CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Notice and Request for Comment
Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers

April 7, 2022

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing for a 90-day comment period, proposed amendments and proposed changes to

- National Instrument 41-101 *General Prospectus Requirements*,
- National Instrument 44-101 *Short Form Prospectus Distributions*,
- National Instrument 44-102 *Shelf Distributions*,
- National Instrument 44-103 *Post-Receipt Pricing*,
- National Instrument 51-102 *Continuous Disclosure Obligations*,
- National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating To Foreign Issuers*,
- Companion Policy 41-101CP to National Instrument 41-101 *General Prospectus Requirements*,
- Companion Policy 44-102CP to National Instrument 44-102 *Shelf Distributions*,
- Companion Policy 44-103CP to National Instrument 44-103 *Post-Receipt Pricing*, and
- Companion Policy 51-102CP *Continuous Disclosure Obligations*;

as well as related proposed consequential changes to

- National Policy 11-201 *Electronic Delivery of Documents*,
- National Policy 47-201 *Trading Securities Using the Internet and Other Electronic Means*, and
- Companion Policy 54-101CP to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*;

(collectively, the **Proposed Amendments**).

The public comment period will end on **July 6, 2022**.

The text of the Proposed Amendments is contained in Annexes A through M of this notice and will also be available on websites of CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
nssc.novascotia.ca
www.fcnb.ca
www.osc.ca
www.fcaa.gov.sk.ca
www.mbsecurities.ca

Substance and Purpose

The Proposed Amendments implement an access equals delivery model for prospectuses generally, annual financial statements, interim financial reports and related management's discussion & analysis (**MD&A**) for non-investment fund reporting issuers.

The proposed access equals delivery model (the **AED Model**) contemplates the following:

- in all jurisdictions except British Columbia, providing public electronic access to a document and alerting investors that the document is available will constitute delivery for prospectuses under securities legislation;
- in British Columbia, an exemption from the requirement under securities legislation to send a prospectus (the **BC Exemption**) will permit access *instead* of delivery;
- for annual financial statements, interim financial reports and related MD&A, providing public electronic access to the documents and alerting investors that the documents are available will constitute delivery for the documents; and
- in all cases, delivery of a document will occur, or the conditions in the BC Exemption will be met, when:
    - the document is filed on the System for Electronic Document Analysis and Retrieval (**SEDAR**), and
    - where applicable, a news release is issued and filed on SEDAR indicating that the document is available electronically and that a paper or an electronic copy can be obtained upon request.

The purpose of the proposed AED Model is to modernize the way documents are made available to investors and reduce costs associated with the printing and mailing of documents, which are currently borne by issuers. The proposed AED Model provides a more cost-efficient, timely and environmentally friendly manner of communicating information to investors than paper delivery. In our view, the proposed AED Model reduces regulatory burden on issuers without compromising investor protection.

We recognize that information technology is an important and useful tool in facilitating communication with investors. The proposed AED Model is consistent with the general evolution of our capital markets, including how investors are increasingly accessing and consuming information electronically.

The proposed AED Model offers benefits for both issuers and investors. The proposed AED Model further facilitates the communication of information by enabling issuers to reach more investors in a faster and more effective manner than by mailing documents. SEDAR is a common, standardized platform that provides ease and convenience of use for investors, allowing them to access and search for specific information in a document more efficiently than they would otherwise be able to with paper copies of documents.

The proposed AED Model does not remove an investor's ability to request documents in paper or electronic form or prevent an issuer from delivering financial statements and related MD&A based on an investor's standing instructions.

The Proposed Amendments would implement the proposed AED Model for prospectuses generally, annual financial statements, interim financial reports and related MD&A. In our view, the proposed AED Model is well suited for these types of documents, which are increasingly being accessed electronically by investors. At this time, we are not proposing an access equals delivery model for the delivery of documents that require immediate shareholder action and participation, such as proxy-related materials and take-over bid and issuer bid circulars.

Background

On January 9, 2020, we published CSA Consultation Paper 51-405 *Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers*. The purpose of the consultation was to provide a forum for discussion on the appropriateness of implementing an access equals delivery model in the Canadian market. We solicited views on whether an access equals delivery model should be introduced, the types of documents to which an access equals delivery model should apply and the mechanics of a potential access equals delivery model.

The comment period ended on March 9, 2020. We received 30 comment letters from various market participants, including issuers, investors, industry associations and law firms. We wish to thank all commenters for contributing to the consultation.

We have reviewed the comments received, and we note as follows:

- A large majority of commenters expressed general support for implementing an access equals delivery model.
- A majority of commenters expressed support for prioritizing implementing an access equals delivery model for prospectuses, annual financial statements, interim financial reports and related MD&A.
- Although many commenters expressed general support for extending an access equals delivery model to other types of documents, such as proxy-related materials and takeover bid and issuer bid circulars, some commenters indicated that the CSA should carefully consider the impact of introducing an access equals delivery model to documents that require a time sensitive response from investors.
- Several commenters submitted that filing a document on SEDAR (and not also posting the document on the issuer's website) is sufficient as it provides a common, standardized platform that allows investors to access issuers' documents.
- A majority of commenters agreed that a news release is sufficient to alert investors that the document is available electronically.

- Commenters identified several benefits of an access equals delivery model, including reducing regulatory burden and costs for issuers, modernizing the way documents are made available to investors and promoting a more environmentally friendly manner of communicating information than paper delivery.
- The main limitations to implementing an access equals delivery model identified by commenters are the delivery requirements outside of securities legislation (e.g. corporate law) and electronic transactions legislation. In addition, some commenters noted the potential negative impact on investor engagement.

In light of the comments received and our analysis, we think it is appropriate to propose the AED Model for prospectuses generally, annual financial statements, interim financial reports and related MD&A into the Canadian market.

Summary of the Proposed Amendments

Prospectuses

The proposed AED Model applies to all types of prospectuses, except rights offerings by way of prospectus and medium-term note (**MTN**) programs and other continuous distributions under a shelf prospectus. The proposed AED Model may not be suitable for a rights offering by way of prospectus since this type of distribution requires a time sensitive response. MTN programs and other continuous distributions under a shelf prospectus are dealt with in a different manner in our rules and are not suited for the proposed AED Model. It also does not apply to a prospectus offering of investment fund securities.

Except in British Columbia, the Proposed Amendments contemplate that a prospectus or any amendment must be delivered or sent by providing access to the document in accordance with the procedures set out in the rules, unless the document is delivered or sent pursuant to another procedure prescribed by securities legislation.

British Columbia is instead providing an exemption from the prospectus delivery requirements because it better aligns with British Columbia's legislative authority and approach to legislative drafting. The BC Exemption is intended to achieve the same outcome as the AED Model proposed in the other jurisdictions.

The Proposed Amendments stipulate that, in all jurisdictions except British Columbia, access to the final prospectus or any amendment has been provided if:

- the issuer has filed the document on SEDAR and a receipt has been issued for the document, and
- the issuer has issued and filed a news release on SEDAR announcing that the document is available and accessible on SEDAR, indicating the securities that are offered and specifying that a paper or an electronic copy of the document can be obtained upon request.

Under the BC Exemption, a dealer is exempt from requirements under securities legislation to send a final prospectus or any amendment to a purchaser if these same conditions are met.

The Proposed Amendments clarify that, under the proposed AED Model, the right to withdraw from an agreement to purchase securities may be exercised within 2 business days after the later

of (a) the date that access to the final prospectus or any amendment has been provided, and (b) the date that the purchaser has entered into the agreement to purchase the securities. In British Columbia, it is a condition of the BC Exemption that an equivalent right be provided to a purchaser.

We are also proposing to require a cross-reference on the front page of the prospectus to alert investors to the section that explains how the withdrawal right period is calculated under the AED Model.

For the preliminary prospectus or any amendment, the Proposed Amendments stipulate that access has been provided if the issuer has filed the document on SEDAR and a receipt has been issued for the document. In this scenario, the Proposed Amendments do not require that the issuer issue and file a news release on SEDAR to alert investors because investors should be aware of when the preliminary prospectus is available by virtue of their interest in the distribution. In our view the requirement to file a news release is important in connection with the final prospectus because the investor's withdrawal right period is calculated at this stage.

The Proposed Amendments clarify how the AED Model applies to the advertising and marketing of a prospectus offering, including with respect to the preliminary prospectus, and update the statements contained in the marketing materials to inform investors that the prospectus or any amendment is available on SEDAR and that a copy of the document can be obtained upon request.

The proposed AED Model has been adapted to suit the particularities of different types of prospectuses, i.e. long-form prospectuses, short-form prospectuses, shelf prospectuses and post-receipt pricing prospectuses.

In certain jurisdictions, amendments to local securities acts may be required to fully implement the Proposed Amendments.

Financial Statements and related MD&A

The Proposed Amendments contemplate that the proposed AED Model applies to annual financial statements, interim financial reports and related MD&A.

The Proposed Amendments provide that the issuer must issue and file a news release to inform investors that its financial statements and related MD&A are available on SEDAR, unless the issuer complies with the current delivery requirements. The Proposed Amendments stipulate that access to the financial statements and related MD&A has been provided if

- the issuer has filed the documents on SEDAR, and
- on the same day that it has filed the documents, the issuer has issued and filed a news release on SEDAR announcing that the documents are available electronically and specifying that a paper or an electronic copy of the documents can be obtained upon request.

We think the proposed AED Model is especially well suited for these types of documents since investors are generally aware that the documents will be available on SEDAR. Investors can also predict when the documents will be available since they are subject to prescribed filing deadlines.

Issuers may still be required to comply with certain delivery requirements under corporate law and other applicable requirements to which they may be subject.

The proposed AED Model would also be available to SEC foreign issuers and designated foreign issuers.

Consequential Amendments

We are proposing changes to National Policy 47-201 *Trading Securities Using the Internet and Other Electronic Means* to clarify that the investment dealer conducting a road show must make an oral statement at the commencement of the road show that the relevant prospectus or any amendment is available on SEDAR, or provide the investor with a copy of the relevant prospectus or any amendment.

We are proposing changes to Companion Policy 54-101CP to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* to clarify the interaction between the current delivery requirements and the proposed AED Model with respect to financial statements and related MD&A.

Local Matters

Where applicable, an additional annex is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

Request for Comments

We welcome your comments on the Proposed Amendments and also invite comments on the following specific questions.

1. With regards to financial statements and related MD&A, the Proposed Amendments provide that an issuer must issue and file a news release on SEDAR announcing that the documents are available electronically and specifying that a paper or an electronic copy of the documents can be obtained upon request.
    a. Would the requirement to issue and file a news release be unduly costly or onerous in these circumstances? If so, why? Would the burden differ depending on whether the issuer is a venture issuer or not?
    b. Should we consider alternative ways to alert investors of the availability of a document that could be less onerous? Which ones and why?

Please submit your comments in writing on or before **July 6, 2022**. Please send your comments by email in Microsoft Word format.

Please address your submission to all members of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island

Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Deliver your comments only to the addresses below. Your comments will be distributed to the other participating CSA members.

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
Fax: 514 864-8381
E-mail: consultation-en-cours@lautorite.qc.ca

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416 593-2318
E-mail: comments@osc.gov.on.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com, the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Contents of Annexes

- Annex A: Proposed Amendments to National Instrument 41-101 *General Prospectus Requirements*
- Annex B: Proposed Changes to Companion Policy 41-101CP to National Instrument 41-101 *General Prospectus Requirements*
- Annex C: Proposed Amendments to National Instrument 44-101 *Short Form Prospectus Distributions*
- Annex D: Proposed Amendments to National Instrument 44-102 *Shelf Distributions*
- Annex E: Proposed Changes to Companion Policy 44-102CP to National Instrument 44-102 *Shelf Distributions*
- Annex F: Proposed Amendments to National Instrument 44-103 *Post-Receipt Pricing*

- Annex G: Proposed Changes to Companion Policy 44-103CP to National Instrument 44-103 *Post-Receipt Pricing*
- Annex H: Proposed Amendments to National Instrument 51-102 *Continuous Disclosure Obligations*
- Annex I: Proposed Changes to Companion Policy 51-102CP *Continuous Disclosure Obligations*
- Annex J: Proposed Amendments to National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating To Foreign Issuers*
- Annex K: Proposed Changes to National Policy 11-201 *Electronic Delivery of Documents*
- Annex L: Proposed Changes to National Policy 47-201 *Trading Securities Using the Internet and Other Electronic Means*
- Annex M: Proposed Changes to Companion Policy 54-101CP to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*

Questions

Please refer your questions to any of the following:

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ANNEX A

PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 41-101 *GENERAL PROSPECTUS REQUIREMENTS*

1. National Instrument 41-101 General Prospectus Requirements is amended by this Instrument.

2. The following is added after Part 2:

PART 2A: Access to a Prospectus

Application

2A.1 This Part does not apply in respect of

(a) a prospectus to distribute rights,

(b) a prospectus filed under NI 44-102 or NI 44-103, and

(c) a prospectus to distribute securities of an investment fund.

Access equals delivery

2A.2(1) This section does not apply in British Columbia.

(2) The requirement under securities legislation to deliver or send a prospectus or any amendment is satisfied when access to the document has been provided in accordance with subsection 2A.3(3) or (6).

(3) The prospectus or any amendment is delivered or sent on the date that access to the document has been provided in accordance with subsection 2A.3(3) or (6).

(4) The prospectus or any amendment is received on the date the document has been delivered or sent in accordance with subsection (3).

(5) Except in Saskatchewan, if the final prospectus or any amendment is delivered or sent in accordance with subsection 2A.3(3), the right to withdraw from, or in Quebec the right to rescind, an agreement to purchase a security provided to a purchaser under securities legislation may be exercised within 2 business days after the later of

(a) the date the document is received in accordance with subsection (4), and

(b) the date that the purchaser has entered into the agreement to purchase the security.

(6) In Saskatchewan, if the final prospectus or any amendment has been delivered or sent in accordance with subsection 2A.3(3), a purchaser that is not a registrant may cancel a purchase if the purchaser has not sold or otherwise transferred beneficial ownership of the security and the person or company from whom the purchaser purchased the security receives notice in writing to cancel the agreement of purchase and sale for the security at any time up to 2 business days after the later of

(a) the date that the document is received in accordance with subsection (4), and

(b) the date that the purchaser has entered into the agreement to purchase the security.

Procedures

2A.3(1) This section does not apply in British Columbia.

(2) A final prospectus or any amendment must be delivered or sent by providing access to the document, unless the document is delivered or sent pursuant to another procedure prescribed by securities legislation.

(3) Access to the final prospectus or any amendment has been provided if

(a) the document has been filed on SEDAR and a receipt has been issued for the document, and

(b) on the same day the document was filed, a news release has been issued and filed on SEDAR that states

(i) in the title of the news release, that the document is available,

(ii) that the document is accessible at www.sedar.com,

(iii) the securities that are offered under the document, and

(iv) the following:

"An electronic or paper copy of the final prospectus or any amendment may be obtained, without charge, from [*insert contact information for the issuer or dealer, as applicable*] by providing the contact with an email address or address, as applicable."

(4) If a prospective purchaser requests a copy of the preliminary prospectus or any amendment, or a purchaser requests a copy of the final prospectus or any amendment, from the issuer or dealer, a copy of the document must be sent by the issuer or dealer within 2 business days and without charge to the prospective purchaser or purchaser at the email address or address specified in the request.

(5) Except if a prospective purchaser indicates an interest in purchasing a security and requests a copy of the preliminary prospectus or any amendment, such document that is required to be delivered or sent must be delivered or sent by providing access to the document, unless the document is delivered or sent pursuant to another procedure prescribed by securities legislation.

(6) Access to the preliminary prospectus or any amendment has been provided if the issuer has filed on SEDAR, and a receipt has been issued for, the document.

Exemption from requirement to send prospectus - British Columbia

2A.4 (1) In British Columbia, a dealer is exempt from a requirement under securities legislation to send a final prospectus or any amendment if

(a) the document has been filed on SEDAR and a receipt has been issued for the document, and

(b) on the same day the document was filed, a news release has been issued and filed on SEDAR that states

(i) in the title of the news release, that the document is available,

(ii) that the document is accessible at www.sedar.com,

(iii) the securities that are offered under the document, and

(iv) the following:

"An electronic or paper copy of the final prospectus or any amendment may be obtained, without charge, from [*insert contact information for the issuer or dealer, as applicable*] by providing the contact with an email address or address, as applicable."

(2) In British Columbia, a dealer or issuer that solicits an expression of interest from a prospective purchaser is exempt from the requirement in securities legislation to send a copy of the preliminary prospectus or any amendment to the prospective purchaser if the document has been filed on SEDAR and a receipt has been issued for the document.

(3) If a purchaser requests a copy of the final prospectus or any amendment from the issuer or dealer, a copy of the document must be sent by the issuer or dealer within 2 business days and without charge to the purchaser at the email address or address specified in the request.

(4) If a dealer relies on subsection (1), an agreement of purchase and sale is not binding on a purchaser if the dealer from whom the purchaser purchases the security receives written notice sent by the purchaser, evidencing the intention of the

purchaser not to be bound by the agreement, not later than 2 business days after the later of

(a) the date that conditions referred to in subsection (1) are satisfied, and

(b) the date of the agreement.

(5) Subsection (4) does not apply if the purchaser

(a) is a registrant, or

(b) disposes of the beneficial ownership of the security referred to in subsection (4), otherwise than to realize on collateral given for debt, before the end of the time referred to in subsection (4).

(6) For the purposes of this section, receipt of the notice referred to in subsection (4) by a dealer that acted as agent of the seller with respect to the sale of the security referred to in subsection (1) is deemed to be receipt by the seller on the date on which the dealer received the notice**..**

3. Subsection 13.1(1) is amended

(a) by adding "and is available on SEDAR***" after "***A preliminary prospectus containing important information relating to these securities has been filed with securities commissions or similar authorities in certain jurisdictions of Canada***", and***

(b) by deleting "name and***".***

4. Subsection 13.2(1) is amended

(a) by adding "and is available on SEDAR***" after "***The prospectus contains important detailed information about the securities being offered***", and***

(b) by deleting "name and***".***

5. Subsection 13.5(2) is amended by adding "and is available on SEDAR***" after "***A preliminary prospectus containing important information relating to the securities described in this document has been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada]***".***

6. Subsection 13.6(2) is amended by adding "and is available on SEDAR***" after "***A final prospectus containing important information relating to the securities described in this document has been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada]***".***

7. Paragraph 13.7(1)(g) is replaced with the following:

(g) the investment dealer

(i) includes, in the marketing materials, a statement that the preliminary prospectus or any amendment is available on SEDAR, or

(ii) provides, with the marketing materials, a copy of the preliminary prospectus or any amendment**..**

8. Subsection 13.7(5) is amended

(a) by adding "and is available on SEDAR. Copies of the preliminary prospectus or any amendment may be obtained from [insert contact information for dealer or other relevant person or entity.]***" after "***A preliminary prospectus containing important information relating to the securities described in this document has been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada]***", and***

(b) by deleting "A copy of the preliminary prospectus, and any amendment, is required to be delivered with this document.***".***

9. Paragraph 13.8(1)(g) is replaced with the following:

(g) the investment dealer

(ii) includes, in the marketing materials, a statement that the final prospectus or any amendment is available on SEDAR, or

(ii) provides, with the marketing materials, a copy of the final prospectus or any amendment**..**

10. Subsection 13.8(5) is amended

(a) by adding "and is available on SEDAR. Copies of the final prospectus or any amendment may be obtained from [insert contact information for dealer or other relevant person or entity.]***" after "***A final prospectus containing important information relating to the securities described in this document has been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada]***", and***

(b) by deleting "A copy of the final prospectus, and any amendment, is required to be delivered with this document.***".***

11. Paragraph 13.9(3)(c) is replaced with the following:

(c) make an oral statement at the commencement of the road show that the preliminary prospectus or any amendment is available on SEDAR, or provide the investor with a copy of the preliminary prospectus or any amendment**..**

12. Subsection 13.9(4) is amended by adding "**The preliminary prospectus or any amendment is available on SEDAR.**" after "**Investors should read the preliminary prospectus, the final prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.**".

13. Paragraph 13.10(3)(c) is replaced with the following:

(c) make an oral statement at the commencement of the road show that the final prospectus or any amendment is available on SEDAR, or provide the investor with a copy of the final prospectus or any amendment**..**

14. Subsection 13.10(4) is amended by adding "**The final prospectus or any amendment is available on SEDAR.**" after "**Investors should read the final prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.**".

15. Section 16.1 is amended by adding "**and despite subsection 2A.3(5),**" after "**Except in Ontario,**.

16. Schedule 3 of APPENDIX A is amended by replacing the address of the regulator in Québec with the following:

Autorité des marchés financiers
Attention: Responsable de l'accès à l'information
800, rue du Square-Victoria, 22e étage
C.P. 246, Place Victoria
Montréal, Québec H4Z 1G3
Telephone: (514) 395-0337
Toll Free in Québec: (877) 525-0337
www.lautorite.qc.ca

17. Form 41-101F1 INFORMATION REQUIRED IN A PROSPECTUS is amended by adding the following section:

Right of withdrawal

1.10.1 Include a cross-reference to the section in the prospectus or any amendment where information about the right to withdraw from an agreement to purchase securities is provided**..**

18. Form 41-101F1 INFORMATION REQUIRED IN A PROSPECTUS is amended by adding the following section:

Access procedures - general

30.1.1 If the issuer intends to issue and file, under subsection 2A.3(3) or 2A.4(1) of the Instrument, or under subsection 2A.3(3) or 2A.4(1) of NI 44-103, a news release announcing that the prospectus or any amendment is available on SEDAR, replace the second sentence in the statement required under section 30.1 with a sentence in substantially the following form:

> "This right may be exercised within 2 business days after the later of (a) the date that the issuer (i) filed the prospectus or any amendment on SEDAR and a receipt is issued for the document, and (ii) issued and filed a news release on SEDAR announcing that the document is available, and (b) the date that the purchaser has entered into an agreement to purchase the securities."**.**

19. Form 41-101F1 INFORMATION REQUIRED IN A PROSPECTUS is amended by adding the following section:

Access procedures - non-fixed price offerings

30.2.1 In the case of a non-fixed price offering, if the issuer intends to issue and file, under subsection 2A.3(3) or 2A.4(1) of the Instrument, or under subsection 2A.3(3) or 2A.4(1) of NI 44-103, a news release announcing that the prospectus or any amendment is available on SEDAR, replace, if applicable in the jurisdiction in which the prospectus is filed, the second sentence in the statement in section 30.1 with a sentence in substantially the following form:

> "Irrespective of the determination at a later date of the purchase price of the securities distributed, this right may only be exercised within 2 business days after the later of (a) the date that the issuer (i) filed the prospectus or any amendment on SEDAR and a receipt is issued for the document, and (ii) issued and filed a news release on SEDAR announcing that the document is available, and (b) the date that the purchaser has entered into an agreement to purchase the securities."**.**

Effective date

20. (1) This Instrument comes into force on •.

(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after •, this Instrument come into force on the day on which it is filed with the Registrar of Regulations.

ANNEX B

PROPOSED CHANGES TO
COMPANION POLICY 41-101CP TO NATIONAL INSTRUMENT 41-101 *GENERAL PROSPECTUS REQUIREMENTS*

1. Companion Policy 41-101CP to National Instrument 41-101 General Prospectus Requirements is changed by this Document.

2. The following Part is added:

PART 2A: Access to a Prospectus

Delivery obligation

2A.1 Securities legislation generally requires a dealer who receives an order to purchase a security offered in a distribution to deliver or send to the purchaser a copy of the prospectus or any amendment. Securities legislation generally requires a dealer who solicits expressions of interest from a prospective purchaser to deliver or send to the prospective purchaser a copy of the preliminary prospectus or any amendment.

In jurisdictions except British Columbia, under subsection 2A.3(2) or (5), a dealer must provide access to the document in accordance with subsection 2A.3(3) or (6) of the Instrument to satisfy its delivery obligation under securities legislation, unless the document is delivered or sent pursuant to another procedure prescribed by securities legislation.

In British Columbia, a dealer is provided with an exemption from the requirement in securities legislation to send a prospectus, preliminary prospectus or any amendment if the conditions set out in subsection 2A.4(1) or (2) are met**.**

3. Section 6.2 is amended by adding the following subsection:

Copies of a prospectus

(7.1) The term "copy" or "copies" in the legends of marketing materials referred to in Part 13 of the Instrument, Part 7 of NI 44-101, Part 9A of NI 44-102 and Part 4A of NI 44-103 means a paper or an electronic copy**..**

4. These changes become effective on •.

ANNEX C

PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 44-101 *SHORT FORM PROSPECTUS DISTRIBUTIONS*

1. National Instrument 44-101 Short Form Prospectus Distributions is amended by this Instrument.

2. Paragraph 7.2(c) is replaced with the following:

(c) upon issuance of a receipt for the preliminary short form prospectus,

(i) a written or oral statement that the preliminary short form prospectus is available on SEDAR is made to each person or company that, in response to the solicitation, expressed an interest in acquiring the securities, or

(ii) a copy of the preliminary short form prospectus is sent to each person or company that, in response to the solicitation, expressed an interest in acquiring the securities, and**.**

3. Paragraph 7.4(2)(c) is replaced with the following:

(c) upon issuance of a receipt for the preliminary short form prospectus,

(i) a written or oral statement that the preliminary short form prospectus is available on SEDAR is made to each person or company that, in response to the solicitation, expressed an interest in acquiring the securities, or

(ii) a copy of the preliminary short form prospectus is sent to each person or company that, in response to the solicitation, expressed an interest in acquiring the securities, and**.**

4. Subsection 7.5(2) is replaced with the following:

(2) A standard term sheet provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

A preliminary short form prospectus containing important information relating to the securities described in this document has not yet been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada].

The preliminary short form prospectus will be available on SEDAR. A copy of the preliminary short form prospectus may be obtained from [insert contact information for the investment dealer or underwriters]. There will

not be any sale or any acceptance of an offer to buy the securities until a receipt for the final short form prospectus has been issued.

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the preliminary short form prospectus, final short form prospectus and any amendment, for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision..

5. Paragraph 7.6(1)(g) is replaced with the following:

(g) the marketing materials include a statement that the preliminary short form prospectus will be available on SEDAR, or, upon issuance of a receipt for the preliminary short form prospectus, a copy of the preliminary short form prospectus is sent to each person or company that received the marketing materials and expressed an interest in acquiring the securities..

6. Subsection 7.6(5) is replaced with the following:

(5) Marketing materials provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

A preliminary short form prospectus containing important information relating to the securities described in this document has not yet been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada]. The preliminary short form prospectus will be available on SEDAR. A copy of the preliminary short form prospectus may be obtained from [*insert contact information for the investment dealer or underwriters*].

There will not be any sale or any acceptance of an offer to buy the securities until a receipt for the final short form prospectus has been issued.

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the preliminary short form prospectus, final short form prospectus and any amendment, for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision..

7. Paragraph 7.7(3)(c) is replaced with the following:

(c) make an oral statement at the commencement of the road show that the preliminary prospectus or any amendment will be available on SEDAR, or, upon issuance of a receipt for the preliminary prospectus, provide the investor with a copy of the preliminary prospectus or any amendment..

8. Item 1 of Form 44-101F1 SHORT FORM PROSPECTUS is amended by adding the following section:

1.9.1 Right of Withdrawal

Include a cross-reference to the section in the short form prospectus or any amendment where information about the right to withdraw from an agreement to purchase securities is provided**.**

9. Item 20 of Form 44-101F1 SHORT FORM PROSPECTUS is amended by adding the following sections:

20.1.1 Access Procedures – General

If the issuer intends to issue and file, under subsection 2A.3(3) or 2A.4(1) of NI 41-101, under subsection 6A.3(3) or 6A.4(1) of NI 44-102, or under subsection 2A.3(3) or 2A.4(1) of NI 44-103, a news release announcing that the short form prospectus or any amendment is available on SEDAR, replace the second sentence in the statement required under section 20.1 with a sentence in substantially the following form:

> This right may be exercised within 2 business days after the later of (a) the date that the issuer (i) filed the prospectus or any amendment on SEDAR and a receipt is issued for the document, and (ii) issued and filed a news release on SEDAR announcing that the document is available, and (b) the date that the purchaser has entered into an agreement to purchase the securities.***, and***

20.2.1 Access Procedures – Non-fixed Price Offerings

In the case of a non-fixed price offering, if the issuer intends to issue and file, under subsection 2A.3(3) or 2A.4(1) of NI 41-101, under subsection 6A.3(3) or 6A.4(1) of NI 44-102, or under subsection 2A.3(3) or 2A.4(1) of NI 44-103, a news release announcing that the short form prospectus or any amendment is available on SEDAR, replace, if applicable in the jurisdiction in which the short form prospectus is filed, the second sentence in the statement required under section 20.1 with a sentence in substantially the following form:

> "Irrespective of the determination at a later date of the purchase price of the securities distributed, this right may only be exercised within 2 business days after the later of (a) the date that the issuer (i) filed the prospectus or any amendment on SEDAR and a receipt is issued for the document, and (ii) issued and filed a news release on SEDAR announcing that the document is available, and (b) the date that the purchaser has entered into an agreement to purchase the securities."**.**

10. (1) This Instrument comes into force on •.

(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after •, this Instrument come into force on the day on which it is filed with the Registrar of Regulations.

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ANNEX D

PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 44-102 *SHELF DISTRIBUTIONS*

1. National Instrument 44-102 Shelf Distributions is amended by this Instrument.

2. Section 6.7 is amended by replacing "The***" before "***shelf prospectus supplement***" with "***Subject to Part 6A, the***".***

3. The following Part is added:

PART 6A ACCESS TO SHELF PROSPECTUS SUPPLEMENTS AND BASE SHELF PROSPECTUSES

6A.1 Application - This Part does not apply in respect of

(a) a prospectus to distribute securities by way of an MTN program or other continuous distribution, and

(b) a prospectus to distribute securities of an investment fund.

6A.2 Access equals delivery

(1) This section does not apply in British Columbia.

(2) The requirement under securities legislation to deliver or send a prospectus is satisfied when access to the shelf prospectus supplement, the corresponding base shelf prospectus, the preliminary base shelf prospectus or any amendment to the documents has been provided in accordance with subsection 6A.3(3) or (6).

(3) The shelf prospectus supplement, the corresponding base shelf prospectus, the preliminary base shelf prospectus or any amendment to the documents is delivered or sent on the date that access to the document has been provided in accordance with subsection 6A.3(3) or (6).

(4) The shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents is received on the date the document has been delivered or sent in accordance with subsection (3).

(5) Except in Saskatchewan, if the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents is delivered or sent in accordance with subsection 6A.3(3), the right to withdraw from, or in Quebec the right to rescind, an agreement to purchase a security provided to a purchaser under securities legislation may be exercised within 2 business days after the later of

(a) the date the document is received in accordance with subsection (4); and

(b) the date that the purchaser has entered into the agreement to purchase the security.

(6) In Saskatchewan, if the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents has been delivered or sent in accordance with subsection 6A.3(3), a purchaser that is not a registrant may cancel a purchase if the purchaser has not sold or otherwise transferred beneficial ownership of the security and the person or company from whom the purchaser purchased the security receives notice in writing to cancel the agreement of purchase and sale for the security at any time up to 2 business days after the later of

(a) the date that the document is received in accordance with subsection (4), and

(b) the date that the purchaser has entered into the agreement to purchase the security.

6A.3 Procedures

(1) This section does not apply in British Columbia.

(2) A shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents must be delivered or sent by providing access to the document, unless the document is delivered or sent pursuant to another procedure prescribed by securities legislation.

(3) Access to the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents has been provided if

(a) the base shelf prospectus or any amendment has been filed on SEDAR and a receipt has been issued for the document,

(b) the shelf prospectus supplement or any amendment has been filed on SEDAR, and

(c) on the same day the shelf prospectus supplement or any amendment was filed, a news release has been issued and filed on SEDAR that states

(i) in the title of the news release, that the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents is available,

(ii) that the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents is accessible at www.sedar.com,

(iii) the securities that are offered under the shelf prospectus supplement, and

(iv) the following:

"An electronic or paper copy of the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents may be obtained, without charge, from [*insert contact information for the issuer or dealer, as applicable*] by providing the contact with an email address or address, as applicable."

(4) If a prospective purchaser requests a copy of the preliminary base shelf prospectus or any amendment, or a purchaser requests a copy of the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents, from the issuer or dealer, a copy of the document must be sent by the issuer or dealer within 2 business days and without charge to the prospective purchase or purchaser at the email address or address specified in the request.

(5) Except if a prospective purchaser indicates an interest in purchasing a security and requests a copy of the preliminary base shelf prospectus or any amendment, such document that is required to be delivered or sent must be delivered or sent by providing access to the document, unless the document is delivered or sent pursuant to another procedure prescribed by securities legislation.

(6) Access to the preliminary base shelf prospectus or any amendment has been provided if the issuer has filed on SEDAR, and a receipt has been issued for, the document.

6A.4 Exemption from requirement to send prospectus - British Columbia

(1) In British Columbia, a dealer is exempt from a requirement under securities legislation to send a prospectus or any amendment if

(a) the base shelf prospectus or any amendment has been filed on SEDAR and a receipt has been issued for the document,

(b) the shelf prospectus supplement or any amendment has been filed on SEDAR, and

(c) on the same day the shelf prospectus supplement or any amendment was filed, a news release has been issued and filed on SEDAR that states

(i) in the title of the news release, that the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents is available,

(ii) that the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents is accessible at www.sedar.com,

(iii) the securities that are offered under the shelf prospectus supplement, and

(iv) the following:

"An electronic or paper copy of the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents may be obtained, without charge, from [*insert contact information for the issuer or dealer, as applicable*] by providing the contact with an email address or address, as applicable."

(2) In British Columbia, a dealer or issuer that solicits an expression of interest from a prospective purchaser is exempt from the requirement in securities legislation to send a copy of the preliminary base shelf prospectus or any amendment to the prospective purchaser if the document has been filed on SEDAR and a receipt has been issued for the document.

(3) If a purchaser requests a copy of the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents from the issuer or dealer, a copy of the document must be sent by the issuer or dealer within 2 business days and without charge to the purchaser at the email address or address specified in the request.

(4) If a dealer relies on subsection (1), an agreement of purchase and sale is not binding on a purchaser if the dealer from whom the purchaser purchases the security receives written notice sent by the purchaser, evidencing the intention of the purchaser not to be bound by the agreement, not later than 2 business days after the later of

(a) the date that conditions referred to in subsection (1) are satisfied, and

(b) the date of the agreement.

(5) Subsection (4) does not apply if the purchaser

(a) is a registrant, or

(b) disposes of the beneficial ownership of the security referred to in subsection (4), otherwise than to realize on collateral given for debt, before the end of the time referred to in subsection (4).

(6) For the purposes of this section, receipt of the notice referred to in subsection (4) by a dealer that acted as agent of the seller with respect to the sale of the security referred to in subsection (1) is deemed to be receipt by the seller on the date on which the dealer received the notice**..**

4. Subsection 9.2(1) is replaced with the following:

(1) The following provisions do not apply to an issuer distributing a security under an ATM prospectus:

(a) section 7.2 of NI 41-101;

(b) section 1.9A of Form 44-101F1;

(c) item 20 of Form 44-101F1;

(d) item 8 of section 5.5 of this Instrument;

(e) Part 6A of this Instrument**..**

5. Subsection 9A.2(2) is replaced with the following:

(2) A standard term sheet provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

A final base shelf prospectus containing important information relating to the securities described in this document has been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada].

The final base shelf prospectus, any amendment and any applicable shelf prospectus supplement are available on SEDAR. Copies of the documents may be obtained from [*insert contact information for the investment dealer or underwriters*].

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the final base shelf prospectus, any amendment and any applicable shelf prospectus supplement for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision**..**

6. Paragraph 9A.3(1)(g) is replaced with the following:

(g) the investment dealer

(i) includes, in the marketing materials, a statement that the final base shelf prospectus, any amendment and any applicable shelf prospectus supplement are available on SEDAR, or

(ii) provides, with the marketing materials, a copy of the final base shelf prospectus, any amendment and any applicable shelf prospectus supplement that have been filed**..**

7. Subsection 9A.3(5) is replaced with the following:

(5) Marketing materials provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

A final base shelf prospectus containing important information relating to the securities described in this document has been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada].

The final base shelf prospectus, any amendment and any applicable shelf prospectus supplement are available on SEDAR. Copies of the documents may be obtained from [*insert contact information for the investment dealer or underwriters*].

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the final base shelf prospectus, any amendment and any applicable shelf prospectus supplement for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision**..**

8. Paragraph 9A.4(3)(c) is replaced with the following:

(c) make an oral statement at the commencement of the road show that the final base shelf prospectus, any amendment and any applicable shelf prospectus supplement are available on SEDAR, or provide the investor with a copy of the final base shelf prospectus, any amendment and any applicable shelf prospectus supplement that have been filed**..**

9. Subsection 9A.4(4) is amended by adding "The final base shelf prospectus, any amendment and any applicable shelf prospectus supplement are available on SEDAR.***" after "***Investors should read the final base shelf prospectus, any amendment and any applicable shelf prospectus supplement for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.***".***

10. (1) This Instrument comes into force on •.

(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after •, this Instrument come into force on the day on which it is filed with the Registrar of Regulations.

ANNEX E

PROPOSED CHANGES TO
COMPANION POLICY 44-102CP TO NATIONAL INSTRUMENT 44-102 *SHELF DISTRIBUTIONS*

1. Companion Policy 44-102CP to National Instrument 44-102 Shelf Distributions is changed by this Document.

2. Subsection 2.6(3) is changed by adding ", subject to Part 6A,***" after "***NI 44-102 provides that***".***

3. Section 2.9 is replaced with the following:

2.9 Rights of Rescission or Withdrawal

The securities regulatory authorities are of the view that statutory rights of rescission or withdrawal commence from the time of the purchaser's receipt of all relevant shelf prospectus supplements. It is only at this time that the entire prospectus has been delivered. If the shelf prospectus supplement, the corresponding base shelf prospectus or any amendment to the documents is delivered or sent in accordance with Part 6A of the Instrument, statutory rights of rescission or withdrawal commence from the later of (i) the date the shelf prospectus supplement or any amendment was filed on SEDAR and a news release was issued and filed on SEDAR announcing that the document is available, and (ii) the date that the purchaser has entered into the agreement to purchase the security**..**

4. The following Part is added:

PART 2A ACCESS TO SHELF PROSPECTUS SUPPLEMENTS AND BASE SHELF PROSPECTUSES

2A.1 Delivery Obligation

Securities legislation generally requires a dealer who receives an order to purchase a security offered in a distribution to deliver or send to the purchaser a copy of the prospectus or any amendment. Securities legislation generally requires a dealer who solicits expressions of interest from a prospective purchaser to deliver or send to the prospective purchaser a copy of the preliminary prospectus or any amendment.

In jurisdictions except British Columbia, under subsection 6A.3(2) or (5), a dealer must provide access to the shelf prospectus supplement, the corresponding base shelf prospectus, the preliminary base shelf prospectus or any amendment to the documents in accordance with subsection 6A.3(3) or (6) of the Instrument to satisfy its delivery obligation under securities legislation, unless the document is delivered or sent pursuant to another procedure prescribed by securities legislation.

In British Columbia, a dealer is provided with an exemption from the requirement in securities legislation to send a shelf prospectus supplement, the corresponding base shelf prospectus, the preliminary base shelf prospectus or any amendment to the documents if the conditions set out in subsection 6A.4(1) or (2) are met.

5. These changes become effective on ●.

ANNEX F

PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 44-103 *POST-RECEIPT PRICING*

1. National Instrument 44-103 Post-Receipt Pricing is amended by this Instrument.

2. The following Part is added:

PART 2A ACCESS TO SUPPLEMENTED PREP PROSPECTUSES

2A.1 Application - This Part does not apply in respect of a prospectus to distribute securities of an investment fund.

2A.2 Access equals delivery

(1) This section does not apply in British Columbia.

(2) The requirement under securities legislation to deliver or send a prospectus is satisfied when access to the supplemented PREP prospectus, the preliminary base PREP prospectus or any amendment to the documents has been provided in accordance with subsection 2A.3(3) or (6).

(3) The supplemented PREP prospectus, the preliminary base PREP prospectus or any amendment to the documents is delivered or sent on the date that access to the document has been provided in accordance with subsection 2A.3(3) or (6).

(4) The supplemented PREP prospectus or any amendment is received on the date the document has been delivered or sent in accordance with subsection (3).

(5) Except in Saskatchewan, if the supplemented PREP prospectus or any amendment is delivered or sent in accordance with subsection 2A.3(3), the right to withdraw from, or in Quebec the right to rescind, an agreement to purchase a security provided to a purchaser under securities legislation may be exercised within 2 business days after the later of

(a) the date the document is received in accordance with subsection (4), and

(b) the date that the purchaser has entered into the agreement to purchase the security.

(6) In Saskatchewan, if the supplemented PREP prospectus and any amendment has been delivered or sent in accordance with subsection 2A.3(3), a purchaser that is not a registrant may cancel a purchase if the purchaser has not sold or otherwise transferred beneficial ownership of the security and the person or company from

whom the purchaser purchased the security receives notice in writing to cancel the agreement of purchase and sale for the security at any time up to 2 business days after the later of

(a) the date that the document is received in accordance with subsection (4), and

(b) the date that the purchaser has entered into the agreement to purchase the security.

2A.3 Procedures

(1) This section does not apply in British Columbia.

(2) A supplemented PREP prospectus or any amendment must be delivered or sent by providing access to the document, unless the document is delivered or sent pursuant to another procedure prescribed by securities legislation.

(3) Access to the supplemented PREP prospectus or any amendment has been provided if

(a) the base PREP prospectus or any amendment has been filed on SEDAR and a receipt has been issued for the document;

(b) the supplemented PREP prospectus or any amendment has been filed on SEDAR;

(c) on the same day the supplemented PREP prospectus or any amendment was filed, a news release has been issued and filed on SEDAR that states

(i) in the title of the news release, that the supplemented PREP prospectus or any amendment is available,

(ii) that the supplemented PREP prospectus or any amendment is accessible at www.sedar.com,

(iii) the securities that are offered under the supplemented PREP prospectus, and

(iv) the following:

"An electronic or paper copy of the supplemented PREP prospectus or any amendment may be obtained, without charge, from [*insert contact information for the issuer or dealer, as applicable*] by providing the contact with an email address or address, as applicable."

(4) If a prospective purchaser request a copy of the preliminary base PREP prospectus or any amendment, or a purchaser requests a copy of the supplemented PREP prospectus or any amendment, from the issuer or dealer, a copy of the document must be sent by the issuer or dealer within 2 business days and without charge to the prospective purchaser or purchaser at the email address or address specified in the request.

(5) Except if a prospective purchaser indicates an interest in purchasing a security and requests a copy of the preliminary base PREP prospectus or any amendment, such document that is required to be delivered or sent must be delivered or sent by providing access to the document, unless the document is delivered or sent pursuant to another procedure prescribed by securities legislation.

(6) Access to the preliminary base PREP prospectus or any amendment has been provided if the issuer has filed on SEDAR, and a receipt has been issued for, the document.

2A.4 Exemption from requirement to send prospectus – British Columbia

(1) In British Columbia, a dealer is exempt from a requirement under securities legislation to send a prospectus or any amendment if

(a) the base PREP prospectus or any amendment has been filed on SEDAR and a receipt has been issued for the document,

(b) a supplemented PREP prospectus or any amendment has been filed on SEDAR, and

(c) on the same day the supplemented PREP prospectus or any amendment was filed, a news release has been issued and filed on SEDAR that states

(i) in the title of the news release, that the supplemented PREP prospectus or any amendment is available,

(ii) that the supplemented PREP prospectus or any amendment is accessible at www.sedar.com,

(iii) the securities that are offered under the supplemented PREP prospectus, and

(iv) the following:

"An electronic or paper copy of the supplemented PREP prospectus or any amendment may be obtained, without charge, from [*insert contact information for the issuer or dealer, as applicable*] by providing the contact with an email address or address, as applicable."

(2) In British Columbia, a dealer or issuer that solicits expressions of interest from a prospective purchaser is exempt from the requirement in securities legislation to send a copy of the preliminary base PREP prospectus or any amendment to the prospective purchaser if the document has been filed on SEDAR and a receipt has been issued for the document.

(3) If a purchaser requests a copy of the supplemented PREP prospectus or any amendment from the issuer or dealer, a copy of the document must be sent by the issuer or dealer within 2 business days and without charge to the purchaser at the email address or address specified in the request.

(4) If a dealer relies on subsection (1), an agreement of purchase and sale is not binding on a purchaser if the dealer from whom the purchaser purchases the security receives written notice sent by the purchaser, evidencing the intention of the purchaser not to be bound by the agreement, not later than 2 business days after the later of

(a) the date that conditions referred to in subsection (1) are satisfied, and

(b) the date of the agreement.

(5) Subsection (4) does not apply if the purchaser

(a) is a registrant, or

(b) disposes of the beneficial ownership of the security referred to in subsection (4), otherwise than to realize on collateral given for debt, before the end of the time referred to in subsection (4).

(6) For the purposes of this section, receipt of the notice referred to in subsection (4) by a dealer that acted as agent of the seller with respect to the sale of the security referred to in subsection (1) is deemed to be receipt by the seller on the date on which the dealer received the notice**.**

3. Section 4A.2 is amended by replacing subsection (2) with the following:

(2) A standard term sheet provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

A [final base PREP prospectus/supplemented PREP prospectus] containing important information relating to the securities described in this document has been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada].

The [final base PREP prospectus/supplemented PREP prospectus] or any amendment is available on SEDAR. A copy of the document may be obtained from *[insert contact information for the investment dealer or underwriters]*.

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the supplemented PREP prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision..

4. Paragraph 4A.3(1)(g) is replaced with the following:

(g) the investment dealer

(i) includes, in the marketing materials, a statement that the final base PREP prospectus or any amendment, or if it has been filed, the supplemented PREP prospectus or any amendment, is available on SEDAR, or

(ii) provides, with the marketing materials, a copy of the final base PREP prospectus or any amendment, or if it has been filed, the supplemented PREP prospectus or any amendment..

5. Subsection 4A.3(6) is replaced with the following:

(6) Marketing materials provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

A [final base PREP prospectus/supplemented PREP prospectus] containing important information relating to the securities described in this document has been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada].

The [final base PREP prospectus/supplemented PREP prospectus] or any amendment is available on SEDAR. A copy of the document may be obtained from [*insert contact information for the investment dealer or underwriters*].

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the supplemented PREP prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision..

6. Paragraph 4A.4(3)(c) is replaced with the following:

(c) make an oral statement at the commencement of the road show that the final base PREP prospectus and any amendment, or if they have been filed, the supplemented

PREP prospectus and any amendment, are available on SEDAR, or provide the investor with a copy of the final base PREP prospectus and any amendment, or if they have been filed, the supplemented PREP prospectus and any amendment..

7. ***Subsection 4A.4(4) is amended by adding "***The [final base PREP prospectus/ supplemented PREP prospectus] or any amendment is available on SEDAR.***" after "***Investors should read the supplemented PREP prospectus and any amendment for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision.***".***

8. (1) This Instrument comes into force on •.

(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after •, this Instrument come into force on the day on which it is filed with the Registrar of Regulations.

ANNEX G

PROPOSED CHANGES TO
COMPANION POLICY 44-103CP TO NATIONAL INSTRUMENT 44-103 *POST-RECEIPT PRICING*

1. Companion Policy 44-103CP to National Instrument 44-103 Post-Receipt Pricing is changed by this Document.

2. The following Part is added:

PART 2A ACCESS TO SUPPLEMENTED PREP PROSPECTUSES

2A.1 Delivery Obligation – Securities legislation generally requires a dealer who receives an order to purchase a security offered in a distribution to deliver or send to the purchaser a copy of the prospectus or any amendment. Securities legislation generally requires a dealer who solicits expressions of interest from a prospective purchaser to deliver or send to the prospective purchaser a copy of the preliminary prospectus or any amendment.

In jurisdictions except British Columbia, under subsection 2A.3(2) or (5), a dealer must provide access to the supplemented PREP prospectus, the preliminary base PREP prospectus or any amendment to the documents in accordance with subsection 2A.3(3) or (6) of the Instrument to satisfy its delivery obligation under securities legislation, unless the document is delivered or sent pursuant to another procedure prescribed by securities legislation.

In British Columbia, a dealer is provided with an exemption from the requirement in securities legislation to send a supplemented PREP prospectus, the preliminary base PREP prospectus or any amendment to the documents if the conditions set out in subsection 2A.4(1) or (2) are met**.**

3. Section 3.3 is replaced with the following:

3.3 Rights of Rescission or Withdrawal – The securities regulatory authorities are of the view that statutory rights of rescission or withdrawal commence from the time of the purchaser's receipt of a supplemented PREP prospectus. It is only at this time that the entire prospectus has been delivered. If the supplemented PREP prospectus or any amendment is delivered or sent in accordance with Part 2A of the Instrument, statutory rights of rescission or withdrawal commence from the later of (i) the date the supplemented PREP prospectus or any amendment was filed on SEDAR, and a news release was issued and filed on SEDAR announcing that the document is available, and (ii) the date that the purchaser has entered into the agreement to purchase the security**..**

4. These changes become effective on ●.

ANNEX H

PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 51-102 *CONTINUOUS DISCLOSURE OBLIGATIONS*

1. National Instrument 51-102 Continuous Disclosure Obligations is amended by this Instrument.

2. The following is added after section 4.2:

4.2.1 Access to Annual Financial Statements

(1) A reporting issuer must issue and file a news release in accordance with subsection (2) unless the reporting issuer complies with paragraph 4.6(1)(a) or subsection 4.6(5).

(2) A reporting issuer that has filed its annual financial statements and MD&A for the annual financial statements on SEDAR, as required by sections 4.1 and 5.1, must issue and file a news release on SEDAR on the same day that it has filed the documents that states:

(a) in the title that the documents are available,

(b) that the documents are accessible at www.sedar.com, and

(c) the following

"An electronic or paper copy of the annual financial statements and MD&A for the annual financial statements may be obtained, without charge, by a registered holder or beneficial owner of the reporting issuer's securities, other than debt instruments, from [insert contact information for the reporting issuer] by providing the contact person with an email address or address, as applicable."**.**

3. The following is added after section 4.4:

4.4.1 Access to an Interim Financial Report

(1) A reporting issuer must issue and file a news release in accordance with subsection (2) unless the reporting issuer complies with paragraph 4.6(1)(b).

(2) A reporting issuer that has filed its interim financial reports and MD&A for the interim financial reports on SEDAR, as required by sections 4.3 and 5.1, must issue and file a news release on SEDAR on the same day that it has filed the documents that states:

(a) in the title that the documents are available,

(b) that the documents are accessible at www.sedar.com, and

(c) the following

"An electronic or paper copy of the interim financial reports and MD&A for the interim financial reports may be obtained, without charge, by a registered holder or beneficial owner of the reporting issuer's securities, other than debt instruments, from [insert contact information for the reporting issuer] by providing the contact person with an email address or address, as applicable."**.**

4. Subsection 4.6(1) is amended

(a) by replacing "Subject to subsection (2)***" with "***Unless the reporting issuer issues and files a news release in accordance with subsections 4.2.1(2) and 4.4.1(2)***", and***

(b) in paragraph (a) by deleting "paper***".***

Effective date

5. (1) This Instrument comes into force on **[**•**]**.

(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after **[**•**]**, this Instrument come into force on the day on which it is filed with the Registrar of Regulations.

ANNEX I

PROPOSED CHANGES TO
COMPANION POLICY 51-102CP *CONTINUOUS DISCLOSURE OBLIGATIONS*

1. Companion Policy 51-102CP Continuous Disclosure Obligations is changed by this Document.

2. The following is added after section 3.3:

3.3.1 Access to financial statements

(1) The news releases required by subsections 4.2.1(2) and 4.4.1(2) are intended to inform the registered holders and beneficial owners of the reporting issuer' securities, other than debt instruments, that the reporting issuer's annual financial statements and related MD&A, and interim financial reports and related MD&A are available on SEDAR.

(2) If a request for a copy of the financial statements is received from a registered holder or beneficial owner of the reporting issuer's securities, other than debt instruments, the reporting issuer must send a copy of the document requested to the registered holder or beneficial owner at the address or email address specified in the request by the delivery deadline set out in paragraph 4.6(3)(c).

3. Subsection 3.5(1) is changed by replacing the first sentence with the following:

Unless the reporting issuer issues and files a news release in accordance with subsections 4.2.1(2) and 4.4.1(2), subsection 4.6(1) of the Instrument requires reporting issuers to send a request form to the registered holders and beneficial owners of their securities, other than debt instruments..

4. This change becomes effective on **[•]**.

ANNEX J

PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 71-102 *CONTINUOUS DISCLOSURE AND OTHER EXEMPTIONS RELATING TO FOREIGN ISSUERS*

1. National Instrument 71-102 Continuous Disclosure and Other Exemptions Relating to Foreign Issuers is amended by this Instrument.

2. Section 3.2 is amended by adding "Except as provided in section 3.2.1,***" before "***If a person***".***

3. The following is added after section 3.2:

3.2.1 Access to Financial Statements and MD&A by Canadian Securityholders

(1) Despite section 3.2, a person or company may issue and file a news release in accordance with subsection (2).

(2) A person or company that has filed its financial statements and MD&A on SEDAR, as required by this Instrument, may issue and file a news release on SEDAR on the same day that it has filed the documents that states:

(a) in the title that the documents are available,

(b) that the documents are accessible at www.sedar.com, and

(c) the following

"An electronic or paper copy of the financial statements and MD&A may be obtained, without charge, by a holder of the person or company's securities from [insert contact information for the person or company] by providing the contact person with an email address or address, as applicable."

(3) If a holder of the person or company's securities requests a copy of the financial statements or MD&A from the person or company, a copy of the document must be sent by the person or company, within 10 calendar days and without charge, to the holder of the person or company's securities at the email address or address specified in the request.

(4) A person or company is not required to send a copy of the financial statements or MD&A under subsection (3) that were filed more than one year before the person or company receives the request..

4. ***Paragraph 4.3(d) is amended by adding "***or 3.2.1***" after "***section 3.2***".***

5. ***Paragraph 4.4(c) is amended by adding "***or 3.2.1***" after "***section 3.2***".***

6. ***Paragraph 5.4(c) is amended by adding "***or 3.2.1***" after "***section 3.2***".***

7. ***Paragraph 5.5(c) is amended by adding "***or 3.2.1***" after "***section 3.2***".***

Effective Date

8. (1) This Instrument comes into force on •.

(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after •, this Instrument come into force on the day on which it is filed with the Registrar of Regulations.

ANNEX K

PROPOSED CHANGES TO
NATIONAL POLICY 11-201 *ELECTRONIC DELIVERY OF DOCUMENTS*

1. National Policy 11-201 Electronic Delivery of Documents is changed by this Document.

2. ***Section 2.2 is changed by adding "***generally***" after "***Securities legislation***".***

3. This change becomes effective on •.

ANNEX L

PROPOSED CHANGES TO NATIONAL POLICY 47-201 *TRADING SECURITIES USING THE INTERNET AND OTHER ELECTRONIC MEANS*

1. National Policy 47-201 Trading Securities Using the Internet and Other Electronic Means is changed by this Document.

2. The following is added to the beginning of the third bullet in subsection 2.7(3):

"make an oral statement at the commencement of the road show that the relevant prospectus and any amendment is available on SEDAR, or"**.**

3. This change becomes effective on **[•]**.

ANNEX M

PROPOSED CHANGES TO
COMPANION POLICY 54-101CP TO NATIONAL INSTRUMENT 54-101
COMMUNICATION WITH BENEFICIAL OWNERS OF SECURITIES OF A REPORTING ISSUER

1. Companion Policy 54-101CP to National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer is changed by this Document.

2. Subsection 4.1(1) is replaced with the following:

(1) By completing a client response form as provided in Part 3 of the Instrument, a beneficial owner gives notice of its choices concerning the receipt of materials and the disclosure of ownership information concerning it. Pursuant to section 3.4 of the Instrument, a beneficial owner may, by notice to the intermediary through which it holds, change any prior instructions given in a client response form. Proximate intermediaries should alert their clients to the costs and other consequences of the options in the client response form. Unless the reporting issuer issues and files a news release in accordance with subsections 4.2.1(2) and 4.4.1(2) of National Instrument 51-102 *Continuous Disclosure Obligations* ("NI 51-102"), paragraph 4.6(1)(a) and subsection 4.6(5) of NI 51-102 requires reporting issuers to send annually a request form to the registered holders and beneficial holders of its securities that the holders may use to request a copy of the reporting issuer's financial statements and MD&A. Failing to return the request form or otherwise specifically request a copy of the financial statements or MD&A from the reporting issuer will override the beneficial owner's standing instructions under this Instrument in respect of the financial statements. However, a beneficial owner's standing instructions under this Instrument in respect of the financial statements will not be overridden if a reporting issuer issues and files a news release in accordance with subsections 4.2.1(2) and 4.4.1(2) of NI 51-102**.**

3. This change becomes effective on **[•]**.

Via email April 28th 2022

CSA NOTICE AND REQUEST FOR COMMENT PROPOSED AMENDMENTS AND PROPOSED CHANGES TO IMPLEMENT AN ACCESS EQUALS DELIVERY (AED) MODEL FOR NON-INVESTMENT FUND REPORTING ISSUER
CSA Notice and Request for Comment – Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers (osc.ca)

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British Columbia Securities Commission
Alberta Securities Commission Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

I greatly appreciate the opportunity to provide comments on Access EQUALS Delivery. First off, I don't understand the nomenclature. Imagine you order a pizza from a restaurant that offers free delivery. When nothing arrives, you find out that you must go to the restaurant website, check if your order is ready, then drive over and pick it up yourself and then take it back home to enjoy. In a nutshell, that's what the CSA is putting forward as the *modern* way to "deliver" important regulation-required disclosure documents to investors. There is a clear difference between "Available for pickup" and "Delivery" and attempting to fuse the two does not constitute a modernization of the disclosure process. This is a fake statement.

Worse, the CSA proposal says that if a news release has been made and posted on some website called SEDAR the CSA claim this means that delivery has actually

been achieved - that is not true except in the mind of a CSA lawyer. The dictionary defines *delivery* as **the action of delivering letters, packages, or ordered goods.** Will investors lose some legal rights if this false narrative is allowed to prevail? Having access to a news release in the cloud somewhere does not constitute notice. I doubt very much if the CSA has any investor research that agrees with these claims. Shouldn't regulations be based on evidence, facts, investor testing, behavioural finance and common sense?

I researched the word SEDAR and found it was a CSA managed site for disclosure information. How many retail /DIY investors know this? My Google search also revealed it is an antiquated site that is not very investor friendly. There is apparently an IT project (SEDAR Plus) to modernize it but I was unable to locate much information as to its features or when it will be open for business. Shouldn't this new site be operational before introducing a new scheme to notify and deliver financial statements?

Under the so-called modern approach to disclosure, investors will have to be on the lookout for news releases and then try to navigate the investor-unfriendly website.

Under the new scheme, shareholders of issuers adopt this *modern* form of "delivery" for Financial Statements will no longer annually receive request forms with which he/she can request copies of financial statements and related MD&A. To continue receiving copies of financial statements and related MD&A, those shareholders will need to provide standing instructions to their dealer (including discount brokers) or salesperson or request the documents on a one-off basis. *Modernization* means shareholders will not be prompted annually to request the disclosure documents and may not see news releases issued by the issuers that announce that financial statements and related MD&A are available! And this is good news, how? Why can't the CSA deploy technology to make the life of the retail investor easier, rather than harder? Has the OSC been unduly influenced by outside forces as recently reported by the Ontario Auditor General?

While the CSA scheme could reduce investor engagement, why not consider the 2020 comment letters where two distinguished consumer groups (OSC advisory panel and FAIR Canada) recommended electronic delivery ? They recommended that this model should be the default mechanism for **communicating** information **to** investors. They were of this view because electronic delivery improves the timely availability of information for investors and reduces the economic cost associated with delivery of paper documents. What happened to this sensible idea?

I am not sure how foreign investors will become informed of Canadian news releases.

The CSA should also factor in the browsing work cost that would be required for retail investors to find news releases. It seems we have a burden transfer issue with investors getting the short end of the stick. If the issuer's demands prevail and this scheme is made legal, the CSA education department should run educational sessions on it. A one year transition time should be permitted so people can acclimatize themselves to the changes. I also recommend that all issuers permitted to use this scheme be required to maintain a website that would direct investors to

a well-defined section of their website where all the required documents can be found and downloaded or printed.

The CSA should have a plan to ensure that those investors who do not have a computer or internet access (or just prefer paper documents) are aware of their rights and how to use those rights. Inclusion is very important for a modern socially responsible securities regulator.

The good part of the consultation appears to be that the CSA is not going to tamper with mutual fund disclosure (except to enhance) or any disclosure where shareholders get to vote (use their ownership rights) , such as proxies, exec comp plans , change of auditor or Board Directors . I am also delighted to see that the proposed CSA disclosure scheme does not remove an investor's ability to request documents in paper or electronic form or prevent an issuer from delivering financial statements and related MD&A based on an investor's standing instructions.
I assume all such requests will have to be honoured by issuers including TSXV issuers.

I am troubled that disclosure reform efforts currently under way during this period of economic uncertainty are concentrated on reducing disclosure obligations instead of improving the disclosures that need attention (e.g. Fund Facts), thereby enhancing transparency and, ultimately, trust for investors.

Hope this is helpful.

I would appreciate prompt posting of this comment letter on all CSA member websites.

Peter Whitehouse
PS. This document is being submitted to OSC in both the requested WORD format and the .pdf format as the chosen typefont may reproduce differently depending upon the fonts in the recipients computer.

Subject : Comments on access equal disclosure proposals

Attention: Secretary, Ontario Securities Commission

I am a retiree still active in investing. I do have a computer and internet access.I routinely use it for email and other tasks. But some things I prefer reading on paper rather than off a screen.

I came across this consultation by chance. The label “access equals delivery” caught my attention. How could that be ? If I order newspaper delivery and the newspaper tells me that I need to go to their website every day , enter my password to access the paper , I wouldn’t call that delivery. It’s access but not delivery. If they drop a paper copy at my front door, that’s delivery .

The same logic applies to this consultation. A news release which I’m unlikely to see , would only inform me where to go to access the document I was looking for. Then I would have to go to this SEDAR site, try to find the financial statement and read it online or download it to my PC. That is most certainly NOT delivery.

If the regulators do not believe these financial documents should be delivered , they should come straight out and say that. Perhaps the regulators believe that mere access to financial statements on the Sedar site or the company’s website is good enough disclosure for the investing public. Why do regulators require delivery of a Fund Facts document before sale/purchase ? Is this not inconsistent? Is make-believe delivery really top notch investor protection?

All this proposal does is make it harder and more time consuming for me to follow the stocks I own. Since the regulators are so keen on modernizing delivery , why not just have companies email me a copy or a direct link to the document? Better yet, why not just notify me via email when a document has been posted to this sedar site? If I want a paper copy, it should be easy for me ,as a shareholder, to order one from the company. The current system allows me each year to receive request forms allowing me to request copies of financial statements. That meets my needs just fine.

For me, modernization would directly inform me when a disclosure document is available and allow me to view it on the Sedar site or request a paper copy. The notification could be via email or regular mail. This is the KISS principle in action.

I notice that some companies don’t have a website. If the regulators mandated a website that had to host the financial disclosures , that would reduce the burden that would result from the proposed delivery system. They could simply email notify me when a disclosure was made if I sign up for the notification system. That isn’t high tech but it would work better than me spending time chasing down news releases.

The sedar website looks intimidating but perhaps it is easy to use . In any event, I would never arrive there unless I uncover the news releases which I do not know how to find. You’d think companies would want to make it easy for shareholders to obtain their financials and other information .Why make us jump hurdles?

Whoever dreamt up the access equals delivery system needs to spend more time with actual ordinary users, especially seniors , who have a lot of other things on their mind besides looking for news releases.

My retirement savings include the stocks and bonds in my accounts. I want to keep up to date on how they are doing financially and socially. If I want timely delivery of these documents , it seems to me as a shareholder owner, I shouldn’t have to be a hunter -gatherer in this day and age.

I trust you will find these comments constructive and useful.

Respectfully,

M. Ruth Elliott

Submitted via email May 2, 2022

CSA NOTICE AND REQUEST FOR COMMENT PROPOSED AMENDMENTS AND PROPOSED CHANGES TO IMPLEMENT AN ACCESS EQUALS DELIVERY (AED) MODEL FOR NON-INVESTMENT FUND REPORTING ISSUER
CSA Notice and Request for Comment – Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers (osc.ca)

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The Secretary, Ontario Securities Commission
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British Columbia Securities Commission
Alberta Securities Commission Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Thank you for providing an opportunity to comment on your access equals delivery (AED) proposals. I cannot support AED because SEDAR is awkward for retail investors to use, access does not constitute delivery, news releases are not easy to locate, the current system works, AED increases investor burden by increasing search time, electronic delivery is more effective than AED, issuer websites are not required to post filings and cost savings (apparently 99.5% of investors are NOT asking for paper delivery) are modest compared to the aggravation AED will cause retail investors.

Most retail investors have never heard of SEDAR. For those who have, many find SEDAR investor-unfriendly and archaic. See *The Totally Practical, Not Even Slightly Sarcastic or Frustrated, Investor's Guide to SEDAR* https://thedeepdive.ca/the-totally-practical-not-even-slightly-sarcastic-or-frustrated-investors-guide-to-sedar/ A modern 21st century approach would simplify navigation and would allow shareholders or potential investors to request notifications when certain disclosure documents were filed on the site. The proposed access model might be more palatable if SEDAR was brought up to contemporary standards. Why not modernize SEDAR before proceeding with AED?

I note that SEDAR lacks confidence in itself "**You should not assume that SEDAR or the Content on this Web Site will be error-free, timely, accurate, complete or that SEDAR or this Web Site will operate without interruption.**" Re https://www.sedar.com/terms_of_use_en.htm That doesn't inspire site usage.

News releases are not easy to track for the average retail investor – they really are an early 20th century approach to communications. Besides, investors are busy people, any disclosure model that adds to their workload is not an improvement.

Asserting that access equals delivery makes a mockery of the English language and is fundamentally untruthful. Investors should not be assumed to be acting on information if it was not delivered to them. In fact, under the proposals, it is far more likely than not, that retail investors will not be basing investment decisions based on news releases received from issuers. The CSA should not design a disclosure system that makes demonstrably false claims and could prejudice investor positions. All the AED model does is satisfy low CSA standards for disclosure "delivery" of financial reports and MD&A to the Public.

It does not appear to me that the AED model proposal is based on independent retail investor research. For example, the consultation states "*We think the proposed AED Model is especially well suited for these types of documents since investors are generally aware that the documents will be available on SEDAR".* These thoughts may or may not be accurate but how many retail investors are even aware of SEDAR? What about them? The CSA also believe that *"Investors can also predict when the documents will be available since they are subject to prescribed filing deadlines.".* Maybe some can, but wouldn't electronic delivery as proposed by an investor Panel associated with the Ontario Securities Commission be much better and less burdensome for investors? (https://www.osc.ca/sites/default/files/2020-11/com_20200224_iap-access-equals.pdf) That would be an effective use of technology and evidence of real modernization.

I couldn't find any research on Canadian investor disclosure delivery preferences but a 2019 FINRA funded US study **Investors in the United States A Report of the National Financial Capability Study** https://www.usfinancialcapability.org/downloads/NFCS_2018_Inv_Survey_Full_Report.pdf found that *"Investors prefer to have disclosures mailed to them as paper documents (36%), although this percentage has dropped considerably from 49% in 2015. Receiving disclosure documents via email is a close second (33%, up from 27% in 2015 ".* According to the CSA Consultation paper, I *understand that less than 0.5% of security holders requested to receive copies of financial statements and related MD&A in each of 2019 and 2018."* Why the disparity? Does the SEC promote disclosure better? Is EDGAR easier to use? Are Americans more investment savvy than Canadians? Do Canadians enjoy web searches more? In my opinion, the CSA needs much more investor research backup before proceeding.

Even if the CSA's understanding is correct, what impact will the new model have on this "tiny" percentage? [assuming, in round numbers, there are 20 million retail

investors, at 0.50%, this amounts to about 100,000 Canadians potentially impacted by the new disclosure model].

Electronic delivery would meet the needs of most retail investors. Implementing electronic delivery isn't exactly rocket science and it is more modern than news releases which have been around as far back as the early 20th century. SEDAR could be set up to provide alerts that would make use of modern technology. Dealers should make electronic delivery the default delivery choice, not paper.

Obviously, electronic delivery does not meet the needs of investors who prefer paper copies of disclosures or can't/won't use the internet. The AED model would have to ensure that it would be easy to make requests for delivery, provide standing instructions and make revisions. Mailing timelines should be enforced.

The statement "*An electronic or paper copy of the final prospectus or any amendment may be obtained, without charge, from [insert contact information for the issuer or dealer, as applicable] by providing the contact with an email address or address, as applicable."* should also include a toll-free telephone number.

To the extent issuers are concerned about the environment, they ought to consider using recycled paper for print disclosure documents.

Louis Morisset, CSA Chair and President and CEO of the Autorité des marchés financiers says *"The proposed access equals delivery model is intended to modernize the way documents are made available for the benefit of investors and issuers."* I therefore recommend that all issuers modernize by providing a website that would allow their shareholders and others to easily read, print or download financial statements, news releases and MD&A disclosures.

I agree 100% with the CSA not to mess with mutual fund/ETF disclosures or any document that allows investors to exercise their rights as shareholders.N0-Go zone.

I expect the modernized SEDAR website (whenever it finally appears!) will comply with Accessibility for Ontarians with Disabilities Act requirements) or equivalent law.

One final point: The CSA should step up its educational efforts on financial disclosure documents, why they are important, where to find them etc. It should be noted that ordinary Canadians are very interested in societal matters such as diversity, gender related issues, corporate governance, supply chains, use of child labour and of course, climate change risks. That's why MD&A delivery is important.

Permission is granted to publish this Comment letter on CSA member websites.

Sincerely,

Arthur Ross, Toronto

May 5, 2022

CSA NOTICE AND REQUEST FOR COMMENT PROPOSED AMENDMENTS AND PROPOSED CHANGES TO IMPLEMENT AN ACCESS EQUALS DELIVERY (AED) MODEL FOR NON-INVESTMENT FUND REPORTING ISSUER

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The Secretary, Ontario Securities Commission
Email: comments@osc.gov.on.ca

British Columbia Securities Commission
Alberta Securities Commission Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Thank you for the opportunity to provide input on this very important consultation paper.

I get the general concept that in the Information age it can be argued that there may be less need to physically deliver documents because they are accessible in cyberspace. Nevertheless, it is a stretch to say they were delivered (and imply they were received) simply by issuing a news release. I would accept that an email with a hyperlink to the applicable disclosure document constitutes delivery, but chasing down news releases does not.

The SEDAR website is still an unknown for many retail investors:
"Few retail investors are aware of SEDAR; and even fewer use it. Without automatic delivery of continuous disclosure information, or notification of updated information, few investors would find it. • 82% of investors either are not aware of SEDAR or do not use it" **-** *True North* Investor Quantitative Report https://www.osc.ca/sites/default/files/2021-09/com_20210917_51-102_broadridge.pdf More CSA investor education is needed.

In addition, the CSA should add the required features to make it easy for retail investors to navigate and use SEDAR. Until SEDAR is made user-friendly, AED **should not** be implemented.

As SEDAR is the critical infrastructure supporting AED, it should be effectively managed with a management team that will ensure continuous improvement, address user complaints and guarantee a very high uptime metric.

The long list of accountability disclaimers is disturbing especially given the fact that investors are directed there by the CSA. The SEDAR **Term of Use** state:" **THE ASC AND THE CSA RELATED PARTIES MAKE NO REPRESENTATIONS, WARRANTIES OR CONDITIONS ABOUT THE ACCURACY, RELIABILITY, COMPLETENESS, CURRENCY, QUALITY, TIMELINESS, SEQUENCE OR USEFULNESS OF THE WEB SITE**,…" What is an investor supposed to make of that statement? No one is accountable? Is it not fit for purpose? Is this an example of "modern" disclosure? The CSA should review these terms and adjust as befits a socially-responsible regulator.

The use of news releases is not 21st century communications technology. Why not give SEDAR a capability for investors to set up email notifications when an issuer filing has been made. This should be relatively easy to do. It would make getting issuer information much easier for Main Street.

Regulators encourage investors to read financial statements. See https://www.investright.org/informed-investing/know-your-investments/financial-statements-mda-a/ This encouragement should be met with a disclosure system that invites retail investor usage. I fail to see how the AED proposal does that.

The proposed AED model requires shareholders/ investors to closely track the news releases of specific issuers. I believe this chore can be partially mitigated if issuers offer shareholders/investors an opportunity to sign-up to receive issuer news releases with links directly connecting to disclosure documents on its website. The issuer would, therefore, *push* the information to investors which is actual delivery and congruent with regulatory intent.

There should be a connection to compliance/ enforcement to deal with those issuers that do not comply with applicable disclosure laws.

The foundation of modern shareholder relations is built on a high degree of transparency in order to enable issuer share prices in the market to fairly reflect their fundamental value. Issuers should therefore be required to maintain a website hosting their investor relations material. This will cut down on paper usage which is a positive for the environment. The location for disclosure materials including news releases should be prominent and easily navigable on the issuer's website.

For shareholders that want/need paper delivery, the AED system should make it free and simple to utilize and make changes to delivery choices.

Can investment dealers play a bigger role in making AED a success? I don't know the answer but I suspect there are opportunities for improvement.

CSA oversight of SEDAR management is required just like the CSA oversee the MFDA, IIROC and OBSI. There should be annual review of performance, user satisfaction metrics, strategic plans, development programs, cybersecurity and continuous improvement progress. The report should be made public.

The CSA and SEDAR management teams should work together to make disclosure documents, not just their delivery, match the needs and wants of the changing user base especially seniors, retail investors and ESG advocates. Inclusion should be paramount in CSA disclosure/ delivery policy design. The SEC has done some innovative work in this regard. AED is really yesterday's approach to disclosure.

Permission is granted for public posting of this letter.

Respectfully,

Stan Gourley

May 8, 2022

By simply providing access to a disclosure and notification - of its presence on SEDAR via a news releases - is not the best path to be effective for "inducing" shareholders to be engaged with their

investments. This would be no more than a 1970's approach. So why not use the current existing technology to speed delivery, while reducing its costs, ergo increasing "shareholder" participation?

I recommend a digital solution . This approach would give shareholders the option of requesting financial disclosures via email - also a default with paper deliveries remaining - as another option.

The CSA commitment to update and modernize SEDAR should be in place before implementing any changes to delivery. All reporting issuers should be required to maintain a website wherein

disclosure documents would be hosted . This would be a more natural site for the average retail investor to visit than SEDAR. A simple email notification alert subscription service would permit

Investors to be notified as to when a document has been posted. Paper delivery must remain an option. The website could also serve as a backup in case SEDAR went down due to a hacking.

software / hardware failure, or any power outages.

I believe that a "digital solution:" better meets the Investor/Shareholder pressing needs in a superior manner, while concurrently meeting the CSA Disclosure System's effectiveness objectives.

David M. Fieldstone, BA (Econ) LLB
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Access Equals Delivery May 10-2022

CSA NOTICE AND REQUEST FOR COMMENT PROPOSED AMENDMENTS AND PROPOSED CHANGES TO IMPLEMENT AN ACCESS EQUALS DELIVERY (AED) MODEL FOR NON-INVESTMENT FUND REPORTING ISSUER
CSA Notice and Request for Comment – Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers (osc.ca)

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Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

I appreciate the opportunity to comment on *access equal delivery* ("AED") for financial statements, the MD&A, and news releases. At the outset I am really shocked with all the very intelligent people involved with the Canadian Securities Administrators ("CSA") that this proposal is even being considered in its current form.

Before getting into my concerns, as an **IMPORTANT** initial step I recommend that investor testing be implemented before introducing AED. This testing (not a complete list) should exam investor preferences, usage of key documents such as the MD&A and financial reports, alternate methods used to obtain issuer information, barriers to usage etc. After all, my understanding is that the CSA is an advocate for investors and this proposal leaves investors totally in the dark.

First off, access **DOES NOT** equal delivery unless delivery is actually made. What about investors that do not have Internet access or where Internet access is very problematic? Imagine all investors hunting news releases which will tell them about information that all investors are then expected to search

SEDAR to locate. Do you really expect retail investors to access news releases for all the companies that they invest in on a predetermined frequency and read all news releases to see if there is information that they should be requesting? What guarantees are there that all investors will see all news releases? Are the CSA really expecting investors to research investment opportunities and additionally spend valuable time researching news releases? Is this what the CSA defines as investor protection or is this just caving in to a specific segment that is only interested is supposedly reducing costs and of course saying that they are concerned about the environment, which is what everyone says to attempt to justify all proposals.

How does this AED proposal relate to investor protection as I see no relationship to investor protection? If this information can be subject to AED, why not mandate all information subject to AED as there appears to be information inconsistency in the way information is communicated to investors. Why not just come out and say that companies do not want to send information out to investors anymore once they invest in them but are more than willing to provide information to get investors to invest as that may impact capital acquisition.

Let me be frank, from my personal perspective, this proposal will make it harder and more time consuming for me to follow the investments I own as currently proposed. In fact, it will cause me to reduce the quantum of my investment holdings and move the capital to investment vehicles where the information is provided, trust me they do exist. Why not require companies email their investors either an electronic copy or a direct hyperlink to the document(s) that by the way should reside on their own websites? Alternately, why not email investors the hyperlink to the documents on SEDAR as SEDAR is not that easy to navigate as I have used SEDAR before and it can be very daunting to vulnerable investors? Either of the two proposals is far more efficient and effective for investors than requiring investors to scan news releases for information and is the KISS principle in action.

Consequently, to effect and ensure true delivery, I recommend that an email and/or text message be sent to all investors who want delivery of the designated documents. The message should contain the document and/or a hyperlink to where it can be found and downloaded. That is a modern, efficient, effective, environmentally responsible and reliable method of ensuring delivery. Requiring shareholders to hunt down news releases is not the way forward.

Furthermore, even if the ("CSA") deems that delivery has been made, it should not be assumed that it has been received by the investor. Hunting news release(s) does not in any stretch of the imagination constitute access, notification, or delivery from any logical viewpoint. I strongly recommend that the CSA move away from the deemed delivery idea since it is manifestly wrong and is not supported by any investor research / testing. It is certainly not the average Canadian's interpretation of the word *delivery.* In addition, for example, it is not even the dictionary definition of delivery that can be found at hyperlink https://www.dictionary.com/browse/delivery. The stroke of the CSA pen does not change the English language dictionary of delivery or investors understanding of what delivery actually means. All provincial legislatures should ensure that never happens.

It also seems strange that issuers would expend so much time, effort and cash preparing the applicable documents and then not really want to ensure the documents actually reach the shareholders, the owners of the respective Company.

I note that the CSA expect that those security holders that have historically requested copies of financial statements and related MD&A will continue to do so under AED for Financial Statements which suggests

that printing and mailing costs will not decline from this component of the shareholder base which is the basis for the AED proposal. Document copy requests might even increase if investors are unable to effectively use the controversial news release "delivery" approach. If so, this could impact the Ontario Securities Commission ("OSC") cost-benefit analysis in the direction of maintaining the status quo or a better disclosure alternative. Investor testing and surveys can help improve the quality of the cost-benefit analysis. It seems to me that a basic criterion for a modern issuer would be for it to maintain a website with a prominent investor relations section. The CSA proposal, as it stands, does not mandate such a website.

I am relieved to note that, despite industry lobbying, the CSA is not moving ahead with watering down mutual fund or ETF disclosure rules OR disclosure documents that prompt timely or important shareholder action. Even "burden" reduction has its limits.

SEDAR

The Terms of Use, last updated 8 years ago, should be reviewed to ensure they are congruent with current practices and laws.

The website should provide a mechanism for users to file complaints and / or suggestions for improvement.

The identities and contact details of the senior executives responsible for the operation of SEDAR should be posted on the website

I don't think anyone disagrees that SEDAR has not kept up with IT or internet technology. I strongly recommend cleaning up SEDAR **before** implementing any changes to the disclosure document delivery process.

I strongly recommend that paragraph 8 modification to the SEDAR Terms of Use be deleted. The Alberta Securities Commission ("ASC") should not have the right to discontinue and /or suspend a national public interest website in whole or in part, at any time, without prior notice to users or approval of other provincial securities commissions. This would be even more important if the AED proposal is implemented.

CONCLUSION

I **DO NOT** agree that news releases will be effective in notifying retail investors of the posting of a regulatory disclosure. As the current system is working, why fix it unless a superior system, such as electronic delivery, replaces it? This aspect of the AED proposal needs to be supported by publicly disclosed independent empirical research.

An enhanced modernized SEDAR needs to be implemented to have a posting notification service before AED comes into force. More importantly, all issuers should be required to maintain an investor section on their respective website where shareholders can easily access any / all financial disclosures including press releases

If AED is implemented, investors **MUST** be forewarned and educated on AED and given, for example, a year, to make adjustments of their preferences.

Issuers that do not comply with their AED obligations, such as they are, should be sanctioned by enforcement, which I know will most probably never happen as the CSA's main stakeholders are the issuers.

The bottom line is that the AED proposal is currently not ready for implementation until many improvements are made. If the CSA is looking to improve retail investor disclosure, it should improve Fund Facts, stop investment funds from greenwashing, and enhance its process for uncovering and penalizing through active enforcement, misleading financial disclosures.

Permission is granted for posting this communication on CSA member websites and / or on the CSA website in the document entirety, not excerpts thereof.

Thanks for your attention to this matter.

Rick Price

Kenmar Associates

Sent Via email May 17, 2022

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Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

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Kenmar Associates is an Ontario-based privately-funded organization focused on investor education via on-line research papers hosted at www.canadianfundwatch.com . Kenmar also publishes the Fund OBSERVER on a monthly basis discussing consumer protection issues primarily for retail investors. An affiliate, Kenmar Portfolio Analytics, provides pro bono assistance to consumers and/or their counsel in filing investor complaints and restitution claims.

Kenmar are disappointed that we must again comment on CSA's *access equals delivery* (AED) [Self-*Serve internet enabled access model*] proposal. We are frustrated that a consultation is taking place before SEDAR+ has been put into service and tested, its new features delineated for commenters (it has been two

years since the 2020 consultation) and there is no consumer usage experience with the new technology platform. We are surprised that this material proposed change in disclosure delivery is being contemplated at this time, in the midst of a pandemic and a record number of novice DIY investors.

We take this opportunity to compliment OSC staff for quickly and effectively responding to our many questions.

Commentary on CSA AED proposal

This attempt to conflate the concepts of "delivery" and "disclosure" is confusing and, in our view, will constitute a disservice to many retail investors, including some of the most vulnerable.

The presumption is that access is possible, but technology fails and the proposed AED model simply presumes access is happening at all times for everyone.

Kenmar appreciate that the digital world is here for most Canadians. Electronically filed documents have the potential to allow more efficient review than paper. Reducing paper document usage is environmentally responsible. There is an opportunity here for positive change, but not every change is an improvement. Any decision to transition to AED must be based on facts, evidence, research, logic, investor testing, fundamental fairness and principles to all stakeholders. See REFERENCE 1 for one example of disclosure principles.

The consultation paper notes that a majority of commenters expressed general support for implementing an *access equals delivery* model and a majority of commenters expressed support for prioritizing implementing an access equals delivery model for prospectuses, annual financial statements, interim financial reports and related MD&A. This is true but of little statistical consequence since, as is typical, only a small fraction of commenters are retail investors/shareholders or investor advocacy groups. Just 5 of the 27 comment letters came from this segment. The scarcity of retail investor input can sometimes be mitigated by empirical research, but the consultation paper does not reveal such research. [The Comment letter of the OSC IAP (https://www.osc.ca/sites/default/files/2020-11/com_20200224_iap-access-equals.pdf) was not on the list of comments received. We nevertheless assume its recommendation for electronic delivery was considered but set aside by the CSA.]

The CSA proposal implements an "access equals delivery "model for prospectuses generally, annual financial statements, interim financial reports and related management's discussion & analysis (MD&A) for non-investment fund reporting issuers. According to the accompanying News Release *"The proposed access equals delivery model is intended to modernize the way documents are made available for the benefit of investors and issuers."* Currently, an issuer is required to annually send a request form to the shareholders of its securities, other than debt securities, so they can request paper copies of financial statements, Annual Report and related MD&A. This is crystal clear notification of the shareholder's right to be sent and

receive disclosure documents. **Under AED, Financial Statements Securityholders will no longer annually receive request forms with which the securityholder can request copies of financial statements and related MD&A.** When the ability of investors to receive important information in their preferred format/manner is at stake, there should be an extremely high bar for altering the method of delivery. We are not convinced AED meets that bar.

The CSA believe an AED model could benefit both issuers and investors. This model, it assets, could further facilitate the communication of information by enabling issuers to reach more investors in a faster, more cost-effective, and more environmentally friendly manner. The CSA assert, but do not provide objective evidence, that SEDAR provides ease and convenience of use for investors, allowing them to access and search for information more efficiently than they would under the current system. We would appreciate seeing any surveys, tests, fundamental research or analysis that backs up the CSA assertion that AED Model is designed to actually reach more retail investors than the existing notice-and-access system.

Kenmar recommend that the front page of all disclosure documents issued (including those under the AED model) should contain a prominent BOLD faced note that the document is available without cost in paper or electronic form upon request.

There is little transparency concerning the SEDAR site. We have no idea who manages it, how dependent it is on third party software, what backup plans it has regarding cyberattacks or power outages or why a mission -critical national website feels it is appropriate to state: *"The SEDAR trade-mark, www.sedar.com domain name, and related words and logos are trade-marks and/or trade names of the ASC (collectively the "ASC Trade-marks")…"* **Kenmar recommend that the CSA provide increased visibility on SEDAR and amend the Terms of Use and ownership to the point where stakeholder confidence in SEDAR is justified.**

Under AED, the idea put forward states that an issuer is considered to have effected disclosure delivery to an investor once: the document is filed on the System for Electronic Document Analysis and Retrieval (SEDAR), and where applicable, a news release is issued and filed on SEDAR indicating that the document is available electronically and that a paper or an electronic copy can be obtained upon request. The stated ***benefit* for issuers** in using AED for Financial Statements is that they will not need to annually copy and mail request forms to their shareholders and keep track of request forms returned by them.

However, shareholders will continue to be able to request paper copies of financial statements and related MD&A, either on an individual basis or by giving standing instructions to the issuer or its intermediary (investment dealer). An issuer's use of the AED Model would not override any standing delivery instructions given by a shareholder. [An issuer would not be required to issue such a news release if it (i) annually sends a request form to shareholders (other than debt securities) to request paper copies of the issuer's financial statements and related MD&A, or (ii)

sends copies of the annual financial statements and related MD&A to all shareholders within 140 days of the issuer's financial year-end.]

This proposed AED model does nothing to modernize or improve access or delivery for the benefit of investors/shareholders .Under the prevailing model, investors already have access to SEDAR and can request copies in paper or electronic format. If they do not make a request, they are NOT deemed to have been delivered a disclosure; they have merely decided not to request or receive a disclosure.

Under the proposed model, investors are deemed to have been delivered a disclosure even though issuers have not, in fact effected delivery or confirmed receipt. AED thus creates a situation that could disadvantage investors in the event an investor later finds a deficiency or a material omission in a disclosure. There could be unintended legal ramifications for investors that we are unable to quantify at this time.

We think the CSA is intending to say that AED will permit issuers to satisfy the CSA's regulatory intent of disclosure for the defined documents- to make selected disclosure documents available to investors via the news- release/ SEDAR mechanism. AED would permit issuers to claim they have satisfied CSA regulatory delivery requirements for disclosure even though investors would not have been delivered any disclosures.

Kenmar are not aware of any way for retail investors to be sure that they become aware of issuer news releases in a timely manner and in a way that they can distinguish them from other news releases. Furthermore, there is no mechanism currently offered through SEDAR by which an investor might subscribe to alerts that a SEDAR filing (e.g. a news release) has been made.

To help ensure investors are kept aware of their right to request copies of financial disclosure documents, Kenmar recommend that the CSA should require a prominent statement, on an annual basis, of their ability to request paper or electronic copies of disclosures in the annual proxy materials to this effect.

The consultation paper states *"The proposed AED Model offers benefits for both issuers and investors."* but we could not identify any incremental benefit(s) resulting from AED for investors that they do not have today. Indeed, there are some downsides of the AED model for Main Street investors.

For one, AED requires investors to closely follow the news releases of specific issuers. The problem with AED arises when the retail investor is unaware of the news release (or cannot navigate SEDAR) and therefore cannot request paper copy. In our experiences with retail investors, we find that news releases are not the normal method by which Main Street investors/shareholders access disclosure information. See **APPENDIX I: Disclosure –dependence on news releases** for more details.

Any news release must include the name of the disclosure document(s) being issued with hyperlinks directly to these documents, highlight any timing considerations an investor should be aware of with respect to the document, articulate any applicable rescission/withdrawal rights as well as a form to request paper copies if desired and full contact information including a toll-free telephone number. Paper copies should be delivered within a CSA defined timeframe [When an issuer delivers a disclosure by email with a hyperlink to the disclosure, the email should state that the client will not be asked to provide their personal financial details online (e.g. to access the disclosure). This is to mitigate the risk of phishing.]

Delivery methods, such as "access equals delivery," that require investors to seek out the information all but guarantee that only the most financially sophisticated and technologically adept individuals will receive information that the CSA deems to be important investor information. AED could result in a significant diminution of investor education, engagement and protection.

Other opportunities for cost savings and efficiencies that might better enhance, rather than compromise, the quality of investor disclosure communications through the adoption of existing digital solutions should be considered.

Kenmar recommend that the default delivery for brokerage accounts be set to digital delivery, with investors having the option to select paper copies within the brokerage account or opt out. Investors however should not be compelled to provide an email address in order to open an account.

Kenmar recommend that the CSA and IIROC financial literacy initiatives prioritize investor education on the importance of disclosure documents, how to access them on SEDAR and how to use them effectively.

There is no CSA requirement for issuers to maintain a website or even if they do, to post the news release on their website. Is this modern digital delivery/disclosure? We note that the respected Canadian Bar Association recommend that issuers should have a digital presence where all their relevant information is available. https://www.cba.org/CMSPages/GetFile.aspx?guid=57dd7f08-26fd-444c-af36-9ddd5a679bcc The Canadian Investor Relations Institute representing professionals in investor communications also supports a mandatory issuer website where the documents should be posted in the section that houses all investor-related information. A website is so basic and inexpensive in this day and age that every reporting issuer should have one. **Kenmar recommend that ALL issuers be required to maintain a website that would provide straightforward access to the disclosed documents.** Shareholders will find this much better than hunting around for news releases. The site should have an investor notification alert option to inform when a new disclosure document has been posted.

The AED model is not really disclosure delivery at all for retail investors. It is a gross misrepresentation of reality. The CSA claim that access equals delivery does not make it so any more than a fund Company labelling a fund as ESG when it is

not. **We challenge the legal right of the CSA to make laws and regulations that are based on a falsehood.**

Current regulations provide that "delivery" can generally be satisfied through electronic distribution, provided:

- the investor receives notice that the document has been, or will be, delivered electronically.
- the investor has easy access to the document.
- the document received is the same as the document delivered and
- the issuer has evidence that the document has been delivered.

Current policy allows for notice-and-access. Notice and-access reflects the fundamental principle of pushing information to investors rather than expecting them to know when the information is available and requiring them to take steps to obtain it. This is behavioural finance 101. Although electronic delivery is already permitted, and despite the guidance provided in NP 11-201 and the introduction of the successful notice-and-access model, the Consultation Paper expresses a concern that some issuers continue to incur costs associated with printing and mailing documents required to be delivered under securities legislation. Is this because these issuers have poor cost controls or because their shareholders prefer receiving printed/digital documents or both?

Current disclosure policy and practices seems to be working reasonably well for those investors/shareholders who choose to use it. It is our understanding that this model will be permitted to continue as an alternate to AED.

The AED proposal assumes that average Canadian retail investors/shareholders can predict when the documents will be available because the disclosures are subject to prescribed filing deadlines. Do most retail investors track these deadlines? Are issuer disclosure dates top of mind for investors during these troubled times? Does the CSA believe that COVID-19 has not had an impact on Main Street investors? In fact, COVID-19 has added to mental health issues with the Survey on COVID-19 and Mental Health (SCMH) indicating that one in four (25%) Canadians aged 18 and older screened positive for symptoms of depression, anxiety or posttraumatic stress disorder (PTSD) in spring 2021. **We do not recommend that the CSA should assume retail investors are focussed on disclosure filing dates in establishing delivery/disclosure policy without investor testing.** In our opinion, the AED proposal needs to be supported by more research or amended.

Kenmar are relieved to see that the proposed AED Model does not remove an investor's right to request documents in paper or electronic form or prevent an issuer from delivering financial statements and related MD&A based on an investor's standing instructions. **The CSA needs to ensure that investors are made aware of their right to request delivery of disclosure documents and how to make the request other than via the news releases. Issuers must make the process of requesting and receiving paper/electronic copies (the right to "opt-in") seamless to investors.**

The enforcement powers of CSA members should specifically extend to instances where paper copies are not easily accessible.

Consideration should be given to allow issuers/ dealers to deliver just one copy of the disclosure document where the same security is held in multiple brokerage accounts. This practice would reduce the costs of delivery and reduce investor frustration dealing with excessive notifications. [As part of its modernization project, the CSA should also consider permitting all listed companies to web-cast their annual meetings. This could help increase retail investor engagement and reduce costs.]

Another opportunity to reduce paper usage could be the delivery of the Annual account cost and performance reports by email with paper delivery as an option. These are currently delivered exclusively by mailed paper reports.

Under AED, retail investors may find it more difficult to file complaints against issuers since they will be deemed to have received disclosure information although no actual delivery has taken place.

The proposal implicitly assumes that non-domestic domiciled retail investors can and will access news releases by Canadian issuers, and are aware of SEDAR. We are not confident that this assumption is valid. Again, this implicit assumption needs validation.

Under the CSA proposal, retail investors/shareholders, typically holding a diversified portfolio of about 15-20 investments, would need to be constantly on alert re: the timing of 20 or more news releases and bookmark the applicable website links. In our view, the proposed CSA approach unduly shifts the so-called regulatory "burden" from issuers to investors.

We cannot identify any new benefit for retail investors from adoption of the AED model. It is possible, perhaps likely, that investor engagement/ due diligence will decline as a result of AED. The OSC cost-benefit analysis suggests that reduced delivery expenses are net savings for issuers but there is no analysis of the "costs" or effect of following news releases on retail investors.

With regard to the question re the burden related to the requirement to issue and file a news release ,we cannot comment. The consultation Paper estimates that 65% of the 1994 TSXV listed issuers do not currently issue news releases to announce the availability of their financial statements and would incur ongoing additional costs of approximately $1,500 to issue and file a news release, or $6,000 per year, in connection with using AED for Financial Statements. If these TSXV issuers find this expense excessive, they should retain the current disclosure model. **If TSXV listed issuers select the AED option, they should be required to not only issue a news release but maintain a website where the news release can readily be found.**

Prospectus delivery

The *benefit* to issuers who elect to use AED for prospectuses is that they will not need to make copies of preliminary prospectuses and final prospectuses and pay for those copies to be sent to prospective purchasers and purchasers .For prospectuses, we agree that, since prospective purchasers have either indicated an interest in purchasing under the distribution without having been solicited or solicited to purchase under the distribution, they can readily request a free paper or PDF copy via email of the preliminary prospectus. Equally, purchasers that order or subscribe for securities can readily request a copy of the final prospectus without charge. We do not envision a major investor protection issue in such cases for securities, other than investment funds (Fund Facts).

Investment dealers and Registered representatives recommending new issues must comply with CFR and other protective regulations which may provide the necessary level of retail investor protection for advised investors.

That being said, we believe CSA Policies should focus on encouraging issuers' use of digital platforms and investor adoption of these notification and *push* technologies. The CSA should not assume that all prospective purchasers are sophisticated investors and are able to access the preliminary prospectus and final prospectus easily through SEDAR. Retail investors who use discount brokers (no personalized advice) may or may not be sophisticated or experienced. The more forward-thinking OEO dealers hopefully will provide digital notification/access.

We are relieved to see that AED will not apply to a prospectus offering of investment fund securities. Kenmar are concerned that there are forces at play that want to expand the scope of AED to mutual fund disclosure documents (aka regulatory "burden" reduction). Kenmar fought for years for Fund Facts (effectively a prospectus) to be **delivered pre-sale** to people who were sold mutual funds. We fought for MRFP disclosure and annual cost/performance reporting delivered to investors. With about $2 trillion invested in mutual funds, we view the AED Model and associated regulatory thinking as an emerging threat to mutual fund investor protection in Canada.

MD&A delivery and disclosure

Per the consultation paper:" *We **think** the proposed AED Model is especially well suited for these types of documents since investors are generally aware that the documents will be available on SEDAR."* Yet empirical research raises questions.

The True North Canada Investor Quantitative Report, July 2021 found that 94% of investors wish to either receive corporate issuers' Management Discussion & Analysis ("MD&A") automatically (52%) or be sent a notice of its availability (42%); 66% of those who prefer notification, would like to be notified by e-mail.
https://www.osc.ca/sites/default/files/2021-09/com_20210917_51-

102_broadridge.pdf (Reference 5 is highly recommended reading for CSA decision makers).

This Broadridge empirical research does not support some of the CSA thinking regarding the use of SEDAR by Main Street investors/shareholders.

We found other empirical research that retail investors want to receive disclosures or be notified as to availability (Investors in the United States: A report on the national financial capability study: FINRA https://www.usfinancialcapability.org/downloads/NFCS_2018_Inv_Survey_Full_Report.pdf). We were unable to locate any research or retail investor surveys indicating retail investor support of AED for disclosure. If the CSA has access to such research, it should be made public

The MD&A is being increasingly used for much more than financial disclosure. See ESG Disclosure in Canada - Legal Requirements https://www.fasken.com/en/knowledge/2021/02/esg-disclosure-in-canada-legal-requirements-voluntary-disclosure-and-potential-liability

The CSA should reconsider using AED for the MD&A delivery based on available empirical investor research. Digital delivery would be an acceptable alternative for a large majority of retail investors.

Right of rescission/withdrawal

According to the proposal, the right to rescind, an agreement to purchase a security provided to a purchaser under securities legislation may be exercised within 2 business days after the later of (a) the date the document is received in accordance with subsection (4), and (b) the date that the purchaser has entered into the agreement to purchase the security. A cross-reference on the front page of a prospectus utilizing the AED Model is required to alert investors to the section of the prospectus that explains how the withdrawal right period is calculated under the AED Model.

Any concerns we might have are mitigated in the belief that professional advisers, regulated Dealer due diligence and the watchful eye of CSA members will prevent and/or detect misrepresentations and omissions.

Time-sensitive/action-required disclosure document delivery

The consultation Paper states *"**At this time**, we are not proposing an access equals delivery model for the delivery of documents that require immediate shareholder action and participation, such as proxy-related materials and take-over bid and issuer bid circulars."* All of this information, whether disseminated by news release or posted to an issuer's website and on SEDAR, may not reach the intended recipients in time for responsible consideration and action. We cannot envisage any scenario when there is a time-sensitive aspect to a disclosure where AED would be appropriate or suitable. **Kenmar are convinced that the AED model is wholly**

inappropriate for proxy-related materials and other disclosure documents on which investors rely to exercise their rights as shareholders and which require action on the part of shareholders within a specified timeframe.

Concern over voting rights

Voting is one of the key mechanisms that investors have to exercise oversight over the companies in which they are invested and therefore it is important for companies to be required to continue to provide notice to shareholders to facilitate shareholder participation in votes on both routine and special resolutions. It is the responsibility of issuers to proactively ensure that all shareholders are made aware of voting events and have timely access to the information they need to exercise their voting rights. Having clear communication in this regard, would prevent issuer companies from seeking to manipulate voting outcomes through reduced shareholder participation.

In the notice-and-access model, retail investors are sent both the notice and the Voting Instruction Form which includes the resolutions and agenda items to be voted upon. This information promotes investor action and participation which must surely be behind regulatory intent. It is very difficult to see how an AED model would ever be consistent with regulatory intent and protection of voter rights.

While not a topic directly related to this consultation, it is worth noting that manufactured products like mutual funds, actually are doing most of the shareholder voting that impact corporate behaviour and governance .This has a direct impact on Canadian shareholder democracy. For example, see Mutual fund board connections and proxy voting – ScienceDirect https://www.sciencedirect.com/science/article/abs/pii/S0304405X19301126 It is a Public interest topic that deserves to be on the CSA's priority agenda as the influence of ETF's and mutual funds on Canada, Canadians and issuers continues to grow.

The OSC Cost- Benefit Analysis (ANNEX N para 6.)

The Ontario Securities Commission is required to effect a cost- benefit analysis on new legislation such as AED. An analysis of this kind would require fairly detailed information on industry expenses for printing and mailing the relevant documents. This information is not generally available to OSC staff so that the analysis is very difficult to do. In all fairness to OSC staff, they are being asked to do the impossible without detailed cost data and investor testing.

Furthermore, it can be extremely difficult to cost- justify some investor protection initiatives. Sometimes, as with disclosure, common sense and basic principles are required to maintain/ enact legislation to protect retail investors [no doubt car manufacturers find it a "burden" to install seat belts but transportation regulators have decided otherwise].

The C-B analysis is an attempt to weigh the costs of introducing AED vs. the benefits expected to be derived. The cost benefit analysis considers the cost of implementing AED which basically is nil for most issuers since they already issue news releases. The benefit is that they will no longer need to mail out annual notices to shareholders informing them of their right to have reports mailed to them. The problem is that the model being assessed is regarded by some as inferior to the notice and access model in effect today i.e. the "burden"of regulation is being shifted to shareholders who receive no benefit from AED.] What are the "benefits" of deeming delivery even if it has not occurred? None for Main Street.

Why is the request percentage so low? We don't know .What is the magnitude of the printing and mailing issue in dollars and cents for TSX listed issuers? For TSXV issuers? We don't know. Is the expense trend increasing or decreasing? We don't know. Do retail investors favour digital delivery? We don't know but limited research suggests they do. Will investors have faster access to financial disclosures? We don't know. CSA assumptions, conjectures, thoughts and beliefs are not adequate evidence to justify AED in our view.

Per the Consultation Paper *"For those CF issuers that are reporting issuers and that are not investment fund issuers , the use of AED for Financial Statements does not impose additional financial burden and saves them from annually sending a request form to security holders*". What is the impact of this change on the retail investor? What burden is placed on shareholders as a result of AED? If negative, what can the CSA do to mitigate?

Current regulations permit de facto AED. The proposed access equals delivery model only **removes** requirements for the provision of specific notification that materials are available and that copies can be requested. It in no way enhances investor accessibility to those materials.

Those entities, typically institutions/ professionals, who do not wish or need to receive delivery of disclosure documents ("AED advocates") can simply not sign up for any delivery. We expect *AED advocates* already make use of SEDAR and/or routinely visit Company websites, so much of the hoped for printing/ postage savings for this investor class are currently captured by issuers. Therefore, any cost savings resulting from this proposal may be relatively modest and incremental.

The CSA expect that those retail investors currently requesting paper delivery of financial statements would continue to do so under AED- if the prevailing pattern remains, there will thus not be any material printing/postage cost savings derived from this demographic. However, there may even be a downturn in demand for delivery if AED is implemented. Has the CSA adequately assessed this unintended consequence on investor protection?

What we have in the cost-benefit analysis is some idea of costs but no overall estimate of the total cost in dollars in cents to issuers of printing and mailing each of the relevant documents. Furthermore, there are no qualitative or quantitative benefits or AED "costs" for retail investors cited in the analysis.

The analysis did not consider the risks associated with AED. In particular, we are concerned that AED will reduce investor and shareholder use of disclosure filings. We assume that such a reduction would be in opposition to CSA regulatory intent and strategy.

The published analysis did not consider alternatives to AED like Digital Delivery Equals Delivery (DDED). If it had, we suspect it would yield a superior cost-benefit ratio (depending on one's definition of *benefit*).

The C-B analysis did not claim to improve **inclusion;** we opine AED could actually reduce investor engagement and inclusion.

Overall, we conclude that the AED C-B analysis presented does not make a convincing case for regulatory change, especially considering the well-known SEDAR deficiency issues and how well notice-and-access is working.

The CSA SEDAR+ project and AED implementation

While institutional investors and professionals may have other electronic tools that facilitate searching for specific company filings (and alert them to new filings), retail investors need to rely on searching the aging SEDAR website.

The current SEDAR system has been allowed to become outdated, user-unfriendly, and in need of enhanced capabilities. It is our understanding that even some institutions/professionals currently pay private firms to receive the alert service. SEDAR is incongruent with the role of a 21st century securities regulator promoting modernization.

The CSA states that it is committed to modernizing disclosure delivery and access. Building a system with improved features, such as a browser-based interface, enhanced search capabilities and investor notifications/alerts will improve the investor experience and could increase investor/shareholder usage. There is currently no mechanism through SEDAR by which a person might receive alerts that a SEDAR filing has been made. Recognizing its deficiencies, securities regulators are working to improve SEDAR to provide better functionality through a modernized user interface, with search function improvements and harmonized processes for all filings and enhanced cybersecurity and privacy management. But right now, SEDAR is not retail investor friendly.

Kenmar are of the view that a modernized SEDAR must be a condition placed on AED introduction since the technology is readily available and the need for improvement is obvious.

We are of the firm conviction that the CSA via SEDAR should provide a free service for investors to subscribe for real time notification of SEDAR filings by issuers as a condition for implementing the AED model.

SEDAR Terms of Use must be updated to ensure they are fair and reasonable and not a barrier to usage.

SEDAR+ should not be looked at as a one- off project so that in 15 years from now we are again looking at another out-of-date site. It should be run like a tech business where annual budgets are used for continuous improvement of the system, and make it more than just a digital library.

Kenmar recommend rapid acceleration of the SEDAR+ project and the production of plain language investor educational materials (including video) on how to navigate and utilize SEDAR.

SEDAR is a mission- critical support system**. We recommend that SEDAR cybersecurity be validated on a defined frequency and that there is adequate backup power available in case of a power outage.** In the event of SEDAR unavailability, investors could refer to the issuer website where news releases and other disclosure documents should be available.

Kenmar recommend that the approach used by SEDAR management to provide quality control and system integrity of SEDAR be publicly revealed (i.e. governance, Public interest).

See also **APPENDIX II: A note on SEDAR usage by retail investors**

Digital disclosure equals delivery ("DDED") Model

Kenmar propose email notification to retail investors to effect delivery as an alternative to AED (subject **of course to investor testing**). This will ensure that disclosure documents are actually "delivered". Based on our experience, news releases are not the method by which the average retail investor typically accesses mandated issuer disclosure information. Furthermore, we believe that the estimated recently added million novice DIY investors would be better served with a Digital Delivery Equals Disclosure model. DDED could be harmonized with the existing "notice and access" regime for communication with shareholders

News releases should not be the exclusive source of notice- they must be supplemented or replaced by email (or other suitable technology) notification to investors.

DDED election could be an annual requirement (including any changes or modifications to e-mail address or other relevant contact information).

Actual delivery by email (with a hyperlink to a document or with the document attached) should be the default disclosure delivery option with paper delivery as a no cost option. DDED reflects the fundamental disclosure principle of pushing requested information to investors who elect DDED rather than expecting them to know when the information is available or take additional steps to find it.

This digital delivery model recognizes that an electronic address can be just as appropriate for communications and regulatory document delivery as a postal mailing address. In fact, the process of handling bounce-backs of e-mails compares favorably to the physical mail process, which can take days or even weeks for returned or undelivered mail to be received by the firm.

Investors who may be traveling, on vacation or employed away from their home address (e.g., military personnel or remote or traveling workers), can easily obtain notice and access to their disclosure documents via DDED.

Kenmar is supportive of the DDED model with the added right of investors to readily request free paper document delivery if they so choose. This approach accommodates those investors who prefer digital disclosure delivery since they will still have access but will not be burdened by having to navigate SEDAR (or company websites) or monitor news releases and issuers will not (with some exceptions) have to print and mail disclosure documents for those who elect DDED. DDED thus avoids the printing and postage costs, improves the environment **AND** is investor/shareholder friendly.

Efforts by the CSA to encourage digital delivery could yield additional savings to Canadian issuers without the negative impact that AED could have on investor awareness of important information and effective access to it.

A progressive move to DDED and a more responsive SEDAR system will make for an effective and cost-efficient disclosure and delivery process. Why aggravate the advocacy community for such a relatively minor issue as printing/postage costs? Better to devote regulatory attention to more important, longstanding investor protection issues as a binding decision mandate for OBSI, enhanced Fund Facts disclosure or a modern Client complaint handling regulation.

We recommend that the CSA move forward with modernizing disclosure practice to allow for the digital delivery of disclosure documents by issuers to their investors as long as the investors have provided an e-mail or other digitally enabled address (such as a smartphone telephone number) to the issuer for use of digital delivery. This would be the **default** option (dependent of course on SEDAR upgrading).

Another possibility worth exploring could be that "New SRO" investment dealers, including discount brokers, could provide clients with notification and access to disclosure documents upon login and/or an email ALERT.

Summary and Conclusion

There is a fundamental disclosure principle involved with AED. Should CSA disclosure policy be focussed on supporting developing technologies and social issues that builds on a fundamental principle of *pushing* the information directly to investors/ shareholders OR on the idea that investors/ shareholders will know when or where to search for disclosure information, or that it is sufficient to post a news

release, which may (or may not) come to the attention of the investor/shareholder, that advises of its availability? (In the case of certain disclosure documents, the CSA is recommending AED)

Requiring important disclosure documents to be prepared, at shareholder expense, and then not delivering them in an effective manner to shareholders undermines the fundamental purpose of disclosure. AED dependence on news releases and SEDAR+ is questionable.

Since documents are already made available on SEDAR and most issuer's websites, the proposed AED model produces no additional benefit to investors in terms of increased availability of disclosure information. See **APPENDIX III: Retail investors/shareholders and disclosure *delivery***

Furthermore, the Consultation Paper has not provided evidence to support the argument that AED would increase the likelihood that retail investors would search, read and better understand the regulatory disclosures that are deemed to have been delivered to them.

Kenmar has raised a number of concerns and recommended amendments with the proposed "access equals delivery" model for prospectuses, financial statements and MD&A. We have suggested changes, ideas, constraints and a viable alternative**. We therefore cannot support AED unless these concerns are addressed.**

The CSA's track record on CRM2 and cost reporting suggest that the CSA would be well advised to listen to the voice of the retail investor, not just self-interested parties. The OSC in particular, should be cautious, given the disturbing revelations in the 2021 OAG report.

We recommend that the CSA should, as part of this consultation, arrange for a Roundtable of stakeholders to discuss differences of opinion and seek common ground backed by evidence. A live demonstration of SEDAR +features should be made. This could help reduce investor anxiety (or not) of this long awaited site overhaul.

We feel compelled to point out that we find the nomenclature *Access equals delivery* offensive- it is a misrepresentation of reality and distorts the meaning of "delivery " from what any reasonable Canadian understands by the word **delivery**. This new principle of law could have unintended consequences within the financial sector and beyond. Regulators should not be a party to deception. If the CSA, despite our concerns, proceed with the AED model, we urge that another terminology be used. One idea would be "*Self-serve internet-enabled access*". **It must not involve the notion of "deemed delivery"** and **would not apply to any disclosures that involve time limitations or direct investor action.**

Kenmar is of the firm conviction that it is manifestly unreasonable for SEDAR to deny any accountability as to fitness for use while at the same time declaring that shareholders have been delivered disclosure documents if they are posted on

SEDAR .SEDAR must agree to operate on a Best Efforts basis, be owned by the CSA and be transparent on its operation and governance.

An integral component of AED, if implemented, should be increased investor education (plain language) about SEDAR and how to utilize regulated disclosures for decision making.

If AED is implemented, a gradual approach is warranted to ensure that retail investors attempt to adjust to the new "delivery" model.

The CSA AED proposal appears destined to reduce investor engagement, inhibit investor/shareholder understanding of their investments and discourage investor engagement with issuers. There is a very real risk that the proposed shifting of the current delivery system to access equals delivery will make it less likely that certain retirement savers read issuer disclosures and, as a result, these investors could make less informed decisions. Why do this to save a relatively small amount on printing and postage when better alternatives are available? If behavioural finance research shows otherwise, the research should be made publicly available.

We recommend that the AED proposal give more consideration to how it will impact the global view of the quality of investor protection/securities regulation in Canada.

We fail to see how the AED proposal is in the Public interest, especially when the impacted disclosures are for investments that constitute the foundation of millions of Canadian retail investor retirement savings.

Kenmar recommend the digital delivery model of information in the capital markets as the default digital delivery model for selected disclosure documents as an alternative to AED.

The alternative DDED approach satisfies those investors, mostly retail, who appreciate direct access via a web link (or pdf attachment) and those who prefer/need paper copy. This approach would send a clear signal to the marketplace that the CSA respects effective disclosure and delivery and wants to encourage retail investor engagement with financial markets. In our opinion, the AED proposal sends the opposite message.

We recommend that regulators abandon or amend this AED proposal and instead expend more resources on improving access to disclosure, using technology to enhance disclosure, improving disclosure effectiveness, increasing investor education on the value of disclosures, and enforcing disclosure laws instead of making delivery the primary focus of disclosure system improvement.

The measure of disclosure effectiveness should be whether investors are more likely to view and understand the information provided, not just the method of delivery.

Kenmar agree to public posting of this letter.

We sincerely hope this feedback proves useful to CSA policy and decision makers.

Do not hesitate to contact us if there any questions or clarifications needed.

Ken Kivenko, President
Kenmar Associates

APPENDIX I: Disclosure –dependence on news releases

AED is a revolutionary change in information disclosure and delivery policy and practice. NP11-201 defines the basic nature of how issuers well communicate with those who are potential or existing shareholders in the information age. This outdated 2011 document should be updated to reflect international best practices for electronic delivery in general .A holistic view is required based on sound principles and investor rights. We recommend that the CSA commit to a separate consultation on this Policy. That consultation would involve taking into consideration the NASAA investor Bill of rights , empirical research, investor surveys , investor testing, international benchmarking , advances in technology and of course behavioural finance concepts.

Most retail investors are busy people .They have many other life activities besides investing to deal with. According to OSC research, 58%% of DIY investors spend less than 2 hours per month researching their investments. https://www.osc.ca/sites/default/files/2021-04/inv_research_20210421_self-directed-investor-survey.pdf Any disclosure/delivery model that increases investor research time cannot be regarded as employing smart use of technology for improved investor decision making.

AED requires investors to closely follow the news releases of specific issuers.
A problem with AED arises when the retail investor is unaware of the news release (or cannot navigate SEDAR) and therefore cannot request paper copy. In our experiences with retail investors, we find that news releases are not the normal method by which Main Street investors/shareholders access disclosure information.

Kenmar appreciate that the information included in financial statements and related MD&A is not time sensitive in the sense it is historical (backward-looking) financial information. Still, the information, in the MD&A in particular, could impact an investor's stance on the company. The earlier he/she knows of material facts, the better.

Other opportunities for cost savings and efficiencies that might better enhance, rather than compromise, the quality of investor communications through the adoption of existing digital solutions should be considered.

Kenmar recommend that the default delivery for brokerage accounts be set to digital delivery, with investors having the option to select paper copies when opening a new brokerage account or opt out. Investors however should not be compelled to provide an email address in order to open an account.

Kenmar recommend that the CSA and IIROC financial literacy initiatives prioritize retail investor education on the importance of disclosure documents, how to access them on SEDAR and how to use them effectively.

APPENDIX II: A note on SEDAR usage by retail investors

"*We understand that less than 0.5% of securityholders requested to receive copies of financial statements and related MD&A in each of 2019 and 2018.*"- CSA consultation paper

The problem goes beyond the use of paper copies. We understand that a relatively low percentage of retail investors and shareholders use SEDAR to satisfy their information needs for non-investment funds. There are a number of valid reasons for this. These include, but are not limited to:

- They are not aware that SEDAR exists.
- They find SEDAR too difficult to utilize.
- SEDAR Terms of Use indicate the site is unreliable.
- They are unaware of their right to request disclosure documents.
- They do not appreciate the information available in, say, an Annual Report.
- The ESG information they seek is inadequate.
- Only own mutual funds so little need for individual issuer disclosure filings.
- The rise of ETF's reduce the investor's need for individual company disclosures.
- They access the disclosure material on company websites or contact Company IR and request a copy.
- Investors count on their financial advisor to track their portfolio investments for them.
- They are too busy with other matters especially during the pandemic
- They use analyst reports for decision making.
- They use social media / BNN for information.
- They find the disclosures too technical/ legalistic to understand.
- Investment club members share the disclosure(s) as a team.
- They cannot read the disclosure on their smartphone.
- They do not know how to use the disclosure information.
- They are not fluent in English or French.
- They lack basic literacy skills.

Like the Canadian Investor Relations Institute, Kenmar believe the paper copy default setting for new brokerage accounts contributes to the low adoption rate of e-delivery. **Kenmar recommend that the default should, be set to electronic-delivery (subject to investor testing) , with investors required to manually**

select paper copies when opening a new brokerage account. CIRI Comment letter at https://www.osc.ca/sites/default/files/pdfs/irps/comments/com_20200309_51-405_lokkery.pdf

With increased financial literacy, we expect direct SEDAR+ usage could increase. We certainly hope that the CSA will utilize its financial educational initiative to inspire and motivate Main Street usage of corporate disclosure information and make SEDAR so investor- friendly that investors will want to use it.

News releases should direct investors and interested parties to the issuer website location where full information is available and where required disclosure documents are readily available for viewing and downloading.

The enforcement powers of CSA members should specifically extend to issuers that post documents in an obscure manner or in circumstances where documents are not posted in a timely and accessible fashion (assuming issuers will be required to maintain websites that include regulatory filings).

APPENDIX III Retail investors/shareholders and disclosure *delivery*

Disclosure provides an investor the information to judge the potential risks and rewards of an investment. More complex access to disclosure would make that assessment more burdensome and leave Main Street investors/shareholders handicapped in deciding whether an opportunity is a good one—or a sinkhole for their hard-earned money. Investor losses could easily swamp out any issuer printing/postage savings achieved via AED. **Disclosure modernization provides an opportunity to increase retail investor participation, not reduce it**.

A cornerstone of modern investor protection is full, accurate and timely disclosure. Disclosure delivery is the critical means for investors/shareholders to know and understand their investments, and to adequately manage and plan for their retirement income security. Disclosure makes available the information needed for informed investment decisions, thus promoting efficient capital markets.

It should be noted that the retail investor now participates in the market as never before due to the decline of Defined Benefit pension plans and low Guaranteed Investment Certificate (GIC) rates. Canadian online brokerages experienced an influx of new retail investors during the COVID-19 pandemic. Some estimates put the figure at over one million new account openings. As a result, the number of DIY retail investors has never been higher. These novice investors may not even be aware of what disclosure documents are available to them.

We respectfully submit that any change in the current disclosure/delivery model must aim to increase retail investor engagement with disclosure communications and build on the core principle of pushing the selected information directly to investors (subject to investor request), not requiring investors to search around for it.

In addition, the senior population is growing in absolute and proportionate terms and living longer. Research shows that there is lower awareness of SEDAR among older investors and those with less income or wealth, or lower education. Regulators should acknowledge that certain households—primarily lower wage workers, workers with lower educational attainment, persons who live in rural communities, racial minorities, older workers, retirees and techno-peasants may disproportionately bear the negative impacts of the AED proposal because they suffer from technophobia, are busy holding down a job ,are not tuned in to issuer news releases, are just more comfortable with paper copy for disclosures and/or do not have ready access to computers or the internet.

As Canadian investor investing competency improves, they are asking for better, more readable and informative disclosure. There is a growing movement for better disclosure of diversity, supply chains, corporate alliances, and international business practices. An increasing number of Canadians are also demanding better disclosure of climate change, social accountability and governance related actions and risks. **Effective delivery of ESG information is very important to Canadians.** Modern securities regulation should recognize that disclosure today involves much more than financial disclosure.

The front page of all disclosure documents issued (including under the AED model) should contain a prominent BOLD faced note that the document is available without cost in paper or electronically upon oral or written request.

Kenmar recommend that standardization be mandated for the location, presentation and retention of disclosure documents on issuers' websites, so investors are not burdened with the task of navigating a maze of web pages in order to locate disclosure documents on each reporting issuer's website.

REFERENCES

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o Advance Notice. Investors should be provided with a reasonable timeframe to receive notice that their regulatory documents will be delivered to them digitally. Notice of the change in process must be written clearly and in plain English, explaining the details of how digital delivery will work.
o Honor Investor Preferences. Investors should have a freely accessible means in which to communicate their preferences and an ability to change their election at any time.
o Easy Access to Change Contact Information. Investors should have an opportunity to provide up-to-date contact information for the purpose of digital delivery, or the means to change their information, during the time period before their regulatory documents are moved to digital delivery, and at any time thereafter. Investors who have not provided such contact information will not be transitioned to digital delivery until digital contact information is provided.

o Consumer Friendly Format. Investors should be able to access regulatory documents in a user- friendly and timely manner at their convenience. Access should be provided in a safe and secure manner with ease of reference and retention abilities. Investors must be provided with a paper copy of a regulatory document in a reasonable timeframe, if so requested.
o Safeguards to Assure Delivery. Firms should establish safeguards to address invalid or inoperable digital contact information of investors and establish policies and procedures for the change to paper delivery if failures to digital delivery cannot be cured. Source:
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May 19, 2022

In the management discussion and analysis (MD&A) ,company management provides commentary on financial statements , systems and controls, compliance with laws and regulations, and actions it has planned or has taken to address any challenges the company is facing. These could include supply chain issues , labour shortages , geopolitical issues and climate change. Management also discusses the upcoming year by outlining future goals and approaches to new projects. The MD&A is therefore an important source of information for investors like myself who want to review a company's financial fundamentals , operations and management performance. My investment in a company constitutes a key component of my retirement savings.

Instead of being informed each year that I can receive it , complete a request form and mail it in , the proposed access equals delivery model requires me to scour the internet for a news release informing me to visit a site called SEDAR , search for the MD&A , download it and print it for easy reading. According to the consultation paper, regulators will consider this burdensome process placed on investors as fulfilling a company's obligation to deliver its MD&A to its shareholders. It is wholly unreasonable to make such a conclusion given that I will not have received it and the company will not even know (or apparently care) if I have downloaded it from the SEDAR site.

This model is neither encouraging investor engagement nor in the best interest's of investors or modern in any sense of the word. I thought regulators were supposed to protect investors, not make it harder to receive disclosure documents like the MD&A that they have indirectly paid for.In fact, it would be hard to find a more convoluted way to ensure that investors will not read the MD&A .

If regulators persist in this peculiar method of " delivery" , I suggest that every listed company should be required by law to provide a website where shareholders can easily locate and access the MD&A and other financial statements. That way , at least I would know where to go to look for the MD&A for each of the companies in my portfolio. This process is a pain and worse than than the existing delivery process.

It really is hard to see how access equals delivery would be in the Public interest or considered professional shareholder communications in the Information age.

As a consequence I cannot support the proposal .If the intent is to save paper, printing and mailing costs, why not give investors an additional option of requesting and receiving the MD&A via an email?

I suspect many small investors today would appreciate that option. A Win-Win for all stakeholders with a modest benefit for the environment.

Thank you for the opportunity to provide comments.

Anatol Feldman

Nutrien
Feeding the Future™

May 20, 2022

Delivered by Email: comment@osc.gov.on.ca; consultation-en-cours@lautorite.qc.ca

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

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Re: CSA NOTICE AND REQUEST FOR COMMENT – PROPOSED AMENDMENTS AND PROPOSED CHANGES TO IMPLEMENT AN ACCESS EQUALS DELIVERY MODEL FOR NON-INVESTMENT FUND REPORTING ISSUERS ("REQUEST FOR COMMENT")

Dear Sirs and Mesdames:

This letter is submitted in response to the Request for Comment regarding proposed amendments and proposed changes to implement an Access Equals Delivery Model for non-investment fund reporting issuers ("the Proposed Amendments"). Nutrien Ltd. is the world's largest provider of crop inputs and services, with a market capitalization of approximately US $53 billion. Our shares are publicly traded on the New York Stock Exchange and the Toronto Stock Exchange.

We appreciate the opportunity to comment on the Proposed Amendments as we commend all efforts to improve the accessibility of disclosures for investors.

Nutrien
Feeding the Future™

We agree with the Proposed Amendments that the CSA should implement an access equals delivery model ("AED Model") for the reasons provided in the Request for Comment, largely that this is a cost-efficient, timely and environmentally friendly manner of communicating information to investors. We agree that filing a document on SEDAR is sufficient as we agree that this is a common, standardized platform that allows investors to access our documents. We also agree that a news release is sufficient to alert investors that the document is available electronically. Filing a news release is not onerous or at an undue cost.

We recommend that the CSA considers including the AIF as an additional document in scope for the AED Model, as this is not a document that requires immediate shareholder action and participation, the noted guideline used by the CSA as a threshold for determining which documents are or are not included in the AED Model. This is especially considering the CSA's proposed amendments to National Instrument 51-102 *Continuous Disclosure Obligations* to combine the MD&A and AIF in one reporting document called the "annual disclosure statement". While we had expressed that we disagreed with the proposal that the AIF should be combined with the MD&A in our comment letter dated September 17, 2021, we consider the AIF fit for the AED Model. Investors can generally predict when the AIF will be available since it is subject to prescribed filing deadlines, and investors are generally aware the AIF will be available on SEDAR.

Respectfully,

(signed) *"Janice Anderson"*

_____

Janice Anderson
Director, Technical Accounting and Research Advisory Services

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THE GLOBE AND MAIL

OPINION

CSA's proposal for company disclosures has downsides for investors

JEAN-PAUL BUREAUD AND **EDWARD WAITZER**
CONTRIBUTED TO THE GLOBE AND MAIL
PUBLISHED JUNE 19, 2022

Jean-Paul Bureaud is the executive director of FAIR Canada, an independent national non-profit organization dedicated to advocating for investor rights. Edward Waitzer is a lawyer and former Chair of the Ontario Securities Commission. Broadridge Financial Solutions is a client. The views expressed are his own.

On April 7, the Canadian Securities Administrators issued a proposal to implement an "access equals delivery," or AED, model for certain public-company disclosures. According to the CSA, the purpose of the model "is to modernize the way documents are made available to investors" and to "reduce regulatory burden without compromising investor protection."

In our view, the proposal misses an opportunity to modernize investor communications and falls short on reducing regulatory burden. We question the CSA's assertion that the changes will not compromise investor protection.

Currently, public companies must deliver financial statements and related management's discussion and analysis (MD&A) to their shareholders, as well as provide prospectuses to investors buying newly issued securities. In the case of financial statements and MD&A, companies can send a notice each year indicating that shareholders can request that copies be delivered.

The CSA's AED proposal would provide another alternative under securities law to public companies. Instead of delivering documents or sending an annual notice to shareholders, the documents would be "deemed" to be delivered if the company meets two conditions. It would have to post them on SEDAR – an electronic database that has been around for decades, but that few investors know about or use – and, on the same day, issue a press release (also filed on SEDAR) advising shareholders that the documents are available.

While existing delivery requirements should be modernized, this proposal has more downsides than upsides for investors and may result in them becoming less engaged with the companies they own. This is because AED will require investors to find a way to monitor company press releases, or regularly track its public filings; become aware of the SEDAR database and know how to use it; and monitor and download documents they need from SEDAR.

The CSA's policy choice is too focused on eking out minor costs savings for some public companies rather than better protecting investors. We are also concerned that it may be expanded over time to other delivery requirements (such as mutual-fund-related disclosures or proxy materials).

While the CSA may claim that AED will enhance investors' access to information, prospectuses, financial statements and MD&A have long been required to be posted on SEDAR. Most investors are not aware of the database, and most media outlets will typically not pick up routine press releases.

Our concerns are supported by research. A True North Canada investor survey commissioned by Broadridge Financial Solutions last year found that 82 per cent of retail investors are either not aware of SEDAR or do not use it. This lack of awareness is greater among investors with lower income or wealth, less education, and of older age.

The survey also revealed that 94 per cent of retail investors wish to either receive financial statements and MD&A automatically or be sent a notice of their availability.

Further, while the CSA argues that AED will reduce regulatory burden for public companies without compromising investor protection, the analysis that accompanied the proposal is incomplete and based on assumptions rather than data. It selectively considers the costs and benefits to public companies while ignoring them for investors.

The CSA does acknowledge that, for companies choosing to use it, AED will impose an estimated $6,000 annual "SEDAR filing charge" on those that do not currently issue press releases when filing prospectuses or financial statements. The benefit derived for them is unclear.

Finally, while some alternatives to AED are discussed in the proposal, little supporting explanation is provided as to why they are not feasible and preferable. This makes them difficult to assess.

One alternative recommended by many commentators is to move from paper to electronic delivery (to facilitate digital access to a broader range of corporate information). Why shouldn't the investor experience (including their ability to indicate preferences on how to receive information) keep pace with other areas?

For example, most consumers can easily subscribe to updates or receive alerts. The CSA, however, dismisses electronic delivery because of "legal uncertainties" that "may require legislative changes," and other complications, including potentially having to revise other rules and policies.

Another alternative is to expand the existing "notice-and-access" process, which allows for the greater use of electronic delivery by providing actual notice that disclosure documents are available to investors. Expanding it was rejected because "certain requirements … may deter some issuers."

Yet an increasing number of public companies are overcoming these uncertainties to deliver information to their shareholders electronically. Some are being resolved. For example, 2018 amendments to the Canada Business Corporations Act, when enacted, will facilitate greater use of the existing notice-and-access process.

What is needed are more effective tools for fostering investor engagement while also reducing paper burden and regulatory costs. This is the path regulators are taking in other jurisdictions. Both objectives are easily within reach (and SEDAR could be part of the solution). Investors deserve no less.

We encourage the CSA to listen to investors about how they want to receive information and modify the regulatory framework accordingly.

CCGG Canadian Coalition for Good Governance
THE VOICE OF THE INVESTOR

June 29, 2022

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marches financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

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Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
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Dear Sir/Madam,

Re: CSA Notice and Request for Comment – Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment fund Reporting Issuers

We have reviewed the above referenced *CSA Notice and Request for Comment – Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment fund Reporting Issuers* (the CSA Proposal) and we thank the Canadian Securities Administrators (CSA) for the opportunity to provide you with our comments.

CCGG's members are Canadian institutional investors that together manage approximately $6 trillion in assets on behalf of pension funds, mutual fund unit holders, and other institutional and individual investors. CCGG promotes good governance practices, including the governance of environmental and social matters, at Canadian public companies and assists institutional investors in meeting their stewardship responsibilities. CCGG also works toward the improvement of the regulatory environment to best align the interests of boards and management with those of their investors and to increase the efficiency and effectiveness of the Canadian capital markets. A list of our members is attached to this submission.

CCGG supports the CSA's goal of reducing regulatory burden on issuers while ensuring that investor protection is not compromised. CCGG further supports the CSA's recognition that information is an important and useful tool in improving communication with investors and its commitment to facilitating electronic access to documents where appropriate. CCGG's focus is on ensuring that institutional investors have the information they need to make good investment decisions and to monitor those investments.

GENERAL COMMENTS

CCGG has existing positions on access equals delivery, most recently articulated in our March 2020 submission to the CSA in response to *CSA Consultation Paper 51-405 – Considerations of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers* and in our September 2020 response to the *Ontario Capital Markets Modernization Task Force's draft recommendations*[1].

CCGG is generally supportive of enhancing electronic delivery of documents and movement toward a default electronic delivery for a limited scope of documents, provided that institutional investors retain a right to "opt in" to receive a paper copy.

[1] CCGG, Submission to Canadian Securities Administrators re *CSA Consultation Paper 51-405 – Considerations of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers*, March 5, 2020; CCGG, *Submission to Capital Markets Modernization Taskforce re: Consultation – Modernizing Ontario's Capital Markets*, September 7, 2020.

ELEMENTS OF THE CSA PROPOSAL CCGG SUPPORTS

Scope of the Proposal

The CSA is proposing to introduce access equals delivery for prospectuses, annual financial statements, interim financial reports and related MD&A. Such documents would be deemed delivered once posted on SEDAR and where applicable, a news release is issued and filed on SEDAR.

The CSA is expressly **not** proposing an access equals delivery model for documents such as proxy-related materials, and take-over bid and issuer bid circulars that require shareholders to take action. We agree strongly with this approach and it aligns with our recommendations in response to earlier consultations on this topic.

For the same reasons as set out in our prior submissions, which we are restating below, we would also like to emphasize that we would **not** be supportive of the CSA extending access equals delivery to documents requiring shareholder action in the future. CCGG is of the view that proxy-related materials, and other documents upon which investors rely in order to exercise their rights as shareholders should not be deemed "delivered" by issuers under an electronic access equals delivery model, absent prior notice and consent. This is distinct from electronic delivery which can still be achieved under a notice and consent model.

Information related to the timing as to when and for what purpose an issuer may call a shareholder meeting is within the purview of the issuer and it is the responsibility of the issuer to proactively ensure that shareholders are made aware of such events and have timely access to the information they require to exercise their rights. Voting is one of the key mechanisms investors have to exercise oversight over the companies in which they are invested and therefore it is important for companies to be required to continue to provide notice to shareholders to facilitate shareholder participation in votes on both routine (e.g. election of directors) and special resolutions, whether included on the ballot at an Annual General Meeting or through a special meeting of shareholders. Requiring clear communication in this regard, prevents companies from seeking to game voting outcomes through reduced shareholder participation.

Conversely, absent the provision of notice, some companies, especially those with a dispersed or retail investor heavy shareholder base, may have difficulty achieving quorum, ultimately creating barriers for issuers with respect to a company's ability to pursue corporate initiatives.

Paper copies and standing instructions

We were pleased to note that the CSA Proposal does not remove an investor's ability to request paper copies or from receiving financial statements and related MD&A based on the investor's standing instructions. This approach is in line with CCGG's position in prior submissions and we are pleased to see that the CSA Proposal incorporates this approach.

ELEMENTS OF THE PROPOSAL CCGG QUESTIONS

Clear risk to retail investors

While CCGG's members are sophisticated institutional investors familiar with accessing and tracking company disclosures on SEDAR, we view the protection of all investors as paramount to the Canadian capital markets regulatory environment and we do have concerns that the CSA Proposal creates a risk for retail investors.

The CSA Proposal is premised on the following assumption: "SEDAR is a common, standardized platform that provides ease and convenience of use for investors, allowing them to access and search for specific information in a document more efficiently than they would otherwise be able to with paper copies of documents"[2].

The CSA has provided no empirical evidence to support this assumption. In fact, while this may be true for institutional investors, 2021 research conducted by True North Marketing Insights (on behalf of Broadridge and provided to the CSA in September 2021) surveying Canadian retail investors found the converse assumption to be true. The survey revealed that 82% of retail investors are not aware of SEDAR and don't use it; only 4% of retail investors use SEDAR once a year and only 6% use it more than once per year; and lack of awareness is greater among more vulnerable segments of retail investors such as older investors, those with lower income, wealth and education[3].

Issuer cost reduction is prioritized over modernization of document delivery

The stated purpose of the CSA Proposal is "to modernize the way documents are made available to investors and reduce costs associated with the printing and mailing of documents"[4]. This purpose appears to conflate effective, electronic delivery with access equals delivery but these two things are distinct. Electronic delivery can be achieved by an effective and modernized notice and access model without removing delivery requirements. This distinction should be made clearer to investors, especially retail investors.

In addition, pushing particularly retail investors toward SEDAR as the tool for accessing important company documents cannot be equated with "modernization" given that important upgrades to the SEDAR platform through implementation of its replacement SEDAR Plus is a longstanding and long-

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[2] April 7, 2002, *CSA Notice and Request for Comment – Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment fund Reporting Issuers* (2022), 45 OSCB 3610.
[3] Broadridge Investor Communications Corporation, Letter to CSA re: Proposed Amendments to National Instrument 51-102 *Continuous Disclosure Obligations* and other Amendments and Changes Relating to Annual and Interim Filings of Non-Investment Fund Reporting Issuers September 17, 2021 at pages 38 and 39.
[4] *Supra*, note 1. We note that the CSA has recently launched a pilot program for SEDAR Plus and has indicated an intention for the platform to roll out in late 2022 but this has not yet been achieved and access equals delivery should not be implemented until there has been adequate time for investors of all sized to acclimatize to SEDAR Plus. We also note that education and training resources and focus appears to be focused on issuers as users rather than investors as consumers: SEDAR+ Frequently Asked Questions - Canadian Securities Administrators (securities-administrators.ca)

awaited objective, repeatedly identified as a priority by securities commissions but is still not operational[5]. Implementing access equals delivery prior to delivering a modernized and more user friendly, searchable and intuitive platform for investors to access such documents seems both premature and appears to unfairly advance the stated purpose of reducing issuer costs without providing investors with a modernized platform for accessing documents.

Role of investor education and timing

The Proposal is silent as to when the proposed changes would be implemented and does not provide any guidance as to the steps that the CSA and/or each individual securities commissions would take to both ensure that retail investors are made aware of the change, and that their investor education initiatives are providing resources to educate and raise awareness as to SEDAR and how to access and navigate the information posted there.

CONCLUSION

We thank you again for the opportunity to provide you with our comments. If you have any questions regarding the above, please feel free to contact our Executive Director, Catherine McCall, at cmccall@ccgg.ca or our Director of Policy Development, Sarah Neville at sneville@ccgg.ca.

Yours truly,

'Bruce Cooper'

Chair of the Board of Directors
Canadian Coalition for Good Governance

[5] See for example, CCGG's December 16, 2022 letter to the OSC re: Notice 11-794 – Statement of Priorities: Request for Comments regarding Statement of Priorities for Financial Year to End March 31, 2023 at 5.

INCLUDES COMMENT LETTERS RECEIVED

CCGG MEMBERS 2022

- Alberta Investment Management Corporation (AIMCo)
- Alberta Teachers' Retirement Fund (ATRF)
- Archdiocese of Toronto
- BlackRock Asset Management Canada Limited
- BMO Global Asset Management Inc.
- Burgundy Asset Management Ltd.
- Caisse de dépot et placement du Québec
- Canada Pension Plan Investment Board (CPPIB)
- Canada Post Corporation Registered Pension Plan
- Capital Group Canada
- CIBC Asset Management Inc.
- Colleges of Applied Arts and Technology Pension Plan (CAAT)
- Connor, Clark & Lunn Investment Management Ltd.
- Desjardins Global Asset Management
- Fiera Capital Corporation
- Forthlane Partners Inc.
- Fondation Lucie et André Chagnon
- Franklin Templeton Investments Corp.
- Galibier Capital Management Ltd.
- Healthcare of Ontario Pension Plan (HOOPP)
- Hillsdale Investment Management Inc.
- IGM Financial Inc.
- Investment Management Corporation of Ontario (IMCO)
- Industrial Alliance Investment Management Inc.
- Jarislowsky Fraser Limited
- Leith Wheeler Investment Counsel Ltd.
- Letko, Brousseau & Associates Inc.
- Lincluden Investment Management Limited
- Manulife Investment Management Limited
- NAV Canada Pension Plan
- Northwest & Ethical Investments L.P. (NEI Investments)
- Ontario Municipal Employee Retirement System (OMERS)
- Ontario Teachers' Pension Plan (OTPP)
- OP Trust
- PCJ Investment Counsel Ltd.
- Pension Plan of the United Church of Canada Pension Fund
- Public Sector Pension Investment Board (PSP Investments)
- QV Investors Inc.
- RBC Global Asset Management Inc.
- Régimes de retraite de la Société de transport de Montréal (STM)
- RPIA
- Scotia Global Asset Management
- Sionna Investment Managers Inc.
- SLC Management Canada
- State Street Global Advisors, Ltd. (SSgA)
- Summerhill Capital Management
- Teachers' Pension Plan Corporation of Newfoundland and Labrador
- TD Asset Management
- Teachers' Retirement Allowances Fund
- UBC Investment Management Trust Inc.
- University Pension Plan Ontario (UPP)
- University of Toronto Asset Management Corporation (UTAM)
- Vestcor Inc.
- York University Pension Fund

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June 30, 2022

By email:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Re: CSA Notice and Request for Comment – *Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers* (Proposed Amendments)

Dear Staff:

We are writing in response to your request for comment dated April 7, 2022 regarding the matters set out in the above-noted CSA Notice and Request for Comment regarding the proposed adoption of an access equals delivery model (AED Model) for non-investment fund reporting issuers. These comments are provided by the lawyers of Torys LLP who are signatories below, in their personal capacities, and not on behalf of the firm or any of its clients.

We appreciate the efforts of the Canadian Securities Administrators (CSA) to introduce an AED Model that acknowledges the impact that technological advances and the digitization of capital markets have had on the methods that issuers use to communicate with their investors. The objective of access equals delivery is to both modernize the way documents are made available to investors (who are increasingly accessing these documents electronically in any event), and reduce costs associated with printing and mailing of documents.

Although the proposed AED Model represents an important step in the right direction, we believe that by excluding medium term note (MTN) programs and other continuous distributions under a shelf prospectus from the AED Model, the Proposed Amendments will fall short of achieving the intended objectives and fail to maximize the benefits that could be had. As we discuss in more detail below, we also recommend that the CSA consider changes to the AED Model to eliminate the unnecessary requirement that issuers issue and file news releases announcing that documents are available on SEDAR. Provided that these documents are accessible on the internet, investors should be considered to have received delivery of these documents.

MTN Programs

We think that issuers conducting MTN prospectus distributions and their investors would also benefit from the AED Model. Issuers with active MTN programs often file multiple pricing supplements each day. Although Part 8 of National Instrument 44-102 – *Shelf Distributions* provides for a relaxed filing requirement for MTN programs whereby pricing supplements do not need to be filed until seven days after the end of the month during which they were sent or delivered to purchasers, it is market practice amongst many MTN issuers to file pricing supplements on the same day they are sent or delivered to purchasers, as is required for issuers using prospectus supplements to distribute securities under a base shelf prospectus. We cannot think of any policy reason why an MTN issuer that has filed a pricing supplement on SEDAR on or before the date it is first sent or delivered to purchasers or prospective purchasers should be prevented from relying on the AED Model. Expanding the scope of the AED Model to include pricing supplements that are filed on the date of first use would benefit issuers without harming or disadvantaging purchasers.

News Release Requirement

The Proposed Amendments provide that an issuer must issue and file a news release on SEDAR announcing that the document in question (e.g., the final prospectus, prospectus supplement or financial report) is available. Although the requirement to issue and file a news release does not seem unduly costly or onerous, we question whether this is the most effective way to alert investors as to the availability of documents and whether that is even necessary in the first place. It also runs counter to market practice to require a news release on the same day that the final prospectus or prospectus supplement is filed. To the extent issuers announce offerings by way of news release, they typically issue news releases on (i) filing the preliminary prospectus, and/or (ii) pricing the offering, which often occurs several hours or days before the final prospectus or prospectus supplement is filed. Requiring a release on the same day, after the final prospectus, prospectus supplement or pricing supplement is filed, will not have any other purpose and may cause confusion amongst investors, particularly when the issuer in question has an active MTN program pursuant to which it files multiple pricing supplements every day – issuers of structured notes under MTN programs do not currently issue any news releases in connection with new issuances because these are not material transactions for the issuers concerned. Further, we expect that most prospective investors will have been made aware of the planned offering and of the availability of (and as necessary, how to source) the offering materials by a dealer or financial advisor. By virtue of their interest in the offering, investors will be just as aware of these filings (if not more aware since they include pricing information and other specific terms for the offering) as they are for any preliminary prospectus filing. As the Ontario Securities Commission (OSC) noted in its cost/benefit analysis for the Proposed Amendments:

> "Generally, we expect that prospective purchasers and purchasers under a prospectus are sophisticated investors and are able to access the preliminary prospectus and final prospectus easily through SEDAR. Moreover, we have been advised that, when considering an investment in prospectus distributions, investors are aware that information relevant to their decision making is available on SEDAR and do not wait for, or rely on, paper delivery of a prospectus to inform their investment decision.
>
> We also note that, since prospective purchasers have either been solicited to purchase under the distribution or have indicated an interest in purchasing under the distribution without having been solicited, they can easily request a copy of the preliminary prospectus. Equally, purchasers that order or subscribe for securities can easily request a copy of the final prospectus."

This is also the case for structured note offerings, where investors typically receive the specific pricing/terms of any new structured note offering via their investment advisor after receiving electronic delivery of the filed pricing supplement that has been made available to the dealer/advisor network.

We note that the current draft of the Proposed Amendments contemplates that the time limit applicable to withdrawal rights in relation to a prospectus distribution would only begin to run if a news release concerning a prospectus' or prospectus supplement's availability has been filed. We think that it should be

sufficient that the relevant offering document is publicly available, and its availability has been made known by the issuer through its website or other electronic communications. For example, other technologies, such as a subscription-based system or email notifications on request) may provide a more effective means of notifying investors that materials have been filed. This would also promote more direct engagement with the investor community.

Investors should be able to access information by any preferred means including electronically (via SEDAR and/or issuer websites for easy viewing on computer, tablet, or other devices), email distribution or paper delivery. Investors should not be restricted by limitations of prescribed regulations.

As other commentators have observed, under the Proposed Amendments investors are assumed to monitor company news releases and track public filings on SEDAR notwithstanding that most investors are not aware of SEDAR or do not use it. Investors will generally be more inclined to search issuer websites for relevant material information before accessing the SEDAR website. And since media outlets do not usually pick up routine news releases of the sort contemplated, they are unlikely to meaningfully "push out" information about an offering.

In terms of financial reports, the OSC indicated that:

> "[W]e believe that most securityholders who want to review the financial statements and related MD&A of CF Issuers are aware that the documents become available at regular intervals during the year. Although some stakeholders have expressed concerns that securityholders may be negatively impacted, we generally believe that securityholders that are interested in obtaining financial statements and related MD&A can, with minimal effort, obtain copies of those documents."

We recommend, therefore, that these news releases be made optional and/or that issuers be given the alternative to provide notifications via their own websites or other electronic means of communication rather than via SEDAR. A similar model has been implemented in the United States. In the United States, an issuer has no obligation to issue a news release if it is relying on access equals delivery. Purchasers have to receive written notice within two business days of the purchase that the sale was made pursuant to a prospectus. Annex A to the CSA's Consultation Paper 51-405 – *Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers* also highlights access equals delivery models implemented in the European Union and Australia. Those jurisdictions do not appear to require a news release.

If, nonetheless, the CSA considered that news releases are an essential element of the AED Model, we think that this requirement could be addressed by either a news release filed on the same day as the related prospectus or other filing or a previously filed news release that disclosed the anticipated filing date of the related prospectus or other filing (e.g., for a bought deal, that the prospectus is expected to be filed on or about [date]).

Similarly, for news releases with respect to the filing of annual and interim financial reports, it should be sufficient if an issuer discloses in its earnings release that the financial reports will be filed on SEDAR. This would avoid the need for additional news releases for issuers that do not file their financial reports on the same day that they issue their earnings releases.

Implementation

The Proposed Amendments should provide considerable benefits to market participants. As the CSA has observed, in addition to being more cost-effective and environmentally friendly, an AED Model will benefit issuers and investors by facilitating faster communication. That said, we believe that accessing the AED model should be optional (as opposed to mandatory) so as to enhance investor access to information while not precluding electronic/email or paper delivery options where that is preferred by issuers and their investors. Given the Proposed Amendments follow a CSA consultation process that was conducted in 2020, and general support for the Proposed Amendments, we recommend that the Proposed Amendments be adopted without delay once they have been finalized, including to address the issues noted in this comment letter.

***

We appreciate the opportunity to comment on the Proposed Amendments and would be happy to discuss any of our comments set out above with you by phone or by email.

Yours truly,

Jonathan Cescon
David Chaikof
Glen R. Johnson
Robbie Leibel
Karrin Powys-Lybbe

SHARE

July 4, 2022

Me Philippe Lebel
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RE : CSA Notice and Request for Comment – Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers

To whom it may concern;

I am writing to comment on the proposed amendments to various national instruments intended to implement an Access Equals Delivery (AED) model for certain corporate reporting issuer disclosures.

SHARE (Shareholder Association for Research & Education) is a national non-profit leader in responsible investment services, research and education for institutional investors. Since its creation in 2000, SHARE has carried out this mandate by providing active ownership services, including proxy voting and shareholder engagement, education, policy advocacy, and practical research on issues related to responsible investment and the promotion of a sustainable, inclusive and productive economy. Our clients include pension funds, universities, mutual funds, foundations, Indigenous trusts, endowments, faith-based organizations and asset managers across Canada with more than $95 billion in assets under management.

While we appreciate the CSA's effort to reduce the reporting burden for issuers and to provide a more cost-efficient, timely and environmentally friendly manner of communicating information to investors than paper delivery, we do not support the proposed Access Equals Delivery model proposed by the CSA for the following reasons:

- Placing both the final disclosures and a news release announcing their availability on SEDAR is circular. An investor must somehow know to access SEDAR at the appropriate time in order to be alerted (by press release, issued on SEDAR) that it is now the appropriate time to access SEDAR and collect the issuer's latest disclosure. Given that there is relatively little knowledge or understanding of SEDAR amongst retail investors, this is inevitably going to result in less information reaching retail investors. The CSA says that "investors are generally aware that the documents will be available on SEDAR" and that "investors can also predict when the documents will be available since they are subject to prescribed filing deadlines" but provides no evidence that retail investors – and in particular retail investors – are "generally aware" of these timelines for companies incorporated in multiple jurisdictions, foreign issuers, and a full portfolio of companies with different quarter- and year-ends.

- It is not clear why the access equals delivery model is preferable to an electronic notice and access model that still requires issuers to notify investors directly with a link or QR code to access the disclosures on SEDAR or the company's own website. The primary cost to issuers is in printing and mailing reports (estimated at 70-90% of the cost by Broadridge), which may be minimized by a notice and access model without reducing investor protections. Further, the CSA should examine means of using broker web platforms through which many retail investors already access information as a means of notice delivery.

- We appreciate that the CSA currently proposes to institute its AED model for prospectuses generally, annual financial statements, interim financial reports and related MD&A, and not *"at this time"* for documents that require immediate shareholder action and participation, such as proxy-related materials and take-over bid and issuer bid circulars. While we agree it may be appropriate to institute different notification models for time-sensitive documents as opposed to shelf documents, we are concerned that the CSA's unwillingness to explicitly forego an AED model for proxy-related materials and take-over bid and issuer bid circulars puts investors at risk that acceptance of AED for some materials may lead to further erosion of investor protections in future

We believe that investor engagement with issuers is critical for investor protections, and that regulators should be assisting further engagement with issuer disclosures rather than less. We believe this can be done while simultaneously reducing printing and mailing expenses for issuers, but that the proposed AED method does not achieve both ends.

Regards,

[redacted]

Kevin Thomas, CEO
SHARE

DAVIES

155 Wellington Street West
Toronto, ON M5V 3J7 Canada

dwpv.com

July 5, 2022

BY EMAIL

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers (Québec)
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

c/o

M^{e} Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers (Québec)
Email: consultation-en-cours@lautorite.qc.ca

The Secretary
Ontario Securities Commission
Email: comments@osc.gov.on.ca

Dear Sirs/Mesdames:

CSA Notice and Request for Comment – *Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers*

We are writing in response to the proposed amendments and proposed changes (collectively, the "**Proposed Amendments**") set out in CSA Notice and Request for Comment – *Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers*.

We strongly support the CSA's proposal to implement an access equals delivery model as an alternative for satisfying delivery obligations under Canadian securities legislation for prospectuses and financial statements and related management's discussion & analysis. Detailed reasons for our support are included in our prior comment letter, dated March 5, 2020, in response to CSA Consultation Paper 51-405 – *Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers*.

Despite our support for the fundamental terms of the access equals delivery model set out in the Proposed Amendments, we respectfully submit that there are elements of the proposed access equals delivery model for prospectus delivery (the "**Prospectus AED Model**") that entail unnecessary burden and may undercut the cost-efficiency, environmental and other objectives of the Prospectus AED Model. In addition, we believe the Prospectus AED Model would benefit from certain improvements to better align with market realities. A summary of these problematic elements and potential improvements is included below.

1. Remove or limit paper copy requirement and extend deadline for delivery

(a) Remove requirement for delivery of paper copy of a prospectus or limit the types of prospectuses or prospective purchasers to whom a paper copy must be delivered

Further consideration should be given as to whether to remove or limit the option for prospective purchasers or purchasers, as applicable, to request a paper copy of a preliminary or final prospectus (the "**paper copy requirement**")[1]. On its face, this paper copy requirement seems wasteful, serving no practical purpose. Merely by virtue of being engaged in the offering process, any prospective purchaser or purchaser should be keenly aware that the relevant prospectus is or will soon be filed and available under the issuer's profile on SEDAR. The marketing materials for the offering and, in the case of the final prospectus, the prescribed news release (which is to include a SEDAR link) will remind purchasers of this. Given it is the quickest and easiest way to obtain the relevant disclosure, if a purchaser chooses not to check SEDAR for the prospectus, it is safe to assume that same purchaser will be in no rush to (and may never) review a paper copy of the prospectus upon receipt. Waiting for actual delivery of a prospectus by mail (which could have been accessed days earlier on SEDAR) does not appear to serve any practical purpose.

If the paper copy requirement is not removed in its entirety, we respectfully submit that it should not be applicable to any short form prospectus. When considering their investment in an offering qualified by a short form prospectus, purchasers invariably access the disclosure documents that are critical to their investment (i.e., the documents incorporated by reference) electronically *prior* to the filing of the preliminary short form-prospectus or prospectus supplement. Investors do not wait for, or rely on, actual delivery of each of the documents incorporated by reference into the prospectus to inform their investment decision. While there has always been an option for a purchaser to request a copy of these documents, anecdotal evidence suggests that these requests are rarely, if ever, made.

In addition (or in the alternative, if the final rules include a paper copy requirement that applies to short form prospectuses), the right to request a paper copy should be limited to the final prospectus document (i.e., the final prospectus, shelf prospectus supplement or supplemented PREP prospectus, as applicable, or an amendment to any of them). Receiving a paper copy of the preliminary version of that prospectus serves no purpose. The necessary investment decision will invariably have been made prior to delivery of the paper copy of that preliminary prospectus document, particularly in the case of a "bought deal" by way of short form prospectus or shelf. In addition, the purchaser will still have two

[1] This requirement is contained in subsections 2A.3(4) of NI 41-101, 6A.3(4) of NI 44-102 and 2A.3(4) of NI 44-103.

business days from the filing of the final prospectus document to exercise its right of withdrawal (or rescission, as applicable).

If the paper copy requirement continues to apply with respect to any preliminary prospectus document, the prospective purchasers who may request a copy should be expressly limited only to those prospective purchasers that were initially solicited by the underwriters for the offering[2]. As currently drafted, the Proposed Amendments would allow any prospective purchasers to make such a request, regardless of whether they have been solicited[3]. This leaves open the potential for any number of requests, the timing and amount of which are entirely unpredictable.

(b) Extend deadline for delivery of paper copy of a prospectus

To the extent any form of paper copy requirement is preserved in the final rules, ample time should be afforded for sending the requested paper copy of the prospectus so that issuers will not be compelled to print commercial copies in advance of any such request. A failure to provide ample time will result in issuers printing in advance and maintaining an inventory of commercial copies as a precautionary matter (in case of any requests), with all or substantially all of those printed copies never being used, thereby undercutting the intended cost-saving and environmental benefits of the Prospectus AED Model. What constitutes ample time will be a function, in part, of the number of purchasers and the nature of the offering. However, in all circumstances, the dealer or issuer (as applicable) should be afforded significantly more than two business days following a request to deliver a paper copy of a prospectus.

For the reasons noted earlier and in our prior comment letter, there is no basis for requiring that a paper copy be delivered in an expedited time frame. This is true even in the case of a final prospectus, as the delivery of a paper copy of that prospectus does not (and should not) inform the timing of a purchaser's withdrawal right. It is possible that an investor may request a paper copy to help inform its continuing investment in the security it has purchased (however, this should be coupled with that purchaser's ongoing review of the issuer's continuous disclosure filed on SEDAR). If so, it is unclear why the deadline for delivery should be any less than the ten calendar days permitted by securities legislation for delivery of a copy of an issuer's financial statements (following a request for that copy).

(c) Add an exception to the paper copy requirement where the purchaser has consented to an alternative delivery method

The paper copy requirement (if not removed in the final rules) should not apply where the purchaser (or prospective purchaser, if applicable) has previously consented or otherwise agreed to an alternative delivery method[4]. In addition, the final version of the Prospectus AED Model should provide that,

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2 A corresponding change should be made in any prescribed text with respect to copies of any such materials being available (for example, the new text for marketing materials prescribed by the amendments to subsection 13.7(5) of NI 41-101).

3 See subsections 2A.3(4) of NI 41-101, 6A.3(4) of NI 44-102 and 2A.3(4) of NI 44-103.

4 Corresponding edits will be necessary elsewhere to reflect this exception. For example, the disclosure in the prescribed news release that one may obtain a paper copy of the final prospectus document should be qualified to the following effect: "Unless you have consented to alternative delivery arrangements,…."

where a purchaser (or prospective purchaser, if applicable) indicates or confirms its interest in purchasing a prospectus qualified security by email or other electronic means, a dealer may satisfy its delivery obligation by delivering the prospectus to that email address or using those other electronic means (and that purchaser or prospective purchaser, as applicable, will be deemed to have consented to that method of delivery through its indication or confirmation of interest).

2. Do not impose other new and unnecessary burdens

The Prospectus AED Model should not be an instrument for adding burden without a separate objective whose benefits outweigh that burden.

(a) Make the Prospectus AED Model an option, not an obligation, for all prospectus deliveries

The new obligation imposed under subsections 2A.3(2) of NI 41-101, 6A.3(2) of NI 44-102 and 2A.3(2) of NI 44-103 (the "**new final prospectus delivery obligation**") is a prime example of a new and unnecessary burden imposed by the Proposed Amendments. This new final prospectus delivery obligation should be removed in the final rules as it serves no purpose.[5] Alternatively, it should be modified (and moved, as appropriate) to clarify that satisfying the prospectus delivery requirement under securities legislation through access to the document is an option and does not preclude other means of delivery that are permitted or not prohibited by securities legislation.

The new final prospectus delivery obligation provides that the relevant final prospectus document "must be delivered or sent by providing access to the document". On its face, this would make the Prospectus AED Model mandatory for the delivery of a final prospectus document subject only to the very limited exception noted below. It is unclear why this mandatory use of the Prospectus AED Model was built into the Proposed Amendments. The delivery obligation for a final prospectus document is already appropriately addressed within securities legislation of each local jurisdiction and that delivery obligation may be achieved in a number of ways, including by e-mail or other electronic means provided that the requisite elements for satisfying electronic delivery (in NP 11-201) have been met. Further, the new final prospectus delivery obligation would achieve a different outcome than the approach taken in British Columbia, where a dealer clearly has a choice as to how to satisfy its delivery obligation.[6]

In contrast, the new final prospectus delivery obligation only allows for delivery of a final prospectus document by means other than the Prospectus AED Model where that document "is delivered or sent

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5 In addition, clarifying edits could be made elsewhere in the Proposed Amendments to be clear the Prospectus AED Model is an option, not an obligation. For example, each of subsection 2A.2(2) of NI 41-101, 6A.2(2) of NI 44-102 and 2A.2(2) of NI 44-103 should say that the requirement to deliver or send a prospectus "**may** be satisfied by providing access in accordance with" the relevant subsection in the instrument (as opposed to saying that delivery obligation "**is** satisfied when", which suggests this may be the exclusive procedure for delivery).

6 In British Columbia, a dealer using the Prospectus AED Model would be exempt from the prospectus delivery requirement. Accordingly, it would have the choice of delivering a final prospectus document by way of access or by any other means, including electronic delivery. This different outcome in British Columbia is contrary to the CSA's Notice which says that the "BC Exemption is intended to achieve the same outcome as the AED Model proposed in the other jurisdictions".

pursuant to another procedure prescribed by securities legislation". This exception is too limited as the only other "procedure" for sending or delivering a final prospectus document that is "prescribed" under securities legislation is prepaid mail[7]. Electronic delivery options (which are significantly more efficient and effective than prepaid mail) are either permitted or not prohibited under securities legislation; they are not prescribed[8]. Accordingly, even where a purchaser has previously consented to prospectus delivery via email or other means of electronic delivery, and without regard to whether that alternative is the purchaser's preferred means of delivery and is permitted by current securities legislation, the Proposed Amendments would (by virtue of the new final prospectus delivery obligation) unilaterally deem such means of delivery to be invalid.

For all the reasons noted in our prior comment letter, an access equals delivery model is the best and most efficient method for prospectus delivery[9]. As a result, we expect that the Prospectus AED Model (when finalized) will be used to satisfy prospectus delivery in most circumstances. However, there may still be discrete circumstances where it is appropriate to satisfy delivery through email or other electronic means. Moreover, although rare, there may be circumstances where SEDAR is not available (due to technical reasons or otherwise), in which case the dealer or issuer, as applicable, must be permitted to use any alternate means of final prospectus delivery then available to it and should not be forced to revert to printing and mailing the prospectus.

The mandatory nature of the new final prospectus delivery obligation is even more concerning when one considers that the obligation to deliver a prospectus under local securities legislation is, generally speaking, an obligation of the dealer[10]. In contrast, an action typically taken by the issuer (i.e., SEDAR filing), not the dealer, is necessary in order to effectively provide access under the Prospectus AED Model. At best, a dealer could use its reasonable efforts to cause the issuer to comply with the necessary issuer actions (by filing on SEDAR the applicable prospectus and, if applicable, the prescribed news release)[11].

(b) Remove unnecessary requirement to file prescribed news release

In order for access to be achieved for a final prospectus document, the Prospectus AED Model requires that the prescribed news release be filed (in addition to being issued). In our view, the issuance of the prescribed news release should be more than sufficient given the only purpose of this news release is

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7 In the case of Ontario, see subsection 71(1) of the *Securities Act* (Ontario).

8 The view of the CSA that delivery requirements of securities legislation can generally be satisfied through electronic delivery is set out in a policy (NP 11-201). Per NI 14-101, "securities legislation" is defined only to include the securities act of the local jurisdiction, the regulations and rules under that act and, where appropriate, blanket rulings and orders. Accordingly, electronic delivery is not currently a "procedure prescribed by securities legislation".

9 Electronic delivery is an inferior substitute for an access equals delivery model because it (i) adds unnecessary time and expense, (ii) involves unnecessary risk (both legal and technical) for failed delivery and (iii) exposes recipients to potential cybersecurity risks from, among other things, the use of personal information for delivery of the relevant document and an attached file or link (as applicable) for the delivered document.

10 In the case of Ontario, see sections 66 and 71 of the *Securities Act* (Ontario).

11 It may be that dealers will coordinate the issuance of the prescribed news release, consistent with practice for a bought deal news release. However, we would still expect that issuers will make the SEDAR filings necessary for providing access per the terms of the Prospectus AED Model.

to provide notice of the availability of the prospectus[12]. Requiring that the prescribed news release also be filed on SEDAR adds no incremental value from a notice perspective. As the prospectus itself is already filed on SEDAR, requiring the filing of yet another document right after (whose sole purpose is to refer to that previously filed prospectus) only clutters an issuer's SEDAR profile (as well as the in-boxes of investor and other market participants receiving alerts of the issuer's SEDAR filings). As such, this additional filing obligation is just a burden and another potential source of technical default (were an issuer to fail to file the prescribed news release on time) that may be outside of the control of the dealer obligated to deliver the prospectus[13].

3. Modify news release requirement to avoid market disruption from multiple news releases

The requirement within the Prospectus AED Model that a news release (the "**prescribed news release**") be issued on the same day that the final prospectus document is filed (the "**news release requirement**")[14] should be modified to allow a forward-looking notice of that filing. In a number of circumstances, permitting the prescribed news release to be issued prior to the filing of the relevant prospectus will allow an issuer to issue a single news release that discloses material information with respect to the offering (i.e., pricing related information) and concurrently satisfy the notice objective of the news release requirement. As noted in our prior comment letter, this will avoid a scenario in which there are multiple announcements in respect of an offering, at least one of which (the prescribed news release) would contain no material information in respect of the issuer, its securities or the offering. Unless coupled with corresponding material news, the prescribed news release can introduce disruptive "noise" in the market.

This concern with a multiplicity of news releases is greater in offerings where the pricing is close to, but not concurrent with, the filing of the final prospectus document. For example, marketed deals (where pricing typically occurs shortly before filing of the final prospectus) and take downs from a shelf prospectus (where pricing triggers a two-day period in which to file the shelf prospectus supplement). In these types of offerings, a news release is commonly issued immediately after pricing. However, because additional work must be done to reflect the pricing information in the final prospectus document, it will rarely be practical to file that final document concurrently with the pricing news release. In these circumstances, it should be open to an issuer to satisfy the news release requirement by including a statement in its pricing news release that the final prospectus document "will be" available within a certain time period[15]. This approach would not disadvantage purchasers provided the ultimate filing of the final prospectus document was not delayed beyond a reasonable period (e.g., two business days following pricing).

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12 This notice would be in addition to notice an investor may already receive from alerts pushed to them upon any SEDAR filing.

13 See footnote 11 above.

14 See subsections 2A.3(3)(b) of NI 41-101, 6A.3(3)(c) of NI 44-102 and 2A.3(3)(c) of NI 44-103.

15 Corresponding changes to the news release requirement should be made to accommodate this, including allowing the prescribed news release to be issued "on **or prior to** the day the [relevant prospectus] was filed…" and to say in that news release that such prospectus "is **or will be**" available or accessible, as applicable, on SEDAR.

While a press release is currently the most practical option for providing immediate notice as to the availability of the final prospectus document in most circumstances, allowing for an alternative form of notice that is sent directly to purchasers (as suggested in our prior comment letter and section 6 of this letter) could also mitigate the market disruption issue stemming from multiple news releases.

4. The Prospectus AED Model should be an option for satisfying prospectus delivery obligations in connection with MTN programs and other continuous distributions

Further consideration should be given to how the Prospectus AED Model may be amended to allow it to be available for prospectus delivery in connection with MTN programs and other continuous distributions under a shelf prospectus. In each case, access equals delivery should be an option for satisfying the prospectus delivery obligation and should never be an obligation (see our earlier comments in section 2 of this letter).

Notably, there is a range of types of distributions that could constitute an "MTN program or other continuous distribution" for purposes of Part 8 of NI 44-102. Some corporate issuers use a pricing supplement to offer debt securities qualified under a base shelf prospectus. The timing for the filing of the final prospectus document and the issuance of the pricing news release in those MTN offerings is no different than for a public offering of debt securities by way of a prospectus supplement. At a minimum, the final rules should clarify that the Prospectus AED Model is an available option for delivery of a pricing supplement (and corresponding base shelf prospectus / supplement) used in connection with any such MTN offering.

We assume that only a subset of MTN programs and other continuous distributions were intended to be excluded from the Prospectus AED Model – namely, prospectus qualified distributions of "structured notes" issued by a financial institution. While it is true that, as currently proposed, the Prospectus AED Model may not be suitable for structured note distributions, this is principally a function of the prescribed access conditions that have been included in the Proposed Amendments. Given the volume of prospectuses delivered in structured note offerings, there would be significant efficiencies in allowing those deliveries to be achieved by way of an access equals delivery model (to the extent those prospectuses cannot be effectively delivered by electronic means). Bearing in mind the significance of those efficiencies, we suggest that further consideration be given as to practical ways to modify the access conditions of the proposed Prospectus AED Model to work for structured note offerings – either in finalizing the Proposed Amendments or in the next round of rulemaking that expands the circumstances in which access equals delivery is available.

In addition to ensuring that use of an access model is an option (not an obligation) for delivery of a structured note prospectus, the other key hurdle in making the Proposed AED Model workable for structured note offerings is the prescribed news release requirement. No financial institution should be required to issue multiple immaterial news releases in a week (or even a single day) simply to draw attention to the availability of a pricing supplement. This goes well beyond the coverage necessary to adequately notify structured note purchasers of the filing of that pricing supplement. Moreover, and as noted earlier, issuing multiple news releases with immaterial information is disruptive from a market perspective. In structured note programs, there is no overriding investor protection rationale for requiring any independent notice (by news release or otherwise) as to the availability of a pricing supplement. However, if it is determined that some notice is necessary, it should be open to the issuer

or dealers of a structured note program to use any disclosure outlet reasonably designed to give that notice directly to the purchasers of a structured note. Issuers of structured notes, and their dealers, should be consulted on this point as they are in the best position to advise as to what methods may be viable for providing this direct notice (as an alternative to a news release).

5. Other amendments are required for the Prospectus AED Model to work

In addition to the more substantive changes noted above, certain technical amendments and clarifications are also necessary in order for the Prospectus AED Model to work in practice.

Generally speaking, the prospectus delivery obligation under current securities legislation is an obligation of the dealer, not the issuer. However, certain of the access conditions under the Prospectus AED Model involve actions traditionally taken by the issuer. Accordingly, clarifications or changes should be made in the final rules to make clear that a dealer may satisfy any of the access conditions of the Prospectus AED Model on behalf of, or independently from, the issuer. For example, a provision could be added in the final rules to clarify that the prescribed news release may be issued directly by the dealer to satisfy its prospectus delivery obligation.[16]

The Proposed Amendments would also benefit from additional precision or clarification, as applicable, to avoid ambiguity in their application. For example, references to the "right to withdraw" and the "right to rescind" in the Proposed Amendments[17] should be defined with reference to the specific subsection under the securities legislation of each local jurisdiction under which that right arises.

In addition to the changes within the Proposed Amendments, for the Prospectus AED Model to work in practice changes may also be necessary in related provisions of securities legislation and in the SEDAR filing manual to address the use of a SEDAR filing as the trigger for deemed delivery / receipt of a prospectus. For example, for purposes of establishing the date on which access has been provided under the Prospectus AED Model, NI 13-101 should be modified to clarify that the 5:00pm local time cut-off in subsection 2.7(3) does not apply. Access should be deemed to have been provided to a prospectus document (and, as a result, a purchaser or prospective purchaser should be deemed to have received that document) on the date it is actually filed on SEDAR, provided that it is filed (and, in the case of a final prospectus document, the prescribed news release has been issued) before midnight on that day. Requiring filing by 5:00pm is impractical for offerings pricing in the afternoon. In addition, we submit that there is no principled basis for extending the withdrawal right period (and delaying closing of any such offering by an additional day to afford time to allow the withdrawal rights to expire before closing) merely because the relevant final prospectus document was not filed by 4:59pm. Investors do not stop working at 5:00pm local time.

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16 Other changes are required in the Proposed Amendments to clarify that certain access conditions may be satisfied by the issuer and not the dealer. Section 2A.1 of 41-101CP errantly notes that "a dealer must provide access". In contrast, Item 30 of 41-101F1 and Item 20 of 44-101F1 both say "if the issuer intends to issue …" the prescribed news release. As noted above, it may be that this prescribed news release is issued by the dealer, not the issuer.

17 See subsections 2A.2(5) of NI 41-101, 6A.2(5) of NI 44-102 and 2A.2(5) of NI 44-103.

6. In future rulemaking, consider alternate means for providing notice of a filed final prospectus document

For the reasons noted in our prior comment letter, a news release is more than sufficient to alert purchasers that a prospectus is available. In fact, a news release goes well beyond the coverage necessary to adequately notify purchasers of the filing of a final prospectus document, as the only persons who need to be notified are the purchasers for that public offering. Accordingly, we would urge the CSA not to foreclose on alternative methods of notifying purchasers as to the availability of the relevant final prospectus document. In our view, it should be open to the issuer or dealers to use any disclosure outlet reasonably designed to give that notice to purchasers. While the prescribed news release should be sufficient in all circumstances, it should not be the only means for providing that notice.

That said, given the significant benefits to swift adoption of the Prospectus AED Model, we suggest that an expansion of the available methods for notice of the filing of a final prospectus document (in lieu of the prescribed news release) is a matter that could be delayed to a subsequent round of rulemaking that expands on the scope of this initially implemented access equals delivery model. However, as noted earlier, consideration should be given in the near term as to alternative means of notice that would allow an access equals delivery model to be used for the delivery of a final prospectus document for structured note programs and in other circumstances where use of a prescribed news release would result in an inappropriate amount market disruption.

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The following partners at our firm participated in the preparation of this comment letter and may be contacted directly should you have any questions regarding our submissions.

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SUBMISSION OF CONCERNED INVESTORS

July 5, 2022

CSA NOTICE AND REQUEST FOR COMMENT PROPOSED AMENDMENTS AND PROPOSED CHANGES TO IMPLEMENT AN ACCESS EQUALS DELIVERY (AED) MODEL FOR NON-INVESTMENT FUND REPORTING ISSUER

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Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

We are a group of concerned individuals focused on investor protection who share an interest in the CSA's proposal to implement an Access Equals Delivery (AED) model for non-investment funds.

We have engaged in dialogue since the proposal was announced in April 2022 but have individually followed the CSA's important work in this area for several years. The perspectives of this group are not monolithic, but several important themes have emerged from our dialogue that we all agree on. In our capacity as investor advocates focused on investor protection, we are conveying the perspectives of the individual participants listed below, who generally agree with the following broad observations, which may be of interest to the ongoing important work of the Staff of the CSA:

Modernization should promote engagement and investor awareness (in addition to burden reduction)

- Disclosures should not be eliminated, rather they should be made better and more accessible. For disclosures to be fit for their purpose, they must be in plain language and reflect the empirically determined financial literacy of the average Ontarian investor. Retail investors prefer to receive summary disclosures (either hard copy or digitally) with layers of details available online or upon request. An example of this is the Fund Facts and ETF Facts disclosure. Though the Fund Facts template requires basic

improvements, they were the result of a collective effort of securities regulators focused on creating better disclosures for retail investors, while minimizing industry burden.

- Effective notice is a key investor protection for retail investors. Retail investors want to be notified in plain language and with sufficient advance notice about changes to their investments. Without a push notification, they will not be aware of disclosures and will not read them.
- Investors are seeking new relevant disclosures, such as those related to climate related risks, to keep current with what is impacting their investments. The need is to have better objective ESG disclosure in plain language. It makes no sense to require issuers to prepare and file these disclosures, but then not notify investors of their content and to offer to deliver these disclosures to their investors.

AED should not be used for continuous disclosure and cannot be used for proxy materials, or any disclosures that require a response or immediate action.

- Implementing AED for continuous disclosure as is will significantly impair the efficacy of the disclosure regime, at least for retail investors. If AED were to be implemented for these latter types of materials, it would significantly reduce shareholder participation and raises serious governance, as well as investor protection concerns.

Consideration of AED is premature.

- The proposed changes to implement AED are based, in part, on modernization efforts of SEDAR (called SEDAR+). The nature of these enhancements have not been made public. SEDAR+'s time line for rollout is unknown and must go through public comment. Aside from the need to consider alternatives, securities regulators and the investing public needs time to understand these enhancements and test them with investors BEFORE a rule can be implemented that relies on it.

We appreciate this opportunity to share our views on this important topic and would be happy to follow up, individually or as a group.

Yours truly,

"Harold Geller"

Harold Geller

Investor Advocate,

Former Member of OSC Investor Advisory Panel

"Harvey Naglie"

Harvey Naglie

Former Member, OSC Investor Advisory Panel

SUBMISSION OF CONCERNED INVESTORS

"Don Mercer"	"Edward Waitzer
Don Mercer	Edward Waitzer
President, Consumers Council of Canada	Former OSC Chair

July 5, 2022

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Re: CSA Consultation – Access Equals Delivery Model for Non-Investment Fund Reporting Issuers

On behalf of the Ontario Securities Commission's Investor Advisory Panel (IAP), I am pleased to provide this response to the CSA's *Notice and Request for Comment on the Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers* published on April 7, 2022 ("the proposed AED concept").

Contextual overview: AED vs. modern push notification

We strongly support the goal of delivering information to investors in a manner that is efficient, effective and environmentally responsible. We also support the goal of reducing cost and unnecessary burden for reporting issuers. Importantly, these goals are not mutually exclusive. They can be achieved without diminishing investor protection and without making information acquisition burdensome for the investing public.

To accomplish this, however, the proposed AED concept must be elevated beyond its current design. It should be brought completely up to date through the integration of push notification tools that better accord with the way information is conveyed and consumed today.

Access Equals Delivery was conceived at a time when technology had just begun to make feasible the idea of public access to centralized electronic document repositories – virtual libraries that individuals could 'visit' online. The basic idea, therefore, was to obviate the need for physical delivery of disclosure materials by giving investors a single digital portal (SEDAR) where they could look through all of an issuer's regulatory filings.

But technology has advanced considerably since then, and this notion of substituting access for delivery has become somewhat quaint with the advent of digital tools and platforms that facilitate:

(a) targeted distribution of notifications to subscribers (e.g., using apps for building and managing email subscription lists) or to those who choose to "follow" postings of selected entities on social media; and

(b) instant electronic distribution of documents and document-based or web-based information (e.g., via embedded hyperlinks or QR codes).

These technologies are efficient, inexpensive, readily available, easy to administer and easy to use. Their adoption is widespread, with even very small businesses employing them. And consumers have become accustomed to receiving information this way.

Core recommendation – Actual electronic delivery, not simply access

The world has moved beyond the point where there were efficiencies to be gained by equating access with delivery.

Today, actual electronic delivery of documents through push notification is a routine and easily achieved reality. Its adoption as the primary method of distributing disclosure information to investors, in place of paper-based postal notification, would reduce costs and burden for issuers while also reducing environmental harm, and all without compromising the needs of investors.

Given these changes in the digital landscape, we believe the public interest will best be served by an information delivery model that is thoroughly modern and forward looking, leveraging the full array of today's technology and not just the technology of a decade or two ago.

A searchable electronic library remains a good idea (especially if it incorporates a well-designed user interface) and it should continue to be a prominent feature of the AED concept. However, we believe the concept also must incorporate push notification technology – and must make that technology central to the system's operation – in order to meet modern standards and expectations for information distribution.

Electronic delivery should be the default mechanism

In our comment letter dated February 24, 2020, on *CSA Consultation Paper 51-405 – Access Equals Delivery*, we stated:

> *In our view, electronic delivery of prescribed documents has become manifestly appropriate. Indeed, it should be the default mechanism for communicating information to investors. We are of this view because electronic delivery improves the timely availability of information for investors and reduces the economic burden associated with delivery of paper documents.*

We are also mindful of the financial cost to reporting issuers that is associated with disseminating information, as well as the environmental impact of paper production, printing and physical delivery. As long as investors are offered the option of receiving disclosure documents by mail or are provided with actual delivery of disclosure documents in an electronic format, we are in favour of electronic dissemination as the default method.

As we indicated previously, we remain of the view that electronic delivery requirements have to ensure actual disclosure of information material to making investment decisions. While access may equal delivery in a purely technical sense, it is a legal fiction. With the proposed AED concept, regulators are imposing the burden of the delivery of disclosure documents on investors. As proposed, investors will need to be proactive in order to find information that may be critical to their investments. Many are not well-equipped to do so.

Taking this extra step – the need for investors to search for and find documents that are necessary for them to assess their investments – is cumbersome and will dissuade some investors from receiving the disclosure documents that have long been a cornerstone of securities regulation. SEDAR, as it is currently constituted, is difficult to navigate. While SEDAR has its challenges, it is at least in the process of being improved. The news release as a means of communication is more problematic. Continuing to rely on the use of news releases is in no way a step forward. The news release is technology with its roots in the early 1950's. It is not an effective way in which to notify investors: there is no guarantee investors will look for let alone see pertinent information.

Right of rescission overlooked

It is interesting that the proposed access equals delivery model is not being extended to proxy-related materials and takeover and issuer bid circulars because of the time-sensitive nature of these materials and their importance to the issuer. A right of rescission is no less important and no less time sensitive to investors than proxy-related materials are to a reporting issuer, yet the access equals delivery approach does not accord it the same level of importance. Enabling actual electronic delivery where requested would help in this regard. So too would e-mail or other electronic notification of the fact that a filing has been made.

In addition, the continuous disclosure materials that will be subject to the access equals delivery approach are important to investors, can be time sensitive and are mandatory because they are a fundamental component of the investor protection framework. A filing on SEDAR will likely only be picked up in a timely way by sophisticated investors and perhaps a few enterprising ones.

Design recommendations

As we articulated in February 2020, in our response to CSA Consultation Paper 51-405:

> *However, delivery of these documents in electronic format should not be simply directive, leaving investors to search out the document on SEDAR or on the website of the issuer. Rather, delivery should mean that the investor is provided with an electronic link directly to the document together with the ability to download the document in PDF format.*

Additionally, as a necessary design redundancy, we recommended these features:

> *Issuers should also be required to maintain a website where all prescribed documents are available for viewing and in a downloadable PDF format. Press releases, where required, can similarly direct investors and interested parties to the issuer website where full information is available and where required documents can be available for viewing and downloading.*
>
> *We recommend that some standardization be mandated for the location and presentation of these documents on issuers' websites, so investors are not forced to hunt through an idiosyncratic labyrinth of web pages in order to find documents on each issuer's site.*

Ensuring equal access

We reiterated these points in our response to the Capital Markets Modernization Taskforce recommendations in September 2020, adding the following caveat:

> *It must be kept in mind, however, that data networks are not robust in all corners of Ontario, and that some investors, especially older ones, may not be proficient or comfortable online. Investors therefore should retain the ability to opt out of electronic delivery by requesting that documents be mailed to them in hard copy.*

We suspect that this is true across the country.

More recently, in our Horizon Project report of June 2021, we discussed issues relating to the broader topic of digital services and mentioned this concern:

> *Consumer advocates and industry organizations also noted that widespread digital adoption may jeopardize access to advice and services for certain groups outside the mainstream. Dealers and advisors may eventually find it uneconomic to service digital illiterates, people who lack access to equipment or reliable connectivity, others who have lost the ability to use technology due to cognitive decline, and individuals who simply do not wish to have an online*

footprint. How will service to these groups be assured? It's a foreseeable problem, and a policy response needs to be formulated.

We remain concerned about this issue and consequently urge regulators to retain postal notification as a simple, easy-to-arrange option for all investors. As noted above, however, we believe the primary default mechanism for information dissemination should be actual electronic delivery of documents via e-mail or other targeted push notification with an embedded hyperlink to the document or with the document as an actual attachment.

Lesser alternatives

Direct notification about a document's existence without embedding the document is a poor substitute and a wholly unnecessary compromise, in our view. Worse still would be indirect notification via untargeted general news release.

As we've stated, directing investors to 'visit the library' is no longer state-of-the-art; and consequently we must question maintaining an outmoded process as the centrepiece of this initiative – especially since the initiative is one that aims to modernize disclosure.

Indeed, absent the use of modern communication tools, the proposed AED concept potentially amounts a retrograde step. Delivery under the proposed AED concept can only be effected if the investor seeks out and locates the disclosure that has been made. This is burden shifting, not burden reduction. It also undermines a key principle of securities legislation: the requirement for 'timely, accurate and efficient disclosure of information.' Putting the obligation on the investor to discover that a reporting issuer's disclosure is available does not make for efficiencies unless investors are provided with better notice that documents relevant to them have been filed on SEDAR. Disclosure cannot be timely if it is not found on time.

Nonetheless, if regulators opt for notional delivery through notification that a document has been filed on SEDAR, it is essential that investors be provided at the very least with clear and easy to follow instructions on how to locate the document – without that, access will not be effective or meaningful.

Evolutionary considerations

Finally, we recognize that there may well be challenges with changing the current default to electronic delivery, including the legal uncertainties referenced in the proposed AED concept. However, we also note that the stated purpose of the AED model "is to modernize the way documents are made available to investors and reduce costs associated with the printing and mailing of documents."

While we understand the challenges for reporting issuers to communicate effectively with beneficial owners, we believe that AED is an opportunity to advance the electronic delivery of disclosure documents across the board for the benefit of

issuers and investors alike. The regulatory endorsement of a transition to subscription apps and social media postings would recognize how investors are "increasingly accessing and consuming information electronically" and would be "consistent with the general evolution of our capital markets". This would also help regulators further facilitate innovation in the capital markets.

To reiterate, we believe the public interest will best be served by an information delivery model that is thoroughly modern and forward looking, leveraging the full array of today's push notification technology and not just the technology of a decade or two ago.

We wish to thank you again for the opportunity to comment on this important initiative. We will, of course, be happy to provide any clarification or elaboration on our comments should the need arise.

Sincerely,

Neil Gross
Chair, Investor Advisory Panel

CIRI

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Relations Institute (CIRI)
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July 5, 2022

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Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Dear Secretary and Me Lebel,

Re: CSA PROPOSED AMENDMENTS AND PROPOSED CHANGES TO IMPLEMENT AN ACCESS EQUALS DELIVERY MODEL FOR NON-INVESTMENT FUND REPORTING ISSUERS

The Canadian Investor Relations Institute (CIRI), a professional, not-for-profit association of executives responsible for communication between public corporations, investors and the financial community, is pleased to provide comments on the *Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers* (Proposed Amendments). CIRI membership represents more than 230 non-investment fund reporting issuers with a combined market capitalization of $1.9 trillion. More information about CIRI is provided in Appendix A.

CIRI

General Comments

CIRI appreciates the opportunity to review and provide comments regarding the Proposed Amendments. CIRI further recognizes the efforts of the Canadian Securities Administrators (CSA) to generate discussion on the appropriateness of implementing access equals delivery (AED Model) in the Canadian market commencing with the 2020 issuance of CSA Consultation Paper 51-*405 Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers*. CIRI and our members agree in principle with the objective of the CSA to implement an AED Model and recognize that it will modernize the way documents are made available to investors. Issuers will benefit from reduced costs for printing and mailing documents while still providing investors with the key information they rely on to make investment decisions and without compromising investor protection. Add to this, the proposed AED Model is more environmentally friendly, which is beneficial to investors and issuers alike.

We note that the current proposal prioritizes the adoption of an AED Model for (a) prospectus documents and (b) annual financial statements, interim financial reports and related MD&A. CIRI will at this time limit its comments to the proposed AED Model as it pertains to financial statements and related MD&A.

Role of SEDAR

It is critical that investors have the ability to access all of an issuer's documents online through SEDAR; however, the current version of SEDAR does present users with challenges, both for the filing of documents by issuers and for accessing documents by users, including investors.

We understand that a new, improved version of SEDAR+ is forthcoming and we applaud this effort. In fact, we suggest that the implementation of SEDAR+ be given high priority, particularly given the central role it will play once the AED Model is fully implemented. CIRI and its members have previously suggested that the new SEDAR+ should be more user-friendly with functionality that more readily allows issuers to post their required documents. Currently, the process is so complicated that many issuers actually outsource the posting of documents to SEDAR to third parties – for a fee.

Further, for SEDAR+ to be as user-friendly as possible, we suggest it include an 'alert system' whereby an investor could be notified whenever a new document has been posted by an issuer, provided they have subscribed to that issuer. If technologically possible, CIRI further suggests that investors would be best served if a direct link to the specific documents on SEDAR be available for inclusion in the news release.

Role of the News Release

CIRI supports the use of a news release as a primary communication vehicle to notify investors that material documents have been filed on SEDAR; however, CIRI proposes that this notification be done as a one-time verification for all materials, after which investors will be able to monitor SEDAR filings. This simplifies procedures significantly and reduces news release and SEDAR-related expenses substantially.

We have assumed that the required news release would include (a) the documents that are being made available (e.g. financial statements and related MD&A); (b) that they are now available electronically on SEDAR; and (c) that paper versions are available to investors upon request and at no cost to the investor. We understand that the proposed rule contemplates that all of this information be required in the headline of the release. CIRI believes that this approach is not only unwieldy but unnecessary. A preferred alternative would be to provide the required disclosure as some form of boilerplate text below the headings but above the main body of the news release. Real world experience indicates that sophisticated investors and traders working in real-time react best to shorter headlines without cumbersome superfluous details, which is significantly impacted by Google's search results that only display the first 63 characters of the news release's headline.

In addition, once the AED Model is implemented and all issuers begin to issue AED-required news releases, the markets will quickly understand just what such releases are for and how to get the detailed information they seek via SEDAR.

Questions

In response to the two questions included in the AED proposal, CIRI has the following comments.

a. *Would the requirement to issue and file a news release be unduly costly or onerous in these circumstances? If so, why? Would the burden differ depending on whether the issuer is a venture issuer or not?*

   Given that issuers currently issue news releases regarding financial results, it would generally not be particularly onerous to adopt this element of the proposed AED Model and any additional costs may be offset by cost savings resulting from less printing and mailing of documents. It does make sense; however, to issue a single news release denoting the filing of annual and/or interim financial statements and the related MD&A rather than issuing separate news releases for each.

   As indicated above, providing a means for issuers to more easily file their documents to SEDAR would be an improvement over the current system since many issuers turn to third parties, at a cost, to post these filings. This is particularly burdensome for smaller reporting issuers who often have significantly fewer resources.

b. *Should we consider alternative ways to alert investors of the availability of a document that could be less onerous? Which ones and why?*

   As mentioned above, CIRI proposes that the news release notification be done as a one-time verification for all materials and that SEDAR+ include an 'alert system' whereby an investor could be notified whenever a new document has been posted by an issuer, provided they have subscribed to that issuer.

CIRI appreciates the opportunity to provide comments on the Proposed AED Model and commends the CSA's efforts to reduce the associated costs and regulatory burden on issuers while protecting investors.

Sincerely yours,

[redacted]

Yvette Lokker
President & Chief Executive Officer
Canadian Investor Relations Institute

CIRI

Appendix A

The Canadian Investor Relations Institute

The Canadian Investor Relations Institute (CIRI) is a professional, not-for-profit association of executives responsible for communication between public corporations, investors and the financial community. CIRI contributes to the transparency and integrity of the Canadian capital market by advancing the practice of investor relations, the professional competency of its members and the stature of the profession.

Investor Relations Defined

Investor relations is the strategic management responsibility that integrates the disciplines of finance, communications, marketing, securities law compliance and sustainability to achieve an effective flow of information between a company, the investment community and other stakeholders, in order to support an informed valuation of the company's securities and enable fair and efficient capital markets.

The practice of investor relations involves identifying, as accurately and completely as possible, current shareholders as well as potential investors and key stakeholders and providing them with publicly available information that facilitates knowledgeable investment decisions. The foundation of effective investor relations is built on the highest degree of transparency in order to enable reporting issuers to achieve prices in the marketplace that accurately and fully reflect the fundamental value of their securities.

CIRI is led by an elected Board of Directors of senior IR practitioners, supported by a staff of experienced professionals. The senior staff person, the President and CEO, serves as a continuing member of the Board. Committees reporting directly to the Board include: Human Resource and Corporate Governance; Audit; Membership; and Issues.

CIRI Chapters are located across Canada in Ontario, Quebec, Alberta and British Columbia. Membership is close to 500 professionals serving as corporate investor relations officers in approximately 200 reporting issuer companies, consultants to issuers or service providers to the investor relations profession.

CIRI is a founding member of the Global Investor Relations Network (GIRN), which provides an international perspective on the issues and concerns of shareholders in capital markets beyond North America. The President and CEO of CIRI has been a member of the Continuous Disclosure Advisory Committee (CDAC) of the Ontario Securities Commission. In addition, several members, including the President and CEO of CIRI, are members of the National Investor Relations Institute (NIRI), the corresponding professional organization in the United States.

NORTON ROSE FULBRIGHT

July 5, 2022

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British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

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Comments on the CSA Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers

1 INTRODUCTION

This letter is submitted in response to the CSA Notice and Request for Comment (the **Notice and Request for Comment**) on *Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers* (the **Proposed Amendments**) issued by the Canadian Securities Administrators (the **CSA**) on April 7, 2022. This letter reflects the views of a working group consisting of issuers having a combined market capitalization of more than CAD $110 billion (the **Working Group** or **we**).

Members of the Working Group welcome the CSA's initiative to implement an access equals delivery model (the **Proposed AED Model**) for delivering certain prospectuses, annual financials, quarterly reports and accompanying management's discussion and analysis (**MD&A**), in a general effort to modernize the way documents are made available to investors while reducing costs associated with printing and mailing for reporting issuers in Canada. With a view to contributing to these efforts, we provide herewith comments in respect to the Proposed Amendments and our responses to the specific questions asked by the CSA in its Notice and Request for Comment. We thank you for affording us the opportunity to comment on this important matter, and we trust that the CSA will consider the views expressed in this letter in finalizing the Proposed Amendments.

2 GENERAL COMMENTS

Regulatory and administrative practices have evolved to allow electronic delivery of documents in a timely and efficient manner. After studying the Proposed Amendments, we are of the view that they are a reasonable extension of this practice. The following comments and suggestions aim at further refining the Proposed Amendments so as to contribute to this general effort based on the Working Group members' practical experience.

In particular, we would like to emphasize the following observations:

2.1 Interaction with other corporate laws and regulations

The Proposed AED Model would operate alongside other securities and corporate laws and regulations, some of which offer different delivery frameworks. For instance, under National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), beneficial securityholders can currently request financial statements and related MD&A, as part of the annual request forms, through an opt-in method. Similarly, National Policy 11-201 *Electronic Delivery of Documents* allows issuers to deliver documents electronically to those registered securityholders who have consented to receive electronic delivery of material from the issuer. Furthermore, corporate law provisions such as those of the Canada Business Corporations Act (**CBCA**) require corporations to send annual financial statements to registered shareholders unless they opt-out. The CBCA also requires intermediaries to send financial statements and certain other documents to beneficial owners to allow their shares to be voted.

We encourage the CSA to consider the compatibility of the regime with the various securities and corporate law provisions and engage with corporate law regulators in order to actively address and solve any potential incoherence or inefficiencies that may arise with the adoption of the Proposed AED Model.

We note that under National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (**NI 54-101**), a beneficial owner may give notice of its choices concerning the receipt of materials. The Proposed Amendments contemplate an amendment to the Companion Policy to NI 54-101 which stipulates, among other things, that a beneficial owner's standing instructions under NI 54-101 in respect of the financial statements will not be overridden if a reporting issuer issues and files a news release in accordance with subsections 4.2.1(2) and 4.4.1(2) of NI 51-102. In an effort to fully optimize the benefits sought through the Proposed Amendments, we respectfully submit that the Companion Policy to NI 54-101 should be amended so as to permit the Proposed AED Model to prevail, subject to the beneficial owners confirming their previous standing instructions. In the alternative, we propose that the Companion Policy to NI 54-101 be amended so as to provide a mechanism through which beneficial owners can revisit their standing instructions if an issuer elects to follow the Proposed AED Model. Ideally, this would be done through a notice-and-access type notice sent by the intermediary to beneficial owners, by way of which they can either confirm or amend their standing instructions.

2.2 Withdrawal rights

Under the Proposed AED Model, the right to withdraw from, or in Québec the right to rescind, an agreement to purchase securities may be exercised within two (2) business days after the later of (a) the date that access to the final prospectus or any amendment has been provided, and (b) the date that the purchaser has entered into the agreement to purchase the securities. As such, the current right of purchasers to withdraw from a purchase of securities within two (2) business days of the delivery of the final prospectus (which includes a supplement) or an amendment thereto, on the surface, does not appear to be affected by the adoption of the Proposed AED Model.

However, the Working Group notes that it is currently unclear whether a purchaser's withdrawal rights under the Proposed AED Model override the withdrawal rights under applicable securities legislation in the context where an issuer has invoked the Proposed AED Model but a purchaser nonetheless requests

a paper copy of the prospectus. We would recommend to amend the withdrawal rights provisions to clarify that the right to rescind may be exercised within two (2) business days of the later of (a) the date that access to the final prospectus or any amendment has been provided pursuant to the AED Model (notwithstanding requests for paper copies), and (b) the date that the purchaser has entered into the agreement to purchase the securities.

Proposed section 2A.2(5) of National Instrument 41-101 *General prospectus requirements* does not contain "notwithstanding" language and is drafted permissively, leading to ambiguity as to whether such purchaser's withdrawal right could commence to run from the date of actual receipt or deemed receipt of the document under applicable securities legislation. As such, amending the withdrawal rights provision so as to clarify that the withdrawal right period runs from the later of the issuance and filing of the news release (notwithstanding requests for paper copies), and the agreement to purchase the securities, would provide greater certainty for timing, greater consistency of withdrawal rights across all purchasers and greater certainty to issuers in closing a transaction. Moreover, we note that, in order to rely upon the Proposed AED Model in connection with a prospectus offering, the prospectus would need to contain an additional cross-reference on the front page of the prospectus to alert investors to the section explaining how this withdrawal period is calculated.

2.3 Expansion of the Proposed AED Model

The Proposed AED Model is not available for delivery of documents that may require a response from shareholders within a specified time period such as proxy voting and other security holder meeting-related materials and takeover and issuer bid circulars. The Working Group recommends extending the application of the Proposed AED Model to the management information proxy circular provided by issuers in connection with their annual meeting of shareholders. Omitting such annual disclosure document from the list of documents to which the Proposed AED Model applies greatly reduces its impact and encourages issuers to continue using the notice-and-access model for *all* annual disclosure documents, including financial statements and related MD&A, as they will seek to avoid the burden of managing two distinct delivery models. As noted above, however, engagement with corporate law regulators would be required in order to maximize the potential benefits of the Proposed AED Model; for instance, amendments to the CBCA should be considered so as to exempt intermediaries from sending the proxy circular when an issuer elects to follow the Proposed AED Model so that beneficial owners' shares can be voted on.

Furthermore, the Working Group believes that the CSA should eventually consider including the Annual Information Form (the **AIF**) within the scope of the Proposed AED Model, in light of the CSA's proposed amendments to NI 51-102 to combine the MD&A and the AIF into one reporting document called the "annual disclosure statement". As put forward in our comment letter regarding the *Draft Regulation to amend Regulation 51-102 respecting Continuous Disclosure Obligations and Other Draft Amendments Relating to Annual and Interim Filings of Non-Investment Fund Reporting Issuers* (the **Draft Amendments to NI 51-102**), it would be crucial and most rational for the Proposed AED Model to be in force prior to or concurrently with the entering into force of the Draft Amendments to NI 51-102. Otherwise, the requirement to deliver the annual disclosure statement may be unduly burdensome for issuers.

Finally, the Working Group believes the CSA should expand the Proposed AED Model to prospectuses for rights offerings, medium-term note programs and other securities in continuous distribution under a shelf prospectus. As there is a variety of market practices, further considerations need to be given to how the AED Model would be implemented for such offerings, programs and distributions. The CSA should continue to engage with issuers, dealers and investors on the best solution to balance the need for added efficiency in the delivery of documents with the particularities of such offerings, programs and distributions.

Furthermore, as stated below, the Working Group believes that the progressive rolling out of SEDAR+ may offer new functionalities which may replace a requirement to issue and file a news release by a notification process that would permit a more efficient delivery to market participants.

2.4 Flexible approach

The Working Group recommends a flexible approach to the use of the Proposed AED Model so as to allow issuers and their stakeholders to adjust to it. Issuers should be allowed to use the AED Model for some (but not necessarily all) of the documents covered by the model.

3 SPECIFIC QUESTIONS OF THE CSA

Please find below the answers of members of the Working Group to the questions posed in the Notice and Request for Comment pertaining specifically to financial statements and related MD&A.

3.1 Would the requirement to issue and file a news release be unduly costly or onerous in these circumstances? If so, why? Would the burden differ depending on whether the issuer is a venture issuer or not?

The Working Group does not believe that the requirement to issue and file a news release would be unduly costly or onerous in these circumstances. We note that a majority of listed issuers on the Toronto Stock Exchange already follow a practice of issuing a news release to announce the availability of their annual financial statements and interim financial reports. As such, for these issuers, there would be little to no additional cost to add the disclosure required by the Proposed AED Model to such news releases.

3.2 Should we consider alternative ways to alert investors of the availability of a document that could be less onerous? Which ones and why?

We do not believe that there is a need, at this time, to consider alternative ways to alert investors of the availability of a document that could be less onerous. However, with the progressive rolling out of SEDAR+, alternative ways to alert investors may be considered as it is understood that investors may be able to set up alerts or real time notifications on this new platform, a setting which may render the publication of a press release redundant. We recommend that this rolling out be accompanied by a public campaign to raise awareness and encourage investors who are not aware of the database's existence and/or utility to familiarize themselves with it.[1]

4 CONCLUSION

Thank you again for allowing us to provide comments on the Proposed Amendments. Members of the Working Group appreciate the efforts of the CSA at modernizing the way documents are made available to investors while reducing costs associated with printing and mailing for reporting issuers in Canada. We hope that the comments and suggestions set forth in this letter will further contribute to provide meaningful information to the market, in a user-friendly format.

Yours truly,

(signed) Norton Rose Fulbright Canada LLP

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[1] The general lack of public awareness as to the existence and utility of SEDAR is a concern raised by Jean-Paul Bureaud and Edward Waitzer in their opinion published in the Globe and Mail on June 20, 2022. See Opinion: CSA's proposal for company disclosures has downsides for investors - The Globe and Mail. In support of this argument, the authors cite a True North Canada investor survey commissioned by Broadridge Financial Solutions which found that 82% of retail investors are either not aware of SEDAR or do not use it. See com_20210917_51-102_broadridge.pdf (osc.ca).

July 5, 2022

VIA EMAIL

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

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Dear Sirs/Mesdames:

Re: CSA Notice and Request for Comment *Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers*

TSX Inc. and TSX Venture Exchange Inc. (collectively, the "**Exchanges**" or "**we**") welcome the opportunity to comment on the notice and request for comment published by the Canadian Securities Administrators ("**CSA**") on April 7, 2022 entitled *Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers* (the "**Request for Comment**"). Capitalized terms used in this letter and not specifically defined have the meaning given to them in the Request for Comment.

The Exchanges

The Exchanges are part of TMX Group Limited, a company that is strongly focused on supporting and promoting innovation, capital formation, good governance and financial markets in Canada and globally through its exchanges, including the Toronto Stock Exchange ("**TSX**") and TSX Venture Exchange ("**TSXV**") for equities and the Montreal Exchange for financial derivatives. TSX is a globally recognized, robust stock exchange that lists growth-oriented companies with strong

performance track records and is a top-ranked destination for global capital. TSXV is Canada's leading global capital formation platform for growth stage companies looking to access public venture capital to facilitate their growth and is an important part of Canada's vibrant and unique capital markets continuum.

Reducing Regulatory Burden

It is vital to our clients and to all investors that the capital markets in Canada remain fair, efficient and competitive. Our businesses rely on our customers' continued confidence and participation in Canada's capital markets. We believe that achieving the right balance between investor protection and regulatory burden is essential to creating an environment where companies and the Canadian economy can grow and successfully and sustainably compete on an international level. The Exchanges are very supportive of initiatives to reduce the regulatory burden on all market participants without impeding the ability of the CSA to fulfill its regulatory responsibility to protect investors.

Access Equals Delivery

The AED Model implements an access equals delivery model for prospectuses generally, annual financial statements, interim financial reports and related MD&A for non-investment fund reporting issuers. We agree with the CSA's view that information technology is an important and useful tool in improving communication with investors. We appreciate the CSA's consideration of comments received in response to CSA Consultation Paper 51-405 *Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers* (the "**Consultation Paper**"), namely, that the proposed AED Model does not remove an investor's ability to request documents in paper or electronic form or prevent an issuer from delivering financial statements and related MD&A based on an investor's standing instructions.[1] An important amendment to the AED Model since the publication of the Consultation Paper permits this delivery method to be optional rather than mandatory. This amendment permits each issuer to choose appropriate delivery methods for the company and its shareholders, which strikes the right balance between investor protection and the reduction of regulatory burden. As a result, given the amendments to the AED Model since the Consultation Paper, the Exchanges are supportive of the AED Model as set out in the Request for Comment.

The Exchanges are of the view that AED Model (where adopted by issuers) will help reduce the regulatory burden and costs borne by issuers associated with the printing and delivery of paper disclosure documents to their investors. Additionally, the AED Model will facilitate the timely disclosure of information to investors and will not have an adverse impact on investor protection. In addition, electronic access to documents provides an environmentally friendly manner of communicating information to investors.

Finally, given the CSA's objective to harmonize regulation of the Canadian capital markets, we suggest that a single, unified approach to the AED Model would be most appropriate. However, we appreciate that all CSA jurisdictions may not be in a position to have the requisite legislative amendments in place when the AED Model goes live, so a phased-in approach may be warranted.

[1] See our comment letter to the Consultation Paper dated March 9, 2020 on page 179.

Although at this time, the CSA is not proposing an access equals delivery model for the delivery of documents that require immediate shareholder action and participation, such as proxy-related materials and take-over bid circulars, further consultation prior to such a proposal, would, in our opinion, be warranted, given the impact such a delivery model may have on financial market infrastructures, including clearing agencies, central securities depositories, and other intermediaries.

We appreciate the opportunity to respond to the Request for Comment. Should you wish to discuss any of the comments with us in more detail, we would be pleased to respond.

Yours truly,

"*Loui Anastasopoulos*"

Loui Anastasopoulos
CEO, Toronto Stock Exchange &
Global Head, Capital Formation

ASSOCIATION DES BANQUIERS CANADIENS
CANADIAN BANKERS ASSOCIATION

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July 6, 2022

SENT VIA EMAIL

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

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Fax: 416 593-2318
Email: comments@osc.gov.on.ca

Dear Sirs/Mesdames:

Re: CSA Notice and Request for Comment – Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model ("AED model") for Non-Investment Fund Reporting Issuers ("Consultation Paper")

Following the CSA's last consultation on AED model, the Canadian Bankers Association ("CBA") sent a letter to the Ontario Securities Commission on March 9, 2020, (March 9th Letter) outlining our general support of the adoption of an AED model. In the following letter, we reiterate that our members, as bank issuers, remain supportive of the transition to the AED model. We believe the AED model is a logical progression of the electronic delivery of certain issuer documents that is permitted and already substantially taking place under securities regimes and corporate statutes in Canada. Many issuers, including the banks, are already using electronic delivery for continuous disclosure materials and the process is well established. Along with the environmental benefits of lessening paper distributions which is widely supported by investors, the AED model will help make communications with investors more timely, efficient and accessible through enhanced electronic delivery. Further, similar to the notice and access system, the adoption of the AED model provides the flexibility to offer both electronic and print formats as options for disclosures. While offering greater electronic access, the AED model would support the continuation of disclosures still being delivered in electronic or print format for those investors who prefer to receive these items in such a way.

Scope and Implementation of the AED Model

We support the application of the AED model to prospectuses and certain continuous disclosure documents with certain limited exceptions. The AED model reflects the reality that most shareholders do not wish to receive paper copies of corporate disclosure documents. Shareholders who wish to view such documents are able to find them conveniently on the websites of the reporting issuer and through SEDAR and other websites. Shareholders are

also able to download and save electronic copies should they wish, and the electronic versions of the documents are more portable and searchable than paper copies. Shareholders can also be selective about which portions, if any, of the documents they wish to print. Also, under Canadian securities laws, shareholders who wish to do so may always request electronic or physical copies of the financial statements and other proxy materials from the reporting issuer.

We also support the expansion of the regime to annual financial statements, interim financial reports and related MD&A, and suggest other disclosure documents, such as rights offering materials, proxy-related materials, and takeover bids and issuer bid circulars should also be included. Generally, the inclusion of these materials would be beneficial from an accessibility and environment and cost saving perspective. Further, with respect to proxy related materials, we suggest these documents would not lead to any information overflow as they are generally only issued once a year. In addition, they are already the subject of a press release in most cases therefore the transition to an AED model would be seamless.

We also note that consideration should be given to adapting the AED model's application to medium-term note (MTN) programs (i.e., removing the press release requirement and exploring other options for providing notice to investors, as MTNs are not well-suited to the news release approach due to the frequency of issuance, typically multiple issues daily, and the fact that supplements for new issues are often filed up to the SEDAR "closing time").

We suggest this expansion should be done through a tiered implementation process. We note that a tiered implementation process would allow for testing how the new model works, gather stakeholder opinions, and make improvements through an informed decision as we move onto a full rollout.

That said, we believe these changes should be made a soon as possible. While time will be needed for issuers to be ready to handle fulfillment requests, we suggest a six-to-twelve-month implementation period for the AED model as a sufficient implementation period.

Use of News Releases under AED

We also agree with the amendments' proposed approach to using news releases under the

AED model except with respect to high-frequency MTN programs as noted above.

Conclusion

We appreciate the opportunity to provide our support to the AED model. As always, if it would be helpful, we would be pleased to further discuss any of the matters raised in our correspondences. Please feel free to contact the CBA at any time.

Best regards,

Umair Azam

FAIR Canada Canada's Investor Rights Advocate | Promoteur des droits des investisseurs

July 6, 2022

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Sent via email to:

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Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
consultation-en-cours@lautorite.qc.ca

The Secretary
Ontario Securities Commission
comment@osc.gov.on.ca

Re: CSA Notice and Request for Comment – Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers ("AED")

FAIR Canada is pleased to provide comments on the above-referenced proposed AED model published by the Canadian Securities Administrators (CSA).

FAIR Canada is a national, independent charitable organization dedicated to being a catalyst for the advancement of the rights of investors and financial consumers in Canada. It

advances its mission through outreach and education, public policy submissions to governments and regulators, and proactive identification of emerging issues. FAIR Canada has a reputation for independence, thoughtful public policy commentary, and repeatedly advancing the interests of retail investors and financial consumers.[1]

A. GENERAL COMMENTS

The stated purpose of the proposed AED model is to "modernize the way documents are made available to investors" and "reduce costs associated with the printing and mailing of documents, which are currently borne by issuers" all without "compromising investor protection."[2]

We support these aims. However, we believe the AED model falls short in achieving them.

FAIR Canada's key concern is that the proposal is too focused on reducing regulatory burden, rather than modernizing and improving shareholder engagement and communications. Simply put, we are disappointed with the limited scope of this policy project.

We believe it would be more worthwhile for the CSA to explore and address the root causes of low investor engagement, including solving issues around electronic delivery. The CSA should also investigate ways to enhance choices available to investors in terms of how they wish to receive information. While AED may save some issuers a few dollars, it does little to serve ordinary investors. Access does not equal delivery, and we are concerned that even more investors are likely to become less engaged as a result.

Our concerns rest primarily with on-going disclosures provided to investors. As applied to financial statements and related Management Discussion and Analysis (MD&A), AED will further erode the level of investor engagement, which is undesirable. We have set out our concerns in more detail below.

(i) Financial Statements and MD&A

When it comes to financial statements and related MD&A, the proposal will shift the burden from reporting issuers (who need to deliver information) to investors (who will need to actively search for that information). This shift in burden relies heavily on the fiction that the media will pick up press releases issued by those using AED and bring the news to investors' attention. We know that in most cases this will not happen.

Shifting the burden in this way does not modernize shareholder communication. A truly

[1] Visit www.faircanada.ca for more information.
[2] CSA Notice and Request for Comment – Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers (CSA Notice), at page 2.

modern framework would be based on modern communications tools that allow investors to choose how they want to receive information from the companies they own. These would include electronic delivery, subscriptions or alerts.

The projected cost savings for some issuers who choose to use AED are also minimal and hardly justify shifting the burden. For other issuers, they may incur significantly more rather than less costs if they choose to use AED.[3] Either way, it is difficult to justify the proposal from a cost savings perspective.

Finally, and most importantly, we are concerned that AED will further erode investor engagement with the companies they own. The shift in burden and the removal of direct notice under AED will further reduce investor awareness and lead to fewer investors accessing financial statements and MD&A on SEDAR[4].

We believe the CSA could achieve a more modern and investor friendly approach by:

- **Improving investor understanding about what information they can request.** This could be achieved by improving the *Explanation to Clients and Client Response Form* (Form 54-101F1) based on behavioural science and focus group testing to improve comprehension and clarity. It could also be done by prescribing a plain language and easy-to-read annual request form delivered pursuant to section 4.6 of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102).

- **Facilitating e-delivery and other tools that accommodate investor preferences for communicating.** This could be achieved by revising the necessary rules and forms to address consent issues impeding e-delivery preferences, enabling investors to easily "subscribe" to receive information from SEDAR+, and promoting development of platforms that enable retail investors to receive information directly through their broker's website or SEDAR+.

These approaches hold the promise of achieving real modernization and substantial cost savings *without* further compromising investors' ability to easily access information they want and need to make informed investment decisions.

We would also recommend deferring AED until SEDAR (or SEDAR+) has enhanced functionalities that permit investors to pre-select which filings they wish to receive and how they want to be notified (for example, electronically by email with the document attached, or via an alert that notifies them when the filing is available).

Proceeding with AED prior to enabling these alternative approaches will create undesirable consequences. For example, we are concerned that issuers and dealers, in time, will push the CSA to expand reliance on AED to other shareholder communications, including proxy

[3] The example provided in the CSA Notice (at page 34) estimates annual cost savings of only $250 for an issuer. with 1000 securityholders. The analysis also notes (at page 35) a new annual cost of $6,000 to issue news releases for companies that do not currently do so to in connection with their financial statements and MD&A.
[4] System for Electronic Document Analysis and Retrieval (SEDAR): https://www.sedar.com/.

materials or those involving investment funds.[5] Given that AED is a sub-optimum approach for modernizing shareholder communications and engagement, investors will not be well served should it become the blueprint for these other areas.

(ii) Prospectuses

We are less concerned about AED when it comes to prospectuses. This is because in the prospectus context, investors are more actively engaged in the process of buying securities being offered, either directly or indirectly through their dealer.

We also note the AED regime adopted in the United States (U.S.) is only available in the context of prospectuses. We suspect that this is based on the same rationale – investors tend to be more engaged when buying securities in the primary market. Interestingly, AED is not available to U.S. public companies for on-going disclosures. Nor are we aware of any proposal to expand the use of AED in the U.S.

B. FINANCIAL STATEMENTS AND MD&A

(i) What the Data Tells Us

Available data on investor delivery preferences shows they prefer to have on-going disclosure materials delivered to them. It also shows that very few are aware of SEDAR, or that it is a national filing database for public companies. Key data points include:

- **Investors prefer automatic delivery or actual notice.** A True North Canada investor survey, shared with the CSA, found that 94% of investors wish to either receive financial statements and MD&A automatically or receive a notification of their availability.[6]

- **Investors do not prefer AED.** In 2018, a survey by the U.S. Financial Industry Regulatory Authority (FINRA) found:[7]

    - Only 9% of investors preferred receiving disclosure by accessing documents on the internet.
    - 36% preferred physical delivery.
    - 33% favoured delivery by email.

[5] Expanding AED to certain documents related to investment funds, including Fund Facts and ETF Facts, is noted as being under consideration in the 2023-2025 OSC Business Plan, at page 35.
[6] Appended to the Broadridge comment letter to the CSA on Proposed Amendments to NI 51-102, September 13, 2021, page 3 to 106. See slide 31 of the True North Survey deck.
[7] FINRA Investor Education Foundation, Investors in the United States, A Report of the National Financial Capability Study (December 2019) at page 17.

This data was also shared with the CSA.[8]

- **Investors are not aware of SEDAR.** A study commissioned by Broadridge Financial Solutions (Broadridge) found that 82% of retail investors are not aware of SEDAR or do not use it. This lack of awareness is greater among investors with lower income or wealth, less education, and among seniors.[9]

Despite their relevance, these data points are not highlighted in the cost benefit analysis included with the CSA Notice. Rather, undue reliance is placed on one factor. For those that were mailed the NI 51-102 annual request form, "…less than 0.5% of securityholders requested to receive copies of financial statements and related MD&A in each of 2019 and 2018".[10]

This data point is not explained, so we cannot assess its reliability or whether it paints a full picture. For example, does it include securityholders who sent their annual request forms directly to issuers, or just those that sent their requests through the dealer's or the issuer's agent?

The conclusion drawn from it, however, is that "AED for Financial Statements will have little impact" on investors.[11] Simply put, since so few investors requested to receive copies in 2018 and 2019, the conclusion is that very few will be affected by the proposed change going forward. This, unfortunately, seems to suggest the choices made by these investors are unimportant.

To our way of thinking, the low percentage of requests should be cause for concern for the CSA, not a justification for moving forward with AED. In our view, reliance on this data point is insufficient to support AED. Many factors could be behind the low percentage of requests for financial statements and MD&A, including:

- Incomprehensible options prescribed by Form 54-101F1, leading many investors to simply choose not to receive any materials from issuers.

- A lack of consistency and clarity in the NI 51-102 annual request forms prepared by different issuers, leading to investor confusion or information overload.

- The fact that under securities law the investor has to "opt-in" to receive such information, which leads to investors ignoring the NI 51-102 annual request form or not bothering to complete and return it.

[8] CSA Consultation Paper 51-405 – Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers, comment from Broadridge, March 9, 2020.
[9] Broadridge comment letter to the CSA on Proposed Amendments to NI 51-102 Continuous Disclosure Obligations, September 13, 2021, page 25.
[10] CSA Notice , at page 33.
[11] Ibid., at page 33.

Recommendations:

We recommend the CSA:

- Ensure that reliable data drives the design of any delivery modernization framework, especially data about how investors wish to receive materials.
- If available data is insufficient, the CSA should commission research to obtain it. One way to do so would be to incorporate questions with respect to investor delivery preferences in the next iteration of the CSA Investor Index survey.[12]
- Delay implementing AED until sufficient data is obtained and alternative approaches are fully considered. There is no urgent reason to implement AED at this time.

(ii) Why AED Will Further Erode Investor Engagement

There is nothing particularly "modern" about the proposed AED model. Today, the delivery system is based on two basic scenarios. First, reporting issuers may choose to deliver financial statements and MD&A to their shareholders as per the requirements under the applicable securities statute. Second, they may deliver an annual request form under NI 51-102 to their investors.

At its core, AED is proposing to add a further option – rather than deliver financial statements and MD&A or the NI 51-102 annual request form, the reporting issuer could issue a press release indicating the materials are available. The proposal's corresponding requirement to file the continuous disclosure documents on SEDAR is not new.

What *is* new is that, for issuers choosing to use AED, investors entitled to this information will now have to take steps to become aware of it, and then retrieve it. Our concern is that existing low levels of investor engagement will be further eroded. This is because of the following factors:

- **The documents will not be noticed.** Investors will have to monitor news releases and/or track filings, potentially for multiple reporting issuers. Retail investors are unlikely to subscribe to newswire services or check SEDAR regularly for news releases to do this, relying instead on mainstream media for their information.

  Mainstream media tends to disseminate reporting issuer news releases only if they are issued by large companies or are otherwise newsworthy, such as in the case of "material change" news releases.

[12] See: 2020 CSA Investor Index.

- **There is no requirement to post information on the reporting issuer's website.** The most intuitive place for an engaged investor to look for information about a reporting issuer would be the reporting issuer's website or social media channels. Although raised by commentators and considered by the CSA, the AED proposal does not require reporting issuers to post financial statements or MD&A on their websites. It only requires that they be posted on SEDAR, a system we already know many ordinary investors are unaware of and rarely use.[13]

  We believe this is a flaw in the proposal that could easily be addressed by requiring reporting issuers that maintain websites to include this type of information.

  The concept of posting on a second website was part of the CSA's AED Consultation Paper in 2020.[14] A wide range of responding stakeholders supported the concept, including exchanges (TSX Inc., TSX Venture Exchange Inc.) industry associations such as the Quebec Bourse, and institutional investor groups such as the Canadian Coalition for Good Governance.

  The importance of posting on a second website is also reflected in the notice-and-access regime for delivery of proxy materials. Under that regime, posting materials on a website in addition to SEDAR is mandatory.

  Finally, the value of posting disclosures on an issuer's website was noted as far back as 2008 by the U.S. Securities and Exchange Commission (SEC):

  > As we have developed EDGAR to facilitate and promote electronic availability of information, we also have encouraged companies to make their Commission filings and other company information available on their Web sites. We believe that company disclosure should be more readily available to investors in a variety of locations and formats to facilitate investor access to that information. Although our rules do not require reporting companies to establish or maintain Web sites, our rules do promote and, in some cases require, companies to use Web sites to make required disclosures.[15]

- **Accessing the documents will be cumbersome for some.** If an investor happens to notice a news release, or otherwise becomes aware of a filing, they will need to navigate SEDAR to download the documents or request copies from the reporting issuer. The news release will not help with this – it will simply say that a document is available on SEDAR, with no requirement to include a hyperlink to the actual document.

[13] Supra, footnote 9.
[14] CSA Consultation Paper 51-405, January 9, 2020.
[15] Commission Guidance on the Use of Company Web Sites, Aug. 7, 2008, at page 3.

(iii) Increasing Investor Engagement

In our view, the real problem begins when investors are asked to complete Form 54-101F1.

When completing Form 54-101F1, clients can, among other things, choose to "decline" receiving any "securityholder materials" from reporting issuers they invested in. This includes declining to receive financial statements and related MD&A.

The client's understanding of Form 54-101F1 is therefore key to ensuring they have adequate, real notice of their delivery options. As specified in our recommendations below, there are some simple revisions that could be made to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* and Form 54-101F1 that would go a long way towards enhancing investor understanding and choices.

a. Improve Form 54-101F1

This prescribed form was developed decades ago with little understanding of behavioural insights or the importance of developing retail-oriented forms with the aid of focus group testing. Our concern is that Form 54-101F1 is poorly drafted and designed, leading investors to make uninformed choices.

To improve it, we believe the CSA should invest resources in exploring ways to increase investor understanding of the choices they have in terms of sharing information about them and requesting disclosure materials. This would include expanding the scope of the consent granted to facilitate electronic delivery of disclosure materials by the issuer and its agents.

Recommendations:

We recommend the following improvements to NI 54-101 and Form 54-101F1.

NI 54-101:

- To improve understanding and choice, amend NI 54-101 to require intermediaries to periodically review Form 54-101F1 with their clients, so that clients have an opportunity to reconsider their delivery options over time and not just at account opening.

- To promote increased adoption of e-delivery, amend subparagraph 3.2(b)(iii) as follows:

  if applicable, enquire whether the client wishes to consent and, if so, obtain the consent of the client, to electronic delivery of documents by the intermediary, the reporting issuer or an agent of the intermediary or

reporting issuer to the client.[16]

Form 54-101F1:

To improve clarity and understanding:

- Apply plain language to the form, including the descriptions of investor choices for receiving information.
- Add language to explain *why* receiving prescribed documents and information from a reporting issuer is important and would be of interest to investors.
- Amend language, as suggested above, about the client's consent to e-delivery so they can receive delivery by email from the reporting issuer or an agent of the reporting issuer.
- Apply principles of behavioural insights and test the form with investors to ensure it clearly communicates the importance and impact of the investor's choices when completing the form.

Some examples of the type of wording changes to consider for this form are provided below.

Form 54-101F1 – Examples of Suggested Wording Changes

Current Wording	**Proposed Wording**
Electronic Delivery of Documents Securities law permits us to deliver some documents by electronic means if the consent of the recipient to the means of delivery has been obtained. Please provide your electronic mail address if you have one. *[**Instruction:** If applicable, either state (1) if the client wishes to receive documents by electronic delivery from the intermediary, the client should complete, sign and return an enclosed consent form with the client response form or (2) inform the client that electronic delivery of documents by the*	**Do you prefer to receive documents electronically?** Securities law permits us to deliver some documents to you by email rather than regular mail. If you prefer to receive documents by email, please provide us with your consent and email address: ***Instruction:** If applicable, either state (1) if the client wishes to receive documents by email from the intermediary, the reporting issuer or an agent acting on behalf of the intermediary or reporting issuer, the client should complete, sign and return an enclosed consent form with the client*

[16] This amendment would remove a barrier to e-delivery faced by transfer agents retained by reporting issuers to deliver documents to the issuer's NOBO securityholders. This barrier was raised in a comment letter to the CSA from the Securities Transfer Association of Canada in March, 2020.

intermediary may be available upon his or her consent, and provide information as to how the client may provide that consent.]	*response form or (2) inform the client that email delivery of documents by the intermediary, the reporting issuer or an agent acting on behalf of the intermediary or reporting issuer, may be available upon his or her consent, and provide information as to how the client may provide that consent.*
I WANT to receive ALL securityholder materials sent to beneficial owners of securities.	I WANT to receive the following information: ☐ ALL materials I am entitled to receive as a beneficial owner of securities. **OR** (check all that apply): ☐ ALL annual financial statements and related MD&A documents. ☐ ALL quarterly financial statements and related MD&A documents. ☐ ALL proxy-related materials I need to exercise my right to vote at securityholder meetings. ☐ ONLY proxy-related materials in connection with special meetings of securityholders.
I DECLINE to receive ALL securityholder materials sent to beneficial owners of securities. (Even if I decline to receive these types of materials, I understand that a reporting issuer or other person or company is entitled to send these materials to me at its expense.)	I DO NOT WANT to receive ANY information designed to assist me as an investor. (Even if I make this choice, I understand that the company is entitled to send these materials to me at its expense.)
I WANT to receive ONLY proxy-related materials that are sent in connection with a special meeting.	

b. Prescribe the Annual Request Form

Per subsection 4.6(1) of NI 51-102, a reporting issuer must send a request form annually to securityholders to request a paper copy of the reporting issuer's annual financial statements and MD&A, or a copy of the reporting issuer's interim financial reports and MD&A. In terms of sending this annual request form, NI 51-102 requires the reporting issuer to follow the

procedures set out in NI 54-101.

The Companion Policy to NI 51-102 makes it clear that not returning the request form or otherwise specifically requesting a copy of the financial statements or MD&A from the reporting issuer will override the beneficial owner's standing instructions under NI 54-101 in respect of the financial statements and MD&A. Moreover, it clarifies that NI 51-102 does not prescribe when the request form must be sent, or how it must be returned to the reporting issuer.

Neither NI 51-102 nor its companion policy include a prescribed or recommended form for the annual request. This has resulted in each reporting issuer developing its own form, which varies widely from issuer to issuer.

Based on a quick review of several publicly available annual request forms, FAIR Canada observed it would be difficult for the ordinary investor to read and understand some of the forms developed by different issuers. On the other hand, some forms are written using plain language and offer clearer choices, including the possibility of receiving financial statements and MD&A electronically.

Below is a summary of key differences from a small, but illustrative, sample:

	Core One Labs[17]	**Trevali Mining**[18]	**Hemisphere Energy**[19]
Length	2 pages	1 page	1 page
Complexity	High (many legal terms)	Medium (some legalese)	Medium (some legalese)
Number of investor choices	4	2	2
Delivery by email available?	No	No	Yes (consent language included in the form)
Method of returning form	Mail, fax	Mail, online	Email, fax, mail
Explanation as to why the information is important	No	No	No

Recommendations:

We recommend the CSA take steps to ensure the annual request form under NI 51-102 fosters increased investor awareness and promotes greater adoption of e-delivery by creating a prescribed form that:

[17] See: Core One Labs Annual Request Form.
[18] See: Trevali Mining Annual Request Form.
[19] See: Hemisphere Energy Annual Request Form.

- Is easy to understand and action by investors, using principles of behavioural insights and based on testing with investors.
- Highlights the importance of financial statements and MD&A in relation to making informed investment decisions.
- Facilitates e-delivery by requesting the investor's email and including proper consent language.
- Includes the option for the investor to return the form by email, text message, or uploading it to a website.

c. Do More to Support e-Delivery

The CSA explored making electronic delivery the default option as an alternative to the AED model. It rejected this alternative, however, because of "legal uncertainties" related to the consent required under corporate law and e-commerce legislation.

The benefits of an e-delivery option are significant:

- It provides direct notice to investors.
- It cuts costs associated with paper mailing.
- It is environmentally sustainable.
- A significant and likely growing proportion of investors prefer it, which better aligns with the desire to increase investor engagement.[20]

All of this strongly suggests that the CSA should explore every avenue to overcome these legal uncertainties and promote increased use of e-delivery. This includes expanding the consent provisions in Form 54-101F1 and including a similar provision in a prescribed NI 51-102 annual request form.

Another approach developed in the U.S. could serve as a model. The model, called "enhanced brokers' internet platforms" (EBIPs), enables retail shareholders to receive reporting issuer information, as well as to cast their shareholder vote directly through their broker's website.

The New York Stock Exchange (NYSE) piloted a program to promote adoption of the model between 2014 to 2019. It was designed to incentivise brokers to develop EBIPs and

[20] FINRA Investor Education Foundation, Investors in the United States, A Report of the National Financial Capability Study (December 2019) at page 17. In 2018, 1/3 of U.S. investors surveyed preferred e-delivery, a number that has likely substantially increased in the intervening four years.

encourage brokers' clients to convert to e-delivery. A key driver behind the program was a desire to encourage more retail investors to vote their shares by making it easier for them to do so.

The program ran as follows:

- The NYSE set the user fees.
- An issuer would pay each broker who held accounts of beneficial owners of that issuer a one-time 0.99¢ user fee for each client that converted to e-delivery via an "investor mailbox" provided through an EBIP platform on the broker's website.
- Issuers had an incentive to participate because the cost savings (from eliminating paper mailings of proxy materials) were significantly greater than the one-time user fee.[21]

The experience of one broker, who had an existing EBIP platform before the pilot program was launched, illustrates the potential of this model:

- The e-delivery adoption rate among that broker's account holders increased from under 10% to over 39% in "just a few years".
- Adopting EBIP created "a positive client experience" and resulted in "real cost savings" while continuing the firm's efforts to "promote an eco-friendly business environment".[22]

More recent data on the adoption and impact of EBIPs was provided to the CSA in response to the 2020 AED Consultation Paper. This data showed that a sizable proportion of U.S. broker/dealers implemented EBIPs (accounting for approximately 55% of all accounts held in street name) and that retail shareholder voting participation through EBIPs experienced meaningful growth. For example, in the 12 months ending June 30, 2017, 16% of all positions voted by retail investors on Broadridge's online platforms used its 'investor mailbox' solution, up from 7% in 2015.[23]

Recommendations:

The CSA should:

- Explore alternatives such as EBIPs for a more modern and efficient means to deliver information electronically between reporting issuers, intermediaries, and

[21] See: SEC Release No. 34-68936; File No. SR-NYSE-2013-07), February 15, 2013, at page 38. See also: NYSE Information Memo on EBIP, January 24, 2014.
[22] Ibid., SEC Release at page 40.
[23] CSA Consultation Paper 51-405 – Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers, comment from Broadridge, March 9, 2020.

investors.

- Ensure that SEDAR+ can support adoption of modern approaches to electronic delivery. For example, dealers or other intermediaries should be able to pull information from SEDAR+ so that it can be re-purposed for delivery to investors electronically.

d. Enhance Notice-and-Access

Another alternative to AED considered by the CSA was to enhance the notice-and-access model under NI 54-101, which is used primarily for delivery of proxy materials. Although the CSA does not specify what enhancements it considered, it rejected this alternative as well. One reason given for this decision is that notice-and-access has "not been used by many issuers."[24]

This conclusion seems to conflict with data provided to the CSA by Broadridge in 2020.[25] Specifically, the data showed that the rate of adopting notice-and-access has steadily increased each year, from 15.2% of issuers adopting it in 2015, to 19.5% adopting it in 2019. Based on recent information shared by Broadridge, it is our understanding the rate of adopting notice-and-access continues to increase, with over 29% of Canadian issuers using it in 2021. These are positive trend lines that suggest further consideration should be given to this alternative.

Moreover, a key barrier to further adoption of notice-and-access was due to certain constraints imposed on certain reporting issuers that were incorporated under the *Canada Business Corporations Act* (CBCA). However, these constraints have been removed with amendments to the CBCA made in 2018. As soon as the regulations regarding notice-and-access under the CBCA have been drafted and the amendments are proclaimed into force, we expect that many more Canadian issuers will begin using notice-and-access.[26]

Recommendations:

Unlike AED, notice-and-access provides direct notice to investors. For this reason, we recommend that the CSA consider whether there are further enhancements that could be made to increase usage of notice-and-access under NI 54-101.

[24] CSA Notice, at page 37.
[25] Supra, footnote 23.
[26] See Using notice-and-access under the Canada Business Corporations Act. Corporations Canada, 2018.

C. IF THE CSA DECIDES TO PROCEED WITH AED AS PROPOSED

Should the CSA decide to move ahead with AED, we recommend the following enhancements to help minimize its potential negative impact on investor engagement and communications.

Recommendations:

The CSA should enhance the proposed AED model as follows:

- **SEDAR subscription mechanism.** SEDAR should first be upgraded to include a mechanism that allows investors to subscribe to receive documents of their choosing filed on SEDAR. Alternatively, SEDAR should include an alert function that lets investors know when certain filings (such as a news release) are available on SEDAR.

- **SEDAR awareness campaign.** Given the critical role of SEDAR in the AED proposal, success will require increasing investor awareness through a concerted SEDAR education and outreach campaign. The campaign should precede the launch of AED and repeat periodically to support ongoing awareness.

  It should include leveraging opportunities in different communications sent to investors reminding them of the information that is available on SEDAR free of charge. For example, one could include information about SEDAR in account statements, trade confirmation reports, or the Annual Charges and Compensation Report. Information could also be included in a revised Form 54-101F1.

- **Second website/social media requirement.** In addition to requiring a news release, AED should be conditional on the reporting issuer posting their financial statements and MD&A on their website and/or social media channels. We believe that investors would be more likely to search the issuer's website for this information than they would be to search SEDAR (assuming, of course, they are even aware of SEDAR).

- **Mandatory hyperlink.** To help get documents into the hands of investors as quickly as possible, the news release should include a hyperlink to them on SEDAR and/or the reporting issuer's website. We note that many commentators recommended including such a requirement in response to the 2020 AED Consultation Paper. The current proposal, however, is silent on this requirement.[27]

[27] Six commenters felt the news release should include such a hyperlink; one commenter supported at least encouraging issuers to include a hyperlink; 1 commenter noted that such links "could" be included; and 1 commenter suggested encouraging inclusion of a link to the issuer's SEDAR landing page.

- **Transition period.** To ensure that investors are provided advance notice that they may no longer be receiving the NI 51-102 annual request form, we recommend that issuers wishing to use AED should first provide notice to their investors. The notice should include how the issuer's choice will affect investors and a reminder that investors can provide standing instructions to receive these materials or periodically refer to SEDAR for new filings.

D. PROSPECTUSES

In the prospectus context, since investors have either shown an interest in buying the securities, have been solicited to purchase them, or have decided to order them, there is less concern they would be unaware of the prospectus under the AED model.

In addition, the low level of retail investor awareness and use of SEDAR is not an issue here. As pointed out in the CSA Notice, most purchasers under a prospectus are institutional rather than retail investors, and these more sophisticated investors are "able to access the preliminary and final prospectus easily through SEDAR."[28]

Regarding the right for purchasers to withdraw from an agreement to buy securities under a final prospectus, we agree with the CSA decision to preserve the status quo 2-day withdrawal period. This is because under the proposed AED model, the right to withdraw can be exercised within 2 business days after the *later of*:

a) the date that access to the final prospectus has been provided, and
b) the date the purchaser entered into the agreement to buy the securities.

Given the above, in our view the proposed AED model is appropriate for prospectuses.

E. CSA CONSULTATION QUESTIONS

1. *With regards to financial statements and related MD&A, the Proposed Amendments provide that an issuer must issue and file a news release on SEDAR announcing that the documents are available electronically and specifying that a paper or an electronic copy of the documents can be obtained upon request.*

   a. *Would the requirement to issue and file a news release be unduly costly or onerous in these circumstances? If so, why? Would the burden differ depending on whether the issuer is a venture issuer or not?*

[28] CSA Notice, at page 36.

b. Should we consider alternative ways to alert investors of the availability of a document that could be less onerous? Which ones and why?

As outlined in the CSA Notice, almost all TSX listed issuers (94% of the sample reviewed) and a significant proportion of venture issuers (35%) already issue these news releases.[29]

Some venture issuers may find the need to issue a news release too costly. In our view, there is no need to address this by creating exemptions from any of the AED requirements. This is because issuers that find AED too costly can simply decide not to use it.

F. CONCLUSION

Our fundamental concern with AED is less about the specifics of the proposed model and more about the missed opportunity to modernize shareholder communications more broadly.

We believe the AED project is too focused on streamlining delivery requirements for some issuers. Instead, we believe the CSA needs to tackle the bigger problem of investor engagement and undertake a more comprehensive review of how to truly modernize shareholder communications.

This would include tackling issues around electronic delivery, providing structures to incentivize dealers and issuers to encourage electronic communications with investors, and finding ways to facilitate investor choices as to what information they want to receive and how they want to receive it.

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting. Please note that we intend to make our submission public by posting it to the FAIR Canada website. Should you have questions or require further explanation of our views on these matters, please contact us at jp.bureaud@faircanada.ca or mauro.lagana@faircanada.ca.

Sincerely,

[redacted]

FAIR Canada

[29] CSA Notice, at page 35.

CFA Societies Canada

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July 6, 2022

VIA EMAIL

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Me Philippe Lebel, Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
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Email: comments@osc.gov.on.ca

Re: *Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers* (the "Proposed Amendments")

The Canadian Advocacy Council of CFA Societies Canada[1] (the "**CAC**") appreciates the opportunity to provide the following general comments on the Proposed Amendments and respond to the specific questions set out in the consultation.

[1] The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 19,000 Canadian CFA Charterholders. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC.

CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors' interests come first, markets function at their best, and economies grow. There are more than 180,000 CFA Charterholders worldwide in 160 markets. CFA Institute has nine offices worldwide and there are 160 local societies. For more information, visit www.cfainstitute.org or follow us on LinkedIn and Twitter at @CFAInstitute.

CFA Societies Canada

Canadian Advocacy Council

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General Comments

In principle, we are supportive of an electronically enabled access equals delivery ("**AED"**) model, as it would modernize the method by which documents are made available to investors and would provide for more timely disclosure over paper delivery. We agree that the proposed model would reduce the regulatory burden on issuers and save both issuers and dealers significant costs relating to paper delivery. However, we continue to have overriding concerns that, as currently constituted and operated, SEDAR will remain difficult for many retail investors to locate, access, and navigate. As a result, a significant segment of investors may not be able to easily locate and access the documents that would have otherwise been mailed out to them. In particular, we understand that there are significant accessibility challenges that result from SEDAR's current interface. In addition, there is no easy ability for related documents (or related issuers) to be electronically linked together. Documents can only be found if the person searching for the document is familiar with SEDAR's unique navigation functions, the exact name of an issuer is known, and if the user can identify the type and name of the document containing the information sought. We expect that retail investors will be discouraged from proactively looking for documents given the time and process currently involved.

In our view, in order for the Proposed Amendments to have the intended effect and given the heavy reliance placed on SEDAR as the centralized source of disclosure information, SEDAR **must** function as an accessible, intuitive, and modern resource for these critical disclosure documents. Currently, it does not. The system is also important as a repository for historical information such as the date on which certain disclosure was posted (for investor rights, litigation purposes or otherwise). **Given the Proposed Amendments' central reliance on SEDAR, we believe the implementation of AED should be delayed until the roll-out of SEDAR+ is complete.**

We are also of the view that SEDAR+ should expeditiously roll out an enhancement such that interested investors can subscribe to electronic (i.e. emailed) alerts for new filings on issuers of interest, in the event that they do not see a news release alerting them to a document's release in a timely manner. In addition, SEDAR+ should facilitate the use of "open data", such that value-added commercial solutions (e.g. providing position-aware issuer disclosure updates through integration with an investor's broker) can be made available in addition to the more basic access and features available to the general public as core functionality of SEDAR+.

The initial proposal in 2020 relating to the AED model did not rely as heavily on centralization of disclosure information with SEDAR and therefore an investor's ability to successfully access and navigate SEDAR. The initial draft required the documents to be posted on an issuer's website, providing a mandated secondary potential source for issuer information. We do recognize that not all issuers post filings on their websites in a timely fashion, and that some documents may be difficult to locate. In addition, some websites only maintain the document for a short period of time (and thus historical information is not always available). However, we believe issuers should be encouraged to provide and maintain a website as a secondary point of reference for easy investor access to their disclosure information. It would be ideal if this was facilitated through the

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open data protocols and easy electronic linking to the issuer's disclosure record on SEDAR+, as we understand this functionality is not currently available via SEDAR.

We agree with the proposal to implement an AED model in stages. Documents that require immediate shareholder attention such as take-over bid circulars should continue to be delivered in paper format until such time as an AED model has been in place for a sufficient length of time to raise investor awareness, and for commercial solutions to develop that better facilitate interaction with documents that are either time-sensitive and governance-critical. We are concerned that until the AED model is better understood by investors and supported by enhanced system access, the use of the model for documents requiring shareholder action could lead to challenges regarding the legitimacy of the voting results.

Specific Consultation Questions:

1. *With regards to financial statements and related MD&A, the Proposed Amendments provide that an issuer must issue and file a news release on SEDAR announcing that the documents are available electronically and specifying that a paper or an electronic copy of the documents can be obtained upon request.*

a. Would the requirement to issue and file a news release be unduly costly or onerous in these circumstances? If so, why? Would the burden differ depending on whether the issuer is a venture issuer or not?

We do not believe the requirement to issue and file a news release is unduly costly or onerous on any otherwise viable issuer. Based on our understanding, the cost to issue and file a news release is not a material cost in the context of the capitalization or expense profile of a public issuer of any size. Further, we believe that if notification in this fashion is not required for important new issuer information, it could potentially raise questions about the efficacy and reliability of news releases in other public disclosure contexts.

b. Should we consider alternative ways to alert investors of the availability of a document that could be less onerous? Which ones and why?

We do not believe it is necessary to consider alternative ways to alert investors; the cost to issue and file a news release should not be a material expense to any reporting issuer in Canada.

Concluding Remarks

While we understand the benefits of an AED model for issuers and other market participants, we remain strongly concerned that SEDAR's lack of functionality will severely hamper the goals of the Proposed Amendments. The implementation of the Proposed Amendments should be delayed until SEDAR+ is fully implemented. It is also important than enhancements be made available to SEDAR+, such as the ability for investors to subscribe to alerts for new filings and the enablement of open data protocols, as soon as possible. Such enhanced functionality will assist in furthering investor protection through robust and easily accessible disclosure information.

CFA Societies Canada

Canadian Advocacy Council

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We thank you for the opportunity to provide these comments and would be happy to address any questions you may have. Please feel free to contact us at cac@cfacanada.org on this or any other issue in future.

(Signed) *The Canadian Advocacy Council of CFA Societies Canada*

The Canadian Advocacy Council of CFA Societies Canada

Tim Currie
Managing Director
Tcurrie@iiac.ca

Submitted via Email

Date: July 6, 2022

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Attention: The Secretary
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Me Philippe Lebel,
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
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Re: CSA Staff Notice and Request for Comment – Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers

Dear Sirs and Mesdames:

The Investment Industry Association of Canada (the "IIAC") appreciates the opportunity to provide feedback on the CSA Staff Notice and Request for Comment – *Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers* ("Proposed Amendments").

The IIAC is the leading national association representing investment firms that provide products and services to Canadian retail and institutional investors. Our members manufacture and distribute a variety of securities such as mutual funds, exchange-traded funds, segregated fund contracts and other managed equity and fixed income funds, and provide a diverse array of portfolio management, advisory and non-advisory services. Our members trade in debt and equity on all marketplaces, provide carrying broker services and underwrite issuers in public and private markets. They operate in Canadian and global capital markets.

Summary: The IIAC supports the Canadian Securities Administrator's ("CSA") efforts to implement an access equals delivery model ("AED Model").

Key Recommendations:

- The AED Model should be an option for prospectus delivery rather than a requirement to allow for other delivery options as permitted by securities legislation.
- The AED Model should be extended to medium term notes ("MTN") programs and other continuous distributions under a shelf prospectus offering.
- The IIAC recommends a working group to identify practical alternatives to the issuance if press releases for the notice of filing obligation for structured notes are required.

THE PROPOSED AMENDMENTS

The IIAC strongly supports the efforts of the CSA to implement an access equals delivery model ("AED Model") as the benefits realized from a modernized approach to the way documents are made available to investors are significant for both issuers and investors. We commend the CSA for considering this and other efficiency gains as part of the current regulatory burden reduction initiative and encourage further progress through future rulemaking to align changing investor and market preferences to a more environmentally conscious and technologically supported capital markets system.

While the Proposed Amendments achieve the stated goals of reducing costs associated with printing and mailing documents and introducing a more environmentally friendly manner of communicating with investors, we believe the Proposed Amendments for prospectus delivery should extend to MTN programs and other continuous distributions under a shelf prospectus offering. Changes to the access conditions of the AED Model should be considered to accommodate structured note offerings in particular, as these are ideally suited for this format of document distribution and would materially benefit issuers and investors.

If implemented, the Proposed Amendments requires that all relevant prospectuses be distributed to investors by way of the AED Model or another procedure "prescribed" by securities legislation. The IIAC recommends that the AED Model be an option for prospectus delivery rather than a requirement to allow for other delivery options that, while not "prescribed", are either permitted (or not prohibited) under current securities legislation.

AED Model: An Option not a Requirement

The New Prospectus Delivery Obligation of the Proposed Amendments only permits delivery of documents by means other than the AED Model if it is a procedure "prescribed" by securities legislation. The only other delivery procedure "prescribed" is prepaid mail. As other valid delivery methods (such as electronic delivery) are not "prescribed", practically this means the only option for delivery is by way of the AED Model or prepaid mail.

While the AED Model will be the preferred method of prospectus delivery in most circumstances, providing issuers and investors with the option to deliver / receive a prospectus by email or other electronic means, as agreed by the parties and as permitted by regulation, is a necessary requirement and already appropriately addressed in securities legislation. These alternative electronic delivery options must be preserved.

MTN Programs

The Proposed Amendments suggest that the AED Model should not apply to MTN programs and other continuous distributions under a shelf prospectus without adequately explaining the policy rationale for this exclusion. Given the range of distributions that could constitute an "MTN program or other continuous distribution", we assume that only prospectus-qualified distributions of "structured notes" issued by a financial institution were intended to be excluded from the AED Model.

We question the rationale for excluding structured notes. In our view, these types of structured notes would not pose any greater risk to investors when delivered under an AED Model instead of via prepaid mail. In fact, investors would benefit from having access to more timely and current information under the AED model.

Background:

Shelf prospectuses filed to facilitate the offering of structured notes describe the issuer and the consistent terms of notes offered under the issuer's program. While these terms are important to the operation of a structured note, they are not sensitive to pricing variables that change over the life of a shelf prospectus.

The security-specific terms of each structured note are typically provided to investors in a pricing supplement filed under the related shelf prospectus. Pricing supplements are produced and filed together with note-specific marketing material on SEDAR in accordance with applicable rules.

Currently, when a structured note is sold, it is common practice for the related pricing supplement, together with the shelf prospectus, to be printed and mailed to the investor. Mailings will generally involve several different groups working for an issuer, the dealers who distribute the issuer's structured notes, and their respective service providers.

Website Disclosure:

CSA Staff Notice 44-305 outlines CSA requirements for issuer website disclosures related to each structured note issued in Canada, both during the term of the note and for a reasonable period afterwards. As a result, structured note issuers in Canada publish and maintain a detailed website for each structured note they issue, and file related offering documents and marketing material on SEDAR.

Note-specific websites include note offering documents and marketing material. These websites are updated daily with current indicative values of the relevant note and the value of the related underlying interest. As a result, investors are better served by these websites as they contain accessible and current information, as opposed to static data that was only available at the time of printing mailed materials.

MTN Benefits:

Structured notes make up a large proportion of all new issue securities offered in Canada and each offering requires an expensive and inefficient paper prospectus mailing to investors. SEDAR filings indicate between 500-600 structured note pricing supplements are filed in Canada each month, each of which is purchased by multiple investors. A pricing supplement and prospectus package averaging 50-60 printed pages per package is mailed to each of these investors.

The process for prospectus mailings is cumbersome, expensive, and creates operational risks for both issuers and investors. Mailing regulatory documents is generally outsourced, first to the brokers distributing notes and then onwards to their service providers who print and mail the documents. Outsourcing prospectus mailing necessarily involves the confidential communication of investors' sensitive personal information to third parties. Any error in process or execution creates risks for issuers and investors involving lost or compromised personal information.

Eliminating the printing of documents by including structured note offerings in the AED Model would materially reduce costs and eliminate unnecessary risks. Utilizing SEDAR and issuer websites consolidates information for investors in an easy to access location and provides for better and timely access to relevant information.

News Release Requirement:

The Proposed Amendments require a news release to be issued and filed on SEDAR indicating that the relevant document is available electronically. The large volume of structured notes issued on a daily/weekly basis and the non-material nature of the disclosure suggest that the obligation to issue a press release is not practical nor appropriate. To our knowledge, there are no investor protection concerns associated with notification of the availability of pricing supplements. If the CSA determines that investor notification is required, we recommend that the IIAC convene a working group of CSA representatives and financial institutions that issue and distribute notes to identify practical alternatives to the notice of filing obligation that satisfies the regulatory objectives for structured notes. Given the significant benefits of the AED Model, the recommendations of the working group can be adopted following implementation of the Proposed Amendments, with changes adopted through subsequent rulemaking.

Thank you for considering the recommendations.

Yours sincerely,

Tim Currie
Investment Industry Association of Canada

Securities Transfer Association of Canada

Lara Donaldson
President

July 6, 2022

Delivered via e-mail

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marches financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territories
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Me Philippe Lebel
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Dear Sirs:

Re: CSA Notice and Request for Comment
Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers ("Proposed Amendments")

This letter represents the comments of the Securities Transfer Association of Canada (STAC) in response to the above noted Proposed Amendments. STAC is a non-profit association of Canadian transfer agents that, among others, has the following purposes:

- To promote professional conduct and uniform procedures among its members and others;

- To provide membership to firms engaged as transfer agents or registrars in the field of the issuance, transfer and registration of securities and associated functions;
- To study, develop, implement and encourage new and improved requirements and practices within the securities industry;
- To assist members with problems of a technical or operational nature;
- To develop solutions to complex industry-wide problems;
- To provide a forum and to act as a representative and spokesperson for the positions and opinions of its members, and, where appropriate, its clients and the holders of securities;
- To provide members and others with information and comments of an educational and technical nature relating to the securities transfer and corporate trust industry;
- To exercise any and all powers required to meet the needs and the obligations of this Association; and
- To ensure that its activities in relation to these purposes are communicated to all Members.

In Canada, transfer agents are retained by public and private companies to maintain records of the registered securityholders, specifically, those who hold securities directly in their name. Our records contain the shareholder's name and address, and, in some cases email address. We process transfers, mail disclosure material, such as proxies, financial statements, quarterly reports, and management information circulars, and distribute dividends and related tax slips.

STAC appreciates the opportunity to provide our comments on the Proposed Amendments related to CSA Consultation Paper 51-405 *Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers* originally published on January 9, 2020.

As stated in our original comment letter dated March 9, 2020, STAC is generally supportive of an access equals delivery ("AED") model for documents that do not require a response from the securityholder receiving the document. These documents include, but are not limited to proxy related material, rights offering circulars, and take-over bid and issuer bid circulars. We support the CSA's proposal to implement AED for annual financial statements, interim financial reports and related management's discussion & analysis for non-investment fund reporting issuers. STAC members are not involved in the distribution of prospectus documents, and we therefore will refrain from commenting on this specific section of the AED proposal.

We appreciate that you have acknowledged our previously communicated concerns regarding the limitations that exist with conflicting delivery requirements under certain corporate law requirements. These limitations will prevent certain issuers from fully implementing an AED model for the proposed documents.

STAC respectfully submits the following comments:

Appendix H - Proposed Amendments to National Instrument 51-102 *Continuous Disclosure Obligations*

STAC believes that the text proposed in Section 4.2.1(2)(c) and 4.4.1(2)(c) is too prescriptive. The issuer may wish to appoint a service provider to fulfill the role of providing paper or electronic copies of documents to securityholders. We believe the news release should include required information, but the issuer should be able to determine the specific text they wish to include. STAC proposes that the required information should include:

- A statement that an electronic or paper copy of the relevant document may be obtained, without charge.

- Details of the relevant contact information to obtain the above noted electronic or paper copy.

- Details to be provided by the requestor, including name, address or email address, the name of the issuer, and the specific document requested. STAC believes that these last two points are necessary to ensure that the request can be fulfilled, as issuers may outsource this task to agents who act for multiple issuers, and requests from securityholders may not be received in a manner which aligns with the date on which the document they are requesting is released. Without the requestor providing these specific details, the fulfillment of the request may be delayed.

- The time frame in which the requestor can expect the request to be fulfilled.

In connection with the e-mail fulfilment of requests, STAC would also appreciate clarification on whether or not this can be completed by providing a direct link to an electronic version of the document, or whether an electronic version of the document must be attached to the email that is forwarded to the requestor. If the electronic copy must be delivered as an email attachment, there may be concerns with the delivery of a larger document, such as an annual financial statement and related MD&A document. Larger documents sent by email are often delayed or blocked, and may result in a requestor not receiving the document. If the electronic version can be delivered via a direct link, we request that this is clarified in the amendments.

STAC would again like to extend our appreciation for the opportunity to provide our comments. We would be pleased to discuss the contents of our letter, or provide any further feedback as the CSA may required.

Sincerely,

"*Lara Donaldson*"

Lara Donaldson
President
Phone: (416) 947-4361
Mobile: (416) 206-2738
Email: lara.donaldson@tmx.com

Access equals delivery

Dear CSA and OSC and Mr Lebel

While the submission relates to non investment funds specifically, you might want to also consider the implications for third party oversight as such, and potential if any to sidestep systemic risk compliance protocol

The reason I mention this is that for example in a somewhat different context TD Direct for example in its terms of service when retail investors open accounts has adjusted its terms pdf clauses 4 and 5 in that direction directing retail investors to do their own separate due diligence regarding material disclosures and has gone so far as to grant absolution to its third party service providers for errors omissions and interruption of service etc.

Of course retail should do their own due diligence, but when I picked up series of discrepancies in data feed from TDs own third party service providers and tried to report it, it was simply brushed off by TDs senior compliance official instead of being remedied.

This lack of concern about the quality of services from the third party service provider which is contrary to csa s own directives regarding risk management and outsourcing, as it is for the OScs own statutues and instruments, as it is for osfi B10 and as it is for iirocs own rules 14-0012 rules (legacy rules) as well as with the s e c and iosco expectations.

So you might want to screen for such inventive ways of spinning out access equals delivery that run afoul of other best practices guidance and rules for creative usage beyond the core intent of delivery equals access.

Bev Kennedy

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July 6, 2022

Via email to: comment@osc.gov.on.ca
consultation-en-cours@lautorite.qc.ca

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territories
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

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Re: Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers

Dear Madam/Sir:

Broadridge Investor Communications Corporation ("Broadridge")[1] appreciates the opportunity to provide comments on the Canadian Securities Administrators ("CSA") *Proposed Amendments and*

[1] Broadridge (NYSE: "BR") is a Fortune 500 global Fintech leader with over $5 billion in revenues. It provides Canadian companies, investment managers, investors, and financial intermediaries with technology solutions for investor communications, corporate governance, trade processing, and other functions.

Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers (the "proposal").

Executive Summary

Based on the CSA's estimates of the costs, Broadridge's estimates of the potential savings, and testing with Canadian investors, the proposed Access Equals Delivery ("AED") model would raise costs for most Canadian companies and result in less access to information investors use to monitor their investments.

The added costs the average issuer would incur to rely on AED would surpass the savings they would realize in no longer sending annual request notices, financial statements, and MD&As to investors who receive them today. Averages of course do not tell the whole story. The economics of the AED model would benefit only the largest companies. But among 88% of all Canadian issuers, reliance on AED would cost them more than they would save on paper and postage, so they would likely not use it. Based on the economics alone, AED would potentially create confusion for investors. That is because investors would receive personal notifications for some of the holdings in their portfolio, which most investors have come to expect, while needing to search for media releases and filings for other holdings in their portfolio.

Investor advocates have expressed the view that the relatively minor cost savings to the largest companies would not be worth the reduction in investor protection, particularly for investor segments that most need such protection.[2] The costs to keep retail investors informed are relatively small compared to the great advantages public companies receive by going public.

The results of research with Canadian retail investors indicate that the model's use of media releases would not provide effective notification. Moreover, few retail investors use SEDAR to access the disclosure documents. The evidence shows that "access" does not equal "delivery."

We commend the CSA for looking to modernize investor communications. However, when it comes to technology, a better path exists. Digital delivery of notifications and continuous disclosure documents, under "tweaks" to the current Notice & Access approach, can both reduce regulatory costs and enhance investor education and engagement.[3] Based on Broadridge's analysis, digital delivery can eliminate approximately 76% of the costs of sending financial statements and MD&As, while ensuring that every investor who now receives the annual request notices and disclosures will continue to receive them. Virtually all issuers, large and small, can realize economic benefits from digital delivery.

Digital delivery provides a more effective form of notification and access. Notifications are typically provided to an investor's email inbox along with a link to the specific document in a centralized

---

[2] *See CSA's Proposal for Company Disclosures Has Downsides for Investors,* by Jean-Paul Bureaud and Edward Waitzer, Globe and Mail, June 19, 2022, ("The CSA's policy choice is too focused on eking out minor costs savings for some public companies rather than better protecting investors…This lack of awareness is greater among investors with lower income or wealth, less education, and of older age.").

[3] The option to receive annual and interim financial statements as well as related management's discussion and analysis (MD&As) under the "Notice & Access" model is set out in subsection 4.6 of National Instrument 51-102 *Continuous Disclosure Obligations* ("NI 51-102").

database, thereby eliminating the time and effort involved in hunting and pecking for information. Providing a robust, user-agnostic link should be foremost on the agenda for SEDAR+ so that no investors are left behind.[4] Moreover, providing QR codes on mailed notices, for example, would facilitate a smooth transition to digital delivery -- with resulting paper and postage savings accruing to all issuers for these and other regulatory communications as well.

Main Discussion

Economic Analysis

Based on Broadridge's analysis of over 3,400 Canadian issuers, companies incurred an average cost of approximately $5,500 in sending annual request notifications, financial statements, and MD&As in 2021. This estimate includes paper, postage, and processing fees for personal notification of disclosure documents, preference capture, and fulfillment of requests by Canadian and U.S. investors to receive documents by mail or email.

The CSA estimates that the average issuer would incur approximately $6,000 in new SEDAR filing costs to rely on the AED approach.[5] In other words, for the average issuer, the costs of relying on the AED model would exceed the savings.

Our analysis indicates that the largest companies could realize economic benefits from AED, while 88% of all Canadian issuers would be economically worse off if they relied on it. Therefore, most companies would likely not use it. As a result, the AED model has the potential to create confusion for investors. Investors would receive personal notifications and disclosures directly for some of the securities in their portfolio, which they have learned to expect, but need to know to monitor media releases, or to search for them (e.g., on SEDAR) for their other holdings.

By contrast, digital delivery would provide cost savings to virtually all companies along with more consistency and easier access for investors. With further adoption of digital delivery of notices and financial disclosures, the average issuer would realize savings of approximately $4,200 (i.e., 76% of the costs they currently incur). Larger issuers would save substantially more. With greater adoption of digital delivery, issuers would realize additional savings by electronically delivering other regulatory communications as well.

Highlights of Recent Investor Testing

Quantitative Research. To assist regulators and other market participants in evaluating potential changes to the continuous disclosure framework, including NI 51-102, Broadridge retained an

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[4] *See* Canadian Coalition for Good Governance's ("CCGG") comment letter to CSA's Proposed Amendments, Bruce Cooper, Chairman of the Board of Directors, June 29, 2022, ("Electronic delivery can be achieved by an effective and modernized notice and access model without removing delivery requirements.").

[5] *See* Section 6*, Anticipated Costs and Benefits of the Proposed Amendments* (ANNEX N, Local Matters, Ontario Securities Commission ("OSC")), which estimates that listed issuers "would incur ongoing additional costs of approximately $1,500 to issue and file a news release, or $6,000 per year, in connection with using AED for financial statements."

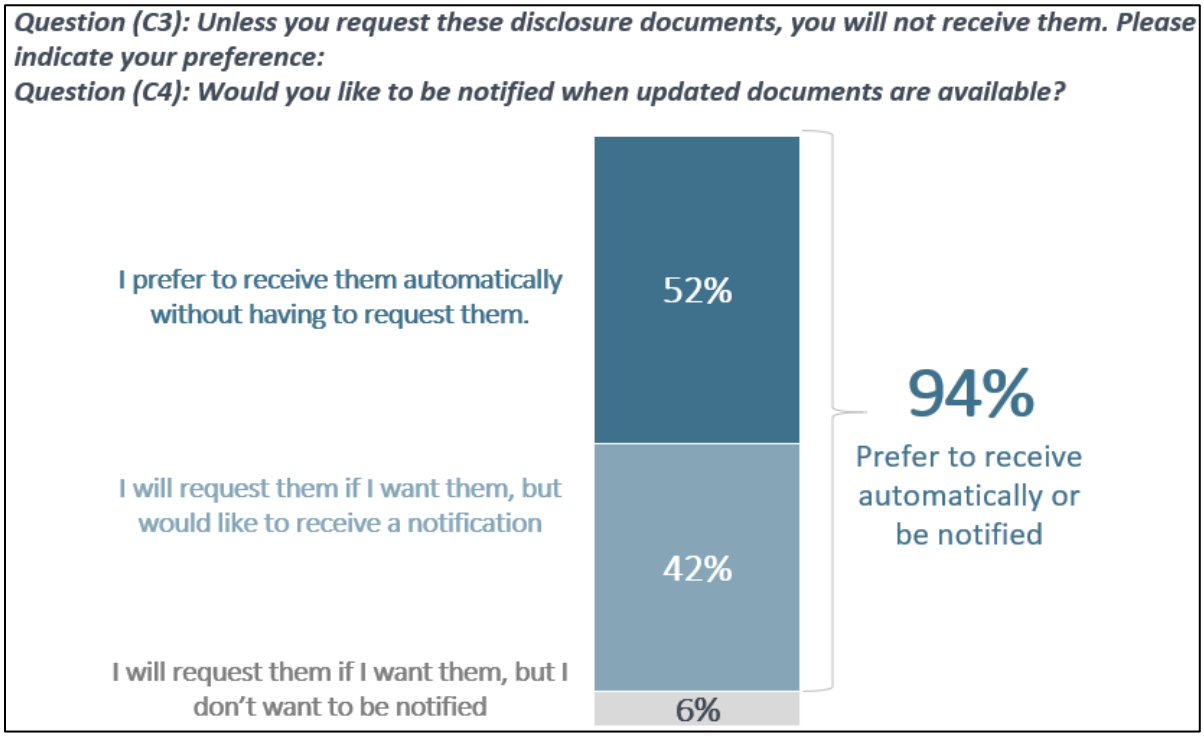
independent market research firm, True North Market Insights ("True North"), to survey 2,000 Canadian retail investors. The survey was administered both in English and French and included residents of all provinces and territories.[6] Survey participants were asked questions about sample disclosure documents including company financial statements and MD&As.[7]

Respondents were profiled based on self-reported demographic information (e.g., gender, age, income, level of educational attainment, and household assets) for purposes of understanding the extent to which AED would impact various segments of investors. Results of True North's survey indicate that AED would derogate from investor education and protection, and prove to be unpopular with investors. Few if any investors would use SEDAR to access information without regular, personal notification:

- 94 percent of Canadian investors said they prefer to receive the disclosures automatically or be notified directly when they are available.

- 82 percent of Canadian investors are either not aware of SEDAR or do not use it.

Chart 1. 94% of stock investors say they prefer to receive MD&As and financial statements automatically or to be notified of updated documents. Only 6% say they do not want to be notified.

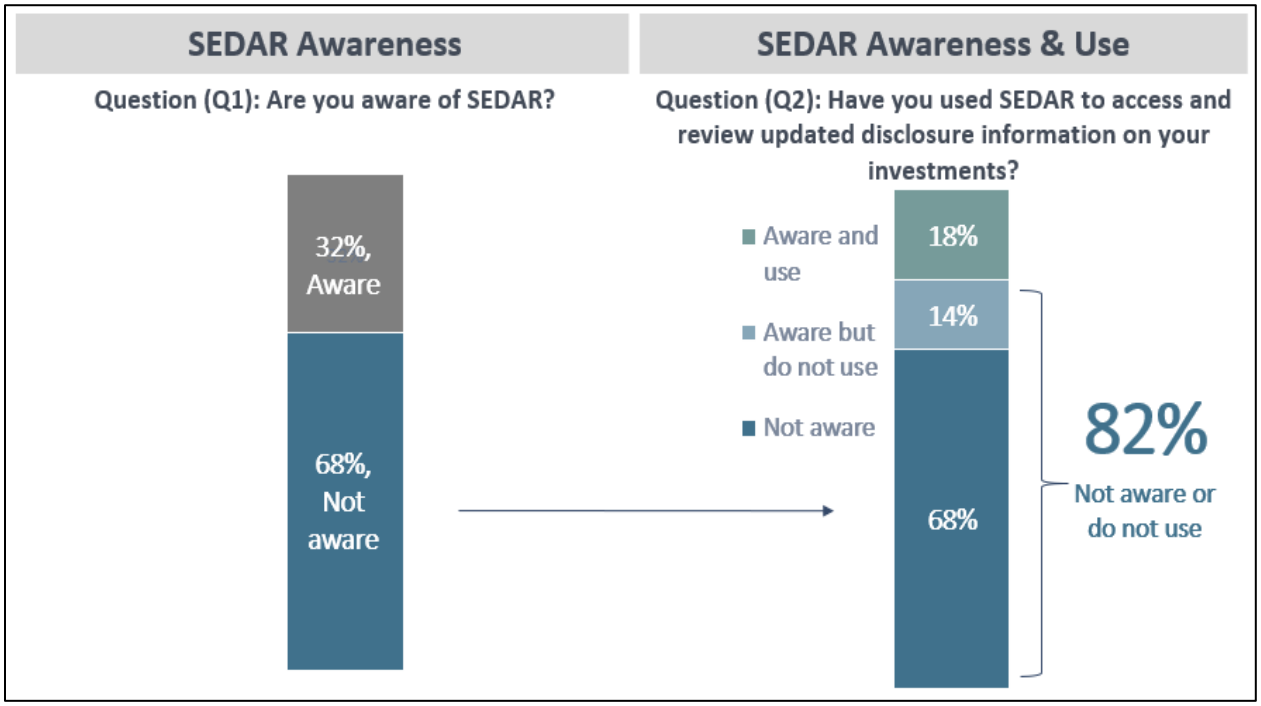


Source: True North Market Insights, 2021 Survey (Slide 31).

[6] True North conducted the research between May 11 and May 20, 2021. See the full report attached to Broadridge Investor Communications Corporation September 17, 2021 comment letter to Proposed Amendments to National Instrument 51-102 Continuous Disclosure Obligations and other Amendments and Changes Relating to Annual and Interim Filings of Non-Investment Fund and Reporting Issuers, available at com_20210917_51-102_broadridge.pdf (osc.ca).

[7] The survey included several questions suggested by OSC staff.

Chart 2. 82% of investors either are not aware of SEDAR or do not use it.



Source: True North Market Insights, 2021 Survey (Slide 23). Only 6% use SEDAR more than once a year (Slide 24).

Qualitative Research. Broadridge arranged also for an online focus group of 50 Canadian retail investors to observe in practice how they find continuous disclosure documents. With their permission, we recorded the steps they take to find or access financial statements and MD&As for a stock they own, and we asked them if they preferred to receive a notification, or to access a news release when disclosure documents are available.[8]

Out of the 50 participants, only 1 thought to go to SEDAR initially when asked to find a continuous disclosure document for a stock they own. 49 out of 50 participants performed an internet word search, and then navigated to an issuer or broker-dealer website to find the documents (where available). None of the focus group participants searched for media releases.

[8] We utilized UserTesting.com, an online research forum and panel. Participants agreed to be videoed while being asked questions about locating continuous disclosure documents. The video captures their thoughts and reactions while searching for an annual report for a stock they own.

Participants were clear that media releases would not be an effective form of notification.[9] Most said they would prefer to receive automatic, "push" notifications when disclosure documents are available.[10] A sample of verbatim quotes follows:

> *"I would prefer to receive a notification instead of having to go to the site [SEDAR] and search."*
>
> *"If something was just released in the news, I might miss that, but if I were to get a direct email or text message or something like that, that would actually be preferable."*
>
> *"I would prefer to receive notification that would link me directly to it [Annual Report or other disclosure] rather than have to search myself."*
>
> *"…I wouldn't go searching for the report…"*

A short, curated video clip representing their responses is available here (place your smartphone camera over the QR code below, and tap, to view the video clip on YouTube).[11]

Video Clip: 46 of 50 participants prefer to receive automatic, push notifications.

A Better Path Exists to Reduce Regulatory Costs and Enhance Investor Communications.

We commend the CSA for incorporating technology in the proposal, however, a better path exists to reduce regulatory costs and enhance investor communications; namely, digital delivery of notifications and continuous disclosure documents under the current Notice & Access approach.[12] We estimate that

[9] Cooper, *supra* note 4, ("Implementing access equals delivery prior to delivering a modernized and more user friendly, searchable and intuitive platform for investors to access such documents seems both premature and appears to unfairly advance the stated purpose of reducing issuer costs without providing investors with a modernized platform for accessing documents.").

[10] In partnership with Bridgeable, a human-centered design firm, we also undertook sessions with investors to illuminate key design principles for continuous disclosures, an exercise that exceeded the scope of the proposed rule. We welcome the opportunity to brief the CSA on findings at a future time.

[11] The entire, unedited video montage is available upon request.

[12] *See* subsection 4.6 of NI 51-102.

Notice & Access has saved issuers approximately $29 million in 2021, a more than 200% increase in four years. Pending amendments to the *Canada Business Corporations Act* (to permit issuers to use Notice & Access without an exemption) will lead to further adoption and additional cost savings for Canadian companies.

Digital delivery can eliminate approximately 76% of the costs of sending financial statements and MD&As, while ensuring that every investor who now receives notifications and disclosure documents will continue to receive them. Unlike a media release, digital delivery is personalized and sent directly to investors.

Technologies that "push" disclosure information electronically to investors result in better engagement and added savings. They include email messages on mobile devices, notifications through apps and brokerage firms' client-facing websites (i.e., to the very places where most investors go to manage their holdings), and other means.[13] Digital delivery provides attachments to the specific document or "links" to an electronic version filed in a central database. Under the AED model, investors would need to know to search for and monitor media releases, and then to search for the specific documents in SEDAR.

Digital delivery would provide the CSA with a smooth transition path to SEDAR+ without leaving any investors behind. Moreover, by encouraging QR codes on mailed notices, the CSA could greatly assist investors in transitioning to electronic delivery of financial statements, MD&As, and other regulatory communications, thereby eliminating additional paper and postage costs for issuers. The technology facilitates engagement with disclosure information. It will also result in added cost savings by moving other regulatory communications to digital delivery as well.

Attachment A provides a summary comparison of the AED and digital delivery models.

Conclusion

Based on the CSA's analysis of the costs, Broadridge's analysis of the savings, and testing with Canadian investors, the proposed AED model would add costs for most Canadian companies and result in less access by investors to information they use to monitor their investments. The added costs that 88% of companies would incur to rely on the AED model would surpass the savings they'd realize by no longer sending the annual request notices, and financial statements and MD&As to investors who receive them today. They would likely not rely on it. The resulting dual treatment has the potential to create confusion for investors.

Investor advocates have expressed the view that any relatively minor cost savings to the largest issuers would not be worth the reduction in investor protection, particularly for investor segments that most need such protection. These costs to inform retail investors are small compared to the great advantages public companies receive by going public.

---

[13] In the U.S., regulators encouraged the adoption of digital delivery solutions. The SEC and NYSE conducted a 5-year pilot, "Enhanced Broker Internet Platforms," to increase the use of digital mailboxes and e-delivery rates. The program demonstrated that a shift to e-delivery can encompass all regulatory disclosures with better engagement of investors and added savings to issuers.

We commend the CSA for looking to modernize investor communication. When it comes to technology, a better path exists to reduce regulatory costs and enhance investor education and engagement; namely, digital delivery of notifications and regulatory disclosures. Providing a robust, user-agnostic link should be foremost on the agenda for SEDAR+ so that no investors are left behind.

On behalf of Broadridge, we thank you for the opportunity to submit comments. We welcome any questions you may have.

Sincerely,

[redacted]

Martha Moen
General Manager, Investor Communication Solutions, Canada

Attachment A: Comparison of Digital Delivery and Access Equals Delivery Models

Attachment A

Comparison of Digital Delivery and Access Equals Delivery Models

	DIGITAL DELIVERY	ACCESS EQUALS DELIVERY
MAIN STREET INVESTORS		
Awareness of Disclosures	High open rates on emails from brokerage firms to clients	Unknown
Awareness of Opportunity to Receive Disclosures Directly	Annual request process	Ad hoc request process
Ease of Accessing Disclosures	Easy (personal message with link to specific disclosures)	Multiple steps (locate general media release, then search for disclosure)
ISSUERS		
Overall Cost Savings (average per issuer)	$4,200	$5,500
Incremental Cost to Utilize (average per issuer)	$0	$6,000
Net Savings/Cost (average per issuer)	$4,200	($500)
Cost Savings Opportunity (varies by size)	All issuers	Largest issuers

Note: See main body of letter for supporting data sources.

Enbridge
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July 6, 2022

Via E-mail: comments@osc.gov.on.ca; consultation-en-cours@lautorite.qc.ca

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

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Re: CSA Notice and Request For Comment – Proposed Amendments and Proposed Changes to Implement An Access Equals Delivery Model For Non-Investment Fund Reporting Issuers ("Request for Comment")

Dear Sirs and Mesdames:

Enbridge Inc. (Enbridge) appreciates the opportunity to provide comments in respect to the Request for Comment regarding proposed amendments to implement an Access Equals Delivery Model ("AED Model") for non-investment fund reporting issuers.

Enbridge is a leading North American energy infrastructure company with common shares listed on the Toronto Stock Exchange and the New York Stock Exchange. Headquartered in Calgary, Alberta, we operate an extensive network of liquids and natural gas pipelines, regulated distribution utilities and renewable power generation assets across North America and have a growing offshore wind presence in Europe. Enbridge is a *Canada Business Corporations Act* corporation and currently qualifies as a

foreign private issuer in the U.S. for purposes of the *Securities Exchange Act of 1934*. As a foreign private issuer, although we are not required to file annual reports on Form 10-K with the U.S. Securities and Exchange Commission, we do so voluntarily. As such, Enbridge is subject to disclosure requirements in both Canada and the U.S.

Transparency, facilitating open and informed dialogue and sharing our story is as important to our shareholders as it is to us and as such, we value our active engagement with shareholders and stakeholders on an ongoing basis through a variety of avenues. In addition to our active engagement, and our regulated filings on SEDAR and EDGAR, we ensure that our investors have timely access to key information whenever they need it by ensuring that our corporate website is kept current, is easy to navigate and houses our current news releases and public disclosure filings. In addition, we are pleased to provide printed or electronic copies of our principal public disclosure documents to shareholders at no cost upon request.

We commend the Canadian Securities Administrators for recognizing that modernization, by way of the AED Model, is much-needed for a myriad of reasons.

Timely Information Access: The AED Model acknowledges that shareholder information access needs have progressed rapidly since the current delivery requirements were initially introduced. Shareholders now expect timely access to information regarding the issuers they invest in, and they want to trade on the basis of that timely information. They no longer rely on printed materials which, through their intermediaries, often arrive at their doorsteps much too late to facilitate investors trading on an informed and timely basis.

Multiple Communication Methods: While the AED Model relies on SEDAR, because it is already a regulatory requirement and is widely accessible and common to all reporting issuers, it is set in the context of today's world where multiple shareholder communication methods exist. This includes corporate websites which are an effective way for shareholders to receive timely information from reporting issuers. Whether it is through SEDAR, corporate websites, news releases, webcasts and more, these multiple communication methods provide shareholders with choices in the way they wish to access the timely information they need. All such communication methods would continue to be accessible under the AED Model, even if reliance is placed on SEDAR for regulatory purposes.

Competitive Capital Markets: It is timely for the Canadian Securities Administrators to recognize the financial and environmental costs associated with printing and mailing millions of pages per year, annually, per reporting issuer. Are the marginal benefits associated with receiving stale-dated written materials by mail worth the costs that are borne by issuers (and ultimately their shareholders)? Eliminating the burden of mailing annual and interim financial statements and MD&A will be an important step forward to removing unnecessary regulatory requirements and reducing barriers to the competitiveness of Canadian capital markets.

We thank the Canadian Securities Administrators for the opportunity to share our perspectives and we welcome additional opportunities to further engage on this topic.

Sincerely,
Enbridge Inc.

(Signed) *"Robert R. Rooney"*

Robert R. Rooney, Q.C.
Executive Vice President & Chief Legal Officer

Stikeman Elliott

Stikeman Elliott LLP
Barristers & Solicitors
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July 6, 2022

Without Prejudice
By E-mail

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Dear Sirs/Mesdames:

Re: CSA Notice and Request for Comment Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers

We submit the following comments in response to the Notice and Request for Comment (the "**Notice**") published by the Canadian Securities Administrators (the "**CSA**") on April 7, 2022 with respect to proposed amendments (the **"Proposed Amendments**") to certain National Instruments, Companion Policies and National Policies to create a proposed "access equals delivery model" (the "**AED Model**").

We have organized our comments below with reference to the proposed rule, policy or form to which the comments relate and, where applicable, with reference to the specific consultation question posed. All references to parts and sections are to the relevant parts or sections of the applicable rule, policy or form.

Thank you for the opportunity to comment on the Proposed Amendments and the AED Model. This letter represents the general comments of certain individual members of our securities practice group (and not those of the firm generally or any client of the firm) and are submitted without prejudice to any position taken or that may be taken by our firm on its own behalf or on behalf of any client.

A. NEWS RELEASE REQUIREMENTS

We acknowledge and applaud the intention behind the proposed AED Model. The CSA's continued commitment to reducing regulatory burdens for reporting issuers and other market participants is beneficial to the efficiency of Canadian capital markets and should be at the forefront of all of the CSA's regulatory initiatives. We are also of the opinion that any initiatives that reduce the volume of paper to be printed and mailed is of general benefit from both a cost savings and an environmental perspective.

However, despite the foregoing, we have some concerns that notification by way of news release may not be sufficient from the perspective of investors. First, based on our experience, mainstream and financial media outlets will not generally amplify these types of news releases. As such, investors will need to be aware of a filing and familiar with SEDAR in order to access the news release in the first instance. The Notice states that the CSA generally expects that (a) prospective purchasers under a prospectus will be sophisticated and generally aware that information about an offering is available on SEDAR, and (b)

investors are generally aware of various filings because they will have interest in a distribution or know that documents are available on SEDAR and can predict the timing of such filings since they are subject to prescribed filing deadlines. If an investor or prospective purchaser is already aware of and accessing a filing on SEDAR, the additional news release filed on SEDAR will simply be redundant.

Secondly, if significant numbers of reporting issuers are issuing news release to announce the filing of documents on SEDAR, the influx of these types of news releases may serve to drown out more material news releases and only add confusion to the market. This is especially true for public offerings under a prospectus, which already involve numerous news releases, including separate and sometimes formulaic announcements for (at least) the launch of the proposed offering, final pricing terms and closing of the offering. While we recognize that availability and notification are intended to serve a particular purpose in the case of prospectuses by governing the period of time during which statutory rights of withdrawal and rescission remain available, we respectfully submit that the exercise of such rights by an investor – being a very significant investment decision – is not likely to hinge on whether a filing was or was not announced by way of news release. Moreover, given that the exercise of such rights remains extremely rare (relative to aggregate transaction volumes), we further submit that such rights should not on their own justify a less efficient design for the AED Model.

While we do not believe that issuing and filing a news release will be unduly onerous to issuers from a preparation perspective, we note that there is an added cost to issuing a news release and we do not believe that such cost will provide significant benefit to the issuer, investors or Canadian capital markets. Given the foregoing, we do not believe that news releases should be the only or primary method of notification of a filing. As such, we respectfully suggest that the CSA consider alternative means of notifying investors of SEDAR filings (for example, through email notification, filings on the issuer's website, alerts provided by intermediaries, etc.). Given that the SEDAR+ project is also scheduled to be completed in February 2023, we also suggest that the CSA time the implementation of the AED Model with the launch of SEDAR+ to take full advantage of a more functional filing website that will be easier for investors to use. To the extent that the functionality of SEDAR+ can be tailored to allow investors to "subscribe" to issuer filings and notifications thereof, we think that would be beneficial under the AED Model. If that is not practicable, then perhaps an issuer wanting to take advantage of the AED Model should be required to implement or cause to be implemented a system whereby investors could subscribe to a free email service to receive news releases.

To the extent that the CSA determines that notification by way of news release should be the only or primary method of notification of a filing, the Proposed Amendments could nevertheless be significantly improved by allowing news releases announcing document availability to be issued and filed *prior* to the SEDAR filing date of the applicable prospectus or financial reports. Such a construct could require the news release to prospectively specify the date on which (or by which) the applicable document would be filed. For example, the news release announcing the pricing of an offering made under a short form base shelf prospectus could be allowed to fulfill the AED Model requirements by indicating that the prospectus supplement in respect of the offering will be filed on SEDAR within the next two business days, the whole consistent with subparagraph 6.4(2)(a)(ii) of National Instrument 44-102 *Shelf Distributions.* Similarly, for the numerous issuers which issue and file news releases announcing comprehensive annual or quarterly financial results before the SEDAR filing date for the corresponding financial statements and MD&A, the AED Model requirements could be fulfilled by indicating on which date such documents are intended to be filed. Then, if ever an issuer would become unable complete the filing of the applicable document on or by the date prospectively specified, a separate news release could be issued to update the market.

B. APPLICATION – MTN PROGRAMS AND OTHER CONTINUOUS DISTRIBUTIONS

The AED Model should apply equally for all types of prospectuses and we do not believe that any differentiation is required in this respect. As such, we respectfully submit that MTN programs and other continuous distributions (collectively referred to as "continuous distributions") should not be excluded from the AED Model as is currently being proposed. In particular, we note that issuers undertaking continuous

distributions will often frequently file prospectus supplements (potentially in a short period of time including several in a single day) and, as a result, the related delivery obligations can often be quite burdensome for such issuers. In addition, we have found that there is generally ample opportunity for such issuers and/or registered dealers and advisers to notify investors that the relevant prospectus and ancillary documentation related to the offering have been filed. Given the foregoing, it is our view that the AED Model would provide significant benefit and efficiency to issuers undertaking continuous distributions, as well as investors, and we do not see any compelling policy reason to exclude such offerings from the AED Model.

In light of our view that the AED Model should be available to continuous distributions, we reiterate our concerns with respect to the news release requirements in the proposed AED Model particularly with respect to the potential for an influx of immaterial news releases to overshadow those that are material and result in market confusion. We do not believe that an MTN issuer should have to issue and file multiple news releases in connection with an MTN program in order to notify investors that a prospectus or pricing supplement has been filed on SEDAR.

C. APPLICATION – DISTRIBUTION OF RIGHTS

We further submit that the term “rights” in Section 2A.1(a) of NI 41-101 should be defined in order to reduce ambiguity in the rule.

* * * * *

Thank you for the opportunity to comment on the AED Model. Please do not hesitate to contact any of the undersigned if you have any question in this regard.

Yours truly,

Laura Levine,

on my own behalf and on behalf of

Ramandeep K. Grewal
Jeff Hershenfield
Simon A. Romano
David Tardif

BY ELECTRONIC MAIL: consultation-en-cours@lautorite.qc.ca, comment@osc.gov.on.ca

July 6, 2022

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

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Dear Sirs / Mesdames:

RE: Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers ("Proposed Amendments")

Thank you for the opportunity to provide comments to the Canadian Securities Administrators (the "**CSA**") on the Proposed Amendments.

Fidelity Investments Canada ULC ("**Fidelity**", "**we**", "**us**", "**our**") is the third largest mutual fund company in Canada. As at March 31, 2022, Fidelity managed more than $203 billion (CAD) in

retail mutual funds, exchange traded funds and institutional assets. Over 1.5 million Canadians entrust us with their savings, and we take their trust very seriously.

We commend the CSA for taking steps to implement an access equal delivery ("**AED**") model for the full suite of main continuous disclosure documents for non-investment fund issuers. While we are disappointed that the CSA has not included investment fund issuers as part of this important initiative, we are of the view that similar principles apply to investment fund issuers and are confident that you, as regulators, will move to include investment fund issuers in such initiatives going forward.

As part of the recent regulatory burden reduction-related amendments to National Instrument 81-106 - *Investment Fund Continuous Disclosure* ("**NI 81-106**"), the CSA introduced the requirement for public investment funds to identify a designated website on which to post all required regulatory disclosure, which potentially could be used as a launching-off point to transition investment fund issuers to an AED model for the suite of main continuous disclosure documents. A combined AED model publication would result in reduced burden for market participants, especially given the many similarities between the documents referenced in the Proposed Amendments and those required to be produced by investment fund issuers. To quote the CSA from the Proposed Amendments, "The Proposed Amendments would implement the proposed AED Model for **prospectuses** generally, **annual financial statements**, **interim financial reports** and related **MD&A**. In our view, the proposed AED Model is **well suited for these types of documents, which are increasingly being accessed electronically by investors**" (at 3610) [*Emphasis added*]. These are the very same documents required to be produced by investment fund issuers, and investment fund investors would equally benefit from being able to access them electronically.

We agree with the CSA that an AED model "further facilitates the communication of information by enabling issuers to reach more investors in a **faster and more effective manner than by mailing documents**" (at 3610) [*Emphasis added*]. In fact, our own findings show that only a fraction of investors open and read mailed disclosure documents. We encourage the CSA to afford investment fund investors this same ease of access to their investor communications by implementing an AED model for investment fund issuers.

Of course, we also agree with the CSA that in any AED model, investors who request to receive such documents in paper or electronic form should continue to receive them according to their instructions. In addition, we are of the view that not all documents would be appropriate for an AED model and are more appropriately delivered via electronic delivery. In fact, by adopting an AED model for some documents and electronic delivery for others, we expect investors to be less overwhelmed by the volume of documents sent or available to them and allow them to be selective about what they choose to focus on.

Fidelity has consistently advocated for an electronic delivery and AED model for investment fund continuous disclosure documents. Today, when investors expect convenient and effective communication, investment fund continuous disclosure rules continue to reflect an antiquated paper-based world. In the January 2021 Ontario Capital Markets Modernization Taskforce's (the "**Taskforce**") final recommendations (the "**Taskforce Report**"), the Taskforce recommended that Ontario adopt an AED model for the disclosure documents of all issuers **and investment funds** within six months of the date of the Taskforce Report. The Taskforce recognized that this recommendation would likely be most effective when harmonized across Canada. We could not agree more and hope that the OSC and CSA work towards a quick transition.

Once again, we would like to thank the CSA for the opportunity to comment on the Proposed Amendments and we would be pleased to discuss any of our comments.

Yours sincerely,

"Stefania Zilinskas"

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British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers (Québec)
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

c/o
Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers (Québec)

Email: consultation-en-cours@lautorite.qc.ca
The Secretary
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Email: comments@osc.gov.on.ca

cc Kenmar; SHARE; FAIR; SIPA

Dear Sirs/Mesdames:
CSA Notice and Request for Comment – *Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers*

I apologise for this late submission, which I hope you will still consider. I will be brief. I oppose the AED proposal and support the submissions of Kenmar and SHARE, which I have read and considered. I have no

professional relationship with those organisations, nor do I represent York University.

I would like to emphasise just a few points that agree with Kenmar and SHARE, or perhaps add to them a bit.

- The major cost of disclosure is the preparation of the disclosures, not the dissemination of them. It is a total waste of good money to avoid making the disclosures as widely accessible as possible.
- Older investors are those who are more likely to find difficulty in accessing SEDAR and websites, and generally navigating the internet. Older investors are also the ones with the most direct investments in Canadian equities. Your AED proposal discriminates against older investors with the most at stake.
- Indigenous people and others in remote communities have poor or no connection to the internet. Your AED proposal discriminates against them. In my opinion, this point and the previous one strongly signal violation of Charter rights.
- I have used SEDAR and EDGAR extensively for all sorts of purposes, including investment, regulation of payday lending, litigation support, academic research and teaching. I am an expert, and even I find them hard to navigate sometimes. A great many persons investing their own money would find them very hard to navigate. Relying on them is simply wrong. Personally, I would require every listed company to load all its disclosures on its website as well as SEDAR, because their websites are in my experience easier to use, and are the logical place to look. Data storage capacity in today's world is so colossal and cheap that I couldn't have dreamed of it when I started my career. It is likewise a simple matter to keep a linked record of the email addresses of all registered shareholders.
- Electronic notices to everyone who can and will take them is a natural first step. Already the great majority of investors are abandoning paper for every financial matter. But as I said, not everyone has the capability to receive them.
- Even an expert like me can't keep track of everything without notices that something important is available. Only a month ago there was a major transaction happening that affected me, and I would not have known about it without receiving a notice.
- Of course the ultimate aim is to reduce the use of paper and cost of paper and distributing it. The neo-liberals who are urging AED love to claim that they believe in the power of markets, but only when it suits their clients in their pursuit of wealth for the elites. If you believe in

markets, then let the markets operate. Urge the clients to convert to electronic distribution. It is already becoming the norm. You will get your savings without hurting anyone soon enough as the next generation responds to the market incentive of the convenience of electronic data receipt and storage. As Bob Dylan said, "The times they are a changing."

Why should you pay attention to my comments? I taught finance for 38 years. I have invested in hundreds of Canadian equities since 1974. I have read literally 10,000 corporate disclosure documents of every sort. I have taught security valuation, financial statement analysis, corporate finance, ethics in finance and personal finance to thousands of students. I have been working in litigation support as an expert witness in finance and accounting for 30 years.

In my professional opinion, AED is another step in the erosion of the rights of individual investors.

Regards,

[redacted]

Chris Robinson