

OSC Notice 11–904
Request for Comment regarding
the Proposed Passport System

Members of the Canadian Securities Administrators (passport members), other than the Ontario Securities Commission (OSC or we), have published a proposal for implementing the next phase of the passport system for securities regulation.

The passport members are proposing National Instrument 11-102 *Passport System*, a rule that could be adopted by all securities regulators in Canada. Although the proposed rule is characterized as a national instrument, the OSC will not be adopting the rule.

The OSC believes that securities regulatory reform should

- strengthen Canada’s capital markets and improve our competitive position by eliminating fees, costs and duplication arising from 13 provincial and territorial securities regulators,
- promote consistency in regulatory decision making to ensure fairness and a level playing field for all market participants, and
- lead to better and more effective enforcement across Canada resulting in greater investor protection.

The passport proposal does not sufficiently address these objectives. Although the proposal may add incremental administrative improvements and efficiencies to our current regulatory processes, it does not resolve the need to modernize Canada’s securities regulatory structure.

Ontario is not a party to the Memorandum of Understanding to implement a passport system that has been entered into by other provinces and territories. The Ontario Government has indicated that it is not prepared to participate in the passport system without a roadmap, with reasonable timelines, to get to a common securities regulator. The passport proposal is based on rule-making powers that the passport members have or expect to receive through statutory amendments. These statutory amendments have not been enacted in Ontario and we understand that there are no plans to introduce them.

The OSC supports a common securities regulator that would interpret, apply and enforce securities laws consistently for all market participants in Canada. Under the passport proposal, rather than all market participants dealing with the same regulator, each market participant would deal with one of 13 securities regulators. For the most part, they would also continue to pay fees to all securities regulators. Each of the 13 regulators would apply the law and make regulatory decisions that have legal effect in other passport jurisdictions. In addition, the passport members would do so without the current safeguards that promote consistency in regulatory decision making within the CSA.

OSC supports Harmonization and Consistent Application of Regulatory Requirements

Current mutual reliance policies among CSA members provide a seamless regulatory process for public companies – enabling public companies to deal with their principal regulator in filings involving multiple jurisdictions. Under current mutual reliance policies, a non-principal regulator has the ability to “opt out” of a decision made by the principal regulator. This feature imposes a procedural discipline on CSA members and, in practice, promotes consistency in regulatory decision making across jurisdictions. Consistency in decision making promotes fairness and a level playing field for all market participants.

The passport proposal would remove this procedural discipline. The OSC is concerned that eliminating this safeguard may undermine consistency in decision making within the CSA. As reform proposals are considered, it is important to ensure that the current level of consistency in decision making among CSA members is not compromised. We are encouraged that the passport members have signaled their intent to develop and put in place administrative practices and procedures to enable regulators to interpret and apply harmonized securities requirements in a uniform way.

We are also pleased that the passport proposal is based on harmonized laws. The OSC will continue to work with other members of the CSA to streamline, simplify and harmonize regulatory requirements and to provide significant resources for initiatives such as registration reform, harmonization of prospectus requirements and modernization of take-over bid requirements.

OSC supports Reform through the National Registration System

In 2005, the CSA implemented the National Registration System (NRS) which allows an individual or firm to apply for registration in multiple jurisdictions and deal with only one regulator under principles of mutual reliance. NRS exempts an applicant from some of the registration requirements of each non-principal jurisdiction if it meets the corresponding requirements of its principal regulator. Currently, NRS can be used by registrants in some, but not all, of the registration categories. Implementation across Canada of the CSA’s proposed registration reform and modernization initiative (proposed National Instrument 31-103 *Registration Requirements*), currently out for public comment, would significantly increase the scope and usefulness of NRS. It would expand the operational efficiency of the registration process through application to more categories of registration and by harmonizing the substantive requirements.

The passport members are proposing to replace NRS with an alternative system under the passport proposal. As the passport members further consider the implementation of passport in the registration area, we encourage them to consider expanding and streamlining the current NRS process as the preferred mechanism for registration in multiple jurisdictions.

OSC supports a Seamless Regulatory Regime for Market Participants

The OSC anticipates that the passport proposal, if implemented, would be accompanied by effective “interfaces” between Ontario and the passport members. The viability and competitiveness of our Canadian capital markets require a seamless regulatory regime and level playing field for market participants. Reforms to Canada’s securities regulatory system, including any implementation of the passport proposal, should be implemented in a way that continues to provide an orderly and as seamless as possible regulatory system for the benefit of all market participants.

The OSC has participated in discussions of the passport proposal. We will continue to participate in those discussions so that we will be able to develop, in cooperation with the passport members, effective interfaces between Ontario and the passport members to deliver regulatory efficiencies for all market participants. For the most part, we anticipate that these interfaces would involve administrative policies and procedures to facilitate cooperation among securities regulators to enable public companies and registrants to continue to deal with one regulator in accessing capital markets in multiple jurisdictions.

REQUEST FOR COMMENT

The OSC welcomes your comments on the passport proposal put forward by the passport members. See the Notice and Request for Comment published by the other members of the CSA for detailed information on the proposal.

The OSC also welcomes your suggestions for the structure of an appropriate interface mechanism between securities regulatory authorities in those jurisdictions that adopt National Instrument 11-102 and those that do not.

Please submit your comments in writing on or before May 28, 2007. If you are not sending your comments by email, a diskette or CD containing your submission (in Windows format, Word) should also be forwarded.

Addressing your submission to:

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We cannot keep submissions confidential because securities legislation in Ontario requires that a summary of the written comments received during the comment period be published.

QUESTIONS

Please refer your questions to:

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The text for the National Instrument 11-102 *Passport System* and related materials can be found on the websites of the other CSA members.

March 28, 2007