

Ontario Securities Commission

National Policy 11-205

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NATIONAL POLICY 11-205

PROCESS FOR DESIGNATION OF CREDIT RATING ORGANIZATIONS IN MULTIPLE JURISDICTIONS

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PART 1 APPLICATION

Application

1. This policy describes the process for the filing and review of an application to become a designated rating organization in more than one jurisdiction of Canada.

PART 2 DEFINITIONS

Definitions

2. In this policy

"AMF" means the regulator in Québec;

"application" means an application to become a designated rating organization;

"dual application" means an application described in section 6 of this policy;

"dual review" means the review under this policy of a dual application;

"filer" means

(a) a person or company filing an application, or

(b) an agent of a person or company referred to in paragraph (a);

"MI 11-102" means Multilateral Instrument 11-102 *Passport System*;

"NI 25-101" means National Instrument 25-101 *Designated Rating Organizations*;

"notified passport jurisdiction" means a passport jurisdiction for which a filer gave the notice referred to in section 4B.6(1)(c) of MI 11-102;

"OSC" means the regulator in Ontario;

"passport application" means an application described in section 5 of this policy;

"passport jurisdiction" means the jurisdiction of a passport regulator;

"passport regulator" means a regulator that has adopted MI 11-102;

"regulator" means a securities regulatory authority or regulator.

Further definitions

3. Terms used in this policy that are defined in MI 11-102, National Instrument 14-101 *Definitions* or NI 25-101 have the same meanings as in those instruments.

PART 3 OVERVIEW, PRINCIPAL REGULATOR AND GENERAL GUIDELINES

Overview

4. This policy applies to an application to become a designated rating organization in multiple jurisdictions. These are the possible types of applications:

- (a) The principal regulator is a passport regulator and the filer does not seek a designation in Ontario. This is a "passport application."
- (b) The principal regulator is the OSC and the filer also seeks a designation in a passport jurisdiction. This is also a "passport application."
- (c) The principal regulator is a passport regulator and the filer also seeks a designation in Ontario. This is a "dual application."

Passport application

5. (1) If the principal regulator is a passport regulator and the filer does not seek a designation in Ontario, the filer files the application only with, and pays fees only to, the principal regulator. Only the principal regulator reviews the application. The principal regulator's decision to grant the designation automatically results in a deemed designation in the notified passport jurisdictions.

(2) If the principal regulator is the OSC and the filer also seeks designation in a passport jurisdiction, the filer files the application only with, and pays fees only to the OSC. Only the OSC reviews the application. The OSC's decision to grant the designation automatically results in a deemed designation in the notified passport jurisdictions.

Dual application – Designation sought in passport jurisdiction and Ontario

6. If the principal regulator is a passport regulator and the filer also seeks a designation in Ontario, the filer files the application with, and pays fees to the principal regulator and the OSC. The principal regulator reviews the application and the OSC, as non-principal regulator, coordinates its review with the principal regulator. The principal regulator's decision to grant the designation automatically results in a deemed designation in the notified passport jurisdictions and, if the OSC has made the same decision as the principal regulator, evidences the decision of the OSC.

Principal regulator for an application

7. (1) For an application under this policy, the principal regulator is identified in the same manner as in sections 4B.2 to 4B.5 of MI 11-102.

(2) If the filer cannot determine its principal regulator under 4B.2(a) or (b) of MI 11-102, section 4B.2(c) of MI 11-102 requires that the filer determine its principal regulator by determining the specified jurisdiction with which the filer has the most significant connection. Section 4B.3 and 4B.4 also establish circumstances in which the filer may need to determine its principal regulator.

(3) For the purpose of this section, a specified jurisdiction is one of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia and New Brunswick.

(4) The factors a filer should consider in identifying the principal regulator for the application based on the most significant connection test are, in order of influential weight:

- (a) jurisdiction where the filer generated the majority of its credit rating related revenue in the 3-year period preceding the date of its application, or
- (b) jurisdiction where the filer issued the most initial ratings in the 3-year period preceding the date of its application.

Discretionary change in principal regulator

8. (1) If the principal regulator identified under section 7 of this policy thinks it is not the appropriate principal regulator, it will first consult with the filer and the appropriate regulator and then give the filer a written notice of the new principal regulator and the reasons for the change.

- (2)** A filer may request a discretionary change of principal regulator for an application if
- (a) the filer concludes that the principal regulator identified under section 7 of this policy is not the appropriate principal regulator,
 - (b) the location of the head office changes over the course of the application,
 - (c) the most significant connection to a specified jurisdiction changes over the course of the application, or
 - (d) the filer withdraws its application in the principal jurisdiction because it does not want to be designated in that jurisdiction.

(3) Regulators do not anticipate changing a principal regulator except in exceptional circumstances.

(4) A filer should submit a written request for a change in principal regulator to its current principal regulator and include the reasons for requesting the change.

PART 4 FILING MATERIALS

Election to file under this policy and identification of principal regulator

9. In an application, the filer should indicate whether it is filing a passport application or a dual application and identify the principal regulator for the application.

Materials to be filed with application

10. (1) For a passport application, the filer should remit to the principal regulator the fees payable under the securities legislation of the principal regulator, and file the following materials with the principal regulator only:

- (a) a written application in which the filer:
 - (i) states the basis for identifying the principal regulator under section 7 of this policy,
 - (ii) gives notice of the non-principal passport jurisdictions for which section 4B.6 of MI 11-102 is intended to be relied upon,
 - (iii) states that the filer and any relevant party is not in default of securities legislation applicable to credit rating organizations in any jurisdiction of Canada or in any jurisdiction in which the filer operates or, if the filer is in default, the nature of the default;
- (b) the materials required by Part 2 of NI 25-101;
- (c) other supporting materials.

(2) For a dual application, the filer should remit the fees payable under the securities legislation of the principal regulator and the OSC, and file the following materials with the principal regulator and the OSC:

- (a) a written application in which the filer:

- (i) states the basis for identifying the principal regulator under section 7 of this policy,
 - (ii) gives notice of the non-principal passport jurisdictions for which section 4B.6 of MI 11-102 is intended to be relied upon;
 - (iii) states that the filer is not in default of securities legislation applicable to credit rating organizations in any jurisdiction of Canada or in any jurisdiction in which the filer operates or, if the filer is in default, the nature of the default;
- (b) the materials required by Part 2 of NI 25-101;
 - (c) other supporting materials.

Language

11. A filer seeking a designation in Québec should file a French language version of the draft decision when the AMF is acting as principal regulator.

Materials to be filed to make a designation available in an additional passport jurisdiction under section 4B.6 of MI 11-102

12. (1) Under section 4B.6 of MI 11-102, the principal regulator's decision to grant the designation under a passport application or dual application can become available in a non-principal passport jurisdiction for which the filer did not give the notice referred to in section 10(1)(a)(ii) or 10(2)(a)(ii) of this policy in the initial application if certain conditions are met. One of the conditions is that the filer gives the notice under section 4B.6(1)(c) of MI 11-102 for the additional non-principal passport jurisdiction.

(2) For greater certainty, a filer may not rely on section 4B.6 of MI 11-102 to obtain an automatic designation under the provision of Ontario's securities legislation.

(3) The filer should give the notice referred to in subsection (1) to the principal regulator for the initial application. The notice should

- (a) list each relevant non-principal passport jurisdiction for which notice is given that section 4B.6 of MI 11-102 is intended to be relied upon,
- (b) include the date of the decision of the principal regulator for the initial application, if the notice is given under section 4B.6(1)(c) of MI 11-102,
- (c) include the citation for the principal regulator's decision, and
- (d) confirm that the designation is still in effect.

(4) The regulator that receives the notice referred to in section 10 will send a copy of the notice and its decision to the regulator in the relevant non-principal passport jurisdiction.

Filing

13. A filer should send the application materials in paper together with the fees to

- (a) the principal regulator, in the case of a passport application, and
- (b) the principal regulator and the OSC in the case of a dual application.

The filer should also provide an electronic copy of the application materials, including the draft decision document, by e-mail or on CD ROM. Filing the application concurrently in all required jurisdictions will make it easier for the principal regulator and non-principal regulators, if applicable, to process the application expeditiously.

Filers should send application materials by e-mail using the relevant address or addresses listed below:

British Columbia	www.bcsc.bc.ca (click on BCSC e-services and follow the steps)
Alberta	legalapplications@asc.ca
Saskatchewan	exemptions@sfsc.gov.sk.ca
Manitoba	exemptions.msc@gov.mb.ca
Ontario	https://www.osc.gov.on.ca/filings
Québec	Dispenses-Passeport@lautorite.qc.ca
New Brunswick	Passport-passeport@nbsc-cvmnb.ca
Nova Scotia	nsscexemptions@gov.ns.ca
Prince Edward Island	CCIS@gov.pe.ca
Newfoundland and Labrador	securitiesexemptions@gov.nl.ca
Yukon	corporateaffairs@gov.yk.ca
Northwest Territories	securitiesregistry@gov.nt.ca
Nunavut	legalregistries@gov.nu.ca

Incomplete or deficient material

14. If the filer's materials are deficient or incomplete, the principal regulator may ask the filer to file an amended application. This will likely delay the review of the application.

Acknowledgment of receipt of filing

15. After the principal regulator receives a complete and adequate application, the principal regulator will send the filer an acknowledgment of receipt of the application. The principal regulator will send a copy of the acknowledgement to any other regulator with whom the filer has filed the application. The acknowledgement will identify the name, phone number, fax number and e-mail address of the individual reviewing the application.

Withdrawal or abandonment of application

16. (1) If a filer withdraws an application at any time during the process, the filer is responsible for notifying the principal regulator and any non-principal regulator with whom the filer filed the application and for providing an explanation of the withdrawal.

(2) If at any time during the review process, the principal regulator determines that a filer has abandoned an application, the principal regulator will notify the filer that it will mark the application as "abandoned". In that case, the principal regulator will close the file without further notice to the filer unless the filer provides acceptable reasons not to close the file in writing within 10 business days. If the filer does not, the principal regulator will notify the filer and any non-principal regulator with whom the filer filed the application that the principal regulator has closed the file.

PART 5 REVIEW OF MATERIALS

Review of passport application

17. (1) The principal regulator will review any passport application in accordance with its securities legislation and securities directions and based on its review procedures, analysis and considering previous decisions.

(2) The filer will deal only with the principal regulator, who will provide comments to and receive responses from the filer.

Review and processing of dual application

18. (1) The principal regulator will review any dual application in accordance with its securities legislation and securities directions, and based on its review procedures, analysis and considering previous decisions. Please refer to section 10(2) of this policy for guidance on filing an application with the OSC as non-principal regulator with whom a filer should file a dual application.

(2) The filer will generally deal only with the principal regulator, who will be responsible for providing comments to the filer once it has completed its own review. However, in exceptional circumstances, the principal regulator may refer the filer to the OSC as non-principal regulator.

PART 6 DECISION-MAKING PROCESS

Passport application

19. (1) After completing the review process and after considering the recommendation of its staff, the principal regulator will determine whether to grant or deny the designation sought in a passport application.

(2) If the principal regulator is not prepared to grant the designation based on the information before it, it will notify the filer accordingly.

(3) If a filer receives a notice under subsection (2) and this process is available in the principal jurisdiction, the filer may request the opportunity to appear before, and make submissions to, the principal regulator.

Dual application

20. (1) After completing the review process and after considering the recommendation of its staff, the principal regulator will determine whether to grant or deny the designation sought in a dual application and immediately circulate its decision to the OSC.

(2) The OSC will have at least 10 business days from receipt of the principal regulator's decision to confirm whether it has made the same decision and is opting in or is opting out of the dual review.

(3) If the OSC is silent, the principal regulator will consider that the OSC has opted out.

(4) If the filer shows that it is necessary and reasonable in the circumstances, the principal regulator may request, but cannot require, the OSC to abridge the opt-out period.

- (5) The principal regulator will not send the filer a decision for a dual application before the earlier of
- (a) the expiry of the opt-out period, or
 - (b) receipt from the OSC of the confirmation referred to in subsection (2).
- (6) If the principal regulator is not prepared to grant the designation a filer sought in its dual application based on the information before it, it will notify the filer and the OSC.
- (7) If a filer receives a notice under subsection (6) and this process is available in the principal jurisdiction, the filer may request the opportunity to appear before, and make submissions to, the principal regulator. The principal regulator may hold a hearing on its own, or jointly or concurrently with the OSC. After the hearing, the principal regulator will send a copy of the decision to the filer and the OSC.
- (8) If the OSC elects to opt out it will notify the filer and the principal regulator and give its reasons for opting out. The filer may deal directly with the OSC to resolve outstanding issues and obtain a decision without having to file a new application or pay any additional related fees. If the filer and the OSC resolve all outstanding issues, the OSC may opt back into the dual review by notifying the principal regulator within the opt-out period referred to in subsection (2).

PART 7 DECISION

Effect of decision made under passport application

- 21. (1)** The decision of the principal regulator under a passport application is the decision of the principal regulator. Under MI 11-102, a filer is automatically designated in the notified passport jurisdictions as a result of the decision of the principal regulator making the designation.
- (2) Except in the circumstances described in section 12(1) of this policy, the designation is effective in each notified passport jurisdiction on the date of the principal regulator's decision (even if the regulator in the notified passport jurisdiction is closed on that date). In the circumstances described in section 12(1) of this policy, the designation is effective in the relevant non-principal passport jurisdiction on the date the filer gives the notice under section 4B.6(1)(c) of MI 11-102 for that jurisdiction (even if the regulator in that jurisdiction is closed on that date).

Effect of decision made under dual application

- 22. (1)** The decision of the principal regulator under a dual application is the decision of the principal regulator. Under MI 11-102, a filer is automatically designated in the notified passport jurisdictions as a result of the decision of principal regulator making the designation. The decision of the principal regulator under a dual application also evidences the OSC's decision, if the OSC has confirmed that it has made the same decision as the principal regulator.
- (2) The principal regulator will not issue the decision until the earlier of
- (a) the date that the OSC confirms that it has made the same decision as the principal regulator, or
 - (b) the date the opt-out period referred to in section 20(2) of this policy has expired.

Listing non-principal jurisdictions

23. (1) For convenience, the decision of the principal regulator on a passport application or a dual application will refer to the notified passport jurisdictions, but it is the filer's responsibility to ensure that it gives the required notice for each jurisdiction for which section 4B.6(1) of MI 11-102 is intended to be relied upon.

(2) The decision of the principal regulator on a dual application will contain wording that makes it clear that the decision evidences and sets out the decision of the OSC to the effect that it has made the same decision as the principal regulator.

(3) For a dual application for which Québec is not the principal jurisdiction, the AMF will issue a local decision concurrently with and in addition to the principal regulator's decision. The AMF decision will contain the same terms and conditions as the principal regulator's decision. No other local regulator will issue a local decision.

Issuance of decision

24. The principal regulator will send the decision to the filer and to all non-principal regulators.

PART 8 EFFECTIVE DATE

Effective date

25. This policy comes into effect on April 20, 2012.