

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

September 27, 2022

Introduction

The Canadian Securities Administrators (**CSA** or **we**) are proposing an alternative to delivering financial statements, which include interim financial reports, and interim and annual management reports of fund performance (**MRFPs**, and with financial statements, **designated documents**) for investment fund reporting issuers. The access-based model proposed by the CSA is seeking to modernize the current delivery of continuous disclosure document requirements and reduce the regulatory burden on investment fund reporting issuers.

We are publishing for a 90-day comment period

- proposed amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure (NI 81-106)*,
- proposed changes to Companion Policy 81-106CP *Continuous Disclosure Obligations (81-106CP)*, and
- proposed consequential amendments to
 - National Instrument 41-101 *General Prospectus Requirements (NI 41-101)*, and
 - National Instrument 81-101 *Mutual Fund Prospectus Disclosure (NI 81-101)*,

(collectively, the **Proposed Amendments**).

For the reasons outlined in this notice, we are not proposing to extend an access-based model for investment funds disclosure documents other than the designated documents. We are interested, however, in understanding whether there are any other changes that we should consider in order to help facilitate alternatives to delivery in paper format, such as electronic delivery for these other documents.

We are seeking specific feedback on a number of consultation questions, but we welcome comments on all aspects of the Proposed Amendments.

The text of the Proposed Amendments is contained in Annexes A, B, C, and D of this notice and will also be available on the websites of the following CSA jurisdictions:

www.lautorite.qc.ca

www.asc.ca
www.bcsc.bc.ca
nssc.novascotia.ca.
www.fcnb.ca
www.osc.gov.on.ca
www.fcaa.gov.sk.ca
www.msc.gov.mb.ca

Substance and Purpose

The purpose of the Proposed Amendments is to modernize the way designated documents are made available to investors and to reduce printing and mailing costs associated with the current regime. The Proposed Amendments would enable a more cost-efficient, timely and environmentally friendly manner of making these documents available to investors, which could assist in reducing the regulatory burden on investment funds without compromising investor protection.

The Proposed Amendments would replace the current delivery requirements, for designated documents of an investment fund that is a reporting issuer, with a designated website posting requirement, a requirement to issue, file, and post a news release announcing the availability of the documents, and requirements to send documents to a registered holder or a beneficial owner of securities of the investment fund (a **Securityholder**) on request or in accordance with standing instructions.

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. Securityholders would benefit from the Proposed Amendments because the information would be more readily available to them.

We recognize that information technology is an important and useful tool in facilitating communication with investors. The Proposed Amendments are consistent with the general evolution of the investment fund industry, particularly the increased availability and accessibility of information online. The Proposed Amendments also recognize increased investor capacity and preference for accessing and consuming information electronically.

The Proposed Amendments would not remove an investor's ability to request designated documents in paper or electronic form. Investors would also have the ability to provide standing instructions to receive paper or electronic copies of designated documents.

Background

In April 2017, the CSA published CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers (CP 51-404)* to identify and consider areas of securities legislation that could benefit from a reduction of undue regulatory burden, without compromising investor protection or the efficiency of the capital markets. Commenters responding to CP 51-404 were generally supportive of developments which would further facilitate electronic delivery of documents. Investment fund stakeholders specifically commented that it is overly onerous and expensive to comply with the condition that they send an annual reminder, or send annual notices, in order to rely on the exemption from sending designated documents and advocated for its removal.

In January 2020, the CSA published CSA Consultation Paper 51-405 *Consideration of Access Equals Delivery Model for Non-Investment Fund Reporting Issuers (CP 51-405)*. While CP 51-405 focused on non-investment fund reporting issuers, some commenters nevertheless raised concerns about the costs to investment funds of complying with the delivery requirements in Part 5 of NI 81-106. These commenters supported an access-based model for investment funds.

The Proposed Amendments are informed by the comment letters received in response to CP 51-404 and CP 51-405.

On April 7, 2022, the CSA published CSA Notice and Request for Comment *Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers* (the **Non-Investment Fund Proposal**) which proposed to implement an access-based model for non-investment fund reporting issuers in respect of prospectuses, annual financial statements, interim financial reports and related management's discussion & analysis. The Proposed Amendments are also informed by the Non-Investment Fund Proposal, but are targeted specifically to the investment funds context, and consequently are different in some key areas.

Existing requirements

Under subsection 5.1(2) of NI 81-106, an investment fund must send financial statements and, if applicable, copies of MRFPs, to a Securityholder.

Section 5.2 of NI 81-106 permits the investment fund to request standing instructions (**Standing Instructions**) from a Securityholder with respect to the documents they wish to receive. When soliciting Standing Instructions from Securityholders, an investment fund can deem no response from a Securityholder to be an election not to receive designated documents. Subsection 5.2(5) of NI 81-106 provides that, even if the investment fund obtains Standing Instructions, it must send an annual letter (**Annual Notices**) reminding those Securityholders of, among other things, their right to receive designated documents. Alternatively, under section 5.3 of NI 81-106, an investment fund may solicit annual delivery instructions (**Annual Instructions**) from Securityholders.

Under subsection 5.4(1) of NI 81-106, an investment fund must send designated documents to a Securityholder who requests them. An investment fund must file these documents on SEDAR and, under section 5.5 of NI 81-106, an investment fund that is a reporting issuer must post these documents on its designated website.

Summary of the Proposed Amendments

Under the Proposed Amendments, the requirements for an investment fund that is a reporting issuer to send designated documents, to solicit Standing Instructions and send Annual Notices, and solicit Annual Instructions would be repealed and replaced with requirements to:

- post designated documents in a prominent manner on the investment fund's designated website;
- issue, file on SEDAR, and post on the investment fund's designated website, a news release announcing the availability of the designated documents;
- send a designated document to a Securityholder who requests a copy; and

- send a designated document that is filed by the investment fund to a Securityholder who provides the investment fund with standing instructions to receive copies of all documents commencing with the next document filed after the Securityholder has provided those standing instructions and continuing until the Securityholder changes those standing instructions.

The Proposed Amendments do not amend the requirement to file designated documents on SEDAR.

In applicable jurisdictions, a mutual fund that is not a reporting issuer continues to be subject to requirements substantially identical to the existing requirements under Part 5 of NI 81-106.

Under the transition provisions of the Proposed Amendments, a Securityholder is considered to have provided standing instructions to receive paper copies of the designated documents if they have previously provided Standing Instructions to the investment fund to deliver financial statements or MRFP but has not previously consented to electronic delivery. If a Securityholder previously consented to electronic delivery, the Securityholder is deemed to have provided standing instructions to receive electronic copies of the designated documents.

Content of Annexes

This notice contains the following annexes:

- Annex A - Proposed Amendments to National Instrument 81-106 *Investment Fund Continuous Disclosure*
- Annex B - Proposed Changes to Companion Policy 81-106 *Investment Fund Continuous Disclosure*
- Annex C - Proposed Consequential Amendments to National Instrument 41-101 *General Prospectus Requirements*
- Annex D - Proposed Consequential Amendments to National Instrument 81-101 *Mutual Fund Prospectus Disclosure*
- Annex E - Local Matters

Specific Questions

In addition to your comments on all aspects of the Proposed Amendments, the CSA also seeks specific feedback on the following 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.

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.

3. Notification methods

Under subsection 5.4(1) of the proposed amendments to NI 81-106, an investment fund would be required to file a news release and to post that news release on its designated website, indicating that the designated document is available electronically and that a paper or electronic copy can be obtained upon request.

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

4. Designated websites

The effectiveness of the Proposed Amendments depends in part on whether investors will be able to easily find and retrieve the designated documents that they are interested in on a fund's designated website. Subsection 11.1(5) of 81-106CP provides that a designated website should be designed in a manner that allows an individual investor with a reasonable level of technological skill and knowledge to easily access, read and search the information and the documents posted on the website, and download and print the documents.

- a. Is this guidance sufficient? Are there additional best practices beyond the guidance in Part 11 of 81-106CP that should be highlighted?
- b. Alternatively, should the CSA establish specific requirements for the posting and maintenance of any regulatory document on a designated website in order to create more consistency and comparability in terms of investor experience in accessing these documents? In responding, please specify the additional guidance or specific presentation requirements that we should consider and outline the reason for your

preferred approach. Where possible, please also outline if there are any significant cost or benefit differences between these two approaches.

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.

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.
- 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.
- 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.

How to Provide Your Comments

Please provide your comments in writing by **December 26, 2022**.

We cannot keep submissions confidential because securities legislation requires publication of a summary of written comments received during the comment period. All comments received will be posted on the website of each of the Alberta Securities Commission at www.asc.ca, the Ontario Securities Commission at www.osc.ca and the Autorité des marchés financiers at www.lautorite.qc.ca. Therefore, you should not include personal information directly in comments to be published. It is important you state on whose behalf you are making the submissions.

Thank you in advance for your comments.

Please address your submission to all of the CSA as follows:

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

Please send your comments only to the following addresses. Your comments will be forwarded to the remaining jurisdictions:

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Ontario Securities Commission
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Email: comment@osc.gov.on.ca

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
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Questions

Please refer your questions to any of the following:

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