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Sent via email

Re: CSA Consultation Paper 51-405 - *Considerations for an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers*

The Investment Industry Association of Canada (“IIAC”) appreciates the opportunity to provide comment on CSA Consultation Paper 51-405 - *Considerations for an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers*. IIAC members are important intermediaries between reporting issuers and investors, allowing our members to bring insightful perspectives on the implications of an access equals delivery model on the Canadian marketplace.

As detailed in our responses below, the IIAC believes that the Canadian marketplace is well placed to adopt an access equals delivery model. Such a move would align current investor preferences with the CSA’s objective of modernizing the way documents are made available. However, in order to timely achieve the benefits of access equals delivery, IIAC recommends the CSA take a staged implementation approach prioritizing an access equals delivery model for prospectuses and financial statements and related MD&A.

Our responses to the CSA questions are as follows:

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

The IIAC believes that Canadian capital markets are among the most developed globally and sufficiently mature to adopt an access equals delivery model without compromising investor protection or shareholder engagement.

Our well-functioning ecosystem of exchanges, regulators, securities dealers, industry service providers and legal professionals is well placed to implement an access equals delivery model benefitting securities issuers and investors.

Our members indicate that investors prefer consuming financial information electronically. For example, when considering their investment in prospectus offerings investors are aware that information relevant to their decision making is available on SEDAR. Investors no longer wait for, or rely on, the actual paper delivery of a prospectus to inform their investment decision. In addition, this is responsive to the realities of the pace of modern capital markets – in practice, the only timely way for an investor to receive and analyze the information necessary to inform its investment decision is through electronic access.

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

The benefits of an access equals delivery model would be the added efficiency it would bring to the Canadian marketplace, significantly reducing the time and money necessary to comply with delivery obligations. Electronically filed documents are immediately accessible, from anywhere, and allow for much more efficient review than paper. Eliminating paper documents that are often immediately discarded would also be environmentally responsible.

An access equals delivery model would also address many of the technical challenges that our members experience with electronic delivery methods (e.g. failed delivery of emails). In addition to these technical challenges, there are legal challenges to effecting electronic delivery; changes to securities and other legislation (outside the purview of the CSA) would be necessary to allow dealers to satisfy their delivery obligations exclusively by way of electronic delivery.

The limitations of an access equals delivery model implemented by way of securities legislation may invariably hinge on whether it conflicts with current requirements of corporate statutes and provincial electronic commerce legislation that may govern communications between market participants. The IIAC recognizes that any issues arising under such other legislation would be outside the purview of the CSA. For this reason, the IIAC thinks it sensible, for the near term, to narrow the scope of access equals delivery to prospectuses and financial statements and MD&A (see our response to question #3 below). An

effective access model for the delivery of those documents can be achieved quickly and exclusively through Canadian securities legislation.

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

While the IIAC believes an access equals delivery model could provide the greatest efficiency and cost-savings if it were to cover the broadest set of investor disclosure documents, accommodating the delivery of additional documents (beyond prospectuses, financial statements and MD&A) this would entail overcoming additional hurdles and complications which would significantly delay, and potentially jeopardize, the CSA's policy initiative.

The IIAC believes access equals delivery is well suited for addressing prospectus delivery obligations because investors that participate in prospectus offerings do not require actual delivery of the prospectus to ensure their engagement. They are already engaged in the offering process (directly or through their broker) and are already aware that the prospectus (and, where applicable, other information they require for informing their investment decision) is available on SEDAR. Notably, any term sheet or other materials used to market the offering must contain a legend that investors should read the prospectus.

For these reasons, the IIAC concurs that as a first step the CSA should prioritize access equals delivery for prospectuses and financial statement and related MD&A. Narrowing the CSA's focus to these disclosures would result in some of the benefits of an access equals delivery model being realized sooner.

The CSA should, however, continue to consult with market participants on how access equals delivery can eventually be applied to other documents required to be delivered under securities legislation and the complications that would need to be addressed related to these deliveries.

- 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**
 - b. How should we calculate an investor's withdrawal right period**
 - 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?**

The IIAC believes access equals delivery should apply to all prospectus types (long-form, short-form, and shelf). However, it is important to make some distinctions in an access equals delivery model as it relates to prospectuses.

Specifically, consideration should be given to whether a press release should be required **only** for the final prospectus or prospectus supplement, as applicable. For deemed delivery of a preliminary (or base shelf) prospectus by way of access, no news release or equivalent notice as to availability should be required. Notably, notice of the current or future (in the case of bought deals) availability of any such prospectus is already effectively provided to solicited investors through equivalent disclosure in the indicative term sheet or other materials used for soliciting expressions of interest in the prospectus offering. Alternatively, in the context of a bought deal, it should be sufficient for the announcing press release to indicate that the preliminary prospectus “will” be available as this prospectus must be filed within a short window of time after that announcement and the issuer information critical to the investment decision (i.e., the incorporated reports) is already on file. Having issuers publish multiple press releases for the same offering will lead to added costs, time and possible investor confusion.

In terms of calculating an investors withdrawal right period, an investor would still get current notice when the final prospectus is available on SEDAR, and then two business days to review the final prospectus/supplement prior to expiry of the associated withdrawal right.

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.

The benefits of an access equals delivery model would be maximized if it were to encompass the broadest set of documents required to be delivered under securities legislation. The IIAC would support, therefore, CSA efforts to broaden the framework where sensible. However, the IIAC reiterates concern that a single broad sweep might complicate the policy initiative and risk delays in bringing benefits to the market. The CSA should prioritize implementing an access equals delivery framework for prospectuses and financial statements and related MD&A while undertaking work on understanding the feasibility of a similar framework for other disclosures.

The proxy voting infrastructure in Canada was significantly modernized in 2013 with the adoption of “Notice and Access” which the IIAC believes has achieved a good balance between investor engagement and electronic access resulting in a positive experience for investors. The industry has devoted considerable resources in implementing notice and access including developing operational processes surrounding the solicitation and submission of voting instructions. Much of this work would have to be revisited should the proxy voting infrastructure in Canada move to access equals delivery. The long-term benefits of such a move, however, could potentially outweigh the cost and disruption. The IIAC recommends that the CSA work with a representative group of stakeholders to undertake an in-depth study, including an analysis of cost and benefits, from adopting access equals delivery for proxies.

While the IIAC recognises that the scope of the CSA consultation relates to non-investment fund reporting, IIAC members have commented that consideration should also be given to other areas where access equals delivery can be adopted. Specifically, many of the dealer reporting obligations could be streamlined through access equals delivery and the IIAC would be very interested in pursuing further discussion in this area.

- 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 to allow market participants to use other technologies. Please explain.**
- d. Should we require all issuers to have a website on which the issuer could post documents**

Members question the need for issuers to file the document/news release on both SEDAR and the issuer's website as this would appear redundant. SEDAR should be the trusted repository for all investor disclosures and communications. Pointing investors to this single source would simplify processes for issuers while ensuring each document can be accessed easily by investors and in a similar fashion. The CSA's current initiative to integrate the industry's primary information and filing systems (SEDAR, SEDI and NRD) provides a further opportunity to enhance the user experience.

The IIAC recommends, therefore, that issuers be required to post their documents and news release on SEDAR and be given the option (but not be required) to also post on their website or any other digital communication channel(s) utilized by the issuer such as social media.

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

Yes, in the IIAC's view a news release is sufficient to alert investors of the availability of the delivered document. Investors, however, consume financial information differently. We recognize, therefore, that not all investors are likely to utilize press releases as their primary source for receiving their information. However, in our experience news releases are effective at communicating information to the marketplace and the marketplace in turn has then been able to take that information and efficiently disseminate it, broadly and in real-time, to participants via the multiple communication channels that exist.

While sufficient, the IIAC does not think a news release should be the only means available for alerting investors. In the IIAC's view, it should be open to the issuer or dealers to use any means reasonably calculated to disclose the availability of the relevant document to the target audience. They should not be limited to providing this notice through the issuance of a news release.

At a minimum the information in the news release should identify the document that is (or will be) available electronically, and include a reminder to investors that the document is available on SEDAR and instructions on how investors can request a paper copy of the document.

The IIAC would be pleased to meet with CSA representatives to discuss our comments in greater detail.

Sincerely,

"Jack Rando"

Jack Rando
Managing Director