

MI 11-102 *Passport System* and Related Policies: NP 11-202 and NP 11-203



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Presentation Outline

1. Multilateral Instrument 11-102 *Passport System*
2. National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions*
3. National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*
4. Questions and answers

1. Multilateral Instrument 11-102 *Passport System*



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Part 1: MI 11-102 - Outline

This presentation will cover:

1. Background
2. Passport Phase 2 – Overview
3. Ontario capital market participants
4. Principal regulator under MI 11-102
5. Passport for prospectuses
6. Passport for discretionary exemptions
7. Passport for continuous disclosure
8. Passport for Registration (in development)
9. Benefits of Passport 2



1. Background


- **2004** – governments of all provinces & territories, except Ontario, agree to develop a passport system
 - market participants get single window access to capital markets in multiple jurisdictions by dealing with one regulator and one set of harmonized requirements
- **2005** – MI 11-101 *Principal Regulator System* (Passport Phase 1)
- **2005 / 2006** – passport jurisdictions enact rule-making powers to support passport phase 2
- **2007 / 2008** – Passport regulators adopt MI 11-102 and CSA adopts the related national policies, to come into force on March 17, 2008



2. Passport Phase 2 - Overview

Passport 2 includes:

- MI 11-102 – adopted by all jurisdictions except Ontario,
- The repeal of most of MI 11-101 *Principal Regulator System*, and
- Two new national policies for multi-jurisdictional prospectuses and exemption applications



Passport Phase 2 – Overview

Scope of MI 11-102

- MI 11-102 provides a passport system for obtaining a receipt for a prospectus and a discretionary exemption
 - A market participant will obtain a prospectus receipt or a discretionary exemption from its principal regulator (**PR**) and that decision will apply automatically in each passport non-principal jurisdiction, subject to certain conditions
- MI 11-102 promotes more harmonized prospectus and continuous disclosure requirements



3. Ontario capital market participants

- The OSC can be a PR under MI 11-102
- Market participants based in Ontario have direct access to passport
- A market participant from a passport jurisdiction will require a decision from its PR and from the OSC



4. Principal Regulator under MI 11-102

For prospectuses and discretionary exemptions:

- ‘Specified jurisdictions’ who can be PR under passport are: BC, AB, SK, MB, ON, QC, NB & NS
- PR is the ‘specified jurisdiction’ where the filer’s head office is located
- If filer’s head office is not in a specified jurisdiction the PR is based on the specified jurisdiction with which the filer has the most significant connection



Discretionary Change of PR

- If a market participant receives a written notice from a regulator that specifies a PR, the regulator specified in the notice is the PR for the prospectus or exemption application (s. 3.2 & 4.6)
- The related national policies give guidance on the process for a discretionary change of PR
- A change may be initiated by the usual PR or by a request from the market participant



PR for exemption applications – special rules

- Additional rules to determine the PR for exemption applications in the following circumstances:
 - (1) For relief from insider reporting requirements the PR is based on the head office of issuer
 - (2) For relief from take-over bid requirements the PR is based on the head office of the target issuer
 - (3) If filer does not require relief in its head office jurisdiction, the PR is based on the specified jurisdiction where the relief is required and with which the filer has the most significant connection



5. Passport for prospectuses

Deemed receipt for preliminary prospectus (s. 3.3(1))

- When a PR issues a receipt for a preliminary prospectus, a receipt is deemed to be issued in passport non-principal jurisdictions if:
 - (a) The preliminary prospectus is filed:
 - (i) with the passport NPR
 - (ii) under securities legislation and
 - (iii) under a 'national prospectus instrument'; and
 - (b) The filer indicates on SEDAR that it is filing the preliminary prospectus under the Instrument



Passport for prospectuses (con't)

Deemed receipt for a prospectus (s. 3.3(2))

- When a PR issues a receipt for a prospectus, a receipt is deemed to be issued in passport non-principal jurisdictions if:
 - (a) The prospectus is filed:
 - (i) with the passport NPR
 - (ii) under securities legislation and
 - (iii) under a 'national prospectus instrument'; and
 - (b) (i) The filer complied with paragraph 3.3(1)(b) at the time of filing the related preliminary prospectus, or
 - (ii) The filer indicated on SEDAR that it filed the related pro forma prospectus under the Instrument at the time of filing the pro forma prospectus



Passport for prospectuses (con't)

- Receipts are deemed issued for an amendment to a 'preliminary prospectus' and an amendment to a 'prospectus' on the same conditions as in s. 3.3
- The rule includes exemptions from a few non-harmonized prospectus requirements (s. 3.4)
- Issuers must continue to pay prospectus filing fees in all jurisdictions where the prospectus is filed



Passport for prospectuses (con't) Transition Provision (s. 3.5)

- NP 43-201 *MRRS for Prospectuses* will continue to apply to a prospectus filed before March 17, 2008, and to an amendment filed after March 17, if the related preliminary prospectus was filed before that date
- However, a receipt is deemed issued for an amendment to a final prospectus, even if the related preliminary or pro forma prospectus was filed before March 17, 2008, if filer indicates on SEDAR the amendment is filed under MI 11-102



6. Passport for Discretionary Exemptions (s. 4.7)

- When a PR grants an exemption from a requirement listed in Appendix D to MI 11-102, the ‘equivalent provision’ of the passport NPR does not apply if
 - The filer gave notice that this subsection is intended to be relied upon for the equivalent provision of the NPR
 - The person relying on the exemption complies with any terms and conditions imposed by the PR as if they were imposed in the local jurisdiction



Transition for discretionary exemptions (s. 4.8)

- MRRS continues to apply to exemptive relief applications that are in progress on March 17, 2008
- A filer may extend an existing exemption to a new passport jurisdiction by providing notice of the new passport jurisdiction where the filer will rely on the relief in accordance with the guidance in NP 11-203
- If a filer wishes to extend an existing exemption into Ontario, it must file a new application with the OSC
- Exemptions from 'CD requirements' under MI 11-101 are grandfathered by MI 11-102



7. Passport for continuous disclosure

- MI 11-102 provides a couple exemptions from a few non-harmonized continuous disclosure requirements (s.2.1)
- Repealing MI 11-101 – all harmonized continuous disclosure requirements apply in all jurisdictions
- The CSA's Harmonized Continuous Disclosure Review Program, has a PR review the disclosure record of issuers who are based in that jurisdiction (CSA Staff Notice 51-312)



8. Passport for Registration

- We will implement passport for registration at the same time as the proposed new national registration rule (NI 31-103), in the first half of 2009
- A registrant will be able to register in a non-principal jurisdiction in the same category as in its principal jurisdiction, by filing a simple notice



9. Benefits of MI 11-102

- It gives market participants simpler, faster and cheaper access to Canada's capital markets
- It achieves governments' commitment in their Memorandum of Understanding to provide a passport system
- It streamlines the MRRS decision making processes for prospectuses and exemption applications

National Policy 11-202

Process for Prospectus Reviews in Multiple Jurisdictions



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National Policy 11-202 - Overview

NP 11-202

- Replaces NP 43-201 *MRRS for Prospectuses*
- Filing, review and decision making for prospectuses filed in multiple jurisdictions
- Interface for market participants based in passport jurisdictions to access the Ontario market
- Becomes effective on March 17, 2008



Principal Regulator

- PR determined as under MI 11-102
- If PR is based on significant connection; connecting factors are described in s. 3.4(7)
- Discretionary change in PR similar to MI 11-102



Two Types of Prospectuses

1. Passport prospectus = single decision maker
 - (a) PR is passport jurisdiction and prospectus not filed in Ontario, or
 - (b) OSC is PR (s. 3.1(a),(b))
2. Dual prospectus = two decision makers
 - PR is passport regulator and prospectus filed in Ontario (s. 3.1(c))



1. Passport Prospectus – single decision maker

- Filing in, and pay fees to, each jurisdiction where securities will be distributed
- Reviewed only by the PR
- PR's receipt, triggers a deemed receipt in each passport jurisdiction where prospectus filed



2. Dual Prospectus – 2 decision makers

- Filing in, and pay fees to, each jurisdiction where securities will be distributed
- Reviewed by passport PR and OSC (as NPR)
- PR's receipt:
 - triggers a deemed receipt in each passport non-principal jurisdiction where prospectus filed, and
 - evidences OSC's receipt



General Filing Guidelines

- Identify PR on SEDAR
 - If not based on head office, indicate connecting factor (s. 4.1)
- Identify in cover letter filing under NP 11-202 and MI 11-102
- File prospectus and pay fees to PR even if not distributing securities in that jurisdiction (s. 4.2)



Review periods

- Consistent with MRRS periods
- May apply longer review periods for complex filings
- Dual prospectus
 - OSC clears for final or advises PR of receipt refusal concerns within specified periods
 - OSC can opt out at any time before issuance of final receipt



Receipts - Effect

- Receipt is that of PR
- Dual prospectus - also evidences receipt from OSC (s. 7.1(2))
- Indicates each jurisdictions where the PR understands deemed receipts result (s. 7.1(1))
- NPR's do not have to be open for a receipt to be issued on their behalf (Part 11)
- OSC must be open for a receipt to be issued on its behalf



Receipts – Conditions

- Preliminary Receipt
 - acceptable materials filed (s. 7.2(1))
 - letter confirming items in s. 7.2(2)
- Final Receipt
 - PR satisfied all comments resolved (s. 7.3(1))
 - OSC “clear for final” (s. 7.3(2))
 - acceptable materials filed (s. 7.3(3))
 - letter confirming items in s. 7.3(4)



Pre-filings and Waiver Applications

- Annex A lists examples (s. 8.2(3)(b))
- Final receipt for prospectus evidences:
 - exemption granted for waiver application (s. 8.4(1)(a), or
 - pre-filing satisfactorily resolved (s. 8.5(1))



Pre-filings and Waiver Applications - single decision maker

- All routine pre-filing or waiver application
 - Reviewed solely by PR (s. 8.2(3)(a))
 - Fees only paid to PR
- Novel pre-filing or waiver application for passport prospectus (s. 8.2(3)& (4))
 - Reviewed solely by PR
 - Fees only paid to PR
 - PR may provide copies or description of pre-filing or waiver application to other regulators to discuss



Pre-filings and Waiver Applications - two decision makers

- Novel pre-filing or waiver application for dual prospectus
 - Fees paid to PR & OSC
 - PR coordinates review with OSC
 - PR will attempt to resolve outstanding issues with the filer and OSC, if OSC disagrees with proposed disposition (s. 8.2(5)(e))



Transitional provisions

- NP 43-201 continues to apply to all prospectus and pre-filings pre-March 17th.
- Deemed receipt available for an amendment to a final prospectus, even if the related preliminary or pro forma prospectus filed before March 17th.

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



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NP 11-203

This presentation will cover:

- Four types of applications and the key filing, review and decision-making processes for each
- General guidelines
- Decisions under NP 11-203 and
- Transition provisions



NP 11-203 Overview

- Replaces NP 12-201 *MRRS for Exemptive Relief Applications*
- Describes processes for:
 - Filing
 - Review, and
 - Decision making

Provides guidance on:

- Determining the PR
- Effect and form of decision
- Extending existing exemptions to new jurisdictions, and
- Transition from MRRS



Four Types of Exemption Applications

1. Passport Application:
2. Dual Application
3. Coordinated Review Application
4. Hybrid Application



1. Passport Application – single decision maker (OSC as PR or relief not required in Ontario)

- Filing
 - File only with the PR
 - Pay application fee only to the PR
 - List the passport NPR jurisdictions where the filer wants equivalent exemptions under MI 11-102
- Reviewed only by the PR
 - subject to consultations on novel or substantive issues
- The PR's decision to grant the exemption, results in an equivalent exemption in the notified passport NPR jurisdictions (i.e. the jurisdictions listed in the application)



2. Dual Application – two decision makers (PR in passport jurisdiction & relief needed in ON)

- Filing
 - File with the passport PR and with OSC
 - Pay application fee to the PR and the OSC
 - List the passport NPR jurisdictions where the filer wants equivalent exemptions
- Reviewed by the passport PR and the OSC (as NPR)
 - OSC provides ‘opt-out level’ comments to PR
 - PR sends to filer the comments of PR and OSC
 - Filer resolves comments by dealing only with its PR
- PR sends decision to OSC who will have 5 days to opt-in
- PR’s decision to grant exemption, results in an equivalent exemption in the notified passport NPR jurisdictions, and evidences the OSC’s decision if the OSC opted-in



3. Coordinated Review – multiple decision makers (for relief that is outside scope of passport)

These follow the same processes as under MRRS
Filing

- File in all jurisdictions where relief is required
- Pay application fees to regulators in all jurisdictions
- Reviewed by the PR and all NPRs
 - NPRs provide ‘opt-out level’ comments to PR
 - PR sends the comments to the filer
 - Filer resolves comments by dealing only with its PR
- PR sends decision to NPRs who will have 5 days to opt-in
- PR’s exemption decision will evidence the NPR’s decision for each NPR that opted-in



4. Hybrid Application – multiple decision makers

- Application for exemptions from more than one requirement, some or which are under coordinated review, plus others that are either passport or dual
- Filer uses processes for both coordinated review and either passport or dual, as appropriate;
- Review processes and decision outcomes are based on those for both coordinated review and either passport or dual, as appropriate



General Filing Guidelines

Part 5 describes the information required in an application, depending on the application type

For example, applications must:

- Specify the PR;
- For passport or dual applications, give notice of passport NPRs where the filer will rely on the relief;
- List the requirements from which the filer wants relief;
- Include other information consistent with current practice.
- Discretionary change of PR.



General Guidelines (cont'd)

Verification Statement:

- No prescribed form – must be signed by filer and contain a statement certifying truth of the facts in the application
- Format used in AB is:

We authorize _____ to make and file the attached application and confirm the truth of the facts contained in it.

Dated on _____, 20__.

Authorized Officer

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General Guidelines (cont'd)

- Filers cannot use passport to extend the availability of a non-harmonized exemption in NI 45-106, to a passport NPR where the non-harmonized exemption is not available under that rule (s. 3.8(4) of NP 11-203)
- Part 4 of the policy tells filers how to make a pre-filing request, which process depends on the type of application that is contemplated



Decisions under NP 11-203

- There is a form of decision document for each application type as set out in appendices to the policy
- A passport or dual decision will list the notified passport jurisdictions where the filer will rely on the decision; a dual decision will do the same and will also evidence that the OSC has granted the exemption (if the OSC opted-in)
- PR will send the signed and dated decision to the filer and to the regulator in each jurisdiction where relief is effective



Transition Provisions

- For exemptive relief applications that are in progress on March 17, 2008, the processes and form of decision under NP 12-201 MRRS will continue to apply
- A filer may extend an existing exemption, whether granted before, on or after March 17, to a new passport jurisdiction by providing notice of the new passport jurisdiction where the filer will rely on the relief (if the filer provides the notice to its PR, the PR will notify the new passport NPR(s))
- If a filer wishes to extend an existing exemption into Ontario, it must file a new application with the OSC



Transition (cont'd)

- What happens to exemptions from from a 'CD requirement' under MI 11-101 ?
- For filers that filed a Form 11-101F1 *Notice of Principal Regulator*, and obtained an exemption from a 'CD requirement', the exemption is automatically extended to all passport jurisdictions, without any notice, but subject to the key condition in MI 11-102 that the filer complies with any terms or conditions imposed by the principal regulator as if they were imposed in the local jurisdiction



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