

Schedule B

Companion Policy 11-102CP *Passport System*

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Companion Policy 11-102CP
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PART 1 GENERAL

1.1 Definitions

In this policy,

“MI 11-101” means Multilateral Instrument 11-101 *Principal Regulator System*;

“non-principal jurisdiction” means, for a person or company, a jurisdiction other than the principal jurisdiction;

“NP 11-202” means National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions*; and

“NP 11-203” means National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*.

1.2 Additional definitions

Terms used in this policy and that are defined in NP 11-202 and NP 11-203 have the same meanings as in those national policies.

1.3 Purpose

(1) **General** – Multilateral Instrument 11-102 *Passport System* (the Instrument) and this policy implement part of the passport system contemplated by the Provincial/Territorial Memorandum of Understanding Regarding Securities Regulation.

The Instrument gives each market participant a single window of access to the capital markets in multiple jurisdictions. It enables a person or company to deal only with its principal regulator to

- get deemed receipts in other jurisdictions (except Ontario) for a preliminary prospectus and prospectus, and
- obtain automatic exemptions in other jurisdictions (except Ontario) equivalent to most types of discretionary exemptions granted by the principal regulator.

(2) **Ontario** – The Ontario Securities Commission (OSC) has not adopted the Instrument, but the Instrument provides that the OSC can be a principal regulator for purposes of a prospectus filing under Part 3 or a discretionary exemption application under Part 4. Consequently, when the OSC issues a receipt for a prospectus to an issuer

whose principal jurisdiction is Ontario, a deemed receipt is automatically issued in each passport jurisdiction where the market participant filed the prospectus under the Instrument. Similarly, a market participant whose principal jurisdiction is Ontario obtains an automatic exemption from the equivalent provision of securities legislation of each passport jurisdiction for which the person who makes the application gives the notice described in section 4.7(1)(c) of the Instrument if the OSC grants the discretionary exemption.

(3) **Process** – NP 11-202 and NP 11-203 set out the processes for a market participant in any jurisdiction to obtain a deemed prospectus receipt or an automatic exemption in a passport jurisdiction. These policies also set out processes for a market participant in a passport jurisdiction to get a prospectus receipt or a discretionary exemption from the OSC.

NP 11-203 also sets out the process for seeking exemptive relief in multiple jurisdictions that falls outside the scope of the Instrument. NP 11-203 applies to a broad range of exemptive relief applications, not just to discretionary exemption applications from the provisions listed in Appendix D of the Instrument. For example, NP 11-203 applies to an application to be designated a reporting issuer, mutual fund, non-redeemable investment fund or insider. It also applies to an application for a discretionary exemption from a provision not listed in Appendix D of the Instrument.

Please refer to NP 11-202 and NP 11-203 for more details on these processes.

(4) **Interpretation of the Instrument** – As with all national or multilateral instruments, you should read the Instrument from the perspective of the local jurisdiction in which you want to obtain a deemed prospectus receipt or an automatic exemption. For example, if the Instrument does not specify where you file a document, it means that you must file it in the local jurisdiction.

To get a deemed receipt for a prospectus in the local jurisdiction, a filer must file the prospectus in the jurisdiction through SEDAR. Similarly, to get an automatic exemption based on a discretionary exemption granted in the principal jurisdiction, a filer must give notice under section 4.7(1)(c) of the Instrument to the securities regulatory authority or regulator in the local jurisdiction. Under section 4.7(2) of the Instrument, a filer can satisfy the latter requirement by giving notice to the principal regulator instead of the securities regulatory authority or regulator in the local jurisdiction.

(5) **Operation of law** – The provisions of the Instrument on prospectus receipt and discretionary exemptions produce automatic legal outcomes in the local jurisdiction that result from a decision made by the principal regulator. The effect is to make the law of the local jurisdiction apply to a market participant as if the non-principal regulator had made the same decision as the principal regulator.

(6) **Harmonized laws and their interpretation** – Most of the continuous disclosure and prospectus requirements are in rules or regulations, commonly referred to as

‘national instruments’. The securities regulatory authorities and regulators intend to interpret and apply these requirements in a consistent way, and have put in place practices and procedures so this will be the case.

(7) **Exemptions from non-harmonized requirements** – The Instrument contains exemptions from most non-harmonized continuous disclosure requirements and prospectus requirements that exist in a local jurisdiction. These exemptions apply in all jurisdictions, including the principal jurisdiction, for issuers that are reporting issuers, or file a prospectus, in multiple jurisdictions.

(8) **Discretionary exemptions** –The Instrument provides an automatic exemption from an equivalent provision of securities legislation in the local jurisdiction if the principal regulator grants the discretionary exemption and the filer gives the required notice.

1.4 Language of documents – Québec

The Instrument does not relieve issuers filing in Québec from the linguistic obligations prescribed by Québec law, including the specific obligations in the Québec *Securities Act* (e.g. section 40.1). For example, where a prospectus is filed in several jurisdictions including Québec, the prospectus must be in French or in French and English.

PART 2 CONTINUOUS DISCLOSURE

2.1 Exemption from non-harmonized continuous disclosure provisions

Section 2.1 of the Instrument exempts a reporting issuer from the non-harmonized continuous disclosure provisions listed in Appendix A of the Instrument opposite the name of the local jurisdiction if the issuer is reporting in other jurisdictions. Consequently, the provisions that apply to the reporting issuer in the local jurisdiction are the harmonized continuous disclosure provisions and any non-harmonized continuous disclosure provisions from which the securities regulatory authority or regulator in the local jurisdiction has not provided an exemption under section 2.1 of the Instrument.

An issuer must continue to pay the fees related to the filing of any continuous disclosure document in each jurisdiction where it is a reporting issuer.

Although a reporting issuer does not have to identify a principal regulator to benefit from the exemption in section 2.1 of the Instrument, the securities regulatory authorities or regulators will continue to assign each reporting issuer a principal regulator for continuous disclosure review purposes under CSA Notice 51-312 *Harmonized Continuous Disclosure Review Program*. The principal regulator will deal with the reporting issuer on continuous disclosure related matters and would generally take action in the event of non-compliance.

PART 3 PROSPECTUS

3.1 Principal regulator for prospectus

For a prospectus filing subject to Part 3 of the Instrument, the principal regulator is the principal regulator identified under section 3.1 of the Instrument. Under this section, the principal regulator must be the securities regulatory authority or regulator in a specified jurisdiction. Section 3.1(1) of the Instrument specifies the following jurisdictions for purposes of that section: British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick and Nova Scotia.

Section 3.4 of NP 11-202 gives guidance on how to identify the principal regulator for a prospectus filing subject to Part 3 of the Instrument.

3.2 Discretionary change in principal regulator for prospectus

Section 3.2 of the Instrument permits the securities regulatory authority or regulator to change the principal regulator for a prospectus filing subject to Part 3 of the Instrument on its own motion or on application. Section 3.5 of NP 11-202 gives guidance on the process for, and considerations leading to, a discretionary change in principal regulator for a prospectus filing subject to Part 3 of the Instrument.

3.3 Deemed issuance of receipt

Section 3.3 of the Instrument deems a receipt to be issued for a preliminary prospectus or prospectus in the local jurisdiction if certain conditions are met. A deemed receipt in the local jurisdiction has the same legal effect as a receipt issued in the principal jurisdiction.

To rely on section 3.3 of the Instrument in the local jurisdiction, a filer must file on SEDAR the preliminary prospectus or the pro forma prospectus, and the prospectus, in both the local jurisdiction and the principal jurisdiction. When filing, the filer must also indicate that it is filing the preliminary prospectus or pro forma prospectus under the Instrument. Under the law of the local jurisdiction, these filings trigger the obligation to file supporting documents (e.g., consents and material contracts).

To rely on section 3.3 of the Instrument in the local jurisdiction, the filer must also pay the fees required for the preliminary prospectus, pro forma prospectus or prospectus in the local jurisdiction. The effect of section 3.3 of the Instrument is that the law of the local jurisdiction, including the obligation to pay fees, applies to the filing of a preliminary prospectus, pro forma prospectus or prospectus in the jurisdiction. Section 3.4 of the Instrument does not exempt a filer from the obligation to pay fees in the local jurisdiction.

NP 11-202 sets out the process for making a waiver application for a prospectus filing subject to Part 3 of the Instrument.

If the principal regulator refuses to issue a receipt for a prospectus, it will notify the filer and the non-principal regulators by sending a refusal letter through SEDAR. In these circumstances, the Instrument will no longer apply to the filing and the filer may deal separately with the local securities regulatory authority or regulator in any non-principal jurisdiction in which the prospectus was filed to determine if the local securities regulatory authority or regulator would issue a local receipt.

3.4 Exemption from non-harmonized prospectus provisions

Section 3.4 of the Instrument provides an exemption from the non-harmonized prospectus provisions listed in Appendix C of the Instrument opposite the name of the local jurisdiction. The exemption is available if a person or company files a preliminary prospectus, pro forma prospectus or prospectus under a provision set out in Appendix B to the Instrument and under a national prospectus instrument in multiple jurisdictions, including its principal jurisdiction. Consequently, the provisions that apply in the local jurisdiction where a preliminary prospectus, pro forma prospectus or prospectus is filed are the harmonized prospectus provisions and any non-harmonized prospectus provisions from which the securities regulatory authority or regulator in the local jurisdiction has not provided an exemption under section 3.4 of the Instrument.

3.5 Transition for section 3.3

Section 3.3 of the Instrument applies to a preliminary prospectus or pro forma prospectus and their related prospectus, and to an amendment to a prospectus, filed on or after March 17, 2008.

Section 3.5(1) of the Instrument removes the deemed receipt that would otherwise be available in the local jurisdiction under section 3.3 of the Instrument if a preliminary prospectus amendment is filed after March 17, 2008 and the related preliminary prospectus was filed before March 17, 2008.

Section 3.5(2) provides an exemption from the requirement in section 3.3(2)(b) of the Instrument to indicate on SEDAR, at the time of filing the preliminary prospectus or pro forma prospectus, that the preliminary prospectus or pro forma prospectus is filed under Instrument. This means there is a deemed receipt in the local jurisdiction for a prospectus amendment if the related preliminary prospectus or pro forma prospectus was filed before March 17, 2008 and the filer indicated on SEDAR that it filed the amendment under the Instrument at the time of filing the amendment.

The exemption from non-harmonized prospectus requirements in section 3.4 of the Instrument is available in the local jurisdiction for a prospectus filed on or after March 17, 2008 even though the related preliminary prospectus or pro forma prospectus was filed in the local jurisdiction before that date and there is no deemed receipt for the prospectus in the local jurisdiction.

PART 4 DISCRETIONARY EXEMPTIONS

4.1 Application

Part 4 of the Instrument applies to an application for discretionary exemption from a provision listed in Appendix D of the Instrument made in multiple jurisdictions. Part 4 does not apply to a discretionary exemption application from a provision not listed in Appendix D of the Instrument or to other types of exemptive relief applications. For example, Part 4 does not apply to an application to designate a person to be a reporting issuer, mutual fund, non-redeemable investment fund or insider.

4.2 Principal regulator for discretionary exemption applications

For purposes of a discretionary exemption application under Part 4 of the Instrument, the principal regulator is the principal regulator identified under sections 4.1 to 4.5 of the Instrument. Under these sections, the principal regulator must be the securities regulatory authority or regulator in a specified jurisdiction. Section 4.1 of the Instrument specifies the following jurisdictions for purposes of Part 4: British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick and Nova Scotia.

Section 3.6 of NP 11-203 gives guidance on how to identify the principal regulator for a discretionary exemption application under Part 4 of the Instrument.

4.3 Discretionary change of principal regulator for discretionary exemption applications

Section 4.6 of the Instrument permits the securities regulatory authority or regulator to change the principal regulator for a discretionary exemption application under Part 4 of the Instrument on its own motion or on application. Section 3.7 of NP 11-203 gives guidance on the process for, and considerations leading to, a discretionary change in principal regulator for a discretionary exemption application under Part 4 of the Instrument.

4.4 Passport application of discretionary exemptions

Section 4.7(1) of the Instrument exempts a person or company from an equivalent provision of securities legislation in the local jurisdiction if the principal regulator for the application grants the discretionary exemption, the filer gives the notice required under paragraph (c) of that section and other conditions are met. The equivalent provisions from which an automatic exemption is available under section 4.7(1) of the Instrument are set out in Appendix D of the Instrument.

A discretionary exemption under section 4.7(1) of the Instrument is available in the passport jurisdictions for which the filer gives the required notice when filing the application. However, the discretionary exemption can become available later in other passport jurisdictions if the circumstances warrant. For example, if a reporting issuer

obtains a discretionary exemption from a national continuous disclosure requirement in its principal jurisdiction and an automatic exemption under section 4.7(1) in three non-principal jurisdictions in 2008 and the issuer becomes a reporting issuer in a fourth non-principal jurisdiction in 2009, the issuer could obtain an automatic exemption in the new jurisdiction. To obtain the automatic exemption in the new jurisdiction, the issuer would have to give the notice referred to in section 4.7(1)(c) of the Instrument in respect of that jurisdiction and meet the other condition of the exemption.

Under section 4.7(2) of the Instrument the filer may give the required notice to the principal regulator instead of the non-principal regulator.

A filer should identify in the application all the exemptions required and give notice for all the jurisdictions in which section 4.7(1) of the Instrument is intended to be relied upon. If an exemption is required in a non-principal jurisdiction when the filer files the application, but the filer does not give the required notice for that jurisdiction until after the principal regulator grants the exemption, the securities regulatory authority or regulator of the non-principal jurisdiction will take appropriate action. This could include removing the exemption, in which case the filer may have an opportunity to be heard in that jurisdiction in appropriate circumstances.

Because, under the Instrument, a person or company files an application for a discretionary exemption only in the principal jurisdiction to obtain an automatic exemption in multiple jurisdictions, the filer is required to pay fees only in the principal jurisdiction.

NP 11-203 sets out the process for seeking exemptive relief in multiple jurisdictions, including the process for seeking a discretionary exemption under Part 4 of the Instrument.

4.5 Availability of passport for discretionary exemptions applied for before March 17, 2008

Under section 4.8(1) of the Instrument, an exemption from the equivalent provision is automatically available in the local jurisdiction if

- an application was made in a specified jurisdiction before March 17, 2008 for an exemption from a provision of securities legislation that is now listed in Appendix D of the Instrument,
- the securities regulatory authority or regulator in the specified jurisdiction granted the exemption before, on or after March 17, 2008, and
- certain other conditions are met.

These conditions include giving the notice required under section 4.8(1)(c). Section 4.8(2) permits the filer to give the required notice to the securities regulatory authority or regulator that would be the principal regulator for the application under Part 4 if an

application were to be made under that Part at the time the notice is given, instead of to the non-principal regulator.

Under section 4.1, the specified jurisdictions are British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick and Nova Scotia.

A specified jurisdiction for purposes of section 4.8 of the Instrument is a principal jurisdiction under MI 11-101. Therefore, under section 4.8(1) of the Instrument, an exemption from the equivalent provision is automatically available in the local jurisdiction if

- an application was made before March 17, 2008 in the principal jurisdiction, as defined in MI 11-101, for an exemption from a CD requirement, as defined in that Instrument, which is now listed in Appendix D of the Instrument,
- the securities regulatory authority or regulator in the principal jurisdiction granted the exemption before March 17, 2008, and
- the other conditions of section 4.8(1) of the Instrument are met, including giving notice.

Section 4.8(3) of the Instrument provides an exemption from the notice requirement in section 4.8(1)(c) of the Instrument if, before March 17, 2008, the principal regulator under MI 11-101 granted the exemption and the reporting issuer filed the notice of principal regulator under section 2.2 or 2.3 of that Instrument.

The combined effect of sections 4.8(1) and 4.8(3) is to make the exemption from a CD requirement granted by the principal regulator under MI 11-101 automatically available in the local jurisdiction, even though the decision of the principal regulator under MI 11-101 does not refer to the local jurisdiction. To benefit from this, however, the reporting issuer must comply with the terms and conditions of the decision of the principal regulator under MI 11-101. Only exemptions granted from CD requirements that are now listed in Appendix D of the Instrument become available in the local jurisdiction in this way.

Appendix A of this policy lists the CD requirements from which a reporting issuer could get an exemption under section 3.2 of MI 11-101. Appendix D of the Instrument sets out the list of equivalent provisions.

PART 5 EFFECTIVE DATE

5.1 Effective date

The Instrument applies to continuous disclosure documents, prospectuses and discretionary exemption applications filed on or after March 17, 2008.

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Appendix A

CD requirements under MI 11-101

For ease of reference, this appendix reproduces the definition of CD requirements in MI 11-101 even though some references might no longer be relevant because sections were repealed after September 19, 2005 when MI 11-101 came into force.

British Columbia:

Securities Act: section 85 and 117
Securities Rules: section 144 (except as it relates to fees), 145 (except as it relates to fees, 152 and 153
sections 2, 3 and 189 as they relate to a filing under another CD requirement, as defined in MI 11-101

Alberta:

Securities Act: sections 146, 149 (except as it relates to fees), 150, 152 and 157.1
Securities Commission Rules (General): except as it relates to a prospectus, section 143 – 169, 196 and 197

Saskatchewan:

The Securities Act, 1988: section 84, 86 – 88, 90, 94 and 95
The Securities Regulations: section 117 – 138.1 and 175 as it relates to a filing under another CD requirement, as defined under MI 11-101

Manitoba:

Securities Act: sections 101(1), 102(1), 104, 106(3), 119, 120 (except as it relates to fees) and 121– 130
Securities Regulation: sections 38 – 40 and 80 – 87

Québec:

Securities Act: sections 73 excluding the filing requirement of a statement of material change, 75 excluding the filing requirement, 76, 77 excluding the filing requirement, 78, 80 – 82.1, 83.1, 87, 105 excluding the filing requirement, 106 and 107 excluding the filing requirement
Securities Regulation: sections 115.1 – 119, 119.4, 120 – 138 and 141 – 161
Regulations: No. 14, No. 48, Q-11, Q-17 (Title IV) and 62 – 102

A document filed with or delivered to the Autorité des marchés financiers, delivered to securityholder in Québec or disseminated in Québec under section 3.2 of the

Instrument, is deemed, for the purposes of securities legislation in Québec, to be a document filed, delivered or disseminated under Chapter II of Title III or section 84 of the *Securities Act* (Québec).

New Brunswick:

Securities Act: sections 89(1) – (4), 90, 91, 100 and 101

Nova Scotia:

Securities Act: section 81, 83, 84 and 91

General Securities Rules: sections 9, 140(2), 140(3) and 141

**Newfoundland
and Labrador:**

Securities Act: except as they relate to fees, sections 76, 78 – 80, 82, 86 and 87

Securities Regulations: sections 4 – 14 and 71 – 80

Yukon:

Securities Act: section 22(5) except as it relates to filing a new or amended prospectus

All jurisdictions:

- (a) National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, except as it relates to a prospectus,
- (b) National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*, except as it relates to a prospectus,
- (c) National Instrument 51-102 *Continuous Disclosure Obligations*,
- (d) National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* as it applies to a document filed under National Instrument 51-102 *Continuous Disclosure Obligations*,
- (e) National Instrument 52-108 *Auditor Oversight*,
- (f) National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*,
- (g) National Instrument 52-110 *Audit Committees*, except in British Columbia
- (h) BC Instrument 52-509 *Audit Committees*, only in British Columbia

- (i) National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*,
- (j) National Instrument 58-101 *Disclosure of Corporate Governance Practices*,
- (k) section 8.5 of National Instrument 81-104 *Commodity Pools*, and
- (l) National Instrument 81-106 *Investment Fund Continuous Disclosure*.