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Nova Scotia Securities Commission  
Superintendent of Securities, Newfoundland and Labrador  
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### **CSA NOTICE AND REQUEST FOR COMMENT PROPOSED AMENDMENTS AND PROPOSED CHANGES TO IMPLEMENT AN ACCESS EQUALS DELIVERY (AED) MODEL FOR NON-INVESTMENT FUND REPORTING ISSUER**

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

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

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

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

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

### **Commentary on CSA AED proposal**

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

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

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

The consultation paper notes that a majority of commenters expressed general support for implementing an *access equals delivery* model and a majority of commenters expressed support for prioritizing implementing an access equals delivery model for prospectuses, annual financial statements, interim financial reports and related MD&A. This is true but of little statistical consequence since, as is typical, only a small fraction of commenters are retail investors/shareholders or investor advocacy groups. Just 5 of the 27 comment letters came from this segment. The scarcity of retail investor input can sometimes be mitigated by empirical research, but the consultation paper does not reveal such research. [The Comment letter of the OSC IAP ([https://www.osc.ca/sites/default/files/2020-11/com\\_20200224\\_iap-access-equals.pdf](https://www.osc.ca/sites/default/files/2020-11/com_20200224_iap-access-equals.pdf)) was not on the list of comments received. We nevertheless assume its recommendation for electronic delivery was considered but set aside by the CSA. ]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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### Prospectus delivery

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

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

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

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

### MD&A delivery and disclosure

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

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

[https://www.osc.ca/sites/default/files/2021-09/com\\_20210917\\_51-](https://www.osc.ca/sites/default/files/2021-09/com_20210917_51-)

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

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

We found other empirical research that retail investors want to receive disclosures or be notified as to availability (Investors in the United States: A report on the national financial capability study: FINRA [https://www.usfinancialcapability.org/downloads/NFCS\\_2018\\_Inv\\_Survey\\_Full\\_Report.pdf](https://www.usfinancialcapability.org/downloads/NFCS_2018_Inv_Survey_Full_Report.pdf) ). We were unable to locate any research or retail investor surveys indicating retail investor support of AED for disclosure. If the CSA has access to such research, it should be made public

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

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

### **Right of rescission/withdrawal**

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

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

### **Time-sensitive/action-required disclosure document delivery**

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

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

### **Concern over voting rights**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **The CSA SEDAR+ project and AED implementation**

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

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

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

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

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

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

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

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

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

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

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

### **Digital disclosure equals delivery (“DDED”) Model**

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

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

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

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

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

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

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

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

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

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

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

### Summary and Conclusion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Kenmar agree to public posting of this letter.

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

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

Ken Kivenko, President  
Kenmar Associates

### **APPENDIX I: Disclosure –dependence on news releases**

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

Most retail investors are busy people .They have many other life activities besides investing to deal with. According to OSC research, 58%% of DIY investors spend less than 2 hours per month researching their investments. [https://www.osc.ca/sites/default/files/2021-04/inv\\_research\\_20210421\\_self-directed-investor-survey.pdf](https://www.osc.ca/sites/default/files/2021-04/inv_research_20210421_self-directed-investor-survey.pdf) Any disclosure/delivery model that increases investor research time cannot be regarded as employing smart use of technology for improved investor decision making.

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

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

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

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

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

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

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

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

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

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

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**select paper copies when opening a new brokerage account.** CIRI Comment letter at [https://www.osc.ca/sites/default/files/pdfs/irps/comments/com\\_20200309\\_51-405\\_lokkery.pdf](https://www.osc.ca/sites/default/files/pdfs/irps/comments/com_20200309_51-405_lokkery.pdf)

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

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

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

### **APPENDIX III Retail investors/shareholders and disclosure *delivery***

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

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

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

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

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

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

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

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

## REFERENCES

### *1. 3. Blackrock's 5 Digital Delivery Investor Protection Principles*

- o Advance Notice. Investors should be provided with a reasonable timeframe to receive notice that their regulatory documents will be delivered to them digitally. Notice of the change in process must be written clearly and in plain English, explaining the details of how digital delivery will work.

- o Honor Investor Preferences. Investors should have a freely accessible means in which to communicate their preferences and an ability to change their election at any time.

- o Easy Access to Change Contact Information. Investors should have an opportunity to provide up-to-date contact information for the purpose of digital delivery, or the means to change their information, during the time period before their regulatory documents are moved to digital delivery, and at any time thereafter. Investors who have not provided such contact information will not be transitioned to digital delivery until digital contact information is provided.

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o Consumer Friendly Format. Investors should be able to access regulatory documents in a user- friendly and timely manner at their convenience. Access should be provided in a safe and secure manner with ease of reference and retention abilities. Investors must be provided with a paper copy of a regulatory document in a reasonable timeframe, if so requested.

o Safeguards to Assure Delivery. Firms should establish safeguards to address invalid or inoperable digital contact information of investors and establish policies and procedures for the change to paper delivery if failures to digital delivery cannot be cured. Source:

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***"We have collected data from recent surveys of North American investors. The data from the surveys suggests that the proposed "access equals delivery" model for providing continuous disclosures would have the unintended consequence of reducing investors' awareness and use of them. Investors say the disclosures are important to them and they express a preference to receive summary information and updates automatically rather than through a news release, as proposed. The survey data suggests that an access equals delivery method would be unpopular with investors. It would make it more difficult for investors to access information and would in turn make them less likely to read or review information. Further, the survey responses indicate that an access equals delivery model could negatively impact certain disadvantaged demographic groups"***

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6. NATIONAL POLICY 11-201 ELECTRONIC DELIVERY OF DOCUMENTS

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