

CSA Notice of Publication
Multilateral Instrument 11-102 *Passport System*
Multilateral Instrument 11-103 *Failure-to-File Cease Trade*
Orders in Multiple Jurisdictions

March 3, 2016

Introduction

The Canadian Securities Administrators (the CSA or we), except for the Ontario Securities Commission (the OSC), are implementing amendments to Multilateral Instrument 11-102 *Passport System* (MI 11-102 or the passport rule) and changes to Companion Policy 11-102CP *Passport System* (CP 11-102).

The CSA, except for the OSC and the Alberta Securities Commission (the ASC), are also implementing Multilateral Instrument 11-103 *Failure-to-File Cease Trade Orders in Multiple Jurisdictions* (MI 11-103).

All members of the CSA are implementing the following policies:

- National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications* (NP 11-206);
- National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions* (NP 11-207);
- National Policy 12-202 *Revocation of Certain Cease Trade Orders* (NP 12-202) (replacing current National Policy 12-202 *Revocation of a Compliance-Related Cease Trade Order*, which will be withdrawn on June 23, 2016); and
- National Policy 12-203 *Management Cease Trade Orders* (NP 12-203) (replacing current National Policy 12-203 *Cease Trade Orders for Continuous Disclosure Defaults*, which will be withdrawn on June 23, 2016).

The amendments to MI 11-102, the changes to CP 11-102, MI 11-103 and the four National Policies are collectively referred to as the 2016 Materials.

Provided all necessary ministerial approvals are obtained, the 2016 Materials will come into force on **June 23, 2016**.

The text of the 2016 Materials is published with this notice and is also available, as applicable, on the websites of CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
<http://nssc.novascotia.ca/>
www.fcnb.ca

Substance and Purpose

The purpose of the 2016 Materials is to:

- *Expand the passport rule to cover applications to cease to be a reporting issuer.* Currently, these applications are filed with and reviewed by each provincial or territorial securities regulator (where the issuer is a reporting issuer) under the coordinated review procedure provided in National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*. By bringing the process surrounding these applications into passport, an issuer will generally be able to deal only with its principal regulator to obtain an order to cease to be a reporting issuer in all jurisdictions of Canada where it has this status. ***The new provisions are set out in Part 4C of MI 11-102.***
- *Automatically prohibit or restrict trading in or purchasing of securities in multiple jurisdictions upon the issuance of certain cease trade orders for continuous disclosure defaults.* When a reporting issuer is in default of certain types of continuous disclosure requirements under securities legislation (specified default), regulators may issue a cease trade order (failure-to-file cease trade order). Currently, there is no formal coordinated process across the jurisdictions of Canada for when other regulators will reciprocate the order first issued against the securities of the defaulting reporting issuer. Under MI 11-103, if a regulator issues a failure-to-file cease trade order against the securities of a reporting issuer, trading in or purchasing of those securities is automatically prohibited or restricted (the automatic prohibition) under the same terms and conditions set out in the failure-to-file cease trade order in every jurisdiction that has adopted MI 11-103 and where the issuer is reporting. To revoke or vary a failure-to-file cease trade order, the issuer will generally deal only with the regulator that issued the failure-to-file cease trade order. The revocation or variation of the failure-to-file cease trade order will also have an automatic effect in multiple jurisdictions. ***The automatic prohibition, which was originally set out in Part 4D of MI 11-102, is now being adopted as a separate rule, MI 11-103.***
- *Implement two new policies, NP 11-206 and NP 11-207, to describe the processes the CSA has developed in connection with the amendments to the passport rule and MI 11-103.* NP 11-206 sets out the process for the filing and review of applications to cease to be a reporting issuer. NP 11-207 explains why the CSA will issue a failure-to-file cease trade order and sets out the process for applying for a revocation of this type of order. Both NP 11-206 and NP 11-207 also describe an interface between Ontario and the other CSA jurisdictions, including a “dual” process if the OSC is not the principal regulator. Since Ontario will not be adopting MI 11-102 amendments or MI 11-103 and orders of another CSA

regulator will not automatically apply in Ontario, the dual process outlines how the OSC can opt into an order issued by another CSA regulator acting as principal regulator.

Background

On April 16, 2015, we published a Notice and Request for Comment relating to proposals reflected in the 2016 Materials (the April 2015 Materials).

Summary of Written Comments Received by the CSA

The comment period for the April 2015 Materials ended on June 15, 2015 and the CSA received one submission. The comment letter on the April 2015 Materials can be viewed on the Autorité des marchés financiers website at www.lautorite.qc.ca and on the ASC website at www.albertasecurities.com.

We have considered the comment received and thank the commenter for its input. The name of the commenter is contained in Annex A and a summary of its comments, together with our responses, is contained in Annex B.

Summary of Changes to April 2015 materials

We have made some revisions to the April 2015 Materials that were published for comment. Those revisions are reflected in the 2016 Materials that we are publishing concurrently with this notice. As these changes are not material, we are not republishing the 2016 Materials for a further comment period.

The notable changes from the April 2015 Materials are described below:

MI 11-103

In the April 2015 Materials, we proposed the automatic prohibition as an amendment to MI 11-102. We have decided to implement it as a separate rule because not all jurisdictions will adopt MI 11-103.

On July 1, 2015, Alberta implemented a statutory reciprocal order provision that provides for the automatic reciprocation of any order imposing sanctions, conditions, restrictions or requirements issued by another CSA regulator based on a finding or admission of a contravention of securities legislation. The ASC will be relying on this provision for the automatic reciprocation of failure-to-file cease trades orders and will not be adopting MI 11-103. Other jurisdictions are considering enacting a similar provision. Each jurisdiction will be able to repeal MI 11-103, without impacting MI 11-102, when it obtains a statutory reciprocal order provision.

Although the substance of MI 11-103 remains the same as what we published in the April 2015 Materials, we have expressly carved-out management cease trade orders from

the definition of “failure-to-file cease trade order” to clearly reflect our stated intent that these orders are not to be automatically reciprocated at this time. CSA regulators currently have different approaches to the issuance of management cease trade orders. Further harmonization of these approaches will be necessary before management cease trade orders can be included in MI 11-103.

CP 11-102

We have deleted parts of the companion policy that related to what is now MI 11-103.

NP 11-207

Most of the changes that we have made to this policy are to reflect that we are adopting MI 11-103 as a separate rule. For example, we have removed all references to “passport” and have further streamlined the processes wherever possible.

We have also removed cease trade orders issued against “OTC reporting issuers” (as defined in Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*) from the list of orders not covered by MI 11-103 provided in section 2 of this policy. As a category of reporting issuer, OTC reporting issuers are caught by MI 11-103’s definition of “failure-to-file cease trade order”. As a result, the processes surrounding the issuance and revocation of failure-to-file cease trade orders issued against these reporting issuers are set out in NP 11-207.

We have added some text to explain that in a jurisdiction which has a statutory reciprocal order provision, like Alberta, all continuous disclosure cease trade orders will be automatically reciprocated in that jurisdiction even where the issuer is not a reporting issuer.

NP 12-202

We have slightly modified the title of this policy to reflect the adoption of MI 11-103 as a separate rule.

Like in NP 11-207, we have removed cease trade orders issued against OTC reporting issuers from the list of orders not covered by MI 11-103 provided in section 1 of this policy. The processes surrounding the issuance and revocation of failure-to-file cease trade orders issued against OTC reporting issuers are set out in NP 11-207.

NP 12-203 and NP 11-206

We did not make any notable changes to these policies.

Local Matters

Annex J to this notice is being published in any local jurisdiction that is making related changes to local securities laws, including changes to local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

Contents of Annexes

The following annexes form part of this CSA Notice:

ANNEX A	Commenter
ANNEX B	Summary of Comments and Responses
ANNEX C	Amendments to Multilateral Instrument 11-102 <i>Passport System</i>
ANNEX D	Multilateral Instrument 11-103 <i>Failure-to-File Cease Trade Orders in Multiple Jurisdictions</i>
ANNEX E	Changes to Companion Policy 11-102CP <i>Passport System</i>
ANNEX F	National Policy 11-206 <i>Process for Cease to be a Reporting Issuer Applications</i>
ANNEX G	National Policy 11-207 <i>Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions</i>
ANNEX H	National Policy 12-202 <i>Revocations of Certain Cease Trade Orders</i>
ANNEX I	National Policy 12-203 <i>Management Cease Trade Orders</i>
ANNEX J	Local Matters

Questions

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