

February 14, 2025

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 of Republication and Request for Comment – Access Model for Non-Investment Fund Reporting Issuers (Consultation)

FAIR Canada is pleased to provide comments in response to the above-referenced Consultation.

FAIR Canada is a national, independent, non-profit organization known for balanced and thoughtful commentary on public policy matters. Our work includes advancing the rights of investors and financial consumers in Canada through:

- Informed policy submissions to governments and regulators
- Relevant research focused on retail investors
- Public outreach, collaboration, and education
- Proactive identification of emerging issues.¹

¹ Visit www.faircanada.ca for more information.

A. A Significantly Improved Delivery Model

We were critical of the Canadian Securities Administrators' (CSA) Access Equals Delivery Proposal (AED Proposal), published on April 7, 2022.² In particular, we criticized the AED Proposal for shifting the burden from reporting issuers (who need to deliver disclosure) to investors (who will need to search for that disclosure). We were disappointed that the AED Proposal seemed too focused on reducing the regulatory burden on the industry while missing the opportunity to modernize how investors can access disclosure documents.

In contrast to the AED Proposal, we support the Access Model presented in the Consultation (Access Model) and commend the CSA for reconsidering its earlier proposal.

We were pleased to see that the Access Model includes some of the recommendations in our response to the AED Proposal:

- A mechanism through which investors can subscribe to receive documents (or links to documents) via email.
- A requirement for issuers to post disclosure documents on their websites (for those that have them).

In addition, we support other features of the Access Model. Delivering an annual paper notice with either proxy materials or notice-and-access notice will ensure that investors receive a regular prompt to sign up for direct, electronic notification of available financial disclosure documents through SEDAR+. It may also be the first notice investors receive if they purchase their shares after a reporting issuer adopts the Access Model or do not elect to receive financial disclosure pursuant to National Instrument 54-101 (NI 54-101).

The new Access Model also increases the odds that investors will notice and review the annual paper notice by requiring the annual paper notice to be on:

- A separate piece of paper, and
- A different colour sheet from the rest of the proxy materials or notice-and-access notice package.

Moreover, we support the guidance that if a reporting issuer uses the Access Model, it does not override an investor's standing instructions under NI 54-101 to receive the documents in hard copy or electronically. Once an investor has given standing instructions to receive certain shareholder materials, that decision should not be presumed to have changed unless the investor provides express instructions to the contrary.

We thank the CSA for responding to our concerns and improving the AED Proposal.

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: April 7, 2022). FAIR Canada's response to the AED Proposal can be found [here](#).

B. Opportunities for Further Enhancements

While we support the Access Model presented, we have several suggestions to further improve the investor experience when the new model is implemented.

Limit the Number of Delivery Options

The Access Model introduces another option by which reporting issuers can satisfy their fundamental obligation to deliver financial statements to their shareholders. If implemented, most reporting issuers would choose between:

- The current delivery model under National Instrument 51-102 (NI 51-102), section 4.6, and NI 54-101 (Current Model), or
- The Access Model.

We believe the new Access Model is the better option for ensuring investors are appropriately informed and for promoting investor engagement with the public companies that they own. In our view, the most important policy objective should be to find ways to foster better investor outcomes and engagement.

However, given that reporting issuers could choose how they want to satisfy their delivery obligations, we are concerned that some may prefer the status quo. If so, the benefits of the Access Model may be lost.

The Canadian Bankers Association (CBA) shares this concern. In its submission, the CBA asserts that the requirement under the Access Model to send shareholders an annual paper form should be eliminated because it does not reduce costs for issuers compared to the Current Model and is unnecessary.³

While we acknowledge the cost issue, we disagree with its recommendation to eliminate the new annual notice. If the annual paper form is eliminated, the Access Model, like the AED Proposal before it, will effectively shift the burden from issuers being obliged to deliver disclosure to investors who will be obliged to actively search for it. Contrary to the CBA's assertions, most retail investors:

- Will not see the news releases provided for in the Access Model.
- Will not automatically know of or see documents posted on SEDAR+ (see our comments below under the "Broader SEDAR+ Education Campaign" subheading).
- Will not automatically know that disclosure documents are available on an issuer's website (we are skeptical that many retail investors keep track of reporting issuers' fiscal years and financial reporting calendars).

³ [CBA](#) (January 10, 2025), at 3-4

As noted above, the annual paper notice may be the first and only actual notice that many shareholders receive that an issuer is using the new Access Model and that they can subscribe to receive notifications of financial disclosure through SEDAR+. For this reason and the reasons stated above, we believe that the Access Model has the potential to drive positive shareholder engagement and support informed decision-making, particularly by do-it-yourself (DIY) investors.

In our view, reducing the number of available delivery options is the better way to address concerns that reporting issuers will choose the status quo and continue to rely on the Current Model. Specifically, we recommend that the CSA consider implementing the Access Model and repealing the Current Model. If the Access Model is a cost-neutral change from the Current Model for reporting issuers, but has the potential to positively benefit investors, we do not see a principled case for allowing reporting issuers to choose between them.

We also note that the number of DIY investors has increased dramatically since the Current Model was first introduced. Given the extent to which self-directed investing has become mainstream, we believe the CSA should review the Current Model's merits relative to the new Access Model. In contrast to the Current Model, the Access Model will ensure that DIY investors, in particular, receive an annual prompt to subscribe for SEDAR+ notifications. Consequently, investors may be more likely to use and rely on SEDAR+ for information.

Moreover, under the Current Model, a shareholder's failure to return an annual request form overrides their standing instructions under NI 54-101 to receive certain disclosure documents. As noted above, we believe that a shareholder's standing instructions to receive disclosure documents should not be changed unless the shareholder expressly changes them. In our view, the Current Model's failure to respect investors' choices is another reason to repeal it.

Enhance the SEDAR+ Subscription Function

We appreciate that the CSA added an email subscription service to SEDAR+ so that investors can receive email notifications when issuers post disclosure documents there. However, when trying out the functionality, we noticed the end-user's ability to tailor subscriptions to suit their needs and preferences is limited and inflexible.

For example, the user must subscribe to receive "all documents" or "only specific documents" for the reporting issuers they select. If they select "all documents," they only receive notice of the reporting issuers' annual MD&A, annual financial statements, interim MD&A, and interim financial statements. The "select all" option does not contain other important documents that investors would commonly want to receive. These include material change reports, annual information forms, press releases, or proxy materials.

Similarly, when users select "specific documents," they can only choose from one or more of four specific choices—annual MD&A, annual financial statements, interim MD&A, and interim financial statements. They cannot select other documents, which, as noted above, may better suit their needs and preferences.

We believe the implementation of SEDAR+'s subscription function is currently too limited. In our view, it would be worth expanding the range of disclosure documents to which an investor can subscribe beyond financial statements and MD&A.

The new subscription function is also inflexible because the investor's selection for one reporting issuer applies to every other issuer they subscribe to. They cannot select "all documents" for one reporting issuer and "specific documents" for another.

While we understand that additional coding and other development work may be required, we recommend extending the new subscription functionality to expand the choices and provide more flexibility regarding which documents an investor can subscribe to receive notices. Specifically, we recommend that SEDAR+ support:

- Notifications for all types of disclosure documents.
- Individual notification settings for each reporting issuer for which an end-user subscribes to receive notices.

Enhance SEDAR+ More Broadly

We support the following submissions by The Canadian Advocacy Council of CFA Societies Canada:

- Engage investors as stakeholders in the design of SEDAR+ to ensure that SEDAR+'s core functionality (including investor notification and search functions) meets their needs.
- Investigate 'permalink' functionality within SEDAR+ so that issuers' news releases and websites can link directly to disclosure documents published on SEDAR+.
- Require issuers to file machine-readable and structured disclosure information.⁴

We acknowledge the work involved in implementing the SEDAR+ notification function and recognize that these comments fall outside the scope of the Consultation. However, we encourage the CSA to view SEDAR+'s current notification function as the first step in making SEDAR+ a modern, one-stop platform for investors to access disclosure from the issuers in which they invest.

⁴ [The Canadian Advocacy Council of CFA Societies Canada](#) (January 31, 2025).

Broader SEDAR+ Education Campaign

Investor awareness that SEDAR exists is quite low, as is investor use of SEDAR. According to a previous survey:

- Only 32% of investors are aware of SEDAR.
- Only 18% of investors use SEDAR.
- 82% of investors are unaware of SEDAR or do not use it.⁵

It is critical that more investors become aware of SEDAR+ and the information available on it. This would promote investor engagement and help support informed decision-making, particularly for DIY investors.

We suggest the CSA conduct a broader educational or information campaign regarding SEDAR+ and its subscription service to achieve this goal. This could involve working with the Canadian Investment Regulatory Organization (CIRO) and dealers to ensure they publicize SEDAR+ and its subscription service to their clients, including clients of order-execution-only dealers. It should also include tutorials and educational materials that help investors learn how to use SEDAR+ effectively.

Modernize NI 54-101 and Form 54-101F1

While outside the scope of the Consultation, we encourage the CSA to pursue ways to make digital delivery of disclosure documents the default process. To that end, we recommend that the CSA review the recommendations in our response to the AED Proposal regarding improving NI 54-101 and Form 54-101F1.⁶

As noted in our previous submission, enhancing and modernizing NI 54-101 and Form 54-101F1 should involve:

- Using plain language, applying behavioural science principles, and testing the forms with real investors
- Explaining why financial disclosure is important
- Requiring intermediaries to review these forms with their clients periodically
- Making it easier for investors to complete and return forms
- Facilitating digital delivery more broadly

⁵ [Canada Investor Quantitative Report](#) (True North Market Insights/ Broadridge: July 2021), at 23. The report is attached to Broadridge's submission regarding Ontario Securities Commission Notice 11-794 – *Statement of Priorities* and begins on page 20 of the .PDF.

⁶ [FAIR Canada](#) (July 6, 2022), at 8-10.

In addition, we recommend that the CSA consider integrating the current Access Model (including SEDAR+ subscriptions) into Form 54-101F1 to promote investor knowledge about SEDAR+ and encourage its use more broadly.

Test Investors' Comprehension

We appreciate that the CSA has endeavoured to use plain language and make the notices and news releases in the proposed NI 51-102 amendments as easy to understand as possible.

As with the CSA's recent consultation regarding modernizing investment fund continuous disclosure,⁷ we recommend that the CSA test the proposed notices and news releases with retail investors to ensure that they will understand them. The results of such testing could lead to positive enhancements for the notices and news releases.

We support using behavioural science principles and investor testing as a regulatory best practice for all investor-facing documents and notices.⁸

Consider Reasonable Cost Reductions for Issuers

We believe the proposed Access Model is better than the Current Model, and that the Current Model should be repealed. However, there may be reasonable cost savings for issuers that the CSA can consider that would not compromise the Access Model's benefits for investors.

For example, the cost of issuing a news release over a news wire service every quarter when an issuer releases its financial results could be expensive for smaller issuers. As larger issuers tend to issue news releases regarding their financial results, we do not expect this aspect of the Access Model to concern larger issuers.

We suggest that the CSA consider whether the requirement in proposed subsections 4.5.1(3) and 4.5.2(3) of NI 51-102 to "issue and file a news release on SEDAR+" could instead be an obligation to "post a news release on its website and file a news release on SEDAR+" for smaller reporting issuers (measured by number of shareholders and/ or market capitalization). We recognize that such a change may necessitate revisions to other proposed amendments and changes.

In addition, it appears under the NI 51-102 amendments that a reporting issuer could effectively combine the news releases required by proposed subsections 4.5.1(2) and 4.5.2(2). We agree that this should be possible because we view the Access Model as being better for investors than the Current Model. We also do not see any virtue in

⁷ [CSA Notice and Request for Comment](#) (CSA: September 19, 2024).

⁸ [FAIR Canada](#) (January 27, 2025), at 2-3.

reporting issuers paying to issue these news releases separately, given the low likelihood retail investors will see them. Therefore, it may be helpful for many issuers if the permissibility of this approach is clarified in the revisions to Companion Policy 51-102CP.

Thank you for considering our comments on this important issue. We welcome any further opportunities to advance efforts that improve outcomes for investors. We intend to post our submission on the FAIR Canada website and have no concerns with the members of the Canadian Securities Administrators publishing it on their websites. We would be pleased to discuss our submission with you. Please contact Jean-Paul Bureaud, Executive Director, at [REDACTED] or Bruce McPherson, Policy Counsel, at [REDACTED].

Sincerely,

[REDACTED]

Jean-Paul Bureaud
President, CEO and Executive Director
FAIR Canada | Canadian Foundation for the Advancement of Investor Rights