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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  
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**Canadian securities regulators propose amendments to implement an access-based model for investment fund reporting issuers**

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

Kenmar Associates is an Ontario-based privately-funded organization focused on investor advocacy and education via a blog hosted at [www.canadianfundwatch.com](http://www.canadianfundwatch.com). Kenmar is an active participant in regulator activity and consultations. Kenmar also publishes ***the Fund OBSERVER*** on a monthly basis discussing investor protection issues primarily for retail investors. An affiliate, Kenmar Portfolio Analytics, assists, on a no-charge basis, abused investors and/or their counsel in resolving investor complaints.

**Introduction**

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As a general tenet, when the ability of retail investors to receive important information in their preferred format/manner is at stake, **there should be an extremely high bar for altering the method of delivery.** [The investment fund industry holds retail investor assets of approximately \$2 trillion so it is a particularly important industry]

While we appreciate the opportunity to comment on these proposals, we are surprised that the CSA proceeded with this consultation before having finalized the review of public comments on AED on the corporate finance side.

The CSA consultation is forthright in its intentions "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 ". The CSA proposals do not address the need for increasing readership of the designated disclosure documents. It would be more appropriate for the regulators to be seeking increased readership of designated document disclosure, utilizing modern technology while reducing the cost of notification/delivery.*

The Management Report of Fund Performance (the investment fund equivalent of MD&A) is an important disclosure document for unitholders; increased readership, would enhance unit-holder understanding and lead to better investment decisions.

### **The proposals**

Under the CSA proposals, the issuer must post (a) designated documents ( financial statements and MRFP) in a prominent manner on its website; (b) instead of sending directed personalized Notices ,issue, file on SEDAR, and post on the issuer's website, a news release announcing the availability of the designated disclosure documents ; (c) send the disclosure document to a unit-holder who requests a copy; and (d) send a filed disclosure document to a unit-holder who provides the investment fund with standing instructions to receive copies of desired disclosure documents until the unit-holder amends those standing instructions. The ability to obtain paper copy is maintained upon request. The IRC Annual Report is not considered a designated document under the proposal.

### **Comments on the Proposals**

Disclosure is a cornerstone of investor protection so it unusual for an investor - protection regulatory system to characterize disclose notice/delivery changes as "regulatory burden reduction" any more than transportation regulators should refer to mandatory car seat belts as a "manufacturing burden " on manufacturers of an automobile.

Under the proposal, investors would be required to locate a news release that would inform them that a designated document is available on SEDAR and on the issuer's designated website. This is problematical.

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The “issue” centers on the process for alerting people as to when the designated documents are available. Posting on web sites and on SEDAR and issuing a news release does not ensure that people are aware that the disclosure material is available. Most fund investors do not know about SEDAR and those who do often have problems navigating it. News releases do not come to the attention of most people and routine news releases are not widely disseminated by the media. **News releases cannot therefore be relied upon as bringing the information to the attention of individual investors.** Retail mutual fund investors are, in our opinion, among the most in need of investor protections and good fund information is a foundation for such protection.

Additionally, there is the concern that not everyone has computer or internet access and that relatively few people today read the national newspapers. This augurs in favour of allowing for electronic access to those who opt in for it. Electronic delivery would be effective for those who do not want paper delivery.

For those who opt in to electronic delivery, they need to receive an electronic notice that the material is available and how and where to find it. They would be required to provide their email address. We have been informed that some forward-looking issuer’s already send e-mails notifying clients when a new disclosure document is available. This should be a requirement for all who rely on electronic notification/delivery of documents as long as the client agrees to electronic delivery and provides an email address. This modern option of disclosure notification/delivery would satisfy consumer needs/wants, save issuer’s money and be environmentally friendly.

We recommend changing “ ... 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...” by replacing “reasonable” with “**typical fund investor**”. According to a recent *OSC Investor Knowledge Study* [https://www.osc.ca/sites/default/files/2022-09/inv\\_research\\_20220907\\_investor-knowledge-study\\_EN.pdf](https://www.osc.ca/sites/default/files/2022-09/inv_research_20220907_investor-knowledge-study_EN.pdf), the fact that mutual funds’ returns are not guaranteed and therefore, there is investment risk associated with such investments, is not well understood by the majority of respondents. Only 1/3 (34%) of fund investors knew that neither bond nor equity mutual funds pay a guaranteed rate of return. A *reasonable* mutual fund investor may not exist in large numbers.

Kenmar most definitely agree that the proposals should not apply to Fund Facts/ETF Facts, prospectuses or proxy materials, which are essential to retail investor decision making and wholly inappropriate for an access model. Pre-sale delivery of Fund Facts to investors is essential.

The ability to place Standing Instructions for delivery ( electronic/ paper) of financial statements and the MRFP is a positive, **providing the process is made**

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**known and simple to execute** for the average unitholder. It should be intuitive and easy on how to change the instructions when desired.

Kenmar believe electronic notice/delivery is effective for those who want it. We think it's important that people are individually asked whether they would prefer to receive paper copy. This could be done at the time of the initial investment. If no specification is made, electronic delivery could be the default choice but individuals should have the option to request paper copy delivery at any time and of course, not request any delivery. For greater clarity, the revised delivery regulation should make it clear that unit -holders can obtain a paper copy of the designated documents by mail, free of charge.

### **Rationale for proposed notification change not persuasive**

Per the Consultation "*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 Security holders*" Is there objective evidence that the delivery costs are "significant" (\$?) and that the benefits to unitholders do not exceed those costs? Is a cost-benefit analysis available?

Unlike the days of type-set documents with high front-end costs when small print-runs were very costly on a per copy basis, small print runs today are economically achievable in the digital age. Have unitholders complained about the features of the current notice/delivery system? On what basis is it asserted that the existing delivery system is not beneficial to unit-holders? Currently, a knowledgeable investor has 24/7/365 access to an issuer's or SEDAR website to locate a designated disclosure, when she/he is notified that such disclosure documents can be accessed on the issuer's website or SEDAR.

Under existing regulations, NI 81-106 provides that, even if the investment fund obtains Standing Instructions, it must send an annual letter /Notice reminding unit-holders of, among other things, their right to receive designated documents or alternatively, it permits an investment fund to solicit annual delivery instructions from Unit-holders. This existing system provides a direct communication to investors of their right to receive the designated disclosure documents. **The CSA proposal does not.**

### **A note on Designated Issuer websites**

The fund issuer's designated website should include a prominent reserved section for its disclosure documents. It should be easy to search for and find the desired document(s) in English or French. It should be simple for users to download the documents. **We recommend that to modernize designated document delivery, that the issuer website provide a sign-up capability for auto electronic delivery (email) or paper delivery (surface mail) for the desired disclosure document(s).** Digital documents should be in PDF format. The website should have adequate security and back-up provisions. Disclosure document

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retention periods should be defined by the CSA (say 7 years). See *What Makes a Good Website? 7 Key Qualities Analyzed* <https://www.reliablesoft.net/what-makes-a-good-website/> **We recommend that the CSA establish criteria for the posting and maintenance of any regulatory document on a fund issuer's designated website in order to create consistency and comparability in terms of the retail investor experience in accessing these important fund disclosure documents.** The reserved section for disclosure documents on the issuer website should be open access (not client restricted with password) and available to existing unit -holders and potential fund investors alike.

### **Other commentary and suggestions**

If, despite our recommendations and empirical evidence, a news release is utilized, it should name the document and provide a direct link to the document on the issuer's designated website and SEDAR. (SEDAR is not top of mind for the average retail fund unit-holders based on our experience). The posting on SEDAR and the website should be concurrent. We recommend that a news release should contain substantially the following language:

*Please note that yyyFundco's most recent Fund Facts, Simplified Prospectus, and Management Reports of Fund Performance (MRFPs) were filed with regulators on ( state date ) and are available at no cost at [www.yyyyFundco.ca](http://www.yyyyFundco.ca) and [www.sedar.com](http://www.sedar.com). You can also request the documents by email at [service@yyyFundco.ca](mailto:service@yyyFundco.ca) or by calling us at our toll free number 1.888.777.zzzz extension xxx.*

In parallel with any notification/delivery change, we recommend that the CSA provide guidance/materials on how retail fund unitholders can exercise their rights to use the access -based disclosure regime. We also recommend that the CSA step up its educational materials on investment fund disclosures and the value they bring to the investment decision process. We found the SEC's *How to Read a Mutual Fund Shareholder Report* [https://www.sec.gov/investor/alerts/ib\\_readmfreport](https://www.sec.gov/investor/alerts/ib_readmfreport) the kind of document unit-holders might find informative.

### **Bottom Line**

Notification by news release is not effective for retail mutual fund investors. Electronic notification and delivery is recommended with retention of the paper notification / delivery option.

Kenmar agree to public posting of this letter.

We sincerely hope this feedback proves useful to decision makers.

Do not hesitate to contact us if there any questions or clarifications needed.

Ken Kivenko, President