

Borden Ladner Gervais LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto ON M5H 4E3
Canada
T 416-367-6000
F 416-367-6749
blg.com



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DELIVERED BY EMAIL

WITHOUT PREJUDICE

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

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

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

Dear Sir/Mesdames:

Re: CSA Notice of Republication and Request for Comment – Proposed Amendments and Proposed Changes to Implement an Access Model for Certain Continuous Disclosure Documents of Non-Investment Fund Reporting Issuers

We are pleased to provide the following comments in response to the Notice of Republication and Request for Comment (the **Notice**) published by the Canadian Securities Administrators (the **CSA**) on November 19, 2024, with respect to proposed amendments and proposed changes (the **Proposed Amendments**) to implement an access model for certain continuous disclosure documents for non-investment fund reporting issuers (the **Proposed Access Model**).

We thank you for the opportunity to comment on the Proposed Amendments. This letter represents the general comments of certain individual members of the Securities and Capital Markets practice group at Borden Ladner Gervais LLP (**BLG**). Our comments are not those of BLG generally or any client of the firm. Our comments are being submitted without prejudice to any position taken or that might be taken in the future by BLG on our own behalf or on behalf of any client.

Where our comments are in response to specific questions posed in the Notice, we have included the text of the question for ease of reference. Capitalized terms used in this letter that are not defined have the meanings attributed to them in the Notice.

Part A – General Comments

We acknowledge and applaud the CSA for the Proposed Amendments and support the underlying policy rationale of the Proposed Access Model.

Like in other jurisdictions around the world, Canadian capital markets have seen a significant decline in publicly traded issuers (reporting issuers) since the global financial crisis. The combination of current economic uncertainty and a general increase in regulatory burden, among other things, has caused reporting issuers and potential reporting issuers to become acutely aware of the cost, financial and otherwise, of accessing public markets in Canada, particularly as compared to other options for raising capital. As a result, a commitment to reducing regulatory burden for reporting issuers, balancing costs and benefits, and promoting efficiency and competition in Canadian capital markets is imperative and should inform each CSA regulatory initiative. The availability of an alternative procedure whereby electronic access to annual financial statements, interim financial reports and related MD&A (**CD documents**) satisfies the delivery requirements of Canadian securities regulation will be attractive to reporting issuers and companies wishing to go public. Further, we believe that the Proposed Access Model represents a positive step towards greater alignment with other global securities regulatory regimes which will serve to better facilitate cross-border capital markets activity and access to information.

In this respect, we are generally supportive of the Proposed Amendments and the adoption of the Proposed Access Model in Canada. However, we wish to highlight a few concerns for your consideration.

The requirement to prepare and mail a new standalone annual notice is a reintroduction of regulatory burden

While the Proposed Amendments represent a positive step toward modernizing the current disclosure regime, we question whether the proposed one-page annual notice requirement (the **Annual Notice**), which would accompany proxy-related materials or the notice-and-access notice, is the most efficient and effective means of achieving the goal of informing investors as to how they can access disclosure documents while still reducing regulatory burden.

First, for issuers wishing to take advantage of the Proposed Access Model, the Annual Notice will supplant the annual request form (the **Request Card Requirement**) that is required under Section 4.6 of National Instrument 51-102 *Continuous Disclosure Obligations (NI 51-102)*. However, unlike the existing Request Card Requirement, the Annual Notice will have to be printed as a standalone document on differently coloured paper. In our experience, the Request Card Requirement is typically satisfied by incorporating the requisite information into the form of proxy or voting instruction form that is provided to investors and does not represent a separate piece of paper. As a result, the Annual Notice will add an additional document to an issuer's annual proxy materials along with additional administrative burden. Moreover, it could

inadvertently reinforce traditional delivery practices, leading to additional administrative and financial strain on issuers, including the preparation, printing, and mailing of such notices. These added costs could potentially undo the efficiencies of electronic dissemination that the Proposed Amendments aim to provide. Finally, coordination of new technical and administrative requirements creates additional room for technical error and questions as to whether an issuer has met its CD obligations.

In the interest of reducing regulatory burden, costs and environmental impact, we encourage the CSA to explore alternative methods of annually informing investors of the Proposed Access Model, including by integrating the requisite disclosure into the issuer's notice of meeting, management information circular, form of proxy and/or notice-and-access notice. Including the required information as part of an existing document would reduce duplicative efforts and better align with the Proposed Access Model's stated goals. Including the requisite disclosure in one of the documents that already comprises the issuer's proxy materials should provide sufficient notice to investors, particularly when coupled with the other forms of notification to investors that are contemplated in the Proposed Access Model (e.g., news release in advance of first use, news release announcing availability of CD document, posting to website).

While SEDAR+ includes enhanced functionality, we encourage the CSA to continue to improve the SEDAR+ user experience and increase the general public's awareness of SEDAR+

We applaud the CSA's efforts to modernize the continuous disclosure framework and recognize the importance of making SEDAR+ a central access point for both issuers and investors alike. We further commend the CSA's investor outreach and education initiatives as exemplified by the training videos on SEDAR+'s Learning Centre. Notwithstanding these advancements, we believe further enhancements are needed to fully support investor's needs. We encourage the CSA to continue enhancing the functionality of SEDAR+ to make it more intuitive and accessible, particularly for less technologically savvy or older investors who may struggle with navigating the platform. These users should be able to easily find the information they need, especially since many may not be familiar with SEDAR+ or how to use it effectively. In addition to improving the platform's usability, we recommend practical upgrades, such as customizable dashboards and the addition of interactive support tools like chatbots to complement the current FAQs. Mobile functionality should also be prioritized given that many people access electronic information by way of mobile device. By addressing these practical challenges, the CSA can further enhance transparency and investor engagement, ensuring that SEDAR+ is not just a repository of documents but a truly user-friendly resource.

Additional guidance with respect to the interaction between the Proposed Access Model and corporate law should be included in the Companion Policy to NI 51-102

The Proposed Access Model does not override an investor's ability to request CD documents in either electronic or paper form, ensuring that shareholders maintain the right to choose their preferred method of receiving documents. This aspect of the Proposed Access Model supports an issuer's ability to comply with applicable corporate law requirements. However, we note a key distinction between the *Canada Business Corporations Act* (the **CBCA**) and the *Business Corporations Act* (Ontario) (the **OBCA**). While an issuer incorporated under the OBCA is only required to send annual financial statements to shareholders who have specifically requested these materials (i.e., an "opt-in model"), the CBCA requires issuers incorporated thereunder to send annual financial statements to all shareholders unless they have explicated indicated in writing that they do not wish to receive the annual financial statements (i.e., an "opt-out model"). As such, use of the Proposed Access Model for annual financial statements will not generally

satisfy the CBCA requirements and CBCA-incorporated issuers may face administrative challenges in simultaneously complying with both the Proposed Access Model and the CBCA.

In the interest of clarity and ease of implementation, we recommend that the CSA include additional guidance in the Companion Policy to NI 51-102 to address this potential issue, similar to the guidance provided with respect to standing instructions. Further, we encourage the CSA to engage with regulators in efforts to better harmonize securities regulation with corporate law in this respect. A unified regulatory approach would reduce administrative challenges and ensure shareholders' rights are protected across all frameworks.

Part B – Response to CSA Questions

1. Under the Proposed Access Model, an issuer that has filed a CD document on SEDAR+ must, on the same day, issue and file a news release on SEDAR+ and, if the issuer has a website, post the document on its website. Do you anticipate any practical issues with having to complete these steps on the same day? Please explain.

We support the CSA's goal of enhancing transparency and ensuring timely access to CD documents under the Proposed Access Model. However, we recognize that issuers may face practical challenges in meeting the same-day requirement to file a CD document on SEDAR+, issue a news release, and post the document on their website. These challenges may include: (i) resource and administrative constraints; (ii) technical issues with website updates, such as delays or errors in posting; and (iii) increased costs for those relying on external services. Furthermore, smaller issuers with limited internal teams are likely to face additional administrative challenges. These factors could result in rushed processes, increasing the risk of errors or discrepancies, and potentially causing confusion in the market.

To address these concerns, we recommend: (i) introducing a short grace period for website postings to allow for unforeseen delays or issues; and/or (ii) establishing clear time-of-day guidelines for compliance to help issuers manage their internal processes efficiently. This approach would help ensure that all issuers, especially smaller ones, can comply with the requirements effectively and without compromising the accuracy or quality of their disclosures.

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Thank you for the opportunity to comment on the Proposed Amendments. Please do not hesitate to contact any of the undersigned if you have any questions with respect to our comments above or wish to discuss.

Sincerely,

Laura Levine
Partner

[REDACTED]

Yemisi Afolabi
Associate

[REDACTED]