

Canadian Securities Administrators implement access model for prospectuses

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After several years of consideration, the Canadian Securities Administrators (CSA) are implementing an access equals delivery model for prospectus delivery in Canada. On January 11, 2024, the CSA [published](#) [PDF] amendments to several national instruments that will implement an optional alternative model for prospectus delivery for Canadian reporting issuers, other than investment funds. The amendments will come into force on April 16, 2024, subject to receiving expected approvals.

Access equals delivery has long been a feature of U.S. capital markets, allowing cost savings benefits to issuers, and the dealers acting as their underwriters or agents, by avoiding the need to print and mail copies of a prospectus to each purchaser, or even to send copies to purchasers by e-mail. Inspired by the U.S. model, in 2020 the CSA first solicited feedback on the possible adoption of a similar access model in Canada. In April 2022, the CSA proposed amendments to give full effect to an access model. The proposed model would have applied not only to prospectuses, but also to annual financial statements, interim financial reports and related MD&A for non-investment fund reporting issuers.

While the April 2022 proposal was generally well received, concerns were raised about an access model for continuous disclosure documents, leading the CSA to move ahead only with a prospectus access model at this time.

The approval of the prospectus access model is certainly a welcome development.

What is the access model?

Under the access model, reporting issuers will have the ability to elect not to print and mail prospectuses or send them electronically by e-mail. Instead, the issuer and the dealers may satisfy their prospectus delivery obligations under securities law by following these procedures:

- **Preliminary prospectus** — by filing the preliminary prospectus and any amendment on SEDAR+
- **Final prospectus** — by filing the final prospectus and any amendment on SEDAR+, and also issuing and filing a news release on SEDAR+ that states

- in the title of the news release, that the document is accessible through SEDAR+
- that access to the document is provided in accordance with securities legislation relating to procedures for providing access to a prospectus and to any amendment
- that the document is accessible at www.sedarplus.com
- the securities that are offered under the document
- that “An electronic or paper copy of the final prospectus and any amendment may be obtained, without charge, from [insert contact information for the issuer or dealer, as applicable] by providing the contact with an email address or address, as applicable.”

In general, the news release may only be issued after a receipt for the final prospectus has been issued. However, the amendments set out different requirements for news releases relating to shelf distributions and post-receipt pricing (PREP) prospectuses. For these types of prospectuses, a supplement or supplemented PREP prospectus need only be filed within a required period after the pricing of the offering. To accommodate these types of offerings, the news release may be issued following pricing and disclosure, on a forward-looking basis, that the supplement or supplemented PREP prospectus will be filed on SEDAR+ within two business days. This avoids the need to issue more than one news release. The CSA have also clarified in amendments to the prospectus rule companion policies that a separate news release specifically about the availability of the prospectus on SEDAR+ is not required. Instead, the prescribed information may be included in another news release announcing information with respect to the offering.

The access model is not available for rights offerings, medium-term note offerings, and other continuous distributions under a shelf prospectus. The CSA has noted that these distributions are dealt with in a different manner under Canadian securities laws and that the access model is not well suited for these types of distributions. The model is also not currently available for investment fund securities.

If a purchaser requests an electronic or paper copy of the preliminary prospectus, final prospectus or any amendment from the issuer or dealer, a copy of the document in the format requested by the purchaser must be sent by the issuer or dealer without charge to the purchaser. In the case of the final prospectus or any amendment, the document must be sent within two business days of the date of the request.

Issuers will continue to have the ability to elect to print and mail the prospectus or to e-mail electronic copies of it (subject to compliance with the requirements for electronic delivery) and not rely on the access model. However, in light of the significant advantages offered, we expect that take-up of the access model will be fairly rapid and widespread.

A note about withdrawal rights

The amendments also adjust the withdrawal rights available under applicable securities laws when the access model is relied upon. Under the new access model, withdrawal rights may be exercised within two business days after the *later of* providing public access to the prospectus (i.e., filing on SEDAR+, and issuing a press release) and the date the purchaser enters a contract to purchase “the security”. This is a change from the current formulation of the deadline for exercise of withdrawal rights in certain provinces such as Ontario, where those rights expire at midnight on the second day after the purchaser receives the prospectus.

While this may not be a significant difference normally, in unusual circumstances it could potentially extend the time period for withdrawal rights to run. Using the access model, it will no longer be possible to deliver the prospectus and wait for the withdrawal rights to expire

before issuing the trade confirmation or entering into some other type of purchase agreement. This difference may be important if additional securities are sold to an existing purchaser in an offering in circumstances where the sale to another purchaser was not completed for any reason. The withdrawal period for the additional securities would be longer than the withdrawal period for the securities that were initially sold because it would run from when the trade confirmation for the additional securities is issued, rather than the prospectus delivery date.

The CSA has added guidance in the companion policies to clarify that a request for an electronic or paper copy of the final prospectus or any amendment will not affect the calculation of the period of time during which a purchaser or subscriber's withdrawal rights must be exercised.

Will the access model be expanded?

The CSA has indicated that it is also considering an access model for investment fund issuers. In light of the investor protection concerns expressed by certain commenters on the April 2022 proposal, the CSA is further considering whether an access model for continuous disclosure documents can be implemented that addresses these concerns.

access equals delivery