

Chapter 5

Rules and Policies

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

NOTICE OF COMMISSION APPROVAL OF
ONTARIO SECURITIES COMMISSION RULE 11-501
ELECTRONIC DELIVERY OF DOCUMENTS TO THE ONTARIO SECURITIES COMMISSION
AND
CONSEQUENTIAL POLICY AMENDMENTS

October 31, 2013

Introduction

On October 22, 2013, the Ontario Securities Commission (the OSC, the Commission or we) made as a rule under the *Securities Act*, OSC Rule 11-501 *Electronic Delivery of Documents to the Ontario Securities Commission* (the Rule), and adopted 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 Policy Amendments).

The Rule, Policy Amendments and other required materials were delivered to the Minister of Finance on October 30, 2013. If the Minister approves the Rule or does not take any further action by December 30, 2013, the Rule will come into force on February 19, 2014. The Policy Amendments will come into force on the same date as the Rule.

Substance and Purpose

The Rule will make electronic filing mandatory for a number of documents that are 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 will:

- 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.

Initially 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:

- Form 21-101F3 *Quarterly Report of Marketplace Activities*
- 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*

- Applications for Exemptive Relief and Pre Files

These forms are currently available on the OSC website either to the general public on a voluntary basis, or to select market participants on a 'pilot' testing basis. We anticipate that the online filing portal will be available on a voluntary basis for all users by January 10, 2014 with electronic filing becoming mandatory on February 19, 2014.

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.

The Policy Amendments, relevant only in Ontario, are consequential to the Rule. The Policy Amendments make cross-references to the Rule and to the URL address contemplated in the Rule.

For additional background, please refer to the notice and request for comment we published with the proposed Rule on April 11, 2013.

Comments Received

After we published the proposed Rule for comment on April 11, 2013, we received submissions from two commenters. We have considered the comments received and thank all of the commenters for their input. The names of commenters and a summary of their comments, together with our responses, are contained in Annex A of this notice. Copies of the comment letters are available on the Commission's website at www.osc.gov.on.ca.

We also conducted a voluntary testing process for some of the electronic forms noted above seeking specific feedback from filing agents and market participants. The web-based Report of Exempt Distribution form has been available on a voluntary basis since June 2012.

We have made a number of changes to the electronic forms and filing process based on comments noted above and other informal comments received during the testing process. We anticipate continuing the testing and further refining the filing process to reflect market participant and Commission needs going forward.

Summary of Changes to the Rule

We have made some revisions to the materials that were published for comment. Those revisions are reflected in the Rule. As these changes are not material, we are not republishing the Rule for a further comment period.

In particular, we added a definition of "deliver to" to clarify that this Rule will not affect the existing interpretation of the term "filed" as contemplated in the Act and discussed in OSC Policy 13-601. We have also updated Appendix A of the Rule to itemize other documents that would have been captured as "required documents" but were not listed in this appendix.

Amendments to Ontario Regulation 1015 under Subsection 143(3) of the Securities Act

Concurrently with the Rule, the Commission has made a regulation (the Regulation) to amend Ontario Regulation 1015 under subsection 143(3) of the *Securities Act*.

Subject to Ministerial approval, the Regulation comes into force on the later of (a) the day the Regulation is filed; and (b) the day that the Rule comes into force.

Final Materials

The Rule is set out in Annex B. The Policy Amendments are set out in Annex C. The Regulation is set out in Annex D.

Questions

Please refer your questions to any of the following:

Alina Bazavan
Data Analyst
Market Regulation
416-593-8082
abazavan@osc.gov.on.ca

Michael Denyszyn
Senior Legal Counsel
Compliance & Registrant Regulation
416-595-8775
mdenyszyn@osc.gov.on.ca

Rules and Policies

Robert Galea
Legal Counsel
General Counsel's Office
416-593-2321
rgalea@osc.gov.on.ca

Jo-Anne Matear
Manager
Corporate Finance
416-593-2323
jmatear@osc.gov.on.ca

Darren McCall
Manager
Investment Funds Branch
416-593-8118
dmckall@osc.gov.on.ca

Paul Redman
Principal Economist
Strategy & Operations
416-593-2396
predman@osc.gov.on.ca

Annex A
List of Commenters and Response to Comments

List of Commenters

Borden Ladner Gervais LLP
Osler, Hoskin & Harcourt LLP

Response to Comments

Item	Issue	Commission's Response
1.	Both commenters were supportive of the OSC's efforts to improve data analysis capabilities, but concerned about the administrative effort and regulatory burden of the initiative – in particular the Report of Exempt Distribution electronic form (the 45-106F1 eform).	<p>We acknowledge that the transition from existing paper filing processes to electronic filing may result in additional burden for some market participants but believe that the impact is proportionate to the benefits we seek, including automating processes that were previously manual, improving the quality of submissions and reducing the volume of physical correspondence between market participants and the OSC.</p> <p>We have taken a number of steps (including the specific steps identified below) to streamline the filing process for the 45-106F1 eform and other electronic forms. We intend to continue to seek out feedback from filing agents and market participants to further improve the filing process going forward.</p>
2.	One commenter noted that the 45-106F1 eform may not result in submissions that are of higher quality than those made in paper form.	In our experience to date with voluntary filings made using this form, we have found that submissions made using the electronic form are more accurate and of higher quality than those submissions made in paper form.
3.	To ease the administrative effort involved in completing the 45-106F1 eform, one commenter suggested that the form be changed to allow it to be prepared offline.	<p>The majority of the information in this form may be prepared offline in the commissions and finder's fee template worksheet (Item 8) and Schedule I.</p> <p>We have also added the ability to save the form 'in progress' to allow for additional collaboration.</p>
4.	The OSC should eliminate the need for electronic and paper submission for each 45-106F1 eform filing by allowing for electronic payment of filing fees rather than maintaining the requirement to pay filing fees by cheque.	We agree, and will be implementing online payment of these filing fees by debit and credit card. We intend to continue to assess alternative payment mechanisms in future years.
5.	Both commenters expressed concern about the use of online web-based forms that would apply in Ontario only and expressed a desire to allow for the same form of document to be delivered or filed in all CSA jurisdictions.	The OSC is committed to the CSA's initiative to replace the core CSA national systems, including SEDAR, and will work closely with the CSA to develop harmonized web-based forms as part of this initiative. In the interim, we have changed the 45-106F1 eform so that the completed form can be printed in a format substantially similar to the paper form. We have initiated discussions with the other CSA jurisdictions (except British Columbia, which generally requires its own report of exempt distribution) to determine whether they will accept a print out of the completed 45-106F1 eform to be filed in lieu of the paper form and expect to provide further guidance before the date electronic filing becomes mandatory.

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Item	Issue	Commission's Response
6.	One commenter noted that the information set forth in Schedule I to the 45-106F1 eform is highly personal and in the case of non-individual investors, may also constitute proprietary information. The commenter expressed the belief that it is extremely important for the protection of personal privacy and proprietary information that the OSC respond to freedom of information access requests for this information by providing the requesting party with data in paper format only.	We anticipate continuing to respond to freedom of information access requests for this information by providing the information in paper format. In all cases, access will be subject to the personal privacy and confidential business information exemptions in freedom of information legislation.

ANNEX B

THE RULE

Interpretation

1. (1) In this Rule

“form filer” means a person or company required or permitted by Ontario securities law to file or deliver 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 or delivered to 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 delivered includes a document that is required or permitted to be deposited 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 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 or delivered through SEDAR, SEDI or NRD;
- (b) filed or delivered under the Ontario Securities Commission Rules of Procedure; or
- (c) filed or delivered under Part V, Part VI or Part VII of the Securities Act.

Temporary technical difficulties exemption

3. (1) If unanticipated technical difficulties prevent the timely transmission of a required document, the form filer may transmit 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 or delivery under subsection (1), a copy of each completed required document of a form filer must be transmitted 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 resolution of the technical difficulties.

(4) If a document is filed or delivered as required under this section, the date by which the document is required to be filed or delivered 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.

Effective Date

5. This Rule comes into force on February 19, 2014.

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), 81-106, s. 11.2(4)	Confidential material change reports permitted to be filed under subsection 75(3) of the <i>Securities Act</i> , subsection 7.1(2) of National Instrument 51-102 <i>Continuous Disclosure Obligations</i> , or subsection 11.2(2) of NI 81-106 <i>Investment Fund Continuous Disclosure</i>
Securities Act, s. 75(4) 51-102, s. 7.1(5), 81-106, s. 11.2(4)	The notification required under subsection 75(4) of the <i>Securities Act</i> , subsection 7.1(5) of NI 51-102 <i>Continuous Disclosure Obligations</i> , or subsection 11.2(4) of NI 81-106 <i>Investment Fund Continuous Disclosure</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>
13-502F8	Form 13-502F8 <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>

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Document Reference	Description of Document
21-101F3	Form 21-101F3 <i>Quarterly Report of Alternative Trading System Activities</i>
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. 11.9	Notice of acquisition pursuant to section 11.9 of National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</i>
31-103 s. 11.10	Notice of acquisition pursuant to section 11.10 of National Instrument 31-103 <i>Registration Requirements, Exemptions and Ongoing Registrant Obligations</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>
33-506F5	Form 33-506F5 <i>Change of Registration Information (Commodity Futures Act)</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>

Document Reference	Description of Document
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>
45-101 s.10.1	Notice and materials sent pursuant to subsection 10.1 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>
81-102 s. 5.8(3)	Notice to the Commission by a manager under subsection 5.8(3) of National Instrument 81-102 <i>Mutual Funds</i>
81-102 s. 6.7(3)	Delivery of custodian compliance reports under subsection 6.7(3) of National Instrument 81-102 <i>Mutual Funds</i>
81-102 s. 12.1(2), 12.1(3)	Compliance reports under subsection 12.1(2) or 12.1(3) of National Instrument 81-102 <i>Mutual Funds</i>
81-106 s. 2.11(c)	Notice to the Commission that a mutual fund is relying on the exemption not to file its financial statements in section 2.11 of National Instrument 81-106 <i>Investment Fund Continuous Disclosure</i>
91-507, Part 4	OTC Derivative Trade Reporting (not already reported to repository) pursuant to Part 4 of OSC Rule 91-507 <i>Trade Repositories and Derivatives Data Reporting</i>
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>

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Document Reference	Description of Document
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 C

THE POLICY AMENDMENTS

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 February 19, 2014.**

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 Relief 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 February 19, 2014.**

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 February 19, 2014.**

ANNEX D

ONTARIO REGULATION

made under the

SECURITIES ACT

Amending Reg. 1015 of R.R.O. 1990 (General)

Note: Regulation 1015 has previously been amended. For the legislative history of the Regulation, see the Table of Consolidated Regulations -- Detailed Legislative History at www.e-Laws.gov.on.ca.

1. **Subsection 3(1.2) of Regulation 1015 is revoked.**
2. **Section 4 of Regulation 1015 is amended by striking out “shall be marked “Confidential” and placed in an envelope addressed to the Secretary marked “Confidential – s. 75”” and substituting “shall be designated as confidential and refer to section 75 of the Act”,**
3. **Section 161 of Regulation 1015 is amended by striking out the portion before clause (a) and substituting the following:**

*“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*,”*
4. **This Regulation comes into force on the later of,**
 - (a) **the day this Regulation is filed; and**
 - (b) **the day that the rule made by the Ontario Securities Commission entitled “Ontario Securities Commission Rule 11-501 *Electronic Delivery of Documents to the Ontario Securities Commission*” comes into force.**