

Notice of

Policy Statement 11-204 respecting Process for Registration in Multiple Jurisdictions

Regulation to amend Regulation 11-102 respecting Passport System

Amendment to Policy Statement to Regulation 11-102 respecting Passport System

Amendment to Policy Statement 11-202 respecting Process for Prospectus Reviews in Multiple Jurisdictions

Amendment to Policy Statement 11-203 respecting Process for Exemptive Relief Applications in Multiple Jurisdictions

Introduction — Passport/Interface System

Members of the Canadian Securities Administrators (CSA or we), other than the Ontario Securities Commission (OSC), (passport regulators) will implement the next phase of the passport system for registrants and amend phase II of passport for issuers effective when *Regulation 31-103 respecting Registration Requirements* (proposed Regulation 31-103) is implemented. Phase II of passport for issuers covers continuous disclosure, prospectuses and discretionary exemption applications. The amendments deal with issues that have arisen since implementation in March 2008.

All CSA members, including the OSC, will implement a new national policy setting out the processes for registration in multiple jurisdictions (Policy Statement 11-204) and amend the national policies for the filing and review of prospectuses (Policy Statement 11-202) and exemptive relief applications (Policy Statement 11-203). CSA members will also repeal *Regulation 31-101 respecting National Registration System* (Regulation 31-101) and its related policy.

Passport system

The amendments to *Regulation 11-102 respecting Passport System* (Regulation 11-102) and *Policy Statement to Regulation 11-102 respecting Passport System* (Policy Statement 11-102) are initiatives of the passport regulators.

Each of the passport regulators will make the amendments to Regulation 11-102 as a rule or regulation and will adopt the amendments to Policy Statement 11-102. The text of these amendments is published with this Notice.

Regulation 11-102 and Policy Statement 11-102 implement, in the main areas of securities regulation, a system that gives a market participant access to the capital markets in multiple jurisdictions by dealing only with its principal regulator and meeting the requirements of one set of harmonized laws. The amendments to Regulation 11-102 and Policy Statement 11-102 implement the next phase of the passport system for registrants and deal with issues that have arisen since the implementation of phase II of passport for issuers.

Although the OSC is not adopting Regulation 11-102 or the amendments to Regulation 11-102, it can be a principal regulator under the instrument, thereby giving market participants in Ontario access to the capital markets in passport jurisdictions by dealing only with the OSC.

National policy on the process for registration in multiple jurisdictions

Policy Statement 11-204 is an initiative of the CSA. Each member of the CSA will adopt Policy Statement 11-204. The text of Policy Statement 11-204 is published with this Notice.

Policy Statement 11-204 and the amendments to Regulation 11-102 replace Regulation 31-101 and its related policy. Each CSA member will repeal:

- Regulation 31-101, including *Form 31-101F1 Election to use NRS and Determination of Principal Regulator* and *Form 31-101F2 Notice of Change*;
- *Policy Statement 31-201 respecting National Registration System.*

A regulation repealing Regulation 31-101 is published with this Notice.

Policy Statement 11-204 sets out the procedures for a firm or individual to register in more than one jurisdiction. It includes an interface similar to NRS for registrants in passport jurisdictions to gain access to the Ontario market. Ontario registrants get direct access to passport jurisdictions under the amendments to Regulation 11-102.

Under Regulation 11-102 and Policy Statement 11-204, the principal regulator for a firm will usually be the regulator of the jurisdiction where the firm's head office is located and for an individual will be the regulator of the jurisdiction where the individual's working office is located.

Consequential amendments

All CSA members will also adopt consequential amendments to the following policies:

- Policy Statement 11-202;
- Policy Statement 11-203;

The text of the amendments to Policy Statement 11-202 and Policy Statement 11-203 is published with this Notice.

In addition, consequential amendments related to passport will be included in proposed Regulation 31-103 and its policy statement and in the related amendments to *Regulation 31-102 respecting National Registration Database* (Regulation 31-102) and *Regulation 33-109 respecting Registration Information* (Regulation 33-109).

Local non-harmonized requirements

Most regulatory requirements for registrants will be harmonized through proposed Regulation 31-103. However, registrants will be subject to a few additional local requirements that continue to exist in some jurisdictions. Policy Statement 11-102 includes a description of these requirements.

In addition, proposed Regulation 31-103 provides transition periods for certain fit and proper requirements (solvency and proficiency). The transition provisions allow registrants to carry on their activities on the basis of the current fit and proper requirements that apply in the principal jurisdiction under NRS. After the transition period, registrants must comply with the new requirements in proposed Regulation 31-103. Please refer to proposed Regulation 31-103 for further details.

Effective date and transition

A key foundation for the passport system is a set of nationally harmonized regulatory requirements consistently interpreted and applied throughout Canada.

Implementation of passport for registrants depends on the adoption of proposed Regulation 31-103. CSA members expect to implement consequential amendments to national and local rules when we adopt proposed Regulation 31-103. In addition, governments in some jurisdictions will need to proclaim act amendments to harmonize registration requirements. We will implement the changes described in this notice when we adopt proposed Regulation 31-103.

The timing of adoption of proposed Regulation 31-103 is currently uncertain. Please refer to CSA Notice 31-309 for more information.

We will republish the documents if we need to revise them to reflect the final versions of Regulation 31-103, Regulation 31-102 or Regulation 33-109.

The amendments to Regulation 11-102 apply to an individual or firm seeking registration on or after the effective date of proposed Regulation 31-103. In addition, the amendments apply to an individual or firm that is registered on that date unless the individual or firm requests and obtains an exemption under section 6.9(2) of Regulation 11-102.

The amendments to passport for issuers apply to prospectuses filed under National Instrument 71-101 *The Multijurisdictional Disclosure System* on or after the effective date of proposed Regulation 31-103.

The amendments to Regulation 11-102 and Policy Statement 11-102 refer to rules (e.g., proposed Regulation 31-103) and Act provisions that CSA expects to be in force on the effective date.

Background

CSA published the proposal to streamline the process for registration on July 18, 2008. All CSA members published Policy Statement 11-204 and the amendments to Policy Statement 11-202 and Policy Statement 11-203 and the repeal of NRS. In the same publication, the passport regulators published the amendments to Regulation 11-102 and Policy Statement 11-102.

Summary of Written Comments

CSA received 5 comment letters in response to the request for comments published in July 2008. All the comment letters are posted on the Alberta Securities Commission website at www.albertasecurities.com. We thank commenters for their submissions.

CSA considered the comments and is publishing a summary of comments and responses with this Notice. The summary includes the names of the commenters, a summary of their comments, and the CSA responses to comments.

Summary of Changes

Regulation 11-102

Passport regulators revised the amendments to Regulation 11-102 to delete the requirement that an NPR acknowledge receipt of a submission as a condition for a firm to become registered in a non-principal jurisdiction. Instead, the firm's registration will take effect when it submits a completed form to the PR when registering in an additional jurisdiction. The PR will notify the firm of the legal date of registration in the non-principal jurisdiction and will explain why this date may be earlier than the 'effective date' shown on NRD.

Passport regulators also added a condition that a firm or individual is a member of a self-regulatory organization (SRO) if required in the local jurisdiction. This ensures that necessary SRO memberships are obtained prior to registration under passport.

Policy Statement 11-102

Passport regulators made changes to Policy Statement 11-102 to reflect the revisions noted above and to add a description of local registration requirements that exist in Québec and British Columbia.

Policy Statement 11-204

CSA made changes to Policy Statement 11-204 to reflect the revisions noted above.

Questions

Please refer your questions to any of:

Sylvia Pateras
Senior Legal Counsel
Autorité des marchés financiers
514-395-0337, extension 2536
sylvia.pateras@lautorite.qc.ca

Leigh-Anne Mercier
Special Advisor to the Chair
British Columbia Securities Commission
604-899-6643
lmercier@bcsc.bc.ca

Gary Crowe
Senior Legal Counsel
Alberta Securities Commission
403-297-2067
gary.crowe@asc.ca

Barbara Shourounis
Director
Saskatchewan Financial Services Commission
306-787-5842
bshourounis@sfsc.gov.sk.ca

Doug Brown
Director
Manitoba Securities Commission
204-945-0605
doug.brown@gov.mb.ca

Dirk de Lint
Senior Legal Counsel
Ontario Securities Commission
416-593-8090
ddelint@osc.gov.on.ca

Susan W. Powell,
Senior Legal Counsel
New Brunswick Securities Commission
506-643-7697
Susan.Powell@nbsc-cvmnb.ca

Shirley Lee
Securities Analyst
Nova Scotia Securities Commission

902-424-5441
leesp@gov.ns.ca

Katharine Tummon
Director
Consumer, Corporate and Insurance Services
Prince Edward Island Securities Office
902-368-4542
kptummon@gov.pe.ca

Doug Connolly
Deputy Superintendent of Securities
Government of Newfoundland & Labrador
Department of Government Services
Financial Services Regulation Division
709-729-4909
connolly@gov.nl.ca

Rhonda Horte
Deputy Registrar
Yukon Registrar of Securities
867-667-5005
rhonda.horte@gov.yk.ca

Donn MacDougall
Manager
Northwest Territories Securities Office
867-873-8984
donald_macdougall@gov.nt.ca

Louis Arki
Director, Legal Registries
Nunavut Securities Registry
867-975-6587
larki@gov.nu.ca

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Regulation 11-102 respecting Passport System

List of commenters

1. ITG Canada Corp.
2. Investment Industry Association of Canada
3. Baillie Gifford Overseas Ltd.
4. Investment Fund Institute of Canada
5. Financial Executives International Canada

**Summary of comments and responses
on the amendments to *Regulation 11-102 respecting Passport System*
(Regulation 11-102)**

Passport regulators adopted Regulation 11-102 on March 17, 2008 to establish the passport system for issuers - covering continuous disclosure, prospectuses and discretionary exemptions. When Regulation 11-102 was first published for comment on March 28, 2007, it also included provisions to provide a passport for registrants. We published the passport for registrants for comment for a second time on July 18, 2008. The following summarizes and responds to the comments on the second publication of the passport system for registrants.¹

#	Themes	Comments	Responses
1.	General	<p>CSA received five comment letters on the second publication for comment of the proposed passport for registrants.</p> <p>All commenters supported the CSA's efforts to harmonize, simplify and streamline the registration regime and thought that passport is an important step forward to more effective and efficient regulation in Canada. However, three commenters also said that passport does not go far enough. They encouraged CSA to work toward a further evolution of the Canadian regulatory structure. Two of them specifically called for a single national regulator and a single set of laws.</p> <p>One commenter said that harmonization, simplification and streamlining of the registration regime would help international firms operating in Canada by simplifying the regulatory environment.</p>	<p>The amendments to Regulation 11-102 implement the second phase of the passport system for registrants (passport for registrants) contemplated in the Provincial/Territorial Memorandum of Understanding regarding Securities Regulation (MOU). The objective of the MOU is to set up a system that gives a single window of access to market participants in areas where securities laws are already highly harmonized or could be harmonized quickly. The structural changes two commenters suggested are not within the powers of securities regulators to consider.</p> <p>CSA continues to work on harmonizing, simplifying and streamlining regulatory requirements. Phase 2 of passport and the concurrent harmonization of registration requirements will simplify regulation for foreign firms registered in Canada.</p>
2.	Inconsistencies create complexity	<p>Four commenters raised issues related to consistency:</p> <ul style="list-style-type: none"> ▪ The remaining inconsistencies in proposed <i>Regulation 31-103 respecting Registration Requirements</i> (Regulation 31-103) seriously detract from the effectiveness of the proposed passport for 	<ul style="list-style-type: none"> ▪ Through Regulation 31-103 and related Act amendments coming into effect at the same time as passport for registrants, CSA has harmonized and streamlined most of the registration requirements across jurisdictions. Most of

¹The comment letters are available on the Alberta Securities Commission website at www.albertasecurities.com.

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		<p>registrants. It is difficult to understand why local requirements cannot be harmonized for registrants that carry on business in more than one jurisdiction given the size of the Canadian market and the lack of any truly unique regional characteristics.</p>	<p>the few remaining differences are readily identifiable in Regulation 31-103. Some of these relate to structural differences in the regulatory framework in some jurisdictions (e.g. the regulation of mutual fund dealers in Québec, or the regulation of ‘exchange contracts’ under the securities legislation of British Columbia, Alberta, Saskatchewan and New Brunswick) or result from initiatives driven by specific provincial legislation (e.g., labour sponsored funds). Others are technical in nature and designed either</p> <ul style="list-style-type: none"> ○ to harmonize substantive requirements across jurisdictions (e.g., the regulation of referral arrangements) or work with passport for registrants (e.g., the British Columbia and Manitoba approach to exempt market dealer registration), or ○ to have no substantive/practical impact on passport for registrants (e.g., the British Columbia, Manitoba and New Brunswick approach to the business trigger). <p>Very few reflect true differences in policy across jurisdictions.</p>
		<ul style="list-style-type: none"> ▪ The lack of uniformity in Regulation 31-103 will obstruct the goals of <i>Policy Statement 11-204 respecting Process for Registration in Multiple Jurisdictions</i> (Policy Statement 11-204) to allow firms to meet the requirements of one set of harmonized laws. It appears that a firm would need only comply with the requirements in its principal jurisdiction, but it is unclear what requirements apply when the firm is operating in a non-principal jurisdiction 	<ul style="list-style-type: none"> ▪ Under passport for registrants, a firm or individual that registers in more than one jurisdiction is subject to the law of each jurisdiction where the firm or individual is registered. Regulation 31-103 consolidates, harmonizes and streamlines in one instrument most of the requirements that apply to registrants in all Canadian jurisdictions. The few differences in these requirements are readily identifiable in the instrument.

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		that may have implemented slightly different requirements.	
		<ul style="list-style-type: none"> ▪ The proposed passport for registrants does not exempt registrants from all non-harmonized requirements. 	<ul style="list-style-type: none"> ▪ CSA has eliminated or harmonized all non-harmonized local registration requirements that the passport regulators were prepared to exempt from under the passport system for registrants. The regulators intend that any remaining local non-harmonized requirements continue to apply in the relevant jurisdictions. In many instances, the remaining non-harmonized local requirements apply to registrants that operate only in the local jurisdiction and do not affect firms or individuals registered in multiple jurisdictions. Only a few non-harmonized local requirements apply to registrants operating in multiple jurisdictions
		<ul style="list-style-type: none"> ▪ It creates three different methods for ascertaining the principal regulator based on the type of exemptive relief sought. 	<ul style="list-style-type: none"> ▪ The principal regulator for passport for registrants is the regulator in the jurisdiction where the head office of the firm or the working office of the individual is located. This deals with most circumstances where a firm or individual seeks registration under passport. To expedite the registration process, Regulation 11-102 provides that the same principal regulator will also handle an application for exemption from the fit and proper requirements of Regulation 31-103 or the registration filing requirements under <i>Regulation 33-109 respecting Registration Information</i> made at the same time as the application for registration in the principal jurisdiction. If a firm or individual applies for another type of relief or for relief after registration in the principal jurisdiction, then the principal regulator is determined in the same way as for any other application for exemption under Regulation 11-102. A

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			<p>firm or individual would have different principal regulators in these circumstances only if the head office or working office is in one of the five smallest jurisdictions or if relief is sought from a requirement that does not apply in the principal jurisdiction.</p>
		<ul style="list-style-type: none"> ▪ Ontario's decision not to participate in passport adds to the complexity. Allowing the Ontario Securities Commission (OSC) to act as a principal regulator under passport simplifies the process for registrants whose principal jurisdiction is Ontario. But the fact that Ontario is not willing to accept that another jurisdiction act as principal jurisdiction for non-Ontario registrants creates significant inefficiencies. 	<ul style="list-style-type: none"> ▪ CSA members in passport jurisdictions would welcome a decision by Ontario to join passport. Meanwhile, CSA is implementing the passport system and interfaces to make the securities regulatory system as efficient and effective as possible in the circumstances for all market participants who want to gain access to the capital markets in both passport jurisdictions and Ontario. The OSC has participated in developing the interfaces between the passport jurisdictions and Ontario.
		<ul style="list-style-type: none"> ▪ The fact that some jurisdictions have delegated their registration functions to the Investment Industry Regulatory Organization of Canada (IIROC), and others have not, is at odds with the objectives of the passport system. CSA should adopt a uniform policy on the delegation of registration functions to IIROC and the Mutual Fund Dealers Association to further streamline the registration regime across Canada and potentially generate additional administrative and cost efficiencies. 	<ul style="list-style-type: none"> ▪ Delegation of registration functions to SROs is outside the scope of the passport project. However, we have designed the passport and interface system to work efficiently with different delegation arrangements among jurisdictions.
		<ul style="list-style-type: none"> ▪ There are discrepancies in the scope of delegation to IIROC among delegating jurisdictions that would require a firm or individual to deal with two regulators and IIROC depending on the principal jurisdiction and the type of registration and the non-principal jurisdictions where registration is sought. 	<ul style="list-style-type: none"> ▪ A firm or individual wishing to register in a non-principal passport jurisdiction under Regulation 11-102 deals only with its principal regulator. If the principal regulator has delegated registration to IIROC, IIROC makes the registration decision instead of the principal regulator. The system for registering an IIROC member firm or

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3.	Ontario registration Act amendments and harmonization	One commenter reiterated its view that the Ontario government's proposal to move a substantial number of Regulation 31-103 provisions into the Ontario <i>Securities Act</i> undermines the CSA's commitment to a harmonized approach to securities regulation across Canada.	<p>representative works with different delegation arrangements as follows.</p> <ul style="list-style-type: none"> ○ No delegation to IIROC: a firm would make its submission to, and deal only with, the principal regulator, except if the firm is seeking registration in Ontario and Ontario is a non-principal jurisdiction. The principal regulator will deal directly with IIROC to ensure the firm is a member of IIROC before granting registration. Once the principal regulator grants registration, the firm is automatically registered in the non-principal passport jurisdictions in which it is seeking registration. If the firm is seeking registration in Ontario, the firm makes its submission to the OSC and the principal regulator coordinates its decision with the OSC. ○ Delegation to IIROC: the process is the same except that the firm deals with the relevant office of IIROC for the principal regulator's jurisdiction. ○ Individuals make their submissions on NRD and identify the jurisdictions where they seek registration. NRD automatically directs the submission to the appropriate entity in each jurisdiction, i.e., the securities regulator or the relevant office of IIROC in the jurisdiction. <p>CSA is committed to harmonizing, simplifying and streamlining regulatory requirements and will continue to work with all governments towards this goal.</p>
4.	Acknowledgement for automatic firm registration	One commenter urged CSA to add a time limit for the non-principal regulator to make the	We have revised Regulation 11-102 to eliminate the need for an acknowledgement. The registration

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(section 6.3(1)(b) of Regulation 11-102)		acknowledgement on NRD, for example within one business day of receiving the submission.	of a firm in a non-principal passport jurisdiction will be automatic upon filing. The passport regulator will manually record the legal date of registration of a firm in the non-principal jurisdiction and notify the firm. The notification will explain why this date may be earlier than the ‘effective date’ shown on NRD.
5.	Interface registration (section 6.2(2) of Policy Statement 11-204)	One commenter recommended that the Ontario office of IIROC advise the principal regulator of its decision relating to an interface registration within the same time-frame as the OSC for individuals not registering as representatives of an investment dealer, i.e. one business day of receiving the interface document.	IIROC agreed to use the same timeframe for making decisions as the OSC.
6.	Fees	Two commenters suggested eliminating or reducing fees in non-principal jurisdictions under passport. One commenter urged CSA, at a minimum, to advise how CSA will assess the effectiveness and efficiency of the passport system in the absence of fee reductions.	<p>Fees for prospectus filings and registration are mainly ‘participation fees,’ through which market participants who access the capital markets in a jurisdiction contribute to the cost of maintaining the regulatory system that oversees those markets. Although passport will reduce costs for market participants, the cost of operating the regulatory system will not decrease significantly because of passport.</p> <p>At the request of the Council of Ministers, the passport regulators are conducting a review of their fee structures and have provided a preliminary report to the Council of Ministers. CSA does not expect any fee changes implemented following the fee review to eliminate the requirement to pay prospectus filing and registration fees in non-principal passport jurisdictions. CSA is also considering how to assess the effectiveness and efficiency of the passport system more generally.</p>
7.	Mobility exemption	One commenter thought that the decision to retain limits on broker mobility in the mobility exemption in proposed Regulation 31-103 is inconsistent with the principles of passport.	The mobility exemption provides flexibility to dealers for the mobility of their clients, by letting a firm or individual not registered in a jurisdiction deal with a few clients who move there. If more clients move to the jurisdiction, or the firm or individual wishes to solicit clients there, Regulation 11-102 allows the firm or

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8.	Proficiency requirements for foreign registrants	One commenter requested that, if a foreign registrant is subject to the competency requirements of an equivalent regulatory regime, CSA recognize those regulatory requirements instead of imposing additional proficiency requirements on foreign registrants, e.g., their chief compliance officer.	individual to register automatically in the non-principal passport jurisdiction to obtain full access to the market in that jurisdiction. Under passport, a foreign registrant can apply to the principal regulator to accept equivalent proficiency requirements. If the principal regulator grants relief from the proficiency requirements of Regulation 31-103, the exemption will apply automatically in non-principal passport jurisdictions. CSA will review on an on-going basis equivalent proficiency requirements to determine whether amendments to Regulation 31-103, or other action, is necessary.
9.	Novel exemptive relief applications under <i>Policy Statement 11-203 respecting Process for Exemptive Relief Applications in Multiple Jurisdictions (Policy Statement 11-203)</i>	One commenter said that it is not always clear who the ultimate decision-maker is when an exemptive relief application involves a novel issue. The experience of some of its members is that the principal regulator acts more like a spokesperson to facilitate building consensus among regulators on the outcome of novel applications. This can result in a lack of transparency (not knowing the source of a comment) and significant delays in the decision-making process. The commenter urged CSA to clarify and streamline the review and decision-making process for novel exemptive relief applications.	CSA has put mechanisms in place to ensure consistency in decision-making across jurisdictions under passport. Some of these processes involve the principal regulator consulting with one or more non-principal regulators on a novel exemptive relief application. Although this consultation may take place, only the principal regulator makes the decision and that decision has automatic effect in the relevant non-principal passport jurisdictions.
10.	Revocation or variation of mutual reliance review system (MRRS) decision made before March 17, 2008 (section 9.4 of Policy Statement 11-203)	One commenter thought that having made an MRRS decision before March 17, 2008 is not a good reason to go back to the MRRS process to revoke or vary that decision. The commenter recommended that CSA permit the filing of a revocation or variance application for a pre-March 17, 2008 MRRS decision as a passport application or dual application to the extent that the filer could make that type of application under Policy Statement 11-203.	Under MRRS, each jurisdiction made a decision on the application for exemptive relief and the decision document issued by the principal regulator was ‘evidence’ of the principal regulator’s and each non-principal regulator’s decision. Therefore, to revoke or vary an MRRS decision, each regulator that made the MRRS decision must revoke or vary it. This is not possible under a passport application because a non-principal regulator does not make a decision. Instead, the decision of the principal regulator has automatic effect in the non-principal jurisdiction.