

**Notice of
Multilateral Instrument 11-102 *Passport System*,
Companion Policy 11-102CP *Passport System*, and
Related Consequential Amendments**

**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

**Rescission of
National Policy 12-201 *Mutual Reliance Review System for Exemptive Relief Applications*,
and
National Policy 43-201 *Mutual Reliance Review System for Prospectuses***

Introduction

Members of the Canadian Securities Administrators (CSA), other than the Ontario Securities Commission (OSC), (passport regulators) are implementing the next phase of the passport system for continuous disclosure, prospectuses and discretionary exemptions effective March 17, 2008. All CSA members, including the OSC, are implementing new national policies for the filing and review of prospectuses and exemptive relief applications and rescinding the corresponding mutual reliance review policies on the same date.

Passport system

Multilateral Instrument 11-102 *Passport System* (MI 11-102) and Companion Policy 11-102CP *Passport System* (CP 11-102) are initiatives of the passport regulators.

Each of the passport regulators has made or will make MI 11-102 as a rule or regulation. Each passport regulator has also adopted or will adopt CP 11-102 as a policy. The text of MI 11-102 and CP 11-102 are set out in Schedules A and B.

The purpose of MI 11-102 and CP 11-102 is to implement, in the main areas of securities regulation, a system that gives a market participant access to the capital markets in multiple jurisdictions by dealing only with its principal regulator and meeting the requirements of one set of harmonized laws.

Although the OSC is not adopting MI 11-102, it can be a principal regulator under the instrument, thereby giving market participants in Ontario access to the capital markets in passport jurisdictions by dealing only with the OSC.

Consequential amendments to national instruments and related documents

The passport regulators are also adopting consequential amendments to the following instruments and policies (together, the related consequential amendments):

- National Instrument 14-101 *Definitions* (NI 14-101)
- National Instrument 58-101 *Disclosure of Corporate Governance Practices* (NI 58-101)

- National Instrument 81-104 *Commodity Pools* (NI 81-104)
- Companion Policy 81-104CP *Commodity Pools* (CP 81-104)
- Multilateral Instrument 11-101 *Principal Regulator System* (MI 11-101)
- Form 11-101F1 *Notice of Principal Regulator under Multilateral Instrument 11-101* (Form 11-1-01F1)
- Companion Policy 11-101CP *Principal Regulator System* (CP 11-101)
- Multilateral Instrument 52-110 *Audit Committees* (MI 52-110)
- Companion Policy 52-110CP to Multilateral Instrument 52-110 *Audit Committees* (CP 52-110)

The purpose of the consequential amendments to MI 11-101, CP 11-101 and Form 11-101F1 is to allow for the implementation of passport in stages. They repeal the principal regulator system for continuous disclosure, prospectuses and discretionary exemptions, but preserve the provisions related to the mobility exemptions (see *Background* below for further details).

The OSC did not and was not required to publish for comment the consequential amendments to NI 14-101, NI 58-101, NI 81-104, CP 81-104, MI 52-110 and CP 52-110 because the amendments are not material or do not apply in Ontario. The OSC made the amendments to NI 14-101 on December 18, 2007 and delivered them to the Minister of Finance on December 27, 2007 for approval. The OSC will change the references to MI 52-110 to read NI 52-110 in NI 58-101 at the earliest opportunity. The OSC will reflect the consequential amendments to the other instruments on its website.

The text of the related consequential amendments is in Schedules C to G. All the amendments related to NI 81-104 are in Schedule E, the amendments related to MI 11-101 are in Schedule F, and those related to NI 52-110 are in Schedule G. The British Columbia Securities Commission (BCSC) is not publishing Schedule G (see *Consequential Amendments to Local Rules* below for further details).

National filing and review process policies

The following policies are initiatives of the CSA:

- National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions* (NP 11-202); and
- National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* (NP 11-203).

Each member of CSA has adopted or will adopt NP 11-202 and NP 11-203. Their text is in Schedules H and I.

Each member of CSA is rescinding:

- National Policy 12-201 *Mutual Reliance Review System for Exemptive Relief Applications* (NP 12-201)¹, and
- National Policy 43-201 *Mutual Reliance Review System for Prospectuses* (NP 43-201)².

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

NP 11-202 and NP 11-203 (together the interface policies) set out the processes for the filing and review of prospectuses and exemptive relief applications in multiple jurisdictions. These policies include interfaces for market participants in passport jurisdictions to gain access to the Ontario market. CSA intends to give access to exemption decisions made under NP 11-203 through the CSA website at www.csa-acvm.ca.

Under MI 11-102 and the interface policies, the principal regulator for a prospectus offering or discretionary exemption application will usually be the regulator in the jurisdiction where the market participant's head office is located.

Consequential amendments to local rules

CSA members in some jurisdictions are also publishing a local notice to make consequential amendments to local rules.

The BCSC is adopting MI 52-110, CP 52-110 and the related forms, and repealing its local audit committee rule, BC Instrument 52-509 *Audit Committees*. Consequently, CSA is amending the title of MI 52-110 to reflect that it is a national instrument. The BCSC is publishing with the BC notice published at the same time as this notice a consolidated version of MI 52-110 and CP 52-110 that includes the consequential amendments in Schedule G.

The BCSC is giving reporting issuers that obtained a discretionary exemption from MI 52-110 and certain provisions of NI 81-104 and NI 58-101 in another Canadian jurisdiction before March 17, 2008 an equivalent exemption in British Columbia. This will put these reporting issuers in the same position in British Columbia as elsewhere in Canada when the BCSC adopts MI 52-110 and the amendments to NI 81-104 and NI 58-101. For more information, see the BC notice published at the same time as this notice.

Effective date and transition

MI 11-102 applies to a continuous disclosure document filed on or after March 17, 2008. It also 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. MI 11-102 does not apply to a preliminary prospectus amendment if the related preliminary prospectus was filed before March 17, 2008.

MI 11-102 also applies to an application for discretionary exemption filed

- on or after March 17, 2008, or
- before March 17, 2008, if the regulator in a specified jurisdiction granted the exemption before, on or after March 17, 2008 and a filer wishes to have an equivalent exemption in a passport jurisdiction after March 17, 2008.

MI 11-102 and CP 11-102 refer to rules (e.g., Multilateral Instrument 62-104 *Take-over bids and issuer bids*) and Act provisions that CSA expects to be in force on March 17, 2008.

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

The process set out in NP 12-201 will continue to apply to a discretionary exemptive relief application and any related pre-filing filed before March 17, 2008. Similarly, the process set out in NP 43-201 will continue to apply to

- a preliminary prospectus, pro forma prospectus, a preliminary prospectus amendment and prospectus amendment filed before March 17, 2008,
- a prospectus if the related preliminary prospectus or pro forma prospectus was filed before March 17, 2008, and
- a preliminary prospectus amendment if the related preliminary prospectus was filed before March 17, 2008.

Passport for registration

When the passport regulators published proposed MI 11-102 and related documents for comment in March 2007, the proposed rule included passport for registration provisions. The passport regulators plan to amend MI 11-102 and CP 11-102 to include the passport for registration at the same time as, or after, implementing proposed National Instrument 31-103 *Registration Requirements* (NI 31-103). CSA expects to publish proposed NI 31-103 for a second comment period early in 2008 and expects to publish proposed National Policy 11-204 *Process for registration in multiple jurisdictions* for comment in due course.

Impact of new Securities Acts on discretionary exemptions

The governments of Prince Edward Island and Yukon each plan to proclaim into force a new *Securities Act* by March 17, 2008 and to adopt concurrently MI 11-102 and all the other CSA national instruments as rules. The governments of Northwest Territories and Nunavut each expect to introduce a new *Securities Act* and, if enacted, to adopt all CSA national instruments as rules. It is expected that the new *Securities Act* for all four jurisdictions will be highly harmonized.

The references to the securities legislation in the appendices to MI 11-102 for Prince Edward Island and Yukon are to their new *Securities Act* and related rules. The references for Northwest Territories and Nunavut are to their current securities legislation.

Background

The passport regulators published for comment MI 11-102, CP 11-102, the related consequential amendments and the repeal of MI 11-101, Form 11-101F1, CP 11-101, and NP 43-201 on March 28, 2007. The OSC did not publish MI 11-102 related materials for comment. Rather, on March 28, 2007, it published OSC Notice 11-904 *Request for Comment regarding the Proposed Passport System*.

At that time, passport regulators indicated that CSA had published for comment in proposed NI 31-103 a revised mobility exemption that would replace the mobility exemption in Part 5 of MI 11-101. Passport regulators also indicated that, subject to comments received, CSA would move that exemption into a separate national instrument between the repeal of MI 11-101 and the implementation of NI 31-103.

Instead, the passport regulators are amending MI 11-101, CP 11-101 and Form 11-101F1 to repeal the provisions dealing with passport for continuous disclosure, prospectuses and

discretionary exemptions and retain the provisions for the mobility exemptions. Subject to comments received, CSA anticipates including the modified mobility exemptions in proposed NI 31-103 when CSA finalizes that rule and the passport regulators expect repealing amended MI 11-101 at the same time.

CSA published for comment NP 11-202 and NP 11-203 and the rescission of NP 12-201 and NP 43-201 on August 31, 2007.

Summary of Written Comments

The passport regulators received 17 submissions on MI 11-102 and CP 11-102, seven of which the OSC also received in response to OSC notice 11-904. CSA received three submissions on the interface policies. All the comment letters are posted on the Alberta Securities Commission website at www.albertasecurities.com. Comments received by the OSC are also published on its website at www.osc.gov.on.ca. CSA thanks commenters for their submissions on the two requests for comment.

CSA considered the comments and is publishing a combined summary of comments and responses as Schedule J to this notice. The summary includes the names of the commenters, a summary of their comments, and the CSA responses to comments that do not relate specifically to the passport for registration. Passport regulators will respond to those comments when finalizing the passport for registration.

Summary of Changes

MI 11-102

Passport regulators made amendments to MI 11-102 to implement passport first for continuous disclosure, prospectuses and exemption applications. This means the provisions relating to passport for registration were deleted from the instrument. Passport regulators also removed the concept of determination date to identify the principal regulator for a prospectus offering made under MI 11-102 and instead provided guidance in NP 11-202 and NP 11-203 on how to identify the principal regulator for a pre-filing or waiver application. Passport regulators clarified how to determine the principal regulator for an exemption application in certain situations. In addition, passport regulators added transition provisions and removed the provision that allows the regulators to grant an exemption from the instrument because the passport regulators' authority for these exemptions is in their respective *Securities Act*. The changes to MI 11-102 are not material and do not need to be republished for comment.

CP 11-102

Passport regulators made changes to CP 11-102 to delete the guidance for the passport for registration, add a discussion of how MI 11-102 and the interfaces with Ontario work, and delete information that is now included in NP 11-202 and NP 11-203. Passport regulators clarified that the OSC can be a principal regulator despite not adopting MI 11-102.

Interface policies

CSA made changes to NP 11-202 and NP 11-203 to deal with technical issues raised in comment letters or otherwise.

Questions

Please refer your questions to any of:

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