

Companion Paper to Fund Industry Guidelines for Electronic Signatures

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Background

The benefits of electronic signatures are clear. As an industry, we need to keep up with the technology that is expected as a result of changing demographics of both our clients and our advisors. Digital signature solutions for e-signatures are now being employed through many e-sign services in the financial industry; however the technical specifications and functionality that they include may differ.

Distributors (deliverers of the e-signed documents) that have engaged an e-sign service will have done their due diligence in ensuring that these technical specifications meet their security and compliance requirements, but organizations such as manufacturers (recipients of the completed e-signed documents), which are on the receiving end of an electronically-signed document, may not be aware of the distributor's due diligence and usage of the e-sign service.

Notice

The accompanying Investment Fund Industry Guidelines for Electronic Signatures (the "Guidelines") were developed by Fundserv Inc. in consultation with an industry working group, including The Investment Funds Institute of Canada. They are intended as guidance for Fundserv members in order to facilitate a standardized approach to electronic signature use and acceptability for Fundserv members. Members should seek legal advice as to the applicable laws if they have any questions or require further information about electronic commerce and electronic signatures and how they apply to their business. Fundserv believes that the following requirements are in compliance with applicable law but takes no responsibility for reliance on the Guidelines by its members and is not providing legal advice to its members.

Business Purpose

The purposes of these Fundserv Customer Industry Guidelines for Electronic Signatures are three-fold:

- 1) They create technology and e-sign service-neutral guidelines which deliverers can use to determine what functionality they would require when shopping for an e-sign service.
- 2) They give the distributors that are obtaining e-signatures from clients the ability to self-attest that they have complied with industry-accepted guidelines for managing and completing these documents. This ensures that there is a universal minimum standard that is being applied to the methodology used to acquire e-signatures.
- 3) They give manufacturers, and other organizations that are on the receiving end of an e-signed document, the assurance that e-signatures are obtained using these Guidelines as a minimum benchmark. This is facilitated through an addendum to the Fundserv customer contract (the "Addendum") that outlines the terms and conditions distributors will use to send client instructions to a counter-party where e-signatures have been obtained and will allow recipients of e-signed documents to rely on and act upon those instructions. Parties that will be obtaining e-signatures from investors will be responsible for the collection and management of electronic documents as required by applicable laws and as established in these Guidelines, and will therefore indemnify receiving parties from all liability related to acting on those instructions.

1. General FAQ

1.1 *What is the definition of an electronic signature? Does it include digital signatures?*

An “electronic signature”, or “e-signature” refers to electronic information that a person creates or adopts in order to sign a document and that is in, attached to or associated with the document. Some examples include: (i) a typed name on an electronic form or document; (ii) an image of a handwritten signature on a transmitted fax, (iii) clicking “agree” or “disagree” on an electronic “terms and agreements” contract, and (iv) a handwritten but digitally captured signature made on a touch device, such as a tablet or smartphone (sometimes referred to as a “dynamic signature”).

A “digital signature” is a type of electronic signature that includes a certificate of authority to identify both the party requesting a signature and the party providing one.

1.2 *How were the Guidelines and Addendum developed?*

Fundserv developed the Guidelines based on member feedback that identified the need for an industry-wide minimum standard for accepted e-signature criteria and a centralized agreement between Fundserv members. The Guidelines were further developed along with the IFIC E-signature sub-group, as well as from feedback from other members and service providers. The Addendum was produced by Fundserv’s legal counsel based on the business requirements put forth by Fundserv.

1.3 *Who do the Guidelines and Addendum not apply to?*

The Guidelines and Addendum apply to Fundserv members where a distributor will be using an e-sign system to obtain electronically signed documents, then in turn transferring them to a counterparty (i.e. manufacturer or other distributor) for execution of the instructions.

Here are some examples where the Guidelines and Addendum are applicable:

- Client Name accounts where the e-signed documents are sent to the manufacturer.
- Any account where an e-signed transfer form is sent to the relinquishing institution.

1.4 *Who do the Guidelines and Addendum not apply to?*

The Addendum does not apply to any organization that is not a Fundserv member; however, any industry participant can use the Guidelines as a reference point while implementing their own e-sign solution.

For Fundserv members, it does not apply to a distributor that either does not obtain electronically signed documents or is not required to send them to a counter-party.

Here are some examples where the Guidelines and Addendum are not applicable:

- Any account where the documentation is not e-signed
- Nominee accounts where the e-signed documents are being retained by the distributor.
- Where the advisor is using a manufacturer’s e-sign service to complete documents (the obtainer and the destination of the documents are both the manufacturer).

1.5 *When did the Addendum come into effect?*

The Addendum came into effect on November 1, 2018.

If you are a deliverer, the Addendum takes effect the first time you send an electronically-signed document to a counter-party following this date.

If you are a recipient, the Addendum takes effect when you first act on the instructions provided in an electronically-signed document following this date.

1.6 Why don't distributors need to sign the Addendum?

Similar to the Systematic Plan Agreement, the Addendum outlines the responsibilities incumbent on the organization obtaining the electronic signature as well as the organization receiving the electronically-signed document. In consultation with our legal counsel, this was the recommended approach to meet this requirement.

1.7 What other benefits are there to not requiring a signed agreement from distributors?

There are many benefits in taking this approach:

- 1) The Guidelines and Addendum are applicable to all Fundserv members at once on the same date rather than being slowly integrated as each distributor signs up.
- 2) It relieves the considerable administrative task of tracking which distributors have signed up and cross-referencing this list each time instructions must be acted on.
- 3) Further to point 2, it minimizes the risk of trade delays in the event that instructions are received using an electronic signature.

1.8 Why is there a need for the Guidelines if the Receiving Parties are being indemnified anyway?

The Guidelines set the minimum accepted criteria for the acceptance of e-signatures by all Fundserv members, which minimizes the risk that unconventional or irregular means are used to authorize investor instructions.

1.9 Do the Guidelines and Addendum only apply to orders placed on the Fundserv network?

The Terms and Conditions outlined in the Addendum apply to all instructions sent between Fundserv members, including both wire order trades as well as those sent direct and confirmed back through Fundserv.

1.10 Do the Guidelines and Addendum apply to non-mutual fund products such as segregated funds and alternative investments?

Yes, although only if e-signed documents are sent to a counterparty for execution. The Guidelines and Addendum are general enough to accommodate any investment vehicle and the documents related to them. Where applicable, specific manufacturers may make exceptions based on their internal business processes.

1.11 Which document types can be e-signed?

Your organization will need to evaluate where under applicable law an e-signature is not effective (such as documents which fall under testamentary law), then determine whether a business justification outweighs that risk.

Otherwise, a document that has been signed electronically is legally equivalent to one that has been wet signed and should therefore be acceptable.

The following is a list of commonly accepted e-signed documents. Whereas Fundserv does not have the ability to enforce this list, it provides a reasonable framework for distributors who would like to understand what is generally accepted by manufacturers.

Note: Fundserv supports the reduction of form handling through the [Electronic Processing Agreement \(EPA\)](#). Where appropriate, distributors are encouraged to retain documentation at source rather than sending copies to fund manufacturers.

Document Types generally accepted

- Application forms*
- Trade instructions
- Systematic Plan forms
- Transfer forms
- Fee for Service Arrangements
- FATCA/CRS forms
- Limited Authorization Forms

*In the case of Beneficiary designation contained within an application form, some manufacturers have determined that they will accept these when e-signed, however, this is not yet a consistent practice. As a result, distributors should confirm the acceptability of an e-signed beneficiary election with the fund manufacturers they partner with.

1.12 Are the Fundserv Standards being updated as a result of this initiative?

No. Changes to the Standards to support future e-signature initiatives will be tabled and reviewed through the various Fundserv councils and committees and approved by the Standards Steering Committee, as per the current process.

2. Distributor FAQ

2.1 What is the difference between Fundserv's Guidelines and applicable electronic commerce acts?

While various electronic commerce acts outline the requirements that apply to the collection of e-signatures, it is technology-neutral. The Guidelines, while remaining solution neutral, focus on the functional requirements to implement of an electronic signature service.

A distributor should always validate their e-sign service with their SRO to ensure they are compliant prior to implementing a new solution.

2.2 What happens if my organization can't meet these minimum Guidelines?

Please validate with your e-signature provider whether they can comply with the Guidelines. If they cannot, then e-signed documents should not be sent to counter-parties.

2.3 Can advisors use their own e-sign service provider?

No. As per the Contract Addendum, distributors are responsible for ensuring that their electronic signature methodology complies with the stated Guidelines. The most effective way to do this is to establish a corporate-wide approved tool that advisors can use for obtaining electronic signatures from investors.

2.4 Will Fundserv be auditing distributors to ensure compliance with the Guidelines?

No. Fundserv's role is to facilitate the Terms and Conditions between distributors and manufacturers in order to support the e-signature initiative. Similar to the Systematic Plan Agreement, distributors acknowledge responsibility for collecting the required information from their clients, under the conditions set forth in the Guidelines.

2.5 Will all manufacturers accept my electronically-signed document?

For the most part, yes - manufacturers are expected to accept the documents listed above in 1.11. There will be exceptions where manufacturers may or may not accept, for example, a beneficiary designation using an e-signed form for a registered

plan account. Before sending your first e-signed document to a manufacturer or other recipient, check with their Dealer Relations team for their specific conditions of acceptance.

2.6 Will manufacturers still require a signature guarantee on my e-signed forms?

Fund manufacturers will each have their own policy around the requirement of signature guarantees, however, with the introduction of the Fundserv e-signature guidelines around dealer controls as well as the contract addendum including an indemnity agreement, manufacturers acknowledge that these measures may preclude the need for an additional dealer guarantee.

As a result, several fund manufacturers no longer require a signature guarantee on forms that they can easily identify as being e-signed.

2.7 How can distributors help ensure this initiative is successful?

Distributors can help to simplify the acceptance of e-signed documents by managing any internal exceptions from their side. If, for example, your advisors need to be pre-approved to use an e-sign service, implement a monitoring system to oversee this activity without relying on the manufacturers to accept/reject e-sign documents from only select codes.

Implementation considerations for distributors

- Does your e-signature service provider meet the minimum criteria set out in the Guidelines?
- Have you informed your SRO of your intent to start collecting signatures electronically from investors?
- Has your organization informed your advisors and other administrative staff of their responsibilities in obtaining electronic signatures from their clients, including the requirement that they may only use an e-sign service that has been approved by head office?
- Have you informed each manufacturer that you do business with that your organization will start submitting electronically signed documents to them?
 - Have you provided a sample of an e-signed form so that they understand how it will be identified?
 - Have you inquired with them about any exceptions in their acceptance of e-signed documents?
 - Have you confirmed the method by which your organization will be sending them the completed document (where applicable)?

3. Manufacturer FAQ

3.1 How can manufacturers identify an e-signed document?

When viewing an image of an electronically signed document (which can happen when sent by fax), it can sometimes be difficult to identify if the signature is in fact wet signed or e-signed. Because manufacturers will have processes in place around the acceptance of specific types of e-signed documents, they must be able to tell them apart. As a result, section 1.1.i of the Guidelines requires that e-signed documents must be easily identifiable to the recipient.

3.2 Does my organization need to track which distributors will be sending e-signed documents?

No, the process that is implemented around the acceptance of e-signed documents should be related to the type of document, but not each distributor. As stated above, electronically signed documents will be identifiable by your operations staff once they are received and can therefore be routed into the appropriate workflow from there.

3.3 How do we reject an e-signed document?

With the exception of document types where an e-signature is not effective, manufacturers should not reject a client's instructions based solely on whether the documentation is e-signed. In conjunction with their existing policies and procedures, a manufacturer will want to apply steps to request back-up documentation, including the investor's wet signature, using their existing NIGO process.

3.4 What happens if my organization won't accept any e-signed documents?

The consequence of this decision is a business one. This and other modernization initiatives depend on broad acceptance from manufacturers in order for the distribution channel to have the confidence to invest in a change to their services. Not accepting electronically signed documents may decrease the ease of doing business with your organization.

3.5 How can manufacturers help ensure this initiative is successful?

Distributors have frequently stated that an industry initiative is less likely to be successful if they are responsible for managing the processing exceptions. As a manufacturer, ensure that you are mitigating barriers to the acceptance of e-signed documents by implementing a NIGO process that allows your organization to inform distributors when they need to obtain back-up, wet signed documentation according to your policies and procedures without impeding the flow of business.

Implementation considerations for manufacturers

- Have your organization's legal & compliance teams reviewed the Contract Addendum and Guidelines, and as a result, do they have an e-signature policy that articulates the acceptance of e-signed documents from distributors?
- Do your processing and dealer relations teams understand:
 - How to differentiate a wet signed document from an e-signed document?
 - Which documents will or will not be accepted when they are e-signed?
 - The recommended way in which distributors should send the completed documents (where applicable)?
- Does your organization have a clearly-defined NIGO process for handling e-signed documents that must be wet signed?

Resource Library

The Uniform Electronic Commerce Act (UECA) - <http://www.ulcc.ca/en/1999-winnipeg-mb/359-civil-section-documents/1138-1999-electronic-commerce-act-annotated>

Quebec's C-1.1 Act to establish a legal framework for information technology - <http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/C-1.1>

Personal Information Protection and Electronic Documents Act (PIPEDA) - <http://laws-lois.justice.gc.ca/eng/acts/P-8.6/>

MFDA Electronic Communications Review Bulletin - <http://mfda.ca/bulletin/0744-c/>

IIROC Notice regarding the use of e-signature - https://www.iiroc.ca/documents/2019/4926ed1b-b31f-4a48-ae84-7aff9fa05363_en.pdf

OSC National Policy 11-201 – Electronic Delivery of Documents - http://www.osc.gov.on.ca/documents/en/Securities-Category1/pol_20111118_11-201_amd-electronic.pdf

CAPSA Guideline 2 – Electronic Communication in the Pension Industry -

<https://www.capsa-acor.org/Documents/View/14>

e-commerce legislation, by province -

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| The Electronic Commerce and Information Act | Manitoba | http://web2.gov.mb.ca/laws/statutes/ccsm/e055e.php |
| Electronic Transactions Act | New Brunswick | https://www.gnb.ca/legis/business/pastsessions/54/54-3/status-e/bills/070-e.asp |
| Electronic Commerce Act | Newfoundland and Labrador | https://www.assembly.nl.ca/Legislation/sr/statutes/e05-2.htm |
| Electronic Transactions Act | Northwest Territories | https://www.assembly.gov.nt.ca/sites/default/files/11-03-10bill3.pdf |
| Electronic Commerce Act | Nova Scotia | https://www.nslegislature.ca/sites/default/files/legc/statutes/electron.htm |
| Electronic Commerce Act | Nunavut | https://www.canlii.org/en/nu/laws/stat/snu-2004-c-7/latest/snu-2004-c-7.html |
| Electronic Commerce Act | Ontario | https://www.canlii.org/en/on/laws/stat/so-2000-c-17/latest/so-2000-c-17.html |
| Electronic Commerce Act | Prince Edward Island | https://www.princeedwardisland.ca/sites/default/files/legislation/E-04-1-Electronic%20Commerce%20Act.pdf |
| An Act to establish a legal framework for information technology | Quebec | http://legisquebec.gouv.qc.ca/en/ShowDoc/cs/C-1.1 |
| The Electronic Information and Documents Act | Saskatchewan | https://www.canlii.org/en/sk/laws/stat/ss-2000-c-e-7.22/latest/ss-2000-c-e-7.22.html |
| Electronic Commerce Act | Yukon | http://www.gov.yk.ca/legislation/acts/elco.pdf |