



VIA E-MAIL

December 21, 2022

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

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Re: CSA Notice and Request for Comment – Proposed Amendments and Proposed Changes to Implement an Access-Based Model for Investment Fund Reporting Issuers

OVERVIEW

The Portfolio Management Association of Canada (**PMAC**) is pleased to have the opportunity to submit the following comments regarding the Canadian Securities Administrators' (**CSA**) Notice and Request for Comment – *Proposed Amendments and Proposed Changes to Implement an Access-Based Model for Investment Fund Reporting Issuers* (the **Consultation**). The term "**Issuer**" is used in this letter to refer to Investment Fund Reporting Issuers. All capitalized terms used but not defined in this letter shall have the meaning given to them in the Consultation.

PMAC represents over [310 investment management firms](#) registered to do business in Canada as portfolio managers (**PMs**) with the members of the CSA. In addition to this primary registration, 70% of our members are also registered as investment fund managers (**IFMs**) and/or exempt market dealers (**EMDs**). Some member firms manage large mutual funds or pooled products, and others use separately managed accounts on behalf of private clients or institutions such as pension plans and foundations. PMAC's members encompass both large and small firms and manage total assets in excess of \$3 trillion.

KEY RECOMMENDATIONS

1. Give Issuers the option to continue to use the current process, or adopt a true access-based system

Issuers should have the option to continue to use the current process, namely mailing annual reminders of the availability of the documents or soliciting annual instructions, rather than adopting the new process proposed in the Consultation. As discussed below, many Issuers do not have systems in place to maintain standing instructions or provide electronic documents or notifications to Securityholders. Building such systems represents a significant burden and cost to Issuers.

Moreover, many firms also use the annual mailing to Securityholders to satisfy the other notification requirements, as is discussed further below. Given that these annual notification requirements are not included in the Consultation, the proposed amendments will not significantly reduce burden for Issuers. The requirement to issue a news release also represents a significant new cost to Issuers, which, as is discussed below, we do not believe will be beneficial to Securityholders. These issues could be resolved if the CSA moved quickly to adopt a true access-based system, which would eliminate the need for Issuers to communicate individually with Securityholders.

2. Securityholder requests for electronic delivery of documents should be optional and not mandated

Certain Issuers may be more readily able to offer electronic delivery of documents than others. Issuers should have the discretion to offer or not offer electronic delivery of documents. Further, for Issuers that are able to offer electronic delivery, we believe that the requirement should be revised such that Securityholders may be provided with notice and a link to the website where the documents may be accessed, rather than electronic delivery of the actual document. We believe that a link is: (a) consistent with the notification requirements for electronic delivery under National Policy 11-201 *Electronic Delivery of Documents (NP 11-201)* (although we note below the limitations with respect to the use of hyperlinks in NP 11-201) and, (b) more efficient, as Securityholders may seek multiple documents and the size of those documents may result in difficulties with electronic delivery. In addition, as Securityholders' e-mail information can become stale-dated, the proposals

should be amended to confirm that Issuers are not in default of delivery obligations should the e-mail information be stale-dated or the e-mail undeliverable.

As noted above, not all Issuers have the ability to maintain standing instructions or to provide electronic notice and delivery of documents. We discuss further below some of the impediments to electronic delivery contained in NP 11-201. Securityholders should be educated and encouraged to access documents on the designated website or on SEDAR, and if SEDAR is intended to be a resource for Securityholders to obtain information, it should provide improved accessibility, including to allow Securityholders to subscribe to receive notifications about documents via e-mail.

3. Remove the requirement to issue a news release

The requirement to issue a news release in addition to posting documents on the designated website and on SEDAR is redundant. This requirement will cause SEDAR and the designated website to be visually overwhelmed, which will be confusing to investors, and it will present a significant cost and burden to Issuers. We recommend that this requirement be removed. In the alternative, we believe that the requirement should be changed to only require a news release when the first designated document is posted, and that only a single news release be required for multiple funds from the same issuer.

4. Continue to conduct behavioural research and investor education with a view to adopting a true access-based model

Most consumers use the Internet to access information about products, including investment products. The CSA should continue to conduct behavioural research and develop programs and information to educate investors about how to access information online. Over time, paper-based disclosure should be eliminated and additional documents should be included in an access-based system. Doing so will improve investor access to up-to-date and relevant information about investments in a manner that is easy to find, search, store and retrieve.

GENERAL COMMENTS

PMAC has long supported moving towards an access-based delivery model for investment fund reporting issuers. We believe that improving the continuous disclosure regime by replacing onerous and outdated disclosure requirements with effective, meaningful and accessible disclosure will be of tremendous benefit to investors. We agree that an access-based model would appropriately balance market efficiency with investor protection in a way that is advantageous for the Canadian capital markets. We have previously made submissions to this effect in [our response](#) to CSA Consultation Paper 51-405 – *Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers* and [our response](#) to the CSA Notice and Request for Comment – *Reducing Regulatory Burden for Investment Fund Issuers – Phase 2, Stage 1*.

Changes to the continuous disclosure regime must be flexible and adaptable to technological and behavioural change. We agree that using information technology can improve communication with investors, and is a more cost-efficient, timely and environmentally friendly manner of communicating information as compared to physical delivery of documents. Communication by electronic means may also be more effective and engaging for investors.¹ We encourage the CSA to continue to conduct behavioural research to examine investor preferences with respect to communications and disclosure.

As technology continues to evolve, providing electronic access to documents may permit Issuers to contribute to this research by obtaining data such as the number of views of the information (click reviews), which portions of the information attract the most interest, and, potentially, analyze how the information is being used by investors. It is not possible to collect similar data when using paper documents. This data could assist Issuers in developing better, more useful disclosure and in adapting disclosure (through personalization and customization, for example) to respond to investor needs.

Given the widespread adoption of Internet technology in North America, we believe that a true access-based model should be the ultimate goal. Most consumers are aware that they can visit a website to obtain information about products – this is certainly the case with respect to consumers of financial products and services. With respect to investment funds that are reporting issuers, individual Securityholder communications should be phased out over time in favour of a true access-based system. This recommendation mirrors that of the Ontario Capital Markets Modernization Taskforce (**Taskforce**) in its Final Report. The Taskforce did not distinguish between investment fund reporting issuers and other reporting issuers.²

PMAC has concerns about the proposed amendments requiring electronic delivery of documents to Securityholders, including that the Issuer may not have the Securityholder's valid and current e-mail information. NP 11-201 indicates at section 2.6 (2) that if a deliverer receives a notification of delivery failure, delivery should be attempted by an alternative method, such as by paper delivery. Tracking failed electronic deliveries and finding alternative delivery methods would impose additional burden and costs on Issuers. Moreover, a Securityholder may receive the disclosure, but may not open or read it. This results in an inconsistent experience among Securityholders – it would be preferable if all Securityholders were encouraged to review the documents online. We note that the recommendation of the Taskforce was as follows: "For greater certainty, notification that these disclosure documents are available would not be required, and as long as they are accessible on the Internet, investors are considered to have received delivery of these documents."

¹ See Beworks and Investment Funds Institute of Canada (IFIC), *Behavioural Economics (BE) Applied to Financial Disclosure*, February 2019 at pp. 63-64. The authors explain why "there are many potential benefits to providing financial information online." They also note some of the drawbacks to online disclosure.

² Capital Markets Modernization Taskforce, *Final Report*, January 2021, (**CMMT Report**) at page 42 (available at <https://files.ontario.ca/books/mof-capital-markets-modernization-taskforce-final-report-en-2021-01-22-v2.pdf>)

As discussed further below, many Issuers do not currently have systems in place to maintain standing instructions or to send notifications to Securityholders via e-mail. It would be very costly and time-consuming for Issuers to build such systems. There are onerous privacy law and consent requirements that would impact on Issuers' ability to collect Securityholders' e-mail information and send e-mail communications to Securityholders.³ The time and money required to implement such a system would introduce greater regulatory burden. It would be preferable if Securityholders were educated as to how to find information that is of interest to them and if enhancements were made to the SEDAR system to facilitate investor access. The Taskforce expressly noted the importance of the SEDAR+ project with respect to its impact on the access equals delivery model.⁴

We thank the CSA for their continued consultation and work to reduce regulatory burden and streamline disclosure requirements in a way that is beneficial to investors. We respond below to the specific questions in the Consultation. We have not included the questions on which we have no comments.

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.

We agree that for the time being, Securityholders should have the ability to request a paper copy of a designated document. This will help to ensure that Securityholders who do not have access to the Internet or who prefer to receive paper documents can continue to do so.

However, many firms do not currently have systems in place to maintain standing instructions. Currently, these firms mail an annual notification to all Securityholders, and only provide paper copies of documents to those that request one. The process is repeated every year and no annual or standing instructions are maintained. Many Issuers would prefer to continue with this system rather than build a new system to maintain annual or standing instructions. Creating such a system would impose significant additional cost and burden on Issuers, and therefore Issuers should have the option of creating one or maintaining the current process of mailing notices to all Securityholders. If maintaining standing instructions is mandatory, firms should be

³ See for example the discussion of consent in NP 11-201, section 2.2

⁴ CMMT Report, at page 48

given a minimum of two years to build the necessary systems and processes to do so.

We believe that moving to a true access-based delivery model would solve this issue. To reduce regulatory burden, over time, we encourage the CSA to consider whether paper documents can and should be phased out, given the cost and environmental impact of annual mailings (or maintaining standing instructions) and producing and delivering paper documents, as well as the potential benefits to investors of having access to documents online, including that online documents will be the most current versions.

Whether it conducts annual mailings or maintains standing instructions, the amendments should not preclude an Issuer from periodically contacting Securityholders to confirm the instructions and inform the Securityholder that they may elect to access the document on the designated website or SEDAR rather than receiving paper copies.

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 do not agree that a Securityholder should have the ability to provide annual or standing instructions to receive an electronic copy of a designated document; rather it should be at the Issuer's discretion to offer this service. For Issuers that are able to offer electronic delivery, we believe that the requirement should be revised such that Securityholders may be provided with notice and a link to the website where the documents may be accessed, rather than electronic delivery of the actual document. Currently, section 3.3 of NP 11-201 notes limitations on the use of hyperlinks, including links to SEDAR, as a delivery method.

Requesting an electronic copy of a document implies that the Securityholder is comfortable using electronic documents – we therefore believe that it would be preferable to encourage Securityholders to access documents on the designated website or on SEDAR.

NP 11-201 requires in section 2.1(1) that a recipient be notified that a document has been, or will be, delivered electronically. Section 2.3 of NP 11-201 states that a deliverer intending to effect electronic delivery by permitting intended recipients to access a document posted on a website should also provide notice to the recipient of its availability. This additional notification requirement represents an added burden for electronic delivery of documents and an access-based model. As noted above,

many Issuers do not have a system for maintaining standing instructions or sending investor notifications electronically. We do not believe that Issuers should be required to send notifications to Securityholders. It would be preferable for SEDAR to provide individuals with the ability to subscribe to receive notifications from SEDAR when information is updated. The burden of establishing and maintaining a notification system would be significant for issuers, similar to the burden of creating a system to maintain standing instructions. We do not believe that the costs involved would result in meaningfully better outcomes for investors compared to a true access-based delivery model.

If Issuers are required to or elect to maintain annual or standing instructions and/or provide electronic copies of documents to Securityholders, they should not be precluded from periodically confirming the instructions and informing the Securityholder that they may elect to access the document on the designated website rather than receiving electronic copies or notification.

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.

We are strongly opposed to the requirement to create and file a news release to advise of the availability of documents. The decision to issue a news release to notify Securityholders of the availability of designated documents should be at the discretion of the Issuer and we believe other, more effective and cost-efficient alternatives exist.

A news release requirement would add significant cost and burden to Issuers without a corresponding benefit to Securityholders. The requirement would result in multiple funds issuing news releases simultaneously. This would flood SEDAR with news releases and would have the effect of distracting users from other important news. We also believe that these news releases would visually overwhelm the designated website and be confusing to Securityholders. We doubt that Securityholders would read a news release, or whether they would read the news release and then also read the disclosure document – additional behavioural research may be needed to determine whether this is the case and what benefit a news release requirement might have.

According to our members, the cost of preparing a single news release is approximately \$1,500. For Issuers with multiple funds (which may number in the hundreds) the cost of preparing a news release each time a designated document is available would be exorbitant.

A prominent posting on the designated website that includes the information in proposed ss. 5.4(2) would be more effective than a separate news release for every document. Other alternatives could include a banner on the designated website to indicate that new documents have been posted. Providing Securityholders with the ability to subscribe to notifications via SEDAR would also be a preferable alternative.

If a news release is required, it should be a one-time initial news release the first time a disclosure document is published for the fund. The news release would inform Securityholders that continuous disclosure information for the Issuer's funds will be available on the designated website and SEDAR. If, despite our concerns, the requirement to issue a news release is maintained, the CSA should permit a single news release to be issued for multiple funds of the same issuer.

Members also noted that it may take time for documents to be posted on SEDAR, and that there would need to be some flexibility with respect to the timing of the news release if the requirement is maintained.

In the alternative, for the reasons set out above, we request that Issuers be provided with an option to continue with the current regime under NI 81-106 rather than adopt the new proposals.

- 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?

As noted above, we agree with the content of proposed ss. 5.4(2), but believe that this information should be provided on the designated website rather than in a news release.

- 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?

We have discussed the costs of issuing a news release and suggested alternative methods of notification in our response to question 3(a), above. We believe that these notifications would be far more likely to be read by Securityholders than a news release. We discuss the difficulty of notification by e-mail in our response to question 2, above.

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?

We agree with the guidance provided and believe that it is sufficient.

- 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.

The requirements should not be prescriptive, given the diversity of funds, Issuers, Securityholder profiles and website designs. Maintaining flexibility will allow for adaptation to changes in technology and Securityholder behaviour.

5. No further broadening of access-based model

...We have the following additional questions:

- 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.

We are of the view that Fund Facts and ETF Facts should be treated similarly to the designated documents. Securityholders should have the option to request these in paper format, or could be directed to the Issuer's website to view them. We believe that Securityholders should be encouraged to view these documents online, given that they are updated annually. The online version would include the most up-to-date information available for the fund.

- 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.

As drafted, the proposed amendments will not significantly reduce burden for Issuers. This is because Issuers are subject to other annual disclosure requirements aside from the financial statements and MRFPs. For example, Issuers are required to annually advise investors of their redemption rights and the processes on how to redeem their securities under section 10.1(3) of National Instrument 81-102 Investment Funds (**NI 81-102**). Certain Issuers are also required to provide notice to Securityholders of the possibility of their securities being automatically switched from a higher management fee series to a lower management fee series, if certain eligibility criteria are met pursuant to relief obtained by the Issuers and dealers from the requirements to deliver Fund Facts in such situations. There is also the requirement in NI 81-101, subsection 3.2.03(c) regarding Fund Facts delivery for subsequent purchases under a pre-authorized purchase plan (collectively, the **Other Annual Requirements**). The new process would only represent a cost savings to Issuers if the Other Annual Requirements are included in an access-based model. The CSA should consider whether these annual mailings should be included in an access-based system and whether direct Securityholder notifications can be eliminated altogether in favour of posting the information on the Issuer's website.

In addition to financial statements and MRFPs, we noted in previous consultations our view that an access-based model could include the following documents:

- Fund prospectuses and simplified prospectuses (including for ETFs)
- Fund Facts, ETF Facts
- Material Change Reports
- Annual Information Forms (AIFs) – where required

We suggest that the following notices could also be included:

- Annual redemption notice requirements under section 10.1(3) of NI 81-102
- Annual automatic switch notice requirements under exemptive relief granted by regulators
- Annual notice regarding Fund Facts delivery for subsequent purchases under a pre-authorized purchase plan subsection 3.2.03(c) of NI 81-101

- 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.

We agree with the Taskforce recommendation of adopting a true access-based model where Securityholder notification would not be required. As noted above, we believe that Securityholders should be educated and encouraged to access documents through SEDAR or the Issuer's designated website. Accessing information on the website or via SEDAR will ensure that Securityholders receive the most up-to-date information, and do not receive information that is not of interest to them. If a notification function can be built into the SEDAR system this could be an alternative, but we do not believe this would be more effective than an access-based model.

Currently, NP 11-201 is an impediment to greater adoption of an access-based model because of the notification requirements and hyperlink limitations contained in the Policy. As noted above, there are also numerous privacy law and consent obligations that arise with respect to electronic communications that make it costly and time-consuming for firms to create and maintain systems for retaining standing instructions and/or electronic notification of and communication with Securityholders.

Conclusion

We are pleased that CSA members are reviewing the continuous disclosure regime to determine what information is most useful to investors; as noted above, research has demonstrated how difficult it can be for retail investors to interpret and understand the information they are given. An access-based model can be an important tool to ensure that investors receive the up-to-date disclosure they need in an easy-to-find, search and store format. We ask that the requirements to maintain annual or standing instructions and to issue a news release for each designated document be eliminated as we do not see a significant investor protection justification for imposing these additional burdens and costs on Issuers.

Please do not hesitate to contact Katie Walmsley [REDACTED] if you have any questions or would like to discuss our comments in more detail.

Yours truly,

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