

New Access Model for Delivery of Prospectuses

Ben McLaughlin

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Background

On January 11, 2024, the Canadian Securities Administrators (CSA) published final form amendments and changes to several national instruments and the related companion policies to implement an access model delivery (Access Model) for prospectuses of non-investment fund reporting issuers (the CSA Notice). The Access Model is designed to provide issuers with the option to provide digital access to, and notice of, preliminary and final prospectuses via SEDAR+ rather than physical paper delivery, as is currently required. Provided all necessary approvals are obtained, the Access Model is expected to come into force on April 16, 2024.

The Access Model was proposed as a modernized, cost-effective, and environmentally friendly option for the delivery of prospectuses, similar to the notice and access model implemented in 2013, which permits certain proxy materials to be provided to securityholders electronically. Similarly, the Access Model will provide issuers with the option to forgo paper delivery of prospectuses if specified procedures are followed. Purchasers or prospective purchasers who prefer paper copies or electronic copies (via email rather than SEDAR+) will be able to request such copies.

The Access Model

The Access Model will be implemented through amendments and changes to: (i) National Instrument (NI) 41-101 – *General Prospectus Requirements* (NI 41-101) and Companion Policy (CP) 41-101CP to NI 41-101; (ii) NI 44-101 – *Short Form Prospectus Distributions* (NI 44-101); (iii) NI 44-102 – *Shelf Distributions* (NI 44-102) and CP 44-102CP to NI 44-102; (iv) NI 44-103 – *Post-Receipt Pricing* and CP 44-103CP to NI 44-103; and (v) National Policy 47-201 – *Trading Securities Using the Internet and Other Electronic Means*.

To use the Access Model under NI 41-101, an issuer will need to post a preliminary prospectus (and any amendment) on SEDAR+, and meet the following criteria with respect to a final prospectus (and any amendment):

1. The prospectus must be filed on SEDAR+ and a receipt must be issued and posted on SEDAR+ for such prospectus.

2. Following the step in item (1) above, a news release must be issued and filed on SEDAR+ that states:

- a. in the title of the news release, that the document is accessible on SEDAR+;
- b. that access is being provided in accordance with securities legislation relating to procedures for providing access to a prospectus and any amendment;
- c. that the document is accessible at sedarplus.ca;
- d. the securities that are offered under the document; and
- e. the following: “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.

If a purchaser or prospective purchaser requests an electronic or paper copy of a preliminary prospectus or any amendment, a copy in the format requested must be sent by the issuer or dealer without charge at the specified email address or address (within two business days from the date of request, in the case of a final prospectus or amendment). The CSA added further guidance to clarify that investment dealers will be able to rely on the Access Model to satisfy their prospectus delivery obligations.

The electronic delivery procedures are similar under the amendments to NI 44-101 and NI 44-102 with respect to short form prospectuses and shelf prospectus supplements and base shelf prospectuses, respectively.

The CSA Notice also confirmed that the CSA was considering additional ways to enhance the Access Model, including proposals for other continuous disclosure filings.

While the objective of the Access Model is the same across jurisdictions, the amendments and changes are being implemented in two ways. In Ontario and all jurisdictions other than British Columbia, Quebec, and New Brunswick, providing public access to the prospectus and alerting investors that it is accessible on SEDAR+ will **constitute delivery** of the prospectus. Meanwhile, in British Columbia, Quebec, and New Brunswick, providing the same public access and alert to investors will satisfy the conditions for a **delivery exemption**. There are certain other jurisdiction-specific amendments and changes set out in the CSA Notice, along with full details of the amendments and changes.

Conclusion

The Access Model is a welcome change to the delivery requirements for issuers and investment dealers

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that will serve to limit the time and burden of printing, together with the associated administrative, financial, and environmental costs.

Issuers are encouraged to speak to a member of the Cassels Securities Group about using the Access Model following implementation, as well as regarding additional amendments and changes specified in the CSA Notice and particular jurisdictional differences.

This publication is a general summary of the law. It does not replace legal advice tailored to your specific circumstances.