



FUND FACTS DELIVERY: POS STAGE 2 STRATEGIES FOR SUCCESS

Taking advantage of the Point Of Sale regulations for Fund Facts Delivery

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TABLE OF CONTENTS

Introduction	2
Chapter 1: Regulatory Landscape	2
CSA Regulation (NI 81-101) – what has been announced and anticipated timelines	2
<i>Figure 1 – June 2012 CSA proposed amendment highlights</i>	3
Chapter 2: implementation recommendations	5
Back-office implementation	5
<i>Figure 2 – the InvestorPOS™ repository containing all Fund Facts launched October 2011</i>	6
InvestorPOS™ back-office solution	7
Front-office implementation	8
InvestorPOS™ front-office solution	9
<i>Figure 4 – Front Office implementation for Fund Facts fulfillment through InvestorPOS™</i>	10
Chapter 3: NP 11-201 Electronic Delivery of Documents	10
Background	10
Four components to e-delivery	11
Interaction with Other Legislation	11
MFDA Guidance on e-delivery of Documents	12
IIROC Guidance on e-delivery of Documents	12
HTML links as an acceptable e-delivery method	12
Other compliant e-delivery methods	13
Chapter 4: Legal Considerations	13
Regulatory Sanction	14
Civil Liability	15
Liability of the Dealer	16
A Note on Outsourcing	16
Chapter 5: E-migration strategies	18
Developing an e-migration strategy	18
The need for building blocks	18
The need for e-mail addresses and opt-ins	18
<i>Figure 5 - Dalbar: The 2011 e-delivery benchmark study</i>	19
The need to accelerate adoption	19
<i>Figure 6 - Dalbar: The 2011 e-delivery benchmark study</i>	20
It's time to think differently	20
Everyone has email	20
<i>Figure 7 – Top 50 Countries with highest internet penetration (www.internetworldstats.com)</i>	21
There's no time like the present	22
Consent is not a barrier	22
<i>Figure 8 - Dalbar: The 2011 e-delivery benchmark study</i>	22
Conclusion	23
About the Authors	24
About InvestorPOS™	25
Contact information	25

INTRODUCTION

Industry is waiting for the Canadian Securities Administrators (CSA) to finalize their position on Stage 2 POS which, among other things, authorizes investment dealers and asset managers to replace the prospectus with the Fund Facts document. The CSA is widely expected to publish the final rules implementing Stage 2 in late 2012 and the transition period for moving to the new regime will be compressed. The most recent CSA release proposes a six-month window for transition, and contains the statement ***“It is the CSA’s expectation that systems development to contemplate the delivery of Fund Facts will begin now.”***

Fund Facts delivery represents a significant opportunity for the industry in terms of cost reduction and improved investor satisfaction. However, it also represents a significant effort in terms of implementation. Both dealers and fund managers are looking for partners to provide solutions and guidance with this implementation.

CHAPTER 1: REGULATORY LANDSCAPE

CSA REGULATION (NI 81-101) – WHAT HAS BEEN ANNOUNCED AND ANTICIPATED TIMELINES

On June 21, 2012, the CSA released its proposed amendments to National Instrument 81-101 *“Implementation of Stage 2 of Point of Sale Disclosure for Mutual Funds”*. In it, the CSA suggested a number of content changes to the Fund Facts document intended to improve investors’ understanding of the mutual fund, particularly in the areas of risk disclosure and performance. While most of the amendments were directed at asset managers tasked with creating the Fund Facts documents, the CSA also re-stated its Stage 2 requirement for dealers to deliver the Fund Facts document in lieu of or in addition to the prospectus.

This was part of the CSA’s decision in 2010 to implement the Point of Sale Framework in three stages:

- Stage 1 was completed on January 1, 2011 when amendments to NI 81-101 came into force. These amendments required mutual funds subject to NI 81-101 to produce and file a Fund Facts document and make it available on the mutual fund’s or mutual fund manager’s website, and be delivered or sent to investors free of charge upon request.
- Stage 2, now underway, proposes amendments to NI 81-101 to allow delivery of the Fund Facts document to satisfy the prospectus delivery requirements under securities legislation to deliver a prospectus within two days of buying a mutual fund.

It is the CSA’s expectation that systems development to contemplate the delivery of Fund Facts will begin now.

- In Stage 3, the CSA will publish for further comment any proposed requirements that would implement Fund Facts delivery for mutual funds at, or prior to, the point of sale. As part of Stage 3, the CSA will also consider the applicability of a summary disclosure document and point of sale delivery for other types of publicly offered investment funds.

Although the regulators have been criticized for dragging their heels over implementation, it is unlikely that they will delay implementation past 2013.

This last CSA communication was the result of ten years of industry consultation dating back to the Joint Forum of Financial Market Regulators' Point of Sale initiative in 2003 and to the Ontario Securities Commission's Fair Dealing Model in 2004. Similar point-of-sale initiatives exist in other jurisdictions and are in various stages of implementation around the world. Quasi-regulators such as the International Organization of Securities Commissions (IOSCO) have been examining different approaches and best practices and its "Principles on Point of Sale Disclosure – Final Report" was released in 2011.

The rate of regulatory change and activity has increased over the last decade. In the wake of the 2008 financial crisis, countries around the world have been moving ahead with measures intended to protect the interests of retail investors. In Canada, the emergence of investor advocacy groups like The Canadian Foundation for the Advancement of Investor Rights (FAIR) in 2008 and the OSC's Investor Advisory Panel in 2010 indicate a renewed focus on investor protection.

Point-of-sale discussions have been ongoing since 2003 and although the regulators have been criticized for dragging their heels over implementation, it is unlikely that they will delay implementation past 2013.

10 Years in the making...



- 2003 - Joint Forum first released its POS consultation paper
- 2012 – CSA released its proposed amendments for Stage 2 of NI 81-101
 - Fund managers to make Fund Facts content changes:
 - Quick Facts Δ's, risk warnings, performance benchmark, Top 10 %'s
 - Fund dealers to deliver Fund Facts in lieu of prospectus w/ transaction confirmation
 - Final rule expected by December 2012
 - 6-month transition period for delivery systems and Fund Facts content changes

Figure 1 – June 2012 CSA proposed amendment highlights

At the Investment Industry Regulatory Organization of Canada's (IIROC) September 21, 2012 Compliance Conference, President and CEO Susan Wolburgh Jenah had this to say:

“Over the past few years, confidence in financial markets has been sorely tested around the world in the aftermath of the global economic crisis. While it's been four years since the onset of the financial crisis, global economic conditions remain somewhat fragile and growth prospects are relatively weak. In the wake of the crisis, regulators and policy-makers around the world vowed not to let the crisis go to waste and are moving forward (at various speeds) with necessary reforms that were identified following the near collapse of the global financial system.”

As outlined in a July 2012 research report issued by the Investment Funds Institute of Canada (IFIC), “Point of Sale Disclosure: The Balance Between Consistency and Flexibility”, Canada has been fairly aggressive in its directives surrounding both the disclosure content contained in the Fund Facts and the timely delivery of the document, compared to countries like the U.S., Australia, the U.K and Hong Kong. Certainly the series-specific content contained in the Canadian Fund Facts document is far more detailed than the more general disclosure contained in documents in some of these other jurisdictions. And whereas some jurisdictions in which pre-sale disclosure has been implemented offer oral delivery exemptions where written disclosure is impractical, IFIC suggests that in Canada's framework, delivery timeframes will be more rigid. The detailed disclosure information contained in the Canadian Fund Facts and the delivery requirement of dealers, suggest that Canadian regulators remain very committed to the three-staged point of sale initiative.

Dealers are now faced with a new requirement in which they must deliver the Fund Facts after the trade.

With the comment period for the CSA's Stage 2 amendments now closed (on Sept. 6, 2012) and a proposed 6-month transition period for fund managers and dealers to implement the CSA's final rule, many industry participants expect a final Stage 2 rule from the CSA by December 2012 and a Stage 2 compliance requirement for asset managers and dealers of mid-2013. While asset managers will modify their Fund Facts based on initial templates designed in 2011, dealers are now faced with a new requirement in which they must deliver the Fund Facts after the trade and maintain an audit trail of this delivery activity. At Stage 3, dealers will have to determine how best to deliver the document to investors at or prior to the point of sale.

CHAPTER 2: IMPLEMENTATION RECOMMENDATIONS

The anticipated introduction of Stage 2 POS will allow investment dealers and asset managers to fulfill their compliance requirements by delivering the Fund Facts document in place of the prospectus. While this capability exists today, dealers are limited to implementing Fund Facts where regulatory approval has been granted through the exemptive relief process. Even though a substantial number of asset managers (45) have been granted exemptive relief (representing over 80% of all mutual fund transactions), take-up has been very modest because dealers are reluctant to support more than one fulfillment process. Once Stage 2 is in effect, the potential benefits across the entire investment community are significant. Asset managers will see reduced production costs, dealers will realize economies in document distribution and the investor will receive better information.

Each investment dealer has unique processes and business rules in place to support the compliant delivery of investor communications. The implementation of Stage 2 must address these dealer-specific requirements. For the purpose of this discussion paper, we are grouping these processes into two main categories for POS Stage 2:

1. Back-office implementations
2. Front-office or advisor-led implementations

BACK-OFFICE IMPLEMENTATION

Current back-office compliance processes are transaction-driven and combine the mutual fund trade confirmation with a prospectus and then deliver this integrated package to the investor. Today, there are a range of automated and manual solutions that support this compliant workflow for investment dealers and asset managers. Automated solutions include dynamic (or “smart”) document fulfillment whereby the trade confirmation and prospectus are dynamically assembled or bound together and delivered to the investor. Manual processes often achieve the same result but require the physical collation of the required documents to be delivered to the investor. Replacing this prospectus fulfillment process with a Fund Facts fulfillment process is relatively straightforward because the process remains largely unchanged; the only change is the document itself.

Many dealers may choose to simply “swap” the Fund Facts document for the prospectus. In our view, to do so will be a wasted opportunity. We believe that Stage 2 implementation can be the catalyst to streamline processes and promote a more aggressive e-delivery strategy that will pay dividends for years to come. For those dealers that are currently using a manual or semi-automated process to meet their compliant delivery requirements, there are now several automated industry solutions available. These new industry solutions - including InvestorPOS™ - are also available to those dealers that have implemented an automated solution but might be interested in

Stage 2 implementation can be the catalyst to streamline processes and promote a more aggressive e-delivery strategy.

alternatives that offer new features such as e-delivery and integrated back-office / front-office services.

Essential to this process is access to a robust, high-quality Fund Facts repository that contains the entire universe of Fund Facts. Combining this database with a multi-channel delivery infrastructure that supports compliant delivery in printed and electronic channels completes the solution.

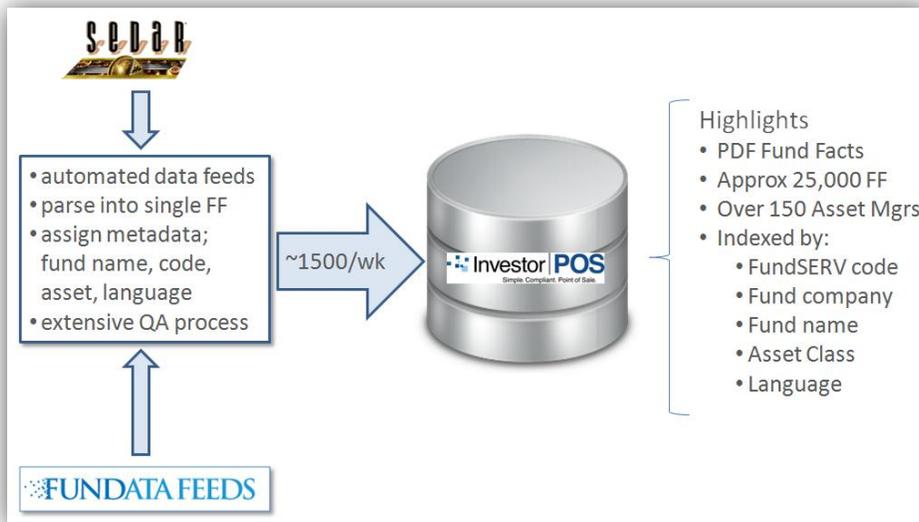


Figure 2 – the InvestorPOS™ repository containing all Fund Facts launched October 2011

Implementing a Stage 2 back-office implementation will deliver significant cost savings to dealers and asset managers. It is estimated that the combined reduction of page count (Fund Facts are 2-4 pages compared to 200+ pages for prospectuses) and lower postage rates will deliver an overall per-package cost reduction of 55-60%! Leveraging e-delivery will result in even greater savings. In times of cost management, these savings are critical.

For many Stage 2 back-office implementations, the internal process changes may be relatively minor. However, the client communications strategy will require significant attention. The mere introduction of a new document, such as the Fund Facts document, will require a plan for investor education. Even though most industry experts agree that the Fund Facts document is a much improved investor communication piece (when compared to the prospectus), any change requires education and support. We also believe that dealers have a tremendous opportunity to promote e-delivery with the introduction of this new document and this channel strategy will also require education and support for the investor.

It is estimated that the combined reduction of page count and lower postage rates will deliver an overall per-package cost reduction of 55-60%!

From a timing standpoint, the CSA *“do not think a lengthy transition period is necessary”*. We agree with this position. The implementation of Stage 2 for back-office processes delivers benefits for all parties and delaying implementation defers these benefits. With the introduction of multiple solutions in the marketplace, dealers are now in a position to select a partner/solution that meets their unique requirements and proceed with implementation. We believe that implementation can occur in 8-12 weeks depending on the particular business requirements of each dealer.

INVESTORPOS™ BACK-OFFICE SOLUTION

InvestorPOS™ offers an end-to-end compliant solution that supports dealers’ back-office fulfillment processes and delivers the resulting benefits to dealers, asset managers and investors. Leveraging the InvestorPOS™ repository, trade confirmations and the required Fund Facts are delivered to investors via mail or e-delivery.

Key features of the InvestorPOS™ solution:

- Repository – contains every Fund Facts document, integrated with SEDAR to ensure 100% content currency
- Data processing and dynamic document composition – trade confirmations and Fund Facts document are composed into an integrated package
- Multi-channel delivery – print/mail and e-delivery supported - all channel fulfillment including print/mail and e-delivery managed internally by InvestorPOS
- Project Management Support – implementation and e-migration support provided

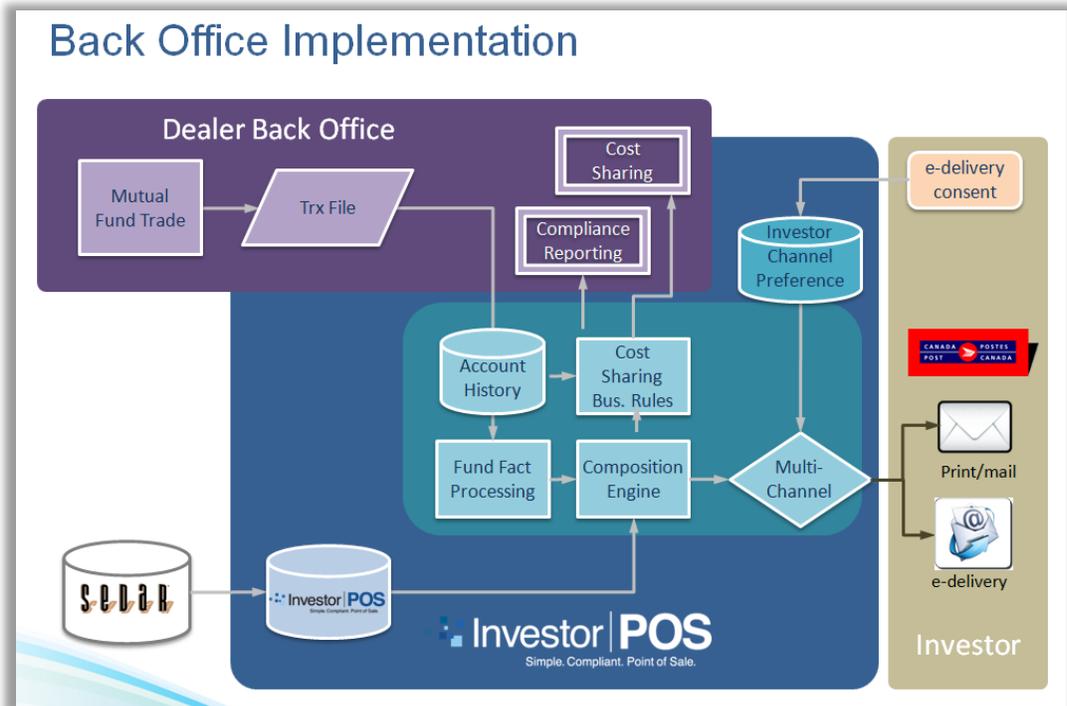


Figure 3 – Back-Office implementation for Fund Facts fulfillment through InvestorPOS

FRONT-OFFICE IMPLEMENTATION

Today, many dealers rely on their advisors to fulfill their compliance requirements. Advisors deliver prospectuses and other compliance documents to their investors as part of the sales process. In many ways, this process more closely resembles a Stage 3 or true “Point of Sale” delivery requirement. For front-office implementations, the introduction of the Fund Facts document is a welcome change for advisors. Accessing a repository that contains every Fund Facts document will be a vast improvement over searching a fund company’s website for prospectuses in order to fulfill their compliance requirements.

Dealers that are currently using these front-office processes stand to realize substantial gains with the implementation of Stage 2. Under POS stage 2, dealers could move away from a process where prospectuses are sourced from many locations (websites and warehouses) to a process where they will access all Fund Facts documents from a single online repository. They will be improving the delivery process from one that is managed by an advisor (or assistant) to one that is automated and multi-channel. Advisor productivity will be positively impacted, compliance delivery gaps will be eliminated and investors will receive better information faster.

The current front-office process is inherently more risky from a compliance standpoint when compared to the back-office process described above. Compliant delivery of mutual fund prospectuses is reliant on an individual – the advisor or assistant – to

complete this process. Reporting on compliant delivery across tens of thousands of accounts by potentially thousands of advisors also introduces a significant compliance reporting challenge for these dealers. While there are many shortfalls with this process, a significant advantage is that this process closely resembles a “Point of Sale” fulfillment process. In the event that Stage 3 POS moves forward these dealers will be more prepared to meet these implementation requirements.

Under POS stage 2, dealers will be improving the delivery process from one that is managed by an advisor to one that is automated and multi-channel.

Another front-office implementation is in the bank branch where mutual funds are sold in a retail environment. Current compliance processes require a physical prospectus to be delivered to the investor at point of sale. From our discussions with the banks, it would appear that the vast majority of them are storing printed prospectuses in each branch for mutual fund advisors and their clients. Again, the implementation of a comprehensive repository that contains all Fund Facts will deliver huge productivity gains to the advisor while improving customer service and dramatically reducing costs.

Implementing Stage 2 in the front-office environment will require process changes within the dealer and retail bank branches. The introduction of a new document – the Fund Facts - and an automated process to deliver this document to investors will require advisor training and adoption. However, unlike process changes that are likely to be met with resistance, this change will deliver huge gains to all stakeholders which we anticipate will lead to rapid adoption.

INVESTORPOS™ FRONT-OFFICE SOLUTION

When the InvestorPOS™ repository was launched in October 2011, the capability of delivering a front-office solution was in place. Advisors have access to all Fund Facts documents which can be delivered to investors in printed or electronic formats. As of October, 2012, over 1500 advisors are using the repository to find and deliver Fund Facts to investors and prospects. As we move to a dealer-specific solution, the repository is being white-labeled to support the front-office requirements of dealers within their IT infrastructure. Compliance reporting and multi-channel delivery options are being customized to meet their unique requirements.

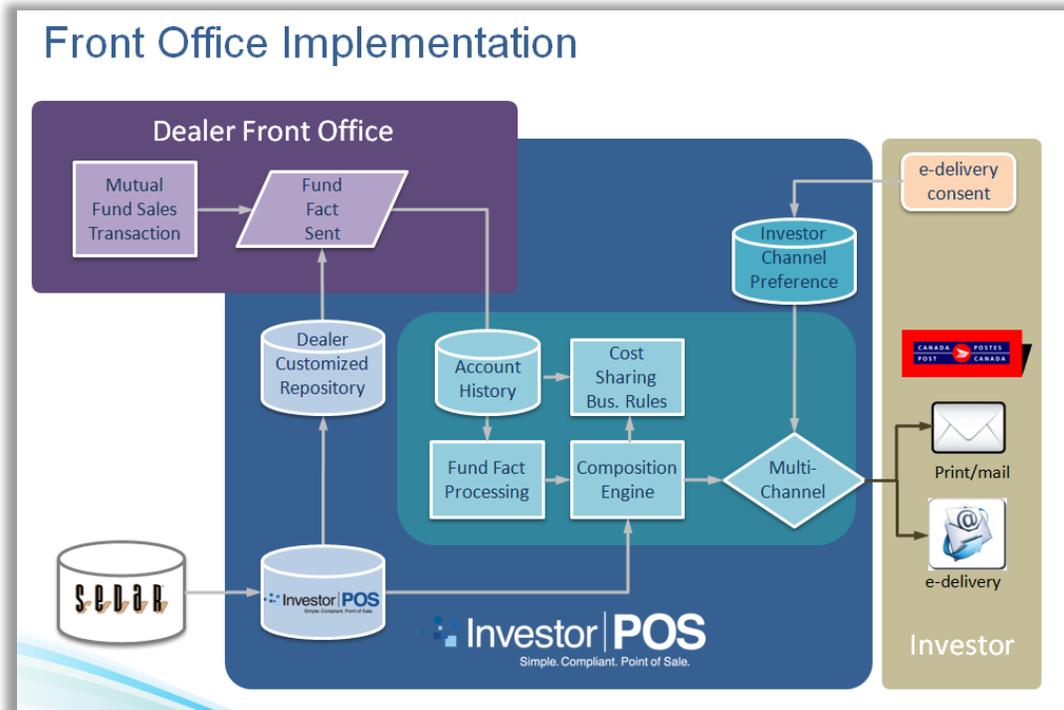


Figure 4 – Front Office implementation for Fund Facts fulfillment through InvestorPOS™

CHAPTER 3: NP 11-201 ELECTRONIC DELIVERY OF DOCUMENTS

BACKGROUND

The CSA's National Policy 11-201 *Electronic Delivery of Documents* (NP 11-201) was originally introduced in 2000 and provided stringent rules around the electronic delivery of documents. Since 2000, much has changed. Electronic communications have become much more common than when the Policy was first drafted and there is ample corporate and government legislation in place to protect privacy of information. The CSA also recognized that the use of electronic communications can help industry deliver compliance documents more cost-efficiently, timely and in a more widespread manner than by paper.

The original NP 11-201 prescribed in detail the manner and form for getting consent from security holders for electronic delivery. However, current securities legislation does not require a deliverer to obtain express consent of the intended recipient nor does it prescribe the form or content of any consent. Securities legislation instead focuses on requirements to deliver various documents.

Current securities legislation does not require a deliverer to obtain express consent nor does it prescribe the form or content of any consent.

As a result, in 2011 the CSA amended the Policy to be far less prescriptive. The amended NP 11-201 eliminates most of the guidance to stakeholders on the form and content of consent, including the sample consent form in Appendix A of the old NP 11-201.

However, it does emphasize that the process of obtaining express consent, and then delivering the document in accordance with that consent, may enable the deliverer to achieve some of the basic components of electronic delivery as outlined in the Policy.

FOUR COMPONENTS TO E-DELIVERY

NP 11-201 provides industry guidance on how the obligations imposed under Canadian securities legislation to deliver documents can be satisfied by electronic means. It states that there are four components to electronic delivery that should be satisfied in order to show good delivery:

1. *Notice of Delivery* - The intended recipient of the document should have notice that the document has been, or will be, sent electronically or otherwise electronically made available. Notice may be given in any manner, electronic or non-electronic, such as electronic mail, telephone or communication in paper form.
2. *Access* - The intended recipient of the document should have easy access to the document. Deliverers should ensure that electronic access to documents is not burdensome or overly complicated for recipients. A document delivered electronically should be delivered in a way that enables the recipient to retain a permanent record of it, as is the case with paper delivery.
3. *Evidence of Delivery* - The deliverer should obtain evidence that the document has been delivered or otherwise made available to the recipient. If electronic delivery is attempted but cannot be accomplished for any reason, delivery should be accomplished by an alternative method, such as by paper delivery.
4. *Delivery of an Unaltered Document* - The deliverer should ensure, to the extent possible, that no alteration or corruption of the document occurs during the delivery process.

INTERACTION WITH OTHER LEGISLATION

There have been numerous legislative changes that concern electronic delivery of documents since NP 11-201 was first implemented in 2000. The amendments to NP 11-201 made on November 18, 2011 were intended to be less prescriptive in nature in order to encourage firms to better leverage technology and the emerging electronic channel. Some of the relevant legislative changes include:

- All jurisdictions except the Northwest Territories have passed electronic commerce legislation (ECAs) that governs electronic transactions
- Certain corporate legislation now provides explicit guidance on the electronic delivery of documents. For example, the regulations to the *Canada Business*

Corporations Act provide guidance on the electronic delivery of documents for corporations governed by that Act. The corporate laws of Ontario and of Alberta adopt the requirements under the ECA of the respective jurisdiction for sending electronic documents

- Self-regulatory organizations like the MFDA and IIROC have also issued guidance on the electronic delivery of documents
- The federal government and governments in other jurisdictions have adopted privacy legislation

MFDA GUIDANCE ON E-DELIVERY OF DOCUMENTS

MFDA expressly states in their Member Regulation notice MR-0015 *Electronic Delivery of Documents* that the MFDA will permit members to electronically transmit documents that they are required or permitted to deliver to clients under the MFDA Rules provided they consider National Policy 11-201. The notice further states that MFDA members who intend to deliver documents to clients by electronic means are encouraged to review NP- 11-201 in its entirety.

IIROC GUIDANCE ON E-DELIVERY OF DOCUMENTS

IIROC states that dealer members may satisfy the delivery requirements regarding initial disclosure and subsequent updates through electronic means. Dealer members that intend to rely on electronic delivery of the information would be expected to satisfy the requirements noted in IDA Member Regulation Notice MR-008.

HTML LINKS AS AN ACCEPTABLE E-DELIVERY METHOD

One of the goals of the amended NP 11-201 is to reduce technology-related language to avoid references to particular technologies that may become obsolete. To that end, it does not expressly state what are deemed acceptable forms of electronic delivery of documents.

Section 3.3 of NP-11-201 cautions against the use of hyperlinks to other documents delivered electronically because of the risk of becoming legally responsible for the accuracy of the hyperlinked information. Best practice would restrict the use of hyperlinks in an email only to the Fund Facts PDF document, with no hyperlinks outside of that PDF.

An email containing hyperlinks to the specific Fund Facts document PDFs meets NP-11-201 compliance requirements:

1. *Notice of Delivery* – The intended recipient is emailed notice that the document is available.
2. *Access* – the intended recipient can easily access the Fund Fact by clicking on the hyperlink, which will open a PDF of the Fund Fact. The PDF can be saved if the

recipient wishes to retain a permanent record of it, as is the case with paper delivery.

3. *Evidence of Delivery* – The deliverer has evidence the document has been delivered. The deliverer can also track when or if the document was opened. In the case of delivery failure, best practice workflow automatically redirects to print/mail delivery.
4. *Delivery of an Unaltered Document* – A permanent hyperlink ensures data integrity. It cannot become corrupt and it remains active for -7 years. From a compliance standpoint, advisors can prove that the email they sent to an investor referred to a specific Fund Facts document (potentially years later).

OTHER COMPLIANT E-DELIVERY METHODS

InvestorPOS promotes the use of HTML links as the preferred delivery method with the lowest compliance-related risk for the reasons listed above. However, there are a number of alternative e-delivery choices including:

1. *PDF attachments to an email* – The advisor is able to track that the intended recipient received the email, however they are unable to track that the recipient opened the PDF attachments.
2. *Access to a secure portal* – The system sends an email to the recipient that contains a link to a secure portal. The recipient logs into the portal with a user ID and password to retrieve the Fund Facts documents.
3. *Availability of Fund Facts documents through the dealers' investor portal* – Integrate InvestorPOS repository with your online investor portal for investors to access Fund Facts.
4. *Fully managed solution* – A system that composes the trade confirmation and bundles it with Fund Facts document, with choice of print/mail or e-delivery.

CHAPTER 4: LEGAL CONSIDERATIONS

Our Fund Facts delivery solutions for both asset managers and dealers have been informed by the Joint Forum of Financial Market Regulators' Point of Sale Framework, the Canadian Securities Administrators' (CSA) directives, policy statements of IIROC, MFDA, and the AMF, together with input from industry committees led by the Investment Funds Institute of Canada (IFIC). In particular, we have had the benefit of regular consultation with the Ontario Securities Commission (OSC).

The InvestorPOS delivery solution provides dealers with enhanced ability to reduce the risk of non-compliance which is inherent in many dealers' current prospectus fulfillment processes.

POS Stage 2 marks an important turning point for all dealers who distribute mutual funds in Canada. Once POS Stage 2 is in effect, something widely expected to occur during 2013, all dealers will be required to deliver the correct Fund Facts document to purchasers of mutual fund securities within two days of the purchase. This requirement can be expected to affect all dealers and advisors. Failure to comply with this requirement will expose the financial advisor and his or her sponsoring dealer to disciplinary action, regulatory sanction and civil liability.

Currently, subsection 71 (1) of the *Securities Act* (Ontario) requires a dealer to send the purchaser the latest prospectus and any amendments within two days of the trade date. When POS Stage 2 is effective, the dealer will send a Fund Facts document to meet this prospectus delivery requirement, with the net effect of having delivery of the Fund Facts document be equivalent to delivery of a prospectus.

The prospectus delivery obligation in securities legislation is and has always been a dealer obligation. It has never been the case that prospectus delivery is an obligation that was to have been fulfilled by someone other than the dealer, or the financial advisor on behalf of the sponsoring dealer. What happens under POS Stage 2 is that if a dealer sends the Fund Facts document, the statutory obligation to send the prospectus is deemed to be satisfied so that there is no liability for failure to send the prospectus.

A dealer can choose to send the simplified prospectus at the same time as a Fund Facts document. However, the dealer cannot choose to stay within the old regime and *not* send a Fund Facts document on the basis that the dealer is delivering the simplified prospectus.

REGULATORY SANCTION

Market participants are required and expected to comply with securities legislation, and failure to do so can result in anything from a reprimand to fines, penalties and the loss of registration.

Fund Facts delivery is intended to take the place of prospectus delivery. There are few things more fundamental to our securities regulatory regime than the idea that a purchaser of securities is entitled to "full true and plain" disclosure about the securities being purchased, contained in a document called a prospectus. It has become incontrovertible that most purchasers of securities do not read or use the traditional prospectus: it is too long, too legalistic and too difficult to understand. Hence, the search for a document and a delivery protocol which will give investors "access to key

A dealer's compliance system and internal control systems must be capable of ensuring that Fund Facts delivery is carried out, every time, and that any exceptions are identified and rectified.

information, in language they can easily understand, at a time that is relevant to their investment decision”.

Because prospectus delivery is so central to the integrity of the regulatory regime, dealers have an obligation to ensure that the obligation is met consistently. So a dealer’s compliance system and internal control systems must be capable of ensuring that prospectus delivery is carried out consistently, and that exceptions or omissions are identified and rectified. All of these concepts carry over once dealers are able to send the Fund Facts document in lieu of the prospectus.

Dealers will not only have to send the Fund Facts document, they will have to be able to demonstrate that the correct Fund Facts document was sent to the correct recipient within the allowable time period. In other words, they must have, or arrange for, auditable systems so that there can be little room for dispute as to whether the Fund Facts document was or was not sent.

Clearly, this is not an area where it is prudent for dealers to rely on each financial advisor or their sales assistant to send the Fund Facts. There are simply too many Fund Facts documents and demonstrating compliance will be difficult if not impossible unless processes are standardized.

CIVIL LIABILITY

As if the threat of regulatory sanction for non-compliance were not enough, dealers also have market risk and civil liability for non-delivery of the Fund Facts document.

When we say “non-delivery”, we are using the lawyer’s sense of the word. In this context, there is only “good delivery” and “non-delivery”, and nothing in between. For securities law purposes, delivery of a Fund Facts document that is out of date, even if it is for the correct fund and the correct class or series, is the same as if the delivery had not occurred. Industry veterans have observed how the use of classes and series of fund shares and units has proliferated. Many funds now have six, or eight or twelve different series of the same fund. Well guess what. Each class or series has its own Fund Facts document. And this is before taking into account language preference. And delivery of the Fund Facts document for the particular class or series purchased by the investor is the only thing that will meet the “good delivery” requirement. If the dealer sends the Fund Facts for all of the classes or series offered by the fund, the delivery requirement will not have been met. The regulations permit you to send only the Fund Facts for the class or series of the fund that the purchaser actually purchased.

What about the civil liability for non-delivery of the Fund Facts? As you might expect, it is the same as for non-delivery of a prospectus.

For securities law purposes, delivery of a Fund Facts document that is out of date, even if it is for the correct fund and the correct class or series is the same as if the delivery had not occurred.

LIABILITY OF THE DEALER

Under the current Section 133 of the Securities Act (Ontario), a purchaser of a security to whom a prospectus was required to be sent or delivered but was not sent or delivered in compliance with subsection 71 (1) has a right of action for rescission or damages against the dealer or offeror who failed to comply with the applicable requirement.

Once POS Stage 2 is effective, the legislation will read:

(New) Section 133 - Liability of dealer or offeror

Each of the following has a right of action for rescission or damages against the dealer or offeror who failed to comply with the applicable requirement:

- 1. A purchaser of a security to whom a prospectus was required to be sent or delivered but was not sent or delivered in compliance with subsection 71 (1).*
- 2. A purchaser of an investment fund security to whom a prescribed disclosure document referred to in subsection 71 (1.1) was required to be sent or delivered but was not sent or delivered in compliance with the regulations.*

A purchaser of an investment fund security will have a right of action for rescission or damages against the dealer.

A right of action for damages means that the dealer is liable to put the investor in the place the investor would have been, economically speaking, had the Fund Facts been delivered. More to the point, the right of rescission entitles the purchaser to simply rescind the purchase and have his or her money returned to them if the purchaser is able to show that the Fund Facts document was not received.

In other words, if the prospectus is not delivered, the purchaser has a free option. If the price of the security declines, a purchaser who did not receive the right Fund Facts document can cancel the agreement. The dealer, on the other hand, will be required to pay any resulting dilution to the mutual fund.

A NOTE ON OUTSOURCING

For dealers and advisors who do business in client name, there may be an expectation that the fund companies will send out the Fund Facts documents along with the trade confirmation. It is unclear that fund companies are currently planning to do this. As stated, delivery of the Fund Facts document will be a dealer obligation, and prospectus delivery has always been a dealer obligation.

This can be contrasted to the requirement to send trade confirmations. Prior to Registration Reform, the Securities Act (Ontario) contained this provision:

Exemption-Mutual fund trades

A registered dealer need not send to its client a written confirmation of a trade in a security of a mutual fund where the manager of the mutual fund sends the client a written confirmation containing the information required to be sent under this section.

The legislation also contained similar provisions exempting mutual fund dealers from sending account statements. By contrast, the legislation has never historically contemplated that any person other than the dealer would be responsible for prospectus delivery. Hence, as we move to the Fund Facts document taking the place of the prospectus, there is no specific regulatory framework under which fund companies would take on this additional delivery requirement.

However, if a fund manager did agree to provide this service for their dealers doing client name business, such an arrangement would constitute an “outsourcing” arrangement for the dealer under *National Instrument 31-103, Registration Requirements, Exemptions and Ongoing Registrant Obligations*. In the absence of regulatory relief, a dealer will need a separate outsourcing agreement with each and every fund company with whom the dealer does business.

Members of the MFDA may find MFDA Policy Bulletin #0396-P National Instrument 31-103 Requirements instructive:

Outsourcing Account Statements and Trade Confirmations

Under NI 31-103, dealers are responsible for sending account statements and trade confirmations to clients. MFDA Rules 5.3.1(c) and (d) and 5.4.1 allow for instances where a dealer may rely on another party to send account statements or trade confirmations on its behalf. Based on discussions with the CSA, the MFDA understands that Rules 5.3.1(c) and (d) and 5.4.1 do not require amendment to comply with NI 31-103, as such instances would be considered “outsourcing arrangements”. The NI 31-103 Companion Policy notes that Members are responsible and accountable for all functions that they outsource to a service provider. Outsourcing arrangements should be subject to a binding agreement, in writing, stating that due-diligence should be conducted prior to engaging third party service providers and that the firm, its auditors and regulators should have the same access to the work product of such service providers as they would if the firm performed the activities itself.

As of this writing, the MFDA has issued no official guidance with respect to the outsourcing of Fund Facts delivery. There is however no reason to believe that the regulators’ approach will differ from what they have said with regard to statements and trade confirmations.

CHAPTER 5: E-MIGRATION STRATEGIES

DEVELOPING AN E-MIGRATION STRATEGY

The business case for migrating as much paper-based communication to an electronic medium is obvious. It's all about the money you can save. While there are many other reasons to do it, nothing affects the bottom line in a clearer, more direct way than the cost of a postage stamp multiplied by the number of pieces of mail you can avoid sending out. Do the math: Add up all the trade confirmations, statements, annual reports, prospectuses, and tax documents that are sent out over a 12-month period and multiply the total by the cost of a stamp. There isn't a management team around that wouldn't listen to you if you proposed delivering that amount in annual cost reduction. So what's keeping that from happening?

THE NEED FOR BUILDING BLOCKS

Just like print, delivering documents electronically requires the infrastructure to do it. Much of the back-end components like data management and composition remain the same, but once a PDF is produced, instead of the print and mail steps, an organization needs the infrastructure to deliver notifications, and a secure environment in which to present, store and archive these documents. This capability is the cost of entry to play in this space.

Many in the industry are aware of the cost savings to be had and have made the investment in the infrastructure. Others have opted for externally managed solutions. Over the past several years, a number of such solutions have emerged, offering options that reduce both the ongoing cost and the cost to entry for those who have delayed or deferred this investment.

THE NEED FOR E-MAIL ADDRESSES AND OPT-INS

As noted above, compliance and regulatory constraints are no longer barriers to migrating to an electronic communications and document presentation platform. Provided that the basic provisions are met, there are very few limitations to pursuing paperless communications. While not absolutely imperative, getting customer consent and email addresses are the keys to throwing open the electronic communication channels.

Success in obtaining consent and email addresses is not a technology challenge. It's a challenge to obtaining the status quo, which is paper-based. These customers will not migrate to e-delivery on their own. They need to be alerted, informed, reassured and encouraged to switch habits. Achieving an organic opt-in rate that surpasses 10% is unlikely.

"In 2008, 85% of firms reported that they hosted their site internally. In 2011, that number has dropped to 71%."

As experienced by the 80 U.S. financial services firms included in the long-established Dalbar study, time and patience were not sufficient to drive paperless adoption. After five years of offering e-presentment capability, 60% of these firms still had not achieved 10% adoption rates.

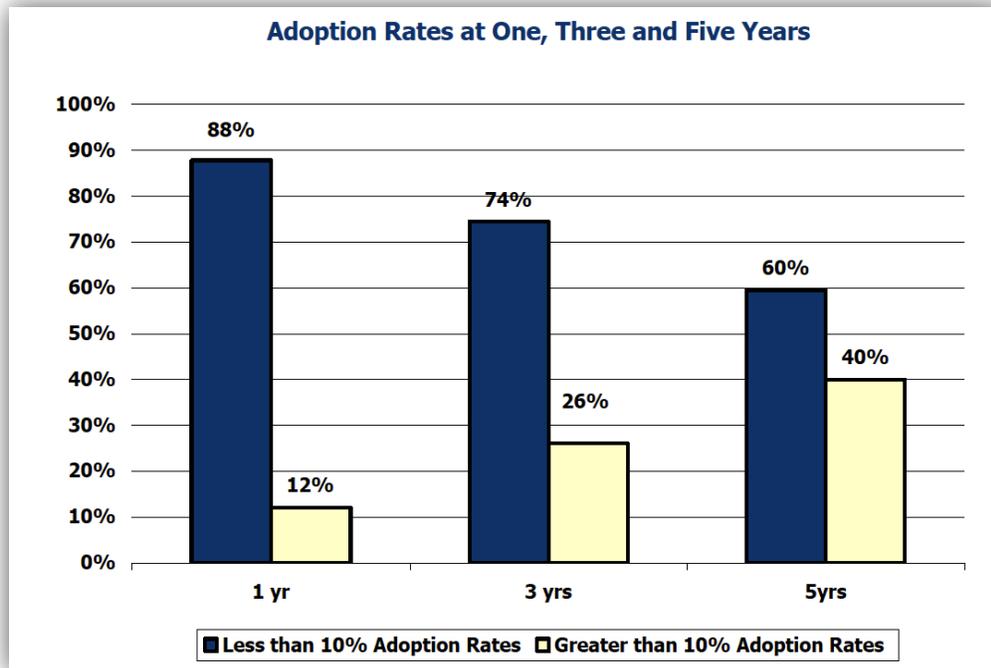


Figure 5 - Dalbar: The 2011 e-delivery benchmark study

THE NEED TO ACCELERATE ADOPTION

All hope is not lost! With a focused e-migration strategy, opt-in rates well above 10% can be achieved.

According to InfoTrends (The Future of Electronic Bill Presentment & Payment in North America, 2010), the top five benefits of e-migration are:

1. Good for the environment
2. Convenient
3. Free
4. Easy to manage
5. A reminder to pay

The same study also found that the top five barriers are:

1. Archiving and backup reasons
2. Security concerns
3. Not easy enough

4. Resistance to change
5. Incentive is not attractive enough

A cornerstone of an effective e-migration strategy is a well-executed marketing campaign or series of campaigns that build from these consumer insights. Unfortunately, none of these insights offer the magic bullet to drive conversion rates. The messaging must address the barriers and benefits, but ultimately, moving the needle in a significant way involves pervasive and constant messaging in all channels, through as many communications as possible, to keep the e-migration call to action front and centre.

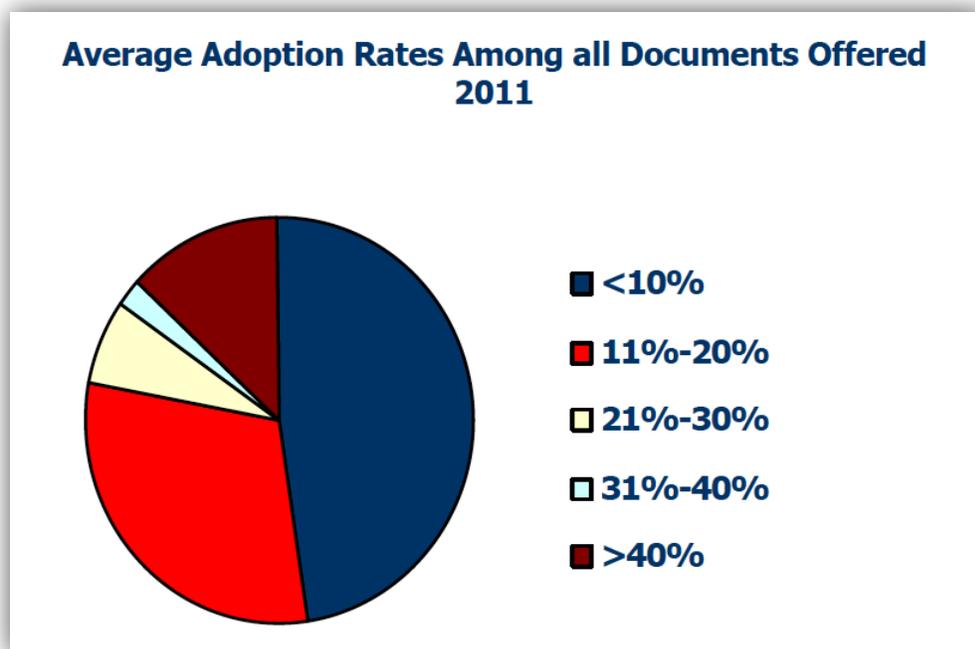


Figure 6 - Dalbar: The 2011 e-delivery benchmark study

With focused marketing efforts, results in the financial services industry are moving beyond the organic growth barrier of 10% toward the 30% - 40% range.

IT'S TIME TO THINK DIFFERENTLY

Some organizations have managed to break through the 40% paperless adoption rate. Just like getting past 10% requires something different – a focused marketing effort – but moving beyond 40% requires something different again. It requires a new way of thinking, one that **assumes** an electronic environment.

EVERYONE HAS EMAIL

Discussions about e-migration inevitably lead to concerns about equal access to all customers. The reality is that Internet and email access in Canada is the norm. It's not

the minority and it's not limited to certain demographics. Over 80% of Canadians have Internet access. We have reached a tipping point and gone well beyond. We need to begin to think about e-migration in terms of a population that is connected and regularly communicates electronically. There are still those who do not have email, but they likely comprise less than 10% of a financial services company's customer base.

TOP 50 COUNTRIES WITH THE HIGHEST INTERNET PENETRATION RATE						
#	Country or Region	Penetration (% Population)	Country Literacy	Internet Users Latest Data	Population (2011 Est.)	Latest Data Source
1	Iceland	97.8 %	99.0 %	304,129	311,058	ITU - Dec/11
2	Norway	97.2 %	99.0 %	4,560,572	4,691,849	ITU - Dec/11
3	Sweden	92.9 %	99.0 %	8,441,718	9,088,728	ITU - Dec/11
4	Falkland Islands	92.4 %	99.0 %	2,900	3,140	ITU - Dec/11
16	Germany	82.7 %	99.0 %	67,364,898	81,471,834	ITU - Dec/11
17	Korea, South	82.7 %	99.0 %	40,329,660	48,754,657	ITU - Dec/11
18	Liechtenstein	81.8 %	99.0 %	28,826	35,236	ITU - Dec/11
19	Canada	81.6 %	99.0 %	27,757,540	34,030,589	ITU - Dec/11
20	Belgium	81.4 %	99.0 %	8,489,901	10,431,477	ITU - Dec/11
21	Andorra	81.0 %	100.0 %	68,740	84,825	ITU - Dec/11
22	Antigua & Barbuda	80.8 %	99.0 %	70,968	87,884	ITU - Dec/11
45	Hong Kong	68.7 %	94.6 %	4,894,913	7,122,508	ITU - Dec/11
46	Argentina	67.0 %	97.7 %	28,000,000	41,769,726	ITU - Dec/11
47	Barbados	66.9 %	99.7 %	191,878	286,705	ITU - Dec/11
48	Ireland	66.8 %	99.0 %	3,122,358	4,670,976	ITU - Dec/11
49	Spain	65.6 %	97.7 %	30,654,678	46,754,784	ITU - Dec/11
50	Hungary	65.3 %	99.4 %	6,516,627	9,976,062	ITU - Dec/11

Figure 7 – Top 50 Countries with highest internet penetration (www.internetworldstats.com)

How does this help us think differently? Just as we assume our customers have phone lines and residential addresses, assuming that our customers have email access allows us to design completely new processes. CSA NP 11-201 is an example of how this reality allows us to reinterpret ideas of consent, access, notice, and delivery. It also opens doors to deliver more value and redesign the customer experience. Mapping these new experiences enables interactive applications like education materials, personalized calculators, and intelligent cross-selling in addition to increasing the diversion of paper to electronic communications.

THERE'S NO TIME LIKE THE PRESENT

Many organizations are wary of changing a process that involves meeting regulatory obligations. Along comes CSA Regulation NI 81-101. This is a new document. It involves a new process. If ever there was a good time to take advantage of different thinking it's now.

Conventional thinking would suggest replacing current prospectus distribution with Fund Facts document, and then introducing the organic e-migration. The organization would bank the savings from printing fewer pages, and then begin the slow journey toward 10% paperless adoption, all the while hoping these reductions will fund the changes that need to happen to build out the online platform and the changes at the printer. What would the experience look like if you assumed that a Fund Facts document was first and always electronic? So not a piece of paper at all, but a digital file: created electronically, transmitted across networks (not mailed), stored and retrieved on servers (not cabinets and bankers boxes). What kind of savings would that deliver? There will never be a better time to find out.

CONSENT IS NOT A BARRIER

Consent is an important part of any e-migration strategy. Securities legislation does not require a deliverer to obtain consent from the recipient, nor does it prescribe the form or content of any consent. However the process of obtaining consent can be a convenient way of meeting several other requirements.

In cases where obtaining express consent is a real barrier to breakthrough results, some firms are beginning to explore creative ways to meet requirements and foregoing the consent-based route.

The introduction of CSA Regulation NI 81-101 requirements invites new thinking with respect to consent. Obviously the most popular channel for obtaining consent to communicate electronically is online. However, the fastest growing channel, and likely the most effective conversion channel, is the client in a face-to-face setting with an advisor. The new requirements are linked to point of sale disclosures, and therefore, by definition, are connected to interactions that are taking place within an advisory context. Forms need to be filled in and documents need to be signed.

Opt-in Methods (All Documents)	Automatic	Opt-in via Web site	Opt-in during meeting with advisor	Opt-in via phone	Opt-in via email
2008	7%	53%	10%	16%	10%
2011	8%	49%	17%	17%	6%

Figure 8 - Dalbar: The 2011 e-delivery benchmark study

Thinking differently, here is an opportunity to recognize that for the customer, most communications are already happening electronically. While filling out a form, an advisor can simply indicate “that by filling in your email address, you agree that you will receive your trade confirmation and Fund Facts document electronically. Afterward, notification of other documents we are required to deliver, including your account statements, will be emailed to you.” It becomes the norm, rather than an acquisition activity.

CONCLUSION

POS Stage 2 presents a great opportunity for industry to embrace change while delivering cost reduction and improved investor satisfaction. While implementing new process and workflow requires significant effort, InvestorPOS offers dealers and asset manager’s expertise, solutions and guidance that will lead to successful implementation. It is the CSA’s expectation that systems development to contemplate the delivery of Fund Facts will begin now.

We are in a new environment for e-delivery. New regulations have been introduced, and the tipping point has been reached in Internet access. These game-changing factors have created an environment in which organizations can see e-migration through to the final phase without taking on a disproportionate amount of market risk. While this evolution has been underway for several years, we now have a critical confluence of events that will finally make paperless, digital communications the norm. Every organization needs to consider how to capitalize on the move to e-migration. Those who stick with organic approaches to gradually reduce paper will be left with additional communication costs and limitations on introducing and delivering customer value in a timely way. Those who seize the opportunity that is in front of us right now can achieve significant results and significant savings.

ABOUT THE AUTHORS



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For more than 10 years, Dave has been an ambassador for relevant, personalized communications. Most recently, at Blue ID, Dave has worked with investment firms and banks to help them develop and execute communications programs. In a consulting role, Dave has led his clients to see dramatic cost and paper reductions while improving the effectiveness of their communications. Dave has accumulated a wealth of experience and understanding of what it takes to deliver on the promise of personalization within large organizations – without having to run from the CFO.

ABOUT INVESTORPOS™

InvestorPOS™ is a hosted, Software-as-a-Service (SaaS) solution and suite of modules that allows fund managers and dealers to efficiently create and deliver Fund Facts and other disclosure documents to investors. Visit www.investorpos.com for more information.

InvestorPOS™ is jointly owned by VAULT Solutions and Distributech Inc. VAULT Solutions is a dynamic technology firm focused on creating customer-facing web solutions for the financial services industry. For over 15 years, VAULT has provided award-winning web solutions to Canada's leading asset managers and investment dealers. Distributech provides a range of multi-channel communications solutions to the financial services industry and has a 20-year history of building long-term outsourcing relationships with many leading Canadian financial institutions.

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