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

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Comments on CSA Consultation Paper 51-405 - *Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers***Introduction**

This letter is submitted in response to the Consultation Paper 51-405 - (**CP 51-405**) Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers (the **Proposed Access Model**) issued by the Canadian Securities Administrators (the **CSA**) on January 9, 2020. It reflects the views of a working group consisting of issuers having a combined market capitalization of more than CAD \$200 billion (the **Working Group** or **we**). Members of the Working Group welcome the CSA's initiative to reduce the regulatory burden for issuers. We thank you for affording us an opportunity to comment on this important matter and we trust that the CSA will consider the views expressed in this letter in finalizing the Proposed Access Model.

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General comments

The Working Group believes that the Proposed Access Model has significant advantages for issuers involved in the distribution of disclosure documents by reducing costs (including printing and mailing) and increasing the speed and availability of information.

Questions

We provide below answers of the Working Group with respect to each question described in CP 51-405.

- 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 Working Group thinks that it is appropriate to introduce an access equals delivery model into the Canadian market. The market now routinely uses electronic access to documents. As mentioned in the CP 51-405, electronic access to documents provides a more cost efficient, timely and environmentally friendly manner of communicating information to investors than physical delivery.

Many investors are requesting issuers to reduce their carbon footprint. The Proposed Access Model is a way to do so.

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

As indicated in CP 51-405, the Working Group agrees the Proposed Access Model could further facilitate the communication of information by enabling issuers to reach more investors in a faster, more cost-effective and more environmentally friendly manner. SEDAR and the issuer's website provide ease and convenience of use for investors, allowing them to access and search for information more efficiently than they would otherwise be able to with paper copies of documents.

The Working Group is of the view that the Proposed Access Model has no material limitation if issuers continue to deliver documents in paper or electronic form, based on the investors' standing instructions or upon request.

- 3 *Do you agree that the CSA should prioritize a policy initiative focussing on implementing an access equals delivery model for prospectuses and financial statements and related MD&A?*

The Working Group is of the view that the Proposed Access Model (as adapted for prospectuses) should be implemented in all documents that have to be delivered to investors. However, if the CSA prefer to implement the Proposed Access Model gradually, the Working Group agrees that CSA should prioritize a policy initiative focussing on implementing an access equals delivery model for prospectuses and financial statements and related MD&As.

- 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.)?

The Working Group thinks that the Proposed Access Model should be adapted to the prospectuses as explained below.

- (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.

Currently, securities legislation in certain of the provinces of Canada requires that a dealer who receives an order to subscribe for or purchase a security offered in a distribution made with a prospectus, send to the purchaser a copy of the latest prospectus (including the applicable prospectus supplement(s) in the case of a base shelf prospectus) and any amendment thereto (the **Final prospectus**), not later than the second working day after the subscription or purchase. Securities legislation in certain of the provinces of Canada provides purchasers with the right to withdraw from an agreement to purchase securities. This right may be exercised within two business days after receipt or deemed receipt of the Final prospectus. The Working Group is of the view that the current regime should be adapted under the Proposed Access Model. Instead of having the obligation to send a copy of the prospectus and any amendment thereto, the dealer would have the obligation to send a notice to the purchaser that such document has been filed on SEDAR. The withdrawal right period could be calculated from the date on which the investor receives the notice. A similar approach to the U.S. rules could be adopted in Canada. Accordingly, the Final prospectus would be deemed to have been delivered as long as it is filed on SEDAR and a notice of the filing is sent to purchasers of securities issued pursuant to the prospectus.

Alternatively, since the process of using electronic delivery is already well established, brokers who would wish to send offering materials electronically to their clients should be allowed to continue their practice. The withdrawal right period would then be calculated from the date on which the dealers send the offering materials through electronic means.

The filing of a news release indicating that the Final prospectus is available electronically would be a further alternative to the delivery of the notice or materials but should not be a requirement of the access equals delivery model as discussed below.

Based on the above, the withdrawal rights would run from the earliest of (i) receipt by the investor of the notice, (ii) receipt by the investor of the offering materials electronically; and (iii) the posting on SEDAR of the news release; provided that, in the case of items (i) and (iii), the issuer has filed the offering materials on SEDAR. The working group considers these to be the appropriate date(s) from which the withdrawal right period should run.

In all cases, purchasers would be permitted to request a copy of the offering materials, which, however, would not alter the computation of the withdrawal right period as per the new requirements.

- (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?

The Proposed Access Model represents an improvement to the current offering material delivery requirement. However, the Working Group is of the view that imposing the issuance of a press release would be adding something over and above the current process rather than simplifying it, particularly in the context of a shelf prospectus.

The news release would not be more efficient than the approach proposed above in ensuring the investor receives the offering materials and that the timing for withdrawal rights is clear and trackable and so should be included only as an alternative and not a requirement for the access equals delivery model. Imposing such a requirement would be onerous on frequent issuers, which can have multiple offerings in one day, and have the effect of significantly increasing the volume of news releases from such issuers, in each case without a corresponding benefit.

For shelf prospectuses, at the time of filing the preliminary shelf and the final shelf, there is no investor group to notify or to start a withdrawal right period for as no one is buying a security at that point and so no press release should be required at that point. It is only upon the filing of the prospectus supplement and/or pricing supplement for a specific issuance that there are specific investors for the securities being issued in that issuance. As mentioned above, the Working Group would consider that news releases in respect of the publication of the prospectus supplement/pricing supplement should not be a requirement but should be an alternative to notice or delivery in connection with such offerings.

Section 410 of the TSX Company Manual already requires prompt disclosure of public sales of securities. For example, issuers generally announce entering into an agreement with dealers for the sale of securities at the

time of the filing of a preliminary prospectus or at the time of the filing of supplements or pricing supplements. However, a press release is not necessarily issued at the time a Final prospectus is filed. A press release is instead sometimes issued at the closing of the offering in the cases of long and short form prospectuses. The Working Group is of the view that requiring a news release each time a prospectus or a supplement is filed would be confusing and onerous.

5 *For which documents required to be delivered under securities legislation (other than prospectuses and financial statements and related MD&As) 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.*

The Working Group is of the view that the Proposed Access Model should be extended to all such documents that have to be delivered to investors.

The Working Group believes that the benefits of the Proposed Access Model outweigh any concern associated with implementing such model for rights offering circulars, proxy-related materials, and/or take-over bid and issuer bid circulars.

Please note that intermediaries have obligations to inform their clients of corporate events. As mentioned in section 4.7 of *Policy Statement to Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer*, intermediaries have obligations to the beneficial owners holding through them that arise from the nature of the relationship between the intermediary and the beneficial owners. Such obligations can potentially mitigate information gaps.

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.

TSX strongly recommends that all TSX-listed issuers make investor relations information available on their web site. Section 423.10 of the TSX Company Manual provides that if an issuer creates its own web site, it can ensure that all of its investor relations information is available through one site and can provide more information than is currently available online. The Working Group is of the view that the issuer’s website, together with SEDAR, are the best ways to make documents accessible to all investors. However, the Working Group agrees with the proposal to allow market participants to use other technologies if the document has also been filed on SEDAR and posted on the issuer’s website. Furthermore, the Working Group suggests that the CSA develop a model that can be easily adaptable to future technological developments.

(b) Should we require all issuers to have a website on which the issuer could post documents?

The CSA encourages issuers to use technology to improve investor access to issuers information. Section 6.11 of *National Policy 51-201 – Disclosure Standards* indicates that issuers should concurrently post on their website, if they have one, all documents that issuers file on SEDAR. The Working Group is of the view that the Proposed Access Model should adopt the same approach and encourage all reporting issuers to have a website on which such documents are posted.

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?

The Working Group is of the view that a news release is sufficient to alert investors that a document is available but should only be an alternative to providing notice or delivery of the offering documents as discussed above.

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

The Working Group is of the view that the news release, as an alternative only to notice or delivery, should not include detailed information about the document but only the fact that the document is available electronically on SEDAR and on the issuer's website and that a paper copy or electronic copy can be obtained from the issuer upon request.

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?*

As previously mentioned, the Working Group suggests that the CSA develop a model that can be easily adaptable to future technological developments and that the news release not be a requirement but be provided as an alternative.

Conclusion

As explained above, the Working Group is in favour of the access equals delivery model. It is of the view that the Proposed Access Model represents a good step in disseminating information efficiently and reducing the carbon footprint of issuers.

Yours very truly,

(signed) Norton Rose Fulbright Canada LLP