

Schedule H

MI 11-102 *Passport System*

List of commenters

1. ITG Canada Corp.
2. Investment Industry Association of Canada
3. Baillie Gifford Overseas Ltd.
4. Investment Fund Institute of Canada
5. Financial Executives International Canada

**Summary of comments and responses
on the amendments to MI 11-102 *Passport System*
(MI 11-102)**

Passport regulators adopted MI 11-102 on March 17, 2008 to establish the passport system for issuers - covering continuous disclosure, prospectuses and discretionary exemptions. When MI 11-102 was first published for comment on March 28, 2007, it also included provisions to provide a passport for registrants. We published the passport for registrants for comment for a second time on July 18, 2008. The following summarizes and responds to the comments on the second publication of the passport system for registrants.¹

#	Themes	Comments	Responses
1.	General	<p>CSA received five comment letters on the second publication for comment of the proposed passport for registrants.</p> <p>All commenters supported the CSA's efforts to harmonize, simplify and streamline the registration regime and thought that passport is an important step forward to more effective and efficient regulation in Canada. However, three commenters also said that passport does not go far enough. They encouraged CSA to work toward a further evolution of the Canadian regulatory structure. Two of them specifically called for a single national regulator and a single set of laws.</p>	<p>The amendments to MI 11-102 implement the second phase of the passport system for registrants (passport for registrants) contemplated in the Provincial/Territorial Memorandum of Understanding regarding Securities Regulation (MOU). The objective of the MOU is to set up a system that gives a single window of access to market participants in areas where securities laws are already highly harmonized or could be harmonized quickly. The structural changes two commenters suggested are not within the powers of securities regulators to consider.</p>

¹The comment letters are available on the Alberta Securities Commission website at www.albertasecurities.com.

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2.	Inconsistencies create complexity	<p>One commenter said that harmonization, simplification and streamlining of the registration regime would help international firms operating in Canada by simplifying the regulatory environment.</p> <p>Four commenters raised issues related to consistency:</p> <ul style="list-style-type: none"> ▪ The remaining inconsistencies in proposed National Instrument 31-103 <i>Registration Requirements</i> (NI 31-103) seriously detract from the effectiveness of the proposed passport for registrants. It is difficult to understand why local requirements cannot be harmonized for registrants that carry on business in more than one jurisdiction given the size of the Canadian market and the lack of any truly unique regional characteristics. 	<p>CSA continues to work on harmonizing, simplifying and streamlining regulatory requirements. Phase 2 of passport and the concurrent harmonization of registration requirements will simplify regulation for foreign firms registered in Canada.</p> <ul style="list-style-type: none"> ▪ Through NI 31-103 and related Act amendments coming into effect at the same time as passport for registrants, CSA has harmonized and streamlined most of the registration requirements across jurisdictions. Most of the few remaining differences are readily identifiable in NI 31-103. Some of these relate to structural differences in the regulatory framework in some jurisdictions (e.g. the regulation of mutual fund dealers in Québec, or the regulation of ‘exchange contracts’ under the securities legislation of British Columbia, Alberta, Saskatchewan and New Brunswick) or result from initiatives driven by specific provincial legislation (e.g., labour sponsored funds). Others are technical in nature and designed either <ul style="list-style-type: none"> ○ to harmonize substantive requirements across jurisdictions (e.g., the regulation of referral arrangements) or work with passport for registrants (e.g., the British Columbia and Manitoba approach to exempt market dealer

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			<p>registration), or</p> <ul style="list-style-type: none"> ○ to have no substantive/practical impact on passport for registrants (e.g., the British Columbia, Manitoba and New Brunswick approach to the business trigger). <p>Very few reflect true differences in policy across jurisdictions.</p>
		<ul style="list-style-type: none"> ▪ The lack of uniformity in NI 31-103 will obstruct the goals of National Policy 11-204 <i>Process for Registration in Multiple Jurisdictions</i> (NP 11-204) to allow firms to meet the requirements of one set of harmonized laws. It appears that a firm would need only comply with the requirements in its principal jurisdiction, but it is unclear what requirements apply when the firm is operating in a non-principal jurisdiction that may have implemented slightly different requirements. ▪ The proposed passport for registrants does not exempt registrants from all non-harmonized requirements. 	<ul style="list-style-type: none"> ▪ Under passport for registrants, a firm or individual that registers in more than one jurisdiction is subject to the law of each jurisdiction where the firm or individual is registered. NI 31-103 consolidates, harmonizes and streamlines in one instrument most of the requirements that apply to registrants in all Canadian jurisdictions. The few differences in these requirements are readily identifiable in the instrument. ▪ CSA has eliminated or harmonized all non-harmonized local registration requirements that the passport regulators were prepared to exempt from under the passport system for registrants. The regulators intend that any remaining local non-harmonized requirements continue to apply in the relevant jurisdictions. In many instances, the remaining non-harmonized local requirements

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		<ul style="list-style-type: none"> ▪ It creates three different methods for ascertaining the principal regulator based on the type of exemptive relief sought. 	<p>apply to registrants that operate only in the local jurisdiction and do not affect firms or individuals registered in multiple jurisdictions. Only a few non-harmonized local requirements apply to registrants operating in multiple jurisdictions.</p> <ul style="list-style-type: none"> ▪ The principal regulator for passport for registrants is the regulator in the jurisdiction where the head office of the firm or the working office of the individual is located. This deals with most circumstances where a firm or individual seeks registration under passport. To expedite the registration process, MI 11-102 provides that the same principal regulator will also handle an application for exemption from the fit and proper requirements of NI 31-103 or the registration filing requirements under National Instrument 33-109 <i>Registration Information</i> made at the same time as the application for registration in the principal jurisdiction. If a firm or individual applies for another type of relief or for relief after registration in the principal jurisdiction, then the principal regulator is determined in the same way as for any other application for exemption under MI 11-102. A firm or individual would have different principal regulators in these circumstances only if the head office or working office is in one of the five smallest jurisdictions or if relief is sought from a

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			requirement that does not apply in the principal jurisdiction.
		<ul style="list-style-type: none"> ▪ Ontario's decision not to participate in passport adds to the complexity. Allowing the Ontario Securities Commission (OSC) to act as a principal regulator under passport simplifies the process for registrants whose principal jurisdiction is Ontario. But the fact that Ontario is not willing to accept that another jurisdiction act as principal jurisdiction for non-Ontario registrants creates significant inefficiencies. ▪ The fact that some jurisdictions have delegated their registration functions to the Investment Industry Regulatory Organization of Canada (IIROC), and others have not, is at odds with the objectives of the passport system. CSA should adopt a uniform policy on the delegation of registration functions to IIROC and the Mutual Fund Dealers Association to further streamline the registration regime across Canada and potentially generate additional administrative and cost efficiencies. ▪ There are discrepancies in the scope of 	<ul style="list-style-type: none"> ▪ CSA members in passport jurisdictions would welcome a decision by Ontario to join passport. Meanwhile, CSA is implementing the passport system and interfaces to make the securities regulatory system as efficient and effective as possible in the circumstances for all market participants who want to gain access to the capital markets in both passport jurisdictions and Ontario. The OSC has participated in developing the interfaces between the passport jurisdictions and Ontario. ▪ Delegation of registration functions to SROs is outside the scope of the passport project. However, we have designed the passport and interface system to work efficiently with different delegation arrangements among jurisdictions. ▪ A firm or individual wishing to register in a non-

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		<p>delegation to IIROC among delegating jurisdictions that would require a firm or individual to deal with two regulators and IIROC depending on the principal jurisdiction and the type of registration and the non-principal jurisdictions where registration is sought.</p>	<p>principal passport jurisdiction under MI 11-102 deals only with its principal regulator. If the principal regulator has delegated registration to IIROC, IIROC makes the registration decision instead of the principal regulator. The system for registering an IIROC member firm or representative works with different delegation arrangements as follows.</p> <ul style="list-style-type: none"> o No delegation to IIROC: a firm would make its submission to, and deal only with, the principal regulator, except if the firm is seeking registration in Ontario and Ontario is a non-principal jurisdiction. The principal regulator will deal directly with IIROC to ensure the firm is a member of IIROC before granting registration. Once the principal regulator grants registration, the firm is automatically registered in the non-principal passport jurisdictions in which it is seeking registration. If the firm is seeking registration in Ontario, the firm makes its submission to the OSC and the principal regulator coordinates its decision with the OSC. o Delegation to IIROC: the process is the same except that the firm deals with the relevant office of IIROC for the principal regulator's jurisdiction. o Individuals make their submissions on NRD

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3.	Ontario registration Act amendments and harmonization	One commenter reiterated its view that the Ontario government's proposal to move a substantial number of NI 31-103 provisions into the Ontario <i>Securities Act</i> undermines the CSA's commitment to a harmonized approach to securities regulation across Canada.	and identify the jurisdictions where they seek registration. NRD automatically directs the submission to the appropriate entity in each jurisdiction, i.e., the securities regulator or the relevant office of IIROC in the jurisdiction. CSA is committed to harmonizing, simplifying and streamlining regulatory requirements and will continue to work with all governments towards this goal.
4.	Acknowledgement for automatic firm registration (section 6.3(1)(b) of MI 11-102)	One commenter urged CSA to add a time limit for the non-principal regulator to make the acknowledgement on NRD, for example within one business day of receiving the submission.	We have revised MI 11-102 to eliminate the need for an acknowledgement. The registration of a firm in a non-principal passport jurisdiction will be automatic upon filing. The passport regulator will manually record the legal date of registration of a firm in the non-principal jurisdiction and notify the firm. The notification will explain why this date may be earlier than the 'effective date' shown on NRD.
5.	Interface registration (section 6.2(2) of NP 11-204)	One commenter recommended that the Ontario office of IIROC advise the principal regulator of its decision relating to an interface registration within the same time-frame as the OSC for individuals not registering as representatives of an investment dealer, i.e. one business day of receiving the interface document.	IIROC agreed to use the same timeframe for making decisions as the OSC.

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6.	Fees	Two commenters suggested eliminating or reducing fees in non-principal jurisdictions under passport. One commenter urged CSA, at a minimum, to advise how CSA will assess the effectiveness and efficiency of the passport system in the absence of fee reductions.	<p>Fees for prospectus filings and registration are mainly ‘participation fees,’ through which market participants who access the capital markets in a jurisdiction contribute to the cost of maintaining the regulatory system that oversees those markets. Although passport will reduce costs for market participants, the cost of operating the regulatory system will not decrease significantly because of passport.</p> <p>At the request of the Council of Ministers, the passport regulators are conducting a review of their fee structures and have provided a preliminary report to the Council of Ministers. CSA does not expect any fee changes implemented following the fee review to eliminate the requirement to pay prospectus filing and registration fees in non-principal passport jurisdictions. CSA is also considering how to assess the effectiveness and efficiency of the passport system more generally.</p>
7.	Mobility exemption	One commenter thought that the decision to retain limits on broker mobility in the mobility exemption in proposed NI 31-103 is inconsistent with the principles of passport.	The mobility exemption provides flexibility to dealers for the mobility of their clients, by letting a firm or individual not registered in a jurisdiction deal with a few clients who move there. If more clients move to the jurisdiction, or the firm or individual wishes to solicit clients there, MI 11-102 allows the firm or individual to register automatically in the non-principal passport jurisdiction to obtain full access to the market in that jurisdiction.
8.	Proficiency	One commenter requested that, if a foreign	Under passport, a foreign registrant can apply to the

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requirements for foreign registrants	registrant is subject to the competency requirements of an equivalent regulatory regime, CSA recognize those regulatory requirements instead of imposing additional proficiency requirements on foreign registrants, e.g., their chief compliance officer.	principal regulator to accept equivalent proficiency requirements. If the principal regulator grants relief from the proficiency requirements of NI 31-103, the exemption will apply automatically in non-principal passport jurisdictions. CSA will review on an on-going basis equivalent proficiency requirements to determine whether amendments to NI 31-103, or other action, is necessary.	
9.	Novel exemptive relief applications under National Policy 11-203 <i>Process for Exemptive Relief Applications in Multiple Jurisdictions (NP 11-203)</i>	One commenter said that it is not always clear who the ultimate decision-maker is when an exemptive relief application involves a novel issue. The experience of some of its members is that the principal regulator acts more like a spokesperson to facilitate building consensus among regulators on the outcome of novel applications. This can result in a lack of transparency (not knowing the source of a comment) and significant delays in the decision-making process. The commenter urged CSA to clarify and streamline the review and decision-making process for novel exemptive relief applications.	CSA has put mechanisms in place to ensure consistency in decision-making across jurisdictions under passport. Some of these processes involve the principal regulator consulting with one or more non-principal regulators on a novel exemptive relief application. Although this consultation may take place, only the principal regulator makes the decision and that decision has automatic effect in the relevant non-principal passport jurisdictions.
10.	Revocation or variation of mutual reliance review system (MRRS) decision made before March 17, 2008 (section 9.4 of	One commenter thought that having made an MRRS decision before March 17, 2008 is not a good reason to go back to the MRRS process to revoke or vary that decision. The commenter recommended that CSA permit the filing of a revocation or variance application for a pre-March 17, 2008 MRRS decision as a passport application	Under MRRS, each jurisdiction made a decision on the application for exemptive relief and the decision document issued by the principal regulator was ‘evidence’ of the principal regulator’s and each non-principal regulator’s decision. Therefore, to revoke or vary an MRRS decision, each regulator that made the MRRS decision must revoke or vary it. This is not

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NP 11-203)	or dual application to the extent that the filer could make that type of application under NP 11-203.	possible under a passport application because a non-principal regulator does not make a decision. Instead, the decision of the principal regulator has automatic effect in the non-principal jurisdiction.	
