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

c/o

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Corporate Secretary and Executive Director, Legal Affairs
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The Secretary
Ontario Securities Commission
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Dear Sirs/Mesdames:

CSA Consultation Paper 51-405 *Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers*

We are writing in response to CSA Consultation Paper 51-405 *Considerations of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers* (the "**Consultation Paper**"). We strongly support this initiative to adopt an access equals delivery model to satisfy prospectus and other documentary delivery obligations under Canadian securities legislation.

Our comments are intended to address the specific questions identified in the Consultation Paper and, for ease of reference, use the same numbering. Most of our commentary is at a high level due to the

preliminary nature of the contemplated access model. We will provide more specific and comprehensive feedback as detailed rule proposals are published in connection with this initiative.

1. Do you think it is appropriate to introduce an access equals delivery model into the Canadian market? Please explain why or why not.

(a) General

An access equals delivery model is the ideal solution to satisfy prospectus and most other documentary delivery obligations of issuers and dealers under Canadian securities legislation. It offers several benefits over the existing alternatives for document delivery (as summarized in our response to question #2) and can be accomplished in a manner that does not compromise investor engagement or protection. Canadian investors have the ability to, and do, access documents filed on SEDAR. This is particularly (but not exclusively) the case with Canadian investors participating in prospectus offerings. As noted below, requiring physical delivery of a document to investors is an unnecessary burden given the high level of Internet access in Canada. Electronic delivery (other than by way of access) also comes with burden and expense and exposes the delivering party to risk for failed delivery.

A securities regulatory regime premised on the physical delivery of documents imposes an unnecessary burden on issuers and dealers and fails to realize the obvious benefits of an access model. It also ignores the realities of modern capital markets. The only timely way for an investor to receive the information necessary to inform its investment decision is through electronic access. This is critical in almost all follow-on public offerings, where timely participation requires an investor to access SEDAR for the information included in (or incorporated into) the relevant prospectus. However, the need for real-time, electronic access is not exclusive to prospectus offerings. It is also necessary to access time sensitive issuer information that informs day to day trading in an issuer's securities. This is easy to do where real-time information is easily accessible, at any time and from any device, via the Internet. Material developments are currently disclosed by way of a news release and this information is then pushed to anyone who chooses to follow the issuer.[1] Notably, there is no corresponding requirement for actual delivery of a news release or any corresponding material change report. Clinging to a regime that errantly suggests that it is adequate to invest in the public markets relying on paper delivery and using stale market information is a substantial disservice to the investing public. To invest responsibly in any public securities, investors (with the assistance of their brokers, where applicable) must take a minimum level of responsibility to be and remain engaged with those investments.

Electronic delivery is not an acceptable substitute to an access equals delivery model because it (i) adds unnecessary time and expense and (ii) involves unnecessary risk (both legal and technical) for failed delivery, a non-issue for an access model. While an electronic delivery model could offer some of the same benefits as an access model, it cannot offer *all* of the same benefits. Critically, even if there were a feasible electronic delivery solution (from both a legal and technical perspective), it would still involve a significant amount of time and cost to establish and maintain 'back-office' processes to effect and monitor the electronic deliveries – requiring more time and expense than the access model without

[1] There are a myriad of alternatives available to investors to be automatically notified of news releases or filings by any particular issuer.

a corresponding benefit. Moreover, there are legal and technical uncertainties to satisfying electronic delivery that makes this an impractical and imperfect solution for satisfying delivery obligations imposed under Canadian securities legislation. In order to allow issuers and dealers to satisfy their respective delivery obligations exclusively by way of electronic delivery, changes to existing legislation would be necessary. The necessary changes would not be limited to securities legislation; corporate and other legislation outside the purview of securities regulators would also require changes. Further, even if all the necessary changes could be implemented, such that electronic delivery would not expose issuers or dealers to unacceptable exposure to legal risk, electronic delivery still involves technical risks (including the risk of failed delivery due to any number of reasons) that are impossible to plan for and overcome in all instances.

(b) Prospectuses

An "access equals delivery" model is particularly well suited for addressing prospectus delivery obligations because investors participating in a public offering are already engaged in the offering process (directly or through a broker) and, as a result, are well aware that the prospectus (and, where applicable, other information critical to their investment decision) is available and easily accessible on SEDAR. Investors participating in public offerings do not need further action to encourage them to read the prospectus. Any risk that an investor might rely on other marketing materials to the exclusion of the prospectus is already adequately addressed through the disclosure mandated to be included in those marketing materials (*i.e.*, the disclosure that investors should read the prospectus). An investor that chooses not to read the prospectus in spite of this disclosure is doing so on an informed basis – there is no reason to believe that investors who receive the prospectus by mail or email are any more or less likely to read the prospectus than they would if they are notified that the prospectus is available (whether by press release, a notice in marketing materials or otherwise). Accordingly, these investors do not require actual delivery of the prospectus to ensure their engagement or protection.

Notably, the short form prospectus system is already premised on an "access equals delivery" model, incorporating by reference (without actual delivery) substantially all of the critical issuer information contained in the issuers' current continuous disclosure.[2] When considering their investment in a prospectus offering, investors invariably access the prospectus (and, critically, the documents incorporated by reference) electronically. Investors do not wait for, or rely on, actual delivery of a prospectus and each of the incorporated documents to inform their investment decision. While the option is available to request a copy of these documents, anecdotal evidence suggest that these requests are rarely, if ever, made. We assume this is because waiting for actual delivery of these documents by mail (when they could have been accessed days earlier on SEDAR) or even email does not serve any practical purpose.

In addition to being wasteful and unnecessary, insisting on antiquated prospectus delivery requirements that are premised on delivery by mail as opposed to electronic access (and that deem receipt "in the

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[2] This demonstrates the CSA is already comfortable that investors have the ability to, and will, access documents filed on SEDAR to inform their investment decision in a prospectus offering. The CSA has further demonstrated its comfort with a deemed prospectus delivery concept through the relief routinely accorded to reporting issuers with ATM programs and its recent proposal to codify this relief.

ordinary course of the mail") unnecessarily delay the offering process. Among other things, this artificially extends the expiry of the investors' statutory withdrawal right, making it is impossible for those rights to expire on a normal (modern) settlement cycle. As a result, the time to settlement for most Canadian public offerings is considerably longer than for a U.S. public offering, creating a tension in cross-border offerings as to whether to apply the artificially long Canadian settlement cycle (with the associated costs and risks of extending closing by a number of days) or the shorter U.S. settlement cycle (in which case the Canadian underwriters must assume the risk that withdrawal rights may be exercised after closing).

(c) Financial Statements and MD&A

An "access equals delivery" model is also well suited for addressing an issuer's obligations to deliver its financial statements and MD&A to its investors. The current obligation to send annually a request form to all of an issuer's shareholders, affording investors the opportunity to request a paper copy of these documents, is a wasteful and unnecessary burden. The request form is wasteful because only a very small percentage, if any, of an issuer's shareholders will request a paper copy of these documents; for all other shareholders, that request form is promptly discarded.

The request form is unnecessary because shareholders do not need a reminder as to the availability of these documents. Much like a prospective investor in a prospectus offering, an issuer's shareholders expect and can predict when the issuer's financial statements and MD&A will be available; they are filed at roughly the same time in respect of each of the four fiscal quarters and, in any event, not later than the legally prescribed deadline following the quarter end. Investors are already aware of the contents of their portfolios, and have the ability to monitor the performance of their investments through almost universal access to the Internet (and a myriad of alternatives if they wish to be automatically notified of news releases or filings by any particular issuer). Accordingly, one could argue no notice as to the availability of financial statements and MD&A is necessary for their deemed delivery to shareholders. However, if the CSA determines such notice of availability is necessary, the notice is best achieved through a news release or other notice that is reasonably designed to alert the issuer's shareholders on a more real time basis. Notably, the proposed "access equals delivery" model will provide such notice and afford shareholders the opportunity to request a paper copy.

Consideration should also be given as to whether to remove the option for shareholders to request a paper copy of financial statements and MD&A. Physical delivery of these documents affords no protection or other benefits to investors. Modern markets react to the announcement of earnings, broadly disseminated by a news release, not the mailing of statutorily mandated materials whose material contents have already been made public long before the documents wind their way through the post. Investors who postpone their analysis and delay their investment decisions until they receive physical delivery of financial statements and MD&A are left to deal with a landscape where the informational content of these materials is already factored into the price of the issuer's securities. Waiting for actual delivery of these documents by mail (when they could have been accessed days earlier on SEDAR) does not serve any practical purpose.

(d) Other Documents

See our response to question #5 below.

2. In your view, what are the potential benefits or limitations of an access equals delivery model? Please explain.

An "access equals delivery" model will have significant benefits to the Canadian capital markets. This access model will compliment the transition to a modern securities regulation scheme as it takes into account how market participants actually access and process market information. We understand that investors invariably access electronic versions of relevant public documents, as immediate access is critical to keep pace in modern capital markets. Documents can be accessed in all connected areas – including through portable devices – and are easily searchable for specific content. In addition, implementing an "access equals delivery" model will eliminate the substantial costs of printing and delivering the relevant documents; costs that are all borne, indirectly, by investors. This model will also free up time and resources, currently dedicated to satisfying actual delivery of those documents, that would be better directed toward future improvements to the digital infrastructure for document access that will enhance the investor experience.[3] Finally, adopting a workable electronic delivery model (such as "access equals delivery") has the environmental benefit of eliminating a significant amount of waste that is directly attributable to the requirement to delivery physical copies of documents to investors.

In addition to the general benefits discussed above, applying an "access equals delivery" model to the prospectus delivery requirement will have the benefit of reducing (i) the costs and risks associated with the artificially extended Canadian settlement cycle for prospectus offerings and (ii) risks related to failed delivery of documents (which would be eliminated). Canadian prospectus offerings often settle five business days following obtaining a receipt for a final prospectus or pricing, as applicable. This is in stark contrast to the two business day settlement cycle that is standard in the United States. The longer T+5 Canadian settlement cycle for prospectus offerings is intended to accommodate the additional days required for physical delivery of the final prospectus to Canadian investors and allow for some or all of the Canadian investors' withdrawal rights to expire prior to settlement. A shorter settlement cycle is available with an "access equals delivery" model because it allows for an earlier start (and therefore earlier expiry) of the withdrawal rights period than the current physical delivery model.[4] This will reduce costs (the issuer's delay in receiving proceeds) and risks (exposure to market related risks) associated with a long settlement. It will also allow for alignment with the shorter U.S. settlement cycle on cross-border transactions without risk to the underwriters of withdrawal rights being exercised after closing.

In our view, there are no limitations on the "access equals delivery" model from a conceptual perspective. Any limitations on such a model from a practical perspective will depend on the rules that implement the model. If these rules are too prescriptive or not sufficiently flexible to accommodate alternative means for providing notice or posting documents, there is the risk that conditions to deemed delivery may not be satisfied due to technological failures (including failures outside the control of the delivering party) or that some of the benefits of an access model may not be realized. As we discuss

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[3] For example, social media or block chain platforms or, in the case of prospectus delivery, enhanced dealers investment platforms. See our response to question #6.

[4] On a related note, because delivery (and therefore receipt) is deemed through an access model, there will be certainty as to exactly when investors' withdrawal rights for an offering will expire.

further below, some of these issues can be avoided simply by not requiring an issuer (or dealer) to take actions that are superfluous and otherwise unnecessary to meet the deemed delivery requirement. Ideally the implementing rules will be sufficiently flexible to accommodate future technological developments. However, in the interest of implementing an access model as soon as possible to realize its substantial benefits, it would be sufficient for the initial access model to work with today's Canadian capital markets; the next generation of technology can be addressed in a subsequent round of rulemaking.

There is also the potential for a disconnect between securities and other legislation addressing delivery obligations. Specifically, some issuers may be subject to delivery obligations under their governing corporate statute that do not accommodate, in whole or in part, an "access equals delivery" model implemented under securities legislation. This is not an issue for prospectus delivery. However, it may pose an issue for delivery of other document by way of access until the relevant corporate legislation is amended[5]. However, even in these cases, we still believe it important that the CSA advance implementation of "access equals delivery" model (despite impediments under corporate law requirements at the time of implementation). We are hopeful that changes under securities legislation would provide an impetus for corresponding changes to modernize the relevant corporate statues.

3. Do you agree that the CSA should prioritize a policy initiative focussing on implementing an access equals delivery model for prospectuses and financial statements and related MD&A?

We agree. While an "access equals delivery" model would be a beneficial alternative for the delivery of various other documents to investors, in our view the CSA should concentrate their efforts in the near term on implementing an access model that is tailored for prospectuses and financial statements and related MD&A. An access solution for the delivery of these documents will achieve the largest benefit in the shortest possible time period. If initial implementation of an "access equals delivery" model will be delayed by virtue of addressing considerations specific to the delivery of financial statements and MD&A, we suggest that the CSA first proceed to implement the access model for prospectus delivery only and then follow with implementation of an access model for the delivery of financial statements and related MD&A.

As detailed in our response to question #5 below, broadening this model to address the delivery of other documents will also be beneficial to Canadian capital markets in the long run. However, this will entail additional considerations and, possibly, additional or different conditions than those for the access model proposed in the Consultation Paper. Trying to accommodate delivery of these other documents within the proposed model – which works well for both prospectuses and financial statements and related MD&A with only a few adjustments - would add complication. Effective delivery of proxy materials by way of access will also require changes to corporate legislation. In our view, in order to avoid delaying the implementation of the effective, electronic solution for delivery for

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[5] For example, corporate requirements for the delivery of annual financial statements to registered shareholders and corporate requirements for the delivery of proxy materials.

prospectuses, financial statements and MD&A proposed in the Consultation Paper, it would be best to consider options for the electronic delivery of other documents by way of access separately.

4. If you agree that an access equals delivery model should be implemented for prospectuses:

(a) Should it be the same model for all types of prospectuses (i.e., long-form, short-form, preliminary, final, etc.)?

We agree that an "access equals delivery" model should be implemented for prospectuses. However, we believe the model should differ for preliminary prospectus documents[6] and final prospectus documents.[7]

In our view, no news release or equivalent notice as to availability should be required for deemed delivery (by way of access) of preliminary prospectus documents (though issuers and dealers should be entitled to voluntarily issue a news release regarding such availability). Delivery should be premised solely on the posting of the preliminary prospectus document on SEDAR. There is no principled basis for requiring such a news release in respect of a preliminary prospectus document. Timely notice of the deemed delivery of a *final* prospectus document could be important as that deemed delivery should 'start the clock' on an investor's withdrawal period (as discussed further below). However, the same is not true of the delivery of a preliminary prospectus or a base shelf prospectus (preliminary or final). Accordingly, a news release (or equivalent notice of availability) should be required only for deemed delivery of a final prospectus document. Any investor interested in participating in a public offering is already aware that a prospectus is or will be available and that it will include important information relevant to their investment decision. They are already engaged by virtue of their interest in the offering. Further, there is no investor protection concern that an investor will rely on the content of marketing materials to the exclusion of the preliminary prospectus documents on file. Such concern is adequately addressed through the disclosure (required to be included in any marketing materials)[8] advising the investor to read the relevant preliminary prospectus document before making an investment decision.

We think consideration should also be give as to whether the option to receive a paper copy of a preliminary prospectus document is of value to investors. Such value is clearly quite limited in the case

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6 Our references to "preliminary prospectus documents" in this comment letter are to preliminary prospectuses, amendment to or amended and rested preliminary prospectuses and, in the context of a shelf offering, preliminary and final versions of base shelf prospectuses.

7 Our references to "final prospectus documents" in this comment letter are to final versions of a prospectus or prospectus supplement (including a supplemented base PREP prospectus) upon which liability of an issuer and dealers to a purchaser is premised.

8 Changes will be necessary to the prescribed legends and certain other requirements for marketing materials and standard term sheets, as applicable, to reflect an access model. We assume the modified legends would be similar to the existing legends, but modified to allow reference to SEDAR for (in lieu of delivering) a copy of the relevant prospectus and providing the option to request a paper copy, if deemed applicable – see below for a discussion about the limited value of paper delivery. We assume such legends would still note that the relevant document does not provide full disclosure of all material facts relating to the securities offered and advise investors to read the relevant prospectus.

of an offering by means of a short form prospectus or a shelf where, in reality, an investment decision is made long before paper delivery can occur.

(b) How should we calculate an investor's withdrawal right period?

Under an "access equals delivery" model, subject to the caveat below, we do not think that commencement of an investor's withdrawal right period should require any change. Generally, it should commence, as it does now, at the time of the investor's receipt of the final prospectus document. To bridge the concepts of delivery and receipt, the rules implementing the access model should be clear that an investor is deemed to have received the final prospectus document at the same time as the document is deemed to have been delivered. There are no policy reasons to delay the withdrawal period further, as the investor is already engaged, having recently placed an order with its broker for the security, and will be on notice that a final prospectus document has been, or will soon be, filed. However, one modification will be necessary to accommodate transactions where orders are placed after the final prospectus document has been filed.[9] In these cases, the withdrawal right period should commence at the time that later order is placed. Accordingly, we submit that the appropriate time for an investor's 2 business day withdrawal right period to commence should be the later of (i) the time when both (A) the final prospectus document has been filed on SEDAR, and, (B) a news release (or alternative form of notice, if permitted) has been issued announcing that the final prospectus document is (or will be) available, and (ii) the time he investor places its order for the security.

(c) Should a news release be required for both the preliminary prospectus and the final prospectus, or is only one news release for an offering appropriate?

There is no principled basis for requiring a news release or equivalent notice as to the availability of a preliminary prospectus document for deemed delivery by way of access. However, if it is determined that a news release will be required under such a delivery regime, in the context of a bought deal, we submit the rules should allow this to be satisfied through a forward-looking news release. Specifically, it should be sufficient for the news release announcing the bought deal to indicate that the preliminary prospectus "will be" available (on or before a specified date), as (i) that prospectus must be filed within four business days following the bought deal announcement and (ii) the issuer information critical to the investment decision (*i.e.*, in the documents incorporated by reference) is already on file and should have been reviewed by the investor well in advance of the filing of the preliminary prospectus. Notably, an investor would still get current notice when the final prospectus is available, and then two business days to review the final prospectus prior to expiry of the associated withdrawal right. Accordingly, requiring that investors have current notice when the prospectus "is" (as opposed to "will be") available is arguably only relevant for the final prospectus.

In formulating a rule incorporating an access equals delivery model, the mechanics of a typical offering should be considered carefully to ensure that the news release requirement signalling availability of the final prospectus document does not result in a flurry of public announcements from an issuer regarding the offering. This would cause significant noise in the market. The problem of a multiplicity of news

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9 For example, in an underwritten offering where there are insufficient orders to fill the book at the time of pricing or in a best efforts offering where marketing continues after the final prospectus document has been filed.

releases is greater in offerings where the pricing is close to, but not concurrent with, the filing of the final prospectus document. These would include marketed deals (where pricing typically occurs shortly before filing of the final prospectus) and take downs from a shelf prospectus (where pricing triggers a two day period in which to file the shelf prospectus supplement). In these types of offerings, pricing is typically a material event for an issuer that requires a news release under securities laws. It should be open to an issuer, in such circumstances, to include a statement in their pricing news release that the final document "will be" available within a certain time period.[10]

5. For which documents required to be delivered under securities legislation (other than prospectuses and financial statements and related MD&A) should an access equals delivery model be implemented? Are there any investor protection or investor engagement concerns associated with implementing an access equals delivery model for rights offering circulars, proxy-related materials, and/or take-over bid and issuer bid circulars? In your view, would this model require significant changes to the proxy voting infrastructure (e.g., operational processes surrounding solicitation and submission of voting instructions)? Please explain.

We believe that a move to an access equals delivery model for delivery of all documents under securities legislation is desirable and can be justified even absent the environmental benefits of doing so. Issuers would clearly benefit from the cost savings associated with printing and mailing as would bidders in a take-over bid scenario and dissident shareholders in a proxy contest. In that regard, the cost savings alone – the costs of printing and mailing alone can run into the millions of dollars – could potentially enhance shareholder democracy as more shareholders might be willing to seek to assert their rights and engage in a proxy solicitation campaign.

A key question is whether investors would also benefit. Investors and the market generally are already accustomed to the fact that material information is disseminated by way of news release, with no requirement for any subsequent mailing of material change reports, for example. In addition, notice-and-access has been available now for several years and technological advances continue to make information readily available and accessible to investors almost instantaneously. Anecdotal evidence also suggests that the current system has its own imperfections, including investors receiving printed materials only days prior to a deadline or, in some cases, failing to receive the materials at all. In addition, in circumstances involving late-breaking amendments to a bid or a transaction requiring shareholder approval, there may well be insufficient time, even within current legislated time periods, for printed materials to reach shareholders in a timely fashion.

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[10] In circumstances where an issuer uses a formulation that a final prospectus document "will be" available, depending on the length of time in which the final prospectus document actually does become available, it is possible that the news release component of the "delivery" obligation should be deemed to occur at some point after the issuance of the news release, perhaps at an outside time specified in the news release at which the final prospectus document will become available. This would accommodate the practical reality that the filing of the final prospectus document cannot be effected concurrently with pricing of the offering (and the related public announcement). This approach would not disadvantage investors provided the ultimate filing of the final prospectus document was not delayed beyond a reasonable period (for a final prospectus, this might be up to a day following pricing, and, for a prospectus supplement, this should align with the filing requirement of two days following pricing).

To the extent that there is concern about a decrease in shareholder engagement, we would not expect that to be the case in a transaction-related scenario or an adversarial situation such as a hostile bid or a proxy contest. In those circumstances, the issuer as well as the bidder or dissident shareholder typically retains the services of a proxy solicitation firm to ensure that shareholders are aware of the issues and actively participate. In addition, reporting on these situations by the financial press often serves as additional publicity and notice to shareholders. These situations could also be expected to enhance the market's understanding of and interaction with the access equals delivery system. It is possible that, at least in the near term, routine annual meetings, particularly for issuers with a large retail shareholder base, could initially suffer from lower turn-out as the market adjusts to the new system. In any event, we would expect that any access equals delivery system would nevertheless allow for parties to mail materials as an alternative, if they wished to do so.

Admittedly, adopting an access equals delivery model in the proxy solicitation context will require amendments to applicable corporate law; however, it is hoped that making the requisite changes to overlapping requirements under applicable securities laws would serve as a catalyst for change in the applicable corporate law. In fact, introducing an access equals delivery model into securities laws could facilitate the granting of exemptions from corporate law requirements by corporate regulators prior to the adoption of corporate law amendments. By way of example, Industry Canada has routinely granted exemptive relief to permit use of notice-and-access for the delivery of proxy materials.

We also expect that there will be a number of logistical matters to be addressed in the proxy voting infrastructure, including the manner of facilitating on-line voting instructions and the distribution of unique control numbers to shareholders. Again, we believe that advancing an access equals delivery model might also serve as an opportunity for market participants to embark on the larger project of enhancing the proxy voting infrastructure and addressing other concerns that have been raised by market participants with respect to the workings of that system.

6. Under an access equals delivery model, an issuer would be considered to have effected delivery once the document has been filed on SEDAR and posted on the issuer's website.

(a) Should we refer to "website" or a more technologically-neutral concept (e.g., "digital platform") to allow market participants to use other technologies? Please explain.

As noted below, consideration should be given as to whether filing on SEDAR is sufficient for deemed delivery purposes without an additional, redundant posting on the issuer's website or some other digital platform. However, if the CSA determines that an additional source is necessary to access the relevant document, it should be sufficient to make the document available on any digital platform that can be accessed by the relevant investor; it need not be a platform that is broadly available to the public.[11] Further, where dealing with prospectus delivery (which is typically an obligation of the dealer – not the issuer), the dealer should have an option to post the prospectus on its own platform or that of a third

[11] For example, as an alternative to the issuer's website, an acceptable digital platform for issuer deliveries could include social media or a block chain platform. For deliveries by dealers, an enhanced broker internet platform may be appropriate.

party. It is critical that this remain flexible, not only to accommodate future technologies but also to allow for alternative platforms in the event the chosen technology fails at the time a delivery is required.

(b) Should we require all issuers to have a website on which the issuer could post documents?

No. The requirement that documents be posted on an issuer's website (notwithstanding the same document is posted on SEDAR) introduces yet another action that is unnecessary to meet the objective of delivery through an access model.

As the one and only mandated repository for the public filing of documents under Canadian securities legislation, SEDAR should be the only place that an investor must look to access a prospectus or any other filed document that is to be delivered to investors. Mandating one, common source for these documents – that is administered under the supervision of CSA members – ensures a consistent user experience that meets a minimum standard for accessibility. Unlike issuer websites, which can vary as to where and how investor information is accessed, investors access information on SEDAR the same way for each reporting issuer. We submit it is better to have a single, well maintained website that investors may access, as it will be easier for investors and any issues with access will be well-known to the market (as opposed to a failure of an issuer's website).

While issuers and dealers should have the option to also post these documents on other digital platforms, it is unclear what is gained by requiring a separate platform for accessing these documents.[12] In our view, this additional posting requirement simply introduces another hoop to jump through for delivery. At best, it is redundant with the SEDAR filing (from an investor perspective) and an annoyance (from an issuer/dealer perspective). However, it has the potential to meaningfully delay delivery. It is possible that the issuer (or dealer, as applicable) will be unable to satisfy this superfluous requirement due to their website (or other platform) being unavailable due to issues outside of their control.[13] Even without any such systems issues, there will be delay as issuers/dealers will need to coordinate the separate posting after filing on SEDAR[14].

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12 If this due to an issue stemming from the current functionality of SEDAR, then those issues should be addressed as part of the initiative to upgrade to SEDAR.

13 For many issuers, website management is not conducted in-house. Also, regardless of who manages an issuer's website, the availability of an issuer's website may be disrupted by virtue of a failure of the issuer's internet service provider, or other third party service providers necessary for the operation of the website, or other events outside of an issuer's control.

14 Internal, administrative delays at the relevant securities commission in making the filed SEDAR document public could further delay this separate posting as issuers and dealers.

7. Under an access equals delivery model, an issuer would issue and file a news release indicating that the document is available electronically and that a paper copy can be obtained upon request.

(a) Is a news release sufficient to alert investors that a document is available?

Yes, in our view a news release is sufficient to alert investors that a document is available. A news release clearly works from an investor engagement perspective as it is currently the sole mode under Canadian securities laws by which material information can be broadly disseminated (for material changes, etc.). As noted above, investors now don't even need to monitor news releases on an issuer's website or SEDAR, as there are many services available to set up automatic notification of news regarding particular issuers. We note, however, that a news release goes beyond the coverage necessary to adequately notify investors of the filing of a prospectus or financial statements and MD&A. For a final prospectus document, the only persons who need to be notified are persons that participate in the public offering, and for financial statements and MD&A, the only persons who need to be notified are the shareholders of the issuer. In both cases, the coverage of a news release is over broad and, accordingly, we would urge the CSA not to foreclose on alternative methods of notification that are sufficient to encompass these groups. In our view, it should be open to the issuer or dealers to use any disclosure outlet reasonably designed to give notice as to the availability of the relevant document to all the persons to whom delivery of that document is to be made. They should not be limited to providing this notice through the issuance of a news release. Again, given the significant benefits to swift adoption of an "access equals delivery" model, we suggest that, if necessary, an expansion of the available modes of delivery is a matter that could be delayed to a subsequent round of rulemaking that expands on the scope of the initially implemented rule. In the interim, for the initial implementation of the access model, a safe-harbour approach could be used to provide issuers and dealers comfort that a news release would constitute sufficient notification in all circumstances.

Further, as noted in our response to question #4, in the context of a prospectus offering, no news release or other notice should be required for preliminary prospectus documents.

(b) What particular information should be included in the news release?

The news release announcing the filing of the final prospectus document or the financial statements and MD&A, as the case may be, should state that the relevant document has been filed, and can be obtained, on SEDAR under the issuer's profile.[15] To the extent that the final "notice equals access" regime includes provisions for requesting delivery of a paper copy of the relevant prospectus document, a statement to that effect should be included. We do not see a need for such a news release to include other information (such as a repetition of the statutory rights of withdrawal, damages or rescission that

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[15] Consideration should be given to whether this may provide a link to the SEDAR home page. If, in the updated version of SEDAR currently being developed, it will be possible to create a permanent link to the issuer's SEDAR landing page, the CSA could consider including a link to that page. A link to the actual document that is filed on SEDAR should not be necessary for these purposes and may lead to issues ensuring that the appropriate link is included in the news release

are already included in a prospectus). While not mandated, issuers should be able to include additional information in any such news release.

8. Do you have any other suggested changes to or comments on the access equals delivery model described above? Are there any aspects of this model that are impractical or misaligned with current market practices?

Further consideration and clarity is necessary with respect to any obligation to deliver a paper copy where using this access model to deliver a prospectus. Among other things:

- As noted in our response to question #4, consideration should be given as to whether the option to receive a paper copy of a preliminary prospectus document is of any value to investors.

- Consideration should be given as to who is best positioned to deliver the paper copy of a prospectus to an investor. The Consultation Paper assumes a paper copy of the prospectus would be requested from the issuer but this may not make sense in most or all cases.[16] It may be that the purchaser's own broker is best positioned for this delivery, or it may be appropriate to leave it open as to who will make the delivery.

- We suggest that investors be given the option to request either an electronic copy or a paper copy (in contrast with the Consultation Paper, which refers only to a paper copy option).

- The option to request a copy of the relevant document should be limited to the applicable investor (*i.e.*, in the context of a final prospectus delivery, purchasers in the offering).

Further, we assume that delivery of any requested paper copy of a prospectus would be an obligation separate from, and not a pre-condition to satisfying, the prospectus delivery obligation under securities legislation. Accordingly, the time at which any requested paper copy is delivered or received would not factor into the time at which the prospectus is deemed delivered (under applicable prospectus delivery requirements) or received (for purposes of the statutory right of withdrawal).[17] We trust that ample time would be afforded for sending any requested paper copy such that issuers would not be required to print commercial copies in advance of any such request, as all or substantially all of these printed

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16 It is also inconsistent with certain current securities legislation addressing from whom a copy of the prospectus should be requested. For example, the legend for a standard term sheet requires contact information for a registered dealer or underwriter.

17 It would defeat the purpose of an access model if the time of delivery or receipt was a function of when a requested paper copy is delivered by mail. Moreover, it would give rise to significantly different withdrawal rights periods for those who request a paper copy, so much so that it may provide an incentive for certain investors to request physical delivery (when they otherwise wouldn't) merely to artificially extend their withdrawal right.

With the implementation of access equals delivery, we have also assumed that dealers will no longer be obligated to keep a "distribution list" of persons to whom a prospectus has been forwarded as substantially all (if not all investors) will have received the prospectus by way of access. In our view, it would be unnecessary to maintain a list solely for the purpose of memorializing persons that have requested a paper copy.

copies would ultimately not be used and this would defeat the intended efficiencies of this burden reduction initiative.

Certain other changes may be appropriate in crafting the specific requirements for delivery by way of access to ensure they do not impose unnecessary burden. For example, in the context of prospectus delivery, the issuance of the news release should be more than sufficient given its purpose is to provide notice of the availability of the prospectus. In our view, requiring that this news release also be filed on SEDAR and posted on the issuer's website (or any other digital platform) adds no incremental value from a notice perspective. As such, it is just a burden. Additionally, as noted in our response to question #7, issuers or dealers, as applicable, should ultimately be afforded the option to notify the relevant investors of the availability of a document by alternative means. They should not be limited to providing this notice through the issuance of a news release.

Certain technical clarifications will also be appropriate. For example, it should be clear that meeting the access conditions will satisfy the delivery obligation of a dealer or any other applicable person, not just the obligations of the issuer.[18] Further, where the delivery obligation is of the dealer, not the issuer, clarifications or changes may be appropriate so it is clear that the dealer may satisfy the access conditions on behalf of, or independently from, the issuer. For example, clarifying that any necessary news release or alternative notice may be issued directly by the dealer and modifying any conditions that specifically require the issuer to take the relevant action. Finally, changes will be necessary, in related provisions of securities legislation and in the SEDAR filing manual, to address the use of SEDAR filing as a trigger for deemed delivery.[19] Changes may also be appropriate to otherwise enhance investors' experience with electronic access.[20]

Requiring the issuance of multiple news releases with respect to the availability of the prospectus for an offering is out of step with current market practice. News releases are issued to disclose material news. In the absence of any corresponding material news, a news release can be disruptive. Our response to question #4 identifies a number of ways to minimize this disruption without impairing the objective of the news release, including removing this notice requirement for the delivery of a preliminary prospectus documents and allowing for this requirement to be satisfied through a forward-looking news release

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18 The Consultation Paper currently refers only to documents that issuers are required to deliver to investors. However, prospectus delivery is typically a dealer obligation.

19 For example, for purposes of establishing the date on which an investor received the prospectus and that investor's associated withdrawal right period, NI 13-101 should be modified to clarify that the 5:00pm local time cut-off in 2.7(3) does not apply. An investor should be deemed to have received the prospectus on the date it is filed, provided that is filed before the 11:00pm cut-off for SEDAR filings and the other "access equals delivery" conditions are met before midnight on that day. Requiring filing by 5:00pm is impractical for offerings pricing in the afternoon. There is no principled basis for delaying closing of any such offering by an additional day (to afford time to allow the withdrawal right period to expire before closing) merely because the relevant prospectus (or supplement) was filed between 5:00 and 11:00pm, and not at 4:59pm.

20 For example, modifications to the SEDAR filing manual to allow for hyperlinks in news releases or marketing materials that link to an issuer's landing page on SEDAR so that the investor can quickly click through to obtain a copy of the prospectus or other document that is deemed to be delivered under the access model.

(indicating that a prospectus “will” be available). Allowing for an alternative form of notice, that is more directed than a news release (as suggested above), should also mitigate this issue.

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The following partners at our firm participated in the preparation of this comment letter and may be contacted directly should you have any questions regarding our submissions.

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