

COMPANION POLICY 11-101CP
Principal Regulator System

PART 1 GENERAL

1.1 Purpose

- (1) **General** - Multilateral Instrument 11-101 *Principal Regulator System* (the Instrument), together with related instruments, policies and administrative processes, is intended to let an issuer or registrant seek and obtain many types of regulatory approvals in all Canadian jurisdictions by dealing with its principal regulator. Ontario has not adopted the Instrument but will continue to act as a principal regulator under the mutual reliance review systems established by the CSA.
- (2) **For issuers** - The Instrument provides issuers with exemptions in non-principal jurisdictions from most prospectus disclosure and continuous disclosure requirements. Many of those requirements are in national instruments, which are uniform across Canada. Some of the requirements are in multilateral or local instruments, and so are not uniform in every jurisdiction.

The exemptions are not available to an issuer that is

- (a) not an investment fund and has its head office in Ontario, or
- (b) is an investment fund, if the investment fund manager's head office is in Ontario.

The goal of the Instrument is to permit an issuer to deal with its principal regulator when it files a prospectus or continuous disclosure document in multiple jurisdictions. The issuer still has to comply with filing, delivery, fee and some other requirements of each non-principal regulator but will only have to look at the disclosure requirements that apply in its principal jurisdiction, as applied by its principal regulator.

The exemptions are based on an issuer being subject to the prospectus-related and continuous disclosure requirements of its principal jurisdiction, but are not conditional on compliance with those requirements. Non-principal regulators will generally rely on the principal regulator to monitor and enforce compliance as appropriate. However, if a non-principal regulator sees misconduct and considers enforcement action necessary to protect local investors or markets, it can still bring an enforcement action on the basis of its public interest jurisdiction or any violations of local laws, like prohibitions against misrepresentation or fraud. No provision in the Instrument should be interpreted as limiting the competence of, or access to, a local regulator or tribunal.

(3) **For registrants** –

- (a) The Instrument provides an exemption from the registration requirement for a firm or individual to continue dealing with a client that moves to a different jurisdiction, and with family members of that client. As long as the registrant is

registered in its principal jurisdiction and has a minimal number of clients and minimal amount of assets under management in the other jurisdiction, the registrant will not have to become registered in the other jurisdiction. Because Ontario has not adopted the Instrument, the exemption is not available to a registrant in another jurisdiction whose clients move to Ontario. Under the Instrument, the exemption is not available to a firm with a head office in Ontario or to an individual with a working office in Ontario.

- (b) The Instrument also provides an exemption from the proficiency and supervisory requirements that apply in respect of trades in securities of a commodity pool if a mutual fund restricted individual, principal distributor or participating dealer is registered in its principal jurisdiction.

1.2 Applications for relief

Impact on MRRS - Parts 3 and 4 of the Instrument provide exemptions from the CD requirements and certain prospectus-related requirements that apply to an issuer in its non-principal jurisdictions, provided generally that the issuer, among other things, files the prospectus or continuous disclosure document with the non-principal regulator.

These exemptions also eliminate the need for an issuer to obtain relief from prospectus disclosure or continuous disclosure requirements in non-principal jurisdictions. This means that an issuer does not have to apply under National Policy 12-201 *Mutual Reliance Review System for Exemptive Relief Applications* (NP 12-201)¹ or Part 8 or 9 of National Policy 43-201 *Mutual Reliance Review System for Prospectuses* (NP 43-201)² unless it files a prospectus in Ontario or is a reporting issuer in Ontario. Instead, the issuer will be able to make a local application with its principal regulator, and rely on the exemptions in Part 3 or 4 or section 5.6 of the Instrument in its non-principal jurisdictions. The process for pre-filings under Part 9 of NP 43-201 remains the same.

If an issuer files a prospectus in Ontario and its head office (or that of the investment fund manager) is not in Ontario, the issuer must make any application for relief with its principal regulator and the Ontario Securities Commission (OSC) under NP 12-201 or NP 43-201. If the issuer's or the investment fund manager's head office is in Ontario, the exemptions in the Instrument are not available and the issuer must apply for discretionary relief under NP 12-201 or NP 43-201 in each jurisdiction in which the issuer is filing the prospectus.

If an issuer is a reporting issuer in Ontario and its head office (or that of the investment fund manager) is not in Ontario, the issuer must make any application for relief about a continuous disclosure filing with its principal regulator and the OSC under NP 12-201. If the issuer's or the investment fund manager's head office is in Ontario, the exemptions in the Instrument are not available and the issuer must apply for discretionary relief under

¹ In Québec, NP 12-201 is adopted as Notice 12-201 *Relating to the Mutual Review Reliance System for Exemptive Relief Applications*.

² In Québec, NP 43-201 is adopted as Notice 43-201 *Relating to the Mutual Review Reliance System for Prospectuses and Annual Information Forms*.

NP 12-201 in each jurisdiction in which the issuer is making a continuous disclosure filing.

1.3 Language of documents

When filing in Québec, a person must comply with linguistic obligations and rights prescribed by Québec law, including specific obligations (e.g. section 40.1) in the Québec *Securities Act*.

1.4 Requirements not covered by exemptions

The Instrument does not exempt reporting issuers in Québec from having to comply with Québec Regulation Q-27 *Respecting Protection of Minority Securityholders in the Course of Certain Transactions*.

PART 2 PRINCIPAL REGULATOR

2.1 Participating principal jurisdictions

For the purposes of Parts 3 and 4 of the Instrument, an issuer must select its principal regulator from among the jurisdictions that are “participating principal jurisdictions”, as defined in the Instrument. The participating principal jurisdictions are the jurisdictions that have agreed to act as principal regulator for the continuous disclosure and prospectus exemptions in the Instrument. A market participant will have the same principal regulator under this Instrument and the relevant mutual reliance review system established by the CSA, except as noted below.

Because Ontario has not adopted this Instrument, it is not a participating principal jurisdiction for purposes of these exemptions and Ontario-based market participants cannot rely on the exemptions. However, the OSC will continue to act as a principal regulator under NP 43-201 and NP 12-201.

An issuer with a head office outside of Ontario that uses the OSC as its principal regulator under NP 43-201 and NP 12-201 (for example, a foreign issuer listed on the TSX) could select another jurisdiction to act as principal regulator under the Instrument and rely on the exemptions in the Instrument. The effect would be that the OSC would still be the issuer’s principal regulator under NP 43-201 or NP 12-201, but the other jurisdiction selected by the issuer as principal regulator under the Instrument would be the only non-principal jurisdiction under NP 43-201 or NP 12-201.

An issuer with a principal regulator other than the OSC would continue to comply with Ontario securities law to the extent it participates in Ontario’s capital market, and would continue, when necessary, to file any relief applications with the OSC as its only non-principal regulator under NP 43-201 or NP 12-201.

Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut do not currently act as principal regulator under NP 43-201. However, they will act as principal regulator for the prospectus exemptions in Part 4 of the Instrument if

Ontario is the principal regulator for the prospectus filing under NP 43-201. The OSC will issue the decision document under NP 43-201, evidencing the receipts of all jurisdictions where the prospectus is filed. The receipt for Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut, evidenced by the decision document issued by Ontario, will be the principal jurisdiction receipt needed for the exemptions in the non-principal jurisdictions under the Instrument.

2.2 Determination of principal regulator

- (1) **For issuers** - If an issuer's or investment fund manager's head office is not in a participating principal jurisdiction, the issuer must determine a principal regulator based on the participating principal jurisdiction that it has the most significant connection with.

Refer to section 3.2 in NP 43-201 for further guidance on determining a principal regulator.

- (2) **For registration** – The principal regulator for a firm is determined by the location of its head office. Under NI 31-101, a firm's principal regulator is determined using the most significant connection, with the head office as the primary indicator. If a person or company wishes to confirm its determination of principal regulator (e.g., because it determines its principal jurisdiction is different than under NI 31-101), it should follow the process set out in section 3.2(7) in National Policy 31-201 *National Registration System* (NP 31-201).

2.3 Notice of principal regulator

- (1) **Initial notice – exemptions from continuous disclosure requirements** – Under section 2.2 of the Instrument, a reporting issuer relying on an exemption in Part 3 of the Instrument must file a notice in Form 11-101F1 at the same time the issuer files its first filing under Part 3. This notice sets out who the reporting issuer's principal regulator is for the purposes of the exemptions from continuous disclosure requirements in the Instrument. The notice should be filed on SEDAR under the category 'Notice of Principal Regulator under Multilateral Instrument 11-101'.
- (2) **Initial notice – registration exemption** – If a person or company is required to file a Form 11-101F1 under section 2.6 of the Instrument, it should immediately file the form with its principal regulator and non-principal regulators. It may send it by e-mail to the following addresses:

British Columbia	registration@bcsc.bc.ca
Alberta	nrs@seccom.ab.ca
Saskatchewan	dmurrison@sfsc.gov.sk.ca
Manitoba	securities@gov.mb.ca
Québec	inscription@lautorite.qc.ca
New Brunswick	nrs@nbsc-cvmnb.ca
Nova Scotia	nrs@gov.ns.ca
Prince Edward Island	mlgallant@gov.pe.ca
Newfoundland & Labrador	skmurphy@gov.nl.ca

Yukon Territory
 Northwest Territories
 Nunavut

corporateaffairs@gov.yk.ca
 ann_burry@gov.nt.ca
 svangenne@gov.nu.ca

- (3) **Change in principal regulator – continuous disclosure exemptions** – If a reporting issuer’s principal regulator changes because the issuer’s head office changes to another participating principal jurisdiction or the investment fund manager’s head office changes to another participating principal jurisdiction, the issuer must file a new Form 11-101F1. This notice must be filed on SEDAR under the category ‘Notice of Principal Regulator under Multilateral Instrument 11-101’ at the same time as the issuer’s next filing after the change takes place.
- (4) **Change in principal regulator – registration exemption** – If a person or company’s principal regulator changes because the firm’s head office or the individual’s working office changes to another jurisdiction, the person or company should immediately file the new Form 11-101F1 under section 2.6(1) of the Instrument with its principal regulator and non-principal regulators by e-mail to the addresses set out in section 2.3(2) of this Policy. This is only required if the person or company has not already filed a Form 31-101F2 *Notice of Change* in accordance with NI 31-101.
- (5) **Change in principal regulator – by securities regulatory authority or regulator** – If a person or company’s principal or non-principal regulator disagrees with a person or company’s determination of principal regulator, the regulator may, under section 2.8 of the Instrument, advise the person or company that another regulator will be its principal regulator for the purposes of the Instrument. There is a discussion of circumstances when this may occur in section 3.3 of NP 31-201 and section 3.5 of NP 43-201.

A person or company may request that a regulator change the person or company’s principal regulator under section 2.8 of the Instrument if the person or company originally selects its principal regulator based on the jurisdiction it has the most significant connection with, and that jurisdiction changes over time. The request should be made in writing and include the reasons for the change.

PART 3 CONTINUOUS DISCLOSURE EXEMPTIONS

3.1 Filing copies of documents

An issuer relying on an exemption in Part 3 of the Instrument must file the same documents in a non-principal jurisdiction as it has to file in the principal jurisdiction except documents related to an application for discretionary relief. If the issuer is not relying on the exemption in the non-principal jurisdiction (for example, if the non-principal jurisdiction does not have a particular CD requirement), the issuer does not have to file the document in that non-principal jurisdiction.

An issuer relying on an exemption in Part 3 of the Instrument must also pay to the non-principal regulator the fee that would otherwise apply to the filing under the CD requirement except if no document is required to be filed with the principal regulator

(e.g., the issuer is not required to file financial statements under a discretionary order in the principal jurisdiction).

Section 3.2(2) of the Instrument requires an issuer that relies on the exemption in section 3.2(1) of the Instrument and whose principal jurisdiction is British Columbia to make certain disclosures about the audit committee rule that it applies. The additional disclosure is not required if the issuer complies with MI 52-110 under section 3(a) of BCI 52-509.

PART 4 PROSPECTUS-RELATED EXEMPTIONS

4.1 Long form prospectus exemption

An issuer relying on the exemption in section 4.3 for a long form prospectus may also rely on section 4.2 for an exemption from requirements in a national prospectus rule that applies to the long form prospectus (e.g., NI 52-107).

4.2 Prospectus-related requirements not covered by exemptions

The Instrument exempts an issuer filing a prospectus from the local prospectus-related requirements set out in Appendix A to the Instrument and from requirements in the national prospectus rules. Part 4 of the Instrument does not exempt an issuer from certain local statutory requirements in connection with a prospectus offering. For example, we have not provided exemptions from the following requirements that form the basis for the statutory rights and remedies relating to prospectus offerings in securities legislation:

- (a) the requirement to file a prospectus or amendment to a prospectus that is receipted in order to distribute securities, which is the basis for a purchaser's right of action for misrepresentation,
- (b) the requirement to deliver a prospectus to a purchaser under the offering, after which the purchaser has a right to withdraw from the purchase, and
- (c) the requirements to include certificates in the prospectus and file consents of experts, which trigger statutory rights of action.

The significant requirements in each jurisdiction that are not included in the exemptions in Part 4 of the Instrument are listed in Appendix A to this Policy.

4.3 Application of prospectus policies

The Instrument does not provide an exemption from prospectus policies because it is not necessary to do so (policies can only describe or interpret requirements, not impose requirements). The non-principal regulators do not intend to apply local policies relating to prospectus filings in the non-principal jurisdictions. The principal regulator will continue to apply national policies relating to prospectuses on behalf of the non-principal regulators.

4.4 Notice that issuer is relying on exemption

An issuer relying on an exemption in Part 4 of the Instrument should indicate this in the cover letter to its preliminary prospectus.

4.5 Shelf and PREP prospectus supplements

The exemption in the Instrument that applies to national prospectus rules is available if, among other things, the issuer receives a receipt for its prospectus from its principal regulator. If the issuer is filing a prospectus supplement under either National Instrument 44-102 *Shelf Distributions* or National Instrument 44-103 *Post-Receipt Pricing*, the issuer does not receive a receipt for that supplement.

The issuer can still rely on the exemption in section 4.2 of the Instrument for a prospectus supplement if the issuer

- (a) received a receipt for the corresponding base shelf or PREP prospectus it filed, and
- (b) subsequently applies for, and obtains, an exemption from the prospectus supplement requirements in its principal jurisdiction that is evidenced by a discretionary order.

PART 5 REGISTRATION-RELATED EXEMPTIONS

5.1 Notice that person or company is relying on exemption

Under section 5.8 of the Instrument, a person or company must give prior notice to the securities regulatory authority in the local jurisdiction that it is relying on an exemption in Part 5. A person or company should indicate which exemption it is relying on in an e-mail sent to the e-mail addresses set out in Form 31-101F2 *Notice of Change* under NI 31-101. The requirement in section 5.8 of the Instrument is separate from the requirement in section 2.6 of the Instrument.

5.2 Interplay of mobility exemptions

Sections 5.2, 5.3, 5.4 and 5.5 of the Instrument provide separate exemptions for a dealer, unrestricted adviser or individual. If an individual employed by a dealer or unrestricted adviser is relying on the exemption for trading with or advising eligible clients in a local jurisdiction, the dealer or unrestricted adviser that employs the individual must either be registered as a dealer or unrestricted adviser, as applicable, in the local jurisdiction, or ensure that it also meets the terms of the mobility exemption.

If an individual can no longer rely on the exemption, then both the individual and the dealer or unrestricted adviser that employs the individual must apply for registration in the local jurisdiction if they want to continue to deal with eligible clients in the jurisdiction.

5.3 Multilateral Instrument 81-104 *Commodity Pools* Exemption

Section 5.7 of the Instrument provides an exemption from the commodity pool proficiency requirements, provided the mutual fund restricted individual, principal distributor or participating dealer is registered in its principal jurisdiction. As a result, a mutual fund restricted individual, principal distributor or participating dealer whose principal jurisdiction is British Columbia is exempt from the proficiency requirements under section 4.2 of MI 81-104.

Appendix A

Prospectus-related requirements not exempted under the instrument

British Columbia:

Securities Act: sections 61(1), 66 - 71, 79, 80, and 83

Securities Rules: sections 106 and 121

Alberta:

Securities Act: sections 110, 113(1), 114 - 117 and 119 - 122

Securities Rules: sections 85(1), 88, 92, 102, 104, 112, 113, 115, 116 and 117

Saskatchewan:

The Securities Act, 1988: sections 58, 60, 61(1)(a), and 62 - 80

The Securities Regulations: sections 76, 77, 94 and 97

Manitoba:

Securities Act: sections 37, 38, 40, 42, 50, 51, 52, 53, 56, 61, and 64

Québec:

Securities Act: sections 11, 13 (certificate requirements and paragraph 2), 14 - 17, 20 (paragraph 3), 21 - 39 and 40.1

Securities Regulations: sections 25, 31 [not yet in force], 32 [not yet in force], 33, 37 and 94 – 98.1

Regulation: Q-17 *Restricted Shares*

New Brunswick:

Securities Act: sections 71, 74(1), 74(2), 75 - 78, 82 - 85, 87, 88 and 194

New Brunswick Implementing Instrument 41-801, section 2.3

Nova Scotia:

Securities Act: sections 58, 62 - 64, 67, 71, 72 and 76

Securities Rules: sections 96 - 98

Prince Edward Island:

Securities Act: sections 8(1), 8.1(1) as this section relates to disclosure requirements, 8.3 - 8.7, 8.9 - 8.12 and 8.16

Newfoundland and Labrador:

Securities Act: sections 54, 57, 58 - 60, 62, 63, 66 - 69, 71 and 72

Yukon:

Securities Act: sections 22(5) and 23

Securities Regulation: section 14(1)

Northwest Territories:

Securities Act: sections 27(4) and 28

Nunavut:
Securities Act: sections 27(4) and 28