

Companion Policy 11-101CP
Principal Regulator System

PART 1 GENERAL

1.1 Purpose

- (1) **General** - Multilateral Instrument 11-101 *Principal Regulator System* (the Instrument), together with related instruments, policies and administrative processes, is intended to let an issuer or registrant seek and obtain many types of regulatory approvals in all Canadian jurisdictions, except Ontario, by dealing with its principal regulator. Ontario has not adopted the Instrument but will continue to act as a principal regulator under the mutual reliance review systems established by the CSA.
- (2) **For issuers** - The Instrument provides issuers with exemptions in non-principal jurisdictions from continuous disclosure and most prospectus disclosure requirements. Many of those requirements are in national instruments, which are uniform across Canada. Some of the requirements are in multilateral or local instruments, and so are not uniform in every jurisdiction.

The exemptions are not available to an issuer that is

- (a) not an investment fund and has its head office in Ontario, or
- (b) is an investment fund, if the investment fund manager's head office is in Ontario.

The goal of the Instrument is to permit an issuer to deal with its principal regulator when it files a prospectus or continuous disclosure document in multiple jurisdictions. For a prospectus, the issuer still has to comply with filing, delivery, fee and some other requirements of each non-principal regulator but will only have to look at the disclosure requirements that apply in its principal jurisdiction, as applied by its principal regulator. For a CD requirement, the issuer still has to comply with fee requirements.

The exemptions are based on an issuer being subject to the prospectus disclosure and continuous disclosure requirements of its principal jurisdiction, but are not conditional on compliance with those requirements. Non-principal regulators will generally rely on the principal regulator to monitor and enforce compliance as appropriate. However, if a non-principal regulator sees misconduct and considers enforcement action necessary to protect local investors or markets, it can still bring an enforcement action on the basis of its public interest jurisdiction or any violations of local laws, like prohibitions against misrepresentation or fraud. No provision in the Instrument should be interpreted as limiting the competence of, or access to, a local regulator or tribunal.

(3) **For registrants** –

- (a) The Instrument provides an exemption from the registration requirement for a firm or individual to continue dealing with a client that moves to a different

jurisdiction, and with family members of that client. As long as the registrant is registered in its principal jurisdiction and has a minimal number of clients and minimal amount of assets under management in the other jurisdiction, the registrant will not have to become registered in the other jurisdiction. Because Ontario has not adopted the Instrument, the exemption is not available to a registrant in another jurisdiction whose clients move to Ontario. Under the Instrument, the exemption is not available to a firm with a head office in Ontario or to an individual with a working office in Ontario.

- (b) The Instrument also provides an exemption from the proficiency and supervisory requirements that apply in respect of trades in securities of a commodity pool if a mutual fund restricted individual, principal distributor or participating dealer is registered in its principal jurisdiction.

1.2 Applications for relief

Impact on MRRS - Parts 3 and 4 of the Instrument provide exemptions from the CD requirements and certain prospectus-related requirements that apply to an issuer in its non-principal jurisdictions, provided generally that the issuer, among other things, files the prospectus or continuous disclosure document with the non-principal regulator.

These exemptions also eliminate the need for an issuer to obtain relief from prospectus disclosure or continuous disclosure requirements in non-principal jurisdictions. This means that an issuer does not have to apply under Notice 12-201 *Relating to the Mutual Review Reliance System for Exemptive Relief Applications* in Québec and National Policy 12-201 *Mutual Reliance Review System for Exemptive Relief Applications* (NP 12-201) in other jurisdictions or Part 8 or 9 of Notice 43-201 *Relating to the Mutual Review Reliance System for Prospectuses* in Québec and National Policy 43-201 *Mutual Reliance Review System for Prospectuses* (NP 43-201) in other jurisdictions unless it files a prospectus in Ontario or is a reporting issuer in Ontario. Instead, the issuer will be able to make a local application with its principal regulator, and rely on the exemptions in Part 3 or 4 or section 5.6 of the Instrument in its non-principal jurisdictions. The process for pre-filings under Part 9 of NP 43-201 remains the same.

If an issuer files a prospectus in Ontario and its head office (or that of the investment fund manager) is not in Ontario, the issuer must make any application for relief with its principal regulator and the Ontario Securities Commission (OSC) under NP 12-201 or NP 43-201. If the issuer's or the investment fund manager's head office is in Ontario, the exemptions in the Instrument are not available and the issuer must apply for discretionary relief under NP 12-201 or NP 43-201 in each jurisdiction in which the issuer is filing the prospectus.

If an issuer is a reporting issuer in Ontario and its head office (or that of the investment fund manager) is not in Ontario, the issuer must make any application for relief about a continuous disclosure filing with its principal regulator and the OSC under NP 12-201. If the issuer's or the investment fund manager's head office is in Ontario, the exemptions in the Instrument are not available and the issuer must apply for discretionary relief under

NP 12-201 in each jurisdiction in which the issuer is making a continuous disclosure filing.

1.3 Language of documents - Québec

The Instrument does not exempt issuers, when filing in Québec, from having to comply with linguistic obligations prescribed by Québec law, including specific obligations (e.g. section 40.1) in the *Québec Securities Act*.

1.4 Requirements not covered by exemptions

The Instrument does not exempt reporting issuers in Québec from having to comply with Québec Regulation Q-27 *Respecting Protection of Minority Securityholders in the Course of Certain Transactions*.

PART 2 PRINCIPAL REGULATOR

2.1 Participating principal jurisdictions

For the purposes of Parts 3 and 4 of the Instrument, an issuer must select its principal regulator from among the jurisdictions that are “participating principal jurisdictions”, as defined in the Instrument. The participating principal jurisdictions are the jurisdictions that have agreed to act as principal regulator for the continuous disclosure and prospectus exemptions in the Instrument. A market participant will have the same principal regulator under this Instrument and the relevant mutual reliance review system established by the CSA, except as noted below.

Because Ontario has not adopted this Instrument, it is not a participating principal jurisdiction for purposes of these exemptions and Ontario-based market participants cannot rely on the exemptions. However, the OSC will continue to act as a principal regulator under NP 43-201 and NP 12-201.

An issuer with a head office outside of Ontario that uses the OSC as its principal regulator under NP 43-201 and NP 12-201 (for example, a foreign issuer listed on the TSX) could select another jurisdiction to act as principal regulator under the Instrument and rely on the exemptions in the Instrument. The effect would be that the OSC would still be the issuer’s principal regulator under NP 43-201 or NP 12-201 for applications for exemptive relief, but the other jurisdiction selected by the issuer as principal regulator under the Instrument would be the only non-principal jurisdiction under NP 43-201 or NP 12-201 for the application. For a prospectus filing under NP 43-201, the OSC would still be the issuer’s principal regulator under NP 43-201, but the other jurisdiction selected by the issuer as principal regulator under the Instrument would be one of the non-principal jurisdictions under NP 43-201 for the prospectus.

An issuer with a principal regulator other than the OSC would continue to comply with Ontario securities law to the extent it participates in Ontario’s capital market, and would continue, when necessary, to file any relief applications with the OSC as its only non-principal regulator under NP 43-201 or NP 12-201.

Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut do not currently act as principal regulator under NP 43-201. However, they will act as principal regulator for the prospectus exemptions in Part 4 of the Instrument if Ontario is the principal regulator for the prospectus filing under NP 43-201. The OSC will issue the decision document under NP 43-201, evidencing the receipts of all jurisdictions where the prospectus is filed. The receipt for Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut, evidenced by the decision document issued by Ontario, will be the principal jurisdiction receipt needed for the exemptions in the non-principal jurisdictions under the Instrument. The process for issuing the decision document under Part 7 of NP 43-201 remains the same.

2.2 Determination of principal regulator

- (1) **For issuers** - If an issuer's or investment fund manager's head office is not in a participating principal jurisdiction, the issuer must determine a principal regulator based on the participating principal jurisdiction that it has the most significant connection with.

Refer to section 3.2 in NP 43-201 for further guidance on determining a principal regulator.

- (2) **For registration** – The principal regulator for a firm is determined by the location of its head office. Under NI 31-101, a firm's principal regulator is determined using the most significant connection, with the head office as the primary indicator. If a person or company wishes to confirm its determination of principal regulator (e.g., because it determines its principal jurisdiction is different than under NI 31-101), it should follow the process set out in section 3.2(7) in National Policy 31-201 *National Registration System* (NP 31-201).

2.3 Notice of principal regulator

- (1) **Initial notice – exemptions from continuous disclosure requirements** – Under section 2.2 of the Instrument, a reporting issuer relying on an exemption in Part 3 of the Instrument must file a notice in Form 11-101F1 no later than the issuer files its first filing under Part 3. This notice sets out who the reporting issuer's principal regulator is for the purposes of the exemptions from continuous disclosure requirements in the Instrument. The notice should be filed in electronic format on SEDAR under the category 'Notice of Principal Regulator under Multilateral Instrument 11-101'.
- (2) **Initial notice – registration exemption** – If a person or company is required to file a Form 11-101F1 under section 2.6 of the Instrument, it should immediately file the form with its principal regulator and non-principal regulators. It may send it by e-mail to the following addresses:

British Columbia
 Alberta
 Saskatchewan
 Manitoba
 Québec

registration@bcsc.bc.ca
 nrs@seccom.ab.ca
 dmurrison@sfsc.gov.sk.ca
 securities@gov.mb.ca
 inscription@lautorite.qc.ca

New Brunswick	nrs@nbsc-cvmnb.ca
Nova Scotia	nrs@gov.ns.ca
Prince Edward Island	mlgallant@gov.pe.ca
Newfoundland & Labrador	skmurphy@gov.nl.ca
Yukon Territory	corporateaffairs@gov.yk.ca
Northwest Territories	SecuritiesRegistry@gov.nt.ca
Nunavut	svangenne@gov.nu.ca

- (3) **Change in principal regulator – continuous disclosure exemptions** – If a reporting issuer’s principal regulator changes because the issuer’s head office changes to another participating principal jurisdiction or the investment fund manager’s head office changes to another participating principal jurisdiction, the issuer must file a new Form 11-101F1. This notice must be filed in electronic format on SEDAR under the category ‘Notice of Principal Regulator under Multilateral Instrument 11-101’ at the same time as the issuer’s next filing after the change takes place. The issuer would have to request from its new principal regulator any ongoing discretionary relief from a CD requirement that it received before the change in principal regulator.
- (4) **Change in principal regulator – registration exemption** – If a person or company’s principal regulator changes because the firm’s head office or the individual’s working office changes to another jurisdiction, the person or company should immediately file the new Form 11-101F1 under section 2.6(1) of the Instrument with its principal regulator and non-principal regulators by e-mail to the addresses set out in section 2.3(2) of this Policy. This is only required if the person or company has not already filed a Form 31-101F2 *Notice of Change* in accordance with NI 31-101.
- (5) **Change in principal regulator – by securities regulatory authority or regulator** – If a person or company’s principal or non-principal regulator disagrees with a person or company’s determination of principal regulator, the regulator may, under section 2.8 of the Instrument, advise the person or company that another regulator will be its principal regulator for the purposes of the Instrument. There is a discussion of circumstances when this may occur in section 3.3 of NP 31-201 and section 3.5 of NP 43-201.

A person or company may request that a regulator change the person or company’s principal regulator under section 2.8 of the Instrument if the person or company originally selects its principal regulator based on the jurisdiction it has the most significant connection with, and that jurisdiction changes over time. The request should be made in writing and include the reasons for the change.

PART 3 CONTINUOUS DISCLOSURE EXEMPTIONS

3.1 Continuous disclosure requirements covered by exemption

The Instrument exempts an issuer from the CD requirements, as defined in the Instrument, including the local continuous disclosure requirements set out in Appendix A to the Instrument. We intend that, if an issuer relies on the exemption in a jurisdiction, no

local continuous disclosure requirements (other than the obligation to pay fees for its filings) in that jurisdiction apply. Although the Instrument does not exempt from the requirement to file some documents in Québec (because the requirement to file these documents triggers fees), the AMF has issued a blanket order that exempts issuers from these filing requirements if the issuer's principal regulator granted a discretionary exemption from the filing of these documents. This puts issuers in the same position in Québec as in the principal jurisdiction for discretionary exemptions.

The exemption from local CD requirements in Appendix A of the Instrument for investment funds is not available unless the investment fund is subject to NI 81-106 in its principal jurisdiction.

Filing copies of documents

An issuer relying on an exemption in Part 3 of the Instrument must file the same documents in a non-principal jurisdiction it files in the principal jurisdiction except documents related to an application for discretionary relief. If the issuer is not relying on the exemption in the non-principal jurisdiction (for example, if the non-principal jurisdiction does not have a particular CD requirement), the issuer does not have to file the document in that non-principal jurisdiction.

An issuer relying on an exemption in Part 3 of the Instrument must also pay to the non-principal regulator the fee that would otherwise apply to the filing under the CD requirement except if no document is required to be filed with the principal regulator (e.g., the issuer is not required to file financial statements under a discretionary order in the principal jurisdiction).

Section 3.2(2) of the Instrument requires an issuer that relies on the exemption in section 3.2(1) of the Instrument and whose principal jurisdiction is British Columbia to make certain disclosures about the audit committee rule that it applies. The additional disclosure is not required if the issuer complies with MI 52-110 under section 3(a) of BCI 52-509.

PART 4 PROSPECTUS-RELATED EXEMPTIONS

4.1 Long form prospectus exemption

An issuer relying on the exemption in section 4.3 for a long form prospectus may also rely on section 4.2 for an exemption from requirements in a national prospectus rule that applies to the long form prospectus (e.g., NI 52-107).

4.2 National prospectus rules exemption

The exemption in section 4.2 from the national prospectus rules does not apply to the certificate form requirements in national instruments for prospectuses filed in Québec because the certificates form the basis for statutory rights in that province.

4.3 Prospectus-related requirements not covered by exemptions

The Instrument exempts an issuer filing a prospectus from the local prospectus-related requirements set out in Appendix B to the Instrument and from requirements in the national prospectus rules. Part 4 of the Instrument does not exempt an issuer from certain local statutory requirements in connection with a prospectus offering. For example, we have not provided exemptions from the following requirements that form the basis for the statutory rights and remedies relating to prospectus offerings in securities legislation:

- (a) the requirement to file a prospectus or amendment to a prospectus that is receipted in order to distribute securities, which is the basis for a purchaser's right of action for misrepresentation,
- (b) the requirement to deliver a prospectus to a purchaser under the offering, after which the purchaser has a right to withdraw from the purchase, and
- (c) the requirements to include certificates in the prospectus and file consents of experts, which trigger statutory rights of action.

The significant requirements in the securities act, rules and regulations in the local jurisdiction from which an issuer is not exempt under Part 4 of the Instrument are listed in Appendix A to this Policy. For example, an issuer is not exempt from the local jurisdiction's requirement to provide full, true and plain disclosure of all material facts relating to the securities issued or proposed to be distributed, and from the equivalent local requirement in Québec to disclose all material facts likely to affect the value or the market price of the securities to be distributed.

There are also requirements in national or multilateral instruments about the structure of an offering under a prospectus that are not included in the exemptions in Part 4 of the Instrument (e.g., Part 4 of National Instrument 45-101 *Rights Offerings*).

4.4 Application of prospectus policies

The Instrument does not provide an exemption from prospectus policies because it is not necessary to do so (policies can only describe or interpret requirements, not impose requirements). The non-principal regulators do not intend to apply local policies relating to prospectus filings in the non-principal jurisdictions. The principal regulator will continue to apply national policies relating to prospectuses.

In Québec, certain policies are deemed to be regulations (e.g., *Regulation No.14 respecting Acceptability of Currencies in Material Filed with Securities Regulatory Authority* and *Regulation No.15 respecting Conditions Precedent to Acceptance of Scholarship or Educational Plan Prospectuses*) and are exempted under this Instrument.

4.5 Notice that issuer is relying on exemption

An issuer relying on an exemption in Part 4 of the Instrument should indicate this in the cover letter to its preliminary prospectus.

4.6 Shelf and PREP prospectus supplements

The exemption in the Instrument that applies to national prospectus rules is available if, among other things, the issuer receives a receipt for its prospectus from its principal regulator. If the issuer is filing a prospectus supplement under either National Instrument 44-102 *Shelf Distributions* or National Instrument 44-103 *Post-Receipt Pricing*, the issuer does not receive a receipt for that supplement.

The issuer can still rely on the exemption in section 4.2 of the Instrument for a prospectus supplement if the issuer

- (a) received a receipt for the corresponding base shelf or PREP prospectus it filed, and
- (b) subsequently applies for, and obtains, an exemption from the prospectus supplement requirements in its principal jurisdiction that is evidenced by a discretionary order.

PART 5 REGISTRATION-RELATED EXEMPTIONS

5.1 Notice that person or company is relying on exemption

Under section 5.9 of the Instrument, a person or company must give prior notice to the securities regulatory authority in the local jurisdiction that it is relying on an exemption in Part 5. A person or company should indicate which exemption it is relying on in an e-mail sent to the e-mail addresses set out in Form 31-101F2 *Notice of Change* under NI 31-101. The requirement in section 5.9 of the Instrument is separate from the requirement in section 2.6 of the Instrument.

5.2 Interplay of mobility exemptions

Sections 5.3, 5.4, 5.5 and 5.6 of the Instrument provide separate exemptions for a dealer, unrestricted adviser or individual. If an individual employed by a dealer or unrestricted adviser is relying on the exemption for trading with or advising eligible clients in a local jurisdiction, the dealer or unrestricted adviser that employs the individual must either be registered as a dealer or unrestricted adviser, as applicable, in the local jurisdiction, or ensure that it also meets the terms of the mobility exemption.

If an individual can no longer rely on the exemption, then both the individual and the dealer or unrestricted adviser that employs the individual must apply for registration in the local jurisdiction if they want to continue to deal with eligible clients in the jurisdiction.

5.3 Multilateral Instrument 81-104 *Commodity Pools Exemption*

Section 5.8 of the Instrument provides an exemption from the commodity pool proficiency requirements, provided the mutual fund restricted individual, principal distributor or participating dealer is registered in its principal jurisdiction. As a result, a

mutual fund restricted individual, principal distributor or participating dealer whose principal jurisdiction is British Columbia is exempt from the proficiency requirements under section 4.2 of MI 81-104.

Appendix A

Prospectus-related requirements that continue to apply under the instrument

British Columbia:

Securities Act: sections 61(1), 63(1), 66, 67, 70, 71, 79, 80, and 83

Securities Rules: sections 98.3, 106 and 121

For long form prospectuses only:

Securities Act: sections 68 and 69(1)

Securities Rules: sections 98.2

Alberta:

Securities Act: sections 110, 113(1)(a), 114 - 117 and 119 - 122

Securities Commission Rules (General): sections 85(1), 88, 92, 102, 104, 112, 113 and 115 - 117

For long form prospectuses only:

Securities Act: section 116 and the form of certificate set out in sections 117(1) and 117(2)

Saskatchewan:

The Securities Act, 1988: sections 58(1), 60, 61(1)(a), 62 – 64, 70 - 80

The Securities Regulations: sections 76, 77, 94 and 97

For long form prospectuses only:

The Securities Act, 1988: section 66 and the form of certificate set out in section 67

Manitoba:

Securities Act: sections 37, 40(2), 41(1), 42, 50, 51, 55, 56, 61, and 64(1)

For long form prospectuses only:

Securities Act: sections 52 and 53

Québec:

Securities Act: sections 11 - 19 (paragraph 1), 20 - 40.1 and 64 - 67

Securities Regulation: sections 25, 34, 37, 50 and 94 - 98.1

Regulation: Q-17 (except Title IV), Q-25, Q-26, Q-27, Q-28 (part 12 and item 33 of Schedule 1), 44-101 (sections 21.1 and 21.2 of Form 44-101F3), 44-102 (sections 1.1(c), 1.2(b), 2.1(c) and 2.2(b) in Appendix A and sections 1.1(c), 1.2(b), 2.1(c), 2.2(b) in Appendix B), 44-103 (sections 3.2(1).7(c), 3.2(1).8, 4.5(2).3(c) and 4.5(2).4)

For long form prospectuses only:

Securities Regulation: sections 13 (references to sections 33 – 33.2 and 37), 33 – 33.2 and 37

New Brunswick:

Securities Act: sections 71(1) other than the requirement that a preliminary prospectus and prospectus be in the form prescribed by regulation, 74(1) as it relates to the full, true and plain disclosure requirement, 76 - 78, 83, 84 and 88

Local Rule 11-502: section 2

For long form prospectuses only:

Implementing Instrument 41-802: sections 2.3(a), 2.3(b) and 2.3(c) except as they relate to the form of certificate

Nova Scotia:

Securities Act: sections 58, 61(1) as it relates to the full, true and plain disclosure requirement, 62, 67, 71, 72 and 76

General Securities Rules: sections 85, 96, 97 and 115

For long form prospectuses only:

Securities Act: sections 63 and 64

Prince Edward Island:

Securities Act: sections 8(1), 8.1(1) as it relates to the full, true and plain disclosure requirement, 8.3, 8.4, 8.9, 8.11, 8.12 and 8.16

For long form prospectuses only:

Securities Act: sections 8.5 and 8.6

Newfoundland and Labrador:

Securities Act: sections 54, 57(1) as it relates to the full, true and plain disclosure requirement, 58, 60, 63, 67, 68 and 72

For long form prospectuses only:

Securities Act: section 59

Yukon:

Securities Act: sections 22(4) as it relates to the full, true and plain disclosure requirement and 23

Northwest Territories:

Securities Act: sections 27(2)(a)(i) as it relates to the filing requirement and any requirement to make full, true and plain disclosure, 27(4) and 28

Nunavut:

Securities Act: sections 27(2)(a)(i) as it relates to the filing requirement and any requirement to make full, true and plain disclosure, 27(4) and 28