

**Nova Scotia Securities Commission**

**Rule 11-102**  
***Passport System***

**-and-**

**Multilateral Instrument 11-102**  
***Passport System***

**-and-**

**Companion Policy 11-102 CP *Passport System***

**-and-**

**National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions***

**- and -**

**National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions***

WHEREAS:

1. Pursuant to section 150 of the *Securities Act*, R.S.N.S. 1989, chapter 418, as amended (the "Act"), the Nova Scotia Securities Commission (the "Commission") has power to make rules subject to compliance with the requirements of the Act;
2. Pursuant to section 19 of the Act, the Commission has power to issue and publish policy statements;
3. Multilateral Instrument 11-102 *Passport System* (hereinafter called the "Rule"), a copy of which is attached hereto, has been made a rule by one or more of the Canadian securities regulatory authorities;

4. Companion Policy 11-102CP *Passport System*, National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions* and National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* (the "Policies"), copies of which are attached hereto, have been issued by one or more of the Canadian securities regulatory authorities; and

5. The Commission is of the opinion that the attainment of the purpose of the Act is advanced by this Instrument.

NOW THEREFORE the Commission hereby:

(a) pursuant to the authority contained in section 150 of the Act and subject to compliance with the requirements of section 150A of the Act, approves the Rule and makes the same a rule of the Commission;

(b) pursuant to the authority contained in section 19 of the Act and subject to publication in the *Royal Gazette* or the Commission's website, issues each Policy as a policy statement of the Commission; and

(c) declares that the rule approved and made pursuant to clause (a) and the policy statements issued pursuant to clause (b) shall all take effect, with the approval and specification of the Minister under subsection 150A(4) of the Act, on **March 17, 2008**, unless the Minister disapproves the rule or returns it to the Commission in accordance with subsection 150A(3) of the Act in which event the rule and the policy statements shall not be effective until the rule is approved by the Minister.

IN WITNESS WHEREOF this Instrument has been signed by the Chair and Vice-Chair of the Commission, being the members of the Commission prescribed by the Chair pursuant to subsection 15(3) of the Act to attend the hearing of this matter and the quorum with respect to this matter, on the **1st** day of **February, 2008**.

"H. Leslie O'Brien"  
H. Leslie O'Brien, Q.C.

"R. Daren Baxter"  
R. Daren Baxter

Attachments

**Multilateral Instrument 11-102**  
*Passport System*

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**Multilateral Instrument 11-102**  
***Passport System***

**PART 1      DEFINITIONS**

**1.1      Definitions**

In this Instrument,

“equivalent provision” means, for a provision listed in Appendix D below the name of a jurisdiction, the provision set opposite that provision below the name of another jurisdiction;

“national prospectus instrument” means

- (a)      National Instrument 41-101 *General Prospectus Requirements*,
- (b)      National Instrument 44-101 *Short Form Prospectus Distributions*,
- (c)      National Instrument 44-102 *Shelf Distributions*,
- (d)      National Instrument 44-103 *Post-Receipt Pricing*, or
- (e)      National Instrument 81-101 *Mutual Fund Prospectus Disclosure*;

“preliminary prospectus” includes an amendment to a preliminary prospectus;

“principal jurisdiction” means, for a person or company, the jurisdiction of the principal regulator;

“principal regulator” means, for a person or company, the securities regulatory authority or regulator determined in accordance with Part 3 or 4, as applicable;

“prospectus” includes an amendment to a prospectus;

“SEDAR” has the same meaning as in National Instrument 13-101 *System for Electronic Document Analysis and Retrieval*.

**1.2      Language of documents - Québec**

In Québec, nothing in this Instrument shall be construed as relieving a person from requirements relating to the language of documents.

## **PART 2      CONTINUOUS DISCLOSURE**

### **2.1      Exemption from non-harmonized continuous disclosure requirements**

A provision listed in Appendix A does not apply to a reporting issuer if the reporting issuer is also a reporting issuer under the securities legislation of another jurisdiction of Canada.

## **PART 3      PROSPECTUS**

### **3.1      Principal regulator for prospectus**

- (1) For the purposes of this section, the specified jurisdictions are British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick and Nova Scotia.
- (2) Subject to subsection (3) and section 3.2, for the purposes of a prospectus filing subject to this Part the principal regulator is the securities regulatory authority or regulator of the jurisdiction in which
  - (a) the issuer's head office is located, if the issuer is not an investment fund, or
  - (b) the investment fund manager's head office is located, if the issuer is an investment fund.
- (3) If the jurisdiction identified under paragraph (2) (a) or (b) is not a specified jurisdiction, the principal regulator is the securities regulatory authority or regulator of the specified jurisdiction with which the issuer or, in the case of an investment fund, the investment fund manager, has the most significant connection.

### **3.2      Discretionary change of principal regulator for prospectus**

If a person or company receives written notice from a securities regulatory authority or regulator that specifies a principal regulator, the securities regulatory authority or regulator specified in the notice is the principal regulator as of the later of

- (a) the date the person or company receives the notice, and
- (b) the effective date specified in the notice, if any.

### **3.3      Deemed issuance of receipt**

- (1) Subject to section 3.5(1), a receipt for a preliminary prospectus is deemed to be issued if
  - (a) the preliminary prospectus is filed under a provision set out in Appendix B and under a national prospectus instrument,
  - (b) at the time of filing the preliminary prospectus, the filer indicates on SEDAR that it is filing the preliminary prospectus under this Instrument,

- (c) the local jurisdiction is not the principal jurisdiction for the preliminary prospectus, and
  - (d) the preliminary prospectus is filed with the principal regulator and the principal regulator issues a receipt for it.
- (2) A receipt for a prospectus is deemed to be issued if
- (a) the prospectus is filed under a provision set out in Appendix B and under a national prospectus instrument,
  - (b) subject to section 3.5(2), the filer
    - (i) complied with paragraph (1)(b) at the time of filing the related preliminary prospectus, or
    - (ii) indicated on SEDAR that it filed the related pro forma prospectus under this Instrument at the time of filing the related pro forma prospectus,
  - (c) the local jurisdiction is not the principal jurisdiction for the prospectus, and
  - (d) the prospectus is filed with the principal regulator and the principal regulator issues a receipt for the prospectus.

### **3.4 Exemption from non-harmonized prospectus requirements**

- (1) A provision listed in Appendix C does not apply to a preliminary prospectus if
- (a) the preliminary prospectus is filed under a provision set out in Appendix B and under a national prospectus instrument,
  - (b) the preliminary prospectus is filed in at least one other jurisdiction of Canada, and
  - (c) a jurisdiction where the preliminary prospectus is filed is the principal jurisdiction for the filing of the preliminary prospectus.
- (2) A provision listed in Appendix C does not apply to a prospectus, other than a preliminary prospectus, if
- (a) the prospectus is filed under a provision set out in Appendix B and under a national prospectus instrument,
  - (b) the prospectus is filed in at least one other jurisdiction of Canada, and
  - (c) a jurisdiction where the prospectus is filed is the principal jurisdiction for the filing of the prospectus.

### **3.5 Transition for section 3.3**

- (1) Section 3.3(1) does not apply in respect of a receipt issued on or after March 17, 2008 if the receipt relates to an amendment, filed after March 17, 2008, to a preliminary prospectus and the preliminary prospectus was filed before March 17, 2008.
- (2) Section 3.3(2)(b) does not apply in respect of a receipt issued on or after March 17, 2008 if
  - (a) the receipt relates to an amendment to a prospectus whose related preliminary prospectus or pro forma prospectus was filed before March 17, 2008, and
  - (b) the filer indicated on SEDAR that it filed the amendment under this Instrument at the time of filing the amendment.

## **PART 4 DISCRETIONARY EXEMPTIONS**

### **4.1 Specified jurisdiction**

For the purposes of this Part, the specified jurisdictions are British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick and Nova Scotia.

### **4.2 Principal regulator – general**

Subject to sections 4.3 to 4.6, the principal regulator for an application for an exemption is,

- (a) for an application made with respect to an investment fund, the securities regulatory authority or regulator of the jurisdiction in which the investment fund manager's head office is located, or
- (b) for an application made with respect to a person or company other than an investment fund, the securities regulatory authority or regulator of the jurisdiction in which the person or company's head office is located.

### **4.3 Principal regulator – exemptions related to insider reporting and take-over bids**

Subject to sections 4.4 to 4.6, the principal regulator for an application for an exemption from

- (a) a provision related to insider reporting listed in Appendix D is the securities regulatory authority or regulator of the jurisdiction in which the head office of the reporting issuer is located, or
- (b) a provision related to take-over bids listed in Appendix D is the securities regulatory authority or regulator of the jurisdiction in which the head office of the issuer whose securities are subject to the take-over bid is located.

#### **4.4 Principal regulator – head office not in a specified jurisdiction**

Subject to section 4.5 and 4.6, if the jurisdiction identified under section 4.2 or 4.3, as applicable, is not a specified jurisdiction, the principal regulator for the application is the securities regulatory authority or regulator of the specified jurisdiction with which

- (a) in the case of an application for an exemption from a provision related to insider reporting listed in Appendix D, the reporting issuer has the most significant connection,
- (b) in the case of an application for an exemption related to a provision related to take-over bids listed in Appendix D, the issuer whose securities are subject to the take-over bid has the most significant connection, or
- (c) in any other case, the person or company or, in the case of an investment fund, the investment fund manager, has the most significant connection.

#### **4.5 Principal regulator – exemption not sought in principal jurisdiction**

- (1) Subject to subsection (2), if a person or company is not seeking an exemption in the jurisdiction of the principal regulator, as determined under section 4.2, 4.3 or 4.4, as applicable, the principal regulator for the application is the securities regulatory authority or regulator in the specified jurisdiction
  - (a) in which the person or company is seeking the exemption, and
  - (b) with which
    - (i) in the case of an application for an exemption from a provision related to insider reporting, the reporting issuer has the most significant connection,
    - (ii) in the case of an application for an exemption from a provision related to take-over bids, the issuer whose securities are subject to the take-over bid has the most significant connection, or
    - (iii) in any other case, the person or company, or in the case of an investment fund, the investment fund manager, has the most significant connection.
- (2) If at any one time a person or company is seeking more than one exemption and not all of the exemptions are needed in the jurisdiction of the principal regulator, as determined under section 4.2, 4.3 or 4.4 or subsection (1), as applicable, the person or company may make the application to the securities regulatory authority or regulator in the specified jurisdiction
  - (a) in which the person or company is seeking all of the exemptions, and
  - (b) with which



- (i) in the case of an application for an exemption from a provision related to insider reporting, the reporting issuer has the most significant connection,
  - (ii) in the case of an application for exemption from a provision related to take-over bids, the issuer whose securities are subject to the take-over bid has the most significant connection, or
  - (iii) in any other case, the person or company, or in the case of an investment fund, the investment fund manager, has the most significant connection.
- (3) If a person makes an application under subsection (2), the securities regulatory authority or regulator under that subsection is the principal regulator for the application.

#### **4.6 Discretionary change of principal regulator for discretionary exemption applications**

If a person or company receives written notice from a securities regulatory authority or regulator that specifies a principal regulator for the person or company's application, the securities regulatory authority or regulator specified in the notice is the principal regulator for the application.

#### **4.7 Passport application of discretionary exemptions**

- (1) If an application is made in the principal jurisdiction for an exemption from a provision of securities legislation listed in Appendix D, the equivalent provision of the local jurisdiction does not apply if
- (a) the local jurisdiction is not the principal jurisdiction for the application,
  - (b) the principal regulator for the application granted the exemption,
  - (c) the person or company that made the application gives notice to the securities regulatory authority or regulator that this subsection is intended to be relied upon for the equivalent provision of the local jurisdiction, and
  - (d) the person or company relying on the exemption complies with any terms, conditions, restrictions or requirements imposed by the principal regulator as if they were imposed in the local jurisdiction.
- (2) For the purpose of paragraph (1) (c), the person or company may give the notice referred to in that paragraph by giving it to the principal regulator.

#### **4.8 Availability of passport for discretionary exemptions applied for before March 17, 2008**

- (1) If, before March 17, 2008, an application was made in a specified jurisdiction for an exemption from a provision of securities legislation listed in Appendix D, the equivalent provision of the local jurisdiction does not apply if

- (a) the local jurisdiction is not the specified jurisdiction,
  - (b) the securities regulatory authority or regulator in the specified jurisdiction granted the exemption whether the order was made before, on or after March 17, 2008,
  - (c) subject to subsection (3), the person or company that made the application gives notice to the securities regulatory authority or regulator that this subsection is intended to be relied upon for the equivalent provision of the local jurisdiction, and
  - (d) the person or company relying on the exemption complies with any terms, conditions, restrictions or requirements imposed by the securities regulatory authority or regulator in the specified jurisdiction as if they were imposed in the local jurisdiction.
- (2) For the purpose of paragraph (1) (c), the person or company may give the notice referred to in that paragraph by giving it to the securities regulatory authority or regulator that would be the principal regulator under Part 4 if an application were to be made under that Part at the time the notice is given.
- (3) Paragraph (1)(c) does not apply to a reporting issuer in respect of an exemption from a CD requirement, as defined in Multilateral Instrument 11-101 *Principal Regulator System*, if, before March 17, 2008,
- (a) the principal regulator, identified under that Instrument, granted the exemption, and
  - (b) the reporting issuer filed the notice of principal regulator under section 2.2 or 2.3 of that Instrument.

## **PART 5      EFFECTIVE DATE**

### **5.1      Effective date**

This Instrument comes into force on March 17, 2008.

**APPENDIX A**  
**Non-harmonized continuous disclosure provisions**

<b>Jurisdiction</b>	<b>Provisions</b>
British Columbia	sections 2 ( <i>Foreign financial statements and reports</i> ), and 3, other than subsection 3(3) ( <i>Preparation of financial statements</i> ) of the Securities Rules
Alberta	none
Saskatchewan	none
Manitoba	none
Québec	none
New Brunswick	none
Nova Scotia	none
Prince Edward Island	none
Newfoundland and Labrador	none
Yukon	none
Northwest Territories	none
Nunavut	none

## APPENDIX B

### Prospectus provisions

<b>Jurisdiction</b>	<b><i>Securities Act provisions</i></b>
British Columbia	sections 61(1) ( <i>Prospectus required</i> ) and 62 ( <i>Voluntary filing of prospectus</i> )
Alberta	section 110 ( <i>Filing prospectus</i> )
Saskatchewan	section 58 ( <i>Prospectus required</i> )
Manitoba	sections 37(1) ( <i>Prohibition as to trading</i> ) and 37(1.1) ( <i>Voluntary filing of non-offering prospectus</i> )
Ontario	section 53 ( <i>Prospectus required</i> )
Québec	sections 11 ( <i>Prospectus required</i> ), 12 ( <i>Distribution outside Québec</i> ), and 68 (para 2) ( <i>Voluntary filing of prospectus</i> )
New Brunswick	section 71 ( <i>Filing of preliminary prospectus and prospectus required and voluntary filing of prospectus</i> )
Nova Scotia	sections 58(1) ( <i>Prospectus required</i> ) and 58(2) ( <i>Prospectus to enable issuer to become a reporting issuer where no distribution is contemplated</i> )
Prince Edward Island	section 94 ( <i>Prospectus required</i> )
Newfoundland and Labrador	sections 54.(1) ( <i>Prospectus required</i> ) and 54.(2) ( <i>Prospectus to enable issuer to become a reporting issuer where no distribution is contemplated</i> )
Yukon	section 94 ( <i>Prospectus required</i> )
Northwest Territories	section 27(2) ( <i>Prohibition</i> )
Nunavut	section 27(2) ( <i>Prohibition</i> )

**APPENDIX C**  
**Non-harmonized prospectus provisions**

<b>Jurisdiction</b>	<b>Provisions</b>
British Columbia	sections 2 ( <i>Foreign financial statements and reports</i> ), and 3, other than subsection 3(3) ( <i>Preparation of financial statements</i> ) of the Securities Rules
Alberta	none
Saskatchewan	none
Manitoba	none
Québec	section 25 ( <i>Distribution made by the issuer itself</i> ) of Securities Regulation
New Brunswick	none
Nova Scotia	none
Prince Edward Island	none
Newfoundland and Labrador	none
Yukon	none
Northwest Territories	none
Nunavut	none

## APPENDIX D

### Equivalent provisions

All references are to provisions of the *Securities Act* of the relevant jurisdiction unless otherwise noted. All references to ‘NI’ are to ‘National Instruments’. All references to ‘MI’ are to ‘Multilateral Instruments’.

Provision	British Columbia	Alberta	Saskatchewan	Manitoba	Québec	Nova Scotia	New Brunswick	Prince Edward Island	Newfoundland and Labrador	Yukon	Northwest Territories	Nunavut	Ontario	
SEDAR	NI 13-101													
Marketplace operation	NI 21-101 (only Parts 6, 7 – 11, as they apply to an ATS, and 13)													
Trading rules	NI 23-101 (only Parts 4 and 8 – 11)													
Institutional trade matching and settlement	NI 24-101										n/a		NI 24-101	
National registration database (NRD)	NI 31-102													
Underwriting conflicts	NI 33-105													
Registrant information	NI 33-109													
Prospectus disclosure requirements	NI 41-101 (except as noted below)													
Certificate of issuer	s.5.3(1) of NI 41-101												s.58	
Certificate of corporate issuer	s.5.4(1) of NI 41-101												s.58	



Provision	British Columbia	Alberta	Saskatchewan	Manitoba	Québec	Nova Scotia	New Brunswick	Prince Edward Island	Newfoundland and Labrador	Yukon	Northwest Territories	Nunavut	Ontario
Distribution of preliminary prospectus and distribution list	s.16.1 of NI 41-101												ss.66 and 67
Statement of rights	s.18.1 of NI 41-101												s.60
Disclosure standards for mineral projects	NI 43-101												
Short form prospectus distribution requirements	NI 44-101												
Shelf prospectus requirements	NI 44-102												
Post receipt pricing	NI 44-103												
Rights offering requirements	NI 45-101												
Resale of securities	NI 45-102												
Standards of disclosure for oil and gas activities	NI 51-101										n/a		NI 51-101
Continuous disclosure obligations	NI 51-102 (except as noted below)										n/a		NI 51-102 (except as noted below)



Provision	British Columbia	Alberta	Saskatchewan	Manitoba	Québec	Nova Scotia	New Brunswick	Prince Edward Island	Newfoundland and Labrador	Yukon	Northwest Territories	Nunavut	Ontario
Publication of material change	s. 7.1 of NI 51-102										n/a		s.75 of <i>Securities Act</i> and s.3(1.1) of Regulation 1015 (General)
Accounting principles, auditing standards and reporting currency requirements	NI 52-107												
Auditor oversight	NI 52-108												
Certification of disclosure in annual and interim filings	NI 52-109												
Audit committees	NI 52-110												
Communication with beneficial owners	NI 54-101										n/a		NI 54-101
System for electronic disclosure by insiders (SEDI)	NI 55-102										n/a		NI 55-102

Provision	British Columbia	Alberta	Saskatchewan	Manitoba	Québec	Nova Scotia	New Brunswick	Prince Edward Island	Newfoundland and Labrador	Yukon	Northwest Territories	Nunavut	Ontario
Insider reporting for certain derivative transactions (EM) - Reporting requirement	ss. 87(2), (5) and (6)	s. 2.1 of MI 55-103									n/a		s.2.1 of MI 55-103
EM – Existing agreements which continue in force	s.87.1	s.2.3 of MI 55-103									n/a		s.2.3 of MI 55-103
EM – Existing agreements entered into prior to becoming insider	s.87(2) and (6)	s.2.4 of MI 55-103									n/a		s.2.4 of MI 55-103
EM – Form and timing of report	s. 87(2), (5) and (6) of <i>Securities Act</i> and s. 155.1(1), (2) and (3) of Securities Rules	s.3.1 of MI 55-103									n/a		s.3.1 of MI 55-103

Provision	British Columbia	Alberta	Saskatchewan	Manitoba	Québec	Nova Scotia	New Brunswick	Prince Edward Island	Newfoundland and Labrador	Yukon	Northwest Territories	Nunavut	Ontario
EM – Form and timing of report for existing agreements	s. 87.1 of <i>Securities Act</i> and s. 155.1(4) of Securities Rules	s.3.2 of MI 55-103									n/a		s.3.2 of MI 55-103
EM – Form and timing of report for existing agreements entered into prior to becoming insider	s. 87 (2) and (6) of <i>Securities Act</i> and s. 155.1(1) and (3) of Securities Rules	s.3.3 of MI 55-103									n/a		s.3.3 of MI 55-103
Disclosure of corporate governance practices	NI 58-101										n/a		NI 58-101
Protection of minority security holders in special transactions	n/a				MI 61-101		n/a					MI 61-101	
Early warning reports and other take-over bid and insider reporting requirements	NI 62-103										n/a		NI 62-103



Provision	British Columbia	Alberta	Saskatchewan	Manitoba	Québec	Nova Scotia	New Brunswick	Prince Edward Island	Newfoundland and Labrador	Yukon	Northwest Territories	Nunavut	Ontario
TOB/IB – Duty to make bid to all security holders	s.2.8 of MI 62-104												s.94
TOB/IB – Commencement of bid	s.2.9 of MI 62-104												s.94.1(1) and (2)
TOB/IB – Offeror’s circular	s.2.10 of MI 62-104												s.94.2(1) - (4) of <i>Securities Act</i> and s.3.1 of OSC Rule 62-504
TOB/IB – Change in information	s.2.11(1) of MI 62-104												s.94.3(1)
TOB/IB – Notice of change	s.2.11(4) of MI 62-104												s.94.3(4) of <i>Securities Act</i> and s.3.4 of OSC Rule 62-504
TOB/IB – Variation of terms	s.2.12(1) of MI 62-104												s.94.4(1)
TOB/IB – Notice of variation	s.2.12(2) of MI 62-104												s.94.4(2) of <i>Securities Act</i> and s.3.4 of OSC Rule 62-504





Provision	British Columbia	Alberta	Saskatchewan	Manitoba	Québec	Nova Scotia	New Brunswick	Prince Edward Island	Newfoundland and Labrador	Yukon	Northwest Territories	Nunavut	Ontario
TOB/IB – Form of director’s or officer’s circular	s.2.20(3) of MI 62-104												s.96(3) of <i>Securities Act</i> and s.3.3 of OSC Rule 62-504
TOB/IB – Send director’s or officer’s circular or notice of change to securityholders	s.2.20(5) of MI 62-104												s. 96(5)
TOB/IB – File and send to offeror director’s or officer’s circular or notice of change	s.2.20(6) of MI 62-104												s. 96(6)
TOB/IB – Form of notice of change for director’s or officer’s circular	s.2.20(7) of MI 62-104												s.96(7) of <i>Securities Act</i> and s.3.4 of OSC Rule 62-504





Provision	British Columbia	Alberta	Saskatchewan	Manitoba	Québec	Nova Scotia	New Brunswick	Prince Edward Island	Newfoundland and Labrador	Yukon	Northwest Territories	Nunavut	Ontario
TOB/IB – Minimum deposit period	s.2.28 of MI 62-104												s.98(1)
TOB/IB – Prohibition on take up	s.2.29 of MI 62-104												s.98(2)
TOB/IB – Obligation to take up and pay for deposited securities	s.2.32 of MI 62-104												s.98.3
TOB/IB – Return of deposited securities	s.2.33 of MI 62-104												s.98.5
TOB/IB – News release on expiry of bid	s.2.34 of MI 62-104												s.98.6
TOB/IB – Language of bid documents	s.3.1 of MI 62-104												n/a
TOB/IB – Filing of documents by offeror	s.3.2(1) of MI 62-104												s.98.7 of <i>Securities Act</i> and s.5.1(1) of OSC Rule 62- 504



Provision	British Columbia	Alberta	Saskatchewan	Manitoba	Québec	Nova Scotia	New Brunswick	Prince Edward Island	Newfoundland and Labrador	Yukon	Northwest Territories	Nunavut	Ontario
TOB/IB – Obligation to provide security holder list	s.3.4(1) of MI 62-104												s.99.1(1)
TOB/IB – Application of <i>Canada Business Corporations Act</i>	s.3.4(2) of MI 62-104												s.99.1(2)
TOB/IB – Early Warning	s.5.2 of MI 62-104												s.102.1(1) – (4) of <i>Securities Act</i> and s.7.1 of OSC Rule 62-504
TOB/IB – Acquisitions during bid	s.5.3 of MI 62-104												s.102.2(1) and (2) of <i>Securities Act</i> and s.7.2(1) of OSC Rule 62-504
TOB/IB – Copies of news release and report	s.5.5 of MI 62-104												s.7.2(3) of OSC Rule 62-504



Provision	British Columbia	Alberta	Saskatchewan	Manitoba	Québec	Nova Scotia	New Brunswick	Prince Edward Island	Newfoundland and Labrador	Yukon	Northwest Territories	Nunavut	Ontario
<b>Registration</b>													
Dealer registration requirement	s.34(1)(a)	s. 75(1)(a)	s. 27(a)	s.6(1)	ss.148 & 149	s.31(1)(a)	s.45(a)	s. 86(1)(a)	s.26(1)(a)	s. 86(1)(a)	s. 4	s. 4	s. 25(1)(a)
Underwriter registration requirement	s.34(1)(b)	s. 75(1)(a)	n/a	s.6(1)	s.148	s.31(1)(b)	n/a	s. 86(2)	s.26(1)(b)	s.86(2)	n/a	n/a	s. 25(1)(a)
Adviser registration requirement	s.34(1)(c)	s. 75(1)(b)	s.27(c)	s.6(7)	ss.148 & 149	s.31(1)(c)	s.45(b)	s. 86(1)(b)	s.26(1)(c)	s.86(1)(b)	s. 4	s. 4	s. 25(1)(c)
<b>Trading in Securities Generally</b>													
Registered dealer acting as principal	s.51	s.94	s.45	s.70	s.163 of <i>Securities Act</i> and s.234.3 of <i>Securities Regulation</i>	s.45	s.59	n/a	s.40	n/a	n/a	n/a	s.39
Disclosure of investor relations activities	s.52	n/a	n/a	n/a	n/a	n/a	s.62	n/a	n/a	n/a	n/a	n/a	n/a
Use of name of another registrant	s.53	s.99	s.49	s.73	n/a	s.49	s.63	n/a	s.44	n/a	n/a	n/a	s.43

Provision	British Columbia	Alberta	Saskatchewan	Manitoba	Québec	Nova Scotia	New Brunswick	Prince Edward Island	Newfoundland and Labrador	Yukon	Northwest Territories	Nunavut	Ontario
Trading in Exchange Contracts													
Trading exchange contracts on an exchange in jurisdiction	s.58	s.106 & 107	s.40	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Trading exchange contracts on an exchange outside jurisdiction	s.59	s.108 & 109	s.41	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Prospectus													
Prospectus requirement	s.61	s.110	s.58	s.37	ss.11 and 12	s.58	s.71(1)	s. 94	s.54	s.94	s. 27	s. 27	s.53
Contents of prospectus (full, true & plain disclosure)	s.63	s.113	s.61	s.41	ss.13 and 20	s.61	s.74	s. 99	s.57	s.99	n/a	n/a	s.56
Waiting period communications	s.78	s.123	s.73	s.38	ss.21 & 22	s.70	s.82	s. 97	s.66	s.97	n/a	n/a	s.65(2)
Obligation to send prospectus	s.83	s.129	s.79	s.64	ss.29, 30, 31 and 32	s.76	s.88	s. 101(1)	s.72	s.101 (1)	s. 28	s. 28	s.71(1)

Provision	British Columbia	Alberta	Saskatchewan	Manitoba	Québec	Nova Scotia	New Brunswick	Prince Edward Island	Newfoundland and Labrador	Yukon	Northwest Territories	Nunavut	Ontario
<b>Requirements when using prospectus exemptions</b>													
Filing disclosure documents in connection with exemption	n/a	s.127.2 of ASC Rules	s.80.1	n/a	s.37.2 of Securities Regulation	n/a	s.2.3 of Local Rule 45-802	n/a	n/a	n/a	n/a	n/a	s. 6.4 of OSC Rule 45-501
Filing report of exempt distribution	s.139 of Securities Rules and ss. 6.1 and 6.3 of NI 45-106	s.129.1 of ASC Rules and ss. 6.1 and 6.3 of NI 45-106	ss. 6.1 and 6.3 of NI 45-106	s.7 of Regulation and ss. 6.1 and 6.3 of NI 45-106	ss. 6.1 and 6.3 of NI 45-106	ss. 6.1 and 6.3 of NI 45-106	ss. 6.1 and 6.3 of NI 45-106	ss. 6.1 and 6.3 of NI 45-106	ss. 6.1 and 6.3 of NI 45-106	ss. 6.1 and 6.3 of NI 45-106	n/a	n/a	s. 7.1 of OSC Rule 45-501 and ss. 6.1 and 6.3 of NI 45-106
<b>Continuous Disclosure</b>													
Voting if proxies provided	s.118	s.157	s.96	s.105	n/a	s.93	ss.102 and 103(2)	n/a	s.88	n/a	n/a	n/a	s 87
Shares in name of registrant not to be voted	s. 182 of Securities Rules	s.104	s.55	s.79	s.164	s.55	s.103(3) – (7)	s.163	s.50	s.163	n/a	n/a	s.49



Provision	British Columbia	Alberta	Saskatchewan	Manitoba	Québec	Nova Scotia	New Brunswick	Prince Edward Island	Newfoundland and Labrador	Yukon	Northwest Territories	Nunavut	Ontario
<b>Insider Reporting</b>													
Insider reports – filing upon becoming an insider of a reporting issuer	s.87(2) other than as it applies to a related financial instrument	s.182(1)	s.116(1)	s.109	s.96	ss.113(1) of <i>Securities Act</i> and 172 of General Securities Rules	s.135(1)	s.1(1) of Local Rule 55-501	s.108(1)	n/a	n/a	n/a	s.107(1)
Insider reports – filing upon acquisition or change in securities	s.87 (5) other than as it applies to a related financial instrument	s.182(2)	s.116(2)	s.109	s.97	s.113(2)	s.135(2)	s.1(2) of Local Rule 55-501	s.108(2)	n/a			s.107(2)
Insider reports – filing upon being deemed an insider	s.87 (6) other than as it applies to a related financial instrument	s.182(3)	s.116(3)	s.109	s.98	s.113(4)	s.135(3)	s.1(3) of Local Rule 55-501	s.108(3)	n/a	n/a	n/a	s.107(3)
Time periods for filing insider reports	s.155.1 of Securities Rules other than as it applies to a related financial instrument	s.190 of ASC Rules	s.165(1) of Regulations	s.109	ss.171, 171.1, 172 & 174 of Securities Regulation	s.113	s.5 of Local Rule 11-502	s.1 of Local Rule 55-501	s.108	n/a	n/a	n/a	s.107

Provision	British Columbia	Alberta	Saskatchewan	Manitoba	Québec	Nova Scotia	New Brunswick	Prince Edward Island	Newfoundland and Labrador	Yukon	Northwest Territories	Nunavut	Ontario
Transfer reports	n/a	s.182(2)	s.117	n/a	s.102	s.116	s.136	n/a	s.109	n/a			s.108 of <i>Securities Act</i> and s. 167 of Regulation 1015 (General)
Nominee reports	n/a	s.183	s.118	n/a	s.103	s.117	n/a		s.110	n/a			s.109 of <i>Securities Act</i> and s.168 of Regulation 1015 (General)
Take-Over Bids and Issuer Bids													
Directors must make recommendation on bid	s.99(1)(a)	s.160	s.100	s.90	ss.113 & 114	s.105(2)	s.124	s. 108	s.92	s.108	n/a	n/a	ss.95 and 96
Investment Funds – Self Dealing													
Investments of mutual funds	s.121	s.185	s.120	n/a	s.236 of Securities Regulation	s.119	s.137	n/a	n/a	n/a	n/a	n/a	s.111
Indirect investment	s.122	s.186	s.121	n/a	n/a	s.120	s.138	n/a	n/a	n/a	n/a	n/a	s.112
Fees on investment for mutual fund	s.124	s.189	s.124	n/a	n/a	s.123	s.141	n/a	n/a	n/a	n/a	n/a	s.115

Provision	British Columbia	Alberta	Saskatchewan	Manitoba	Québec	Nova Scotia	New Brunswick	Prince Edward Island	Newfoundland and Labrador	Yukon	Northwest Territories	Nunavut	Ontario
Report of mutual fund manager	s.126	s.191	s.126	n/a	n/a	s.125	s.143	n/a	n/a	n/a	n/a	n/a	s.117
Restrictions on transactions with responsible persons	s.127	s.192	s.127	n/a	s.236 of Securities Regulation	s.126	s.144	n/a	n/a	n/a	n/a	n/a	s.118
<b>General</b>													
Confidentiality	s.169	s.221	s.152	s.149(q)	s.296	s.148	s.198	s. 26	s.140	s.25	s. 44	s. 44	s.140
Accounting principles, auditing standards and reporting requirements (other than in NI 52-107)	s. 3(3) of Securities Rules	n/a	n/a	n/a	ss.116 and 121 of Securities Regulation	s.3(4) of Reg.	n/a				n/a	n/a	s. 2(1) of Regulation 1015 (General)

**Companion Policy 11-102CP**  
*Passport System*

**PART 1 GENERAL**

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- 1.2 Additional definitions
- 1.3 Purpose
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**PART 2 CONTINUOUS DISCLOSURE**

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**PART 3 PROSPECTUS**

- 3.1 Principal regulator for prospectus
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**PART 4 DISCRETIONARY EXEMPTIONS**

- 4.1 Application
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**PART 5 EFFECTIVE DATE**

- 5.1 Effective date

**Appendix A**

- CD requirements under MI 11-101

**Companion Policy 11-102CP**  
***Passport System***

**PART 1      GENERAL**

**1.1    Definitions**

In this policy,

“MI 11-101” means Multilateral Instrument 11-101 *Principal Regulator System*;

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

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

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

**1.2    Additional definitions**

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

**1.3    Purpose**

(1)    **General** – Multilateral Instrument 11-102 *Passport System* (the Instrument) and this policy implement part of the passport system contemplated by the Provincial/Territorial Memorandum of Understanding Regarding Securities Regulation.

The Instrument gives each market participant a single window of access to the capital markets in multiple jurisdictions. It enables a person or company to deal only with its principal regulator to

- get deemed receipts in other jurisdictions (except Ontario) for a preliminary prospectus and prospectus, and
- obtain automatic exemptions in other jurisdictions (except Ontario) equivalent to most types of discretionary exemptions granted by the principal regulator.

(2)    **Ontario** – The Ontario Securities Commission (OSC) has not adopted the Instrument, but the Instrument provides that the OSC can be a principal regulator for purposes of a prospectus filing under Part 3 or a discretionary exemption application under Part 4. Consequently, when the OSC issues a receipt for a prospectus to an issuer

whose principal jurisdiction is Ontario, a deemed receipt is automatically issued in each passport jurisdiction where the market participant filed the prospectus under the Instrument. Similarly, a market participant whose principal jurisdiction is Ontario obtains an automatic exemption from the equivalent provision of securities legislation of each passport jurisdiction for which the person who makes the application gives the notice described in section 4.7(1)(c) of the Instrument if the OSC grants the discretionary exemption.

(3) **Process** – NP 11-202 and NP 11-203 set out the processes for a market participant in any jurisdiction to obtain a deemed prospectus receipt or an automatic exemption in a passport jurisdiction. These policies also set out processes for a market participant in a passport jurisdiction to get a prospectus receipt or a discretionary exemption from the OSC.

NP 11-203 also sets out the process for seeking exemptive relief in multiple jurisdictions that falls outside the scope of the Instrument. NP 11-203 applies to a broad range of exemptive relief applications, not just to discretionary exemption applications from the provisions listed in Appendix D of the Instrument. For example, NP 11-203 applies to an application to be designated a reporting issuer, mutual fund, non-redeemable investment fund or insider. It also applies to an application for a discretionary exemption from a provision not listed in Appendix D of the Instrument.

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

(4) **Interpretation of the Instrument** – As with all national or multilateral instruments, you should read the Instrument from the perspective of the local jurisdiction in which you want to obtain a deemed prospectus receipt or an automatic exemption. For example, if the Instrument does not specify where you file a document, it means that you must file it in the local jurisdiction.

To get a deemed receipt for a prospectus in the local jurisdiction, a filer must file the prospectus in the jurisdiction through SEDAR. Similarly, to get an automatic exemption based on a discretionary exemption granted in the principal jurisdiction, a filer must give notice under section 4.7(1)(c) of the Instrument to the securities regulatory authority or regulator in the local jurisdiction. Under section 4.7(2) of the Instrument, a filer can satisfy the latter requirement by giving notice to the principal regulator instead of the securities regulatory authority or regulator in the local jurisdiction.

(5) **Operation of law** – The provisions of the Instrument on prospectus receipt and discretionary exemptions produce automatic legal outcomes in the local jurisdiction that result from a decision made by the principal regulator. The effect is to make the law of the local jurisdiction apply to a market participant as if the non-principal regulator had made the same decision as the principal regulator.

(6) **Harmonized laws and their interpretation** – Most of the continuous disclosure and prospectus requirements are in rules or regulations, commonly referred to as

‘national instruments’. The securities regulatory authorities and regulators intend to interpret and apply these requirements in a consistent way, and have put in place practices and procedures so this will be the case.

(7) **Exemptions from non-harmonized requirements** – The Instrument contains exemptions from most non-harmonized continuous disclosure requirements and prospectus requirements that exist in a local jurisdiction. These exemptions apply in all jurisdictions, including the principal jurisdiction, for issuers that are reporting issuers, or file a prospectus, in multiple jurisdictions.

(8) **Discretionary exemptions** – The Instrument provides an automatic exemption from an equivalent provision of securities legislation in the local jurisdiction if the principal regulator grants the discretionary exemption and the filer gives the required notice.

#### **1.4 Language of documents – Québec**

The Instrument does not relieve issuers filing in Québec from the linguistic obligations prescribed by Québec law, including the specific obligations in the *Québec Securities Act* (e.g. section 40.1). For example, where a prospectus is filed in several jurisdictions including Québec, the prospectus must be in French or in French and English.

## **PART 2 CONTINUOUS DISCLOSURE**

### **2.1 Exemption from non-harmonized continuous disclosure provisions**

Section 2.1 of the Instrument exempts a reporting issuer from the non-harmonized continuous disclosure provisions listed in Appendix A of the Instrument opposite the name of the local jurisdiction if the issuer is reporting in other jurisdictions. Consequently, the provisions that apply to the reporting issuer in the local jurisdiction are the harmonized continuous disclosure provisions and any non-harmonized continuous disclosure provisions from which the securities regulatory authority or regulator in the local jurisdiction has not provided an exemption under section 2.1 of the Instrument.

An issuer must continue to pay the fees related to the filing of any continuous disclosure document in each jurisdiction where it is a reporting issuer.

Although a reporting issuer does not have to identify a principal regulator to benefit from the exemption in section 2.1 of the Instrument, the securities regulatory authorities or regulators will continue to assign each reporting issuer a principal regulator for continuous disclosure review purposes under CSA Notice 51-312 *Harmonized Continuous Disclosure Review Program*. The principal regulator will deal with the reporting issuer on continuous disclosure related matters and would generally take action in the event of non-compliance.

## **PART 3      PROSPECTUS**

### **3.1    Principal regulator for prospectus**

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

### **3.2    Discretionary change in principal regulator for prospectus**

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

### **3.3    Deemed issuance of receipt**

Section 3.3 of the Instrument deems a receipt to be issued for a preliminary prospectus or prospectus in the local jurisdiction if certain conditions are met. A deemed receipt in the local jurisdiction has the same legal effect as a receipt issued in the principal jurisdiction.

To rely on section 3.3 of the Instrument in the local jurisdiction, a filer must file on SEDAR the preliminary prospectus or the pro forma prospectus, and the prospectus, in both the local jurisdiction and the principal jurisdiction. When filing, the filer must also indicate that it is filing the preliminary prospectus or pro forma prospectus under the Instrument. Under the law of the local jurisdiction, these filings trigger the obligation to file supporting documents (e.g., consents and material contracts).

To rely on section 3.3 of the Instrument in the local jurisdiction, the filer must also pay the fees required for the preliminary prospectus, pro forma prospectus or prospectus in the local jurisdiction. The effect of section 3.3 of the Instrument is that the law of the local jurisdiction, including the obligation to pay fees, applies to the filing of a preliminary prospectus, pro forma prospectus or prospectus in the jurisdiction. Section 3.4 of the Instrument does not exempt a filer from the obligation to pay fees in the local jurisdiction.

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



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 Instrument will no longer apply to the filing and the filer may deal separately with the local securities regulatory authority or regulator in any non-principal jurisdiction in which the prospectus was filed to determine if the local securities regulatory authority or regulator would issue a local receipt.

### **3.4 Exemption from non-harmonized prospectus provisions**

Section 3.4 of the Instrument provides an exemption from the non-harmonized prospectus provisions listed in Appendix C of the Instrument opposite the name of the local jurisdiction. The exemption is available if a person or company files a preliminary prospectus, pro forma prospectus or prospectus under a provision set out in Appendix B to the Instrument and under a national prospectus instrument in multiple jurisdictions, including its principal jurisdiction. Consequently, the provisions that apply in the local jurisdiction where a preliminary prospectus, pro forma prospectus or prospectus is filed are the harmonized prospectus provisions and any non-harmonized prospectus provisions from which the securities regulatory authority or regulator in the local jurisdiction has not provided an exemption under section 3.4 of the Instrument.

### **3.5 Transition for section 3.3**

Section 3.3 of the Instrument 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 Instrument removes the deemed receipt that would otherwise be available in the local jurisdiction under section 3.3 of the Instrument 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 Instrument 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 Instrument. This means there is a deemed receipt in the local jurisdiction for a prospectus amendment if the related preliminary prospectus or pro forma prospectus was filed before March 17, 2008 and the filer indicated on SEDAR that it filed the amendment under the Instrument at the time of filing the amendment.

The exemption from non-harmonized prospectus requirements in section 3.4 of the Instrument is available in the local jurisdiction for a prospectus filed on or after March 17, 2008 even though the related preliminary prospectus or pro forma prospectus was filed in the local jurisdiction before that date and there is no deemed receipt for the prospectus in the local jurisdiction.

## **PART 4      DISCRETIONARY EXEMPTIONS**

### **4.1      Application**

Part 4 of the Instrument applies to an application for discretionary exemption from a provision listed in Appendix D of the Instrument made in multiple jurisdictions. Part 4 does not apply to a discretionary exemption application from a provision not listed in Appendix D of the Instrument 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 Instrument, the principal regulator is the principal regulator identified under sections 4.1 to 4.5 of the Instrument. Under these sections, the principal regulator must be the securities regulatory authority or regulator in a specified jurisdiction. Section 4.1 of the Instrument specifies the following jurisdictions for purposes of Part 4: British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick and Nova Scotia.

Section 3.6 of NP 11-203 gives guidance on how to identify the principal regulator for a discretionary exemption application under Part 4 of the Instrument.

### **4.3      Discretionary change of principal regulator for discretionary exemption applications**

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

### **4.4      Passport application of discretionary exemptions**

Section 4.7(1) of the Instrument exempts a person or company from an equivalent provision of securities legislation in the local jurisdiction if the principal regulator for the application grants the discretionary exemption, the filer gives the notice required under paragraph (c) of that section and other conditions are met. The equivalent provisions from which an automatic exemption is available under section 4.7(1) of the Instrument are set out in Appendix D of the Instrument.

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

Under section 4.7(2) of the Instrument 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 Instrument is intended to be relied upon. If an exemption is required in a non-principal jurisdiction when the filer files the application, but the filer does not give the required notice for that jurisdiction until after the principal regulator grants the exemption, the securities regulatory authority or regulator of the non-principal jurisdiction will take appropriate action. This could include removing the exemption, in which case the filer may have an opportunity to be heard in that jurisdiction in appropriate circumstances.

Because, under the Instrument, a person or company 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.

NP 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 Instrument.

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

Under section 4.8(1) of the Instrument, 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 Instrument,
- 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 Instrument is a principal jurisdiction under MI 11-101. Therefore, under section 4.8(1) of the Instrument, an exemption from the equivalent provision is automatically available in the local jurisdiction if

- an application was made before March 17, 2008 in the principal jurisdiction, as defined in MI 11-101, for an exemption from a CD requirement, as defined in that Instrument, which is now listed in Appendix D of the Instrument,
- the securities regulatory authority or regulator in the principal jurisdiction granted the exemption before March 17, 2008, and
- the other conditions of section 4.8(1) of the Instrument are met, including giving notice.

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

The combined effect of sections 4.8(1) and 4.8(3) is to make the exemption from a CD requirement granted by the principal regulator under MI 11-101 automatically available in the local jurisdiction, even though the decision of the principal regulator under MI 11-101 does not refer to the local jurisdiction. To benefit from this, however, the reporting issuer must comply with the terms and conditions of the decision of the principal regulator under MI 11-101. Only exemptions granted from CD requirements that are now listed in Appendix D of the Instrument become available in the local jurisdiction in this way.

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

## **PART 5      EFFECTIVE DATE**

### **5.1    Effective date**

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

**Companion Policy 11-102CP**  
***Passport System***

**Appendix A**

**CD requirements under MI 11-101**

For ease of reference, this appendix reproduces the definition of CD requirements in MI 11-101 even though some references might no longer be relevant because sections were repealed after September 19, 2005 when MI 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 MI 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 MI 11-101

**Manitoba:**

*Securities Act:* sections 101(1), 102(1), 104, 106(3), 119, 120 (except as it relates to fees) and 121– 130  
*Securities Regulation:* sections 38 – 40 and 80 – 87

**Québec:**

*Securities Act:* sections 73 excluding the filing requirement of a statement of material change, 75 excluding the filing requirement, 76, 77 excluding the filing requirement, 78, 80 – 82.1, 83.1, 87, 105 excluding the filing requirement, 106 and 107 excluding the filing requirement  
*Securities Regulation:* sections 115.1 – 119, 119.4, 120 – 138 and 141 – 161  
*Regulations:* No. 14, No. 48, Q-11, Q-17 (Title IV) and 62 – 102

A document filed with or delivered to the Autorité des marchés financiers, delivered to securityholder in Québec or disseminated in Québec under section 3.2 of the

Instrument, is deemed, for the purposes of securities legislation in Québec, to be a document filed, delivered or disseminated under Chapter II of Title III or section 84 of the *Securities Act* (Québec).

**New Brunswick:**

*Securities Act:* sections 89(1) – (4), 90, 91, 100 and 101

**Nova Scotia:**

*Securities Act:* section 81, 83, 84 and 91

*General Securities Rules:* sections 9, 140(2), 140(3) and 141

**Newfoundland  
and Labrador:**

*Securities Act:* except as they relate to fees, sections 76, 78 – 80, 82, 86 and 87

*Securities Regulations:* sections 4 – 14 and 71 – 80

**Yukon:**

*Securities Act:* section 22(5) except as it relates to filing a new or amended prospectus

**All jurisdictions:**

- (a) National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, except as it relates to a prospectus,
- (b) National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*, except as it relates to a prospectus,
- (c) National Instrument 51-102 *Continuous Disclosure Obligations*,
- (d) National Instrument 52-107 *Acceptable Accounting Principles, Auditing Standards and Reporting Currency* as it applies to a document filed under National Instrument 51-102 *Continuous Disclosure Obligations*,
- (e) National Instrument 52-108 *Auditor Oversight*,
- (f) National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*,
- (g) National Instrument 52-110 *Audit Committees*, except in British Columbia
- (h) BC Instrument 52-509 *Audit Committees*, only in British Columbia

- (i) National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*,
- (j) National Instrument 58-101 *Disclosure of Corporate Governance Practices*,
- (k) section 8.5 of National Instrument 81-104 *Commodity Pools*, and
- (l) National Instrument 81-106 *Investment Fund Continuous Disclosure*.

**National Policy 11-202**  
***Process for Prospectus Reviews in Multiple Jurisdictions***

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11.1 Holidays

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12.1 Effective date – This policy comes into effect on March 17, 2008.

12.2 Prospectus filed before March 17, 2008 – The process set out in National Policy 43-201 Mutual Reliance Review System for Prospectuses will continue to apply to

**Annex A**

Examples of Pre-Filings and Waiver Applications Dealt With  
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**National Policy 11-202**  
***Process for Prospectus Reviews in Multiple Jurisdictions***

**PART 1 APPLICATION**

**1.1 Scope and application** – This policy describes procedures for the filing and review of a preliminary prospectus, prospectus and related materials in more than one Canadian jurisdiction.

**PART 2 DEFINITIONS**

**2.1 Definitions** – In this policy,

“CP 11-102” means Companion Policy 11-102 *CP Passport System* to MI 11-102;

“dual prospectus” means a prospectus described in section 3.3 of this policy;

“dual review” means the review under this policy of a dual prospectus;

“filer” means

(a) a person or company filing a prospectus, or

(b) an agent of a person or company referred to in paragraph (a);

“long form prospectus” includes a simplified prospectus and annual information form for a mutual fund;

“materials” mean the documents required under a national prospectus instrument;

“MI 11-102” means Multilateral Instrument 11-102 *Passport System*;

“NI 13-101” means National Instrument 13-101 *System for Electronic Document Analysis and Retrieval* (SEDAR);

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

“OSC” means the regulator in Ontario;

“passport jurisdiction” means the jurisdiction of a passport regulator;

“passport prospectus” means a prospectus described in section 3.2 of this policy;

“passport regulator” means a regulator that has adopted MI 11-102;

“pre-filing” means a consultation with the principal regulator for a prospectus filing, initiated before the filing of materials, regarding the interpretation of securities legislation or securities directions or their application to a particular offering or proposed offering;

“regulator” means a securities regulatory authority or regulator;

“shelf prospectus” means a prospectus filed under National Instrument 44-102 *Shelf Distributions*;

“short form prospectus” means a prospectus filed under National Instrument 44-101 *Short Form Prospectus Distributions*; and

“waiver application” means a request for an exemption from securities legislation, if the exemption would be evidenced by the issuance of a receipt under this policy.

**2.2 Further definitions** – Terms used in this policy and that are defined in MI 11-102, NI 13-101, or National Instrument 14-101 *Definitions* have the same meanings as in those instruments.

## **PART 3 OVERVIEW AND PRINCIPAL REGULATOR**

**3.1 Overview** – This policy deals with prospectuses filed in multiple jurisdictions in the following circumstances:

- (a) The principal regulator is passport regulator and the prospectus is not filed in Ontario. This is a “passport prospectus.”
- (b) The principal regulator is the OSC and the prospectus is also filed in a passport jurisdiction. This is also a “passport prospectus.”
- (c) The principal regulator is a passport regulator and the prospectus is also filed in Ontario. This is a “dual prospectus.”

### **3.2 Passport Prospectus**

(1) If the principal regulator is a passport regulator and the prospectus is not filed in Ontario, only the principal regulator will review the prospectus. Under MI 11-102, the issuance of a receipt by the principal regulator will trigger a deemed receipt in each other passport jurisdiction where the prospectus is filed.

(2) If the principal regulator is the OSC and the prospectus is also filed in a passport jurisdiction, only the OSC will review the prospectus. Under MI 11-102, the issuance of the OSC receipt will trigger a deemed receipt in each passport jurisdiction where the prospectus is filed.

**3.3 Dual Prospectus** – If the principal regulator is a passport regulator and the prospectus is also filed in Ontario, the principal regulator will review the prospectus, and the OSC, as a non-principal regulator, will coordinate its review with the principal regulator. The receipt of the principal regulator will trigger a deemed receipt in each other passport jurisdiction where the prospectus is filed and will evidence the receipt of the OSC, if the OSC has made the same decision as the principal regulator.

### **3.4 Principal Regulator**

(1) For purposes of a prospectus filing under this policy, the principal regulator is identified in the same manner as in section 3.1 of MI 11-102. This section summarizes section 3.1 of MI 11-102 and provides guidance for identifying the principal regulator for a prospectus filing. The same guidance also applies to a related pre-filing.

(2) For purposes of a waiver application related to a prospectus filing under this policy, the principal regulator is identified in the same manner as in sections 4.1 to 4.5 of MI 11-102. A filer should refer to section 3.6 of NP 11-203 for guidance on how to identify the principal regulator for a waiver application related to a prospectus filing under this policy.

(3) In most circumstances, the principal regulator for a waiver application and the principal regulator for the related prospectus filing will be the same. If the principal regulator is not the same, the regulators may initiate a discretionary change of principal regulator under section 3.5 of this policy. Alternatively, the filer may apply for a discretionary change of principal regulator under that section.

(4) The principal regulator for a prospectus filing under this policy is the regulator of the jurisdiction in which

- (a) the issuer's head office is located, if the issuer is not an investment fund, or
- (b) the investment fund manager's head office is located, if the issuer is an investment fund.

(5) If the regulator identified under subsection (4) is not in a specified jurisdiction, the principal regulator is the regulator in the specified jurisdiction with which the issuer, or in the case of an investment fund, the investment fund manager, has the most significant connection.

(6) For purposes of this section, a specified jurisdiction is one of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick or Nova Scotia.

(7) The factors an issuer, or in the case of an investment fund, the investment fund manager, should consider in identifying the principal regulator based on its most significant connection are, in order of influential weight:

- (a) location of management;

- (b) location of assets and operations;
- (c) location of trading market or quotation system in Canada;
- (d) location of securities holders, if the securities are not traded or quoted on a trading market or quotation system in Canada;
- (e) location of underwriter;
- (f) location of legal counsel; and
- (g) location of transfer agent.

The connecting factors in (e) to (g) are not relevant for a Canadian issuer, or Canadian investment fund manager, because it will have a significant connection to a specified jurisdiction based on the connecting factors in (a) to (d). Regulators will generally object to a Canadian issuer, or Canadian investment fund manager, identifying a principal regulator based on the factors in (e) to (g).

(8) A filer should refer to section 3.6 of NP 11-203 for additional guidance if the filer

- (a) is seeking a waiver application exemption but does not seek it from the regulator that would normally be the principal regulator for the waiver application, or
- (b) is seeking more than one exemption and does not seek all of the exemptions from the regulator that would normally be the principal regulator for the waiver application.

### **3.5 Discretionary change in principal regulator**

(1) If the principal regulator identified under section 3.4 of this policy thinks that it is not the appropriate principal regulator, it will first consult with the filer and the appropriate regulator and then give the filer a written notice of the new principal regulator and the reasons for the change. The regulator specified in the notice will be the principal regulator as of the later of the date the filer receives the notice and the effective date specified in the notice, if any.

(2) A filer may request a discretionary change of principal regulator for a prospectus filing if the filer believes that the principal regulator identified under section 3.4 of this policy is not the appropriate principal regulator.

(3) When a filer requests a discretionary change in principal regulator under subsection (2), the principal regulator will consult with the appropriate regulator.

(4) Regulators do not anticipate changing a principal regulator except in exceptional circumstances and will give a written notice when approving a request.

(5) A filer that requests a discretionary change of principal regulator under subsection (2) should do so at least 30 days before filing the related materials. If the filer submits the request at least 30 days before filing the related materials, the regulators will use their best efforts to resolve the request within 30 days of receiving it. If the request is not resolved when the filer files the related materials, the principal regulator determined under section 3.4 of this policy will be the principal regulator for the prospectus filing. If the regulators subsequently agree to the change, they will give the filer notice and the change of principal regulator will apply to the filer's future prospectus filings.

(6) A filer should submit a written request for a change in principal regulator to its current principal regulator and include the reasons for requesting the change.

(7) The guidance in this section also applies to a pre-filing.

(8) A filer should refer to section 3.7 of NP 11-203 for guidance on a discretionary change of principal regulator for a waiver application related to a prospectus filing under this policy.

## **PART 4 FILING MATERIALS**

**4.1 Election to file under this policy, identification of principal regulator and payment of fees** – The filer should indicate in its electronic filing on SEDAR the principal regulator for the prospectus offering and that it is filing materials under this policy. If the principal regulator is not in the jurisdiction of the issuer's head office (or, in the case of an investment fund, the jurisdiction of the investment fund manager's head office), the filer should also indicate the connecting factor used to identify the principal regulator. If the filer files a prospectus in paper format under NI 13-101, the filer should include this information in the cover letter for the prospectus. In all cases, the filer should pay the required fees in each jurisdiction in which it files the prospectus.

**4.2 Filing for distribution to purchasers only in jurisdictions outside principal jurisdiction** – If a filer proposes to distribute its securities by prospectus only to purchasers in jurisdictions other than the jurisdiction of its principal regulator, the filer should file the materials with, and pay the required fees to, the principal regulator. The principal regulator will review the materials of the filer.

**4.3 Blacklined document** – A filer should file on SEDAR, as much in advance of filing final materials as possible, a draft final prospectus (the French language version in Québec), blacklined against the preliminary prospectus to show all proposed changes. A filer should also file with the final materials a copy of the final prospectus blacklined against the preliminary prospectus to show all changes made.

**4.4 Seasoned Prospectuses** – If a pro forma or preliminary prospectus is filed within two years of the date that a final receipt was issued for a prospectus of the same issuer, a filer (other than a filer that files under National Instrument 81-101 *Mutual Fund Prospectus Disclosure*) may identify the pro forma or preliminary prospectus as a seasoned prospectus. When filing a seasoned prospectus, the filer should also file

- (a) a copy of the seasoned prospectus blacklined against the preceding prospectus of the filer to show all changes made, and
- (b) a certificate certifying that the blacklined prospectus indicates all differences between the content of the seasoned prospectus and that of the filer's previous prospectus.

## **PART 5 REVIEW OF MATERIALS**

**5.1 General** – The principal regulator will review the materials in accordance with its securities legislation and securities directions and based on its review procedures, analysis and precedents.

**5.2 Passport prospectus** – The filer will deal only with the principal regulator, who will provide comments to, and receive responses from, the filer on the materials.

### **5.3 Dual prospectus**

(1) The OSC will also review the materials and will advise the principal regulator of any concerns relating to the materials that, if left unresolved, would cause the OSC to opt out of the dual review.

(2) The filer will deal only with the principal regulator, who will provide comments to, and receive responses from, the filer and will issue the prospectus receipt if the relevant conditions are satisfied. However, in exceptional circumstances, the principal regulator may refer the filer to the OSC.

### **5.4 Review period for preliminary long form prospectuses and pro forma prospectuses**

(1) The principal regulator will use its best efforts to review the materials relating to a preliminary long form prospectus or pro forma prospectus and provide a first comment letter within 10 working days of the date of the preliminary receipt or of receiving the pro forma prospectus and related materials in acceptable form. The principal regulator may provide further comments as a result of the filer's responses or the continuing review of the materials.

(2) In the case of a dual prospectus, the OSC will, within five working days of the date of the preliminary receipt or of receiving the pro forma prospectus and related materials in acceptable form, use its best efforts to:

- (a) advise the principal regulator of any concerns with the materials that, if left unresolved, would cause the OSC to opt out of the dual review; or
- (b) indicate on SEDAR that it is clear to receive final materials.

### **5.5 Review period for preliminary short form prospectuses and preliminary shelf prospectuses**

(1) The principal regulator will use its best efforts to review the materials relating to a preliminary short form prospectus or preliminary shelf prospectus and provide a first comment letter within three working days of the date of the preliminary receipt. The principal regulator may provide further comments as a result of the filer's responses or the continuing review of the materials.

(2) In the case of a dual prospectus, the OSC will, within two working days of the date of the preliminary receipt, use its best efforts to:

- (a) advise the principal regulator of any concerns with the materials that, if left unresolved, would cause the OSC to opt out of the dual review; or
- (b) indicate on SEDAR that it is clear to receive final materials.

(3) If the principal regulator does not think it can review a preliminary short form prospectus or preliminary shelf prospectus adequately within the time-period contemplated in subsection (1) because it is too complex, the principal regulator may decide to apply the time-period for long form prospectuses. In that case, the principal regulator will notify the filer and, in the case of a dual prospectus, the OSC, within one working day of issuing the receipt for the preliminary short form prospectus or the preliminary shelf prospectus. Filers should submit a pre-filing to resolve any issues that may cause a delay in the review of a preliminary short form prospectus or preliminary shelf prospectus.

**5.6 Novel and substantive issue** – If a prospectus is filed for an offering that involves a novel and substantive issue or raises a novel policy concern and the issues were not resolved in a pre-filing, the complexity of the issue or concern may delay the review of the prospectus.

**5.7 Form of response** – The filer should provide written responses to the principal regulator's comment letter.

## **PART 6 OPTING OUT OF A DUAL REVIEW**

### **6.1 Opting Out**

(1) The OSC can opt out of a dual review at any time before the principal regulator issues a final receipt for the materials. The OSC will provide notice of its decision to opt out to the filer and the principal regulator by indicating that it has opted out on SEDAR.



(2) The OSC will provide to the principal regulator written reasons for its decision to opt out of the dual review. The principal regulator will forward the reasons to the filer and will use its best efforts to resolve opt-out issues with the filer and the OSC.

(3) If the principal regulator is able to resolve the OSC's opt-out issues with the filer and the OSC, the OSC may opt back in. If the principal regulator is unable to resolve the OSC's opt-out issues, the principal regulator's final receipt will not evidence that the OSC has issued a receipt and the filer should deal with the OSC outside the dual review to resolve any outstanding issues.

## **PART 7 RECEIPTS**

### **7.1 Effect of prospectus receipt**

(1) Under MI 11-102, a filer that receives a receipt for a preliminary prospectus or prospectus from the principal regulator will be deemed to have a receipt for the preliminary prospectus or prospectus in a passport jurisdiction if certain conditions are met, including that

- (a) the filer filed the preliminary prospectus or prospectus in the passport jurisdiction, and
- (b) the regulator of the passport jurisdiction is not the principal regulator for the prospectus filing.

To assist filers, the principal regulator will list in its receipt the passport jurisdictions in which it understands the filer has a deemed receipt.

(2) In the case of a dual prospectus, the principal regulator's receipt for a preliminary prospectus will also evidence that the OSC has issued a receipt. The principal regulator's receipt for a final prospectus will also evidence that the OSC has issued a receipt, if the OSC has indicated on SEDAR that it is "clear for final".

**7.2 Conditions to issuance of preliminary receipt** – The principal regulator will issue a preliminary receipt if:

- (1) the principal regulator determines that the filer has filed acceptable materials; and
- (2) the filer provides a letter to the principal regulator with the materials confirming the following, to the best of its knowledge and belief:
  - (a) The filer filed the materials (including all required translations) with, and paid the required fees to, the principal regulator and all non-principal regulators.
  - (b) The filer delivered all documents required to be delivered under the securities legislation of each jurisdiction in which the filer filed the materials.

- (c) The filer is not subject to a cease trade order issued by the regulator of any jurisdiction in which the filer filed the materials.
- (d) Where an underwriter is required to sign a certificate, at least one underwriter that signed the certificate is registered, or has filed an application for registration or for exemption from registration, in each jurisdiction in which the filer will offer securities to purchasers.
- (e) Where an underwriter is required to sign a certificate in a jurisdiction in which the filer is making the distribution and none of the underwriters that signed the certificate is registered in that jurisdiction, but one of them has filed an application for registration or for exemption from registration, that underwriter filed an undertaking with the principal regulator not to solicit in that jurisdiction until it is registered or exempt from registration.
- (f) If the filer plans to distribute the securities itself, the filer is registered in each jurisdiction in which the filer will offer securities to purchasers, has filed an application for registration or for exemption from registration, or is not required to be registered.
- (g) If the filer has filed an application for registration or exemption from registration in a jurisdiction, the filer filed an undertaking with the principal regulator not to solicit in that jurisdiction until the filer is registered or exempted from registration.

**7.3 Conditions to issuance of final receipt for a prospectus** – The principal regulator will issue a final receipt for a prospectus if:

- (1) the principal regulator is satisfied that all of its comments have been resolved;
- (2) in the case of a dual prospectus, the OSC indicates on SEDAR that it is clear to receive final materials or opts out of the dual review;
- (3) the principal regulator determines that the filer filed acceptable materials; and
- (4) the filer provides a letter to the principal regulator with the materials confirming the following, to the best of its knowledge and belief:
  - (a) The filer filed the materials (including all required translations and any undertaking the principal regulator requested) with, and paid the required fees to, the principal regulator and all non-principal regulators, except the OSC if the prospectus is a dual prospectus and the OSC has opted out of the dual review.
  - (b) The filer delivered all documents required to be delivered under the securities legislation of each jurisdiction in which the filer filed the materials.

- (c) The filer is not subject to a cease trade order issued by the regulator of any jurisdiction in which the filer filed the materials.
- (d) Where an underwriter is required to sign a certificate, at least one underwriter that signed the certificate is registered or is exempt from registration in each jurisdiction in which the filer will offer securities to purchasers.
- (e) If the filer plans to distribute the securities itself, the filer is registered in each jurisdiction in which the filer will offer securities to purchasers, has an exemption from registration, or is not required to be registered.
- (f) The filer has applied for and received all necessary exemptions from applicable securities legislation from the principal regulator and also from the OSC, in the case of a dual prospectus for which the OSC has not opted out of the dual review.

**7.4 Translations** – The filer is responsible for ensuring the accuracy of any required translations.

## **PART 8 PRE-FILINGS AND WAIVER APPLICATIONS**

### **8.1 General**

- (1) A filer seeking a pre-filing interpretation or a waiver application exemption before the issuance of a receipt should submit the pre-filing or waiver application sufficiently in advance of the filing of the related materials to avoid delays in the issuance of the receipt.
- (2) The time required to review a pre-filing or waiver application will depend on whether it is routine or involves a novel and substantive issue or raises a novel policy concern.
- (3) Annex A to the policy lists examples of pre-filings and waiver applications.

### **8.2 Procedure**

- (1) A filer should submit a pre-filing or waiver application by letter to the principal regulator. The pre-filing or waiver application should:
  - (a) identify the principal regulator for the pre-filing or waiver application and the basis for that determination;
  - (b) identify the non-principal regulators from which the filer requires the pre-filing interpretation or exemption,
  - (c) describe the subject matter of the pre-filing or waiver application, set out the interpretation or exemption sought, and provide supporting documentation; and
  - (d) in the case of a pre-filing or waiver application relating to a dual prospectus, provide the information set out in paragraph (c) that is relevant for Ontario.

(2) Filing the waiver application under subsection (1) with the principal regulator will satisfy the requirement to give notice in section 4.7(1)(c) of MI 11-102 to each passport regulator from which the filer seeks the exemption.

(3) For a routine pre-filing or waiver application,

- (a) the principal regulator alone will review the pre-filing or waiver application and supporting documentation in accordance with its securities legislation and securities directions and based on its review procedures, analysis and precedents, and
- (b) the principal regulator will use its best efforts to advise the filer of the disposition of the pre-filing or waiver application within four working days from receiving it.

(4) If the principal regulator determines that a pre-filing or waiver application for a passport prospectus involves a novel and substantive issue or raises a novel policy concern, the principal regulator may provide copies or a description of the pre-filing or waiver application to other regulators for discussion purposes.

(5) If the principal regulator determines that a pre-filing or waiver application for a dual prospectus involves a novel and substantive issue or raises a novel policy concern,

- (a) The principal regulator will direct the filer to submit the pre-filing or waiver application in writing to the OSC if the filer has not already submitted it under paragraph (6).
- (b) The principal regulator will use its best efforts to review the pre-filing or waiver application and supporting documentation and send its proposed disposition to the OSC within four working days from the date the principal regulator receives the pre-filing or waiver application.
- (c) The OSC will use its best efforts to advise the principal regulator whether it agrees or disagrees with the principal regulator's proposed disposition within two working days from the date the OSC receives the principal regulator's proposed disposition.
- (d) The principal regulator will advise the filer of the disposition of the pre-filing or waiver application if the OSC agrees with the proposed disposition.
- (e) The principal regulator will use its best efforts to resolve the outstanding issues with the filer and the OSC if the OSC disagrees with the proposed disposition.
- (f) If the principal regulator is unable to resolve the OSC's outstanding issues, the principal regulator will advise the filer of how it disposed of the pre-filing or

waiver application and to deal separately with the OSC to resolve the outstanding issues.

(6) If it is apparent to the filer that a pre-filing or waiver application for a dual prospectus involves a novel and substantive issue or raises a novel policy concern, the filer may accelerate the process by initially submitting the pre-filing or waiver application to both the principal regulator and the OSC.

### **8.3 Information to be provided with related materials**

(1) When filing a preliminary or pro forma prospectus after submitting a pre-filing or waiver application, a filer should always indicate on SEDAR that it submitted a pre-filing or waiver application in the principal jurisdiction and, if applicable, in Ontario.

(2) If the principal regulator for the filer's pre-filing or waiver application is different from the principal regulator for the filer's related prospectus filing, the filer should also indicate the name of the principal regulator for the pre-filing or waiver application in the cover letter for the prospectus.

(3) In addition, when filing a preliminary prospectus or pro forma prospectus after receiving the disposition for a pre-filing or waiver application, the filer should include in the cover letter for the prospectus:

- (a) the name of the principal regulator for the pre-filing or waiver application, if it is different from the principal regulator for the prospectus filing;
- (b) a description of the subject matter of the pre-filing or waiver application;
- (c) the relevant provisions of the securities legislation in the principal jurisdiction;
- (d) how the principal regulator for the pre-filing or waiver application disposed of the pre-filing or waiver application; and
- (e) in the case of a pre-filing or waiver application relating to a dual prospectus,
  - (i) the information set out in paragraph (c) that is relevant for Ontario;
  - (ii) if the OSC disagrees with the principal regulator's proposed disposition, how the OSC disposed of the matter; and
  - (iii) if the filer did not seek an interpretation or an exemption in any passport jurisdiction, the subject matter of the pre-filing or waiver application and the disposition by the OSC.

#### **8.4 Effect of prospectus receipt when waiver application submitted**

(1) If a filer submitted a waiver application for a prospectus filing and the disclosure in the prospectus reflects that the principal regulator granted an exemption, the principal regulator's final receipt

- (a) evidences that the principal regulator has granted the exemption, and
- (b) results in an equivalent exemption in each passport jurisdiction that the filer identified in its waiver application under section 8.2(1)(b) of this policy and in which the filer filed the prospectus.

(2) If the principal regulator for the waiver application is different from the principal regulator for the related prospectus, the principal regulator for the waiver application will advise the principal regulator for the related prospectus of the disposition of the waiver application. If the principal regulator for the waiver application grants the exemption, the final receipt of the principal regulator for the related prospectus will

- (a) evidence that the principal regulator for the waiver application has granted the exemption, and
- (b) result in an equivalent exemption in each passport jurisdiction that the filer identified in its waiver application under section 8.2(1)(b) of this policy and in which the filer filed the prospectus.

(3) In the case of a waiver application relating to a dual prospectus, the principal regulator's final receipt will also evidence that the OSC has granted the exemption if the OSC has indicated on SEDAR that it is "clear for final".

#### **8.5 Resolution of pre-filing**

(1) The fact that the principal regulator issued the final receipt for a prospectus filing for which a filer submitted a pre-filing confirms that the pre-filing was satisfactorily resolved.

(2) If the principal regulator for a pre-filing is different from the principal regulator for the related prospectus, the principal regulator for the pre-filing will advise the principal regulator for the related prospectus of its interpretation.

### **PART 9 APPLICATIONS**

**9.1 Applications in multiple jurisdictions** – In many instances, filers require exemptions not contemplated under Part 8 to file materials or to facilitate a distribution of securities. NP 11-203 is available for these types of exemption applications.

**9.2 Timing of application** – A filer requiring an exemption before the issuance of a receipt should file its application sufficiently in advance of the filing of the related materials to avoid delays in the issuance of the receipt.

**9.3 Additional information to be provided** – When filing an application, the filer should indicate in a cover letter for the application that it has filed or will file related materials. When filing the related materials for a dual prospectus, the filer should indicate on SEDAR it has made or is making the application in Ontario.

## **PART 10 AMENDMENTS**

**10.1 Conditions to issuance of receipt for preliminary prospectus amendments** – The principal regulator will issue a preliminary prospectus amendment receipt if:

- (1) the principal regulator determines that the filer has filed acceptable materials; and
- (2) the filer provides a letter to the principal regulator with the materials confirming the following, to the best of its knowledge and belief:
  - (a) The filer filed the materials (including all required translations) with, and paid the required fees to, the principal regulator and all non-principal regulators.
  - (b) The filer delivered all documents required to be delivered under the securities legislation of each jurisdiction in which the filer filed the materials.
  - (c) The filer is not subject to a cease trade order issued by the regulator of any jurisdiction in which the filer filed the materials.
  - (d) Where an underwriter is required to sign a certificate, at least one underwriter that signed the certificate is registered, or has filed an application for registration or for exemption from registration, in each jurisdiction in which the filer will offer securities to purchasers.
  - (e) Where an underwriter is required to sign a certificate in a jurisdiction in which the filer is making the distribution and none of the underwriters that signed the certificate is registered in that jurisdiction, but one of them has filed an application for registration or for exemption from registration, that underwriter filed an undertaking with the principal regulator not to solicit in that jurisdiction until it is registered or exempt from registration.
  - (f) If the filer plans to distribute the securities itself, the filer is registered in each jurisdiction in which the filer will offer securities to purchasers, has filed an application for registration or for exemption from registration, or is not required to be registered.

- (g) If the filer has filed an application for registration or exemption from registration in a jurisdiction, the filer filed an undertaking with the principal regulator not to solicit in that jurisdiction until the filer is registered or exempted from registration.

## **10.2 Receipt for preliminary prospectus amendments**

(1) Under MI 11-102, a filer that receives a receipt for a preliminary prospectus amendment from the principal regulator will be deemed to have a receipt for the preliminary prospectus amendment in a passport jurisdiction if certain conditions are met, including that

- (a) the filer filed the preliminary prospectus amendment in the passport jurisdiction, and
- (b) the regulator in the passport jurisdiction is not the principal regulator for the prospectus filing.

To assist filers, the principal regulator will list in its receipt the passport jurisdictions in which it understands the filer has a deemed receipt.

(2) In the case of a dual prospectus, the principal regulator's receipt for a preliminary prospectus amendment will also evidence that the OSC has issued a receipt.

## **10.3 Review period for preliminary prospectus amendments**

(1) If a filer files a preliminary prospectus amendment before the principal regulator issues its comment letter relating to the preliminary prospectus materials, the principal regulator may be unable to complete its review of the preliminary prospectus materials and issue its comment letter within the time-period indicated in section 5.4(1) or 5.5(1) of this policy, as applicable. The principal regulator will use its best efforts to issue its comment letter on the later of the date that is

- (a) in the case of a long form prospectus, five working days after the date of the receipt for the preliminary prospectus amendment and the original due date for the comment letter; and
- (b) in the case of a short form prospectus or a shelf prospectus, three working days after the date of the receipt for the preliminary prospectus amendment and the original due date for the comment letter.

Similarly, in the case of a dual prospectus, if a filer files a preliminary prospectus amendment before the OSC completes its review under section 5.4(2) or 5.5(2) of this policy, the OSC may be unable to complete its review within the relevant time-periods. The OSC will use its best efforts to advise the principal regulator by the later of

- (a) the date that is three working days after the date of the receipt for the preliminary prospectus amendment, and



- (b) the original due date for advising the principal regulator

of any concerns with the materials that, if left unresolved, would cause it to opt out of the dual review.

(2) If a filer files a preliminary long form prospectus amendment after the principal regulator has issued its comment letter,

- (a) the principal regulator will use its best efforts to review the materials and issue a comment letter within three working days of the date of the receipt for the preliminary long form prospectus amendment; and
- (b) in the case of a dual prospectus, the OSC will use its best efforts to advise the principal regulator, within three working days of the date of the receipt for the preliminary long form prospectus amendment, of any concerns with the materials that, if left unresolved, would cause it to opt out of the dual review.

(3) If a filer files a preliminary short form prospectus amendment or preliminary shelf prospectus amendment after the principal regulator has issued its comment letter,

- (a) the principal regulator will use its best efforts to review the materials and issue a comment letter within two working days of the date of the receipt for the preliminary short form prospectus amendment or preliminary shelf prospectus amendment; and
- (b) in the case of a dual prospectus, the OSC will use its best efforts to advise the principal regulator, within two working days of the date of the receipt for the preliminary short form prospectus amendment or preliminary shelf prospectus amendment, of any concerns with the materials that, if left unresolved, would cause it to opt out of the dual review.

(4) The time periods in subsections (2) and (3) may not apply in circumstances where it would be more appropriate for the principal regulator and, in the case of a dual prospectus, the OSC, to review the amendment materials at a different stage of the review process. For example, the principal regulator and the OSC may wish to defer reviewing the amendment materials until after receiving and reviewing the filer's responses to comments already issued on the preliminary prospectus materials.

#### **10.4 Review period for prospectus amendments**

(1) If a filer files a long form prospectus amendment,

- (a) the principal regulator will use its best efforts to review the materials and issue a comment letter within three working days of the date of receiving the materials in acceptable form; and

- (b) in the case of a dual prospectus, the OSC will use its best efforts to advise the principal regulator within three working days of the date of receiving the materials in acceptable form of any concerns with the materials that, if left unresolved, would cause it to opt out of the dual review.

(2) If a filer files a short form prospectus amendment or shelf prospectus amendment,

- (a) the principal regulator will use its best efforts to review the materials and issue a comment letter within two working days of the date of receiving the materials in acceptable form; and
- (b) in the case of a dual prospectus, the OSC will use its best efforts to advise the principal regulator within two working days of the date of receiving the materials in acceptable form of any concerns with the materials that, if left unresolved, would cause it to opt out of the dual review.

**10.5 Conditions to issuance of prospectus amendment receipt** – The principal regulator will issue a prospectus amendment receipt if:

- (1) the principal regulator is satisfied that all of its comments have been resolved;
- (2) in the case of a dual prospectus, the OSC indicates on SEDAR that it is clear to receive amendments to final materials or opts out of the dual review;
- (3) the principal regulator determines that the filer filed acceptable materials; and
- (4) the filer provides a letter to the principal regulator with the materials confirming the following, to the best of its knowledge and belief:
  - (a) The filer filed the materials (including all required translations and any undertaking the principal regulator requested) with, and paid the required fees to, the principal regulator and all non-principal regulators, except the OSC if the amendment relates to a dual prospectus and the OSC has opted out of the dual review.
  - (b) The filer delivered all documents required to be delivered under the securities legislation of each jurisdiction in which the filer filed the materials.
  - (c) The filer is not subject to a cease trade order issued by the regulator of any jurisdiction in which the filer filed the materials;
  - (d) Where an underwriter is required to sign a certificate and the amendment relates to the removal of an underwriter, at least one underwriter that signed the certificate is registered or is exempt from registration in each jurisdiction in which the filer will offer securities to purchasers.

- (e) The filer has applied for and received all necessary exemptions from applicable securities legislation from the principal regulator, and from the OSC in the case of a dual prospectus for which the OSC has not opted out of the dual review.

### **10.6 Prospectus amendment receipt**

(1) Under MI 11-102, a filer that receives a receipt for a prospectus amendment from the principal regulator will be deemed to have a receipt for the prospectus amendment in a passport jurisdiction if certain conditions are met, including that

- (a) the filer filed the prospectus amendment in the passport jurisdiction, and
- (b) the regulator in the passport jurisdiction is not the principal regulator for the prospectus filing.

To assist filers, the principal regulator will list in its receipt the passport jurisdictions in which it understands the filer has a deemed receipt.

(2) In the case of a dual prospectus, the principal regulator's receipt for a prospectus amendment will also evidence that the OSC has issued a receipt, if the OSC has indicated on SEDAR that it is "clear" for the amendment to final.

## **PART 11 HOLIDAYS**

**11.1 Holidays** – A receipt issued under this Policy is deemed to be issued in a non-principal passport jurisdiction on the date of the receipt issued by the principal regulator even if the non-principal passport regulator is closed on that date. For a dual prospectus, the receipt from the principal regulator will also evidence that the OSC has issued a receipt if the OSC is open on the date of the principal regulator's receipt and has not opted-out. If the OSC is not open on the date of the principal regulator's receipt, the principal regulator will issue a second receipt that evidences that the OSC has issued a receipt on the next day that the OSC is open.

## **PART 12 EFFECTIVE DATE AND TRANSITION**

**12.1 Effective date** – This policy comes into effect on March 17, 2008.

**12.2 Prospectus filed before March 17, 2008** – The process set out in National Policy 43-201 Mutual Reliance Review System for Prospectuses will continue to apply to

- (a) a preliminary prospectus, pro forma prospectus, preliminary prospectus amendment or prospectus amendment filed before March 17, 2008,
- (b) a prospectus, other than a prospectus amendment, whose related preliminary prospectus or pro forma prospectus was filed before March 17, 2008, and

- (c) a pre-filing or waiver application filed before March 17, 2008 if it relates to a prospectus whose related preliminary prospectus or pro forma prospectus was filed before March 17, 2008.

**Annex A**

**Examples of Pre-Filings and Waiver Applications Dealt With  
under Part 8 of National Policy 11-202**

Matters relating to:

1. Financial statement and other prospectus requirements
2. Escrow requirements for a prospectus
3. Confidentiality of material contracts
4. NI 81-101 *Mutual Fund Prospectus Disclosure*
5. Confidential pre-filing of a prospectus for review purposes

**National Policy 11-203**  
***Process for Exemptive Relief Applications in Multiple Jurisdictions***

**PART 1 APPLICATION**

- 1.1 Application

**PART 2 DEFINITIONS**

- 2.1 Definitions
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**PART 3 OVERVIEW, PRINCIPAL REGULATOR AND GENERAL GUIDELINES**

- 3.1 Overview
- 3.2 Passport application
- 3.3 Dual application
- 3.4 Coordinated review application
- 3.5 Hybrid applications
- 3.6 Principal regulator
- 3.7 Discretionary change in principal regulator
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**PART 4 PRE-FILINGS**

- 4.1 General
- 4.2 Procedure for passport application pre-filing
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- 4.4 Procedure for coordinated review application pre-filing
- 4.5 Disclosure in related application

**PART 5 FILING MATERIALS**

- 5.1 Election to file under this policy and identification of principal regulator
- 5.2 Materials to be filed with application
- 5.3 Materials to be filed to make an exemption available in an additional passport jurisdiction under sections 4.7 and 4.8 of MI 11-102
- 5.4 Request for confidentiality
- 5.5 Filing
- 5.6 Incomplete or deficient material
- 5.7 Acknowledgment of receipt of filing
- 5.8 Withdrawal or abandonment of application

**PART 6 REVIEW OF MATERIALS**

- 6.1 Review of passport application
- 6.2 Review and processing of dual application or coordinated review application

**PART 7 DECISION-MAKING PROCESS**

- 7.1 Passport application
- 7.2 Dual application or coordinated review application

**PART 8 DECISION**

- 8.1 Effect of decision made under passport application
- 8.2 Effect of decision made under dual application
- 8.3 Effect of decision made under coordinated review application
- 8.4 Listing non-principal jurisdictions
- 8.5 Form of decision

8.6 Issuance of decision

**PART 9 EFFECTIVE DATE AND TRANSITION**

9.1 Effective date

9.2 Exemptive relief applications filed before March 17, 2008

9.3 Availability of passport for exemptions applied for before March 17, 2008

**Annex A**

Form of decision for passport application

**Annex B**

Form of decision for a dual application

**Annex C**

Form of decision for coordinated review application

**Annex D**

Form of decision for hybrid application

**National Policy 11-203**  
***Process for Exemptive Relief Applications in Multiple Jurisdictions***

**PART 1 APPLICATION**

**1.1 Application** – This policy describes the process for the filing and review of an application for exemptive relief in more than one Canadian jurisdiction.

**PART 2 DEFINITIONS**

**2.1 Definitions** – In this policy

“AMF” means the regulator in Québec;

“application” means a request for exemptive relief other than a pre-filing or waiver application as those terms are defined in NP 11-202;

“coordinated review application” means an application described in section 3.4 of this policy;

“coordinated review” means the review under this policy of a coordinated review application;

“CP 11-102” means Companion Policy 11-102CP *Passport System* to MI 11-102;

“dual application” means an application described in section 3.3 of this policy;

“dual review” means the review under this policy of a dual application;

“exemption” means any discretionary exemption to which Part 4 of MI 11-102 applies;

“exemptive relief” means any approval, decision, declaration, designation, determination, exemption, extension, order, ruling, permission, recognition, revocation, waiver or other relief sought under securities legislation or securities directions;

“filer” means

- (a) a person or company filing an application, or
- (b) an agent of a person or company referred to in paragraph (a);

“hybrid application” means an application comprised of both

- (a) a passport application or dual application, and
- (b) a coordinated review application;



“MI 11-102” means Multilateral Instrument 11-102 *Passport System*;

“notified passport jurisdiction” means a passport jurisdiction for which a filer gave the notice referred to in section 4.7(1)(c) of MI 11-102

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

“OSC” means the regulator in Ontario;

“passport application” means an application described in section 3.2 of this policy;

“passport jurisdiction” means the jurisdiction of a passport regulator;

“passport regulator” means a regulator that has adopted MI 11-102;

“pre-filing” means a consultation with the principal regulator for an application, initiated before the filing of the application, regarding the interpretation of securities legislation or securities directions or their application to a particular transaction or matter or proposed transaction or matter; and

“regulator” means a securities regulatory authority or regulator.

**2.2 Further definitions** – Terms used in this policy that are defined in MI 11-102 or National Instrument 14-101 *Definitions* have the same meanings as in those instruments.

## **PART 3 OVERVIEW, PRINCIPAL REGULATOR AND GENERAL GUIDELINES**

### **3.1 Overview**

This policy applies to any application for exemptive relief in multiple jurisdictions. These are the possible types of applications:

- (a) The principal regulator is a passport regulator and the filer does not seek an exemption in Ontario. This is a “passport application.”
- (b) The principal regulator is the OSC and the filer also seeks an exemption in a passport jurisdiction. This is also a “passport application.”
- (c) The principal regulator is a passport regulator and the filer also seeks an exemption in Ontario. This is a “dual application.”
- (d) An application for any type of exemptive relief not covered by Part 4 of MI 11-102. This is a “coordinated review application.”

### **3.2 Passport application**

(1) If the principal regulator is a passport regulator and the filer does not seek an exemption in Ontario, the filer files the application only with, and pays fees only to, the principal regulator. Only the principal regulator reviews the application. The principal regulator's decision to grant an exemption automatically results in an equivalent exemption in the notified passport jurisdictions.

(2) If the principal regulator is the OSC and the filer also seeks an equivalent exemption in a passport jurisdiction, the filer files the application only with, and pays fees only to, the OSC. Only the OSC reviews the application. The OSC's decision to grant the exemption automatically results in an equivalent exemption in the notified passport jurisdictions.

**3.3 Dual application** – If the principal regulator is a passport regulator and the filer also seeks an exemption in Ontario, the filer files the application with, and pays fees to, both the principal regulator and the OSC. The principal regulator reviews the application and the OSC, as a non-principal regulator, coordinates its review with the principal regulator. The principal regulator's decision to grant the exemption automatically results in an equivalent exemption in the notified passport jurisdictions and, if the OSC has made the same decision as the principal regulator, evidences the decision of the OSC.

**3.4 Coordinated review application** – If the application is outside the scope of MI 11-102 (see section 4.1 of CP 11-102 for details on the types of applications that fall outside the scope of MI 11-102), the filer files the application and pays fees in each jurisdiction where the exemptive relief is required. The principal regulator reviews the application, and each non-principal regulator coordinates its review with the principal regulator. The decision of the principal regulator to grant exemptive relief evidences the decision of each non-principal regulator that has made the same decision as the principal regulator.

**3.5 Hybrid applications** – The processes and outcomes applicable to a passport application, dual application or a coordinated review application under this policy also apply to a hybrid application. For a hybrid application, the filer should follow the processes for both a coordinated review application and either a passport application or dual application, as appropriate.

### **3.6 Principal regulator**

(1) For any application under this policy, the principal regulator is identified in the same manner as in sections 4.1 to 4.5 of MI 11-102. This section summarizes sections 4.1 to 4.5 of MI 11-102 and provides guidance on identifying the principal regulator for an application under this policy.

(2) For the purpose of this section, a specified jurisdiction is one of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick or Nova Scotia.

(3) Except as provided in subsections (4) to (8) of this section and in section 3.7 of this policy, the principal regulator is

- (a) for an application made for an investment fund, the regulator of the jurisdiction in which the investment fund manager's head office is located; or
- (b) for an application made for a person or company other than an investment fund, the regulator of the jurisdiction in which the person or company's head office is located.

(4) For an application for exemptive relief from a provision of securities legislation related to insider reporting, the principal regulator is the regulator in the jurisdiction in which the head office of the reporting issuer, not the insider, is located.

(5) For an application for exemptive relief from a provision of securities legislation related to take-over bids, the principal regulator is the regulator in the jurisdiction in which the head office of the issuer whose securities are subject to the take-over bid, not the person or company that is making the take-over bid, is located.

(6) If the jurisdiction identified under subsection (3), (4) or (5) is not a specified jurisdiction, the principal regulator for the application is the regulator of the specified jurisdiction with which

- (a) in the case of an application for exemptive relief from a provision of securities legislation related to insider reporting, the reporting issuer has the most significant connection,
- (b) in the case of an application for exemptive relief from a provision of securities legislation related to take-over bids, the issuer whose securities are subject to the take-over bid has the most significant connection, or
- (c) in any other case, the person or company or, in the case of an investment fund, the investment fund manager, has the most significant connection.

(7) Except as provided in subsection (8), if a person or company is not seeking exemptive relief in the jurisdiction of the principal regulator, as determined under subsections (3), (4), (5) or (6), the principal regulator for the application is the regulator in the specified jurisdiction

- (a) in which the person or company is seeking exemptive relief, and
- (b) with which
  - (i) in the case of an application for exemptive relief from a provision of securities legislation related to insider reporting, the reporting issuer has the most significant connection,

- (ii) in the case of an application for exemptive relief from a provision of securities legislation related to take-over bids, the issuer whose securities are subject to the take-over bid has the most significant connection, or
- (iii) in any other case, the person or company or, in the case of an investment fund, the investment fund manager, has the most significant connection.

(8) If at any one time a person or company is seeking more than one item of exemptive relief and not all of the exemptive relief is needed in the jurisdiction of the principal regulator, as determined under subsection (3), (4), (5) or (6), the person or company may make an application to the regulator in the specified jurisdiction

- (a) in which the person or company is seeking all of the exemptive relief, and
- (b) with which
  - (i) in the case of an application for exemptive relief from a provision of securities legislation related to insider reporting, the reporting issuer has the most significant connection,
  - (ii) in the case of an application for exemptive relief from a provision of securities legislation related to take-over bids, the issuer whose securities are subject to the take-over bid has the most significant connection, or
  - (iii) in any other case, the person or company or, in the case of an investment fund, the investment fund manager, has the most significant connection.

That regulator will be the principal regulator for the application.

(9) The factors a filer should consider in identifying the principal regulator for the application based on the most significant connection test are, in order of influential weight:

- (a) location of reporting issuer status or registration status,
- (b) location of management,
- (c) location of assets and operations,
- (d) location of majority of security holders or clients, and
- (e) location of trading market or quotation system in Canada.

### **3.7 Discretionary change in principal regulator**

(1) If the principal regulator identified under section 3.6 of this policy thinks it is not the appropriate principal regulator, it will first consult with the filer and the appropriate regulator

and then give the filer a written notice of the new principal regulator and the reasons for the change.

(2) A filer may request a discretionary change of principal regulator for an application if

- (a) the filer believes the principal regulator identified under section 3.6 of this policy is not the appropriate principal regulator,
- (b) the location of the head office changes over the course of the application,
- (c) the most significant connection to a specified jurisdiction changes over the course of the application, or
- (d) the filer withdraws its application in the principal jurisdiction because no exemptive relief is required in that jurisdiction.

(3) Regulators do not anticipate changing a principal regulator except in exceptional circumstances.

(4) A filer should submit a written request for a change in principal regulator to its current principal regulator and include the reasons for requesting the change.

### **3.8 General guidelines**

(1) A filer should identify the exemptive relief that is appropriate and necessary in the principal jurisdiction and each non-principal jurisdiction to which the filer applies or for which it gives notice under section 4.7(1)(c) of MI 11-102.

(2) The terms, conditions, restrictions and requirements of a decision will reflect the securities legislation and securities directions of the principal jurisdiction.

(3) A decision will generally provide exemptive relief for the entire transaction or matter that is the subject of the application to ensure the transaction or matter gets uniform treatment in all jurisdictions. This means that, if the transaction or matter is comprised of a series of trades, the decision will generally exempt all the trades in the series and the filer will not rely on statutory exemptions for some trades and on the decision for others.

(4) The regulators are not prepared to extend the availability of a non-harmonized exemption set out in National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) to a non-principal jurisdiction where the non-harmonized exemption is not available under that rule. If a filer makes a passport application or a dual application that would have that effect, the principal regulator will request that the filer provide a representation that no person or company will rely on the exemption in that non-principal jurisdiction. For example, jurisdictions have adopted two types of offering memorandum exemptions under NI 45-106. A principal regulator would not grant an exemption that would have the effect of allowing the use of a type of offering memorandum exemption that is not available under NI 45-106 in a non-principal jurisdiction, unless the filer gave a representation that no person or company

would offer the securities relying on that type of offering memorandum exemption in the non-principal jurisdiction.

(5) Regulators will generally send communications to filers by e-mail or facsimile.

## **PART 4 PRE-FILINGS**

### **4.1 General**

(1) A filer should submit a pre-filing sufficiently in advance of an application to avoid any delays in the issuance of a decision on the application.

(2) The principal regulator will treat the pre-filing as confidential except that it:

- (a) may provide copies or a description of the pre-filing to other regulators for discussion purposes if the pre-filing involves a novel and substantive issue or raises a novel policy concern, and
- (b) may have to release the pre-filing under freedom of information and protection of privacy legislation.

**4.2 Procedure for passport application pre-filing** – A filer should submit a pre-filing for a passport application by letter to the principal regulator and should

- (a) identify in the pre-filing the principal regulator for the application and each passport jurisdiction for which the filer intends to give the notice referred to in section 4.7(1)(c) of MI 11-102, and
- (b) submit the pre-filing to the principal regulator only.

### **4.3 Procedure for dual application pre-filing**

(1) A filer submitting a pre-filing for a dual application should identify in the pre-filing the principal regulator, each passport jurisdiction for which the filer intends to give the notice referred to in section 4.7(1)(c) of MI 11-102, and Ontario.

(2) The filer should submit the pre-filing only to the principal regulator. If the pre-filing is routine, the filer will deal only with the principal regulator to resolve the pre-filing.

(3) If the principal regulator determines that a pre-filing submitted as a routine pre-filing involves a novel and substantive issue or raises a novel policy concern, it will advise the filer and direct the filer to submit the pre-filing to the OSC.

(4) If it is apparent to the filer that a pre-filing involves a novel and substantive issue or raises a novel policy concern, the filer may accelerate this process by submitting the pre-filing to both the principal regulator and the OSC.

(5) If a pre-filing involves a novel and substantive issue or raises a novel policy concern, the principal regulator will arrange with the OSC to discuss it within seven business days, or as soon as practicable after the OSC receives the pre-filing.

#### **4.4 Procedure for coordinated review application pre-filing**

(1) A filer submitting a pre-filing for a coordinated review application should identify in the pre-filing the principal regulator and all non-principal jurisdictions where the filer intends to file the application.

(2) The filer should submit the pre-filing only to the principal regulator. If the pre-filing is routine, the filer will deal only with the principal regulator to resolve the pre-filing.

(3) If the principal regulator determines that a pre-filing submitted as a routine pre-filing involves a novel and substantive issue or raises a novel policy concern, it will advise the filer and direct the filer to submit the pre-filing to each non-principal regulator.

(4) If it is apparent to the filer that a pre-filing involves a novel and substantive issue or raises a novel policy concern, the filer may accelerate this process by submitting the pre-filing to the principal regulator and each non-principal regulator with whom the filer intends to file the application.

(5) If a pre-filing involves a novel and substantive issue or raises a novel policy concern, the principal regulator will arrange with the non-principal regulators to discuss the pre-filing within seven business days, or as soon as practicable after all non-principal regulators receive the pre-filing.

**4.5 Disclosure in related application** – The filer should include in the application that follows a pre-filing,

- (a) a description of the subject matter of the pre-filing and the approach taken by the principal regulator, and
- (b) any alternative approach proposed by a non-principal regulator that was involved in discussions and that disagreed with the principal regulator.

## **PART 5 FILING MATERIALS**

**5.1 Election to file under this policy and identification of principal regulator** – In its application, the filer should indicate whether it is filing a passport application, dual application, coordinated review application or hybrid application under this policy and identify the principal regulator for the application. If submitting a hybrid application, the filer should indicate whether it includes a passport application or a dual application.

## **5.2 Materials to be filed with application**

(1) For a passport application, the filer should remit to the principal regulator the fees payable under the securities legislation of the principal regulator, and file the following materials with the principal regulator only:

- (a) a written application drafted in accordance with the procedures of the principal regulator as to format and content in which the filer:
  - (i) states the basis for identifying the principal regulator under section 3.6 of this policy,
  - (ii) identifies whether another application in connection with the same transaction or matter has been filed in one or more jurisdictions, the reasons for that application, and the principal regulator for that application,
  - (iii) sets out, for any related pre-filing, the information referred to in section 4.5 of this policy,
  - (iv) sets out, under separate headings, each provision of securities legislation listed in Appendix D of MI 11-102 below the name of the principal jurisdiction from which the filer and other relevant party seek an exemption,
  - (v) gives notice of the non-principal passport jurisdictions for which section 4.7(1) of MI 11-102 is intended to be relied upon for each equivalent provision of the local jurisdiction,
  - (vi) sets out any request for confidentiality,
  - (vii) sets out references to previous decisions of the principal regulator or other regulators that would support granting the exemption, or indicates that the exemption sought is novel and has not been previously granted;
  - (viii) includes a verification statement that authorizes the filing of the application and confirms the truth of the facts in the application; and
  - (ix) states that the filer and other relevant party is not in default of securities legislation in any jurisdiction or, if the filer is in default, the nature of the default;
- (b) supporting materials; and
- (c) a draft form of decision with terms, conditions, restrictions or requirements, including



- (i) a representation stating that the filer and other relevant party are not in default of securities legislation in any jurisdiction or, if the filer or other relevant party is in default, the nature of the default; and
- (ii) resale restrictions, if applicable, based on the securities legislation and securities directions of the principal jurisdiction.

(2) For a dual application, the filer should remit the fees payable under the securities legislation of the principal regulator and the OSC to each of them, as appropriate, and file the following materials with both the principal regulator and the OSC:

- (a) a written application drafted in accordance with the procedures of the principal regulator as to format and content in which the filer:
  - (i) states the basis for identifying the principal regulator under section 3.6 of this policy,
  - (ii) identifies whether another application in connection with the same transaction or matter has been filed in one or more jurisdictions, the reasons for the application, and the principal regulator for that application,
  - (iii) sets out, for any related pre-filing, the information referred to in section 4.5 of this policy,
  - (iv) sets out, under separate headings, each provision of securities legislation listed in Appendix D of MI 11-102 below the name of the principal jurisdiction from which the filer and other relevant party seek an exemption, the relevant provisions of securities legislation in Ontario and an analysis of any differences between the applicable provisions in the principal jurisdiction and Ontario,
  - (v) gives notice of the non-principal passport jurisdictions for which section 4.7(1) of MI 11-102 is intended to be relied upon for each equivalent provision of the local jurisdiction,
  - (vi) sets out any request for confidentiality,
  - (vii) sets out any request to shorten the review period (see section 6.2(3) of this policy) or the opt-out period (see section 7.2(4) of this policy) and provides supporting reasons,
  - (viii) sets out references to previous decisions of the principal regulator or other regulators that would support granting the exemption, or indicates that the exemption sought is novel and has not been previously granted;

- (ix) includes a verification statement that authorizes the filing of the application and confirms the truth of the facts in the application; and
  - (x) states that the filer and any relevant party are not in default of securities legislation in any jurisdiction or, if the filer or other relevant party is in default, the nature of the default;
- (b) supporting materials; and
- (c) a draft form of decision with terms, conditions, restrictions or requirements, including
- (i) a representation stating that the filer and other relevant party are not in default of securities legislation in any jurisdiction or if the filer or relevant party is in default, the nature of the default; and
  - (ii) resale restrictions, if applicable, based on the securities legislation and securities directions of the principal jurisdiction.

(3) For a coordinated review application, the filer should remit the fees payable under the securities legislation of the principal regulator and each non-principal regulator from whom the filer or other relevant parties seek exemptive relief to each of them, as appropriate, and file the following materials with the principal regulator and each of the non-principal regulators:

- (a) a written application drafted in accordance with the procedures of the principal regulator as to format and content in which the filer:
  - (i) states the basis for identifying the principal regulator section 3.6 of this policy,
  - (ii) identifies whether another application in connection with the same transaction or matter has been filed in one or more jurisdictions, the reasons for the application, and the principal regulator for that application,
  - (iii) sets out, for any related pre-filing, the information referred to in section 4.5 of this policy,
  - (iv) sets out, under separate headings, each provision of securities legislation in the principal jurisdiction from which the filer and other relevant party are seeking exemptive relief, the relevant provisions of securities legislation in each non-principal jurisdiction, and an analysis of any differences between the applicable provisions in the principal jurisdiction and each non-principal jurisdiction,
  - (v) sets out any request for confidentiality,

- (vi) sets out any request to shorten the review period (see section 6.2(3) of this policy) or the opt-out period (see section 7.2(4) of this policy) and provides supporting reasons,
  - (vii) sets out references to previous decisions of the principal regulator or other regulators that would support granting the exemptive relief, or indicates that the exemptive relief sought is novel and has not been previously granted;
  - (viii) includes a verification statement that authorizes the filing of the application and confirms the truth of the facts in the application; and
  - (ix) states that the filer and any other relevant party are not in default of securities legislation in any jurisdiction or if the filer or other relevant party is in default, the nature of the default;
- (b) supporting materials; and
- (c) a draft form of decision with terms, conditions, restrictions or requirements, including
- (i) a representation stating that the filer and any other relevant party are not in default of securities legislation in any jurisdiction or if the filer or other relevant party is in default, the nature of the default; and
  - (ii) resale restrictions, if applicable, based on the securities legislation and securities directions of the principal jurisdiction.
- (4) For a hybrid application, the filer should pay the fees, file the application with each regulator and, for each type of application, set out the exemption or exemptive relief sought and submit the relevant information and materials, all as described in this section.
- (5) A filer should file an application sufficiently in advance of any deadline to ensure that staff have a reasonable opportunity to complete the review and make recommendations for a decision.
- (6) A filer making a passport application or a dual application should identify in the application all the exemptions required and give the required notice for all the passport jurisdictions for which section 4.7(1) of MI 11-102 is intended to be relied upon. The notice given under subsection (1)(a)(v) or (2)(a)(v) above satisfies the notice requirement of section 4.7(1)(c) of MI 11-102.
- (7) A filer seeking exemptive relief in Québec should file a French language version of the draft decision when the AMF is acting as principal regulator.

### **5.3 Materials to be filed to make an exemption available in an additional passport jurisdiction under sections 4.7 and 4.8 of MI 11-102**

(1) Under section 4.7(1) of MI 11-102, an exemption from a provision of securities legislation listed in Appendix D of that Instrument granted by the principal regulator under a passport application or dual application can become available in a non-principal passport jurisdiction for which the filer did not give the notice referred to in section 5.2(1)(a)(v) or 5.2(2)(a)(v) of this policy in the initial application if certain conditions are met. One of the conditions is that the filer give the notice under section 4.7(1)(c) of MI 11-102 for the additional non-principal passport jurisdiction.

(2) Under section 4.8(1) of MI 11-102, an exemption from a provision of securities legislation that is now listed in Appendix D of that Instrument and that was granted before March 17, 2008 by the regulator in a specified jurisdiction, as defined in that section, can also become available in a non-principal passport jurisdiction if certain conditions are met. One of the conditions is that the filer gives the notice under section 4.8(1)(c) of MI 11-102 for the non-principal passport jurisdiction. Under section 4.8(3), the filer is not required to give this notice if the exemption relates to a CD requirement, as defined in Multilateral Instrument 11-101 *Principal Regulator System*, that is now listed in Appendix D of MI 11-102 and other conditions are met. For more guidance on section 4.8(1) of MI 11-102, refer to section 9.3 of this policy and section 4.5 of CP 11-102.

(3) For greater certainty, a filer may not rely on section 4.7 or 4.8 of MI 11-102 to obtain an automatic exemption from a provision of Ontario's securities legislation listed in Appendix D of MI 11-102. A filer may rely on section 4.7 and 4.8 of MI 11-102 only in a passport jurisdiction.

(4) The filer should give the notice referred to in subsection (1) to the principal regulator for the initial application and the notice referred to in subsection (2) to the regulator that would be the principal regulator under Part 4 of MI 11-102 if an application were to be made under that Part at the time the notice is given. The notice should

- (a) list each relevant non-principal passport jurisdiction for which notice is given that section 4.7(1) or 4.8(1) of MI 11-102 is intended to be relied upon,
- (b) include the date of the decision of
  - (i) the principal regulator for the initial application, if the notice is given under section 4.7(1)(c) of MI 11-102, or
  - (ii) the regulator of the specified jurisdiction that granted the application, if the notice is given under section 4.8(1)(c) of MI 11-102,
- (c) include the citation for the regulator's decision,
- (d) describe the exemption the regulator granted, and

- (e) confirm that the exemption is still in effect.

(5) If an exemption sought in a passport application or a dual application is required in a non-principal jurisdiction at the time the filer files the application, but the filer does not give the notice required under section 4.7(1)(c) of MI 11-102 for that jurisdiction until after the principal regulator grants the exemption, the regulator of the non-principal passport jurisdiction will take appropriate action. This could include removing the exemption, in which case the filer would have an opportunity to be heard in that jurisdiction in appropriate circumstances.

(6) The regulator that receives the notice referred to in subsection (1) or (2) will send a copy of the notice and its decision to the regulator in the relevant non-principal passport jurisdiction.

#### **5.4 Request for confidentiality**

(1) A filer requesting that the regulators hold an application and supporting materials in confidence during the application review process should provide a substantive reason for the request in its application.

(2) If a filer is requesting that the regulators hold the application, supporting materials, or decision in confidence after the effective date of the decision, the filer should describe the request for confidentiality separately in its application, and pay any required fee:

- (a) in the principal jurisdiction, if the filer is making a passport application,
- (b) in the principal jurisdiction and in Ontario, if the filer is making a dual application,  
or
- (c) in each jurisdiction, if the filer is making a coordinated review application.

(3) Any request for confidentiality should explain why the request is reasonable in the circumstances and not prejudicial to the public interest and when any decision granting confidentiality could expire.

(4) Communications on requests for confidentiality will normally take place by e-mail. If a filer is concerned with this practice, the filer may request in the application that all communications take place by facsimile or telephone.

#### **5.5 Filing – A filer should send the application materials in paper together with the fees to**

- (a) the principal regulator, in the case of a passport application,
- (b) the principal regulator and the OSC, in the case of a dual application, or
- (c) each regulator from which the filer seeks exemptive relief, in the case of a coordinated review application.

The filer should also provide an electronic copy of the application materials, including the draft decision document, by e-mail or on CD ROM. Filing the application concurrently in all required jurisdictions will make it easier for the principal regulator and non-principal regulators, if applicable, to process the application expeditiously. In British Columbia, an electronic filing system is available for filing and tracking exemptive relief applications. Filers should file an application in British Columbia using that system instead of e-mail. Filers should file applications related to National Instrument 81-102 *Mutual Funds* on SEDAR.

Filers should send pre-filing and application materials by e-mail using the relevant address or addresses listed below:

British Columbia	<a href="http://www.bpsc.bc.ca">www.bpsc.bc.ca</a> (click on BCSC e-services and follow the steps)
Alberta	<a href="mailto:legalapplications@seccom.ab.ca">legalapplications@seccom.ab.ca</a>
Saskatchewan	<a href="mailto:exemptions@sfsc.gov.sk.ca">exemptions@sfsc.gov.sk.ca</a>
Manitoba	<a href="mailto:exemptions.msc@gov.mb.ca">exemptions.msc@gov.mb.ca</a>
Ontario	<a href="mailto:applications@osc.gov.on.ca">applications@osc.gov.on.ca</a>
Québec	<a href="mailto:Dispenses-Passeport@lautorite.qc.ca">Dispenses-Passeport@lautorite.qc.ca</a>
New Brunswick	<a href="mailto:Passport-passeport@npsc-cvmnb.ca">Passport-passeport@npsc-cvmnb.ca</a>
Nova Scotia	<a href="mailto:nsscexemptions@gov.ns.ca">nsscexemptions@gov.ns.ca</a>
Prince Edward Island	<a href="mailto:CCIS@gov.pe.ca">CCIS@gov.pe.ca</a>
Newfoundland and Labrador	<a href="mailto:securitiesexemptions@gov.nl.ca">securitiesexemptions@gov.nl.ca</a>
Yukon	<a href="mailto:Corporateaffairs@gov.yk.ca">Corporateaffairs@gov.yk.ca</a>
Northwest Territories	<a href="mailto:SecuritiesRegistry@gov.nt.ca">SecuritiesRegistry@gov.nt.ca</a>
Nunavut	<a href="mailto:legalregistries@gov.nu.ca">legalregistries@gov.nu.ca</a>

**5.6 Incomplete or deficient material** – If the filer’s materials are deficient or incomplete, the principal regulator may ask the filer to file an amended application. This will likely delay the review of the application.

### **5.7 Acknowledgment of receipt of filing**

(1) After the principal regulator receives a complete and adequate application, the principal regulator will send the filer an acknowledgment of receipt of the application. The principal regulator will send a copy of the acknowledgement to any other regulator with whom the filer has filed the application. The acknowledgement will identify the name, phone number, fax number and e-mail address of the individual reviewing the application.

(2) For a dual application, coordinated review application or hybrid application, the principal regulator will tell the filer, in the acknowledgement, the end date of the review period identified in section 6.2(3) of this policy.

### **5.8 Withdrawal or abandonment of application**

(1) If a filer withdraws an application at any time during the process, the filer is responsible for notifying the principal regulator and any non-principal regulator with whom the filer filed the application and for providing an explanation of the withdrawal.

(2) If at any time during the review process, the principal regulator determines that a filer has abandoned an application, the principal regulator will notify the filer that it will mark the application as “abandoned”. In that case, the principal regulator will close the file without further notice to the filer unless the filer provides acceptable reasons not to close the file in writing within 10 business days. If the filer does not, the principal regulator will notify the filer and any non-principal regulator with whom the filer filed the application that the principal regulator has closed the file.

## **PART 6 REVIEW OF MATERIALS**

### **6.1 Review of passport application**

(1) The principal regulator will review any passport application in accordance with its securities legislation and securities directions and based on its review procedures, analysis and considering previous decisions.

(2) The filer will deal only with the principal regulator, who will provide comments to and receive responses from the filer.

### **6.2 Review and processing of dual application or coordinated review application**

(1) The principal regulator will review any dual application or coordinated review application in accordance with its securities legislation and securities directions, based on its review procedures, analysis and considering previous decisions. The principal regulator will consider any comments from a non-principal regulator with whom the filer filed the application. Please refer to section 5.2(2) of this policy for guidance on the non-principal regulator with whom a filer should file a dual application, and to section 5.2(3) for similar guidance for a coordinated review application.

(2) The filer will generally deal only with the principal regulator, who will be responsible for providing comments to the filer once it has considered the comments from the non-principal regulators and completed its own review. However, in exceptional circumstances, the principal regulator may refer the filer to a non-principal regulator with whom the filer has filed the application.

(3) A non-principal regulator with whom the filer has filed the application will have seven business days from receiving the acknowledgement referred to in section 5.7(1) of this policy to review the application. In exceptional circumstances, if the filer filed the dual application or coordinated review application concurrently in the non-principal jurisdictions and shows that it is necessary and reasonable in the circumstances for the application to receive immediate attention, the principal regulator may abridge the review period. A non-principal regulator that disagrees with abridging the review period may notify the filer and the

principal regulator and request the filer to withdraw the application in that jurisdiction. In that case, the application will proceed as a local application without the need to file a new application and pay any additional related fees.

(4) Exceptional circumstances when the principal regulator may abridge the review period include:

- (a) where exemptive relief is sought for a contested take-over bid and delay would prejudice the filer's position, and
- (b) other situations in which the filer is responding to a critical event beyond its control and could not have applied for the exemptive relief earlier.

(5) Unless the filer provides compelling reasons as to why it did not start the application process sooner, the principal regulator will not consider the following circumstances as exceptional:

- (a) the mailing of a management information circular for a scheduled meeting of security holders to consider a transaction,
- (b) the filing of a prospectus where the receipt for the prospectus cannot evidence the exemptive relief,
- (c) the closing of a transaction,
- (d) the filing of a continuous disclosure document shortly before the date on which its filing is required, or
- (e) other situations in which the deadline was known before filing the application and the filer could have filed the application earlier.

While staff will attempt to accommodate transaction timing where possible, filers planning time-sensitive transactions should build sufficient regulatory approval time into their transaction schedules.

The fact that a filer may consider an application as routine is not a compelling argument for requesting an abridgement.

(6) Filers should provide sufficient information in an application to enable staff to assess how quickly they should handle the application. For example, if the filer has committed to take certain steps by a specific date and needs to have staff's view or a decision by that date, the filer should explain why staff's view or the exemptive relief is required by the specific date and identify these time constraints in its application.

(7) A non-principal regulator with whom the filer has filed the dual application or coordinated review application will advise the principal regulator, before the expiration of



the review period, of any substantive issues that, if left unresolved, would cause staff to recommend that the non-principal regulator opt out of the review. The principal regulator may assume that a non-principal regulator does not have comments on the application if the principal regulator does not receive them within the review period.

(8) A non-principal regulator with whom the filer has filed the dual application or coordinated review application will notify the filer and the principal regulator and request that the filer withdraw the application if staff of the non-principal regulator think that no exemptive relief is required under its securities legislation.

## **PART 7 DECISION-MAKING PROCESS**

### **7.1 Passport application**

(1) After completing the review process and after considering the recommendation of its staff, the principal regulator will determine whether to grant or deny the exemption a filer sought in a passport application.

(2) If the principal regulator is not prepared to grant the exemption a filer sought in its passport application based on the information before it, it will notify the filer accordingly.

(3) If a filer receives a notice under subsection (2) and this process is available in the principal jurisdiction, the filer may request the opportunity to appear before, and make submissions to, the principal regulator.

### **7.2 Dual application or coordinated review application**

(1) After completing the review process and after considering the recommendation of its staff, the principal regulator will determine whether to grant or deny the exemption a filer sought in a dual application or the exemptive relief the filer sought in a coordinated review application and immediately circulate its decision to the non-principal regulators with whom the filer filed the application.

(2) Each non-principal regulator with whom the filer filed the dual application or coordinated review application will have five business days from receipt of the principal regulator's decision to confirm whether it has made the same decision and is opting in or is opting out of the dual review or coordinated review.

(3) If the non-principal regulator is silent, the principal regulator will consider that the non-principal regulator has opted out.

(4) If the filer shows that it is necessary and reasonable in the circumstances, the principal regulator may request, but cannot require, the non-principal regulators to abridge the opt-out period. In some circumstances, abridging the opt-out period may not be feasible. For example, in many jurisdictions, only a panel of the regulator that convenes according to a schedule can make some types of decisions.

(5) The principal regulator will not send the filer a decision for a dual application or coordinated review application before the earlier of

- (a) the expiry of the opt-out period, or
- (b) receipt from a non-principal regulator with whom the filer filed the application of the confirmation referred to in subsection (2).

(6) If the principal regulator is not prepared to grant the exemption a filer sought in its dual application or the exemptive relief the filer sought in its coordinated review application based on the information before it, it will notify the filer and all non-principal regulators with whom the filer filed the application.

(7) If a filer receives a notice under subsection (6) and this process is available in the principal jurisdiction, the filer may request the opportunity to appear before, and make submissions to, the principal regulator. The principal regulator may hold a hearing on its own, or jointly or concurrently with the non-principal regulators with whom the filer filed the application. After the hearing, the principal regulator will send a copy of the decision to the filer and all non-principal regulators with whom the filer filed the application.

(8) A non-principal regulator electing to opt out will notify the filer, the principal regulator and any other non-principal regulator with whom the filer filed the application and give its reasons for opting out. The filer may deal directly with the non-principal regulator to resolve outstanding issues and obtain a decision without having to file a new application or pay any additional related fees. If the filer and non-principal regulator resolve all outstanding issues, the non-principal regulator may opt back into the dual review or coordinated review by notifying the principal regulator and the other non-principal regulators with whom the filer filed the application within the opt-out period referred to in subsection (2).

## **PART 8 DECISION**

### **8.1 Effect of decision made under passport application**

(1) The decision of the principal regulator under a passport application to grant an exemption from a provision of securities legislation listed below the name of the principal jurisdiction in Appendix D of MI 11-102 is the decision of the principal regulator. Under MI 11-102, a filer is automatically exempt from the equivalent provision of each notified passport jurisdiction as a result of the principal regulator for the application granting the exemption.

(2) Except in the circumstances described in section 5.3(1) or (2) of this policy, the exemption is effective in each notified passport jurisdiction on the date of the principal regulator's decision (even if the regulator in the notified passport jurisdiction is closed on that date). In the circumstances described in section 5.3(1) of this policy, the exemption is effective in the relevant non-principal passport jurisdiction on the date the filer gives the notice under section 4.7(1)(c) or 4.8(1)(c) of MI 11-102 for that jurisdiction (even if the regulator in that jurisdiction is closed on that date).

## **8.2 Effect of decision made under dual application**

(1) The decision of the principal regulator under a dual application to grant an exemption from a provision of securities legislation listed below the name of the principal jurisdiction in Appendix D of MI 11-102 is the decision of the principal regulator. Under MI 11-102, a filer is automatically exempt from an equivalent provision of each notified passport jurisdiction as a result of the principal regulator for the application granting the exemption. The decision of the principal regulator under a dual application also evidences the OSC's decision, if the OSC has confirmed that it has made the same decision as the principal regulator.

(2) The principal regulator will not issue the decision until the earlier of

- (a) the date that the OSC confirms that it has made the same decision as the principal regulator, or
- (b) the date the opt-out period referred to in section 7.2(2) of this policy has expired.

## **8.3 Effect of decision made under coordinated review application**

(1) The decision of the principal regulator under a coordinated review application to grant exemptive relief from a provision of securities legislation in the principal jurisdiction is the decision of the principal regulator and evidences the decision of each non-principal regulator that has confirmed that it has made the same decision as the principal regulator.

(2) The principal regulator will not issue the decision until the earlier of

- (a) the date that the principal regulator has received confirmation from each non-principal regulator that it has made the same decision as the principal regulator, or
- (b) the date the opt-out period referred to in section 7.2(2) of this policy has expired.

## **8.4 Listing non-principal jurisdictions**

(1) For convenience, the decision of the principal regulator on a passport application or a dual application will refer to the notified passport jurisdictions, but it is the filer's responsibility to ensure that it gives the required notice for each jurisdiction for which section 4.7(1) of MI 11-102 is intended to be relied upon.

(2) The decision of the principal regulator on a dual application or a coordinated review application will contain wording that makes it clear that the decision evidences and sets out the decision of each non-principal regulator that has made the same decision as the principal regulator.

(3) For a coordinated review application for which Québec is not the principal jurisdiction, the AMF will issue a local decision concurrently with and in addition to the principal regulator's decision. The AMF decision will contain the same terms and conditions as the principal regulator's decision. No other local regulator will issue a local decision.

### **8.5 Form of decision**

(1) Except as described in subsection (2), the decision will be in the form set out in:

- (a) Annex A, for a passport application,
- (b) Annex B, for a dual application,
- (c) Annex C, for a coordinated review application, or
- (d) Annex D, for a hybrid application.

(2) A principal regulator may issue a less formal decision where it is appropriate.

(3) If the decision is to deny the exemptive relief, the decision will set out reasons.

**8.6 Issuance of decision** – The principal regulator will send the decision to the filer and to all non-principal regulators.

## **PART 9 EFFECTIVE DATE AND TRANSITION**

### **9.1 Effective date**

This policy comes into effect on March 17, 2008.

### **9.2 Exemptive relief applications filed before March 17, 2008**

The process set out in National Policy 12-201 *Mutual Reliance Review System for Exemptive Relief Applications* will continue to apply to an exemptive relief application and any related pre-filing filed in multiple jurisdictions before March 17, 2008.

### **9.3 Availability of passport for exemptions applied for before March 17, 2008**

(1) Section 4.8(1) of MI 11-102 provides that an exemption from the equivalent provision is automatically available in the local jurisdiction if

- (a) 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 MI 11-102,
- (b) the regulator in the specified jurisdiction granted the exemption before, on or after March 17, 2008, and
- (c) certain other conditions are met, including giving the required notice for the additional non-principal passport jurisdiction; refer to section 5.3 of this policy for information on where to give the required notice and what information the notice should contain.

(2) A specified jurisdiction for purposes of section 4.8 of MI 11-102 is a principal jurisdiction under Multilateral Instrument 11-101 *Principal Regulator System*. Therefore,

section 4.8(1) applies to an exemption from a CD requirement, as defined in Multilateral Instrument 11-101 *Principal Regulator System*, which the principal regulator under that Instrument granted to a reporting issuer before March 17, 2008 if the exemption relates to a CD requirement that is now listed in Appendix D of MI 11-102. In this case, however, section 4.8(3) exempts a reporting issuer from having to give the notice required in section 4.8(1)(c). Refer to section 4.5 of the CP 11-102 for guidance on the effect of section 4.8 of MI 11-102.

(3) For greater certainty, a filer may not rely on section 4.8 of MI 11-102 to obtain an automatic exemption from a provision of Ontario's securities legislation listed in Appendix D of MI 11-102. A filer may rely on section 4.8 of MI 11-102 only in a passport jurisdiction.

## Annex A

### Form of decision for passport application

[Citation:[**neutral citation**]

[**Date of decision**]]

In the Matter of  
the Securities Legislation of  
[**name of principal jurisdiction**] (the Jurisdiction)

and

In the Matter of  
**the Process for Exemptive Relief Applications in Multiple Jurisdictions**

and

In the Matter of  
[**name(s) of filer(s) and other relevant parties,**  
**including definitions as required**] (the Filer(s))

### Decision

#### **Background**

The principal regulator in the Jurisdiction has received an application from the Filer(s) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) for [**describe the exemption sought (the Exemption Sought ) by referring to the relevant requirement(s) or provision(s) listed in the first column of Appendix D to MI 11-102.**]

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a passport application):

- (a) the [**name of the principal regulator**] is the principal regulator for this application, and
- (b) the Filer(s) has(have) provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in [**names of non-principal passport jurisdictions**].

#### **Interpretation**

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined. [**Add additional definitions here.**]

**Representations**

This decision is based on the following facts represented by the Filer(s):

**[Insert material representations necessary to explain why the principal regulator came to this decision. Include the location of the Filer's head office and, if appropriate, the connecting factor the filer used to identify the principal regulator for the application. State that the filer and any other relevant party is not in default of securities legislation in any jurisdiction or, if the filer or other relevant party is in default, set out the nature of the default.]**

**Decision**

The principal regulator is satisfied that the decision meets the test set out in the Legislation for the principal regulator to make the decision.

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that:

**[Insert numbered terms, conditions, restrictions or requirements. These should include references to the relevant requirement(s) or provision(s) listed in the first column of Appendix D to MI 11-102.]**

**[If any exemption has an effective date after the date of the decision, state here.]**

\_\_\_\_\_ (Name of signatory for the principal regulator)

\_\_\_\_\_ (Title)

\_\_\_\_\_ (Name of principal regulator)  
*(justify signature block)*

## Annex B

### Form of decision for a dual application

[Citation:[**neutral citation**]

[Date of decision]]

In the Matter of  
the Securities Legislation of  
[**name of principal jurisdiction**] and Ontario (the Jurisdictions)

and

In the Matter of  
**the Process for Exemptive Relief Applications in Multiple Jurisdictions**

and

In the Matter of  
[**name(s) of filer(s) and other relevant parties,**  
**including definitions as required**] (the Filer(s))

#### Decision

#### **Background**

The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer(s) for a decision under the securities legislation of the Jurisdictions (the Legislation) for [**describe the exemption sought (the Exemption Sought) by referring to the relevant requirement(s) or provision(s) listed in the first column of Appendix D to MI 11-102.**]

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application):

- (a) the [**name of the principal regulator**] is the principal regulator for this application,
- (b) the Filer(s) has(have) provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in [**names of non-principal passport jurisdictions**], and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.



**Interpretation**

Terms defined in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined. **[Add additional definitions here.]**

**Representations**

This decision is based on the following facts represented by the Filer(s):

**[Insert material representations necessary to explain why the Decision Makers came to this decision. Include the location of the Filer's head office and, if appropriate, the connecting factor the filer used to identify the principal regulator for the application. State that the filer and any other relevant party is not in default of securities legislation in any jurisdiction or, if the filer or other relevant party is in default, set out the nature of the default.]**

**Decision**

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted provided that:

**[Insert numbered terms, conditions, restrictions or requirements. These should include references to the relevant requirement(s) or provision(s) listed in the first column of Appendix D to MI 11-102.]**

**[If any exemption has an effective date after the date of the decision, state here.]**

\_\_\_\_\_(Name of signatory for the principal regulator)

\_\_\_\_\_(Title)

\_\_\_\_\_(Name of principal regulator)

*(justify signature block)*

## Annex C

### Form of decision for coordinated review application

[Citation:[**neutral citation**]

[**Date of decision**]]

In the Matter of  
the Securities Legislation of  
[**name of jurisdictions participating in decision**] (the Jurisdictions)

and

In the Matter of  
**the Process for Exemptive Relief Applications in Multiple Jurisdictions**

and

In the Matter of  
[**name(s) of filer(s) and other relevant parties,  
including definitions as required**] (the Filer(s))

### Decision

#### **Background**

The securities regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filer(s) for a decision under the securities legislation of the Jurisdictions (the Legislation) for [**describe the exemptive relief sought (the Exemptive Relief Sought) in words (e.g., that the filer is not a reporting issuer). Do not use statutory references. Include defined terms as necessary.**]

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a coordinated review application):

- (a) the [**name of the principal regulator**] is the principal regulator for this application, and
- (b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

#### **Interpretation**

Terms defined in National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined. [**Add additional definitions here.**]

**Representations**

This decision is based on the following facts represented by the Filer(s):

**[Insert material representations necessary to explain why the Decision Makers came to this decision. Include the location of the Filer's head office and, if appropriate, the connecting factor the filer used to identify the principal regulator for the application. State that the filer and any other relevant party is not in default of securities legislation in any jurisdiction or, if the filer or other relevant party is in default, set out the nature of the default. Do not use statutory references.]**

**Decision**

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Exemptive Relief Sought is granted provided that:

**[Insert numbered terms, conditions, restrictions or requirements. These should be generic and without statutory references to the Legislation of the Jurisdictions.]**

**[If any exemptive relief has an effective date after the date of the decision, state here.]**

\_\_\_\_\_ (Name of signatory for the principal regulator)

\_\_\_\_\_ (Title)

\_\_\_\_\_ (Name of principal regulator)

*(justify signature block)*

## Annex D

### Form of decision for hybrid application

[Citation:[neutral citation]]

[Date of decision]]

In the Matter of  
the Securities Legislation of  
[name of principal jurisdiction (for a passport application), or of principal jurisdiction  
and Ontario (for a dual application), and name of each jurisdiction participating in  
coordinated review application decision]

and

In the Matter of  
**the Process for Exemptive Relief Applications in Multiple Jurisdictions**

and

In the Matter of  
[name(s) of filer(s) and other relevant parties,  
including definitions as required,] (the Filer(s))

#### Decision

#### Background

[If you are making a passport application, insert:]

The securities regulatory authority or regulator in \_\_\_\_\_ has received an application from the Filer(s) for a decision under the securities legislation of the jurisdiction of the principal regulator (the Legislation) for [**describe the exemption sought (the Passport Exemption) by referring to the relevant requirement(s) or provision(s) listed in the first column of Appendix D to MI 11-102.**]

OR

[If you are making a dual application, insert:]

The securities regulatory authority or regulator in \_\_\_\_\_ and Ontario (Dual Exemption Decision Makers) have received an application from the Filer(s) for a decision under the securities legislation of those jurisdictions (the Legislation) for [**describe the exemption sought (the Dual Exemption) by referring to the relevant requirement(s) or provision(s) listed in the first column of Appendix D to MI 11-102.**]

AND

[For your coordinated review application, insert:]

The securities regulatory authority or regulator in each of \_\_\_\_\_ (the Jurisdictions) (Coordinated Exemptive Relief Decision Makers) has received an application from the Filer(s) for a decision under the securities legislation of the Jurisdictions (the Legislation) for **[describe the exemptive relief sought (the Coordinated Exemptive Relief) in words (e.g., that the filer is not a reporting issuer). Do not use statutory references. Include defined terms as necessary.]**

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a hybrid application):

- (a) the **[name of the principal regulator]** is the principal regulator for this application,
- (b) the Filer(s) has(ve) provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in **[names of non-principal passport jurisdictions]**,
- (c) the decision is the decision of the principal regulator, **[if you are making a dual application, insert: “and the decision evidences the decision of the securities regulatory authority or regulator in Ontario,”]** and
- (d) the decision evidences the decision of each Coordinated Exemptive Relief Decision Maker.

### **Interpretation**

Terms defined in MI 11-102 and National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined. **[Add additional definitions here.]**

### **Representations**

This decision is based on the following facts represented by the Filer(s):

**[Insert material representations necessary to explain why the Decision Makers came to this decision. Include the location of the Filer’s head office and, if appropriate, the connecting factor the filer used to identify the principal regulator for the application. State that the filer and any other relevant party is not in default of securities legislation in any jurisdiction or, if the filer or other relevant party is in default, set out the nature of the default. Do not use statutory references.]**

### **Decision**

Each of the principal regulator **[if you are making a dual application, insert: “, the securities regulatory authority or regulator in Ontario,”]** and the Coordinated Exemptive Relief Decision Makers is satisfied that the decision meets the test set out in the Legislation for the relevant regulator or securities regulatory authority to make the decision.

**[If you are making a passport application, insert:]**

The decision of the principal regulator under the Legislation is that the Passport Exemption is granted provided that:

**[Insert numbered terms, conditions, restrictions or requirements. These should include references to the relevant requirement(s) or provision(s) listed in the first column of Appendix D to MI 11-102.]**

**OR**

**[If you are making a dual application, insert:]**

The decision of the Dual Exemption Decision Makers under the Legislation is that the Dual Exemption is granted provided that:

**[Insert numbered terms, conditions, restrictions or requirements. These should include references to the relevant requirement(s) or provision(s) listed in the first column of Appendix D to MI 11-102.]**

**AND**

**[For your coordinated application, insert:]**

The decision of the Coordinated Review Decision Makers under the Legislation is that the Coordinated Exemptive Relief is granted provided that:

**[Insert numbered terms, conditions, restrictions or requirements. These should be generic and without statutory references to the Legislation of the Jurisdictions.]**

**[If any exemption or exemptive relief has an effective date after the date of the decision, state here.]**

\_\_\_\_\_ (Name of signatory for the principal regulator)

\_\_\_\_\_ (Title)

\_\_\_\_\_ (Name of principal regulator)

*(justify signature block)*