BY ELECTRONIC MAIL: consultation-en-cours@lautorite.qc.ca, comment@osc.gov.on.ca

December 23, 2022

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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
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Dear Sirs/Mesdames:

RE: CSA Notice and Request for Comment, Proposed Amendments and Proposed Changes to Implement an Access-Based Model for Investment Fund Reporting Issuers ("Proposed Amendments")

Thank you for the opportunity to provide comments to the Canadian Securities Administrators (the "**CSA**") on the Proposed Amendments.

Fidelity Investments Canada ULC ("**Fidelity**", "**we**", "**us**", "**our**") is the third largest mutual fund company in Canada. As at December 19, 2022, Fidelity managed more than $191 billion (CAD) in retail mutual funds, exchange traded funds and institutional assets. Over 1.5 million Canadians entrust us with their savings, and we take their trust very seriously.

We highly commend the CSA for taking steps to implement an access-based delivery model for financial statements, which include interim financial reports, and interim and annual management reports of fund performance ("**MRFPs**", and with financial statements, "**designated documents**") for investment fund reporting issuers.

Indeed, digitalization is an initiative that we believe has strong support across the investment funds industry, across Canada and even across the globe. Hon. Peter Bethlenfalvy, Minister of Finance, has articulated that his "vision is to make Ontario the global leader in digital government", and most recently in introducing rule making authority to the access-equals-delivery initiative noted that the proposal shows "how Ontario is moving ahead with modernizing the way public companies communicate with investors and the market to reduce regulatory burden and support the digitization of the economy".[1]

Similar initiatives are underway across Canada, with New Brunswick's vision to become the first digital society in North America,[2] Québec's vision to transform into a fully digital society,[3] British Columbia's recognition that "digital is the new normal",[4] and so on. Globally, the United States investment funds industry may begin defaulting to electronic delivery for its disclosure documents.[5]

The Proposed Amendments are a welcome first step in modernizing the investment funds industry continuous disclosure regime, however they do not go far enough in several key respects, namely mandating the collection of email addresses and modernizing electronic delivery guidance so that it fully supports an electronic delivery regime. We elucidate further on these points below as well as set out our responses to the CSA's specific questions.

1. Standing instructions to receive paper copies

Under subsection 5.3(2) of the proposed amendments to NI 81-106, a Securityholder can provide standing instructions in order to receive a paper copy of a designated document that is filed by the investment fund. These instructions will apply to the next designated document filed and continue to apply until the standing instructions are changed by the Securityholder. While the costs of complying with this requirement may be greater than the costs for the delivery of electronic copies, we are of the view that these costs are outweighed by the benefits to Securityholders being able to provide standing instructions to receive paper copies. Do you agree? Please explain.

Fidelity understands that there are investors who wish to receive the designated documents in paper form, and we are completely supportive of continuing to provide this option. However, the transition provision set out in Section 5 of the proposed amendments to NI 81-106 is problematic in that it assumes that all investors that currently have standing instructions to

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[1] http://hansardindex.ontla.on.ca/hansardespeaker/43-1/l038a-1_4.html
[2] Digital New Brunswick (gnb.ca)
[3] Propelling Québec into a digital future | C2 Montréal (c2montreal.com)
[4] Digital Framework - Digital Government - Province of British Columbia
[5] *Improving Disclosure for Investors Act of 2022* <https://www.pionline.com/washington/lawmakers-float-bipartisan-bill-directing-sec-issue-default-electronic-delivery-rules>

receive paper copies of the designated documents wish to continue to receive such paper copies.

Fidelity circulates more than 113,000 packages containing the designated documents in paper form each year, and very few investors year-over-year take the active step to reach out to Fidelity to change their standing instructions. We believe that some, and perhaps even a significant number, of the investors currently receiving paper copies of the designated documents are doing so based on legacy instructions that do not represent their current wishes. Indeed, according to Environics Research, the preference for digital by investors is overwhelmingly clear, as 72% of Canadian investors prefer to receive their investment information in a digital format rather than paper-based materials. What's more, 71% say they're more likely to read investment information in a digital format versus paper.

As a way to balance the ability for investors to access paper documents with the concern that paper documents are being sent based on outdated, legacy instructions, we would propose that the transition provision set out in Section 5 of the Proposed Amendments be revised to include an optional one-time solicitation of renewed instructions to investors with current standing instructions for paper. We would propose the form, format and timing of this optional one-time solicitation of renewed instructions be determined by industry participants, rather than prescribed in the rules, based on our understanding of the needs of our clients and our current communications infrastructure and cadence.

2. Standing instructions to receive electronic copies

Under subsection 5.3(4) of the proposed amendments to NI 81-106, a Securityholder can provide standing instructions in order to receive an electronic copy of a designated document that is filed by the investment fund. These instructions will apply to the next designated document filed by the investment fund and continue to apply until the standing instructions are changed by the Securityholder. We are of the view that the cost of complying with this requirement is de minimis while the benefits to Securityholders of being able to provide standing instructions to receive electronic copies is significant. Do you agree? Please explain.

We are of the view that mandating an electronic delivery regime for the designated documents undermines the principles underpinning an access-based regime, imposes not insignificant financial costs on investment fund reporting issuers and in fact would establish a third delivery regime for the designated documents, thereby not achieving the goal of the reduction of regulatory burden.

Delivering documents electronically is not without cost. We estimate that in third-party service provider charges alone, Fidelity spends approximately $20,000 per year e-delivering the designated documents. In addition to those hard costs, Fidelity dedicates not insignificant resources to overseeing and managing this work. While e-delivery is an appropriate mechanism for many investor documents, our view is that an access-based delivery approach is most appropriate for the designated documents as they are not time sensitive, do not require an investor response and do not contain investor confidential information.

Mandating an electronic delivery regime for the designated documents would establish three delivery regimes for the designated documents: (i) access-based delivery; (ii) paper delivery; and (iii) electronic delivery. Administrating each regime requires designated resources and

engagement of third parties. The CSA have acknowledged that an access-based model would be sufficient to effect delivery, and as such industry participants should not also be obligated to administrate a third regime. This undermines the burden reduction goal of the Proposed Amendments.

We propose that an electronic delivery regime be optional for those participants that wish to offer an electronic delivery option.

Consideration regarding ETFs

We wish to point out that the transition provisions set out in Section 5 and 6 of the Proposed Amendments are also problematic when considered in the context of ETFs. Unlike mutual funds, ETF manufacturers are unable to determine when an investor ceases to be a securityholder without engaging a third-party service provider. If the transition provisions set out in Section 5 and 6 of the proposed amendments to NI 81-106 were to be applied, ETF manufacturers would be required to either (i) send the designated documents (in paper or electronically) to the last set of ETF holders indefinitely, even after they cease to be investors; or (ii) continue to rely on third parties to query the investors in each ETF and cross-check those holders against the existing sets of paper and electronic standing instructions. Neither of these reduces the regulatory burden currently experienced by ETF manufacturers in delivering the designated documents.

If the transition provisions set out in Section 5 and 6 of the Proposed Amendments to NI 81-106 are included as part of the final access-based delivery rules, in addition to the changes outlined above, they should also be changed so as not to apply to ETFs.

3. Notification methods

Under subsection 5.4(1) of the proposed amendments to NI 81-106, an investment fund would be required to file a news release and to post that news release on its designated website, indicating that the designated document is available electronically and that a paper or electronic copy can be obtained upon request. a. Would this be an effective way to notify Securityholders that designated documents are available? If not, please explain why. b. Should the news release or the designated website include any information other than the information required in subsection 5.4(2) of the proposed amendments to NI 81-106? c. Are there any alternative ways of notifying Securityholders we should consider that would be effective and practical? Please provide specific details on how to implement your proposal, along with an outline of the costs and benefits of your suggested approach. Are there any obstacles to using your suggested approach? For example, if you propose notification by email, how would an investment fund obtain a Securityholder's email address? What should be the outcome if the Securityholder does not keep their email address updated or does not provide consent to receiving these communications by email?

While we are supportive of the use of news releases as a notification method, proposed section 5.4 of NI 81-106 would require *each investment fund*, rather than each fund family, to issue, file and post a news release. Fidelity alone would be required to issue approximately **665** news releases per year! Drafting, approving, distributing, posting and filing this number (and counting) of news releases each year would represent a considerable investment of time and resources

that we submit would not achieve the regulatory burden reduction aim of the Proposed Amendments.

Further, the news releases would be substantially similar, setting out nearly identical information. We respectfully submit that the notice can as-effectively be provided by way of a single news release listing all of the funds that are filing and posting designated documents as part of the same cycle.

Issue regarding annual notices

Additionally, while one of the stated aims of the Proposed Amendments is to eliminate the requirement to send annual notices, as drafted the Proposed Amendments would not achieve that aim. The Proposed Amendments eliminate only one of the disclosures typically included in the annual notice sent to investors, namely the financial reports section required pursuant to section 5.2(5) of NI 81-106.

In addition to that disclosure, annual notices also typically include:

- Systematic plan notice disclosure required per s. 3.2.03 of NI 81-101 and s. 3C.2.2 of NI 41-101 (a dealer requirement but often fulfilled by managers);

- Automatic switching and rebalancing programs disclosure required per s. 3.2.05 of NI 81-101 and s. 3C.2.4 of NI 41-101 (a dealer requirement but also often fulfilled by managers); and

- Redemption of securities disclosure required per s. 10.1(3) of NI 81-102.

We would encourage the CSA to simultaneously address these required disclosures as part of the Proposed Amendments, to potentially eliminate them or to include them as part of the news release requirement. Without also addressing these disclosures, the Proposed Amendments would have the effect of adding a news release requirement in addition to the existing annual notice requirement.

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 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? b. Alternatively, should the CSA establish specific requirements for the posting and maintenance of any regulatory document on a designated website in order to create more consistency and comparability in terms of investor experience in accessing these documents? In responding, please specify the additional guidance or specific presentation requirements that we should consider and outline the reason for your preferred approach. Where possible, please also outline if there are any significant cost or benefit differences between these two approaches.

We believe this guidance is sufficient.

5. No further broadening of access-based model

a. Do you agree with our views about the delivery requirements for each type of document described above? Please justify your response with reference to the costs and benefits of an access-based model for each type of document.

Our view is the designated documents are particularly well suited for the access-based model owing to their low take-up rate by investors. We believe there could be other documents similarly less central to investor decision-making that would be appropriate to be delivered using an access-based model, and we encourage the CSA to consider each in turn. Ultimately, our view is that the majority of the remaining investment fund disclosure documents should be delivered electronically as the default (with opt-in for investors who choose to receive paper).

b. If you think the CSA should adopt an access-based model for a specific type of document, please describe the model and explain how that approach would be beneficial to funds, dealers and investors.

N/A

c. Are there alternative ways, other than adopting an access-based model, to improve or modernize the current delivery requirements for investment fund documents other than designated documents? For example, does securities legislation impose any impediments to greater adoption of electronic delivery? Could the methods of electronic delivery be modernized? If so, please describe any methods, provide the reasons why those methods are an improvement and explain what regulatory changes would be required to use any proposed method.

On behalf of Fidelity, KPMG has just completed a study entitled "Estimating the Carbon Footprint of Fidelity Investments and the Broader Canadian Investment Industry's Required Regulatory Mail Outs" which found that Fidelity distributed an average of 92 tonnes of paper between the years 2019 and 2021. KPMG estimated that when extrapolated to the broader Canadian investment management industry, 882 tonnes of paper material are generated annually to comply with regulatory mail out requirements[6] and the emissions produced by those regulatory mail outs were equivalent to the annual emissions of 518 gasoline-powered passenger vehicles.[7]

These findings help demonstrate that there is a significant environmental impact to outdated regulatory delivery obligations. We encourage the CSA to take this opportunity to modernize the regulatory delivery regime by tackling two integral initiatives:

1. Mandating the collection and provision of investor e-mail addresses and cellphone numbers; and

2. Repealing and replacing National Policy 11-201 - *Electronic Delivery of Documents* ("**NP 11-201**").

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[6] KPMG LLP, "Estimating the Carbon Footprint of Fidelity Investments and the Broader Canadian Investment Industry's Required Regulatory Mail Outs" (December 2022) ("**KPMG Study**"). This figure was generated assuming a conservative 5 g per paper sheet and per envelope.
[7] KPMG Study.

1. *Mandating the collection and provision of investor e-mail addresses*

A cornerstone of an effective, modern and environmentally conscious disclosure delivery regime is the collection and maintenance of e-mail addresses and cell phone numbers by investment fund issuers, dealers and intermediaries responsible for the delivery of an investment fund's continuous disclosure documents. Without a reliable and comprehensive database, market participants cannot ensure they are meeting their regulatory delivery requirements when they seek to meet them electronically. As such, the collection of e-mail addresses and cell phone numbers is absolutely fundamental and should be mandated as part of client onboarding by the dealers/advisors and as part of keeping client information current. In this modern world, collecting email addresses is the same as collecting home addresses for the delivery of paper which is, of course, mandated in the SRO rules.

Indeed, certain corporate statutes have been recently amended to reflect the modern digital world in which we live. For example, in May of this year amendments to the *Business Corporations Act* (Alberta) came into force that include the requirement to collect a person's telephone number and email address as part of their contact information for records like securityholder registers if requested by the registrar.[8]

Language mandating the collection of e-mail addresses and cell phone numbers should be incorporated into the various instruments and rules governing client relationships, including:

(i) sections 13.2(2)(a) and 13.2(2)(c)(i) of National Instrument 31-103 - *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("**NI 31-103**") as part of establishing the identity of a client and as part of understanding a client's personal circumstances;

(ii) section 3.2 of CSA National Policy 54-101 - *Communication with Beneficial Owners of Securities of a Reporting Issuer* ("**NP 54-101**") relating to the collection of email addresses of new clients by intermediaries prior to holding securities on behalf of the client;

(iii) SRO Rules relating to items like new account application forms, minimum standards for account supervision and minimum information required to place trades.

We wish to point out that it is difficult for certain market participants who do not have direct client access, for example fund manufacturers, to access email and cellphone information even when it is collected, owing to the fact that there is no requirement for participants with a direct client relationship, for example dealers, to pass that information along. It must be mandated that such information be passed through to market participants down the chain of communication such that an electronic system of delivery can be adopted equitably and comprehensively.

Only once investment fund manufacturers, dealers and intermediaries responsible for the delivery of an investment fund's continuous disclosure documents can create a reliable and comprehensive database of client electronic information, can the benefits of a modern electronic system of delivery be realized.

[8] Bill (assembly.ab.ca) - see definition of "contact information".

2. *Repealing and replacing National Policy 11-201 - Electronic Delivery of Documents*

Although NP 11-201 purports to be permissive of electronic delivery, it sets out an onerous and complicated regime for electronic delivery of documents required to be delivered under securities laws. In addition to other elements (easy access and electronic document the same), NP 11-201 requires: (i) notice the document has been or will be delivered electronically, and (ii) evidence the document was delivered electronically. While NP 11-201 does state that express consent is not required, many issuers resort to express consent to ensure they are fulfilling the requirements.

NP 11-201 creates uncertainty for issuers and is the likely reason many market participants in Canada still deliver paper documents by mail. This reliance on mail in part contributed to financial services participants being unable to implement a work-from-home policy for all employees during the COVID-19-related lockdowns, as certain employees were needed in-person to manage and handle paper mail. This is not conducive to electronic delivery, as electronic delivery should be the default, express consent should not be required and there should be no evidentiary burden for electronic delivery (just as there is none for mailing).

Indeed, it appears that the United States investment funds industry may default to electronic delivery for its disclosure documents. On December 15, 2022 a bipartisan bill was introduced in the United States House of Representatives that would direct the Securities and Exchange Commission to introduce rules allowing investment fund industry participants to deliver required documents to investors *electronically as the default option*.[9] The *Improving Disclosure for Investors Act of 2022* would permit investors to choose paper delivery if preferred via an opt-out method, but would implement electronic delivery as the default means for delivering investor communications.

There is also successful precedent for defaulting to electronic delivery in Canada. In May of 2019, the Canadian Association of Pension Supervisory Authorities updated *Guideline No. 2 - Electronic Communication in the Pension Industry*[10], which encouraged jurisdictions that have not already done so to adopt legislation that permits electronic communications as a **default** form of communication or recognizes deemed consent.

In response, on December 10, 2019, the *Pension Benefits Act* (Ontario) ("**PBA**")[11] was amended to include new provisions pertaining to the electronic delivery of certain documents required to be delivered to pension plan members (the "**PBA Amendments**"). Provided a notice is sent to the pension plan member's last known address that contains certain specified information, the pension plan member will be deemed to have consented to electronic delivery of documents on a go forward basis.

Prior to the PBA Amendments, the PBA only permitted administrators to send notices, statements and other records to members through electronic means if such means complied with the *Electronic Commerce Act* (Ontario) and only if the administrator had obtained the member's permission to do so.

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[9] https://www.pionline.com/washington/lawmakers-float-bipartisan-bill-directing-sec-issue-default-electronic-delivery-rules

[10] https://www.capsa-acor.org/Documents/View/14.

[11] Pension Benefits Act, R.S.O. 1990, c. P.8, available at: https://www.ontario.ca/laws/statute/90p08

We believe that NP 11-201 should be repealed and replaced by a national instrument that creates a regime:

(i) that includes a requirement that investors provide a digital address (such as an email address) for document delivery (unless they do not have access to the necessary technology to receive email) and that intermediaries who collect those digital addresses be required to provide them to other market participants, e.g. mutual fund manufacturers, who have delivery obligations;

(ii) where the default method of delivery under securities laws is electronic;

(iii) that deems delivery: (i) for email delivery, when the document is emailed by the issuer to the last email address provided to the issuer; (ii) for notice-and-access, when notice of the availability of a document is circulated and the document is uploaded to the portal/website; and (ii) for access-equals-delivery, when the document is posted to SEDAR and the designated website;

(iv) where consent to e-delivery is not required, whether as a standalone requirement or to demonstrate delivery has been effected;

(v) that includes a safe harbour provision that gives the deliverer a grace period to take reasonable steps to remediate any delivery/posting failures that they are notified or become aware of, but the steps required must not be more onerous than would be required where documents are delivered by traditional mail; and

(vi) that clarifies the interaction of the national instrument with provincial e-commerce legislation and specifically that, in respect of documents covered by the national instrument, the national instrument is paramount.

Ultimately, the requirements applicable to electronic delivery should be no more onerous than the requirements to deliver physical mail. Under the *Canada Post Corporation Act*[12], for example, leaving mail at the place of residence or business of the addressee or depositing mail in a post office box provided for the receipt of mail are deemed to be delivered to the addressee. Currently, there is no way of knowing if an investor has received a paper document let alone reviewed it.

To conclude, we are encouraged by the Proposed Amendments and believe that with the changes described above, the Proposed Amendments will be a meaningful step in starting to move the investment funds industry towards a more modern, accessible and environmentally-friendly regulatory document delivery regime.

Once again, we would like to thank the CSA for the opportunity to comment on the Proposed Amendments and we would be pleased to discuss any of our comments.

[12] R.S.C., 1985, c. C-10, section 2.

Yours sincerely,

[redacted]

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