



Via email

June 29, 2011

George Hungerford
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and

Me Anne-Marie Beaudoin, Corporate Secretary
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Dear Mr. Hungerford and Ms. Beaudoin,

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

This comment letter is submitted on behalf of the following entities within RBC: RBC Dominion Securities Inc.; RBC Direct Investing Inc.; Royal Mutual Funds Inc.; RBC Global Asset Management Inc.; RBC Phillips, Hager & North Investment Counsel Inc.; Phillips, Hager & North Investment Funds Ltd; and Commission Direct Inc. We are writing in response to the Canadian Securities Administrators' ("CSA") request for feedback on National Policy 11-201 – *Delivery of Documents by Electronic Means* ("NP 11-201" or "Policy"). We appreciate the opportunity to provide comments on this important initiative.

As stated in our previous submission in August 2010, since NP 11-201 came into effect in 2000, the use of electronic delivery has become standard for many consumers. Clients of securities registrants expect to be able to conduct their business in an electronic format. Consequently, we support the objective of CSA's proposed amendments to the Policy, which is to recognize the requirements under various legislations concerning the electronic delivery of documents. That being said, we have outlined our specific comments to NP 11-201 below.

Questions for Industry

1. Do you believe that the Policy presents any impediments to electronic delivery?

It is our view that in some instances NP 11-201 imposes a higher standard on electronic delivery of documents than is required under "electronic commerce legislation", as defined in the Policy.

First, proposed section 2.6 provides that deliverers "should retain records to demonstrate that a document has been delivered or otherwise made available to the recipient" and prescribes that they "should not conclude that electronic delivery of a document has been effected if there are reasons to believe that it is

not received, such as receiving a notification of delivery failure". We note that the *Electronic Commerce Act* (Ontario) (the "Act") does not impose such obligations on deliverers. Also, when delivering a document in paper format, there are no requirements that place an "evidentiary burden" on the deliverer to prove that the intended recipient actually received the paper version. Securities registered firms are subject to self-regulatory organization rules which require dealers to have policies and procedures in place to deal with returned mail. To that end, we believe that NP 11-201 should regard electronic delivery in the same manner as the delivery of the same documents in paper format where the deliverer should only be required to ensure that policies and procedures are in place to manage returned/undeliverable electronic documents rather than confirm that the recipient actually received the document.

Second, proposed section 2.5 stipulates that "a deliverer should take steps to prevent alteration or corruption of a document during electronic delivery of a document". This is a more onerous requirement than current section 2.6 which suggests that a deliverer should ensure, to the extent possible via reasonably appropriate and necessary technical steps, that no alteration or corruption of a document occurs. Under the Act, the condition relating to the integrity and reliability of a document is prescribed when there is a legal requirement to provide an original document (as opposed to legal requirement to provide information or document in writing or in specified non-electronic form). Specifically, section 8 of the Act provides that there must be a "reliable assurance as to the integrity of the information contained in the electronic document from the time the document... was first created in its final form" and "the criterion for assessing integrity is whether the information has remained complete and unaltered...". We believe that by requiring deliverers "take steps to *prevent* alteration or corruption of a document", the CSA has set an unreasonably high standard that exceeds requirements of the electronic commerce legislation. Therefore, we recommend that proposed section 2.5 should reflect the current requirements as provided under current section 2.6.

Further, we have concerns with proposed section 3.5 of NP 11-201 which states that "electronic delivery of materials to recipients should be made contemporaneously with the mailing of the paper version of such materials even though the deliverer may be capable of electronically delivering such materials sooner". In practice, it would be difficult for a deliverer to ensure that that a paper and electronic version of a document were delivered contemporaneously. Additionally, many investors sign up for electronic delivery of documents in order to receive documents in an expedient manner. This is especially important with respect to the receipt of trade confirmations, where the need for "real-time information" (rather than outdated information received in paper format by mail) may be critical to the recipient. In our view, investors should be able to take advantage of all of the benefits of receiving their documents electronically. As such, the CSA should consider excluding this provision from NP 11-201.

We recommend that deliverers should be granted the flexibility to implement options for the electronic delivery of documents in a way that is most effective based on their business models. Specifically, deliverers should have the option to advise clients that the electronic delivery of documents would become the default method to receive documents unless a client notifies the deliverer of their preference to receive paper versions of the documents. This approach would be consistent with the Act, which allows implied consent for electronic delivery (provided that there are reasonable grounds to believe that the consent is genuine and is relevant to the information or document). We believe that clients would benefit from this approach given that it is less onerous than having to sign a consent document.

2. *The Policy describes four basic components for electronic delivery. Do the requirements of other legislation, including electronic commerce legislation and corporate legislation, impact your ability to satisfy the four basic components for electronic delivery described in the Policy?*

We support the revision to section 2.1(1) of NP 11-201 which clarifies that the application of the basic components for electronic delivery is "subject to applicable electronic commerce or other legislation". That being said, it appears that the CSA continues to advise deliverers on the actions that should be taken in order to satisfy the four components through proposed sections 2.3 (Notice), 2.4 (Access), 2.5 (Delivery of an Unaltered Document) and 2.6 (Effecting Delivery).

As mentioned above, electronic commerce legislation appears to provide for greater flexibility regarding the delivery of electronic documents in certain instances. Any inconsistency between the Policy and electronic commerce legislation would create challenges for the industry in the interpretation of the competing requirements and to satisfy the four basic components for electronic delivery, where applicable.

3. *We have proposed amendments to remove guidance on the recommended form and substance of a consent to electronic delivery. Please comment on this proposal.*

Based on reasons stated above, we support the proposed removal of most guidance pertaining to express consent in order to align with applicable statutory requirements.

We would welcome the opportunity to discuss the foregoing with you in further detail. If you have any questions or require further information, please do not hesitate to contact the undersigned.

Sincerely,

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Russell Purre
Chief Compliance Officer
RBC Dominion Securities Inc. (Retail)

- cc. Shaine Pollock, Chief Compliance Officer, RBC Dominion Securities Inc. (Institutional)
Greg Nowakowski, Chief Compliance Officer, RBC Directing Investing Inc.
Ann David, Chief Compliance Officer, Royal Mutual Funds Inc.
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