CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Consultation Paper 51-405
Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers

January 9, 2020

1. Introduction

On April 6, 2017, the Canadian Securities Administrators (**CSA** or **we**) published a consultation paper[1] to identify and consider areas of securities legislation applicable to non-investment fund reporting issuers that could benefit from a reduction of undue regulatory burden, without compromising investor protection and the efficiency of the capital markets. Enhancing electronic delivery of documents was identified as one area where a broader review may be warranted. Commenters responding to that consultation were generally supportive of developments which would further facilitate electronic delivery of documents. On March 27, 2018, CSA staff published a notice[2] stating that, among other things, a policy initiative will be undertaken in this area.

We recognize that information technology is an important and useful tool in improving communication with investors and are committed to facilitating electronic access to documents where appropriate. Electronic access to documents provides a more cost-efficient, timely and environmentally friendly manner of communicating information to investors than physical delivery.

The CSA are considering whether electronic access should be expanded to reduce the use of paper to fulfil delivery requirements. A possible regulatory framework that has the potential to significantly reduce regulatory burden on issuers and to enhance the accessibility of information for investors is an "access equals delivery" model. Under the model that we are contemplating, delivery of a document is effected by the issuer alerting investors that the document is publicly available on the System for Electronic Document Analysis and Retrieval (**SEDAR**) and the issuer's website. We are considering prioritizing a policy initiative in this area for prospectuses and certain continuous disclosure documents.

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[1] CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*.
[2] CSA Staff Notice 51-353 *Update on CSA Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*.

An access equals delivery model is consistent with the general evolution of our capital markets, including changes in technology and, in particular, the increased availability and accessibility of information. We note that similar models have been implemented in certain foreign jurisdictions for specific documents.

The purpose of this consultation paper (the **Consultation Paper**) is to provide a forum for discussion on the appropriateness of an access equals delivery model in the Canadian market. We encourage commenters to provide any data and information that could help us evaluate the effects of an access equals delivery model on capital formation and investor protection. We are seeking comments on whether and how such a model may affect investor engagement, positively and negatively, including whether it constitutes an efficient way for investors to access information.

The CSA are publishing this Consultation Paper for a 60-day comment period to solicit views on whether an access equals delivery model should be introduced, the types of documents to which this model should apply and its mechanics. In addition to any general comments that you may have, we also invite comments on the specific questions set out at the end of the Consultation Paper.

The comment period will end on **March 9, 2020**.

While this Consultation Paper focuses on access equals delivery to reduce regulatory burden for issuers, the CSA continue to evaluate other options for enhancing the electronic delivery of documents.

2. Current delivery requirements

Securities legislation requires issuers to deliver various documents to investors. These include prospectuses, rights offering circulars, annual and interim financial statements and related management's discussion and analysis (**MD&A**), proxy-related materials and take-over bid and issuer bid circulars that are delivered by issuers or those acting on their behalf, such as underwriters, intermediaries and transfer agents.

In general, securities legislation does not prescribe the medium to be used by issuers for providing information to investors. In most instances, an issuer must "deliver", "send" or "provide" the document. Accordingly, issuers can generally deliver documents to investors in paper or electronic format. National Policy 11-201 *Electronic Delivery of Documents* (**NP 11-201**) provides guidance to securities industry participants that want to use electronic delivery to fulfil delivery requirements. NP 11-201 sets out the CSA's view that

delivery requirements can generally be satisfied through electronic delivery if each of the following basic components is met:

- 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.

Although securities legislation does not require that the issuer obtain consent from the investor to use electronic delivery, NP 11-201 acknowledges that the process of obtaining express consent may enable the issuer to achieve some of the basic components of electronic delivery. If an issuer does not obtain express consent, it may be more difficult to demonstrate that the investor had notice of, and access to, the document, and that the investor actually received the document.

The notice-and-access model introduced in 2013 also streamlined delivery requirements for proxy-related materials relating to annual or special shareholders' meetings. Under the notice-and-access model set out in National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* and National Instrument 51-102 *Continuous Disclosure Obligations*, an issuer can deliver proxy-related materials to investors by:

- posting the proxy-related materials on SEDAR and a non-SEDAR website; and
- sending the relevant voting document and a notice informing investors that the proxy-related materials have been posted, with an explanation on how to access the materials.

Although electronic delivery is already permitted, and despite the guidance provided in NP 11-201 and the introduction of the notice-and-access model, some issuers continue to incur significant costs associated with printing and mailing various documents required to be delivered under securities legislation.

3. Access equals delivery

Given widespread access to, and use of, the Internet, we are evaluating whether it is appropriate to adopt an access equals delivery model to satisfy delivery requirements under securities legislation. Our objective is to modernize the way documents are made available to investors and significantly reduce costs associated with the printing and mailing of documents that are currently borne by issuers.

To achieve this objective, a possible regulatory framework could be an access equals delivery model under which, for documents that issuers are required to deliver to investors, providing public electronic access would constitute delivery. Specifically, an issuer is considered to have effected delivery once: (a) the document has been filed on SEDAR; (b) the document has been posted on the issuer's website; and (c) the issuer has issued a news release (filed on SEDAR and posted on its website) indicating that the document is available electronically on SEDAR and the issuer's website and that a paper copy can be obtained from the issuer upon request.

An access equals delivery model could benefit both issuers and investors. This model 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. SEDAR and the issuer's website provide ease and convenience of use for investors, allowing them to access and search for information more efficiently than they would otherwise be able to with paper copies of documents.

We note that certain documents are not required to be delivered to investors. For example, a reporting issuer that is not a venture issuer must file an annual information form on SEDAR every year. Another example is timely reporting of a material change to the issuer's affairs, which is publicly disclosed through the issuance and filing of a press release and the filing of a material change report. In both cases, securities legislation does not require the issuer to deliver the document to investors.

The access equals delivery model that we are contemplating could be implemented for various types of documents. As an initial step, we are considering whether to prioritize a policy initiative to implement this model for prospectuses and certain continuous disclosure documents. In our view, implementing an access equals delivery model for these types of documents is achievable and could meaningfully reduce regulatory burden on issuers.

Prospectuses

We note that access equals delivery models have been implemented for prospectuses in the U.S., the European Union and Australia. Please refer to Annex A of this Consultation Paper for further information.

Some stakeholders are supportive of implementing an access equals delivery model for prospectuses. They note that investors are increasingly accessing these documents electronically. They are of the view that this model would reduce costs for issuers and provide convenient and timely access to information for investors.

We recognize the merits of an access equals delivery model for prospectuses. We would have to determine the appropriate regulatory framework, including: (a) how to address investors' withdrawal rights; and (b) whether a news release should be required for both the preliminary prospectus and the final prospectus or whether one news release for an offering is appropriate.

Financial statements and MD&A

Issuers are required to file on SEDAR annual financial statements and interim financial reports (accompanied by the MD&A) within prescribed deadlines. In addition, issuers must either (i) annually send a request form to investors that investors may use to request a paper copy of the issuers' annual financial statements and MD&A, interim financial reports and MD&A, or both, or (ii) send the issuer's annual financial statements to all investors. Issuers are also required to send a copy of their interim financial statements to investors that request them. If an issuer sends financial statements to investors, the issuer must also send the annual or interim MD&A relating to the financial statements.

We note that replacing these requirements with a requirement to issue and file a news release indicating where these documents are electronically available may meaningfully reduce regulatory burden on issuers.

Other types of documents

We are also seeking comments on whether to extend this access equals delivery model to other types of documents, including rights offering materials, proxy-related materials and take-over bid and issuer bid circulars. However, we are cognizant that introducing this model for documents requiring immediate shareholder attention and participation could raise investor protection concerns and could have a negative impact on shareholder engagement. An access equals delivery model for proxy-related materials could also require significant changes to the proxy voting infrastructure, such as operational processes surrounding solicitation and submission of voting instructions.

The access equals delivery model that we are contemplating is not intended to remove the option of having paper copies of documents delivered for those who prefer this option. We acknowledge that issuers are in the best position to choose whether to use access equals delivery considering the needs and preferences of their investors. Issuers could continue to deliver documents in paper or electronic form, based on the investors' standing instructions or upon request.

Some legal aspects of electronic delivery fall outside of the scope of securities legislation. We also recognize that different corporate laws and regulations contain specific delivery

requirements. We do not view these potential limitations as roadblocks to soliciting comments and considering amendments under securities legislation. However, if the CSA decide to implement amendments to our rules related to electronic access, these amendments would not eliminate the limitations that exist in other laws and regulations.

4. Consultation questions

We welcome your comments on the issues outlined in this Consultation Paper. In addition, we are also interested in your views and comments on the following specific questions:

1. Do you think it is appropriate to introduce an access equals delivery model into the Canadian market? Please explain why or why not.

2. In your view, what are the potential benefits or limitations of an access equals delivery model? Please explain.

3. Do you agree that the CSA should prioritize a policy initiative focussing on implementing an access equals delivery model for prospectuses and financial statements and related MD&A?

4. If you agree that an access equals delivery model should be implemented for prospectuses:
    a. Should it be the same model for all types of prospectuses (i.e. long-form, short-form, preliminary, final, etc.)?
    b. How should we calculate an investor's withdrawal right period? Should it be calculated from (i) the date on which the issuer issues and files a news release indicating that the final prospectus is available electronically, (ii) the date on which the investor purchases the securities, or (iii) another date? Please explain.
    c. Should a news release be required for both the preliminary prospectus and the final prospectus, or is only one news release for an offering appropriate?

5. For which documents required to be delivered under securities legislation (other than prospectuses and financial statements and related MD&A) should an access equals delivery model be implemented? Are there any investor protection or investor engagement concerns associated with implementing an access equals delivery model for rights offering circulars, proxy-related materials, and/or take-over bid and issuer bid circulars? In your view, would this model require significant changes to the proxy voting infrastructure (e.g. operational processes surrounding solicitation and submission of voting instructions)? Please explain.

6. Under an access equals delivery model, an issuer would be considered to have effected delivery once the document has been filed on SEDAR and posted on the issuer's website.
    a. Should we refer to "website" or a more technologically-neutral concept (e.g. "digital platform") to allow market participants to use other technologies? Please explain.
    b. Should we require all issuers to have a website on which the issuer could post documents?

7. Under an access equals delivery model, an issuer would issue and file a news release indicating that the document is available electronically and that a paper copy can be obtained upon request.
    a. Is a news release sufficient to alert investors that a document is available?
    b. What particular information should be included in the news release?

8. Do you have any other suggested changes to or comments on the access equals delivery model described above? Are there any aspects of this model that are impractical or misaligned with current market practices?

Please submit your comments in writing on or before March 9, 2020. 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

Please 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.gov.on.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.

5. Questions

Please refer your questions to any of the following:

Autorité des marchés financiers
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Autorité des marchés financiers
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Financial and Consumer Affairs Authority of Saskatchewan
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Nova Scotia Securities Commission
Peter Lamey, Legal Analyst, Corporate Finance
Nova Scotia Securities Commission
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Annex A

The table below highlights the access equals delivery models implemented in the U.S., the European Union and Australia. Information included in this table is not intended to present a comprehensive review of the law in those jurisdictions.

Jurisdiction	Model
U.S.	In 2005, the SEC adopted an access equals delivery model for final prospectuses in registered offerings based on the assumption that investors have access to the Internet. This model is intended to facilitate effective access to information, while taking into account the advancements in technology and the practicalities of the offering process. Under applicable rules[3], a final prospectus is deemed to have been delivered as long as the final prospectus is filed with the SEC electronically on EDGAR or the issuer makes a good faith and reasonable effort to file the final prospectus within the required timeframe. An underwriter or dealer participating in a registered offering (or an issuer, if no underwriter or dealer is involved) may send, in lieu of the final prospectus, a notice to each purchaser providing that the sale was made pursuant to a registration statement or in a transaction otherwise subject to the prospectus delivery requirements. This notice must be sent not later than two business days after the completion of the sale. Purchasers are permitted, however, to request a copy of the final prospectus.
	In 2015, the SEC adopted an access equals delivery model to ease regulatory burden for small public offerings that are exempted from the registration requirements (Regulation A offerings). The SEC noted that the expanded use of the Internet and continuing technological developments suggest that the delivery requirements for these offerings should be updated in a manner that is consistent with the access equals delivery model adopted in 2005 for final prospectuses in registered offerings. Under applicable rules[4], an issuer may satisfy its final offering circular delivery requirements by filing it electronically on EDGAR. The issuer is, however, required to include a notice in any preliminary offering circular informing potential investors that the issuer will rely on access equals delivery for the final offering circular.

[3] *Securities Act of 1933*, Rule 172 and Rule 173.
[4] *Securities Act of 1933*, Rule 251 and Rule 254.

	The issuer (or participating broker-dealer) is required, not later than two business days after completion of the sale, to provide the purchaser with a copy of the final offering circular or a notice stating that the sale occurred pursuant to a qualified offering circular. This notice must include the URL where the final offering circular may be obtained on EDGAR and contact information sufficient to notify the purchaser where a request for a final offering circular can be sent.
European Union	In 2019, the new European Union prospectus regulation[5] came into force. This regulation recognizes that since the Internet ensures easy access to information, and in order to ensure better accessibility for investors, the prospectus should always be published in an electronic form. In order to ensure investor protection, the obligation to publish a prospectus applies to both equity and non-equity securities offered to the public or admitted to trading on regulated markets. Once approved by the relevant competent authority, the prospectus must be made available to the public by the issuer, the offeror or the person asking for admission to trading on a regulated market before the offer to the public or admission to trading takes place. The prospectus is deemed available to the public when published on the website of the issuer, the offeror or the person asking for admission to trading on a regulated market, on the website of the financial intermediaries placing or selling the securities or on the website of the regulated market where the admission to trading is sought. The prospectus must be published on a dedicated section of the website which is easily accessible when entering the website, and must be downloadable, printable and searchable in electronic format that cannot be modified. All prospectuses approved, or at least a list of those prospectuses with hyperlinks to the dedicated website sections, must be published on the website of the competent authority of the issuer's home member state. Also, each prospectus must be transmitted by the competent authority to the European Securities and Markets Authority (**ESMA**) along with the relevant data enabling its classification. ESMA must provide a centralised storage mechanism of prospectuses allowing access free of charge and appropriate search facilities for the public. Any potential investor may obtain a copy of the prospectus upon request.
Australia	In March 2014, the Australian Securities & Investments Commission (**ASIC**) published a regulatory guide[6] to facilitate and encourage the use of electronic disclosure, including the Internet (e.g. posting a

[5] *Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC.*

[6] *Regulatory Guide 107 Fundraising: Facilitating electronic offers of securities*.

	disclosure document on a website), for making offers of securities. ASIC notes that issuers are increasingly using electronic means to distribute and present disclosure documents (e.g. prospectuses) to investors and recognizes that this has advantages for both issuers offering securities and investors. ASIC explains its interpretation of the offering provisions under corporate law and clarifies that relief is not required for offers of securities using the Internet, provided that the electronic disclosure document has the same content, presentation, and prominence of information as the paper version. ASIC also sets out good practice guidance for the use and distribution of electronic disclosure documents, including ensuring ease of access and providing free paper documents to investors on request. ASIC recognises that there may be other types of web-based platforms that emerge in the future to distribute and present electronic disclosure documents. The guide is principles-based and is intended to apply to current and emerging forms of electronic disclosure documents.

BY ELECTRONIC MAIL: comments@osc.gov.on.ca, consultation-en-cours@lautorite.qc.ca

March 13, 2020

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Authorité 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, Northwest Territories
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Nunavut

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Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
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Dear Sirs / Madames:

RE: CSA Consultation Paper 51-405 - Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers ("Consultation Paper")

Thank you for the opportunity to provide comments to the Canadian Securities Administrators (the "**CSA**") on the Consultation Paper.

Fidelity Investments Canada ULC ("**Fidelity**") is the 4th largest mutual fund company in Canada. Fidelity currently manages over $124 billion in retail mutual funds, exchange traded funds and institutional assets. Many Canadians entrust us with their savings and we take their trust very seriously.

Fidelity is very pleased with the CSA's decision to pursue an "access equals delivery" model ("**AED Model**") in Canada. We were, however, surprised that the CSA did not consider this

initiative for investment fund reporting issuers. The rationale for supporting such a model is equally, if not more, applicable to investment fund reporting issuers. According to StatCan, the share of Canadians aged 15 and older who use the Internet is 91%, with more seniors reporting Internet use (71%) - overall, 94% of Canadians have home Internet access[1]. In this day in age, we are no longer experimenting with Internet technology and we believe that the online experience is superior for Canadian investors. Accordingly, we believe that the AED Model should be the default for offering and continuous disclosure documents in Canada - with snail mail available for request by investors who prefer that form of delivery. Electronic delivery is more cost-effective and wastes fewer resources, and it would relieve regulatory burden on investment fund reporting issuers while enhancing the investor experience.

As at January 31, 2020, mutual fund assets totalled $1.66 trillion in Canada. Over 5 million (33%) Canadians save for their future through mutual funds. It is clear from this Consultation Paper that Canadian retail investors will be disadvantaged by the CSA's missed opportunity. Many of our investors tell us that they prefer electronic delivery. Fidelity has also heard customer complaints over the years about the mass proliferation of regulatory required mailings they receive. We believe that the AED Model will enhance the investor experience because it provides investors instant access to current information about their investments that is more navigable than paper disclosures. It also allows for innovative features, including hyperlinks, document search capabilities, etc. Current delivery rules for investment fund reporting issuers are not consumer friendly and out of touch. For example, Canadian investors interested in electronic delivery must affirmatively opt-in to receive documents electronically for each document on an account-by-account basis. In this day in age, we cannot imagine that this is what the average Canadian desires.

With respect to our continuous disclosure documents, we have seen a very low percentage of securityholders opt-in to receive annual financial statements and MRFPs. For example, in 2019, approximately 1.81% of all our securityholders requested the annual financial statements. Similarly, during the same period, approximately 0.72% of all our securityholders requested the annual MRFPs. Based on these low take-up figures, we believe that these documents are not meaningful to investors. As such, we believe that financial statements and MRFPs may be effectively delivered through the AED Model. We note that a similar approach has been adopted by the Securities and Exchange Commission ("**SEC**") in the United States - Rule 30e-3 under the *Investment Company Act of 1940* provides registered investment companies with the ability to make financial statements, among other documents, available online if a paper notice is sent to securityholders.

In conclusion, we agree with the CSA's view that information technology is an important and useful tool in improving communication with investors. In fact, in 2020, we believe that the online experience is superior for Canadian retail investors. We believe, however, that limiting the scope of this Consultation Paper to non-investment fund reporting issuers excludes the consideration of all affected market participants and is a missed opportunity for the CSA.

[1] October 29, 2019, https://www150.statcan.gc.ca/n1/daily-quotidien/191029/dq191029a-eng.htm.

Once again, we would like to thank the CSA for the opportunity to comment on the Consultation Paper and we would be pleased to discuss any of our comments.

Yours sincerely,

"W. Sian Burgess"

W. Sian Burgess
Senior Vice President, Fund Oversight
Fidelity Investments Canada ULC

c.c. Rob Strickland, President
Rob Sklar, Manager, Legal Services and Senior Legal Counsel
Aleks Ramsvik, Legal Counsel

Comments by: Alistair Harrigan Investor living in British Columbia

51-405 Consideration of an Access Equals
Delivery Model for Non-Investment Fund Reporting Issuers [CSA Consultation Paper]

Before commenting on your specific questions, I would like to observe that in general online access has made it much easier for me as an investor and I encourage any efforts to further electronic information sharing. Concerning this initiative, I would assume that all this data would be available on a single common website that would be easily accessed by the public. Furthermore, there must be a feedback mechanism for users of the system and reports on whatever system is adopted.

1. Do you think it is appropriate to introduce an access equals delivery model into the Canadian market? Please explain why or why not.

I agree that the access equals delivery model would be beneficial to the Canadian market. This initiative will reduce costs and make information more available. That said, the information must be available through a simple interface preferably on a common website/portal that would also provide the notification of new information with an alert feature.

2. In your view, what are the potential benefits or limitations of an access equals delivery model? Please explain.

The potential benefits are reduced cost and increased speed of access. The limitation is making investors aware of where to find the information in an easy to follow website. There also needs to be a monitoring mechanism to avoid a post and forget mindset by the industry. The regulators should be conducting semi-annual reviews of filings and reporting compliance information.

3. Do you agree that the CSA should prioritize a policy initiative focussing on implementing an access equals delivery model for prospectuses and financial statements and related MD&A?

Yes as first step towards a full electronic ecosystem.

4. If you agree that an access equals delivery model should be implemented for prospectuses:

a. Should it be the same model for all types of prospectuses (i.e. long-form, short-form, preliminary, final, etc.)?

Yes

b. How should we calculate an investor's withdrawal right period?

Should it be calculated from:

(i) the date on which the issuer issues and files a news release indicating that the final prospectus is available electronically,
(ii) the date on which the investor purchases the securities, or
(iii) another date? Please explain.

I believe that the date of purchase would be the best option for the investor as it will be clear date to the investor. Use of another date provides for arbitrary expirations that may not be clear to an individual investor.

c. Should a news release be required for both the preliminary prospectus and the final prospectus, or is only one news release for an offering appropriate?

A news release should be required for both. The cost of electronic posting of the news release is minimal. As identified previously a notification system on the website would also serve to advise investors.

5. For which documents required to be delivered under securities legislation (other than prospectuses and financial statements and related MD&A) should an access equals delivery model be implemented? Are there any investor protection or investor engagement concerns associated with implementing an access equals delivery model for rights offering circulars, proxy-related materials, and/or takeover bid and issuer bid circulars? In your view, would this model require significant changes to the proxy voting infrastructure (e.g. operational processes surrounding solicitation and submission of voting instructions)? Please explain.

I am a fan of all electronic access provided that is coordinated. I have been more engaged as an investor when companies have done electronic voting. I believe that the regulators should mandate electronic voting and that all TSX listed companies should web-cast their annual meetings. In the interest of cost savings standardized services, perhaps through the regulators, would ensure credibility in the voting process.

6. Under an access equals delivery model, an issuer would be considered to have effected delivery once the document has been filed on SEDAR and posted on the issuer's website.

a. Should we refer to "website" or a more technologically-neutral concept (e.g. "digital platform") to allow market participants to use other technologies? Please explain.

As identified above a website/portal would be best. I would be in favor of a common look and feel with access to all companies from one site.

b. Should we require all issuers to have a website on which the issuer could post documents?

No, the issuers should use a common source. This would reduce costs for the issuers and provide investors with a common source to access information. I would not want to be navigating multiple web sites with unique layouts.

7. Under an access equals delivery model, an issuer would issue and file a news release indicating that the document is available electronically and that a paper copy can be obtained upon request.

a. Is a news release sufficient to alert investors that a document is available?

Yes. That said, it should indicate where to source the information. A web alert would also be useful here linked to the web site(s) depending on how this will be implemented.

b. What particular information should be included in the news release?

Simple who, what, timeline and where to find the information.

8. Do you have any other suggested changes to or comments on the access equals delivery model described above? Are there any aspects of this model that are impractical or misaligned with current market practices?

I do not see any impractical aspects of this approach. The construction of a web environment will be the challenge. My preference would be for a common system to avoid multiple technical solutions and potential fraud by presentation of information in a less than forthright fashion. Also, there must be a follow-up and reporting by the regulators to ensure that this system evolves smoothly.

THE CANADIAN BAR ASSOCIATION
L'ASSOCIATION DU BARREAU CANADIEN

Access Equals Delivery Model for Prospectuses and Other Documents

CANADIAN BAR ASSOCIATION
BUSINESS LAW SECTION

March 2020

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PREFACE

The Canadian Bar Association is a national association representing 36,000 jurists, including lawyers, notaries, law teachers and students across Canada. The Association's primary objectives include improvement in the law and in the administration of justice.

This submission was prepared by the CBA Business Law Section, with assistance from the Advocacy Department at the CBA office. The submission has been reviewed by the Law Reform Subcommittee and approved as a public statement of the CBA Business Law Section

Access Equals Delivery Model for Prospectuses and Other Documents

I. INTRODUCTION

The Business Law Section of the Canadian Bar Association (CBA Section) is pleased to comment on the Canadian Securities Administrators' proposed access equals delivery (AED) model for prospectuses and other documents.

The CBA is a national association representing over 36,000 jurists, including lawyers, Quebec notaries, law teachers and students across Canada. Its primary objectives include improvement to the law and the administration of justice. The CBA Section comprises lawyers from across Canada who are experts in all areas of securities law including securities filings, public offerings, corporate governance, continuous disclosure and the regulation of registrants.

II. QUESTIONS

Our comments are organized in accordance with the questions in the consultation document.

1. Do you think it is appropriate to introduce an access equals delivery model into the Canadian market? Please explain why or why not.

Yes. Regulatory and administrative practices have evolved to allow electronic delivery and to give investors the option of not receiving certain documents (e.g. financial statements). An AED model is a reasonable extension of these practices.

A primary objective of securities regulation is to ensure that relevant documents such as offering materials are accessible to investors. An AED model furthers this objective and we believe it is an opportune time to implement it – if effective investor protections are included.

2. In your view, what are the potential benefits or limitations of an access equals delivery model? Please explain.

Benefits

More efficient access: There is a benefit to issuers, investors and potentially dealers, in making the documents accessible in a timely and efficient manner. Investors would have easy access to all relevant documents to make informed decisions, and the convenience of not receiving voluminous paper documents. They would also have easy access on the issuer's website and the System for Electronic Document Analysis and Retrieval (SEDAR). Although navigating SEDAR can be complex, we expect that upcoming reforms to the SEDAR regime will enhance accessibility to disclosure documents online.

Reducing administrative burdens: For continuous disclosure documents such as financial statements and Management Discussions and Analysis (MD&A), an AED model would reduce administrative burdens – which could be especially beneficial for junior issuers.

Tracking delivery and receipt: Currently, there is no way of knowing if an investor has received a paper document let alone reviewed it. An AED system could assist with

tracking the delivery and receipt of the document and, potentially determining if it has been reviewed.

Reduced costs: We expect cost savings for issuers, investors and securities intermediaries.

Environmental benefits: The change would mean significant reduction in paper documents.

Limitations

Scope: An AED model would only work for shareholder reporting requirements not subject to other areas of law – e.g. corporate legislation – unless those other requirements are also updated to reflect the AED model.

Accessibility: While the number of individuals unable to access documents online is small, it will be important to also ensure access to paper documents in certain cases.

Potential vulnerabilities: An electronic system could be vulnerable to cyberattacks or prolonged power outages.

3. Do you agree that the CSA should prioritize a policy initiative focusing on implementing an access equals delivery model for prospectuses and financial statements and related MD&A?

Yes. There is already a model in the *notice and access* system for proxy materials. it would be relatively easy to develop a similar process for prospectuses, financial statements and related MD&A.

AED should be implemented for interim financial statements and the related MD&A (other than for investors who opt out either wholly or in part – see our response to question seven below). Prospectuses are also governed by applicable securities legislation and trigger certain statutory rights based on delivery. This necessitates additional considerations that should be addressed to accommodate prospectus delivery under the new regime.

4. If you agree that an access equals delivery model should be implemented for prospectuses:

(a) **Should it be the same model for all types of prospectuses (i.e. long-form, short-form, preliminary, final, etc.)?**

Yes. We see no reason to distinguish between types of prospectuses.

(b) **How should we calculate an investor's withdrawal right period? Should it be calculated from (i) the date on which the issuer issues and files a news release indicating that the final prospectus is available electronically, (ii) the date on which the investor purchases the securities, or (iii) another date? Please explain**.

Currently, prospectus withdrawal rights contemplate that the right to withdraw from an agreement to purchase securities may be exercised within two business days after receipt or *deemed* receipt of a prospectus.

In an AED model, calculating withdrawal rights as commencing on the date a final prospectus news release is issued is analogous to *deeming* receipt of a prospectus. This would, in general, parallel current withdrawal rights.

In addition to reduced costs and paper, we expect that in most cases this approach would also allow the offering to close more quickly. By calculating the withdrawal right period from the date of the news release – which could be the same day as the day a receipt is obtained for a final prospectus – rather than receipt (or deemed receipt) of a printed final prospectus, which will often be delivered at least one business day after the final prospectus has been receipted, the withdrawal right period would end sooner than under the current system, facilitating an earlier closing of the offering.

(c) **Should a news release be required for both the preliminary prospectus and the final prospectus, or is only one news release for an offering appropriate?**

A separate news release would be appropriate for both the preliminary and final prospectus. News releases inform the public of the offering and, under an AED regime, would serve the additional purpose of constituting a means of delivery. For a final prospectus, it also sets the date from which withdrawal rights would be calculated.

5. For which documents required to be delivered under securities legislation (other than prospectuses and financial statements and related MD&A) should an access equals delivery model be implemented?

Subject to our comments below, AED should be extended to all disclosure documents requiring delivery to investors.

Are there any investor protection or investor engagement concerns associated with implementing an access equals delivery model for rights offering circulars, proxy-related materials, and/or take-over bid and issuer bid circulars?

There are significant investor engagement concerns. Investors may not be able to exercise their rights, such as voting and dissent rights, if access is delayed. This is particularly important in the case of rights offerings, take-over bids and "fundamental changes", as contemplated by corporate legislation.

However, these concerns also exist with the current system as there is no guarantee that paper documents are received or reviewed prior to making investment decisions. An AED model could facilitate the delivery of documents and track receipt and, potentially, review of the documents.

We believe that extending the *notice and access* system – ideally streamlined to make it more cost-effective – would serve this purpose. Investors would still receive a physical notification of the transaction or meeting, but the disclosure document would generally not be delivered.

We recommend more consultations before implementing rule changes affecting documents other than financial statements, MD&A and prospectuses.

In your view, would this model require significant changes to the proxy voting infrastructure (e.g. operational processes surrounding solicitation and submission of voting instructions)? Please explain.

We believe that an enhanced notice-and-access system as referenced above would not trigger significant changes to the proxy voting infrastructure.

6. Under an access equals delivery model, an issuer would be considered to have effected delivery once the document has been filed on SEDAR and posted on the issuer's website.

(a) **Should we refer to "website" or a more technologically-neutral concept (e.g. "digital platform") to allow market participants to use other technologies? Please explain.**

We recommend that access be as wide as possible and that issuers be encouraged to use multiple platforms. At this time, we believe that one of those platforms must be the issuer's website and that all documents should continue to be posted to SEDAR – ensuring one place where investors can access all relevant information. Websites are commonly understood platforms and consistent with other regulatory contexts (i.e. stock exchanges) that mandate certain online disclosure.

We are not opposed to other "digital platforms" in addition to a website. A reference only to "digital platform", however, may hinder access for investors who lack fluency with emerging technologies.

(b) **Should we require all issuers to have a website on which the issuer could post documents?**

Yes, all issuers should have a digital presence where all their relevant information is available. For the moment, a website is preferable. Other platforms may also be acceptable, especially if future technological changes offer more advantages.

7. Under an access equals delivery model, an issuer would issue and file a news release indicating that the document is available electronically and that a paper copy can be obtained upon request.

(a) **Is a news release sufficient to alert investors that a document is available?**

For continuous disclosure and prospectuses, generally yes, a news release is sufficient. Financial statements and MD&A are released on a known schedule, and for prospectuses the brokerage community is involved in marketing the offering and can also reach out to interested clients.

Investors should be entitled to opt-out of AED for continuous disclosure documents. It would also be ideal to offer a "partial opt-out", where the investor requires email notification that applicable documents are available.

(b) **What particular information should be included in the news release?**

The news release should include:

1. a brief description of documents;

2. to whom the documents may be relevant;
3. how the documents may be accessed (include links to all platforms); and
4. relevant timelines and deadlines.

8. Do you have any other suggested changes to or comments on the access equals delivery model described above? Are there any aspects of this model that are impractical or misaligned with current market practices?

As this model has been implemented in other jurisdictions such as the U.S., European Union and Australia, we recommend ascertaining their experience and identifying lessons learned.

We understand that a separate consultation addresses the regulatory burden on investment funds (as opposed to the current consultation on non-investment fund reporting issuers). We note that several commentators advocated for an AED model. We recommend that the delivery model adopted be consistent for "non-investment fund reporting issuers" and for "investment fund reporting issuers" to the extent practicable.

III. CONCLUSION

We appreciate the opportunity to comment on the Canadian Securities Regulators' consultation on "Access Equals Delivery" Model for Prospectuses and Other Documents. The CBA Section would welcome the opportunity to be of further assistance through future consultations, reviews or development of the initiative.

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Borden Ladner Gervais

March 9, 2020

Delivered by 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, 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
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Dear Sirs/Mesdames:

Re: CSA Notice and Request for Comment
***CSA Consultation Paper 51-405 – Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers* published for comment on January 9, 2020 (the Consultation Paper)**
Comments of the Investment Management Group of Borden Ladner Gervais LLP

We are pleased to provide the members of the Canadian Securities Administrators (**CSA**) with comments on the above-noted Consultation Paper. Our comments are those of the individual lawyers in the Investment Management practice group of Borden Ladner Gervais LLP listed below, and do not necessarily represent the views of BLG, other BLG lawyers or our clients.

As we previously noted in our letters dated March 1, 2019 and December 11, 2019 commenting on the Ontario Securities Commission's Staff Notice 11-784 – *Burden Reduction* and CSA Notice *Reducing Regulatory Burden for Investment Fund Issuers – Phase 2, Stage 1*, respectively, we are in favour of the access equals delivery model of document disclosure for certain documents that may be interest to some investors, but remain unread and unopened when received in paper form by others. We agree with the CSA's latest commitment to reduce undue regulatory burden through such means. Given the widespread access to, and use of the internet by Canadian investors, we feel that implementing such a model would be a significant step forward in achieving the CSA's objective of modernizing the way documents are made available to investors and significantly reducing the costs associated with printing and mailing such documents. It will also serve to reduce the environmental footprint of the financial services industry through the reduced use of paper, printing and mailing of these documents. Access equals delivery also recognizes the fact that many investors rely on financial advisors (registered dealing representatives) in making their investment decisions, including their decision to continue to hold any particular security. This reliance also reduces the need for individual investors to receive physical paper forms of documents.

We urge the CSA to extend the concepts summarized in the Consultation Paper, with particular emphasis on the access equals delivery model, to investment fund reporting issuers. This adjustment would permit investment fund reporting issuers and their investors to benefit from the model under the same requirements as non-investment fund reporting issuers listed in the Consultation Paper. While we recognize that in certain circumstances investment fund reporting issuers have differing disclosure obligations than non-investment fund reporting issuers, we nevertheless believe that these differences should not result in a regime which prevents such issuers from benefitting as policies such as those outlined in the Consultation Paper evolve to permit modern electronic forms of delivery.

BLG is a national law firm that has particular expertise on, among other things, the regulation of investment funds and their managers. In this capacity, we have worked on hundreds of investment fund-related matters that have required the physical mailing of materials to investors. We therefore have first-hand experience about how costly and burdensome these continuous disclosures are for investment fund reporting issuers, and wish to stress the fact that such resources could instead be used for other activities that would directly benefit fund investors.

We are of the view that the benefits gained by non-investment fund reporting issuers of the access equals delivery model would also be applicable to investment fund reporting issuers. The various documents described in the Consultation Paper to which the access and delivery model would likely apply for non-investment fund reporting issuers – namely, prospectuses, annual and interim financial statements and related management's discussion and analysis (or the fund equivalent "management discussion of fund performance") – are also required disclosures of investment fund reporting issuers. Furthermore, the many benefits of implementing such a model, including cost savings, increased efficiency, faster access to information and positive environmental impact, apply to both non-investment fund and investment-fund reporting issuers alike.

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We hope that our comments will be considered positively by the CSA and as helpful to advance the CSA's considerations of the important matters outlined in the Consultation Paper.

Please contact Rebecca Cowdery at rcowdery@blg.com and 416-367-6340 if you have any questions on our comments or wish to meet with us to discuss any or all of our comments.

Yours very truly,

Borden Ladner Gervais LLP

Rebecca Cowdery Lynn McGrade Justin Yee

(Investment Management Practice Group Lawyers)

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March 9, 2020

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 Consumers Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
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Re: CSA Consultation Paper 51-405 – Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers

This letter represents the comments of Broadridge Investor Communications Corporation[1] (Broadridge) in response to your request for comment on CSA Consultation Paper 51-405 – *Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers* (the "Consultation").

[1] Broadridge is an industry leader in the Canadian financial marketplace, facilitating the investor communication process since 1987. Our services include delivery of shareholder communications and other documents on behalf of corporate issuers, mutual funds and banks, brokers and trust companies, in compliance with industry regulations. We currently support 66 proximate intermediaries (representing 253 financial institutions) holding securities on behalf of investors of approximately 3,000 Canadian public issuers, as well as custodians and institutional investors. Broadridge's global reach also provides U.S. and other foreign investors the opportunity to receive materials from and participate actively in the voting process for Canadian reporting issuers. Unique to Broadridge are our domestic and global reach and our combined industry, regulatory and information technology expertise. Our clients rely on us to help them efficiently and cost-effectively comply with applicable proxy and disclosure laws and regulations through the deployment of technology-based solutions.

Broadridge

Introduction

Broadridge supports the assertion of the Consultation that "…information technology is an important and useful tool in improving communication with investors… Electronic access to documents provides a more cost-efficient, timely and environmentally friendly manner of communicating information to investors than physical delivery."

We believe that any communication framework – either in practice or proposed – should leverage technology to improve efficiencies, reduce costs *and* support investor engagement and protection. It is our view that while the proposed access equals delivery framework may remove small, persistent costs, it will significantly increase the difficulty for retail investors to access this information, resulting in reduced engagement with disclosure communications. This will compromise investor protections. We submit that any change in the current communication model should aim to increase investor engagement with disclosure communications and build on the principle of pushing the information directly to investors, not requiring investors to search for it.

We will provide data that illustrates the current frameworks – notice-and-access and National Instrument 51-102 – *Continuous Disclosure Obligations* (NI 51-102) investor preference model – are delivering significant cost efficiencies to issuers without compromising investor participation and engagement. Together, notice-and-access and NI 51-102 have allowed issuers to realize significant cost savings since their inception.

Technology creates the opportunity to benefit both issuers (via cost savings) and investors (through more targeted and effective communication). Policies should be implemented with a view to providing the greatest good for all market participants.

Ensuring effective access for investors

In the request for comment, the CSA refers to "access equals delivery" as a proposed framework whereby documents are posted to a website(s) and investors may be informed of their availability via press release or other indirect means. The proposed access equals delivery model would in fact impose barriers (i.e. additional steps)[2] to accessibility by requiring investors to go looking for information and eliminating automatic access to specific documents.

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[2] DM Cain, S Mullainathan. "Channel Factors That Block (Psychologically) Effective Access". Unforeseen Risks of the Proposal on "Internet Availability of Proxy Materials". Harvard University, 2016.

"We worry that notice-and-access may provide lower levels of psychologically effective access than those provided to investors today. The evidence cited so far hopefully makes clear that apparently small barriers to access and changes in the status quo can effectively deter access. There are good reasons that the SEC would demand that shareholders be at least mailed "notifications" of the presence of online proxy materials, rather than merely leaving it up to shareholders to "check online, from time to time." Likewise, there are good reasons to put substantial information into the actual hands of investors. As a default, consumers should receive enough information to make informed decisions, though perhaps not so much as to overwhelm them. The information in-hand should be sufficient to inform investors and provide sufficient momentum towards maintained participation. At the very least, it is our strong belief that any proposed method of shareholder notification (and even the current) ought to be properly tested to assess its true effectiveness."

Information accessibility generally refers to removing the barriers to access and minimizing the effort required to get information regardless of the ability of the user. Accessibility is related to the principle of creating an environment without restrictions, operating within the widest possible range of situations.

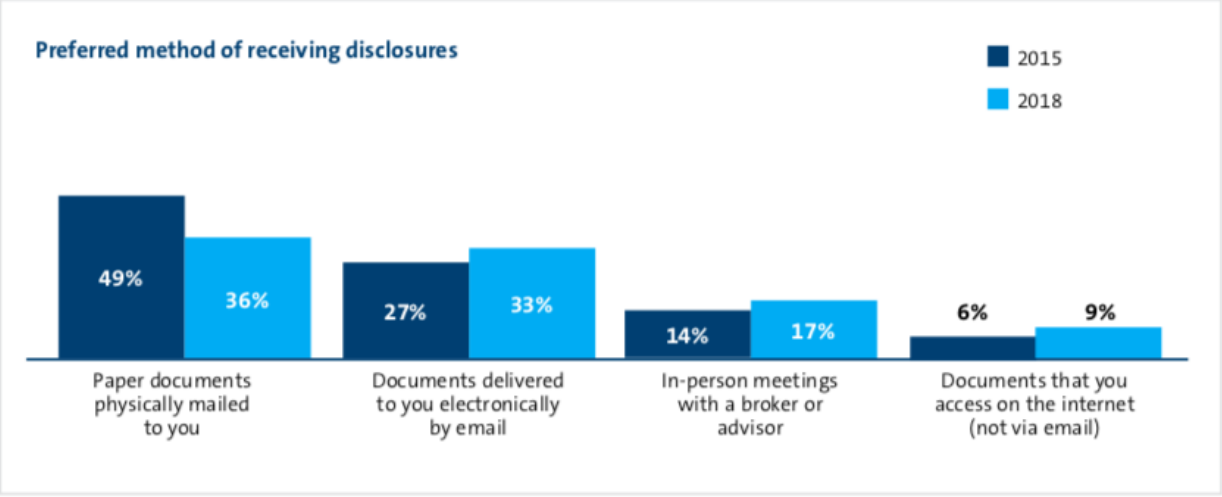
Since documents are already made available on SEDAR and most issuer's websites, this framework produces no additional benefit in terms of increased availability of information. The proposed access equals delivery framework only removes requirements for delivery of materials or specific notification that materials are available. It in no way enhances accessibility to those materials.

Delivery and receipt of regulatory disclosure information cannot be assured by simply making the documents available on a website. Rules should be drafted to focus on supporting current and future technologies that build on the fundamental principle of pushing the information directly to investors and not on the notion that investors will know when or where to search for information, or that it is sufficient to post a press release, which may or may not come to the attention of the investor, that advises of its availability.

The proposed framework may be workable for institutional investors that have systems in place to continuously monitor the newswires and SEDAR, but it will significantly reduce the access in practice for retail investors.

Retail investor landscape

In its survey conducted in 2018[3] of nearly 30,000 U.S. investors, the FINRA Investor Education Foundation (FINRA) reported investor preferences for receipt of disclosure information.



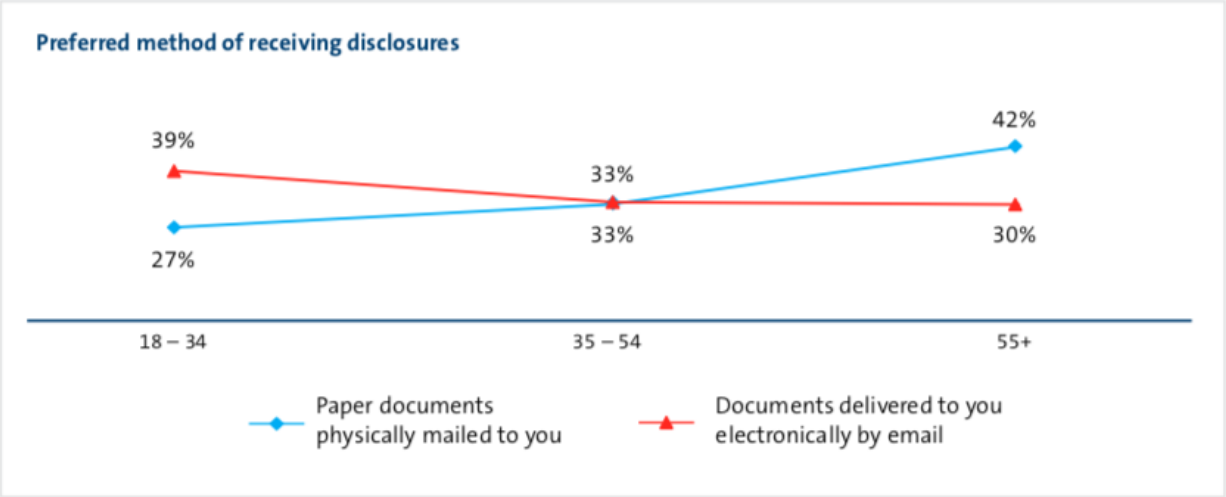
[3] FINRA Investor Education Foundation, *Investors in the United States, A Report of the National Financial Capability Study* (December 2019), online: https://www.usfinancialcapability.org/downloads/NFCS_2018_Inv_Survey_Full_Report.pdf

Broadridge

According to the FINRA survey, 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). Investors indicated a preference of 17% in 2018 compared to 14% to receive disclosure in-person meetings with a broker or advisor.

Since 2015, 6% of investors and then 9% of investors indicated a preference to access disclosure documents on the Internet (not via email). In summary, 91% of investors preferred to have documents delivered to them compared to an "access equals delivery" model.

Preference for paper documents increases by age, while preference for email delivery decreases by age.



Delivery preferences vary by age demographics. Whether notification is an app, email or by mail, investors are still more likely to read and act when information is pushed to them. As this data illustrates, the variance in preference is in the preferred method of receiving documents.

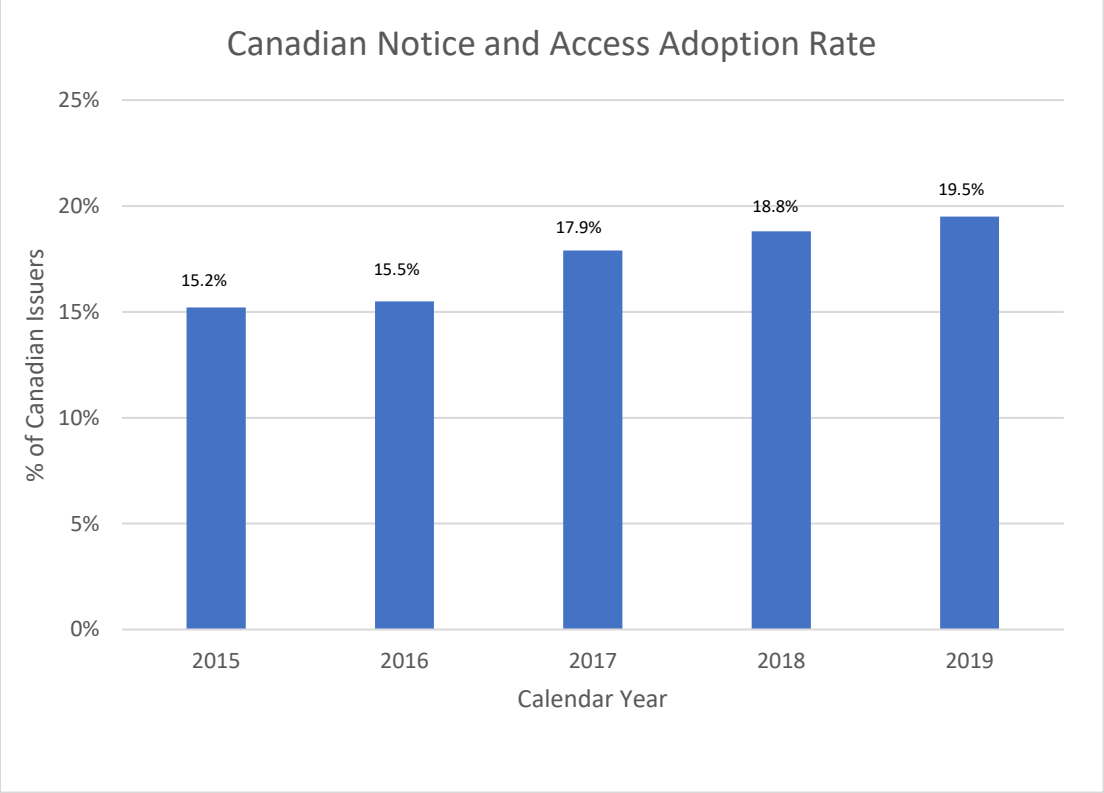
Here we address the questions specifically asked in the Consultation:

1. **Do you think it is appropriate to introduce an access equals delivery model into the Canadian market? Please explain why or why not.**

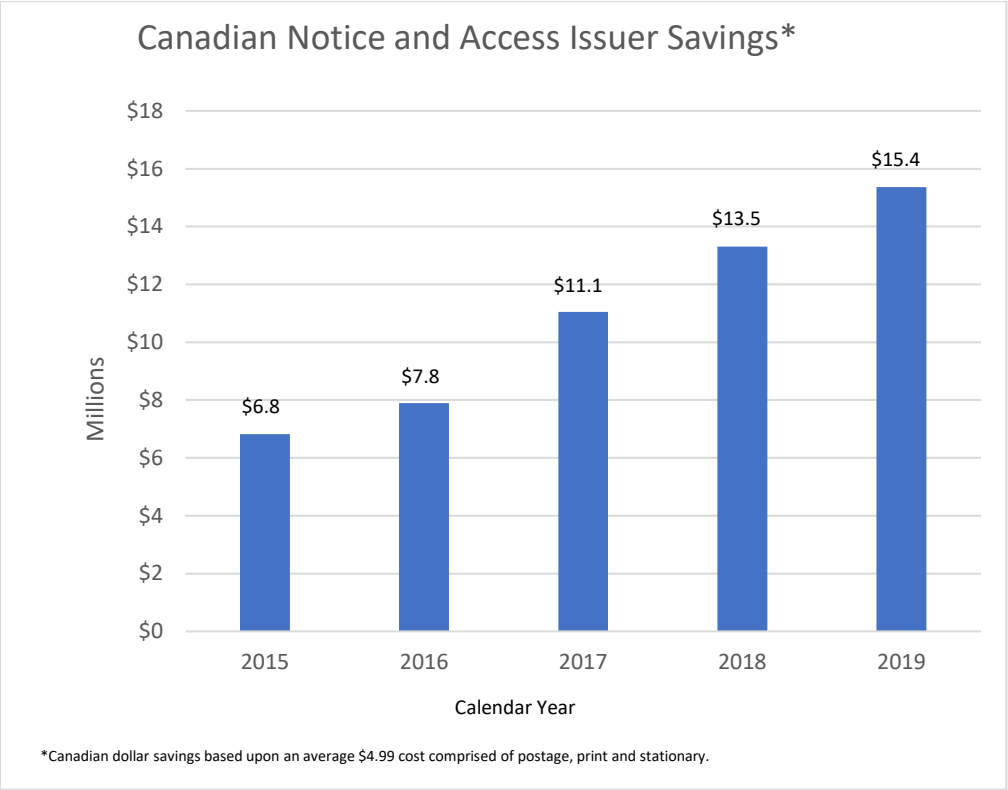
We do not believe the introduction of another communication framework is necessary or appropriate. The CSA was rigorous in its approach to the introduction of notice-and-access to provide issuers with cost savings and to ensure retail investors were not disadvantaged and thus disengaged by an issuer's decision to use the notice of Internet delivery option.

In Canada, notice-and-access is the framework whereby documents are posted to a website(s) and investors receive a notice and a voting form via e-delivery or paper. The notice provides a direct link to the documents (push model) and along with the voting form, includes proposals and agenda items.

Broadridge tracks statistics on adoption and use of notice-and-access for delivery of proxy materials.



Amendments to the *Canada Business Corporations Act* will enable the participation of an additional 18% of Canadian issuers currently not eligible to leverage notice-and-access.



Canadian issuers have recognized savings of over $54.6 million dollars since 2015 with notice-and-access.

Issuers and investors continue to benefit from current rules for notice-and-access. Since its introduction, issuer adoption, and savings, continue to increase, with no negative impact to retail voting participation.

The CSA's approach to the introduction of notice-and-access in Canada reflected 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. (Parenthetically, this principle is also one that marketers have long relied on; namely, if people are to be made aware of information, it needs to be sent directly to them.)

Forcing investors to search for their investment information could lead to a significant decline in participation and voting, a scenario that the CSA took particular interest to avoid when considering the empirical data on the negative participation impact of the U.S. notice-and-access model.

The notice-and-access model introduced in the U.S. in 2008 imposed barriers to receiving voting information. Under the U.S. system, investors get notice of the availability of proxy information but have to take additional steps to actually access the voting form in order to vote.

The notice-and-access framework in the U.S. had a negative impact on voting participation by retail investors. In fact, the rates in the U.S. have not recovered to pre-notice-and-access voting rates.

In the Canadian notice-and access model retail investors are sent both the notice and the Voting Instruction Form (VIF) which includes the resolutions and agenda items to be voted. This information encourages action and therefore participation. (Please see appendix for an illustrative sample of a VIF and notice.)

The notice-and-access model introduced in Canada is working. It was well considered and is demonstrating results in issuer savings and investor engagement. A change to an access equals delivery model will potentially confuse issuers and investors alike and jeopardize engagement and participation.

2. **In your view, what are the potential benefits or limitations of an access equals delivery model? Please explain.**

The negative impacts of access equals delivery on retail investor engagement are known. As the FINRA survey found, investors do not search for regulatory disclosures on the Internet. They need to be notified, provided with key summary information in user-friendly standard formats and engaged to link to more detailed information through layered disclosures.

The current CSA rules and framework recognize and support this premise. With notice-and-access, investor preferences are supported, and targeted push communications provide easy access to the required documentation, specifically where there is time sensitivity for a response such as a corporate action or shareholder meeting.

Given the challenges associated with ongoing monitoring of various websites, it cannot be presumed that retail investors will continuously search for new or updated information. The proposed changes should be drafted to focus on supporting digital technologies that build on the fundamental principle of providing notification of relevant document availability directly to investors and not on the notion that investors will know how and when to search for information.

3. **Do you agree that the CSA should prioritize a policy initiative focussing on implementing an access equals delivery model for prospectuses and financial statements and related MD&A?**

We do not agree that the CSA should consider a policy initiative that promotes the implementation of access equals delivery. Currently, investors request financial statements and related MD&A as part of the annual request forms being delivered to investors under NI 51-102 for beneficial securityholders through an opt-in method. Significant savings from the elimination of printing financial statements and related MD&A have been realized by issuers as a result of the regulation, while still providing investors with the information they want delivered.

The benefits of NI 51-102 are significant. In the last three years, issuers have saved over $100 million in costs and the savings are substantially higher since the introduction of NI 51-102 in 2006. It is not clear that moving to the access equals delivery model proposed will produce significant additional cost savings.

Policies should focus on encouraging issuers' use of digital platforms and investor adoption of these notification and push technologies.

4. If you agree that an access equals delivery model should be implemented for prospectuses:

a. Should it be the same model for all types of prospectuses (i.e. long-form, short-form, preliminary, final, etc.)?

We do not believe access equals delivery should be implemented for any type of prospectus. The trend is for regulatory documents to be sent digitally and corporate issuers are able to send offering memorandums and prospectuses electronically. This approach is more environmentally friendly, convenient, cost effective and supports investor preference for receiving materials digitally.

Solutions exist in the marketplace today that enable timely and targeted digital communication with investors. Similar technology could be utilized to fulfill the delivery requirements for new issue preliminary and final prospectus documents on request. It would also have the benefit of allowing for accurate tracking of when a prospectus was sent/delivered, thereby making calculation of the withdrawal period straightforward.

The CSA noted in Annex A to the Consultation that, in 2005, the SEC adopted an access equals delivery model for final prospectuses in registered offerings ("Securities Offering Reform") based on the assumption that investors have access to the Internet. This model was intended to facilitate effective access to information for institutional investors, while taking into account the advancements in technology and the practicalities of the offering process. In looking at this model, it is important to draw the distinction between the abundance of materials that go to underwriters in deals (initial offering circulars, red herrings, etc.) and the comparative lack of materials that go to retail investors.

In Canada, new issue (including IPO) prospectuses are also delivered to every offering participant, including retail investors. There is a real risk in creating a precedent in establishing an access equals delivery model given its known negative impact on investor protection and engagement.

b. How should we calculate an investor's withdrawal right period? Should it be calculated from (i) the date on which the issuer issues and files a news release indicating that the final prospectus is available electronically, (ii) the date on which the investor purchases the securities, or (iii) another date? Please explain.

See comment under 4a.

c. Should a news release be required for both the preliminary prospectus and the final prospectus, or is only one news release for an offering appropriate?

See response to question 7.

5. For which documents required to be delivered under securities legislation (other than prospectuses and financial statements and related MD&A) should an access equals delivery model be implemented? Are there any investor protection or investor engagement concerns associated with implementing an access equals delivery model for rights offering circulars, proxy-related materials, and/or take-over bid and issuer bid circulars? In your view, would this model require significant changes to the proxy voting infrastructure (e.g. operational processes surrounding solicitation and submission of voting instructions)? Please explain.

Relying on access equals delivery for any communications that require timely investor actions would be problematic. These time sensitive communications include documents relating to rights offerings, takeover or issuer bids and proxy materials. As the U.S. notice-and-access experience showed, the negative impact on investor engagement will be significant.

Current guidance contained in the Canadian notice-and-access rules and in National Instrument 54-101 – *Communication with Beneficial Owners of Securities of a Reporting Issuer* (NI 54-101) specify that "Proxy-related materials that are posted under subparagraph 2.7.1(1)(d)(ii) must be posted in a manner and be in a format that permit an individual with a reasonable level of computer skill and knowledge to do all of the following easily: (a) access, read and search the documents on the website; (b) download and print the documents."

The same kind of guidance should be applied to any new regulatory disclosure frameworks to ensure they meet basic usability thresholds. The importance here is that the investor is receiving actual and timely notice of the posting of the material so it can be reviewed and informed action may be taken.

In our view, no change should be applied to the existing proxy infrastructure. A change in the process along the lines of the Consultation would result in a significant and irreversible decline in retail investors' engagement with disclosure materials and vote participation. Investors expect automatic delivery of a notice, VIF or the materials in a manner consistent with their standing preferences.

6. **Under an access equals delivery model, an issuer would be considered to have effected delivery once the document has been filed on SEDAR and posted on the issuer's website.**

   a. **Should we refer to "website" or a more technologically-neutral concept (e.g. "digital platform") to allow market participants to use other technologies? Please explain.**

"Digital platform" is the most appropriate term in this context, as it does not limit the inclusion of future technologies. The rule should be drafted to allow the adoption of current and future digital platform technologies and focus on supporting communication options that will increase investor engagement with disclosure communications building on the fundamental principle of pushing information directly to investors, as per the existing e-delivery model.

Of greater concern is that any system to be used is readily accessible to all investors and that the investors are given clear notice of what is posted, when it is/will be available and that it can be easily found.

   b. **Should we require all issuers to have a website on which the issuer could post documents?**

The fundamental principle should be that investors receive or be specifically directed to investment information that is relevant to that individual – e.g. based on holdings, or in the context of an action or intent – in a manner that employs sending or delivering an appropriate communication. Whether information is posted on a website (SEDAR or an issuer's) is secondary to the principle of getting the necessary information directly to the investor. A notice that informs the availability of information is not effective as compared to a direct push of that information.

All issuers should be required to post material to a website other than SEDAR. Currently, only issuers that utilize the notice-and-access model are subject to NI 54-101 2.7.4 Posting Material on a non-SEDAR website.

7. **Under an access equals delivery model, an issuer would issue and file a news release indicating that the document is available electronically and that a paper copy can be obtained upon request.**
   a. **Is a news release sufficient to alert investors that a document is available?**
   b. **What particular information should be included in the news release?**

Relying on posting a news release to give notice likely would result in a significant and irreversible decline in investors' engagement with disclosure materials.[4]

It is unclear how effective a news release is in communicating important information to the whole investor community. Retail investors are unlikely to subscribe to newswire services or check SEDAR on a daily basis and so likely would be getting their information from other media sources. The business media are going to pick up and disseminate news releases from large issuers. Smaller issuers' news releases are likely to

[4] This statement is supported by the clear decline in retail voting participation in the U.S. after notice-and-access was implemented for proxy materials as noted above. Under the U.S. system, the investors get notice of the availability of proxy information but have to take additional steps to actually access that information in order to vote.

be less widely distributed, resulting in less transparency for retail investors. In both cases, the information that gets distributed beyond the press release is unlikely to include sufficient information to make for easy access to the actual documents.

8. Do you have any other suggested changes to or comments on the access equals delivery model described above? Are there any aspects of this model that are impractical or misaligned with current market practices?

The fundamental reason for disclosure requirements is to provide investors, and the public more generally, with all material information about the issuer and its securities so that informed investment decisions can be made. Requiring the disclosure documents to be prepared, at the issuer's expense, and then not providing them in an effective manner to those investors undercuts the whole goal of disclosure.

Changes to regulations involving investor communications should not unintentionally reduce investors' access to information by requiring them to take extensive steps to receive it. Information must remain easily accessible and available in the format preferred by the investor. The perceived cost savings anticipated in an access equals delivery model is not of sufficient benefit to justify the significant reduction in investor engagement with disclosure communications. By contrast, greater cost savings are available under current rules and guidance without a change in the delivery default, simply by making it easier for issuers to use targeted digital communication options that are currently available.

Digital platforms provide delivery of financial information to the sites currently being visited by the investors. For example, the NYSE's Proxy Fee Advisory Committee ("PFAC") published recommendations supporting the Enhanced Broker Internet Platform (EBIP)[5] concept as a means of fostering greater retail engagement and cost savings efficiencies through technology (May 2012). [6]

Currently, 24 U.S. broker/dealers provide their clients with access to Investor Mailbox (one example of an EBIP provided by Broadridge). As a group, these 24 brokers have approximately 55% of all accounts held in street name in the U.S.

Voting participation through EBIPs is growing each year. In the 12 months ending June 30, 2017, retail shareholders voted over 2.1 million positions using the Investor Mailbox. This represents 16% of all positions voted by retail investors on Broadridge's online platforms – up from just 7% in the 12 months ending June 30, 2015.

Rather than moving to an access equals delivery framework that brings with it real risks of retail investor disengagement, the CSA may want to consider promoting the adoption of new and emerging digital platforms to encourage greater long-term savings, while at the same time improving investor engagement and participation.

[5] An EBIP is a system whereby, among other things, investors received notices of upcoming corporate votes, and have the ability to access proxy materials and voting forms, through their own broker's website

[6] *Recommendations of the Proxy Fee Advisory Committee to the New York Stock Exchange* (May 16, 2012), online: http://www.shareholdercoalition.com/sites/default/files/NYSE%20PFAC%20Report%205-16-2012.pdf

Broadridge

Some examples include:

Notifications through multi-channels – including text message, instant message, and other means further facilitate mobile access to regulatory communications. Notifications can be enriched to include key content in the body of the message, better branding, and a means to easily connect with issuers, brokers, funds, and advisors. (All channels provide compliance links to full reports.)

Personal interactive communications technologies – push information to investors and provide personalization, interactivity, and layered information in user-friendly formats on all devices - using charts, tables, videos, and key summary information.

Integration with mobile apps – integration across each investor's digital experience with the companies they are invested in with their brokers, advisors, and fund companies – provides better context for regulatory communications and makes them more understandable.

Addition of technology features (e.g., QR codes) **–** will make it easier for investors to access information and provide their consents to e-delivery. This will provide a smoother path to greater use of technology by individual investors who receive mailed notices.

In Conclusion

Technology has enabled tremendous improvements in the investor communication process in the past 25 years. This has benefitted issuers, investors, and indeed all industry participants. It has made possible tremendous **efficiencies**, reducing costs, and improving the speed and accuracy with which issuers and intermediaries can communicate with investors. It has increased **equity** in investor communications by supporting a model of investor choice and allowing investors to specify what materials they want to receive and how they want to receive them. Technology also promotes greater **engagement** and **protection** of investors.

We would be pleased to meet with representatives from the CSA to discuss further the digital communication options and our technology infrastructure that enables them. We are also happy to provide further quantitative data that may be informative and valuable.

Broadridge remains committed to improving the regulatory disclosure systems for issuers, intermediaries, investors and all other constituents of the investor communication process.

Sincerely,

[redacted]

Patricia Rosch
Broadridge
President
Investor Communication Solutions, International

INCLUDES COMMENT LETTERS RECEIVED

Appendix
Sample Voting Instruction Form

VOTING INSTRUCTION FORM
BROADRIDGE FINANCIAL SOLUTIONS, INC.

MEETING TYPE: ANNUAL MEETING
MEETING DATE: FRIDAY, APRIL 24, 2020 AT 9:00 AM EDT
RECORD DATE: FEBRUARY 27, 2020
PROXY DEPOSIT DATE: APRIL 22, 2020 **CUID:** ABCD
ACCOUNT NO: 1234567891234567891 **CUSIP:** 12345D

CONTROL NO.: → 1234 5678 9012 3456

STEP 2 **APPOINT A PROXY (OPTIONAL)**

APPOINTEE(S): APPOINTEE 1, OR FAILING HIM, APPOINTEE 2

IF YOU WISH TO ATTEND THE MEETING OR DESIGNATE ANOTHER PERSON TO ATTEND, VOTE AND ACT ON YOUR BEHALF AT THE MEETING, OR ANY ADJOURNMENT OR POSTPONEMENT THEREOF, OTHER THAN THE PERSON(S) SPECIFIED ABOVE, PRINT YOUR NAME OR THE NAME OF THE OTHER PERSON ATTENDING THE MEETING IN THE SPACE PROVIDED HEREIN. UNLESS YOU INSTRUCT OTHERWISE, THE PERSON WHOSE NAME IS WRITTEN IN THIS SPACE WILL HAVE FULL AUTHORITY TO ATTEND, VOTE AND OTHERWISE ACT IN RESPECT OF ALL MATTERS THAT MAY COME BEFORE THE MEETING OR ANY ADJOURNMENT OR POSTPONEMENT THEREOF, EVEN IF THESE MATTERS ARE NOT SET OUT IN THE FORM OR THE CIRCULAR.

PLEASE PRINT APPOINTEE NAME ABOVE

E-R1

STEP 3 **COMPLETE YOUR VOTING DIRECTIONS**

01 ELECTION OF DIRECTORS: *VOTING RECOMMENDATION: FOR ALL THE NOMINEES PROPOSED AS DIRECTORS* (FILL IN ONLY ONE BOX " ■ " PER NOMINEE IN BLACK OR BLUE INK)

	FOR	WITHHOLD		FOR	WITHHOLD		FOR	WITHHOLD
01 DIRECTOR A	☐	☐	07 DIRECTOR G	☐	☐	13 DIRECTOR M	☐	☐
02 DIRECTOR B	☐	☐	08 DIRECTOR H	☐	☐	14 DIRECTOR N	☐	☐
03 DIRECTOR C	☐	☐	09 DIRECTOR I	☐	☐	15 DIRECTOR O	☐	☐
04 DIRECTOR D	☐	☐	10 DIRECTOR J	☐	☐			
05 DIRECTOR E	☐	☐	11 DIRECTOR K	☐	☐			
06 DIRECTOR F	☐	☐	12 DIRECTOR L	☐	☐			

ITEM(S): *VOTING RECOMMENDATIONS ARE INDICATED BY* **HIGHLIGHTED TEXT** *OVER THE BOXES* (FILL IN ONLY ONE BOX " ■ " PER ITEM IN BLACK OR BLUE INK)

02 APPOINTMENT OF AUDITORS.

FOR	WITHHOLD
☐	☐

03 TO APPROVE THE 2020 STOCK OPTION PLAN.

FOR	AGAINST
☐	☐

04 ADVISORY VOTE ON THE COMPANY'S APPROACH TO EXECUTIVE COMPENSATION.

FOR	AGAINST
☐	☐

05 TO TRANSACT SUCH OTHER BUSINESS AS MAY PROPERLY COME BEFORE THE MEETING AND ANY ADJOURNMENT OR POSTPONEMENT THEREOF.

FOR	AGAINST	ABSTAIN
☐	☐	☐

TO RECEIVE FUTURE PROXY MATERIALS BY MAIL CHECK THE BOX TO THE RIGHT. TO REQUEST MATERIALS FOR THIS MEETING REFER TO THE NOTICE INCLUDED IN THE PACKAGE WITH THIS FORM. ☐

TO RECEIVE ANNUAL AND/OR INTERIM FINANCIAL STATEMENTS AND ACCOMPANYING MANAGEMENT'S DISCUSSION AND ANALYSIS, PLEASE MARK THE APPLICABLE BOX.

ANNUAL	INTERIM
☐	☐

STEP 4 **THIS DOCUMENT MUST BE SIGNED AND DATED**

SIGNATURE(S) ***INVALID IF NOT SIGNED*** M M D D Y Y

Appendix
Sample Notice

ANNUAL MEETING OF SHAREHOLDERS OF SAMPLE COMPANY
NOTICE AND ACCESS NOTIFICATION TO SHAREHOLDERS

You are receiving this notification as Sample Company (the "Company") has decided to use the notice and access model for delivery of meeting materials to its shareholders. Under notice and access, shareholders still receive a proxy or voting instruction form enabling them to vote at the Company's meeting. However, instead of a paper copy of the Information Circular [and the Annual Report], shareholders receive this notice with information on how they may access such materials electronically. The use of this alternative means of delivery is more environmentally friendly as it will help reduce paper use and also will reduce the cost of printing and mailing materials to shareholders.

Explanation of Notice and Access. Section 2.7.1(1)(a)(vi)

MEETING DATE AND LOCATION:

WHEN: Friday, April 24, 2020
9:00 a.m. EDT

WHERE: Royal Ballroom,
Meeting Place Hotel
123 Any Street
Any City, Any Province
A1B 2C3

Date and Time of Meeting. S. 2.7.1(1)(a)(i)

SHAREHOLDERS WILL BE ASKED TO CONSIDER AND VOTE ON THE FOLLOWING MATTERS:

ELECTION OF DIRECTORS: Shareholders will be asked to fix the number of directors and elect directors for the next year. Information respecting the election of directors may be found in the "Nominees for Director" section of the Information Circular.

APPOINTMENT OF AUDITORS: Shareholders will be asked to re-appoint Audit Company as the company's auditors for the ensuing year, and fix their remuneration. Information respecting the appointment of Audit Company may be found in the "Appointment of Auditors" section of the Information Circular.

Description of each matter or group of related matters. S. 2.7.1(1)(a)(ii)

SAY ON PAY: Shareholders will be asked to consider and approve an advisory (non-binding) resolution regarding the Company's approach to executive compensation, which is more fully described in the "Say on Pay" and "Executive Compensation" sections of the Information Circular.

SHAREHOLDER PROPOSALS: Shareholders will be asked to consider proposals submitted by shareholders. The full text of the proposals can be found in the "Shareholder Proposals" section of the Information Circular.

The section(s) of the Information Circular where disclosure regarding each matter or group of matters can be found. S. 2.7.1(1)(a)(vi)(D)

OTHER BUSINESS: Shareholders may be asked to consider other items of business that may be properly brought before the meeting. Information respecting the use of discretionary authority to vote on any such other business may be found in the "Other Business" section of the Information Circular.

SHAREHOLDERS ARE REMINDED TO VIEW THE MEETING MATERIALS PRIOR TO VOTING.

A reminder to review the Information Circular before voting. S. 2.7.1(1)(a)(iv)

WEBSITES WHERE MEETING MATERIALS ARE POSTED

Material can be viewed online at **www.SEDAR.com** or at the following Internet addresses:

Information Circular: **http://www.samplecompany.com/2020infocircl.pdf**

Interim Request Card: **http://www.samplecompany.com/2020quarter.pdf**

E-delivery Encouragement Letter: **http://www.materials. proxyvote.com/S60019.pdf**

Annual Report: **http://www.samplecompany.com/2019annualreport.pdf**

Website addresses for SEDAR and non-SEDAR website where materials are posted. S. 2.7.1(1)(a)(iii)

Include the Annual Report only if the issuer is sending the annual financial statements and MD&A pursuant to 4.6(5) of NI 51-102.

HOW TO OBTAIN PAPER COPIES OF THE MEETING MATERIALS

Beneficial shareholders may request paper copies of the meeting materials be sent to them by postal delivery at no cost. Requests for meeting material may be made up to one year from the date the Information Circular was filed on SEDAR, online at **www.ProxyVote.com** or by telephone at 1-877-XXX-XXXX and entering the control number located on the voting instruction form or notification letter and following the instructions provided.

Requests should be received at least 5 business days in advance of the proxy deposit date and time set out in the accompanying proxy or voting instruction form in order to receive the meeting materials in advance of such date and the meeting date.

Explanation of how to obtain paper copies. S. 2.7.1(1)(a)(v)

Toll-free number to request paper material. S. 2.7.1(1)(e)

Estimated date to request a copy of the material for receipt by voting cut-off. S. 2.7.1(1)(a)(vi)(B)

[Required if Stratification is used]

The company has determined that those [registered] and beneficial shareholders with existing instructions on their account to receive paper material ("standing instructions") and those [registered] and beneficial shareholders with addresses outside of Canada and the United States will receive a paper copy of the Information Circular [and Annual Report] with this notification.

If Stratification was used list of the types of investors who will receive paper copies. S. 2.7.1(1)(a)(vi)(A)

VOTING:

[Registered Holders] are asked to return their proxies using the following methods by the proxy deposit date noted on your proxy:

INTERNET:

TELEPHONE:

FACSIMILE:
MAIL:

Beneficial Holders are asked to return their voting instruction form using the following methods at least one business day in advance of the proxy deposit date noted on their voting instruction form:

INTERNET: **www.proxyvote.com**

TELEPHONE: 1-800-474-7493 (ENGLISH) OR 1-800-474-7501 (FRENCH)

FACSIMILE: 905-507-7793

MAIL: DATA PROCESSING CENTRE
P.O. BOX 3700, STN INDUSTRIAL PARK
MARKHAM, ONTARIO L3R 9Z9

An explanation on how to return voting instructions. S. 2.7.1(1)(a)(vi)(C)

Shareholders with questions about notice and access can call toll free at 1-800-XXX-XXXX.

Toll-free number the beneficial owner can call to get information on Notice and Access. S. 2.7.1(1)(a)(vi)(E)

ASSOCIATION DES BANQUIERS CANADIENS
CANADIAN BANKERS ASSOCIATION

Angelina Mason
General Counsel & Vice-President, Legal

[redacted]
amason@cba.ca

March 9, 2020

Delivered 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

Attn: 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

Dear Sirs/Mesdames:

Re: CSA Consultation Paper 51-405 Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers

The Canadian Bankers Association ("**CBA**") appreciates the opportunity to comment on *CSA Consultation Paper 51-405 – Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers* ("**Consultation Paper**"). The CBA is the voice of more than 60 domestic and foreign banks that help drive Canada's economic growth and prosperity. The CBA advocates for public policies that contribute to a sound, thriving banking system to ensure Canadians can succeed in their financial goals.

Overall, we are supportive of the adoption of an Access Equals Delivery ("**AED**") model which we believe is a continuation of the electronic delivery of 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.

The following are some specific comments we have in response to the questions raised in the Consultation Paper.

Introducing an AED Model in Canada

As bank issuers, our members support the introduction of the AED model for the delivery of various issuer disclosure documents including, as discussed below, prospectuses, certain continuous disclosure documents, rights offering materials, proxy-related materials, and takeover bid and issuer bid circulars.

Along with the environmental benefits of lessening paper distributions which is widely supported by investors, the model would help make communications with investors more timely and efficient through enhanced electronic delivery. The adoption of AED provides the flexibility to offer both electronic and print formats as options for disclosures. While offering greater electronic access, the model allows for the continuation of paper disclosures for those investors who prefer to receive these items in paper format.

Scope of Application

We agree with the initial application of AED to prospectuses and certain continuous disclosure documents in the near term.

We do not believe, however, that AED should apply for all types of prospectuses as it would create information overflow that could be unnecessarily burdensome as well as distracting to the market. For one, securities purchases only occur once a prospectus supplement and/or pricing supplement is filed for a specific offering, which may be some time after the preliminary or final shelf prospectus is filed. Also, there

are certain offerings (e.g. under medium term note or continuous distribution programs) where there are multiple offerings occurring each month, and possibly multiple times a week, and a news release is not issued for each offering.

We also believe that the AED model should be extended, perhaps through tiered implementation, to other disclosure documents including: rights offering materials, proxy-related materials, and takeover bid and issuer bid circulars. As long as accessible options are provided for those with preferences for paper materials, it would be beneficial to adopt AED for these additional disclosures.

We note that electronic delivery for proxy-related materials allows for a hybrid approach, whereby investors have the option of opting-in for electronic delivery of documents if preferred. Similarly, under notice-and-access, issuers mail out one-page notices rather than an entire disclosure package, and then investors have the option to request paper copies at no cost. This is the approach taken for proxy voting information by companies incorporated under various provincial *Business Corporations Acts* as well as the *Canada Business Corporations Act*. Also, a similar approach has been taken by investment fund issuers under the CSA's point-of-sale delivery requirements. The U.S. model goes even further, giving issuers the option of requiring votes to be casted electronically once a paper notice has been mailed to shareholders.

One factor to consider for whether issuers decide to move to an AED model is the impact on proxy voter turnout as issuers will want to ensure that turnout levels are maintained or enhanced. That being said, whether chosen by issuers or not, AED offers another potential means to encourage voter turnout.

Alerting Investors to Delivery

News Releases

A news release is an adequate mechanism to alert investors. However, we believe that requiring news releases for each stage of filings would create an unnecessary higher volume of news releases and this would be disruptive to the market. For frequent issuers such as the banks, where there are often several issuances each week and possibly more than one offering per day, this would be extremely onerous and potentially confusing to the market.

We do not believe a news release should be required for both preliminary and final prospectuses. As indicated earlier, notifications are already provided under the current process for electronic delivery without always issuing a news release. Also, as indicated above, actual share purchases only occur once prospectus or pricing supplements are filed off the shelf, so it would only be appropriate to issue a news release at this stage.

Where a news release is required, we believe that it should include information which advises investors of: (i) the nature and content of disclosures made, (ii) where electronic documents can be accessed (i.e. SEDAR, issuer's website), and (iii) how a paper copy can be obtained (e.g. upon request).

Further consideration should be given as to whether a news release should be required at all for electronic delivery as there are other means to alert investors (e.g. in term sheets posted to a website).

Issuer Websites

Issuer websites are already a common platform used for posting disclosure documents. If other digital platforms are to be made available for making disclosures, we would need to understand what those are before providing any comments.

Changes to Voting Infrastructure

We expect that some changes will be required to account for the adoption of an AED model for proxies. For instance, changes will be required to what voting instructions are provided to shareholders.

Withdrawal Periods

We support a withdrawal period of 48 hours that is calculated from the time at which the investor is given electronic access to the prospectus.

* * *

Thank you for considering our comments. Please do not hesitate to contact me with any questions you have.

Sincerely,

CCGG Canadian Coalition for Good Governance
THE VOICE OF THE SHAREHOLDER

March 5, 2020

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

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario, M5H 3S8
comments@osc.gov.on.ca

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
consultation-en-cours@lautorite.qc.ca

Dear Sir/Madam,

Re: CSA Consultation Paper 51-405 – Consideration of an Access Equals Delivery Model for Non- Investment Fund Reporting Issuers

We have reviewed the above referenced *CSA Consultation Paper 51-405- Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers* 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 $4 trillion in assets on behalf of pension funds, mutual fund unit holders, and other institutional and individual investors. CCGG promotes good governance practices in Canadian public companies in order to best align the interests of boards and management with those of their shareholders. We also seek to improve Canada's regulatory framework to strengthen 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

As noted in its July 2017 submission to the CSA in response to *Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*, and its February 2019 submission to the Ontario Securities Commission *OSC Staff Notice 11-784: Burden Reduction*, CCGG is supportive of enhancing electronic delivery of documents and movement toward a default electronic delivery of documents, provided investors retain a right to "opt in" to receive a paper copy. We were pleased to note that the access equals delivery model the CSA is contemplating is not intended to remove the option of having paper copies of documents delivered for those who prefer this option and the CSA expressly acknowledges that the needs and preferences of investors (such as investors' standing instructions) would inform issuers' decisions as to whether or not to choose an access equals delivery model.

Given the above position, we have responded to the consultation questions most relevant to CCGG Members.

CONSULTATION QUESTIONS:

3. **Do you agree that the CSA should prioritize a policy initiative focusing on implementing an access equals delivery model for prospectuses and financial statements and related MD&A**?

   CCGG agrees that prioritizing an access equals delivery model for prospectuses and financial statements and related MD&A is appropriate and that an incremental approach is warranted to ensure that investors acclimatize themselves to the new model.

5. **For which documents required to be delivered under securities legislation (other than prospectuses and financial statements and related MD&A) should an access equals delivery model be implemented? Are there any investor protection or investor engagement concerns associated with implementing an access equals delivery model for rights offering circulars, proxy-related materials, and/or take - over bid and issuer bid circulars? In your view, would this model require significant changes to the proxy voting infrastructure (e.g. operational processes surrounding solicitation and submission of voting instructions)? Please explain.**

   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. Requiring shareholders to proactively monitor all the websites and news releases of the issuers in which they are invested for proxy related materials, unreasonably shifts the burden from the issuer to the shareholder.

   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.

Large institutional investors may, over time, have the resources to adapt to an access equals delivery model for proxy related materials, however, this will not be without cost to the investor, and there is a clear risk to retail investors' ability to meaningfully participate in Annual General Meetings and other shareholder votes.

While we are not able to comment on the specific implications for the operational processes of our Members for the proposed model, to the extent that institutional investors' operational processes surrounding solicitation and submission of voting instructions would be impacted by an access equals delivery model for proxy-related material, including requiring security holders to access information such as their proxy control number, the ability to continue to receive notice and to request paper copies is paramount.

6. **Under an access equals delivery model, an issuer would be considered to have effected delivery once the document has been filed on SEDAR and posted on the issuer's website.**

   (a) Should we refer to "website" or a more technologically-neutral concept (e.g. "digital platform") to allow market participants to use other technologies? Please explain.

CCGG is of the view that the CSA should refer to "website" in order to create a universal standard as to where documents may be accessed. Requiring investors to keep track of and search across different digital platforms for different issuers is not efficient and would be an unnecessary burden on investors. Issuers would not be precluded from posting or hyper-linking materials on additional digital platforms (e.g. social media platforms) provided that all documents are easily available and accessible on the issuer's website.

   (b) Should we require all issuers to have a website on which the issuer could post documents?

Yes. See response to (a) above.

7. **Under an access equals delivery model, an issuer would issue and file a news release indicating that the document is available electronically and that a paper copy can be obtained upon request.**

(a) Is a news release sufficient to alert investors that a document is available?

Subject to our views on which documents should be excluded from an access equals delivery model, as set out in the response to paragraph five above, CCGG is of the view that a news release is sufficient to alert investors.

(b) What particular information should be included in the news release?

The news release should include information, including a hyper-link, as to where on the issuer's website the document is accessible. In addition, the news release should highlight any timing considerations an investor should be aware of with respect to the document posted. Finally, in the absence of any standing instructions to receive paper copy, the contact information, including either an email address or phone number, of the person at the issuer to whom a request for a paper copy can be made should be included.

CONCLUSION

In summary, CCGG is supportive of the CSA's steps toward increased electronic delivery of documentation for some documents, but not for proxy-related materials. CCGG supports the incremental approach recommended and the ability for investors to continue to request and receive paper copies as appropriate to support their internal operations and procedures.

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 (416) 868-3582 or cmccall@ccgg.ca or our Director of Policy Development, Sarah Neville at (416) 847-0523 or sneville@ccgg.ca.

Yours truly,

Marcia Moffat
Chair of the Board of Directors
Canadian Coalition for Good Governance

CCGG Canadian Coalition for Good Governance
THE VOICE OF THE SHAREHOLDER

CCGG MEMBERS 2020

- Alberta Investment Management Corporation (AIMCo)
- Alberta Teachers' Retirement Fund (ATRF)
- Archdiocese of Toronto
- Aviva Investors Canada Inc.
- 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
- 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)

INCLUDES COMMENT LETTERS RECEIVED

- OPSEU Pension 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)
- Scotia Global Asset Management
- Sionna Investment Managers Inc.
- SLC Management Canada
- State Street Global Advisors, Ltd. (SSgA)
- Summerhill Capital Management Inc.
- TD Asset Management Inc.
- Teachers' Pension Plan Corporation of Newfoundland and Labrador
- Teachers' Retirement Allowances Fund
- UBC Investment Management Trust Inc.
- University of Toronto Asset Management Corporation (UTAM)
- Vestcor Inc.
- Workers' Compensation Board - Alberta
- York University Pension Fund

INCLUDES COMMENT LETTERS RECEIVED

cenovus ENERGY

Cenovus Energy Inc. | 225 6 Ave SW PO Box 766 | Calgary, AB T2P 0M5 | 403.766.2000 cenovus.com

March 6, 2020

SENT BY ELECTRONIC MAIL

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 (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

To the Attention of:

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

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

Dear Sir/Mesdames:

RE: CSA Consultation Paper 51-405 *Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers*

We are pleased to provide our comments on the above consultation paper.

We strongly support the CSA's efforts to identify and consider areas of securities legislation applicable to non-investment fund reporting issuers that could benefit from a reduction of undue regulatory burden, without compromising investor protection and the efficiency of the capital markets. We are of the view that electronic access should be expanded to reduce the use of paper to fulfil delivery requirements and that an access equals

delivery model has the potential to significantly reduce regulatory burden on issuers and enhance accessibility of information for investors. In addition, an access equals delivery framework has significant environmental benefits. We support the concept of delivery of a document being accomplished by the issuer alerting investors that the document is publicly available on the System for Electronic Document Analysis and Retrieval (**SEDAR**) and the issuers website. We also support prioritizing a policy initiative in this area for prospectuses and certain continuous disclosure documents.

Specific Questions

1. Do you think it is appropriate to introduce an access equals delivery model into the Canadian market?

   We believe it is appropriate to introduce access equals delivery model into the Canadian market. An important factor in determining whether an access equals delivery model is appropriate for the Canadian market is the extent to which Canadians have access to the internet. According to a 2018 survey by Statistics Canada (released October 29, 2019), 94% of Canadians had home internet access. The share of Canadians aged 15 and older who used the internet was 91%, with 71% of seniors reporting Internet use. Results from the previous survey cycle indicated that 83% of Canadians had used the internet in 2012, with the proportion of seniors online at 48%. Also, according to a Statistics Canada survey conducted in 2018 (Canadian Internet Use Survey) 88.1% of Canadians have a smartphone, which is another avenue by which shareholders can conveniently access information that has been posted on SEDAR or a company website. We would suggest that internet access and use of this magnitude leaves little doubt that the internet is a valid mechanism for investors to access information about companies in which they are invested.

2. In your view, what are the potential benefits or limitations of an access equals delivery model?

   The potential benefits of an access equals delivery model are lower costs for issuers and their shareholders and the environmental benefit of issuers not mailing out hundreds of pages of documents. A potential limitation is that a small, and likely diminishing, number of investors may feel that going online to view the documents, instead of automatically receiving a paper copy, is an inconvenience. However, respectfully suggest that as many investors read the document online, mailing paper copies of documents to investors who have not specifically requested the mailing is likely to be unnecessary and a waste of resources. As such, a system that mails paper copies to large numbers of investors is costly for issuers and their shareholders and harmful to the environment.

3. Do you agree that the CSA should prioritize a policy initiative focusing implementing an access equals delivery model for prospectuses and financial statements and related MD&A?

   We are in favor of the CSA prioritizing a policy initiative that is focused on implementing an access equals delivery model for prospectuses and financial statements and related MD&A. These documents are often quite large and as such, cost savings for issuers and their shareholders and environmental benefits would be significant. In addition, as the information contained in a prospectus in respect of a financing transaction is often particularly time-sensitive in nature, it can be expected that the vast majority of investors who wish to view the documents will access them online. Further, as noted in the Consultation Paper, access equals delivery models have been implemented for prospectuses in the U.S., European Union and Australia. We see no reason why Canada’s securities markets should not take the same approach.

4. If you agree that an access equals delivery model should be implemented for prospectuses:

    a. Should it be the same model for all types of prospectuses (i.e. long-form, short-form, preliminary, final, etc.)?

        We see no compelling reason to distinguish based on the type of prospectus.

    b. How should we calculate an investor's withdrawal right period? Should it be calculated from (i) the date on which the issuer issues and files a news release indicating that the final prospectus is available electronically, (ii) the date on which the investor purchases the securities, or (iii) another date? Please explain.

        We believe the withdrawal rights period should be calculated from the date on which the issuer issues and files a news release indicating that the final prospectus is available electronically, as this will make the calculation of the withdrawal rights period simpler and enable the parties to confidently close a transaction once the withdrawal rights period for all investors has expired.

    c. Should a news release be required for both the preliminary prospectus and the final prospectus, or is only one news release for an offering appropriate?

        Issuers listed on a stock exchange are generally required to disclose material information immediately upon the information becoming known to management, or in the case of information previously known, forthwith upon it becoming apparent that the information is material. Accordingly, for exchange listed issuers, other than a requirement to issue and file a news release indicating the final prospectus for a securities offering is available electronically (in order to commence the withdrawal rights period), a stand-alone requirement to issue a news release is in our view unnecessary as its only effect will be to require an issuer to issue a news release in respect of a prospectus filing that is not material (e.g. the routine filing of a preliminary or final base shelf prospectus). Notwithstanding stock exchange requirements, we understand that issuers and their underwriters or agents involved in a financing transaction often choose to issue and file a news release to help make prospective investors aware of the pending transaction. Accordingly, it is our view that, other than a requirement to issue and file a news release indicating the final prospectus for a securities offering is available electronically (in order to commence the withdrawal rights period), issuers listed on a stock exchange should not be subject to a stand-alone requirement to issue a news release on the filing of a preliminary or final prospectus.

5. For which documents required to be delivered under securities legislation (other than prospectuses and financial statements and related MD&A) should an access equals delivery model be implemented? Are there any investor protection or investor engagement concerns associated with implementing an access equals delivery model for rights offering circulars, proxy-related materials, and/or takeover bid and issuer bid circulars? In your view, would this model require significant changes to the proxy voting infrastructure (e.g. operational processes surrounding solicitation and submission of voting instructions)?

    We believe an access equals delivery model would be appropriate for financial statements (and the corresponding MD&A) and proxy-related materials (collectively, "Meeting Materials"). We believe a news release that sets out how materials can be accessed is adequate. Also, any investors who have provided standing instructions to receive paper copies of financial statements should be sent a notice-and-access type notice informing them of how to access materials online and providing a toll-free phone number to order paper copies at no cost. Regarding standing instructions, we believe many investors check a box when opening an investment account to receive financial statements and MD&A without appreciating the

volume of paper they will ultimately receive. Once standing instructions have been provided the delivery of paper copies will continue until the investor takes the initiative and terminates the mailings. Many investors will simply continue to receive (and either recycle or dispose of) the material rather than take steps to remove their standing instructions. We believe this leads to a considerable amount of waste and could be addressed by requiring investors who have checked a box to receive paper copies to take a small action (e.g. calling a toll-free number) to receive paper copies each year. The requirement to take a small action each year imposed on the small number of investors who genuinely wish to receive paper copies is a worthwhile cost to prevent the waste that occurs when investors are mailed materials they do not want or make use of. If the CSA is not prepared, at this time, to implement an access equals delivery model for Meeting Materials, we would request that section 2.7.6 of National Instrument 54-101 *Communications with Beneficial Owners of Securities of a Reporting Issuer* be amended to allow reporting issuers to mail shareholders who have given standing instructions a notice-and-access type notice instead of paper copies of the Meeting Materials for the reasons articulated above.

6. Under an access equals delivery model, an issuer would be considered to have effected delivery once the document has been filed on SEDAR and posted on the issuer's website.

    a. Should we refer to "website" or a more technologically-neutral concept (e.g. "digital platform") to allow market participants to use other technologies? Please explain.

        We believe referring to a website is appropriate at this stage. Most reporting issuers have a website and most investors will understand how to find and access an issuer's website. In time, the CSA could consider expanding to other concepts as technology expands and becomes better understood by investors.

    b. Should we require all issuers to have a website on which the issuer could post documents?

        We believe requiring issuers to have a website is reasonable. As stated above, most issuers are likely to have a website. Issuers who do not have a website can establish one at a relatively low cost.

7. Under an access equals delivery model, an issuer would issue and file a news release indicating that the document is available electronically and that a paper copy can be obtained upon request.

    a. Is a news release sufficient to alert investors that a document is available?

        We believe that a news release will be sufficient to alert investors that a document is available. For proxy materials and financial statements (including MD&A) many shareholders would be familiar with the approximate timing of release of these documents as they are released annually at approximately the same time.

    b. What particular information should be included in the news release?

        The news release should state clearly which documents are available and that they are available on both SEDAR and on the issuer's website. A toll-free phone number could also be provided for shareholders to call if they have questions regarding accessing the documents.

8. Do you have any other suggested changes to or comments on the access equals delivery model described above? Are there any aspects of this model that are impractical or misaligned with current market practices?

   Other than as set out in our above responses, we do not have any additional suggested changes to r comments on the access equals delivery model.

Thank you for the opportunity to comment on the consultation paper.

Sincerely,

/s/ Blaine Young

Blaine Young
Senior Legal Counsel
Corporate Secretarial Group

CFA Societies Canada

Canadian Advocacy Council

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Toronto, ON M5H 1T1

+1 (416) 366 3658 tel
www.cfacanada.org

February 26, 2020

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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E-mail: consultation-en-cours@lautorite.qc.ca

and

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

Dear Sirs/Mesdames:

Re: CSA Consultation Paper 51-405 – *Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers* (the "Consultation")

The Canadian Advocacy Council of CFA Societies Canada[1] (the "CAC") appreciates the opportunity to provide the following general comments on the Consultation.

[1] The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 18,000 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

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We are supportive of the CSA's initiatives to reduce regulatory burden without having a negative impact on investor protection, and are in favour of facilitating electronic delivery of documents where possible. Regulation in general should be risk and principles-based, as well as technologically neutral and flexible.

We understand the model under consideration is one where delivery of a disclosure document would be considered to occur when: (i) the document is filed on SEDAR and posted to the issuer's website; and (ii) the issuer issues a press release (also filed on SEDAR and posted to its website) stating where the document is available electronically and that a paper copy can be obtained upon request. Currently, delivery of prospectuses and financial statements and related MD&A may be prioritized for this project.

We are supportive of the proposal to facilitate an access equals delivery model for the distribution of prospectus documents, financial statements and MD&A filings. In our view, however, given the shortcomings of SEDAR's current user interface, if the proposal moves forward as contemplated, it will be critical for the issuer's website to be easy to locate and navigate. While professionals may have other electronic tools that facilitate searching for specific company filings (and alert them to new filings), investors need to rely on searching SEDAR. It may be preferable to wait until the SEDAR Plus project is further developed so that all investors can more readily access important documents on a consistent basis.

Regardless of the timing of the implementation of the proposal, the issuer should be required to post the documents prominently on their website in an easily accessible format. Moreover, considering that there could be a considerable delay between filing a preliminary prospectus and receiving a receipt for a final prospectus, it would be appropriate to require the issuer to issue and file corresponding news releases for both documents. 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.

With respect to withdrawal rights, we understand that in certain jurisdictions, investors have the right to withdraw from their agreement to purchase securities under a prospectus within two business days of receiving a prospectus or any amendment thereto. We agree that the resolution of the issue regarding the commencement of the cooling off period will be critical to the success of an access equals delivery model. As the CSA continues to consider the *Proposed National Systems Renewal Program Rule and Related Amendments*, the ability to reformulate the withdrawal mechanism based on new technological capabilities may emerge.

The requirement to provide paper copies of documents upon request should be at no charge to the investor, as there remain some retail investors with intermittent to no online access. While the cost may be minimal, we note that there is a cost to receive

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 171,500 CFA charterholders worldwide in 164 markets. CFA Institute has nine offices worldwide and there are 158 local member societies. For more information, visit www.cfainstitute.org.

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internet access. Issuers must make the process of requesting and receiving paper copies seamless to investors. The enforcement powers of CSA members should also specifically extend to instances where paper copies are not easily accessible.

We appreciate that Annex A to the notice sets out a summary of the current rules in the United States (and other jurisdictions) relating to access equals delivery. To the extent possible, aligning the initiative with international counterparts may bring some consistency to issuers and international investors.

We understand that the CSA is also considering whether other issuer documents such as rights offering materials and take-over bid circulars should be included in the access equals delivery model. As set out in the notice of the Consultation, extending the model to time-sensitive documents and processes that require shareholder participation could, and we believe does, raise investor protection concerns in the near term. While some investors may be able to monitor SEDAR or an issuer's website for new information, it is more difficult to locate information for transactions that involve multiple or new issuers. In addition, it is less intuitive for investors to know when to look for information and for details about required investor action. 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 reasonable consideration and action.

Concluding Remarks

We thank you for the opportunity to provide these comments. We would be happy to address any questions you may have and appreciate the time you are taking to consider our points of view. 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

Canadian Investor Relations Institute
Institut canadien des relations avec les investisseurs

March 9, 2020

The Secretary
Ontario Securities Commission
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22nd Floor, Box 55
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E-mail: consultation-en-cours@lautorite.qc.ca

CC: Canadian Securities Administrators (CSA)
- 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 (New Brunswick)
- Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
- Nova Scotia Securities Commission
- Superintendent of Securities, Newfoundland and Labrador
- Superintendent of Securities, Northwest Territories
- Superintendent of Securities, Yukon Territory
- Superintendent of Securities, Nunavut

Dear Secretary and Me Lebel,

Re: CSA Consultation Paper 51-405 - Consideration of 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 above referenced CSA Notice and Request for Comment, issued January 9, 2020. CIRI membership represents over 230 non-investment fund reporting issuers with a combined market capitalization of $1.9 trillion. More information about CIRI is provided in Appendix 1.

General Comment

CIRI welcomes the opportunity to provide its comments to the CSA in its consideration to adopt an access equals delivery model for non-investment fund reporting issuers. We strongly support this initiative and congratulate the CSA for exploring opportunities to not only reduce regulatory burden on issuers, but to increase the speed at which investors can access information.

As you note in the Consultation Paper, the internet is widely used. This is confirmed by an October 29, 2019 release by Statistics Canada: "In 2018, the share of Canadians aged 15 and older who used the Internet was 91%, with more seniors reporting Internet use (71%). Results from the previous survey cycle indicated that 83% of Canadians had used the Internet in 2012, with the proportion of seniors online at 48%. Overall, 94% of Canadians had home Internet access.[1] In addition, Canadian internet usage is estimated to be higher than other jurisdictions that have already adopted access equals delivery.[2]

CIRI believes this high level of Canadian internet usage provides ample rationale for Canada to successfully implement an access equals delivery model without harm to retail or institutional shareholders.

Consultation Questions

1. **Do you think it is appropriate to introduce an access equals delivery model into the Canadian market? Please explain why or why not.**

   CIRI strongly supports introducing an access equals delivery model into the Canadian market. It advances the Notice and Access procedures adopted in 2013 that, while valuable, are complicated and somewhat restrictive to implement. While Notice and Access allows issuers to reduce printing and mailing costs, the fee charged to issuers who wish to use the Notice and Access option may cancel the potential cost savings, which depends on the size of the mailing.

   Under access equals delivery, the Notice and Access card mailing to all shareholders would be replaced by notification through a news release and posting of materials to SEDAR and the issuers' website. This simplifies procedures significantly and reduces printing and mailing costs substantially. In addition, this e-delivery approach is more sustainable and eco-friendlier.

   From the investor perspective, access equals delivery would allow investors to access materials more quickly. As noted in our introductory comments, internet usage in Canada is extremely high and therefore we do not believe that moving to this delivery model will negatively impact investors. This has been demonstrated in other jurisdictions that have successfully adopted a similar approach despite having estimated lower internet usage.

2. **In your view, what are the potential benefits or limitations of an access equals delivery model? Please explain.**

   As noted in question 1, the access equals delivery model will reduce regulatory burden and costs to issuers while positively impacting the environment. It would also provide a broader audience access to issuer materials in a more timely manner.

   While we see no material drawback to introducing this model, it may require investors to follow the news releases of specific issuers more closely. We believe this can be easily mitigated if issuers, as a best practice, offer investors an opportunity to sign-up to receive issuer news releases. The issuer would, therefore, push the information to investors.

3. **Do you agree that the CSA should prioritize a policy initiative focusing on implementing an access equals delivery model for prospectuses and financial statements and related MD&A?**

[1] https://www150.statcan.gc.ca/n1/daily-quotidien/191029/dq191029a-eng.htm
[2] https://www.internetworldstats.com/stats.htm

Yes, CIRI agrees that the CSA should initially focus on implementing the model for prospectuses and financial statements and all related MD&As, not just the Q4 and annual MD&As that are currently included under Notice and Access. As soon as feasible, CIRI suggests that additional continuous disclosure (CD) documents be added to the policy. Once investors understand and experience this new delivery model, it can be expanded quickly as the de facto delivery model for additional CD documents.

4. **If you agree that an access equals delivery model should be implemented for prospectuses:**
   a. **Should it be the same model for all types of prospectuses (i.e. long-form, short-form, preliminary, final, etc.)?**

      CIRI supports adopting the same model for both long- and short-form prospectuses.

   b. **How should we calculate an investor's withdrawal right period? Should it be calculated from: (i) the date on which the issuer issues and files a news release indicating that the final prospectus is available electronically, (ii) the date on which the investor purchases the securities, or (iii) another date? Please explain.**

      CIRI suggests that the fairest approach would be to calculate the withdrawal period from the date of purchase to ensure the date is clear to the investor.

   c. **Should a news release be required for both the preliminary prospectus and the final prospectus, or is only one news release for an offering appropriate?**

      CIRI supports issuing a news release for both the preliminary and final prospectus to ensure maximum exposure and notification for investors.

5. **For which documents required to be delivered under securities legislation (other than prospectuses and financial statements and related MD&A) should an access equals delivery model be implemented? Are there any investor protection or investor engagement concerns associated with implementing an access equals delivery model for rights offering circulars, proxy-related materials, and/or take-over bid and issuer bid circulars? In your view, would this model require significant changes to the proxy voting infrastructure (e.g. operational processes surrounding solicitation and submission of voting instructions)? Please explain.**

   CIRI recommends that the CSA implement access equals delivery for the Management Information Circular and Letters of Transmittal for Corporate Actions. Again, issuers incur significant printing and mailing costs for these documents. Extending this model to broader communications, such as these, would also have a positive impact on the environment.

   Issuers often use Notice and Access for NOBOs and OBOs but the overall proportion of shareholders who manually elect for e-delivery is relatively low. The default setting for new brokerage accounts is printed copies for issuer materials which CIRI believes contributes significantly to the low adoption of e-delivery. CIRI suggests that the default should, instead, be set to e-delivery, with investors requiring to manually select print copies when opening a new brokerage account.

   Once investors become accustomed to the access equals delivery model, CIRI believes there would be no negative consequences for extending this model to rights offering circulars, proxy-related materials, take-over bid and issuer bid circulars. That said, consideration would need to be given to the dissemination process for proxy-related materials since they contain a confidential proxy control number.

6. **Under an access equals delivery model, an issuer would be considered to have effected delivery once the document has been filed on SEDAR and posted on the issuer's website.**
   a. **Should we refer to "website" or a more technologically-neutral concept (e.g. "digital platform") to allow market participants to use other technologies? Please explain.**

      CIRI suggests the CSA refer to 'website' to avoid issuer and investor confusion.

   b. **Should we require all issuers to have a website on which the issuer could post documents?**

      Yes, CIRI supports requiring all issuers to have a website on which they could post documents. The documents should be posted in the section that houses all investor-related information.

7. **Under an access equals delivery model, an issuer would issue and file a news release indicating that the document is available electronically and that a paper copy can be obtained upon request.**
   a. **Is a news release sufficient to alert investors that a document is available?**

      Since the CSA-adopted standard for disclosing material issuer changes is a news release, CIRI believes a news release is sufficient to alert investors that a document is available. In addition, issuers could provide shareholders with an option to join a mailing list so that the issuer can notify them directly when a news release is issued. CIRI would not recommend establishing a mailing list as a regulatory requirement but as a best practice.

   b. **What particular information should be included in the news release?**

      The news release should include the name of the disclosure documents being issued with links directly to these documents as well as a form to request print copies if desired. CIRI would suggest that the title of the news release flag to investors what disclosure documents have been made available online.

8. **Do you have any other suggested changes to or comments on the access equals delivery model described above? Are there any aspects of this model that are impractical or misaligned with current market practices?**

   CIRI does not see any aspects of the model that are impractical or misaligned with current market practices. We believe it rightly acknowledges and leverages how embedded the use of the internet is in Canadian households and, importantly, reduces the regulatory burden on issuers while providing investors with timelier access to materials.

CIRI is pleased to provide the CSA with its comments regarding *Consultation Paper 51-405* and looks forward to further proposals aimed at reducing the regulatory burden on capital market participants, particularly reporting issuers. Should you wish to discuss this submission further, please let me know.

Sincerely yours,

[redacted]

Yvette Lokker
President & Chief Executive Officer
Canadian Investor Relations Institute

Canadian Investor Relations Institute
Institut canadien des relations avec les investisseurs

Appendix 1

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 and marketing to achieve an effective two-way flow of information between a public company and the investment community, in order to 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 over 230 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 investors and 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.

Canadian Natural

March 9, 2020

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 Consultation Paper 51-405 Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers

Dear Commissions:

Canadian Natural Resources Limited ("Canadian Natural") is pleased to respond to the Canadian Securities Administrators ("CSA") invitation to comment on CSA Consultation Paper 51-405 Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers.

Canadian Natural is a senior independent oil and gas exploration and production company headquartered in Calgary, Alberta, Canada, with operations in Western Canada, the North Sea, and offshore Africa. Our shares are publicly traded on the Toronto Stock Exchange and the New York Stock Exchange.

Canadian Natural continues to be supportive of initiatives to allow electronic delivery of continuous disclosure documents. Electronic delivery has the potential to significantly reduce the cost of printing and mailing paper documents, which may not be used by all investors. Anecdotally, we note that stakeholder requests for printed information have decreased dramatically over recent years, as generally our stakeholders are accessing this information electronically, either by means of our website, or through other channels, such as SEDAR in Canada and EDGAR in the United States. Answers to the specific questions posed by the CSA are included in the attached Appendix.

If you have any questions or wish to discuss our comments in more detail, please do not hesitate to contact the undersigned

Sincerely,

[redacted]
Mark Stainthorpe
Chief Financial Officer &
Senior Vice-President, Finance

[redacted]
Ronald D. Kim
Vice-President, Finance &
Principal Accounting Officer

Canadian Natural Resources Limited
Suite 2100, 855-2nd Street SW Calgary, Alberta T2P 4J8 T 403.517.6700 F 403.517.7350 www.cnrl.com

Appendix

Question 1
Do you think it is appropriate to introduce an access equals delivery model into the Canadian market? Please explain why or why not.

We agree with the CSA objective to modernize the way documents are made available to investors. We believe this will significantly reduce costs associated with the printing and mailing of documents that are currently borne by issuers and their shareholders. An access equals delivery model is a positive step forward for a majority of stakeholders.

Question 2
In your view, what are the potential benefits or limitations of an access equals delivery model? Please explain.

Potential benefits include, as stated by the CSA:
1. Reducing the costs of printing and mailing paper documents, which may not be read by investors.
2. Ease and convenience of use for investors, allowing them to access and search for information more efficiently than they would otherwise be able to with paper copies of documents.
3. More environmentally friendly.

Potential limitations include, as stated by the CSA:
1. Legal requirements outside of securities legislation may not allow for an access equals delivery model to be used in some circumstances.

We believe the model requires a technology platform that may restrict access for retail investors; however, for the majority of stakeholders, the potential benefits outweigh the identified limitations of the proposed model.

Question 3
Do you agree that the CSA should prioritize a policy initiative focusing on implementing an access equals delivery model for prospectuses and financial statements and related MD&A?

We agree the CSA should prioritize a policy initiative focussing on implementing an access equals delivery model for prospectuses and financial statements and related MD&A.

Question 4
If you agree that an access equals delivery model should be implemented for prospectuses:
a. Should it be the same model for all types of prospectuses (i.e. long-form, short-form, preliminary, final, etc.)?
b. How should we calculate an investor's withdrawal right period? Should it be calculated from (i) the date on which the issuer issues and files a news release indicating that the final prospectus is available electronically, (ii) the date on which the investor purchases the securities, or (iii) another date? Please explain.
c. Should a news release be required for both the preliminary prospectus and the final prospectus, or is only one news release for an offering appropriate?

a. In our view it should be the same model for all types of prospectuses (i.e. long-form, short-form, preliminary, final, etc.).
b. No comments.
c. In our view, a news release should be required for both the preliminary prospectus and the final prospectus, for consistency.

Question 5
For which documents required to be delivered under securities legislation (other than prospectuses and financial statements and related MD&A) should an access equals delivery model be implemented? Are there any investor protection or investor engagement concerns associated with implementing an access equals delivery model for rights offering circulars, proxy-related materials, and/or take-over bid and issuer bid circulars? In your view, would this model require significant changes to the proxy voting infrastructure (e.g. operational processes surrounding solicitation and submission of voting instructions)? Please explain.

In our view, an access equals delivery model should be implemented for documents other than prospectuses, financial statements and related MD&A, including rights offering materials, proxy-related materials and take-over bid and Issuer bid circulars. We believe that for most investors, electronic delivery is preferred for those reasons listed in our response to Question 2.

Question 6
Under an access equals delivery model, an issuer would be considered to have effected delivery once the document has been filed on SEDAR and posted on the issuer's website. a. Should we refer to "website" or a more technologically-neutral concept (e.g. "digital platform") to allow market participants to use other technologies? Please explain.
b. Should we require all issuers to have a website on which the issuer could post documents?

a. In our view, filing on SEDAR is sufficient as it provides an appropriate platform with standardized layout, providing a single source for access to documents filed by all issuers; posting the document on the issuer's website is not necessary.
b. In our view issuers are in the best position to determine whether to provide an additional electronic platform which the issuer could provide electronic access to documents.

Question 7
Under an access equals delivery model, an issuer would issue and file a news release indicating that the document is available electronically and that a paper copy can be obtained upon request.
a. Is a news release sufficient to alert investors that a document is available?
b. What particular information should be included in the news release?

a. In our view, the current requirements to issue and file a news release are sufficient. We believe that under an access equals delivery model all documents issued and filed on SEDAR would be available in paper copy on investor request.
b. Include the name of the document, and indicate the document is available electronically on SEDAR.

Question 8
Do you have any other suggested changes to or comments on the access equals delivery model described above? Are there any aspects of this model that are impractical or misaligned with current market practices?

We agree with maintaining the option of having paper copies of documents delivered for those who prefer, as issuers are in the best position to choose whether to use access equals delivery considering the needs and preferences of their investors.

We believe that most users have already migrated to an electronic access model, using SEDAR and corporate websites alike to refer to the previously mentioned documents as and when needed. Furthermore, we believe that it is important that any revisions to the securities legislation take into consideration that paper delivery of documents continues to decline and ultimately will not be required for most stakeholders. As a result, we suggest that a staged model could be developed which requires issuers to continue to issue paper documentation for an interim period (for example 2 years) after which time, it would no longer be required for issuers to formally issue paper documents, as long as that issuer had met all of the requirements of the access equals delivery model.

We suggest that the CSA coordinate their efforts with provincial and federal legislatures such that comparable amendments are made in tandem with changes to corporations legislation as required in each jurisdiction.

DAVIES

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March 5, 2020

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

c/o

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Email: consultation-en-cours@lautorite.qc.ca

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

Dear Sirs/Mesdames:

CSA Consultation Paper 51-405 *Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers*

We are writing in response to CSA Consultation Paper 51-405 *Considerations of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers* (the "**Consultation Paper**"). We strongly support this initiative to adopt an access equals delivery model to satisfy prospectus and other documentary delivery obligations under Canadian securities legislation.

Our comments are intended to address the specific questions identified in the Consultation Paper and, for ease of reference, use the same numbering. Most of our commentary is at a high level due to the

preliminary nature of the contemplated access model. We will provide more specific and comprehensive feedback as detailed rule proposals are published in connection with this initiative.

1. Do you think it is appropriate to introduce an access equals delivery model into the Canadian market? Please explain why or why not.

(a) General

An access equals delivery model is the ideal solution to satisfy prospectus and most other documentary delivery obligations of issuers and dealers under Canadian securities legislation. It offers several benefits over the existing alternatives for document delivery (as summarized in our response to question #2) and can be accomplished in a manner that does not compromise investor engagement or protection. Canadian investors have the ability to, and do, access documents filed on SEDAR. This is particularly (but not exclusively) the case with Canadian investors participating in prospectus offerings. As noted below, requiring physical delivery of a document to investors is an unnecessary burden given the high level of Internet access in Canada. Electronic delivery (other than by way of access) also comes with burden and expense and exposes the delivering party to risk for failed delivery.

A securities regulatory regime premised on the physical delivery of documents imposes an unnecessary burden on issuers and dealers and fails to realize the obvious benefits of an access model. It also ignores the realities of modern capital markets. The only timely way for an investor to receive the information necessary to inform its investment decision is through electronic access. This is critical in almost all follow-on public offerings, where timely participation requires an investor to access SEDAR for the information included in (or incorporated into) the relevant prospectus. However, the need for real-time, electronic access is not exclusive to prospectus offerings. It is also necessary to access time sensitive issuer information that informs day to day trading in an issuer's securities. This is easy to do where real-time information is easily accessible, at any time and from any device, via the Internet. Material developments are currently disclosed by way of a news release and this information is then pushed to anyone who chooses to follow the issuer.[1] Notably, there is no corresponding requirement for actual delivery of a news release or any corresponding material change report. Clinging to a regime that errantly suggests that it is adequate to invest in the public markets relying on paper delivery and using stale market information is a substantial disservice to the investing public. To invest responsibly in any public securities, investors (with the assistance of their brokers, where applicable) must take a minimum level of responsibility to be and remain engaged with those investments.

Electronic delivery is not an acceptable substitute to an access equals delivery model because it (i) adds unnecessary time and expense and (ii) involves unnecessary risk (both legal and technical) for failed delivery, a non-issue for an access model. While an electronic delivery model could offer some of the same benefits as an access model, it cannot offer *all* of the same benefits. Critically, even if there were a feasible electronic delivery solution (from both a legal and technical perspective), it would still involve a significant amount of time and cost to establish and maintain 'back-office' processes to effect and monitor the electronic deliveries – requiring more time and expense than the access model without

[1] There are a myriad of alternatives available to investors to be automatically notified of news releases or filings by any particular issuer.

a corresponding benefit. Moreover, there are legal and technical uncertainties to satisfying electronic delivery that makes this an impractical and imperfect solution for satisfying delivery obligations imposed under Canadian securities legislation. In order to allow issuers and dealers to satisfy their respective delivery obligations exclusively by way of electronic delivery, changes to existing legislation would be necessary. The necessary changes would not be limited to securities legislation; corporate and other legislation outside the purview of securities regulators would also require changes. Further, even if all the necessary changes could be implemented, such that electronic delivery would not expose issuers or dealers to unacceptable exposure to legal risk, electronic delivery still involves technical risks (including the risk of failed delivery due to any number of reasons) that are impossible to plan for and overcome in all instances.

(b) Prospectuses

An "access equals delivery" model is particularly well suited for addressing prospectus delivery obligations because investors participating in a public offering are already engaged in the offering process (directly or through a broker) and, as a result, are well aware that the prospectus (and, where applicable, other information critical to their investment decision) is available and easily accessible on SEDAR. Investors participating in public offerings do not need further action to encourage them to read the prospectus. Any risk that an investor might rely on other marketing materials to the exclusion of the prospectus is already adequately addressed through the disclosure mandated to be included in those marketing materials (*i.e.*, the disclosure that investors should read the prospectus). An investor that chooses not to read the prospectus in spite of this disclosure is doing so on an informed basis – there is no reason to believe that investors who receive the prospectus by mail or email are any more or less likely to read the prospectus than they would if they are notified that the prospectus is available (whether by press release, a notice in marketing materials or otherwise). Accordingly, these investors do not require actual delivery of the prospectus to ensure their engagement or protection.

Notably, the short form prospectus system is already premised on an "access equals delivery" model, incorporating by reference (without actual delivery) substantially all of the critical issuer information contained in the issuers' current continuous disclosure.[2] When considering their investment in a prospectus offering, investors invariably access the prospectus (and, critically, the documents incorporated by reference) electronically. Investors do not wait for, or rely on, actual delivery of a prospectus and each of the incorporated documents to inform their investment decision. While the option is available to request a copy of these documents, anecdotal evidence suggest that these requests are rarely, if ever, made. We assume this is because waiting for actual delivery of these documents by mail (when they could have been accessed days earlier on SEDAR) or even email does not serve any practical purpose.

In addition to being wasteful and unnecessary, insisting on antiquated prospectus delivery requirements that are premised on delivery by mail as opposed to electronic access (and that deem receipt "in the

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[2] This demonstrates the CSA is already comfortable that investors have the ability to, and will, access documents filed on SEDAR to inform their investment decision in a prospectus offering. The CSA has further demonstrated its comfort with a deemed prospectus delivery concept through the relief routinely accorded to reporting issuers with ATM programs and its recent proposal to codify this relief.

ordinary course of the mail") unnecessarily delay the offering process. Among other things, this artificially extends the expiry of the investors' statutory withdrawal right, making it is impossible for those rights to expire on a normal (modern) settlement cycle. As a result, the time to settlement for most Canadian public offerings is considerably longer than for a U.S. public offering, creating a tension in cross-border offerings as to whether to apply the artificially long Canadian settlement cycle (with the associated costs and risks of extending closing by a number of days) or the shorter U.S. settlement cycle (in which case the Canadian underwriters must assume the risk that withdrawal rights may be exercised after closing).

(c) Financial Statements and MD&A

An "access equals delivery" model is also well suited for addressing an issuer's obligations to deliver its financial statements and MD&A to its investors. The current obligation to send annually a request form to all of an issuer's shareholders, affording investors the opportunity to request a paper copy of these documents, is a wasteful and unnecessary burden. The request form is wasteful because only a very small percentage, if any, of an issuer's shareholders will request a paper copy of these documents; for all other shareholders, that request form is promptly discarded.

The request form is unnecessary because shareholders do not need a reminder as to the availability of these documents. Much like a prospective investor in a prospectus offering, an issuer's shareholders expect and can predict when the issuer's financial statements and MD&A will be available; they are filed at roughly the same time in respect of each of the four fiscal quarters and, in any event, not later than the legally prescribed deadline following the quarter end. Investors are already aware of the contents of their portfolios, and have the ability to monitor the performance of their investments through almost universal access to the Internet (and a myriad of alternatives if they wish to be automatically notified of news releases or filings by any particular issuer). Accordingly, one could argue no notice as to the availability of financial statements and MD&A is necessary for their deemed delivery to shareholders. However, if the CSA determines such notice of availability is necessary, the notice is best achieved through a news release or other notice that is reasonably designed to alert the issuer's shareholders on a more real time basis. Notably, the proposed "access equals delivery" model will provide such notice and afford shareholders the opportunity to request a paper copy.

Consideration should also be given as to whether to remove the option for shareholders to request a paper copy of financial statements and MD&A. Physical delivery of these documents affords no protection or other benefits to investors. Modern markets react to the announcement of earnings, broadly disseminated by a news release, not the mailing of statutorily mandated materials whose material contents have already been made public long before the documents wind their way through the post. Investors who postpone their analysis and delay their investment decisions until they receive physical delivery of financial statements and MD&A are left to deal with a landscape where the informational content of these materials is already factored into the price of the issuer's securities. Waiting for actual delivery of these documents by mail (when they could have been accessed days earlier on SEDAR) does not serve any practical purpose.

(d) Other Documents

See our response to question #5 below.

2. In your view, what are the potential benefits or limitations of an access equals delivery model? Please explain.

An "access equals delivery" model will have significant benefits to the Canadian capital markets. This access model will compliment the transition to a modern securities regulation scheme as it takes into account how market participants actually access and process market information. We understand that investors invariably access electronic versions of relevant public documents, as immediate access is critical to keep pace in modern capital markets. Documents can be accessed in all connected areas – including through portable devices – and are easily searchable for specific content. In addition, implementing an "access equals delivery" model will eliminate the substantial costs of printing and delivering the relevant documents; costs that are all borne, indirectly, by investors. This model will also free up time and resources, currently dedicated to satisfying actual delivery of those documents, that would be better directed toward future improvements to the digital infrastructure for document access that will enhance the investor experience.[3] Finally, adopting a workable electronic delivery model (such as "access equals delivery") has the environmental benefit of eliminating a significant amount of waste that is directly attributable to the requirement to delivery physical copies of documents to investors.

In addition to the general benefits discussed above, applying an "access equals delivery" model to the prospectus delivery requirement will have the benefit of reducing (i) the costs and risks associated with the artificially extended Canadian settlement cycle for prospectus offerings and (ii) risks related to failed delivery of documents (which would be eliminated). Canadian prospectus offerings often settle five business days following obtaining a receipt for a final prospectus or pricing, as applicable. This is in stark contrast to the two business day settlement cycle that is standard in the United States. The longer T+5 Canadian settlement cycle for prospectus offerings is intended to accommodate the additional days required for physical delivery of the final prospectus to Canadian investors and allow for some or all of the Canadian investors' withdrawal rights to expire prior to settlement. A shorter settlement cycle is available with an "access equals delivery" model because it allows for an earlier start (and therefore earlier expiry) of the withdrawal rights period than the current physical delivery model.[4] This will reduce costs (the issuer's delay in receiving proceeds) and risks (exposure to market related risks) associated with a long settlement. It will also allow for alignment with the shorter U.S. settlement cycle on cross-border transactions without risk to the underwriters of withdrawal rights being exercised after closing.

In our view, there are no limitations on the "access equals delivery" model from a conceptual perspective. Any limitations on such a model from a practical perspective will depend on the rules that implement the model. If these rules are too prescriptive or not sufficiently flexible to accommodate alternative means for providing notice or posting documents, there is the risk that conditions to deemed delivery may not be satisfied due to technological failures (including failures outside the control of the delivering party) or that some of the benefits of an access model may not be realized. As we discuss

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[3] For example, social media or block chain platforms or, in the case of prospectus delivery, enhanced dealers investment platforms. See our response to question #6.

[4] On a related note, because delivery (and therefore receipt) is deemed through an access model, there will be certainty as to exactly when investors' withdrawal rights for an offering will expire.

further below, some of these issues can be avoided simply by not requiring an issuer (or dealer) to take actions that are superfluous and otherwise unnecessary to meet the deemed delivery requirement. Ideally the implementing rules will be sufficiently flexible to accommodate future technological developments. However, in the interest of implementing an access model as soon as possible to realize its substantial benefits, it would be sufficient for the initial access model to work with today's Canadian capital markets; the next generation of technology can be addressed in a subsequent round of rulemaking.

There is also the potential for a disconnect between securities and other legislation addressing delivery obligations. Specifically, some issuers may be subject to delivery obligations under their governing corporate statute that do not accommodate, in whole or in part, an "access equals delivery" model implemented under securities legislation. This is not an issue for prospectus delivery. However, it may pose an issue for delivery of other document by way of access until the relevant corporate legislation is amended[5]. However, even in these cases, we still believe it important that the CSA advance implementation of "access equals delivery" model (despite impediments under corporate law requirements at the time of implementation). We are hopeful that changes under securities legislation would provide an impetus for corresponding changes to modernize the relevant corporate statues.

3. Do you agree that the CSA should prioritize a policy initiative focussing on implementing an access equals delivery model for prospectuses and financial statements and related MD&A?

We agree. While an "access equals delivery" model would be a beneficial alternative for the delivery of various other documents to investors, in our view the CSA should concentrate their efforts in the near term on implementing an access model that is tailored for prospectuses and financial statements and related MD&A. An access solution for the delivery of these documents will achieve the largest benefit in the shortest possible time period. If initial implementation of an "access equals delivery" model will be delayed by virtue of addressing considerations specific to the delivery of financial statements and MD&A, we suggest that the CSA first proceed to implement the access model for prospectus delivery only and then follow with implementation of an access model for the delivery of financial statements and related MD&A.

As detailed in our response to question #5 below, broadening this model to address the delivery of other documents will also be beneficial to Canadian capital markets in the long run. However, this will entail additional considerations and, possibly, additional or different conditions than those for the access model proposed in the Consultation Paper. Trying to accommodate delivery of these other documents within the proposed model – which works well for both prospectuses and financial statements and related MD&A with only a few adjustments - would add complication. Effective delivery of proxy materials by way of access will also require changes to corporate legislation. In our view, in order to avoid delaying the implementation of the effective, electronic solution for delivery for

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[5] For example, corporate requirements for the delivery of annual financial statements to registered shareholders and corporate requirements for the delivery of proxy materials.

prospectuses, financial statements and MD&A proposed in the Consultation Paper, it would be best to consider options for the electronic delivery of other documents by way of access separately.

4. If you agree that an access equals delivery model should be implemented for prospectuses:

(a) Should it be the same model for all types of prospectuses (i.e., long-form, short-form, preliminary, final, etc.)?

We agree that an "access equals delivery" model should be implemented for prospectuses. However, we believe the model should differ for preliminary prospectus documents[6] and final prospectus documents.[7]

In our view, no news release or equivalent notice as to availability should be required for deemed delivery (by way of access) of preliminary prospectus documents (though issuers and dealers should be entitled to voluntarily issue a news release regarding such availability). Delivery should be premised solely on the posting of the preliminary prospectus document on SEDAR. There is no principled basis for requiring such a news release in respect of a preliminary prospectus document. Timely notice of the deemed delivery of a *final* prospectus document could be important as that deemed delivery should 'start the clock' on an investor's withdrawal period (as discussed further below). However, the same is not true of the delivery of a preliminary prospectus or a base shelf prospectus (preliminary or final). Accordingly, a news release (or equivalent notice of availability) should be required only for deemed delivery of a final prospectus document. Any investor interested in participating in a public offering is already aware that a prospectus is or will be available and that it will include important information relevant to their investment decision. They are already engaged by virtue of their interest in the offering. Further, there is no investor protection concern that an investor will rely on the content of marketing materials to the exclusion of the preliminary prospectus documents on file. Such concern is adequately addressed through the disclosure (required to be included in any marketing materials)[8] advising the investor to read the relevant preliminary prospectus document before making an investment decision.

We think consideration should also be give as to whether the option to receive a paper copy of a preliminary prospectus document is of value to investors. Such value is clearly quite limited in the case

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6 Our references to "preliminary prospectus documents" in this comment letter are to preliminary prospectuses, amendment to or amended and rested preliminary prospectuses and, in the context of a shelf offering, preliminary and final versions of base shelf prospectuses.

7 Our references to "final prospectus documents" in this comment letter are to final versions of a prospectus or prospectus supplement (including a supplemented base PREP prospectus) upon which liability of an issuer and dealers to a purchaser is premised.

8 Changes will be necessary to the prescribed legends and certain other requirements for marketing materials and standard term sheets, as applicable, to reflect an access model. We assume the modified legends would be similar to the existing legends, but modified to allow reference to SEDAR for (in lieu of delivering) a copy of the relevant prospectus and providing the option to request a paper copy, if deemed applicable – see below for a discussion about the limited value of paper delivery. We assume such legends would still note that the relevant document does not provide full disclosure of all material facts relating to the securities offered and advise investors to read the relevant prospectus.

of an offering by means of a short form prospectus or a shelf where, in reality, an investment decision is made long before paper delivery can occur.

(b) How should we calculate an investor's withdrawal right period?

Under an "access equals delivery" model, subject to the caveat below, we do not think that commencement of an investor's withdrawal right period should require any change. Generally, it should commence, as it does now, at the time of the investor's receipt of the final prospectus document. To bridge the concepts of delivery and receipt, the rules implementing the access model should be clear that an investor is deemed to have received the final prospectus document at the same time as the document is deemed to have been delivered. There are no policy reasons to delay the withdrawal period further, as the investor is already engaged, having recently placed an order with its broker for the security, and will be on notice that a final prospectus document has been, or will soon be, filed. However, one modification will be necessary to accommodate transactions where orders are placed after the final prospectus document has been filed.[9] In these cases, the withdrawal right period should commence at the time that later order is placed. Accordingly, we submit that the appropriate time for an investor's 2 business day withdrawal right period to commence should be the later of (i) the time when both (A) the final prospectus document has been filed on SEDAR, and, (B) a news release (or alternative form of notice, if permitted) has been issued announcing that the final prospectus document is (or will be) available, and (ii) the time he investor places its order for the security.

(c) Should a news release be required for both the preliminary prospectus and the final prospectus, or is only one news release for an offering appropriate?

There is no principled basis for requiring a news release or equivalent notice as to the availability of a preliminary prospectus document for deemed delivery by way of access. However, if it is determined that a news release will be required under such a delivery regime, in the context of a bought deal, we submit the rules should allow this to be satisfied through a forward-looking news release. Specifically, it should be sufficient for the news release announcing the bought deal to indicate that the preliminary prospectus "will be" available (on or before a specified date), as (i) that prospectus must be filed within four business days following the bought deal announcement and (ii) the issuer information critical to the investment decision (*i.e.*, in the documents incorporated by reference) is already on file and should have been reviewed by the investor well in advance of the filing of the preliminary prospectus. Notably, an investor would still get current notice when the final prospectus is available, and then two business days to review the final prospectus prior to expiry of the associated withdrawal right. Accordingly, requiring that investors have current notice when the prospectus "is" (as opposed to "will be") available is arguably only relevant for the final prospectus.

In formulating a rule incorporating an access equals delivery model, the mechanics of a typical offering should be considered carefully to ensure that the news release requirement signalling availability of the final prospectus document does not result in a flurry of public announcements from an issuer regarding the offering. This would cause significant noise in the market. The problem of a multiplicity of news

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9 For example, in an underwritten offering where there are insufficient orders to fill the book at the time of pricing or in a best efforts offering where marketing continues after the final prospectus document has been filed.

releases is greater in offerings where the pricing is close to, but not concurrent with, the filing of the final prospectus document. These would include 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, pricing is typically a material event for an issuer that requires a news release under securities laws. It should be open to an issuer, in such circumstances, to include a statement in their pricing news release that the final document "will be" available within a certain time period.[10]

5. For which documents required to be delivered under securities legislation (other than prospectuses and financial statements and related MD&A) should an access equals delivery model be implemented? Are there any investor protection or investor engagement concerns associated with implementing an access equals delivery model for rights offering circulars, proxy-related materials, and/or take-over bid and issuer bid circulars? In your view, would this model require significant changes to the proxy voting infrastructure (e.g., operational processes surrounding solicitation and submission of voting instructions)? Please explain.

We believe that a move to an access equals delivery model for delivery of all documents under securities legislation is desirable and can be justified even absent the environmental benefits of doing so. Issuers would clearly benefit from the cost savings associated with printing and mailing as would bidders in a take-over bid scenario and dissident shareholders in a proxy contest. In that regard, the cost savings alone – the costs of printing and mailing alone can run into the millions of dollars – could potentially enhance shareholder democracy as more shareholders might be willing to seek to assert their rights and engage in a proxy solicitation campaign.

A key question is whether investors would also benefit. Investors and the market generally are already accustomed to the fact that material information is disseminated by way of news release, with no requirement for any subsequent mailing of material change reports, for example. In addition, notice-and-access has been available now for several years and technological advances continue to make information readily available and accessible to investors almost instantaneously. Anecdotal evidence also suggests that the current system has its own imperfections, including investors receiving printed materials only days prior to a deadline or, in some cases, failing to receive the materials at all. In addition, in circumstances involving late-breaking amendments to a bid or a transaction requiring shareholder approval, there may well be insufficient time, even within current legislated time periods, for printed materials to reach shareholders in a timely fashion.

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[10] In circumstances where an issuer uses a formulation that a final prospectus document "will be" available, depending on the length of time in which the final prospectus document actually does become available, it is possible that the news release component of the "delivery" obligation should be deemed to occur at some point after the issuance of the news release, perhaps at an outside time specified in the news release at which the final prospectus document will become available. This would accommodate the practical reality that the filing of the final prospectus document cannot be effected concurrently with pricing of the offering (and the related public announcement). This approach would not disadvantage investors provided the ultimate filing of the final prospectus document was not delayed beyond a reasonable period (for a final prospectus, this might be up to a day following pricing, and, for a prospectus supplement, this should align with the filing requirement of two days following pricing).

To the extent that there is concern about a decrease in shareholder engagement, we would not expect that to be the case in a transaction-related scenario or an adversarial situation such as a hostile bid or a proxy contest. In those circumstances, the issuer as well as the bidder or dissident shareholder typically retains the services of a proxy solicitation firm to ensure that shareholders are aware of the issues and actively participate. In addition, reporting on these situations by the financial press often serves as additional publicity and notice to shareholders. These situations could also be expected to enhance the market's understanding of and interaction with the access equals delivery system. It is possible that, at least in the near term, routine annual meetings, particularly for issuers with a large retail shareholder base, could initially suffer from lower turn-out as the market adjusts to the new system. In any event, we would expect that any access equals delivery system would nevertheless allow for parties to mail materials as an alternative, if they wished to do so.

Admittedly, adopting an access equals delivery model in the proxy solicitation context will require amendments to applicable corporate law; however, it is hoped that making the requisite changes to overlapping requirements under applicable securities laws would serve as a catalyst for change in the applicable corporate law. In fact, introducing an access equals delivery model into securities laws could facilitate the granting of exemptions from corporate law requirements by corporate regulators prior to the adoption of corporate law amendments. By way of example, Industry Canada has routinely granted exemptive relief to permit use of notice-and-access for the delivery of proxy materials.

We also expect that there will be a number of logistical matters to be addressed in the proxy voting infrastructure, including the manner of facilitating on-line voting instructions and the distribution of unique control numbers to shareholders. Again, we believe that advancing an access equals delivery model might also serve as an opportunity for market participants to embark on the larger project of enhancing the proxy voting infrastructure and addressing other concerns that have been raised by market participants with respect to the workings of that system.

6. Under an access equals delivery model, an issuer would be considered to have effected delivery once the document has been filed on SEDAR and posted on the issuer's website.

(a) Should we refer to "website" or a more technologically-neutral concept (e.g., "digital platform") to allow market participants to use other technologies? Please explain.

As noted below, consideration should be given as to whether filing on SEDAR is sufficient for deemed delivery purposes without an additional, redundant posting on the issuer's website or some other digital platform. However, if the CSA determines that an additional source is necessary to access the relevant document, it should be sufficient to make the document available on any digital platform that can be accessed by the relevant investor; it need not be a platform that is broadly available to the public.[11] Further, where dealing with prospectus delivery (which is typically an obligation of the dealer – not the issuer), the dealer should have an option to post the prospectus on its own platform or that of a third

[11] For example, as an alternative to the issuer's website, an acceptable digital platform for issuer deliveries could include social media or a block chain platform. For deliveries by dealers, an enhanced broker internet platform may be appropriate.

party. It is critical that this remain flexible, not only to accommodate future technologies but also to allow for alternative platforms in the event the chosen technology fails at the time a delivery is required.

(b) Should we require all issuers to have a website on which the issuer could post documents?

No. The requirement that documents be posted on an issuer's website (notwithstanding the same document is posted on SEDAR) introduces yet another action that is unnecessary to meet the objective of delivery through an access model.

As the one and only mandated repository for the public filing of documents under Canadian securities legislation, SEDAR should be the only place that an investor must look to access a prospectus or any other filed document that is to be delivered to investors. Mandating one, common source for these documents – that is administered under the supervision of CSA members – ensures a consistent user experience that meets a minimum standard for accessibility. Unlike issuer websites, which can vary as to where and how investor information is accessed, investors access information on SEDAR the same way for each reporting issuer. We submit it is better to have a single, well maintained website that investors may access, as it will be easier for investors and any issues with access will be well-known to the market (as opposed to a failure of an issuer's website).

While issuers and dealers should have the option to also post these documents on other digital platforms, it is unclear what is gained by requiring a separate platform for accessing these documents.[12] In our view, this additional posting requirement simply introduces another hoop to jump through for delivery. At best, it is redundant with the SEDAR filing (from an investor perspective) and an annoyance (from an issuer/dealer perspective). However, it has the potential to meaningfully delay delivery. It is possible that the issuer (or dealer, as applicable) will be unable to satisfy this superfluous requirement due to their website (or other platform) being unavailable due to issues outside of their control.[13] Even without any such systems issues, there will be delay as issuers/dealers will need to coordinate the separate posting after filing on SEDAR[14].

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[12] If this due to an issue stemming from the current functionality of SEDAR, then those issues should be addressed as part of the initiative to upgrade to SEDAR.

[13] For many issuers, website management is not conducted in-house. Also, regardless of who manages an issuer's website, the availability of an issuer's website may be disrupted by virtue of a failure of the issuer's internet service provider, or other third party service providers necessary for the operation of the website, or other events outside of an issuer's control.

[14] Internal, administrative delays at the relevant securities commission in making the filed SEDAR document public could further delay this separate posting as issuers and dealers.

7. Under an access equals delivery model, an issuer would issue and file a news release indicating that the document is available electronically and that a paper copy can be obtained upon request.

(a) Is a news release sufficient to alert investors that a document is available?

Yes, in our view a news release is sufficient to alert investors that a document is available. A news release clearly works from an investor engagement perspective as it is currently the sole mode under Canadian securities laws by which material information can be broadly disseminated (for material changes, etc.). As noted above, investors now don't even need to monitor news releases on an issuer's website or SEDAR, as there are many services available to set up automatic notification of news regarding particular issuers. We note, however, that a news release goes beyond the coverage necessary to adequately notify investors of the filing of a prospectus or financial statements and MD&A. For a final prospectus document, the only persons who need to be notified are persons that participate in the public offering, and for financial statements and MD&A, the only persons who need to be notified are the shareholders of the issuer. In both cases, the coverage of a news release is over broad and, accordingly, we would urge the CSA not to foreclose on alternative methods of notification that are sufficient to encompass these groups. In our view, it should be open to the issuer or dealers to use any disclosure outlet reasonably designed to give notice as to the availability of the relevant document to all the persons to whom delivery of that document is to be made. They should not be limited to providing this notice through the issuance of a news release. Again, given the significant benefits to swift adoption of an "access equals delivery" model, we suggest that, if necessary, an expansion of the available modes of delivery is a matter that could be delayed to a subsequent round of rulemaking that expands on the scope of the initially implemented rule. In the interim, for the initial implementation of the access model, a safe-harbour approach could be used to provide issuers and dealers comfort that a news release would constitute sufficient notification in all circumstances.

Further, as noted in our response to question #4, in the context of a prospectus offering, no news release or other notice should be required for preliminary prospectus documents.

(b) What particular information should be included in the news release?

The news release announcing the filing of the final prospectus document or the financial statements and MD&A, as the case may be, should state that the relevant document has been filed, and can be obtained, on SEDAR under the issuer's profile.[15] To the extent that the final "notice equals access" regime includes provisions for requesting delivery of a paper copy of the relevant prospectus document, a statement to that effect should be included. We do not see a need for such a news release to include other information (such as a repetition of the statutory rights of withdrawal, damages or rescission that

[15] Consideration should be given to whether this may provide a link to the SEDAR home page. If, in the updated version of SEDAR currently being developed, it will be possible to create a permanent link to the issuer's SEDAR landing page, the CSA could consider including a link to that page. A link to the actual document that is filed on SEDAR should not be necessary for these purposes and may lead to issues ensuring that the appropriate link is included in the news release

are already included in a prospectus). While not mandated, issuers should be able to include additional information in any such news release.

8. Do you have any other suggested changes to or comments on the access equals delivery model described above? Are there any aspects of this model that are impractical or misaligned with current market practices?

Further consideration and clarity is necessary with respect to any obligation to deliver a paper copy where using this access model to deliver a prospectus. Among other things:

- As noted in our response to question #4, consideration should be given as to whether the option to receive a paper copy of a preliminary prospectus document is of any value to investors.
- Consideration should be given as to who is best positioned to deliver the paper copy of a prospectus to an investor. The Consultation Paper assumes a paper copy of the prospectus would be requested from the issuer but this may not make sense in most or all cases.[16] It may be that the purchaser's own broker is best positioned for this delivery, or it may be appropriate to leave it open as to who will make the delivery.
- We suggest that investors be given the option to request either an electronic copy or a paper copy (in contrast with the Consultation Paper, which refers only to a paper copy option).
- The option to request a copy of the relevant document should be limited to the applicable investor (*i.e.*, in the context of a final prospectus delivery, purchasers in the offering).

Further, we assume that delivery of any requested paper copy of a prospectus would be an obligation separate from, and not a pre-condition to satisfying, the prospectus delivery obligation under securities legislation. Accordingly, the time at which any requested paper copy is delivered or received would not factor into the time at which the prospectus is deemed delivered (under applicable prospectus delivery requirements) or received (for purposes of the statutory right of withdrawal).[17] We trust that ample time would be afforded for sending any requested paper copy such that issuers would not be required to print commercial copies in advance of any such request, as all or substantially all of these printed

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[16] It is also inconsistent with certain current securities legislation addressing from whom a copy of the prospectus should be requested. For example, the legend for a standard term sheet requires contact information for a registered dealer or underwriter.

[17] It would defeat the purpose of an access model if the time of delivery or receipt was a function of when a requested paper copy is delivered by mail. Moreover, it would give rise to significantly different withdrawal rights periods for those who request a paper copy, so much so that it may provide an incentive for certain investors to request physical delivery (when they otherwise wouldn't) merely to artificially extend their withdrawal right.

With the implementation of access equals delivery, we have also assumed that dealers will no longer be obligated to keep a "distribution list" of persons to whom a prospectus has been forwarded as substantially all (if not all investors) will have received the prospectus by way of access. In our view, it would be unnecessary to maintain a list solely for the purpose of memorializing persons that have requested a paper copy.

copies would ultimately not be used and this would defeat the intended efficiencies of this burden reduction initiative.

Certain other changes may be appropriate in crafting the specific requirements for delivery by way of access to ensure they do not impose unnecessary burden. For example, in the context of prospectus delivery, the issuance of the news release should be more than sufficient given its purpose is to provide notice of the availability of the prospectus. In our view, requiring that this news release also be filed on SEDAR and posted on the issuer's website (or any other digital platform) adds no incremental value from a notice perspective. As such, it is just a burden. Additionally, as noted in our response to question #7, issuers or dealers, as applicable, should ultimately be afforded the option to notify the relevant investors of the availability of a document by alternative means. They should not be limited to providing this notice through the issuance of a news release.

Certain technical clarifications will also be appropriate. For example, it should be clear that meeting the access conditions will satisfy the delivery obligation of a dealer or any other applicable person, not just the obligations of the issuer.[18] Further, where the delivery obligation is of the dealer, not the issuer, clarifications or changes may be appropriate so it is clear that the dealer may satisfy the access conditions on behalf of, or independently from, the issuer. For example, clarifying that any necessary news release or alternative notice may be issued directly by the dealer and modifying any conditions that specifically require the issuer to take the relevant action. Finally, changes will be necessary, in related provisions of securities legislation and in the SEDAR filing manual, to address the use of SEDAR filing as a trigger for deemed delivery.[19] Changes may also be appropriate to otherwise enhance investors' experience with electronic access.[20]

Requiring the issuance of multiple news releases with respect to the availability of the prospectus for an offering is out of step with current market practice. News releases are issued to disclose material news. In the absence of any corresponding material news, a news release can be disruptive. Our response to question #4 identifies a number of ways to minimize this disruption without impairing the objective of the news release, including removing this notice requirement for the delivery of a preliminary prospectus documents and allowing for this requirement to be satisfied through a forward-looking news release

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18 The Consultation Paper currently refers only to documents that issuers are required to deliver to investors. However, prospectus delivery is typically a dealer obligation.

19 For example, for purposes of establishing the date on which an investor received the prospectus and that investor's associated withdrawal right period, NI 13-101 should be modified to clarify that the 5:00pm local time cut-off in 2.7(3) does not apply. An investor should be deemed to have received the prospectus on the date it is filed, provided that is filed before the 11:00pm cut-off for SEDAR filings and the other "access equals delivery" conditions are met before midnight on that day. Requiring filing by 5:00pm is impractical for offerings pricing in the afternoon. There is no principled basis for delaying closing of any such offering by an additional day (to afford time to allow the withdrawal right period to expire before closing) merely because the relevant prospectus (or supplement) was filed between 5:00 and 11:00pm, and not at 4:59pm.

20 For example, modifications to the SEDAR filing manual to allow for hyperlinks in news releases or marketing materials that link to an issuer's landing page on SEDAR so that the investor can quickly click through to obtain a copy of the prospectus or other document that is deemed to be delivered under the access model.

(indicating that a prospectus “will” be available). Allowing for an alternative form of notice, that is more directed than a news release (as suggested above), should also mitigate this issue.

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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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FAIR | Canadian Foundation *for* Advancement *of* Investor Rights

March 9, 2020

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: CSA Consultation Paper 51-405 – Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers ("Consultation Paper")

Background

Canadian Foundation for Advancement of Investor Rights **(FAIR Canada)** is pleased to have the opportunity to provide our views on the Consultation Paper. FAIR Canada is a national, charitable organization dedicated to putting investors first. As a voice for Canadian investors, FAIR Canada is committed to advocating for stronger investor protection in securities regulation. It is from an investor protection viewpoint that we arrive at our public policy suggestions and feedback. Visit www.faircanada.ca for more information.

Summary

The internet has had a significant impact on the way that people communicate and do business. We support innovation and believe that burden reduction can be achieved without investor protection being compromised. We also support innovations that can improve investor engagement. Although electronic access has potential benefits, we believe that there are weaknesses in the current consultation that could undermine investor rights.

The Consultation Paper describes delivery to mean document filing on SEDAR, posting on the issuer website and issuance of a news release. We do not believe that the foregoing is sufficient to protect and engage investors, and in particular retail investors and individual shareholders, absent additional measures. We encourage the CSA to explore alternative models. FAIR Canada would be supportive of an "electronic delivery equals delivery" regime for most documents and paper delivery for proxy-related documents. We encourage the CSA to examine the potential for an electronic delivery regime and to determine whether any legislative amendments or instrument amendments would be required.

General Comments

Full disclosure of information material to investment decisions is a core component of the securities regulatory regime and a core safeguard of investor protection, particularly with respect to non-investment fund reporting issuers (referred to herein as "listed companies"). We believe that reducing regulatory burden, innovation and environmental considerations are desirable goals which can be accomplished without undermining investor protection concerns.

In our submission to the Ontario Securities Commission dated September 13, 2019, in response to OSC Staff Notice 11-784 Burden Reduction, we commented that FAIR Canada is supportive of a shift to electronic delivery as a default option provided that certain conditions are met. In respect of the current consultation related to listed companies, it would be appropriate to put in place certain additional measures in order to benefit from a reduction of regulatory burden, while also ensuring a high level of investor protection. The additional measures that we recommend are based on the following principles: (1) meaningful notice; (2) preservation of choice and paper communications optionality; (3) ease of access; and (4) paper communications for documents that require a decision.

Specific Comments on Consultation Questions

1. **Do you think it is appropriate to introduce an access equals delivery model into the Canadian market? Please explain why or why not.**

The internet, as a platform, has changed the way that people communicate, access information and do business. Canada is a very active participant in that global trend. An access equals delivery model (EDGAR filing equals delivery) for final prospectuses, and for small public offerings that are exempted from registration requirements (Regulation A offerings), is in place in the United States, as set out in Annex A to the Consultation Paper.

The investor experience in Canada is distinguishable from the investor experience with regulatory document access in the United States. EDGAR offers a notably different user experience compared to SEDAR (pending completion of the SEDAR system overhaul). For example, EDGAR enables product type searches and full text searches. We believe that modifications to the American model would be needed prior to adoption in Canada. It is our view that the following should be pre-conditions to an access equals delivery model:

- paper communications as an option should be retained;
- press releases should not be the exclusive source of notice and should supplemented by email notification to investors;
- documents which are publicly available on SEDAR should be required to be delivered as email attachments (an electronic delivery regime);
- issuers should be required to post regulatory disclosure documents on their website;
- location of regulatory documents on issuer websites should be easy to navigate and prominently located, with prescribed location requirements or guidance to ensure that their internet location is not obscure;
- access equals delivery should not include time-sensitive documents that require an investor decision;
- notifications and press releases should include a phone number for investors to call who wish to obtain a hard copy of the relevant document (at no expense to the shareholder);
- notifications and information/instructions for navigating portals and websites should be written in plain language; and
- notifications to investors should name or describe the document instead of generic references (for example generic references to “a document”).

2. **In your view, what are the potential benefits or limitations of an access equals delivery model into the Canadian market? Please explain.**

Potential benefits of an access equals delivery model for the Canadian market:

- cost reduction;
- speed of delivery;
- flexibility in viewing, portability, storage and tracking;
- increased capacity and efficiencies to introduce additional helpful content and educational tools (e.g. calculators, videos, graphics);
- efficiencies in data analysis and repackaging potential by third parties;
- increased choice to meet individual preferences; and
- environmental.

Potential limitations of an access equals delivery model include:

- lower readership and engagement by investors who prefer paper copies, or because emails can more easily get not noticed or forgotten;
- lower readership by investors cautious about cybersecurity concerns and wary of email hyperlinks, in a regime that employs access through email notification;

- lower readership of important and time-sensitive documents if notifications to investors are generic and fail to provide sufficient detail regarding the nature of the document and any deadlines;
- increase in investor complaints if they are not made adequately aware of time-sensitive decision-making and if decision deadlines lapse;
- scrolling on a screen may be associated with and may lead to more cursory review;
- challenges in locating disclosure documents on difficult to navigate issuer websites;
- challenges in navigating SEDAR for unsophisticated retail investors until the SEDAR overhaul is finalized; and
- readability on phones by investors who primarily, or exclusively, access the internet through smart phones.

3. Do you agree that the CSA should prioritize a policy initiative focusing on implementing an access equals delivery model for prospectuses and financial statements and related MD&As?

In order to respond to this question, we encourage the CSA to share more data and context, such as data regarding the number of retail investors who directly invest in reporting issuers, any cost-benefit calculations associated with this initiative and any information that may be available regarding the opportunity cost of prioritizing this initiative (i.e. information on alternative initiatives that would otherwise be prioritized if this initiative was not).

4. If you agree that an access equals delivery model should be implemented for prospectuses:
a. Should it be the same model for all types of prospectuses (i.e. long-form, short-form, preliminary, final, etc.)?

b. How should we calculate an investor's withdrawal right period? Should it be calculated from (i) the date on which the issuer issues and files a news release indicating that the final prospectus is available electronically, (ii) the date on which the investor purchases the securities, or (iii) another date? Please explain.

c. Should a news release be required for both the preliminary prospectus and the final prospectus, or is only one news release for an offering appropriate?

We propose electronic delivery, rather than access equals delivery, and we believe that electronic delivery would be appropriate for final prospectuses, financial statements and MD&As.

We encourage further exploration of the question of withdrawal rights, in consideration of the methodologies for delivery that may be explored as this initiative evolves, and such other relevant factors as policy discussions around settlement times for exchange transactions.

A news release should be required for preliminary and final prospectus documents.

5. **For which documents required to be delivered under securities legislation (other than prospectuses and financial statements and related MD&A) should an access equals delivery model be implemented? Are there any investor protection or investor engagement concerns associated with implementing an access equals delivery model for rights offering circulars, proxy-related materials, and/or take-over bid and issuer bid circulars? In your view, would this model require significant changes to the proxy voting infrastructure (e.g. operational processes surrounding solicitation and submission of voting instructions)? Please explain.**

FAIR Canada does not support the inclusion of time-sensitive documents requiring shareholder participation, such as take-over bid, issuer bid and rights offering circulars in the context of an access equals delivery regime. Shareholders who prefer paper communications could suffer delays in determining how to access documents and waiting for paper copies. It is also easier to lose or not notice email communications than paper communications. The precaution of paper communications as the default system should be retained for important documents that require investor decision-making.

6. Under an access equals delivery model, an issuer would be considered to have effected delivery once the document has been filed on SEDAR and posted on the issuer's website.

a. Should we refer to "website" or a more technologically neutral concept (e.g. digital platform) to allow market participants to use other technologies? Please explain.

Given the speed of evolution of today's technological landscape, and the possibility of innovation in digital platforms potentially presenting in the future better options than issuer websites, we support the use of technologically neutral terms provided that certain precautionary measures are put in place first. We believe that the following should be required of a more neutral platform requirement and associated language:

- broadly available to and simple to navigate by the average retail investor;
- plain language navigation;
- centralized to avoid fragmentation amongst numerous platforms;
- notification of digital location;
- internet and mobile device accessibility and readability; and
- free to access.

b. Should we require all issuers to have a website on which the issuer could post documents?

Issuers should be required to maintain a website and to post its regulatory disclosure documents on its website. Regulatory documents posted on issuers' website should be required to be posted in a way that is easy to locate, easy to navigate and not obscure.

7. Under an access equals delivery model, an issuer would issue and file a news release indicating that the document is available electronically and that a paper copy can be obtained upon request.

a. Is a news release sufficient to alert investors that a document is available?

FAIR Canada proposes email notification to investors in addition to news release dissemination. Press release communications cater to institutional rather than retail investors or individual shareholders. Press releases are not the method by which the average retail investor normally accesses investment information.

b. What particular information should be included in the news release?

News releases should contain a description or name of the document, a hyperlink to the document's location, any relevant deadlines and, if relevant, withdrawal rights information and deadlines.

8. Do you have any other suggested changes to or comments on the access equals delivery model described above? Are there any aspects of this model that are impractical or misaligned with current market practices?

In addition to our other comments, a transition plan for moving to electronic delivery as a default needs to be developed, which should ensure that instructions are obtained from each investor.

In summary, we believe that electronic delivery offers potential benefits to investors, including speed, and efficiencies in viewing, analyzing, repackaging, storage and tracking. However, we distinguish electronic delivery from electronic access. We encourage CSA exploration of the former option, as well as any legislative or national instrument amendments that may be required, in order to achieve efficiency objectives without compromising disclosure, investor engagement and investor rights.

We thank you for the opportunity to provide our comments and views in this submission and we would be pleased to discuss this letter with you at your convenience.

Sincerely,

(Signed) *Canadian Foundation for Advancement of Investor Rights*

Canadian Foundation for Advancement of Investor Rights

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March 4, 2020

BY E-MAIL

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 Consumers 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
(the "**CSA**")

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Dear Mesdames/Sirs:

Re: CSA Consultation Paper 51-405 - Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers

[1] Thank you for providing us with the opportunity to comment on the proposal described in CSA Consultation Paper 51-405 - Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers dated January 9, 2020 (the "**Consultation Paper**").

[2] Our comments below address some, but not necessarily all, of the potential regulatory issues derived from the proposal outlined in the Consultation Paper and respond to most of the questions outlined in section 4 thereof. Given the general nature of the Consultation Paper, our comments are mostly at a high level, and consequently incomplete as to details. We will be in a position to provide more specific and comprehensive feedback as details are provided for the regulatory proposals that may follow the Consultation Paper. When appropriate, we have used terms as defined in NI 51-102 and NI 54-101 (as defined below).

[3] In formulating our comments, we have when appropriate attempted to focus on the implications of the proposed access equals delivery securities regulatory framework from the perspective of the ultimate individual or retail investor. We believe that some of these implications may be less critical for institutional and professional investors or other professional market participants given the interactions that already exist among them.

[4] The comments provided herein are submitted without prejudice to any position that may in the future be taken by our firm on its own behalf or on behalf of any client.

[5] Our comments reflect, when relevant, our professional experience in advising issuers and investment bankers in connection with numerous capital markets transactions. Prior to submitting this letter, we also discussed with some industry participants. Though the comments in this letter are ours alone, we have taken into consideration the feedback we received from those with whom we discussed the matter.

1. Summary of our most significant comments

[6] Here is a summary of our most significant comments:

(a) we generally support the view that an access equals delivery securities regulatory framework for prospectuses, financial statements and related MD&A's is appropriate, pursuant to the terms proposed in the Consultation Paper. We also generally support the view that applying such framework to proxy-related materials may not be appropriate for the reasons outlined in the Consultation Paper (see paragraphs [39] and [54]);

(b) we encourage CSA not to hesitate in taking leadership with legislators and governments in identifying legislative amendments that might be required to fully implement an access equals delivery securities regulatory framework in the manner we describe in our comments below, particularly under certain corporate and other provincial legislations dealing more generally with electronic communications and e-commerce, when necessary. We fully acknowledge that CSA is not in a position to implement amendments to such legislations, if required (see paragraph [65]);

(c) CSA should articulate the key general principles to be relied upon in the drafting, interpretation and implementation of securities regulatory requirements governing communications, delivery (or access) through electronic infrastructures or other

means or digital platforms directed to investors. In addition, issuers should be clearly entitled to rely on electronic infrastructures as the preferred infrastructure for making accessible or delivering all their disclosure documents and in fulfilling all of their other disclosure obligations, while preserving the ability of individuals that so choose to select paper, and the Canadian postal system (see paragraphs [12] and [15]);

(d) a successful implementation of an access equals delivery securities regulatory framework would require clarifying in a national instrument the requirements regarding consent to electronic delivery of (or access to) disclosure documents, and the terms and conditions pursuant to which consent may be provided. These clarifications would also improve the current challenges faced by issuers, underwriters and dealers in delivering prospectuses in connection with securities offerings, and similarly ease some of the operational challenges associated with the use and reliance of notice-and-access. A number of changes to notice-and-access would also be required (see paragraphs [28], [38] and [57]);

(e) the consent provided by an individual or retail investor should apply to all issuers whose securities have been purchased by him or on his behalf, and be "portable", or effective, throughout the chain of intermediaries involved in the delivery of (or access to) disclosure documents to that investor as intended ultimate recipient. A generic description of disclosure documents is sufficient and appropriate (see paragraphs [29] and [31]);

(f) an individual or retail investor who agrees to provide an e-mail address or cellular phone number (or who select another acceptable electronic infrastructure) to an issuer or an intermediary holding securities on his behalf should be deemed to consent to the use of such electronic infrastructure (see paragraph [32]);

(g) SEDAR should be designated as the preferred electronic infrastructure to be relied upon by market participants and investors in Canada, although not exclusively (see paragraph [59]);

(h) the two-days rescission right which may be exercised upon delivery by a dealer of a prospectus should be repealed (see paragraph [43]);

(i) investment funds should benefit from the changes that may result from the Consultation Paper, particularly as to consent and notification (see paragraph [68]).

2. Identifying guiding principles governing communications, delivery and access through electronic infrastructures or other digital platforms

[7] The securities regulatory regime in Canada governing communications between issuers, their securityholders and various market participants or other service providers is particularly complex. CSA Consultation Paper 54-401 - Review of the Proxy Voting Infrastructure, dated

August 15, 2013 ("**Paper 54-401**"), illustrates some of this complexity, particularly in connection with the delivery of proxy-related materials. Such delivery involves multiple layers of actors carrying out various functions, different forms of securities ownership, different options for the exercise of voting rights through several different systems and databases, in addition to multiple forms of business organizations governed by various legislations that provide for different information rights, communication or delivery regimes, and regulatory oversight when the issuers are so regulated, like financial institutions. Some of the reasons underlying such complexity are outlined in Paper 54-401, and we submit that they are relevant in considering the proposed access equals delivery securities regulatory framework outlined in the Consultation Paper.

[8] We note that Paper 54-401 states that delivering the appropriate material to intermediaries and soliciting voting instructions is one of the functions encompassed in the proxy voting infrastructure in Canada.

[9] It is generally acknowledged that a significant number of securities issued by reporting issuers are held in what Paper 54-401 describes as the intermediated holding system. In addition, we note, when combining publicly available data from the Government of Canada and from CSA Multilateral Staff Notice 58-311, that a large number of non-venture and non-investment funds reporting issuers are governed by the *Canada Business Corporations Act* ("**CBCA**"). The CBCA primarily provides for mail delivery of financial statements and proxy-related materials in paper format, which is not the case for corporations governed by some provincial statutes, like in Québec. Amendments to relax these CBCA requirements, notably through notice-and-access, have been adopted but are not yet in force. Current CBCA requirements provide issuers with the right to be relieved from such delivery requirements in reliance on notice-and-access, but only a fraction of them, to our knowledge, avail themselves of this option, which need to be renewed yearly. CBCA requirements also allow for delivery of electronic documents (as defined) when written consent and the designation of an information system (as defined) for their receipt have been obtained from the addressee.

[10] Voting rights, information rights like financial statements and participation to a takeover bid are generally legally cast in respect of registered holders only. CSA have for a long time attempted to bridge the "information gap" between registered and non-registered holders, particularly from the perspective of individual or retail investors. The adoption of *National Instrument 54-101* ("**NI 54-101**") and its predecessor in the mid '80 is an illustration of such an initiative in connection with shareholders' meetings and the exercise of voting rights thereat. CSA efforts and initiatives regarding the proxy voting infrastructure have generally focussed on the proper exercise of voting rights and vote reconciliation under NI 54-101 (information rights were excluded from the discussion in Paper 54-401). We however note that CSA expressed its interest in electronic delivery as early as 1997.

[11] Communications between issuers and investors in general, which include disclosure requirements and delivery of securityholder materials and prospectuses, other than proxy-related materials, are governed by different provisions found in securities legislations and other securities regulatory requirements.

[12] In light of the above, we submit that the focus of the Consultation Paper, reliance on electronic access for selected disclosure documents, should be broader than as currently contemplated. We submit that CSA should consider articulating the key general principles to be relied upon in the drafting, interpretation and implementation of securities regulatory requirements governing communications, delivery (or access) through electronic infrastructures or other means or digital platforms ("**electronic infrastructures**") directed to investors and issuers' securityholders, or on their behalf, and fulfillment of other issuers disclosure requirements.

[13] We submit that there are inherent merits in formulating a general principles framework, as this will likely minimize inconsistencies between securities requirements and other corporate or legislative ones when determining if, when and how reliance on electronic infrastructures is allowed, or not, and under what circumstances, including those currently contemplated under NI 54-101. We further submit that this may constitute an occasion for CSA to provide direction for reducing the use of paper documents primarily by issuers or on their behalf, and promoting a paperless environment associated with compliance with current communication and delivery securities regulatory requirements. We acknowledge that implementing securities regulatory requirements reflecting such principles may be achieved through successive phases, and support the proposal that prospectuses, financial statements and related MD&A's comprise the initial phase of such implementation.

[14] In our view, it would be appropriate and relevant for CSA to:

(a) establish the principles to facilitate how to determine consent by individual or retail investors to agree to communications, delivery or access through electronic infrastructures, irrespective of how the securities are held by such investors, and in particular when securities are held through several intermediaries on their behalf;

(b) establish the principles pursuant to which notification to individual or retail investors that securityholder materials and other disclosure documents are available should be made, in which situations, and the format such notification should take, and select the situations where the protection of individual or retail investors reasonably warrants notification to be made, together with those where notification would be unwarranted;

(c) implement alignment between manners to obtain consent to communications through electronic infrastructures and the various notifications sent or requested from individual or retail investors under current securities regulatory requirements applicable to the delivery of securityholder materials and other disclosure documents;

(d) ensure that securities regulatory requirements are technologically neutral, and allow issuers and individual or retail investors to take advantage of the electronic infrastructure that is the most relevant for their needs; and

(e) consider requesting exchanges, other marketplaces and relevant SROs to review their current policies and rules on this topic to ensure coordinated implementation.

3. Facilitating reliance on electronic infrastructures

[15] We are of the view, mostly for the reasons outlined in the Consultation Paper, that issuers (the term used in *National Policy 11-201* ("**NP 11-201**") is "deliverer") be clearly entitled to rely on electronic infrastructures as the preferred infrastructure for making accessible or delivering securityholder materials and other disclosure documents to their securityholders (NP 11-201 describes the person receiving such documents as "recipient", or "intended recipient") and in fulfilling all of their other disclosure obligations under applicable securities regulatory requirements, while preserving the ability of intended recipients that so choose to select paper, and the Canadian postal system, when securityholder materials and other disclosure documents are to be delivered to them.

[16] When modern securities legislations were enacted in Ontario in the late '70, and early '80 for Québec, the infrastructure available to issuers to disseminate and deliver securityholder materials and other disclosure documents was essentially the Canadian postal system. Private courier services were also available, and often used to communicate with CSA, but much less with investors. Material news were (and still are) disseminated by press releases through wire services, and sometimes reproduced in whole or in part in newspapers. There was no discussion as to direct access by investors, as there was no real option that could allow such access in a cost-effective manner.

[17] The same is true for corporate legislations adopted at of before that time.

[18] We submit that the situation today allows for more flexibility in the selection of and reliance on communication infrastructures for purposes of accessibility and delivery of securityholder materials and other disclosure documents to investors. In fact, and as indicated above in paragraph [15], electronic infrastructures should become the preferred ones.

[19] We further note that SEDAR has played a significant role in widening access by investors and the general public to securityholder materials and other disclosure documents. We further submit that fulfilment of other disclosure requirements by issuers should benefit from such flexibility.

[20] With the technology that has been available for many years, Canadian investors now conduct their research online and expect to find relevant information and documentation at websites rather than receive hard copies of such documentation in the mail. Likewise, Canadian investors today typically have a multitude of personal online accounts relating to such diverse needs as financial services, consumer spending and social media.

4. **Consent to delivery through electronic infrastructures**

Consent is to be obtained under current requirements

[21] One of the key impediments to the use of electronic communication tools:

(a) by issuers, underwriters and dealers during the course of a public offering; and

(b) by issuers or other intermediaries acting on behalf, or to the benefit, of individual or retail investors as recipient or intended recipient;

is the need to obtain the express consent from the intended recipient to use such tools, the specificity of such consent, including the identification of the documents covered by the consent, and its length of time We note the CSA view contained in NP 11-201, and reproduced in the Consultation Paper, that failure by an issuer (a "deliverer" under NP 11-201) to obtain such consent "may make it more difficult to demonstrate that the investor [or intended recipient] had notice of, and access to, the document, and that the investor actually received the document". This CSA view is to be read in conjunction with section 5(5) of *Companion Policy 54-101CP* ("**CP 54-101**"), which states that the guidelines set out in NP 11-201 are applicable to documents sent under NI 54-101, and particularly the suggestion that consent be obtained to an electronic transmission of a document. In addition, Form 54-101-*"Explanation to Clients And Client Response Form"*, specifically states, under the heading "Electronic Delivery of Documents", that "[s]ecurities law permits us [the intermediary] to deliver some documents by electronic means if the consent of the recipient to the means of delivery has been obtained". Even though the Consultation Paper state that securities legislation does not require express consent to be obtained, we submit that the above statements are akin to a requirement to obtain express consent prior to electronically delivering a document.

[22] As we indicated above in paragraph [9], CBCA requirements currently allow for delivery of electronic documents (as defined) when written consent and the designation of an information system (as defined) for their receipt have been obtained from the addressee. We note that under these requirements, the consent of the addressee would likely be required under an access means delivery securities regulatory framework as the addressee need to indicate the information system (as defined) where the electronic document is to be received.

[23] As other commentators that carry significant capital market legal practices have noted in response to previous consultations, our experience reveals that issuers, their underwriters, other dealers and their respective representatives involved in the distribution of a prospectus offering want to be able to deliver, or provide access to, prospectuses and associated marketing materials electronically, either by e-mail or through another acceptable electronic infrastructure. The need to have obtained prior express (or implied when allowed) consent to such electronic delivery (or access to) makes it often difficult for them to do so. This difficulty is further amplified by current legislation governing electronic communications, particularly that known as Canada's Anti-Spam Legislation, in situations where it is applicable and where exemptions are not readily available.

Consent and delivery instructions for securityholder materials

[24] Challenges associated with the need to obtain prior consent to electronic delivery are further amplified by the complex requirements found in NI 54-101 and *National Instrument 51-102* ("**NI 51-102**"), like for example those providing for the delivery instructions of securityholder materials to registered holders and intermediaries holding securities on behalf of others. In this situation, registered holders and intermediaries will only receive financial statements and related MD&A's if they so request in response to the yearly request form sent to them by the issuer (see section 4.6 of NI 51-102), subject to corporate law requirements if any. Section 3.5 of *Companion Policy 51-102CP* ("**CP 51-102**") clearly states that financial statements and related MD&A's need only be sent to the persons that request them, and add that when the response request is being received from an intermediary, the issuer is only required to deliver to the intermediary. Failure to respond will override standing instructions for the delivery of paper financial statements under NI 54-101.

[25] Under the provisions of notice-and-access, and particularly Form 54-101F1, a beneficial owner is entitled to decline receiving financial statements that are not part of proxy-related materials, among others. The form goes on to state that the beneficial owner has to confirm his choice of receiving or not securityholder materials.

[26] We note that manners to obtain and collect consent to electronic delivery in connection with proxy-related materials vary significantly. Sometimes, consent is integrated to the yearly request form referred to above, which may itself be part of the proxy form. In other situations, the security holder is invited to register through a digital platform maintained by a transfer agent, or another service provider, or is provided with a specific form to be filled to so register.

[27] We further understand that reliance by a significant number of issuers and the vast majority of intermediaries on third parties to carry out the distribution or mailing of proxy-related materials add to the complexity in the application of these provisions. In this regard, we have anecdotal evidence that in practice, proxy-related materials are mailed and made available in paper to intermediaries in the vast majority of cases, even when notice-and-access is relied upon, and that communications via e-mail or other electronic infrastructures are not frequent.

Terms and conditions for consent to electronic infrastructure for all documents

[28] In light of the above, and in particular the CBCA requirements, we submit that CSA should contemplate providing in a national instrument the terms and conditions pursuant to which consent may be provided by an intended recipient for all circumstances where securityholder materials and other disclosure documents are required to be delivered (or access provided) to such intended recipient (and particularly when such recipient is an individual or retail investor), including the manner and infrastructure that may be used for transmitting and obtaining such consent, from whom (beneficial owner, registered holder, intermediary, client, proximate intermediary, third party retained for distribution tasks), the type of securityholder materials and other disclosure documents required under securities regulatory requirements to be delivered to the intended recipient, the effective length of time of such consent, and other

relevant aspects. At the same time, requirements for the delivery of (or access to) securityholder materials and other disclosure documents should to the extent possible be streamlined, and aligned as to the options to receive, or not, these documents through electronic infrastructures as the preferred option.

Documents identified in the consent

[29] Regarding the type of securityholder materials and other disclosure documents identified in the consent, we submit that a generic description of such documents adequately fulfils the regulatory objective underlying the obtaining of consent for their delivery (or access) through electronic infrastructures, and is consequently sufficient and appropriate. Securities regulatory requirements, and in some cases corporate legislations, identify as a matter of law the documents to which an investor, as an intended recipient, is entitled further to, or in connection with, the purchase of securities of an issuer. Issuers whose constating documents are contractual in nature, like income trusts or limited partnerships, are generally subject to similar obligations to the benefit of their securityholders. In all cases, the type of documents is specific (for example, annual and interim financial statements, prospectuses, information circular for shareholders' meeting, takeover bid circular and directors' circular in connection with a takeover or issuer bid), and the list thereof relatively short. We submit that since the type of such documents is already identified, and that their delivery is mandatory, requesting a consent specific to a particular document of a particular date, or for a particular event (like a prospectus for a given offering, a financial statement for a given period, or an information circular for a given securityholders' meeting) is unwarranted.

[30] As indicated above in paragraph [10], voting rights, information rights like financial statements and participation to a takeover bid, are generally legally cast in respect of registered holders. The adoption of NI 54-101 attempted to bridge this "information gap" in connection with securityholders' meetings and the exercise of voting rights thereat. However, we submit that in all of the above situations, it is the ultimate individual or retail investor that the regulatory requirements attempt to protect, and more particularly seek to provide with the necessary information allowing him to take an informed investment decision in relation to his securities ownership. As we have indicated above in paragraph [19], we note that SEDAR has played a significant role in widening access by all investors and the general public to securityholder materials, prospectuses and other documents prescribed under securities regulatory requirements. In other words, delivery no longer equates access, and we submit that securities regulatory requirements (and corporate ones when applicable) should acknowledge this reality.

[31] We would further suggest, in light of the above, and as some other commentators have done in previous consultations, that the consent provided by an individual or retail investor need not be specific to a particular issuer, but apply to all issuers whose securities have been purchased by him or on his behalf, and that the consent provided by an individual or retail investor be "portable", or effective throughout the chain of intermediaries involved in the delivery of (or access to) securityholder materials and other disclosure documents to that investor as intended ultimate recipient. We submit that implementing such "portability" is appropriate, given the prominence of the current intermediated holding system in Canada and the current

methods to obtain and collect consent to electronic communications in connection with proxy-related materials.

The form of consent

[32] Regarding the form of consent, CSA could for example state that an individual or retail investor who agrees to provide an e-mail address or cellular phone number (or who select another acceptable electronic infrastructure) to a deliverer that is an issuer (when the individual or retail investor is registered) or an intermediary holding securities on his behalf, is deemed to consent to the use of such electronic infrastructure. We would further suggest, as indicated above, that such consent bind all intermediaries involved in the distribution of securityholder materials and other disclosure documents to this individual or retail investor, unless such person request paper delivery. This is what we described above as consent "portability". Reliance upon such number or e-mail address would be valid until replaced or until the recipient otherwise notify the deliverer. We submit that providing an e-mail address or cellular phone number, or selecting another acceptable electronic infrastructure, is in principle similar to providing a mailing address for purposes of paper delivery by mail. We note that under the *Canada Post Corporation Act*, leaving mail at the place of residence or business of the addressee thereof, depositing mail in a post office box or other device provided for the receipt of mail to the addressee thereof, and leaving mail with an agent or other person who may reasonably be considered to be authorized to receive mail by the addressee thereof are deemed to be delivered to the addressee.

[33] We further note that proposed amendments to Section 13.2 of *Companion Policy 31-103CP* provide that the sufficient information about a client's personal circumstances include, both for individuals and non-individuals, his address and contact information. Providing an e-mail address or cellular phone number, or selecting another acceptable electronic infrastructure, could allow such person to receive or access prospectuses through such electronic infrastructure. Although we acknowledge that this might not represent consent allowing the electronic sending of a prospectus to a person who does not have an existing relationship with a registrant, we nevertheless believe it would represent an improvement over the current situation.

[34] We also note that Form 54-101F1 sent by intermediaries to their clients allows clients to provide their e-mail address if they have one.

[35] Registered firms and their registered personnel are subject to extensive regulatory requirements under *National Instrument 31-103* and equivalent rules of the Investment Industry Regulatory Organization of Canada and the Mutual Fund Dealers Association of Canada regarding their relationships with their clients. These regulatory requirements include extensive relationship disclosure information (**"RDI"**) as well as enhanced know-your-client (**"KYC"**) obligations that will take effect under the client focused reforms. We believe that these relationships provide CSA with a means for ensuring that Canadian investors are comfortable with accessing information through electronic infrastructures generally. If CSA have any remaining concerns regarding the efficacy of making access through electronic infrastructures the preferred one, we believe those concerns could be addressed through further RDI and KYC

disclosure that explains to each client how they may locate information on electronic infrastructures relating to their personal investments.

[36] In making these suggestions, we assume that appropriate controls for integrity and data protection to which these entities, or deliverers, are subject under applicable legislation or other regulatory requirements are fully complied with.

[37] We also submit that there is no conflict between the implementation of such terms and conditions and the provisions of other provincial legislation governing e-commerce, or in Québec *An Act to establish a legal framework for information technologies.* The purpose of securities regulatory requirements providing for delivery of securityholder materials and other disclosure documents is clearly different from that animating such legislations. As we indicated above in paragraphs [10] and [30], individual or retail investors that purchased securities of an issuer are beneficiaries of information, voting and participation rights imposed on the issuer or acquirer in specific circumstances. We also submit that the exemption regime contained in the regulations under Canada's Anti-Spam Legislation would be available.

[38] We submit that the successful implementation of an access equals delivery securities regulatory framework is premised on clarifying the requirements regarding consent to electronic delivery of (or access to) securityholder materials and other disclosure documents required under applicable securities regulatory requirements, and submit that CSA have the authority to do so. Without these clarifications, it is unclear if CBCA corporations will be able to fully take advantage of such regulatory framework. In Québec, such clarifications would complement the provisions of *An Act to establish a legal framework for information technologies.* We also submit that the above proposals could in a meaningful manner improve the current challenges faced by issuers, underwriters and dealers in delivering prospectuses in connection with securities offerings, financial statements and related MD&A's. We further submit that implementing these proposals would similarly ease some of the operational challenges associated with the use of and reliance on notice-and-access for proxy-related materials. We are, however, mindful of the need to contemplate appropriate changes to some corporate legislations to fully give effect to the above.

5. When investors should be notified that a document is available

For prospectuses, financial statements and related MD&A's

[39] We submit that there is no need to notify an individual or retail investor that a prospectus has been filed or that financial statements and related MD&A's are available on SEDAR or an electronic infrastructure. Consequently, we support the view that an access equals delivery securities regulatory framework for these documents is appropriate, pursuant to the terms proposed in the Consultation Paper regarding press releases, but subject to the remarks below. We share the views of other commentators that carry significant capital market legal practices expressed in response to previous consultations when they describe the current offering dynamic in Canada associated with short-form prospectuses, and would add that there are no reasons that would warrant a different course of action for initial public offerings. We note as well that CSA

have granted a growing number of reliefs from the requirement to deliver prospectuses in connection with ATM distributions, and that the regulatory requirements governing such types of offerings are in the process of being amended to codify such practice.

[40] The proposed requirement that press releases be published reflects, in our experience, current market practices of a large number of issuers when initiating a prospectus offering and announcing their financial results. However, we submit that base shelf prospectuses would only require press releases when a supplement providing for a specific offering is filed.

[41] Filing the press releases on SEDAR is aligned with our suggestion that SEDAR be the preferred electronic infrastructure for market participants in Canada, but note that currently, only press releases announcing material changes are generally so filed. SEDAR filings may attract civil liability, and we would suggest that consideration be given to such an impact.

[42] We note, however, that changes to the *Securities Act (Québec)* (the "**Québec Act**") may be required to implement this regulatory regime, as the combined reading of sections 29 to 32 appears to request the distribution of a paper copy of the prospectus by mail for the investor to exercise the rescission right conferred to him under section 30 thereof. Consideration should be given to the possibility of granting a blanket exemption waiving such obligation during an interim period.

Repealing the two-days rescission right

[43] We suggest that CSA give consideration to repealing the two-days rescission right that currently exist under securities legislation in Canada, and which may be exercised upon delivery of a prospectus by a dealer.

[44] We have reviewed the legislative history of the introduction of the rescission right in Québec, and submit that such review provides an interesting perspective in the context of the Consultation Paper.

[45] As currently drafted, section 30 of the Québec Act was introduced in 1982, when a new Securities Act was adopted. The Québec Act came into force in 1983. At that time, the rescission right was available to the subscriber only upon failure to receive the preliminary prospectus. The reference to the preliminary prospectus was removed in 1987. The section was further amended in 2011 to add a reference to the delivery of other documents prescribed by regulation, and the delivery of an amendment thereto.

[46] Section 30 is completed by section 214, which allow the person who subscribed or acquired securities without having received the prospectus required to have been delivered to such person to seek rescission of his purchase or price revision, and claim damages. However, such damages can only be claimed from the dealer that failed to comply with section 29 requiring such dealer to deliver the prospectus to the investor.

[47] During the parliamentary debates where the Québec Act was discussed, the then Minister of Finance indicated that such rescission right was derived from similar provisions contained in

the *Consumer Protection Act (Québec)* adopted in 1971 and dealing with itinerant vendors, a defined term under the such legislation. According to the Minister, the rescission right provided the investor with a "cool off" period, or an afterthought period.

[48] The predecessor to section 30 was introduced in 1955, and was applicable in situations entirely different from those summarized above.

[49] As we indicated above in paragraph [35], we submit that registrants are today, and have been for some time, subject to strict rules governing their dealings with clients and the financial products they offer them, and are subject to extensive regulatory oversight, that are not comparable to those in place at the time the rescission right was introduced. The analogy with itinerant vendors might have been relevant at the time; we submit that it is no longer relevant by any standard.

[50] Based on our experience and anecdotal evidence derived therefrom, it is very rare that an individual or retail investor exercises the rescission right conferred by section 30. Our experience also reveals that the determination of the two-days period is at best approximate, since it is premised on a deemed reception in the ordinary course of mail. Logistical challenges of all sort make the delivery of the prospectus, and the related rescission right, cumbersome, time consuming and costly, and we would submit with little or actual benefit to the investor.

[51] We also note the following:

(a) as indicated above in paragraph [39], CSA have granted a growing number of waivers from the prospectus delivery requirements for ATM financings, which we submit reflect some receptivity on the part of CSA on the need to maintain such rescission right;

(b) there have been significant discussions both in Canada and in the US in the past few years to further reduce the settlement time for securities transactions made through an exchange, currently fixed at three business days. Generally, Canada-US cross-border prospectus transactions close within this time frame, while Canadian ones close within five business days. Should settlement time be further reduced, we submit that there will be a conflict between such settlement timing and that currently used to determine when the rescission right has expired;

(c) for a long time, secondary trading in Canada has outpaced and outweighed primary issuances, the only ones (with the exception of control block distributions) that trigger rescission rights. The situation was the reverse when rescission rights were introduced. We submit that it is now difficult to reconcile different regulatory rescission regimes triggered by the manner the purchase of the security is made (prospectus offering relative to the purchase of a similar security on a marketplace or recognized exchange), while the same information about the issuer is publicly available. We acknowledge that the above comment is more relevant for additional offerings.

[52] In light of the above, we submit that the implementation of an access equals delivery securities regulatory framework for prospectuses in the context outlined in the Consultation Paper, is an excellent occasion to further reduce the regulatory burden of issuers and registrants in connection with the delivery of prospectuses, and that the two-days rescission right currently contained in the Québec Act, and similar provisions in other CSA legislations, should be repealed.

[53] As we noted above in paragraph [42], amendments to current securities legislations may be necessary to effectively implement an access equals delivery securities regulatory framework for prospectuses, financial statements and related MD&A's.

For proxy-related materials, takeover bid and issuer bid disclosure documents

[54] We generally support the view that an access equals delivery securities regulatory framework for proxy-related materials may not be appropriate for the reasons outlined in the Consultation Paper, although this is the area where issuers would most benefit from such a regime in terms of reduction of costs and regulatory burden. We however submit, as mentioned in paragraphs [13], [15] and [28] above, that clarifying the requirements regarding consent to delivery (or access) through electronic infrastructures, stating that reliance on electronic infrastructures is the preferred infrastructure for making accessible or delivering securityholder materials and other disclosure documents and streamlining the delivery options and instructions to receive or not securityholder materials under NI 51-102 and NI 54-101 could provide issuers with valuable benefits compared to the current situation, and allow them to reduce their regulatory burden without compromising retail investor protection. We also submit that these improvements would unlikely require changes to corporate legislation.

[55] A number of additional requirements of notice-and-access should be revisited, including the longer timing required to rely thereon. Other commentators have in response to previous consultations indicated a number of areas where improvement to notice-and-access could be implemented to facilitate reliance on such process and make it more effective. We have

delivery through electronic infrastructures" and "For proxy-related materials, takeover bid and issuer bid disclosure documents". These suggestions reflect the fact that vote collection and delivery of proxy-related materials to non-registered holders, which may include financial statements and related MD&A's, are subject to the regulatory requirement contained in NI 54-101. Non-registered holders, as indicated above, form the vast majority of securities holders. As we also indicated above, other commentators have in response to previous consultations either provided data illustrating reliance on notice-and-access for both registered and non-registered holders, or provided suggestions of areas where improvement to notice-and-access could be implemented. Anecdotal evidence that we have allow us to believe that such improvements remain relevant today. We invite CSA to obtain additional data that would assist in the preparation of regulatory requirements giving effect to the Consultation Paper, including information as to actual paper delivery of proxy-related materials and relevant electronic infrastructures.

[58] In our view, CSA should formulate their regulatory requirements regarding notice-and-access within the context of today's technologies that are widely available to Canadian investors and the comfort level that Canadian investors have developed with using such technology as their primary means for accessing information.

7. SEDAR as the preferred electronic infrastructure to be relied upon by market participants and investors in Canada

[59] SEDAR is a digital filing system directly under CSA control and oversight. Securityholder materials and other disclosure documents are required to be filed on SEDAR to satisfy securities regulatory filing requirements in selected circumstances (for example, when launching a takeover bid or for the filing of an early warning report). This is essentially why we submit that SEDAR should be designated as the preferred electronic infrastructure to be relied upon by market participants and investors in Canada, although not exclusively.

[60] We suggest that for additional electronic infrastructures where securityholder materials and other disclosure documents may be posted, like the website of an issuer or service provider, discretion be left to issuers as to the choice of such infrastructure, that no mandatory websites or electronic infrastructure be required to be maintained by issuers or on their behalf, and that the requirements applicable to electronic infrastructures be technologically neutral to allow for future technological developments. We would, however, suggest that regulatory requirements provide for indications as to where, and how, securityholder materials and other disclosure documents can be found on such electronic infrastructures. Electronic formats to be used should at minimum be those allowed for filing on SEDAR.

[61] We would further recommend that the current CSA work to redesign and modernize SEDAR take into account the goal of making information regarding specific issuers more easily accessible by investors. For example, retrieving fund facts, ETF facts and financial statements of individual mutual funds should be easier than is currently the case. We believe that CSA should set for itself the goal of making SEDAR as user-friendly as possible since the mandatory posting of fund facts to the websites of investment fund managers is contemplated. In this way, SEDAR

could better fulfill our recommendation of being the primary preferred electronic infrastructure to be relied upon by market participants and investors in Canada.

8. Legislative and regulatory amendments to be considered

[62] As we indicated in our introductory remarks, our comments address some, but not necessarily all, of the potential regulatory issues derived from the proposed access equals delivery securities regulatory framework outlined in the Consultation Paper. Given its general nature, our comments are consequently incomplete as to specific details and changes.

[63] Despite the above, we have indicated that implementing an access equals delivery securities regulatory framework will require a number of amendments to current securities regulatory requirements and policies. It could also require in certain CSA jurisdictions amendments to securities or corporate legislation. In addition, changes to the CBCA already adopted will need to come into force. Additional amendments should also be considered to implement guiding principles governing reliance on electronic communication infrastructures, as we submitted in paragraphs [12] and [13].

[64] In addition to those already discussed in paragraphs [21], [24] to [28], [38], [42], [54] and [57] relating to NI 51-102, CP 51-102, NI 54-101, CP 51-101 and the rescission right under the Québec Act, additional consideration should be given to amendments to *National Policy 51-201* and the repeal of NP 11-201 in its current form. As we submitted in paragraph [28], adoption of a national instrument should be contemplated, which instrument could incorporate some of the provisions of NP 11-201.

[65] Although we fully acknowledge that CSA is not in a position to implement amendments to legislation, we encourage CSA not to hesitate in taking leadership with legislators and governments in identifying legislative amendments that might be required to fully implement an access equals delivery securities regulatory framework in the manner we described above, particularly under certain corporate and other provincial legislations dealing more generally with electronic communications and e-commerce, when necessary. We note that delivery requirements of securityholder materials and other disclosure documents in corporate legislation are easily identifiable, and fairly limited.

9. Application to investment funds

[66] Though the Consultation Paper is soliciting feedback relating to issuers other than investment funds, we wish to take this opportunity to comment on the importance of CSA undertaking similar changes with respect to investment funds.

[67] On December 11, 2019, our firm provided extensive comments to CSA on the proposals described in Reducing Regulatory Burden for Investment Fund Issuers - Phase 2, Stage 1 set out in CSA Notice and Request for Comment dated September 12, 2019 (the "**RID Proposals**"). In our comments, we proposed that websites of investment fund managers or their funds not be made mandatory until CSA extends notice-and-access to provide an offsetting reduction of regulatory burden. We further recommended a wider use of notice-and-access to reduce

regulatory burden for investment funds, and supported the proposed codification of past rulings allowing notice-and access for investment funds, which rulings were, in the words of CSA, drafted with reference to notice-and-access in NI 51-102 and NI 54-101 and adapted for investment funds.

[68] We submit that investment funds should benefit from changes that may result from the Consultation Paper and discussed in our comments above, particularly as to consent and notification. We reiterate our suggestion that a wider use of notice-and-access be contemplated by CSA in respect of investment funds, as there are no reasons supporting significant differences between investment funds and other reporting issuers. Assuming that the RID Proposals are implemented, we note the following continuing differences between investment funds and other issuers:

(a) unlike other reporting issuers, mutual funds generally distribute their securities on a continuous basis and are purchased largely by retail investors seeking diversification and professional investment management. The securities regulatory framework acknowledges this difference by requiring that investors receive a copy of the fund facts before each purchase, or the ETF facts after each purchase in the secondary market (in the latter case, even if the purchase is not part of distribution). Given the volume of trading activity which occurs in mutual fund and ETF securities on a daily basis, significant savings in cost and efficiency would be achieved by extending notice-and-access to the delivery of fund facts and ETF facts;

(b) unlike the current provisions of NI 54-101 applicable to non-investment fund issuers, there are no provisions in NI 54-101 nor the RID Proposals that would permit the delivery of continuous disclosure information of investment funds through notice-and-access. We see no policy reason why the regime applies to the financial statements and MD&A of non-investment fund issuers, but not the financial statements and management reports of fund performance of investment funds.

**** **** ****

We trust that the foregoing comments will be of assistance to the CSA. We would be pleased to elaborate upon our comments at your request. If you would like to discuss our comments further, please do not hesitate to directly contact us.

Yours truly,

FASKEN MARTINEAU DuMOULIN LLP

[redacted]

Gilles Leclerc

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A member of the Power Corporation group of companies

March 9, 2020

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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Via email to:
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Corporate Secretary and Executive Director, Legal Affairs
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Re: Canadian Securities Administrators ("CSA") Consultation Paper 51-405 – Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers

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We appreciate the opportunity to comment on *Consultation Paper 51-405 – Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers* (the "Consultation Paper"), issued by the CSA on January 9, 2020.

We strongly support the introduction of an "access equals delivery" model in the Canadian market. Enhanced electronic delivery better reflects the digital environment in which we operate and is consistent with our commitment to sustainability. We commend the CSA for its ongoing initiative to reduce regulatory burden on reporting issuers, noting that an enhanced electronic delivery model for disclosure documents is a meaningful step toward that goal.

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A member of the Power Corporation group of companies

Great-West Lifeco Inc. (TSX:GWO) ("Lifeco") is an international financial services holding company with interests in life insurance, health insurance, retirement and investment services, asset management and reinsurance businesses. Lifeco operates primarily in Canada, the United States and Europe through its subsidiaries.

Lifeco and its subsidiaries are committed to taking a sustainable approach to our business, and managing our environmental footprint for stronger, healthier communities across Canada. Increased use of electronic delivery of documents plays an important role in our efforts to minimalize our environmental footprint. Reducing printing and mailing of paper documents not only reduces financial costs, but also reduces the environmental impact.

Minimizing our paper usage is not only the responsible thing to do, but it also aligns with the way investors use information in our digital environment. An access equals delivery model leverages the near-instantaneous and globally accessible nature of online communications and facilitates timely and accurate dissemination of information. This model allows issuers to ensure their disclosure remains current and mitigates the risk that information becomes stale during the printing and mailing preparation process. For instance, the printing and mailing preparation process for a take-over bid or issuer bid circular can stretch across days, increasing the risk that the process will need to be restarted to account for updated material information and creating further environmental waste. An access equals delivery model would ensure that information is current at the time investors are notified via news release that the issuer has posted the circular to its website.

An access equals delivery model that relies on a news release as the main vehicle for notification provides investors with more seamless access to disclosure. From an online news release, one click takes the investor to the disclosure document on SEDAR or the issuer's website. In our view, a modernized delivery model represents a significant improvement in the way in which issuers communicate with investors.

Thank you for the opportunity to provide input on the Consultation Paper. We hope that our strong support for, and comments on, the CSA’s proposal will assist in determining the next steps of this important initiative. Please contact me if you wish to discuss or require additional information.

Yours very truly,

GREAT-WEST LIFECO INC.
Jeremy W. Trickett, Senior Vice-President and Chief Governance Officer

INVESTOR ADVISORY PANEL

February 24, 2020

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Re: IAP Response to CSA Consultation Paper 51-405 - Access Equals Delivery

On behalf of the Ontario Securities Commission's Investor Advisory Panel (IAP), I am pleased to have this opportunity to provide our comments on CSA Consultation Paper 51-405, *Access Equals Delivery*. The IAP is an initiative by the OSC to enable investor concerns and voices to be represented in its policymaking and rule development process.

We understand this consultation aims to consider whether or not an "access equals delivery" model is appropriate for the Canadian market – and more specifically: how such a model might affect investor engagement, both positively and negatively, and will it constitute an efficient way for investors to access information.

While the consultation paper sets out several questions for comment, our response is focused on whether introducing this model to Canada is appropriate, and if so, how it should be accomplished.

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.

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.

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.

We also recommend that legislation or regulations be enacted deeming delivery and notice to have taken place a reasonable time following the sending of an email to the investor or after the public issuance of a press release, so as to give the investor an opportunity to review the material or information. Investors should have the ability to designate an agent for the receipt of information.

Email addresses should be requested of investors. For those who don't have an email address or do not wish to receive documents in electronic form, communication can be sent by mail giving summary notice of the information that is available on the issuer's website.

Lastly, while these comments support the use of more efficient models for delivering important information to investors, we do stress that investor protection should remain paramount and that investor interests should not be lost in the pursuit of burden reduction.

Again, thank you for this opportunity to address the issues raised by this consultation. Please let us know if you require any clarification of, or elaboration on, our comments.

Sincerely,

Neil Gross,
Chair, Investor Advisory Panel

INCLUDES COMMENT LETTERS RECEIVED

THE INVESTMENT FUNDS INSTITUTE OF CANADA | L'INSTITUT DES FONDS D'INVESTISSEMENT DU CANADA

IFIC Submission

Re: CSA Consultation Paper 51-405

Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers

March 9, 2020

PAUL C. BOURQUE, Q.C., ICD.D / c.r. IAS.A
President and CEO *Président et chef de la direction*
pbourque@ific.ca 416 309 2300

March 9, 2020

Delivered By Email: consultation-en-cours@lautorite.qc.ca, comments@osc.gov.on.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, 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

Attention:

The Secretary
Ontario Securities Commission
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Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
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Dear Sirs and Mesdames:

RE: CSA Consultation Paper 51-405 *Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers*

The Investment Funds Institute of Canada (**IFIC**) appreciates the opportunity to comment on the Canadian Securities Administrators' (**CSA**) Consultation Paper 51-405 *Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers* (**Consultation**).

IFIC is the voice of Canada's investment funds industry. IFIC brings together 150 organizations, including fund managers, distributors and industry service organizations to foster a strong, stable investment sector where investors can realize their financial goals. IFIC operates on a governance framework that gathers member input through working committees. The recommendations of the working committees are submitted to the IFIC Board or board-level committees for direction and approval. This process results in a submission that reflects the input and direction of a broad range of IFIC members.

We commend the CSA for its efforts to reduce the regulatory burden on non-investment fund reporting issuers by proposing to adopt an access equals delivery model for delivery of certain disclosure and continuous disclosure documents. We agree that electronic access to documents provides a more cost-efficient, timely and environmentally friendly manner of communicating information to investors. The reasons which support adopting an access equals delivery model for non-investment fund reporting issuers are equally applicable to investment fund reporting issuers. We therefore urge the CSA to also adopting an access equals delivery model for certain continuous disclosure documents filed by investment fund reporting issuers.

IFIC provides its comments on the Consultation, including the reasons which support adopting an access equals delivery model at this time for both non-investment fund reporting issuers and investment fund reporting issuers. Our responses to certain questions posed by the CSA are set out in Appendix A to this letter.

Access Equals Delivery is not a New Model

In *Canada Steps Up: Evolving Investor Protection* the Task Force to Modernize Securities Legislation in Canada (**Task Force**) recommended the adoption of a full access equals delivery system in 2006. The Task Force specifically recommended that since investors can access disclosure materials through SEDAR, the "next step" in the evolution of Canada's disclosure based system is to adopt a more extensive access-equals-delivery model[1].

If access equals delivery was considered a reasonable evolution of the Canadian capital markets without imperiling investor protection in 2006, then given the technological advances since that time it is clearly a reasonable approach for the Canadian capital markets in 2020.

Canadians' Access to the Internet Is Nearly Universal

Past concerns about moving to an access equals delivery model have primarily focused on access to the internet, particularly for rural and older investors. The concern suggested that greater ability for all investors to access the documents electronically was necessary so that investors are not disadvantaged by the new model.

The Statistics Canada *Canadian Internet Use Survey* for 2018 found that 91% of Canadians aged 15 and older used the internet, with more seniors reporting Internet use (71%). This was an increase of 8% over the results in the 2012 survey, with the proportion of seniors online increasing by 23%. The 2018 survey also found that 94% of Canadians had home internet access.[2]

This level of access to the internet by Canadians alleviates previous concerns about investor access to the issuer's documents electronically. We further note that the access equals delivery model preserves the ability of investors to request paper copies of disclosure documents from the issuer.

Current Experience of Investor Opt-In to Receive Continuous Disclosure Documents

Investment fund reporting issuers communicate with their securityholders annually on whether they wish to receive interim and annual financial statements and Management Report of Fund Performance (**MRFP**). We recently surveyed our members to understand the cost of the annual mailing, the number of investors who elect to receive the interim and annual continuous disclosure documents in paper and the cost of providing the documents in paper.

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[1] Task Force to Modernize Securities Legislation in Canada *Canada Steps Up: Evolving Investor Protection* (October 2006) page 27.

[2] Statistics Canada Canadian Internet Use Survey https://www150.statcan.gc.ca/n1/daily-quotidien/191029/dq191029a-eng.htm

The cost of sending the annual request to securityholders varies with the size of the investment fund complex, but for the 15 members who responded to our survey, this cost varied from $13,365-$838,058 in 2017, $22,737-$880,958 in 2018 and $20,727-$1,117,905 in 2019. Further, while the absolute number of annual mailings sent each year varies depending upon the size of the investment fund complex the percentage of securityholders who opted to receive paper documents by mail is quite similar:

- the median percentage who opted to receive interim documents was 3.5% in 2017, 2.6% in 2018 and 3.3% in 2019
- the median percentage who opted to receive annual documents was 3.0% in 2017, 3.1% in 2018 and 3.9% in 2019.

Therefore, the cost to send the annual request far exceeds the percentage of investors who opt to receive the interim and annual documents in paper. These costs are borne by each investment fund and, indirectly, by the fund's investors.

Further, these results support the move to an access equals delivery model. The low opt-in rates clearly demonstrates that only a small number of retail investment fund investors want to receive the interim and annual financial statements and MRFPs in paper.

IFIC Support for Expanding the Access Equals Delivery Model to include Investment Fund Issuers

IFIC supports the CSA's proposed access equals delivery model under which delivery of certain documents can be effected by making the documents publicly available on the System for Electronic Documentation Analysis and Retrieval (**SEDAR**) and the issuer's website. Replacing delivery requirements for certain disclosure documents with a requirement to make the documents are available electronically will reduce regulatory burden on issuers in a meaningful way. Investor protection will not be compromised both because of the nearly universal access of Canadians to the internet and because investors can continue to request hard copies be provided by the issuers.

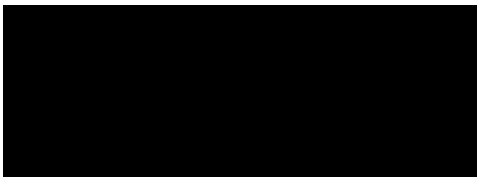
We urge the CSA to make the access equals delivery model available to both investment fund reporting issuers and non-investment fund reporting issuers as quickly as possible.

* * * * *

IFIC supports this important initiative and its extension to investment fund reporting issuers. We would be pleased to provide further information or answer any questions you may have. Please feel free to contact me by email at pbourque@ific.ca or by phone at 416-309-2300.

Yours sincerely,

THE INVESTMENT FUNDS INSTITUTE OF CANADA



By: Paul C. Bourque, Q.C, ICD.D
President and CEO

APPENDIX A—CONSULTATION QUESTIONS

1. Do you think it is appropriate to introduce an access equals delivery model into the Canadian market? Please explain why or why not.

As discussed in our comment letter, IFIC supports introducing an access equals delivery model at this time for both non-investment fund reporting issuers and for investment fund reporting issuers. Such a model has been recommended since 2006, and concerns about investor protection have been addressed with the nearly universal access to the internet which Canadians now have and by preserving the ability of investors to continue to request the delivery of paper copies of the documents. IFIC also supports the significant environmental benefits which will accrue from the move to electronic access to these documents.

2. In your view, what are the potential benefits or limitations of an access equals delivery model? Please explain.

In our view, the access equals delivery model can benefit both issuers and investors. It can facilitate the communication of information by enabling issuers to reach more investors in a faster, more cost-effective and environmentally friendly manner.

3. Do you agree that the CSA should prioritize a policy initiative focussing on implementing an access equals delivery model for prospectuses and financial statements and related MD&A?

We support the CSA prioritizing a policy initiative focusing on access equals delivery for prospectuses and financial statements and related MD&A for non-investment fund reporting issuers, and for financial statements and MRFPs prepared by investment fund reporting issuers.

5. For which documents required to be delivered under securities legislation (other than prospectuses and financial statements and related MD&A) should an access equals delivery model be implemented? Are there any investor protection or investor engagement concerns associated with implementing an access equals delivery model for rights offering circulars, proxy-related materials, and/or take-over bid and issuer bid circulars? In your view, would this model require significant changes to the proxy voting infrastructure (e.g. operational processes surrounding solicitation and submission of voting instructions)? Please explain.

Investment fund reporting issuers are currently able to use notice and access for the delivery of proxy materials to their investors based on exemptive relief granted by the regulators. The CSA has recently [3] published for comment a proposal to codify this relief for all investment fund issuers. We have supported this proposal and look forward to the codification.

6. Under an access equals delivery model, an issuer would be considered to have effected delivery once the document has been filed on SEDAR and posted on the issuer's website.

a. Should we refer to "website" or a more technologically-neutral concept (e.g. "digital platform") to allow market participants to use other technologies? Please explain.

Use of a more technologically-neutral concept would be preferable.

b. Should we require all issuers to have a website on which the issuer could post documents?

The CSA has recently[4] published for comment a requirement for all investment fund reporting issuers to have a desginated website. We assume the purpose of mandating a designated website is to be able to move some disclosures to the desginated website in order to reduce the regulatory burden on investment fund reporting issuers

[3] CSA Request for Comments *Reducing Regulatory Burden for Investment Fund Issuers--Phase 2 Stage 1*

[4] Ibid

7. Under an access equals delivery model, an issuer would issue and file a news release indicating that the document is available electronically and that a paper copy can be obtained upon request.

a. Is a news release sufficient to alert investors that a document is available?

For investment fund reporting issuer continuous disclosure documents such as the interim and annual financial statements and and MRFPs we do not believe a press release should be required, given the very low rate of opt-in by investors.

IIACACCVM
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March 6, 2020

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Sent via email

Re: CSA Consultation Paper 51-405 - *Considerations for an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers*

The Investment Industry Association of Canada ("IIAC") appreciates the opportunity to provide comment on CSA Consultation Paper 51-405 - *Considerations for an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers.* IIAC members are important intermediaries between reporting issuers and investors, allowing our members to bring insightful perspectives on the implications of an access equals delivery model on the Canadian marketplace.

As detailed in our responses below, the IIAC believes that the Canadian marketplace is well placed to adopt an access equals delivery model. Such a move would align current investor preferences with the CSA's objective of modernizing the way documents are made available. However, in order to timely achieve the benefits of access equals delivery, IIAC recommends the CSA take a staged implementation approach prioritizing an access equals delivery model for prospectuses and financial statements and related MD&A.

Our responses to the CSA questions are as follows:

1. Do you think it is appropriate to introduce an access equals delivery model into the Canadian market? Please explain why or why not.

The IIAC believes that Canadian capital markets are among the most developed globally and sufficiently mature to adopt an access equals delivery model without compromising investor protection or shareholder engagement.

Our well-functioning ecosystem of exchanges, regulators, securities dealers, industry service providers and legal professionals is well placed to implement an access equals delivery model benefitting securities issuers and investors.

Our members indicate that investors prefer consuming financial information electronically. For example, when considering their investment in prospectus offerings investors are aware that information relevant to their decision making is available on SEDAR. Investors no longer wait for, or rely on, the actual paper delivery of a prospectus to inform their investment decision. In addition, this is responsive to the realities of the pace of modern capital markets – in practice, the only timely way for an investor to receive and analyze the information necessary to inform its investment decision is through electronic access.

2. In your view, what are the potential benefits or limitations of an access equals delivery model? Please explain

The benefits of an access equals delivery model would be the added efficiency it would bring to the Canadian marketplace, significantly reducing the time and money necessary to comply with delivery obligations. Electronically filed documents are immediately accessible, from anywhere, and allow for much more efficient review than paper. Eliminating paper documents that are often immediately discarded would also be environmentally responsible.

An access equals delivery model would also address many of the technical challenges that our members experience with electronic delivery methods (e.g. failed delivery of emails). In addition to these technical challenges, there are legal challenges to effecting electronic delivery; changes to securities and other legislation (outside the purview of the CSA) would be necessary to allow dealers to satisfy their delivery obligations exclusively by way of electronic delivery.

The limitations of an access equals delivery model implemented by way of securities legislation may invariably hinge on whether it conflicts with current requirements of corporate statutes and provincial electronic commerce legislation that may govern communications between market participants. The IIAC recognizes that any issues arising under such other legislation would be outside the purview of the CSA. For this reason, the IIAC thinks it sensible, for the near term, to narrow the scope of access equals delivery to prospectuses and financial statements and MD&A (see our response to question #3 below). An

effective access model for the delivery of those documents can be achieved quickly and exclusively through Canadian securities legislation.

3. Do you agree that the CSA should prioritize a policy initiative focussing on implementing an access equals delivery model for prospectuses and financial statements and related MD&A

While the IIAC believes an access equals delivery model could provide the greatest efficiency and cost-savings if it were to cover the broadest set of investor disclosure documents, accommodating the delivery of additional documents (beyond prospectuses, financial statements and MD&A) this would entail overcoming additional hurdles and complications which would significantly delay, and potentially jeopardize, the CSA's policy initiative.

The IIAC believes access equals delivery is well suited for addressing prospectus delivery obligations because investors that participate in prospectus offerings do not require actual delivery of the prospectus to ensure their engagement. They are already engaged in the offering process (directly or through their broker) and are already aware that the prospectus (and, where applicable, other information they require for informing their investment decision) is available on SEDAR. Notably, any term sheet or other materials used to market the offering must contain a legend that investors should read the prospectus.

For these reasons, the IIAC concurs that as a first step the CSA should prioritize access equals delivery for prospectuses and financial statement and related MD&A. Narrowing the CSA's focus to these disclosures would result in some of the benefits of an access equals delivery model being realized sooner.

The CSA should, however, continue to consult with market participants on how access equals delivery can eventually be applied to other documents required to be delivered under securities legislation and the complications that would need to be addressed related to these deliveries.

4. If you agree that an access equals delivery model should be implemented for prospectuses:

a. Should it be the same model for all types of prospectuses
b. How should we calculate an investor's withdrawal right period
c. Should a news release be required for both the preliminary prospectus and the final prospectus, or is only one news release for an offering appropriate?

The IIAC believes access equals delivery should apply to all prospectus types (long-form, short-form, and shelf). However, it is important to make some distinctions in an access equals delivery model as it relates to prospectuses.

Specifically, consideration should be given to whether a press release should be required **only** for the final prospectus or prospectus supplement, as applicable. For deemed delivery of a preliminary (or base shelf) prospectus by way of access, no news release or equivalent notice as to availability should be required. Notably, notice of the current or future (in the case of bought deals) availability of any such prospectus is already effectively provided to solicited investors through equivalent disclosure in the indicative term sheet or other materials used for soliciting expressions of interest in the prospectus offering. Alternatively, in the context of a bought deal, it should be sufficient for the announcing press release to indicate that the preliminary prospectus "will" be available as this prospectus must be filed within a short window of time after that announcement and the issuer information critical to the investment decision (i.e., the incorporated reports) is already on file. Having issuers publish multiple press releases for the same offering will lead to added costs, time and possible investor confusion.

In terms of calculating an investors withdrawal right period, an investor would still get current notice when the final prospectus is available on SEDAR, and then two business days to review the final prospectus/supplement prior to expiry of the associated withdrawal right.

5. For which documents required to be delivered under securities legislation (other than prospectuses and financial statements and related MD&A) should an access equals delivery model be implemented? Are there any investor protection or investor engagement concerns associated with implementing an access equals delivery model for rights offering circulars, proxy-related materials, and/or take-over bid and issuer bid circulars? In your view would this model require significant changes to the proxy voting infrastructure (e.g. operational processes surrounding solicitation and submission of voting instructions)? Please explain.

The benefits of an access equals delivery model would be maximized if it were to encompass the broadest set of documents required to be delivered under securities legislation. The IIAC would support, therefore, CSA efforts to broaden the framework where sensible. However, the IIAC reiterates concern that a single broad sweep might complicate the policy initiative and risk delays in bringing benefits to the market. The CSA should prioritize implementing an access equals delivery framework for prospectuses and financial statements and related MD&A while undertaking work on understanding the feasibility of a similar framework for other disclosures.

The proxy voting infrastructure in Canada was significantly modernized in 2013 with the adoption of "Notice and Access" which the IIAC believes has achieved a good balance between investor engagement and electronic access resulting in a positive experience for investors. The industry has devoted considerable resources in implementing notice and access including developing operational processes surrounding the solicitation and submission of voting instructions. Much of this work would have to be revisited should the proxy voting infrastructure in Canada move to access equals delivery. The long-term benefits of such a move, however, could potentially outweigh the cost and disruption. The IIAC recommends that the CSA work with a representative group of stakeholders to undertake an in-depth study, including an analysis of cost and benefits, from adopting access equals delivery for proxies.

While the IIAC recognises that the scope of the CSA consultation relates to non-investment fund reporting, IIAC members have commented that consideration should also be given to other areas where access equals delivery can be adopted. Specifically, many of the dealer reporting obligations could be streamlined through access equals delivery and the IIAC would be very interested in pursuing further discussion in this area.

6. Under an access equals delivery model, an issuer would be considered to have effected delivery once the document has been filed on SEDAR and posted on the issuer's website

a. Should we refer to "website" or a more technologically neutral concept to allow market participants to use other technologies. Please explain.
d. Should we require all issuers to have a website on which the issuer could post documents

Members question the need for issuers to file the document/news release on both SEDAR and the issuer's website as this would appear redundant. SEDAR should be the trusted repository for all investor disclosures and communications. Pointing investors to this single source would simplify processes for issuers while ensuring each document can be accessed easily by investors and in a similar fashion. The CSA's current initiative to integrate the industry's primary information and filing systems (SEDAR, SEDI and NRD) provides a further opportunity to enhance the user experience.

The IIAC recommends, therefore, that issuers be required to post their documents and news release on SEDAR and be given the option (but not be required) to also post on their website or any other digital communication channel(s) utilized by the issuer such as social media.

7. **Under an access equals delivery model, an issuer would issue and file a news release indicating that the document is available electronically and that a paper copy can be obtained upon request.**

a) Is a news release sufficient to alert investors that a document is available?
b) What particular information should be included in the news release?

Yes, in the IIAC's view a news release is sufficient to alert investors of the availability of the delivered document. Investors, however, consume financial information differently. We recognize, therefore, that not all investors are likely to utilize press releases as their primary source for receiving their information. However, in our experience news releases are effective at communicating information to the marketplace and the marketplace in turn has then been able to take that information and efficiently disseminate it, broadly and in real-time, to participants via the multiple communication channels that exist.

While sufficient, the IIAC does not think a news release should be the only means available for alerting investors. In the IIAC's view, it should be open to the issuer or dealers to use any means reasonably calculated to disclose the availability of the relevant document to the target audience. They should not be limited to providing this notice through the issuance of a news release.

At a minimum the information in the news release should identify the document that is (or will be) available electronically, and include a reminder to investors that the document is available on SEDAR and instructions on how investors can request a paper copy of the document.

The IIAC would be pleased to meet with CSA representatives to discuss our comments in greater detail.

Sincerely,

"Jack Rando"

Jack Rando
Managing Director

January 14, 2020

K. Kivenko Comments on CSA Consultation Paper 51-405 – Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers
https://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20200109_51-405_fund-reporting-issuers.htm

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Superintendent of Securities, Newfoundland and Labrador
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I appreciate the opportunity to comment on this consultation. This Consultation provides an excellent forum for discussion on the appropriateness of an access equals delivery model in the Canadian market.

Overview

The Canadian Securities Administrators (CSA) Paper **CSA Consultation Paper 51-405 – Consideration of an Access Equals Delivery Model for Non-**

Investment Fund Reporting Issuers solicits views on the appropriateness of introducing an "access equals delivery" model in the Canadian market. Under this model, delivery of a document would be effected simply by the issuer alerting investors that the document is publicly available on the System for Electronic Document Analysis and Retrieval (SEDAR) and the issuer's website. According to the Consultation Paper, an access equals delivery model could benefit both issuers and investors. It says this model 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 Paper asserts, but does not provide objective evidence, that SEDAR and the issuer's website provide ease and convenience of use for investors, allowing them to access and search for information more efficiently than they would otherwise be able to with paper copies of documents. Some issuer websites are in fact quite difficult to navigate. **In my experience, unsophisticated investors are not aware of SEDAR or how to use it and few access issuers' websites.**

Comments

The consultation states *"In our view, implementing an access equals delivery model for these types of documents is achievable and could meaningfully reduce regulatory burden on issuers."* As a matter of principle, I do not categorize disclosure as a regulatory burden, it is an obligation required by law to protect investors and a privilege to respect those who have invested their savings with the corporation. Disclosure is the critical means for investors to know and understand their investments, and to adequately manage and plan for their retirement security.

Disclosure makes available the information needed for informed investment decisions- thus promoting efficient securities markets which in turn result in better allocation of Canada's capital resources. As a protective device, disclosure prevents the kind of frauds and exploitation of retail investors which depends for its success on nondisclosure, or inadequate or misleading disclosure, by securities dealers or corporate insiders. Better quality disclosure might have prevented the huge losses Canadian Cannabis investors experienced in 2019.Furthermore, forthright disclosure indirectly encourages those in the securities industry and the corporate world to adhere to higher standards of conduct. **The proposal makes no effort to enhance the effectiveness of disclosure as a regulatory strategy – one of the two underlying principles of securities regulation (the second being registration requirements for dealing with the public).**

The idea put forward states that an issuer is considered to have effected disclosure delivery to an investor once: (a) the document has been filed on SEDAR; (b) the document has been posted on the issuer's website; and (c) the issuer has issued a news release (filed on SEDAR and posted on its website) indicating that the document is available electronically on SEDAR and the issuer's website and that a paper copy can be obtained (presumably free of charge) from the issuer upon request. This idea turns the concepts of "delivery" and "disclosure" on its head. Such an odd approach can be labelled as telepathic disclosure. **I just don't see how this approach will encourage more retail investors to read and use**

disclosures. Perhaps the CSA could share any research it has showing how this approach has worked out for retail investors in other jurisdictions.

As a large majority of investors have gained access to the Internet and become comfortable using it for a variety of purposes, including researching investments, securities firms have sought to reduce disclosure delivery costs by driving the transition to electronic delivery of disclosure documents. Investor advocates like ourselves have also noted the potential for electronic delivery to enhance the quality and timeliness of disclosures, including by promoting greater use of intelligent and machine-readable documents and e-delivery, **but only if the transition occurs in a way that increases the likelihood that retail investors will find, read and utilize those important disclosures.**

I believe any proposal on electronic disclosure must balance the option of electronic disclosure with the preservation of choice over delivery preferences. This balance should take into account the basic fact that the demographics show that significant numbers of individuals still do not have ready access to computers or the internet, prefer paper copies of disclosures or are concerned about privacy and security.

The Consultation Paper has not provided any evidence to support the argument that retail investors prefer to receive prospectus or continuous disclosures electronically or that this proposal would increase the likelihood that investors would read and better understand the regulatory disclosures that are provided to them. Rather, 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. In short, the CSA is proposing to seduce a material swath of retirement savers and retirees into a disclosure system that they didn't ask for and which may not work well for them.

National Instrument NP 11-201 *Electronic Delivery of Documents* sets out the CSA's view that delivery requirements can generally be satisfied through electronic delivery if each of the following basic components is met:
• 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.

Although electronic delivery is already permitted, and despite the guidance provided in NP 11-201 and the introduction of the notice-and-access model, the Paper informs that some issuers continue to incur *significant* costs associated with printing and mailing various documents required to be delivered under securities legislation**.** Is this because these issuers have poor cost controls or because their shareholders prefer receiving printed documents or both**?**

Under the model contemplated, delivery of a document is effected by the issuer alerting investors that the document is publicly available on the System for

Electronic Document Analysis and Retrieval **(**SEDAR**)** and the issuer's website. The CSA are considering prioritizing a policy initiative in this area for prospectuses and certain continuous disclosure documents. If investors do not change their delivery options, the cost savings will not be realized so there could be pressure on investors to shift to an unsuitable delivery regime.

While the Consultation Paper says that the *access equals delivery* model the CSA is contemplating is not intended to remove the option of having paper copies of documents delivered for those who prefer this option, it does not provide any details on how this right would be exercised. **For greater clarity I would like to put forward some necessary ground-rules (a) The investor must be informed in writing that they have this right. (b)They can exercise this right via written communication (c) There will be no charge for requesting a paper document and (d) Investors will have the right to change delivery instructions at any time.**

Response to Consultation questions

We provide our views and comments on the following specific questions:
1. *Do you think it is appropriate to introduce an access equals delivery model into the Canadian market? Please explain why or why not.* As explained in the text, we do not believe it is appropriate. **A good investor experience doesn't just allow shareholders to access disclosure documents -it encourages them, by delivering the documents in an interactive and personalized manner that helps them actually get more out of the information they receive.** This is where I think the CSA should prioritize its e-delivery focus. That would materially impact investor protection. See *Facilitating digital financial services disclosures:* ASIC
https://download.asic.gov.au/media/3798806/rg221-published-24-march-2016.pdf
2. *In your view, what are the potential benefits or limitations of an access equals delivery model? Please explain.* We believe a significant number of retail investors will be disadvantaged. There is no evidence that investors under the current system are demanding *access equals delivery* or that mailing costs incurred by issuers are unreasonable or unjustified. I see only trouble for investors/shareholders. It has been said that disclosure is a foundation for securities regulation. It is therefore logical to conclude that any reduction in disclosure or added delivery constraints is an attack on the foundation. That is precisely how I see "*access equals delivery*". It does nothing to improve the robustness of disclosure, the effectiveness of disclosure or the usage rate of disclosure(s) by investors/shareholders.
3. *Do you agree that the CSA should prioritize a policy initiative focusing on implementing an access equals delivery model for prospectuses and financial statements and related MD&A?* If *access equals delivery* is imposed on investors, these are the documents to prioritize. **I believe the regulatory priority should be on improving disclosure quality, relentless enforcement of deficient/misleading disclosure and making it easier for retail investors to obtain *delivery* in the manner they desire.**

4. *If you agree that an access equals delivery model should be implemented for prospectuses:*
a. Should it be the same model for all types of prospectuses (i.e. long-form, short-form, preliminary, final, etc.)? We do not agree with *access equals delivery* as proposed.
b. How should we calculate an investor's withdrawal right period? Should it be calculated from (i) the date on which the issuer issues and files a news release indicating that the final prospectus is available electronically, (ii) the date on which the investor purchases the securities, or (iii) another date? Please explain. Withdrawal rights should begin when the issuer has delivered the disclosure.
c. Should a news release be required for both the preliminary prospectus and the final prospectus, or is only one news release for an offering appropriate?
5. For which documents required to be delivered under securities legislation (other than prospectuses and financial statements and related MD&A) should an access equals delivery model be implemented? Are there any investor protection or investor engagement concerns associated with implementing an access equals delivery model for rights offering circulars, proxy-related materials, and/or take-over bid and issuer bid circulars? In your view, would this model require significant changes to the proxy voting infrastructure (e.g. operational processes surrounding solicitation and submission of voting instructions)? Please explain. We cannot provide an evidence-based response. More research is required.

6. *Under an access equals delivery model, an issuer would be considered to have effected delivery once the document has been filed on SEDAR and posted on the issuer's website.*
a. Should we refer to "website" or a more technologically-neutral concept (e.g. "digital platform") to allow market participants to use other technologies? Please explain. The term website is generally understood by the Canadian population.
b. Should we require all issuers to have a website on which the issuer could post documents? The cost of maintaining a secure website may outweigh the mailing costs, so mandating a website is inappropriate. In practical terms, we cannot imagine a public company without a website. The CSA might however consider requiring that if a website is used, the required documents can easily be found, viewed, downloaded and printed.
7. Under an access equals delivery model, an issuer would issue and file a news release indicating that the document is available electronically and that a paper copy can be obtained upon request.
a. Is a news release sufficient to alert investors that a document is available? As we have stated, a undirected News Release is wholly inadequate to ensure the document will be accessed and read by retail investors. Only direct communication to the investor will achieve that. **The proposals ignore the behavioural reality of individual investors who are as unlikely to read or access documents electronically as they are to read paper documents delivered to them.**
b. What particular information should be included in the news release? The nature of the document and why it is important to be read.
8. Do you have any other suggested changes to or comments on the access equals delivery model described above? Are there any aspects of this model that are

impractical or misaligned with current market practices? We believe that retail investors will suffer and that such suffering will not pass cost-benefit scrutiny.

While sympathetic to the desire to reduce paper and to minimize mailings that may not be fully appreciated by the recipient, I cannot agree with the "access equals delivery" approach advocated in this consultation paper. Quite simply, online access as proposed does not equal delivery. Many investors do not use computers or have internet access. Many others do not wish to use, or cannot use, computers for this purpose. **If disclosure is to be meaningful, it must be made in a manner that accounts for the range of individual circumstances and that does not put an undue burden on the intended recipient.**

The problem with the proposed "*access equals delivery*" approach is not that it allows for online access instead of paper delivery, with its associated cost and environmental impact. Indeed, we agree that investors should have the option of refusing paper documents and instead relying on electronic disclosures. Rather, the problem is that, by following a "negative option" approach to electronic disclosure, this proposal puts the onus on the wrong party, and thus effectively ensures that the disclosure will not reach many retail investors who might otherwise have benefited from it. It is important not to confuse two distinct issues: that of the content of the disclosure and that of the mode of disclosure. With improved content and presentation of the information in question, it can be expected that more investors will be interested in reviewing the documents. Thus, even if current evidence suggests that few consumers are reading prospectuses, that could well change with the move to more investor-friendly information.

In any case, instead of putting the onus on consumers to "opt-in" to paper disclosure, the default rule should require a mode of disclosure which works for everyone. It should also allow for alternative modes of disclosure, upon clear direction from the investor. These alternatives need not be limited to website postings and full information mailings. Electronic mail delivery, or at least notices of new postings, can be offered, for example. Investors can and should be encouraged to opt-in to electronic disclosures, whether by e-mail or website postings; but their ability and willingness to do so should not be taken for granted by the CSA.

If the CSA is looking for ways to improve disclosure to investors, it should laser focus on content. For example, both institutional and individual investors are deeply concerned about ESG. See *The Future of ESG and Sustainability Reporting: What Issuers Need to Know Right Now*
https://www.dfinsolutions.com/sites/default/files/documents/2019-01/dfin_thought_leadership_whitepaper_ESG_Sustainability_Reporting_0.pdf

Bottom line

The CSA is considering the default delivery mechanism from a system that is working, albeit imperfectly, to an *access equals delivery* e-delivery regime. Before proceeding with access equals delivery, the CSA should be able to provide

compelling evidence that there is widespread investor demand for such a regime, that investors are more likely to utilize electronic disclosures than the current system, and that corporations have shown a willingness to innovate by using technology to enhance the quality, effectiveness and timeliness of disclosures whether delivered by mail or electronically**. The proposals ignore the fact that disclosure (full, true and plain) has not been made unless/until the information has been clearly communicated to the recipient and understood by the recipient.**

There is a reference to some issuers still incurring costs due to printing and delivery of paper documents rather than making them electronically available. **That is the issuer's choice. Current policy allows for notice-and-access.** This seems to be working well for those who choose to use it The Consultation Paper has provided no evidence to support a view that such costs are excessive or unreasonable (it does however suggest that some investors prefer reading paper copies!). Even if there are costs savings for issuers , the cost of printing prospectuses and other disclosure documents might simply be passed on to those investors who prefer reading complex documents on paper rather than viewing such documents on screen.

The CSA would do well to focus on how to make disclosure more useful and effective for retail investors. But nothing in the current thinking would actually bring that potential closer to reality, and benefits e-delivery has to offer. Such a consultation provides no incentives for issuers to invest in making regulatory disclosures more attractive and useful. As a result, under the *access equals delivery* regime, investors are likely to receive electronically the same problematic disclosures that they currently receive in the mail and not benefit from the tremendous potential technology result is unlikely to increase the likelihood that investors read and understand these important disclosures.

I cannot see how there can be deemed disclosure unless the investor receives a written notice that the document has been, or will be, delivered electronically and how it can be retrieved. **It is unrealistic to think that individual investors will know that documents have been posted on SEDAR or issuer websites or go to such websites to find them**. Even an approach whereby an email or mail notice is sent to investors which will then direct them to a website where the disclosures are posted has limitations. This mere notice and posting, without a determination of whether participants actually open the notice or access the disclosure, is not enough to be considered a measure reasonably calculated to ensure actual receipt of the disclosed material by investors.

I believe that the CSA should continue to explore alternative approaches to encourage the transition to electronic delivery. In doing so, it should seek to ensure that investor preference regarding delivery methods is respected, including by continuing to distinguish between investors' preferences with regard to research, where a large majority prefer accessing information on the Internet, and delivery of disclosures, where a significant number continue to prefer receiving paper disclosure documents through the mail. In addition, the CSA should encourage development of approaches to electronic delivery that promote, rather than reduce,

the likelihood that investors will see and read the disclosures. And it should engage in testing to help determine, to the extent possible, that its proposed approach has the intended effect.

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. In addition, the senior population is growing in absolute and proportionate terms. These two statistics suggest that the CSA should tread carefully in any consideration that could reduce access to and use of regulated disclosures. In addition, the CSA 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 proposed rule because they do not have ready access to computers or the internet, suffer from technophobia or are just more comfortable with paper copy for financial disclosures. Those households with only smartphone access will find that accessing disclosures online may not be as useful as for households with other means to access the internet.

A successful transition to electronic delivery will occur only if it is done in a way that ensures retirement savers and retirees prefer to receive and consume disclosures electronically and get real value out of those e-disclosures. **I am all in favour of enabling/facilitating electronic delivery of documents if that is the wish of the issuer/investor but unless the investor actually receives such documents or notice of their easily accessible availability, I don't see how "delivery" has been effectively made.** I do not believe the proposals facilitate the delivery of documents which is apparently what the CSA is trying to do. **The proposal therefore has the effect of undermining investor protection given the unlikelihood of effective disclosure being made to individual investors.**

I recommend that registrants should be obliged to make actual delivery (electronic or otherwise) to their clients and withdrawal rights timed from such delivery.

Approval is granted for public posting of this Comment letter.

Do not hesitate to contact me if there are any questions.

Ken Kivenko P.Eng. (retired)

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https://consumerfed.org/pdfs/can-the-internet-transform-disclosures-for-the-better.pdf

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": the act or manner of delivering something". Securities lawyers have convoluted the word " deliver" to mean that something is available for the intended recipient of the delivery to pick up should they (a) become aware of its availability and (b) have internet access. In other words, there is no actual delivery or proof of delivery. And some actually call that disclosure which would enable informed retail investor decision making.
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SEC.gov | **Disclosure in the Digital Age: Time for a New Revolution**
I believe new technologies can be employed to improve the investor communications experience, disclosure quality, effectiveness at reduced cost. The CSA is in a good position to provide leadership here.
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Reading on Paper and Screen among Senior Adults: Cognitive Map and Technophobia
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The 2012 Retirement Confidence Survey: EBRI Issue Brief, No. 369 at 21-22. The EBRI study showed that only a minority of workers and retirees feel very comfortable using online technologies to perform various tasks related to financial management. While this is U.S. data, it likely applies to Canada as well.

FINRA Study A 2016 FINRA study showed that only 31 % of respondents preferred receiving disclosures by email or through internet access; the remainder preferred physical mail (49 percent) or in-person meetings (14 percent). Older respondents preferred paper documents, while younger respondents preferred in person meetings. There was no age differential between those who preferred to receive disclosures by email. FINRA, *Investors in the United States 2016* (Dec. 2016), https://www.usfinancialcapability.org/.
downloads/NFCS_2015_Inv_Survey_Full_Report.pdf

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A Primer on Machine Readability for Online Documents and Data - Data.gov
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CSA News Release: Canadian securities regulators publish guidance on disclosure expectations for cannabis issuers
http://www.osc.gov.on.ca/en/NewsEvents_nr_20181010_guidance-disclosure-expectations-cannabis-issuers.htm

Canadian securities regulators highlight common deficiencies in issuers' continuous disclosure (July 2018)
In fiscal 2018, 51 per cent (2017 – 43 per cent) of review outcomes required issuers to take action to improve and/or amend their disclosure, or resulted in the issuer being referred to enforcement, cease traded or placed on the default list.
https://www.newswire.ca/news-releases/canadian-securities-regulators-highlight-common-deficiencies-in-issuers-continuous-disclosure-688626711.html

Climate change disclosure needs improvements
In CSA Staff Notice 51-354 *Report on Climate change-related Disclosure Project* [PDF] (the Report), a review of disclosure provided by 78 issuers found that 22% provided no climate change-related risk disclosure and 22% provided only boilerplate disclosure.

Looking Beyond the SEC's New E-Delivery Rule | Article | DFIN
https://www.dfinsolutions.com/insights/article/fast-forward-looking-beyond-sec-s-new-e-delivery-rule

New investment statement still won't expose billions of dollars in fees - The Globe and Mail (fee disclosure is deficient)
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OSC behavioural insights study highlights pathways to better fee disclosure
http://www.osc.gov.on.ca/en/NewsEvents_nr_20190819_osc-behavioural-insights-study-highlights.htm

Are mutual fund investors getting the risk disclosure they need? | Wealth Professional
https://www.wealthprofessional.ca/news/industry-news/are-mutual-fund-investors-getting-the-protection-they-need/231899

It's not just issuer disclosure that needs improvement
Kenmar Associates point out that OBSI fails to provide meaningful information on their performance metrics and no information at all on investor abusing low ball offers and settlements.

APPENDIX I Ken's principles for disclosure delivery by digital media:

1. Ensure positive documented investor consent, either selective or global, is formally obtained and that it is "informed "
2. advise investor directly by e-mail each time a disclosure is made and how to access it or to email disclosures directly to the investor
3. provide access to Adobe Acrobat Reader (assuming PDF is the chosen format) on their web- site with instructions on how to download
4. advise the investor of the system requirements necessary for receipt of documents in PDF format and warn the investor that download time may be slow
5. provide no- cost technical service support via a toll-free line during normal business hours to assist investors with internet access and downloads or to request a paper copy of disclosure documents on a no-charge basis
6. formally advise investors that while electronic delivery is indefinite ,consent can be revoked by mail , email or telephonically at any time without penalty or fee
7. provide easy access to site link –good navigability
8. best practices will be used as regards on-screen readability of disclosure documents

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Autorité des marchés financiers
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Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
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Comments on CSA Consultation Paper 51-405 - *Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers*

Introduction

This letter is submitted in response to the Consultation Paper 51-405 - (**CP 51-405**) Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers (the **Proposed Access Model**) issued by the Canadian Securities Administrators (the **CSA**) on January 9, 2020. It reflects the views of a working group consisting of issuers having a combined market capitalization of more than CAD $200 billion (the **Working Group** or **we**). Members of the Working Group welcome the CSA's initiative to reduce the regulatory burden for issuers. We thank you for affording us an 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 Access Model.

CAN_DMS: \131688757\7

General comments

The Working Group believes that the Proposed Access Model has significant advantages for issuers involved in the distribution of disclosure documents by reducing costs (including printing and mailing) and increasing the speed and availability of information.

Questions

We provide below answers of the Working Group with respect to each question described in CP 51-405.

1 *Do you think it is appropriate to introduce an access equals delivery model into the Canadian market? Please explain why or why not.*

The Working Group thinks that it is appropriate to introduce an access equals delivery model into the Canadian market. The market now routinely uses electronic access to documents. As mentioned in the CP 51-405, electronic access to documents provides a more cost efficient, timely and environmentally friendly manner of communicating information to investors than physical delivery.

Many investors are requesting issuers to reduce their carbon footprint. The Proposed Access Model is a way to do so.

2 *In your view, what are the potential benefits or limitations of an access equals delivery model? Please explain.*

As indicated in CP 51-405, the Working Group agrees the Proposed Access Model 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. SEDAR and the issuer's website provide ease and convenience of use for investors, allowing them to access and search for information more efficiently than they would otherwise be able to with paper copies of documents.

The Working Group is of the view that the Proposed Access Model has no material limitation if issuers continue to deliver documents in paper or electronic form, based on the investors' standing instructions or upon request.

3 *Do you agree that the CSA should prioritize a policy initiative focussing on implementing an access equals delivery model for prospectuses and financial statements and related MD&A?*

The Working Group is of the view that the Proposed Access Model (as adapted for prospectuses) should be implemented in all documents that have to be delivered to investors. However, if the CSA prefer to implement the Proposed Access Model gradually, the Working Group agrees that CSA should prioritize a policy initiative focussing on implementing an access equals delivery model for prospectuses and financial statements and related MD&As.

4 *If you agree that an access equals delivery model should be implemented for prospectuses:*

(a) Should it be the same model for all types of prospectuses (i.e. long-form, short-form, preliminary, final, etc.)?

The Working Group thinks that the Proposed Access Model should be adapted to the prospectuses as explained below.

(b) How should we calculate an investor's withdrawal right period? Should it be calculated from (i) the date on which the issuer issues and files a news release indicating that the final prospectus is available electronically, (ii) the date on which the investor purchases the securities, or (iii) another date? Please explain.

Currently, securities legislation in certain of the provinces of Canada requires that a dealer who receives an order to subscribe for or purchase a security offered in a distribution made with a prospectus, send to the purchaser a copy of the latest prospectus (including the applicable prospectus supplement(s) in the case of a base shelf prospectus) and any amendment thereto (the **Final prospectus**), not later than the second working day after the subscription or purchase. Securities legislation in certain of the provinces of Canada provides purchasers with the right to withdraw from an agreement to purchase securities. This right may be exercised within two business days after receipt or deemed receipt of the Final prospectus. The Working Group is of the view that the current regime should be adapted under the Proposed Access Model. Instead of having the obligation to send a copy of the prospectus and any amendment thereto, the dealer would have the obligation to send a notice to the purchaser that such document has been filed on SEDAR. The withdrawal right period could be calculated from the date on which the investor receives the notice. A similar approach to the U.S. rules could be adopted in Canada. Accordingly, the Final prospectus would be deemed to have been delivered as long as it is filed on SEDAR and a notice of the filing is sent to purchasers of securities issued pursuant to the prospectus.

Alternatively, since the process of using electronic delivery is already well established, brokers who would wish to send offering materials electronically to their clients should be allowed to continue their practice. The withdrawal right period would then be calculated from the date on which the dealers send the offering materials through electronic means.

The filing of a news release indicating that the Final prospectus is available electronically would be a further alternative to the delivery of the notice or materials but should not be a requirement of the access equals delivery model as discussed below.

Based on the above, the withdrawal rights would run from the earliest of (i) receipt by the investor of the notice, (ii) receipt by the investor of the offering materials electronically; and (iii) the posting on SEDAR of the news release; provided that, in the case of items (i) and (iii), the issuer has filed the offering materials on SEDAR. The working group considers these to be the appropriate date(s) from which the withdrawal right period should run.

In all cases, purchasers would be permitted to request a copy of the offering materials, which, however, would not alter the computation of the withdrawal right period as per the new requirements.

(c) Should a news release be required for both the preliminary prospectus and the final prospectus, or is only one news release for an offering appropriate?

The Proposed Access Model represents an improvement to the current offering material delivery requirement. However, the Working Group is of the view that imposing the issuance of a press release would be adding something over and above the current process rather than simplifying it, particularly in the context of a shelf prospectus.

The news release would not be more efficient than the approach proposed above in ensuring the investor receives the offering materials and that the timing for withdrawal rights is clear and trackable and so should be included only as an alternative and not a requirement for the access equals delivery model. Imposing such a requirement would be onerous on frequent issuers, which can have multiple offerings in one day, and have the effect of significantly increasing the volume of news releases from such issuers, in each case without a corresponding benefit.

For shelf prospectuses, at the time of filing the preliminary shelf and the final shelf, there is no investor group to notify or to start a withdrawal right period for as no one is buying a security at that point and so no press release should be required at that point. It is only upon the filing of the prospectus supplement and/or pricing supplement for a specific issuance that there are specific investors for the securities being issued in that issuance. As mentioned above, the Working Group would consider that news releases in respect of the publication of the prospectus supplement/pricing supplement should not be a requirement but should be an alternative to notice or delivery in connection with such offerings.

Section 410 of the TSX Company Manual already requires prompt disclosure of public sales of securities. For example, issuers generally announce entering into an agreement with dealers for the sale of securities at the

time of the filing of a preliminary prospectus or at the time of the filing of supplements or pricing supplements. However, a press release is not necessarily issued at the time a Final prospectus is filed. A press release is instead sometimes issued at the closing of the offering in the cases of long and short form prospectuses. The Working Group is of the view that requiring a news release each time a prospectus or a supplement is filed would be confusing and onerous.

5 *For which documents required to be delivered under securities legislation (other than prospectuses and financial statements and related MD&As) should an access equals delivery model be implemented? Are there any investor protection or investor engagement concerns associated with implementing an access equals delivery model for rights offering circulars, proxy-related materials, and/or take-over bid and issuer bid circulars? In your view, would this model require significant changes to the proxy voting infrastructure (e.g. operational processes surrounding solicitation and submission of voting instructions)? Please explain.*

The Working Group is of the view that the Proposed Access Model should be extended to all such documents that have to be delivered to investors.

The Working Group believes that the benefits of the Proposed Access Model outweigh any concern associated with implementing such model for rights offering circulars, proxy-related materials, and/or take-over bid and issuer bid circulars.

Please note that intermediaries have obligations to inform their clients of corporate events. As mentioned in section 4.7 of *Policy Statement to Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer*, intermediaries have obligations to the beneficial owners holding through them that arise from the nature of the relationship between the intermediary and the beneficial owners. Such obligations can potentially mitigate information gaps.

6 *Under an access equals delivery model, an issuer would be considered to have effected delivery once the document has been filed on SEDAR and posted on the issuer's website.*

(a) Should we refer to "website" or a more technologically-neutral concept (e.g. "digital platform") to allow market participants to use other technologies? Please explain.

TSX strongly recommends that all TSX-listed issuers make investor relations information available on their web site. Section 423.10 of the TSX Company Manual provides that if an issuer creates its own web site, it can ensure that all of its investor relations information is available through one site and can provide more information than is currently available online. The Working Group is of the view that the issuer's website, together with SEDAR, are the best ways to make documents accessible to all investors. However, the Working Group agrees with the proposal to allow market participants to use other technologies if the document has also been filed on SEDAR and posted on the issuer's website. Furthermore, the Working Group suggests that the CSA develop a model that can be easily adaptable to future technological developments.

(b) Should we require all issuers to have a website on which the issuer could post documents?

The CSA encourages issuers to use technology to improve investor access to issuers information. Section 6.11 of *National Policy 51-201 – Disclosure Standards* indicates that issuers should concurrently post on their website, if they have one, all documents that issuers file on SEDAR. The Working Group is of the view that the Proposed Access Model should adopt the same approach and encourage all reporting issuers to have a website on which such documents are posted.

7 *Under an access equals delivery model, an issuer would issue and file a news release indicating that the document is available electronically and that a paper copy can be obtained upon request.*

(a) Is a news release sufficient to alert investors that a document is available?

The Working Group is of the view that a news release is sufficient to alert investors that a document is available but should only be an alternative to providing notice or delivery of the offering documents as discussed above.

(b) What particular information should be included in the news release?

The Working Group is of the view that the news release, as an alternative only to notice or delivery, should not include detailed information about the document but only the fact that the document is available electronically on SEDAR and on the issuer's website and that a paper copy or electronic copy can be obtained from the issuer upon request.

8 *Do you have any other suggested changes to or comments on the access equals delivery model described above? Are there any aspects of this model that are impractical or misaligned with current market practices?*

As previously mentioned, the Working Group suggests that the CSA develop a model that can be easily adaptable to future technological developments and that the news release not be a requirement but be provided as an alternative.

Conclusion

As explained above, the Working Group is in favour of the access equals delivery model. It is of the view that the Proposed Access Model represents a good step in disseminating information efficiently and reducing the carbon footprint of issuers.

Yours very truly,

(signed) Norton Rose Fulbright Canada LLP

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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
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Dear Sirs/Mesdames:

Re: Request for Comment – CSA Consultation Paper 51-405 – *Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers*

This comment letter is provided to you in response to CSA Consultation Paper 51-405 – *Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers* (the "Consultation Paper"). Following our initial comments we will respond to each of the specific questions set out in the Consultation Paper. We appreciate the opportunity to provide this comment letter and hope that our submissions will be of assistance.

We are enthusiastically supportive of the CSA's proposal to continue to reduce the regulatory burden on public company issuers and other market participants, and believe that a modernization of the requirements for the communication of information to investors, and the market generally, would be a welcome development. We strongly encourage the CSA to pursue this initiative as a priority for 2020.

While the Consultation Paper is framed as a consideration of an "access equals delivery model", we believe it would be helpful to consider the topic of information communication requirements under securities laws more broadly as part of this initiative. The difference between access equals delivery, as discussed in the Consultation Paper, and electronic delivery, as discussed in National Policy 11-201 *Delivery of Documents by Electronic Means* ("NP 11-201"), seems to be teetering on a knife's edge, given the significant overlap between them. We also note that we do not agree with the premise that access equals delivery should always entail a requirement to issue a press release to notify investors or other market participants that they may access a document that has been filed on SEDAR, or elsewhere, for that document to be considered "delivered", and that in certain cases the filing of, and thereby the provision of access to, a document on SEDAR, without further action, should be sufficient to constitute delivery of that document to all parties to whom delivery is required.

We urge the CSA to consider developing, as part of the Consultation Paper process, a delivery model that addresses all requirements for the delivery of information or documentation under securities laws to investors or the market, integrating the very laudable and timely principles of the proposed access equals delivery model with the existing electronic delivery principles of NP 11-201 in a rationalized way.

We suggest that the first step in developing a framework for a comprehensive access equals delivery regulatory model should be to catalog the currently known and available delivery methods for communicating information or delivering documents ("Delivery Methods"), and then assess which method is best suited to be mandated as the required method of delivery for each type of information and document ("Information Types").

Delivery Methods

While other methods for delivering written information do exist,[1] in practical terms we believe that methods listed below are effectively the only methods of communication that

[1] For example, we do not include fax transmission in the list of Delivery Methods, as the practice of faxing documents has largely been replaced by e-mailing PDF copies of documents instead. Given the limited number of market participants who currently have and use fax machines, we do not believe that faxing should be considered a reliable or viable Delivery Method.

would be practical for consideration as appropriate to satisfy the requirements of Canadian securities laws for delivery any of the Information Types that will be discussed below:

- Delivery by regular mail (Canada Post);
- Delivery by courier or messenger service;
- Delivery by e-mailing a PDF or similar electronic version of the document;
- Delivery by way of e-mailing a link which, when clicked, will retrieve a PDF or similar electronic version of the document;
- Delivery by way of a web-based portal or similar electronic document service or system which transmits or delivers a PDF or similar electronic version of the document, or a link which, when clicked, will retrieve an electronic version of the document;
- Delivery by way of posting an electronic version of the document on the issuer's website or another third party website;
- Delivery by way of filing an electronic version of the document on SEDAR;
- Delivery by way of an advertisement in a publication of general circulation that either contains the required information or provides a means to access the required information; and
- Delivery by way of issuing a press release that either contains the required information or provides a means to access the required information.

The prescribed Delivery Method for any particular Information Type could include any one or more of the methods listed above. As part of the process for adopting an access equals delivery regime, we would propose that the CSA consider "assigning" each of the Information Types listed below to one of three tiers of required Delivery Methods, based on the nature of the document or information:

Full Delivery Requirement **–** For information or a document subject to a "Full Delivery Requirement", we propose that the sender should be required to file the information or document on SEDAR as the first step. Once the SEDAR filing has been made, the filer would then be required to deliver a short "informational document" to the required recipients. In order to advance the principles of the Consultation Paper, including efficiency, reduction of cost and waste, and environmental sustainability, the "informational document" would not be required to include the full text of the SEDAR

filed document, but rather consist of a short summary describing the nature of the SEDAR filing together with instructions as to where and how the actual document required to be delivered may be obtained – which may (but need not) include the sender's website or a third party website, in addition to referencing the filing made on SEDAR. The "informational document" could be delivered, at the sender's election, either: (i) by making physical delivery of the informational document to the required recipients by mail, courier or messenger; or (ii) delivering the informational document electronically by any means compliant with NP 11-201; or (iii) delivering the informational document to the required recipients by any other method to which a particular recipient has provided a consent that has not been withdrawn. We believe that the filing of information and documents of this type on SEDAR, combined with the requirement to deliver an "informational document" containing notice of the SEDAR filing to the intended recipient, should be sufficient for these Information Types, and that the issuance of a press release should not be prescribed as an additional requirement for securities law compliance purposes (noting that voluntary issuance of a press release is always an available option).

Press Release as Delivery Requirement – For information or a document subject to a "Press Release as Delivery Requirement", we propose that the sender should be required to file the information or document on SEDAR, and then also be required to issue a press release alerting the market to the fact that the SEDAR filing has been made, and providing instructions as to where and how the actual document or documents required to be delivered may be obtained, which may include the sender's website or a third party website, in addition to the filings made on SEDAR.

Filing as Delivery Requirement – For information or a document subject to a "Filing as Delivery Requirement", we propose that the sender should only be required to file the information or document on SEDAR, without being required to take any further steps to bring that filing to the attention of the required recipients. The public availability of the document filed on SEDAR would constitute immediately effective delivery to all required recipients.

Information Types

In our view, a comprehensive access equals delivery model should specifically consider and address each of the following types of information and documents, and designate them as either subject to a Full Delivery Requirement, a Press Release as Delivery Requirement, or a Filing as Delivery Requirement, as appropriate depending on the nature and purpose of each type of communication. The categorization we would propose for consideration is set out below:

Prospectuses **–** Consideration of the delivery requirements for a prospectus is complex, given that different rules and policies may be appropriate in different circumstances. For example, in the circumstances of an initial public offering, the requirements for delivery of a preliminary and final prospectus or amendments to those documents may justifiably be different from the requirements appropriate for a short-form prospectus offering. It is interesting to note, in particular, that the CSA has already embraced, since the inception of the short form prospectus rules, an access equals delivery model for the documents incorporated by reference into a short form prospectus, which form the core of the required disclosure regarding the issuer. It has been well accepted that investors purchasing securities in a short form prospectus offering should be expected to seek out, on their own initiative, the financial statements, MD&A, material change reports, proxy circulars and other documents previously filed by the issuer.

We wish to draw to the attention of the CSA the importance of exercising caution when considering the application of the U.S. "access equals delivery" model discussed in Annex A to the Consultation Paper in the Canadian context. In the United States, an investor is considered to have made its investment decision on the basis of the preliminary prospectus (or preliminary prospectus supplement) it has in hand at the time it enters a binding commitment to purchase the securities, as supplemented by any additional pricing-related or other information which may be delivered prior to that time. The purchase commitment is made well before the final prospectus is available. The analysis applied to a Canadian prospectus offering is different. Due to the availability of withdrawal rights, Canadian investors in a prospectus offering are considered to have made their investment decision only after they have received the final prospectus containing pricing information, and the withdrawal rights have expired. Putting this point another way, under the U.S. Securities Act of 1933, the final prospectus containing pricing information is a document made available to an investor solely as a matter of record, after a binding investment decision has already been made. In contrast, in Canada the final prospectus containing pricing information is, in theory, the document on which the investment decision is actually based. Given that difference, as a policy matter, the appropriate method for delivery of a U.S. final prospectus and a Canadian final prospectus could potentially be justifiably different as the documents, in theory, serve different purposes at different points in the investment decision process.

In our view, however, prospectuses are an Information Type for which the appropriate Delivery Method should be a Filing as Delivery Requirement. We believe this is true for preliminary prospectuses, final prospectuses, prospectus supplements and amendments thereto, whether short form or long form, as well as base PREP prospectuses and supplemented PREP prospectuses. An investor in a

securities offering (other than a rights offering by prospectus, which is discussed below) is actively making an investment decision to participate in the offering, having been offered and accepted the opportunity to participate in the offering. We believe that all investors should be sufficiently familiar with the SEDAR filing system to know that all types of prospectuses are available on SEDAR, and that filing on SEDAR, without more, should definitively be a satisfactory Delivery Method for this Information Type. We would urge the CSA to eliminate the complexity and uncertainty of requiring the physical or electronic delivery of a final prospectus to investors to "start the clock" on the time period during which withdrawal rights may be exercised. Rather, we propose that the filing and public availability of a final prospectus on SEDAR (including a rights offering prospectus) should constitute concurrent and immediate delivery of the final prospectus to all purchasers, and that withdrawal rights should begin to run at the time of public availability. We do not believe that it should be necessary to issue a press release as part of the required Delivery Method for prospectuses, although disclosure of the offering by way of press release may of course be required for other reasons such as an issuer's timely disclosure obligations.

Rights Offering Circulars and Prospectuses – As a rights offering involves providing an extraordinary and unscheduled entitlement to existing shareholders of a reporting issuer, we believe that it is appropriate to impose a Full Delivery Requirement for rights offerings, whether conducted under a prospectus or rights offering circular. We note that the current mechanism for prospectus exempt rights offerings in Section 2.1 of National Instrument 45-106 *Prospectus Exemptions* ("NI 45-106") already is much in line with the proposed Full Delivery Requirement model, as the issuer is required to prepare a *notice* of the rights offering that must be filed on SEDAR and "sent" to shareholders, to alert shareholders to the fact that a rights offering is taking place. However, the rights offering circular itself is not required to be "sent" under the current rules, but only made accessible through filing it on SEDAR. As with other final prospectuses, we would propose that a final prospectus for a rights offering should only be subject to a Filing as Delivery Requirement, and that withdrawal rights should start to run at the time that a final rights offering prospectus becomes publicly available on SEDAR.

We note that the rights offering prospectus exemption for issuers with a minimal connection to Canada (Section 2.1.2 of National Instrument 45-106 *Prospectus Exemptions*) requires that all materials "sent" to other security holders also be filed on SEDAR and "sent" to each security holder resident in Canada. We would propose that for this Information Type, the permitted Delivery Method should be the same method that is used to send the materials to non-Canadian shareholders, whatever that may be.

Management Information Circulars – Although reporting issuers are required to have annual general meetings of shareholders meetings every year, the precise time at which the meeting is scheduled is not prescribed and may vary from year to year. Further, special meetings may occur at any time. In order to ensure that shareholders are able to exercise their voting rights, we believe that notice of the meeting should be subject to a Full Delivery Requirement, containing instructions regarding where and how to access all other relevant materials, including the management information circular and required accompanying documents. We note that in any case the proxy voting process requires the delivery of a unique "control number" to each registered and beneficial owner which must appear on the proxy or voting instruction form. As a result, it may be most practical to require that the proxy or voting instruction form bearing that control number should be subject to a Full Delivery Requirement, rather than only notice of the meeting.

Financial Statements and MD&A

We believe that the current model requiring the sending of request forms to investors, or alternatively sending annual financial statements and MD&A to all investors, and also sending interim financial statements to investors that request them, should be replaced by new Delivery Method requirements for those Information Types. All investors are aware that reporting issuers are required to file annual and interim financial statements and, in the modern computer age, should be expected to have the means of accessing those documents on SEDAR and knowing when to do so based on their regular filing deadlines. For the purposes of securities law compliance, we propose that a Filing as Delivery Requirement should apply. While as noted in the Consultation Paper there may be other reasons the issuer may wish to, or be required to, preserve the option of paper delivery, we do not believe that the investor protection objectives of the securities laws should prescribe doing so.

Take-Over Bid and Issuer Bid Circulars

Take-over bids and issuer bids are unscheduled corporate events, and afford investors with a unique and time-limited opportunity to sell their shares. For these reasons, we believe that it is important to maintain a Delivery Method for these Information Types that will bring them to the attention of beneficial owners of securities on a timely basis. For this reason, we propose that a Full Delivery Requirement should apply for notice of the bid. We do not believe, however, that actual delivery of the bid documents is necessary for that purpose, so long as the notice to shareholders includes information as to where the actual bid documents and related documentation may be found on SEDAR. Alternatively, the CSA

may conclude that imposing a Full Delivery Requirement is not in fact necessary to bring a take-over bid or an issuer bid to the attention of shareholders, and that imposing a Press Release as Delivery Requirement would be sufficient for this purpose.

We note that a number of the take-over bid and issuer bid exemptions afforded by National Instrument 62-104 *Take-Over Bids and Issuer Bids* require bid materials that are sent to other securityholders to be filed on SEDAR and "sent" to securityholders in Canada. We would propose that for this Information Type, the permitted Delivery Method should be the same method that is used to send the materials to non-Canadian shareholders, whatever that may be. Further, we believe that for the purposes of these exemptions, there should no longer be a required to publish an advertisement as a prescribed Delivery Method. We believe that newspaper advertisements are no longer a reliable means of communicating information to securityholders who often no longer look at print editions of the daily news. Further, there is typically significant lead time and cost involved in purchasing the advertising space, and advertising space is not always available. We would urge the CSA to replace any requirement or condition of an existing exemption which necessitates the publication of an advertisement with a Press Release as Delivery requirement instead.

Responses to Consultation Paper Questions

Set out below are our responses to the specific questions raised in the Consultation Paper.

1. Do you think it is appropriate to introduce an access equals delivery model into the Canadian market? Please explain why or why not.

We believe it is fully appropriate and timely to introduce an access equals delivery model into the Canadian market. As the CSA is aware, the adoption of access equals delivery will bring Canada more in line with the current rules and practices of other major securities markets, including the United States. We believe that access equals delivery will reduce the regulatory burden for issuers by assisting them in reigning in operating costs though savings in both printing and mailing costs and will provide consistency and, in the context of securities offerings made by prospectus, greater certainty to the market regarding the period of availability of withdrawal rights to investors. However, we believe that access equals delivery would be best implemented through the tiered approach we have proposed, imposing as appropriate in the context either:

- a Full Delivery Requirement, which would require "pushing" a notification to the recipient through physical or electronic delivery and also making a SEDAR filing; or

- a Press Release as Delivery Requirement, which would require only a press release and SEDAR filing; or

- a Filing as Delivery Requirement, which would require only a SEDAR filing.

2. In your view, what are the potential benefits or limitations of an access equals delivery model? Please explain.

As the CSA is aware, and as noted above, printing and mailing costs represent a significant cost for reporting issuers. Moving to an access equals delivery model will reduce costs for all issuers, though larger issuers with broader shareholder distribution have the potential for greater cost savings.

Secondly, assuming the CSA adopts our recommendation regarding the period during which withdrawal rights may be exercised in a prospectus offering (as discussed further below in question 4(b)), market participants will have greater certainty regarding the operation of these rights. Currently the period during which withdrawal rights may be exercised runs for a specified period commencing at the time the purchaser receives the prospectus, which is currently often difficult if not impossible to determine with certainty when the prospectus is delivered through conventional methods such as courier service, or the mail. Having greater certainty regarding the commencement and expiry of the withdrawal period will reduce the risk exposure of market participants seeking to close securities offerings as quickly as practicable, particularly in light of the global evolution toward shorter settlement cycles for both secondary market trades and new issues.

Finally, adopting an access equals delivery model will bring Canada more in line with comparable markets, such as the United States, where various access equals delivery rules have been in place for a number of years, including the access equals delivery model for delivery of prospectuses in securities offerings.

We do not believe that the Delivery Method we are proposing for consideration for various Information Types would in any way prejudice market participants.

For example:

- in the case of a prospectus, the issuer and its underwriters or agents will be seeking to sell securities and therefore will be reaching out to prospective purchasers to make them aware of the transaction. In this respect we would expect the issuer and its underwriters or agents to be actively reaching out to prospective purchasers to make them aware of the

transaction, and the availability of the prospectus on SEDAR should constitute a satisfactory Delivery Method;

- in the case of a take-over bid circular or issuer bid circular, the acquiror or issuer, as applicable, is seeking to have the receiving shareholders agree to tender some or all of their shares. In these transactions, we expect that even if issuers are able to take advantage of an access equals delivery model in respect of a take-over bid circular or issuer bid circular, a notice regarding the transaction, letter of transmittal or notice of guaranteed delivery is, in our view, likely to be mailed to each shareholder in order to get the benefit of higher participation rate; and

- in the case of a management information circular or proxy circular, the issuer or dissident solicitor is seeking support from shareholders. In this case, we would anticipate that issuers and dissidents will continue to mail circulars, proxy cards and voting instruction forms to registered and beneficial shareholders in order to solicit sufficient support whether required to do so or not, but in our view they should not be required to deliver full copies of lengthy documents which can easily be accessed on SEDAR instead.

In this respect, we expect that changes to the permitted Delivery Method for these Information Types will not have significant short-term impact on market practice, as self-interest will drive applicable market participants to continue to ensure that recipients receive the information required in order to make fundamental decisions (where applicable). Accordingly, we view the benefits of modernizing the regulatory requirements surrounding the Delivery Method for various Information Types as significantly outweighing any potential detriments.

3. Do you agree that the CSA should prioritize a policy initiative focussing on implementing an access equals delivery model for prospectuses and financial statements and related MD&A?

We agree that the CSA should prioritize modernizing the prescribed Delivery Method for prospectuses and financial statements and related MD&A, as well as other Information Types.

4. If you agree that an access equals delivery model should be implemented for prospectuses:

(a) Should it be the same model for all types of prospectuses (i.e. long-form, short-form, preliminary, final, etc.)?

In our view the Delivery Method prescribed for all types of prospectus should be filing on SEDAR. We do not see a need to differentiate between the different types of prospectus.

(b) How should we calculate an investor's withdrawal right period? Should it be calculated from (i) the date on which the issuer issues and files a news release indicating that the final prospectus is available electronically, (ii) the date on which the investor purchases the securities, or (iii) another date? Please explain.

In our view, an investor's withdrawal right should run from the date on which the final prospectus has become publicly available on SEDAR. The current withdrawal period runs from the date of receipt of the final prospectus (whether by way of physical or electronic receipt), which has in practice resulted in a longer settlement cycle for new issues in Canada than in the United States and other countries (with closing typically on a T+5 basis as compared to U.S. practice of closing on a shorter settlement cycle). The longer settlement cycle in Canadian offerings is a function of the need to provide sufficient time to permit the withdrawal rights to expire, necessitated by the timing requirements for printing, distribution and mailing of the final prospectus, which is still often required where electronic delivery in accordance with NP 11-201 is not feasible. A Delivery Method allowing for the public availability of the final prospectus on SEDAR to be deemed to constitute immediate delivery of the final prospectus to investors, and having the withdrawal right period commence at that time, would provide certainty of timing to market participants without prejudicing investors, who will be aware that the final prospectus must be filed and made publicly available on SEDAR. The unnecessary time delay between the filing of the final prospectus and closing could be reduced accordingly, potentially reducing any interim period closing risk. In addition to certainty of timing for the withdrawal right period, running the period from dissemination of the press release would provide consistency of withdrawal rights across all purchasers, providing greater certainty to issuers.

(c) Should a news release be required for both the preliminary prospectus and the final prospectus, or is only one news release for an offering appropriate?

We do not believe a news release should be ***required*** as a component of the prescribed Delivery Method for any prospectus. Although an issuer or its underwriters/agents may choose to issue a press release for marketing reasons in connection with a preliminary prospectus, or to satisfy timely disclosure obligations or ensure the information is "generally disclosed" for insider trading purposes, we do not believe such a news release should be required by regulation. In the twenty-three years since the SEDAR system was implemented, investors have become well aware that all prospectuses must be filed on SEDAR, and know how to retrieve them. The issuance of a news release specifically related to a prospectus filing would impose an unnecessary disclosure obligation for no added investor protection benefit.

5. For which documents required to be delivered under securities legislation (other than prospectuses and financial statements and related MD&A) should an access equals delivery model be implemented? Are there any investor protection or investor engagement concerns associated with implementing an access equals delivery model for rights offering circulars, proxy-related materials, and/or take-over bid and issuer bid circulars? In your view, would this model require significant changes to the proxy voting infrastructure (e.g. operational processes surrounding solicitation and submission of voting instructions)? Please explain.

In our view, the CSA should actively pursue Delivery Method requirements to implement a modernized access equals delivery model for all Information Types. For the reasons discussed above, we do not believe that investor protection or investor engagement concerns outweigh the benefit of realizable savings and benefits to issuers and other market participants. Self-interest will drive continued investor outreach, which should have the effect of avoiding immediate changes to proxy voting infrastructure (until such time as an entirely electronic proxy infrastructure model can be developed and implemented).

6. Under an access equals delivery model, an issuer would be considered to have effected delivery once the document has been filed on SEDAR and posted on the issuer's website.

(a) Should we refer to "website" or a more technologically-neutral concept (e.g. "digital platform") to allow market participants to use other technologies? Please explain.

Although technologies are constantly evolving and social media outlets are becoming more prevalent and common for issuers, we believe that an issuer's website remains a principal communication tool. As such, we believe that

reference to a "website" is appropriate for posting of information regarding applicable documentary disclosure. However, we do not believe that the CSA should mandate that copies of applicable documents actually be posted on an issuer's website, only that filing on SEDAR should be required. Investors should have the expectation that all required information regarding the issuer will be available on SEDAR. The location of an issuer's website may be difficult to find, and the specific placement of disclosure documents on the website is uncertain. We would suggest that issuers should be invited to post duplicate copies of disclosure documents, or link to or make reference to the availability of the specific disclosure document under the issuer's profile on SEDAR, but not be subject to a mandatory requirement to do so.

(b) Should we require all issuers to have a website on which the issuer could post documents?

As noted above, we believe that a link from an issuer's website to the SEDAR website should be sufficient, and not mandated. Although many issuers have robust websites that also include all relevant continuous disclosure documents in addition to having filings on SEDAR, we do not believe that issuers without the resources to maintain all continuous disclosure documents on their website should be prejudiced and precluded from using access equals delivery. The purpose of the SEDAR website is to ensure that continuous disclosure documents are readily accessible and we do not see the benefit of a mandated duplication.

7. Under an access equals delivery model, an issuer would issue and file a news release indicating that the document is available electronically and that a paper copy can be obtained upon request.

(a) Is a news release sufficient to alert investors that a document is available?

We believe that filing a document on SEDAR should, by itself, constitute a sufficient Delivery Method for many Information Types, and except for certain specific Information Types as discussed above, a news release should not be required to alert investors that a document is available on SEDAR. In many cases issuers have procedures in place that go beyond the issuance of a news release in order to keep their shareholders informed, including through voluntary electronic mailing lists for dissemination of press releases and other continuous disclosure documents. In addition, as noted above, for many of the disclosure documents that the CSA is specifically inquiring about, issuers and other market participants have a vested interest in ensuring their message is received. We do not believe the CSA should impose any obligations for Delivery Methods other than filing on SEDAR

or, for certain Information Types as discussed above, either the delivery of an informational document or the issuance of a press release.

(b) What particular information should be included in the news release?

We do not believe the CSA should impose specific requirements regarding the information that should be included in a news release (other than the fact that a SEDAR filing has been made), when required as a Delivery Method. Issuers should be free to include in any news release the information that the issuer itself determines to be appropriate.

8. Do you have any other suggested changes to or comments on the access equals delivery model described above? Are there any aspects of this model that are impractical or misaligned with current market practices?

Please refer to our comments above.

We would be happy to discuss our comments with you; please direct any inquiries to James R. Brown (jbrown@osler.com or [redacted]) or Rob Lando (rlando@osler.com or [redacted]).

Yours very truly,

(signed) Osler, Hoskin & Harcourt LLP

Osler, Hoskin & Harcourt LLP

PMAC
PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA
Advancing Standards™

VIA E-MAIL March 9, 2020

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
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
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

Me Phillippe Lebel
Corporate Secretary and Executive Director,
Legal Affairs
Autorité des marchés financiers
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The Secretary
Ontario Securities Commission
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Fax: 416-593-2318
comments@osc.gov.on.ca

Re: CSA Consultation Paper 51-405 – Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers

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Background

The Portfolio Management Association of Canada (**PMAC**) is pleased to have the opportunity to submit the following comments regarding CSA Consultation Paper 51-405 – *Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers* (the **Consultation**).

PMAC represents over 285 investment management firms registered to do business in Canada as portfolio managers. PMAC's members encompass both large and small firms managing total assets in excess of $2.8 trillion for institutional and private client portfolios.

PMAC members include investment fund managers (IFMs)

Of note, close to 70% of PMAC's members are IFMs managing both prospectus qualified investment funds and investment funds that are not reporting issuers (pooled funds). Our focus in responding to the Consultation is on the importance of considering and adopting a notice equals access delivery model for investment fund issuers at the same time as the Consultation directed at non-investment fund issuers.

Support for the Consultation

PMAC views the Consultation as an important opportunity to holistically review the continuous disclosure regime required under securities laws, including for investment fund issuers. PMAC believes that improving the continuous disclosure regime by replacing onerous and outdated disclosure requirements with effective, meaningful, and accessible disclosure will be of tremendous benefit to investors. We support the harmonized approach the CSA is taking with respect to this Consultation.

We believe that an access equals delivery model would appropriately balance market efficiency with investor protection in a way that is generally advantageous for the Canadian capital markets**.**

PMAC believes that regulations applicable to continuous disclosure must be flexible and adaptable to both technological and behavioural change in an evolving investment landscape. We thank the CSA for their continued consultation and work to strike the appropriate balance between reducing regulatory burden and streamlining disclosure requirements in a way that is beneficial to investors.

KEY RECOMMENDATIONS

We would like to highlight the following key recommendations:

1. Although the Consultation is limited to non-investment fund reporting issuers, we encourage the CSA to also consider whether an access equals delivery model would be appropriate for investment fund issuers. We are in favour of access equals delivery for most investment fund continuous disclosure requirements, including for ETF issuers. This could be achieved through access to a designated website for investment fund issuers. We are of the view that the CSA should seize this opportunity to consider an access equals delivery model for investment fund issuers at the same time as the

Consultation , as similar burden reduction and investor protection issues are involved and this would render the consultation process more efficient.

2. We agree that using information technology can improve communication with investors, and is a more cost-efficient, timely and environmentally friendly manner of communicating information, compared to physical delivery of documents. Communication by electronic means may also be more effective and engaging for investors.[1]

We will not respond to the specific questions raised in the Consultation. We refer instead to our response to the CSA Notice and Request for Comment - *Reducing Regulatory Burden for Investment Fund Issuers – Phase 2, Stage 1* (**Fund Consultation**), in which we addressed similar issues with respect to investment fund reporting issuers.

As set out in PMAC's submission on the Fund Consultation, we support an access equals delivery model for investment funds, which we suggest could include the following documents:

- Fund prospectuses and simplified prospectuses (including for ETFs)
- Annual Information Forms (AIFs) (which could be eliminated for funds that are no longer in public distribution but are still reporting issuers)
- MFRPs (which could be eliminated as all relevant information is disclosed elsewhere)
- Fund Facts, ETF Facts
- Material change reports (if not eliminated altogether)

Providing electronic access to documents may also permit the issuer or investment fund manager to obtain data such as the number of views the information has received, which portions of the information attract the most interest, and how the information is being used by investors. It is not possible to collect similar data when using paper statements. This data may assist the manager in developing better, more useful disclosure and in adapting disclosure (through personalization and customization, for example) to respond to investor needs.

It is likely that most investors do not distinguish between investment fund issuers and other reporting issuers; therefore, changing the disclosure regime in various stages may cause confusion. Considering an access equals disclosure model for all reporting issuers at the same time will increase understanding, access and education among investors, which is the ultimate goal of disclosure.

[1] See Beworks and Investment Funds Institute of Canada (IFIC), *Behavioural Economics (BE) Applied to Financial Disclosure*, February 2019 at pp. 63-64. The authors explain why "there are many potential benefits to providing financial information online." They also note some of the drawbacks to online disclosure.

Conclusion

We are pleased that CSA members are reviewing the continuous disclosure regime to determine what information is most useful to investors; research has demonstrated how difficult it can be for retail investors to interpret and understand the information they are given.[2] Access equals delivery can be an important tool in ensuring investors receive disclosure in an easy-to-find, search and store format.

We would be pleased to discuss any of our comments with you at your convenience. Please do not hesitate to contact Katie Walmsley at (416) 504-7018 or Victoria Paris at (416) 504-7491.

Yours truly,

PORTFOLIO MANAGEMENT ASSOCIATION OF CANADA

[redacted]

Katie Walmsley
President

Margaret Gunawan
Director
Chair of Industry, Regulation & Tax Committee,

Managing Director – Head of Canada
Legal & Compliance
BlackRock Asset Management Canada Limited

[2] See for example Behavioural Insights Team and Ontario Securities Commission Investor Office, *Improving fee disclosure through behavioural insights*, August 19, 2019 (Addressing barriers to comprehension, beginning on p. 11)

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Québec Bourse

Le 6 mars 2020,

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Commission des valeurs mobilières du Manitoba
Commission des valeurs mobilières de l'Ontario
Autorité des marchés financiers
Commission des services financiers et des services aux consommateurs (Nouveau-Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Île-du-Prince-Édouard
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Surintendant des valeurs mobilières, Territoires du Nord-Ouest
Surintendant des valeurs mobilières, Yukon
Surintendant des valeurs mobilières, Nunavut

Me Philippe Lebel
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Objet : Lettre en réponse à la consultation 51-405 des ACVM - Étude d'un modèle d'accès tenant lieu de transmission pour les émetteurs assujettis qui ne sont pas des fonds d'investissement

Bonjour,

Québec Bourse remercie les autorités canadiennes en valeurs mobilières (les « ACVM ») de nous donner l'opportunité de participer à cette consultation dans le contexte où il est impératif de mettre en place des mesures permettant une réduction du fardeau réglementaire des émetteurs publics.

Comme vous le savez, Québec Bourse a comme objectif de contribuer à redynamiser l'écosystème du financement public au Québec. La lourdeur du fardeau réglementaire constitue un élément important qui contribue à la non-compétitivité du financement public comparativement aux autres sources de financement à la disposition des entreprises en recherche de financement.

La recherche d'un meilleur équilibre entre les coûts de conformité pour un émetteur et la protection de l'investisseur est essentielle aujourd'hui. L'introduction d'un modèle d'accès tenant lieu de transmission de documents en satisfaction des obligations des émetteurs est sans contredit, une étape logique dans la modernisation de l'encadrement réglementaire et dans l'atteinte de cet objectif.

Vous trouverez ci-dessous nos commentaires aux questions soulevées par la consultation :

1. Croyez-vous qu'il est judicieux d'introduire un modèle d'accès tenant lieu de transmission sur le marché canadien?

Oui tout à fait. Il est essentiel de reconnaitre l'environnement technologique dans lequel nous sommes aujourd'hui. Un modèle d'accès tenant lieu de transmission, offre à l'émetteur un moyen efficace (tant en termes d'accès à l'information qu'en terme de coûts) de s'acquitter de ses obligations réglementaires et assure l'accès rapide à l'information pour les actionnaires.

2. À votre avis, quels sont les avantages et limites possibles du modèle d'accès tenant lieu de transmission?

Le modèle d'accès offre plusieurs avantages par rapport au contexte actuel. Tout d'abord, le modèle d'accès l'avantage de rendre disponible beaucoup plus rapidement les documents importants pour l'actionnaire.

Ensuite, il devrait permettre une réduction significative de coût pour les émetteurs (impression, papeterie et coûts postaux).

Enfin, la transmission électronique répond à des préoccupations environnementales.

3. Êtes-vous favorable à ce que les ACVM donnent la priorité à un projet réglementaire visant la mise en œuvre d'un modèle d'accès tenant lieu de transmission pour les prospectus ainsi que les états financiers et leurs rapports de gestion connexes?

Compte-tenu du fait que les états financiers et rapports de gestion sont assujettis à une fréquence élevée de production et de dépôt tout en constituant des documents volumineux, la priorité devrait leur être donné. Dans la mesure où l'inclusion du prospectus ne retarde pas le projet, alors il est aussi approprié de l'inclure dès le début.

Puisqu'un nombre élevé d'émetteurs réalisent des financements d'autres types que par voie de prospectus, nous croyons qu'il est essentiel de procéder aussi dès que possible à étendre le modèle d'accès à tous les documents de financement (circulaire d'offre de droits, notice, etc.).

4. Si vous êtes favorable à la mise en œuvre d'un modèle d'accès tenant lieu de transmission pour les prospectus, veuillez répondre aux questions suivantes.

a. Devrait-il être le même pour tous les types de prospectus (c'est-à-dire ordinaire, simplifié, provisoire, définitif, etc.)?

Oui, nous sommes d'avis qu'il n'y a pas lieu selon nous de discriminer;

b. Comment devrions-nous calculer le délai de résolution de l'investisseur? Le délai devrait-il courir à partir i) de la date à laquelle l'émetteur publie et dépose un communiqué indiquant que le prospectus définitif est disponible par voie électronique, ii) de la date à laquelle l'investisseur souscrit ou achète les titres ou iii) d'une autre date?

Le délai de résolution devrait courir à la plus tardive des 2 dates (si différentes) : i) la date où le document est disponible électroniquement; et ii) la date où le communiqué est émis;

c. Un communiqué devrait-il être requis aussi bien pour le prospectus provisoire que pour le définitif ou est-il suffisant de ne publier qu'un seul communiqué pour le placement?

Un communiqué émis lors du dépôt du prospectus définitif est suffisant. Le communiqué lors du dépôt du prospectus définitif correspond au début de la période de résolution pour l'investisseur. C'est aussi dans une majorité de càs, le moment ou le prix d'émission des titres et l'ensemble des conditions de placement sont connu.

5. Pour quels documents devant être transmis en vertu de la législation en valeurs mobilières (outre les prospectus et les états financiers et leurs rapports de gestion connexes) devrait-on mettre en œuvre un modèle d'accès tenant lieu de transmission? L'application d'un modèle d'accès tenant lieu de transmission aux notices de placement de droits, aux documents reliés aux procurations et/ou aux notes d'information relatives à une offre publique d'achat ou de rachat provoquerait-elle des inquiétudes en ce qui concerne la protection des investisseurs ou leur engagement? À votre avis, ce modèle nécessiterait-il des modifications importantes de l'infrastructure du vote par procuration (par exemple le processus opérationnel concernant la sollicitation et la transmission d'instructions de vote)?

Comme mentionné plus haut, nous croyons que les documents de financements (notice d'offre de droits de souscription, de placements privés dans le cas des émetteurs inscrits en bourse) devraient également rapidement être éligible au modèle d'accès.

En ce qui concerne les documents reliés aux procurations, nous considérons qu'il est approprié d'étendre le modèle d'accès aux avis de convocation et circulaire d'information. L'objectif demeure le même soit rendre l'information disponible rapidement tout en évitant des coûts importants pour les émetteurs.

Pour les procurations, nous croyons qu'il faut maintenir la pratique actuelle de mise à la poste du document de procuration dabs l'attente de la mise en place d'un système chez les agents de transferts permettant aux actionnaires de faire le choix de recevoir les procurations par voie électronique.

Le modèle d'accès peut être élargi aux circulaires d'offre publique ou rachat par l'émetteur.

6. Dans le cadre d'un modèle d'accès tenant lieu de transmission, un émetteur serait considéré comme ayant transmis un document une fois qu'il l'aurait déposé au moyen de SEDAR et l'aurait affiché sur son site Web.

a. Devrions-nous employer le terme « site Web » ou un concept technologique neutre (comme « plateforme numérique ») permettant aux participants au marché de recourir à d'autres moyens technologiques?

Dans un premier, nous privilégions le « site web » plutôt que de l'expression « plateforme numérique ». Le modèle d'accès doit à l'origine référer au site web et la disponibilité sur SEDAR. Si un émetteur veut utiliser d'autre plateforme (Facebook, twitter ou autre), cela doit être un outil additionnel permettant à l'émetteur de diffusé l'information comme c'est actuellement le cas lors de diffusion de communiqué.

Il sera toujours possible dans l'avenir advenant d'autres avancées technologiques, de référer à d'autres plateformes numériques.

b. Devrions-nous obliger tous les émetteurs à disposer d'un site Web sur lequel ils pourraient afficher les documents?

Oui tous les émetteurs devraient être obligés d'avoir un site web corporatif avec une section clairement identifiable pour les informations aux actionnaires. Les émetteurs devraient également permettre à une actionnaire qui en fait la demande de s'inscrire à une liste d'envoi et d'ainsi de recevoir des alertes de dépôt/disponibilité de document.

7. Dans le cadre d'un modèle d'accès tenant lieu de transmission, un émetteur publierait et déposerait un communiqué indiquant que le document est disponible par voie électronique et qu'il est possible d'en demander un exemplaire imprimé.

a. Un communiqué est-il suffisant pour aviser les investisseurs qu'un document est disponible?

Du côté de l'émetteur, un communiqué est suffisant.

b. Quels renseignements devraient figurer dans le communiqué?

Les informations suivantes devraient figurées :

i) Nature du document;

ii) Date du dépôt sur SEDAR;

iii) Lien du site web de l'émetteur permettant d'accéder directement au document.

iv) Cordonnées des personnes ressources.

8. Avez-vous d'autres modifications à proposer ou d'autres commentaires à formuler concernant le modèle d'accès tenant lieu de transmission décrit ci-dessus? Estimez-vous que certains éléments de ce modèle ne puissent être mis en pratique ou ne cadrent pas avec les pratiques actuelles du marché?

Le mot clé dans un modèle d'accès est effectivement l'accès. Nous croyons qu'il est urgent que les ACVM modernisent SEDAR et/ou sa prochaine version afin de faciliter l'accès aux documents pour les investisseurs (recherche, tri, etc.). De plus, il nous apparaît aussi important de moderniser SEDAR de façon à ajouter un système d'alerte qui permettrait à un investisseur de recevoir des alertes de dépôt de documents pour les émetteurs qu'un investisseur aurait identifié sur sa liste d'alerte.

La mise en œuvre du modèle d'accès est essentielle et doit être traiter en priorité par les ACVM. Nous sommes d'accord à ce que les ACVM priorisent les états financiers, les rapports de gestion et les documents de financements, dans un premier temps.

Par la suite le modèle d'accès pourra être élargi aux documents d'offre publique d'achat et de rachat.

En conclusion, le modèle d'accès est essentiel et fait l'objet d'attentes élevées chez les émetteurs. Nous souhaitons que les ACVM soient en mesure d'agir rapidement.

Enfin, nous sommes disponibles pour une rencontre à votre convenance pour discuter de nos commentaires et pour répondre à vos questions. Nous serions également heureux de participer à toute initiative ou groupe de travail que les ACVM pourrait mettre en place en relation avec la mise en œuvre des initiatives de réduction du fardeau réglementaire.

Vous remerciant à l'avance de l'attention que vos porterez à la présente, veuillez accepter l'expression de nos sentiments les meilleurs.

[redacted]

Louis Doyle
Directeur général
Québec Bourse

INCLUDES COMMENT LETTERS RECEIVED

March 9, 2020

Via email: comments@osc.gov.on.ca; consultation-en-cours@lautorite.qc.ca

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
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and

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
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cc:
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

Dear Sirs/Mesdames,

Re: CSA Consultation Paper 51-405 - Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers

This comment letter is being submitted by RBC Dominion Securities Inc. on behalf of RBC Capital Markets and RBC Wealth Management ("RBC" or "we"). We are writing in response to the Canadian Securities Administrators' ("CSA") *Consultation Paper 51-405 - Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers* (the "Consultation Paper") published on January 9, 2020. RBC appreciates this opportunity to comment on the Consultation Paper; our comments are below.

General Comments

RBC is pleased that the CSA continues to monitor industry developments to identify and consider areas of securities legislation applicable to non-investment fund reporting issuers that could benefit from a reduction of undue regulatory burden, without compromising investor protection and the efficiency of the capital markets. RBC

fully supports the CSA's goals underpinning the Consultation Paper and the development of an access equals delivery ("AED") model, including the recognition that electronic access to documents provides a more cost-efficient, timely and environmentally friendly manner of communicating information to investors than physical delivery.

Access Equals Delivery in the Canadian Market and Related Benefits

RBC is of the view that adopting an AED model is consistent with the standard in the United States, the European Union, and Australia, and in an industry where distributions by Canadian issuers are increasingly cross-border and global in nature, harmonization is imperative in terms of making Canadian capital markets efficient, accessible, competitive and serving the interests of Canadian individual and institutional investors, corporate issuers, and underwriters.

RBC believes an AED model is entirely appropriate and important, primarily because it will: (i) utilize existing technology to enhance access to offering documents and better inform investors on a timely basis; (ii) reduce the regulatory burden for Canadian issuers; and (iii) considerably reduce operational overhead costs to issuers and dealers, mailing and paper costs, and the considerable environmental impact of paper documents and their delivery (including cost of printing, waste, and carbon footprint).

Prioritizing Prospectuses, Financial Statements and related MD&A

RBC views prospectuses and related offering documents, quarterly financial statements, MD&A, as well as Annual Information Forms (AIFs) and other "normal course" documents (or documents that are common to all reporting issuers) evidencing matters of record ("Prioritized Documents") as a natural fit for an AED model and likely represent the easiest class or group of documents to introduce to AED as part of a staged process. These documents are typically "passive" in nature, in that they do not generally require a time-sensitive, reasoned response from investors, but are intended primarily to inform (as opposed to being action-oriented). RBC believes enhanced timeliness and access to fulsome information contained in the Prioritized Documents within an AED model better serves the interests of investors and other market participants.

Matters Specific to Prospectus Delivery

RBC believes it is prudent from an investor service and access to information perspective to require issuers to file both electronically on SEDAR and announce final prospectuses (only) via press release. Since deemed receipt of the final prospectus or other prescribed disclosure document is the determinative date for calculation of the commencement of the investor's withdrawal period under current applicable Canadian securities laws, RBC would propose an investor's withdrawal period under an AED model commence as of the time of the issuer's press release announcing that the final prospectus has been electronically posted and is accessible on SEDAR. This approach would foster certainty of when a withdrawal period commences and terminates, which would be transparent to all market participants and provide equality across investors.

RBC would expect at minimum the press release to contain information which may be currently required under applicable Canadian securities legislation, as well as a link or URL where the applicable prospectus may be obtained on SEDAR (and/or the issuer's website or other digital platform, if applicable), and contact information sufficient to notify potential investors where a request for a paper copy of the applicable document can be directed. RBC would suggest delivery of a paper copy of a final prospectus be considered separate from, and not impact, the timing of an investor's withdrawal period which would commence based on the press release only. CSA may consider whether a statement by the issuer with regard to deemed commencement of a withdrawal period should be included in a press release, for investor certainty.

Technology in Access Equals Delivery

While the Consultation Paper appears to indicate an AED model would require an issuer to maintain a website and post documents delivered under AED, RBC would recommend CSA consider whether it may be a best practice, as opposed to a requirement, for the issuer to post documents (or provide a link to the SEDAR document) on their corporate website or on any and all other publicly accessible digital platforms utilized by the issuer where the issuer regularly posts important investor documents or notices, only if the issuer has such a website or customarily utilized other platforms for this purpose. Consequently, a final prospectus or other prescribed offering document would be

deemed received once electronically posted and accessible on SEDAR, and the issuer has disseminated a corresponding press release only (as opposed to also being required to post on another website or platform).

Alternative and emerging technologies (including blockchain solutions) are worthy of consideration as additional or complementary means of access or facilitation. Currently, RBC believes SEDAR and the issuer's website or other existing digital platforms are the most intuitive and accessible technologic means for access and engagement by the majority of individual investors and institutional investors. However, RBC would recommend any new legislation be drafted to be inclusive and permissive of integration of emerging technologies as to not require further legislative amendment or allow uncertainty to arise as to whether a new technology can be integrated into the existing AED model.

Circulars (Take-Over Bid and Issuer Bid) and Proxy-Related Materials

RBC is of the view that while an AED model may become appropriate for various documents beyond the Prioritized Documents (such as take-over and issuer bid circulars and proxy-related materials that require more timely responses and active engagement from investors), RBC believes the CSA should focus its current AED model on the Prioritized Documents only at this time.

RBC expects shareholder engagement to be a priority consideration for documentation that impacts shareholder rights and/or opportunities. An AED model that may rely on indirect notification to shareholders via press release may not foster and facilitate shareholder engagement on important, outside of the ordinary course matters. Certain impacted shareholders may not have readily available access to or fluency with the requisite technology, and may therefore be potentially disadvantaged with respect to these particular forms of documentation.

With regard to documentation that may be characterized as impacting shareholder rights and/or opportunities requiring a time-sensitive active response, RBC would suggest the CSA consider an AED model whereby electronic delivery is an option for shareholders that they must positively elect well in advance of documentation being disseminated electronically, whereby shareholders also provide an email address in order that such relevant information (or notification thereof) can be sent to them directly by the issuer or through the appropriate intermediary. RBC would suggest CSA consider such positive election to be an annual requirement, including to address any changes or modifications to e-mail or other relevant contact information. RBC expects any such model could be harmonized in consideration of the existing "notice and access" regime for communication with shareholders.

Conclusion

We appreciate the opportunity to provide comments and welcome the opportunity to discuss the foregoing with you in further detail. If you have any questions or require further information, please do not hesitate to contact the undersigned.

"Gavin Higgs"

Gavin Higgs
Managing Director, Equity Capital Markets, Head of Equity Syndication
RBC Capital Markets

"Maarten Jansen"

Maarten Jansen
Head of Investments & Trading
RBC Wealth Management

SkyLaw

BY E-MAIL

March 5, 2020

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– and –

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

Dear Sirs/Mesdames:

Re: Response to CSA Consultation Paper 51-405 – Access Equals Delivery ("Paper 51-405")

We are writing to you in response to the request of the Canadian Securities Administrators for comments on Paper 51-405. We understand that comments are being sought on whether Access Equals Delivery constitutes an efficient way for investors to access information.

SkyLaw Professional Corporation

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Thank you for the opportunity to comment. We wish to respond in particular to question 7(a):

> *Under an access equals delivery model, an issuer would issue and file a news release indicating that the document is available electronically and that a paper copy can be obtained upon request. Is a news release sufficient to alert investors that a document is available?*

In our view the answer is a firm "no".

We are not aware of any way for investors to be sure that they receive these 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 a person might receive alerts that a SEDAR filing (such as a news release) has been made.

We believe that the Canadian Securities Administrators should provide a free service for investors to subscribe for real time notification of SEDAR filings by reporting issuers. As a law firm, we currently pay a substantial monthly fee to a private company to receive this alert service.

The CSA states that it is committed to facilitating electronic access to documents. We believe implementing this alert feature for SEDAR filings should be a top priority for the CSA since the technology already exists.

We understand that the SEDAR+ project is expected to include an alert feature. However, SEDAR+ is expected to launch in phases, with the first phase expected to launch no earlier than 2021. It is unclear whether that phase will even contain the alert mechanism.

Until such time as the CSA implements a SEDAR alert system that is free and easy for all investors to use, we believe it is premature to rely on only a news release to alert investors to important disclosures by reporting issuers.

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The following lawyers 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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Securities Transfer Association of Canada

Lara Donaldson
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March 9, 2020

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Dear Sirs:

Re: CSA Consultation Paper 51-405
Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers

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This letter represents the comments of the Securities Transfer Association of Canada (STAC) in response to CSA Consultation Paper 51-405 *Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers* ("CP51-405"). 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 securityholder's name and address, securities held, and, in some cases, email address. We process transfers, mail disclosure material, such as proxies, annual financial statements, quarterly reports, and management information circulars, and distribute dividends and related tax slips.

STAC appreciates the opportunity to provide our insight on this important initiative. We will be focusing our comments on the areas where transfer agents are directly involved. For ease of reference, we have included the text of the original consultation question, where applicable.

Consultation Question 1 – *Do you think it is appropriate to introduce an access equals delivery model into the Canadian market? Please explain why or why not.*

STAC believes it is appropriate for regulators to consider various ways of modernizing delivery of material to securityholders in Canada. We are currently very dependent on mailing paper and the complexities of the opaque indirect record keeping system causes disconnects in securityholder communication processes.
Access equals delivery is one model that, if properly implemented, may provide benefits and efficiencies to the Canadian market.

Consultation Question 2 – *In your view, what are the potential benefits or limitations of an access equals delivery model? Please explain.*

There are numerous potential benefits to an access equals delivery model for issuers, including reduced costs for mailing and printing material, and reduced environmental footprint.

Certain processes have limitations that will need to be overcome if this model is to be successfully implemented with no adverse effects to issuers or their securityholders. Complexities arise in situations where securityholders must take action to participate in a process, and send documents and/or certificates back to the transfer agent, who must then be able to identify the individual who sent those documents, reconcile them to the appropriate securityholder record, and follow their instructions.

Consultation Question 3 – *Do you agree that the CSA should prioritize a policy initiative focussing on implementing an access equals delivery model for prospectuses and financial statements and related MD&A?*

Given the complexities associated with other documents that the CSA is proposing to explore, specifically rights offering circulars, proxy-related materials and take-over bid and issuer bid circulars, we believe that prioritizing prospectuses and financial statements are a logical first step, given these materials are required to be delivered to securityholders, but there is no requirement for securityholders to deliver

anything back to the transfer agent or issuer. STAC members are not involved in the distribution of prospectuses, so we therefore have no opinion on whether access equals delivery is an appropriate model for these documents.

The delivery of annual financial statements for Canadian issuers has complexities due to issuers having two different categories of securityholders: registered and beneficial. For registered securityholders, issuers, depending on where they are incorporated, either have to mail the annual financial statement and related MD&A to all securityholders who have advised that they wish to receive them (opt-in process) or all securityholders who have not indicated that they do not want to receive them (opt-out process). For beneficial securityholders, all issuers are required to mail the documents to securityholders who have indicated that they want to receive them, as required under National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102). For quarterly financial statements, all securityholders are solicited annually and must opt-in for delivery further to requirements in NI 51-102. Both registered and beneficial securityholder solicitations must be completed annually. The number of annual and quarterly financial statements that are mailed decreases every year. We believe this is due to the information being readily and more rapidly available on-line, although we cannot provide specific data to support this.

Consultation Question 5 – *For which documents required to be delivered under securities legislation (other than prospectuses and financial statements and related MD&A) should an access equals delivery model be implemented? Are there any investor protection or investor engagement concerns associated with implementing an access equals delivery model for rights offering circulars, proxy-related materials, and/or take-over bid and issuer bid circulars? In your view, would this model require significant changes to the proxy voting infrastructure (e.g. operational processes surrounding solicitation and submission of voting instructions)? Please explain.*

STAC members believe that an access equals delivery model could potentially be beneficial if it provides financial, environmental or other benefits to issuers. However, there are certain details concerning investor engagement, investor protection, and issuer requirements that must be carefully considered prior to implementation.

STAC members are responsible for mailing various different types of material to securityholders on behalf of our clients. The material is typically as a result of continuous disclosure requirements or other securities legislation requirements, and includes documents such as proxies, information circulars, annual and quarterly financial statements, rights offering circulars, and take-over and issuer bid circulars. We are not involved in the distribution of prospectuses, and they are therefore not included in our comments.

Given our involvement in the details of these processes, we have set out specifics for you below:

<u>Proxy Material</u>

When proxy material is mailed out the securityholder must be able to send their voting instructions back to the tabulation agent, who must be able to identify who the securityholder is.

The process for mailing proxy material needs to be segregated between registered securityholders, who receive material directly from, and vote directly with, the transfer agent, and beneficial securityholders, who can receive material in various ways, through processes set out in National Instrument 54-101 - *Communication with Beneficial Owners of Securities of a Reporting Issuer* ("NI 54-101").

When a transfer agent creates a record for a registered securityholder, we receive limited information from the intermediary that they purchased their securities through, specifically name, address, and number of shares. We do not have the opportunity to go through an account opening process that would allow us to provide a unique ID to the securityholder, receive an email address and consent for electronic delivery, require sign up for an online account, or other process that would allow us to automate the voting process. Any further information added to a securityholder's record must be gathered through a secondary process, such as soliciting an email address, and success is dependent on the securityholder's response, which cannot be mandated. When transfer agents distribute proxy material, we include information on the physical form of proxy that is delivered to the securityholder, either by mail, or, if we have received the email and consent, electronically. The voting material includes either securityholder name and address and credentials for electronic voting, or, if delivered electronically, a unique log on for electronic voting, that allows us to ensure that the vote is applied to the correct securityholder account. Without that information, any process to match the vote to the account would be manual, and likely prone to errors. The result of this would be securityholder votes potentially not being tabulated resulting in the securityholder's preference not being recorded, and possible concerns with issuers receiving enough votes to meet quorum requirements or pass motions.

If proxy material is included in the access equals delivery model, there must be careful consideration of the voting processes to ensure that there are no unintended consequences.

For beneficial securityholders, which are segregated between Objecting Beneficial Owners (OBOs) and Non-Objecting Beneficial Owners (NOBOs), mailing and voting processes are more complicated. OBO holders always receive proxy material through their intermediary or intermediary's agent. NOBO holders can also receive material through this process, but issuer's also have the option of using their transfer agent as mailing agent. When transfer agents receive the NOBO data from the intermediaries' agent, we receive basic information, as set out in NI 54-101, which allows us to complete the mailing and identify the intermediary account behind CDS & Co where the securities are held. If beneficial securityholders are provided material through an access equals delivery model, consideration will need to be given to how beneficial securityholders will know with which agent to submit their vote. The option to deliver material directly is provided to the issuer, and without receiving material with voting information or a return envelope, beneficial securityholders would not know where or how to submit their vote, which could result in serious issues with the voting process. Although the publicly filed notice of meeting and record date includes details concerning which entity is completing the NOBO mailing, we do not believe that all retail securityholders have sufficient understanding of the in-depth processes to access this information, and, in any event, should not have to hunt around for this information in order to vote.

Rights Offering Circulars

If an issuer elects to raise capital by issuing rights to existing securityholders, the standard process is that a physical rights certificate is mailed to registered securityholders by the transfer agent, along with a rights offering document. This requirement is set out in both the TSX Listed Issuer Manual (Part VI Changes in Capital Structure of Listed Issuers, D. Rights Offerings, Section 614) and the TSX Venture Exchange Corporate Finance Manual, Policy 4.5, Rights Offerings). We would note that both of these manuals require a physical rights certificate to be issued, which could not be delivered under an access equals delivery model.

As stated previously, the information transfer agents receive when creating a record is limited. If rights information is to be distributed through an access equals delivery model, consideration must be given as

to how holders will receive the information that they need in order to evaluate their options, and, if appropriate, exercise their rights and submit the correct documents and information to the transfer agent.

Take-over and Issuer Bid Circulars

The distribution of take-over and issuer bid circulars is also a process that requires securityholders to respond back to the transfer agent. As with rights circulars and proxy material, it is essential that transfer agents be able to reconcile the responses received with the appropriate securityholder record. If a securityholder doesn't receive documents or an electronic message from the transfer agent with the appropriate information, successfully completing this process is jeopardized.

Consultation Question 6 – *Under an access equals delivery model, an issuer would be considered to have effected delivery once the document has been filed on SEDAR and posted on the issuer's website.*

a. *Should we refer to "website" or a more technologically-neutral concept (e.g. "digital platform") to allow market participants to use other technologies? Please explain*
b. *Should we require all issuers to have a website on which the issuer could post documents?*

In general, when describing technology, we propose the use of agnostic terms that do not tie rules to specific systems or software. We support the use of technology-neutral terms in order to allow for issuers to use the most appropriate and newer technologies as they emerge, as opposed to being tied to specific systems or references in the rules or regulations.

Given the recent project that has been undertaken by the CSA in connection with the modernization of SEDAR and other filing systems, it is difficult to respond to questions related to SEDAR or other possible methods of publicly posting documents without having more insight into the new versions that are going to be implemented.

Consultation Question 7 – *Under an access equals delivery model, an issuer would issue and file a news release indicating that the document is available electronically and that a paper copy can be obtained upon request.*

a. *Is a news release sufficient to alert investors that a document is available?*
b. *What particular information should be included in the news release?*

As stated in our response to Consultation Question 5, we have concerns about securityholders receiving information solely through a notification process. For meeting material, rights offerings, and take-over bid and issuer bids, we do not believe that a news release is sufficient.

Consultation Question 8 – *Do you have any other suggested changes to or comments on the access equals delivery model described above? Are there any aspects of this model that are impractical or misaligned with current market practice?*

Given the concerns we have set out in our letter, we would also encourage the CSA to review and correct the inefficiencies in the Canadian market in connection with electronic delivery of documents. The current processes contemplated under National Policy 11-201, *Electronic Delivery of Documents*. We believe there are changes that could be made that will greatly increase the ability of issuers to deliver material

electronically, thereby ensuring securityholders receive the notifications they need, and increasing efficiencies, reducing print and mailing volume, and saving issuers unnecessary expense.

The current process under NP 11-201 allows issuers to deliver documents electronically only to those registered securityholders who have consented to receive electronic delivery of material specifically from that issuer. As stated previously, when transfer agents create a securityholder record, we receive limited information and do not interact directly with that securityholder, which would allow us to obtain the consent. We are instead required to solicit the consent after the fact. We are also not able to transfer the consent to another issuer, even if it is the identical securityholder. This results in inefficiencies, additional costs to issuers, and securityholder dissatisfaction. We believe that a regime of implied consent should be implemented, so that if a transfer agent has received an email address from a securityholder, and that transfer agent has proper processes in place to manage rejected electronic delivery items, they should be authorized to use that email for delivery of material unless specifically instructed otherwise by the securityholder.

There is also a disconnect used in the electronic delivery process under NI 54-101 when an issuer elects to deliver material directly to their NOBO holders. Under NI 54-101, the consent for electronic delivery is provided by the NOBO to the intermediary who holds their account. A single form is completed which applies to all securities held in that account. When NOBO information is provided to the transfer agent for direct mailing, the consent for electronic delivery is not included, as it cannot be passed through to a third party due to the consent provided by the beneficial securityholder being limited only to "...electronic delivery from the intermediary.[1] STAC believes that the consent should be available to any mailing provider. The inability of an issuer's transfer agent to use the e-mail addresses provided has resulted in a breakdown in what should be an efficient communication process, frustration for security holders who have indicated that they want to receive their material electronically, and additional print and mailing costs for issuers.

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 require.

Sincerely,

[redacted]

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[1] National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*, Form 54-101 - *Explanation to Clients and Client Response Form*

March 9, 2020

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 marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, 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: CSA Consultation Paper 51-405 – Consideration of 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 consultation paper published by the Canadian Securities Administrators ("**CSA**") entitled CSA Consultation Paper 51-405 *Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers* ("**Consultation Paper**").

The Exchanges

The Exchanges are part of TMX Group Limited, a company that is strongly focused on supporting and promoting innovation, capital formation, innovation, 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 regulatory 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. We therefore applaud the CSA for continuing to consider options to reduce the regulatory burden for all market participants.

Our recommendation below is given bearing in mind the importance of balancing the need to reduce regulatory burden and fostering fair and efficient capital markets, with the equally important mandate to safeguard the public interest and protect investors.

Access Equals Delivery

We agree with the CSA's view that information technology is an important and useful tool in improving communication with investors and the Exchanges are generally supportive of the access equals delivery model proposed in the Consultation Paper. We understand that the proposed delivery model would permit a non-investment fund reporting issuer to satisfy its delivery requirements of certain disclosure documents (such as prospectuses, and its financial statements and related MD&A) by: (i) filing the document on both SEDAR and on the issuer's website; and (iii) issuing a press release (and filed on SEDAR and posted on the issuer's website) stating where the document is available electronically and that a paper copy can be obtained by request. The Exchanges are generally of the view that this delivery model may help reduce the regulatory burden and costs borne by issuers associated with the printing and delivery of paper disclosure documents to its investors, and that this delivery model would facilitate the timely disclosure of information to investors and would not have an adverse impact on investor protection. In addition, electronic access to documents provides an environmentally friendly manner of communicating information to investors.

In order to facilitate investor protection and to ensure a level playing field among investors, the Exchanges believe that issuers should be required to post the disclosure documents prominently on their website in an easily accessible format, and without requiring the user to endlessly navigate the website in order to locate the disclosure document. In addition, any required press release under the proposed delivery model could include a hyperlink to the issuer's website, the particular webpage that hosts the document, or to the disclosure document itself.

While generally supportive of the access equals delivery model, the Exchanges are of the view that this delivery model may be more burdensome and expensive for certain issuers when compared with the current delivery requirements. For example, certain issuers, such as TSXV

listed issuers, are not always required to issue a press release when releasing financial statements[1]. Instead, these issuers file their financial statements on SEDAR and send investors with a supplemental mail card with their proxy materials whereby investors can indicate whether they wish to receive financial statements of the issuer as permitted by National Instrument 51-102 *Continuous Disclosure Obligations*. We understand that the time and expense required to prepare, print and deliver a supplemental mail card may be considerably less than the cost of preparing and issuing a press release as required under the access equals delivery model. In addition, not all reporting issuers currently maintain, nor are required to maintain, a company website. For example, while TSX listed issuers are required to maintain a publicly accessible website where current copies of their corporate policy and governance documents must be posted, this is not required of TSXV listed issuers. Therefore, to require a TSXV listed issuer to set up and maintain a company website in order to fulfil the access equals delivery model may be considerably more burdensome and costly than the current disclosure documents delivery requirements under Canadian securities laws. As such, the Exchanges urge the CSA to consider whether it is appropriate to mandate that *all* issuers adopt the access equals delivery model, or whether it is appropriate to make this model optional, and thus permit issuers to continue with their current delivery methods.

To the extent that the proposed access equals delivery model may affect other types of documents as noted in the Consultation Paper (such as rights offering materials, proxy-related materials and take-over bid and issuer bid circulars), while generally supportive, the Exchanges urge the CSA to carefully consider the impact that the proposed delivery model may have on financial market infrastructures, including clearing agencies, central securities depositories, and other intermediaries. If, in the context of the present consultation, the CSA determines that the access equals delivery model does or will have a material impact on the operations and processes of the aforementioned intermediaries, further consultation prior to implementation will likely be warranted.

The Exchanges appreciate the opportunity to provide comments. Please do not hesitate to contact us if you have any questions regarding our comments.

Respectfully submitted,

[redacted]

Loui Anastasopoulos
President Capital Formation and TSX Trust

[redacted]

Brady Fletcher
Managing Director & Head of TSX Venture Exchange

[1] See TSXV Policy 3.3 – Timely Disclosure. Section 3.8 sets out what TSXV deems to be "Material Information" and therefore requires the issuance of a press release.