

Chapter 5

Rules and Policies

5.1.1 OSC Notice 11-754

OSC NOTICE 11-754

**MULTILATERAL INSTRUMENT 11-101 PRINCIPAL REGULATOR SYSTEM,
FORM 11-101F1 PRINCIPAL REGULATOR NOTICE UNDER MULTILATERAL INSTRUMENT 11-101,
COMPANION POLICY 11-101CP PRINCIPAL REGULATOR SYSTEM,**

**AMENDMENTS TO NATIONAL POLICY 43-201 MUTUAL RELIANCE REVIEW SYSTEM
FOR PROSPECTUSES AND ANNUAL INFORMATION FORMS,**

**AMENDMENTS TO NATIONAL POLICY 12-201 MUTUAL RELIANCE REVIEW SYSTEM
FOR EXEMPTIVE RELIEF APPLICATIONS,**

**AMENDMENTS TO NATIONAL INSTRUMENT 51-101 STANDARDS OF DISCLOSURE FOR
OIL AND GAS ACTIVITIES, AND MULTILATERAL INSTRUMENT 81-104 COMMODITY POOLS**

Introduction

On May 27, 2005, the Ontario Securities Commission (“we” or the “Commission”), published a notice regarding proposed Multilateral Instrument 11-101 *Principal Regulator System* (MI 11-101), Form 11-101F1 *Notice of Principal Regulator under Multilateral Instrument 11-101*, Companion Policy 11-101CP *Principal Regulator System*. The notice also discussed proposed amendments to:

- National Policy 43-201 *Mutual Reliance Review System for Prospectuses and Annual Information Forms* (MRRS Prospectus Policy),
- National Policy 31-201 *National Registration System* (NRS Policy),
- National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101), and
- Multilateral Instrument 81-104 *Commodity Pools* (MI 81-104).

Other members of the Canadian Securities Administrators (“CSA”) published a similar notice on May 27, 2005, but, unlike the Commission, indicated their intention to adopt MI 11-101.

Nine comment letters were submitted in connection with the May 27, 2005 notices. Five comment letters were addressed to the Commission and another four comment letters were addressed solely to the other CSA members. The comment letters received by the Commission are posted on the Commission’s website at www.osc.gov.on.ca. We have considered the comments and thank all the commenters. For a summary of all comments and responses by the other members of the CSA, please see the following CSA member websites:

www.albertasecurities.com
www.bcsc.bc.ca
www.lautorite.qc.ca

Notice of Amendments

For the reasons set out in the Commission’s Notice dated May 27, 2005, we are not adopting MI 11-101, or its related Form and Companion Policy. Other members of the CSA, however, will be adopting MI 11-101 in their respective jurisdictions effective September 19, 2005. The text for MI 11-101 and related materials can be found on the CSA member websites noted above.

The Commission, together with the other members of the CSA, is adopting amendments to the MRRS Prospectus Policy, and National Policy 12-201 *Mutual Reliance Review System for Exemptive Relief Applications* (the “MRRS Applications

Policy”)(discussed below). The amendments to the MRRS Prospectus Policy and MRRS Applications Policy will also take effect on September 19, 2005.

In the Notice of May 27, the Commission also proposed an amendment to National Policy 31-201 *National Registration System* (NP 31-201) to shorten the decision-making process. The amendment would have reduced the opt-in period in NP 31-201 from five business days to two business days. NP 31-201 has been in effect since April 4 of this year. The CSA have decided not to make the proposed amendment at this time because we need more experience with the system to determine whether it is practical to reduce the opt-in period. The CSA will, therefore, monitor the operation of the system and reconsider the proposed amendment on the first anniversary of NP 31-201.

The British Columbia Securities Commission (BCSC) has also adopted amendments to remove B.C. only carve-outs in sections 2.1.3 and 3.6 of NI 51-101, and in section 8.6 of MI 81-104, to become effective September 19, 2005.

Changes Introduced to the Existing Regulatory System by MI 11-101

The fact that we have not adopted MI 11-101 will not affect the current filing requirements or mutual reliance practices for reporting issuers. All reporting issuers, regardless of where their head office is located, will continue to have to file, deliver and disseminate continuous disclosure information and will continue to pay filing fees in each province or territory where they are reporting issuers. In addition, they will continue to have to file prospectuses with, and obtain receipts from, the securities regulator in each jurisdiction in which they undertake a public offering.

Other than the mobility exemption for registrants (discussed below), the principal change for issuers introduced by MI 11-101 will be to reduce the number of securities regulators that may be involved in an application for relief from certain continuous disclosure requirements, or certain processing prospectus related disclosure or eligibility requirements. In this regard, for reporting issuers in Ontario that have a head office outside Ontario, they will continue to rely on the mutual reliance review systems (“MRRS”), but only two securities regulators will be involved - the OSC and the securities regulator located in the “participating principal jurisdiction” under MI 11-101. For reporting issuers with a head office in Ontario, they will continue to rely on MRRS in each jurisdiction where the relief is required. Considering that the current practice under MRRS enables market participants to deal with one regulator (i.e., their principal regulator), the changes introduced by MI 11-101 should, from an issuer’s perspective, be marginal.

Commitment to Achieving Greater Efficiencies

Several commenters supported the Commission’s decision not to publish MI 11-101 and many urged us to continue working to develop a set of harmonized, if not uniform, requirements. Some commenters also expressed the view that, rather than trying to get multiple regulators to act as one, it would be more efficient to create a single regulator with a single and consistent set of regulatory standards across the country. In this regard, the Commission continues to be committed to enhancing the efficiency and effectiveness of the Canadian regulatory system and developing harmonized requirements. We continue to work with other CSA members to develop greater uniformity in our regulatory requirements and practices.

In addition, we note that as a result of the collective efforts of all CSA members, the following rules or requirements will become uniform across the country on September 19, 2005 when the BCSC adopts them:

- Multilateral Instrument 52-109 *Certification of Disclosure in Issuers’ Annual and Interim Filings* (MI 52-109),
- The requirements in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (NI 51-101) respecting Form 51-101F3 and responsibilities by the Board of Directors to review certain procedures, statements and appointments,
- The disclosure requirement in Multilateral Instrument 81-104 *Commodity Pools* (MI 81-104) respecting the minimum and maximum levels of leverage experienced in a particular financial period, and
- The requirements in National Instrument 51-102 *Continuous Disclosure Obligations* (MI 51-102) respecting Business Acquisition Reports and restricted share disclosure.

We fully support initiatives that will further streamline our current administrative and review processes, as well as lead to greater harmonization in our regulatory requirements. Accordingly, we are amending, together with other CSA members, the MRRS Prospectus Policy and the MRRS Applications Policy (see discussion below).

We also support, in principle, the mobility registration exemption contained in MI 11-101. This exemption will permit registrants to continue to work with their existing clients who relocate to another jurisdiction. As a result of the comments we received, the Commission will study the feasibility of introducing a similar exemption for registrants whose clients move to Ontario. In the

interim, the Commission will, in the appropriate cases, consider and grant applications for exemptive relief from the registration requirements based on the same type of restrictions listed under the mobility exemption in MI 11-101.

Amendments to the MRRS Prospectus Policy

The MRRS Prospectus Policy establishes the mutual reliance review system ("MRRS") for the review and clearance of prospectuses (including long-form, short-form and mutual fund prospectuses), prospectus amendments, waiver applications, and pre-filing discussions. The MRRS remains an important component of the Commission's focus on harmonization and streamlining regulatory requirements and processes that benefit market participants. Under the MRRS Prospectus Policy, each non-principal regulator relies primarily on the review and analysis of the principal regulator in reaching its own decision to grant a receipt.

A blacklined version of the MRRS Prospectus Policy is attached showing the amendments made by the CSA.

Summary of Comments and Changes

The commenters generally welcomed and supported the proposed changes to the prospectus review and clearance system.

To facilitate the review and clearance of prospectus filings, we have streamlined the MRRS Prospectus Policy by reducing the time it takes to review a prospectus by ensuring the non-principal regulators do their review at the same time (instead of after) the principal regulator does its review. We estimate this will shorten the prospectus review process for long form prospectuses by five business days and for short form prospectuses by one to two business days. The result should be quicker access to the capital markets for market participants.

In addition, we have extended the list of jurisdictions that can act as principal regulator under the MRRS Prospectus Policy by including New Brunswick.

We are also making changes that will virtually eliminate the need for issuers to deal with non-principal regulators on any comments. One of these changes requires the principal regulator to forward potential opt-out issues raised by a non-principal regulator to the filer and attempt to resolve those issues with the non-principal regulator and the filer (i.e., the filer would no longer be required to deal directly with a non-principal regulator).

Additional Changes

In addition to the changes we published for comment on May 27, we have amended the pre-filing procedures under the MRRS Prospectus Policy. We made these amendments even though we did not publish them for comment because they relate to internal CSA processes. The amendments shorten the timelines for the review of pre-filings and waiver applications and impose a time limit for the review of these applications by the principal regulator. We made these changes to encourage issuers to use the pre-filing and waiver application process when filing prospectuses that raise novel and substantive issues or raise a novel public policy concern.

Review of AIFs Pending Changes to National Instrument 44-101

The amendments to the MRRS Prospectus Policy streamline the process for reviewing annual information forms. They do not distinguish between the review process for initial and renewal annual information forms because the CSA expects to eliminate this distinction in the restatement of National Instrument 44-101 *Short Form Prospectus Distributions* later this year. Until that happens, we will continue to review initial and renewal annual information forms as we did prior to amending the MRRS Prospectus Policy.

Amendments to the MRRS Applications Policy

The MRRS Applications Policy establishes the MRRS for the review of applications for exemptive relief that are filed in more than one jurisdiction. Under the MRRS Applications Policy, each non-principal regulator relies primarily on the review and analysis of the principal regulator in reaching its own decision on whether to grant relief.

A blacklined version of the MRRS Applications Policy is attached showing the amendments made by the CSA.

The Commission, together with the other CSA, amended the MRRS Applications Policy even though we did not publish it for comment. The amendments will clarify the interplay between the MRRS Applications Policy and MI 11-101 and are not material. The amendments include:

- appending a template decision document for filers to use when they require a decision from their principal regulator under MI 11-101, and

- changing the list of jurisdictions willing to act as principal regulator to remove Newfoundland and Labrador, which has indicated it no longer wishes to act as such, and adding New Brunswick.

These amendments take effect on September 19, 2005.

QUESTIONS

Please refer your questions to:

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The text of the amendments to the MRRS Prospectus Policy, the MRRS Applications Policy, NI 51-101, and MI 81-104 follow.

August 26, 2005