Chapter 5

Rules and Policies

5.1.1 Amendments to NP 11-201 Delivery of Documents by Electronic Means

CSA NOTICE

AMENDMENTS TO
NATIONAL POLICY 11-201 *DELIVERY OF DOCUMENTS BY ELECTRONIC MEANS*

November 18, 2011

Introduction

The Canadian Securities Administrators (the CSA or we) are adopting amendments (the Amendments) to National Policy 11-201 *Delivery of Documents by Electronic Means*. On the effective date, this policy will be renamed National Policy 11-201 *Electronic Delivery of Documents* (NP 11-201 or the Policy).

The Policy will replace the current version of NP 11-201. In Québec, NP 11-201 will replace *Notice 11-201 related to the Delivery of Documents by Electronic Means*.

The Policy will come into force on November 18, 2011.

Text

Annex A sets out the text of the Policy.

Substance and Purpose of the Amendments

NP 11-201 states the views of the CSA on how the obligations imposed under Canadian securities legislation to deliver documents can be satisfied by electronic means. The original version of NP 11-201 *Delivery of Documents by Electronic Means* came into effect on January 1, 2000. The Policy was amended on February 14, 2003 to include guidance on proxy solicitation.

Since the implementation of NP 11-201 in 2000, there have been changes to legislation affecting electronic commerce and transactions, including amendments to corporate legislation and the introduction of legislation governing electronic transactions and protection of personal information. Electronic communications have also become much more common than when the Policy was first drafted.

The Amendments will recognize these changes by:

- Alerting stakeholders to other legislation that addresses the electronic delivery of documents.
- Simplifying guidance on the form and substance of securityholder consents
- Reducing technology-related language to avoid references that may become obsolete.

Written Comments

We published a draft of the Amendments for comment on April 29, 2011 for a 60-day comment period (the April 2011 Materials). The comment period expired on June 29, 2011 and we received submissions from eight commenters. We have considered these comments and we thank all the commenters. A list of the eight commenters and a summary of their comments, together with our responses, are contained in Annexes B and C.

Summary of the Changes to the April 2011 Materials

We have made some revisions to the April 2011 Materials, including drafting changes made only for the purposes of clarification or in response to comments received. As the revisions are not material, we are not republishing the Amendments for a further comment period.

Unpublished Materials

In proposing the amendments to NP 11-201, we have not relied on any significant unpublished study, report, or other written materials.

Questions

Please refer your questions to any of the following:

George Hungerford
Senior Legal Counsel, Corporate Finance
British Columbia Securities Commission
(604) 899-6690
ghungerford@bcsc.bc.ca

Celeste Evancio
Legal Counsel, Corporate Finance
Alberta Securities Commission
(403) 355-3885
celeste.evancio@asc.ca

Lucie J. Roy
Senior Policy Advisor
Service de la réglementation
Autorité des marchés financiers
(514) 395-0337, ext 4464
lucie.roy@lautorite.qc.ca

Wendy Morgan
Legal Counsel
New Brunswick Securities Commission
(506) 643-7202
wendy.morgan@gnb.ca

ANNEX A

NATIONAL POLICY 11-201
ELECTRONIC DELIVERY OF DOCUMENTS

Table of Contents

NATIONAL POLICY 11-201
ELECTRONIC DELIVERY OF DOCUMENTS

PART 1 – GENERAL

1.1 Definitions – In this Policy

"delivered" means transmitted, sent, delivered or otherwise communicated, and "deliver", "delivery" and similar words have corresponding meanings;

"electronic commerce legislation" means the statutes listed in Appendix A and any other federal, provincial or territorial statute of Canada concerning the regulation of electronic commerce, and the regulations, rules, forms and schedules under those statutes, as amended from time to time;

"electronic delivery" includes the delivery of documents by facsimile, e-mail, optical disk, the Internet or other electronic means;

"electronic signature" means electronic information that a person creates or adopts in order to execute or sign a document and that is in, attached to or associated with the document;

"proxy document" means a document relating to a meeting of a reporting issuer, and includes an information circular, a form of proxy, a request for voting instructions, and voting instructions.

1.1.1 Further Definitions – Terms used in this policy that are defined in National Instrument 14-101 *Definitions* have the same meaning as in that instrument.

1.2 Purpose of this Policy

(1) The purpose of this Policy is to provide guidance to securities industry participants who want to use electronic delivery to fulfill delivery requirements in securities legislation.

(2) The Canadian Securities Administrators (the CSA or we) recognize that information technology is an important and useful tool in improving communications to investors. We want provisions of securities legislation that impose delivery requirements to be applied in a manner that accommodates technological developments without undermining investor protection.

1.3 Other Legislation and Rules

(1) Electronic commerce legislation generally prescribes a legal framework for electronic delivery and addresses consent to electronic delivery. The provisions of electronic commerce legislation may vary from jurisdiction to jurisdiction and may not be equally in force in all jurisdictions.

(2) Electronic delivery of documents may also be subject to corporate legislation, SRO rules or stock exchange rules that either directly impose requirements for electronic delivery or incorporate by reference requirements for electronic delivery from electronic commerce legislation. An issuer's constating documents, such as its articles of incorporation, may also limit electronic delivery.

(3) Documents required to be delivered under securities laws, including documents sent electronically, may be subject to the protections of privacy legislation. Securities industry participants may need to take additional steps to preserve the confidentiality of personal information under that legislation.

1.4 Application of this Policy

(1) Parts 2 and 3 of this Policy apply to documents required to be delivered under securities legislation. These include prospectuses, financial statements, trade confirmations, account statements and proxy-related materials that are delivered by securities industry participants or those acting on their behalf, such as transfer agents. Part 4 of this Policy provides additional guidance that only applies to the use of proxy documents in electronic format.

(2) This Policy does not apply to deliveries where the method of delivery prescribed by securities legislation does not permit electronic delivery.

(3) This Policy does not apply to documents filed with or delivered by or to a securities regulatory authority or regulator.

(4) For guidance on using electronic communication to trade securities, refer to National Policy 47-201 *Trading Securities Using the Internet and Other Electronic Means* and, in Québec, *Notice 47-201 relating to Trading Securities Using the Internet and Other Electronic Means*.

PART 2 – ELECTRONIC DELIVERY OF DOCUMENTS

2.1 Basic Components of Electronic Delivery of Documents

(1) Subject to applicable electronic commerce or other legislation, we believe that the delivery requirements of securities legislation can generally be satisfied through electronic delivery if each of the following elements is met:

1. The recipient of the document receives notice that the document has been, or will be, delivered electronically as described in section 2.3.

2. The recipient of the document has easy access to the document, as described in section 2.4.

3. The document that is received by the recipient is the same as the document delivered by the deliverer, as described in section 2.5.

4. The deliverer of the document has evidence that the document has been delivered, as described in section 2.6.

If any one of these components is absent, however, the effectiveness of the delivery may be uncertain.

(2) The components of electronic delivery listed above are compatible with the legal framework for electronic delivery under electronic commerce legislation.

2.2 Consent to Electronic Delivery

(1) Electronic commerce legislation may require the consent of a recipient to electronic delivery. Securities legislation does not require a deliverer to obtain the consent of the intended recipient nor does it prescribe the form or content of any consent. However, the process of obtaining express consent, and then delivering the document in accordance with that consent, may enable the deliverer to achieve some of the basic components of electronic delivery set out in section 2.1. An express consent may give rise to the inferences that, if a document is sent by electronic delivery in accordance with the terms of a consent:

(a) the recipient will receive notice of the electronic delivery of the document;

(b) the recipient has the necessary technical ability and resources to access the document; and

(c) the recipient will actually receive the document.

(2) A deliverer may effect electronic delivery without the benefit of an express consent. However, if a deliverer does not obtain an express consent, it may be more difficult to demonstrate that the intended recipient had notice of, and access to, the document, and that the intended recipient actually received the document.

2.3 Notice

(1) An intended recipient should have notice of the electronic delivery. Notice can be given in any manner, electronic or non-electronic, that advises the recipient of the proposed electronic delivery.

(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.

2.4 Access

(1) A recipient of an electronically delivered document should have easy access to the document.

(2) Deliverers should take reasonable steps to ensure that electronic access to documents is not burdensome or overly complicated for recipients. The electronic systems employed by deliverers should be sufficiently powerful to ensure quick downloading, appropriate formatting and general availability.

(3) A document should remain available to recipients for whatever period of time is appropriate and relevant, given the nature of the document.

(4) A document delivered electronically should be delivered using appropriate electronic formats and methods of electronic delivery that enable the recipient to store and retain a permanent record of it which may be used for subsequent reference, and print it, as is the case with paper delivery.

2.5 Delivery of an Unaltered Document – A deliverer should take reasonable steps to prevent alteration or corruption of a document during electronic delivery. This may include adopting security measures to protect against third-party tampering with the document. Deficiencies in the completeness or integrity of a document delivered electronically may raise questions as to whether the document has in fact been delivered.

2.6 Effecting Delivery

(1) A deliverer should have internal processes to show that a document delivery has been attempted.

(2) A deliverer of a document should not conclude that electronic delivery has been effected if the deliverer has any reason to believe that a document has not been received, such as receiving a notification of delivery failure. If electronic delivery is attempted but cannot be accomplished for any reason, delivery should be attempted by an alternative method, such as by paper delivery.

PART 3 – MISCELLANEOUS ELECTRONIC DELIVERY MATTERS

3.1 Form and Content of Documents

(1) For the sake of consistency, documents delivered electronically may follow the formatting requirements set out in the SEDAR Filer Manual. This includes altering the document to be delivered electronically from the paper version in accordance with these formatting requirements.

(2) As with documents filed under SEDAR, documents proposed to be delivered electronically should be recreated in electronic format, rather than scanned into electronic format. This is recommended because scanned documents can be difficult to transmit, store and retrieve on a cost-efficient basis and may be difficult to view upon retrieval.

3.2 Confidentiality of Documents – Some documents that may be sent by electronic delivery, such as trade confirmations, are confidential to the recipients. Deliverers should take all reasonably necessary steps to ensure that the confidentiality of those documents is preserved in the electronic delivery process.

3.3 Hyperlinks

(1) The hyperlink function can provide the ability to access information instantly, in the same document or in a different document on the same or another website.

(2) The use of hyperlinks within a document may not be appropriate for the reasons described in subsection (3), unless the hyperlink is to another point in that same document.

(3) A deliverer that provides a hyperlink in a document to information outside the document risks incorporating that hyperlinked information into the document and thereby becoming legally responsible for the accuracy of that hyperlinked information. Also, the existence of hyperlinks in a document delivered electronically to a separate document raises the question of which documents are being delivered - only the base document, or the base document and documents to which the base document is linked.

(4) For documents delivered electronically that contain hyperlinks to other documents, deliverers are encouraged to clearly distinguish which documents are governed by statutory disclosure requirements and which are not. This may be effected, for example, by the use of appropriate headings on each page of the documents.

(5) Paragraph 7.2(e) of the SEDAR Filer Manual prohibits hyperlinks between documents.

(6) 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 the document.

3.4 Multimedia Communications

(1) Multimedia communications are sometimes used to present information in varied combinations of text, graphics, video, animation and sound.

We recommend that no information presented through multimedia communications be included in disclosure documents required by statute unless it can be reproduced identically in non-electronic form. This will ensure that all recipients receive the same statutorily required information, regardless of their multimedia capabilities.

(2) Securities industry participants may use multimedia communications to compile and disseminate publicly available information.

(3) Multimedia communications are subject to provisions in securities legislation regarding misleading or untrue statements and promotional or advertising restrictions. These provisions may be relevant, for example, when the multimedia communications appear on a deliverer's website or are hyperlinked to a deliverer's website.

3.5 Timing of Electronic Delivery – Electronic delivery of materials to recipients should be made in accordance with the timing specified in securities legislation.

PART 4 – PROXY DOCUMENTS

4.1 Proxy Delivery Requirements

(1) Securities legislation and securities directions contain provisions relating to the proxy solicitation process that have raised questions as to whether the electronic delivery of proxy documents is permitted, and whether proxy documents can be in electronic format. We have identified two types of requirements in securities law that affect the use of proxy documents in electronic format:

1. Requirements in certain securities directions or securities legislation that

   (a) a form of proxy or proxy be in written or printed form (the “written proxy requirements”); and

(b) a registered holder of voting securities vote or give a proxy in respect of such voting securities in accordance with any written voting instructions provided by the beneficial owner of such voting securities (the "written voting instructions requirements") (collectively with the written proxy requirements, the "in writing requirements").

2. Requirements in securities legislation that a proxy be executed (the "proxy execution requirements").

(2) Securities industry participants who are required by securities legislation to deliver proxy documents and wish to use an electronic delivery method should refer to Part 2 of this Policy, which sets out the principles for delivering documents electronically.

(3) Merely making proxy documents available for access on a website will not constitute delivery of these documents in accordance with the four components of effective delivery that are set out in Part 2 of this Policy.

4.2 The In Writing Requirements

(1) Forms of proxy, proxies and voting instructions in electronic format (including an electronic format that makes use of the telephone) will generally satisfy the in writing requirements if the electronic format used

(a) ensures the integrity of the information contained in the forms of proxy and proxies; and

(b) enables the recipient to maintain a permanent record of this information for subsequent reference.

(2) In order to ensure the integrity of information, the electronic format of the form of proxy, proxy or voting instructions should not permit the information in the document to be easily corrupted or changed. For example, the written proxy requirements generally would not be satisfied by sending an e-mail with a form of proxy in Word format attached, as this format could be easily tampered with.

(3) In order to assist a recipient to retain a permanent record of the information so as to be usable for subsequent reference, appropriate electronic formats and methods of electronic delivery should be used that include the ability to store and print the record.

4.3 Proxy Execution Requirements

(1) The proxy execution requirements are normally satisfied by a security holder's signature. The use of a signature indicates adoption of the information in the completed proxy, and permits authentication of the security holder's identity. We are of the view that the use of a manual signature is one method, but not the only method, of executing a proxy.

(2) The proxy execution requirements may be satisfied through the security holder using an electronic signature to execute a proxy, including a proxy in electronic format that satisfies the in writing requirements (see section 4.2). Any technology or process adopted for executing a proxy should create a reliable means of identifying the person using the signature and establishing that the person incorporated, attached or associated it to the proxy. The security holder's electronic signature should result from the security holder's use of a technology or process that permits the following to be verified or proven:

1. a security holder used the technology or process to incorporate, attach or associate the security holder's signature to the proxy;

2. the identity of the specific security holder using the technology or process; and

3. the electronic signature resulting from a security holder's use of the technology or process is unique to the security holder.

PART 5 –EFFECTIVE DATE

5.1 Prior policy – National Policy 11-201 *Delivery of Documents by Electronic Means* is replaced by the Policy.

5.2 Effective Date – The Policy comes into effect on November 18, 2011.

Appendix A

Electronic Commerce Legislation

Alberta
Electronic Transactions Act, S.A. 2001, c. E-55

British Columbia
Electronic Transactions Act, S.B.C. 2001, c.10

Manitoba
The Electronic Commerce and Information Act, S.M. 2000, c. E55

New Brunswick
Electronic Transactions Act, S.N.B. 2001, c. E-55

Newfoundland and Labrador
Electronic Commerce Act, S.N.L. 2001, c. E-52

Northwest Territories
Electronic Transactions Act, S.N.W.T. 2011, c. 13

Nova Scotia
Electronic Commerce Act, S.N.S. 2000 c. 26

Nunavut
Electronic Commerce Act, S.Nu. 2004, c. 7

Ontario
Electronic Commerce Act, S.O. 2000, c. 17

Prince Edward Island
Electronic Commerce Act, S.P.E.I. 2001, c. E-41

Quebec
An Act to establish a legal framework for information technology, R.S.Q. 2001, c. C-1.1

Saskatchewan
The Electronic Information and Documents Act, S.S. 2000, c. E-7.22

Yukon
Electronic Commerce Act, S.Y. 2000, c. 10

ANNEX B

NATIONAL POLICY 11-201
ELECTRONIC DELIVERY OF DOCUMENTS

List of Commenters

The CSA received comments from the following commenters:

- BMO Private Client Group
- Broadridge Financial Solutions, Inc.
- Computershare Trust Company of Canada
- Investment Industry Association of Canada (IIAC)
- Jason Slattery, Investment Advisor, Equity Associates Inc.
- Osler, Hoskin & Harcourt LLP
- RBC Dominion Securities Inc.
- VAULT Solutions Inc.

ANNEX C

NATIONAL POLICY 11-201
ELECTRONIC DELIVERY OF DOCUMENTS

Summary of Comments

	Theme	Comments	Outcome of Discussion and Response
	GENERAL COMMENTS		
1.	General support for the proposal	Seven commenters expressed support for the initiative. They thought it would increase the number of issuers offering electronic delivery and number of shareholders using electronic delivery. The other commenter did not address the proposal generally.	
2.	Definition of "delivered"	One commenter questioned the meaning of "delivered". They thought that many of the methods of e-delivery do not involve the documents being sent to the individual investors, but rather having the documents made available to an investor through a link to a website or by logging into a secure site to pick up a document. They suggested that the wording of the proposed definition of "delivered" suggests active sending, rather than making the document available for investors to receive or to access by taking steps to retrieve it.	"Delivered" refers to the obligation under securities legislation to deliver documents. We do not intend to be prescriptive because this is a policy and is intended for guidance. Notice and access legislation is being considered by the CSA committee reviewing NI 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*.
3.	Definition of "electronic delivery"	One commenter did not think it was appropriate to replace the word "means" with "includes" in order to limit what constitutes electronic delivery. They also wanted to clarify that the definition included the physical delivery of a document on a storage medium such as optical disk or memory stick. Another commenter thought we should consider removing "e-mail" and "the Internet or other electronic means" from this definition and establishing a separate definition for these terms. They thought that the processes for "e-mail" and "Internet and other electronic means" are significantly different in their operation and technology, including how it is used for the purposes of document delivery. They thought that the use of a secure website, which requires the recipient to log into the site using security credentials to gain access to the documents, should be contemplated in the definition.	The definition of "electronic delivery" was drafted in a manner that allows for the inclusion of other methods of delivery that may evolve with technology. The definition of "electronic delivery" includes delivery by optical disk and delivery by other electronic means, which would include a memory stick. The definition of "electronic delivery" is consistent with the provincial electronic commerce legislation. Notice and access legislation is being considered by the CSA committee reviewing NI 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*.
4.	Definition of "electronic signature"	One commenter thought that the definition may not be sufficiently flexible to address all the potential ways that an individual may evidence the execution of signing of a document; it also appears to be slightly inconsistent with the broad language contemplated in section 4.3(2). Another commenter thought that the definition of electronic signature should instead be a digital signature (i.e. mathematical algorithm and not include real signatures that have been digitized).	The definition of "electronic signature" is consistent with provincial electronic commerce legislation. We disagree that is not a flexible definition and that it is inconsistent with 4.3(2). The definition of "electronic signature" is consistent with provincial electronic commerce legislation and intentionally broad to include digital signatures and other types of electronic signatures (for example, a written signature on a facsimiled or emailed document).

	Theme	Comments	Outcome of Discussion and Response
5.	"Sent" vs. "Delivered"; "Transmitted"	One commenter noted that the word "sent" has been replaced by the word "delivered" throughout the document, and that the word "transmitted" has been added to the definition of "delivery" and that the Internet remains one of the means of delivery under the definition of "electronic delivery". They are not clear what the effect of these changes is.	We have used the word "delivered" to be consistent throughout the document and it is defined to include "sent". "Transmitted" has been added to the definition to reflect Quebec legislation (*An act to establish a legal framework for information technology)*.
6.	Other Additional Definitions	One commenter asked that CSA provide definitions for the following terms: "deliverer" – they thought that it is not clear if "deliverer" means the issuer or intermediary with the delivery obligation under securities legislation, or the party/agent actually carrying out the delivery functions, and that this, coupled with the proposed deletion of the language in the current section 2.1(7) regarding delivery by third party agents, creates some ambiguity. "securities industry participants" – This term is used in several sections of the document but has no definition associated with it.	 "deliverer" refers to the entity with an obligation to deliver documents under securities legislation; we think this term is clear and does not require a definition. The expression "securities industry participants" is meant to be broad and include all entities that have to comply with securities legislation.
7.	Adding to the Scope of Privacy Legislation in s. 1.3(3)	One commenter thought that the CSA should expand the scope of this section to include investors' personal information with the wording in section 1.3(3).	The Policy provides guidance on the electronic delivery of documents. We think that it is beyond the scope of this initiative to provide guidance on privacy issues.
8.	List of documents in s. 1.4(1)	One commenter thought that the list of documents is not clear. For instance, it does not include the new NI 81-101 mutual fund "fund facts documents", and the definition of "prospectuses" is silent on whether this includes preliminary and short form prospectuses. Two other commenters thought that the definitions were not flexible enough to deal with future changes to legislation and that a reference to specific documents should be removed.	NP 11-201 applies to documents that are required to be delivered under securities legislation. We have provided a sample list of some of these types of documents, and the list is not intended to be comprehensive. We think that the sample list is flexible enough to deal with other documents that may be required to be delivered in future (such as the fund facts document, which is not currently required to be delivered by securities legislation). We would refer the commenter to the definition of "Prospectus" in the relevant rule that has to be complied with.
9.	"Otherwise electronically available" in Part 2 and Delivery through a Website; Notice and Access in NI 54-101	One commenter noted that under proposed section 2.1(1), three out of the four elements of electronic delivery that previously referred to documents being "otherwise electronically made available" (elements 1, 2 and 4), have had these references removed. However, in section 2.6(1), a "deliverer should retain records to demonstrate that a document has been delivered or otherwise made available to the recipient", so it is not clear to the commenter what the intended effect of these changes is. The commenter also thought that the removal of the language from proposed section 2.1(1) has caused confusion about whether or not a document can be delivered electronically by way of the recipient accessing	We will delete this instance of "otherwise electronically made available" in section 2.6(1) to be consistent. Notice and access legislation is being considered by the CSA committee reviewing NI 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*. Ultimately, the

	Theme	Comments	Outcome of Discussion and Response
		a website under the proposed Policy. Combined with the issue about the proposed changes to section 2.2 (consent), they are unclear as to whether the CSA is effectively withdrawing its endorsement of delivery by access to a website, a result that seems inconsistent with the general push towards Notice-and-Access with respect to proxy materials under proposed changes to NI 54-101. The commenter seeks clarification that the CSA continues to endorse electronic delivery of a document by accessing it on a website. They acknowledge that merely putting a document onto a website is not enough to satisfy the delivery requirements in the absence of consent from the recipient to retrieve the document.	requirement is that the document be delivered to the securityholder; we do not mandate in legislation the method for how this is accomplished.
10.	Meaning of "Notice" and whether notice be given that advises the recipient of proposed electronic delivery (s. 2.3(1))	Two commenters thought that the amendments appear to recommend the sending of a notice email that provides notice of a future email (in other words, that a deliverer could not send both a notice and the document in one email) and that this situation was excessive.	We do not agree with this interpretation.
11.	Questioning necessity of written notice when certain documents are posted online (s. 2.3(2))	One commenter thought that the separate notice of availability of a document online, such as a monthly account statement, was "paternalistic", especially in the context of monthly account statements. Another wanted guidance on a situation where a recipient has agreed to monitor a site for documents.	An important component to effective electronic delivery is notice to the intended recipient of the proposed electronic delivery. In this section, we indicate that securities industry participants should not assume a one-time notification to access a website is sufficient evidence of notice to the intended recipient. The determination of sufficient notice will depend on the requirements in securities law and other legislation, and the facts of each case. Since this is a policy, we are providing guidance and do not wish to provide an interpretation of the law.
12.	Concept of "electronic systems" in s. 2.4(2)	One commenter thought that that "electronic systems" focuses on hardware issues even though the principle should be applied more broadly. They also thought that the term "general availability" was not appropriate because it should be permissible to use different forms of electronic delivery of the same document to different persons.	We disagree with the commenter's interpretation. The considerations in 2.4(2) are software, hardware and networking. General availability refers to the general accessibility of documents from a website, in an email or some other medium of electronic delivery; it does not suggest using only one form of delivery.
13.	Interplay of NI 54-101 and s. 2.4	One commenter noted that there is inconsistency on the posting of meeting materials between section 2.4(3) of the proposed Policy and the proposed amendments to National Instrument 54-101 (NI 54-101) in section 2.7.1(1)(d)(ii) regarding Notice and Access. The commenter also noted that section 2.4(4) of the proposed Policy, regarding the ability to keep a permanent copy of the document, uses different language from section 4.2(3), but that the objective of the	The example of the posting of meeting material is not necessary and too specific. We will delete the second line in 2.4(3). We have used the 4.2(3) wording in 2.4(4) to be consistent.

	Theme	Comments	Outcome of Discussion and Response
		two sections appears to be the same.	
14.	Reasonable Steps to Prevent Alteration or Corruption s. 2.5	Several commenters thought that draft section 2.5 is drafted in a manner that imposes an unrealistic standard on deliverers. They thought that a deliverer should only be obliged to take "reasonable" steps to prevent alteration or corruption and a deliverer's security measures cannot ensure there will be no tampering, such measures can only "protect against third party tampering". They noted that section 8 of the *Electronic Commerce Act* (Ontario) only requires "reliable assurance as to the integrity of the information" as opposed to our proposal which suggests that deliverers "take steps to prevent alteration or corruption of a document".	We have added the word "reasonable", as in "take reasonable steps", and changed the phasing from "to ensure that third party cannot tamper" to "to protect against third-party tampering".
15.	Clarification on failure of delivery s. 2.6	One commenter thought that guidelines in s. 2.6(1) and (2) for retaining records of delivery and for concluding that delivery has not been effected are more onerous than the electronic commerce legislation in Ontario. They also noted that there is no evidentiary burden on the deliverer to prove delivery under paper delivery. Securities firms are required to be in compliance with SRO rules on returned mail and have policies and procedures in place to manage returned mail rather than confirm that the recipient actually receives it. One commenter asked for our guidance under s. 2.6(2) in the case of a deliverer that receives notice that the electronic delivery has failed. If they intended to electronically deliver only a notice that documents were available on a website; would they be required to deliver all the documents in paper form or may another method be used?	In s. 2.6(1), we have deleted "retain records that a document has been delivered" and added "have internal processes to show that a document delivery has been attempted". In s. 2.6(2), we have changed "should be accomplished" to "should be attempted". Note that we will also delete "or otherwise made available" from s. 2.6(1). S. 2.6(2) advises a deliverer that if they have any reason to believe that a document has not been received (e.g. the deliverer receives notice that electronic delivery has failed), they should attempt delivery by an alternative method. This alternative method could include, but is not limited to, paper delivery.
16.	Concerns about Protection of Privacy s. 3.2	One commenter expressed concerns that personal privacy would not be sufficiently protected under the proposal because the word "reasonably" is too vague.	Deliverers must still comply with applicable privacy legislation. Nothing in this policy takes away from these obligations.
17.	Hyperlinks s. 3.3(3)	One commenter thought that to provide more meaningful guidance, section 3.3(3) should clearly state whether in the view of the Canadian Securities Administrators if a document contains a hyperlink to information located outside the document such hyperlinked information is thereby incorporated into and forms part of the document. Commenters also asked whether sending an e-mail with a hyperlink to the specific document on the SEDAR webpage in accordance with the recipient's consent would constitute valid delivery.	We consider this question to be beyond the scope of our mandate. We do advise, however, that the use of hyperlinks can lead to "dead links" to documents that no longer exist or links to addresses where the content of the document of the address may change.
18.	"Third party provider" in s. 3.3(6)	One commenter wanted clarification on what the term "third party provider" means.	"Third party provider" in this context is a party that is not the issuer that hosts a document.

	Theme	Comments	Outcome of Discussion and Response
19.	Further Guidance on Multimedia s. 3.4	Two commenters requested that the CSA encourage greater adoption of multimedia communications.	We do not discourage the use of multimedia. We recommend that any information presented in a multimedia format also be reproduceable in paper form.
20.	Contemporaneous Mailing and Electronic Delivery s. 3.5	Three commenters recommended that draft section 3.5 be deleted because it was impractical or conflicted with current securities legislation, including section 4.6 of NI 51-102 and the proposed changes to NI 51-104.	We have deleted section 3.5. The timing of electronic delivery of documents must comply with the requirements in securities legislation.
21.	Notice and Access Generally in Part 4	One commenter noted that there is no reference to requirements for notice and access as contemplated under the amendments to NI 54-101 and it is not entirely clear how these amendments and those considered under NP 11-201 align.	The NI 54-101 consequential amendments to NP 11-201 may address this issue.
22.	Changes to electronic form of proxy under 4.2(2)	One commenter thought that the requirement in section 4.2(2) that the electronic form of the proxy or voting instruction not permit the information to be changed is unduly restrictive and that a person giving voting instructions should be able to make changes to designate someone other than management to represent them at the meeting and to make changes with respect to the authority to be given to that representative.	The purpose of this subsection is not to forbid amending the document as the commenter suggests; rather, it is to ensure that the document is not tampered with in sending.
23.	Signatures "by a security holder" in s. 4.3	One commenter argued that in section 4.3, the policy references signatures "by a security holder" and this was incorrect because securities legislation permits proxies to be signed "by or on behalf of a security holder" – which would include signing of a proxy by someone other than a security holder pursuant to a power of attorney, for example.	We think that this change is unnecessary.
24.	Signature verification in 4.3(2)	One commenter thought that the second sentence in section 4.3(2) is somewhat inconsistent with the rest of section 4.3(2) and is redundant in light of the list of items that the technology or process should permit to be verified or proven. They suggest that the second sentence in section 4.3(2) be deleted or that the words "signature and establishing that the person incorporated, attached or associated it to" be replaced with "technology or process to sign".	We have not retained this suggestion because the language used is consistent with the definition of electronic signature found in electronic commerce legislation.
25.	"Default Option" of Electronic Delivery	One commenter thought that deliverers should be granted the flexibility to implement a "default option" of electronic delivery. They believe that this is consistent with the *Electronic Commerce Act* (Ontario) which permits implied consent. They believe that this would be less onerous than having signed consents. Another commenter thought that preserving investor choice was important and that some investors do not have easy access to computers and should not be compelled to access documents over the Internet.	We do not recommend a "default option" of electronic delivery.
	RESPONSES TO SPECIFIC QUESTIONS		
26.	Do you believe the draft Policy presents any impediments to electronic	Most commenters generally either did not respond to the question directly or did not believe that the Policy presented any impediments. Specific concerns about particular sections of the Policy are summarized above.	

	Theme	Comments	Outcome of Discussion and Response
	delivery?	One commenter thought that the proposed amendments do not reflect current best practices nor does it envision the future state of electronic communication between issuers, intermediaries, and investors.	The Policy is drafted to be broad and flexible to address other legislation and to accommodate future technologies. Some amendments will be addressed directly in the notice and access project.
27.	Do the requirements of other legislation impact your ability to satisfy the four basic components to electronic delivery?	One commenter stated that they did not. One commenter thought that the CSA should make available to industry participants the interplay of "other legislation" in order to provide a clear understanding of how one may impact the other. One commenter thought that provincial electronic commerce/transactions acts (ECAs) appear to provide for greater flexibility regarding the electronic delivery of documents than the four components and that there may be a conflict between the ECAs and the Policy. Another commenter was concerned about the requirements of the *Business Corporations Act* (Canada) (CBCA) that may impact their industry's ability to satisfy the components for electronic delivery described in the Policy and whether the CBCA conflicted with the proposed Notice and Access provisions of NI 54-101.	The purpose of the Policy is to provide electronic delivery guidance for securities industry participants. The CSA does not propose to provide guidance on the interpretation or application of non-securities legislation in relation to electronic delivery. This legislation may change over time. Where other legislation is more prescriptive, securities industry participants should follow that legislation. With respect to notice and access, these comments are beyond the scope of this project.
28.	Comments on removing guidance on the form and substance of a consent to electronic delivery.	Two commenters agreed strongly with its removal. One commenter was concerned that language has also been removed from the Policy that provides guidance about consent and notice where electronic delivery is effected by placing a document on a website. They indicated that many deliverers receive consent from clients to deliver documents electronically by placing documents on their website. They believe that the consent and notice evidences the agreement of the client to monitor the website.	Adequate notice is a matter of fact and would depend on the circumstances. The one-time consent would not necessarily meet the requirement for notice in all cases. We also refer the commenter to the account activity reporting provisions under NI 31-103 and the Client Relationship Management 2 amendments to NI 31-103 that are out for comment. Section 1.1 of the 31-103 Companion Policy requires registrants to provide clients with disclosure information in a clear and meaningful manner, which is consistent with the obligation to deal fairly, honestly and in good faith with clients.
	COMMENTS UNRELATED TO PROPOSAL		
29.	Expansion of privacy to cover all communi-cations relating to a client	One commenter suggested additional privacy guidance on communications "behind the scenes" including: • Communications between the investment advisor and head office • Communications between advisors and compliance departments • Communications with approved investment lenders He had a particular concern about identity theft.	This suggestion is beyond the scope of this Policy.