



REQUEST FOR COMMENT

Notice and Request for Comment - Adoption of proposed National Instrument 31-101 – requirements under the National Registration System and proposed National Policy 31-201 – *National Registration System*

Introduction

The New Brunswick Securities Commission, in conjunction with the other members of the Canadian Securities Administrators (“CSA”), is publishing for comment, proposed *National Instrument 31-101 – Requirements under the National Registration System* (“National Instrument”) as well as proposed *National Policy 31-201 – National Registration System* (“National Policy”).

Substance and Purpose

The National Registration System (“NRS”) proposes that a firm filer or individual filer may register in any Canadian jurisdiction solely under the rules of its principal regulator. The principal regulator for a firm filer is determined by an analysis of connecting factors as set out in the National Policy Statement. For individual filers, the principal regulator is the regulator for the jurisdiction in which the individual filer’s working office is located. The non-principal regulators are the regulators in the other jurisdictions where the firm or individual wishes to be registered.

The principal regulator will review the application for registration in accordance with its securities legislation requirements regarding suitability for registration (also known as fit and proper requirements). The non-principal regulators will rely on the principal regulator’s review to accept or refuse the application. When the non-principal regulators opt in to the principal regulator’s decision on registration, the filers will be exempt from the fit and proper requirements of the non-principal regulator. The filer will only have to satisfy the fit and proper requirements of the principal regulator.

The applicable conduct rules will be those of the jurisdiction in which the client is located. Guidance as to which rules will be considered conduct rules is set out in the National Policy. In the cases of registrants who are members of self-regulatory organizations (“SRO”) such as the Investment Dealers Association of Canada, the Mutual Fund Dealers Association, or the Montréal Exchange, the SRO requirements will likely be the applicable conduct requirements.

Summary of National Instrument and National Policy Statement

The NRS is an optional system which can only be used by registrants in the following three registration categories:

- investment dealers;
- mutual fund dealers;
- unrestricted advisers.

The National Instrument sets out the criteria (Section 2.2) for who is eligible to use NRS. Individual filers may only use NRS when the sponsoring firm is eligible and has elected to use NRS. Individual filers must reside in Canada, and firm filers must have an office located in Canada.

Section 3.1 of the National Instrument provides for an exemption from fit and proper requirements in the provinces and territories, other than the principal regulator, where an investment dealer, an unrestricted adviser, a mutual fund dealer as well as their officers and representatives apply for registration, provided they are registered in the jurisdiction of the principal regulator.

A firm or individual filer can use NRS for initial registration in multiple jurisdictions or to add a jurisdiction if they are already registered in a jurisdiction.

Operation of NRS

- When a firm files an application for initial registration in more than one jurisdiction or adds a jurisdiction, it only has to file its materials in the appropriate format with the principal regulator.
- An individual filer files his or her application for registration or approval in the jurisdiction in which his or her working office is located. The application for registration is made through the National Registration Database (“NRD”).
- The principal regulator alone reviews applications for registration for all jurisdictions chosen by the filer, based on the principal regulator’s fit and proper requirements.
- The principal regulator provides a recommendation regarding the granting of registration to the non-principal regulators.
- The non-principal regulators have five days from the receipt of the recommendation to opt in or opt out of the recommended decision.
- If the recommendation is refused, the application for registration is handled directly by the non-principal regulator for that jurisdiction (It is expected that this system will operate in a similar fashion to the MMRS for Prospectuses and that opt outs will be very rare)
- Once registered, the firm or individual filer has only to abide by the continuing fit and proper requirements (including notice filings and approvals) of the principal regulator (Section 3.1).

Role of SROs

SROs shall be considered principal regulators for the purpose of the application of the instrument, when an application is made in a jurisdiction where a delegation of authority to the SRO has been granted.

Changes to NRD

Staff are proposing to evaluate three key changes to be made to NRD for efficient implementation and application of the NRS system. These are: selection of principal regulator, opt in/opt out function, and unique designation of NRS submissions.

Selection of Principal Regulator

Regulators need the ability to override the NRD choice of lead regulator and select the principal regulator which will allow submissions to non-principal jurisdictions to also be assigned to the principal regulator. When a new jurisdiction is added, the principal regulator will receive the submission and the new jurisdiction will receive the submission with an "opt in" or "opt out" button rather than approval. The non-principal regulator will do a detrimental information check on the applicant and provided that it is clear, will opt in to lead regulator's decision to grant registration. NRD needs to be changed to allow the selection of the principal regulator and to have all applications assigned to it as well as the non-principal regulators.

Opt In/Opt Out Button

The NRS is based on Mutual Reliance and the ability to opt in or opt out is key to the system. The current design of NRD does not allow for this selection. However, NRD does allow for lead jurisdictions to approve notices while non-lead jurisdictions just acknowledge. Similar functionality will be needed for multi-jurisdictional applications in which the principal regulator will have a button to approve applications and the non-principal regulators will have buttons to opt in or opt out of the decision to grant registration. NRD needs to be changed to have applications assigned to the principal regulator with the ability to approve while the non-principal regulators will either select opt in or opt out.

Identification of NRS Applications

The NRS will require the principal regulator to coordinate opting in or opting out of the recommendation. There will be turnaround time requirements and to meet these times NRS applications will have to be identified in some unique fashion, for example, using a different colour.

Authority under which the National Instrument and National Policy Statement are being Proposed

The New Brunswick Securities Commission has the authority to make the rules under the following provisions of Subsection 200(1) of the *Securities Act* (New Brunswick):

200(1)

- (a) respecting the application for registration and the renewal, amendment or reinstatement of registration;
- (b) respecting the voluntary surrender, cancellation or expiration of registration and the obligations of a former registrant following the voluntary surrender, cancellation or expiration of registration;
- (c) respecting the suspension of registration and the obligations of suspended registrants;
- (k) respecting requirements for the disclosure or provision of information or material to the public, the Commission or the Executive Director by registrants, including without limiting the generality of the foregoing, authorizing the Commission to require the provision of such information or material as the Commission considers appropriate in the form it requires;

- (l) varying the requirements under this Act in respect of the disclosure or provision of information or material to the public, the Commission or the Executive Director by registrants;

and under the provision of Subsection 55(1)

Alternatives Considered

Consideration was given to developing a system without a National Instrument or National Policy Statement. The alternative allowed firms and individuals who are already registered to apply to another jurisdiction on the basis that such firm or individual was already registered. The non-principal jurisdictions would have to grant an exemption from their requirements either through a blanket ruling or on a case by case application. Since not every jurisdiction has the option of using a blanket ruling, it was determined that it would be more efficient and more conducive to consistency among regulators to have a National Instrument and National Policy Statement. Staff also believes that applicants would prefer to deal with only one regulator (the principal regulator) than to deal with many individual regulators.

Anticipated Costs and Benefits

The CSA expects the NRS to reduce the time spent by applicants to prepare and file forms because applicants will only have to file one set of documents with one regulator. In addition, there will be a reduction in compliance costs due to the fact that registrants will only have to meet one set of fit and proper requirements. There should also be a reduction in processing time by the regulators. Due to the introduction of the NRD system and additional processes during the initial phase of implementation, useful data on turnaround times is not available at this time. Instead the CSA is proposing to do an impact analysis upon implementation of the NRS.

NRD data will be gathered for a period of six months before and after the implementation of the NRS. The actual elapsed processing times will be observed and form the basis of time savings calculations for regulators from pre-implementation to post-implementation. The time savings will be converted to cost savings (benefit estimates) for the industry. We will provide a "report card" on the impact of NRS as part of the analysis.

Comments

Anyone interested may submit comments on the National Instrument and National Policy Statement.

Please send your comments in writing no later than February 11, 2005. If you do not send your comments by e-mail, a diskette or CD containing the submissions (in Windows format, Word) should also be forwarded to:

Secretary
New Brunswick Securities Commission
133 Prince William Street, Suite 606
Saint John, N.B. E2L 2B5
Telephone: (506) 658-3060
Fax: (506) 658-3059

Toll Free (866) 933-2222 (within NB only)

E-mail: information@nbsc-cvmnb.ca

We are unable to keep comments confidential as securities legislation of certain provinces requires the publication of a summary of the written comments received during the consultation period.

Questions

Should you have any questions, please contact the following:

Andrew Nicholson

Director of Market Regulation

New Brunswick Securities Commission

Telephone: (506) 658-3021

E-mail: Andrew.nicholson@nbsc-cvmnb.ca

NATIONAL INSTRUMENT 31-101 – NATIONAL REGISTRATION SYSTEM

PART 1 DEFINITIONS AND INTERPRETATION

1.1 DEFINITIONS

In this Instrument,

“filer” means a firm filer or an individual filer;

“filing requirements” means the requirements, as they apply to filers, contained in the securities legislation of the jurisdictions in which a filer is registered, approved or reviewed or submitting an application for registration, approval or review, pursuant to which the filer must file, as and when required, documents and information with the securities regulatory authorities or regulators of such jurisdictions in connection with the filer’s fit and proper requirements, but does not mean any such requirements in connection with the filer’s renewal of registration;

“firm filer” means a registered firm or a person or company submitting an application to become a registered firm;

“fit and proper requirements” means the requirements and prohibitions, as they apply to registered individuals, non-registered individuals or registered firms, contained in the securities legislation of the jurisdictions in which a registered filer is registered or in which a non-registered individual is approved or reviewed, to ensure the suitability of a filer to be registered or to be approved as a non-registered individual, namely as regards the filer’s solvency, integrity and proficiency, but does not mean

- (a) any requirements to pay fees in connection with a registration or approval, or
- (b) any requirements as they apply to mutual fund dealers and their sponsored individuals who are registered in Québec, contained in the securities legislation of Québec, with respect to liability insurance;

“individual filer” means

- (a) a registered individual,
- (b) an individual submitting an application to become a registered individual, or
- (c) a non-registered individual submitting, or on whose behalf a sponsoring firm is submitting, an application for the approval or review of the individual as director, partner, officer, compliance officer, branch manager or substantial holder of the sponsoring firm;

“investment dealer” means a person or company registered in a category referred to in Appendix A opposite the name of the local jurisdiction under the heading “Investment Dealer”;

“MRRS MOU” means the Memorandum of Understanding relating to the Mutual Reliance Review System signed as of October 14, 1999, as amended, supplemented or replaced from time to time;

“mutual fund dealer” means a person or company registered in a category referred to in Appendix A opposite the name of the local jurisdiction under the heading “Mutual Fund Dealer”;

“National Registration System” or “NRS” means the system implemented pursuant to the MRRS MOU, this Instrument and NP 31-201, to facilitate the registration, approval or review in the jurisdiction of a non-principal regulator of investment dealers, mutual fund dealers, unrestricted advisers and their sponsored individuals;

“non-principal regulator” means, for a filer, a securities regulatory authority or regulator, other than the principal regulator, with whom the filer is registered, approved or reviewed or to whom the filer is submitting an application under NRS to be registered, approved or reviewed;

“non-registered individual” means, for a sponsoring firm, an individual other than a registered individual who is

- (a) a director, partner, officer, compliance officer or branch manager of the firm, or,
- (b) in British Columbia, Alberta and Ontario, a director, partner, officer or substantial holder of the firm;

“notice requirements” means the requirements, as they apply to registered individuals, non-registered individuals or registered firms, contained in the securities legislation of the jurisdictions in which a registered filer is registered or in which a non-registered individual is approved or reviewed, pursuant to which the registered filer or non-registered individual must notify, as and when required, the securities regulatory authorities or regulators of such jurisdictions of changes and events in connection with the filer’s fit and proper requirements;

“NP 31-201” means National Policy 31-201 National Registration System;

“NRS document” means the document issued by the principal regulator for an application made under NRS that evidences that a decision has been made by the principal regulator and the non-principal regulators that have not opted out of NRS for that application, and that evidences the terms of such decision;

“principal regulator” means,

- (a) for a firm filer, the securities regulatory authority or regulator of the jurisdiction with which the firm filer has the most significant connection, and
- (b) for an individual filer, the securities regulatory authority or regulator of the jurisdiction in which the individual filer’s working office is located;

“registered filer” means a registered firm or registered individual;

“registered firm” means a person or company that is registered in at least one jurisdiction as an investment dealer, a mutual fund dealer or an unrestricted adviser;

“registered individual” means an individual that is registered in at least one jurisdiction to trade or advise on behalf of a registered firm;

“securities legislation” means,

- (a) for a local jurisdiction other than Québec, the statute and other instruments referred to in Appendix B of National Instrument 14-101 Definitions opposite the name of the local jurisdiction, and
- (b) for Québec,
 - (i) the statute and other instruments referred to in Appendix B of National Instrument 14-101 Definitions opposite Québec,
 - (ii) an Act respecting the distribution of financial products and services (R.S.Q., c. D-9.2) and the regulations under that Act and the blanket rulings and orders issued by the securities regulatory authority, and
 - (iii) an Act respecting the Agence nationale d’encadrement du secteur financier (R.S.Q., c. A-7.03) and the regulations under that Act and the blanket rulings and orders issued by the securities regulatory authority,

but does not mean any regulation adopted by or for a self-regulatory organization;

“sponsored individual” means, for a firm filer,

- (a) a registered individual who trades or advises on behalf of the firm filer,
- (b) an individual submitting an application to become a registered individual who proposes to trade or advise on behalf of the firm filer, or
- (c) a non-registered individual of the firm filer;

“sponsoring firm” means,

- (a) for a registered individual, the registered firm on whose behalf the individual trades or advises,
- (b) for an individual submitting an application to become a registered individual, the registered firm, or the person or company submitting an application to become a registered firm, on whose behalf the individual proposes to trade or advise,
- (c) for a non-registered individual of a registered firm, the registered firm, or
- (d) for a non-registered individual of a person or company submitting an application to become a registered firm, the person or company that is submitting the application;

“substantial holder” means any individual who beneficially owns, whether directly or indirectly, or exercises control or direction over, ten percent or more of the voting securities of a firm filer;

“unrestricted adviser” means a person or company registered in a category referred to in Appendix A opposite the name of the local jurisdiction under the heading “Unrestricted Adviser”; and

“working office” means the office of the sponsoring firm from which an individual filer primarily works or proposes to primarily work.

1.2 INTERPRETATION

- (1) For the purposes of this Instrument, the term “registration” includes a reinstatement of registration or an amendment to registration, where appropriate.
- (2) For the purposes of this Instrument, a category of registration in a jurisdiction is similar to a category of registration in another jurisdiction if both categories permit the same or substantially the same advising or trading activity.

PART 2 APPLICATION

2.1 APPLICATION OF NRS TO FIRM FILERS

- (1) A firm filer may elect to use the National Registration System if the firm filer
 - (a) has a business office in Canada, and
 - (b) is
 - (i) a registered firm in the jurisdiction of its principal regulator and in at least one other jurisdiction,
 - (ii) submitting an application to become a registered firm in the jurisdiction of its principal regulator and in at least one other jurisdiction, or
 - (iii) a registered firm in the jurisdiction of its principal regulator and submitting an application to become a registered firm in at least one other jurisdiction,

in all cases, in corresponding categories of registration.
- (2) A firm filer elects to use NRS by submitting to the principal regulator and to all non-principal regulators a completed Form 31-101F1. A new completed Form 31-101F1 must be submitted to the principal regulator and all non-principal regulators when a registered firm is seeking registration in further jurisdictions.
- (3) The National Registration System must be used for each application for registration submitted by a firm filer if the firm filer has elected to use NRS.

2.2 APPLICATION OF NRS TO INDIVIDUAL FILERS

The National Registration System must be used for each application for registration, approval or review of an individual filer if

- (a) the individual filer resides in Canada,
- (b) the individual filer's sponsoring firm has elected to use NRS, and
- (c) the individual filer, or the individual filer's sponsoring firm, is submitting the application to a non-principal regulator in a category of registration, approval or review which corresponds to the category in which the individual filer is registered or has been approved or reviewed, or for which the individual filer, or the individual filer's sponsoring firm, is submitting an application to be registered, approved or reviewed, in the jurisdiction of the individual filer's principal regulator.

2.3 NOTICE OF CHANGE

If the factors considered by a firm filer in determining the jurisdiction with which it has the most significant connection change, the firm filer must immediately notify its principal regulator of such change by submitting a completed Form 31-101F2.

PART 3 LOCAL EXEMPTIONS

3.1 EXEMPTIONS FROM NON-PRINCIPAL REGULATOR REQUIREMENTS

- (1) Except as provided in section 3.3, a filer registered, approved or reviewed or submitting an application for registration, approval or review in a local jurisdiction under NRS, a firm filer electing to use NRS or an individual filer whose sponsoring firm has elected to use NRS, is exempt from the fit and proper requirements, notice requirements and filing requirements of the local jurisdiction if
 - (a) the regulator or securities regulatory authority of the local jurisdiction is a non-principal regulator,
 - (b) the filer complies with the applicable fit and proper requirements, notice requirements and filing requirements of the jurisdiction of the filer's principal regulator, and
 - (c) where the principal regulator of the firm filer is situate in Québec, the firm filer registered or submitting an application for registration as a mutual fund dealer maintains insurance or bonding with respect to registrable activities conducted in the local jurisdiction that meets the requirements prescribed by the rules of the self-regulatory organization of which the firm filer is or must be a member.
- (2) A filer registered under NRS is exempt from the local requirement to hold a certificate of registration or to have received written notice of the registration before conducting an activity for which the filer must be registered, if the filer has received an NRS document from its principal regulator that evidences that local regulator or securities regulatory

authority has registered the filer in a category that permits the filer to carry on the activity.

3.2 TEMPORARY EXEMPTION – CHANGE OF PRINCIPAL REGULATOR

If the principal regulator of a registered filer changes, the registered filer is exempt from the fit and proper requirements of the local jurisdiction of the redesignated principal regulator for a period of six months following the effective date of the change of principal regulator, provided that the registered filer continues to satisfy the fit and proper requirements applicable in the jurisdiction of its previous principal regulator during that period.

3.3 TERMINATION OF EXEMPTIONS

- (1) The exemptions in subsection 3.1(1) and section 3.2 are no longer available to a registered filer or non-registered individual that ceases to be eligible under NRS or, for a registered firm, that elects to no longer use NRS.
- (2) A filer shall cease to benefit from the exemption set forth in subsection 3.1(1) in any local jurisdiction where a non-principal regulator of the filer opts out of NRS on the filer's application, unless the non-principal regulator opts back in.

PART 4 TRANSITION

4.1 REGISTRATIONS OR APPROVALS OF INDIVIDUAL FILERS IN QUÉBEC

Individual filers whose principal regulator is situate in Québec will not be exempt from the filing requirements contained in Multilateral Instrument 33-109 Registration Information and Multilateral Instrument 31-102 National Registration Database, unless similar requirements are adopted in Québec.

PART 5 EXEMPTION

5.1 EXEMPTION

- (1) 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.

PART 6 EFFECTIVE DATE

6.1 EFFECTIVE DATE

This Instrument shall come into force on April 4, 2005.

APPENDIX A

REGISTRATION CATEGORY CONCORDANCE

	<u>INVESTMENT DEALER</u>	<u>MUTUAL FUND DEALER</u>	<u>UNRESTRICTED ADVISER</u>
Alberta	Investment dealer	Mutual fund dealer	Investment counsel or portfolio manager
British Columbia	Investment dealer	Mutual fund dealer	Investment counsel or portfolio manager
Manitoba	Investment dealer	Mutual fund dealer	Investment counsel or portfolio manager
New Brunswick	Investment dealer	Mutual fund dealer	Investment counsel or portfolio manager
Newfoundland & Labrador	Investment dealer	Mutual fund dealer	Investment counsel or portfolio manager
Nova Scotia	Investment dealer	Mutual fund dealer	Investment counsel or portfolio manager
Ontario	Investment dealer	Mutual fund dealer	Investment counsel or portfolio manager
Prince Edward Island	Investment dealer	Mutual fund dealer	Investment counsel or portfolio manager
Québec	Dealer with an unrestricted practice	Firm in group-savings-plan brokerage	Adviser with an unrestricted practice
Saskatchewan	Investment dealer	Mutual fund dealer	Investment counsel or portfolio manager
Northwest Territories	Investment dealer	Mutual fund dealer	Investment counsel or portfolio manager
Nunavut	Investment dealer	Mutual fund dealer	Investment counsel or portfolio manager
Yukon	Broker	Broker	Broker

FORM 31-101F1**ELECTION TO USE NRS AND
DETERMINATION OF PRINCIPAL REGULATOR****General Instructions**

1. A firm filer must use this form to notify its principal regulator and non-principal regulator(s) of its election to use and to have its individual filers use NRS for an application submitted in more than one jurisdiction or in a jurisdiction of a non-principal regulator.
2. This form must be filed in paper format with the firm filer's principal regulator and non-principal regulator(s) when submitted in connection with an application.
3. If this form is not submitted with a firm filer's application, it may be submitted with the filer's principal regulator and non-principal regulators by e-mail at the following addresses:

Alberta	nrs@seccom.ab.ca
British Columbia	registration@bcsc.bc.ca
Manitoba	securities@gov.mb.ca
New Brunswick	information@nb-sc-cvmnb.ca
Newfoundland & Labrador	skmurphy@gov.nl.ca
Nova Scotia	nrs@gov.ns.ca
Ontario	registration@osc.gov.on.ca
Prince Edward Island	mlgallant@gov.pe.ca
Québec	inscription@lautorite.qc.ca
Saskatchewan	dmurrison@sfsc.gov.sk.ca
Northwest Territories	ann_burry@gov.nt.ca
Nunavut	svangenne@gov.nu.ca
Yukon Territory	corporateaffairs@gov.yk.ca

1. Identification of Filer

NRD # (if applicable): _____

Firm Name: _____

2. Identification of Regulators

The undersigned firm is submitting an application or is registered in the following jurisdictions:

a) Jurisdiction of Principal Regulator: _____

b) Jurisdiction(s) of Non-Principal Regulator(s): _____

3. Reasons for Designation of Principal Regulator

Provide details on the factors listed under subsection 3.2(4) of NP 31-201 that are taken into consideration in the firm filer's determination of its principal regulator. Other factors may be considered if deemed relevant.

Certification and Submission to Jurisdiction

I, the undersigned, certify on behalf of _____ (the "Firm") that all statements of fact provided in this notice are true and, by submitting this form, the Firm irrevocably and unconditionally submits itself to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of each jurisdiction to which this form has been submitted and any administrative proceedings in that jurisdiction, in any action, investigation or administrative, disciplinary, criminal, quasi-criminal, penal or other proceeding (each, a proceeding) arising out of or relating to or concerning its activities as a registered filer under the securities legislation of the jurisdiction, and the Firm irrevocably waives any right to raise as a defence in any proceeding any alleged lack of jurisdiction to bring that proceeding.

[Name of firm]

Date

Per: _____
Signature of authorized officer or partner

FORM 31-101F2**NOTICE OF CHANGE****General Instructions**

1. This form must be submitted by a firm filer to notify its principal regulator of changes to the factors considered by the firm filer to determine the jurisdiction with which the firm filer has the most significant connection.
2. This form should be submitted with the filer's principal regulator by e-mail at the following address:

Alberta	nrs@seccom.ab.ca
British Columbia	registration@bcsc.bc.ca
Manitoba	securities@gov.mb.ca
New Brunswick	information@nb-sc-cvmnb.ca
Newfoundland & Labrador	skmurphy@gov.nl.ca
Nova Scotia	nrs@gov.ns.ca
Ontario	registration@osc.gov.on.ca
Prince Edward Island	mlgallant@gov.pe.ca
Québec	inscription@lautorite.qc.ca
Saskatchewan	dmurrison@sfsc.gov.sk.ca
Northwest Territories	ann_burry@gov.nt.ca
Nunavut	svangenne@gov.nu.ca
Yukon Territory	corporateaffairs@gov.yk.ca

1. Identification of Filer

NRD # (if applicable): _____

Firm Name: _____

2. Details of Change

Provide details of the change to the factors considered by the firm filer to determine the jurisdiction with which the firm filer has the most significant connection.

Certification

I, the undersigned, on behalf of _____ certify that all
statements of fact provided in this notice are true. [Name of firm]

[Name of firm]

Date

Per:

Signature of authorized officer or partner