

## ***POLICY STATEMENT TO REGULATION 11-102 RESPECTING PASSPORT SYSTEM***

### **PART 1 GENERAL**

#### **1.1. Definitions**

In this Policy Statement,

“domestic firm” means a firm whose head office is in Canada;

“domestic individual” means an individual whose working office is in Canada;

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

“non-principal regulator” means, for a person, the securities regulatory authority or regulator of a jurisdiction other than the principal jurisdiction;

“NRD” has the same meaning as in *Regulation 31-102 respecting National Registration Database* (chapter V-1.1, r. 9);

“NRD format” has the same meaning as in *Regulation 31-102 respecting National Registration Database*;

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

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

“Policy Statement 11-204” means *Policy Statement 11-204 respecting Process for Registration in Multiple Jurisdictions*;

“Policy Statement 11-205” means *Policy Statement 11-205 respecting Process for Designation of Credit Rating Organizations in Multiple Jurisdictions*;

“Policy Statement 11-206” means *Policy Statement 11-206 respecting Process for Cease to be a Reporting Issuer Applications*;

“Policy Statement 11-207” means *Policy Statement 11-207 respecting Failure-to-File Cease Trade Orders and Revocations under Passport*;

“Policy Statement 12-202” means *Policy Statement 12-202 respecting Revocations of Non-Passport Cease Trade Orders*;

“Policy Statement 33-109” means *Policy Statement to Regulation 33-109 respecting Registration Information*;

“Regulation 11-101” means *Regulation 11-101 respecting Principal Regulator System* (M.O. 2005-18, 2005-08-10);

~~“Regulation 31-103” means *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations* (chapter V-1.1, r. 10);~~

~~“Regulation 33-109” means *Regulation 33-109 respecting Registration Information* (chapter V 1.1, r. 12);~~

“SRO” means self-regulatory organization;

“T&C” means a term, condition, restriction or requirement imposed by a securities regulatory authority or regulator on the registration of a firm or an individual.

## 1.2. Additional definitions

~~Terms~~A term used in this Policy Statement and that ~~are~~is defined in Policy Statement 11-202, Policy Statement 11-203, Policy Statement 11-~~204~~204, Policy Statement 11-205, Policy Statement 11-206 and Policy Statement 11-~~205~~207 have the same ~~meanings~~meaning as in those policy statements.

## 1.3. Purpose

### (1) General

*Regulation 11-102 respecting Passport System* (chapter V-1.1, r. 1) (the Regulation) and this Policy Statement implement 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,

- ~~—~~ obtain automatic exemptions in other jurisdictions (except Ontario) equivalent to most types of discretionary exemptions granted by the principal regulator, ~~or~~

~~— register automatically in other jurisdictions (except Ontario).~~

~~The Regulation also enables a credit rating organization to~~

- ~~register automatically in other jurisdictions (except Ontario).~~

- if the person is a credit rating organization, obtain a deemed designation as a designated rating organization in other jurisdictions (except in Ontario).~~;~~

- be deemed to have ceased to be a reporting issuer in other jurisdictions (except in Ontario).

The Regulation also allows for the passport system to be used to more efficiently issue a failure-to-file cease trade order, that has effect in multiple jurisdictions, in response to a failure by a reporting issuer to file one or more specified continuous disclosure documents within the time period set out in Canadian securities legislation. It also enables a reporting issuer to deal only with the regulator that issued the failure-to-file cease trade order (its principal regulator) to obtain a revocation or variation of the order (except in Ontario).

### (2) Process

Policy Statement 11-202, Policy Statement 11-203, Policy Statement 11-~~204~~and204, Policy Statement 11-205 and Policy Statement 11-206 set out the processes for a market participant in any jurisdiction to obtain a deemed prospectus receipt, an automatic exemption, an automatic registration~~—or~~, a deemed designation as a designated rating organization, or to be deemed to cease to be a reporting issuer in a passport jurisdiction. These policy statements also set out processes for a market participant in a passport jurisdiction to get a prospectus receipt~~—or~~, a discretionary exemption or an order to cease to be a reporting issuer from the ~~Ontario Securities Commission (OSC)~~OSC or to register in Ontario or to obtain designation as a designated rating organization in Ontario.

Policy Statement 11-207 has two main objectives. First, it provides guidance to issuers, investors and other market participants regarding how regulators will generally respond to certain types of continuous disclosure defaults (“specified defaults” as defined in Policy Statement 11-207) by a reporting issuer by issuing a failure-to-file cease trade order. Second, Policy Statement 11-207 sets out the process for the issuance of a failure-to-file cease trade order that will have the effect of prohibiting or restricting, by rule, trading in securities of an issuer in each passport jurisdiction where the issuer is a reporting issuer. It explains as well what a

reporting issuer should do to apply for a full or partial revocation (including a variation) of a failure-to-file cease trade order issued in these circumstances. It applies, where the context permits, to a securityholder or other party seeking to revoke or vary a failure-to-file cease trade order. Policy Statement 11-207 also sets out an interface with Ontario for the issuance and revocation (including a variation) of a failure-to-file-cessate trade order against the securities of an issuer whose principal regulator is in a passport jurisdiction. Under Policy Statement 11-207, a variation order is included as part of the definition of “partial revocation order”.

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 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, a mutual fund, a non-redeemable investment fund or an insider. However, it does not apply to an application to be designated as a designated rating organization, specifically covered in Policy Statement 11-205. ~~It also applies 205, or to an application for a discretionary exemption from a provision not listed in Appendix D of the Regulation.~~an order to cease to be a reporting issuer, specifically covered in Policy Statement 11-206.

Please refer to Policy Statement 11-202, Policy Statement 11-203, Policy Statement 11-204-204, Policy Statement 11-205, Policy Statement 11-206 and Policy Statement 11-205207 for more details on these processes.

### (3) Interpretation of the Regulation

As with all regulations, you should read the Regulation from the perspective of the local jurisdiction ~~in which you seek a deemed prospectus receipt, an automatic exemption or registration or a deemed designation as a designated rating organization~~. For example, if the Regulation does not specify where you file a document, it means that you must file it in the local jurisdiction. In this Policy Statement, we generally use the term ‘non-principal jurisdiction’ instead of ‘local jurisdiction’.

To get a deemed receipt for a prospectus in the non-principal 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 non-principal 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 non-principal jurisdiction.

To register in the non-principal jurisdiction, a firm or individual must make the required submission in the non-principal jurisdiction. To streamline the process, section 4A.3(3) of the Regulation allows a firm to make its submission to the principal regulator instead of the non-principal regulator. Submissions for individuals are made through NRD. If the principal regulator imposes a T&C on a firm’s or individual’s registration, or suspends, terminates or accepts the surrender of registration of the firm or individual, that decision applies automatically in the non-principal jurisdiction, whether or not the firm or individual registered in the non-principal jurisdiction under the Regulation.

To obtain a deemed designation as a designated rating organization in ~~another~~the non-principal jurisdiction, a credit rating organization must give notice under section 4B.6(1)(c) of the Regulation to the securities regulatory authority or regulator in the non-principal jurisdiction. Under section 4B.6(2) of the Regulation, a credit rating organization can satisfy the latter requirement by giving notice to the principal regulator instead of the securities regulatory authority or regulator in the non-principal jurisdiction.

To be deemed to cease to be a reporting issuer in the non-principal jurisdiction, an issuer must give notice under section 4C.5(1)(c) of the Regulation to the securities regulatory authority or regulator in the non-principal jurisdiction. Under section 4C.5(2) of the Regulation, the issuer can satisfy this requirement by giving notice to the principal regulator instead of the securities regulatory authority or regulator in the non-principal jurisdiction.

#### (4) **Operation of law**

The provisions of the Regulation on prospectus receipt, discretionary exemptions, registration ~~and~~, designation as a designated rating organization, [applications for an order to cease to be a reporting issuer and failure-to-file cease trade orders and their revocations \(including variations\)](#) produce automatic legal outcomes in the non-principal jurisdiction that result from a decision made by the principal regulator. The effect is to make the law of the non-principal jurisdiction apply to a market participant as if the non-principal regulator had made the same decision as the principal regulator.

#### (5) **Applicable requirements**

A market participant must comply with the law of each jurisdiction in which it files a prospectus, is a reporting issuer, seeks registration, is registered or seeks designation as a designated rating organization.

- ~~Most prospectus, continuous disclosure, registration requirements and designation as a requirements relating to~~ designated rating ~~organization~~ [organizations](#) are harmonized and are in ~~national~~ rules or regulations [commonly referred to as “regulations”](#). The securities regulatory authorities and regulators intend to interpret and apply the harmonized requirements in regulations in a consistent way, and we have put practices and procedures in place to achieve this objective.

- ~~Some jurisdictions have non-harmonized requirements in Securities Acts or local rules or regulations. In addition, some regulations contain requirements or carve-outs for specific jurisdictions, which are apparent on the face of the regulations.~~

- ~~Registrants will be subject to a few non-harmonized requirements. Section 4A.5 contains a description of these requirements.~~

#### (6) **Ontario**

The 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, a discretionary exemption application under Part ~~4~~ ~~or~~ [4](#), registration under Part 4A, ~~or~~ an application for designation as a designated rating organization under Part 4B, [and an application for an order to cease to be a reporting issuer under Part 4C. The OSC can also be the regulator that issues and revokes \(including varies\) a failure-to-file cease trade order under Part 4D.](#) Consequently, Ontario market participants have direct access to passport as follows:

- ~~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.~~

- ~~When the OSC grants a discretionary exemption to a market participant whose principal jurisdiction is Ontario, the person obtains an automatic exemption from the equivalent provision of securities legislation of each passport jurisdiction for which the person gives the notice described in section 4.7(1)(c) of the Regulation.~~

- ~~A firm or individual whose principal jurisdiction is Ontario and who is registered in a category in Ontario is automatically registered in the same category in a passport jurisdiction when the firm or individual makes the required submission under the Regulation.~~

- ~~When the OSC designates a credit rating organization as a designated rating organization, the credit rating organization obtains a deemed designation in each passport jurisdiction for which the credit rating organization gives the notice described in section 4B.6(1)(c) of the Regulation.~~

- [When the OSC issues an order to cease to be a reporting issuer to an issuer whose principal jurisdiction is Ontario, the issuer is deemed to cease to be a reporting issuer in each](#)

[passport jurisdiction for which the issuer gives the notice described in section 4C.5\(1\)\(c\) of the Regulation.](#)

- [As a result of a failure-to-file cease trade order issued by the OSC against the securities of a reporting issuer whose principal jurisdiction is Ontario, trading in the securities that are subject to this order is prohibited or restricted in each passport jurisdiction where the issuer is a reporting issuer. The OSC's revocation order \(including a variation order\) has the effect of removing or limiting the prohibition or restriction on trading in each passport jurisdiction to the same extent as in Ontario.](#)

#### **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* (chapter V-1.1) (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 (Repealed).**

#### **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 non-principal jurisdiction if certain conditions are met. A deemed receipt in the non-principal 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 non-principal jurisdiction, a filer must file on SEDAR the preliminary prospectus or the pro forma prospectus, and the prospectus, in both the non-principal 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 non-principal jurisdiction, these filings trigger the obligation to file supporting documents (e.g., consents and material contracts) and to pay required fees.

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. (Repealed).**

#### **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 non-principal 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 non-principal 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.

### **PART 4 DISCRETIONARY EXEMPTIONS**

#### **4.1. Application**

Part 4 of the Regulation applies to an application for a discretionary exemption from a provision listed in Appendix D of the Regulation. 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. Except under section 4.4.1, 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 this purpose: British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick and Nova Scotia.

Section 4.4.1 of the Regulation provides that the principal regulator for an application for exemption from a requirement in Parts 3 and 12 of Regulation 31-103 and Part 2 of Regulation 33-109 made in connection with an application for registration in the principal jurisdiction is the principal regulator as determined under section 4A.1 of the Regulation. The securities regulatory authority or regulator of each jurisdiction may be a principal regulator under section 4A.1 of the Regulation. <sup>6</sup>

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 non-principal 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.

If the principal regulator revokes or cancels the discretionary exemption or it expires under a sunset clause, the exemption in section 4.7 is no longer available in the non-principal jurisdiction.

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.

A principal regulator's decision to vary a decision the principal regulator previously made to exempt a person from a provision set out in Appendix D of the Regulation has automatic effect in a non-principal jurisdiction if

- ~~the person applied in the principal jurisdiction to have the decision varied~~<sup>7</sup> and gave the notice required under section 4.7(1)(c) of the Regulation in respect of the non-principal jurisdiction,
- ~~the principal regulator grants the exemption and the exemption is in effect, and~~
- ~~the other conditions of section 4.7(1) of the Regulation are met.~~

If the principal regulator for an application for exemption from a filing requirement under section 6.1 of *Regulation 45-106 respecting Prospectus and Registration Exemptions* (chapter V-1.1, r. 21) (Regulation 45-106) grants an exemption under section 4.7(1) of the

Regulation, a person has an automatic exemption in a non- principal jurisdiction under the section only if

- ~~the filing requirement arises from the person relying on one of the provisions referred to in section 6.1 of Regulation 45-106 in the principal jurisdiction,~~
- ~~the person is relying on the equivalent exemption in the non-principal jurisdiction, and~~
- ~~the person complies with the conditions of section 4.7(1) of the Regulation.~~

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.

The combined effect of sections 4.8(1) and 4.8(3) is to make an exemption from a CD requirement granted by the principal regulator before March 17, 2008 under Regulation 11-101 automatically available in the non-principal jurisdiction, even though the decision of the principal regulator under Regulation 11-101 does not refer to the non-principal 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 non-principal 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 4A REGISTRATION**

### **4A.1. Application**

The Regulation permits a firm or individual to register automatically in a non-principal jurisdiction based on its principal jurisdiction registration. It also makes some types of regulatory decisions by a firm's or individual's principal regulator apply automatically in each non-principal jurisdiction where the firm or individual is registered, whether or not the firm or individual is registered automatically under the Regulation.

#### ***Permitted individual***

The Regulation does not apply to "permitted individuals" under Regulation 33-109 because these individuals are not registered under securities legislation. The Regulation applies to a permitted individual only if the permitted individual becomes registered in a category in his or her principal jurisdiction and seeks registration in the same category in a non-principal jurisdiction.

#### ***Restricted dealers and their representatives***

Section 4A.3 of the Regulation does not apply to a firm registered in the category of "restricted dealer" under Regulation 31-103. To register in a non-principal jurisdiction, a restricted dealer must apply directly to the non-principal regulator. Automatic registration under the Regulation does not apply to restricted dealers because there are no standard requirements for this category and most firms registered as restricted dealers operate in a single jurisdiction. However, if a restricted dealer registers directly in the same category in a non-principal jurisdiction, the provisions of the Regulation relating to T&Cs (section 4A.5), suspension (section 4A.6), termination (section 4A.7) and surrender (section 4A.8) apply to the firm.

All the provisions of the Regulation apply to the dealing representatives of a restricted dealer. This includes automatic registration under section 4A.4 of the Regulation if the representative's sponsoring firm is registered as a restricted dealer in the representative's principal jurisdiction and the non-principal jurisdiction in which the representative seeks registration. It also includes the provisions of the Regulation relating to T&Cs (section 4A.5), suspension (section 4A.6), termination (section 4A.7) and surrender (section 4A.8).

### **4A.2. Registration by SRO**

The securities regulatory authority or regulator in some jurisdictions has delegated, assigned or authorized an SRO to perform all or part of its registration function. The Regulation applies to the decisions made by SROs under these arrangements. For more details, refer to section 3.5 of Policy Statement 11-204.

### **4A.3. Principal regulator for registration**

The principal regulator of a firm or individual is the securities regulatory authority or regulator identified under section 4A.1 of the Regulation. The securities regulatory authority or regulator of any jurisdiction can be a principal regulator for registration.

Section 3.6 of Policy Statement 11-204 gives guidance on how to identify the principal regulator of a firm or individual under Part 4A of the Regulation.

### **4A.4. Discretionary change of principal regulator for registration**

Section 4A.2 of the Regulation permits the securities regulatory authority or regulator to change the principal regulator for the purpose of Part 4A of the Regulation. Section 3.7 of Policy Statement 11-204 gives guidance on the process for a discretionary change of principal regulator for registration under Part 4A of the Regulation.

### **4A.5. Registration**

Sections 4A.3 and 4A.4 of the Regulation are available for firms or individuals required to be registered under Regulation 31-103, except for firms registering as restricted dealers.

A firm or individual who registers in a non-principal jurisdiction under section 4A.3 or 4A.4 of the Regulation must comply with all applicable requirements of the non-principal jurisdiction, including the obligation to pay the required fees in that jurisdiction and any non-harmonized requirements.

In Québec, firms and individuals in the mutual fund and scholarship plan sectors are subject to a specific regulatory framework that also applies under passport:

- ~~—~~ mutual fund firms registered in Québec are not required to be members of the Mutual Fund Dealers Association of Canada (MFDA) and are under the direct supervision of the Autorité des marchés financiers, as are scholarship plan firms,

- ~~—~~ individuals in the mutual fund and scholarship plan sectors are required to be members of the Chambre de la sécurité financière,

- ~~—~~ firms and individuals must maintain professional liability insurance, and

- ~~—~~ firms must contribute to the Fonds d'indemnisation des services financiers which provides financial compensation to investors who are victims of fraudulent tactics or embezzlement committed by these firms or individuals.

In addition, in Québec, an individual who is a representative of an investment dealer cannot concurrently be employed by a financial institution and carry on business as a representative in a Québec branch of a financial institution unless he or she is a representative specialized in mutual funds or scholarship plans.

In British Columbia, investment dealers that trade in the U.S. over-the-counter markets must comply with local requirements to manage the risks of trading these securities, retain records and report quarterly to the Commission.

### ***To register in a non-principal jurisdiction***

Before making a submission under section 4A.3 or 4A.4, the firm or individual should ensure that the firm's or individual's principal jurisdiction is correctly identified in the firm's or individual's latest submission under Regulation 33-109.

#### ***Firm***

Under section 4A.3(1) of the Regulation, if a firm is registered in its principal jurisdiction in a category set out in Regulation 31-103, other than the category of "restricted dealer", the firm is registered in the same category in a non-principal jurisdiction if the firm

- (a) has submitted a completed Form 33-109F6 in accordance with Regulation 33-~~109~~, and
- (b) is a member of an SRO if required for that category. 40

A firm should refer to Part 4 and section 5.2 of Policy Statement 11-204 for guidance on how to make its submission under the Regulation.

Under section 4A.3(3) of the Regulation, a firm may make the relevant submission by giving it to its principal regulator instead of the non-principal regulator. In a jurisdiction where the principal regulator has delegated, assigned or authorized an SRO to register firms, the firm should make the submission by giving it to the relevant office of the SRO.

To register under section 4A.3(1) of the Regulation, the firm must be a member of an SRO if required ~~in the local jurisdiction for that category of registration. This condition does not apply if the firm has an exemption~~ in the local jurisdiction for that category of registration. This condition does not apply if the firm has an exemption in the local jurisdiction from the

requirement to be a member of the SRO. All jurisdictions require investment dealers to be members of the Investment Industry Regulatory Organization of Canada. All jurisdictions, except Québec, require mutual fund dealers to be members of the MFDA. A mutual fund dealer whose principal jurisdiction is Québec must be a member of the MFDA before it can register in another jurisdiction.

### ***Individual***

Under section 4A.4 of the Regulation, if an individual acting on behalf of a sponsoring firm is registered in his or her principal jurisdiction in a category set out in Regulation 31-103, the individual is registered in the same category in a non-principal jurisdiction if

- (a) the individual's sponsoring firm is registered in the non-principal jurisdiction in the same category as in the firm's principal jurisdiction,
- (b) the individual submitted a completed Form 33-109F2 or Form 33-109F4 in accordance with Regulation 33-109, and
- (c) the individual is a member or an approved person of an SRO if required for that category.

Section 5.2 of Policy Statement 11-204 provides guidance on how to make a submission.

To register under section 4A.4 of the Regulation, the individual must be a member or an approved person of an SRO if required in the local jurisdiction for that category of registration. This condition does not apply if the individual has an exemption in the local jurisdiction from the requirement to be a member or approved person of the SRO. Québec legislation requires individuals who are representatives of mutual fund or scholarship plan dealers to be members of the Chambre de la sécurité financière. Other jurisdictions require individuals who are representatives of mutual fund dealers to be approved persons under the rules of the MFDA.

For greater certainty, if an individual is registered in a category in his or her principal jurisdiction for more than one sponsoring firm, each sponsoring firm must be registered in the same category in the non-principal jurisdiction in which the individual seeks registration under section 4A.4 of the Regulation.

### **4A.6. Terms and conditions of registration**

Section 4A.5(1) of the Regulation provides that, if a firm or individual is registered in the same category in the principal jurisdiction and in the non-principal jurisdiction, a T&C imposed on the registration in the principal jurisdiction applies to the firm or individual as if it were imposed in the non-principal jurisdiction (i.e., by operation of law). Under section 4A.5(2) of the Regulation, a T&C continues to apply until the earlier of the date the securities regulatory authority or regulator that imposed it, cancels or revokes it, or it expires.

Under section 4A.5 of the Regulation, if the principal regulator amends or adds a T&C to a category in which a firm or individual is registered, the amended or additional T&C automatically applies to the firm's or individual's registration in the same category in the non-principal jurisdiction.

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In the event of a change of principal regulator, and for each category in which a firm or an individual is registered in the non-principal jurisdiction under section 4A.3 or 4A.4 of the Regulation, the firm's or individual's

- ~~original~~ original principal regulator will revoke any T&C it imposed, and
- ~~new~~ new principal regulator will adopt any T&C's that are appropriate.

This will enable the new principal regulator to amend the firm's or individual's T&Cs in appropriate circumstances and result in any T&C amended by the new principal regulator applying automatically in a non-principal jurisdiction as if it had been imposed in that jurisdiction (i.e., by operation of law).

#### **4A.7. Suspension**

Under section 4A.6 of the Regulation, if a firm's or an individual's registration in the principal jurisdiction is suspended, the firm's or individual's registration is automatically suspended in any non-principal jurisdiction where the firm or individual is registered. For greater certainty, a suspension of registration is a suspension of a firm's or individual's trading or advising privileges and the firm or individual remains registered under securities legislation. A firm's or individual's registration is suspended on the same day in the principal jurisdiction and the non-principal jurisdiction. NRD will show the same suspension date in each relevant jurisdiction.

A firm's or individual's registration is suspended in the non-principal jurisdiction for as long as the firm's or individual's registration is suspended in the principal jurisdiction. If the principal regulator lifts a firm's or individual's suspension, the firm or individual may resume trading or advising in the non-principal jurisdiction on the date NRD shows that the suspension has been lifted. Any T&C imposed by the principal regulator when it lifts a suspension applies automatically in the non-principal jurisdiction under section 4A.5 of the Regulation.

#### **4A.8. Termination**

Under section 4A.7 of the Regulation, if a firm's or individual's registration in the principal jurisdiction is cancelled, revoked or terminated, as applicable, the firm's or individual's registration in the non-principal jurisdiction is automatically cancelled, revoked or terminated, as applicable. A firm's or individual's registration is terminated on the same date in the principal jurisdiction and the non-principal jurisdiction. NRD will show the same termination date in each relevant jurisdiction.

#### **4A.9. Surrender**

Under section 4A.8 of the Regulation, a firm's or individual's registration is automatically cancelled, revoked or terminated, as applicable, in a category in all non-principal jurisdictions in which the firm or individual is registered if the firm or individual applies to surrender registration in the category in its principal jurisdiction and the principal regulator accepts the surrender.

A firm should submit an application to surrender registration in one or more categories in the firm's principal jurisdiction and Ontario, if Ontario is a non-principal jurisdiction. The application should identify any non-principal jurisdiction where the firm is registered in the same category(ies). In a jurisdiction where the principal regulator has delegated, assigned or authorized an SRO to perform registration functions, a firm should submit its application to surrender to the relevant office of the SRO. A firm should refer to Appendix B of Policy Statement 33-109 for guidance on how to submit its application for surrender to the principal regulator or the relevant office of the SRO.

An individual should make the relevant NRD submission under Regulation 33-109 to surrender registration.

If a firm or individual applies to surrender a category in the principal jurisdiction, the principal regulator may suspend registration in the category pending surrender, or impose a T&C. See section 4A.7 of this Policy Statement for guidance on suspension of registration.

If the principal regulator imposes a T&C, section 4A.5 of the Regulation provides that the T&C applies in each non-principal jurisdiction where a firm or individual is registered in the same category as if the T&C had been imposed in the non-principal jurisdiction.

The Regulation does not deal with a firm or individual that seeks to surrender a category in a non-principal jurisdiction only. If a firm or individual seeks to surrender a category in a non-principal jurisdiction, other than Ontario,

- the firm may still submit its application by giving it to the principal regulator only or, if the principal regulator has delegated, assigned or authorized an SRO to perform registration functions, the relevant office of the SRO in the principal jurisdiction,

- the individual should make the relevant NRD submission under Regulation 33-109,

- the firm's or individual's submission should indicate the non-principal jurisdiction where the firm or individual is applying to surrender registration, and

- the fact that a securities regulatory authority, regulator or SRO accepts the surrender of registration of a firm or individual in the non-principal jurisdiction does not affect the registration of the firm or individual in another jurisdiction.

#### **4A.10. Transition – terms and conditions in non-principal jurisdiction**

The purpose of section 4A.9(1) of the Regulation is to delay until October 28, 2009 the automatic application of section 4A.5 of the Regulation in a non-principal jurisdiction in which a firm or individual is registered on September 28, 2009. This gives the firm or individual time to make an application under section 4A.9(2) of the Regulation for an exemption from having a T&C imposed by the principal regulator apply automatically in the non-principal jurisdiction.

A firm or individual should apply for the exemption contemplated in section 4A.9(2) of the Regulation separately in each non-principal jurisdiction because the purpose of the exemption application is to give the firm or individual an opportunity to be heard on the automatic application in the non-principal jurisdiction of a T&C imposed by the principal regulator. For this reason, a firm or individual should not make the application under Policy Statement 11-203.

If a firm or individual does not apply for an exemption under section 4A.9(2) of the Regulation in a non-principal jurisdiction,

- a T&C imposed by the principal regulator automatically applies on October 28, 2009 in the non-principal jurisdiction, and

- a T&C previously imposed by the non-principal regulator ceases to apply unless it is enforcement related.

#### **4A.11. Transition – notice of principal regulator for foreign firm**

Under section 4A.10(1) of the Regulation, a foreign firm registered in a category in multiple jurisdictions before September 28, 2009 is required to submit the information to identify its principal jurisdiction in item 2.2(b) in Form 33-109F6 by submitting a Form 33-109F5 on or before October 28, 2009. This information will determine the foreign firm's principal regulator under section 4A.1 of the Regulation.

Section 4A.10(2) of the Regulation permits the foreign firm to make this submission to a non-principal regulator by giving it only to its principal regulator. In a jurisdiction where the principal regulator has delegated, assigned or authorized an SRO to perform registration functions, the foreign firm should make the submission to the relevant office of the SRO. Foreign firms should refer to Appendix B of Policy Statement 33-109 for guidance on how to make a submission.

Because the principal regulator for a foreign individual is the same as the principal regulator for the individual's sponsoring firm, the Regulation does not require the foreign individual to make a submission to identify the individual's principal regulator.

## **PART 4B APPLICATION TO BECOME A DESIGNATED RATING ORGANIZATION**

#### **4B.11. Application**

Part 4B of the Regulation only applies to an application for designation as a designated rating organization. Designated rating organizations applying for a discretionary exemption from a provision of *Regulation 25-101 respecting Designated Rating Organizations* (chapter V-1.1, r. 8.1) should refer to Part 4 of the Regulation.

#### **4B.22. Principal regulator for application for designation**

For purposes of an application for designation as a designated rating organization under Part 4B of the Regulation, the principal regulator is the principal regulator identified under sections 4B.2 to 4B.5 of the Regulation. The principal regulator must be the securities regulatory authority or regulator in a specified jurisdiction. Section 4B.1 of the Regulation specifies the following jurisdictions for this purpose: British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and New Brunswick.

Section 7 of Policy Statement 11-205 gives guidance on how to identify the principal regulator for an application for designation as a designated rating organization under Part 4B of the Regulation.

#### **4B.33. Discretionary change of principal regulator for application for designation**

Section 4B.5 of the Regulation permits the securities regulatory authority or regulator to change the principal regulator for an application for designation as a designated rating organization under Part 4B of the Regulation on its own motion or on application. Section 8 of Policy Statement 11-205 gives guidance on the process for, and considerations leading to, a discretionary change in principal regulator for an application for designation as a designated rating organization under Part 4B of the Regulation.

#### **4B.44. Passport application of designation**

Section 4B.6(1) of the Regulation provides that a credit rating organization is deemed to be designated as a designated rating organization in the non-principal jurisdiction if the principal regulator for the application grants the designation, the credit rating organization gives the notice required under paragraph (c) of that section and other conditions are met.

A deemed designation under section 4B.6(1) of the Regulation is available in the passport jurisdictions for which the credit rating organization gives the required notice when filing the application for designation. Credit rating organizations should give the notice in paragraph (c) of that section for all passport jurisdictions. However, the deemed designation can become available later in other passport jurisdictions if the circumstances warrant. To obtain the deemed designation in the new jurisdiction, the credit rating organization would have to give the notice referred to in section 4B.6(1)(c) of the Regulation in respect of that jurisdiction and meet the other conditions of the designation.

Because, under the Regulation, a credit rating organization makes an application for designation only in the principal jurisdiction to obtain a deemed designation in multiple jurisdictions, the credit rating organization is required to pay fees only in the principal jurisdiction.

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Policy Statement 11-205 sets out the process for seeking designation as a designated rating organization in multiple jurisdictions under Part 4B of the Regulation.

### **PART 4C APPLICATION TO CEASE TO BE A REPORTING ISSUER**

#### **4C.1. Application**

Part 4C of the Regulation only applies to an application for an order to cease to be a reporting issuer.

#### **4C.2. Principal regulator for application to cease to be a reporting issuer**

For purposes of an application for an order to cease to be a reporting issuer under Part 4C of the Regulation, the principal regulator is the principal regulator identified under sections 4C.2 and 4C.3 of the Regulation. The principal regulator must be the securities regulatory authority or regulator in a specified jurisdiction. Section 4C.1 of the Regulation specifies the following jurisdictions for this purpose: British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick and Nova Scotia.

Section 8 of Policy Statement 11-206 gives guidance on how to identify the principal regulator for an application to cease to be a reporting issuer under Part 4C of the Regulation.

#### **4C.3. Discretionary change of principal regulator**

Section 4C.4 of the Regulation permits the securities regulatory authority or regulator to change the principal regulator for an application to cease to be a reporting issuer under Part 4C of the Regulation on its own motion. Section 9 of Policy Statement 11-206 gives guidance on the process for, and considerations leading to, a discretionary change in principal regulator for an application to cease to be a reporting issuer under Part 4C of the Regulation.

#### **4C.4. Deemed to cease to be a reporting issuer**

Subsection 4C.5(1) of the Regulation provides that an issuer is deemed to cease to be a reporting issuer in the non-principal jurisdiction if the principal regulator for the application issues the order, the issuer gives the notice required under paragraph (c) of that subsection and other conditions are met. Issuers should give this notice in each passport jurisdiction in which it is a reporting issuer. Under subsection 4C.5(2) of the Regulation, the filer may satisfy this notice requirement by giving the required notice to the principal regulator.

Under the Regulation, an issuer makes an application only in the principal jurisdiction to obtain an order deeming it to cease to be a reporting issuer in multiple jurisdictions. As a result, the issuer is required to pay fees only in the principal jurisdiction.

Policy Statement 11-206 sets out the process for seeking an order to cease to be a reporting issuer in multiple jurisdictions under Part 4C of the Regulation.

#### **4C.5. Transition**

Subsection 40(1) of Policy Statement 11-206 provides that the coordinated review process set out in Policy Statement 11-203 will continue to apply to an application for an order that an issuer has ceased to be a reporting issuer filed under that process in multiple jurisdictions before ●.

Subsection 40(2) of Policy Statement 11-206 provides that the coordinated review process set out under the heading “The Simplified Procedure” in CSA Staff Notice 12-307 *Applications for a Decision that an Issuer is not a Reporting Issuer* will continue to apply to an application for an order that an issuer has ceased to be a reporting issuer filed under that process in multiple jurisdictions before ●.

### **PART 4D FAILURE-TO-FILE CEASE TRADE ORDERS**

#### **4D.1. Issuance and revocation of a failure-to-file cease trade order**

Under section 4D.1 of the Regulation, if an issuer is a reporting issuer in the local jurisdiction and a securities regulatory authority or regulator in another jurisdiction of Canada issues a failure-to-file cease trade order in respect of the issuer’s securities, a person must not trade in a security of the issuer in the local jurisdiction, except in accordance with the same conditions that are contained in the order, if any, for so long as the failure-to-file cease trade order remains in effect.

In most cases, the securities regulatory authority or regulator that will issue a failure-to-file cease trade order will be the reporting issuer’s principal regulator, that is, the one selected by the issuer at the time that it becomes a reporting issuer and that it identified on its SEDAR profile. In Policy Statement 11-207, we refer to the securities regulatory authority or regulator that issues the failure-to-file cease trade order as the principal regulator.

Part 4 of Policy Statement 11-207 sets out the process for the issuance of a failure-to-file cease trade order and Part 5 of Policy Statement 11-207 sets out the process for its revocation (including a variation) under Part 4D of the Regulation.

#### **4D.2. Transition**

Section 53 of Policy Statement 11-207 provides that the processes set out in Policy Statement 12-202 will continue to apply for a revocation of a cease trade order that was issued before ●.

### **PART 5      EFFECTIVE DATE**

#### **5.1.5.1. Effective date**

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

The Regulation applies to an individual or firm seeking registration outside its principal jurisdiction on or after September 28, 2009. In addition, it applies to an individual or firm that is registered on that date unless the individual or firm requests and obtains an exemption under ~~section~~subsection 4A.9(2).

The Regulation applies to applications for designation as a designated rating organization filed on or after April 20, 2012.

The Regulation applies to applications for an order to cease to be a reporting issuer filed on or after ●.

The Regulation applies to failure-to-file cease trade orders issued on or after ●.



## [Appendix A](#)

### ~~APPENDIX A~~ ~~CD REQUIREMENTS UNDER REGULATION~~ 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* (chapter V-1.1): 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* (chapter V-1.1, r. 50): 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).<sup>17</sup>

#### **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* (chapter V-1.1, r. 15), except as it relates to a prospectus,
- (b) *Regulation 51-101 respecting Standards of Disclosure for Oil and Gas Activities* (chapter V-1.1, r. 23), except as it relates to a prospectus,
- (c) *Regulation 51-102 respecting Continuous Disclosure Obligations* (chapter V-1.1, r. 24),
- (d) *Regulation 52-107 respecting Acceptable Accounting Principles and Auditing Standards* (chapter V-1.1, r. 25),
- (e) *Regulation 52-108 respecting Auditor Oversight* (chapter V-1.1, r. 26),
- (f) *Regulation 52-109 respecting Certification of Disclosure in Issuers' Annual and Interim Filings* (chapter V-1.1, r. 27),
- (g) *Regulation 52-110 respecting Audit Committees* (chapter V-1.1, r. 28), except in British Columbia
- (h) BC Regulation 52-509 *Audit Committees*, only in British Columbia
- (i) *Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer* (chapter V-1.1, r. 29),
- (j) *Regulation 58-101 respecting Disclosure of Corporate Governance Practices* (chapter V-1.1, r. 32),
- (k) section 8.5 of *Regulation 81-104 respecting Commodity Pools* (chapter V-1.1, r. 40), and
- (l) *Regulation 81-106 respecting Investment Fund Continuous Disclosure* (chapter V-1.1, r. 42).

