



INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

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Dear Mesdames:

Re: Proposed National Policy 11-204 *Process for Registration in Multiple Jurisdictions*, Proposed Amendments to National Instrument 11-102 and Companion Policy 11-102CP *Passport System*, National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*

General Comments

The Investment Industry Association of Canada appreciates the opportunity to comment on this critical phase of the Passport initiative. We re-iterate our position expressed in our past submissions on this and other initiatives, that the Passport System represents an important step in the process of restructuring the regulation of the Canadian securities marketplace, but should not be regarded as the end point of the evolution of the multi-jurisdictional Canadian market.

Conceptually, a single point of access underpinned by harmonized regulations would seem to address most of the problems with the existing fragmented marketplace. However, the reality of regional inconsistencies in regulation and the inability or unwillingness of the provinces to fully delegate authority to a principal regulator results in a complex and unwieldy process that materially erodes the objectives of simplicity and the single point of access for many transactions. These problems exist independent of, and are only exacerbated by Ontario's decision not to participate in the Passport System.

It is critical that all members of the CSA (and the governments to which they report) continue to work together to make this a truly national program, while continuing to work toward the further evolution of the Canadian regulatory structure.

Specific Concerns

1. Inconsistencies and Harmonization

The overarching concern in respect to the Passport System in general, and this phase relating to registration in particular, is the outstanding inconsistency in regional regulation. This inconsistency significantly undermines the System's purpose and effectiveness.

Proposed National Instrument 31-103 *Registration Requirements* makes significant advances in creating a harmonized base of regulation. The harmonized regulation and the simple "passport registration" provide a good starting point for a streamlined and efficient system. However, the remaining inconsistencies both in regulatory content and processes developed to accommodate them, seriously detract from the effectiveness of this phase of Passport System implementation. Given the size of the Canadian market, and the lack of any truly unique regionally based characteristics, it is difficult to understand why the local requirements cannot be harmonized for registrants that carry on business in more than one jurisdiction.

The effects of regulatory inconsistency are most clearly demonstrated by the complexity of the processes relating to exemptive relief. The proposed Passport System does not exempt registrants from all non-harmonized requirements, and perpetuates further complexities by creating three different methods for ascertaining the principal regulator based on the type of exemptive relief that is being sought. It is difficult to reconcile the Passport System's claims of a simple single point of access in light of these complexities.

2. Non Participation of Ontario

As noted above, Ontario's decision not to fully participate in the Passport System only adds to the existing problems created by these inconsistencies. The decision to allow Ontario to act as a de-facto principal regulator simplifies the process considerably, and allows for a measure of predictability for the many registrants whose principal jurisdiction is Ontario. However, the lack of reciprocity in respect of delegation of authority by Ontario creates significant inefficiencies for the many registrants seeking to register or obtain an exemption from Ontario where their principal jurisdiction is not Ontario.

3. Multiple Regulators

The situation is further complicated by the fact that certain jurisdictions have delegated all or part of their registration functions to an SRO. The complexity of the situation can be illustrated by a scenario where a firm intends to register with Manitoba as its principal jurisdiction, and in Ontario, Alberta British Columbia, and Quebec as its non-principal jurisdictions. The firm would have to make a "passport application" and deal with the MSC in Manitoba, who would work with IIROC in Alberta, British Columbia and the AMF in Quebec. The firm would have to make a second "interface application" with Ontario for registration. To register individuals employed by the firm, there would be a "passport application" made to the MSC for Manitoba employees, to IIROC in Alberta, British Columbia and Quebec for employees based in those provinces. If the individuals sought registration in other non-principal jurisdictions, applications would have to be made through their principal jurisdictions to obtain that approval. A further "interface application" would have to be made with IIROC in Ontario to register the Ontario employees. When viewed from a national firm perspective, this process does not live up to its billing as a single point of access. The concerns are similar in respect to foreign firms.

4. Limited Broker Mobility

The decision to retain limits on the broker mobility through the use of the exemption contained in the National Instrument 31-103 *Registration Requirements* is problematic and inconsistent with the principles of the Passport System. The requirement for firms and individuals to register in separate jurisdictions rather than nationally, remains a costly and inefficient vestige of another era where business was conducted locally rather than nationally and globally, and information was not freely and easily accessible across geographical borders and time zones. The interests of the public and the markets in general do not differ according to the regions in which they reside. Imposing barriers in respect of who can provide services to clients based on regional borders is artificial and arbitrary, and only serves those who administer the rules, fees and general infrastructure of the barriers. Individuals that are subject to the same national education and conduct provisions should be able to serve clients regardless of their location, as the public interests are the same across the country and the ability to serve clients effectively does not change based on their postal code.

Although the ability to register in different jurisdiction through a principal regulator is an improvement over the current situation, a more effective solution would allow one registration to apply to all jurisdictions at the request of the registrant. The responsibility for conduct issues could be managed by the principal jurisdiction or by the jurisdiction in which any issues of concern arise.

5. Fees

Although the Passport System allows market participants to generally deal only with their principal regulator they are required to pay the applicable registration and filing fees in each jurisdiction. Given that the resources devoted to reviewing transactions are reduced, an accompanying reduction of fees should result. At a minimum, the fees paid to non-principal regulators under the Passport System should be substantially reduced.

Conclusion

The Investment Industry Association of Canada supports the efforts of the CSA in developing the Passport System and the harmonized regulations that underpin it. We believe that a Passport System that simplifies and streamlines regulatory processes is a positive step in creating a more effective and efficient regulatory structure in Canada. The complexities in the proposed Instrument, and the underlying remaining inconsistencies in National Instrument 31-103 however, serve to highlight the problems with the existing multi-jurisdictional system, and significantly limit the potential benefits of the Passport System. Further regulatory harmonization and, ideally, the inclusion of Ontario is required before the Passport System can be regarded as a material improvement over the status quo.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Ian Russell", with a horizontal line underneath the name.

Ian C.W. Russell FCSI
President & Chief Executive Officer