

CSA Notice of Publication
Regulation 11-102 respecting Passport System
Regulation 11-103 respecting Failure-to-File Cease Trade
Orders in Multiple Jurisdictions

March 3, 2016

Introduction

The Canadian Securities Administrators (the CSA or we), except for the Ontario Securities Commission (the OSC), are implementing amendments to *Regulation 11-102 respecting Passport System* (Regulation 11-102 or the passport regulation) and changes to *Policy Statement to Regulation 11-102 respecting Passport System* (Policy Statement 11-102).

The CSA, except for the OSC and the Alberta Securities Commission (the ASC), are also implementing *Regulation 11-103 respecting Failure-to-File Cease Trade Orders in Multiple Jurisdictions* (Regulation 11-103).

All members of the CSA are implementing the following policy statements :

- *Policy Statement 11-206 respecting Process for Cease to be a Reporting Issuer Applications* (Policy Statement 11-206);
- *Policy Statement 11-207 respecting Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions* (Policy Statement 11-207);
- *Policy Statement 12-202 respecting Revocation of Certain Cease Trade Orders* (Policy Statement 12-202) (replacing current *Policy Statement 12-202 respecting Revocation of a Compliance-Related Cease Trade Order*, which will be withdrawn on June 23, 2016); and
- *Policy Statement 12-203 respecting Management Cease Trade Orders* (Policy Statement 12-203) (replacing current *Policy Statement 12-203 respecting Cease Trade Orders for Continuous Disclosure Defaults*, which will be withdrawn on June 23, 2016).

The amendments to Regulation 11-102, the changes to Policy Statement 11-102, Regulation 11-103 and the four Policy Statements are collectively referred to as the 2016 Materials.

Provided all necessary ministerial approvals are obtained, the 2016 Materials will come into force on **June 23, 2016**.

The text of the 2016 Materials is published with this notice and is also available, as applicable, on the websites of CSA jurisdictions, including:

www.lautorite.qc.ca

www.albertasecurities.com
www.bcsc.bc.ca
<http://nssc.novascotia.ca/>
www.fcnb.ca
www.osc.gov.on.ca
www.fcaa.gov.sk.ca
www.msc.gov.mb.ca

Substance and Purpose

The purpose of the 2016 Materials is to:

- *Expand the passport regulation to cover applications to cease to be a reporting issuer.* Currently, these applications are filed with and reviewed by each provincial or territorial securities regulator (where the issuer is a reporting issuer) under the coordinated review procedure provided in Policy Statement 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*. By bringing the process surrounding these applications into passport, an issuer will generally be able to deal only with its principal regulator to obtain an order to cease to be a reporting issuer in all jurisdictions of Canada where it has this status. ***The new provisions are set out in Part 4C of Regulation 11-102.***
- *Automatically prohibit or restrict trading in or purchasing of securities in multiple jurisdictions upon the issuance of certain cease trade orders for continuous disclosure defaults.* When a reporting issuer is in default of certain types of continuous disclosure requirements under securities legislation (specified default), regulators may issue a cease trade order (failure-to-file cease trade order). Currently, there is no formal coordinated process across the jurisdictions of Canada for when other regulators will reciprocate the order first issued against the securities of the defaulting reporting issuer. Under Regulation 11-103, if a regulator issues a failure-to-file cease trade order against the securities of a reporting issuer, trading in or purchasing of those securities is automatically prohibited or restricted (the automatic prohibition) under the same terms and conditions set out in the failure-to-file cease trade order in every jurisdiction that has adopted Regulation 11-103 and where the issuer is reporting. To revoke or vary a failure-to-file cease trade order, the issuer will generally deal only with the regulator that issued the failure-to-file cease trade order. The revocation or variation of the failure-to-file cease trade order will also have an automatic effect in multiple jurisdictions. ***The automatic prohibition, which was originally set out in Part 4D of Regulation 11-102, is now being adopted as a separate rule, Regulation 11-103.***
- *Implement two new policy statements, Policy Statement 11-206 and Policy Statement 11-207, to describe the processes the CSA has developed in connection with the amendments to the passport regulation and Regulation 11-103.* Policy Statement 11-206 sets out the process for the filing and review of applications to

cease to be a reporting issuer. Policy Statement 11-207 explains why the CSA will issue a failure-to-file cease trade order and sets out the process for applying for a revocation of this type of order. Both Policy Statement 11-206 and Policy Statement 11-207 also describe an interface between Ontario and the other CSA jurisdictions, including a “dual” process if the OSC is not the principal regulator. Since Ontario will not be adopting Regulation 11-102 amendments or Regulation 11-103 and orders of another CSA regulator will not automatically apply in Ontario, the dual process outlines how the OSC can opt into an order issued by another CSA regulator acting as principal regulator.

Background

On April 16, 2015, we published a Notice and Request for Comment relating to proposals reflected in the 2016 Materials (the April 2015 Materials).

Summary of Written Comments Received by the CSA

The comment period for the April 2015 Materials ended on June 15, 2015 and the CSA received one submission. The comment letter on the April 2015 Materials can be viewed on the Autorité des marchés financiers website at www.lautorite.qc.ca and on the ASC website at www.albertasecurities.com.

We have considered the comment received and thank the commenter for its input. The name of the commenter is contained in Annex A and a summary of its comments, together with our responses, is contained in Annex B.

Summary of Changes to April 2015 materials

We have made some revisions to the April 2015 Materials that were published for comment. Those revisions are reflected in the 2016 Materials that we are publishing concurrently with this notice. As these changes are not material, we are not republishing the 2016 Materials for a further comment period.

The notable changes from the April 2015 Materials are described below:

Regulation 11-103

In the April 2015 Materials, we proposed the automatic prohibition as an amendment to Regulation 11-102. We have decided to implement it as a separate rule because not all jurisdictions will adopt Regulation 11-103.

On July 1, 2015, Alberta implemented a statutory reciprocal order provision that provides for the automatic reciprocation of any order imposing sanctions, conditions, restrictions or requirements issued by another CSA regulator based on a finding or admission of a contravention of securities legislation. The ASC will be relying on this provision for the automatic reciprocation of failure-to-file cease trades orders and will not be adopting

Regulation 11-103. Other jurisdictions are considering enacting a similar provision. Each jurisdiction will be able to repeal Regulation 11-103, without impacting Regulation 11-102, when it obtains a statutory reciprocal order provision.

Although the substance of Regulation 11-103 remains the same as what we published in the April 2015 Materials, we have expressly carved-out management cease trade orders from the definition of “failure-to-file cease trade order” to clearly reflect our stated intent that these orders are not to be automatically reciprocated at this time. CSA regulators currently have different approaches to the issuance of management cease trade orders. Further harmonization of these approaches will be necessary before management cease trade orders can be included in Regulation 11-103.

Policy Statement 11-102

We have deleted parts of the policy statement that related to what is now Regulation 11-103.

Policy Statement 11-207

Most of the changes that we have made to this policy statement are to reflect that we are adopting Regulation 11-103 as a separate rule. For example, we have removed all references to “passport” and have further streamlined the processes wherever possible.

We have also removed cease trade orders issued against “OTC reporting issuers” (as defined in *Regulation 51-105 respecting Issuers Quoted in the U.S. Over-the-Counter Markets*) from the list of orders not covered by Regulation 11-103 provided in section 2 of this policy statement. As a category of reporting issuer, OTC reporting issuers are caught by Regulation 11-103’s definition of “failure-to-file cease trade order”. As a result, the processes surrounding the issuance and revocation of failure-to-file cease trade orders issued against these reporting issuers are set out in Policy Statement 11-207.

We have added some text to explain that in a jurisdiction which has a statutory reciprocal order provision, like Alberta, all continuous disclosure cease trade orders will be automatically reciprocated in that jurisdiction even where the issuer is not a reporting issuer.

Policy Statement 12-202

We have slightly modified the title of this policy statement to reflect the adoption of Regulation 11-103 as a separate rule.

Like in Policy Statement 11-207, we have removed cease trade orders issued against OTC reporting issuers from the list of orders not covered by Regulation 11-103 provided in section 1 of this policy statement. The processes surrounding the issuance and revocation of failure-to-file cease trade orders issued against OTC reporting issuers are set out in Policy Statement 11-207.

Policy Statement 12-203 and Policy Statement 11-206

We did not make any notable changes to these policy statements.

Local Matters

Annex C to this notice is being published in any local jurisdiction that is making related changes to local securities laws, including changes to local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

Contents of Annexes

The following annexes form part of this CSA Notice:

ANNEX A	Commenter
ANNEX B	Summary of Comments and Responses
ANNEX C	Local Matters

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ANNEX A

Commenter

We received one comment letter from The Canadian Advocacy Council for Canadian CFA Institute Societies.

ANNEX B

Summary of Comments and Responses

No.	Subject	Summarized Comment	Response
Cease to be a reporting issuer			
1	<i>Agreement with proposal</i>	<p>The commenter supports the inclusion of applications to cease to be a reporting issuer in the passport system. However, ideally, the process would also be available to the extent an issuer wished to revoke its status in more than one, but not all, such jurisdictions.</p>	<p>We thank the commenter for its support.</p> <p>However, we are of the view that the proposed “all or nothing” approach is the correct one. An issuer must apply to cease to be a reporting issuer in all jurisdictions in which it is a reporting issuer. Were the issuer to remain a reporting issuer in a jurisdiction in Canada, its securities would continue to be freely tradable in Canada, but shareholders in jurisdictions where the issuer has ceased to be a reporting issuer would have different rights than those where the issuer is still reporting.</p> <p>This approach is in line with the one currently applied in a coordinated fashion between provincial and territorial jurisdictions.</p>

No.	Subject	Summarized Comment	Response
Failure-to-file cease trade orders¹			
2	<i>Agreement with proposal</i>	The commenter supports the proposal that would result in a failure-to-file cease trade order being reciprocated across jurisdictions in which the issuer is reporting issuer. It sees no policy rationale for permitting securities to trade in other jurisdictions since investors are equally impacted by the lack of updated continuous disclosure compliant with legal requirements. The proposal will streamline the process since an issuer will only have to deal with one regulator to obtain a revocation or a variation of the order, saving the issuer both time and additional costs.	We thank the commenter for its support.
3	<i>Support for extending the effect of failure-to-file cease trade orders to jurisdictions where the issuer is not reporting</i>	The commenter agrees there are investor protection considerations that would support extending the prohibitions or restrictions contained in a failure-to-file order to other passport jurisdictions regardless of whether or not the issuer is a reporting issuer. Such actions would help avoid regulatory arbitrage.	We thank the commenter for its support. At this time, we have decided not to extend the effect of failure-to-file cease trade orders to jurisdictions where the issuer is not a reporting issuer. Rather, each province and territory is considering obtaining a provision similar to section 198.1 of Alberta's <i>Securities Act</i> (proclaimed on July 1, 2015) that allows for the automatic reciprocation in

¹ Proposed Part 4D of *Regulation 11-102 respecting Passport System* is now proposed *Regulation 11-103 respecting Failure-to-file Cease Trade Orders in Multiple Jurisdictions*.

No.	Subject	Summarized Comment	Response
			<p>Alberta of certain orders and settlements of another securities regulatory authority. We are of the view that this alternative method would lead to the same result.</p>
4	<p><i>Need to clearly identify in which jurisdictions a failure-to-file cease trade order has effect</i></p>	<p>The commenter underlines the importance of clearly indicating in the order, and disseminating through other means, the jurisdictions in which a failure-to-file cease trade order has application. Such publication would help ensure that the public is aware of the order and any restrictions.</p>	<p>Although we understand the commenter’s public information objective, we do not believe that listing jurisdictions where a failure-to-file cease trade order has effect would be appropriate. Our policies discourage trading in securities of a cease-traded issuer, even where the issuer is not a reporting issuer. We are concerned that listing where the failure-to-file cease trade order has effect could encourage trading of these securities in other jurisdictions. In any event, if a CSA regulator issues a cease trade order with respect to a Canadian-listed issuer, IIROC imposes a regulatory halt on market trading of those securities under the Universal Market Integrity Rules. We also note that</p>

No.	Subject	Summarized Comment	Response
			under Alberta's statutory reciprocal order provision, all cease trade orders will automatically apply, even if the issuer is not a reporting issuer in Alberta. Other jurisdictions are considering a similar provision in their respective securities acts.

Annex C

Local Matters

In Québec, *Regulation amending Regulation 11-102 respecting Passport System* and *Regulation 11-103 respecting Failure-to-File Cease Trade Orders in Multiple Jurisdictions* will be delivered to the Minister of Finance for approval. *Regulation amending Regulation 11-102 respecting Passport System* and *Regulation 11-103 respecting Failure-to-File Cease Trade Orders in Multiple Jurisdictions* will come into force on the date of publication in the *Gazette officielle du Québec* or on any later date specified in these regulations.

Statutory Amendments

Applications to cease to be a reporting issuer

To bring applications to cease to be a reporting issuer into passport, Québec will propose amendments to its securities legislation to provide for a specific rule-making power enabling the adoption of proposed Part 4C of *Regulation 11-102 respecting Passport System*.

Failure-to-file cease trade orders

Québec will propose an amendment to its securities legislation to allow for the issuance of failure-to-file cease trade orders without providing a person the right to present observations or produce documents to complete the person's record.