

Notice of Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*

May 10, 2012

Introduction

Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets* is an initiative of the Canadian Securities Administrators (CSA or we), except the Ontario Securities Commission. The instrument designates as reporting issuers in the local jurisdiction, any issuer whose securities are quoted only on a US OTC market and that have a significant connection to that local jurisdiction.

We, except the Ontario Securities Commission, are adopting:

- Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets* (the Instrument)
- Form 51-105F1 *Notice – OTC Issuer Ceases to be an OTC Reporting Issuer*
- Form 51-105F2 *Notice of Promotional Activities*
- Form 51-105F3A *Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of Personal Information*
- Form 51-105F3B *Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of Personal Information*
- Form 51-105F4 *Notice – Issuer Ceases to be an OTC Reporting Issuer*

(collectively, the Forms)

- Companion Policy 51-105CP (the Companion Policy)

(together, the OTC Rule).

We are also making consequential changes to:

- National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* (NP 11-203)
- CSA Staff Notice 12-307 *Applications for a Decision that an Issuer is not a Reporting Issuer* (Staff Notice)

Provided all necessary ministerial approvals are obtained, the OTC Rule will come into force on **July 31, 2012**. We are publishing the text of the OTC Rule and a blackline copy of NP 11-203 that identifies the consequential changes to that policy concurrently with this notice. Prior to the expected implementation date of the OTC Rule, CSA staff intend to issue a revised version of the Staff Notice.

Substance and Purpose

The OTC Rule will:

- improve disclosure by issuers with a significant connection to a Canadian jurisdiction whose securities are quoted in the U.S. over-the-counter markets
- discourage the manufacture and sale in a Canadian jurisdiction of U.S. over-the-counter quoted shell companies that can be used for abusive purposes

Background

Background to the OTC Rule

On September 15, 2008, BC Instrument 51-509 Issuers Quoted in the U.S. Over-the-Counter Markets and related amendments (the BC OTC Rule) came into force as a local rule in British Columbia. The BC OTC Rule regulates issuers that are quoted in the U.S. over-the-counter markets but not on another North American exchange listed in the rule and that have a significant connection to British Columbia.

The BC OTC Rule was an initiative to address the harm caused to the reputation of British Columbia's capital markets by market participants with a significant connection to British Columbia that engage in abusive activities through the over-the-counter markets in the United States. These markets consist of the OTC Bulletin Board and OTC Markets quotation systems. Damage to British Columbia's market reputation, in turn, was harming legitimate issuers, investment dealers, and other British Columbia market participants.

Since then, some of the OTC reporting issuers migrated to other Canadian jurisdictions. As a result, we are adopting the OTC Rule.

Application of the OTC Rule

The OTC Rule applies to any OTC issuer that has a significant connection to a local Canadian jurisdiction that has adopted the OTC Rule.

Under the OTC Rule, an OTC issuer is an issuer whose securities are quoted on any U.S. over-the-counter markets unless the issuer is also listed or quoted on the TSX Venture Exchange, the TSX, the Canadian National Stock Exchange, the Alpha Exchange, the New York Stock Exchange, the NYSE Amex Equities, or the NASDAQ Stock Market. Those exchanges impose requirements on issuers that make it unnecessary for them to be subject to the OTC Rule. An OTC reporting issuer also includes an issuer if trades in its securities are reported in the grey market.

Under the OTC Rule, an OTC issuer has a significant connection to a Canadian jurisdiction if

1. it is directed or administered or promotional activities are conducted in or from the jurisdiction, in whole or in part, or
2. it distributed securities in a Canadian jurisdiction prior to obtaining a ticker-symbol for the purpose of having its securities quoted on an over-the-counter market in the U.S. and those securities became the issuer's OTC-quoted securities.

The OTC Rule applies to an OTC issuer when the U.S. Financial Industry Regulatory Authority (FINRA) assigns a ticker symbol to a class of its securities so that trades in those securities may be reported. Once an OTC issuer becomes an OTC reporting issuer under the OTC Rule, the OTC Rule will continue to apply to it for at least one year. After that, the OTC Rule applies only

if the issuer is directed or administered or carries out promotional activities in or from a jurisdiction of Canada. In Québec, an OTC reporting issuer will have to apply for a decision to revoke its reporting issuer status.

The OTC Rule applies to an OTC issuer that is already a reporting issuer in a Canadian jurisdiction at the time the rule comes into force. We considered excluding the application of the OTC Rule to this class of OTC issuers but concluded, given the objectives of the OTC Rule, that there is no persuasive policy reason to exclude its application to this class of OTC issuers.

Disclosure requirements

Issuers

The OTC Rule's disclosure requirements improve continuous disclosure for OTC reporting issuers. We will monitor and enforce compliance with the new requirements through continuous disclosure reviews and the use of compliance and enforcement tools when appropriate.

Under the OTC Rule, OTC reporting issuers must:

- meet the same periodic disclosure requirements imposed on other domestic reporting issuers under National Instrument 51-102 *Continuous Disclosure Obligations*, including an annual information form (AIF), management's discussion and analysis (MD&A), and audited financial statements
- comply with Canadian timely disclosure requirements
- file their public disclosure on SEDAR

Other than the requirement to file an AIF, OTC reporting issuers are treated as venture issuers, as defined in National Instrument 51-102 *Continuous Disclosure Obligations*.

OTC reporting issuers that are SEC filers – issuers that file disclosure with the United States Securities and Exchange Commission – can comply with the OTC Rule's requirements to file financial statements, material change reports, MD&A and AIFs using documents they file with the SEC.

The OTC Rule also requires an OTC reporting issuer to file

- in certain circumstances, the most recent registration statement it filed with the SEC, and
- information about persons it retains for promotional activities, the nature and scope of the engagement, compensation, and other material terms of the agreements entered into with those persons.

The OTC Rule also requires OTC reporting issuers in the oil and gas business to comply with National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*. The OTC Rule does not impose additional requirements with respect to National Instrument 43-101 *Standards of Disclosure for Mineral Projects* because that instrument currently applies to OTC issuers.

Insider reports

The OTC Rule requires an insider of an OTC reporting issuer to file an insider report on SEDI unless the insider is exempted from those requirements because it has filed its insider report in compliance with U.S. federal securities law. If an insider of an OTC reporting issuer is exempted

from reporting requirements under U.S. federal securities law, the OTC Rule requires that it file an insider report under Canadian law.

Personal Information Forms

Under the OTC Rule, each director, officer, promoter or control person of an OTC reporting issuer is required to deliver to the securities regulatory authorities a personal information form (PIF). This form would include the person's consent to a criminal record search. Directors and officers of issuers listed on the TSX Venture Exchange and the TSX must file a similar form with those exchanges. If a person has submitted a PIF to the TSX Venture Exchange or the TSX and the information contained in it has not changed, the person may deliver it to satisfy the requirements of the OTC Rule.

Foreign Issuer and MJDS Exemptions

Under the OTC Rule, an OTC reporting issuer may rely on exemptions from continuous disclosure requirements that are available to other reporting issuers that have a class of securities registered under section 12 of the United States *Securities Exchange Act of 1934* or are required to file reports under paragraph 15(d) of that Act, except for the exemption regarding material change reporting. An OTC reporting issuer must comply with the same timely disclosure requirements for material change reporting as domestic reporting issuers, except that it may use SEC Form 8-K *Current Report* as a material change report. The continuous disclosure and other exemptions for a designated foreign issuer under National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* are available to an OTC reporting issuer that is a designated foreign issuer.

Restriction of exemptions

The OTC Rule deters manufacturers of shell companies from delivering to buyers of shell companies, for abusive purposes, the "public float" that is created from shares sold in private placements to Canadian residents and registered in a US registration statement that an issuer files with the SEC prior to obtaining a ticker-symbol.

To effect this, the OTC Rule:

- denies the use of the private agreement take-over bid exemption that could be used for this purpose
- requires a Canadian resident who acquired shares from an OTC issuer before it obtained a ticker-symbol to sell the shares only through a registrant, from an account in the person's own name, into the market or into a formal take-over bid, amalgamation, merger, reorganization or other similar statutory procedure, and
- requires a legend on the certificates or a legend restriction notation on the ownership statements representing the seed stock held by Canadian residents to that effect.

The OTC Rule will also deter insiders and persons who have close ties to issuers from dumping shares into a market that has been prepared with promotional disclosure. Therefore, the OTC Rule provides security holders of OTC reporting issuers with a transparent, open-market resale regime for securities acquired in a private placement.

All of the usual capital raising exemptions would be available to an OTC issuer during both its

private and public stages. However, the OTC Rule would place restrictions on the use of prospectus exemptions when an OTC reporting issuer is issuing securities for services.

Transition Provisions

The transition provisions are not applicable in British Columbia.

When the OTC Rule comes into force, an OTC reporting issuer will have to begin making disclosure immediately. The first quarterly and annual filings would require reporting on periods prior to the effective date of the OTC Rule.

Issuers that are not SEC filers may not have an auditor or the resources and experience to meet the OTC Rule's new disclosure requirements. To give these issuers more time to prepare for compliance with the new rule, we are providing a transition period following the adoption of the OTC Rule. This would give OTC reporting issuers more time to comply with their requirements to file annual financial statements and interim financial reports, related MD&A, AIFs, and, if applicable, their oil and gas disclosure documents.

Proposed Fees

The securities regulatory authorities will impose the same filing fees that reporting issuers, and insiders of reporting issuers, pay to the applicable securities regulatory authority. These fees are set out in the applicable securities legislation. OTC reporting issuers will also have to pay SEDAR fees as well as late fees for failure to meet filing deadlines.

Costs

The disclosure requirements should not be onerous for OTC reporting issuers who are SEC filers, because they can use the documents they file with the SEC in lieu of the Canadian forms for material change reports, financial statements, MD&A and AIF.

OTC reporting issuers who are not SEC filers and who do not have audited financial statements may incur significant new costs to comply with the OTC Rule.

OTC reporting issuers in the oil and gas sector, like other reporting issuers, must comply with National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*. Compliance with this rule may result in significant new costs to OTC reporting issuers.

Since an OTC reporting issuer has a significant connection with a jurisdiction of Canada, we think it is appropriate that those issuers make disclosure to the same standard as other Canadian reporting issuers.

Consequential changes

We are amending NP 11-203 to direct filers to the Companion Policy for the factors a filer should consider in identifying the principal regulator for an application for exemptive relief from the requirements of the Instrument or the Forms.

We are also amending the Staff Notice to state that the simplified procedure for ceasing to be a reporting issuer detailed in that staff notice is not available for an OTC reporting issuer. The

revised Staff Notice will indicate that the simplified procedure and the modified approach described in the Staff Notice are not available to a reporting issuer that is an OTC reporting issuer under Multilateral Instrument 51-105.

Summary of Written Comments Received by the CSA

We published the OTC Rule for comment on June 10, 2011. During the comment period, we received submissions from 3 commenters. We have considered the comments received and thank all of the commenters for their input. The names of commenters are contained in Annex A of this notice and a summary of their comments, together with our responses, are contained in Annex B of this notice.

Summary of Changes to the OTC Rule

After considering the comments received, we have made some revisions to the materials that were published for comment. Those revisions are reflected in the OTC Rule we are publishing concurrently with this notice. As these changes are not material, we are not republishing the Instrument for a further comment period.

In particular, we added Alpha Exchange Inc. to the list of exchanges in the definition of OTC issuer in the Instrument. We also updated the Companion Policy to provide additional guidance to market participants based on the comments we received on the OTC Rule.

Local Matters

Annex C is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

Questions

Please refer your questions to any of the following:

British Columbia Securities Commission

Adrienne Marskell
Senior Compliance Counsel, Corporate Finance
Tel: 604-899-6645
800-373-6393 (toll free across Canada)
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**Annex “A”
List of Commenters**

We received comment letters from the following:

Clark Wilson LLP
Exempt Market Dealers Association of Canada
McMillan LLP

**Annex “B”
Summary of Comments**

**Summary of Comments and CSA Responses
Proposed Multilateral Instrument 51-105
Issuers Quoted in the U.S. Over-the-Counter Markets (MI 51-105)**

A. General Comments

#	Comments	Responses
General		
1.	<i>Multilateral nature of MI 51-105</i>	
	A commenter asked why Ontario is absent from MI 51-105.	<p>The Ontario Securities Commission (OSC) investigated whether there is evidence of abusive activity being conducted in Ontario in relation to OTC issuers and whether, since the BC Instrument 51-509 Issuers Quoted in the U.S. Over-the-Counter Markets (BCI 51-509) was adopted in 2008, some of the OTC issuers operating in British Columbia have migrated to other Canadian jurisdictions including Ontario. As a result of that investigation, the OSC has not found sufficient evidence of abusive activity being conducted in Ontario to pursue legislative amendments that would allow the implementation of MI 51-105 in Ontario. The OSC will continue to monitor whether there is evidence of abusive activity being conducted in Ontario in relation to OTC issuers and determine whether it is necessary in the future to propose amendments to the Securities Act (Ontario) and adopt MI 51-105 as a national instrument.</p> <p>Legislative amendments were not required in other jurisdictions to adopt or implement MI 51-105.</p>
2.	<i>Exempt market dealers</i>	
	A commenter asked whether MI 51-105 permits EMD’s to engage in private placements of OTC issuers.	No, MI 51-105 requires that persons must execute such trades through an investment dealer. We think that the investment dealer category of registration is appropriate for this rule since OTC quoted securities are traded by the public.
Comments on MI 51-105		
3.	<i>Section 1 – Definition of OTC issuer</i>	
	Commenters asked if we would consider adding to the list of exchanges set out in	We reviewed the list of exchanges listed in that paragraph. As a result, we have made the

#	Comments	Responses
	<p>paragraph (b) of the definition of OTC issuer any stock exchanges that impose continuous disclosure requirements and governance requirements that are substantially equivalent to those exchanges on the list.</p> <p>A commenter asked if we would exclude from the definition of OTC issuer an issuer that has previously been and remains a reporting issuer in any local jurisdiction which has adopted MI 51-105. The commenter was concerned that such issuers will already be subject to the disclosure requirements under applicable securities laws.</p>	<p>following changes:</p> <ol style="list-style-type: none"> 1. As we consider NEX to be part of the TSXV for the purposes of MI 51-105, we added text in the Companion policy 51-105CP (51-105CP) to confirm our interpretation. 2. We added the Alpha Exchange Inc. <p>We do not think it is necessary to add any other exchanges or make any further amendments to paragraph (b) of the definition of OTC issuer at this time. However, if an issuer wishes to demonstrate that a specific exchange has similar oversight and governance requirements as the exchanges in paragraph (b) of the definition of OTC issuer, the Canadian securities regulatory authorities may consider relief in the issuer’s specific circumstances.</p> <p>We considered this comment. The reason for treating OTC issuers differently than other reporting issuers is that OTC issuers are not subject to the standards, rules, and regulatory oversight that other exchanges listed in MI 51-105 provide. This differential treatment applies to all OTC issuers, whether or not they are currently reporting issuers.</p> <p>An issuer that is listed on one of the North American exchanges indicated in the definition of “OTC issuer” would not be subject to MI 51-105. We think the situation would be rare where an issuer would be a reporting issuer in a jurisdiction of Canada and not listed or quoted on one of the prescribed exchanges listed in MI 51-105. If such a situation occurs, the Canadian securities regulatory authorities may consider exemptive relief in appropriate circumstances. 51-105CP has some guidance on how issuers can apply for relief.</p>
4.	<i>Section 1 – Definition of ticker symbol date</i>	
	<p>A commenter noted that the definition of “ticker-symbol date” should be limited to when the OTC issuer is first assigned a ticker symbol for OTC-quoted securities.</p>	<p>We acknowledge the comment.</p> <p>Limiting the definition in such a manner would defeat one of the goals of MI 51-105, which is to provide more disclosure about</p>

#	Comments	Responses
	<p>The commenter was concerned that certain issuers who had been listed but then are forced to drop off a qualifying exchange, like NASDAQ, would be adversely affected as their ticker-symbol may have been issued many years ago.</p>	<p>issuers whose securities are traded by the public, over-the-counter, without the oversight of a stock exchange or other recognized self-regulatory organization.</p> <p>The Canadian securities regulatory authorities may consider exemptive relief in appropriate circumstances. 51-105CP has some guidance on how issuers can apply for relief.</p>
5.	<p><i>Section 3 – Reporting issuer designation and determination</i></p>	
	<p>A commenter was concerned that a company would be a reporting issuer in all provinces that have adopted MI 51-105 if the company triggers any one of the criteria in one of the local jurisdictions.</p> <p>A commenter suggested that the determination of whether an OTC issuer is a reporting issuer in a local jurisdiction should be based on the current status of such a person’s residence, not at the time the issuance was made, provided that the issuance was made before the Proposed Instrument came into effect.</p> <p>A commenter suggested adding a qualification that the person in a local jurisdiction who acquired stock before the ticker-symbol date still owns such stock after the effective date. The commenter was concerned that MI 51-105 may inadvertently capture companies that have no connection to the local jurisdiction.</p>	<p>We acknowledge the comment but do not think that it necessitates a change to MI 51-105. MI 51-105 is proposed to be adopted as a local rule or regulation in each jurisdiction of Canada, except Ontario. The OTC reporting issuer designation and determination is made on a jurisdiction by jurisdiction basis as is the case for the determination of reporting issuer status under Canadian securities laws.</p> <p>We added some text to 51-105CP to clarify this issue.</p> <p>We disagree with the comment. We think a test that incorporates a person’s current residence may be utilized by persons seeking to avoid application of MI 51-105.</p> <p>We disagree with this comment. We think this change would significantly narrow the application of MI 51-105 and are concerned that the change may be utilized by persons seeking to avoid application of MI 51-105.</p> <p>Any issuer that is an OTC reporting issuer under MI 51-105, and believes that outcome is inconsistent with the purpose and the intent of MI 51-105, may apply to the applicable securities regulatory authority in the local jurisdiction for an exemption. 51-105CP has some guidance on how issuers can apply for relief.</p>

#	Comments	Responses
	<p>A commenter asked for clarity on whether an embargoed press release (i.e., “not for dissemination in Canada”) would not trigger the criteria in Section 3(b).</p>	<p>An issuer needs to review the connecting factors in section 3 of MI 51-105 to conclude whether or not the issuer is an “OTC reporting issuer” and therefore subject to MI 51-105. A news release stating that it is “not for dissemination in Canada” is not determinative. We added some text in 51-105CP on this point.</p>
6.	<i>Section 4 – Ceasing to be an OTC reporting issuer</i>	
	<p>A commenter wanted more specificity on when an OTC reporting issuer ceases to be an OTC issuer because it has a class of securities listed or quoted on an exchange or quotation system specified in the definition of “OTC issuer” in Section 1. The commenter suggested adding a sentence that expressly states that an OTC reporting issuer ceases to be an OTC issuer immediately upon it having a class of securities listed or quoted on an exchange or quotation system specified in the definition of “OTC issuer” in Section 1.</p> <p>A commenter recommended that the procedure for an OTC reporting issuer to cease to be such be the same for all local jurisdictions.</p>	<p>We disagree with the suggestion. We think it is appropriate for the (former) OTC issuer to inform the regulator about the issuer’s change in status.</p> <p>The Autorité des marchés financiers thinks that the revocation of reporting issuers’ status should be the same for all of its reporting issuers. As such, it will maintain its current process, by which the decision to revoke a reporting issuer’s status is made on a case by case basis by a decision maker.</p>
7.	<i>Section 5 – Additional disclosure requirements</i>	
	<p>A commenter noted that issuers required to report under Section 12 of the Securities Exchange Act of 1934 (the “Exchange Act”) that cannot timely file certain required filings, including a Form 20-F, Form 10-K or Form 10-Q, may receive an “extension” to file such reports, upon filing of a Form 12b-25. The commenter suggested that similar relief should be provided to OTC reporting issuers.</p>	<p>We disagree with the comment. We expect issuers to comply with the requirements of MI 51-105.</p> <p>Canadian securities regulatory authorities will generally not grant exemptive relief to a reporting issuer to extend a continuous disclosure filing deadline to enable an issuer to avoid a default.</p>
8.	<i>Section 7 – Registration statement</i>	
	<p>A commenter noted that there may be circumstances where an issuer’s registration statement was filed with the SEC several years ago and that filing the registration</p>	<p>We disagree with the comment. The requirement to file the registration statement applies to an issuer that becomes an OTC reporting issuer when it obtains its ticker</p>

#	Comments	Responses
	<p>statement on SEDAR would not provide current information. The commenter also noted that certain registration statements (i.e., Form S-8 or Form 8-A) would not provide any material disclosure and should be carved out from this section.</p>	<p>symbol. If it becomes an OTC reporting issuer this way, then the OTC reporting issuer must file the last registration statement it filed with the SEC.</p> <p>Generally speaking, the OTC reporting issuer will file the last registration statement that provides for registration of securities previously distributed by the OTC reporting issuer.</p> <p>We require OTC reporting issuers to file these registration statements because these documents provide base disclosure for which the issuers and their management are responsible and provides useful information for investors.</p>
9.	<i>Section 11 – Resale of seed stock</i>	
	<p>A commenter suggested amending section 11(1) of MI 51-105 to specifically limit the restrictions on resale to persons who reside in a local jurisdiction which has adopted MI 51-105.</p> <p>A commenter noted that section 11(1)(b)(iii) restricts an investment dealer to executing trades through any over-the-counter markets in the United States of America. The commenter stated that investment dealers executing such trades should not be restricted to over-the-counter markets in the United States of America, especially because other markets (outside Canada) may exist where such securities may be sold.</p>	<p>We do not think it is necessary to revise MI 51-105 in the manner suggested. We think that 51-105CP provides sufficient guidance to market participants.</p> <p>We acknowledge the comment but we will not be implementing this change at this time.</p>
10.	<i>Section 12 – Legends on seed stock</i>	
	<p>A commenter noted that the legend requirements contained in Section 12(1) of MI 51-105 may be impractical and, in some cases, impossible to satisfy.</p>	<p>We disagree that the legending requirements are impossible to satisfy.</p> <p>We can see circumstances where issuers have delivered unlegended share certificates prior to making the decision to go public in the U.S. over-the-counter markets.</p> <p>Issuers that have delivered unlegended share certificates can ask their shareholders to submit their certificates for replacement with legended ones. Shareholders may be motivated to seek legended certificates because, until they do, they will not be able to</p>

#	Comments	Responses
		<p>trade the securities without violating the resale requirements in MI 51-105.</p> <p>Another option for issuers would be to legend all share certificates, so that if shares are traded to an investor in a local jurisdiction, the restriction applies to the shares held by the investor.</p>
11.	<i>Section 13 – Resale of private placement securities acquired after ticker-symbol date</i>	
	<p>A commenter was concerned that section 13 of MI 51-105 is dissimilar to Section 12(1) of BCI 51-509. A commenter also presumed that it was not the intention of the CSA to restrict reliance on other exemptions from the registration and prospectus requirements contained in National Instrument 45-106 <i>Prospectus and Registration Exemptions</i> which may be available for transfer of securities of OTC reporting issuers.</p>	<p>In this context, we think it is important to limit trades of securities acquired in private placements to open market trades through investment dealers. A shareholder must apply for an exemption if the shareholder wishes to sell securities privately or under different conditions than permitted in MI 51-105.</p>
12.	<i>Section 15 – Securities for services</i>	
	<p>A commenter indicated that the valuation of certain securities, such as convertible securities, and the determination of whether issuance of the securities would be commercially reasonable would be difficult to establish.</p> <p>A commenter suggested allowing for a mandated discount similar to the concept of “discounted market price” as used in the Policies of the TSX Venture Exchange.</p>	<p>The issuer’s directors must assign a value to each security that the issuer proposes to issue. We think it is unnecessary to provide a definition or guidance on whether a particular issuance of securities is commercially reasonable. The commercial reasonability standard is commonly used in commercial contexts and its meaning has been discussed in numerous court decisions.</p> <p>We disagree with the comment. We will not be implementing this proposed change to MI 51-105.</p>

MULTILATERAL INSTRUMENT 51-105
ISSUERS QUOTED IN THE U.S. OVER-THE-COUNTER MARKETS

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PART 1
DEFINITIONS AND REPORTING ISSUER DESIGNATION AND DETERMINATION

Definitions

1. In this Instrument

“OTC issuer” means an issuer

- (a) that has issued a class of securities that are OTC-quoted securities, and
- (b) that has not issued any class of securities that are listed or quoted on one or more of the following:
 - (i) TSX Venture Exchange Inc.;
 - (ii) TSX Inc.;
 - (iii) Canadian National Stock Exchange;
 - (iv) Alpha Exchange Inc.;
 - (v) The New York Stock Exchange LLC;
 - (vi) NYSE Amex LLC;
 - (vii) The NASDAQ Stock Market LLC;

“OTC-quoted securities” means a class of securities that has been assigned a ticker symbol by the Financial Industry Regulatory Authority in the United States of America for use on any of the over-the-counter markets in the United States of America and includes a class of securities whose trades have been reported in the grey market;

“OTC reporting issuer” means an OTC issuer that is a reporting issuer;

“promotional activities” means activities or communications, by or on behalf of an issuer, that promote or could reasonably be expected to promote the purchase or sale of securities of the issuer, but does not include any of the following

- (a) the dissemination of information or preparation of records in the ordinary course of the business of the issuer
 - (i) to promote the sale of products or services of the issuer;
 - (ii) to raise public awareness of the issuer;
- (b) activities or communications necessary to comply with the requirements of

- (i) the securities legislation of any jurisdiction of Canada;
- (ii) the securities laws of any foreign jurisdiction governing the issuer;
- (iii) any exchange or market on which the issuer's securities trade;

“ticker-symbol date” means the date that an OTC issuer is first assigned a ticker symbol for any class of its securities;

“trade”, in Québec, for the purpose of this Instrument, refers to any of the following activities

- (a) the activities described in the definition of “dealer” in section 5 of the *Securities Act* (R.S.Q., c. V-1.1), including the following activities:
 - (i) the sale or disposition of a security by onerous title, whether the terms of payment be on margin, instalment or otherwise, but does not include a transfer or the giving in guarantee of securities in connection with a debt or the purchase of a security, except as provided in paragraph (b);
 - (ii) participation as a trader in any transaction in a security through the facilities of an exchange or a quotation and trade reporting system;
 - (iii) the receipt by a registrant of an order to buy or sell a security;
- (b) a transfer or the giving in guarantee of securities of an issuer from the holdings of a control person in connection with a debt.

National Instrument definitions apply

- 2. Terms used in this Instrument that are defined or interpreted in National Instrument 51-102 *Continuous Disclosure Obligations* have the same meaning in this Instrument.

Reporting issuer designation and determination

- 3. An OTC issuer is a reporting issuer under securities legislation if one or more of the following apply
 - (a) on or after July 31, 2012, its business has been directed or administered in or from the local jurisdiction;
 - (b) on or after July 31, 2012, promotional activities have been carried on in or from the local jurisdiction;
 - (c) the ticker-symbol date is on or after July 31, 2012, and, on or before the ticker-symbol date, the issuer distributed a security to a person resident in the local jurisdiction and that security is of the class of securities that became the issuer's OTC-quoted securities.

Ceasing to be an OTC reporting issuer

4. (1) Except in Québec, an OTC issuer ceases to be a reporting issuer under section 3 if all of the following conditions are met
 - (a) its business is not directed or administered, and has not been directed or administered for at least one year, in or from the local jurisdiction;
 - (b) promotional activities are not carried on, and have not been carried on for at least one year, in or from the local jurisdiction;
 - (c) more than one year has passed since the ticker-symbol date;
 - (d) it has filed Form 51-105F1 *Notice – OTC Issuer Ceases to be an OTC Reporting Issuer*.
- (2) Except in Québec, if an OTC reporting issuer ceases to be an OTC issuer as a result of its securities being listed or quoted on an exchange or a quotation and trade reporting system specified in the definition of “OTC issuer” in section 1, the OTC reporting issuer must file Form 51-105F4 *Notice – Issuer Ceases to be an OTC Reporting Issuer* at least 10 days before its next required filing under securities legislation in the local jurisdiction.
- (3) In Québec, an OTC reporting issuer must apply to the securities regulatory authority to have its status as an OTC reporting issuer revoked in order to cease to be a reporting issuer under section 3.

PART 2 DISCLOSURE

Additional disclosure requirements

5. In addition to all other provisions of securities legislation that apply to a reporting issuer and its insiders, an OTC reporting issuer must comply with the provisions of the following National Instruments
 - (a) National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)* that apply to an electronic filer, despite section 2.1 of that instrument;
 - (b) National Instrument 51-102 *Continuous Disclosure Obligations* that apply to a reporting issuer that is a venture issuer;
 - (c) Part 6 of National Instrument 51-102 *Continuous Disclosure Obligations* despite section 6.1 of that instrument;
 - (d) National Instrument 52-109 *Certification of Disclosure in Issuers’ Annual and Interim Filings* that apply to a reporting issuer that is a venture issuer;

- (e) National Instrument 52-110 *Audit Committees* that apply to a reporting issuer that is a venture issuer;
- (f) National Instrument 58-101 *Disclosure of Corporate Governance Practices* that apply to a reporting issuer that is a venture issuer.

Timely disclosure obligations

- 6. (1) Section 14.2 of National Instrument 71-101 *The Multijurisdictional Disclosure System* and section 4.2 of National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* do not apply to an OTC reporting issuer.
- (2) An OTC reporting issuer may file a copy of the Form 8-K *Current Report* that it files with the SEC to comply with its obligation in paragraph 7.1(1)(b) of National Instrument 51-102 *Continuous Disclosure Obligations* to file Form 51-102F3 *Material Change Report*.

Registration statement

- 7. (1) If an OTC issuer becomes a reporting issuer on the ticker-symbol date, the OTC reporting issuer must file, within 5 days of the date it became a reporting issuer, a copy of the most recent registration statement it filed with the SEC.
- (2) The OTC reporting issuer must file the registration statement in electronic format under section 2.2 of National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*.

Promotional activities

- 8. (1) If a person will carry on promotional activities under an agreement, arrangement, commitment or understanding with an OTC reporting issuer, the OTC reporting issuer must file a notice in the form of Form 51-105F2 *Notice of Promotional Activities* naming the person and describing the activities and the relationship of the OTC reporting issuer with the person, and the particulars of their agreement, arrangement, commitment or understanding with the OTC reporting issuer.
- (2) The OTC reporting issuer must file the notice under subsection (1) within one of the following dates
 - (a) at least one day before the promotional activities commence;
 - (b) if on the date the OTC issuer became an OTC reporting issuer promotional activities are being carried on, within 5 days of that date.
- (3) The OTC reporting issuer must file the notice in electronic format in accordance with National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*.

Technical reports – mineral properties

9. Section 4.1 of National Instrument 43-101 *Standards of Disclosure for Mineral Projects* does not apply to an OTC reporting issuer.

Personal information form and authorization

10. (1) Each director, officer, promoter and control person of an OTC reporting issuer must deliver to the securities regulatory authorities Form 51-105F3A *Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of Personal Information* or Form 51-105F3B *Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of Personal Information* within 10 days of the issuer becoming an OTC reporting issuer, except for a promoter of an OTC issuer that becomes an OTC reporting issuer more than 2 years after the ticker-symbol date.
- (2) Each person that becomes a director, officer, promoter or control person of an OTC reporting issuer must deliver to the securities regulatory authorities a personal information form referred to in subsection (1) within 10 days of becoming a director, officer, promoter or control person of an OTC reporting issuer.
- (3) If a promoter or control person is not an individual, then each of its directors, officers and control persons must deliver a personal information form referred to in subsection (1) to the securities regulatory authorities within 10 days of the promoter or control person becoming a promoter or control person of an OTC reporting issuer.

PART 3 RESALE OF PRIVATE PLACEMENT SECURITIES

Resale of seed stock

11. After the ticker-symbol date, a person must not trade a security of an OTC reporting issuer that the person acquired on or after July 31, 2012 and before the ticker-symbol date unless either of the following occurs
- (a) the trade is in connection with one or more of the following
 - (i) a take-over bid or an issuer bid in a jurisdiction of Canada;
 - (ii) an amalgamation, merger, reorganization or arrangement that is under a statutory procedure or court order;
 - (iii) a dissolution or winding-up of the issuer that is under a statutory procedure or court order;
 - (b) all of the following conditions are met
 - (i) the certificate representing the security carries the legend, or the ownership statement issued under a direct registration system or other electronic book

entry system relating to the security bears the legend restriction notation, set out in subsection 12(2);

- (ii) the person trades the security through an investment dealer registered in a jurisdiction of Canada from an account at that investment dealer in the name of that person;
- (iii) the investment dealer executes the trade through any of the over-the-counter markets in the United States of America.

Legends on seed stock

12. (1) As soon as practicable after the ticker-symbol date, an OTC reporting issuer must place

- (a) a legend on each certificate representing a security issued before the ticker-symbol date; and
- (b) a legend restriction notation on each ownership statement issued under a direct registration system or other electronic book entry system relating to a security issued before the ticker-symbol date.

(2) The legend and legend restriction notation must state the following

Unless permitted under section 11 of Multilateral Instrument 51-105 Issuers Quoted in the U.S. Over-the-Counter Markets, the holder of this security must not trade the security in or from a jurisdiction of Canada unless

- (a) the security holder trades the security through an investment dealer registered in a jurisdiction of Canada from an account at that dealer in the name of that security holder, and*
- (b) the dealer executes the trade through any of the over-the-counter markets in the United States of America.*

Resale of private placement securities acquired after ticker-symbol date

13. (1) A person must not trade a security of an OTC reporting issuer that the person acquired under an exemption from the prospectus requirement after the ticker-symbol date unless the following conditions are satisfied

- (a) unless the security was acquired under a director or employee stock option, a 4-month period has passed from one of the following
 - (i) the date the OTC reporting issuer distributed the security;
 - (ii) the date a control person distributed the security;

- (b) if the person trading the security is a control person of the OTC reporting issuer, the person has held the security for at least 6 months;
- (c) the number of securities the person proposes to trade, plus the number of securities of the OTC reporting issuer of the same class that the person has traded in the preceding 12-month period, does not exceed 5% of the OTC reporting issuer's outstanding securities of the same class;
- (d) the person trades the security through an investment dealer registered in a jurisdiction of Canada;
- (e) the investment dealer executes the trade through any of the over-the-counter markets in the United States of America;
- (f) there has been no unusual effort made to prepare the market or create a demand for the security;
- (g) no extraordinary commission or other consideration is paid to a person for the trade;
- (h) if the person trading the security is an insider of the OTC reporting issuer, the person reasonably believes that the OTC reporting issuer is not in default of securities legislation; and
- (i) the certificate representing the security bears a legend, or the ownership statement issued under a direct registration system or other electronic book entry system relating to the security bears a legend restriction notation, stating the following:

The holder of this security must not trade the security in or from a jurisdiction of Canada unless the conditions in section 13 of Multilateral Instrument 51-105 Issuers Quoted in the U.S. Over-the-Counter Markets are met.

- (2) Despite subsection (1), a person may trade a security of an OTC reporting issuer that the person acquired under an exemption from the prospectus requirement if the trade is in connection with one or more of the following
 - (a) a take-over bid or an issuer bid in a jurisdiction of Canada;
 - (b) an amalgamation, merger, reorganization or arrangement that is under a statutory procedure or court order;
 - (c) a dissolution or winding-up of the issuer that is under a statutory procedure or court order.

No other hold periods

14. Sections 2.3, 2.4, 2.5 and 2.6 of National Instrument 45-102 *Resale of Securities* do not apply to the first trade of a security of an OTC reporting issuer distributed under an exemption from the prospectus requirement.

PART 4 OTHER RESTRICTIONS

Securities for services

15. An OTC reporting issuer must not distribute a security to a director, officer, or consultant of the issuer for the provision of a service unless
- (a) the consideration for the service is commercially reasonable;
 - (b) in the case of a debt, the debt is a bona fide debt; and
 - (c) the security is distributed for a price that is at least at its current market value.

Take-over bid

16. Section 4.2 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids* does not apply to a take-over bid for an OTC reporting issuer for 2 years after the ticker-symbol date.

Insider reports

17. A person that is exempt or otherwise not required to file an insider report under U.S. federal securities law relating to insider reporting may not rely on the exemption from insider reporting under section 17.1 of National Instrument 71-101 *The Multijurisdictional Disclosure System* or section 4.12 of National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*.

PART 5 EXEMPTION

Exemption

18. The regulator, except in Québec, or securities regulatory authority may, under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction, grant an exemption from this Instrument.

PART 6 TRANSITION AND COMING INTO FORCE

Transition – financial disclosure for non-SEC filers

19. Except in British Columbia, for an OTC reporting issuer that does not have a class of securities registered under section 12 of the 1934 Act and is not required to file reports under paragraph 15 (d) of the 1934 Act, the requirements of National Instrument 51-102 *Continuous Disclosure Obligations* and National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* concerning the filing of

- (a) annual financial statements, related MD&A and annual certificates apply only to financial years beginning on or after January 1, 2012;
- (b) interim financial reports, related MD&A and interim certificates apply only to interim periods that
 - (i) begin on or after January 1, 2012; and
 - (ii) end after July 31, 2012;
- (c) AIFs apply only to financial years beginning on or after January 1, 2012.

Transition – oil and gas disclosure

20. Except in British Columbia, for an OTC reporting issuer, the requirement of National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* concerning the filing of Form 51-101F1 *Statement of Reserves Data and Other Oil and Gas Information* applies only to financial years beginning on or after January 1, 2012.

Coming into force

21. (1) This Instrument comes into force on July 31, 2012.

(2) Despite subsection (1), except in British Columbia, sections 5, 6, 7, and 8 come into force on September 30, 2012.

Form 51-105F1

Notice – OTC Issuer Ceases to be an OTC Reporting Issuer

This is the form required under paragraph 4(1)(d) of Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets* for an OTC issuer to give notice that it has ceased to be an OTC reporting issuer under section 3 of the Instrument in a jurisdiction other than Québec.

In Québec, an OTC reporting issuer must apply to the securities regulatory authority to have its status as an OTC reporting issuer revoked in order to cease to be a reporting issuer.

The Issuer

Name of Issuer: _____ (the Issuer)

Head office address: _____

Last head office address (if different from above): _____

Telephone number: _____

Fax number: _____

E-mail address: _____

Ticker-symbol date: _____

Ceasing to be a Reporting Issuer

The Issuer certifies the following statements to be true:

1. The Issuer's business is not directed or administered, and has not been directed or administered for at least one year, in or from [insert name of local jurisdiction].
2. Promotional activities are not carried on, and have not been carried on for at least one year, in or from [insert name of local jurisdiction].
3. More than one year has passed since the ticker-symbol date.

If the preceding statements are true, on filing this Notice, the Issuer is no longer an OTC reporting issuer in [insert name of local jurisdiction].

If the preceding statements are true, on filing this Notice, the Issuer **has ceased to be** a reporting issuer in [name of local jurisdiction].

Certificate

On behalf of the Issuer, I certify that the statements made in this Notice are true.

Date: _____

Name of Issuer

Print name, title and telephone number
of person signing on behalf of the Issuer

Signature

Warning: It is an offence to make a statement in this Notice that is false or misleading in a material respect, or to omit facts that make this Notice false or misleading in a material respect.

Form 51-105F2

Notice of Promotional Activities

This is the form required under subsection 8(1) of Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets* for an OTC reporting issuer to give notice of promotional activities.

Issuer Information

Name of Issuer: _____ (the Issuer)

Head office address: _____

Telephone number: _____

Fax number: _____

E-mail address: _____

Notice of Promotional Activities

1. Identify each person engaged in promotional activities and provide the person's address, telephone and fax number, and email address. If the person is not an individual, provide the name(s) of the individual(s) carrying on the activities.

2. Describe the relationship between the Issuer and each person engaged in promotional activities.

3. Include particulars of any agreement, arrangement, commitment or understanding between the Issuer and a person engaged in promotional activities. Include

- i. the effective date and duration of the agreement, arrangement or commitment
- ii. the scope of activities being conducted, and

iii. the compensation paid or to be paid by the Issuer, including any non-cash compensation

The Issuer [has / has not] issued a news release disclosing this information.

If the Issuer has issued a news release, the Issuer may file it with this form.

Certificate

On behalf of the Issuer, I certify that the statements made in this Notice are true.

Date: _____

Name of Issuer

Print name, title and telephone number
of person signing on behalf of the Issuer

Signature

Warning: It is an offence to make a statement in this Notice that is false or misleading in a material respect, or to omit facts that make this Notice false or misleading in a material respect.

Form 51-105F3A

Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of Personal Information

This Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of Personal Information must be completed and delivered to the securities regulatory authority by each individual who is required to do so under section 10 of Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*. If an individual has previously delivered a personal information form (an "Exchange Form") to the Toronto Stock Exchange or the TSX Venture Exchange and the information has not changed, the individual may deliver the Exchange Form in lieu of this Form if the Certificate and Consent on page 8 of this Form is completed and attached to the Exchange Form.

The securities regulatory authority does not make any of the personal information provided in this Form public, unless required under freedom of information legislation.

General Instructions:

- All Questions** **All questions must have a response.** The response of "N/A" or "Not Applicable" for any questions, except Questions 1(B), 2B(iii) and 5, will not be accepted.
- Questions 6 to 9** Please check (√) in the appropriate space provided. If your answer to any of questions 6 to 9 is "YES", you must, in an attachment, provide complete details, including the circumstances, relevant dates, names of the parties involved and final disposition, if known. **Any attachment must be initialed by the person completing this Form.** Responses must consider all time periods.
- Delivery** **The issuer must deliver completed Forms electronically via the System for Electronic Document Analysis and Retrieval (SEDAR) under the document type "Personal Information Form and Authorization". Access to this document type is not available to the public.**

CAUTION

It is an offence to make a statement in this Form that is false or misleading in a material respect, or to omit facts that make this Form false or misleading in a material respect. Steps may be taken to verify the answers you have given in this Form, including verification of information relating to any previous criminal record.

DEFINITIONS

"Offence" includes:

- (a) a summary conviction or indictable offence under the *Criminal Code* (Canada);
- (b) a quasi-criminal offence (for example under the *Income Tax Act* (Canada), the *Immigration Act* (Canada) or the tax, immigration, drugs, firearms, money laundering or securities legislation of any jurisdiction of Canada);
- (c) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory therein; or
- (d) an offence under the criminal legislation of any other foreign jurisdiction;

NOTE: If you have received a pardon under the *Criminal Records Act* (Canada) for an Offence that relates to fraud (including any type of fraudulent activity), misappropriation of money or other property, theft, forgery, falsification of books or documents or similar Offences, you must disclose the pardoned offence in this Form. In such circumstances:

- (a) the appropriate written response would be "Yes, pardon granted on (date)"; and
- (b) you must provide complete details in an attachment to this Form.

"Proceedings" means:

- (a) a civil or criminal proceeding or inquiry before a court;

- (b) a proceeding before an arbitrator or umpire or a person or group of persons authorized by law to make an inquiry and take evidence under oath in the matter;
- (c) a proceeding before a tribunal in the exercise of a statutory power of decision making where the tribunal is required by law to hold or afford the parties to the proceeding an opportunity for a hearing before making a decision; or
- (d) a proceeding before a self-regulatory organization authorized by law to regulate the operations and the standards of practice and business conduct of its members and their representatives, in which the self-regulatory organization is required under its by-laws or rules to hold or afford the parties the opportunity for a hearing before making a decision, but does not apply to a proceeding in which one or more persons are required to make an investigation and to make a report, with or without recommendations, if the report is for the information or advice of the person to whom it is made and does not in any way bind or limit that person in any decision the person may have the power to make;

“securities regulatory authority” (or “SRA”) means a body created by statute in any jurisdiction or in any foreign jurisdiction to administer securities law, regulation and policy (e.g. securities commission) but does not include an exchange or other self regulatory or professional organization;

“self-regulatory or professional organization” means:

- (a) a stock, commodities, futures or options exchange;
- (b) an association of investment, securities, mutual fund, commodities, or future dealers;
- (c) an association of investment counsel or portfolio managers;
- (d) an association of other professionals (e.g. legal, accounting, engineering); and
- (e) any other group, institution or self-regulatory entity, recognized by a securities regulatory authority, that is responsible for the enforcement of rules, disciplines or codes under any applicable legislation, or considered a self-regulatory or professional organization in another country.

1. A. IDENTIFICATION OF INDIVIDUAL COMPLETING FORM

LAST NAME(S)	FIRST NAME(S)	MIDDLE NAME(S) (If none, please state)			
NAME(S) MOST COMMONLY KNOWN BY:					
NAME OF ISSUER					
PRESENT or PROPOSED POSITION(S) WITH THE ISSUER – check (√) all positions below that are applicable.	(√)	IF DIRECTOR / OFFICER DISCLOSE THE DATE ELECTED / APPOINTED			IF OFFICER – PROVIDE TITLE IF OTHER – PROVIDE DETAILS
		Month	Day	Year	
Director					
Officer					
Other					

B. Other than the name given in Question 1A above, provide any legal names, assumed names, or nicknames, under which you have carried on business or have otherwise been known, including information regarding any name change(s) resulting from marriage, divorce, court order or any other process. Use an attachment if necessary.

	FROM		TO	
	MM	YY	MM	YY

C.

GENDER	DATE OF BIRTH			PLACE OF BIRTH		
	Month	Day	Year	City	Province/State	Country
Male						

Female							

D.	MARITAL STATUS	FULL NAME OF SPOUSE – include common-law	OCCUPATION OF SPOUSE

E.	TELEPHONE AND FACSIMILE NUMBERS AND E-MAIL ADDRESS		
	RESIDENTIAL	()	FACSIMILE ()
	BUSINESS	()	E-MAIL

F.	RESIDENTIAL HISTORY – Provide all residential addresses for the past 10 YEARS starting with your current principal residential address. If you are unable to correctly identify the complete residential address for a period, which is beyond five years from the date of completion of this Form, the municipality and province or state and country must be identified. The regulator or, in Québec, the securities regulatory authority reserves the right to require the full address.					
	STREET ADDRESS, CITY, PROVINCE/STATE, COUNTRY & POSTAL/ZIP CODE	FROM		TO		
		MM	YY	MM	YY	

2. CITIZENSHIP

A.	CANADIAN CITIZENSHIP	YES	NO
	(i) Are you a Canadian Citizen?		
	(ii) Are you a person lawfully in Canada as an immigrant but are not yet a Canadian citizen?		
	(iii) If "Yes" to Question 2A(ii), the number of years of continuous residence in Canada:		

B.	OTHER CITIZENSHIP	YES	NO
	(i) Do you hold citizenship in any country other than Canada?		
	(ii) If "Yes" to Question 2B(i), the name of the country(s):		
	(iii) Please provide U.S. Social Security number, where you have such a number		

3. EMPLOYMENT HISTORY

Provide your employment history for the **10 YEARS** immediately prior to the date of this Form starting with your current employment. Use an attachment if necessary.

EMPLOYER NAME	EMPLOYER ADDRESS	POSITION HELD	FROM		TO	
			MM	YY	MM	YY

4. POSITIONS WITH OTHER ISSUERS

		YES	NO
A.	While you were a director, officer or insider of an issuer, did any exchange or self-regulatory organization refuse approval for listing or quotation of that issuer (including a listing resulting from a qualifying transaction, reverse takeover, backdoor listing or change of business)? If yes, attach full particulars.		
B.	Has your employment in a sales, investment or advisory capacity with any firm or company engaged in the sale of real estate, insurance or mutual funds ever been terminated for cause?		
C.	Has a firm or company registered under the securities laws of any jurisdiction of Canada or of any foreign jurisdiction as a securities dealer, broker, investment advisor or underwriter, suspended or terminated your employment for cause?		
D.	Are you or have you during the last 10 years been a director, officer, promoter, insider or control person for any reporting issuer?		

E. If "YES" to 4D above, provide the names of each reporting issuer. State the position(s) held and the period(s) during which you held the position(s). Use an attachment if necessary.

NAME OF REPORTING ISSUER	POSITION(S) HELD	MARKET TRADED ON	FROM		TO	
			MM	YY	MM	YY

5. EDUCATIONAL HISTORY

A. PROFESSIONAL DESIGNATION(S) – Provide any professional designation held and professional associations to which you belong. For example, Barrister & Solicitor, C.A., C.M.A., C.G.A., P.Eng., P.Geol., and CFA, etc. and indicate which organization and the date the designations were granted.

PROFESSIONAL DESIGNATION And MEMBERSHIP NUMBER	GRANTOR OF DESIGNATION And JURISDICTION OR FOREIGN JURISDICTION	DATE GRANTED			ACTIVE?	
		MM	DD	YY	YES	NO

B. Provide your post-secondary educational history starting with the most recent.

SCHOOL	LOCATION	DEGREE OR DIPLOMA	DATE OBTAINED						
			MM	DD	YY				

6. **OFFENCES** – If you answer “YES” to any item in Question 6, you must provide complete details in an attachment.

		YES	NO
A.	Have you ever pleaded guilty to or been found guilty of an offence?		
B.	Are you the subject of any current charge, indictment or proceeding for an offence?		
C.	To the best of your knowledge, are you or have you ever been a director, officer, promoter, insider, or control person of an issuer, in any jurisdiction of Canada or in any foreign jurisdiction, at the time of events, where the issuer:		
	(i) has ever pleaded guilty to or been found guilty of an offence?		
	(ii) is the subject of any current charge, indictment or proceeding for an offence?		

7. **BANKRUPTCY** – If you answer “YES” to any item in Question 7, you must provide complete details in an attachment and attach a copy of any discharge, release or other applicable document.

		YES	NO
A.	Have you, in any jurisdiction of Canada or in any foreign jurisdiction, within the past 10 years had a petition in bankruptcy issued against you, made a voluntary assignment in bankruptcy, made a proposal under any bankruptcy or insolvency legislation, been subject to any proceeding, arrangement or compromise with creditors, or had a receiver, receiver-manager or trustee appointed to manage your assets?		
B.	Are you now an undischarged bankrupt?		
C.	To the best of your knowledge, are you or have you ever been a director, officer, promoter, insider, or control person of an issuer, in any jurisdiction of Canada or in any foreign jurisdiction, at the time of events, or for a period of 12 months preceding the time of events, where the issuer:		
	(i) has made a petition in bankruptcy, a voluntary assignment in bankruptcy, a proposal under any bankruptcy or insolvency legislation, been subject to any proceeding, arrangement or compromise with creditors or had a receiver, receiver-manager or trustee appointed to manage the issuer’s assets?		
	(ii) is now an undischarged bankrupt?		

8. **PROCEEDINGS** – If you answer “YES” to any item in Question 8, you must provide complete details in an attachment.

		YES	NO
A.	CURRENT PROCEEDINGS BY SECURITIES REGULATORY AUTHORITY OR SELF-REGULATORY OR PROFESSIONAL ORGANIZATION Are you now, in any jurisdiction or in any foreign jurisdiction, the subject of:		
	(i) a notice of hearing or similar notice issued by a SRA?		
	(ii) a proceeding or to your knowledge, under investigation, by an exchange or other self-regulatory or professional organization?		
	(iii) settlement discussions or negotiations for settlement with a SRA or any self-regulatory or professional organization?		
B.	PRIOR PROCEEDINGS BY SECURITIES REGULATORY AUTHORITY OR SELF-REGULATORY OR PROFESSIONAL ORGANIZATION Have you <u>ever</u> :		

(i)	been reprimanded, suspended, fined, been the subject of an administrative penalty, or otherwise been the subject of any disciplinary proceedings, in any jurisdiction of Canada or in any foreign jurisdiction, by a SRA or self-regulatory or professional organization?		
(ii)	had a registration or licence for the trading of securities, exchange or commodity futures contracts, real estate, insurance or mutual fund products cancelled, refused, restricted or suspended?		
(iii)	been prohibited or disqualified under securities, corporate or any other legislation from acting as a director or officer of a reporting issuer?		
(iv)	had a cease trading or similar order issued against you or an order issued against you that denied you the right to use any statutory prospectus or registration exemption?		
(v)	been the subject of any other proceeding?		

C.	SETTLEMENT AGREEMENT(S)		
	Have you ever entered into a settlement agreement with a SRA, self-regulatory or professional organization, an attorney general or comparable official or body, in any jurisdiction of Canada or in any foreign jurisdiction, in a matter that involved, actual or alleged, fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading in securities or exchange or commodity futures contracts, illegal distributions, failure to disclose material facts or changes or similar conduct, or any other settlement agreement with respect to any other violation of securities legislation in a jurisdiction or in a foreign jurisdiction or the rules of any self-regulatory or professional organization?		

D.	To the best of your knowledge, are you now or have you ever been a director, officer, promoter, insider, or control person of an issuer at the time of such event, in any jurisdiction of Canada or in any foreign jurisdiction, for which a securities regulatory authority or self-regulatory or professional organization has:		
	(i) refused, restricted, suspended or cancelled the registration or licensing of an issuer to trade securities, exchange or commodity futures contracts, or to sell or trade real estate, insurance or mutual fund products?		
	(ii) issued a cease trade or similar order or imposed an administrative penalty against the issuer, other than an order for failure to file financial statements that was revoked within 30 days of its issuance?		
	(iii) refused a receipt for a prospectus or other offering document, denied any application for listing or quotation or any other similar application, or issued an order that denied the issuer the right to use any statutory prospectus or registration exemptions?		
	(iv) issued a notice of hearing, notice as to a proceeding or similar notice against the issuer?		
	(v) taken any other proceeding against the issuer, including a trading halt, suspension or delisting of the issuer (other than in the normal course for proper dissemination of information, pursuant to a reverse takeover, backdoor listing or similar transaction)?		
	(vi) entered into a settlement agreement with the issuer in a matter that involved actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading in securities or exchange or commodity futures contracts, illegal distributions, failure to disclose material facts or changes or similar conduct by the issuer, or involved in any other violation of securities legislation in a jurisdiction or in a foreign jurisdiction or a self-regulatory or professional organization's rules?		

9. **CIVIL PROCEEDINGS** – If you answer “YES” to any item in Question 9, you must provide complete details in an attachment.

		YES	NO
A.	JUDGMENT, GARNISHMENT AND INJUNCTIONS		
	Has a court in any jurisdiction of Canada or in any foreign jurisdiction:		
	(i) rendered a judgment, ordered garnishment or issued an injunction or similar ban (whether by consent or otherwise) against <u>you</u> in a claim based in whole or in part on fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes or allegations of similar conduct?		

(ii) rendered a judgment, ordered garnishment or issued an injunction or similar ban (whether by consent or otherwise) against <u>an issuer</u> , for which you are currently or have ever been a director, officer, promoter, insider or control person, in a claim based in whole or in part on fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes or allegations of similar conduct?		
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B. CURRENT CLAIMS

(i) Are <u>you</u> now the subject, in any jurisdiction of Canada or in any foreign jurisdiction, of a claim that is based in whole or in part on actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes or allegations of similar conduct?		
(ii) To the best of your knowledge, are you currently or have you ever been a director, officer, promoter, insider or control person of <u>an issuer</u> now subject, in any jurisdiction of Canada or in any foreign jurisdiction, of a claim that is based in whole or in part on actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes or allegations of similar conduct?		

C. SETTLEMENT AGREEMENT

(i) Have <u>you</u> ever entered into a settlement agreement, in any jurisdiction of Canada or in any foreign jurisdiction, in a civil action that involved actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes or allegations of similar conduct?		
(ii) To the best of your knowledge, are you currently or have you ever been a director, officer, promoter, insider or control person of <u>an issuer</u> that has entered into a settlement agreement, in any jurisdiction of Canada or in any foreign jurisdiction, in a civil action that involved actual or alleged fraud, theft, deceit, misrepresentation, conspiracy, breach of trust, breach of fiduciary duty, insider trading, unregistered trading, illegal distributions, failure to disclose material facts or changes or allegations of similar conduct?		

CERTIFICATE AND CONSENT

I, _____ hereby certify that:
(Please Print – Name of Individual)

- (a) I have read and understand the questions, cautions, acknowledgement and consent in this Form, and the answers I have given to the questions in this Form and in any attachments to it are true and correct, except where stated to be to the best of my knowledge, in which case I believe the answers to be true;
- (b) I have read and understand Schedule 1;
- (c) I consent to the collection, use and disclosure of the information in this Form (or in a delivered Exchange Form if one is delivered in lieu of this Form) and to the collection, use and disclosure of further personal information in accordance with Schedule 1; and
- (d) I understand that I am delivering this Form with one or more securities regulatory authorities listed in Schedule 2 and it is an offence to make a statement in this Form that is false or misleading in a material respect, or to omit facts that make this Form false or misleading in a material respect.

Date

Signature of person named above

Name(s) of OTC reporting issuer(s) for which this form is delivered

Form 51-105F3A

Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of Personal Information

Schedule 1

Collection of Personal Information

The securities regulatory authorities listed in Schedule 2 are authorized, under securities legislation, to collect personal information. The securities regulatory authorities do not make any of the information provided in this Form public, unless required under freedom of information legislation.

By signing the Certificate and Consent in this Form, you are consenting to submitting your personal information in this Form (the "Information") to the securities regulatory authorities and to the collection and use by the securities regulatory authorities of the Information, as well as any other information that may be necessary to administer securities legislation and assist in the administration of securities laws elsewhere. This may include the collection of information from law enforcement agencies, other government or non-governmental regulatory authorities, self-regulatory organizations, exchanges, and quotation and trade reporting systems in order to conduct background checks, verify the Information, perform investigations and conduct enforcement proceedings.

Under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*, you are required to deliver the Information to the securities regulatory authorities because you are a director, officer, promoter or control person of an OTC Reporting Issuer. Under freedom of information and protection of privacy legislation, you have a right to be informed of the existence of personal information about you that is kept by a securities regulatory authority, to request access to that information, and to request that such information be corrected, subject to applicable freedom of information and protection of privacy legislation.

By signing the Certificate and Consent in this Form, you acknowledge that the securities regulatory authorities may disclose the Information they collect about you, as permitted by law, where its use and disclosure is for the purposes described above. The securities regulatory authorities may use a third party to process the Information, but when that happens, the third party is obligated to comply with the limited use restrictions described above and federal and provincial privacy legislation.

Warning: It is an offence to submit information that, in a material respect, and at the time and in the light of the circumstances in which it is submitted, is misleading or untrue.

Questions

If you have any questions about the collection, use and disclosure of the information you provide to a securities regulatory authority, you may contact the securities regulatory authority at the address or telephone number listed in Schedule 2.

Form 51-105F3A

**Personal Information Form
and Authorization of Indirect Collection,
Use and Disclosure of Personal Information**

Schedule 2

Securities Regulatory Authorities

British Columbia Securities Commission

P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia V7Y 1L2
Telephone: 604-899-6500
Toll free in British Columbia and Alberta 1-800-373-6393
Facsimile: 604-899-6506

Alberta Securities Commission

Suite 600, 250 – 5th Street SW
Calgary, Alberta T2P 0R4
Telephone: 403-297-6454
Facsimile: 403-297-6156

Saskatchewan Financial Services Commission

Suite 601 - 1919 Saskatchewan Drive
Regina, Saskatchewan S4P 4H2
Telephone: 306-787-5879
Facsimile: 306-787-5899

The Manitoba Securities Commission

500 – 400 St Mary Avenue
Winnipeg, Manitoba R3C 4K5
Telephone: 204-945-2548
Toll free in Manitoba 1-800-655-5244
Facsimile: 204-945-0330

Autorité des marchés financiers

800, Square Victoria, 22^e étage
C.P. 246, Tour de la Bourse
Montréal, Québec H4Z 1G3
Telephone: 514-395-0337
or 1-877-525-0337
Facsimile: 514-873-6155 (For delivery purposes only)
Facsimile: 514-864-6381 (For privacy requests only)

New Brunswick Securities Commission

85 Charlotte Street, Suite 300
Saint John, New Brunswick E2L 2J2
Telephone: 506-658-3060
Toll Free in New Brunswick 1-866-933-2222
Facsimile: 506-658-3059

Nova Scotia Securities Commission

2nd Floor, Joseph Howe Building
1690 Hollis Street

Halifax, Nova Scotia B3J 3J9
Telephone: 902-424-7768
Facsimile: 902-424-4625

Prince Edward Island Securities Office

95 Rochford Street, 4th Floor Shaw Building
P.O. Box 2000
Charlottetown, Prince Edward Island C1A 7N8
Telephone: 902-368-4569
Facsimile: 902-368-5283

Government of Newfoundland and Labrador

Financial Services Regulation Division
P.O. Box 8700
Confederation Building
2nd Floor, West Block
Prince Philip Drive
St. John's, NFLD A1B 4J6
Attention: Director of Securities
Telephone: 709-729-4189
Facsimile: 709-729-6187

Government of Yukon

Department of Community Services
Andrew A. Philipsen Law Centre, 3rd Floor
2130 Second Avenue
Whitehorse, YT Y1A 5H6
Telephone: 867-667-5314
Facsimile: 867-393-6251

Government of the Northwest Territories

Government of the Northwest Territories
Office of the Superintendent of Securities
P.O. Box 1320
Yellowknife, NT X1A 2L9
Attention: Deputy Superintendent, Legal & Enforcement
Telephone: 867-920-8984
Facsimile: 867-873-0243

Government of Nunavut

Department of Justice
Legal Registries Division
P.O. Box 1000, Station 570
1st Floor, Brown Building
Iqaluit, Nunavut X0A 0H0
Telephone: 867-975-6590
Facsimile: 867-975-6594

Form 51-105F3B

**Personal Information Form
and Authorization of Indirect Collection,
Use and Disclosure of Personal Information**

This Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of Personal Information must be completed and delivered to the securities regulatory authority by each individual who is required to do so under section 10 of Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*. If an individual has previously delivered either Form 51-105F3A *Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of Personal Information* or a personal information form to the Toronto Stock Exchange or TSX Venture Exchange in connection with another OTC Reporting Issuer and the information has not changed, the individual may deliver this Form in satisfaction of the requirement in section 10 of Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets* if the Certificate and Consent below is completed.

The securities regulatory authority does not make any of the personal information provided in this Form public, unless required under freedom of information legislation.

CERTIFICATE AND CONSENT

I, _____ hereby certify that:
(Please Print – Name of Individual)

- (a) I delivered form 51-105F3A *Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of Personal Information* on _____ (insert date) for _____ (insert name of issuer). I have read and understood the questions, cautions, acknowledgement and consent in that Form, and the answers I have given to the questions in that Form and in any attachments to it are true and correct, except where stated to be to the best of my knowledge, in which case I believe the answers to be true;
- (b) I have read and understand the attached Schedule 1;
- (c) I consent to the collection, use and disclosure of the information in this Form and to the collection, use and disclosure of further personal information in accordance with Schedule 1; and
- (d) I understand that I am delivering this Form to a securities regulatory authority, and it is an offence under securities legislation to provide false or misleading information to the securities regulatory authority.

Date

Signature of person named above

Name(s) of OTC reporting issuer(s) for which this Form is delivered

Form 51-105F3B

Personal Information Form and Authorization of Indirect Collection, Use and Disclosure of Personal Information

Schedule 1

Collection of Personal Information

The securities regulatory authorities listed in Schedule 2 are authorized, under securities legislation, to collect personal information. The securities regulatory authorities do not make any of the information provided in this Form public, unless required under freedom of information legislation.

By signing the Certificate and Consent in this Form, you are consenting to submitting your personal information in this Form (the "Information") to the securities regulatory authorities and to the collection and use by the securities regulatory authorities of the Information, as well as any other information that may be necessary to administer securities legislation and assist in the administration of securities laws elsewhere. This may include the collection of information from law enforcement agencies, other government or non-governmental regulatory authorities, self-regulatory organizations, exchanges, and quotation and trade reporting systems in order to conduct background checks, verify the Information, perform investigations and conduct enforcement proceedings.

Under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*, you are required to deliver the Information to the securities regulatory authorities because you are a director, officer, promoter or control person of an OTC Reporting Issuer. Under freedom of information and protection of privacy legislation, you have a right to be informed of the existence of personal information about you that is kept by a securities regulatory authority, to request access to that information, and to request that such information be corrected, subject to applicable freedom of information and protection of privacy legislation.

By signing the Certificate and Consent in this Form, you acknowledge that the securities regulatory authorities may disclose the Information they collect about you, as permitted by law, where its use and disclosure is for the purposes described above. The securities regulatory authorities may use a third party to process the Information, but when that happens, the third party is obligated to comply with the limited use restrictions described above and federal and provincial privacy legislation.

Warning: It is an offence to submit information that, in a material respect, and at the time and in the light of the circumstances in which it is submitted, is misleading or untrue.

Questions

If you have any questions about the collection, use and disclosure of the information you provide to a securities regulatory authority, you may contact the securities regulatory authority at the address or telephone number listed in Schedule 2.

Form 51-105F3B

**Personal Information Form
and Authorization of Indirect Collection,
Use and Disclosure of Personal Information**

Schedule 2

Securities Regulatory Authorities

British Columbia Securities Commission

P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia V7Y 1L2
Telephone: 604-899-6500
Toll free in British Columbia and Alberta 1-800-373-6393
Facsimile: 604-899-6506

Alberta Securities Commission

Suite 600, 250 – 5th Street SW
Calgary, Alberta T2P 3C4
Telephone: 403-297-6454
Facsimile: 403-297-6156

Saskatchewan Financial Services Commission

Suite 601 - 1919 Saskatchewan Drive
Regina, Saskatchewan S4P 4H2
Telephone: 306-787-5879
Facsimile: 306-787-5899

The Manitoba Securities Commission

500 – 400 St Mary Avenue
Winnipeg, Manitoba R3C 4K5
Telephone: 204-945-2548
Toll free in Manitoba 1-800-655-5244
Facsimile: 204-945-0330

Autorité des marchés financiers

800, Square Victoria, 22^e étage
C.P. 246, Tour de la Bourse
Montréal, Québec H4Z 1G3
Telephone: 514-395-0337
or 1-877-525-0337
Facsimile: 514-873-6155 (For delivery purposes only)
Facsimile: 514-864-6381 (For privacy requests only)

New Brunswick Securities Commission

85 Charlotte Street, Suite 300
Saint John, New Brunswick E2L 2J2
Telephone: 506-658-3060
Toll Free in New Brunswick 1-866-933-2222
Facsimile: 506-658-3059

Nova Scotia Securities Commission

2nd Floor, Joseph Howe Building
1690 Hollis Street

Halifax, Nova Scotia B3J 3J9
Telephone: 902-424-7768
Facsimile: 902-424-4625

Prince Edward Island Securities Office

95 Rochford Street, 4th Floor Shaw Building
P.O. Box 2000
Charlottetown, Prince Edward Island C1A 7N8
Telephone: 902-368-4569
Facsimile: 902-368-5283

Government of Newfoundland and Labrador

Financial Services Regulation Division
P.O. Box 8700
Confederation Building
2nd Floor, West Block
Prince Philip Drive
St. John's, NFLD A1B 4J6
Attention: Director of Securities
Telephone: 709-729-4189
Facsimile: 709-729-6187

Government of Yukon

Department of Community Services
Andrew A. Philipsen Law Centre, 3rd Floor
2130 Second Avenue
Whitehorse, YT Y1A 5H6
Telephone: 867-667-5314
Facsimile: 867-393-6251

Government of the Northwest Territories

Government of the Northwest Territories
Office of the Superintendent of Securities
P.O. Box 1320
Yellowknife, NT X1A 2L9
Attention: Deputy Superintendent, Legal & Enforcement
Telephone: 867-920-8984
Facsimile: 867-873-0243

Government of Nunavut

Department of Justice
Legal Registries Division
P.O. Box 1000, Station 570
1st Floor, Brown Building
Iqaluit, Nunavut X0A 0H0
Telephone: 867-975-6590
Facsimile: 867-975-6594

Form 51-105F4

Notice – Issuer Ceases to be an OTC Reporting Issuer

This is the form required under subsection 4(2) of Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*. This form must be completed and filed in jurisdictions other than Québec if an OTC reporting issuer has ceased to be an OTC issuer because it has a class of securities listed or quoted on an exchange or a quotation and trade reporting system specified in the definition of “OTC issuer” in section 1 of the Instrument.

In Québec, an OTC reporting issuer that has a class of securities listed or quoted on an exchange or a quotation and trade reporting system specified in the definition of “OTC issuer” in section 1 of the Instrument must apply to the securities regulatory authority to have its status as an OTC reporting issuer revoked in order to cease to be an OTC issuer.

The Issuer

Name of Issuer: _____ (the Issuer)

Head office address: _____

Last head office address (if different from above): _____

Telephone number: _____

Fax number: _____

E-mail address: _____

Ceasing to be an OTC Reporting Issuer

The Issuer’s _____ [describe class of securities] are listed or quoted on _____ [name of exchange or quotation and trade reporting system listed in definition of OTC issuer in section 1 of Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*].

If the Issuer has ceased to be an OTC issuer, the Issuer is no longer an OTC Reporting Issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*.

The Issuer [**will not be / will remain**] a reporting issuer in a jurisdiction of Canada.

Certificate

On behalf of the Issuer, I certify that the statements made in this Notice are true.

Date: _____

Name of Issuer

Print name, title and telephone number
of person signing on behalf of the Issuer

Signature

Warning: It is an offence to make a statement in this Notice that is false or misleading in a material respect, or to omit facts that make this Notice false or misleading in a material respect.

Companion Policy 51-105CP

Multilateral Instrument 51-105

Issuers Quoted in the U.S. Over-the-Counter Markets

PART 1: GENERAL COMMENTS

1. Introduction

Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets* (Instrument) applies in every jurisdiction of Canada, except Ontario, and has been implemented as a rule or regulation in all jurisdictions, except Ontario.

This Companion Policy sets out how the Canadian Securities Administrators (we) interpret or apply the provisions of the Instrument and related securities legislation.

Except for Part 1, the numbering of Parts and sections in this Companion Policy corresponds to the numbering in the Instrument. Any general guidance for a Part appears immediately after the Part name. Specific guidance on sections in the Instrument follows any general guidance. If there is no guidance for a section, the numbering in this Companion Policy will skip to the next provision that does have guidance.

The Instrument designates or determines as a reporting issuer (OTC reporting issuer) in a jurisdiction of Canada an issuer that:

- (a) has issued a class of securities that are quoted on any of the over-the-counter markets in the United States of America, including the OTC Bulletin Board, the OTC Markets and reported in the grey markets, and has no securities listed on another North American exchange or quotation system listed in the Instrument (OTC issuer), and
- (b) meets one or more of the tests for a significant connection to that jurisdiction set out in section 3 of the Instrument.

We consider NEX to be part of the TSX Venture Exchange for the purposes of the Instrument.

An OTC reporting issuer must comply with the requirements of securities legislation that apply to reporting issuers in that jurisdiction generally. The Instrument requires an OTC reporting issuer to make some additional disclosure, and restricts the use of some of the prospectus, take-over bid and disclosure exemptions.

Because an OTC reporting issuer is likely to be an unlisted reporting issuer under National Instrument 45-106 *Registration and Prospectus Exemptions*, section 2.25 of that instrument applies to distributions of the issuer's securities by the issuer or a control person to a director, executive officer, employee, consultant or other person described in

section 2.24 of that instrument. Section 2.25 of that instrument requires non-management shareholders to approve those distributions if the limitations in that section are exceeded.

2. Definitions

Unless defined in the Instrument, terms used in the Instrument or in this Companion Policy have the meaning given to them in the securities legislation of each jurisdiction, in National Instrument 14-101 *Definitions* or in National Instrument 51-102 *Continuous Disclosure Obligations*. For example,

- (a) “reporting issuer” is defined in the securities legislation of each jurisdiction,
- (b) “1934 Act”, “local jurisdiction”, “jurisdiction of Canada”, “prospectus requirement”, “securities legislation”, and “SEC” are defined in National Instrument 14-101 *Definitions*, and
- (c) “AIF” and “MD&A” are defined in National Instrument 51-102 *Continuous Disclosure Obligations*.

3. Reporting issuer designation and determination

General

The Instrument has been adopted as a local rule or regulation in each jurisdiction of Canada, except Ontario. The OTC reporting issuer designation and determination is made on a jurisdiction by jurisdiction basis as is the case for determination of reporting issuer status under Canadian securities legislation.

The connecting factors in section 3 of the Instrument prescribe whether or not an issuer is an OTC reporting issuer and therefore subject to the Instrument. We think that a news release stating that it is “not for dissemination in Canada” is not a substitute for an analysis of the connecting factors.

Direction and administration of business

An OTC issuer’s business may be directed or administered in or from more than one jurisdiction. For the purposes of section 3 of the Instrument, generally, we will consider that an OTC issuer’s business is directed or administered in or from a jurisdiction if:

- (a) its head office, or another office where executive functions take place, is located in that jurisdiction,
- (b) some or all of its directors are located in that jurisdiction, or
- (c) any director, officer, consultant or other person who carries out executive functions for the issuer does so from an office in that jurisdiction, or is resident in that jurisdiction.

Executive functions are those of a president, a vice president, a secretary, a treasurer or a general manager of a corporation or other entity, or the chair of a board of directors, normally performs. These functions include responsibility for important corporate activities such as exploration, product development, asset acquisition and development, financing, investor relations and operations.

Generally, we will not consider that an OTC issuer's business is directed or administered in or from a jurisdiction if the only connection to the jurisdiction is the location, in the jurisdiction, of:

- (a) an asset of the issuer, such as a mineral property or distribution or warehouse facility, or
- (b) sales personnel, or an expert, none of whom performs executive functions for the issuer.

Promotional activities

If an OTC issuer employs or retains an individual or a firm located in a jurisdiction of Canada to conduct promotional activities, we will likely conclude that the OTC issuer is carrying out promotional activities from that jurisdiction.

The Instrument defines “promotional activities.” For the purposes of the Instrument, we will consider generally that these activities include communications through an investment newsletter or other publication that promotes, or reasonably could be expected to promote, the purchase or sale of securities of the OTC issuer. Generally, we will consider that these activities also include providing information to potential investors who request information, or to potential private placement investors.

We will consider that an OTC issuer is carrying out promotional activities in a jurisdiction of Canada if it communicates from anywhere with persons in that jurisdiction, or communicates from a jurisdiction of Canada with persons anywhere, in a way that promotes, or reasonably could be expected to promote, the purchase or sale of its securities.

Ticker-symbol date

In the Instrument, the ticker-symbol date is the date an issuer is first assigned a ticker-symbol on any market or quotation system anywhere in the world. If an issuer's ticker-symbol changes, that is not a “ticker-symbol date” under the Instrument.

New OTC issuers

If an OTC issuer has distributed a security to a resident of a jurisdiction of Canada before the ticker-symbol date, it will be a reporting issuer under paragraph 3(c) of the Instrument if the security distributed is of the class of securities that became the issuer's OTC-quoted securities. This provision applies only to an OTC issuer with a ticker-symbol date on or after the effective date of the Instrument in that jurisdiction. An issuer with a ticker-

symbol date prior to the effective date does not become an OTC reporting issuer until it meets the conditions in section 3(a) or (b) of the Instrument.

The condition in (c) which makes an issuer an OTC reporting issuer if it sells seed stock to a Canadian resident only applies to an issuer whose ticker-symbol date is on or after the effective date of the Instrument.

Application to existing reporting issuers

The Instrument applies to a reporting issuer that meets the definition of an “OTC issuer” in section 1 of the Instrument and to an issuer that has become a reporting issuer under section 3 of the Instrument.

4. Ceasing to be an OTC reporting issuer

OTC reporting issuers may cease to be OTC issuers as well as cease to be reporting issuers. In certain circumstances, they may cease to be OTC issuers but remain reporting issuers in one or many of the jurisdictions.

Ceasing to be an OTC issuer and a reporting issuer in jurisdictions other than Québec

Other than in Québec, an OTC reporting issuer may cease to be an OTC issuer and a reporting issuer under one of the following three circumstances:

- (a) it satisfies all the conditions in subsection 4(1) of the Instrument, including filing Form 51-105F1 *Notice - OTC Issuer Ceases to be an OTC Reporting Issuer*, and it does not otherwise meet the definition of reporting issuer in securities legislation;
- (b) it ceases to be an OTC issuer because a class of its securities becomes listed or quoted on an exchange or a quotation and trade reporting system listed in section 1 of the Instrument, it has filed Form 51-105F4 *Notice – Issuer Ceases to be an OTC Reporting Issuer* and it does not otherwise meet the definition of reporting issuer in securities legislation;
- (c) it receives an order from the securities regulatory authority in the jurisdiction that it is no longer a reporting issuer in that jurisdiction.

Ceasing to be an OTC issuer and a reporting issuer in Québec

In Québec, an OTC reporting issuer may cease to be an OTC issuer and a reporting issuer if pursuant to making an application for a decision to revoke its OTC reporting issuer status, it receives an order from the securities regulatory authority that it is no longer a reporting issuer. The application must be made pursuant to section 69 of the *Securities Act* (Québec).

Other cessation procedures unavailable

BC Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status* and CSA Staff Notice 12-307 *Applications for a Decision that an Issuer is not a Reporting Issuer* are not available to an OTC reporting issuer.

Regaining OTC reporting issuer status

An OTC reporting issuer that ceases to be an OTC reporting issuer might become an OTC reporting issuer again if its circumstances change. For example, an OTC reporting issuer that ceased to be an OTC reporting issuer because it satisfied all the conditions in subsection 4(1) of the Instrument and did not otherwise meet the definition of reporting issuer in securities legislation, or, in Québec, obtained a decision revoking its reporting issuer status, would again become an OTC reporting issuer if it subsequently re-located its head office to a jurisdiction of Canada and was an OTC issuer at that time.

Ceasing to be an OTC issuer but remaining a reporting issuer

An OTC reporting issuer that ceases to be an OTC reporting issuer under the Instrument continues to be a reporting issuer under securities legislation if it meets the definition of reporting issuer in securities legislation. For example, if an issuer ceases to be an OTC reporting issuer because its securities have become listed on NASDAQ, it would remain a reporting issuer under securities legislation if it had filed and obtained a receipt for a prospectus in a jurisdiction of Canada or if it has exchanged its securities with another reporting issuer in a jurisdiction of Canada or with the holders of the securities of that other reporting issuer in connection with an amalgamation.

Forms to be filed on ceasing to be an OTC reporting issuer in jurisdictions other than Québec

Subsection 4(1) of the Instrument provides that, except in Québec, if an OTC reporting issuer has no significant connection to any jurisdiction of Canada for at least one year, it may cease to be an OTC reporting issuer on filing Form 51-105F1 *Notice - OTC Issuer Ceases to be an OTC Reporting Issuer*. Form 51-105F1 also requires the issuer to disclose whether or not it will remain a reporting issuer in a jurisdiction of Canada.

Form 51-105F4 *Notice - Issuer Ceases to be an OTC Reporting Issuer* is the form that is required to be filed, except in Québec, for an OTC reporting issuer that ceases to be an OTC issuer because a class of its securities becomes listed or quoted on an exchange or a quotation and trade reporting system listed in section 1 of the Instrument. Form 51-105F4 requires the issuer to disclose whether or not it will remain a reporting issuer in a jurisdiction of Canada. If the issuer will not remain a reporting issuer in a jurisdiction of Canada, filing the form will help prevent the securities regulatory authorities from placing the issuer on the defaulting issuer list, or cease trading the issuer's securities, for failure to file documents.

PART 2: DISCLOSURE

5. Additional disclosure requirements

National Instruments

An OTC reporting issuer has the same disclosure obligations as other reporting issuers under securities legislation, subject to Part 2 of the Instrument. For example, an OTC

reporting issuer is subject to requirements in addition to those described in the Instrument, including:

- (a) National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, which will require most OTC reporting issuers in the mineral business to file with their first AIF a technical report for each material mineral property
- (b) National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities*, which will require most OTC reporting issuers in the oil and gas business to file, when they first file audited annual financial statements, a statement of reserves data and other information, a report of an independent qualified reserves auditor, and a related report of management and directors
- (c) National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* which sets out the accounting principles and auditing standards that must be used by reporting issuers
- (d) National Instrument 52-108 *Auditor Oversight* which sets out the requirements that must be satisfied by auditors of reporting issuers, including the requirement that an auditor must be a participating audit firm with the Canadian Public Accountability Board

Most instruments that impose disclosure obligations have companion policies that also provide guidance.

National Policies

The following policies provide additional guidance to reporting issuers about disclosure obligations:

- (a) National Policy 51-201 *Disclosure Standards*
- (b) National Policy 58-201 *Corporate Governance Guidelines*

Disclosure obligations of insiders of OTC reporting issuers

Insiders of an OTC reporting issuer have the same disclosure obligations as insiders of other reporting issuers under Canadian securities legislation.

Exemptions for SEC filers and their insiders

An OTC reporting issuer that has a class of securities registered under section 12 of the 1934 Act or is required to file reports under paragraph 15(d) of that Act may have exemptions from most continuous disclosure requirements available to it. However, section 6 of the Instrument and BC Instrument 71-503 *Material Change Reporting by OTC Reporting Issuers* provide that an OTC reporting issuer is not exempt from material change reporting requirements.

An OTC reporting issuer must comply with the same timely disclosure requirements for material change reporting as other reporting issuers. The requirements are to issue a news release and file the news release and a material change report on SEDAR. An OTC reporting issuer that files Form 8-K *Current Report* with the SEC disclosing the material change may file Form 8-K *Current Report* on SEDAR as its material change report.

An insider of an OTC reporting issuer that is incorporated outside of Canada and is an SEC filer is exempted from insider reporting requirements if the insider files insider reports with the SEC under U.S. federal securities law. However, an insider of an OTC reporting issuer that is exempted from filing insider reports under U.S. federal securities law must file insider reports in Canada.

The most common exemptions from continuous disclosure requirements for SEC filers and their insiders are in:

- (a) National Instrument 51-102 *Continuous Disclosure Obligations*
- (b) National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*
- (c) National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*
- (d) National Instrument 58-101 *Disclosure of Corporate Governance Practices*
- (e) National Instrument 71-101 *The Multijurisdictional Disclosure System*
- (f) National Instrument 71-102 *Continuous Disclosure and Other Exemptions relating to Foreign Issuers*

Exemptions for designated foreign issuers and their insiders

The continuous disclosure and other exemptions for a designated foreign issuer under National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* are available to an OTC reporting issuer that is a designated foreign issuer.

7. Registration statement

The requirement to file a registration statement under section 7 of the Instrument applies only to an issuer that becomes an OTC reporting issuer under the Instrument on its ticker-symbol date. If it does, then it must file the last registration statement it filed with the SEC.

8. Promotional activities

The required form under section 8 of the Instrument is Form 51-105F2 *Notice of Promotional Activities*. If the promotional activities are a material change then the requirements for material change reporting apply. In that case, the OTC reporting issuer may comply with its obligation to file a news release under section 7.1 of National Instrument 51-102 *Continuous Disclosure Obligations* by including in Form 51-105F2 *Notice of Promotional Activities* the information required by section 7.1(a) of National Instrument 51-102 *Continuous Disclosure Obligations*.

10. Personal information form and authorization

Securities regulatory authorities do not make any of the information provided in these forms public, unless required under freedom of information legislation.

PART 3: RESALE OF PRIVATE PLACEMENT SECURITIES

11. Resale of seed stock

The restrictions on resale of seed stock in Part 3 of the Instrument apply only to seed stock that a person purchases after the effective date of the Instrument.

A person who acquires a security of the issuer after the effective date and before the ticker-symbol date may sell that security using any available exemption until the issuer's ticker-symbol date.

On and after an OTC reporting issuer's ticker-symbol date, a person who acquires a security of the issuer after the effective date and before the ticker-symbol date may trade that security only under the circumstances and conditions set out in section 11 of the Instrument.

13. Resale of private placement securities acquired after ticker-symbol date

Section 13 of the Instrument restricts the resale of securities acquired in a private placement after the issuer's ticker-symbol date to trades that meet the conditions of the section, which include a hold period, volume limitations, and a requirement that the sale be made through an investment dealer who executes the trade through an over-the-counter market in the United States of America.

No other exemptions from the prospectus requirement(s) apply to the first trade by a holder of a security of an OTC reporting issuer distributed to that person after the ticker-symbol date under an exemption from the prospectus requirement(s).

PART 4: OTHER RESTRICTIONS

15. Securities for services

An OTC issuer may only issue securities for services to any of its directors, officers, or consultants if the conditions in this section are met and there is an available exemption from the prospectus requirements.

PART 5: PROCESS FOR EXEMPTIVE RELIEF APPLICATIONS

Exemptive relief requests from the application of the Instrument will be considered on a coordinated review basis under section 3.4 of National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*. This section states that 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.

For an application for an exemption from a requirement in the Instrument, 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 direction or administration of the OTC reporting issuer's business; if direction or administration of the OTC reporting issuer's business occurs in more than one location, the location of the OTC reporting issuer's most senior officer,
- (b) location of conduct of majority of promotional activities of the OTC reporting issuer, and
- (c) location of majority of Canadian security holders of the OTC reporting issuer.

PART 6: TRANSITION AND COMING INTO FORCE

19. Transition - financial disclosure for non-SEC filers

The Instrument provides a transition period for an OTC reporting issuer that is not an SEC filer. The transition period does not apply in British Columbia.

- (a) **annual** – the issuer's first financial year for which it must file annual financial statements and related MD&A is the financial year that begins on or after January 1, 2012. Therefore, an issuer whose financial year ends on December 31, 2012 would be required to file its first annual audited financial statements and related MD&A for the financial year ended December 31, 2012. The filing deadline would be 120 days later, on April 30, 2013.

- (b) **interim** – the issuer’s first period for which it must file interim financial reports and related MD&A begins on or after January 1, 2012 and ends after July 31, 2012. Therefore, an issuer whose financial year ends on December 31, 2011 would be required to file its first interim financial reports and related MD&A for the nine-month period ended September 30, 2012. The filing deadline would be 60 days later, on November 29, 2012.

Section 4.1 of National Instrument 51-102 *Continuous Disclosure Obligations* requires an issuer to file annual financial statements that include comparative information for the immediately preceding year and that are audited. An OTC reporting issuer must ensure that it has financial statements for its comparative period audited.

Sections 3.9 and 3.10 of National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards* state the requirements for acceptable accounting principles and acceptable auditing standards for foreign issuers.

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

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PART 7 DECISION-MAKING PROCESS

- 7.1 Passport application
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PART 8 DECISION

- 8.1 Effect of decision made under passport application
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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

9.4 Revocation or variation of MRRS decisions made 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” means the review under this policy of a coordinated review application;

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

“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*;

“NP 11-204” means National Policy 11-204 *Process for Registration 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 (9) [and \(11\)](#) of this section and in section 3.7 of this policy, the principal regulator for an exemptive relief application 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) Except as provided in ~~subsection~~subsections (6) to (9) and (11) of this section and in section 3.7 of this policy, the principal regulator for an application for exemptive relief from a provision of securities legislation related to insider reporting is the regulator in the jurisdiction in which the head office of the reporting issuer, not the insider, is located.

(5) Except as provided in ~~subsection~~subsections (6) to (9) and (11) of this section and in section 3.7 of this policy, the principal regulator for an application for exemptive relief from a provision of securities legislation related to take-over bids 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) Except as provided in subsections (7), (8), (9) and (911) of this section and section 3.7 of this policy, 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 subsections (8), (9) and (911) of this section and section 3.7 of this policy, if a firm or individual makes an application for exemptive relief from a requirement in Parts 3 and 12 of NI 31-103 or Part 2 of NI 33-109 in connection with an application for registration in the principal jurisdiction, the principal regulator for the exemptive relief application is the principal regulator as determined under section 3.6 of NP 11-204. Under section 3.6 of NP 11-204 the securities regulatory authority or regulator of any jurisdiction can be a principal regulator.

(8) Except as provided in ~~subsection~~subsections (9) and (11) of this section, and section 3.7 of this policy, if a person or company is not seeking exemptive relief in the jurisdiction of the

principal regulator, as determined under subsections (3), (4), (5), (6) or (7), 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.

(9) Except as provided in [subsection \(11\) of this section and](#) section 3.7 of this policy, 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), (6), (7) or (8), 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.

(10) ~~The~~ [Except as provided in subsection \(11\) of this section, 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 [and trade reporting](#) system in Canada.

[\(11\) In the case of an application for exemptive relief from a provision of Multilateral Instrument 51-105 Issuers Quoted in the U.S. Over-the-Counter Markets, the factors a filer should consider in identifying the principal regulator for the application are set out in Part 5 of Companion Policy 51-105CP.](#)

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 file applications related to individual proficiency requirements in NI 31-103 on NRD.

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

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

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* (MRRS) 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.

9.4 Revocation or variation of MRRS decisions made before March 17, 2008

(1) A filer that wants the regulators to revoke an MRRS decision made before March 17, 2008 should make a coordinated review application.

(2) A filer that wants the regulators to vary an MRRS decision made before March 17, 2008 should make a coordinated review application. However, in the case of an MRRS decision that gave exemptive relief from a provision set out in Appendix D of MI 11-102, the filer should instead request new relief by making a passport application or dual application and referencing the MRRS decision in the new application and the proposed decision document.

(3) If a filer makes a passport application or a dual application under subsection (2), the filer must give the notice required under section 4.7(1)(c) of MI 11-102 and meet the other conditions of that section for the principal regulator's decision to have effect automatically in a non-principal passport jurisdiction. A filer may give the notice in the application it files with the principal regulator.

*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)

