

## Notice and Request for Comment

### Proposed *Regulation 11-102 respecting Passport System* and Form 11-102F1 *Notice of Principal Regulator and Registration in Additional Jurisdiction(s)*

#### Proposed Policy Statement to *Regulation 11-102 respecting Passport System*

#### Related amendments and repeals

**March 28, 2007**

This notice describes the proposals of the Canadian Securities Administrators, other than the Ontario Securities Commission (OSC), (CSA or we) for implementing the next phase of the passport system for securities regulation. This proposed set of rule, policy, and administrative changes would further simplify the securities regulatory system for issuers and registrants who have their securities traded or deal with clients in more than one Canadian jurisdiction.

#### Passport system — overview

We implemented phase I of passport in 2005 and propose to start implementing phase II in early 2008. The initiatives in phase II build on, and would largely replace, phase I of passport and the mutual reliance review systems. We describe the elements of the passport system more fully below.

The OSC is not participating in the passport system. Please refer to OSC Notice 11-904 for further details. However, for the public comment process, we have designed phase II of passport as a system for adoption by all Canadian securities regulatory authorities. This will allow market participants to focus on how the passport system could operate to streamline Canadian securities regulation.

A key foundation for the passport system is a set of nationally harmonized regulatory requirements that will be consistently interpreted and applied throughout Canada. Although we already have a significant body of harmonized law, implementation of phase II depends on the adoption of two new proposed national instruments that we have published for comment. They are *Regulation 31-103 respecting Registration Requirements* (Regulation 31-103) and *Regulation 41-101 respecting General Prospectus Requirements* (Regulation 41-101). We expect to implement consequential amendments to local rules, and our governments to proclaim some act amendments that harmonize securities requirements, when we adopt the new national instruments.

#### Passport system – rule and policy changes

The CSA is publishing now the rule and policy changes that we will need for phase II of passport. The major elements of the passport system are set out in:

- *Regulation 11-102 respecting Passport System* (Regulation 11-102),
- Form 11-102 F1 *Notice of Principal Regulator and Registration in Additional Jurisdiction(s)*, and
- Policy Statement to *Regulation 11-102 respecting Passport System* (Policy Statement 11-102)

(collectively, the proposed regulation).

We developed the appendices to the proposed regulation based on the securities act and rule provisions we expect to be in force when we implement each part of the proposed regulation, except for Appendix E of Policy Statement 11-102. Prior to implementing the proposed regulation and in the course of our work to finalize Regulation 31-103, we will aim to eliminate or harmonize most of the local registration requirements that remain and will update the references to reflect the changes.

The appendices do not contain references to the relevant provisions of the existing securities legislation in Prince-Edward Island, Yukon, Northwest Territories and Nunavut because these jurisdictions are developing new securities acts. We will add the relevant references to the appendices when we finalize the proposed regulation.

The CSA is also publishing proposed consequential amendments to *Notice 12-201 relating to the Mutual Reliance Review System for Exemptive Relief Applications* (Notice 12-201)<sup>1</sup>.

The CSA also proposes to repeal the following regulations, forms and policies:

*Regulation 11-101 respecting Principal Regulator System* (Regulation 11-101),

- Form 11-101 F1 *Notice of Principal Regulator under Regulation 11-101* (Form 11-101F1)
- Policy Statement to *Regulation 11-101 respecting Principal Regulator System* (Policy Statement 11-101),
- Regulation 31-101 respecting National Registration System (Regulation 31-101),
- Form 31-101F1 Election to use NRS and Determination of Principal Regulator
- Form 31-101F2 Notice of Change
- Policy Statement 31-201 respecting National Registration System (Policy Statement 31-201), and
- *Notice 43-201 relating to the Mutual Reliance Review System for Prospectuses* (Notice 43-201)<sup>2</sup>

(collectively, the proposed repeals).

## Purpose and scope

The purpose of the proposed regulation 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. A market participant's principal regulator will usually be the regulator in the jurisdiction where the market participant's head office or working office is located.

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<sup>1</sup> Notice 12-201 relating to the Mutual Reliance Review System for Exemptive Relief Applications effective in Québec corresponds to National Policy 12-201, Mutual Reliance Review System for Exemptive Relief Applications elsewhere in Canada.

<sup>2</sup> Notice 43-201 relating to the Mutual Reliance Review System for Prospectuses effective in Québec corresponds to National Policy 43-201, Mutual Reliance Review System for Prospectuses.

## Local amendments

CSA members in some jurisdictions plan to make consequential amendments to local securities rules and policies.

The Autorité des marchés financiers (AMF) intends to amend Appendix C of National Instrument 14-101 *Definitions* (NI 14-101) to replace the reference to the Commission des valeurs mobilières du Québec with a reference to AMF or, where applicable, the Bureau de décision et de révision en valeurs mobilières.

In Québec, the proposed regulation will also include a reference provision (section 1.3) that will direct the reader to an additional appendix (Appendix F). This appendix will set out the complete references of all regulatory and other relevant texts mentioned in the proposed regulation.

The British Columbia Securities Commission (BCSC) intends to eliminate its carve-outs in *Regulation 58-101 respecting Disclosure of Corporate Governance Practices* (Regulation 58-101) and *Regulation 81-104 respecting Commodity Pools* (Regulation 81-104). The latter change will require a consequential amendment to Policy Statement to *Regulation 81-104 respecting Commodity Pool* (Policy Statement 81-104).

The BCSC also proposes to adopt *Regulation 52-110 respecting Audit Committees* (Regulation 52-110), Policy Statement to *Regulation 52-110 respecting Audit Committees* (Policy Statement 52-110), Form 52-110 F1 *Audit Committee Information required in an AIF* (Form 52-110 F1), and Form 52-110F2 *Disclosure by Venture issuers* (Form 52-110F2) and to repeal its local audit committee rule, BC Instrument 52-509 *Audit Committees* (BCI 52-509). The BCSC is publishing Regulation 52-110, Policy Statement 52-110, Form 52-110F1 and Form 52-110F2 and the repeal of BCI 52-509 for comment under a separate local notice.

We are publishing the proposed amendments to NI 14-101, Regulation 58-101, Regulation 81-104 and Policy Statement 81-104 with this notice.

## Publication and request for comments

The text of the proposed regulation and proposed amendments accompany this notice, as follows:

- Regulation 11-102, including Form 11-102F1
- Policy Statement 11-102
- amendments to Notice 12-201
- Regulation to amend National Instrument 14-101
- Regulation to amend Regulation 58-101
- Regulation to amend Regulation 81-104
- amendments to Policy Statement 81-104

We expect to implement the proposed regulation, proposed amendments and proposed repeals in stages as we implement the related proposed national instruments. We would implement the parts that relate to continuous disclosure, prospectuses and discretionary exemptions when we implement proposed Regulation 41-101. That is currently targeted for the end of 2007. We would implement the part of the proposed regulation related to registration concurrently with proposed Regulation 31-103. That is currently targeted for mid-2008.

## Background

On September 30, 2004, the Ministers responsible for securities regulation in most Canadian provinces and territories announced a memorandum of understanding (MOU) and an action plan that includes making best efforts to implement a passport system in certain areas of securities regulation.

The Ministers agreed that the system would provide a single window of access to market participants in areas where there are already highly harmonized securities laws across Canada or where regulators and governments could achieve highly harmonized securities laws quickly. The areas the proposed system cover include:

- prospectus requirements and clearance,
- continuous disclosure requirements,
- registration process, requirements and related filings,
- prospectus and registration exemptions,
- discretionary exemptions.

In 2005, the CSA implemented phase I of the passport system using the statutory powers that were available at the time. We now have, or expect to have, more powers to enable us to implement phase II of the passport system, which will make it easier for market participants to gain access to the capital markets and achieve the goals of the MOU.

The following table shows how we implemented phase I and propose to implement phase II in each area of regulation:

Area	Phase I	Implemented by	Date	Phase II	To be implemented by
Prospectus	<ul style="list-style-type: none"> <li>- Streamlined mutual reliance system</li> <li>- Exemption from non-principal jurisdiction (NPJ) form and content requirements</li> </ul>	<ul style="list-style-type: none"> <li>- Amended Notice 43-201</li> <li>- Part 4 of Regulation 11-101</li> </ul>	Sept 2005	<ul style="list-style-type: none"> <li>- Automatic receipt in NPJ</li> <li>- Most requirements for prospectuses made uniform</li> <li>- Exemption from all non-harmonized requirements</li> </ul>	<ul style="list-style-type: none"> <li>Part 3 of Regulation 11-102</li> <li>Regulation 41-101</li> <li>Part 3 of Regulation 11-102</li> </ul>
Continuous disclosure (CD)	<ul style="list-style-type: none"> <li>- Harmonized most CD requirements</li> <li>- Exemption from NPJ requirements</li> </ul>	<ul style="list-style-type: none"> <li><i>Regulation 51-102 respecting Continuous Disclosure Obligations</i> (Regulation 51-102) and other rules</li> <li>Part 3 of Regulation 11-101</li> </ul>	<ul style="list-style-type: none"> <li>March 2004</li> <li>Sept 2005</li> </ul>	<ul style="list-style-type: none"> <li>- Eliminated substantive continuous disclosure carve outs and opt outs</li> <li>- Exemption from all non-harmonized requirements</li> </ul>	<ul style="list-style-type: none"> <li>Regulation 51-102 and other rules</li> <li>Part 2 of Regulation 11-102</li> </ul>

Area	Phase I	Implemented by	Date	Phase II	To be implemented by
Registration	<ul style="list-style-type: none"> <li>- Mutual reliance system for registering in NPJ</li> <li>- Exemption from NPJ fit and proper requirements</li> </ul>	<ul style="list-style-type: none"> <li>- <i>Policy Statement 31-201 respecting National Registration System</i> (Policy Statement 31-201)</li> <li>- <i>Regulation 31-101 respecting National Registration System</i> (Regulation 31-101)</li> </ul>	April 2005	<ul style="list-style-type: none"> <li>- Automatic registration in NPJ</li> <li>- Most requirements for registrants made uniform</li> <li>- Exemption from most non-harmonized requirements</li> </ul>	<ul style="list-style-type: none"> <li>Part 4 of Regulation 11-102</li> <li>- Regulation 31-103</li> <li>- Part 4 of Regulation 11-102</li> </ul>
Registration and prospectus exemptions	<ul style="list-style-type: none"> <li>- Most exemptions made uniform</li> </ul>	<ul style="list-style-type: none"> <li>- <i>Regulation 45-106 respecting Prospectus and Registration Exemptions</i></li> </ul>	Sept 2005	n/a	n/a
Discretionary exemptions	<ul style="list-style-type: none"> <li>- Continuous disclosure exemptions needed only from principal jurisdiction (PJ)</li> </ul>	<ul style="list-style-type: none"> <li>- Part 3 of Regulation 11-101</li> </ul>	Sept 2005	<ul style="list-style-type: none"> <li>- For most types of discretionary exemptions, automatic exemption in NPJ from equivalent requirements to those covered by PJ exemption</li> </ul>	Part 5 of Regulation 11-102

Under the MOU, governments plan to review the fee structures of participating jurisdictions to assess how they might want to change them so they are consistent with the objectives of the MOU. Meanwhile, market participants are required to pay fees in all jurisdictions for prospectus filings, continuous disclosure filings and registration. Market participants are required to pay fees for discretionary relief applications only in their principal jurisdiction.

### **Effect on Regulation 11-101 and Mutual Reliance Review Systems**

Phase II of passport would replace the current processes issuers use to obtain decisions in multiple jurisdictions. As a result, the following instruments, forms and policies would no longer be necessary and we propose to repeal them:

- Regulation 11-101, including Form 11-101F1
- Policy Statement to Regulation 11-101
- Regulation 31-101, including Form 31-101F1 and Form 31-101F2
- Policy Statement 31-201
- Notice 43-201

Part 5 of Regulation 11-101 provides a mobility exemption, which allows a registered firm or individual to continue dealing with a limited number of clients who move to a jurisdiction where the firm or individual is not registered. Proposed Regulation 31-103, which we published for comment on February 20, 2007, includes a slightly modified mobility exemption that would replace the exemption in Regulation 11-101 and be available in all CSA jurisdictions. Subject to the comments we receive, we propose to move this exemption into a separate national instrument to be brought into force at the same time as the repeal of Regulation 11-101. That would ensure the mobility exemption remains available to registrants between the repeal of Regulation 11-101 and the implementation of Regulation 31-103.

We will not repeal Notice 12-201 because some types of discretionary exemptions remain outside the scope of the proposed regulation. We propose to amend Notice 12-201 to encourage market participants to rely on the exemption in Part 5 of the proposed regulation where it is available and to make the determination of principal regulator consistent under both systems (see amendments to Notice 12-201 published with this notice).

### **Summary of Passport System**

#### ***System for continuous disclosure***

In phase I of passport, each non-principal regulator exempts a reporting issuer from continuous disclosure requirements if the reporting issuer files whatever it files with the principal regulator. The main benefits of this exemption are that the reporting issuer can obtain a discretionary exemption from continuous disclosure requirements by dealing only with its principal regulator and that the reporting issuer does not have to concern itself with differences among jurisdictions in requirements or interpretation.

Phase II deals with continuous disclosure in a different way.

First, we propose a more general provision to deal with discretionary exemptions (see below).

Second, in conjunction with phase II, we propose to eliminate all of the remaining substantive differences in continuous disclosure requirements. We have already eliminated all the substantive carve outs in Regulation 51-102 and plan to eliminate the substantive carve outs affecting the continuous

disclosure requirements of reporting issuers in other national or multilateral instruments. In section 2.1 of Regulation 11-102, we propose to exempt an issuer that is reporting in more than one jurisdiction from any non-harmonized continuous disclosure requirements that remain in any jurisdiction, including its principal jurisdiction. Reporting issuers would therefore be governed by the continuous disclosure requirements in the harmonized provisions of securities legislation. The policy statement makes clear that we propose to interpret and apply these provisions in a uniform way and do not anticipate adopting further requirements that would result in non-harmonized continuous disclosure requirements applying to issuers that are reporting in more than one jurisdiction.

### ***System for prospectus filings and clearance***

In phase I, we shortened prospectus-clearing times by streamlining the mutual reliance review system for prospectus review. In addition, in Regulation 11-101, each non-principal regulator exempts a filer from the prospectus form and content requirements. The main benefits of the exemption are that the filer can obtain a discretionary exemption or waiver from prospectus form and content requirements by dealing only with its principal regulator and that the filer does not have to concern itself with differences among jurisdictions in requirements or interpretation.

In phase II, we propose to deal with exemptions through the general discretionary exemption system described below. We propose to deal with other aspects of prospectus filings and clearance as follows.

#### *(i) Deemed prospectus receipt*

First, we propose to replace the MRRS system with a new system under which a filer can obtain an automatic prospectus receipt in each non-principal jurisdiction. Section 3.3 of Regulation 11-102 would deem a receipt to be issued in each non-principal jurisdiction when a principal regulator issues a receipt for a preliminary prospectus or prospectus.

To obtain a deemed prospectus receipt in a non-principal jurisdiction, the filer would

- file its prospectus materials (including any amendments) with the principal regulator and obtain the necessary receipts, and
- file its prospectus materials with the non-principal regulator.

The filer would also pay prospectus fees in each jurisdiction as it does now.

This simplifies the current MRRS process by producing an automatic legal result in non-principal jurisdictions based on the decision of the principal regulator. It eliminates the need for the principal regulator to coordinate a prospectus review with, and obtain decisions from, non-principal regulators. It therefore eliminates the need to allow a period for non-principal regulators to decide whether to opt out.

To assist issuers, when the principal regulator issues its receipt for a prospectus, it will list the non-principal jurisdictions where it understands the receipt is deemed to have been issued.

#### *(ii) Exemption from non-harmonized requirements*

Second, we propose to complete the harmonization of prospectus requirements through Regulation 41-101, to interpret and apply harmonized prospectus requirements in a uniform way, and, in section 3.4 of Regulation 11-102, to exempt someone filing a prospectus in more than one jurisdiction from non-harmonized prospectus requirements in each jurisdiction where the prospectus is filed, including the principal jurisdiction. A prospectus filer would therefore be governed only by the prospectus requirements in harmonized provisions of securities legislation. The policy statement makes clear that we do not anticipate adopting further requirements that would result in non-harmonized prospectus requirements applying to prospectuses filed in more than one jurisdiction.

### **System for registration**

Phase I of passport for registration consisted of Regulation 31-101 and Policy Statement 31-201 and the mobility exemption in Regulation 11-101. The national registration system provides a registered firm or individual with an exemption from the fit and proper requirements that would otherwise apply when the firm or individual seeks registration in a non-principal jurisdiction and a mutual reliance process for obtaining registration in a non-principal jurisdiction by dealing only with the principal regulator.

As noted above, we plan to move the mobility exemption into a separate instrument and, ultimately, into Regulation 31-103.

In phase II, we propose to deal with exemptions through the general discretionary exemption system described below. We propose to simplify obtaining registration and complying with requirements in multiple jurisdictions as follows.

#### *(i) Automatic registration*

First, we propose to replace the National Registration System with a new system under Part 4 of Regulation 11-102. Under section 4.2 of Regulation 11-102, a firm or individual that is or becomes registered in its principal jurisdiction can obtain registration in a non-principal jurisdiction through a simple filing with its principal regulator. Section 4.3 of Regulation 11-102 provides that any terms, conditions, restrictions, or requirements imposed by the principal regulator would also apply in each non-principal jurisdiction. If the registration is suspended, cancelled, terminated, revoked or surrendered in the principal jurisdiction, section 4.4 of Regulation 11-102 provides that the registration would automatically be suspended cancelled, terminated, revoked or surrendered in each non-principal jurisdiction.

Registration fees would apply in each jurisdiction as at present.

Phase II is designed to accommodate registration through self-regulatory organizations in jurisdictions where the necessary arrangements are in place. If one of those jurisdictions is a firm or individual's principal jurisdiction, the firm or individual would deal with the self-regulatory organization it normally deals with in its principal jurisdiction to become registered in a non-principal jurisdiction under the Regulation.

#### *(ii) Exemption from non-harmonized requirements*

Second, we propose to harmonize most regulatory requirements for registrants through new Regulation 31-103, which was published for comment on February 20, 2007, to interpret and apply harmonized registration requirements in a uniform way, and, in section 4.9 of Regulation 11-102, to exempt a person registered in more than one jurisdiction from most non-harmonized registration requirements in each jurisdiction, including the principal jurisdiction.

The law that would apply would be the registration requirements in the harmonized provisions of securities legislation and a few other requirements in each local jurisdiction in which a person is registered under section 4.2 of Regulation 11-102 (see Appendix C of Policy Statement 11-102 for a list of the substantive local registration requirements in each jurisdiction). The policy statement makes clear that we do not anticipate adopting further requirements that would result in non-harmonized requirements applying to firms or individuals registered in more than one jurisdiction.

These changes would be a significant step toward having only harmonized requirements apply to registrants in multiple jurisdictions. Prior to implementing Part 4 of the proposed rule and in the course of our work to finalize Regulation 31-103, we will aim to eliminate or harmonize most of the remaining local registration requirements to move even closer toward this objective.

As part of our work to finalize Regulation 31-103, we will also review the filing requirements in *Regulation 33-109 respecting Registration Information* to ensure that the notice requirements under that rule and under Regulation 11-102 are consistent.

#### *Automatic transition to passport*

Section 4.6 of Regulation 11-102 automatically transforms the registration of a firm and its representatives in non-principal jurisdictions into a registration under passport unless the firm gives notice to the contrary within 30 days after Part 4 of Regulation 11-102 comes into effect. Generally, this means that, if a firm does not give notice, it and its representatives will be subject to a single set of terms and conditions, i.e., those of their principal regulator.

#### **System for discretionary exemptions**

In phase I, we adopted provisions that permit an issuer or filer to obtain discretionary exemptions from continuous disclosure and prospectus form and content requirements by dealing only with its principal regulator. We propose a much broader system for phase II.

For discretionary exemptions from most securities requirements, we propose in section 5.4 of Regulation 11-102 that a market participant be automatically exempted from requirements in a non-principal jurisdiction, if the principal regulator exempts the market participant from the equivalent provisions in the principal jurisdiction. This simplifies the current MRRS process by providing an automatic legal result in non-principal jurisdictions based on the decision of the principal regulator. It eliminates the need for the principal regulator to coordinate with, and obtain decisions from, non-principal regulators. It also eliminates the need to file an application in non-principal jurisdictions and pay fees in those jurisdictions.

As noted above, we will maintain Notice 12-201 for discretionary orders not covered by the proposed regulation. For example, an order to cease to be a reporting issuer would still be dealt with under Notice 12-201.

#### **Anticipated costs and benefits**

We expect that phase II of passport will enhance the efficiency of regulation of the capital markets and simplify the use of the regulatory system for market participants. By using the passport tools, we can make more timely decisions and our processes more efficient and seamless for market participants.

We did not do a cost-benefit analysis of phase II of passport because we have assumed that all jurisdictions would adopt it. On that basis, we do not expect to impose new costs on market participants. In fact, we expect costs to decrease.

#### **Request for comment**

We request comments on the proposed regulation, the proposed amendments and the proposed repeals.

#### **How to provide your comments**

Please provide your comments by **May 28, 2007** by addressing your submission to the regulators listed below:

British Columbia Securities Commission  
 Alberta Securities Commission  
 Saskatchewan Financial Services Commission  
 Manitoba Securities Commission

Autorité des marchés financiers  
New Brunswick Securities Commission  
Nova Scotia Securities Commission  
Office of the Attorney General, Prince Edward Island  
Financial Services Regulation Division, Consumer and Commercial Affairs Branch, Department of  
Government Services, Newfoundland and Labrador  
Registrar of Securities, Government of Yukon  
Registrar of Securities, Department of Justice, Government of the Northwest Territories  
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut

You do not need to deliver your comments to each of these regulators. Please deliver your comments to the two addresses that follow, and they will be distributed to the other jurisdictions:

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If you are not sending your comments by e-mail, please send a diskette or CD containing your comments in Word.

We cannot keep submissions confidential because securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published.

## Questions

Please refer your questions to any of:

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