

Notice and Request for Comment

Proposed National Instrument 11-102 *Passport System* Form 11-102F1 *Notice of Principal Regulator and Registration in Additional Jurisdiction(s)* and Companion Policy 11-102CP *Passport System* and related amendments and repeals

March 28, 2007

This notice describes the proposals of the Canadian Securities Administrators, other than the Ontario Securities Commission (OSC), (CSA or we) for implementing the next phase of the passport system for securities regulation. This proposed set of rule, policy, and administrative changes would further simplify the securities regulatory system for issuers and registrants who have their securities traded or deal with clients in more than one Canadian jurisdiction.

Passport system — overview

We implemented phase I of passport in 2005 and propose to start implementing phase II in early 2008. The initiatives in phase II build on, and would largely replace, phase I of passport and the mutual reliance review systems. We describe the elements of the passport system more fully below.

The OSC is not participating in the passport system. Please refer to OSC Notice 11-904 for further details. However, for the public comment process, we have designed phase II of passport as a system for adoption by all Canadian securities regulatory authorities. This will allow market participants to focus on how the passport system could operate to streamline Canadian securities regulation.

A key foundation for the passport system is a set of nationally harmonized regulatory requirements that will be consistently interpreted and applied throughout Canada. Although we already have a significant body of harmonized law, implementation of phase II depends on the adoption of two new proposed national instruments that we have published for comment. They are National Instrument 31-103 *Registration Requirements* (NI 31-103) and National Instrument 41-101 *General Prospectus Requirements* (NI 41-101). We expect to implement consequential amendments to local rules, and our governments to proclaim some act amendments that harmonize securities requirements, when we adopt the new national instruments.

Passport system – rule and policy changes

The CSA is publishing now the rule and policy changes that we will need for phase II of passport. The major elements of the passport system are set out in:

- National Instrument 11-102 *Passport System* (NI 11-102),
- Form 11-102 F1 *Notice of Principal Regulator and Registration in Additional Jurisdiction(s)*, and
- Companion Policy 11-102CP *Passport System* (CP 11-102)

(collectively, the proposed instrument).

We developed the appendices to the proposed instrument based on the securities act and rule provisions we expect to be in force when we implement each part of the proposed instrument, except for Appendix E of CP 11-102. Prior to implementing the proposed instrument and in the course of our work to finalize NI 31-103, we will aim to eliminate or harmonize most of the local registration requirements that remain and will update the references to reflect the changes.

The appendices do not contain references to the relevant provisions of the existing securities legislation in Prince-Edward Island, Yukon, Northwest Territories and Nunavut because these jurisdictions are developing new securities acts. We will add the relevant references to the appendices when we finalize the proposed instrument.

The CSA is also publishing proposed consequential amendments to National Policy 12-201 *Mutual Reliance Review System for Exemptive Relief Applications* (NP 12-201)¹.

The CSA also proposes to repeal the following instruments, forms and policies:

- Multilateral Instrument 11-101 *Principal Regulator System* (MI 11-101),
- Form 11-101 F1 *Notice of Principal Regulator under Multilateral Instrument 11-101* (Form 11-101 F1)
- Companion Policy 11-101CP *Principal Regulator System* (CP 11-101),
- National Instrument 31-101 *National Registration System* (NI 31-101),
- Form 31-101F1 *Election to use NRS and Determination of Principal Regulator*
- Form 31-101F2 *Notice of Change*
- National Policy 31-201 *National Registration System* (NP 31-201), and
- National Policy 43-201 *Mutual Reliance Review System for Prospectuses* (NP 43-201)²

(collectively, the proposed repeals).

¹ In Québec, this policy is adopted as Notice 12-201 Relating to the Mutual Reliance Review System for Exemptive Relief Applications.

² In Québec, this policy is adopted as Notice 43-201 Relating to the Mutual Reliance Review System for prospectuses.

Purpose and scope

The purpose of the proposed instrument is to implement, in the main areas of securities regulation, a system that gives a market participant access to the capital markets in multiple jurisdictions by dealing only with its principal regulator and meeting the requirements of one set of harmonized laws. A market participant's principal regulator will usually be the regulator in the jurisdiction where the market participant's head office or working office is located.

Local amendments

CSA members in some jurisdictions plan to make consequential amendments to local securities rules and policies.

The Autorité des marchés financiers (AMF) intends to amend Appendix C of National Instrument 14-101 *Definitions* (NI 14-101) to replace the reference to the Commission des valeurs mobilières du Québec with a reference to AMF or, where applicable, the Bureau de décision et de révision en valeurs mobilières.

In Québec, the proposed instrument will also include a reference provision (section 1.3) that will direct the reader to an additional appendix (Appendix F). This appendix will set out the complete references of all regulatory and other relevant texts mentioned in the proposed instrument.

The British Columbia Securities Commission (BCSC) intends to eliminate its carve-outs in National Instrument 58-101 *Disclosure of Corporate Governance Practices* (NI 58-101) and National Instrument 81-104 *Commodity Pools* (NI 81-104). The latter change will require a consequential amendment to Companion Policy 81-104CP *Commodity Pool* (CP81-104).

The BCSC also proposes to adopt Multilateral Instrument 52-110 *Audit Committees* (MI 52-110), Companion Policy 52-110CP *Audit Committees* (CP52-110), Form 52-110 F1 *Audit Committee Information required in an AIF* (Form 52-110 F1), and Form 52-110F2 *Disclosure by Venture issuers* (Form 52-110F2) and to repeal its local audit committee rule, BC Instrument 52-509 *Audit Committees* (BCI 52-509). The BCSC is publishing MI 52-110, CP52-110, Form 52-110F1 and Form 52-110F2 and the repeal of BCI 52-509 for comment under a separate local notice.

We are publishing the proposed amendments to NI 14-101, NI 58-101, NI 81-104 and CP81-104 with this notice.

Publication and request for comments

The text of the proposed instrument and proposed amendments accompany this notice, as follows:

- NI 11-102 (Appendix A – Schedule 1)
- Form 11-102 F1 (Appendix A – Schedule 2)

- CP 11- 102 (Appendix A – Schedule 3)
- the proposed amendments to NP 12-201 (Appendix B)
- the proposed amendments to NI 14-101 (Appendix C)
- the proposed amendments to NI 58-101 (Appendix D)
- the proposed amendments to NI 81-104 (Appendix E – Schedule 1)
- the proposed amendments to CP 81-104 (Appendix E – Schedule 2)

We expect to implement the proposed instrument, proposed amendments and proposed repeals in stages as we implement the related proposed national instruments. We would implement the parts that relate to continuous disclosure, prospectuses and discretionary exemptions when we implement proposed NI 41-101. That is currently targeted for the end of 2007. We would implement the part of the proposed instrument related to registration concurrently with proposed NI 31-103. That is currently targeted for mid-2008.

Background

On September 30, 2004, the Ministers responsible for securities regulation in most Canadian provinces and territories announced a memorandum of understanding (MOU) and an action plan that includes making best efforts to implement a passport system in certain areas of securities regulation.

The Ministers agreed that the system would provide a single window of access to market participants in areas where there are already highly harmonized securities laws across Canada or where regulators and governments could achieve highly harmonized securities laws quickly. The areas the proposed system cover include:

- prospectus requirements and clearance,
- continuous disclosure requirements,
- registration process, requirements and related filings,
- prospectus and registration exemptions,
- discretionary exemptions.

In 2005, the CSA implemented phase I of the passport system using the statutory powers that were available at the time. We now have, or expect to have, more powers to enable us to implement phase II of the passport system, which will make it easier for market participants to gain access to the capital markets and achieve the goals of the MOU.

The following table shows how we implemented phase I and propose to implement phase II in each area of regulation:

Area	Phase I	Implemented by	Date	Phase II	To be implemented by
Prospectus	<ul style="list-style-type: none"> - Streamlined mutual reliance system - Exemption from non-principal jurisdiction (NPJ) form and content requirements 	<ul style="list-style-type: none"> - Amended NP 43-201 - Part 4 of MI 11-101 	Sept 2005	<ul style="list-style-type: none"> - Automatic receipt in NPJ - Most requirements for prospectuses made uniform - Exemption from all non-harmonized requirements 	<ul style="list-style-type: none"> Part 3 of NI 11-102 NI 41-101 Part 3 of NI 11-102
Continuous disclosure (CD)	<ul style="list-style-type: none"> - Harmonized most CD requirements - Exemption from NPJ requirements 	<ul style="list-style-type: none"> NI 51-102 <i>Continuous Disclosure Obligations</i> (NI51-102) and other rules Part 3 of MI 11-101 	<ul style="list-style-type: none"> March 2004 Sept 2005 	<ul style="list-style-type: none"> - Eliminated substantive continuous disclosure carve outs and opt outs - Exemption from all non-harmonized requirements 	<ul style="list-style-type: none"> NI 51-102 and other rules Part 2 of NI 11-102
Registration	<ul style="list-style-type: none"> - Mutual reliance system for registering in NPJ - Exemption from NPJ fit and proper requirements 	<ul style="list-style-type: none"> - NP 31-201 <i>National Registration System</i> (NP 31-201) - NI 31-101 <i>National Registration System</i> (NI 31-101) 	April 2005	<ul style="list-style-type: none"> - Automatic registration in NPJ - Most requirements for registrants made uniform - Exemption from most non-harmonized requirements 	<ul style="list-style-type: none"> Part 4 of NI 11-102 - NI 31-103 - Part 4 of NI 11-102

Area	Phase I	Implemented by	Date	Phase II	To be implemented by
Registration and prospectus exemptions	- Most exemptions made uniform	- NI 45-106 <i>Prospectus and Registration Exemptions</i>	Sept 2005	n/a	n/a
Discretionary exemptions	- Continuous disclosure exemptions needed only from principal jurisdiction (PJ)	- Part 3 of MI 11-101	Sept 2005	- For most types of discretionary exemptions, automatic exemption in NPJ from equivalent requirements to those covered by PJ exemption	Part 5 of NI 11-102

Under the MOU, governments plan to review the fee structures of participating jurisdictions to assess how they might want to change them so they are consistent with the objectives of the MOU. Meanwhile, market participants are required to pay fees in all jurisdictions for prospectus filings, continuous disclosure filings and registration. Market participants are required to pay fees for discretionary relief applications only in their principal jurisdiction.

Effect on MI 11-101 and Mutual Reliance Review Systems

Phase II of passport would replace the current processes issuers use to obtain decisions in multiple jurisdictions. As a result, the following instruments, forms and policies would no longer be necessary and we propose to repeal them:

- MI 11-101
- Form 11-101F1
- CP 11-101
- NI 31-101
- Form 31-101F1
- Form 31-101F2
- NP 31-201
- NP 43-201

Part 5 of MI 11-101 provides a mobility exemption, which allows a registered firm or individual to continue dealing with a limited number of clients who move to a jurisdiction

where the firm or individual is not registered. Proposed NI 31-103, which we published for comment on February 20, 2007, includes a slightly modified mobility exemption that would replace the exemption in MI 11-101 and be available in all CSA jurisdictions. Subject to the comments we receive, we propose to move this exemption into a separate national instrument to be brought into force at the same time as the repeal of MI 11-101. That would ensure the mobility exemption remains available to registrants between the repeal of MI 11-101 and the implementation of NI 31-103.

We will not repeal NP 12-201 because some types of discretionary exemptions remain outside the scope of the proposed instrument. We propose to amend NP 12-201 to encourage market participants to rely on the exemption in Part 5 of the proposed instrument where it is available and to make the determination of principal regulator consistent under both systems (see Appendix B to this notice).

Summary of Passport System

System for continuous disclosure

In phase I of passport, each non-principal regulator exempts a reporting issuer from continuous disclosure requirements if the reporting issuer files whatever it files with the principal regulator. The main benefits of this exemption are that the reporting issuer can obtain a discretionary exemption from continuous disclosure requirements by dealing only with its principal regulator and that the reporting issuer does not have to concern itself with differences among jurisdictions in requirements or interpretation.

Phase II deals with continuous disclosure in a different way.

First, we propose a more general provision to deal with discretionary exemptions (see below).

Second, in conjunction with phase II, we propose to eliminate all of the remaining substantive differences in continuous disclosure requirements. We have already eliminated all the substantive carve outs in NI 51-102 and plan to eliminate the substantive carve outs affecting the continuous disclosure requirements of reporting issuers in other national or multilateral instruments. In section 2.1 of NI 11-102, we propose to exempt an issuer that is reporting in more than one jurisdiction from any non-harmonized continuous disclosure requirements that remain in any jurisdiction, including its principal jurisdiction. Reporting issuers would therefore be governed by the continuous disclosure requirements in the harmonized provisions of securities legislation. The companion policy makes clear that we propose to interpret and apply these provisions in a uniform way and do not anticipate adopting further requirements that would result in non-harmonized continuous disclosure requirements applying to issuers that are reporting in more than one jurisdiction.

System for prospectus filings and clearance

In phase I, we shortened prospectus-clearing times by streamlining the mutual reliance review system for prospectus review. In addition, in MI 11-101, each non-principal

regulator exempts a filer from the prospectus form and content requirements. The main benefits of the exemption are that the filer can obtain a discretionary exemption or waiver from prospectus form and content requirements by dealing only with its principal regulator and that the filer does not have to concern itself with differences among jurisdictions in requirements or interpretation.

In phase II, we propose to deal with exemptions through the general discretionary exemption system described below. We propose to deal with other aspects of prospectus filings and clearance as follows.

(i) Deemed prospectus receipt

First, we propose to replace the MRRS system with a new system under which a filer can obtain an automatic prospectus receipt in each non-principal jurisdiction. Section 3.3 of NI 11-102 would deem a receipt to be issued in each non-principal jurisdiction when a principal regulator issues a receipt for a preliminary prospectus or prospectus.

To obtain a deemed prospectus receipt in a non-principal jurisdiction, the filer would

- file its prospectus materials (including any amendments) with the principal regulator and obtain the necessary receipts, and
- file its prospectus materials with the non-principal regulator.

The filer would also pay prospectus fees in each jurisdiction as it does now.

This simplifies the current MRRS process by producing an automatic legal result in non-principal jurisdictions based on the decision of the principal regulator. It eliminates the need for the principal regulator to coordinate a prospectus review with, and obtain decisions from, non-principal regulators. It therefore eliminates the need to allow a period for non-principal regulators to decide whether to opt out.

To assist issuers, when the principal regulator issues its receipt for a prospectus, it will list the non-principal jurisdictions where it understands the receipt is deemed to have been issued.

(ii) Exemption from non-harmonized requirements

Second, we propose to complete the harmonization of prospectus requirements through NI 41-101, to interpret and apply harmonized prospectus requirements in a uniform way, and, in section 3.4 of NI 11-102, to exempt someone filing a prospectus in more than one jurisdiction from non-harmonized prospectus requirements in each jurisdiction where the prospectus is filed, including the principal jurisdiction. A prospectus filer would therefore be governed only by the prospectus requirements in harmonized provisions of securities legislation. The companion policy makes clear that we do not anticipate adopting further requirements that would result in non-harmonized prospectus requirements applying to prospectuses filed in more than one jurisdiction.

System for registration

Phase I of passport for registration consisted of NI 31-101 and NP 31-201 and the mobility exemption in MI 11-101. The national registration system provides a registered firm or individual with an exemption from the fit and proper requirements that would otherwise apply when the firm or individual seeks registration in a non-principal jurisdiction and a mutual reliance process for obtaining registration in a non-principal jurisdiction by dealing only with the principal regulator.

As noted above, we plan to move the mobility exemption into a separate instrument and, ultimately, into NI 31-103.

In phase II, we propose to deal with exemptions through the general discretionary exemption system described below. We propose to simplify obtaining registration and complying with requirements in multiple jurisdictions as follows.

(i) Automatic registration

First, we propose to replace the National Registration System with a new system under Part 4 of NI 11-102. Under section 4.2 of NI 11-102, a firm or individual that is or becomes registered in its principal jurisdiction can obtain registration in a non-principal jurisdiction through a simple filing with its principal regulator. Section 4.3 of NI 11-102 provides that any terms, conditions, restrictions, or requirements imposed by the principal regulator would also apply in each non-principal jurisdiction. If the registration is suspended, cancelled, terminated, revoked or surrendered in the principal jurisdiction, section 4.4 of NI 11-102 provides that the registration would automatically be suspended, cancelled, terminated, revoked or surrendered in each non-principal jurisdiction.

Registration fees would apply in each jurisdiction as at present.

Phase II is designed to accommodate registration through self-regulatory organizations in jurisdictions where the necessary arrangements are in place. If one of those jurisdictions is a firm or individual's principal jurisdiction, the firm or individual would deal with the self-regulatory organization it normally deals with in its principal jurisdiction to become registered in a non-principal jurisdiction under the Instrument.

(ii) Exemption from non-harmonized requirements

Second, we propose to harmonize most regulatory requirements for registrants through new NI 31-103, which was published for comment on February 20, 2007, to interpret and apply harmonized registration requirements in a uniform way, and, in section 4.9 of NI 11-102, to exempt a person or company registered in more than one jurisdiction from most non-harmonized registration requirements in each jurisdiction, including the principal jurisdiction.

The law that would apply would be the registration requirements in the harmonized provisions of securities legislation and a few other requirements in each local jurisdiction in which a person is registered under section 4.2 of NI 11-102 (see Appendix C of

CP 11-102 for a list of the substantive local registration requirements in each jurisdiction). The companion policy makes clear that we do not anticipate adopting further requirements that would result in non-harmonized requirements applying to firms or individuals registered in more than one jurisdiction.

These changes would be a significant step toward having only harmonized requirements apply to registrants in multiple jurisdictions. Prior to implementing Part 4 of the proposed rule and in the course of our work to finalize NI 31-103, we will aim to eliminate or harmonize most of the remaining local registration requirements to move even closer toward this objective.

As part of our work to finalize NI 31-103, we will also review the filing requirements in National Instrument 33-109 *Registration Information* to ensure that the notice requirements under that rule and under NI 11-102 are consistent.

(iii) Automatic transition to passport

Section 4.6 of NI 11-102 automatically transforms the registration of a firm and its representatives in non-principal jurisdictions into a registration under passport unless the firm gives notice to the contrary within 30 days after Part 4 of NI 11-102 comes into effect. Generally, this means that, if a firm does not give notice, it and its representatives will be subject to a single set of terms and conditions, i.e., those of their principal regulator.

System for discretionary exemptions

In phase I, we adopted provisions that permit an issuer or filer to obtain discretionary exemptions from continuous disclosure and prospectus form and content requirements by dealing only with its principal regulator. We propose a much broader system for phase II.

For discretionary exemptions from most securities requirements, we propose in section 5.4 of NI 11-102 that a market participant be automatically exempted from requirements in a non-principal jurisdiction, if the principal regulator exempts the market participant from the equivalent provisions in the principal jurisdiction. This simplifies the current MRRS process by providing an automatic legal result in non-principal jurisdictions based on the decision of the principal regulator. It eliminates the need for the principal regulator to coordinate with, and obtain decisions from, non-principal regulators. It also eliminates the need to file an application in non-principal jurisdictions and pay fees in those jurisdictions.

As noted above, we will maintain NP 12-201 for discretionary orders not covered by the proposed instrument. For example, an order to cease to be a reporting issuer would still be dealt with under NP 12-201.

ANTICIPATED COSTS AND BENEFITS

We expect that phase II of passport will enhance the efficiency of regulation of the capital markets and simplify the use of the regulatory system for market participants. By

using the passport tools, we can make more timely decisions and our processes more efficient and seamless for market participants.

We did not do a cost-benefit analysis of phase II of passport because we have assumed that all jurisdictions would adopt it. On that basis, we do not expect to impose new costs on market participants. In fact, we expect costs to decrease.

REQUEST FOR COMMENT

We request comments on the proposed instrument, the proposed amendments and the proposed repeals.

HOW TO PROVIDE YOUR COMMENTS

Please provide your comments by **May 28, 2007** by addressing your submission to the regulators listed below:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Nova Scotia Securities Commission
Office of the Attorney General, Prince Edward Island
Financial Services Regulation Division, Consumer and Commercial Affairs Branch,
Department of Government Services, Newfoundland and Labrador
Registrar of Securities, Government of Yukon
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut

You do not need to deliver your comments to each of these regulators. Please deliver your comments to the two addresses that follow, and they will be distributed to the other jurisdictions:

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If you are not sending your comments by e-mail, please send a diskette or CD containing your comments in Word.

We cannot keep submissions confidential because securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published.

QUESTIONS

Please refer your questions to any of:

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