



December 23, 2022

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission, New Brunswick Superintendent of Securities,
Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Service NL
Northwest Territories Office of the Superintendent of Securities
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Nunavut

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RE: Comments on the CSA Proposed Amendments and Proposed Changes to Implement an Access Based Model for Investment Fund Reporting Issuers

Dear Sirs and Mesdames:

1. INTRODUCTION

This letter is submitted in response to the CSA Notice and Request for Comment (the **Notice and Request for Comment**) on Proposed Amendments and Proposed Changes to Implement an Access Based Model for Investment Fund Reporting Issuers (the **Proposed Amendments**) issued by the Canadian Securities Administrators (the **CSA**) on September 27, 2022.

This letter reflects the views of a working group consisting of members of the Canadian ETF Association (**CETFA**). CETFA represents members comprising 95% of the ETF assets under management in Canada (the **Working Group** or **we**). The mandate of CETFA is to support the growth, sustainability and integrity



of Canada's ETF industry on behalf of its members, who are typically ETF managers. Based in Toronto, Canada, CETFA is the only ETF association in Canada, and the first of its kind in the world.

Members of the Working Group welcome the CSA's initiative to implement an access based delivery model for delivering financial statements, which include interim financial statements, and interim and annual management reports of fund performance (**MRFPs**, and with financial statements, **designated documents**) in a general effort to modernize the way designated documents are made available to securityholders while reducing costs associated with printing and mailing for investment funds in Canada.

With a view to contributing to these efforts, we provide herewith comments in respect of the Proposed Amendments. We thank you for affording us the opportunity to comment on this important matter, and we trust that the CSA will consider the views expressed in this letter in finalizing the Proposed Amendments.

2. GENERAL COMMENTS

The following comments and suggestions aim at further refining the Proposed Amendments so as to contribute to this general effort based on the Working Group members' practical experience and assessment of associated costs.

After studying the Proposed Amendments, we are generally of the view that they are consistent with changes that are needed as a result of the continuing evolution of technology and intended to offer a more efficient, timely and environmentally friendly method of ensuring securityholders have access to the designated documents. In general, the Working Group recommends a flexible approach to the use of the proposed access based delivery model under the Proposed Amendments so as to allow investment fund managers, investment funds and their stakeholders to adjust to it. The industry should be afforded sufficient notice and enough time during a transition period to implement any changes that will be deemed necessary before the Proposed Amendments come into force.

The Working Group further submits that continuing consideration should be given in future to the broadening of the access based delivery model for other investment fund disclosure documents, in addition to the proposed designated documents.

Lastly, we note that the following notices required to be delivered to securityholders were not addressed within the Proposed Amendments:

- the annual notice required pursuant to section 10.1(3) of National Instrument 81-102 *Investment Funds*;
- the systematic plan notice required pursuant to section 3C.2.2 of National Instrument 41-101 *General Prospectus Requirements (NI 41-101)*, which is technically a dealer requirement, but which is often fulfilled by investment fund managers instead; and



- the automatic switching and rebalancing notice required pursuant to section 3C.2.4 of NI 41-101, which is also technically a dealer requirement, but which is often fulfilled by investment fund managers instead.

In our view, in order to be effective, the implementation of any access based delivery model must include these three notices (collectively, the **Ancillary Notices**) as part of the designated documents within the framework of the Proposed Amendments. Short of such inclusion, the Working Group has concern that the Proposed Amendments will fall short of their intended effect, and result in the burden of requiring industry participants to monitor and incur the costs of both an access based delivery model and an annual physical delivery model. On the same policy rationale underpinning the Proposed Amendments, we submit there is no public policy rationale to exclude the Ancillary Notices from the Proposed Amendments.

3. SPECIFIC QUESTIONS OF THE CSA

3.1 Standing instructions to receive paper copies

We support the obligation to provide paper copies of designated documents upon request by securityholders. However, unlike mutual funds, ETFs are unable to confirm when a beneficial holder ceases to be a securityholder of the ETF and should therefore cease to receive paper copies. In order to address this concern, we believe the Proposed Amendments should permit an investment fund manager to reach out to securityholders on a periodic basis, in order to determine whether a securityholder wishes to update its standing instructions, or to assess whether a securityholder continues to be a securityholder. One such mechanic could be an “opt-in” mailing that is sent only to securityholders with current paper standing instructions, and then only those securityholders who opt in again to receiving paper copies will continue to receive the designated documents in paper form.

3.2 Standing instructions to receive electronic copies

We respectfully submit that the offering of electronic delivery by investment funds should be optional. We note that electronic delivery of designated documents for investment fund managers that manage multiple ETFs would be considered costly, burdensome and in some cases unfeasible. Accordingly, we submit that any requirement to provide designated documents electronically, either upon request or by way of a standing instruction, should be optional at the discretion of the investment fund manager based on its technological capabilities. Such optionality would permit those investment fund managers to continue to offer only paper delivery to their securityholders under the Proposed Amendments. Further, if an investment fund manager elects to send a designated document to a securityholder by way of electronic delivery we would expect that they may send such document by way of a link to the



designated website where the document may be accessed (rather than a PDF of the document) as permitted under National Policy 11-201 *Electronic Delivery of Documents* (NP 11-201).¹

3.3 Notification methods

We are of the opinion that the news release requirement would be a significant burden to investment fund managers and their investment funds and would prefer that such a requirement not be included with the Proposed Amendments.

The concern is that the requirement to file a news release whenever financial information is published on an investment fund's designated website would be unduly burdensome without materially improving securityholders' access to information. Even if a news release is issued and filed, news releases are not an effective means of communication with the target retail market for ETFs and mutual funds. Furthermore, designated documents are passive in nature (as opposed to action-oriented) and so do not require a time-sensitive response from securityholders, thereby negating one of the principal reasons for the issuance of disseminating material facts via news release. As many mutual funds and ETFs share similar year-ends and semi-annual filing dates, the Proposed Amendments would have the unintended effect of flooding the newswire with this information, at the expense of potentially burying more material news releases on a given day.

If it is deemed essential to the Proposed Amendments that the news release requirement be included, we would propose that only a single news release be required to be filed annually by an investment fund manager that would cover all of the investment funds in an investment fund manager's fund families, instead of the requirement being that a news release be filed for each and every investment fund individually every single time an investment fund's designated documents are posted on its designated website. We would also strongly encourage the CSA to permit the information communicated by the Ancillary Notices to be included as part of this annual news release, instead of continuing to have to physically deliver the Ancillary Notices as part of a separate process to securityholders.

We also strongly support including a sunset provision for any news release requirement, which would afford the industry and the CSA the opportunity to further evaluate whether the news release requirement is working effectively as intended. We would propose an initial sunset provision of one to two years.

We note that the news release requirement in the Proposed Amendments mandates that a news release mention that the applicable designated document is available on SEDAR. It often takes time

¹ **Note:** Although beyond the scope of this letter, we have significant concerns more generally with respect to the effectiveness and appropriateness of the current electronic delivery guidelines prescribed by NP 11-201, in particular with respect to the requirement for express consent and the evidentiary burden NP 11-201 places on issuers, among other concerns. CETFA would be pleased to discuss these matters further with the CSA.



for these documents to be posted on SEDAR when they are filed by an investment fund manager (or occasionally SEDAR malfunctions). We would therefore request some flexibility with respect to the timing of the SEDAR filing, such as a minimum five business day grace period, and suggest adding the words “...is or will be available on SEDAR” to any prescribed language.

We believe that the content of any news release will quickly develop into boilerplate language, and would therefore support language that is easy to read, concise and minimal in length.

Alternative methods that could be used to communicate the location of an investment fund’s designated documents could be (i) a statement within the fund’s fund facts/ETF facts, (ii) the inclusion of a banner on the main page of an investment fund’s designated website which provides securityholders with information about where to locate a fund’s designated documents and/or (iii) the inclusion of a generic statement in every news release issued by an investment fund manager which provides information to securityholders about where designated documents can be accessed online. We submit that both options (i) and (ii) are more effective than the issuance of a news release, which has generally been reserved for disseminating timely material facts or changes.

3.4 Designated websites

The effectiveness of the Proposed Amendments depends in part on whether investors will be able to easily find and retrieve the designated documents that they are interested in on a fund’s designated website. Subsection 11.1(5) of Companion Policy 81-106CP *Investment Fund Continuous Disclosure (81-106CP)* provides that a designated website should be designed in a manner that allows an individual investor with a reasonable level of technological skill and knowledge to easily access, read and search the information and the documents posted on the website, and download and print the documents.

a. Is this guidance sufficient? Are there additional best practices beyond the guidance in Part 11 of 81-106CP that should be highlighted?

We support the existing guidance in subsection 11.1(5) of 81-106CP providing that a designated website should be designed in a manner that allows an individual investor with a reasonable level of technological skill and knowledge to easily access, read and search information and documents (including with respect to downloading and printing such documents). We believe that this guidance is sufficient and consistent with NP 11-201 and affords managers the flexibility they each require in designing a designated website that is acceptable to them, but while prioritizing these investor concerns.

3.5 No further broadening of access-based model

While we agree with the CSA’s views about the delivery requirements for each of the designated documents, we strongly submit that continuing consideration should be given (i) immediately to the broadening of the access based delivery model to include the Ancillary Notices; and (ii) in the future to the broadening of the access based delivery model for other investment fund disclosure documents, including ETF facts, prospectuses and proxy materials.



Thank you for this opportunity to express our comments about the Proposed Amendments. If you have any questions or if we can be of any other assistance, please do not hesitate to contact Pat Dunwoody, Executive Director of CETFA, [REDACTED]

Yours truly,

CANADIAN ETF ASSOCIATION

Signed

Pat Dunwoody
Executive Director
Canadian ETF Association
[REDACTED]