

Chapter 5

Rules and Policies

5.1.1 Ontario Securities Commission Rule 72-503 Distributions Outside Canada and Companion Policy 72-503 Distributions Outside Canada

NOTICE OF ADOPTION

OSC RULE 72-503 *DISTRIBUTIONS OUTSIDE CANADA*

AND

COMPANION POLICY 72-503 *DISTRIBUTIONS OUTSIDE CANADA*

December 21, 2017

Introduction

On November 28, 2017, the Ontario Securities Commission (**we** or the **OSC**) approved the withdrawal of “Interpretation Note 1 Distributions of Securities Outside Ontario”¹ (the **Interpretation Note**) and the adoption of

- OSC Rule 72-503 *Distributions Outside Canada* (the **Final Rule**), which includes Form 72-503F *Report of Distributions Outside Canada* (the **Final Form**),
- Companion Policy 72-503 *Distributions Outside Canada* (the **Final Companion Policy**), and
- Consequential Amendment to OSC Rule 11-501 *Electronic Delivery of Documents to the Ontario Securities Commission* (the **Final Consequential Amendment** and together with the Final Rule and the Final Companion Policy, the **Final Materials**).

Under section 143.3 of the *Securities Act* (Ontario) (the **Act**), the Final Rule and the Final Consequential Amendment were delivered to the Minister of Finance on December 19, 2017. The Minister may approve or reject the Final Rule and the Final Consequential Amendment or return them for further consideration. If the Minister approves the Final Rule and the Final Consequential Amendment or does not take any further action by March 5, 2018, they will come into force on March 31, 2018.

If the Final Rule and the Final Consequential Amendment come into force on March 31, 2018, the Final Companion Policy will become effective, and the Interpretation Note will be withdrawn, on March 31, 2018.

Substance and Purpose

Together, the Final Rule and the Final Companion Policy modernize and replace the Interpretation Note, bringing greater certainty to cross-border activities in Ontario.

Background

On June 30, 2016, we published our initial proposals for OSC Rule 72-503 *Distributions Outside of Canada* (the **2016 Proposed Rule**), Form 72-503F *Report of Distributions Outside of Canada*, and Companion Policy 72-503 *Distributions Outside of Canada* for a first comment period which ended on September 28, 2016. Fifteen comment letters were received on this initial publication.

On June 29, 2017, concurrent with the Canadian Securities Administrators’ publication of the proposed amendments to National Instrument 45-102 *Resale of Securities*, we published revised proposals for OSC Rule 72-503 *Distributions Outside Canada* (the **2017 Proposed Rule**), Form 72-503F *Report of Distributions Outside Canada* (the **2017 Proposed Form**), and Companion Policy 72-503 *Distributions Outside Canada* (the **2017 Proposed Companion Policy**), together with a consequential amendment to OSC Rule 11-501 *Electronic Delivery of Documents to the Ontario Securities Commission* (together, the **2017 Proposal**).

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.

Summary of Written Comments

The comment period for the 2017 Proposal ended on September 27, 2017. We received submissions from four commenters. We considered the comments received and thank all of the commenters for their input and support of this initiative. The names of commenters and a summary of their comments, together with our responses, are contained in Annex A of this notice.

Summary of Changes

After considering the comments received on the 2017 Proposal, we have made some revisions as reflected in the Materials and as discussed in our responses to comments. As these changes are not material, we are not republishing the Final Materials for a further comment period.

Annexes

This Notice contains the following Annexes:

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

Questions

Please refer your questions to:

Victoria Carrier
Senior Legal Counsel
General Counsel's Office
416-593-8329
vcarrier@osc.gov.on.ca

Michael Tang
Senior Legal Counsel
Corporate Finance Branch
416-593-2330
mtang@osc.gov.on.ca

Elizabeth Topp
Senior Legal Counsel
Compliance and Registrant Regulation
416-593-2377
etopp@osc.gov.on.ca

Doug Welsh
Senior Legal Counsel
Investment Funds and Structured Products
416-593-8068
dwelsh@osc.gov.on.ca

Andre Moniz
Senior Investigation Counsel
Enforcement Branch
416-593-2383
amoniz@osc.gov.on.ca

ANNEX A

OSC RULE 72-503 *DISTRIBUTIONS OUTSIDE CANADA*

LIST OF COMMENTERS AND SUMMARY OF COMMENTS AND RESPONSES

No.	Commenter	Date
1.	Stikeman Elliot LLP	September 27, 2017
2.	Blake, Cassels & Graydon LLP	September 27, 2017
3.	Davies Ward Phillips & Vineberg LLP	September 27, 2017
4.	Osler Hoskin & Harcourt LLP	September 27, 2017

No.	Subject	Summarized Comment	Response
GENERAL COMMENTS			
1	Necessity	<p>Three commenters expressed support for the 2017 Proposal.</p> <p>One commenter stated that the 2017 Proposal would be a vast improvement to the offshore offering regime in Ontario as it provides much needed transparency and certainty for offshore offerings, addressing many previously stated concerns with the potential for extra-territorial application of Canadian prospectus requirements.</p> <p>One commenter stated that Ontario market participants are in need of greater certainty in this area than the guidance currently available under the Interpretation Note. The 2017 Proposal will go a long way toward achieving the intended result, and will work to the significant benefit of Ontario market participants.</p>	We thank commenters for their support.
2	Harmonization – Resale	<p>Two commenters referred to the proposed amendments to Section 2.14 of NI 45-102 published by the CSA on June 29, 2017.</p> <p>One commenter urged the OSC to continue to work with the CSA to revisit the resale regime under NI 45-102.</p> <p>One commenter thinks that the imposition of resale restrictions on the exemption under Section 2.4 of the 2017 Proposed Rule is inappropriate as it will force offshore investors to rely on the resale exemption in proposed Section 2.14.1 of NI 45-102. Only by becoming a reporting issuer in a jurisdiction of Canada could the resale of securities sold offshore be tradeable on a foreign exchange. The commenter advocates for the restoration of the version of the resale exemption previously published for comment in the 2016 Proposed Rule.</p>	<p>We are balancing the need to bring greater certainty to Ontario's offshore offering regime with the importance of supporting the continued harmonization of resale requirements across Canada.</p> <p>We recognize that the new "foreign issuer" resale exemption under the proposed NI 45-102 amendments is not as broad as the exemptions originally contemplated under sections 2.3 and 2.4 of the 2016 Proposed Rule. However, the "foreign issuer" resale exemption addresses many of the concerns expressed by market participants regarding the application of section 2.14 of NI 45-102.</p> <p>We note that the OSC continues to participate in and support the CSA's broader policy initiative to revisit and modernize NI 45-102. In the interests of ongoing efforts to harmonize changes to Canada's resale regime, we will not be reintroducing sections 2.3 and 2.4 of the 2016 Proposed Rule.</p>

No.	Subject	Summarized Comment	Response
3	Distributions Outside Ontario	One commenter notes that the 2017 Proposal does not address distributions that are within Canada but outside Ontario. The commenter asks that the OSC explain the distinction between a distribution outside Canada and one that is within Canada but outside Ontario.	Extending the application of the proposed exemptions to any trade outside of Ontario, including other Canadian jurisdictions, raises broader issues regarding the operation of the passport system and the CSA approach to multi-jurisdictional distributions. We do not believe that further distinction is required in order to meaningfully achieve the cross-border capital-raising purposes of the Final Rule.
2017 PROPOSED RULE			
4	Definition of “Specified Foreign Jurisdiction”	One commenter suggests that to the extent it can be anticipated that certain foreign jurisdictions may become the subject of an application for exemptive relief to be treated as a “specified foreign jurisdiction”, including such jurisdiction in the definition would promote efficiency in Canadian capital markets and reduce future regulatory burden on issuers.	<p>As previously stated, we did not reflect all of the previous suggestions in Appendix A of the 2017 Proposed Rule and only list those jurisdictions in the definition of “designated foreign jurisdiction” and any other member country of the European Union.</p> <p>We believe that the list of “specified foreign jurisdictions” in Appendix A of the Final Rule is sufficiently broad to capture those foreign jurisdictions that would likely become the subject of an application for exemptive relief.</p>
5	Material Compliance with Foreign Securities Law	<p>Three commenters expressed concerns with the condition to materially comply with the securities laws of the foreign jurisdiction.</p> <p>Two commenters think the condition should be removed. Their reasons include:</p> <ul style="list-style-type: none"> • The purpose of Ontario’s prospectus requirement should not be to protect foreign investors or the integrity of their foreign capital markets by ensuring offshore offerings comply with foreign securities regimes. • The condition introduces greater uncertainty. Ontario lawyers cannot opine on compliance with non-Ontario law. Foreign lawyers cannot express an opinion on the meaning of material compliance as interpreted under Ontario securities law. • Guidance in the 2017 Proposed Companion Policy that an issuer or selling security holder will have satisfied the condition if reasonable steps have been taken to ensure the distribution is effected in accordance with the securities laws of the foreign jurisdiction does not help. Neither an Ontario nor a foreign lawyer could express an opinion regarding what steps, under an Ontario law standard of reasonableness, are necessary to ensure compliance with the foreign law’s requirements. 	<p>We appreciate commenters’ concerns regarding the breadth of the condition to materially comply with the securities laws of the foreign jurisdiction and the challenges of providing a related opinion. Nevertheless, exemptions and exemptive relief are often conditioned on market participants’ compliance with similar regulatory requirements in other jurisdictions. In addition to investor protection, the OSC is mandated to foster fair and efficient capital markets and confidence in capital markets, having regard to various principles, including:</p> <ul style="list-style-type: none"> • Requirements for timely, accurate and efficient disclosure of information, (paragraph 2.1(2)(i) of the Act); and • The integration of capital markets is supported and promoted by the sound and responsible harmonization and co-ordination of securities regulation regimes. <p>In response to comments received on the 2017 Proposed Rule, we have revised the condition to materially comply with “the securities law requirements of the jurisdiction outside Canada” under sections 2.2, 2.3 and 2.4 of the Final Rule to more specifically require material compliance with “the disclosure requirements applicable to the distribution under the securities law of the jurisdiction outside Canada, or the</p>

No.	Subject	Summarized Comment	Response
		<p>Three commenters suggest that the condition be modified.</p> <p>One commenter suggests that the OSC consider revising the provision to require substantial compliance with the material aspects of foreign securities laws rather than material compliance with foreign securities law.</p> <p>One commenter suggests revising the condition to provide that an offshore trade is subject to, rather than materially compliant with, the securities law requirements of the relevant foreign jurisdiction.</p> <p>One commenter suggests revising the condition to require that the distribution be made pursuant to any applicable prospectus, qualification, registration or similar requirements of the jurisdiction outside Canada, or an available exemption from such requirements.</p>	<p>distribution is exempt from such requirements”.</p>
6	Exchange or Market Outside Canada	<p>Two commenters suggest that Section 2.5 of the 2017 Proposed Rule refer to a Canadian buyer rather than just a buyer. The suggested change is consistent with guidance in the 2017 Proposed Companion Policy. Codification in the proposed rule would be preferable as it would provide certainty to issuers.</p>	<p>We made the suggested change.</p>
7	Investment Funds	<p>One commenter expressed concerns with Section 4.3 of the 2017 Proposed Rule, which exempts investment funds from the requirement to file a report if it electronically files a Form 45-106F1 not later than 30 days after the calendar year in which the distribution occurred that also includes the required information set forth in the 2017 Proposed Form. It is not clear how an investment fund could electronically file a Form 45-106F1 that contains the same information that would be required in a 2017 Proposed Form given that both will be electronic forms containing different prescribed fields for different required data. The commenter suggests making a single annual report filing on the proposed form but notes that a modified version of the 2017 Proposed Form for use by investment funds for annual reporting purposes should be considered.</p>	<p>We believe that there is sufficient overlap between the two forms such that it should be possible for an investment fund manager to report the information required in the 2017 Proposed Form on Form 45-106F1. The choice, however, remains with the investment fund manager as to whether to file a separate 2017 Proposed Form or a consolidated Form 45-106F1.</p> <p>We are also of the view that a modified 2017 Proposed Form for annual reporting purposes isn't necessary similar to how there is not a separate Form 45-106F1 for annual reporting purposes.</p>
2017 PROPOSED FORM			
8	Certification	<p>Two commenters suggest changes to the 2017 Proposed Form.</p> <p>One commenter suggests additional language be included in the certification clarifying that the individual certifying the proposed form is doing so on behalf of the filer and not in his/her personal capacity.</p> <p>One commenter urged the OSC to take into account the comments and concerns that have been raised by market participants regarding the certification requirements of Form 45-106F1.</p>	<p>To the extent that the final certification requirements of Form 45-106F1 differ from those published for comment, we intend to make consequential amendments to Form 72-503F to align the two certificates.</p>

No.	Subject	Summarized Comment	Response
9	Requirement to File	<p>One commenter suggests that the requirement to file the report in the context of distributions relying on Section 2.2 of the 2017 Proposed Rule be reconsidered. The OSC is likely to have knowledge of the distribution that is taking place as a result of the concurrently filed Ontario prospectus. Virtually every Ontario issuer filing a prospectus in Canada will be required to file a proposed form in connection with the same distribution, adding an administrative cost that is not justified in the circumstances.</p>	<p>We made the suggested change. An issuer or selling security holder relying on the exemption in section 2.2 of the Final Rule is not required to file a report of trade under section 4.1 of the Final Rule.</p>
2017 PROPOSED COMPANION POLICY			
10	Scope	<p>Two commenters expressed views regarding the determination of whether a “distribution” has occurred in Ontario.</p> <p>One commenter agrees that the 2017 Proposal should not be treated or viewed as changing the law in Ontario. However, the commenter believes that the legal determination as to whether a “distribution” has occurred in Ontario should continue to be made under the <i>Securities Act</i> (Ontario) (the Act). The commenter suggests that additional consideration be given to the examples included in Part 1 of the 2017 Proposed Companion Policy to provide greater consistency with the statement that the 2017 Proposed Rule is not intended to deem any particular issuance a distribution. The commenter submits that the examples should provide guidance to assist in the determination of whether an issuance of securities is a distribution for the purpose of Ontario securities law and not just for the purpose of determining whether securities have come to rest in a foreign jurisdiction.</p> <p>One commenter suggests that the language in the 2017 Proposed Companion Policy be revised to clarify when a trade is not subject to the prospectus requirement by virtue of not being a “distribution” as opposed to circumstances where it is an exempt distribution by virtue of the exemptions in Part 2 of the 2017 Proposed Rule. The commenter further suggests replacing the term “distribution” with more generic terms where the purpose is to identify whether or not a particular trade is in fact a “distribution”.</p>	<p>We have not made the suggested change. We are of the view that providing further guidance which narrows the meaning of “distribution” may have unintended consequences and that such guidance is not required in order to meaningfully achieve the cross-border capital-raising purposes of the Final Rule.</p> <p>Whether the OSC has jurisdiction over a distribution of securities to a person or company outside Ontario is a matter to be determined by the courts and tribunals, applying relevant case law to the facts of a particular transaction.</p> <p>The Statement of Principle addresses, more specifically, the application of the Ontario prospectus requirements and provides that, in certain circumstances, the OSC would not interpret the Ontario prospectus requirements as applying to distributions made only to foreign investors.</p>
11	Statement of Principle - Uncertainty	<p>One commenter expressed concerns about the Statement of Principle of the 2017 Proposed Companion Policy. While the concept of reasonable steps to ensure that the offered securities come to rest outside Canada was the cornerstone of the Interpretation Note, it was a source of uncertainty. The commenter expressed specific concerns regarding the use of the term “ensure” and suggests drafting changes to reduce the extent of uncertainty.</p>	<p>We have changed the Statement of Principle in the Final Companion Policy to reduce the uncertainty identified by the commenter.</p>

No.	Subject	Summarized Comment	Response
12	Examples of Reasonable Steps	<p>Two commenters suggest changes to the examples set out in Part 1 of the 2017 Proposed Companion Policy.</p> <p>One commenter suggests that examples (5) and (6) are not relevant. Both examples suggest that a foreign purchaser would be prohibited from reselling securities acquired from a Canadian issuer even to a foreign purchaser.</p> <p>One commenter suggests adding a reference to an “agency agreement” in example (1). The commenter also suggests removing the reference to 90 days in example (6) and replacing it with a reference to a period of time sufficient to create a meaningful economic risk in connection with their investment in the security.</p>	<p>We removed example (6) but did not remove example (5) from the Final Companion Policy.</p> <p>Example (5) is a measure that may contribute to a reasonable conclusion that the offered securities come to rest outside Canada. To have taken “sufficient measures in the circumstances of the distribution to make it reasonable to conclude that the offered securities come to rest outside Canada” does not require a market participant to have taken every measure listed.</p> <p>We have clarified that any representations and warranties provided by the foreign purchaser under example (5) should be reasonable in the circumstances, having regard to the nature of the purchaser, the number of securities purchased, the purchaser’s investment strategy, and any other facts and circumstances that a reasonable person would consider relevant in determining whether a purchaser is purchasing with investment intent and not with a view to distribution.</p> <p>We have added a reference to an “agency agreement” in example (1) of the Final Companion Policy.</p>
13	Concurrent Distributions	<p>Two commenters expressed concerns regarding the guidance on concurrent distributions in the 2017 Proposed Companion Policy.</p> <p>One commenter suggests that it should be clarified for the purposes of concurrent distributions that are qualified by an Ontario prospectus that foreign purchasers do not have statutory rights and investor protections under the Act and that a Canadian underwriter would not be required to sign the prospectus.</p> <p>One commenter thinks this guidance gives the impression that Ontario issuers are under a burden to effectively disclaim the applicability of Ontario securities law to purchasers in foreign jurisdictions. The failure to explicitly disclaim the applicability of Ontario securities law should not automatically confer statutory rights under Ontario securities law on foreign investors. The 2017 Proposal should state that the presumption is that Ontario securities law does not apply to protect foreign investors.</p>	<p>While the Final 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 therefore may be entitled to statutory rights for the purposes of Ontario securities law. Accordingly, if an issuer does not intend the prospectus to qualify the</p>

Rules and Policies

No.	Subject	Summarized Comment	Response
			distribution of securities to purchasers outside Canada, the prospectus should include a statement to this effect.

ANNEX B

**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. The 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, at the time of the distribution, 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 is 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) the issuer of the securities or the selling security holder has materially complied with the disclosure requirements applicable to the distribution under the securities law of the jurisdiction outside Canada, or the distribution is exempt from such requirements; and
- (b) 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) the issuer has materially complied with the disclosure requirements applicable to the distribution under the securities law of the jurisdiction outside Canada, or the distribution is exempt from such requirements; and
- (b) the issuer is a reporting issuer in a jurisdiction of Canada immediately preceding the 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, the issuer has materially complied with the disclosure requirements applicable to the distribution under the securities law of the jurisdiction outside Canada, or the distribution is exempt from such requirements.

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 in Canada.

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 if all of the following apply:
- (a) the distribution is qualified by a prospectus filed in a jurisdiction of Canada or is exempt from the prospectus requirement under Part 2 of this Rule or by another exemption from the prospectus requirement under Ontario securities law;
 - (b) 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;
 - (c) if the distribution is made 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;
 - (d) if the distribution is made 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;
- (e) 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;
- (f) 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 any 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 2.3 or 2.4 must electronically file a report of trade with respect to the distribution as 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 March 31, 2018.

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 <input style="width: 90%;" type="text"/>	Province/State <input style="width: 90%;" type="text"/>
Municipality <input style="width: 90%;" type="text"/>	Postal code/Zip code <input style="width: 90%;" type="text"/>
Country <input style="width: 90%;" type="text"/>	Telephone number <input style="width: 90%;" type="text"/>

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

Types of securities distributed						
<p><i>Provide the following information for all distributions of securities relying on an exemption in 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.</i></p>						
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						
<p><i>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.</i></p>						
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													
<p><i>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.</i></p>													
<p>Start date</p> <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	<p>End date</p> <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"/> (if applicable)

5. **Certification**

Certification

Provide the following certification and business contact information of an officer, director or agent of the issuer. If the issuer is not a company, an individual who performs functions similar to that of a director or officer may certify the report. For example, if the issuer is a trust, the report may be certified by the issuer's trustee. If the issuer is an investment fund, a director or officer of the investment fund manager (or, if the investment fund manager is not a company, an individual who performs similar functions) may certify the report if the director or officer has been authorized to do so by the investment fund.

The certification may be delegated, but only to an agent that has been authorized by an officer or director of the issuer to prepare and certify the report on behalf of the issuer.

The signature on the report must be in typed form rather than handwritten form. The report may include an electronic signature provided the name of the signatory is also in typed form.

Securities legislation requires an issuer that makes a distribution of securities under certain prospectus exemptions to file a completed report of exempt distribution.

By completing the information below, I certify, on behalf of the issuer/investment fund manager, to the securities regulatory authority or regulator, as applicable, that I have reviewed this report and to my knowledge, having exercised reasonable diligence, the information provided in this report is true and, to the extent required, complete.

Name of issuer/investment fund manager/agent

Full legal name
 Family name First given name Secondary given names

Title

Telephone number Email address

Signature Date
 YYYY MM DD

ANNEX C

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 sufficient measures in the circumstances of the distribution to make it reasonable to conclude that the offered securities come to rest outside Canada, meaning that it is unlikely that they will be redistributed back into Canada by an original purchaser outside Canada that has acquired the securities with a view to distribution, rather than with investment intent. The following are examples of measures they may take in support of their reliance on this Statement of Principle:

- (1) A restriction in the underwriting, banking group, selling group, or agency 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 the securities with investment intent and not with a view to distribution, and such representations and warranties are reasonable in the circumstances, having regard to the nature of the purchaser, the number of securities purchased, the purchaser's investment strategy, and any other facts or circumstances that a reasonable person would consider relevant in determining whether a purchaser is purchasing with investment intent and not with a view to distribution.

This list of examples of measures that may be taken is provided for illustrative purposes, and is not intended to be a definitive list of any or all of the measures or other factors that participants may take into account in order to reasonably conclude 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 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 in Canada. 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 disclosure requirements applicable to the distribution under the securities law of the jurisdiction" 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 services 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

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 March 31, 2018.