



# Securities Transfer Association of Canada

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Dear Sirs:

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

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This letter represents the comments of the Securities Transfer Association of Canada (STAC) in response to CSA Consultation Paper 51-405 *Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers* ("CP51-405"). STAC is a non-profit association of Canadian transfer agents that, among others, has the following purposes:

- To promote professional conduct and uniform procedures among its members and others;
- To provide membership to firms engaged as transfer agents or registrars in the field of the issuance, transfer and registration of securities and associated functions;
- To study, develop, implement and encourage new and improved requirements and practices within the securities industry;
- To assist members with problems of a technical or operational nature;
- To develop solutions to complex industry-wide problems;

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- To provide a forum and to act as a representative and spokesperson for the positions and opinions of its members, and, where appropriate, its clients and the holders of securities;
- To provide members and others with information and comments of an educational and technical nature relating to the securities transfer and corporate trust industry;
- To exercise any and all powers required to meet the needs and the obligations of this Association; and
- To ensure that its activities in relation to these purposes are communicated to all Members.

In Canada, transfer agents are retained by public and private companies to maintain records of the registered securityholders, specifically, those who hold securities directly in their name. Our records contain the securityholder's name and address, securities held, and, in some cases, email address. We process transfers, mail disclosure material, such as proxies, annual financial statements, quarterly reports, and management information circulars, and distribute dividends and related tax slips.

STAC appreciates the opportunity to provide our insight on this important initiative. We will be focusing our comments on the areas where transfer agents are directly involved. For ease of reference, we have included the text of the original consultation question, where applicable.

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

STAC believes it is appropriate for regulators to consider various ways of modernizing delivery of material to securityholders in Canada. We are currently very dependent on mailing paper and the complexities of the opaque indirect record keeping system causes disconnects in securityholder communication processes.

Access equals delivery is one model that, if properly implemented, may provide benefits and efficiencies to the Canadian market.

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

There are numerous potential benefits to an access equals delivery model for issuers, including reduced costs for mailing and printing material, and reduced environmental footprint.

Certain processes have limitations that will need to be overcome if this model is to be successfully implemented with no adverse effects to issuers or their securityholders. Complexities arise in situations where securityholders must take action to participate in a process, and send documents and/or certificates back to the transfer agent, who must then be able to identify the individual who sent those documents, reconcile them to the appropriate securityholder record, and follow their instructions.

*Consultation Question 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?*

Given the complexities associated with other documents that the CSA is proposing to explore, specifically rights offering circulars, proxy-related materials and take-over bid and issuer bid circulars, we believe that prioritizing prospectuses and financial statements are a logical first step, given these materials are required to be delivered to securityholders, but there is no requirement for securityholders to deliver

anything back to the transfer agent or issuer. STAC members are not involved in the distribution of prospectuses, so we therefore have no opinion on whether access equals delivery is an appropriate model for these documents.

The delivery of annual financial statements for Canadian issuers has complexities due to issuers having two different categories of securityholders: registered and beneficial. For registered securityholders, issuers, depending on where they are incorporated, either have to mail the annual financial statement and related MD&A to all securityholders who have advised that they wish to receive them (opt-in process) or all securityholders who have not indicated that they do not want to receive them (opt-out process). For beneficial securityholders, all issuers are required to mail the documents to securityholders who have indicated that they want to receive them, as required under National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102). For quarterly financial statements, all securityholders are solicited annually and must opt-in for delivery further to requirements in NI 51-102. Both registered and beneficial securityholder solicitations must be completed annually. The number of annual and quarterly financial statements that are mailed decreases every year. We believe this is due to the information being readily and more rapidly available on-line, although we cannot provide specific data to support this.

*Consultation Question 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.*

STAC members believe that an access equals delivery model could potentially be beneficial if it provides financial, environmental or other benefits to issuers. However, there are certain details concerning investor engagement, investor protection, and issuer requirements that must be carefully considered prior to implementation.

STAC members are responsible for mailing various different types of material to securityholders on behalf of our clients. The material is typically as a result of continuous disclosure requirements or other securities legislation requirements, and includes documents such as proxies, information circulars, annual and quarterly financial statements, rights offering circulars, and take-over and issuer bid circulars. We are not involved in the distribution of prospectuses, and they are therefore not included in our comments.

Given our involvement in the details of these processes, we have set out specifics for you below:

#### Proxy Material

When proxy material is mailed out the securityholder must be able to send their voting instructions back to the tabulation agent, who must be able to identify who the securityholder is.

The process for mailing proxy material needs to be segregated between registered securityholders, who receive material directly from, and vote directly with, the transfer agent, and beneficial securityholders, who can receive material in various ways, through processes set out in National Instrument 54-101 - *Communication with Beneficial Owners of Securities of a Reporting Issuer* ("NI 54-101").

When a transfer agent creates a record for a registered securityholder, we receive limited information from the intermediary that they purchased their securities through, specifically name, address, and number of shares. We do not have the opportunity to go through an account opening process that would allow us to provide a unique ID to the securityholder, receive an email address and consent for electronic delivery, require sign up for an online account, or other process that would allow us to automate the voting process. Any further information added to a securityholder's record must be gathered through a secondary process, such as soliciting an email address, and success is dependent on the securityholder's response, which cannot be mandated. When transfer agents distribute proxy material, we include information on the physical form of proxy that is delivered to the securityholder, either by mail, or, if we have received the email and consent, electronically. The voting material includes either securityholder name and address and credentials for electronic voting, or, if delivered electronically, a unique log on for electronic voting, that allows us to ensure that the vote is applied to the correct securityholder account. Without that information, any process to match the vote to the account would be manual, and likely prone to errors. The result of this would be securityholder votes potentially not being tabulated resulting in the securityholder's preference not being recorded, and possible concerns with issuers receiving enough votes to meet quorum requirements or pass motions.

If proxy material is included in the access equals delivery model, there must be careful consideration of the voting processes to ensure that there are no unintended consequences.

For beneficial securityholders, which are segregated between Objecting Beneficial Owners (OBOs) and Non-Objecting Beneficial Owners (NOBOs), mailing and voting processes are more complicated. OBO holders always receive proxy material through their intermediary or intermediary's agent. NOBO holders can also receive material through this process, but issuer's also have the option of using their transfer agent as mailing agent. When transfer agents receive the NOBO data from the intermediaries' agent, we receive basic information, as set out in NI 54-101, which allows us to complete the mailing and identify the intermediary account behind CDS & Co where the securities are held. If beneficial securityholders are provided material through an access equals delivery model, consideration will need to be given to how beneficial securityholders will know with which agent to submit their vote. The option to deliver material directly is provided to the issuer, and without receiving material with voting information or a return envelope, beneficial securityholders would not know where or how to submit their vote, which could result in serious issues with the voting process. Although the publicly filed notice of meeting and record date includes details concerning which entity is completing the NOBO mailing, we do not believe that all retail securityholders have sufficient understanding of the in-depth processes to access this information, and, in any event, should not have to hunt around for this information in order to vote.

### Rights Offering Circulars

If an issuer elects to raise capital by issuing rights to existing securityholders, the standard process is that a physical rights certificate is mailed to registered securityholders by the transfer agent, along with a rights offering document. This requirement is set out in both the TSX Listed Issuer Manual (Part VI Changes in Capital Structure of Listed Issuers, D. Rights Offerings, Section 614) and the TSX Venture Exchange Corporate Finance Manual, Policy 4.5, Rights Offerings). We would note that both of these manuals require a physical rights certificate to be issued, which could not be delivered under an access equals delivery model.

As stated previously, the information transfer agents receive when creating a record is limited. If rights information is to be distributed through an access equals delivery model, consideration must be given as

to how holders will receive the information that they need in order to evaluate their options, and, if appropriate, exercise their rights and submit the correct documents and information to the transfer agent.

### Take-over and Issuer Bid Circulars

The distribution of take-over and issuer bid circulars is also a process that requires securityholders to respond back to the transfer agent. As with rights circulars and proxy material, it is essential that transfer agents be able to reconcile the responses received with the appropriate securityholder record. If a securityholder doesn't receive documents or an electronic message from the transfer agent with the appropriate information, successfully completing this process is jeopardized.

Consultation Question 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*
- b. *Should we require all issuers to have a website on which the issuer could post documents?*

In general, when describing technology, we propose the use of agnostic terms that do not tie rules to specific systems or software. We support the use of technology-neutral terms in order to allow for issuers to use the most appropriate and newer technologies as they emerge, as opposed to being tied to specific systems or references in the rules or regulations.

Given the recent project that has been undertaken by the CSA in connection with the modernization of SEDAR and other filing systems, it is difficult to respond to questions related to SEDAR or other possible methods of publicly posting documents without having more insight into the new versions that are going to be implemented.

Consultation Question 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?*

As stated in our response to Consultation Question 5, we have concerns about securityholders receiving information solely through a notification process. For meeting material, rights offerings, and take-over bid and issuer bids, we do not believe that a news release is sufficient.

Consultation Question 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 practice?*

Given the concerns we have set out in our letter, we would also encourage the CSA to review and correct the inefficiencies in the Canadian market in connection with electronic delivery of documents. The current processes contemplated under National Policy 11-201, *Electronic Delivery of Documents*. We believe there are changes that could be made that will greatly increase the ability of issuers to deliver material

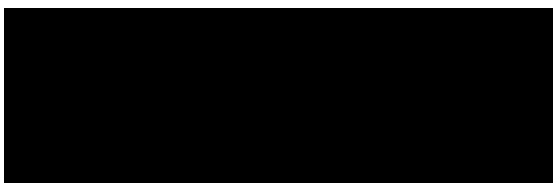
electronically, thereby ensuring securityholders receive the notifications they need, and increasing efficiencies, reducing print and mailing volume, and saving issuers unnecessary expense.

The current process under NP 11-201 allows issuers to deliver documents electronically only to those registered securityholders who have consented to receive electronic delivery of material specifically from that issuer. As stated previously, when transfer agents create a securityholder record, we receive limited information and do not interact directly with that securityholder, which would allow us to obtain the consent. We are instead required to solicit the consent after the fact. We are also not able to transfer the consent to another issuer, even if it is the identical securityholder. This results in inefficiencies, additional costs to issuers, and securityholder dissatisfaction. We believe that a regime of implied consent should be implemented, so that if a transfer agent has received an email address from a securityholder, and that transfer agent has proper processes in place to manage rejected electronic delivery items, they should be authorized to use that email for delivery of material unless specifically instructed otherwise by the securityholder.

There is also a disconnect used in the electronic delivery process under NI 54-101 when an issuer elects to deliver material directly to their NOBO holders. Under NI 54-101, the consent for electronic delivery is provided by the NOBO to the intermediary who holds their account. A single form is completed which applies to all securities held in that account. When NOBO information is provided to the transfer agent for direct mailing, the consent for electronic delivery is not included, as it cannot be passed through to a third party due to the consent provided by the beneficial securityholder being limited only to "...electronic delivery from the intermediary."<sup>1</sup> STAC believes that the consent should be available to any mailing provider. The inability of an issuer's transfer agent to use the e-mail addresses provided has resulted in a breakdown in what should be an efficient communication process, frustration for security holders who have indicated that they want to receive their material electronically, and additional print and mailing costs for issuers.

STAC would again like to extend our appreciation for the opportunity to provide our comments. We would be pleased to discuss the contents of our letter, or provide any further feedback as the CSA may require.

Sincerely,



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<sup>1</sup> National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*, Form 54-101 - *Explanation to Clients and Client Response Form*