5.1.2 Notice of Amendments to OSC Rule 45-501 Ontario Prospectus and Registrations Exemptions and NI 45-106 Prospectus Exemptions

NOTICE OF AMENDMENTS TO
ONTARIO SECURITIES COMMISSION RULE 45-501 *ONTARIO PROSPECTUS AND REGISTRATION EXEMPTIONS*
AND
NATIONAL INSTRUMENT 45-106 *PROSPECTUS EXEMPTIONS*

Introduction
The Ontario Securities Commission (OSC) is implementing amendments (the Rule Amendments) to:

- Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions* (OSC Rule 45-501), and
- An Ontario-specific requirement in National Instrument 45-106 *Prospectus Exemptions* (NI 45-106).

On April 25, 2013, the OSC published for comment proposed amendments (the Proposed Amendments) to OSC Rule 45-501 and NI 45-106. On June 16, 2015, the OSC made the Rule Amendments pursuant to section 143 of the *Securities Act* (Ontario) (the Act).

The Rule Amendments were delivered to the Minister of Finance on June 23, 2015. The Minister of Finance may approve or reject the Rule Amendments or return them for further consideration. If the Minister approves the Rule Amendments or does not take any further action by August 24, 2015, the Rule Amendments will come into force on September 8, 2015.

The amending instruments are set out at Annexes A and B to this notice.

Substance and purpose of the amendments
The main purpose of the Rule Amendments is to amend requirements related to specific items of disclosure required to be included in an offering memorandum in the context of foreign private placements offered to sophisticated investors in Ontario.

The Rule Amendments are intended to provide relief from certain Ontario-specific disclosure requirements that are typically included in a "wrapper" to a foreign offering document, when foreign securities are offered on a private placement basis in Canada. By removing these disclosure requirements, the goal is to facilitate the participation in foreign securities offerings by sophisticated Canadian investors that qualify as permitted clients.

Background
When a foreign offering document is used to distribute securities in Ontario, it falls under the definition of an "offering memorandum" under the Act. As a result, certain items of Ontario-specific disclosure must be included in the offering document before it can be provided to prospective purchasers. In order to have the prescribed Ontario disclosure included in the foreign offering document, the foreign document may either be amended to include the Ontario disclosure, or more commonly, a supplemental document known as a "wrapper" is prepared and attached to the face of the foreign offering document. The wrapper, together with the foreign offering document, form a single Ontario offering memorandum for the purposes of offering securities in Ontario.

Additional background information about the Proposed Amendments is available in the notice and request for comment that was published on April 25, 2013.

Prior exemptive relief decisions granted

Prior to publication of the Proposed Amendments, a number of Canadian and foreign dealers applied for and obtained time-limited exemptive relief from the OSC with respect to the disclosure requirements that are the subject of the Proposed Amendments. At the time the Proposed Amendments were published for comment, the OSC stated that it intended to make rule amendments to place all market participants in the same position as those that obtained exemptive relief orders.

Summary of changes to the proposed amendments

After considering the comments received on the Proposed Amendments, we have made some revisions to the Proposed Amendments. Those revisions are reflected in the Rule Amendments being published today. As these changes are not material, we are not republishing the Rule Amendments for a further comment period.

A summary of notable changes between the Proposed Amendments and the Rule Amendments is set out in Annex C.

Summary of written comments received

The comment period for the Proposed Amendments ended on July 24, 2013. We received written submissions on the Proposed Amendments from nine commenters. We have considered the comments received and thank all of the commenters for their comments. The names of the commenters are contained in Annex D and a summary of their comments, together with our responses, is contained in Annex E. The comment letters can be viewed on the OSC website at www.osc.gov.on.ca.

Related amendments

Certain other CSA jurisdictions are also intending to publish amendments to similar requirements in local legislation as the requirements addressed by the Proposed Amendments.

In addition, the CSA is also publishing today notice of amendments to National Instrument 33-105 *Underwriting Conflicts* (NI 33-105) to provide for an exemption from certain disclosure requirements in NI 33-105 that would otherwise also be included in a wrapper. The purpose of the NI 33-105 amendments is the same as the Proposed Amendments, namely to facilitate the participation in foreign securities offerings by sophisticated Canadian investors that qualify as permitted clients. For more information about these related amendments, please see the CSA Notice being published today.

Questions

Please refer your questions to any of:

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Attachments

Annex A – Amendments to Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions*
Annex B – Amendments to National Instrument 45-106 *Prospectus Exemptions*
Annex C – Summary of changes to the proposed amendments
Annex D – List of commenters
Annex E – Summary of comments and responses

Annex A
Amendments to Ontario Securities Commission Rule 45-501
Ontario Prospectus and Registration Exemptions
Ontario amendment instrument

1. Ontario Securities Commission Rule 45-501 Ontario Prospectus and Registration Exemptions is amended by this Instrument.

2. Section 1.1 is amended by

(a) adding the following definition:

"eligible foreign security" means a security offered primarily in a foreign jurisdiction as part of a distribution of securities in either of the following circumstances:

(a) the security is issued by an issuer

(i) that is incorporated, formed or created under the laws of a foreign jurisdiction,

(ii) that is not a reporting issuer in a jurisdiction of Canada,

(iii) that has its head office outside of Canada, and

(iv) that has a majority of the executive officers and a majority of the directors ordinarily resident outside of Canada;

(b) the security is issued or guaranteed by the government of a foreign jurisdiction; **,**

(b) adding the following paragraph to the definition of "executive officer":

(a.1) a chief executive officer or chief financial officer, **,**

and

(c) adding the following definition:

"permitted client" has the same meaning as in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*; **.**

3. The Instrument is amended by adding the following section:

5.3.1. – (1) Alternative compliance with description of rights in an offering memorandum – If a seller delivers an offering memorandum to a prospective purchaser that is a permitted client in connection with a distribution of an eligible foreign security, the requirement in section 5.3 to disclose the rights referred to in section 130.1 of the Act will be considered to have been satisfied if a specified disclosure statement is made in one of the following:

(a) the offering memorandum;

(b) a document delivered to the permitted client which accompanies, but is not part of, the offering memorandum;

(c) a written notice that:

(i) has been delivered to the permitted client by a registered dealer or an international dealer that proposes to make future distributions of securities to the permitted client; and

(ii) which contains a statement to the effect that the disclosure will apply to all future distributions.

(2) For the purpose of subsection (1), a specified disclosure statement must be in the following form or a substantively similar form:

(a) if the statement is made in a document referred to in paragraph 1(a),

> *Securities legislation in certain provinces or territories of Canada may provide a purchaser with remedies for rescission or damages if the offering memorandum (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by the purchaser within the time limit prescribed by the securities legislation of the purchaser's province or territory. The purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province or territory for particulars of these rights or consult with a legal advisor;*

(b) if the statement is made in a document referred to in paragraph (1)(b) or (1)(c),

> *If, in connection with a distribution of an eligible foreign security as defined in Ontario Securities Commission Rule 45-501 Ontario Prospectus and Registration Exemptions, we deliver to you an offering document that constitutes an offering memorandum under applicable securities laws in Canada, you may have, depending on the province or territory of Canada in which the trade was made to you, remedies for rescission or damages if the offering memorandum (including any amendment thereto) contains a misrepresentation, provided that the remedies for rescission or damages are exercised by you within the time limit prescribed by the securities legislation of your province or territory. You should refer to any applicable provisions of the securities legislation of your province or territory for the particulars of these rights or consult with a legal advisor.* **.**

4. The Instrument is amended by adding the following section:

5.5 – Exemption from Listing Representation Requirements – Subsection 38(3) of the Act does not apply to any representation made in an offering memorandum in connection with a distribution of an eligible foreign security if all of the following apply:

(a) each purchaser of the security is a permitted client;

(b) the representation does not contain a misrepresentation;

(c) the representation is made in compliance with the by-laws and rules of the exchange or quotation and trade reporting system referred to in the representation.

5.6 Application – Sections 5.3.1 and 5.6 do not apply if a prospectus has been filed with a Canadian securities regulatory authority in connection with the distribution. **.**

5. Section 7.1 is replaced by the following:

7.1 Exemption – The Director may grant an exemption to Part 6, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption. **.**

6. Item 9 of Form 45-501F1 is replaced with the following:

Item 9: If a distribution is made to one or more individuals in Ontario, include the attached "Authorization of Indirect Collection of Personal Information for Distribution in Ontario". **.**

7. This Instrument comes into force on September 8, 2015.

Annex B
Amendments to National Instrument 45-106 *Prospectus Exemptions*
Ontario amendment instrument

1. National Instrument 45-106 Prospectus Exemptions is amended by this Instrument.

2. Item 9 of Form 45-106F1 is replaced by the following:

Item 9: If a distribution is made to one or more individuals in Ontario, include the attached "Authorization of Indirect Collection of Personal Information for Distribution in Ontario". The "Authorization of Indirect Collection of Personal Information for Distributions in Ontario" is only required to be filed with the Ontario Securities Commission. **.**

3. This Instrument comes into force on September 8, 2015.

Annex C
Summary of changes to the proposed amendments

The following is a summary of notable changes between the Proposed Amendments and the Rule Amendments.

A. *Definition of "designated foreign security"*

The definition of "designated foreign security" in the Proposed Amendments was changed in a couple of respects. The term itself was changed to "eligible foreign security". This change was made to avoid confusion as to whether the OSC had in fact "designated" certain securities as benefiting from the relief.

In addition to minor drafting changes, the definition was amended to remove the reference to the "principal executive office" being outside of Canada. Instead, the definition clarifies that in addition to the issuer's head office being outside of Canada, a majority of the issuer's executive officers and directors must be ordinarily resident outside of Canada. We made this change to provide greater clarity to the definition. We determined that use of the term "principal executive office" might be too vague and cause confusion.

B. *Definition of "executive officer"*

The definition of "executive officer" in OSC Rule 45-501 has been amended to conform to the current definition in National Instrument 51-102 *Continuous Disclosure Obligations*. The definition now includes paragraph (a.1), which includes the chief executive officer or chief financial officer of the issuer.

C. *Exemption from listing representation requirements*

The Proposed Amendments contemplated that an exemption from the prohibition on making a listing representation in the Act could apply in certain circumstances. In addition to the conditions included in the Proposed Amendments, we have added a further condition (c), namely that the representation is made in compliance with the by-laws and rules of the exchange or quotation and trade reporting system referred to in the representation. This change was made to conform to similar amendments published for comment by certain other CSA jurisdictions in proposed *CSA Multilateral Instrument 45-107 Listing Representations and Statutory Rights of Action Disclosure Requirements* (MI 45-107). We agreed that it was appropriate to include as a condition to the exemption that the representation be made in compliance with the rules and by-laws of the exchange or quotation system referred to.

D. *Manner of disclosure*

The Proposed Amendments would amend OSC Rule 45-501 to add alternative ways that the disclosure mandated by section 5.3 [*Statutory rights of action*] could be provided. As an alternative to requiring this disclosure to be included in the offering memorandum, the Proposed Amendments stated that the disclosure could also be provided in a "representation letter, subscription agreement or other form of written notice delivered to the permitted client in connection with a distribution for which no offering memorandum is being used". A number of commenters pointed out that, if no offering memorandum is being used, then the requirement to provide disclosure of statutory rights of action does not apply. As a result, we have removed the subsection that referred to providing disclosure where no offering memorandum is being used.

In addition, we have added standard language that can be used to satisfy the requirement to provide disclosure of statutory rights of action. This standard summary language is intended to address comments that noted the current requirements often result in lengthy and detailed disclosure on statutory rights of action that is unnecessary for sophisticated investors that qualify as permitted clients. This language is similar to the standard language on statutory rights of action included in a prospectus.

E. ***No requirement for permitted clients to acknowledge receipt of a notice***

The Proposed Amendments allowed for a notice to be provided to a permitted client by a registered dealer or international dealer that included disclosure of the applicable statutory rights of action and that also included a statement that the notice applied to all similar future distributions. This notice was required to be acknowledged by each permitted client.

In response to comments received about the practical difficulties associated with receiving acknowledgment of the notice from each permitted client, we have amended this provision so that the notice can be provided and relate to future distributions, but does not have to be acknowledged by the permitted client.

Annex D
List of commenters

1. Alberta Investment Management Corporation
2. Caisse de Dépôt et Placement du Québec
3. Canada Pension Plan Investment Board
4. Davies Ward Phillips & Vineberg LLP
5. OMERS Administration Corporation
6. Ontario Teachers' Pension Plan Board
7. Osler, Hoskin & Harcourt LLP
8. Public Sector Pension Investment Board
9. Stikeman Elliott

Annex E
Summary of comments and responses

No.	Subject	Summarized Comment	OSC Response
General Comments			
1.	General support for the proposals	Eight commenters expressed general support for the proposed amendments, subject to their comments on specific aspects of the proposals. One commenter stated that the proposed amendments will facilitate participation in the exempt market by sophisticated Ontario investors seeking to invest in foreign securities.	We thank commenters for their support.
2.	General concern with the proposals	Six commenters expressed general support for the proposed amendments but stated that the proposed amendments are not sufficient.	We have made some changes to the amendments as a result of certain concerns raised by commenters, as described more fully below.
3.	Evaluate in conjunction with other initiatives	One commenter stated that the proposed amendments to OSC Rule 45-501 should be evaluated in conjunction with other initiatives related to the exempt market currently being undertaken by the Ontario Securities Commission (OSC) (for example OSC Staff Consultation Paper 45-710 *Considerations for New Capital Raising Prospectus Exemptions*). The commenter noted that the OSC has, in recent years, endeavoured to broaden, rather than reduce, its regulatory oversight of exempt market participants. The OSC has also sought to restrict the scope of dealing activities conducted by foreign dealers.	We have considered the proposed amendments in conjunction with other work currently being conducted on the exempt market. The amendments do not change the types of activities that EMDs can conduct in Ontario and they do not affect the regulatory oversight of EMDs. The amendments only provide limited relief from specific items of *disclosure* where the offering is a foreign offering and the investors in Canada are permitted clients. As a result we do not

No.	Subject	Summarized Comment	OSC Response
			consider the proposed amendments to be contrary to other recent OSC initiatives relating to the exempt market.
4.	Related amendments to National Instrument 33-105 *Underwriting Conflicts* (NI 33-105)	The proposed amendments should also be considered in light of proposed amendments to NI 33-105.	We have coordinated with other CSA jurisdictions to develop and propose related amendments to NI 33-105 which were published for comment on November 28, 2013. After considering the comments received, we are also publishing today final amendments to NI 33-105.
5.	Resale restrictions	Six commenters stated that there is significant uncertainty about the ability to resell the securities acquired in a foreign private placement. The commenters noted that relief from the OSC may be required to permit the sale of securities of a foreign issuer with a *de minimis* connection to the Canadian markets.	Changes to the current resale regime in Ontario are beyond the scope of this project.
6.	The "wrapper" serves a gatekeeper function	One commenter noted that the typical wrapper preparation process serves a "gatekeeper" or compliance function that addresses a number of Canadian-specific requirements, including requirements not addressed by the proposed amendments. While the commenter is supportive of the efforts to streamline and simplify the wrapper process, the commenter noted that there are many legal and practical reasons for preparing a wrapper beyond the requirements addressed in the proposed amendments. The offering of securities using a wrapper in reliance on certain prospectus exemptions under NI 45-106 has been an efficient and well-established process for many offerings.	We acknowledge the comment and note that the amendments only provide relief from certain discrete items of disclosure, and do not relieve issuers from compliance with other aspects of Ontario securities law that may apply to a particular offering.

No.	Subject	Summarized Comment	OSC Response
Comments on amendments to OSC Rule 45-501			
7.	Manner of disclosure	One commenter was encouraged that the OSC had proposed alternative methods of delivery of the right of action disclosure, for example in a separate document, where an offering memorandum is delivered to prospective investors.	We acknowledge the comment.
8.	Disclosure where no offering memorandum	Two commenters submitted that disclosure of statutory rights of action is only necessary where an offering memorandum is used in connection with a distribution. The OSC should clarify the purpose and practical application of the proposed subsection 5.6(c), which would allow for alternative methods of disclosure where no offering memorandum is being used.	We agree that, where no offering memorandum is used, the disclosure required by section 5.3 [*Description of rights in offering memorandum*] of OSC Rule 45-501 is not required to be provided. As a result, we have removed the proposed subsection that would have permitted alternative methods of disclosure where there is no offering memorandum.
9.	Option to provide one-time notice that is signed by each permitted client	A number of commenters suggested that section 5.3 [*Description of rights in offering memorandum*] of OSC Rule 45-501 should not apply in respect of an offering memorandum delivered to a permitted client in connection with the distribution of a designated foreign security[6]. One commenter submitted that the absence of disclosure of a statutory right of action would not affect the investor's ability to rely on such a right. The permitted clients to whom sales would be made under the proposed amendments are sophisticated investors who should be reasonably expected to be aware of the rights and remedies available to them under Ontario's securities laws.	We have not amended the current requirement in section 5.3 [*Description of rights in offering memorandum*] of OSC Rule 45-501, which requires disclosure of applicable statutory rights of action in an offering memorandum, as we continue to believe disclosure of such rights is appropriate.

[6] Note that in the final amendments we have changed the term from "designated foreign security" to "eligible foreign security".

No.	Subject	Summarized Comment	OSC Response
		Four commenters submitted that the OSC should reconsider imposing a requirement to have the permitted client sign a one-time acknowledgement, and suggested revising subsection proposed subsection 5.6(d) [*Manner of disclosure*] to allow the disclosure requirement (of statutory rights of action) to be satisfied by the provision of a one-time notice that does not require the recipient's signature or consent.	However, we have provided for alternative ways to comply with this requirement, such as permitting standard language to be provided either in an offering memorandum or other document that accompanies the offering memorandum, in the context of eligible foreign securities offering to permitted clients. In our view, this change will make it easier to comply with the requirement to provide disclosure of applicable statutory rights of action. In response to comments received, we have amended the proposed option for providing notice to permitted clients, so that each permitted client will no longer be required to return a signed acknowledgment to the registered dealer or international dealer.
10.	Description of statutory rights of action in document other than offering memorandum	One commenter questioned the purpose of permitting disclosure of applicable statutory rights of action to be provided in a document that accompanies an offering memorandum, given that liability relates to disclosure in the offering memorandum.	Given our understanding of the difficulty of including Canadian-specific disclosure in a foreign offering document, we have provided flexibility on where the disclosure of statutory rights of action can be included.

No.	Subject	Summarized Comment	OSC Response
11.	Relief for permitted clients	One commenter submitted that proposed sections 5.5 [*Exemption from listing representation requirements*] and 5.6 [*Manner of disclosure*] are conditioned on the investor qualifying as a "permitted client", notwithstanding that the distribution itself may otherwise qualify under the "accredited investor" prospectus exemption. The commenter noted this introduces additional fragmentation into the private placement process, as private placements offered to "accredited investors" that are not also permitted clients would not qualify. This may result in the unintended consequence that Canadian investors will receive dissimilar disclosure based solely on their status as either "accredited investors" or "permitted clients", notwithstanding that both classes of investor are qualified for the purposes of reliance on the "accredited investor" exemption.	We have been made aware of significant demand for access to these types of foreign investment opportunities from institutional investors that qualify as permitted clients. "Permitted client" is an existing category of investor that is applied in other securities law contexts. We do not consider using the concept of permitted client in these limited areas of relief to be introducing fragmentation to the market. The definition of accredited investor includes a much broader range of investors. At this time, we did not consider it appropriate or necessary to expand the proposed exemption to accredited investors.
12.	Reference to "seller" and role of dealer	One commenter noted that Ontario securities law does not define the term "seller" for the purposes of section 5.3 of OSC Rule 45-501 [*Description of rights in offering memorandum*] and the proposed amendments. However, section 130.1 [*Liability for misrepresentation in offering memorandum*] of the *Securities Act* (the Act) applies to issuers and selling security holders on whose behalf a distribution is made. Therefore, it is reasonable to ascribe similar application of the term "seller" to issuers and selling security holders, rather than to dealers acting as agents.	Where an issuer or selling security holder has engaged a dealer to act as agent in the context of a foreign private placement into Canada, we are of the view that it is appropriate for the dealer to be able to provide notice to its permitted clients of their statutory rights under future private

No.	Subject	Summarized Comment	OSC Response
		The commenter suggested it may not be appropriate as a proxy method of delivering notice of statutory rights of action to have a dealer provide the notice, since liability rests with the "seller".	placements. This was the approach taken in the exemptive relief decisions previously granted to different groups of dealers (the "Wrapper Decisions"), beginning with the decision *In the matter of Barclays Capital Inc. et al* dated April 23, 2013.
Comments on related proposals			
13.	Requirement to provide description of statutory rights in proposed Multilateral Instrument 45-107 *Listing representation and statutory right of action disclosure exemptions* (MI 45-107)	One commenter stated that the proposed disclosure requirement in MI 45-107 does not mesh with the notice requirement in the proposed amendments to NI 33-105. In particular, the proposed amendments to NI 33-105 would permit a notice describing the terms and conditions of the exemptions to be provided in the exempt offering document, while MI 45-107 would only provide for alternative means by which statutory rights could be described. The commenter suggested that a description of statutory rights of action should not be required.	We continue to believe that a brief description of statutory rights should be provided and have worked with our CSA colleagues to align the various amendments relating to wrapper disclosure.
Other comments related to Wrapper Decisions			
14.	Process by which Wrapper Decisions were granted	One commenter suggested there has been confusion about the scope, extent and requirements relating to Wrapper Decisions. The commenter expressed concern with the process by which the Wrapper Decisions were granted and suggested this process was unfair to the broader community of market participants, as the process was not subject to public notice or public commentary.	In our view the Wrapper Decisions were clear with respect to the scope, extent and requirements of the exemptive relief granted in those decisions. We understand from stakeholders that some market participants outside of Canada still find certain Canadian-specific terms (such as

No.	Subject	Summarized Comment	OSC Response
			"connected issuer" and "related issuer") difficult to understand. As a result we have made changes to the amendments to address this concern and provide for broader relief. The process by which the Wrapper Decisions were granted followed the normal exemptive relief process. To recognize that there may have been other market participants that desired similar relief, the Commission delayed the implementation of the Barclays Decision by 60 days. This delay was intended to allow other similarly situated market participants to apply for similar relief. Subsequently, 10 substantially similar exemptive relief decisions have been granted to different applicant groups. The Commission followed the Wrapper Decisions with proposed amendments to implement the relief granted in those decisions.
15.	Authority of OSC to grant "wrapper relief"	One commenter noted that the Commission is prohibited from making any order or ruling "of general application" under the *Securities Act* (Ontario). The commenter expressed concerns as	In considering the Barclays Decision (on which subsequent similar decisions were

No.	Subject	Summarized Comment	OSC Response
		to the Commission's authority to grant the Wrapper Decisions given that prohibition.	based), OSC staff considered the scope of the requested relief and whether it raised concerns regarding the prohibition on orders of general application. The scope of the requested relief in the Barclays Decision was significantly refined through the application review process in order to address such concerns. The Wrapper Decisions apply, in each case, to a specified list of applicants, for a specified period of time in relation to specific heads of relief, subject to defined terms and conditions. Furthermore, the relief provided is transitional in nature, pending the implementation of proposed amendments. The OSC is satisfied that it has the authority to make the Wrapper Decisions.
16.	Wrapper Decisions provide relief based on U.S. disclosure requirements	One commenter noted that the Wrapper Decisions were premised on the assumption that U.S. disclosure requirements are substantially similar to disclosure mandated under the "connected issuer" and "related issuer" standards contained in NI 33-105. There are material and substantive differences between U.S. disclosure requirements and those contained in NI 33-105, with the effect that the Canadian disclosure requirements are more robust and provide investors with additional disclosure.	We are aware that there are differences in the Canadian and U.S. disclosure requirements relating to conflicts of interest between issuers and dealers. Given the narrow application of the amendments and the fact that they only apply

No.	Subject	Summarized Comment	OSC Response
			with respect to foreign offerings made to permitted clients in Canada, we are satisfied that it is appropriate to provide a limited exemption from the disclosure requirements in NI 33-105 based on alternative U.S. disclosure being provided, despite these differences.