

## ***POLICY STATEMENT TO REGULATION 13-103 RESPECTING SYSTEM REPLACEMENT***

### **Introduction**

The purpose of this Policy Statement is to provide guidance on how regulators, except in Québec, and securities regulatory authorities (“we” or “us”) interpret or apply certain provisions of *Regulation 13-103 respecting System Replacement (insert reference)* (the “Regulation”). This Policy Statement includes explanations, discussion and examples of the application of various parts of the Regulation.

### **Phased approach to release of the [Renewed System]**

The National Systems Renewal Program (“NSRP”) of the Canadian Securities Administrators (“CSA”) proposes to implement the [Renewed System] in several phases, with the objective of replacing all current CSA national systems. The first phase (Phase 1) replaces the System for Electronic Document Analysis and Retrieval (SEDAR), the National Cease Trade Order Database and the Disciplined List. Phase 1 relates principally to documents filed by issuers with regulators, except in Québec, or securities regulatory authorities, including:

- all documents previously filed with or delivered through SEDAR;
- Form 45-106F1 *Report of Exempt Distribution*, previously filed in the British Columbia Securities Commission (BCSC) eServices system, the Ontario Securities Commission (OSC) Electronic Filing Portal, and in all other jurisdictions on SEDAR.

In future phases of NSRP, we expect the [Renewed System] will be capable of accepting the transmission of documents filed with or delivered to regulators, except in Québec, and securities regulatory authorities by insiders, registrants, derivatives market participants and regulated entities (such as a marketplace, a self-regulatory body or self-regulatory organization, or a clearing agency).

### ***Phasing of applications and pre-filings***

Applications and pre-filings are also being brought into the [Renewed System] in a phased manner. Phase 1 of NSRP includes all applications and pre-filings previously filed by issuers, whether in the BCSC eServices system, the OSC Electronic Filing Portal, or filed by email, courier or regular mail, including applications:

- for an exemption from a provision of securities legislation;
- to be designated as a reporting issuer, mutual fund or non-redeemable investment fund;
- to cease to be a reporting issuer;
- for a full or partial revocation of a cease trade order;
- for a management cease trade order.

Generally, a person that is an issuer will file an application or a pre-filing through the [Renewed System], while a person that is an insider, a registrant, a derivatives market participant or a regulated entity will file the application in the same manner as it currently does, until a future release of the [Renewed System]. In future phases of NSRP, we expect that the [Renewed System] will be capable of accepting the transmission of applications delivered to regulators, except in Québec, or securities regulatory authorities by insiders, registrants, derivatives market participants and regulated entities.

If a regulation is included in Column A of the Appendix of the Regulation, a pre-filing in relation to that rule or an application for an exemption from a provision of that regulation

will not be filed through the Renewed System at this time, except in the limited circumstances outlined in Column B of the Appendix.

Generally when an application is filed in the Renewed System pursuant to Column B of the Appendix, and a decision is made, the filer should also transmit through the Renewed System all documents required to be filed or delivered pursuant to the decision.

### **Section 1 – Definitions**

Unless defined in the Regulation, terms used in the Regulation have the meanings given to them in local securities legislation or in *Regulation 14-101 respecting Definitions* (chapter V-1.1, r. 3).

The term “document” includes any report, form, application, pre-filing, information, material and notice, as well as a copy thereof, and applies to a document that is required or permitted to be filed or deposited with, or delivered, furnished, sent, provided, submitted or otherwise transmitted to, a regulator, except in Québec, or securities regulatory authority.

### **Section 3 – Transmission of documents outside of the [Renewed System]**

Under paragraph 3(f), the Regulation does not apply to a document required or permitted to be filed or delivered under any of the provisions of securities legislation set out in Column A of the Appendix of the Regulation, unless an exception in Column B applies. The same applies to any document that a person is required or permitted to file or deliver pursuant to a decision or order issued in respect of any of the provisions of securities legislation set out in Column A of the Appendix, unless an exception in Column B applies. We expect that all of these documents will be incorporated into the [Renewed System] in future phases of NSRP.

A person will file these documents with, or deliver them to, the regulator, except in Québec, or securities regulatory authority in the same manner that it currently does, including by email, courier or regular mail, through the System for Electronic Disclosure by Insiders (SEDI), or through the National Registration Database. For example, an issuer filing an issuer event report under National Instrument 55-102, *System for Electronic Disclosure by Insiders (SEDI)* (chapter V-1.1, r. 30) will transmit this information through SEDI.

The Appendix also contains certain exceptions set out in Column B relating to documents filed under the provisions of securities legislation indicated in Column A that will be transmitted through the [Renewed System] in Phase 1. For example, *Regulation 45-108 respecting Crowdfunding* (chapter V-1.1, r. 21.02) contains certain registration requirements for funding portals and registered individuals of funding portals, which will be filed outside of the [Renewed System] until a future phase of NSRP. The exceptions in Column B that relate to *Regulation 45-108 respecting Crowdfunding* are the following documents that an issuer will transmit through the [Renewed System] as part of Phase 1:

- a Form 45-106F1 *Report of Exempt Distribution*;
- a crowdfunding offering document;
- additional distribution material, including a video;
- financial statements filed by an issuer that is not a reporting issuer;
- a notice of use of proceeds.

### **Subsection 5(1) – Payment of fees**

A filer should consult *Regulation 13-102 respecting System Fees* (*insert reference*) to determine whether it is required to pay a system fee when transmitting a document in the [Renewed System], and the amount of any applicable system fee. A filer should consult the local fee rules in each jurisdiction to determine whether it is also required to pay a regulatory

filing fee when transmitting a document to the regulator, except in Québec, or securities regulatory authority, and the amount of any applicable regulatory filing fee.

#### **Subsection 5(4) – Significant connection**

In order to determine the jurisdiction with which a person has the most significant connection, a filer should refer to the factors outlined in subsection 3.4(7) of *Policy Statement 11-202 respecting Process for Prospectus Reviews in Multiple Jurisdictions*.

#### **Subsection 7(3) – Decisions and orders in British Columbia**

Because of differing legislative requirements, subsection 7(1) of the Regulation does not apply in British Columbia. The British Columbia Securities Commission has issued *BC Instrument 13-XXX [XXX]*, which has the same effect as subsection 7(1) of the Regulation.

#### **Using format and templates specified in the [Renewed System]**

A person satisfies a requirement in securities legislation to file a document with, or deliver a document to, the regulator, except in Québec, or securities regulatory authority in a prescribed format by transmitting the information in the manner and using the format and templates, if any, specified in the [Renewed System]. For example, the [Renewed System] requires a filer to transmit Form 45-106F1 *Report of Exempt Distribution* in the format and using the templates specified in the [Renewed System]. In doing so, the filer satisfies all requirements of Form 45-106F1 *Report of Exempt Distribution* that relate to the prescribed format of the report.

#### **Effective time of filing or delivery**

The [Renewed System] is generally available 24 hours a day, 7 days a week. We consider a document to be filed with or delivered to the regulator, except in Québec, or securities regulatory authority when the transmission of the document through the [Renewed System] has been completed. The [Renewed System] allows a filer to confirm the date and time that the transmission of a document was completed.

Although the [Renewed System] is generally available every day to receive documents, securities legislation that refers to a review of a document by the regulator, except in Québec, or securities regulatory authority (for example our obligation to provide a filer with a comment letter on our review of a preliminary prospectus) will continue to provide that the review be carried out within a certain number of business days.

#### **Consent**

In certain jurisdictions, the regulator, except in Québec, or securities regulatory authority must consent to a document being filed with or delivered to it by the transmission of the document through the [Renewed System]. We take the view that the acceptance of documents transmitted through the [Renewed System] in accordance with the Regulation satisfies any such consent requirement of the regulator, except in Québec, or securities regulatory authority contained in electronic commerce legislation.

#### **Requirement to file more than one copy of a document**

If any provision of securities legislation requires a person to file with or deliver to the regulator, except in Québec, or securities regulatory authority more than one copy of a document, the transmission of the document through the Renewed System in accordance with the Regulation satisfies such a requirement.

#### **Official copy of documents**

We consider that, for purposes of securities legislation, securities directions or any other related purpose, an official record of any document transmitted through the [Renewed System] is the document stored in the Renewed System.

## **Certified copy of documents**

Securities legislation in certain jurisdictions contains a requirement to produce or make available an original or certified copy of information filed under the securities legislation. We take the view that the regulator, except in Québec, or securities regulatory authority satisfies such a requirement by providing a printed copy of the information that contains, or is accompanied by, a certificate of the regulator, except in Québec, or securities regulatory authority confirming that the printed copy is a copy of the information filed in the [Renewed System].

## **Use of the Renewed System by the regulator or securities regulatory authority**

The regulator, except in Québec, or securities regulatory authority will transmit certain documents through the [Renewed System]. For example, we will generally transmit through the [Renewed System] a receipt and other confirmation of acceptance for a document transmitted through the [Renewed System], such as a receipt for a prospectus.

## **Public accessibility of documents in the [Renewed System]**

Securities legislation requires that the regulator, except in Québec, or securities regulatory authority make documents filed with it available for public inspection during normal business hours. We consider that the regulator, except in Québec, or securities regulatory authority satisfies this requirement by making such documents publicly available in the [Renewed System].

Under securities legislation, documents required or permitted to be delivered are not required to be publicly available but may be subject to an application made under freedom of information legislation. Filers that transmit information in the [Renewed System] are responsible for complying with applicable privacy laws.

## **Changing public access to transmitted documents**

To change the access status of a document filed with us from public to private, a person should submit a formal request for confidentiality, generally by way of an application for an exemption, under the relevant provisions of securities legislation. The regulator, except in Québec, or securities regulatory authority will generally not change the access status of a document from public to private until the principal regulator has received and reviewed such request, and made a decision in favour of the person.

In the following limited circumstances, we will consider changing the access status of a document from public to private in the [Renewed System] without a formal request for confidentiality:

- a person transmits a document under the incorrect profile;
- a person transmits a fee form with an incorrect calculation;
- a person transmits a document that contains a virus;
- a person entitled to file a redacted version of a material contract or agreement transmits a non-redacted version of the document as a result of technical software errors in electronic redaction software;
- a recipient agency inadvertently makes a document public in connection with a prospectus filing which should have remained private.

To request a change in the access status of a document from public to private in the [Renewed System] in these circumstances, a person should make a written request to its principal regulator, determined in accordance with subsection 5(2), 5(3) or 5(4) of the Regulation.

Filers should note that changing the access status of a document from public to private in the [Renewed System] does not necessarily remove the document from the public domain. For example, various search engines may continue to index the document, notwithstanding that we have changed the access status of the document to private in the [Renewed System]. We do not assist filers to remove documents from the public domain.