



INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

LETTER FROM THE PRESIDENT

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Ease of Access: eDelivery growing in prominence, but can be improved

HIGHLIGHTS:

Regulators have responded positively over the past five years through a series of amendments to existing regulations to facilitate eDelivery for retail investors. Amendments to existing regulations have removed the requirement for consent of electronic delivery by specific document and enabled effective electronic proxy voting by beneficial retail shareholders through the 'notice and access' mechanism.

Regulators need to take another step forward with electronic delivery. Amendments to existing regulations are needed to enable easier client consent for eDelivery and to extend the 'notice and access' mechanism to prospectuses as a sufficient condition to constitute prospectus delivery under the existing statutes.

INTRODUCTION

The world of paper documents has ceded dominance to the online – not with a bang but with a whimper, as the poem goes. Regulatory communications are now increasingly being transmitted via electronic delivery: investors and clients can access regulatory documents (such as trade confirmations, Fund Facts, ETF Facts, and prospectuses for corporate offerings) through client account portals on member firms' websites. This method reduces costs, is eco-friendly, convenient, and supports investors' choice.

Further steps can be taken to relieve the distribution burden.

REGULATORY FRAMEWORK FACILITATES EDELIVERY

In the past five years, the regulators have amended existing national policies, notably National Instrument (NI) 11-201 and NI 51-404, to facilitate electronic delivery of investor documents and the electronic proxy voting for retail investors. The amendments to NI 11-201 *Delivery of Documents by Electronic Means*, which provide a regulatory framework for eDelivery (including the removal of the requirement to collect consent by specific documents) have been a major catalyst to move toward electronic delivery of documentation.

NI 11-201 prescribes the legal framework for electronic delivery and the requirements for client consent. The legislation has two key provisions: i) the investor (or recipient of the information) must receive notice the document has been sent, and the deliverer must have evidence the document has been delivered, and ii) the investor must have easy access to documents and the documents received by the recipient must be the same as that sent.

Significant advances in electronic proxy voting followed the release of the initial rules governing electronic proxy voting and subsequent regulatory amendments in 2013 for *Notice and Access*, 2016 and 2017. The regulations

under the *Notice and Access* require the reporting issuer to include in the notification to the beneficial shareholders of an upcoming shareholders' meeting the electronic location of proxy-related materials and information on the voting procedure along with a voting instruction form. This has enhanced the investor experience and voting rates remain high compared to the U.S. where an investor must take an additional step to receive the voting instruction form. The regulatory model is carefully balanced, "pushing" information to investors rather than expecting them to respond and take steps to obtain it. Regulators have been reluctant to embrace a default option for electronic delivery because it is felt it would significantly deter investor participation in proxy voting—in other words, many investors receiving physical delivery, unless proactively solicited to accept documents in electronic format, would simply opt out of the proxy voting process.

The catalyst for retail investors was the 2016 Stage 3 implementation of Point of Sale Disclosure for Mutual Funds, enabling investment advisors to access Fund Facts and other documents and deliver them electronically to their clients, which naturally led to an increased use of eDelivery. Additionally, service providers drove technology solutions for eDelivery of proxy voting mechanisms to retail shareholders, improving ease of voting participation in corporate decisions and reducing costs to the issuer and investor. This has resulted in year-over-year increases in eDelivery adoption by Canadian corporate issuers (up 6.3% in 2016, 13.1% in 2017 and 15.3% in 2018).

Surprisingly, regulatory framework has proven rapidly adaptive in responding to eDelivery. This is good news for everyone, as a focus on eDelivery will contribute even more to streamlining regulation and generate further cost savings in domestic markets. The Canadian Securities Administrators (CSA) deserves credit for its far-sighted approach to cooperating with issuers and investment dealers to facilitate eDelivery of documents and proxy voting.

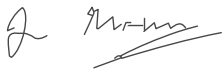
FURTHER STEPS TO RELIEVE THE DISTRIBUTION BURDEN

The approval process to onboard clients to eDelivery is complex, and obtaining permission to do so, sometimes difficult. Firms must notify clients of the various delivery options and require confirmation from clients that they have selected electronic delivery, with responses typically conveyed through a client account portal. It takes considerable effort to reach out to an existing client base to seek confirmation and, in a world inundated with online tasks, relying on the client to respond proactively through the firms' website can be a long and sometimes fruitless wait.

Regulators should consider more user-friendly mechanisms for investors to confirm consent for electronic disclosure, perhaps requiring a simple email or verbal response directly to the advisor, avoiding the complicated process of requiring the client to select (check-off) items for eDelivery.

By treating eDelivery of new issue prospectus documents as if they were analogous to Notice and Access proxy delivery regulation, regulators could relieve the cost burden on firms and corporate issuers. For example, the client could be notified through an email, with hyperlinks to the prospectus. Regulations would ensure that prospectuses are available on SEDAR in a timely fashion so service providers could, in turn, make them available to their clients. Regulators would consider this version of "notice and access" a sufficient condition to constitute prospectus delivery under the applicable provincial securities legislation. The client would be giving permission for eDelivery in the context of a specific regulatory document. It would require the incumbrances of email notification to clients subscribing to a prospectus offering but would be more palatable to regulators than a default mechanism for eDelivery. This email notification would significantly reduce costs for issuers and dealers, and ultimately investors, given the alternative of physical delivery, and improve the convenience and access to prospectus documents.

Yours sincerely,



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