

6.1.2 Proposed Repeal and Replacement of Multilateral Instrument 13-102 System Fees for SEDAR and NRD



Canadian Securities
Administrators

Autorités canadiennes
en valeurs mobilières

CSA Notice and Request for Comment

Proposed Repeal and Replacement of Multilateral Instrument 13-102 System Fees for SEDAR and NRD

May 2, 2019

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing for a 90-day comment period proposed amendments (**Proposed Amendments**) to Multilateral Instrument 13-102 *System Fees for SEDAR and NRD* (**MI 13-102**).¹ This notice should be read together with the CSA notice relating to proposed National Instrument 13-103 *System Replacement Rule* (**Proposed NI 13-103**), which is also being published today.

The CSA is renewing its national records filing systems. A new system (the **Renewed System**) would replace:

- existing CSA national systems (**Existing CSA Systems**) including the System for Electronic Document Analysis and Retrieval (**SEDAR**), the System for Electronic Disclosure by Insiders (**SEDI**) and the National Registration Database (**NRD**), and
- various local records filing systems.

In connection with the development of the Renewed System, the CSA has reviewed system fees for specified filings made by market participants. As a result of this review, the CSA proposes to revise MI 13-102, primarily to change the structure of the system fees provided by MI 13-102. Under the Proposed Amendments,

- system fees would continue to be established on a cost-recovery basis, and
- the total system fees collected by the CSA are projected to decline.

We note that system fees are separate from any regulatory fees users must pay in any province or territory.

The Proposed Amendments are structured as a repeal and replacement (**Proposed MI 13-102**) of MI 13-102 and are contained in Annex A of this notice. Annex B contains local information, where applicable.

This notice is available on the websites of CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
nssc.novascotia.ca
www.fcnb.ca
www.osc.gov.on.ca
www.fcaa.gov.sk.ca
www.mbsecurities.ca

Background

In 2013, MI 13-102 was adopted to replace the filing service charge schedules under the SEDAR Filer Manual and the NRD User Guide. Adopting MI 13-102 reduced some fee rates to reflect cost saving opportunities based on filing patterns but retained the fee structure. The fee structure has remained unchanged since the fee models were implemented in 1997 for SEDAR and in 2003 for NRD.

¹ While the Manitoba Securities Commission is not a participant in MI 13-102, it is a participant in the system fee regime as a result of Regulation 158/2013 under *The Securities Act* (Manitoba). It is anticipated that the Proposed Amendments would be reflected in corresponding changes to Regulation 158/2013.

The Renewed System is intended to

- accept most securities law filings and documents,
- be secure and easy to use, and
- be more cost-effective to operate and change.

This Renewed System is projected to be delivered in phases starting in early 2021. The first phase (**Phase 1**) will replace SEDAR, the Cease-Trade Order (CTO) Database, the Disciplined List and certain filings in the British Columbia Securities Commission eServices system and the Ontario Securities Commission Electronic Filing Portal.

Requirements applicable to insiders (SEDI), registrants (NRD), regulated entities such as exchanges and self-regulatory organizations, and derivatives market participants will be addressed in future phases.

Purpose

In conjunction with the systems renewal, the CSA is proposing to revise system fees to align them to projected national systems operating costs and to provide for future developments and enhancements. The changes are designed to

- reduce annual system fee revenue by \$1.7 million,
- minimize fee changes, especially for smaller filers,
- simplify the fee design by adopting flat fees and eliminating some fees, and
- add new fees for significant new services.

Subject to a transitional measure relating to international dealers and advisers in section 7 of Proposed MI 13-102, the Proposed Amendments are expected to come into force with Phase 1.

Substance of the Proposed Amendments

The Proposed Amendments would replace principal and non-principal regulator fees with flat fees per filing type (**flat fee design**) paid only to a filer's principal regulator. This change substantially simplifies the system fee regime. Further, system fees for certain filing types would be removed, while some new fees for filing types would be introduced, as described below. System fees will rise in some cases (or be newly created) and fall in other cases, based primarily on filing behaviour and volume of use. Total system fees collected by the CSA are projected to decline by approximately \$1.7 million (7%).

Summary of Proposed MI 13-102

(i) Flat fee design

Currently, the majority of system fees are based on the number of jurisdictions with which market participants file. The Proposed Amendments would instead reflect a flat fee design. This flat fee design would better align system fees that users must pay with the CSA's anticipated costs to operate the Renewed System, based on market participants' expected system usage. A flat fee design offers significantly improved administrative simplicity for both market participants and the CSA.

(ii) Eliminating certain system fees

We are proposing to eliminate system fees associated with certain filing types, which reduces costs and simplifies the system fees levied in some areas. The filing types and their related fees that we propose to remove from MI 13-102 are as follows:

- Prospectus – Distribution outside Quebec;
- Registration of an individual in an additional jurisdiction;
- Related Party Transaction Filings;
- Going Private Transaction Filings.

SEDAR users currently pay a one-time charge for creating a profile in SEDAR. We are proposing not to have any charge for creating a profile in the Renewed System.

(iii) Harmonizing system fees for similar filings and introducing system fees for new filing types

Under Item 2 of Appendix A of Proposed MI 13-102, international dealers and advisers would pay a new system fee for filing a notice of reliance on the international dealer or adviser registration exemption in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)*. However, international dealers and advisers will not be required to file this document using the Renewed System until a future phase. Subsection 7(2) provides for a transition so that international dealers and advisers pay the system fee starting at that time. This document is not currently subject to a system fee.

Items 13 and 14 of Appendix A of Proposed MI 13-102 also would provide new system fees for a “pre-filing” or “application” transmitted through the Renewed System. “Pre-filing” and “application” are defined broadly at the beginning of Appendix A. Both definitions include applications for exemptions, but do not cover filer profiles. However, a system fee under Item 14 is nil if it relates to a pre-filing for which a system fee has already been paid under Item 13.

Requiring a system fee for all applications aligns with the existing requirement to pay a system fee for applications for exemptions sought in connection with a prospectus filing or exemptions relating to National Instrument 81-102 *Investment Funds*. This means, for example, that once registrant activities are included in the Renewed System, a registrant that requires an exemption from a registration requirement would file that application for an exemption through the Renewed System and would pay a system fee for filing that application.

Under the Renewed System, all jurisdictions will require reports of exempt distribution (Form 45-106F1 *Report of Exempt Distribution*) to be filed through the Renewed System and filers to pay a system fee. Today, most jurisdictions require that form to be filed on SEDAR and to pay a system fee, while British Columbia and Ontario currently require that form to be filed using local filing systems and do not require a system fee.

The above-noted new filings represent significant new activities to be handled by the Renewed System.

(iv) Transitional provision

While the Proposed Amendments generally would become effective as part of Phase 1, as noted above new system fees for international dealers and advisers filing notices of reliance on an international dealer or adviser registration exemption would not come into effect until after Phase 1.

Since the replacement for NRD will not be part of Phase 1, subsection 7(1) provides that all system fees relating to a registrant requirement that are required to be paid by registrants will continue to be paid through NRD until Proposed NI 13-103 requires filings and renewal through NRD to be made through the Renewed System.

Related Provisions under Proposed NI 13-103 – determination of principal regulator

Under Proposed MI 13-102, system fees are to be paid to a filer’s “principal regulator”, as defined in section 5 of Proposed NI 13-103. Proposed NI 13-103 would clarify how a filer’s principal regulator is determined for the purposes of system fees. The approach taken in Proposed NI 13-103 aligns with the approach taken today in Multilateral Instrument 11-102 *Passport System*.

Anticipated Costs and Benefits

Adopting the Proposed Amendments would support fostering fair and efficient capital markets. Accessing the Renewed System in a fair manner, as with the Existing CSA Systems, is a critical aspect of participation in the markets. Market participants must meet a range of requirements to file or deliver records to comply with Canadian securities laws. The system fees for meeting these requirements should reflect the usage of the system.

In developing the updated system fees, we considered how the updated fees would impact market participants within each market segment. As noted previously, costs to market participants who use the Renewed System would be reduced overall about 7%. CSA projects that system fees will decrease or remain the same for about 45% of market participants. Those market participants that would experience fee increases would do so primarily due to new filings performed in the Renewed System. About 34% of market participants would see increases up to \$100 largely because of the proposed fees for exempt distribution reports. About 20% of market participants would see increases up to \$1,000 largely because of fees for pre-filings and other applications, and because of international dealers or advisers who are filing a notice indicating they are relying on the international dealer or adviser registration exemption in NI 31-103. Only 1% of filers are projected to see increases over \$1,000.

The impact on any one group of market participants because of a flat fee design has also been minimized to the greatest extent possible. For example, a firm that is registering advisers in only one jurisdiction would see its system fee increase, while firms registering advisers in two jurisdictions or more would see their system fees decrease. Similarly, non-investment fund issuers who are reporting issuers in more than one jurisdiction would see their system fees decrease.

Request for Comments

Alternatives Considered

No alternatives to rule changes were considered.

Unpublished Materials

The Proposed Amendments do not rely on any significant unpublished study, report, or other material.

Request for Comments

We welcome your comments on all aspects of the Proposed Amendments.

Please submit your comments in writing on or before July 31, 2019. You may provide written comments in hard copy or electronic form. If you are not sending your comments by email, please send a CD containing the submissions (in Microsoft Word format).

Certain CSA regulators require publication of the written comments received during the comment period. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Please address your submission to all of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission, New Brunswick
Nova Scotia Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Deliver your comments **only** to the addresses below. Your comments will be distributed to the other participating CSA regulators.

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
comments@osc.gov.on.ca

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 4e étage
C.P. 246, Place Victoria
Montréal (Québec) H4Z 1G3
Fax : 514-864-6381
Consultation-en-cours@lautorite.qc.ca

Questions

If you have any comments or questions, please contact any of the CSA staff listed below:

Request for Comments

Alberta Securities Commission
Elizabeth Coape-Arnold
Legal Counsel
403-297-2050
Elizabeth.Coape-Arnold@asc.ca

Autorité des marchés financiers
Mathieu Laberge
Legal Counsel
Legal Affairs
514-395-0337 ext.2537
1-877-525-0337 ext. 2537
mathieu.laberge@lautorite.qc.ca

British Columbia Securities Commission
David M. Thompson
General Counsel
604-899-6537
dthompson@bcsc.bc.ca

Noreen Bent
Manager
Corporate Finance Legal Services
604-899-6741
nbent@bcsc.bc.ca

Ontario Securities Commission
Simon Thompson
Senior Legal Counsel
General Counsel's Office
416-593-8261
sthompson@osc.gov.on.ca

ANNEX A

PROPOSED MULTILATERAL INSTRUMENT 13-102 SYSTEM FEES

Definitions

1. (1) In this Instrument,

“annual information form” means an “AIF” as defined by National Instrument 51-102 *Continuous Disclosure Obligations* or an annual information form for the purposes of Part 9 of National Instrument 81-106 *Investment Fund Continuous Disclosure*;

“individual registrant” means an individual who is

- (a) applying for registration,
- (b) applying for registration reinstatement,
- (c) applying for registration reactivation, or
- (d) renewing registration;

“issuer bid” means an issuer bid to which Part 2 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* applies;

“principal regulator” means the principal regulator determined under section 5 of National Instrument 13-103 [*System Replacement Rule*];

“shelf prospectus” means a prospectus filed under National Instrument 44-102 *Shelf Distributions*;

“system fee” means a fee set out in Appendix A or B;

“take-over bid” means a take-over bid to which Part 2 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* applies.

(2) In this Instrument, a term referred to in Column 1 of the following table has the meaning ascribed to it in the Instrument referred to in Column 2 opposite that term:

Column 1 Defined Term	Column 2 Instrument
CPC instrument	National Instrument 45-106 <i>Prospectus Exemptions</i>
document	National Instrument 13-103 [<i>System Replacement Rule</i>]
long form prospectus	National Instrument 41-101 <i>General Prospectus Requirements</i>
preliminary MJDS prospectus	National Instrument 71-101 <i>The Multijurisdictional Disclosure System</i>
[Renewed System]	National Instrument 13-103 [<i>System Replacement Rule</i>]
rights offering circular	Section 2.1 of National Instrument 45-106 <i>Prospectus Exemptions</i>
short form prospectus	National Instrument 41-101 <i>General Prospectus Requirements</i>
sponsoring firm	National Instrument 33-109 <i>Registration Information</i> , in Form 33-109F4 <i>Registration of Individuals and Review of Permitted Individuals</i>

Inconsistency with other instruments

2. If there is any conflict or inconsistency between this Instrument and National Instrument 13-103 [*System Replacement Rule*], this Instrument prevails.

System fees per transmission

3. (1) A person or company described in Column A of Appendix A must pay the corresponding system fee specified in Column C of the Appendix to the person or company's principal regulator, if the person or company transmits a filing of a type described in Column B of the Appendix.
- (2) Subsection (1) does not apply unless the securities regulatory authority in the local jurisdiction is the person or company's principal regulator.

Annual registrant system fee

4. On December 31 of each year, a sponsoring firm must, for each individual registrant of the sponsoring firm, pay the system fee required by Column C of Appendix B to the securities regulatory authority if the securities regulatory authority in the local jurisdiction is the individual registrant's principal regulator on that date.

Means of payment

5. A system fee must be paid through the [Renewed System].

Exemption

6. (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.
- (2) Despite subsection (1), in Ontario, only the regulator may grant such an exemption.
- (3) Except in Alberta and Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions*, opposite the name of the local jurisdiction.

Transition

7. (1) Despite section 5, the system fee required to be paid under Item 1 of Appendix A and under Appendix B must be paid through NRD, as defined in National Instrument 31-102 *National Registration Database*, until National Instrument 13-103 [*System Replacement Rule*] requires that filings in Item 1 of Appendix A and the filing in Appendix B be transmitted through the [Renewed System].
- (2) Despite section 3, the system fee required to be paid under Item 2 of Appendix A is nil until National Instrument 13-103 [*System Replacement Rule*] requires that filings in Item 2 of Appendix A be transmitted through the [Renewed System].

APPENDIX A
SYSTEM FEES
(Section 3)

In this Appendix,

“application” means a request transmitted through the [Renewed System] for a decision of the regulator or securities regulatory authority but, for greater certainty, does not include a pre-filing;

“pre-filing” means a request to consult with the principal regulator regarding the application of securities legislation or securities directions generally or the application of securities legislation or a direction to a particular transaction or matter or proposed transaction or matter.

Item	Column A Person or company required to file	Column B Filing Type	Column C System Fee
1	Sponsoring firm – in respect of an individual registrant	Application for registration, reinstatement of registration or reactivation of registration	\$86
2	International dealer or international adviser	Annual notice of reliance on exemption from dealer registration requirement or adviser registration requirement	\$350
3	Investment fund that is a reporting issuer	Annual financial statements	\$525
4	Investment fund	Preliminary long form prospectus Preliminary or pro-forma simplified prospectus, annual information form and fund facts when transmitted together as part of a preliminary or pro- forma prospectus filing	\$2,200, which applies in total to a combined filing, if one annual information form and one simplified prospectus are used to qualify the investment fund securities of more than one investment fund for distribution
5	Reporting issuer other than an investment fund	Annual financial statements	\$765
6	Reporting issuer, other than an investment fund, that is not a short form prospectus issuer	Annual information form	\$430
7	Investment fund that is not a short form prospectus issuer	Annual information form if not transmitted together with a preliminary or pro forma simplified prospectus	\$430
8	Reporting issuer that is a short form prospectus issuer	Annual information form	\$2,530
9	Issuer other than an investment fund	Preliminary long form prospectus Preliminary prospectus governed by a CPC instrument	\$950
		Preliminary short form prospectus, preliminary shelf prospectus or preliminary MJDS prospectus	\$1,500
10	All filers	Issuer bid circular or take-over bid circular	\$350
11	Issuer, other than an investment fund	Rights offering circular	\$1,500
12	All filers	Report of exempt distribution	\$40
13	All filers	Pre-filing that is transmitted through the [Renewed System]	\$350

Request for Comments

Item	Column A Person or company required to file	Column B Filing Type	Column C System Fee
14	All filers	Application that is required to be transmitted through the [Renewed System] under National Instrument 13-103 [<i>System Replacement Rule</i>]: (a) if a pre-filing referred to in Item 13 was previously transmitted in respect of the application; and (b) in any other case	\$0 \$350

APPENDIX B

**SYSTEM FEES
(Section 4)**

Column A Person or company required to file	Column B Filing Type	Column C System Fee
Sponsoring firm – in respect of each individual registrant sponsored by the firm	Annual registration renewal	\$86

ANNEX B

ONTARIO LOCAL MATTERS

1. Introduction

This Annex to the accompanying CSA Notice and Request for Comments (**CSA Notice**) sets out matters relevant to Ontario. The Ontario Securities Commission (**Commission**) is publishing this Annex to supplement the CSA Notice.

2. Authority for the Proposed Amendments

The Proposed Amendments described in the CSA Notice will be made under subsection 143(1) of the *Securities Act* (Ontario):

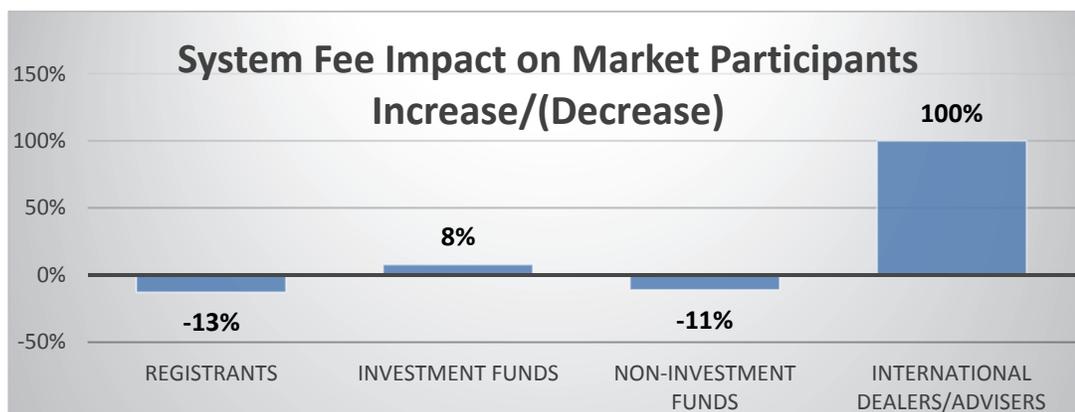
- Paragraph 1 of that subsection provides the Commission with authority to prescribe requirements in respect of registration.
- Paragraph 39 of that subsection provides the Commission with authority in connection the "media, format, preparation, form content, execution, certification, dissemination and other use, filing and review" of documents required under or governed by the Act.
- Paragraph 43 of that subsection provides the Commission with authority to prescribe fees payable to the Commission in connection with the administration of Ontario securities law.
- Paragraph 44 of that subsection provides the Commission with authority to vary the *Securities Act* to permit or require the use of an electronic or computer-based system for the filing, delivery or deposit of specified documents.
- Paragraph 45 of that subsection provides the Commission with authority to establish requirements for and procedures in respect of the use of an electronic or computer-based system for the filing, delivery or deposit of documents or information.
- Paragraph 49 of that subsection provides the Commission with authority to permit or require, including through variations to the Act, methods of filing or delivery by specified persons of specified material required under or governed by Ontario securities law.

3. Impact on Investors

No impacts on investors are anticipated as a result of the Proposed Amendments.

4. Supplementary Information on Cost Benefit Analysis

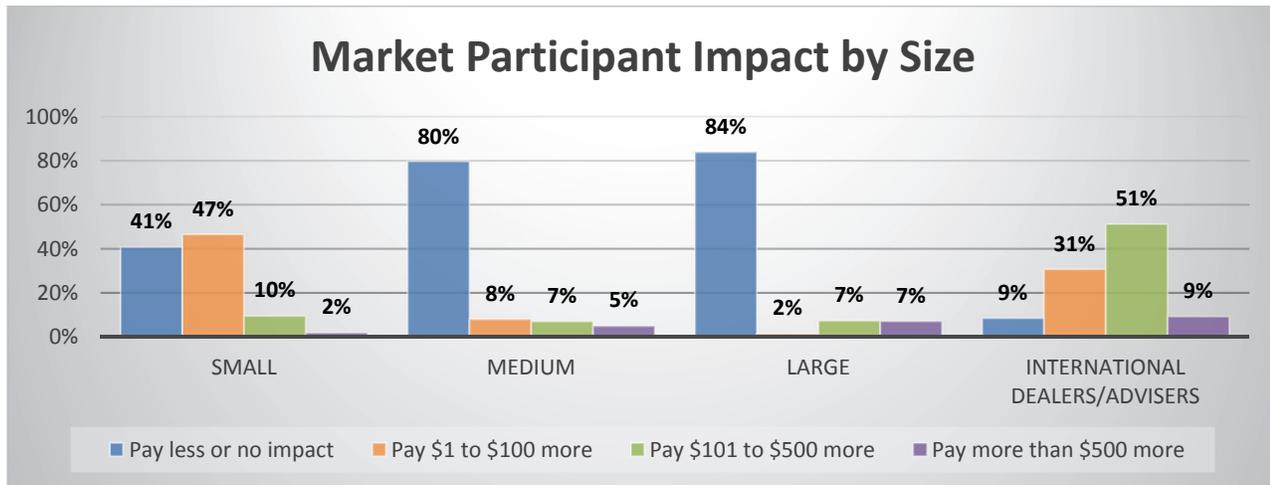
The chart below illustrates the impact on the proposed fees on market participants. While there is a projected 7% reduction in system fees, the impacts per market participant group is projected to result in reductions in system fees for non-investment funds and registrants by 11% and 13%, respectively. Total system fees from international dealers and advisers are expected to increase by 100% while system fees from investment funds are expected to increase by 8%.



International dealers and advisers are expected to utilize the new system to file notices indicating they are relying on the international dealer or adviser registration exemption in NI 31-103. The increase in system fees for international dealers and advisers is due to the new \$350 fee proposed for these filings. In Ontario, a notice of reliance is not required to be filed if the international dealer or adviser satisfies the applicable regulatory filing and fee requirements under OSC Rule 13-502 Fees, so the new system fee may not affect international dealers and advisers operating solely in Ontario.²

Investment funds are expected to experience an increase of approximately 8% in system fees mainly from fees associated with the new \$40 fee proposed for Ontario and British Columbia exempt distribution filings within the new system. These filings are currently filed locally. Fees from annual financial statement filings are expected to increase by 6% while fees from annual information form (NI 81-106) filings are expected to decrease by 5%.

We have also examined the impact of the increases and decreases of systems fees among small³, medium⁴ and large⁵ Canadian market participants and international dealers and advisers. We project that 88% of small and medium sized participants will pay lower system fees or pay only up to \$100 more of system fees. This compares with 86% of the large participants and 40% of international dealers and advisers.



² See subsections 8.18(6) and 8.26(6) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

³ For registrants, less than \$1 million revenues and no more than 3 registered individuals. For issuers, less than \$50 million of market capitalization.

⁴ For registrants, \$1 million to \$50 million of revenues and 4 to 100 registered individuals. For issuers, more than \$50 million to \$1 billion of market capitalization.

⁵ For registrants more than \$50 million of revenue and more than 100 registered individuals. For issuers, more than \$1 billion of market capitalization.