

Multilateral Instrument 11-101
Principal Regulator System

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Multilateral Instrument 11-101
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PART 1 DEFINITIONS

1.1 Definitions

In this Instrument,

“audit committee rule” means,

- (a) except in British Columbia, MI 52-110, and
- (b) in British Columbia, BCI 52-509;

“BCI 52-509” means BC Instrument 52-509 *Audit Committees*;

“CD requirement” means a requirement in

- (a) National Instrument 43-101 *Standards of Disclosure for Mineral Projects*,
- (b) National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*,
- (c) National Instrument 51-102 *Continuous Disclosure Obligations*,
- (d) NI 52-107 as it applies to a document filed under National Instrument 51-102 *Continuous Disclosure Obligations*,
- (e) National Instrument 52-108 *Auditor Oversight*,¹
- (f) Multilateral Instrument 52-109 *Certification of Disclosure in Issuers’ Annual and Interim Filings*,
- (g) National Instrument 54-101 *Communication with Beneficial Owners of Securities of Reporting Issuers*,
- (h) NI 58-101,
- (i) section 8.5 of MI 81-104,²
- (j) NI 81-106³, or
- (k) an audit committee rule;

¹ CSA is still considering whether to include this instrument in the definition.

² CSA will effectively eliminate the carve-out in section 8.6 for British Columbia commodity pools. As a result, section 8.5 will be harmonized.

³ The CSA expects NI 81-106 to come into effect on June 1, 2005.

“commodity pool” has the same meaning as in MI 81-104;

“dealer” means an investment dealer, or a mutual fund dealer, as defined in NI 31-101;

“eligible client” means a client of a person or company if the client

- (a) was a client of the person or company immediately before the client became a resident of the local jurisdiction,
- (b) is a spouse, parent, grandparent, brother, sister or child of a person referred to in paragraph (a),
- (c) is a parent, grandparent, brother, sister or child of the spouse of a person referred to in paragraph (a),
- (d) is a person or company of which a majority of the voting securities are beneficially owned by persons or companies, or a majority of the directors are individuals, described in paragraph (a), (b) or (c), or
- (e) is a trust or estate of which all of the beneficiaries or a majority of the trustees or executors are persons or companies described in paragraph (a), (b) or (c);

“investment fund” has the same meaning as in NI 81-106;

“investment fund manager” means a person or company that directs the business, operations and affairs of the investment fund;

“local prospectus-related requirements” mean the requirements listed in Appendix A below the name of the jurisdiction;

“long form rule” means,

- (a) if Québec is not the principal jurisdiction, Ontario Securities Commission Rule 41-501 *General Prospectus Requirements*, except sections 13.8, 13.9(2), 13.9(3), 13.9(4) and 14.1(2), as modified by Appendix B, or
- (b) if Québec is the principal jurisdiction, Québec Regulation Q-28 *General Prospectus Requirements*, except sections 13.7, 13.8(2), 13.8(3), 13.8(4) and 14.1(2);

“MI 52-110” means Multilateral Instrument 52-110 *Audit Committees*;

“MI 81-104” means Multilateral Instrument 81-104 *Commodity Pools*;

“mutual fund restricted individual” has the same meaning as in MI 81-104;

“national prospectus rules” means

- (a) the requirement in section 2.1 of NI 33-105 to provide the information specified in Appendix C of NI 33-105,
- (b) National Instrument 41-101 *Prospectus Disclosure Requirements*,
- (c) National Instrument 44-101 *Short Form Prospectus Distributions*,
- (d) National Instrument 44-102 *Shelf Distributions*,
- (e) National Instrument 44-103 *Post-Receipt Pricing*,
- (f) the requirements in NI 52-107 that relate to a preliminary prospectus or prospectus;
- (g) NI 81-101,
- (h) the seed capital requirements, and
- (i) sections 8.1, 8.2(1) and 8.2(2) of National Instrument 81-105 *Mutual Fund Sales Practices*;

“NI 31-101” means National Instrument 31-101 *National Registration System*;

“NI 33-105” means National Instrument 33-105 *Underwriting Conflicts*;⁴

“NI 52-107” means National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency*;

“NI 58-101” means National Instrument 58-101 *Disclosure of Corporate Governance Practices*;

“NI 81-101” means National Instrument 81-101 *Mutual Fund Prospectus Disclosure*;

“NI 81-102” means National Instrument 81-102 *Mutual Funds*;

“NI 81-106” means National Instrument 81-106 *Investment Fund Continuous Disclosure*;

“non-principal jurisdiction” means, for a person or company, the jurisdiction of a non-principal regulator;

“non-principal regulator” means, for a person or company, the securities regulatory authority or regulator of a jurisdiction other than the principal jurisdiction;

⁴ The AMF has adopted a blanket order (2003-C-0047) that exempts dealers from certain Québec local regulatory requirements to the extent they comply with NI 33-105. The AMF is presently evaluating the possibility of replacing this order by a regulation for the purposes of this instrument. In the event that NI 33-105 would not be adopted as a regulation in Québec, the blanket order might need to be modified in order to adequately mirror the exemption from Appendix C of NI 33-105 provided for in section 4.2 of this instrument or, alternatively, certain modifications might have to be made to section 4.2 of this instrument in order to reflect Québec’s situation.

“participating dealer” has the same meaning as in NI 81-102;

“principal distributor” has the same meaning as in NI 81-102;

“principal jurisdiction” means, for a person or company, the jurisdiction of the principal regulator;

“principal regulator” means, for a person or company, the securities regulatory authority or regulator determined in accordance with Part 2;

“seed capital requirements” means

- (a) in a jurisdiction other than British Columbia, Part 3 of MI 81-104, and
- (b) in British Columbia, sections 3.1 and 3.2 of NI 81-102;

“unrestricted adviser” has the same meaning as in NI 31-101; and

“working office” has the same meaning as in NI 31-101.

PART 2 PRINCIPAL REGULATOR

2.1 Principal regulator for continuous disclosure

- (1) In this section and section 2.3, “participating principal jurisdiction” means British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick⁵ or Nova Scotia.
- (2) For the purposes of Part 3, the principal regulator for a reporting issuer is the securities regulatory authority or regulator of the jurisdiction in which
 - (a) the issuer’s head office is located, if the issuer is not an investment fund, or
 - (b) the investment fund manager’s head office is located, if the issuer is an investment fund.
- (3) Despite subsection (2), if the issuer is not a reporting issuer in the jurisdiction referred to in paragraph (2)(a) or (b), or that jurisdiction is not a participating principal jurisdiction, the principal regulator for the reporting issuer is the securities regulatory authority or regulator in the participating principal jurisdiction with which the issuer has the most significant connection as of the date it first files a document under Part 3.

2.2 Notice of principal regulator for continuous disclosure

A reporting issuer relying on Part 3 must file a completed Form 11-101F1 with its first filing under Part 3.

⁵ This list is based on the list that is currently used in the MRRS policy 43-201 with New Brunswick added and Ontario removed.

2.3 Notice of change of principal regulator for continuous disclosure

- (1) A reporting issuer relying on Part 3 must file a completed Form 11-101F1 if
 - (a) the issuer is not an investment fund and the location of the issuer's head office changes to another participating principal jurisdiction, or
 - (b) the issuer is an investment fund and the location of the investment fund manager's head office changes to another participating principal jurisdiction.
- (2) For the purposes of subsection (1), the issuer must file the completed Form 11-101F1 at the same time the issuer is first required to file a document under a CD requirement following the change.

2.4 Principal regulator for prospectuses

- (1) In this section,

“determination date” is the earlier of

 - (a) the date the issuer files a pre-filing application in any jurisdiction in connection with the prospectus filing, and
 - (b) the date the issuer files the preliminary prospectus under Part 4 in a jurisdiction; and

“participating principal jurisdiction” means

 - (a) British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick⁶ and Nova Scotia, and
 - (b) Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut if the issuer files the preliminary prospectus and prospectus in Ontario and Ontario is the principal reviewer of the prospectus under a mutual reliance review system.
- (2) For the purposes of a prospectus filing under Part 4, an issuer's principal regulator is the securities regulatory authority or regulator of the jurisdiction in which
 - (a) the issuer's head office is located as of the determination date, if the issuer is not an investment fund, or
 - (b) the investment fund manager's head office is located as of the determination date, if the issuer is an investment fund.

⁶ This list is based on the list that is currently used in the MRRS policy 43-201 with New Brunswick added and Ontario removed.

- (3) Despite subsection (2), if the jurisdiction referred to in paragraph (2)(a) or (b) is not a participating principal jurisdiction, the principal regulator for the issuer is the securities regulatory authority or regulator in the participating principal jurisdiction with which the issuer has the most significant connection as of the determination date.

2.5 Principal regulator for registration

For the purposes of Part 5, the principal regulator

- (a) for a person or company, other than an individual, is the securities regulatory authority or regulator of the jurisdiction in which the person or company's head office is located, and
- (b) for an individual is the securities regulatory authority or regulator of the jurisdiction in which the individual's working office is located.

2.6 Notice of principal regulator for registration

- (1) As soon as practicable after relying on an exemption under Part 5, the person or company must file a completed Form 11-101F1.
- (2) Subsection (1) does not apply if the person or company is required to file a completed Form 31-101F1 or Form 31-101F2 under NI 31-101.

2.7 Notice of change of principal regulator for registration

- (1) A person or company relying on Part 5 must file a completed Form 11-101F1, as soon as practicable, if
- (a) the person or company, other than an individual, changes its head office to another principal jurisdiction, or
- (b) the location of the individual's working office changes to another principal jurisdiction.
- (2) Subsection (1) does not apply if the person or company is required to file a completed Form 31-101F2 under NI 31-101.

2.8 Administrative change of principal regulator

Despite sections 2.1, 2.4 and 2.5, if the person or company receives written notice from a securities regulatory authority or regulator that specifies a principal regulator for the person or company, the principal regulator specified in the notice is the principal regulator for the person or company as of the later of

- (a) the date the person or company receives the notice, and
- (b) the effective date specified in the notice, if any.

PART 3 CONTINUOUS DISCLOSURE EXEMPTION

3.1 Application - This Part does not apply to an issuer that is a reporting issuer in Ontario and

- (a) an investment fund, if the investment fund manager's head office is located in Ontario, or
- (b) not an investment fund, if the reporting issuer's head office is located in Ontario.

3.2 Continuous disclosure exemption

- (1) If the local jurisdiction is a non-principal jurisdiction, a CD requirement does not apply to a reporting issuer if the issuer
 - (a) files with or delivers to the non-principal regulator, at the same time and in the same manner, any document filed or delivered to the principal regulator for the purpose of the CD requirement in the principal jurisdiction or under an exemption from the CD requirement in the principal jurisdiction,
 - (b) pays the fee that would otherwise apply to the filing under the CD requirement unless no document is required to be filed under paragraph (a),
 - (c) delivers to its securityholders in the local jurisdiction, at the same time and in the same manner, any document delivered to its securityholders in the principal jurisdiction for the purpose of the CD requirement in the principal jurisdiction or under an exemption from the CD requirement in the principal jurisdiction, and
 - (d) disseminates in the local jurisdiction, at the same time and in the same manner, any information that it disseminates in the principal jurisdiction for the purpose of the CD requirement in the principal jurisdiction or under an exemption from the CD requirement in the principal jurisdiction.
- (2) If an issuer's principal jurisdiction is British Columbia and the issuer does not comply with MI 52-110 because it relies on the exemption under subsection (1), the issuer must disclose in the information it provides under BCI 52-509 that it is applying the audit committee rule that applies in British Columbia and that the rule differs from the audit committee rule in jurisdictions other than British Columbia.

3.3 Meaning of independence in NI 58-101

If an issuer's principal jurisdiction is British Columbia and the issuer applies the test for independence in section 1.2(2)(a) of NI 58-101, the issuer must disclose in the information it provides under NI 58-101 that it is applying the test of independence for directors that applies in British Columbia and that test differs from the test of independence for directors that applies in jurisdictions other than British Columbia.

PART 4 PROSPECTUS-RELATED EXEMPTIONS⁷

4.1 Application - This Part does not apply to an issuer that is

- (a) an investment fund, if the investment fund manager's head office is located in Ontario, or
- (b) not an investment fund, if the reporting issuer's head office is located in Ontario.

4.2 National prospectus rules exemption

If the local jurisdiction is a non-principal jurisdiction, a requirement in the national prospectus rules does not apply to an issuer filing a preliminary prospectus and prospectus if

- (a) the issuer files the preliminary prospectus and prospectus with the principal regulator,
- (b) the principal regulator issues a receipt for the preliminary prospectus and prospectus filed,
- (c) if applicable, the issuer files an amendment to the preliminary prospectus or amendment to the prospectus with the principal regulator,
- (d) if applicable, the principal regulator issues a receipt for any amendment to the preliminary prospectus or amendment to the prospectus filed, and
- (e) the issuer files or delivers in the local jurisdiction any document filed or delivered in the principal jurisdiction under the requirement of the principal jurisdiction.

4.3 Local prospectus-related exemption

- (1) This section does not apply to a mutual fund unless its securities are listed on an exchange or quoted on an over-the-counter market.
- (2) If the local jurisdiction is a non-principal jurisdiction, the local prospectus-related requirements do not apply to an issuer filing a preliminary prospectus and prospectus if
 - (a) the issuer files the preliminary prospectus and prospectus with the principal regulator under the long form rule,
 - (b) the principal regulator issues a receipt for the preliminary prospectus and prospectus,

⁷ We refer the reader to s. 4.1 of Companion Policy 11-101 for an explanation of the effect of the exemptions in sections 4.1 and 4.2 of the instrument.

- (c) if applicable, the issuer files an amendment to the preliminary prospectus or amendment to the prospectus with the principal regulator,
- (d) if applicable, the principal regulator issues a receipt for the amendment to the preliminary prospectus or amendment to the prospectus, and
- (e) the issuer files or delivers in the local jurisdiction any document filed or delivered in the principal jurisdiction under the long form rule.

PART 5 REGISTRATION-RELATED EXEMPTIONS

5.1 Application - This Part does not apply

- (a) to a person or company, other than an individual, if the person or company's head office is located in Ontario, and
- (b) to an individual, if the individual's working office is located in Ontario.

5.2 Mobility trading exemption - dealer

If the local jurisdiction is a non-principal jurisdiction, the registration requirement does not apply to a person or company if the person or company

- (a) is registered as a dealer in its principal jurisdiction,
- (b) is trading with or for an eligible client,
- (c) has 10 or less eligible clients in the local jurisdiction,
- (d) has in aggregate \$10,000,000 or less in assets under management for clients referred to in paragraph (c), and
- (e) complies with section 5.6.

5.3 Mobility advising exemption – unrestricted adviser

If the local jurisdiction is a non-principal jurisdiction, the registration requirement does not apply to a person or company if the person or company

- (a) is registered as an unrestricted adviser in its principal jurisdiction,
- (b) is advising an eligible client,
- (c) has 10 or less eligible clients in the local jurisdiction,
- (d) has in aggregate \$10,000,000 or less in assets under management for clients referred to in paragraph (c), and
- (e) complies with section 5.6.

5.4 Mobility trading exemption – individual

If the local jurisdiction is a non-principal jurisdiction, the registration requirement does not apply to an individual if

- (a) the individual is registered in its principal jurisdiction to trade on behalf of a dealer,
- (b) the dealer is registered in its principal jurisdiction,
- (c) in the local jurisdiction, the individual is trading with or on behalf of five or less eligible clients of the dealer,
- (d) the dealer has in aggregate \$5,000,000 or less in assets under management for eligible clients whom the individual referred to in paragraph (c) trades, and
- (e) the individual complies with section 5.6.

5.5 Mobility advising exemption – individual

If the local jurisdiction is a non-principal jurisdiction, the registration requirement does not apply to an individual if

- (a) the individual is registered in its principal jurisdiction to advise on behalf of an unrestricted adviser,
- (b) the unrestricted adviser is registered in its principal jurisdiction,
- (c) in the local jurisdiction, the individual is advising five or less eligible clients of the unrestricted adviser,
- (d) the unrestricted adviser has in aggregate \$5,000,000 or less in assets under management for eligible clients whom the individual referred to in paragraph (c) advises, and
- (e) the individual complies with section 5.6.

5.6 Conditions for mobility exemptions

For the purposes of paragraphs 5.2(e), 5.3(e), 5.4(e) and 5.5(e), the person or company must

- (a) disclose to the eligible clients in the local jurisdiction, before it relies on an exemption in Part 5, that the person or company
 - (i) is exempt from the registration requirement in the local jurisdiction, and

- (ii) is not subject to requirements otherwise applicable under local securities legislation,
- (b) act fairly, honestly and in good faith in the course of its dealings with the eligible clients, and
- (c) not advertise for or solicit new clients in the local jurisdiction, except for trades made in reliance on another registration exemption in the local jurisdiction.

5.7 MI 81-104 exemption⁸

If the local jurisdiction is a non-principal jurisdiction, Part 4 of MI 81-104 does not apply to a mutual fund restricted individual, a principal distributor or a participating dealer if the mutual fund restricted individual, principal distributor or participating dealer is registered in its principal jurisdiction.

5.8 Notification

A person or company must, before relying on section 5.2, 5.3, 5.4, 5.5 or 5.7, give written notice of the exemption that it intends to rely on to the securities regulatory authority in the local jurisdiction.

⁸ Part 4 of Multilateral Instrument 81-104 *Commodity Pools* contains proficiency and supervisory requirements for mutual fund dealers, salespersons and distributors. These requirements do not apply in British Columbia.

Appendix A

Local prospectus-related requirements

British Columbia:

Securities Act: sections 63(2), and 63(3)

Securities Rules: sections 98, 107, 111, 112, 114, 115, 118, and 119

The requirement in the following sections that a preliminary prospectus and prospectus be in the required form:

Securities Act, sections 61(2) and 62 and *Securities Rules*, sections 99, 122(b), 122(c), 123(b) and 123(c)

Alberta:

Securities Act: sections 111 and 113(2)

Securities Rules: sections 77(1)(a) - (d), 85(3), 85(4), 86, 87, 93, 94, 97, 98, 103, 105, 107, 108, 109, 111, 114, 118, and 119

Saskatchewan:

The Securities Act, 1988: sections 59, 61(1)(b), and 61(2)

The Securities Regulations: sections 66 - 72, 75, 78 - 93, and 95

Manitoba:

Securities Act: sections 39, 41, 43, 44, 45, 46, 47, 48, 49, and 53(1)

Securities Regulation: sections 8 to 37

The requirement in the following sections that a preliminary prospectus and prospectus be in the required form:

Securities Act, section 40

Québec:

Securities Act: sections 13 (paragraph 1 excluding certificate requirements), 18.1, 19 (paragraph 2), 20 (paragraph 2) and 64

Securities Regulations: sections 5, 9, 10, 13, 15, 16, 17, 27, 34, 37.1, 40, 41, 50, 53, 63, 77 – 83, and 93

Regulations: Q-2, Q-3, Q-4, Q-11 and Q-18

New Brunswick:

Securities Act: sections 72 and 74(4)

Nova Scotia:

Securities Act: sections 65(1) and 65(2)

General Securities Rules: sections 86, 87, 88, 89, 91, 92, 93, 94, 99, 101, 102, 103, 105, 107, 110, 111, 112 and 117

The requirement in the following sections that a preliminary prospectus and prospectus be in the required form:

Securities Act, sections 59 and 61 and *General Securities Rules*, sections 95 and 116

Prince Edward Island:

Securities Act: sections 8(2) and 8.1(2)

Securities Act Regulations: sections 2, 8 and 10

Newfoundland and Labrador:

Securities Act: sections 55(1), and 61

Securities Regulations: section 48

Yukon:

Securities Act: sections 22(1), 24(4) and 25(5)

Northwest Territories:

Securities Act: sections 27(2), 29(4) and 30(5)

Nunavut:

Securities Act: sections 27(2), 29(4) and 30(5)

Appendix B

Modifications to OSC Rule 41-501

For the purposes of the definition of ‘long form rule’, a reference in Ontario Securities Commission Rule 41-501 to

“Commission” means the securities regulatory authority in each jurisdiction;

“Director” means,

- (a) except in Form 41-502F2, the regulator of the principal jurisdiction, and
- (b) in Form 41-502F2, the regulator of each jurisdiction;

“Form 40 to the Regulation” means Form 51-102F6 *Statement of Executive Compensation*;

“Ontario” means the local jurisdiction;

“Ontario securities law” means the securities laws in each jurisdiction;

“section 57(1) of the Act” means,

- (a) in British Columbia, section 67(1) of the *Securities Act*,
- (b) in Alberta, section 114(1) or 115(1) of the *Securities Act*, as the case may be,
- (c) in Saskatchewan, section 58 of *The Securities Act, 1988*,
- (d) in Manitoba, sections 40(2) and 55 of the *Securities Act*,
- (e) in Québec, sections 25, 26 and 27 of the *Securities Act*,
- (f) in New Brunswick, sections 76(1), 76(3) and 77(1) of the *Securities Act*,
- (g) in Nova Scotia, section 62(1) of the *Securities Act*,
- (h) in Prince Edward Island, sections 8.3 and 8.4 of the *Securities Act*,
- (i) in Newfoundland and Labrador, section 58 of the *Securities Act*,
- (j) in Yukon, section 22(5) of the *Securities Act*,
- (k) in Northwest Territories, section 27(4) of the *Securities Act*, and
- (l) in Nunavut, section 27(4) of the *Securities Act*;

“section 62 of the Act”,

- (a) means in British Columbia, section 71 of the *Securities Act*,
- (b) means in Alberta, section 121 of the *Securities Act*,
- (c) means in Saskatchewan, section 71 of the *Securities Act*,
- (d) means in Manitoba, section 56 of *The Securities Act*,
- (e) means in Québec, sections 33, 34 and 35 of the *Securities Act*,
- (f) means in New Brunswick, section 78 of the *Securities Act*,
- (g) means in Nova Scotia, section 67 of the *Securities Act*,
- (h) means in Prince Edward Island, section 8.9 of the *Securities Act* ,
- (i) means in Newfoundland and Labrador, section 63 of the *Securities Act*,
- (j) in Yukon, does not apply,
- (k) in Northwest Territories, does not apply, and
- (l) in Nunavut, does not apply;

“section 67 of the Act”,

- (a) means in British Columbia, section 80 of the *Securities Act*,
- (b) means in Alberta, section 125 of the *Securities Act*,
- (c) means in Saskatchewan, section 67 of the *Securities Act*,
- (d) means in Manitoba, section 38(4) of *The Securities Act*,
- (e) means in Québec, section 24 of the *Securities Act*,
- (f) means in New Brunswick, section 84 of the *Securities Act*,
- (g) means in Nova Scotia, section 72 of the *Securities Act*,
- (h) means in Prince Edward Island, section 8.11 of the *Securities Act*,
- (i) means in Newfoundland and Labrador, section 68 of the *Securities Act*,
- (j) in Yukon, does not apply,
- (k) in Northwest Territories, does not apply, and

- (1) in Nunavut, does not apply.