

December 26, 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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**CSA Notice and Request for Comment - Proposed Amendments and  
Proposed Changes to Implement an Access-Based Model (AED) for  
Investment Fund Reporting Issuers**

[https://www.osc.ca/sites/default/files/2022-09/ni\\_20220927\\_81-106-rfc-  
investment-fund-reporting-issuers.pdf](https://www.osc.ca/sites/default/files/2022-09/ni_20220927_81-106-rfc-investment-fund-reporting-issuers.pdf)

**“It’s more important to do the right thing than to do things  
right.”** — Peter F. Drucker

It appears to me that this CSA consultation is focussed more on reducing the cost of delivering disclosure documents that are rarely read than increasing fund investor usage of disclosure documents that are in their best interests to read. My view is that Socially responsible regulation should focus on the latter rather than the former.

**Introduction**

It appears that the fund industry has convinced the CSA that the priority problem with the disclosure of the designated fund disclosure documents is cost related. I argue that the real investor protection issue is the low readership of the MRFP. The MRFP is the MD&A equivalent for the fund industry. It’s a document that requires

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fund management to explain what's going on with the fund in terms of changes, costs, risks, performance and other material matters impacting the fund .Its preparation requires substantial effort and resources. The CSA requires its preparation because it believes fund investors should be made aware of the information it contains. I argue that the real problem is not the administrative mechanics of notification and delivery of the designated documents -it is the low readership of the disclosures .This is why I am attracted to the Broadridge response- it attempts to increase investor readership and quality of disclosure while also increasing disclosure delivery cost efficiency.

The CSA should not buy into industry speak. Modernization does **NOT** mean using New releases instead of e-delivery. "Access equals delivery" is **NOT** delivery. With the default changing, I expect that most retail fund investors will not opt in even if standing instructions to receive documents are made available to them. Most are not even aware the documents exist or the existence of SEDAR.

The number of self-advised accounts at discount brokerages was 10.6 million as of June 2022 per Investor Economics. Many are younger, less sophisticated investors. [These DIY investors need more, not less, information to help them make informed investment decisions.](#) The CSA should not require them to go searching for News Releases, especially when a e-delivery option is available as a solution. See References 1 and 2. [t should also be noted that the effect of the CSA DSC ban and prohibition of trailing commissions for mutual funds sold via discount brokers, there is the likelihood that the resulting lower costs will attract even more novice DIY investor purchases of mutual funds.]

There is a real danger that if AED, as proposed, is thrust upon mutual fund investors, it could lead to a cessation of disclosure innovation by the fund industry. I fear that real modernization like e-delivery would be shelved. That would be inconsistent with the CSA's mandates (investor protection and efficiency), contrary to evidence-based policy making, and would lead to Canada lagging other major capital markets in retail disclosure frameworks. **The CSA should not enable any of this to happen.**

I am unfortunately unable to provide a fulsome response to this consultation due to resource constraints and priority given to assisting retail investors with their complaints. I do however fully endorse the FAIR Canada submission which is based on facts, research and logic. My comments come from the perspective, that for many Canadians their investment fund holdings are their primary source of pension income, so expect reporting to be of great importance.

### **Commentary**

I agree that with the proposed amendments to NI 81-106 for an investor to be permitted to provide standing instructions to receive paper or electronic copies of a designated document that is filed by the investment fund, primarily those investors that may not otherwise be made aware of the release of these documents given the deletion of the requirement to provide annual notices or seek annual instructions.

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The process to set up (or cancel) standing instructions should be easy to employ and be accessible via online, telephonically or by mail.

I agree with the proposed requirement to provide paper copies of designated documents upon request at no charge to investors, as some retail investors prefer paper or do not have internet access.

I do not disagree that the filings on SEDAR and on the designated websites be made simultaneously and that the corresponding news releases be issued concurrently with filings.

I recommend that it should be standard practice for Fundcos to keep the designated documents posted on their dedicated website for a reasonable amount of time, say at least 3 years, for comparability purposes.

The idea of news releases being a viable method of notifying investors of the availability of a disclosure document is not based on research, behavioural finance or logic. In my view, it is a waste of money. If the CSA has evidence to the contrary it should have presented it as part of the consultation. The consultation comes across as a token gesture to make it look like AED is "modernizing" notification/delivery. **If anything, AED as proposed, could reduce investor engagement.**

Although we do not support the news release method of disclosure notification at all, we suspect some Fundcos may make that flimsy notification even worse by placing in a single news release all funds (classes and series) that file Designated Documents on the same day rather than the CSA proposed separate news release for each fund. Investors would then have to search through a myriad of funds to locate their specific fund. I cannot see how that would make notification better or more modern than the current system of notification.

In an informal poll of 150 Fund OBSERVER readers, Kenmar Associates found that the AED approach would fail to provide effective notification when new MRFPs become available. Not a single respondent said they would monitor news releases. It is very clear to me that investors prefer to be notified directly by email or text when a new edition of MRFP becomes available. I concede this is not scientific proof that a news release is an unreliable notifier but it raises questions about the efficacy of the planned CSA approach to notification and delivery. I believe this result is consistent with some of the excellent research work the OSC Investor Office has effected re behavioural finance. This research should be used by the CSA in assessing the integrity and robustness of the CSA AED proposal. I am confident that the result would be to discard AED and employ superior, more effective and enduring alternatives.

Seniors and retirees have significant portions of their wealth invested in the markets but many find it difficult to navigate SEDAR and Fundco websites to get the information they need. The current system of notifications is beneficial for their needs; the introduction of AED would put them in a disadvantaged position. Why

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not just leave the current system alone and let the industry promote e -delivery of notifications from their websites? Many seniors and other vulnerable investors would appreciate that option. I expect that SEDAR architects already have the design specification for opt-in notifications. [This isn't exactly rocket science; all it takes is CSA determination.](#)

Professor Robinson has pointed out in his Comment letter "*Indigenous people and others in remote communities have poor or no connection to the internet. Your AED proposal discriminates against them. In my opinion, this point and the previous one strongly signal violation of Charter rights*". It seems to me that the CSA needs to pay more attention to the impact of AED on various demographics and ensure that the modest cost savings to Fundcos are worth the potential harm to securityholders. **I urge the CSA to stay on course with socially responsible regulation.**

I most definitely agree that Fund Facts should not be eligible for AED notification/disclosure; **pre-sale delivery of Fund Facts must be maintained.**

**I am of the firm conviction that AED is NOT consistent with the CSA's approach to client best interests (CFR), the CSA's determination to introduce TCR to enhance fund investor knowledge of investing costs via delivery of fulsome cost reporting and the CSA's goals to improve retail investor financial literacy/competency.**

Retail fund investors need periodic reminders of an investors' right to request designated disclosure documents. To increase public awareness, a note could be added to the annual cost and performance reports sent to investors informing that the fund's continuous disclosure documents are available on the Fundco's website. Also, I think a note on client account statements indicating where Financial statements and/or MRFPs may be accessed could cause recipients to review the statements and/or MRFP disclosures. Fundcos could also remind investors to visit the fund's designated website in their marketing materials. It is simple things like this that can help investors become aware of, access and use important disclosure documents and thereby help create a cadre of more informed fund investors. If space permits, Fund Facts could be amended to make investors aware that the fund's disclosure documents can be found on the fund manager's designated website.

ANNEX E OSC to the consultation paper states: *We anticipate that the access-based model under the Proposed Amendments will have little impact on IFRI Securityholders. We estimate that between 0.5% and 4% of current IFRI Securityholders make requests under the current requirements to receive copies of designated documents.*<sup>7</sup> ***We do not anticipate that these percentages will materially change under the Proposed Amendments.***

In making this statement, the OSC is revealing that it is aware that a disclosure document like the MRFP, it considers important to retail investors, is not being effectively utilized. Worse, the OSC concedes that it doesn't expect investor uptake to increase with the introduction of this "modernization" AED proposal. Instead of

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taking impactful steps to increase investor uptake, the OSC is proposing AED **The low investor usage percentages should be a concern for the OSC (and CSA), not a basis for potentially reducing investor utilization via AED.**

All-time high levels of investor interest in ESG issues has contributed to significant growth in the market for ESG-labelled investment products, with a corresponding increase risk of “greenwashing”. For funds that have ESG- related investment objectives, the MRFP can help reduce greenwashing by allowing investors to track the fund’s ESG performance and hence evaluate the fund’s progress in terms of meeting ( or not) its asserted ESG-related investment objectives. Given the growing importance of ESG to retail investors, the CSA should therefore be improving investor access to the MRFP, not proposing an antiquated, unproven notification and delivery disclosure approach (AED).

Market research – in Canada and elsewhere – confirms that an enhanced disclosure document will be most useful to investors if delivery is digital and the format is layered – making it easy and engaging for investors to “dig in” as they like. Digital delivery will also enable cost effective two way communications – essential for functionalities such as flow-through voting. Consideration should be given to ways to facilitate a meaningful transition to digital delivery. The US experience has indicated early success with incentives.

### **What the CSA can do to increase disclosure readership**

The CSA must do more to educate investors on the existence of fund disclosure documents (like the MRFP) and how they can be used to improve investment decision making. There needs to be more intense CSA effort into driving investor usage and improving the readability and value of fund disclosure documents.

Since the intended MRFP reader is the owner or prospective purchaser of the fund, the CSA should consider making it less complicated and more inviting to read. Simplifying the document and using plain language, should increase readership and utilization. That kind of thinking should be top of mind at the CSA instead of a laser focus on “regulatory burden” reduction.

The CSA should consider using Investor ALERTS, educational Bulletins, website, outreach etc. encouraging investors to use the MRFP to track ESG compliance as well as fund performance and risk. Once fund investors recognize the informational value of the MRFP, I expect the uptake on receiving this disclosure document will dramatically increase.

In addressing SEDAR’s current shortcomings, it is vital that the CSA focus on retail investors as they increasingly use the services. SEDAR+ must be intuitive for retail investors to use and be designed from the investors’ vantage point while providing a novice user experience. I also strongly recommend that SEDAR+ include a feature that sends “push” notifications to investors who have subscribed to selected Fundcos when designated disclosure documents become available . I believe that retail fund investors would benefit from the ability to opt-in to a tailored notification

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system. If implemented properly, SEDAR+ could provide an effective vehicle for retail investors to receive real time notifications along with a direct link to the designated disclosure documents of their choice. That is “modern” notification and delivery. **AED should not proceed until SEDAR can provide the necessary functionality.**

The benefit of a more informed fund investor would be better financial outcomes with increased retirement income security. There could be a realization that fund costs count, that ETF’s (indexing) are a viable option and that unbiased personalized advice can add value. Is that not after all, what the CSA seeks?

As noted in the Kenmar and other Comment letters on AED for non-investment fund disclosure, I recommend that the CSA update National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer, as well as modernizing the current guidance in National Policy 11-201 Electronic Delivery of Documents to facilitate ease of electronic delivery. This will ensure that the communication process reflects the clear trend of most regulatory documents being delivered electronically (always with the option for securityholders to receive paper copy).

Canadians own nearly \$2 trillion in actively-managed mutual funds, funds that are among the most expensive in the world. I’d like to see the CSA foster a more competitive fund industry, tackle Firms with restricted shelves, deal with misleading ads like greenwashing and make SEDAR more fund investor-friendly.

### Summary and Conclusion

**“The Proposed Amendments are being proposed on the basis that the current delivery requirements impose a significant cost on investment funds without a corresponding benefit to Securityholders”** - CSA AED consultation paper

That is quite a controversial and debateable statement on which to base the CSA’s AED proposal.

The AED proposal is more about removing what amounts to relatively small costs for Fundcos than proposing truly innovative solutions to enhance the ways retail investors can and want to receive the disclosure information they need to keep track of their investments. **I urge regulators and Government to make a mid-course correction before a crisis emerges.**

I believe this consultation paper does not address the core investor protection issue of fund disclosure documents -low readership is the real issue. I have provided a number of practical ideas that could help increase fund investor uptake. As to the proposal itself, I believe the CSA should not permit the “burden” to be shifted entirely to the retail investor to monitor for the release of the designated documents without some provision of additional tools and/or utilities to assist retail investors in this task. I have provided a number of recommendations for CSA consideration.

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I support a CSA effort to modernize disclosure – however, the AED proposal shifts the balance too much in favour of reducing costs (and retaining outdated notification/delivery approaches) at the expense of providing superior choices and promoting investor engagement .AED also transfers the burden far too heavily onto the shoulders of relatively unsophisticated fund investors to make themselves aware of the availability of the designated disclosure documents.

It's ironic that (as regards the funds sector), Canada starts out ahead (with Fund Facts and the potential of SEDAR+ and, with the proposed AED model, will not only fall behind but create barriers to innovation that will create costs for years to come. The CSA must surely be aware of the forward looking materials that the UK Treasury and the FCA released on retail disclosure and recent US/ SEC initiatives to encourage the digital transition (Reference 3).

One of the most engaging comment letters submitted was the one by Broadridge Investor Communications Corporation. The comment letter provided empirical research, situation analysis, references and best of all, practical ideas for increasing disclosure effectiveness for Main Street and productivity for Fundcos. It described how technology, imagination and innovation could make Canada's notification, delivery and information content comparable to the best disclosure systems in the world. Their approach to disclosure truly is modern, is supported by evidence and most importantly, is client-centric. **I urge the CSA to engage with them and other providers before embarking down the dark path of so-called Access=Delivery for Canada's retail mutual fund investors**

**I feel that there is a golden opportunity here for the CSA to demonstrate investor focus and leadership while increasing operational efficiency. It should seize the day.**

As an aside, I feel that the OSC, Canada's largest securities regulator, should diligently address the Ontario AOG audit report 26 recommendations so as to prevent billions of dollars of mutual fund investor money ever again going down the drain. "Regulatory Burden "reduction for industry participants should be paused and investor protection be put back on the OSC's top priority agenda.

I sincerely hope the comments provided herein will prove useful to the CSA in its work to better protect, inform and educate retail fund investors.

Permission is given for public posting of this comment letter.

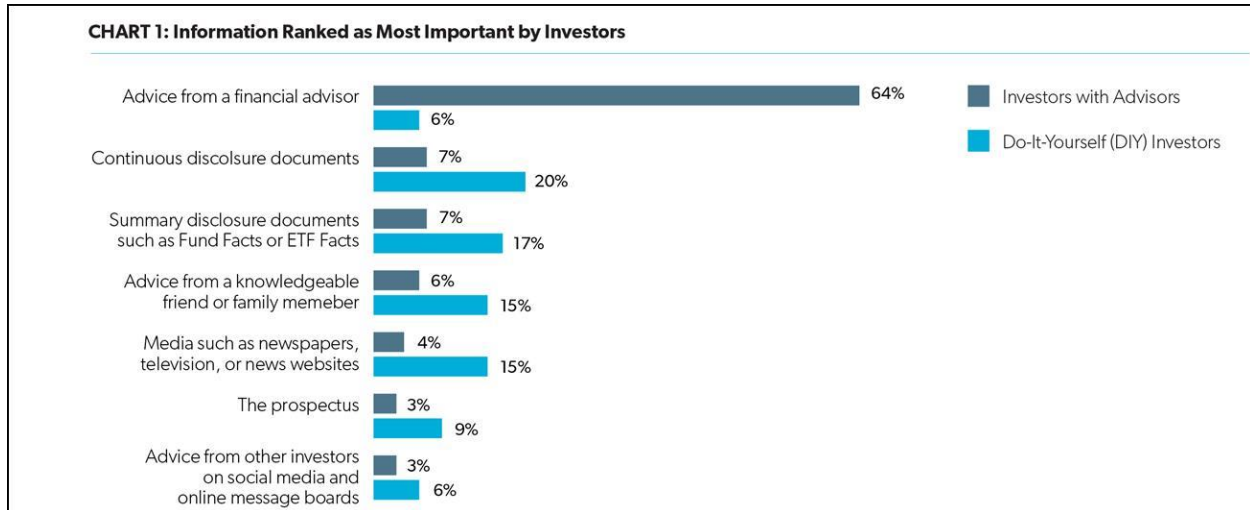
I welcome any questions regarding this Comment letter.

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Investor Advocate

## References

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1. OSC's Survey from May 2021 Information and the Investor Experience Survey [https://www.osc.ca/sites/default/files/2021-05/inv\\_research\\_20210519\\_investor-experience.pdf](https://www.osc.ca/sites/default/files/2021-05/inv_research_20210519_investor-experience.pdf) The chart highlights that Continuous Disclosure documents and Fund Facts are extremely important to investors with Advisors and are the #1 source for DIY investors.



2. April 21, 2021 OSC "Self-Directed Investors: Insights and Experiences" [https://www.osc.ca/sites/default/files/2021-04/inv\\_research\\_20210421\\_self-directed-investor-survey.pdf](https://www.osc.ca/sites/default/files/2021-04/inv_research_20210421_self-directed-investor-survey.pdf) See page 42 and how continuous disclosure documents score higher than research reports, media, and other sources.

**INVESTORS VALUE PERSONAL VIEWS AND EARNINGS INFORMATION** **Leger** 42

Investors were presented with a list of 13 sources of information and then scored the importance of each source on a 7-point scale from "not important at all" to "very important". The options were presented in random order to each respondent. The average score of importance was then calculated based on the rating of all respondents.

Rank	Information Source	Score
1	My personal views based on my experiences or impressions with a company's products and services	5.3
2	Earnings before Interest, Taxes, Depreciation and Amortization (EBITDA)	5.3
3	Accessibility / availability of a marketplace or trading facility to trade	5.3
4	Annual Reports	5.1
5	Debt to Equity ratios or Return on Equity measures such as the CAPE ratio	5.1
6	Summary disclosure documents such as Fund Facts and ETF Facts	5.1
7	Continuous disclosure documents	5.0
8	Stock picks and research reports provided through my online discount brokerage account	5.0
9	Established news media when deciding to buy or sell an investment	4.8
10	Prospectuses	4.8
11	Advice from a knowledgeable friend, or family member or colleague	4.4
12	Environmental, social and governance (ESG) factors	4.4
13	Posts on social media and online message boards such as Reddit, Twitter and Facebook	3.1

0028 When deciding to buy or sell an investment, how important to your decision is the following types of information: Base: All (n=2008) □ Significantly higher



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3. SEC Tailored Shareholder Reports for Mutual Funds and Exchange-Traded Funds; Fee Information in Investment Company Advertisements, (October 26, 2022) [87 FR 72758 (November 25, 2022), at paragraph accompanying n.569, available at <https://www.sec.gov/rules/final/2022/33-11125.pdf>
4. SPIVA Canada Performance Scorecard 2021 "In 2021, 67% of Canadian Equity funds underperformed their benchmark. Consistent with previous evidence over 10-year time frames, a majority of active managers in every fund category lagged their benchmarks, providing a compelling case for passive investing." <https://www.spglobal.com/spdji/en/documents/spiva/spiva-canada-scorecard-year-end-2021.pdf>
5. Canada Persistence Scorecard: Mid-Year 2022 - SPIVA | S&P Dow Jones Indices  
"The 12-month period ending June 2020 were able to maintain top-quartile performance over the subsequent two 12-month intervals. Global Equity and U.S. Equity similarly had no funds that maintained top-half performance over three 12-month periods. The only exception was International Equity, with 12% of funds staying in the top quartile over three consecutive 12-month intervals."  
<https://www.spglobal.com/spdji/en/spiva/article/canada-persistence-scorecard/>
6. MUTUAL FUNDS AND THE REGULATORY CAPTURE OF THE SEC  
[https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1549&=&context=jbl&=&sei-redirect=1&referer=https%253A%252F%252Fwww.google.com%252Furl%253Fq%253Dhttps%253A%252F%252Fscholarship.law.upenn.edu%252Fcgi%252Fviewcontent.cgi%25253Farticle%25253D1549%252526context%25253Djbl%2526sa%253DU%2526ved%253D2ahUKewj8wpbkro\\_8AhW-K1kFHSCzD1sQFnoECAMQAOQ%2526usg%253DAOvVaw1t9MNdfRlwoUKhn94FV\\_FB#search=%22https%3A%2F%2Fscholarship.law.upenn.edu%2Fcgi%2Fviewcontent.cgi%3Farticle%3D1549%26context%3Djbl%22](https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=1549&=&context=jbl&=&sei-redirect=1&referer=https%253A%252F%252Fwww.google.com%252Furl%253Fq%253Dhttps%253A%252F%252Fscholarship.law.upenn.edu%252Fcgi%252Fviewcontent.cgi%25253Farticle%25253D1549%252526context%25253Djbl%2526sa%253DU%2526ved%253D2ahUKewj8wpbkro_8AhW-K1kFHSCzD1sQFnoECAMQAOQ%2526usg%253DAOvVaw1t9MNdfRlwoUKhn94FV_FB#search=%22https%3A%2F%2Fscholarship.law.upenn.edu%2Fcgi%2Fviewcontent.cgi%3Farticle%3D1549%26context%3Djbl%22)