**Appendix A**
**Principal Regulator System**

**List of commenters**

1. ATB Financial

2. Le Conseil des fonds d'investissement du Québec

3. Me Jean-Luc Bilodeau, LL.B., LL.M., LL.M.
   Professeur adjoint, faculté de droit (section de droit civil) de l'Université d'Ottawa

4. Osler Hoskins & Harcourt

5. Ontario Bar Association
   Securities Law Subcommittee of the Business Law Section

6. TSX Group Inc.

7. Desjardins Fédération des caisses du Québec

8. Canadian Bankers Association*

9. Davis Ward Philips & Vineberg LLP*

* These commenters asked the Ontario Securities Commission (OSC) to send their comment letters to the other members of CSA.

# Principal Regulator System

## Summary of comments and responses

**In this summary of comments, references to the CSA do not include the OSC.**

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| 1. | **Principal Regulator System** General | The CSA received nine comment letters on the principal regulator system (PRS).<br><br>Three commenters expressed support for the PRS.<br>• One commenter views the PRS as a positive and welcome initiative.<br>• Another says that the concept of a PRS is the approach that best suits the Canadian context to reconcile harmonization and simplification and to leave room for local initiative. By relieving market participants of the administrative burden of dealing with multiple legislations, the system will allow the Canadian capital market to be more efficient. Any effort toward that objective should be congratulated.<br>• A third commenter says that the CSA are going in the right direction. The commenter is confident that there will soon be a regulatory system that will help eliminate the legislative and regulatory barriers that limit access to the | The CSA thank the commenters for their support. |

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| | | Canadian capital markets, but continues to protect the public and maintain investor confidence.<br><br>Six commenters did not support the PRS, although two of them recognized it could be advantageous for some market participants and one said it was a substantial improvement on the current patchwork system of securities regulation.<br><br>The first commenter strongly urges the proposing jurisdictions not to introduce Multilateral Instrument 11-101 *Principal Regulator System* (MI 11-101) unless and until (i) all jurisdictions participate in it; and (ii) it is agreed that the goal for securities regulation in Canada is uniformity or at least harmonization.<br><br>The second commenter says that a passport system like the PRS cannot be justified on the basis of proven economic principles. The commenter does not believe that the differences that might exist in current provincial requirements could give rise to regulatory competition among the regulators. He believes that, even if the PRS reduced the transaction costs incurred by market participants, it would be at a very high social cost because it would maintain a redundant regulatory structure. | The PRS stems from a Memorandum of Understanding, dated September 30, 2004, signed by the Ministers responsible for securities regulation of all provinces and territories, except Ontario (MOU). The objective of the MOU is to set up a passport system that would give a single window of access to market participants in areas where securities laws is already highly harmonized or could be harmonized quickly.<br><br>The Ministers plan to implement the MOU in phases. The PRS is the first phase of the Ministers' passport initiative. It goes as far as possible under current legislation to achieve the MOU's objective of permitting a market participant to have access to the capital markets in multiple jurisdictions by dealing with the regulator and legal requirements in its principal jurisdiction.<br><br>In the second phase, the Ministers plan to seek legislative amendments to provide securities regulatory authorities with additional powers that would permit arrangements to take the passport system closer to a model where each market participant has to deal with only one regulator and one law (e.g., delegation |

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| | | Therefore, the real issue lies in determining whether the current regulatory structure should be maintained and not whether the differences that might exist in the securities regulation of various Canadian jurisdictions would prevent the passport system from operating effectively. He argues that the establishment of a pan-Canadian securities commission administering a single Act, as proposed by Ontario, is the only viable and logical solution under current circumstances.<br><br>The third commenter believes it is inappropriate to implement a passport system in the absence of highly harmonized legislative requirements for all participating jurisdictions (or ideally, a single legislative regime applicable in all jurisdictions). MI 11-101 does not meet this standard, and does nothing to promote the goal of further harmonization of regulatory standards.<br><br>The fourth commenter supports any proposal that will enhance the efficiency and competitiveness of Canadian capital markets, but strongly believes this will be best achieved through a single regulator rather than through phases like the passport and principal regulator systems. The commenter acknowledges that:<br>• a single regulator model might not be | powers, powers to adopt decisions, etc.).<br><br>The Ministers also plan to develop and implement highly harmonized and streamlined securities legislation and to review fees in further phases of the passport initiative.<br><br>The structural changes suggested by some of the commenters are beyond the scope of the CSA's PRS initiative.<br><br>See item 2 below for our response on the issues related to harmonization and the differences in regulatory requirements.<br><br>See item 8 below for further information on the issue of local carve-outs. |

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| | | achievable in the short-term and that, during the transition, a solution involving more than one regulator might be necessary – given the likelihood of this scenario, the commenter believes that the work done by the CSA to date to reduce regulatory complexity has demonstrably improved our markets.<br>• MI 11-101 could be advantageous for certain issuers. However, some of the local carve-outs give the system an element of complexity.<br><br>The fifth commenter says that the way to reform the existing fragmented Canadian system of regulation is to establish a single securities regulator and not to try to get multiple local regulators to work like a single regulator. The commenter is of the view that even the best passport model would fall short of achieving the benefits of a single regulator and that the PRS fails to meet even the standards of a well crafted passport model because it is incomplete in so many respects. In the commenter's view, the PRS merely substitutes one form of fragmentation for another by allowing jurisdictions to host market participants who would be subject to different rules depending on the location of their head office. The commenter acknowledges that the PRS would introduce some limited benefits to | |

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| | | individual market participants, but believes that it introduces additional risk for investors and does not enhance the competitiveness, reputation and integrity of Canada's capital markets.<br><br>The last commenter says that the efforts and resources of CSA would be better applied to the establishment of a national securities commission and the harmonization of securities laws across the country. The commenter believes the passport system is less than ideal, but acknowledges that it is a substantial improvement on the current patchwork system of securities regulation. | |
| 2. | **Differences in requirements or harmonization** | One commenter is concerned that issuers may be permitted to follow different regulatory standards depending solely on where their head office is located. The commenter says this could result in an inconsistent standard of regulation in the Canadian capital markets. The commenter agrees with the CSA members that certain of the British Columbia carve-outs from national instruments must be reworked if MI 11-101 is implemented to avoid the possibility of regulatory arbitrage. For MI 11-101 to be viable, CSA must ensure that the harmonization of securities laws continues. If the movement toward continued and increased harmonization fails, MI 11-101 will cease to | When MI 11-101 is implemented, the British Columbia Securities Commission (BCSC) will<br><br>• adopt Multilateral Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (MI 52-109),<br>• remove its carve-outs from National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101) and some of its carve outs from MI 81-104 *Commodity Pools* (MI 81-104), and<br>• remove the exemptions it currently provides from complying with the business acquisition report requirements and the restricted security disclosure |

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| | | function in the manner that was intended. To respond to the CSA's specific request for comment on the differences in requirements, the commenter agrees with the majority of CSA members that the PRS must be based on uniform, or at a minimum highly harmonized, requirements. Market participants should not be subject to different standards simply because of where their head office is located.<br><br>Another commenter is concerned that, by maintaining the ability of individual jurisdictions to pursue their own rules, the passport system could result in a greater likelihood that regulatory differences among jurisdictions will become entrenched.<br><br>See item 1 above for comments on harmonization. | requirements in National Instrument 51-102 *Continuous Disclosure Obligations* (MI 51-102) for issuers that are relying on MI 11-101.<br><br>The CSA, except the OSC, have agreed that the other differences in national instruments covered by MI 11-101 would be accepted in other jurisdictions for market participants whose principal regulator is the BCSC. These differences are<br><br>• The audit committee rules (BC Instrument 52-509 instead of MI 52-110)<br>• The test for "independence" in National Instrument 58-101 *Disclosure of Corporate Governance Practices* (NI 58-101)<br>• Part 12 (material contracts) of NI 51-102<br>• Parts 3 (seed capital requirements) and 4 (proficiency and supervisory requirements) of MI 81-104<br><br>The CSA have also agreed to the differences in the treatment of non-reporting investment funds in National Instrument 81-106 *Investment Fund Continuous Disclosure* in British Columbia, Alberta, Manitoba and Newfoundland and Labrador.<br><br>In the MOU, provinces and territories agreed that the passport system would apply initially to areas that are |

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| | | | already highly harmonized or that can be highly harmonized quickly. They also agreed to assess the appropriateness and effectiveness of their actions based on the following principle, among others: highly harmonized securities laws, with well-defined parameters for exceptions to accommodate local and regional differences.<br><br>The CSA believe that the instruments that are covered by MI 11-101 are highly harmonized and that MI 11-101 serves the objective of the MOU. |
| 3. | **Foreign issuers** | One commenter believes that foreign issuers should be permitted to rely on the exemptions in MI 11-101. | Foreign issuers are entitled to rely on MI 11-101. |
| 4. | **OSC opt-out** | Two commenters support the position taken by the OSC in refusing to endorse MI 11-101.<br><br>Another commenter believes that MI 11-101 cannot achieve its desired intent without the participation of Ontario. If Ontario opts-out, MI 11-101 will further complicate and perpetuate an already fragmented and complex system of securities regulation.<br><br>The last commenter says that the goal of easing the capital formation process by streamlining the | The CSA agree that the PRS would be more effective if the OSC adopted MI 11-101. However, even without the OSC's participation we believe that the PRS will provide valuable exemptions to market participants. For example, we have modified MI 11-101 so that issuers will not have to review the continuous disclosure requirements of their non-principal jurisdictions to benefit from the exemption. In addition, MI 11-101 eliminates the need for an issuer that relies on the instrument to obtain in non-principal jurisdictions exemptions from prospectus form and content requirements and discretionary exemptions |

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| | | prospectus clearance process should be paramount and that the public interest would not be well served if Ontario were to remain separate from a passport system in which all other provinces participate. | from continuous disclosure requirements. We also believe MI 11-101 can work effectively with National Policy 43-201 *Mutual Review Reliance System for Prospectuses* (NP 43-201) and National Policy 12-201 *Mutual Review Reliance System for Exemptive Relief Application*s (NP 12-201). In this respect, we note that the OSC will be adopting the amendments to NP 12-201 and the amendments to NP 43-201 to streamline the prospectus clearance process. Although we recognize that MI 11-101is likely to be most valuable for issuers that are not reporting issuers in Ontario, we note that there are at least 950 issuers in that category. |
| 5. | **Enforcement** | One commenter is concerned by the proposition contained in the OSC notice and request for comment that MI 11-101could possibly result in a non-principal regulator not being able to begin enforcement proceedings against an issuer or individual even when substantial harm arising from a breach of securities laws has occurred in its jurisdiction. The commenter urges the CSA to determine definitively that each non-principal regulator will be able to undertake any necessary enforcement proceedings. If this requires the non-principal regulator's enforcement rights to be clearly outlined in MI 11-101, then the commenter requests the CSA to make the drafting changes. | Under MI 11-101, 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 violation of local laws, like prohibitions against misrepresentation or fraud.<br><br>Any constraint on compliance or enforcement action in a non-principal jurisdiction against an issuer for a failure to comply with a specific disclosure requirement would have little practical consequence and would not cause a significant change to current practice. |

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| | | Another commenter believes that that the system of enforcement would be unduly complicated under the PRS. | Currently, it is unusual for a non-principal regulator to take action against an issuer in those circumstances because it is usually the principal regulator's review that leads to compliance or enforcement action. Under the PRS, non-principal regulators will continue, however, to be able to take action in cases that raise public interest concerns or contravene more general provisions like the prohibitions against misrepresentation or fraud and will otherwise rely on the principal regulator to take appropriate action for failure to comply with specific disclosure requirements.<br><br>The CSA believe that this will ensure the appropriate level of monitoring and enforcement of regulatory requirements in each jurisdiction. We will continue to coordinate our actions, to the extent possible, in the event more than one regulator initiate a compliance or enforcement action against an issuer that is relying on MI 11-101. |
| 6. | **Treatment of Ontario-based issuers and registrants** | One commenter recommends that MI 11-101 be amended to permit Ontario-based issuers or registrants to rely on the exemptions in MI 11-101 in the other CSA jurisdictions. The commenter is of the view that the refusal by the OSC to endorse MI 11-101 is not a valid reason for affording differential treatment to Ontario-based issuers or registrants who are reporting issuers in the other | The issue of whether Ontario-based issuers and registrants should be able to rely on the exemptions in MI 11-101 is a matter of reciprocity. An issuer with a head office outside Ontario that uses the OSC as its principal regulator under NP 43-201 and NP 12-201, like a foreign issuer, can select another principal jurisdiction to act as principal regulator under MI 11-101 and rely on the exemptions in MI 11-101 because |

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| | | CSA jurisdictions and who comply with the requirements of those jurisdictions. | there is no reciprocity issue in that case. |
| 7. | **Mobility exemption** | Five commenters support the mobility exemption.<br><br>One commenter suggests the CSA consider increasing the monetary threshold under Part 5, Section 5.3 (d) for advisors from $10 million in aggregate or less, to $20 million. The commenter believes the proposed threshold is low given the nature of the advisory business, with high minimum and average client size.<br><br>Another commenter is concerned that only allowing firms that have no more than 10 clients to benefit from the mobility exemption will be very limiting and the relief provided would only be theoretical. The commenter suggests increasing the number of clients a firm can have and still be eligible for the exemption, but does not propose a specific number.<br><br>The third commenter notes that the mobility exemption is a positive step, but that it also highlights the limited nature of the reforms proposed under the PRS.<br><br>The fourth commenter supports the | The CSA thank the commenters for their support.<br><br>The CSA do not propose to change the threshold for the number of eligible clients and the amount of assets under management in the mobility exemption for dealer or unrestricted advisers. The mobility exemption is designed to allow a firm to continue to do business with a small number of clients with an amount of assets under management that might not justify the cost of registration in another jurisdiction. We believe that the thresholds set out in MI 11-101 are appropriate. We will monitor the effectiveness and usefulness of the exemption in its first year and consider changes, if appropriate, later.<br><br>We note that the OSC is considering the feasibility of |

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| | | implementation of the mobility exemption in Ontario as well as the other CSA jurisdictions and the last commenter encourages all CSA jurisdictions to implement the mobility exemption to the extent it can be achieved by amendments to current instruments. | adopting the mobility exemption. |
| 8. | **Disclosure of local carve-outs** | One commenter says that, to the extent an issuer is permitted to rely on a principal regulator's local carve-out of a rule, the issuer should disclose that it is relying on the carve-out. MI 11-101 should require the issuer to make the disclosure. | MI 11-101 requires issuers providing disclosure based on BC Instrument 52-509 to disclose that it is applying the audit committee rule that applies in British Columbia and that the rule is different from the audit committee rule in other jurisdictions (section 3.2(2)). MI 11-101 also requires issuers applying the British Columbia test for "independence" in NI 58-101 to provide similar disclosure (section 3.3). The CSA believe that these provide adequate disclosure about the most important differences that remain in the national instruments that are covered by MI 11-101. |
| 9. | **Amendments to NP 43-201** | Three commenters support the amendments to NP 43-201.<br><br>One of the commenters supports the proposal to shorten the prospectus/AIF review process by providing for simultaneous review by principal and non-principal regulators. However, the commenter notes that in the interests of efficiency, and as an operational matter, non-principal | The CSA thank the commenters for their support.<br><br>The CSA do not believe that issuers very often experience a problem with duplicate or conflicting comments on prospectuses filed under NP 43-201 because non-principal jurisdictions very seldom comment on these filings. The CSA are, however, willing to examine and streamline their administrative |

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| | | jurisdictions should consult with the principal jurisdiction to avoid duplicative or conflicting comments.<br><br>Another commenter encourages all CSA jurisdictions to work to implement the amendments to NP 43-201.<br><br>The last commenter believes that the amendments to NP 43-201, particularly the ones that will result in shortened review periods, are welcome improvements to the mutual reliance review system. | processes in this area, if they identify a problem. |
| 10. | **Delegation/rule-making authority** | One commenter applauds the effort of the provinces and territories to seek legislative amendments to, among other things, provide powers of delegation to each securities regulatory authority because it will be necessary to ultimately move Canada's markets towards a single regulator model with uniform securities laws. However, the commenter warns the legislative process for this type of reform should not be underestimated. | The CSA are aware of the difficulties inherent in trying to coordinate legislative amendments across all jurisdictions. We note, however, that governments have committed to making the necessary legislative changes under the MOU. |
| 11. | **Costs and benefits** | One commenter said that the CSA did not complete a cost-benefit analysis of MI 11-101 because we expect it to reduce costs. It is not clear to the commenter which costs will be reduced by | MI 11-101 does not affect the fees that issuers and registrants are otherwise required to pay under securities regulation, except in one area. Issuers relying on the prospectus-related and continuous disclosure |

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| | | MI 11-101. Specifically, the commenter would like confirmation that filing and/or registration fees paid to non-principal jurisdictions will be lowered or removed altogether. | exemptions in MI 11-101 will not be required to apply in non-principal jurisdictions for relief from prospectus form and content requirements and for discretionary exemptions from continuous disclosure requirements. As a result, these issuers will not have to pay the fees they would otherwise have had to pay for these applications.<br><br>The MOU contemplates a review of fees in a further phase of the passport initiative.<br><br>The CSA also expects that MI 11-101 (and the related policy amendments) will reduce costs<br><br>• for issuers, by shortening prospectus-processing times and by reducing legal costs now incurred to ensure compliance with requirements in non-principal jurisdictions, and<br>• for securities firms, by not requiring registration of the firm or individual representative when a small number of clients with a limited amount of assets under management move to another jurisdiction. |