

INVESTOR ADVISORY PANEL

July 5, 2022

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

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

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

Contextual overview: AED vs. modern push notification

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

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

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

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

- (a) targeted distribution of notifications to subscribers (e.g., using apps for building and managing email subscription lists) or to those who choose to “follow” postings of selected entities on social media; and
- (b) instant electronic distribution of documents and document-based or web-based information (e.g., via embedded hyperlinks or QR codes).

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

Core recommendation – Actual electronic delivery, not simply access

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

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

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

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

Electronic delivery should be the default mechanism

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

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

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

As we indicated previously, we remain of the view that electronic delivery requirements have to ensure actual disclosure of information material to making investment decisions. While access may equal delivery in a purely technical sense, it is a legal fiction. With the proposed AED concept, regulators are imposing the burden of the delivery of disclosure documents on investors. As proposed, investors will need to be proactive in order to find information that may be critical to their investments. Many are not well-equipped to do so.

Taking this extra step – the need for investors to search for and find documents that are necessary for them to assess their investments – is cumbersome and will dissuade some investors from receiving the disclosure documents that have long been a cornerstone of securities regulation. SEDAR, as it is currently constituted, is difficult to navigate. While SEDAR has its challenges, it is at least in the process of being improved. The news release as a means of communication is more problematic. Continuing to rely on the use of news releases is in no way a step forward. The news release is technology with its roots in the early 1950's. It is not an effective way in which to notify investors: there is no guarantee investors will look for let alone see pertinent information.

Right of rescission overlooked

It is interesting that the proposed access equals delivery model is not being extended to proxy-related materials and takeover and issuer bid circulars because of the time-sensitive nature of these materials and their importance to the issuer. A right of rescission is no less important and no less time sensitive to investors than proxy-related materials are to a reporting issuer, yet the access equals delivery approach does not accord it the same level of importance. Enabling actual electronic delivery where requested would help in this regard. So too would e-mail or other electronic notification of the fact that a filing has been made.

In addition, the continuous disclosure materials that will be subject to the access equals delivery approach are important to investors, can be time sensitive and are mandatory because they are a fundamental component of the investor protection framework. A filing on SEDAR will likely only be picked up in a timely way by sophisticated investors and perhaps a few enterprising ones.

Design recommendations

As we articulated in February 2020, in our response to CSA Consultation Paper 51-405:

However, delivery of these documents in electronic format should not be simply directive, leaving investors to search out the document on SEDAR or on the website of the issuer. Rather, delivery should mean that the investor is provided with an electronic link directly to the document together with the ability to download the document in PDF format.

Additionally, as a necessary design redundancy, we recommended these features:

Issuers should also be required to maintain a website where all prescribed documents are available for viewing and in a downloadable PDF format. Press releases, where required, can similarly direct investors and interested parties to the issuer website where full information is available and where required documents can be available for viewing and downloading.

We recommend that some standardization be mandated for the location and presentation of these documents on issuers' websites, so investors are not forced to hunt through an idiosyncratic labyrinth of web pages in order to find documents on each issuer's site.

Ensuring equal access

We reiterated these points in our response to the Capital Markets Modernization Taskforce recommendations in September 2020, adding the following caveat:

It must be kept in mind, however, that data networks are not robust in all corners of Ontario, and that some investors, especially older ones, may not be proficient or comfortable online. Investors therefore should retain the ability to opt out of electronic delivery by requesting that documents be mailed to them in hard copy.

We suspect that this is true across the country.

More recently, in our Horizon Project report of June 2021, we discussed issues relating to the broader topic of digital services and mentioned this concern:

Consumer advocates and industry organizations also noted that widespread digital adoption may jeopardize access to advice and services for certain groups outside the mainstream. Dealers and advisors may eventually find it uneconomic to service digital illiterates, people who lack access to equipment or reliable connectivity, others who have lost the ability to use technology due to cognitive decline, and individuals who simply do not wish to have an online

footprint. How will service to these groups be assured? It's a foreseeable problem, and a policy response needs to be formulated.

We remain concerned about this issue and consequently urge regulators to retain postal notification as a simple, easy-to-arrange option for all investors. As noted above, however, we believe the primary default mechanism for information dissemination should be actual electronic delivery of documents via e-mail or other targeted push notification with an embedded hyperlink to the document or with the document as an actual attachment.

Lesser alternatives

Direct notification about a document's existence without embedding the document is a poor substitute and a wholly unnecessary compromise, in our view. Worse still would be indirect notification via untargeted general news release.

As we've stated, directing investors to 'visit the library' is no longer state-of-the-art; and consequently we must question maintaining an outmoded process as the centrepiece of this initiative – especially since the initiative is one that aims to modernize disclosure.

Indeed, absent the use of modern communication tools, the proposed AED concept potentially amounts a retrograde step. Delivery under the proposed AED concept can only be effected if the investor seeks out and locates the disclosure that has been made. This is burden shifting, not burden reduction. It also undermines a key principle of securities legislation: the requirement for 'timely, accurate and efficient disclosure of information.' Putting the obligation on the investor to discover that a reporting issuer's disclosure is available does not make for efficiencies unless investors are provided with better notice that documents relevant to them have been filed on SEDAR. Disclosure cannot be timely if it is not found on time.

Nonetheless, if regulators opt for notional delivery through notification that a document has been filed on SEDAR, it is essential that investors be provided at the very least with clear and easy to follow instructions on how to locate the document – without that, access will not be effective or meaningful.

Evolutionary considerations

Finally, we recognize that there may well be challenges with changing the current default to electronic delivery, including the legal uncertainties referenced in the proposed AED concept. However, we also note that the stated purpose of the AED model "is to modernize the way documents are made available to investors and reduce costs associated with the printing and mailing of documents."

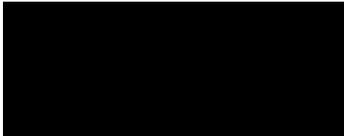
While we understand the challenges for reporting issuers to communicate effectively with beneficial owners, we believe that AED is an opportunity to advance the electronic delivery of disclosure documents across the board for the benefit of

issuers and investors alike. The regulatory endorsement of a transition to subscription apps and social media postings would recognize how investors are “increasingly accessing and consuming information electronically” and would be “consistent with the general evolution of our capital markets”. This would also help regulators further facilitate innovation in the capital markets.

To reiterate, we believe the public interest will best be served by an information delivery model that is thoroughly modern and forward looking, leveraging the full array of today’s push notification technology and not just the technology of a decade or two ago.

We wish to thank you again for the opportunity to comment on this important initiative. We will, of course, be happy to provide any clarification or elaboration on our comments should the need arise.

Sincerely,



Neil Gross
Chair, Investor Advisory Panel