



SECTIONS

- Aboriginal Law
- Administrative Law
- Alternate Dispute Resolution
- Business Law
- Canadian Corporate Counsel Association - Toronto Chapter
- Charity and Not-For-Profit Law
- Citizenship and Immigration
- Civil Litigation
- Constitutional & Civil Liberties
- Construction Law
- Criminal Justice
- Education Law
- Entertainment, Media & Communications
- Environmental Law
- Family Law
- Feminist Legal Analysis
- Health Law
- Information & Technology
- Insolvency Law
- Insurance Law
- International Law
- Labour Relations
- Law Practice Management
- Municipal Law
- Natural Resources and Energy
- Pensions and Benefits
- Privacy Law
- Public Sector Lawyers
- Real Property
- Sole, Small Firm & General Practice
- Taxation Law
- Trusts & Estates
- Worker's Compensation
- Young Lawyers

July 27, 2005

John Stevenson  
Secretary to the Commission  
Ontario Securities Commission  
20 Queen St. W., Suite 1903, Box 55  
Toronto ON M5H 3S8

Leigh-Anne Mercier  
Senior Legal Counsel  
British Columbia Securities Commission  
P.O. Box 10142, Pacific Centre  
701 West Georgia Street  
Vancouver BC V7Y 1L2

Anne-Marie Beaudoin  
Directrice du secretariat  
Autorité des marchés financiers  
Tour de la Bourse  
800, square Victoria  
C.P. 246, 22<sup>e</sup> étage  
Montréal, QC H4Z 1G3

Dear Sir and Mesdames:

**Re: Request for Comments – Multilateral Instrument 11-101  
*Principal Regulator System***

This letter is submitted in response to the requests for comment published May 27, 2005 by the Ontario Securities Commission (the “OSC”) and separately by the Canadian Securities Authorities in the other Canadian provinces and territories (the “other CSA jurisdictions”) on proposed Multilateral Instrument 11-101 *Principal Regulator System* (“MI 11-101”) and proposed consequential amendments to other instruments.

This submission is provided by the Securities Law Subcommittee of the Business Law Section of the Ontario Bar Association (the “OBA Subcommittee”). The members of the OBA Subcommittee are listed in the attached Appendix. Please note that not all of the members of the OBA Subcommittee participated in or reviewed this submission, and that the views expressed are not necessarily those of the firms and organizations represented by members of the OBA Subcommittee.

## **Principal Regulator System**

The OBA Subcommittee supports the position taken by the OSC in refusing to endorse MI 11-101. In particular, we agree that in the interests of market efficiency and investor protection, it is inappropriate to implement a passport system in the absence of highly harmonized legislative requirements for all participating jurisdictions (or ideally, a single legislative regime applicable in all jurisdictions). MI 11-101 does not meet this standard, and does nothing to promote the goal of further harmonization of regulatory standards.

## **MI 11-101 – Treatment of Ontario-based Issuers and Registrants**

MI 11-101 contemplates that issuers or registrants based in the other CSA jurisdictions and foreign issuers will be able to file applications (and pay fees) only with the principal regulator under MI 11-101 and Ontario under MRRS or NRS. However, Ontario-based issuers or registrants will continue to have to file applications (and pay fees) in all applicable CSA jurisdictions under MRRS or NRS.

In our view, the refusal by the OSC to endorse MI 11-101 is not a valid reason for affording differential treatment to Ontario-based issuers or registrants who are reporting issuers in the other CSA jurisdictions and who comply with the requirements of those jurisdictions. In particular, we do not understand why the regulators in the other CSA jurisdictions that have otherwise endorsed MI 11-101 would treat Ontario-based issuers or registrants differently under MI 11-101 in their own jurisdiction.

We recommend that MI 11-101 be amended to permit Ontario-based issuers or registrants to rely on the exemptions in MI 11-101 in the other CSA jurisdictions. An Ontario-based issuer or registrant could use the OSC as its principal regulator under MRRS or NRS and one other CSA jurisdiction with which the Ontario-based issuer or registrant has the next most significant connection as its principal regulator under MI 11-101 (possibly with the other principal regulator under MI 11-101 being the only non-principal regulator for purposes of MRRS). We note that this is the proposed treatment under MI 11-101 of foreign issuers for which the OSC acts as the principal regulator under MRRS.

## **Other Streamlining Initiatives**

The OBA Subcommittee supports the OSC's position in endorsing the other streamlining initiatives outlined in the CSA notice, notably in the areas of prospectus/AIF review and registration.

In particular, we support the implementation of the mobility registration exemption in Ontario as well as the other CSA jurisdictions.

We also support the proposal to shorten the prospectus/AIF review process by providing for simultaneous review by principal and non-principal regulators. However, we note that in the interests of efficiency, as an operational matter, non-principal jurisdictions should consult with the principal jurisdiction to avoid duplicative or conflicting comments.

\* \* \* \* \*

Thank you for this opportunity to comment. If you have any questions, please direct them to Richard Lococo ([richard\\_lococo@manulife.com](mailto:richard_lococo@manulife.com), 416-926-6620), Philippe Tardif ([ptardif@langmichener.ca](mailto:ptardif@langmichener.ca), 416-307-4085) or Janne M. Duncan ([jduncan@tor.fasken.com](mailto:jduncan@tor.fasken.com), 416-868-3357).

Yours truly,

Securities Law Subcommittee  
Business Law Section  
Ontario Bar Association

**Appendix**  
**OBA SECURITIES LAW SUBCOMMITTEE**

**Members:**

Richard A. Lococo (Chair), Manulife Financial  
Thomas W. Arndt, 407 ETR  
Aaron J. Atkinson/Janne M. Duncan, Fasken Martineau DuMoulin LLP  
Timothy S. Baikie, Canadian Trading and Quotation System Inc.  
Justin Beber/Kenneth R. Wiener, Goodmans LLP  
Colin B. Berryman/Michael D. Innes, Osler, Hoskin & Harcourt LLP  
Mary Condon, Osgoode Hall Law School  
Gil I. Cornblum/William D. Kitay, Dorsey & Whitney LLP  
Pierre Dagenais, Ogilvy Renault  
Anoop Dogra, Blake, Cassels & Graydon LLP  
Aaron S. Emes, Torys LLP  
Eleanor K. Farrell (Secretary), CPP Investment Board  
Paul J. Franco, Heenan Blaikie LLP  
Kevin J. Gormely, CIBC World Markets  
Matthew Graham, TD Bank Financial Group  
Margaret I. Gunawan, Barclays Global Investors Canada Limited  
Carol Hansell/Kenneth G. Klassen, Davies Ward Phillips & Vineberg LLP  
Henry A. Harris, Gowling Lafleur Henderson LLP  
Barbara J. Hendrickson, McMillan Binch Mendelsohn LLP  
David R. Kerr/Kay Y. Song, Manulife Financial  
Samir Y.A. Khan, AIM Trimark Funds  
Susan I. McCallum, Barrister & Solicitor  
Caroline Mingfok/Richard Wyruch, Rockwater Capital Corporation  
Richard Raymer, Hodgson Russ LLP  
Nancy J. Ross, RBC Investments  
Warren M. Rudick, Mackenzie Financial  
Shea T. Small, McCarthy Tétrault LLP  
Robert N. Spiegel, Stikeman, Graham, Keeley & Spiegel LLP  
Robert M. Stewart, Miller Thomson LLP  
Philippe Tardif, Lang Michener  
D. Grant Vingoe, Arnold & Porter LLP  
Arlene D. Wolfe, Feltmate Delibato Heagle LLP

**Liaison:**

Michael Brady, Market Regulation Services Inc.  
Luana DiCandia/Julie K. Shin, Toronto Stock Exchange  
Iva Vranic, Ontario Securities Commission