

Goodmans^{LLP} Update

Canadian Securities Regulators May Expand Electronic Delivery of Documents

On January 9, 2019, the Canadian Securities Administrators (CSA) published a [consultation paper](#) seeking feedback from market participants about whether the CSA should adopt a so-called “access equals delivery” model for delivering certain documents to investors. Under this model, companies would be deemed to satisfy the requirement to deliver a document to investors by posting the document on a website as well as the System for Electronic Document Analysis and Retrieval (SEDAR), and issuing a news release indicating the document is available electronically. The CSA is considering prioritizing the use of access equals delivery for prospectuses and financial statements (and related management’s discussion and analysis), with the possibility of broadening its application in the future.

Background

Since April of 2017, the CSA has been exploring ways to reduce regulatory burden for public companies without compromising investor protection or capital market efficiency. Enhancing the use of electronic delivery of documents was one of the things the CSA indicated would be an area of focus early on.

Canadian securities laws already permit electronic delivery of documents (subject to certain conditions), and many issuers utilize electronic delivery to provide certain documents to individual investors or groups of investors. However, the current rules do not permit an issuer to deliver documents to all investors solely through electronic access. While the “notice and access” regime adopted by Canadian Securities Regulators in 2013 minimized paper-based delivery associated with proxy-related materials, it still requires mailing physical materials to investors and the process has not been universally adopted by issuers.

The access equals delivery model is intended to modernize the way documents are made available to investors while reducing costs borne by issuers associated with printing and mailing documents.

The Consultation Paper

Under the proposed access equals delivery model, delivery would be deemed to have been effected once (i) the document has been filed on SEDAR and posted on the issuer’s website, and (ii) the issuer has issued a news release (filed on SEDAR and posted on its website) indicating the document is available electronically and a paper copy can be obtained from the issuer upon request. The proposal only applies to non-investment fund reporting issuers.

As an initial step, the CSA is considering implementing an access equals delivery model for prospectuses and financial statements (and related management’s discussion and analysis) and is seeking input on how to do so. The CSA is also seeking comments about whether to extend access equals delivery to other documents (such as proxy-related materials, take-over bid and issuer bid circulars and rights offering circulars), but has expressed some potential investor protection concerns with introducing the model for documents that require prompt shareholder action. An access equals delivery model for proxy-related materials could also require significant changes to the proxy voting infrastructure.

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The consultation paper makes clear that the CSA is still evaluating whether (and if so to what extent) to adopt an access equals delivery model at all, and no specific rules have been proposed at this time. The CSA is seeking feedback from market participants on the relative pros and cons of adopting an access equals delivery model, as well as potential implications of the application of the model in various contexts. The comment period is open until March 9.

If implemented by the CSA, these new rules would not override corporate law or stock exchange requirements that could still require issuers to deliver paper copies of certain documents to investors.

For further information or to discuss the proposals outlined in the consultation paper, please contact any member of our [Corporate Finance and Securities Group](#).

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