



INVESTMENT INDUSTRY ASSOCIATION OF CANADA

COMMERCE

Ian C.W. Russell FCSI
President & Chief Executive Officer

September 30, 2019

Ms. Erin O'Donovan
Senior Legal Counsel
and
Mr. Jordan Lavi
Legal Counsel
Ontario Securities Commission
20 Queen Street West
19th floor, Box 55
Toronto ON M5H 3S8

M. Michel Bourque
Senior Regulatory Advisor
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montreal, QC H4Z 1G3

Dear Erin, Jordan and Michel:

**Re: Industry comment on options for electronic delivery of prospectuses
and other documents**

I would like to thank you and the other members of the CSA Enhancing Electronic Delivery of Documents Committee for meeting with representatives of the IIAC Investment Banking Committee on September 4 to discuss the CSA's policy project to consider potential amendments to Canadian securities legislation that would facilitate the delivery of prospectuses (among other documents) through electronic means. We welcome the CSA's openness to consider a range of options for this initiative. As discussed, among the potential options for prospectus delivery, we support an "access equals delivery" model whereby access to a prospectus (by virtue of it having been filed on SEDAR and posted on the issuer's website) would constitute delivery.

Following our meeting with your committee, the IIAC convened a broad group of industry professionals from member firms to confirm their support for an "access equals delivery" model and canvass their views on potential alternative models for efficient and effective prospectus delivery. For the reasons we previously discussed, the consensus among this group was that an "access equals delivery model" was the best and only practical option for facilitating prospectus delivery by electronic means. The collective view is that this model would be the most efficient for the Canadian marketplace, significantly reducing the time and money necessary to comply with the prospectus delivery obligation without compromising investor protection. This conclusion was drawn both from the proposed structure of the model, as well as member firm experience with US cross-border offerings.

In reaching this conclusion, member firm representatives made the following observations:



- **An access model is ideal for prospectus delivery.** The “access equals delivery” model is ideally suited for addressing prospectus delivery obligations because investors (1) do not require actual delivery of the prospectus to ensure their engagement and (2) are well aware that information critical to their investment decision is available and easily accessible on SEDAR. When considering their investment in a prospectus offering, investors invariably access the prospectus (and, critically, the documents incorporated by reference) electronically. Based on members’ feedback of their investors, investors do not wait for, or rely on, actual delivery of a prospectus to inform their investment decision. Electronically filed documents are immediately accessible, from anywhere, and allow for much more efficient review than paper.
- **Potential for applying the access model to other document deliveries.** While an “access equals delivery” model may also be appropriate for various other documents to be delivered to investors, in our view the CSA should concentrate their efforts on a model that is tailored only to prospectus delivery obligations. An effective electronic solution for prospectus delivery will achieve the largest efficiency gains in the shortest possible time period. For the reasons noted, an “access equals delivery” model for prospectus delivery is a clean and efficient solution because it does not adversely impact investor engagement. Broadening this model to address the delivery of other documents may entail additional considerations and, possibly, additional conditions that are irrelevant to prospectus delivery, thereby complicating and delaying the adoption of an electronic solution for prospectus delivery. In our view, it would be best to consider options for the electronic delivery of other documents separately from prospectus delivery.
- **When to provide, and what constitutes, appropriate notice.** Under the CSA’s contemplated “access equals delivery” model, we understand delivery of a prospectus (whether preliminary or final) would be deemed to occur when (1) that prospectus is filed on SEDAR and posted on the issuer’s website and (2) a press release is published by (or on behalf of) the issuer indicating the prospectus is available electronically and that a paper copy can be obtained upon request. Consideration should be given to whether this press release should be required only for the final prospectus or prospectus supplement, as applicable. For delivery of a preliminary (or base shelf) prospectus by way of access, adequate notice could be provided through equivalent disclosure in the indicative term sheet or other materials used for soliciting expressions of interest in the prospectus offering. Alternatively, in the context of a bought deal, it may be sufficient for the announcing press release to indicate that the preliminary prospectus “will be” available, as this prospectus must be filed within a short window of time following the bought deal agreement / pricing and the issuer information critical to the investment decision (*i.e.*, the incorporated reports) is already on file. Notably, an investor would still get current notice when the final prospectus is available, and then two business days to review the final prospectus prior to expiry of the associated withdrawal right. Accordingly, requiring that



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investors have current notice when the prospectus “is” (as opposed to “will be”) available may only be relevant for the final prospectus.

- **Separate requirement to deliver paper copies.** Per the above, the press release required for the contemplated “access equals delivery” model would include instructions on how to request a paper copy of the prospectus for any investors interested in this option. We understand that delivery of any requested paper copy of a prospectus would be an obligation separate from, and not a pre-condition to satisfying, the prospectus delivery obligation under securities legislation. Accordingly, the time at which any requested paper copy is delivered or received will not factor into the time at which the prospectus is deemed delivered (under applicable prospectus delivery requirements) or received (for purposes of the statutory right of withdrawal). We trust that ample time would be afforded for sending any requested paper copy such that issuers would not be required to print commercial copies in advance of any such request, as all or substantially all of these printed copies would ultimately not be used and this would defeat the intended efficiencies of this burden reduction initiative. Further, we assume this option to request a copy of the prospectus would be available only to investors (in the case of a final prospectus) or potential investors (in the case of a preliminary prospectus). Consideration should be given as to whether the option to receive a paper copy of a preliminary prospectus is of value to investors. Also, we suggest that investors be given the option to request either an electronic copy or a paper copy.

We understand the above-described “access equals delivery” model would require some time to implement as, among other things, it requires legislative amendments. In light of this, we canvassed the group for alternative solutions that might be implemented in the interim (with the benefit of CSA guidance but without amendment to existing legislation) that would facilitate the electronic delivery of prospectuses. Ultimately, our group could not identify a feasible interim solution that would meaningfully facilitate electronic prospectus delivery. Even with the benefit of CSA staff guidance, member firms noted that changes to existing legislation (as well as National Policy 11-201) would be necessary for member firms to satisfy their prospectus delivery obligations exclusively by way of electronic delivery without exposure to increased regulatory and legal risk. Even if those legal hurdles could be adequately addressed, electronic delivery involves technical challenges (e.g., failed delivery due to any number of reasons) that are impractical to overcome in all instances. An “access equals delivery” model resolves these technical issues. Finally, even there was a feasible solution from both a legal and technical perspective, the necessary time and cost to dealers to make adjustments to their current systems and procedures to allow for an interim solution would likely outweigh its potential benefits, particularly given the relatively short interim period for which these changes would be in effect.



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In the absence of a workable interim solution, the IAC recommends that the CSA focus its efforts on implementation of the “access equals delivery” model as outlined in this letter. We would be pleased to provide whatever further assistance might be helpful as the CSA Committee moves forward with this initiative, including providing feedback on drafts of any proposed rules for its implementation. In our view, this policy project should be a priority among the burden reduction initiatives of the CSA as it will contribute meaningfully to efficiencies and significantly reduce compliance costs in connection with prospectus offerings, further facilitating capital formation across the country.

Yours sincerely,

A handwritten signature in dark ink, appearing to read "Ian C.W. Russell", is written above a long, thin, horizontal line that serves as a signature separator.