Proposed access-based model for investment funds' financial disclosure

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What you need to know

- On September 27, 2022, the Canadian Securities Administrators (CSA) published CSA Notice and Request for Comment *Proposed Amendments and Proposed Changes to Implement an Access-Based Model for Investment Fund Reporting Issuers*, the latest step in the CSA's ongoing campaign to reduce the regulatory burden on investment funds.
- The CSA proposes to amend (the Proposed Amendments) National Instrument 81-106 Investment Fund Continuous Disclosure (NI 81-106) and its companion policy, along with making proposed consequential amendments to National Instrument 41-101 General Prospectus Requirements and National Instrument 81-101 Mutual Fund Prospectus Disclosure that would replace the current delivery requirements for investment fund financial statements and management reports of fund performance (MRFPs and together with the financial statements, the designated documents) with an "access-based model".
- The CSA explain that the purpose of the Proposed Amendments is to make the designated documents available to investors in a more cost-efficient, timely and environmentally friendly manner, without compromising investor protection. The Proposed Amendments apply only to investment funds that are reporting issuers. The CSA have confirmed that the access-based model is only appropriate for the designated documents (that is, no change is being contemplated for prospectus document delivery).
- This initiative is consistent with the recommendation in the Capital Markets Modernization Taskforce Final Report dated January 2021 that an access equals delivery model should replace the defaulted delivery of disclosure documents.
- The CSA are requesting comments on the proposals, as well as specific questions relating to standing instructions, notification methods, designated websites and the scope of the access-based model by **December 26, 2022.**

Background and current requirements

NI 81-106 currently provides that an investment fund must deliver financial statements and MRFPs to securityholders, although there are provisions essentially designed to

allow securityholders to choose which documents they wish to receive electronically or in paper format. These provisions require annual notices to be sent to securityholders to either solicit annual instructions or confirm previously provided standing instructions about document delivery. Investment funds must file the designated documents on the System for Electronic Document Analysis and Retrieval (SEDAR) and post them on their designated websites.

Along with other industry participants, we have previously urged the CSA to consider dropping the notion of "delivery" of fund continuous disclosure documentation in favour of the concept of "access equals delivery" through posting on websites, so the Proposed Amendments are welcome changes. The CSA hinted that they would be open to this in the final rule amendments that provided for the consolidation of the mutual fund simplified prospectus and annual information form, and conditional codifications of commonly granted exemptions finalized last year. Specifically, they said that they view the concept of funds having a designated website as a potential launch point for other burden reduction initiatives, which could potentially include modifications to the acceptable means of delivery of disclosure documents.

The CSA explain that the Proposed Amendments are informed by the comment letters received in response to previous consultation papers on reducing regulatory burden and considering the access model for non-investment fund reporting issuers, which raised concerns about the costs to investment funds of complying with the delivery requirements in Part 5 of NI 81-106. They also reflect feedback received in response to a notice and request for comment on proposed amendments to implement an access equals delivery model for non-investment fund issuers in respect of prospectuses, annual financial statements, interim financial reports, and management's discussion and analysis.

Proposed amendments

Proposed access-based model

The Proposed Amendments repeal the requirements for an investment fund to send designated documents, solicit standing/annual instructions and send annual notices and replace them with requirements to:

- prominently post designated documents on the investment fund's designated website, along with an explanation about the availability of these documents and how they can be delivered on request;
- issue, file on SEDAR, and post on the investment fund's designated website, a news release announcing the availability of the designated documents and containing prescribed information;
- send designated documents to registered holders or beneficial owners of securities of the investment fund (securityholders) who have requested copies (this can be done electronically with appropriate consent) within stated deadlines; and
- send designated documents filed by the investment fund to securityholders who have provided standing instructions to receive copies of all documents, commencing with the next document filed.

Designated documents would continue to be filed publicly on SEDAR.

In addition, mutual funds that are not reporting issuers would remain subject to requirements substantially identical to the current regime in Part 5 of NI 81-106, which require financial statements of those funds to be delivered to securityholders of those funds. This is likely appropriate given that these statements are not filed publicly on SEDAR or posted publicly on any other website.

The CSA have stated that extending the Proposed Amendments beyond financial statements and MRFPs is considered not appropriate at this time. Therefore, other documents (such as Fund Facts and ETF Facts) would continue to be delivered to investors. However, the CSA is seeking feedback on the further broadening of the access-based model to other documents.

The transition provisions of the Proposed Amendments deem a securityholder to have provided standing instructions to receive paper copies of the designated documents if they previously requested to receive the financial statements or MRFPs without consenting to their electronic delivery. The securityholder will be considered to have provided standing instructions to receive electronic copies if they previously consented to electronic delivery.

Next steps

The comment period for the Proposed Amendments is open until December 26, 2022. We plan to submit comments and would be pleased to answer your questions and assist you in doing the same. In particular, the annual notice required under NI 81-102 about redemption procedures is not addressed in these amendments, which we consider to be an oversight.

Please contact your BLG Investment Management Group lawyer for assistance in understanding the above developments and their impact on your business. You may also contact the authors of this article or any of the key contacts noted below.

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