

June 29, 2011

**Darcy Lake**  
Chief Compliance  
Officer  
Private Client Group  
(416) 867-5724

George Hungerford  
Senior Legal Counsel, Corporate Finance  
British Columbia Securities Commission  
P.O. Box 10142, Pacific Centre  
701 West Georgia Street  
Vancouver BC V7Y 1L2  
ghungerford@bcsc.bc.ca

Me Anne-Marie Beaudoin, Corporate  
Secretary  
Autorité des marchés financiers  
800, square Victoria, 22e étage  
C.P. 246, tour de la Bourse  
Montréal QC H4Z 1G3  
consultation-en-cours@lautorite.ca

British Columbia Securities Commission  
Alberta Securities Commission  
Saskatchewan Financial Services Commission  
Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
New Brunswick Securities Commission  
Office of the Attorney General, Prince Edward Island  
Nova Scotia Securities Commission  
Securities Commission of Newfoundland and Labrador  
Registrar of Securities, Northwest Territories  
Registrar of Securities, Yukon Territory  
Registrar of Securities, Nunavut

**SENT VIA EMAIL**

**Re: Notice and Request for Comment – Proposed Amendments to National Policy 11-201 (NP 11-201) Delivery of Documents by Electronic Means (the Notice)**

We welcome the opportunity to provide our comments on behalf of BMO Financial Group's Private Client Group in response to the Notice. We fully support the Canadian Securities Administrators' ("CSA") efforts to facilitate electronic communications and commend the CSA for proposing amendments to NP 11-201 (the "Proposed Amendments" or the "Policy") recognizing that the use of electronic communications can

enable securities industry participants to disseminate information in a more cost-efficient, timely, ecologically-friendly and widespread manner than by paper, as well as recognizing the changes to other non-securities legislation and the increased familiarity of securities industry participants and investors with the electronic delivery of documents. However, we believe that there are still areas within the Proposed Amendments where more clarity should be provided or where the CSA should more closely align the Policy with the demands of investors and the technological capabilities of firms in the industry.

In particular, the proposed section 1.4(1) includes an exhaustive list of documents required to be delivered under securities legislation to which the Policy applies. However, the list of documents does not include “fund facts documents” as defined in National Instrument 81-101 *Mutual Funds Distribution*. Similarly, the list includes “prospectuses”, however, it is unclear whether the term prospectuses encompasses preliminary prospectuses and short-form prospectuses.

Pursuant to the CSA Staff Notice 81-319 *Status Report on the Implementation of Point of Sale Disclosure for Mutual Funds*, Stage 2 of the CSA’s point of sale disclosure project for mutual funds will propose amendments to allow delivery of fund facts documents to satisfy the current prospectus delivery requirements and in Stage 3, the CSA will consider point of sale delivery for other types of investment funds. Given the CSA’s intention to allow delivery of fund facts documents in lieu of a prospectus for mutual funds and other types of publicly offered investment funds, we believe it is appropriate to further clarify that delivery of fund facts documents is permitted electronically, and as such, the guidance under NP 11-201 applies.

In National Instrument 41-101 *Prospectus Contents – Non-Financial Matters*, where a reference to the term prospectus includes a preliminary long-form prospectus, a final long-form prospectus, a preliminary short-form prospectus and a final short-form prospectus, an interpretation of the term is included at section 1.2. In the absence of a similar provision, it is unclear if preliminary and short-form prospectuses are excluded from the application of the Policy.

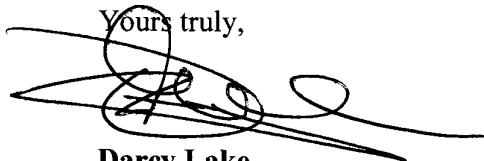
Additionally, under the Proposed Amendments, it appears that the CSA wishes to introduce a requirement that dealers provide written notice every time a document is posted online. Pursuant to the proposed section 2.3(2), “a deliverer intending to effect electronic delivery by permitting intended recipients to access a document posted to a website should not assume that the availability of the document will be known to recipients without separate notice of its availability.” This effectively eliminates the practice of acquiring consent from a client at the account opening stage to deliver monthly account statements by posting them online at the same time every month. This approach seems overly paternalistic and out of keeping with the purpose of the Proposed Amendments to update the Policy to recognize the increased familiarity of investors with the electronic delivery of documents. We believe the a policy that requires written notice every time a document is updated or provided to be contrary to what clients want and demand and out of step with the stated purpose of the Proposed Amendments.

Similarly, under the Proposed Amendments, one of the basic components of electronic delivery is that the recipient receives notice that a document will be delivered electronically. Pursuant to section 2.3(1) notice can be given “in any manner, electronic or non-electronic, that advises the recipient of the proposed electronic delivery.” Under this system, it is conceivable that a client would receive notice by email that they will receive a document by email. Sending a notice in these circumstances seems redundant and will likely confuse clients and lead to increased complaints. Firms should simply be able to send a document to a client electronically without having to send a separate email informing the client that they will be receiving the document electronically. The delivery of the document electronically, together with obtaining consent at account opening that documents will be delivered electronically, should in itself serve as sufficient notice.

Finally, pursuant to section 3.3(6) of the Proposed Amendments, “an attempt to deliver documents by referring an intended recipient to a third party provider of the document, such as SEDAR, *will alone likely not* constitute valid delivery of a document.” The wording implies that in certain circumstance referring an intended recipient to SEDAR might constitute valid delivery of a document. Further clarity is required on what those circumstances might be. For example, would an email containing a link to SEDAR constitute valid delivery of a preliminary prospectus where the deliverer undertakes to send the recipient updates as may be required? Given the increased familiarity of securities industry participants and investors with the electronic delivery of documents, we believe this to be a reasonable means of delivery.

We once again thank the CSA for the opportunity to comment upon and contribute to the improvement of NP 11-201. We welcome all opportunities for further consultation, in writing or in person. Please feel free to contact the undersigned if you have any questions about this submission or wish to discuss it further.

Yours truly,

A handwritten signature in black ink, appearing to read 'Darcy Lake', with a long horizontal line extending to the right.

**Darcy Lake**  
Chief Compliance Officer  
BMO Private Client Group