

FAIR

Canadian Foundation *for*
Advancement *of* Investor Rights

March 9, 2020

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

c/o

M^e Philippe Lebel
Corporate Secretary and Executive Director,
Legal Affairs
Autorité des marchés financiers
E-mail: consultation-en-cours@lautorite.qc.ca

The Secretary
Ontario Securities Commission
Email: comments@osc.gov.on.ca

Dear Sirs/Mesdames:

Re: CSA Consultation Paper 51-405 – Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers (“Consultation Paper”)

Background

Canadian Foundation for Advancement of Investor Rights (**FAIR Canada**) is pleased to have the opportunity to provide our views on the Consultation Paper. FAIR Canada is a national, charitable organization dedicated to putting investors first. As a voice for Canadian investors, FAIR Canada is committed to advocating for stronger investor protection in securities regulation. It is from an investor protection viewpoint that we arrive at our public policy suggestions and feedback. Visit www.faircanada.ca for more information.

Summary

The internet has had a significant impact on the way that people communicate and do business. We support innovation and believe that burden reduction can be achieved without investor protection being compromised. We also support innovations that can improve investor engagement. Although electronic access has potential benefits, we believe that there are weaknesses in the current consultation that could undermine investor rights.

The Consultation Paper describes delivery to mean document filing on SEDAR, posting on the issuer website and issuance of a news release. We do not believe that the foregoing is sufficient to protect and engage investors, and in particular retail investors and individual shareholders, absent additional measures. We encourage the CSA to explore alternative models. FAIR Canada would be supportive of an “electronic delivery equals delivery” regime for most documents and paper delivery for proxy-related documents. We encourage the CSA to examine the potential for an electronic delivery regime and to determine whether any legislative amendments or instrument amendments would be required.

General Comments

Full disclosure of information material to investment decisions is a core component of the securities regulatory regime and a core safeguard of investor protection, particularly with respect to non-investment fund reporting issuers (referred to herein as “listed companies”). We believe that reducing regulatory burden, innovation and environmental considerations are desirable goals which can be accomplished without undermining investor protection concerns.

In our submission to the Ontario Securities Commission dated September 13, 2019, in response to OSC Staff Notice 11-784 Burden Reduction, we commented that FAIR Canada is supportive of a shift to electronic delivery as a default option provided that certain conditions are met. In respect of the current consultation related to listed companies, it would be appropriate to put in place certain additional measures in order to benefit from a reduction of regulatory burden, while also ensuring a high level of investor protection. The additional measures that we recommend are based on the following principles: (1) meaningful notice; (2) preservation of choice and paper communications optionality; (3) ease of access; and (4) paper communications for documents that require a decision.

Specific Comments on Consultation Questions

1. Do you think it is appropriate to introduce an access equals delivery model into the Canadian market? Please explain why or why not.

The internet, as a platform, has changed the way that people communicate, access information and do business. Canada is a very active participant in that global trend. An access equals delivery model (EDGAR filing equals delivery) for final prospectuses, and for small public offerings that are exempted from registration requirements (Regulation A offerings), is in place in the United States, as set out in Annex A to the Consultation Paper.

The investor experience in Canada is distinguishable from the investor experience with regulatory document access in the United States. EDGAR offers a notably different user experience compared to SEDAR (pending completion of the SEDAR system overhaul). For example, EDGAR enables product type searches and full text searches. We believe that modifications to the American model would be needed prior to adoption in Canada. It is our view that the following should be pre-conditions to an access equals delivery model:

- paper communications as an option should be retained;
- press releases should not be the exclusive source of notice and should be supplemented by email notification to investors;
- documents which are publicly available on SEDAR should be required to be delivered as email attachments (an electronic delivery regime);
- issuers should be required to post regulatory disclosure documents on their website;
- location of regulatory documents on issuer websites should be easy to navigate and prominently located, with prescribed location requirements or guidance to ensure that their internet location is not obscure;
- access equals delivery should not include time-sensitive documents that require an investor decision;
- notifications and press releases should include a phone number for investors to call who wish to obtain a hard copy of the relevant document (at no expense to the shareholder);
- notifications and information/instructions for navigating portals and websites should be written in plain language; and
- notifications to investors should name or describe the document instead of generic references (for example generic references to “a document”).

2. In your view, what are the potential benefits or limitations of an access equals delivery model into the Canadian market? Please explain.

Potential benefits of an access equals delivery model for the Canadian market:

- cost reduction;
- speed of delivery;
- flexibility in viewing, portability, storage and tracking;
- increased capacity and efficiencies to introduce additional helpful content and educational tools (e.g. calculators, videos, graphics);
- efficiencies in data analysis and repackaging potential by third parties;
- increased choice to meet individual preferences; and
- environmental.

Potential limitations of an access equals delivery model include:

- lower readership and engagement by investors who prefer paper copies, or because emails can more easily get not noticed or forgotten;
- lower readership by investors cautious about cybersecurity concerns and wary of email hyperlinks, in a regime that employs access through email notification;

- lower readership of important and time-sensitive documents if notifications to investors are generic and fail to provide sufficient detail regarding the nature of the document and any deadlines;
 - increase in investor complaints if they are not made adequately aware of time-sensitive decision-making and if decision deadlines lapse;
 - scrolling on a screen may be associated with and may lead to more cursory review;
 - challenges in locating disclosure documents on difficult to navigate issuer websites;
 - challenges in navigating SEDAR for unsophisticated retail investors until the SEDAR overhaul is finalized; and
 - readability on phones by investors who primarily, or exclusively, access the internet through smart phones.
- 3. Do you agree that the CSA should prioritize a policy initiative focusing on implementing an access equals delivery model for prospectuses and financial statements and related MD&As?**

In order to respond to this question, we encourage the CSA to share more data and context, such as data regarding the number of retail investors who directly invest in reporting issuers, any cost-benefit calculations associated with this initiative and any information that may be available regarding the opportunity cost of prioritizing this initiative (i.e. information on alternative initiatives that would otherwise be prioritized if this initiative was not).

- 4. If you agree that an access equals delivery model should be implemented for prospectuses:**
- a. **Should it be the same model for all types of prospectuses (i.e. long-form, short-form, preliminary, final, etc.)?**
 - b. **How should we calculate an investor's withdrawal right period? Should it be calculated from (i) the date on which the issuer issues and files a news release indicating that the final prospectus is available electronically, (ii) the date on which the investor purchases the securities, or (iii) another date? Please explain.**
 - c. **Should a news release be required for both the preliminary prospectus and the final prospectus, or is only one news release for an offering appropriate?**

We propose electronic delivery, rather than access equals delivery, and we believe that electronic delivery would be appropriate for final prospectuses, financial statements and MD&As.

We encourage further exploration of the question of withdrawal rights, in consideration of the methodologies for delivery that may be explored as this initiative evolves, and such other relevant factors as policy discussions around settlement times for exchange transactions.

A news release should be required for preliminary and final prospectus documents.

- 5. For which documents required to be delivered under securities legislation (other than prospectuses and financial statements and related MD&A) should an access equals delivery model be implemented? Are there any investor protection or investor engagement concerns associated with implementing an access equals delivery model for rights offering circulars, proxy-related materials, and/or take-over bid and issuer bid circulars? In your view, would this model require significant changes to the proxy voting infrastructure (e.g. operational processes surrounding solicitation and submission of voting instructions)? Please explain.**

FAIR Canada does not support the inclusion of time-sensitive documents requiring shareholder participation, such as take-over bid, issuer bid and rights offering circulars in the context of an access equals delivery regime. Shareholders who prefer paper communications could suffer delays in determining how to access documents and waiting for paper copies. It is also easier to lose or not notice email communications than paper communications. The precaution of paper communications as the default system should be retained for important documents that require investor decision-making.

- 6. Under an access equals delivery model, an issuer would be considered to have effected delivery once the document has been filed on SEDAR and posted on the issuer's website.**

- a. Should we refer to "website" or a more technologically neutral concept (e.g. digital platform) to allow market participants to use other technologies? Please explain.**

Given the speed of evolution of today's technological landscape, and the possibility of innovation in digital platforms potentially presenting in the future better options than issuer websites, we support the use of technologically neutral terms provided that certain precautionary measures are put in place first. We believe that the following should be required of a more neutral platform requirement and associated language:

- broadly available to and simple to navigate by the average retail investor;
- plain language navigation;
- centralized to avoid fragmentation amongst numerous platforms;
- notification of digital location;
- internet and mobile device accessibility and readability; and
- free to access.

- b. Should we require all issuers to have a website on which the issuer could post documents?**

Issuers should be required to maintain a website and to post its regulatory disclosure documents on its website. Regulatory documents posted on issuers' website should be required to be posted in a way that is easy to locate, easy to navigate and not obscure.

7. Under an access equals delivery model, an issuer would issue and file a news release indicating that the document is available electronically and that a paper copy can be obtained upon request.

a. Is a news release sufficient to alert investors that a document is available?

FAIR Canada proposes email notification to investors in addition to news release dissemination. Press release communications cater to institutional rather than retail investors or individual shareholders. Press releases are not the method by which the average retail investor normally accesses investment information.

b. What particular information should be included in the news release?

News releases should contain a description or name of the document, a hyperlink to the document's location, any relevant deadlines and, if relevant, withdrawal rights information and deadlines.

8. Do you have any other suggested changes to or comments on the access equals delivery model described above? Are there any aspects of this model that are impractical or misaligned with current market practices?

In addition to our other comments, a transition plan for moving to electronic delivery as a default needs to be developed, which should ensure that instructions are obtained from each investor.

In summary, we believe that electronic delivery offers potential benefits to investors, including speed, and efficiencies in viewing, analyzing, repackaging, storage and tracking. However, we distinguish electronic delivery from electronic access. We encourage CSA exploration of the former option, as well as any legislative or national instrument amendments that may be required, in order to achieve efficiency objectives without compromising disclosure, investor engagement and investor rights.

We thank you for the opportunity to provide our comments and views in this submission and we would be pleased to discuss this letter with you at your convenience.

Sincerely,

(Signed) *Canadian Foundation for Advancement of Investor Rights*

Canadian Foundation for Advancement of Investor Rights