

CSA Notice of Republication and Request for Comment – Proposed Amendments and Proposed Changes to Implement an Access Model for Certain Continuous Disclosure Documents of Non-Investment Fund Reporting Issuers

November 19, 2024

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are republishing for a 90-day comment period, proposed amendments to

- National Instrument 51-102 *Continuous Disclosure Obligations* (**proposed amendments to NI 51-102**)

and proposed changes to

- Companion Policy 51-102CP *Continuous Disclosure Obligations*, and
- Companion Policy 54-101CP to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*

(collectively, the **Proposed Changes**)

and are publishing for comment, related proposed consequential amendments to

- National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*

(collectively, with proposed amendments to NI 51-102, the **Proposed Amendments**).

The public comment period will end on **February 17, 2025**.

The text of the Proposed Amendments and the Proposed Changes are contained in Annexes B through E of this notice and will also be available on websites of CSA jurisdictions, including:

www.lautorite.qc.ca

www.asc.ca

www.bcsc.bc.ca

nssc.novascotia.ca

www.fcmb.ca

www.osc.ca
www.fcaa.gov.sk.ca
www.mbsecurities.ca

Substance and Purpose

If implemented, the Proposed Amendments and the Proposed Changes will introduce an access model for annual financial statements, interim financial reports and related management's discussion & analysis (**MD&A**) for non-investment fund reporting issuers (the **Proposed Access Model**).

The Proposed Access Model provides alternative procedures whereby electronic access may be provided to annual financial statements, interim financial reports and related MD&A (**CD documents**) instead of following the delivery requirements currently found in securities legislation.

The Proposed Amendments stipulate that electronic access to a CD document has been provided if

- the issuer has filed the document on SEDAR+,
- on the same day, the issuer has issued and filed 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, and
- on the same day, if the issuer has a website, the issuer has posted the document on its website.

The SEDAR+ notification functionality allows a person or company (**subscriber**) to sign up (**subscribe**), through SEDAR+, to receive an email notification when the CD documents that they subscribed for have been filed by the issuer on SEDAR+. We further describe this functionality below.

In addition, the Proposed Amendments require the issuer to disclose how to access CD documents electronically, that the SEDAR+ notification functionality is available, how to obtain a copy of a CD document and that standing instructions can be provided. The required disclosure must be made

- in a news release before using the Proposed Access Model if, during the previous financial period, the issuer complied with the current delivery requirements in National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**),
- in a separate document sent to investors with the proxy-related materials or, if the issuer is using the notice-and-access model, with the notice, and
- on its website in the same location where the issuer posts its CD documents, if applicable.

Before ceasing to use the Proposed Access Model, the Proposed Amendments require the issuer to inform investors of this change in a news release.

We recognize that information technology is an important and useful tool in facilitating communication with investors. The Proposed Access Model is consistent with the general evolution of our capital markets and recognizes that investors are increasingly accessing and consuming information electronically. The Proposed Access Model will further enhance investors' awareness of the availability of CD documents and how they can access them electronically.

The Proposed Access Model does not impact an investor's ability to request CD documents in electronic or paper form. If an investor has provided standing instructions to an intermediary to receive the documents in electronic or paper form, the documents will continue to be sent based on those instructions even if the issuer has selected to provide electronic access to its CD documents in accordance with the Proposed Access Model.

Background

On January 9, 2020, we published CSA Consultation Paper 51-405 *Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers*. The purpose of the consultation was to provide a forum for discussion on the appropriateness of implementing an access model in the Canadian market. We solicited views on whether an access model should be introduced, the types of documents to which the model should apply and its mechanics.

At that time, a significant majority of commenters expressed general support for implementing an access model in Canada. On April 7, 2022, we published for comment proposed amendments and proposed changes to implement an access model for prospectuses generally and CD documents (the **Initial Proposals**). During the comment period, which ended on July 6, 2022, we received submissions from 29 commenters. We have considered the comments received and thank the commenters for their input. The names of commenters and a summary of their comments, together with our responses, are contained in Annex A of this notice.

The Initial Proposals for prospectuses were generally well received by commenters. On January 11, 2024, we published final amendments and changes implementing an access model for prospectuses. These final amendments and changes generally came into force on April 16, 2024.

However, several commenters expressed concerns about implementing the Initial Proposals for CD documents, including potential negative effects on retail investors.

Summary of Changes to the Initial Proposals

After considering the comments received, we made material changes to the Initial Proposals for CD documents and the Proposed Amendments and Proposed Changes reflect certain of the comments and enhance the Proposed Access Model from an investor perspective, including the following:

1. SEDAR+ notification functionality

We introduced disclosure requirements on the SEDAR+ notification functionality, which allows a person or company to subscribe to receive a notification by email when an issuer has filed a CD document. A subscriber may select one or more issuers for which notifications by email are requested. The email received by a subscriber includes a link to the issuer's CD document. The email will include one or more issuers and documents depending on the subscription. A subscriber can update its subscription at any time based

on its preferences (i.e., to change its email address, to add or remove an issuer or document or to unsubscribe).

The SEDAR+ notification functionality addresses the main concern raised by commenters about implementing an access model for CD documents, which is the need for meaningful notice to investors that a CD document is accessible electronically, including providing a link to the document. The Proposed Amendments require information about the SEDAR+ notification functionality to increase investors' awareness of this functionality and of SEDAR+, the official site to access public documents and information filed by issuers.

2. *Before providing electronic access to CD documents*

We added a requirement to issue and file a news release on SEDAR+ at least 25 days before using the Proposed Access Model if, during the previous financial period, the issuer either (i) sent a request form to investors that investors may use to request a copy of the issuer's CD documents, or (ii) sent its documents to all investors. The requirement is similar to the notice required in advance of the first time that an issuer uses the notice-and-access model¹. The news release is intended to provide advance notice to investors that CD documents will be accessible electronically, that the SEDAR+ notification functionality is available, how to obtain a copy of a CD document and that standing instructions can be provided. We added guidance to encourage issuers to consider whether additional methods of advance notification about the use of the Proposed Access Model may be appropriate.

3. *Sending a separate document*

We added a requirement to include a separate document with the proxy-related materials or, if the issuer is using the notice-and-access model, with the notice, sent to investors. This document would serve as an annual reminder to investors about how to access CD documents electronically, that the SEDAR+ notification functionality is available, how to obtain a copy of a document and that standing instructions can be provided.

This requirement is intended to serve as an annual reminder to investors that the issuer is using the Proposed Access Model and to describe how investors can access the documents electronically or obtain copies of the documents in electronic or paper form.

4. *Issuer's website*

We added a requirement for issuers that have a website to, on the same day the issuer has filed a CD document on SEDAR+, post the CD document on its website and to provide the same information that is required to be provided with the proxy-related materials or, if the issuer is using the notice-and-access model, the notice about using that model. We added guidance suggesting that this information should be posted on the same webpage and in proximity to where the CD document is posted. We also added guidance suggesting that the CD document should remain posted at least until the CD document for the next financial period is posted on the issuer's website.

¹ See section 9.1.1 of NI 51-102 and section 2.7.1 of National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (NI 54-101).

We note that the most intuitive place for investors to look for information about an issuer is the issuer's website. Posting CD documents on its website would help further facilitate investor engagement and would provide alternatives for investors to electronically access an issuer's CD documents.

5. *Ceasing to provide electronic access to CD documents*

We added a requirement that an issuer issue and file a news release on SEDAR+ at least 25 days before the issuer intends to cease using the Proposed Access Model announcing that it will no longer provide electronic access to CD documents and that it will comply with the current delivery requirements under securities legislation.

The requirement aims to provide advance notice to investors that the issuer will no longer be using the Proposed Access Model.

6. *Interaction with current delivery requirements*

We added guidance to clarify that an issuer may provide electronic access to its annual financial statements and related MD&A, interim financial reports and related MD&A, or both. If an issuer provides electronic access to its annual financial statements and related MD&A only, the current delivery requirements apply to the issuer's interim financial reports and related MD&A, and vice versa.

7. *Contact information*

We added guidance to clarify that when an issuer provides contact information in its news releases, with its proxy-related materials or notice and on its website, if applicable, so that an investor can request a copy of the issuer's CD documents, the issuer should include a physical address, email address and telephone number in its contact information, along with any other contact information the issuer considers would aid an investor in contacting the issuer.

8. *Standing instructions*

We added guidance to clarify that, when an issuer provides electronic access to its CD documents, this will not override the beneficial owner's standing instructions to receive the documents in electronic or paper form in accordance with NI 54-101.

We are now proposing amendments to NI 54-101 to clarify that issuers using the Proposed Access Model must send the separate document mentioned above with the proxy-related materials or, if the issuer is using the notice-and-access model, the notice, to beneficial owners of its securities.

As we consider these to be material changes, we are republishing the Proposed Amendments and Proposed Changes for a further comment period.

Also, we decided not to propose to implement the Proposed Access Model for SEC foreign issuers and designated foreign issuers as contemplated in the Initial Proposals. National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* already provides broad relief from most of the requirements of NI 51-102 on the condition that the issuer complies

with the continuous disclosure requirements of the SEC or of a designated foreign jurisdiction. After further consideration of the material amendments that we are proposing to the Proposed Access Model, which could not be mirrored for foreign issuers, we are of the view that it is no longer appropriate to contemplate amendments to this instrument.

Consequential Amendments

We are proposing amendments to NI 54-101 to clarify the interaction between the current requirements and the Proposed Access Model.

Local Matters

Where applicable, an additional annex is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

Request for Comments

We welcome your comments on the Proposed Amendments and the Proposed Changes and also invite comments on the following specific question.

1. Under the Proposed Access Model, an issuer that has filed a CD document on SEDAR+ must, on the same day, issue and file a news release on SEDAR+ and, if the issuer has a website, post the document on its website. Do you anticipate any practical issues with having to complete these steps on the same day? Please explain.

Please submit your comments in writing on or before **February 17, 2025**. Please send your comments by email in Microsoft Word format.

Please address your submission to all members of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
The Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission of New Brunswick
Superintendent of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Superintendent of Securities, Yukon Territory
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Nunavut

Deliver your comments only to the addresses below. Your comments will be distributed to the other participating CSA members.

Me Philippe Lebel

Corporate Secretary and Executive Director, Legal Affairs

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We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at www.asc.ca, the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Contents of Annexes

- Annex A: List of Commenters and Summary of Comments and CSA Responses
- Annex B: Proposed Amendments to National Instrument 51-102 *Continuous Disclosure Obligations*
- Annex C: Proposed Changes to Companion Policy 51-102CP *Continuous Disclosure Obligations*
- Annex D: Proposed Amendments to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*
- Annex E: Proposed Changes to Companion Policy 54-101CP to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*
- Annex F: Local Matter (if applicable)

Questions

Please refer your questions to any of the following:

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