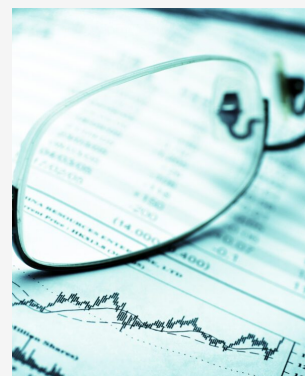


Will access finally equal delivery? Progress in access model for certain Canadian continuous disclosure documents

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Authors: [James R. Brown](#), [Rosalind Hunter](#), [Jessie Armour](#)

An alternative model for the delivery of certain continuous disclosure documents by non-investment fund reporting issuers is back on the table in Canada. On November 19, 2024, the Canadian Securities Administrators (CSA) announced a further proposed access model (the proposed amendments) for annual and interim financial statements and related management's discussion and analysis (MD&A).

Background to access equals delivery

The CSA first sought feedback on the potential implementation of an access model in January 2020 when it published CSA Consultation Paper 51-405 *Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers*. After considering the initial feedback, on April 7, 2022, the CSA published for comment proposed amendments to implement an "access equals delivery" model for delivery of both prospectuses and continuous disclosure documents, in an effort to continue to modernize investor communications. The prospectus model was well received and was subsequently adopted [PDF] across the CSA, coming into force in April of this year. However, stakeholders expressed concerns that the access model for continuous disclosure documents raised investor protection concerns, particularly for retail investors, causing the CSA to shelve the proposal.

Having taken the time to review and consider the comments received on the April 2022 proposal, the CSA has republished for comment an access equals delivery model only for certain disclosure documents. The proposed amendments provide for a revamped alternative that is predicated on the notification functionality of SEDAR+, which allows subscribers to receive email notifications when continuous disclosure documents have been filed by particular issuers.

The proposed access model for financial statements and MD&A

Under the current delivery regime, reporting issuers must send, on an annual basis, a form through which investors can request copies of the issuer's financial statements and related MD&A in either electronic or paper form. With the proposed amendments, reporting issuers would be able to satisfy electronic delivery of their financial statements and MD&A by

- filing the document on SEDAR+

- on the same day, issuing and filing a news release on SEDAR+ announcing that
 - the document is accessible electronically
 - the SEDAR+ notification functionality is available
 - an electronic or paper copy of the document can be obtained upon request
 - any standing instructions to receive the document in electronic or paper form will continue to be followed
- on the same day, posting the document on the issuer's website (if applicable)

In addition to the specific news release requirements, reporting issuers opting for the access model must also provide additional disclosure on their delivery practices. Disclosure must outline that

- the financial statements and related MD&A will be available electronically on SEDAR+
- investors can subscribe for SEDAR+ filing notifications
- investors can obtain an electronic or paper copy of the documents by contacting the issuer
- any standing delivery instructions will continue to be honoured

This disclosure must be made in three separate locations:

- in a news release at least 25 days before using the access model if, during the previous financial period, the issuer complied with the current delivery requirements in NI 51-102
- in a separate document sent to investors each year with the issuer's proxy-related materials or, if the issuer is using the notice-and-access model in connection with a meeting of shareholders, with the notice
- on its website in the same location where the issuer posts its financial statements and MD&A, if applicable

Issuers will also be required to provide at least 25 days' advanced notice by way of a news release if they decide to stop using the proposed access model.

Unlike the CSA's initial proposal, the proposed amendments will not be available to SEC foreign issuers and designated foreign issuers.

Feedback and next steps

The CSA has provided a deadline of February 17, 2025, for those wishing to provide feedback on the proposed amendments. The CSA is seeking specific comments on any practical issues that might arise for issuers who would be required to issue and file a news release and post the document to its website on the date the applicable continuous disclosure document is filed on SEDAR+.

As a practical matter, if adopted as proposed, the changes may not have a significant effect on current practices by issuers. Issuers currently must send an election card to shareholders who may opt in to receiving electronic or paper copies of these materials. That will not change under the proposed access model, nor will the obligation to actually deliver those materials if requested.

At this time, the CSA has noted that it agrees with certain comments received during the initial consultation that did not support the availability of an access model for other types of continuous disclosure documents, such as proxy-related materials and takeover and issuer bid circulars. It remains uncertain what would need to change for the CSA to consider extending an access model to time-sensitive documents requiring participation from

securityholders.