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

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

FAIR Canada is pleased to provide comments on the above-referenced proposed AED model published by the Canadian Securities Administrators (CSA).

FAIR Canada is a national, independent charitable organization dedicated to being a catalyst for the advancement of the rights of investors and financial consumers in Canada. It

advances its mission through outreach and education, public policy submissions to governments and regulators, and proactive identification of emerging issues. FAIR Canada has a reputation for independence, thoughtful public policy commentary, and repeatedly advancing the interests of retail investors and financial consumers.¹

A. GENERAL COMMENTS

The stated purpose of the proposed AED model is to “modernize the way documents are made available to investors” and “reduce costs associated with the printing and mailing of documents, which are currently borne by issuers” all without “compromising investor protection.”²

We support these aims. However, we believe the AED model falls short in achieving them.

FAIR Canada’s key concern is that the proposal is too focused on reducing regulatory burden, rather than modernizing and improving shareholder engagement and communications. Simply put, we are disappointed with the limited scope of this policy project.

We believe it would be more worthwhile for the CSA to explore and address the root causes of low investor engagement, including solving issues around electronic delivery. The CSA should also investigate ways to enhance choices available to investors in terms of how they wish to receive information. While AED may save some issuers a few dollars, it does little to serve ordinary investors. Access does not equal delivery, and we are concerned that even more investors are likely to become less engaged as a result.

Our concerns rest primarily with on-going disclosures provided to investors. As applied to financial statements and related Management Discussion and Analysis (MD&A), AED will further erode the level of investor engagement, which is undesirable. We have set out our concerns in more detail below.

(i) Financial Statements and MD&A

When it comes to financial statements and related MD&A, the proposal will shift the burden from reporting issuers (who need to deliver information) to investors (who will need to actively search for that information). This shift in burden relies heavily on the fiction that the media will pick up press releases issued by those using AED and bring the news to investors’ attention. We know that in most cases this will not happen.

Shifting the burden in this way does not modernize shareholder communication. A truly

¹ Visit www.faircanada.ca for more information.

² [CSA Notice and Request for Comment – Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers](#) (CSA Notice), at page 2.

modern framework would be based on modern communications tools that allow investors to choose how they want to receive information from the companies they own. These would include electronic delivery, subscriptions or alerts.

The projected cost savings for some issuers who choose to use AED are also minimal and hardly justify shifting the burden. For other issuers, they may incur significantly more rather than less costs if they choose to use AED.³ Either way, it is difficult to justify the proposal from a cost savings perspective.

Finally, and most importantly, we are concerned that AED will further erode investor engagement with the companies they own. The shift in burden and the removal of direct notice under AED will further reduce investor awareness and lead to fewer investors accessing financial statements and MD&A on SEDAR⁴.

We believe the CSA could achieve a more modern and investor friendly approach by:

- **Improving investor understanding about what information they can request.** This could be achieved by improving the *Explanation to Clients and Client Response Form* (Form 54-101F1) based on behavioural science and focus group testing to improve comprehension and clarity. It could also be done by prescribing a plain language and easy-to-read annual request form delivered pursuant to section 4.6 of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102).
- **Facilitating e-delivery and other tools that accommodate investor preferences for communicating.** This could be achieved by revising the necessary rules and forms to address consent issues impeding e-delivery preferences, enabling investors to easily “subscribe” to receive information from SEDAR+, and promoting development of platforms that enable retail investors to receive information directly through their broker’s website or SEDAR+.

These approaches hold the promise of achieving real modernization and substantial cost savings *without* further compromising investors’ ability to easily access information they want and need to make informed investment decisions.

We would also recommend deferring AED until SEDAR (or SEDAR+) has enhanced functionalities that permit investors to pre-select which filings they wish to receive and how they want to be notified (for example, electronically by email with the document attached, or via an alert that notifies them when the filing is available).

Proceeding with AED prior to enabling these alternative approaches will create undesirable consequences. For example, we are concerned that issuers and dealers, in time, will push the CSA to expand reliance on AED to other shareholder communications, including proxy

³ The example provided in the [CSA Notice](#) (at page 34) estimates annual cost savings of only \$250 for an issuer. with 1000 securityholders. The analysis also notes (at page 35) a new annual cost of \$6,000 to issue news releases for companies that do not currently do so to in connection with their financial statements and MD&A.

⁴ System for Electronic Document Analysis and Retrieval (SEDAR): <https://www.sedar.com/>.

materials or those involving investment funds.⁵ Given that AED is a sub-optimum approach for modernizing shareholder communications and engagement, investors will not be well served should it become the blueprint for these other areas.

(ii) Prospectuses

We are less concerned about AED when it comes to prospectuses. This is because in the prospectus context, investors are more actively engaged in the process of buying securities being offered, either directly or indirectly through their dealer.

We also note the AED regime adopted in the United States (U.S.) is only available in the context of prospectuses. We suspect that this is based on the same rationale – investors tend to be more engaged when buying securities in the primary market. Interestingly, AED is not available to U.S. public companies for on-going disclosures. Nor are we aware of any proposal to expand the use of AED in the U.S.

B. FINANCIAL STATEMENTS AND MD&A

(i) What the Data Tells Us

Available data on investor delivery preferences shows they prefer to have on-going disclosure materials delivered to them. It also shows that very few are aware of SEDAR, or that it is a national filing database for public companies. Key data points include:

- **Investors prefer automatic delivery or actual notice.** A True North Canada investor survey, shared with the CSA, found that 94% of investors wish to either receive financial statements and MD&A automatically or receive a notification of their availability.⁶
- **Investors do not prefer AED.** In 2018, a survey by the U.S. Financial Industry Regulatory Authority (FINRA) found:⁷
 - Only 9% of investors preferred receiving disclosure by accessing documents on the internet.
 - 36% preferred physical delivery.
 - 33% favoured delivery by email.

⁵ Expanding AED to certain documents related to investment funds, including Fund Facts and ETF Facts, is noted as being under consideration in the [2023-2025 OSC Business Plan](#), at page 35.

⁶ Appended to the Broadridge [comment letter to the CSA](#) on Proposed Amendments to NI 51-102, September 13, 2021, page 3 to 106. See slide 31 of the True North Survey deck.

⁷ [FINRA Investor Education Foundation, Investors in the United States, A Report of the National Financial Capability Study](#) (December 2019) at page 17.

This data was also shared with the CSA.⁸

- **Investors are not aware of SEDAR.** A study commissioned by Broadridge Financial Solutions (Broadridge) found that 82% of retail investors are not aware of SEDAR or do not use it. This lack of awareness is greater among investors with lower income or wealth, less education, and among seniors.⁹

Despite their relevance, these data points are not highlighted in the cost benefit analysis included with the CSA Notice. Rather, undue reliance is placed on one factor. For those that were mailed the NI 51-102 annual request form, “...less than 0.5% of securityholders requested to receive copies of financial statements and related MD&A in each of 2019 and 2018”.¹⁰

This data point is not explained, so we cannot assess its reliability or whether it paints a full picture. For example, does it include securityholders who sent their annual request forms directly to issuers, or just those that sent their requests through the dealer’s or the issuer’s agent?

The conclusion drawn from it, however, is that “AED for Financial Statements will have little impact” on investors.¹¹ Simply put, since so few investors requested to receive copies in 2018 and 2019, the conclusion is that very few will be affected by the proposed change going forward. This, unfortunately, seems to suggest the choices made by these investors are unimportant.

To our way of thinking, the low percentage of requests should be cause for concern for the CSA, not a justification for moving forward with AED. In our view, reliance on this data point is insufficient to support AED. Many factors could be behind the low percentage of requests for financial statements and MD&A, including:

- Incomprehensible options prescribed by Form 54-101F1, leading many investors to simply choose not to receive any materials from issuers.
- A lack of consistency and clarity in the NI 51-102 annual request forms prepared by different issuers, leading to investor confusion or information overload.
- The fact that under securities law the investor has to “opt-in” to receive such information, which leads to investors ignoring the NI 51-102 annual request form or not bothering to complete and return it.

⁸ CSA Consultation Paper 51-405 – Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers, [comment from Broadridge](#), March 9, 2020.

⁹ Broadridge [comment letter to the CSA](#) on Proposed Amendments to NI 51-102 Continuous Disclosure Obligations, September 13, 2021, page 25.

¹⁰ [CSA Notice](#), at page 33.

¹¹ *Ibid.*, at page 33.

Recommendations:

We recommend the CSA:

- Ensure that reliable data drives the design of any delivery modernization framework, especially data about how investors wish to receive materials.
- If available data is insufficient, the CSA should commission research to obtain it. One way to do so would be to incorporate questions with respect to investor delivery preferences in the next iteration of the CSA Investor Index survey.¹²
- Delay implementing AED until sufficient data is obtained and alternative approaches are fully considered. There is no urgent reason to implement AED at this time.

(ii) Why AED Will Further Erode Investor Engagement

There is nothing particularly “modern” about the proposed AED model. Today, the delivery system is based on two basic scenarios. First, reporting issuers may choose to deliver financial statements and MD&A to their shareholders as per the requirements under the applicable securities statute. Second, they may deliver an annual request form under NI 51-102 to their investors.

At its core, AED is proposing to add a further option – rather than deliver financial statements and MD&A or the NI 51-102 annual request form, the reporting issuer could issue a press release indicating the materials are available. The proposal’s corresponding requirement to file the continuous disclosure documents on SEDAR is not new.

What *is* new is that, for issuers choosing to use AED, investors entitled to this information will now have to take steps to become aware of it, and then retrieve it. Our concern is that existing low levels of investor engagement will be further eroded. This is because of the following factors:

- **The documents will not be noticed.** Investors will have to monitor news releases and/or track filings, potentially for multiple reporting issuers. Retail investors are unlikely to subscribe to newswire services or check SEDAR regularly for news releases to do this, relying instead on mainstream media for their information.

Mainstream media tends to disseminate reporting issuer news releases only if they are issued by large companies or are otherwise newsworthy, such as in the case of “material change” news releases.

¹² See: [2020 CSA Investor Index](#).

- **There is no requirement to post information on the reporting issuer's website.** The most intuitive place for an engaged investor to look for information about a reporting issuer would be the reporting issuer's website or social media channels. Although raised by commentators and considered by the CSA, the AED proposal does not require reporting issuers to post financial statements or MD&A on their websites. It only requires that they be posted on SEDAR, a system we already know many ordinary investors are unaware of and rarely use.¹³

We believe this is a flaw in the proposal that could easily be addressed by requiring reporting issuers that maintain websites to include this type of information.

The concept of posting on a second website was part of the CSA's AED Consultation Paper in 2020.¹⁴ A wide range of responding stakeholders supported the concept, including exchanges (TSX Inc., TSX Venture Exchange Inc.) industry associations such as the Quebec Bourse, and institutional investor groups such as the Canadian Coalition for Good Governance.

The importance of posting on a second website is also reflected in the notice-and-access regime for delivery of proxy materials. Under that regime, posting materials on a website in addition to SEDAR is mandatory.

Finally, the value of posting disclosures on an issuer's website was noted as far back as 2008 by the U.S. Securities and Exchange Commission (SEC):

As we have developed EDGAR to facilitate and promote electronic availability of information, we also have encouraged companies to make their Commission filings and other company information available on their Web sites. We believe that company disclosure should be more readily available to investors in a variety of locations and formats to facilitate investor access to that information. Although our rules do not require reporting companies to establish or maintain Web sites, our rules do promote and, in some cases require, companies to use Web sites to make required disclosures.¹⁵

- **Accessing the documents will be cumbersome for some.** If an investor happens to notice a news release, or otherwise becomes aware of a filing, they will need to navigate SEDAR to download the documents or request copies from the reporting issuer. The news release will not help with this – it will simply say that a document is available on SEDAR, with no requirement to include a hyperlink to the actual document.

¹³ Supra, footnote 9.

¹⁴ [CSA Consultation Paper 51-405](#), January 9, 2020.

¹⁵ [Commission Guidance on the Use of Company Web Sites](#), Aug. 7, 2008, at page 3.

(iii) Increasing Investor Engagement

In our view, the real problem begins when investors are asked to complete Form 54-101F1.

When completing Form 54-101F1, clients can, among other things, choose to “decline” receiving any “securityholder materials” from reporting issuers they invested in. This includes declining to receive financial statements and related MD&A.

The client’s understanding of Form 54-101F1 is therefore key to ensuring they have adequate, real notice of their delivery options. As specified in our recommendations below, there are some simple revisions that could be made to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* and Form 54-101F1 that would go a long way towards enhancing investor understanding and choices.

a. Improve Form 54-101F1

This prescribed form was developed decades ago with little understanding of behavioural insights or the importance of developing retail-oriented forms with the aid of focus group testing. Our concern is that Form 54-101F1 is poorly drafted and designed, leading investors to make uninformed choices.

To improve it, we believe the CSA should invest resources in exploring ways to increase investor understanding of the choices they have in terms of sharing information about them and requesting disclosure materials. This would include expanding the scope of the consent granted to facilitate electronic delivery of disclosure materials by the issuer and its agents.

Recommendations:

We recommend the following improvements to NI 54-101 and Form 54-101F1.

NI 54-101:

- To improve understanding and choice, amend NI 54-101 to require intermediaries to periodically review Form 54-101F1 with their clients, so that clients have an opportunity to reconsider their delivery options over time and not just at account opening.
- To promote increased adoption of e-delivery, amend subparagraph 3.2(b)(iii) as follows:
if applicable, enquire whether the client wishes to consent and, if so, obtain the consent of the client, to electronic delivery of documents by the intermediary, the reporting issuer or an agent of the intermediary or

reporting issuer to the client.¹⁶

Form 54-101F1:

To improve clarity and understanding:

- Apply plain language to the form, including the descriptions of investor choices for receiving information.
- Add language to explain *why* receiving prescribed documents and information from a reporting issuer is important and would be of interest to investors.
- Amend language, as suggested above, about the client's consent to e-delivery so they can receive delivery by email from the reporting issuer or an agent of the reporting issuer.
- Apply principles of behavioural insights and test the form with investors to ensure it clearly communicates the importance and impact of the investor's choices when completing the form.

Some examples of the type of wording changes to consider for this form are provided below.

Form 54-101F1 – Examples of Suggested Wording Changes

Current Wording	Proposed Wording
<p>Electronic Delivery of Documents</p> <p>Securities law permits us to deliver some documents by electronic means if the consent of the recipient to the means of delivery has been obtained. Please provide your electronic mail address if you have one.</p> <p><i>[Instruction: If applicable, either state (1) if the client wishes to receive documents by electronic delivery from the intermediary, the client should complete, sign and return an enclosed consent form with the client response form or (2) inform the client that electronic delivery of documents by the</i></p>	<p><u>Do you prefer to receive documents electronically?</u></p> <p>Securities law permits us to deliver some documents <u>to you by email rather than regular mail. If you prefer to receive documents by email, please provide us with your consent and email</u> address:</p> <p><i>Instruction: If applicable, either state (1) if the client wishes to receive documents by <u>email from the intermediary, the reporting issuer or an agent acting on behalf of the intermediary or reporting issuer</u>, the client should complete, sign and return an enclosed consent form with the client</i></p>

¹⁶ This amendment would remove a barrier to e-delivery faced by transfer agents retained by reporting issuers to deliver documents to the issuer's NOBO securityholders. This barrier was raised in a [comment letter](#) to the CSA from the Securities Transfer Association of Canada in March, 2020.

<p><i>intermediary may be available upon his or her consent, and provide information as to how the client may provide that consent.]</i></p>	<p><i>response form or (2) inform the client that <u>email</u> delivery of documents by the intermediary, <u>the reporting issuer or an agent acting on behalf of the intermediary or reporting issuer</u>, may be available upon his or her consent, and provide information as to how the client may provide that consent.</i></p>
<p>I WANT to receive ALL securityholder materials sent to beneficial owners of securities.</p>	<p>I WANT to receive <u>the following information</u>:</p> <p><input type="checkbox"/> <u>ALL materials I am entitled to receive as a beneficial owner of securities.</u></p> <p>OR (check all that apply):</p> <p><input type="checkbox"/> <u>ALL annual financial statements and related MD&A documents.</u></p> <p><input type="checkbox"/> <u>ALL quarterly financial statements and related MD&A documents.</u></p> <p><input type="checkbox"/> <u>ALL proxy-related materials I need to exercise my right to vote at securityholder meetings.</u></p> <p><input type="checkbox"/> <u>ONLY proxy-related materials in connection with special meetings of securityholders.</u></p>
<p>I DECLINE to receive ALL securityholder materials sent to beneficial owners of securities. (Even if I decline to receive these types of materials, I understand that a reporting issuer or other person or company is entitled to send these materials to me at its expense.)</p>	<p>I DO NOT WANT to receive <u>ANY information designed to assist me as an investor</u>. (Even if I <u>make this choice</u>, I understand that <u>the company</u> is entitled to send these materials to me at its expense.)</p>
<p>I WANT to receive ONLY proxy-related materials that are sent in connection with a special meeting.</p>	

b. Prescribe the Annual Request Form

Per subsection 4.6(1) of NI 51-102, a reporting issuer must send a request form annually to securityholders to request a paper copy of the reporting issuer’s annual financial statements and MD&A, or a copy of the reporting issuer’s interim financial reports and MD&A. In terms of sending this annual request form, NI 51-102 requires the reporting issuer to follow the

procedures set out in NI 54-101.

The Companion Policy to NI 51-102 makes it clear that not returning the request form or otherwise specifically requesting a copy of the financial statements or MD&A from the reporting issuer will override the beneficial owner's standing instructions under NI 54-101 in respect of the financial statements and MD&A. Moreover, it clarifies that NI 51-102 does not prescribe when the request form must be sent, or how it must be returned to the reporting issuer.

Neither NI 51-102 nor its companion policy include a prescribed or recommended form for the annual request. This has resulted in each reporting issuer developing its own form, which varies widely from issuer to issuer.

Based on a quick review of several publicly available annual request forms, FAIR Canada observed it would be difficult for the ordinary investor to read and understand some of the forms developed by different issuers. On the other hand, some forms are written using plain language and offer clearer choices, including the possibility of receiving financial statements and MD&A electronically.

Below is a summary of key differences from a small, but illustrative, sample:

	Core One Labs¹⁷	Trevali Mining¹⁸	Hemisphere Energy¹⁹
Length	2 pages	1 page	1 page
Complexity	High (many legal terms)	Medium (some legalese)	Medium (some legalese)
Number of investor choices	4	2	2
Delivery by email available?	No	No	Yes (consent language included in the form)
Method of returning form	Mail, fax	Mail, online	Email, fax, mail
Explanation as to why the information is important	No	No	No

Recommendations:

We recommend the CSA take steps to ensure the annual request form under NI 51-102 fosters increased investor awareness and promotes greater adoption of e-delivery by creating a prescribed form that:

¹⁷ See: Core One Labs [Annual Request Form](#).

¹⁸ See: Trevali Mining [Annual Request Form](#).

¹⁹ See: Hemisphere Energy [Annual Request Form](#).

- Is easy to understand and action by investors, using principles of behavioural insights and based on testing with investors.
- Highlights the importance of financial statements and MD&A in relation to making informed investment decisions.
- Facilitates e-delivery by requesting the investor’s email and including proper consent language.
- Includes the option for the investor to return the form by email, text message, or uploading it to a website.

c. Do More to Support e-Delivery

The CSA explored making electronic delivery the default option as an alternative to the AED model. It rejected this alternative, however, because of “legal uncertainties” related to the consent required under corporate law and e-commerce legislation.

The benefits of an e-delivery option are significant:

- It provides direct notice to investors.
- It cuts costs associated with paper mailing.
- It is environmentally sustainable.
- A significant and likely growing proportion of investors prefer it, which better aligns with the desire to increase investor engagement.²⁰

All of this strongly suggests that the CSA should explore every avenue to overcome these legal uncertainties and promote increased use of e-delivery. This includes expanding the consent provisions in Form 54-101F1 and including a similar provision in a prescribed NI 51-102 annual request form.

Another approach developed in the U.S. could serve as a model. The model, called “enhanced brokers’ internet platforms” (EBIPs), enables retail shareholders to receive reporting issuer information, as well as to cast their shareholder vote directly through their broker’s website.

The New York Stock Exchange (NYSE) piloted a program to promote adoption of the model between 2014 to 2019. It was designed to incentivise brokers to develop EBIPs and

²⁰ [FINRA Investor Education Foundation, Investors in the United States, A Report of the National Financial Capability Study](#) (December 2019) at page 17. In 2018, 1/3 of U.S. investors surveyed preferred e-delivery, a number that has likely substantially increased in the intervening four years.

encourage brokers' clients to convert to e-delivery. A key driver behind the program was a desire to encourage more retail investors to vote their shares by making it easier for them to do so.

The program ran as follows:

- The NYSE set the user fees.
- An issuer would pay each broker who held accounts of beneficial owners of that issuer a one-time 0.99¢ user fee for each client that converted to e-delivery via an “investor mailbox” provided through an EBIP platform on the broker’s website.
- Issuers had an incentive to participate because the cost savings (from eliminating paper mailings of proxy materials) were significantly greater than the one-time user fee.²¹

The experience of one broker, who had an existing EBIP platform before the pilot program was launched, illustrates the potential of this model:

- The e-delivery adoption rate among that broker’s account holders increased from under 10% to over 39% in “just a few years”.
- Adopting EBIP created “a positive client experience” and resulted in “real cost savings” while continuing the firm’s efforts to “promote an eco-friendly business environment”.²²

More recent data on the adoption and impact of EBIPs was provided to the CSA in response to the 2020 AED Consultation Paper. This data showed that a sizable proportion of U.S. broker/dealers implemented EBIPs (accounting for approximately 55% of all accounts held in street name) and that retail shareholder voting participation through EBIPs experienced meaningful growth. For example, in the 12 months ending June 30, 2017, 16% of all positions voted by retail investors on Broadridge’s online platforms used its ‘investor mailbox’ solution, up from 7% in 2015.²³

Recommendations:

The CSA should:

- Explore alternatives such as EBIPs for a more modern and efficient means to deliver information electronically between reporting issuers, intermediaries, and

²¹ See: [SEC Release No. 34-68936; File No. SR-NYSE-2013-07](#)), February 15, 2013, at page 38. See also: [NYSE Information Memo on EBIP](#), January 24, 2014.

²² Ibid., SEC Release at page 40.

²³ CSA Consultation Paper 51-405 – Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers, [comment from Broadridge](#), March 9, 2020.

investors.

- Ensure that SEDAR+ can support adoption of modern approaches to electronic delivery. For example, dealers or other intermediaries should be able to pull information from SEDAR+ so that it can be re-purposed for delivery to investors electronically.

d. Enhance Notice-and-Access

Another alternative to AED considered by the CSA was to enhance the notice-and-access model under NI 54-101, which is used primarily for delivery of proxy materials. Although the CSA does not specify what enhancements it considered, it rejected this alternative as well. One reason given for this decision is that notice-and-access has “not been used by many issuers.”²⁴

This conclusion seems to conflict with data provided to the CSA by Broadridge in 2020.²⁵ Specifically, the data showed that the rate of adopting notice-and-access has steadily increased each year, from 15.2% of issuers adopting it in 2015, to 19.5% adopting it in 2019. Based on recent information shared by Broadridge, it is our understanding the rate of adopting notice-and-access continues to increase, with over 29% of Canadian issuers using it in 2021. These are positive trend lines that suggest further consideration should be given to this alternative.

Moreover, a key barrier to further adoption of notice-and-access was due to certain constraints imposed on certain reporting issuers that were incorporated under the *Canada Business Corporations Act* (CBCA). However, these constraints have been removed with amendments to the CBCA made in 2018. As soon as the regulations regarding notice-and-access under the CBCA have been drafted and the amendments are proclaimed into force, we expect that many more Canadian issuers will begin using notice-and-access.²⁶

Recommendations:

Unlike AED, notice-and-access provides direct notice to investors. For this reason, we recommend that the CSA consider whether there are further enhancements that could be made to increase usage of notice-and-access under NI 54-101.

²⁴ [CSA Notice](#), at page 37.

²⁵ *Supra*, footnote 23.

²⁶ See [Using notice-and-access under the Canada Business Corporations Act](#). Corporations Canada, 2018.

C. IF THE CSA DECIDES TO PROCEED WITH AED AS PROPOSED

Should the CSA decide to move ahead with AED, we recommend the following enhancements to help minimize its potential negative impact on investor engagement and communications.

Recommendations:

The CSA should enhance the proposed AED model as follows:

- **SEDAR subscription mechanism.** SEDAR should first be upgraded to include a mechanism that allows investors to subscribe to receive documents of their choosing filed on SEDAR. Alternatively, SEDAR should include an alert function that lets investors know when certain filings (such as a news release) are available on SEDAR.
- **SEDAR awareness campaign.** Given the critical role of SEDAR in the AED proposal, success will require increasing investor awareness through a concerted SEDAR education and outreach campaign. The campaign should precede the launch of AED and repeat periodically to support ongoing awareness.

It should include leveraging opportunities in different communications sent to investors reminding them of the information that is available on SEDAR free of charge. For example, one could include information about SEDAR in account statements, trade confirmation reports, or the Annual Charges and Compensation Report. Information could also be included in a revised Form 54-101F1.

- **Second website/social media requirement.** In addition to requiring a news release, AED should be conditional on the reporting issuer posting their financial statements and MD&A on their website and/or social media channels. We believe that investors would be more likely to search the issuer's website for this information than they would be to search SEDAR (assuming, of course, they are even aware of SEDAR).
- **Mandatory hyperlink.** To help get documents into the hands of investors as quickly as possible, the news release should include a hyperlink to them on SEDAR and/or the reporting issuer's website. We note that many commentators recommended including such a requirement in response to the 2020 AED Consultation Paper. The current proposal, however, is silent on this requirement.²⁷

²⁷ Six commenters felt the news release should include such a hyperlink; one commenter supported at least encouraging issuers to include a hyperlink; 1 commenter noted that such links "could" be included; and 1 commenter suggested encouraging inclusion of a link to the issuer's SEDAR landing page.

- **Transition period.** To ensure that investors are provided advance notice that they may no longer be receiving the NI 51-102 annual request form, we recommend that issuers wishing to use AED should first provide notice to their investors. The notice should include how the issuer's choice will affect investors and a reminder that investors can provide standing instructions to receive these materials or periodically refer to SEDAR for new filings.

D. PROSPECTUSES

In the prospectus context, since investors have either shown an interest in buying the securities, have been solicited to purchase them, or have decided to order them, there is less concern they would be unaware of the prospectus under the AED model.

In addition, the low level of retail investor awareness and use of SEDAR is not an issue here. As pointed out in the CSA Notice, most purchasers under a prospectus are institutional rather than retail investors, and these more sophisticated investors are "able to access the preliminary and final prospectus easily through SEDAR."²⁸

Regarding the right for purchasers to withdraw from an agreement to buy securities under a final prospectus, we agree with the CSA decision to preserve the status quo 2-day withdrawal period. This is because under the proposed AED model, the right to withdraw can be exercised within 2 business days after the *later of*:

- a) the date that access to the final prospectus has been provided, and
- b) the date the purchaser entered into the agreement to buy the securities.

Given the above, in our view the proposed AED model is appropriate for prospectuses.

E. CSA CONSULTATION QUESTIONS

1. *With regards to financial statements and related MD&A, the Proposed Amendments provide that an issuer must issue and file a news release on SEDAR announcing that the documents are available electronically and specifying that a paper or an electronic copy of the documents can be obtained upon request.*
 - a. *Would the requirement to issue and file a news release be unduly costly or onerous in these circumstances? If so, why? Would the burden differ depending on whether the issuer is a venture issuer or not?*

²⁸ [CSA Notice](#), at page 36.

b. Should we consider alternative ways to alert investors of the availability of a document that could be less onerous? Which ones and why?

As outlined in the CSA Notice, almost all TSX listed issuers (94% of the sample reviewed) and a significant proportion of venture issuers (35%) already issue these news releases.²⁹

Some venture issuers may find the need to issue a news release too costly. In our view, there is no need to address this by creating exemptions from any of the AED requirements. This is because issuers that find AED too costly can simply decide not to use it.

F. CONCLUSION

Our fundamental concern with AED is less about the specifics of the proposed model and more about the missed opportunity to modernize shareholder communications more broadly.

We believe the AED project is too focused on streamlining delivery requirements for some issuers. Instead, we believe the CSA needs to tackle the bigger problem of investor engagement and undertake a more comprehensive review of how to truly modernize shareholder communications.

This would include tackling issues around electronic delivery, providing structures to incentivize dealers and issuers to encourage electronic communications with investors, and finding ways to facilitate investor choices as to what information they want to receive and how they want to receive it.

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting. Please note that we intend to make our submission public by posting it to the FAIR Canada website. Should you have questions or require further explanation of our views on these matters, please contact us [REDACTED].

Sincerely,

[REDACTED]

FAIR Canada

²⁹ [CSA Notice](#), at page 35.