

Annex C

National Policy 11-201 *Electronic Delivery of Documents*

Summary of Comments

	Theme	Comments	Outcome of Discussion and Response
	<u>GENERAL COMMENTS</u>		
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 <i>Communication with Beneficial Owners of Securities of a Reporting Issuer</i> .
3.	Definition of “electronic delivery”	<p>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.</p> <p>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.</p>	<p>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.</p> <p>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 <i>Communication with Beneficial Owners of Securities of a Reporting Issuer</i>.</p>

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4.	Definition of “electronic signature”	<p>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).</p> <p>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).</p>	<p>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).</p> <p>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).</p>
5.	“Sent” vs. “Delivered”; “Transmitted”	<p>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.</p>	<p>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 (<i>An act to establish a legal framework for information technology</i>).</p>
6.	Other Additional Definitions	<p>One commenter asked that CSA provide definitions for the following terms:</p> <p>“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.</p> <p>“securities industry participants” – This term is used in several sections of the document but has no definition associated with it.</p>	<p>“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.</p> <p>The expression “securities industry participants” is meant to be broad and include all entities that have to comply with securities legislation.</p>

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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	<p>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.</p> <p>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 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</p>	<p>We will delete this instance of "otherwise electronically made available" in section 2.6(1) to be consistent.</p> <p>Notice and access legislation is being considered by the CSA committee reviewing NI 54-101 <i>Communication with Beneficial Owners of Securities of a Reporting Issuer</i>. Ultimately, the requirement is that the document be delivered to the securityholder; we do not mandate in legislation the method for how</p>

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		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.	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.

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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	<p>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.</p> <p>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 two sections appears to be the same.</p>	<p>The example of the posting of meeting material is not necessary and too specific. We will delete the second line in 2.4(3).</p> <p>We have used the 4.2(3) wording in 2.4(4) to be consistent.</p>
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 <i>Electronic Commerce Act</i> (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	<p>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”.</p> <p>In s. 2.6(2), we have changed “should be</p>

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		<p>rules on returned mail and have policies and procedures in place to manage returned mail rather than confirm that the recipient actually receives it.</p> <p>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?</p>	<p>accomplished” to “should be attempted”.</p> <p>Note that we will also delete “or otherwise made available” from s. 2.6(1).</p> <p>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.</p>
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.

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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.

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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 <i>Electronic Commerce Act</i> (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.
<u>RESPONSES TO SPECIFIC QUESTIONS</u>			
26.	Do you believe the draft Policy presents any impediments to electronic delivery?	<p>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.</p> <p>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.</p>	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?	<p>One commenter stated that they did not.</p> <p>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 <i>Business Corporations Act</i> (Canada) (CBCA) that may impact their industry’s ability to satisfy the components for electronic delivery described in the Policy and</p>	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

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		whether the CBCA conflicted with the proposed Notice and Access provisions of NI 54-101.	beyond the scope of this project.
28.	Comments on removing guidance on the form and substance of a consent to electronic delivery.	<p>Two commenters agreed strongly with its removal.</p> <p>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.</p>	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.
<u>COMMENTS UNRELATED TO PROPOSAL</u>			
29.	Expansion of privacy to cover all communications relating to a client	<p>One commenter suggested additional privacy guidance on communications “behind the scenes” including:</p> <ul style="list-style-type: none"> • Communications between the investment advisor and head office • Communications between advisors and compliance departments • Communications with approved investment lenders <p>He had a particular concern about identity theft.</p>	This suggestion is beyond the scope of this Policy.