

Chapter 6

Request for Comments

6.1.1 Proposed OSC Rule 11-501 – Electronic Delivery of Documents to the Ontario Securities Commission and Proposed Consequential Policy Amendments

NOTICE AND REQUEST FOR COMMENT

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

AND

PROPOSED CONSEQUENTIAL POLICY AMENDMENTS

Introduction

The Ontario Securities Commission (the OSC, the Commission or we) are publishing for a 90 day comment period proposed OSC Rule 11-501 (the Proposed Rule), together with proposed consequential amendments to National Policies 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions*, 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* and 11-205 *Process for Designation of Credit Rating Agencies in Multiple Jurisdictions* (the Proposed Policy Amendments).

Substance and Purpose of the Proposed Rule and the Proposed Policy Amendments

The Proposed Rule would make electronic filing mandatory for a number of documents that may be currently filed with the Commission in paper format. The documents generally include the forms, notices and other materials required under Ontario's securities rules that are not covered already by SEDAR, SEDI and NRD, the CSA national electronic filing systems.

Electronic filing is a convenience to filers and would allow for the efficient collection and use of information by the OSC. For example, each year we receive more than 6,000 Reports of Exempt Distribution and more than 1,800 submissions of Form 31-103F1. We anticipate that mandatory electronic filing would:

- streamline the submission process and regulatory burden for market participants in Ontario;
- improve our data analysis, compliance and enforcement capabilities by requiring more reports in a machine-readable format; and
- reduce the effort and time required to process and analyze the documents, allowing the Commission to focus resources on more substantive matters.

We believe that requiring electronic filing would result in greater efficiencies than if electronic filing were simply a permitted option.

The Proposed Policy Amendments are consequential to the Proposed Rule.

Summary of the Proposed Rule and the Proposed Policy Amendments

Subsection 1(1) of the Proposed Rule sets out the definitions of "form filer" and "required document". The former expression refers to a person or company required or permitted by Ontario securities law to file or deliver a "required document". "Required documents" are those documents, information and material described in Appendix A of the Proposed Rule, together with other information, notices, forms and filings that are required to be submitted to the Commission by market participants or exempted entities under Ontario securities law. The documents referenced in Appendix A include documents filed by foreign issuers that are not required to file documents on SEDAR in accordance with section 2.1 of National Instrument 13-101 *System for Electronic Document Analysis and Retrieval*.

Initially, it is anticipated that many of the required documents will continue to be filed in unstructured format, typically PDF. Our intention is to migrate many of these documents to online web-based forms and structured data. At the time the rule becomes effective, we expect the following forms to be available only as online web-based forms:

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- Form 24-101F1 *Registered Firm Exception Report of DAP/RAP Trade Reporting and Matching*
- Form 31-103F1 *Calculation of Excess Working Capital*
- Form 45-106F1 *Report of Exempt Distribution*
- Form 45-501F1 *Report of Exempt Distribution*

Transitional details will be considered further, taking into account comments received.

The reference in Appendix A to “Applications, as defined in National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*” would mean that any application for relief or approval would have to be filed in electronic form, even if the relevant section number of the statutory provision, national instrument, rule or policy was not listed in Appendix A, such as:

- an application for written approval of the Director under section 38(3) of the *Securities Act*
- an application for an order or ruling under sections 74, 80, 104, 121(2), and 147 of the *Securities Act*
- an application under section 144 of the *Securities Act* to vary or revoke an earlier decision granting exemptive relief
- an application for consent to an amendment of an escrow agreement under section 8.1 of National Policy 46-201 *Escrow for Initial Public Offerings*
- an Ontario-only application under OSC Policy 2.1 Applications to the Ontario Securities Commission
- an application for an exemption under section 13.1 of National Instrument 51-102 *Continuous Disclosure Obligations* or other similar sections of national instruments and rules.

Subsection 2(1) of the Proposed Rule provides the obligation for a person or company to file required documents by electronic means, in accordance with system instructions on the OSC website.

Subsection 2(2) clarifies that this obligation does not apply to documents already filed electronically through SEDAR, SEDI or NRD, documents submitted under the OSC Rules of Procedure, or documents submitted in connection with enforcement investigations, compliance reviews or continuous disclosure reviews.

Section 3 of the Proposed Rule applies in the event of unanticipated technical difficulties. It provides that, in the case of unanticipated technical difficulties, a required document may simply be filed by email (within 2 business days after the day on which the filing was required) in the manner described in section 3. The document must also be filed electronically in the manner contemplated in section 2, no more than 3 business days after the resolution of the unanticipated technical difficulty. Section 3 contemplates that, in these circumstances, the filing deadline is effectively extended to the date subsequently filed under section 2.

Section 4 allows the Director to grant an exemption from the provisions of the Proposed Rule.

The Proposed Policy Amendments, relevant only in Ontario, are consequential to the Proposed Rule. The Proposed Policy Amendments, which are set out in Annex C, make cross-references to the Proposed Rule and to the url address contemplated in the Proposed Rule.

Legislative Authority for Rule Making

The rulemaking authority for the mandatory electronic transmission of documents is provided under paragraph 39 of subsection 143(1) of the *Securities Act*. Paragraph 39 authorizes the Commission to make rules requiring or respecting the media, format, preparation, form content, execution, certification, dissemination and other use, filing and review of documents required under or governed by the Act, regulation or rules (and all documents determined by the regulations and rules to be ancillary to the documents).

Alternatives Considered

While providing for the voluntary electronic transmission of documents has been facilitated in the past (for example, Form 45-106F1), for reasons set out above we are of the view that providing for the mandatory electronic transmission of documents is appropriate. Making electronic transmission mandatory requires the exercise of rule-making authority.

Unpublished Material

The Commission did not rely on any unpublished study, report or other written materials in connection with the Proposed Materials.

Amendments Proposed under Subsection 143(3) of the Act

If the Proposed Rule goes forward, we propose to amend Ontario Regulation 1015 under subsection 143(3) of the Act. Specifically,

1. Subsection 3(1.2) of Ontario Regulation 1015 would be repealed,
2. Section 4 of Ontario Regulation 1015 would be amended by replacing “shall be marked “Confidential” and placed in an envelope addressed to the Secretary marked “Confidential – s. 75”” with “shall be designated as confidential and refer to section 75 of the Act”,
3. The text underlined below would be added to the preamble of section 161 of Ontario Regulation 1015 as follows:

“161. Except as otherwise provided in the Act, section 11, 174 or 181 of this Regulation, Ontario Securities Commission Rule 11-501 *Electronic Delivery of Documents to the Ontario Securities Commission*, Ontario Securities Commission Rule 55-502 *Facsimile Filing or Delivery of Section 109 Reports*, National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)* or National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers, ...*”

Impact on Investors

This initiative does not directly affect investors. However, the better use of information that we seek to achieve under the Proposed Rule will help us better fulfill our investor protection mandate. We also anticipate that these changes will facilitate our ability to provide access to public records not filed through the CSA National Systems.

Anticipated Costs and Benefits

We believe that the impact of this initiative on market participants is proportionate to the benefits we seek. This initiative will provide benefits by automating processes that were previously manual (such as manual data entry and validation checks), streamlining processes at the Commission. The OSC will incur system development costs in implementing electronic filing, which will be paid for from existing OSC sources of funds.

While some market participants will incur costs in transitioning from existing paper filing processes to electronic filing, we anticipate that, in the long run, this initiative will streamline filing processes for market participants, improve the quality of submissions and reduce the volume of physical correspondence between market participants and the OSC.

Request for Comments

We welcome your comments on the Proposed Materials.

Please submit your comments in writing on or before July 10, 2013. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format) to:

The Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
comments@osc.gov.on.ca

We cannot keep submissions confidential because there is a statutory requirement for publication of a summary of the written comments received during the comment period.

Contents of Annexes

Annex A contains the text of the Proposed Rule.

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Annex B contains additional operational considerations and standards that relate to electronic filing on the OSC website. These will be posted on the OSC website and may be updated from time to time.

Annex C contains the text of the Proposed Policy Amendments.

Questions

Please refer your questions to any of the following:

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ANNEX A

THE PROPOSED RULE

Interpretation

1. (1) In this Rule

“form filer” means a person or company required or permitted by Ontario securities law to file a required document with the Ontario Securities Commission;

“NRD” has the meaning ascribed to it in National Instrument 31-102 *National Registration Database*;

“required document” means

- (a) a document listed in Appendix A; or
- (b) any other document required to be filed with the Ontario Securities Commission under Ontario securities law by
 - (i) a market participant, or
 - (ii) another person or company exempted from a requirement of Ontario securities law by reason of section 147 of the Act or an application otherwise provided for in Ontario securities law;

“SEDAR” has the meaning ascribed to it in National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*;

“SEDI” has the meaning ascribed to it in National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)*.

(2) In this Rule, unless the context otherwise requires, “document” includes “information”, “material” and “notice” as those words are used in Ontario securities law.

(3) In this Rule, a reference to a document that is required or permitted to be filed includes a document that is required or permitted to be deposited or filed with, or delivered, furnished, sent, provided or submitted to, the Ontario Securities Commission under Ontario securities law.

(4) The transmission of a document in electronic format to the Ontario Securities Commission under section 2 of this Rule constitutes

- (a) if the document is required or permitted to be filed under Ontario securities law, the filing of that document under Ontario securities law; and
- (b) if the document is required or permitted to be delivered, furnished, provided or submitted to the Ontario Securities Commission under Ontario securities law, the delivery of that document.

Electronic filing

2. (1) Each required document of a person or company must be transmitted to the Ontario Securities Commission electronically by the person or company following the steps set out at <https://www.osc.gov.on.ca/filings>.

(2) Subsection 2(1) does not apply to any required document that is

- (a) filed through SEDAR, SEDI or NRD;
- (b) filed under the Ontario Securities Commission Rules of Procedure; or
- (c) filed under Part VI or Part VII of the Securities Act.

Temporary technical difficulties exemption

3. (1) If unanticipated technical difficulties prevent the timely transmission of an electronic filing of a required document, the form filer may file the document by e-mail as soon as practical and in any event no later than 2 business days after the day on which the filing was required.

(2) A filing under subsection (1) must include the following legend at the top of the first page:

THIS REPORT IS BEING FILED UNDER A TEMPORARY TECHNICAL DIFFICULTIES
EXEMPTION

(3) In addition to filing under subsection (1), a copy of each completed required document of a form filer must be filed under section 2 as soon as practical after the unanticipated technical difficulty has been resolved and in any event no later than 3 business days after the filing has been made by email.

(4) If a document is filed as required under this section, the date by which the document is required to be filed under Ontario securities law is deemed to be the date on which the document is filed electronically under section 2.

Exemption

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

Appendix A

Document Reference	Description of Document
Securities Act, s. 1(10)	Applications to the Commission under clause 1(10) of the <i>Securities Act</i>
Securities Act, s. 1(11)	Applications to the Commission under clause 1(11) of the <i>Securities Act</i>
Securities Act, Part VIII	Applications to the Commission for recognition or designation under Part VIII of the <i>Securities Act</i>
Securities Act, s. 21.4	Applications to the Commission for the voluntary surrender of a recognition or designation under section 21.4 of the <i>Securities Act</i>
Securities Act, s. 75(3) 51-102, s. 7.1(2)	Confidential material change reports permitted to be filed under subsection 75(3) of the <i>Securities Act</i> and subsection 7.1(2) of National Instrument 51-102 <i>Continuous Disclosure Obligations</i>
Securities Act, s. 75(4) 51-102, s. 7.1(5)	The notification required under subsection 75(4) of the <i>Securities Act</i> and subsection 7.1(5) of National Instrument 51-102 <i>Continuous Disclosure Obligations</i>
Securities Act, Part XXIII.1	Notices and other documents to be sent to the Commission under Part XXIII.1 of the <i>Securities Act</i>
Securities Act, s. 144	Applications to the Commission to vary or revoke a recognition or designation granted under Part VIII of the <i>Securities Act</i>
11-202	Pre-filings or waiver applications within the meaning of National Policy 11-202 <i>Process for Prospectus Reviews in Multiple Jurisdictions</i>
11-203	Pre-filings, as defined in National Policy 11-203 <i>Process for Exemptive Relief Applications in Multiple Jurisdictions</i>
11-203	Applications, as defined in National Policy 11-203 <i>Process for Exemptive Relief Applications in Multiple Jurisdictions</i>
11-205	Applications to become Designated Rating Organization, under the process set out in National Policy 11-205 <i>Process for Designation of Credit Rating Organizations in Multiple Jurisdictions</i>
12-202	Applications to vary or revoke a CTO as defined in National Policy 12-202 <i>Revocation of a Compliance-related Cease Trade Order</i>
13-101 s.2.1	Documents to be filed with the Commission by issuers not required to comply with National Instrument 13-101 <i>System for Electronic Document Analysis and Retrieval</i> in accordance with section 2.1 of that Instrument
13-101 s.2.3	Documents to be filed with the Commission in paper format under section 2.3 of National Instrument 13-101 <i>System for Electronic Document Analysis and Retrieval</i>
13-502F4	Form 13-502F4 <i>Capital Markets Participation Fee Calculation</i>
13-502F5	Form 13-502F5 <i>Adjustment of Fee for Registrant Firms and Unregistered Exempt International Firms</i>
13-503F1	Form 13-503F1 <i>Capital Markets Participation Fee Calculation (Firms registered only under the Commodity Futures Act)</i>
13-503F2	Form 13-503F2 <i>Adjustment of Fee for Registrant Firms registered only under the Commodity Futures Act</i>
13-508F8	Form 13-508F8 <i>Designated Rating Organizations – Participation Fee</i>
21-101F1	Form 21-101F1 <i>Information Statement Exchange or Quotation and Trade Reporting System</i>
21-101F2	Form 21-101F2 <i>Initial Operation Report Alternative Trading System</i>
21-101F3	Form 21-101F3 <i>Quarterly Report of Alternative Trading System Activities</i>

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Document Reference	Description of Document
21-101F4	Form 21-101F4 <i>Cessation of Operations Report for Alternative Trading System</i>
21-101F5	Form 21-101F5 <i>Initial Operation Report for Information Processor</i>
21-101F6	Form 21-101F6 <i>Cessation of Operations Report for Information Processor</i>
24-101F1	Form 24-101F1 <i>Registered Firm Exception Report of DAP/RAP Trade Reporting and Matching</i>
24-101F2	Form 24-101F2 <i>Clearing Agency - Quarterly Operations Report of Institutional Trade Reporting and Matching</i>
24-101F3	Form 24-101F3 <i>Matching Service Utility - Notice of Operations</i>
24-101F4	Form 24-101F4 <i>Matching Service Utility - Notice of Cessation of Operations</i>
24-101F5	Form 24-101F5 <i>Matching Service Utility - Quarterly Operations Report of Institutional Trade Reporting and Matching</i>
25-101F1	Form 25-101F1 <i>Designated Rating Organization Application and Annual Filing</i>
25-101F2	Form 25-101F2 <i>Submission to Jurisdiction and Appointment of Agent for Service of Process</i>
31-103 s. 12.2	Notice of repayment or termination of subordination agreement pursuant to section 12.2 of National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i>
31-103 s. 12.7	Notice of change, claim or cancellation of insurance policy pursuant to section 12.7 of National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i>
31-103F1	Form 31-103F1 <i>Calculation of Excess Working Capital</i> , together with associated financial information as required by sections 12.12, 12.13 and 12.14 of National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i>
31-103F2	Form 31-103F2 <i>Submission to Jurisdiction and Appointment of Agent for Service</i>
31-103F3	Form 31-103F3 <i>Use of Mobility Exemption</i>
31-317	CSA Staff Notice: 31-317 (Revised) <i>Reporting Obligations Related to Terrorist Financing</i>
32-102F1	Form 32-102F1 <i>Submission to Jurisdiction and Appointment of Agent for Service for International Investment Fund Manager</i>
32-102F2	Form 32-102F2 <i>Notice of Regulatory Action</i>
33-109F5	Form 33-109F5 <i>Change of Registration Information</i>
33-109F6	Form 33-109F6 <i>Firm Registration</i>
33-506F6	Form 33-506F6 <i>Firm Registration (Commodity Futures Act)</i>
35-101F1	Form 35-101F1 <i>Form of Submission to Jurisdiction and Appointment of Agent for Service of Process by Broker-Dealer</i>
35-101F2	Form 35-101F2 <i>Form of Submission to Jurisdiction and Appointment of Agent for Service of Process by Agents of the Broker-Dealer</i>
43-101F1	Form 43-101F1 <i>Technical Report</i>
45-101F	Form 45-101F <i>Information Required in a Rights Offering Circular</i>
45-101 s. 3.1(1)2	A statement of the issuer sent pursuant to paragraph 2 of subsection 3.1(1) of National Instrument 45-101 <i>Rights Offerings</i>

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Document Reference	Description of Document
45-101 s.10.1(2)	Notice to the Commission sent pursuant to subsection 10.1(2) of National Instrument 45-101 <i>Rights Offerings</i>
45-106F1	Form 45-106F1 <i>Report of Exempt Distribution</i>
45-106 s.2.42(2)(a)	Notice to the Commission given pursuant to paragraph 2.42(2)(a) of National Instrument 45-106 <i>Prospectus and Registration Exemptions</i>
45-106 s.4.1(4)	Letters filed with the Commission pursuant to subsection 4.1(4) of National Instrument 45-106 <i>Prospectus and Registration Exemptions</i>
45-501F1	Form 45-501F1 <i>Report of Exempt Distribution</i>
45-501 s.5.4	Delivery of an offering memorandum or any amendment to a previously delivered offering memorandum in accordance with section 5.4 of OSC Rule 45-501 <i>Ontario Prospectus and Registration Exemptions</i>
71-101F1	Form 71-101F1 <i>Forms of Submission to Jurisdiction and Appointment of Agent for Service of Process</i>
•	OTC Derivative Trade Reporting (not already reported to repository)
Business Corporations Act, s. 1(6)	Applications to the Commission under subsection 1(6) of the <i>Business Corporations Act</i>
Business Corporations Act, s. 46(4)	Applications to the Commission under subsection 46(4) of the <i>Business Corporations Act</i>
Business Corporations Act, s. 113	Applications to the Commission under section 113 of the <i>Business Corporations Act</i>
Business Corporations Act, s. 158(1.1)	Applications to the Commission under subsection 158(1.1) of the <i>Business Corporations Act</i>
Business Corporations Act, s. 190(6)	Applications to the Commission under subsection 190(6) of the <i>Business Corporations Act</i>
Ont. Reg. 289/00 made under the Business Corporations Act, s. 4(b)	Applications to the Commission for consents under subsection 4(b) of Ont. Reg. 289/00 made under the <i>Business Corporations Act</i>
Loan and Trust Corporations Act, s. 213(3)(b)	Applications to the Commission for approvals under subsection 213(3)(b) of the <i>Loan and Trust Corporations Act</i>

ANNEX B

**PROPOSED OPERATIONAL CONSIDERATIONS AND STANDARDS
THAT RELATE TO ELECTRONIC FILING UNDER ONTARIO SECURITIES COMMISSION RULE 11-501
*ELECTRONIC DELIVERY OF DOCUMENTS TO THE ONTARIO SECURITIES COMMISSION***

1. Required documents may be transmitted to the Ontario Securities Commission on any business day between the hours of 7:00a.m. and 11:00p.m. Eastern Time. Electronic filings may also be transmitted outside of those business hours if the system is not shut down for regular maintenance or for any other reasons.
2. Technical support will be available on any business day between the hours of 8:30 a.m. and 5:00 p.m. local time.
3. A document filed in electronic format is, for purposes of securities legislation, filed on the day that the electronic transmission of the document is completed.
4. Although the obligation to file electronically falls on the person or company (defined as the "form filer") required or permitted by Ontario securities law to file an Appendix A document, the person or company may use an agent, such as its legal counsel, to file the document on its behalf.
5. The system may not accept files larger than 20 MB. Please contact ● for direction on how to file a document that exceeds 20 MB.
6. The instrument provides a temporary exemption in the event a technical difficulty prevents the form filer from filing electronically. To use the exemption, the form filer must file the applicable document and consent by email to ● within two business days. Once the technical difficulty is resolved and, in any event, within three business days of filing by email, the form filer is required to file the document electronically using the system. The fees payable for filing the applicable document should be paid at the time the form filer files the document electronically using the system.

ANNEX C

THE PROPOSED POLICY AMENDMENTS

Proposed Policy Amendment in Ontario to
National Policy 11-202 Process for Prospectus Reviews in Multiple Jurisdictions

1. **Section 8.1 of National Policy 11-202 Process for Prospectus Reviews in Multiple Jurisdictions is changed by adding the following after subsection 8.1(1):**

(1.1) Despite subsection (1), in Ontario prefilings and waiver applications are submitted in accordance with Ontario Securities Commission Rule 11-501 *Electronic Delivery of Documents to the Ontario Securities Commission*.

2. **Section 1 becomes effective • 2013.**

Proposed Policy Amendment in Ontario to
National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions

1. **Section 5.5 of National Policy 11-203 Process for Exemptive Relieve Applications in Multiple Jurisdictions is changed by replacing “applications@osc.gov.on.ca” with “https://www.osc.gov.on.ca/filings”.**

2. **Section 1 becomes effective •, 2013.**

Proposed Policy Amendment in Ontario to
National Policy 11-205 Process for Designation of Credit Rating Organizations in Multiple Jurisdictions

1. **Section 13 of National Policy 11-205 Process for Designation of Credit Rating Organizations in Multiple Jurisdictions is changed by replacing “applications@osc.gov.on.ca” with “https://www.osc.gov.on.ca/filings”.**

2. **Section 1 becomes effective •, 2013.**