

IFIC

THE INVESTMENT
FUNDS INSTITUTE
OF CANADA

L'INSTITUT DES FONDS
D'INVESTISSEMENT
DU CANADA

IFIC Submission

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

December 20, 2022

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Delivered By Email: consultation-en-cours@lautorite.qc.ca, comments@osc.gov.on.ca

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 of New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territory
Superintendent of Securities, Nunavut

The Secretary
Ontario Securities Commission
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Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
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Dear Sirs and Mesdames:

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

The Investment Funds Institute of Canada (**IFIC**) appreciates the opportunity to comment on CSA Notice and Request for Comment – *Proposed Amendments and Proposed Changes to Implement an Access-Based Model for Investment Fund Reporting Issuers* (the **Consultation**).

IFIC is the voice of Canada's investment funds industry. IFIC brings together approximately 150 organizations, including fund managers, distributors, and industry service organizations to foster a strong, stable investment sector where investors can realize their financial goals. IFIC operates on a governance framework that gathers member input through working committees. The recommendations of the working committees are submitted to the IFIC Board or board-level committees for direction and approval. This process results in a submission that reflects the input and direction of a broad range of IFIC members.

Summary

IFIC is pleased to provide the following comments in connection with the Consultation. Our feedback is focused on the following key points:

- IFIC strongly supports the Canadian Securities Administrators' (**CSA**) intention to introduce an access-based delivery model for delivery of financial statements (which include interim and annual financial reports) and interim and annual management reports of fund performance (**MRFP**) (together, the **Designated Documents**)
- There are approximately 3600 investment fund reporting issuers in Ontario. IFIC does not believe the requirement for each fund to issue, file on SEDAR and post on the investment fund's designated website, a separate news release announcing the availability of its Designated Documents would be the optimal way to notify investors that the Designated Documents are available. This approach would be both costly for investment fund managers and confusing to investors.
- IFIC instead recommends that an investment fund manager be required to issue one news release for all funds in its fund family that are filing the Designated Documents on the same date. The news release, or an appendix included with the news release, would identify each fund by name and can be filed under each fund on SEDAR and on each fund's designated website. We also recommend the news release be issued within five business days of the filing of the Designated Documents.
- We note that the annual notice concerning the availability of Designated Documents is not the only annual notice which securities legislation requires to be delivered to investors. There is also the systematic plan notice requirement, the automatic switching and rebalancing programs notice and the redemption of securities notice requirement (together, the **Annual Documents Notices**). We note that the systematic plan notice requirement and the automatic switching and rebalancing programs notice are dealer obligations, but these notices are often bundled with the notice concerning the Designated Documents and delivered by the manager on behalf of the dealer. The notice concerning redemption of securities is often included in this mailing as well. We recommend the CSA consider, as part of the Consultation or in parallel with the Consultation, including disclosure about the Annual Documents Notices in the news release requirements applicable to the Designated Documents to ensure regulatory burden reduction in respect of all annual notices. Simultaneously the CSA could consider whether the Annual Documents Notices continue to be relevant.
- Finally, IFIC recommends that the CSA undertake a significant review and revamp of National Policy 11-201 *Electronic Delivery of Documents* and of National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* to facilitate ease of electronic delivery. While the Consultation is an important first step of the digitization of documentation, we believe other documents should also be delivered electronically with the option for the securityholder to opt out and receive paper documents.

In Appendix A we respond to the Consultation's five specific questions either by cross-references to applicable comments in this submission or directly in Appendix A.

Support For the Proposal for Access-Based Delivery for Designated Documents

IFIC strongly supports the CSA's intention to "enable a more cost-efficient, timely and environmentally friendly manner of making certain documents (financial statements, which include interim financial reports, and interim and annual management reports of fund performance) (together, the Designated Documents) available to investors, which will assist in reducing the regulatory burden on investment funds without compromising investor protection."

Concern With the Requirement for Each Fund to Issue a News Release

IFIC does not agree with the requirement for each fund to issue, file on SEDAR and post on the investment fund's designated website a news release announcing the availability of the Designated Documents for the following reasons:

- Most mutual funds have similar or identical interim filing dates (typically 60 days after the end of the interim period) and annual filing dates (typically 90 days after the calendar year end). As noted in Appendix E of the Consultation, in Ontario there are approximately 3600 investment fund reporting issuers. To have approximately 3600 news releases issued on or near the same date will make it difficult for investors to determine if the funds in which they invest have filed their Designated Documents. This could be counter-productive to the CSA's regulatory objectives.
- As noted in IFIC's comment letter¹ in respect of CSA Consultation Paper 51-405 *Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers*, based on a survey of some IFIC members at that time, the median percentage of investors who opted to have interim documents delivered to them was 3.5% in 2017, 2.6% in 2018 and 3.3% in 2019. The median percentage of investors who opted to have annual documents delivered to them was 3.0% in 2017, 3.1% in 2018 and 3.9% in 2019². Issuing 3600 news releases in Ontario alone, twice a year, is a burden that far exceeds the interest displayed by investors in receiving Designated Documents.
- Further, and importantly, in connection with the introduction of the know your product requirements of the Client Focused Reforms, and in consultation with IFIC, the CSA decided to retain the current requirement for investment fund managers to file a news release whenever there is a material change to a fund, in addition to filing a material change report notwithstanding the disclosure in both documents is generally identical. The requirement to file a news release was maintained so as to help dealers to identify when material changes occur to funds they offer, thereby assisting them with their know your product requirements. Requiring thousands of news releases to be filed in respect of the Designated Documents will unnecessarily impede the ability of dealers to find the important material change information about the mutual funds they offer their clients.

IFIC Recommendation: Investment Fund Managers Should Issue One News Release for All Funds That File Designated Documents on the Same Day

IFIC recommends that an investment fund manager be required to issue one news release for all its funds, classes and series that file Designated Documents on the same day. The news release would, in its body or in an attached appendix, identify the funds individually. In addition, this news release can be posted on each fund's designated website and be filed under each fund's profile on SEDAR.

This approach would reduce the confusion to the marketplace and investors in having numerous news releases issued within a narrow time span. Reducing the proliferation of documents should assist the CSA in achieving its regulatory objectives.

We also recommend that the requirement to file the news release on the date the Designated Documents are filed be amended to "within five business days" instead of immediately. There is no materiality component to the Designated Documents that requires an immediate filing of a news release.

¹ https://www.ific.ca/wpcontent/themes/ificnew/util/downloads_new.php?id=24242&lang=en_CA (IFIC Comment Letter).

² IFIC Comment Letter, page 3.

IFIC Recommendation: Annual Document Delivery Requirements Also Be Addressed in the Consultation or in Parallel with the Consultation

While IFIC supports the proposed repeal of the requirements to solicit standing instructions and send annual notices and to repeal the requirements to solicit annual instructions, we note that the annual notice concerning the availability of Designated Documents is not the only annual notice that securities legislation requires to be delivered to investors. The Annual Documents Notices consist of the systematic plan notice requirement of section 3.2.03 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**), the automatic switching and rebalancing programs notice requirement of section 2.3.03 of NI 81-101 and the redemption of securities notice requirement of section 10.1(3) of National Instrument 81-102 *Investment Funds* (**NI 81-102**). We note that the systematic plan notice requirement and the automatic switching and rebalancing notice are dealer obligations, but these notices are often bundled with the notice concerning the Designated Documents and delivered by the manager on behalf of the dealer. The notice concerning redemption of securities is often included in this mailing as well. We recommend that the CSA consider, as part of the Consultation or in parallel with the Consultation, including the disclosure about the Annual Documents Notices in the news release requirements applicable to the Designated Documents. Otherwise, the Consultation’s proposal to repeal the requirements in National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**) to solicit standing instructions and send annual notices and to repeal the requirements to solicit annual instructions will not result in significant regulatory burden reduction. Annual Documents would still have to be mailed to investors. For managers who do these mailings on behalf of dealers, they will still have these mailing requirements while having the additional new requirement/burden of issuing news releases in respect of the Designated Documents. Simultaneously the CSA should also consider whether the Annual Documents continue to be relevant.

Support for the CSA to Undertake a Review of Delivery Obligations Under Securities Legislation

IFIC encourages the CSA to undertake a review and updating of 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. There will still be non-securities related legislative challenges required to facilitate electronic delivery. Nevertheless, we believe the CSA should ensure that its regime reflects current (and future) realities which will result in other regulatory documents also being delivered electronically with the option for the securityholder to receive paper documents.

Conclusion

IFIC commends the CSA on its proposal for access-based delivery of Designated Documents.

We are pleased to have had this opportunity to participate in this Consultation and we hope our comments are helpful.

We would be pleased to provide further information or answer any questions you may have. Please feel free to contact me by email pbourque@ific.ca.

Yours sincerely,



THE INVESTMENT FUNDS INSTITUTE OF CANADA

By: Paul Bourque President & CEO

APPENDIX A

RESPONSES TO 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.

We agree. Please see our answer to question 2 concerning the option to indicate a default option. We also suggest that managers be permitted to ask Securityholders to refresh their standing instructions from time to time, to ensure they continue to reflect the Securityholder's preferences.

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 this should be an option that a manager may offer, but it should not be mandated. In addition, we suggest that a manager should have the option to identify paper or electronic delivery as its default option unless otherwise notified by a Securityholder. Finally, we assume electronic delivery can be effected by including either a PDF of the relevant document or a link to the relevant document or a page where the relevant document can be accessed.

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.

Please refer to our discussion of this issue in the comment letter. We suggest instead that a fund manager only needs to file one news release for all funds that file a Designated Document on the same day. We also recommend that the news release be filed within five business days of the posting of the Designated Documents.

- 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?

No, unless our suggestion for incorporating disclosure about Annual Documents is accepted. In this case conforming changes would need to be included.

- 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 comment letter, we support the CSA undertaking a review of delivery obligations under securities legislation

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?

The guidance 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 CSA's guidance is sufficient; there must be flexibility for different business models to design their websites, provided the guidance is followed.

5. No further broadening of access-based model

Do you agree with our views about the delivery requirements for each type of document described above [Fund Facts, ETF Facts, prospectuses for mutual funds and ETFs, prospectuses for scholarship plans, prospectuses for non-redeemable investment funds and proxy materials]? Please justify your response with reference to the costs and benefits of an access-based model for each type of document.

At this time, we agree with the CSA's analysis relating to Fund Facts, ETF Facts, and prospectuses for mutual funds and ETFs. However, as noted in our answer below, we believe the CSA should undertake a broader consultation on delivery under securities legislation, including its applicability to these documents. We do not have a view with respect to prospectuses for non-redeemable investment funds or scholarship plans.

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.

Not applicable.

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.

In Annex E to the Consultation, the OSC noted that one alternative to the access-based model that was considered was altering the current default of paper delivery to electronic delivery, but noted:

Another alternative considered was to alter the current default of paper delivery to electronic delivery. Under this option, investors would receive documents by email unless they “opt in” to receiving paper documents as opposed to the status quo where investors must “opt in” to receive documents electronically.

There are challenges associated with altering the current default to electronic delivery, including legal uncertainties to satisfying electronic delivery of documents under other legislation such as corporate law and electronic commerce legislation that may require consent to electronic delivery. Altering the default to electronic delivery may require legislative change and would also require clarifying the current requirements regarding investor consent in 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. An additional challenge associated with altering the current default is that the issuer may need to consult its investors and obtain an affirmative response from each respective investor (i.e. e-mail address) in order to avail itself of electronic delivery.³

We believe now is the time for the CSA to undertake a broader consultation on delivery obligations under securities legislation, as discussed in the comment letter above. While other non-securities related legislative challenges to facilitate electronic delivery may remain, we believe the CSA should ensure that its regime reflects current (and future) realities. The Consultation is an important first step of the digitization of documentation, and we believe other documents should also be delivered electronically with the option for the securityholder to opt out and receive paper documents.

³ (2022), 454 OSCB 8376