

Notice and Request for Comment

Proposed National Policy 11-204 *Process for Registration in Multiple Jurisdictions*

Proposed Amendments to Multilateral Instrument 11-102 *Passport System*, Companion Policy 11-102CP *Passport System*, National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions*, and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* and Other Related Amendments

July 18, 2008

This notice describes the proposals of the Canadian Securities Administrators (the CSA) to streamline the process for registration in multiple jurisdictions. The proposals include rule and policy amendments by the CSA, other than the Ontario Securities Commission (OSC), (the passport regulators) to make the passport system available for registration. The proposals also include a new national policy for adoption by all members of CSA, including the OSC, setting out the processes for registration in multiple jurisdictions. These proposed rule and policy amendments would further simplify the securities regulatory system for registrants who deal with clients in more than one Canadian jurisdiction.

The proposals also include rule and policy amendments to deal with issues that have arisen since the implementation of the phase II of passport for issuers. The phase II of passport for issuers covers continuous disclosure, prospectuses and discretionary exemption applications.

Passport system — overview

In September 2005, the passport regulators implemented Multilateral Instrument 11-101 *Principal Regulator System* (MI 11-101) as phase I of passport. On March 17, 2008, the passport regulators implemented Multilateral Instrument 11-102 *Passport System* (MI 11-102) as phase II of passport for issuers and repealed the provisions of MI 11-101 related to issuers. We propose implementing phase II of passport for registration, and updates to phase II of passport for issuers, in the first half of 2009.

The OSC is not adopting the proposed amendments to MI 11-102 and to Companion Policy 11-102CP *Passport System* (CP 11-102) to implement the passport for registrants. As with the passport for issuers, CSA developed proposed interfaces to make the securities regulatory system as efficient and effective as possible in the circumstances for all registrants who want to deal with clients in both passport jurisdictions and Ontario.

The OSC has participated in developing the proposed interfaces between the passport jurisdictions and Ontario.

Passport for registration, together with the related Ontario interfaces, would replace the National Registration System (NRS). We describe the elements of the passport and interface system for registration more fully below.

A key foundation for the passport system is a set of nationally harmonized regulatory requirements consistently interpreted and applied throughout Canada. Implementation of passport for registration depends on the adoption of proposed National Instrument 31-103 *Registration Requirements* (NI 31-103). CSA members expect to implement consequential amendments to national and local rules, and some of our governments to proclaim act amendments to harmonize registration requirements, when we adopt NI 31-103.

The governments of the Northwest Territories and Nunavut have enacted a new *Securities Act*, which the regulators in those jurisdictions expect will be in force when CSA members adopt NI 31-103.

CSA expects to make consequential amendments to National Instrument 31-102 *National Registration Database* (NI 31-102) and National Instrument 33-109 *Registration Information* (NI 33-109), its companion policy and forms and to make minor changes to proposed NI 31-103 and its companion policy. CSA members are not publishing these amendments for comment because they are not material, but we describe them generally later in this notice.

Passport system – rule and policy changes for registration

The passport regulators are publishing the proposed rule and policy changes to implement passport for registration. The major elements of the passport system for registration are set out in:

- amendments to MI 11-102, and
- amendments to CP 11-102.

We developed the amendments to appendices to MI 11-102 based on the securities act and rule provisions we expect to be in force when we implement passport for registration.

All CSA members, including the OSC, are publishing proposed National Policy 11-204 *Process for Registration in Multiple Jurisdictions* (NP 11-204) and proposed consequential amendments to National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* (NP 11-203).

Passport for registration contained in the proposed amendments to MI 11-102 and related documents and proposed NP 11-204 would replace NRS, which is the current process

registrants use to obtain decisions in multiple jurisdictions. Consequently, CSA, including the OSC, also proposes to repeal the following:

- National Instrument 31-101 *National Registration System* (NI 31-101),
- Form 31-101F1 *Election to use NRS and Determination of Principal Regulator* (Form 31-101F1),
- Form 31-101F2 *Notice of Change* (Form 31-101F2), and
- National Policy 31-201 *National Registration System* (NP 31-201) (collectively, the proposed repeals).

Purpose and scope of passport for registration

The purpose of passport for registration is to implement a system that gives a registrant access to clients in multiple jurisdictions by dealing only with the registrant's principal regulator and meeting the requirements of one set of harmonized laws. A registrant's principal regulator will usually be the regulator in the jurisdiction where the registrant'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.

Amendments to passport for issuers

We propose to update the passport for issuers to address a few issues that have arisen since implementation. The passport regulators propose to amend MI 11-102 and CP 11-102, and CSA proposes to amend National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions* (NP 11-202) and NP 11-203.

Publication and request for comments

The text of proposed new NP 11-204, the proposed amendments to NP 11-202 and NP 11-203 and, except in Ontario, the proposed amendments to MI 11-102 and CP 11-102 accompany this notice, as follows:

- amendments to MI 11-102 (Schedule A)
- amendments to Appendix D of MI 11-102 (in the form of a blackline) (Schedule B)
- amendments to CP 11-102 (in the form of a blackline) (Schedule C)
- NP 11-204 (Schedule D)
- amendments to NP 11-202 (Schedule E)
- amendments to NP 11-203 (in the form of a blackline) (Schedule F)

CSA expects to implement proposed NP 11-204, the proposed amendments to NP 11-202 and NP 11-203, and the proposed repeals when we implement NI 31-103, which we currently target for the first half of 2009. The passport regulators expect to implement the proposed amendments to MI 11-102 and CP 11-102 at the same time.

Background

In 2005, the passport regulators implemented phase I of the passport system using the statutory powers that were available at the time. In March 2008, we implemented phase II of the passport for issuers using recently acquired statutory powers. We are also using these powers to implement the passport for registration.

On March 28, 2007, the passport regulators published a proposed passport system for registration. We received 17 submissions on that publication which also included the passport for issuers. The passport regulators responded to all comments received, except those specifically related to registration, in a notice published on January 25, 2008. We attach a summary of the registration comments, including our response, as Schedule G.

Under the Memorandum of Understanding Regarding Securities Regulation of September 2004 entered into by the Ministers responsible for securities regulation in the passport jurisdictions (MOU), governments undertook 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 passport.

The Council of Ministers created under the MOU asked CSA to review the fee structures of its members and propose changes to Ministers. CSA is conducting the review and will report to Ministers. Meanwhile, under passport, existing fees continue to apply to market participants in all jurisdictions, except for fees for exemption applications, which apply only in the principal jurisdiction.

Summary of proposals

Passport for registration

Phase I of passport for registration consisted of NRS and the mobility exemption in MI 11-101. NRS 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, an exemption from fit and proper filing and notice requirements, and a mutual reliance process for obtaining registration in a non-principal jurisdiction by dealing only with the principal regulator.

CSA published a revised mobility exemption on February 29, 2008 as part of the second publication for comment of proposed NI 31-103 and proposed repealing MI 11-101 (because it only contains the current mobility exemption, which will be replaced with the new exemption in NI 31-103).

CSA does not propose to keep the NRS exemption from the fit and proper requirements that would otherwise apply when a firm or individual seeks registration in a non-principal jurisdiction. This exemption is no longer necessary because the requirements will be harmonized under NI 31-103. Furthermore, CSA proposes to replace the NRS exemption from the notice and filing requirements with a permission in the companion policy to NI

31-103 for a firm to submit fit and proper notices and filings to its principal regulator only.

In addition, the passport regulators propose to simplify obtaining registration and complying with requirements in multiple jurisdictions as follows.

(i) Automatic registration and other regulatory action

We propose to replace NRS with a new system under Part 6 of MI 11-102. Under sections 6.3 and 6.4 of MI 11-102, a firm or individual that is registered in its principal jurisdiction can obtain registration in a non-principal passport jurisdiction through a submission that, for a firm, can be made only with its principal regulator. A submission for an individual will continue to be made on the National Registration Database (NRD).

For a firm, automatic registration also depends on receipt of the submission having been acknowledged. A regulator will acknowledge receipt by updating NRD to show that the firm is registered in the non-principal jurisdiction. This condition would make the firm's registration effective on the date shown on NRD so that the NRD information would be conclusive. CSA is currently looking at ways to remove the acknowledgement as a condition of registration so that automatic registration in a non-principal passport jurisdiction can occur upon making the required submission, while still preserving the accuracy of NRD as the database of record for firm registration. We did not include the acknowledgement as a condition for automatic registration of individuals because NRD keeps track of every submission date for individuals.

Section 6.3 of MI 11-102 does not apply to a firm registered in the category of restricted dealer. To register in a non-principal jurisdiction, a restricted dealer must apply directly in the non-principal passport jurisdiction. Automatic registration does not apply because there are no standard requirements for this category, which has been designed to deal with purely local categories. However, other aspects of passport, including automatic registration of the firm's representatives, would apply to a restricted dealer registered as such in multiple passport jurisdictions.

MI 11-102 makes regulatory actions by a firm's or individual's principal regulator apply automatically in each non-principal passport jurisdiction where the firm or individual is registered. Section 6.5 provides that any terms, conditions, restrictions, or requirements imposed by the principal regulator would also apply in each non-principal passport jurisdiction. If the registration is suspended, cancelled, terminated, revoked or surrendered in the principal jurisdiction, sections 6.6 to 6.8 provide that the registration would automatically be suspended, cancelled, terminated or revoked in each non-principal passport jurisdiction as appropriate. These provisions apply whether or not the firm or individual was registered automatically in a non-principal passport jurisdiction under section 6.3 or 6.4.

Registration fees would apply in each passport jurisdiction as at present. However, we plan to make changes to NRD to allow a firm making a submission to register in more

than one jurisdiction to submit each jurisdiction's fees on NRD instead of by cheque as is currently the case.

Passport 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's 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 passport jurisdiction under MI 11-102.

(ii) Automatic transition to terms and conditions of Principal Regulator

Section 6.9 of MI 11-102 delays the automatic application of the terms and conditions of the principal regulator in a non-principal passport jurisdiction until 30 days after the effective date of Part 6 of MI 11-102. This is to give a firm or individual time to apply to the regulator in the non-principal jurisdiction for an exemption from section 6.5 of MI 11-102. This means that, if a firm or individual does not apply for the exemption, the firm or individual will generally be subject to a single set of terms and conditions, i.e., those of the principal regulator.

(iii) Transition – Notice of Principal Regulator for Foreign Firm

Under section 6.10(1) of MI 11-102, if a foreign firm was registered in a category in multiple jurisdictions of Canada before the effective date of Part 6, the firm must submit information about its principal regulator in proposed Form 33-109F6, which will be revised to make this possible. The purpose of this submission is for a foreign firm to identify its principal regulator in accordance with section 6.1 of MI 11-102 and notify the securities regulatory authorities or regulators. Section 6.10(2) permits the foreign firm to make its submission by giving it to the principal regulator instead of the regulator in the non-principal passport jurisdiction.

(iv) Applicable requirements

We propose to harmonize most regulatory requirements for registrants through proposed NI 31-103, which CSA published for a second comment period on February 29, 2008. Proposed NI 31-103 contains some requirements and carve-outs for specific jurisdictions, which are apparent on the face of the instrument. In addition, some jurisdictions may have unique registration requirements in their statute or local rules or regulations.

Passport for discretionary exemption applications

Consequent to the proposed amendments for passport for registration and the expected concurrent adoption of proposed NI 31-103, passport regulators also propose to amend

- MI 11-102 to ensure the principal regulator for registration deals with the usual applications for exemption made in connection with an application for registration, and
- Appendix D of MI 11-102 to add the relevant provisions of proposed NI 31-103 and other equivalent registration provisions to the list of equivalent provisions

from which a registrant may obtain a discretionary exemption and have it apply automatically in non-principal passport jurisdictions under Part 4 of MI 11-102.

NP 11-204

CSA proposes to implement new processes for making national registration decisions through NP 11-204, which all jurisdictions would adopt. NP 11-204 would work in tandem with MI 11-102. The processes will provide the interface:

- for registrants from passport jurisdictions to register in Ontario; and
- for Ontario registrants to register in one or more passport jurisdictions.

The interface for passport jurisdiction registrants would be similar to NRS. They would ensure that a passport jurisdiction registrant generally deals only with its principal regulator to gain access to Ontario.

The interface for Ontario market participants would provide them with direct access to passport jurisdictions under MI 11-102. An Ontario market participant would therefore be able to deal with the OSC as its principal regulator to register automatically in passport jurisdictions.

A foreign registrant would be able to gain access to the Canadian capital markets through a principal regulator on the same basis as a market participant in that regulator's jurisdiction.

Description of other amendments

The passport regulators propose to amend MI 11-102 and CP 11-102, and CSA proposes to amend NP 11-202 to address issues that have arisen since we implemented MI 11-102. The proposed additional amendments to MI 11-102

- repeal the exemptions from the non-harmonized continuous disclosure and prospectus requirements because the requirements would no longer exist or the relevant passport regulators have determined that they should continue to apply in their jurisdiction.
- amend the definition of 'national prospectus instrument' to add National instrument 71-101 *Multijurisdictional Disclosure System* and extend passport to MJDS offerings, and
- make necessary adjustments to the equivalent provisions in Appendix D.

The amendments to NP 11-202 reflect administrative practices that CSA has developed since the passport regulators implemented MI 11-102.

Most of the amendments to NP 11-203 are consequential to the proposed amendments to MI 11-102 to implement passport for registration. The others deal with issues that have arisen since the implementation of passport for issuers.

CSA also expects to amend NI 31-102 and NI 33-109, its related forms and companion policy, as applicable, to

- allow firms, and individuals filing under a temporary hardship exemption, to make their submissions in alternate format instead of in paper format,
- allow foreign firms to identify their principal regulator under item A of Form 33-109F6, and
- generally adapt them for use with MI 11-102, for example, by adding the concept of ‘principal regulator’ and giving a firm permission to submit a notice of change on Form 33-109F5 to the firm’s principal regulator only.

CSA also expects to further amend proposed NI 31-103 and its companion policy, which we published for a second comment period on February 29, 2008. The proposed additional amendments include

- conforming the definition of ‘principal regulator’ in NI 31-103 to the concept of ‘principal regulator’ in proposed Part 6 of MI 11-102,
- eliminating the notice of principal regulator requirement under the mobility exemption in NI 31-103,
- adopting a requirement to give notice before relying on the mobility exemption under NI 31-103 like under MI 11-101,
- giving permission in the companion policy to a firm to submit the notices and filings required under the ‘fit and proper’ notice and filing requirements of Part 4 of proposed NI 31-103 to the firm’s principal regulator only, and
- reflecting the repeal of NRS.

Anticipated Costs and Benefits

The passport regulators expect that passport for registration will enhance the efficiency of regulation of the capital markets and simplify the use of the regulatory system for registrants. By using the passport tools, we can make more timely decisions and our processes more efficient and seamless for registrants.

We did not do a cost-benefit analysis of passport for registration. We worked with the OSC to develop interfaces for Ontario registrants who want to deal with clients in passport jurisdictions, and for registrants in passport jurisdictions who want to deal with clients in Ontario. The interfaces make the securities regulatory system as efficient and effective as possible in the circumstances for all registrants who want to deal with clients in both passport jurisdictions and Ontario.

Request for Comment

We request comments on the proposed amendments to MI 11-102 and CP 11-102, proposed new NP 11-204, the proposed amendments to NP 11-202 and NP 11-203, and the proposed repeals.

How to Provide Your Comments

Please provide your comments on

- the amendments to MI 11-102, CP 11-102, NP 11-202, NP 11-203, and new NP 11-204, by **September 17, 2008**, and
- the repeal of NRS by **October 17, 2008**.

Please address your submissions 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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