

December 26, 2022

VIA EMAIL

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: *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 Canadian Advocacy Council of CFA Societies Canada¹ (the “CAC”) appreciates the opportunity to provide the following general comments on the Consultation and respond to the specific consultation questions below.

¹ The CAC is an advocacy council for CFA Societies Canada, representing the 12 CFA Institute Member Societies across Canada and over 19,000 Canadian CFA Charterholders. The council includes investment professionals across Canada who review regulatory, legislative, and standard setting developments affecting investors, investment professionals, and the capital markets in Canada. Visit www.cfacanada.org to access the advocacy work of the CAC.

CFA Institute is the global association of investment professionals that sets the standard for professional excellence and credentials. The organization is a champion of ethical behavior in investment markets and a respected source of knowledge in the global financial community. Our aim is to create an environment where investors' interests come first, markets function at their best, and economies grow. There are more than 190,000 CFA Charterholders worldwide in 160 markets. CFA Institute has nine offices worldwide and there are 160 local societies. For more information, visit www.cfainstitute.org or follow us on [LinkedIn](https://www.linkedin.com/company/cfa-institute) and Twitter at [@CFAInstitute](https://twitter.com/CFAInstitute).

We are generally supportive of the proposed access-based model as an alternative to delivering financial statements and management reports of fund performance for investment fund reporting issuers.

We understand that the proposed amendments would require designated documents to be posted on a designated website, with a requirement to issue, file on SEDAR and post on the designated website a news release announcing the availability of the documents. Documents would still need to be sent to registered or beneficial owners on request, or in accordance with standing instructions.

We agree that the proposal will have the effect of reducing regulatory burden on investment fund reporting issuers. However, as expressed in previous comment letters related to similar consultations for non-investment fund reporting issuers, we continue to have concerns that the proposed amendments should only come into force subsequent to the release of SEDAR+ and go-live of key SEDAR+ features, to ensure adequate investor access to designated documents. We note that most fund reporting issuers currently host key documents on their website, however we have observed little to no consistency in how these companies display this information. In this light, the CSA should consider the accessibility of these documents for less technology savvy investors in its warehousing and provision of these documents to the public via SEDAR+.

As currently constituted, SEDAR does not have functionality to allow users to find the key or designated documents of related issuers easily (such that designated documents of different investment funds managed by a common investment fund manager), and thus a user must know the exact name of the fund or investment fund manager in order to locate the suite of available continuous disclosure documents for the relevant fund on SEDAR. SEDAR also has legacy accessibility issues, as have been detailed in prior comment processes.

We appreciate the cost savings for the investment funds industry that are expected to be realized from no longer having to solicit annual instructions or obtain standing instructions and provide an annual notice to securityholders, but are conversely somewhat concerned as to the loss of investor awareness of accessibility of key documents and their information. While the news release requirement may mitigate some of the loss of investor awareness related to this benefit to industry, as expressed below we do not think that all affected securityholders will be aware of these news releases. Absent an available electronic notification function either available directly from SEDAR+ or enabled through a future SEDAR+ open access data architecture, these existing paper/electronic notifications act as a useful and unique alert for investors as to the availability of new continuous disclosure information, whose utility is not entirely replicated as proposed with the posting and press release. We believe there would be a benefit to requiring periodically sent (perhaps prominently, but in combination with other investor notifications), either in paper or electronic format, reminders of the designated website for the fund and investors' right to request designated documents. We believe it may be circular for some investors to be expected to be made aware of designated documents through a news release they may not see, describing a designated website they may not be aware of. The burden of awareness should not be shifted fully to the

retail investor to monitor for the release of these documents without some provision of additional tools or notification utilities to assist in this task, ideally powered by SEDAR+.

Absent a reliable and accessible utility solution such as SEDAR+, we strongly encourage the CSA to weigh the timing and benefits of this policy against the many costs firms and investor will need to bear as a result of this policy change. Specifically, it must be noted that issuing news releases for each fund's documents can be resource intensive. In addition, any time there is a policy change, a firm's regulatory, legal and compliance, project management and technology resources will be required to implement and maintain the new requirements. Rather than making serial changes to accommodate these policy changes and then adjust for the launch of SEDAR+ and its available functionality, it is our view that these changes should be implemented following the launch of SEDAR+, taking into account its future (hopefully/as requested) available utility functionality and features.

General Comments

Specific Responses to 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.*

Yes, we agree that securityholders should continue to be permitted to provide standing instructions to receive paper copies, primarily as some securityholders may not otherwise be made aware of the release of these documents with the removal of the requirement to provide annual notices or seek annual instructions. We agree with the proposed requirement to provide paper copies of documents upon request at no charge to the investors, as there remain some retail investors with intermittent to no online access, or those with accessibility challenges that might better be addressed through paper copies. Investment fund managers must make the process of requesting and receiving paper copies straightforward and seamless to investors, and regulators should improve electronic accessibility through feature enhancements to address these needs in SEDAR+..

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 agree that the benefits to securityholders of being able to provide standing instructions to receive electronic copies of designated documents is significant, including ease of access, quick delivery, and the positive environmental impact of fewer paper copies. We are unaware of any material relative costs to reporting issuers in delivering these documents electronically, and are aware of the significant cost savings likely to be generated for investment fund issuers from this initiative. It will be important to remind investors periodically (and in a prominent manner) of their ability to elect to receive these documents in either paper or electronic form at no cost, along with a reminder of the location of the designated website.

We do query, however, whether there is a more efficient way to deliver documents electronically upon request in fewer steps. We believe it should be possible to notify investors that an electronic copy is available and provide a hyperlink to the document in that medium, which could avoid the second step of subsequently emailing out the document or a link thereto. We believe this should be explored as a utility feature of SEDAR+.

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.*

It is unlikely that retail investors will monitor for news releases on the funds in which they are invested. In addition, we expect that most retail investors visit designated websites only infrequently, and when they do search the page may not easily navigate to the required documentation. Retail investors may thus be discouraged from proactively looking for documents. As a result, we continue to remain of the view that SEDAR+ must expeditiously roll out enhancements to allow for subscriptions to alerts for new filings on funds of interest, and provide cross-references between groups of issuers and their investment fund managers for ease of navigation.

- 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?*

With respect to the required news release, the proposed amendments include specific wording that must be included in the news release, such as the reference to the relevant documents being available on SEDAR and the designated website and providing the designated website address. We



believe it would be helpful if it were possible to include a hyperlink (where the release is being reviewed electronically) specifically to the landing page for the documents on the designated website to help locate the documents quickly, and would strongly support direct-linking to the available documents in SEDAR+ in future, along with a requirement for the designated website to reference the issuer's main page on SEDAR+, and for the SEDAR+ issuer page to likewise list the designated website for the issuer.

We strongly support the proposed requirement to display posted designated documents on the website in a manner that would be considered prominent to a reasonable person, and believe that this must also meet applicable accessibility standards.

- 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?*

As noted in our response to Question 3(a) above, SEDAR+ should include the ability to subscribe for alerts when new documents are posted for funds of interest. SEDAR+ should also facilitate the future development of value-added commercial solutions for increased functionality through an open data model in addition to the more basic access and features available to everyone as a core public utility feature of SEDAR+.

Dealers should also be encouraged to let their clients know in plain language about their choices for receipt of designated documents and where the documents can be found on SEDAR and on the manager's designated website. Dealers should not be permitted to discourage investors from contacting the investment fund manager directly to request these documents.

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?*



Best practices would include adhering to any applicable federal and provincial accessibility guidelines. Issuers should be encouraged to remind investors to review the designated website in their marketing materials.

- 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.*

An investment fund manager may choose to maintain continuous disclosure documents on its designated website for a short period of time, and thus comparable materials and historical information may not always be readily available on the site.

We think it should be a best practice for investment fund issuers to keep the designated documents posted on their website in an unalterable format for a reasonable amount of time for comparability purposes, similar to the historical record found on SEDAR.

5. *No further broadening of access-based model. Both CP 51-404 and CP 51-405 were limited in scope to non-investment fund reporting issuers. In response to these publications, commenters said that the reasons underlying an alternative delivery model for non-investment fund reporting issuers are equally applicable to investment fund reporting issuers. While the underlying principles may be similar, there are fundamental differences between non-investment funds and investment funds that justify the application of different delivery models between these types of issuers. We have reviewed the delivery requirements applicable to investment funds and are of the view that extending the Proposed Amendments beyond financial statements and MRFPs is not appropriate at this time. Specifically, we have considered the delivery requirements for the following documents:*

- *Fund Facts document and ETF Facts document: The Fund Facts and the ETF Facts are plain language documents that concisely highlight key information about a mutual fund that our research has identified as important to investors. The Fund Facts is required to be delivered prior to the purchase of a mutual fund, and so it does not lend itself to being part of an access-based model. For consistency, we think an access-based model should not apply to ETFs and that ETF investors should also continue to receive the ETF Facts. These documents are an important way to assist mutual fund and ETF investors in their decision-making process and in discussions with their financial advisors.*
- *Prospectuses for mutual funds and ETFs: The prospectus delivery requirement does not apply to a dealer selling a mutual fund or an ETF. Instead, for a mutual fund that is not an ETF, a dealer is required to deliver a Fund Facts prior to purchase. For ETFs, a dealer is required to deliver an ETF Facts document instead.*



• *Prospectuses for scholarship plans: In our view, an access-based model for this type of document is not appropriate. Like mutual funds and ETFs, we consider the delivery of key informational documents as important to assist scholarship plan investors in their decision-making process. We think the key informational document for a scholarship plan is its prospectus.*

• *Prospectuses for non-redeemable investment funds (that are not ETFs): We think investment fund investors should have a consistent means of obtaining the information they need to make a purchase decision. As discussed above, we are not proposing an access-based model for Fund Facts or ETF Facts documents or scholarship plan prospectuses. For consistency, we also think it is appropriate to retain the current prospectus delivery requirements for non-redeemable investment funds.*

• *Proxy materials: In 2021, the CSA adopted a notice-and-access system for the solicitation of proxies for investment funds that is substantially similar to the regime for non-investment fund issuers. Notice-and-access differs from an access-based model in that it permits delivery of proxy-related materials by sending a notice providing Securityholders with summary information about the proxy-related materials and instructions on how to access them. In our view, an access-based model for this type of document, with no notice, is not appropriate. As discussed in the Non-Investment Fund Proposal, stakeholder comments in response to CP 51-404 and CP 51-405 cautioned the CSA against introducing an access-based model to documents that require a time sensitive response from investors. The CSA has published for comment an access-based model for prospectuses of non-investment fund reporting issuers under the Non-Investment Fund Proposal. We think the typical investor in non-investment fund reporting issuers has different informational needs than the typical investor in investment fund reporting issuers. We are not proposing an access-based model for offering documents (Fund Facts, ETF Facts, or prospectus as applicable) of investment fund reporting issuers because we think there are significant benefits to the typical investor in investment fund reporting issuers in receiving the relevant offering documents rather than only having access to them.*

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 agree with the views expressed above about the delivery requirements for each type of documents.

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.

Other than the suggested enhancements to SEDAR+ mentioned above to enhance investor access and to act as an improved utility, we do not have a view on alternative ways to improve or modernize the current delivery requirements for investment fund documents other than designated documents.

Concluding Remarks

We generally support initiatives to reduce the regulatory burden on reporting issuers without compromising investor protection. While there are many laudable features contained in the Consultation, the burden may be shifting too heavily onto the shoulders of investment fund investors to make themselves aware of the availability of designated documents. It will be important that they be alerted and reminded, either through periodic notices directed to the investor or through new functionality on SEDAR+, to the release and availability of these important continuous disclosure materials.

We thank you for the opportunity to provide these comments and would be happy to address any questions you may have. Please feel free to contact us at cac@cfacanada.org on this or any other issue in future.

(Signed) *The Canadian Advocacy Council of
CFA Societies Canada*

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