirements in connection with a distribution to a person or company in Canada.

PART 3

EXEMPTION FROM THE DEALER AND UNDERWRITER REGISTRATION REQUIREMENTS

Exemption from the Dealer and Underwriter Registration Requirements

- 3.1 The dealer registration requirement and the underwriter registration requirement do not apply to a person or company in connection with a distribution of securities to a person or company outside Canada that is qualified by a prospectus filed in a jurisdiction of Canada or that is exempt from the prospectus requirement under Part 2 of this Rule or another exemption from the prospectus requirement under Ontario securities law if all of the following apply:
- (a) 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;
 - (b) if the distribution is 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;
 - (c) if the distribution is 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 Ontario, 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;

- (d) the person or company does not carry on business as a dealer or underwriter from an office or place of business in Ontario except in accordance with Ontario Securities Commission Rule 32-505 *Conditional Exemption from Registration for United States Broker-Dealers and Advisers Servicing U.S. Clients from Ontario*, an exemption from the registration requirement in this Rule or another exemption from the registration requirement under Ontario securities law;
- (e) the person or company is not registered in any jurisdiction of Canada in the category of dealer.

Issuer Exemption from the Dealer and Underwriter Registration Requirements

- 3.2** 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 a jurisdiction of Canada or that is exempt from the prospectus requirement under Part 2 of this Rule or another exemption from the prospectus requirement under Ontario securities law if one or both of the following apply:
- (a) the trade is made through or to a person or company that is relying on the exemption in section 3.1 or another exemption from registration under Ontario securities law;
 - (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.

PART 4 REPORT OF DISTRIBUTION OUTSIDE CANADA

Report of Distribution outside Canada

- 4.1** An issuer that relies on an exemption in section 2.2, 2.3 or 2.4 must electronically file a report of trade with respect to that exempt distribution. The electronic filing must include the information required by Form 72-503F *Report of Distributions Outside Canada* and its instructions.
- 4.2 Filing Deadline**
- (1) An issuer, other than an investment fund, must file the report required under section 4.1 on or before the tenth day after the distribution date.
 - (2) An issuer that is an investment fund must file the report required under section 4.1 not later than 30 days after the end of the calendar year in which the distribution occurred.

Investment Funds

- 4.3** An issuer that is an investment fund is not required to file the report under section 4.1 if the seller electronically files a Form 45-106F1 not later than 30 days after the end of the calendar year in which the distribution occurred that also includes the required information set forth in Form 72-503F *Report of Distributions Outside Canada* and its instructions.

PART 5 EXEMPTION

Exemption

- 5.1** The Director may grant an exemption from Part 4, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

PART 6 EFFECTIVE DATE

Effective Date

- 6.1** This Rule comes into force on ●.

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

FORM 72-503F
REPORT OF DISTRIBUTIONS OUTSIDE CANADA

Instructions:

1. An issuer that is required to complete this Form must do so through the online e-form available at <http://www.osc.gov.on.ca>.
2. Security codes: Wherever this form requires disclosure of the type of security, use the following security codes:

Security code	Security type
BND	Bonds
CER	Certificates <i>(including pass-through certificates, trust certificates)</i>
CMS	Common shares
CVD	Convertible debentures
CVN	Convertible notes
CVP	Convertible preferred shares
DEB	Debentures
FTS	Flow-through shares
FTU	Flow-through units
LPU	Limited partnership units
NOT	Notes <i>(include all types of notes except convertible notes)</i>
OPT	Options
PRS	Preferred shares
RTS	Rights
UBS	Units of bundled securities <i>(such as a unit consisting of a common share and a warrant)</i>
UNT	Units <i>(exclude units of bundled securities, include trust units and mutual fund units)</i>
WNT	Warrants
OTH	Other securities not included above <i>(if selected, provide details of security type in Item 7d)</i>

1. Full name, address and telephone number of the Issuer.

a) Full name of issuer

b) Head office address

Street address

Province/State

Municipality

Postal code/Zip code

Country

Telephone number

2. Type of security, the aggregate number or amount distributed and the aggregate purchase price.

Types of securities distributed							
Provide the following information for all distributions of securities relying on an exemption from section 2.2, 2.3 or 2.4 of the Rule on a per security basis. Refer to section 2 of the Instructions for how to indicate the security code. If providing the CUSIP number, indicate the full 9-digit CUSIP number assigned to the security being distributed.							
Security code	CUSIP number (if applicable)	Description of security	Number of securities	Canadian \$			
				Single or lowest price	Highest price	Total amount	

Details of rights and convertible/exchangeable securities						
If any rights (e.g. warrants, options) were distributed, provide the exercise price and expiry date for each right. If any convertible/exchangeable securities were distributed, provide the conversion ratio and describe any other terms for each convertible/exchangeable security.						
Security code	Underlying Security code	Exercise price (Canadian \$)		Expiry date (YYYY-MM-DD)	Conversion ratio	Describe other terms (if applicable)
		Lowest	Highest			

3. Date of distribution(s).

Distribution date													
State the distribution start and end dates. If the report is being filed for securities distributed on only one distribution date, provide the distribution date as both the start and end dates. If the report is being filed for securities distributed on a continuous basis, include the start and end dates for the distribution period covered by the report.													
Start date <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; height: 20px;"></td> <td style="width: 33%; height: 20px;"></td> <td style="width: 33%; height: 20px;"></td> </tr> <tr> <td style="text-align: center;">YYYY</td> <td style="text-align: center;">MM</td> <td style="text-align: center;">DD</td> </tr> </table>				YYYY	MM	DD	End date <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; height: 20px;"></td> <td style="width: 33%; height: 20px;"></td> <td style="width: 33%; height: 20px;"></td> </tr> <tr> <td style="text-align: center;">YYYY</td> <td style="text-align: center;">MM</td> <td style="text-align: center;">DD</td> </tr> </table>				YYYY	MM	DD
YYYY	MM	DD											
YYYY	MM	DD											

4. **State the name and address of any person acting as dealer or underwriter (including an underwriter that is acting as agent) in connection with the distribution(s) of the securities.**

Dealer and underwriter information			
Full legal name	<input type="text"/>		
Street address	<input type="text"/>		
Municipality	<input type="text"/>	Province/State	<input type="text"/>
Country	<input type="text"/>	Postal code/Zip code	<input type="text"/>
Telephone number	<input type="text"/>	Website	<input type="text"/> <i>(if applicable)</i>

ANNEX C

PROPOSED COMPANION POLICY 72-503 *DISTRIBUTIONS OUTSIDE CANADA*

PART 1 APPLICATION AND PURPOSE

This Policy sets out how the Ontario Securities Commission (the **Commission** or the **OSC**) interprets and applies section 53 of the *Securities Act* (Ontario) (the **Act**), the provisions of OSC Rule 72-503 *Distributions of Securities Outside Canada* (the **Rule**) and section 25 of the Act in the context of distributions outside Canada.

Statement of Principle

The Commission takes the view that an investor outside Canada will ordinarily expect to rely on the prospectus, registration statement or similar protections of the securities laws of the foreign jurisdiction in which the investor is located. The Commission recognizes that compliance with the prospectus requirement or conditions of a prospectus exemption under Ontario securities law may be unnecessarily duplicative of these protections and will generally not be necessary to fulfill the purposes of the Act.

Accordingly, the Commission does not interpret the Ontario prospectus requirement as applying to a distribution of securities outside Canada that is made in compliance with the securities laws of the foreign jurisdiction in which the investor is located. However, the Commission would expect the issuer, a selling security holder, an underwriter and other participants in the distribution to take reasonable steps to ensure that the offered securities come to rest outside Canada and are not redistributed back into Canada. The following are factors that participants may consider and examples of reasonable steps they may take in support of their reliance on this Statement of Principle:

- (1) A restriction in the underwriting, banking group or selling group agreement that prohibits the sale of securities to any person or company in Canada, except pursuant to a Canadian prospectus or prospectus exemption;
- (2) Clear statements in the offering document that the securities: (i) have not been qualified for distribution by prospectus in Canada, and (ii) may not be offered or sold in Canada during the course of their distribution except pursuant to a Canadian prospectus or prospectus exemption;
- (3) The class or series of securities being distributed have an existing trading market outside Canada that would not be materially less advantageous for investors outside Canada than making resales on any exchange or market in Canada on which the securities may also be traded;
- (4) The distribution is conducted as a broad-based public offering in one or more countries outside Canada and, if there is no existing trading market outside of Canada, it is reasonable to expect that a trading market for the offered securities outside Canada will develop;
- (5) Purchasers outside Canada provide representations and warranties, or are given notice that their purchase of the securities will be deemed to constitute a representation and warranty, that they are purchasing with investment intent and not for the purpose of making an immediate resale; and
- (6) Purchasers outside Canada provide representations and warranties, or are given notice that their purchase of the securities will constitute a representation and warranty, that they will not resell the security to a person they actually know to be located in Canada or through the facilities of an exchange or market in Canada, for a period of 90 days from the date of their purchase.

This list of factors and examples of reasonable steps is provided for illustrative purposes, and is not intended to be a definitive list of any or all of the factors or steps that participants may take into account in order to conclude that reasonable steps have been taken to ensure that securities have come to rest outside Canada. Furthermore, the list is intended to assist in determining whether the prospectus requirement applies to a distribution, and is not intended to have a bearing on the ability of market participants to rely on the Rule's exemptions. As the Rule's exemptions are intended to provide greater certainty for market participants, the Commission would not view reliance or purported reliance on an exemption, itself, as determinative that the Ontario prospectus requirement would otherwise apply to a distribution outside Canada or to activities related to the distribution.

The Integrity of the Ontario Capital Markets and the Jurisdiction of the Commission

The Rule's exemptions are intended only for distributions being made in good faith outside Canada, and not as part of a plan or scheme to conduct an indirect distribution to a person or company in Canada.

Neither the Rule nor this Policy impacts the jurisdiction of the Commission. Where the Commission becomes aware of conduct that may bring the reputation of Ontario's capital markets into disrepute or otherwise impair its mandate, the Commission may

assert its jurisdiction and exercise its powers to take appropriate action against issuers, underwriters and other persons, including in connection with distributions of securities to an investor outside Canada. The Commission may exercise its discretionary authority to cease trade securities, make orders to prevent conduct contrary to the public interest, and make regulations to foster fair and efficient capital markets and confidence in capital markets irrespective of whether there is a “distribution” in Ontario in breach of section 53 of the Act.

PART 2 EXEMPTIONS FROM THE PROSPECTUS REQUIREMENT

General

The prospectus exemptions under Part 2 of the Rule are intended to facilitate cross-border offerings by removing the potentially duplicative application of Ontario prospectus requirements where offerings to an investor outside Canada are made in material compliance with the securities laws of the foreign jurisdiction.

An issuer or selling security holder meets the requirement to sell to “a person or company outside Canada” if the issuer or selling security holder has no knowledge, and no reason to believe, that the purchaser is a person or company resident in Canada. Further, section 2.5 of the Rule provides that a distribution made through the facilities of an exchange or market outside Canada will qualify as a distribution outside Canada if neither the seller, nor any person acting on its behalf, has reason to believe the distribution has been pre-arranged with a buyer. Where the transaction has been pre-arranged, the exemption from the prospectus requirement will only be available if the pre-arranged buyer is in fact a person or company outside Canada.

An issuer or selling security holder will have “materially complied with the securities law requirements of a jurisdiction outside Canada” if the issuer or selling security holder has taken reasonable steps to ensure the distribution is effected in accordance with the securities laws of the foreign jurisdiction.

Concurrent Distribution under Final Prospectus in Ontario

An issuer or selling security holder distributing securities to an investor outside Canada may concurrently distribute securities to purchasers in Ontario provided that the distribution of securities to an investor in Ontario is qualified by a prospectus filed under the Act, or is conducted in reliance on an exemption from the prospectus requirement. The condition under paragraph 2.2(b) of the Rule therefore requires the filing of a prospectus in Ontario in connection with a concurrent distribution in Ontario. The prospectus exemption under section 2.2 of the Rule may be relied on for purposes of the distribution to an investor outside Canada only.

If an issuer or selling security holder files a prospectus to qualify a concurrent distribution to a person or company in Ontario, the issuer may choose to file a prospectus in Ontario to qualify the distribution of securities to an investor outside Canada, rather than rely on the exemption in section 2.2 of the Rule. Any prospectus filed in such circumstances should clearly state whether or not it also qualifies the distribution of securities to an investor outside Canada, recognizing that purchasers of Ontario prospectus-qualified securities may be entitled to certain rights and investor protections under the Act even if the investor is outside Canada.

If there is no concurrent distribution in Ontario but the issuer files an Ontario prospectus in connection with the distribution of securities to an investor outside Canada, the securities being distributed outside Canada will be qualified by the Ontario prospectus. In this case, the issuer or selling security holder would not be relying on the exemption from the prospectus requirement in section 2.2 of the Rule because a prospectus in Ontario is qualifying the distribution.

Resale

Securities distributed under an exemption from the prospectus requirement in section 2.1, 2.2, or 2.3 of the Rule are free trading.

The first trade of securities distributed under an exemption from the prospectus requirement in section 2.4 of the Rule is subject to a restricted period on resale. Refer to Appendix D of National Instrument 45-102 *Resale of Securities*.

The Multijurisdictional Disclosure System

Nothing in the Rule is intended to affect the guidance in section 4.3 of Companion Policy 71-101CP To National Instrument 71-101 *The Multijurisdictional Disclosure System*. An issuer relying on an exemption from the prospectus requirement in paragraph 2.1(a) of the Rule may file a Form F-10 in connection with a distribution solely in the United States of America under the multijurisdictional disclosure system adopted by the SEC, select Ontario as the review jurisdiction, file the registration statement filed with the SEC with the Commission contemporaneously with the filing of the registration statement with the SEC, obtain notification of clearance from the Commission and advise the SEC of the issuance of the notification of clearance. In this situation, the exemption in paragraph 2.1(a) of the Rule will be available once the Form F-10 has become effective.

PART 3 EXEMPTIONS FROM THE REGISTRATION REQUIREMENT

Section 25 of the Act and National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)* set out the general requirements for registration as well as certain exemptions from these requirements. The Companion Policy to NI 31-103 provides guidance to issuers and intermediaries on how to apply the triggers for registration as well as interpret the exemptions from these requirements.

Part 3 of the Rule provides an exemption from the dealer and underwriter registration requirements in Ontario securities law for certain foreign dealers (including dealers acting as underwriters) with respect to distributions to investors outside Canada that are made under a prospectus filed in Ontario or made in reliance on a prospectus exemption available under Ontario securities law, including the exemptions in Part 2 of the Rule. The registration exemption in section 3.1 may also be relied on by an entity that has its head office in Canada, is not registered as a dealer in Canada but is registered as a dealer (or exempt from registration) in the United States of America or a specified foreign jurisdiction. The exemption includes entities that have their head office in Canada to address the situation of certain foreign broker-dealer affiliates of Canadian firms that have no foreign offices and share space and personnel with the affiliated Canadian dealer.

The Commission reminds market participants that registration in Ontario is generally required (unless an exemption is otherwise available) where registerable activities are provided to investors in Ontario or where registerable activities are otherwise conducted within Ontario, regardless of the location of the investors.

The Commission recognizes that, in the case of a distribution of securities by an Ontario issuer to purchasers outside Canada, there may be a question as to whether foreign dealers or underwriters that participate in the distribution are subject to the dealer and underwriter registration requirements of Ontario securities law. The Commission has introduced the exemption in section 3.1 of the Rule to provide greater certainty to market participants and to help address the challenges that foreign dealers and underwriters may face in determining whether the dealer and underwriter registration requirements apply to their activities. The provision of these exemptions is not determinative of whether Ontario securities law would otherwise apply to the activities of the foreign dealer or underwriter related to the distribution. Foreign dealers and advisers may also wish to consider the registration exemptions in OSC Rule 32-505 *Conditional Exemption from Registration for United States Broker-Dealers and Advisers Servicing U.S. Clients from Ontario*.

The registration exemption in section 3.2 is intended to parallel the existing registration exemption in section 8.5 of NI 31-103 [*Trades to or through a registered dealer*], but broaden it to apply in circumstances where that exemption may not be available because it requires the trades to occur through a dealer that is registered (rather than relying on an exemption from registration). Issuers that distribute securities with regularity and for a business purpose may in certain circumstances be required to be registered. The companion policy to NI 31-103 provides guidance to issuers on how to apply the registration business trigger.

PART 4 FORM 72-503F

Issuers are required to file the information required by Form 72-503F *Report of Distributions Outside Canada* (the **Form**) electronically through the Commission's Electronic Filing Portal. The electronic filing requirement applies to all issuers that are subject to the Form's disclosure requirements. Please see OSC Rule 11-501 *Electronic Delivery of Documents to the Ontario Securities Commission* for further information.

APPENDIX A

The Commission is prepared to consider applications for exemptive relief in respect of distributions in a jurisdiction outside Canada that is not listed as a specified foreign jurisdiction in Appendix A of the Rule.

ANNEX D

PROPOSED AMENDMENTS TO
ONTARIO SECURITIES COMMISSION RULE 11-501
ELECTRONIC DELIVERY OF DOCUMENTS
TO THE ONTARIO SECURITIES COMMISSION

1. *Ontario Securities Commission Rule 11-501 Electronic Delivery of Documents to the Ontario Securities Commission is amended by this Instrument.*
2. *The second row below is added, immediately after the row containing "71-101F1", to Appendix A:*

Document Reference	Description of Document
72-503F	Form 72-503F <i>Report of Distributions Outside Canada</i>

3. This Instrument comes into force on •.