

POLICY STATEMENT TO REGULATION 11-102 RESPECTING PASSPORT SYSTEM

PART 1 GENERAL

1.1. Definitions

In this Policy Statement,

“Regulation 11-101” means *Regulation 11-101 respecting Principal Regulator System*;

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

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

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

1.2. Additional definitions

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

1.3. Purpose

(1) General

Regulation 11-102 respecting Passport System (the Regulation) and this Policy Statement implement part of the passport system contemplated by the Provincial/Territorial Memorandum of Understanding Regarding Securities Regulation.

The Regulation gives each market participant a single window of access to the capital markets in multiple jurisdictions. It enables a person 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 Regulation, but the Regulation 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 Regulation. 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 Regulation if the OSC grants the discretionary exemption.

(3) **Process**

Policy Statement 11-202 and Policy Statement 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.

Policy Statement 11-203 also sets out the process for seeking exemptive relief in multiple jurisdictions that falls outside the scope of the Regulation. Policy Statement 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 Regulation. For example, Policy Statement 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 Regulation.

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

(4) **Interpretation of the Regulation**

As with all regulations, you should read the Regulation 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 Regulation 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 Regulation to the securities regulatory authority or regulator in the local jurisdiction. Under section 4.7(2) of the Regulation, 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 Regulation 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 Regulation 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 Regulation 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 Regulation 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 Regulation exempts a reporting issuer from the non-harmonized continuous disclosure provisions listed in Appendix A of the Regulation 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 Regulation.

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 Regulation, 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 Regulation, the principal regulator is the principal regulator identified under section 3.1 of the Regulation. Under this section, the principal regulator must be the securities regulatory authority or regulator in a specified jurisdiction. Section 3.1(1) of the Regulation 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 Policy Statement 11-202 gives guidance on how to identify the principal regulator for a prospectus filing subject to Part 3 of the Regulation.

3.2. Discretionary change in principal regulator for prospectus

Section 3.2 of the Regulation permits the securities regulatory authority or regulator to change the principal regulator for a prospectus filing subject to Part 3 of the Regulation on its own motion or on application. Section 3.5 of Policy Statement 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 Regulation.

3.3. Deemed issuance of receipt

Section 3.3 of the Regulation 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 Regulation 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 Regulation. 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 Regulation 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 Regulation 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 Regulation does not exempt a filer from the obligation to pay fees in the local jurisdiction.

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

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 Regulation 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 Regulation provides an exemption from the non-harmonized prospectus provisions listed in Appendix C of the Regulation opposite the name of the local jurisdiction. The exemption is available if a person files a preliminary prospectus, pro forma prospectus or prospectus under a provision set out in Appendix B to the Regulation 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 Regulation.

3.5. Transition for section 3.3

Section 3.3 of the Regulation 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 Regulation removes the deemed receipt that would otherwise be available in the local jurisdiction under section 3.3 of the Regulation 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 Regulation 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 Regulation. 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 Regulation at the time of filing the amendment.

The exemption from non-harmonized prospectus requirements in section 3.4 of the Regulation 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 Regulation applies to an application for discretionary exemption from a provision listed in Appendix D of the Regulation made in multiple jurisdictions. Part 4 does not apply to a discretionary exemption application from a provision not listed in Appendix D of the Regulation 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 Regulation, the principal regulator is the principal regulator identified under sections 4.1 to 4.5 of the Regulation. Under these sections, the principal regulator must be the securities regulatory authority or regulator in a specified jurisdiction. Section 4.1 of the Regulation 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 Policy Statement 11-203 gives guidance on how to identify the principal regulator for a discretionary exemption application under Part 4 of the Regulation.

4.3. Discretionary change of principal regulator for discretionary exemption applications

Section 4.6 of the Regulation permits the securities regulatory authority or regulator to change the principal regulator for a discretionary exemption application under Part 4 of the Regulation on its own motion or on application. Section 3.7 of Policy Statement 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 Regulation.

4.4. Passport application of discretionary exemptions

Section 4.7(1) of the Regulation exempts a person 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 Regulation are set out in Appendix D of the Regulation.

A discretionary exemption under section 4.7(1) of the Regulation 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 Regulation in respect of that jurisdiction and meet the other condition of the exemption.

Under section 4.7(2) of the Regulation 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 Regulation 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 Regulation, a person 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.

Policy Statement 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 Regulation.

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

Under section 4.8(1) of the Regulation, 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 Regulation,
- 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 Regulation is a principal jurisdiction under Regulation 11-101. Therefore, under section 4.8(1) of the Regulation, 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 Regulation 11-101, for an exemption from a CD requirement, as defined in that regulation, which is now listed in Appendix D of the Regulation,
- 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 Regulation are met, including giving notice.

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

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 Regulation 11-101 automatically available in the local jurisdiction, even though the decision of the principal regulator under Regulation 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 Regulation 11-101. Only exemptions granted from CD requirements that are now listed in Appendix D of the Regulation become available in the local jurisdiction in this way.

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

PART 5 EFFECTIVE DATE

5.1. Effective date

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

APPENDIX A**CD REQUIREMENTS UNDER REGULATION 11-101**

For ease of reference, this appendix reproduces the definition of CD requirements in Regulation 11-101 even though some references might no longer be relevant because sections were repealed after September 19, 2005 when Regulation 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 Regulation 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 Regulation 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 Regulation, 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) *Regulation 43-101 respecting Standards of Disclosure for Mineral Projects*, except as it relates to a prospectus,
- (b) *Regulation 51-101 respecting Standards of Disclosure for Oil and Gas Activities*, except as it relates to a prospectus,
- (c) *Regulation 51-102 respecting Continuous Disclosure Obligations*,
- (d) *Regulation 52-107 respecting Acceptable Accounting Principles, Auditing Standards and Reporting Currency* as it applies to a document filed under *Regulation 51-102 respecting Continuous Disclosure Obligations*,
- (e) *Regulation 52-108 respecting Auditor Oversight*,
- (f) *Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filings*,
- (g) *Regulation 52-110 respecting Audit Committees*, except in British Columbia
- (h) BC Instrument 52-509 *Audit Committees*, only in British Columbia
- (i) *Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer*,
- (j) *Regulation 58-101 respecting Disclosure of Corporate Governance Practices*,
- (k) section 8.5 of *Regulation 81-104 respecting Commodity Pools*, and
- (l) *Regulation 81-106 respecting Investment Fund Continuous Disclosure*.