

CSA Notice of Publication
*of Amendments and Changes to Implement an Access Model for
Prospectuses of Non-Investment Fund Reporting Issuers*

January 11, 2024

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing in final form amendments to

- National Instrument 41-101 *General Prospectus Requirements*,
- National Instrument 44-101 *Short Form Prospectus Distributions*,
- National Instrument 44-102 *Shelf Distributions (NI 44-102)*,
- National Instrument 44-103 *Post-Receipt Pricing (NI 44-103)*

(collectively, the **Final Amendments**)

and changes to

- Companion Policy 41-101CP to National Instrument 41-101 *General Prospectus Requirements (41-101CP)*,
- Companion Policy 44-102CP to National Instrument 44-102 *Shelf Distributions (44-102CP)*,
- Companion Policy 44-103CP to National Instrument 44-103 *Post-Receipt Pricing (44-103CP)*,

as well as related consequential changes to

- National Policy 47-201 *Trading Securities Using the Internet and Other Electronic Means*

(collectively, the **Final Changes**).

Provided all necessary regulatory and ministerial approvals are obtained, the Final Amendments will come into force on April 16, 2024.

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

www.lautorite.qc.ca

www.albertasecurities.com

www.bcsc.bc.ca

nssc.novascotia.ca

www.fcmb.ca

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

Substance and Purpose

The Final Amendments and the Final Changes implement an access model for prospectuses, generally, for non-investment fund reporting issuers (the **Access Model**). The Access Model for prospectuses provides alternative procedures whereby access may be provided to a final prospectus or a preliminary prospectus, as applicable.

Under the Access Model,

- in all jurisdictions except British Columbia, Québec and New Brunswick, providing public electronic access to a prospectus and alerting investors that the document is accessible through SEDAR+ will constitute delivery for prospectuses, generally, under securities legislation;
- in British Columbia, Québec and New Brunswick, providing public electronic access to a prospectus and alerting investors that the document is accessible through SEDAR+ will satisfy the conditions of an exemption from the requirement under securities legislation to send a prospectus (the **Delivery Exemption**);
- delivery of a prospectus will occur, or the conditions of the Delivery Exemption will be met, when:
 - the prospectus is filed on SEDAR+, and
 - where applicable, a news release is issued and filed on SEDAR+ indicating that the prospectus is accessible through SEDAR+ and that an electronic or paper copy can be obtained upon request.

In British Columbia, Québec and New Brunswick, the Access Model is structured as an exemption from the delivery obligation, as this approach better aligns with the legislative authority in those jurisdictions, while in all other jurisdictions the Access Model is structured to satisfy the delivery obligation under securities legislation. However, the access procedures are substantially equivalent to the conditions of the Delivery Exemption. In either case, the Access Model is intended to achieve the same outcome of providing investors with electronic access to a final prospectus or preliminary prospectus, as applicable.

We recognize that information technology is an important and useful tool in facilitating communication with investors. The purpose of the Access Model is to modernize the way prospectuses are made accessible to investors and reduce costs associated with the printing and mailing of prospectuses, which are currently borne by issuers. The Access Model for prospectuses offers benefits for both issuers and investors by providing a more cost-efficient, timely and environmentally friendly manner of communicating information to investors than paper delivery.

We understand that investors that are involved in a prospectus distribution are actively engaged by virtue of their interest in the offering and are communicating with a dealer who provides them with information about the distribution. We also understand that, when considering an investment in prospectus distributions, investors are aware that information relevant to their decision making is accessible through SEDAR+ and do not generally wait for, or rely on, paper delivery of a prospectus to inform their investment decision. The Access Model is consistent with the general

evolution of our capital markets, including how investors are increasingly accessing and consuming information electronically.

The Access Model is not mandatory for issuers. Also, prospective purchasers or purchasers will have the ability to request a copy of a preliminary prospectus or final prospectus in electronic or paper form. A prospective purchaser that has been solicited to purchase under a prospectus distribution or that has indicated an interest in purchasing under a prospectus distribution without having been solicited, will usually already have a relationship with a dealer, or will otherwise have taken steps to become aware of the distribution before purchasing the securities. The prospective purchaser or purchaser is able to get the information they need to make an informed investment decision about the securities, including obtaining a copy of, or getting access to, the preliminary prospectus or the final prospectus. On this basis, the Access Model is well suited for prospectuses because it reduces regulatory burden on issuers without compromising investor protection and the efficiency of the capital markets.

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. In light of the comments received and our analysis, we considered it appropriate to prioritize implementing an access model for prospectuses generally, annual financial statements, interim financial reports and related management's discussion and analysis (**MD&A**).

Summary of Written Comments Received by the CSA

On April 7, 2022, we published for comment proposed amendments and proposed changes to implement an access model for prospectuses generally, and for annual financial statements, interim financial reports and related MD&A for non-investment fund reporting issuers (the **Proposed Access Model**). 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 Proposed Access Model for prospectuses was generally well received by commenters. However, several commenters expressed concerns about implementing the Proposed Access Model for annual financial statements, interim financial reports and related MD&A (**CD documents**). Following feedback on the Proposed Access Model for CD documents, the CSA is further considering ways to enhance the access model for these documents to address investor protection concerns, including potential negative effects on retail investors. In due course, subject to relevant approvals, we anticipate publishing a revised access model for CD documents to allow stakeholders an opportunity to evaluate and comment on the revised model.

Summary of Changes to the Proposed Access Model

After considering the comments received, we made changes to the Proposed Access Model and the Final Amendments and the Final Changes reflect certain of the comments and improve or clarify the procedures, including the following:

1. *Clarified that the Access Model is not mandatory*

The Access Model is not mandatory. However, in light of certain comments that suggested this was not clear, we have clarified that the Access Model provides alternative procedures for an issuer to provide electronic access to a final prospectus or preliminary prospectus, as applicable.

We also revised the Final Amendments and the Final Changes to indicate that the requirement under securities legislation to deliver or send a prospectus or any amendment may be satisfied, or the conditions of the Delivery Exemption are met, by providing access to the document in accordance with the alternative procedures under the Access Model.

2. *Guidance on dealer's obligation under securities legislation*

We added guidance in 41-101CP, 44-102CP and 44-103CP to clarify that a dealer may rely on the Access Model to satisfy, or be exempt from, the requirement under securities legislation to deliver or send a prospectus and any amendment.

3. *Purchaser's or subscriber's rights*

We added guidance in 41-101CP, 44-102CP and 44-103CP 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 rights must be exercised.

4. *News release contents*

We added guidance in 41-101CP, 44-102CP and 44-103CP to clarify that a news release containing information relevant to the applicable offering may also include the information required under the Access Model.

5. *News release for shelf distributions and post-receipt pricing (PREP) prospectuses*

As the Access Model has been adapted to suit the particularities of different types of prospectuses, we revised the news release requirement for shelf prospectuses and PREP prospectuses to allow a forward-looking notice that the document will be accessible through SEDAR+ within 2 business days.

We recognize that in some circumstances, an issuer may issue a news release disclosing material information with respect to an offering prior to the filing of the final prospectus. For example, a news release is commonly issued immediately after pricing is determined for shelf prospectuses and PREP prospectus offerings. Subsection 6.4(2) of NI 44-102 and section 4.8 of NI 44-103 impose prescribed time limits for filing a shelf prospectus

supplement and supplemented PREP prospectus, respectively, once the offering price of the securities to which the document pertains is determined.

Given the specified time limits for filing shelf prospectus supplements and supplemented PREP prospectuses, we are of the view that it is appropriate to allow the prescribed news release under the Access Model to be issued within 2 business days before the date the document is filed. The Final Amendments will allow an issuer to issue a single news release that satisfies the objective of the news release requirement under the Access Model.

6. *Copy of a preliminary prospectus*

We removed the 2-day time limit within which an issuer or dealer must send a copy of the preliminary prospectus if requested by a prospective purchaser in accordance with securities legislation.

The ability for purchasers and prospective purchasers to request an electronic or paper copy of a final prospectus and preliminary prospectus, as applicable, is a fundamental aspect of the Access Model. Under the Access Model, a copy of the preliminary prospectus or any amendment must be sent by the issuer or dealer without charge to a prospective purchaser that requests a copy. However, unlike the right of withdrawal, revocation or cancellation in connection with a final prospectus, we acknowledge that there is no time sensitive action required from, or investment decision by, prospective purchasers in connection with a preliminary prospectus. Therefore, we are of the view that the time limit to send a copy of the preliminary prospectus, if requested by a prospective purchaser, is not necessary.

As we do not consider these to be material changes, we are not republishing the Final Amendments and the Final Changes for a further comment period.

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.

Contents of Annexes

This notice contains the following annexes:

- Annex A: List of Commenters and Summary of Comments and CSA Responses
- Annex B: Amendments to National Instrument 41-101 *General Prospectus Requirements*
- Annex C: Changes to Companion Policy 41-101CP to National Instrument 41-101 *General Prospectus Requirements*
- Annex D: Amendments to National Instrument 44-101 *Short Form Prospectus Distributions*
- Annex E: Amendments to National Instrument 44-102 *Shelf Distributions*
- Annex F: Changes to Companion Policy 44-102CP to National Instrument 44-102 *Shelf Distributions*
- Annex G: Amendments to National Instrument 44-103 *Post-Receipt Pricing*

- Annex H: Changes to Companion Policy 44-103CP to National Instrument 44-103 *Post-Receipt Pricing*
- Annex I: Changes to National Policy 47-201 *Trading Securities Using the Internet and Other Electronic Means*

Questions

Please refer your questions to any of the following:

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ANNEX D

AMENDMENTS TO NATIONAL INSTRUMENT 44-101 *SHORT FORM PROSPECTUS DISTRIBUTIONS*

1. *National Instrument 44-101 Short Form Prospectus Distributions is amended by this Instrument.*

2. *Paragraph 7.2(c) is replaced with the following:*

- (c) upon issuance of a receipt for the preliminary short form prospectus,
 - (i) a written or oral statement that the preliminary short form prospectus is accessible through SEDAR+ is made to each person or company that, in response to the solicitation, expressed an interest in acquiring the securities, or
 - (ii) a copy of the preliminary short form prospectus is sent to each person or company that, in response to the solicitation, expressed an interest in acquiring the securities, and.

3. *Paragraph 7.4(2)(c) is replaced with the following:*

- (c) upon issuance of a receipt for the preliminary short form prospectus,
 - (i) a written or oral statement that the preliminary short form prospectus is accessible through SEDAR+ is made to each person or company that, in response to the solicitation, expressed an interest in acquiring the securities, or
 - (ii) a copy of the preliminary short form prospectus is sent to each person or company that, in response to the solicitation, expressed an interest in acquiring the securities, and.

4. *Subsection 7.5(2) is replaced with the following:*

- (2) A standard term sheet provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

A preliminary short form prospectus containing important information relating to the securities described in this document has not yet been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada].

The preliminary short form prospectus will be accessible through SEDAR+. A copy of the preliminary short form prospectus may be obtained from [insert contact information for the investment dealer or underwriters].

There will not be any sale or any acceptance of an offer to buy the securities until a receipt for the final short form prospectus has been issued.

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the preliminary short form prospectus, final short form prospectus and any amendment, for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision..

5. Section 7.6 is amended by

(a) replacing paragraph (1)(g) with the following:

- (g) the marketing materials include a statement that the preliminary short form prospectus will be accessible through SEDAR+, or, upon issuance of a receipt for the preliminary short form prospectus, a copy of the preliminary short form prospectus is sent to each person or company that received the marketing materials and expressed an interest in acquiring the securities.;
- and**

(b) replacing subsection (5) with the following:

- (5) Marketing materials provided under subsection (1) must be dated and include the following legend, or words to the same effect, on the first page:

A preliminary short form prospectus containing important information relating to the securities described in this document has not yet been filed with the securities regulatory authorit[y/ies] in [each of/certain of the provinces/provinces and territories of Canada]. The preliminary short form prospectus will be accessible through SEDAR+. A copy of the preliminary short form prospectus may be obtained from [*insert contact information for the investment dealer or underwriters*].

There will not be any sale or any acceptance of an offer to buy the securities until a receipt for the final short form prospectus has been issued.

This document does not provide full disclosure of all material facts relating to the securities offered. Investors should read the preliminary short form prospectus, final short form prospectus and any amendment, for disclosure of those facts, especially risk factors relating to the securities offered, before making an investment decision..

6. Paragraph 7.7(3)(c) is replaced with the following:

- (c) make an oral statement at the commencement of the road show that the preliminary short form prospectus and any amendment will be accessible through SEDAR+, or, upon issuance of a receipt for the preliminary short form prospectus, provide the investor with a copy of the preliminary short form prospectus and any amendment..

7. ***Form 44-101F1 Short Form Prospectus is amended by***

(a) adding the following section after section 1.9:

1.9.1 Statutory Rights of Withdrawal and Rescission

Include a cross-reference to the section in the short form prospectus and any amendment where information about the right to withdraw or rescind from an agreement to purchase securities is provided.;

(b) adding the following section after section 20.1:

20.1.1 Access Procedures – General

If a news release will be issued and filed announcing that the short form prospectus or any amendment is accessible through SEDAR+ in accordance with subsection 2A.5(2) or 2A.6(1) of NI 41-101, subsection 6A.5(2) or 6A.6(1) of NI 44-102, or subsection 2A.5(2) or 2A.6(1) of NI 44-103, replace the second sentence in the statement required under section 20.1 with a sentence in substantially the following form:

“This right may be exercised within 2 business days after the later of (a) the date that the issuer (i) filed the prospectus or any amendment on SEDAR+ and a receipt is issued and posted for the document, and (ii) issued and filed a news release on SEDAR+ announcing that the document is accessible through SEDAR+, and (b) the date that the purchaser or subscriber has entered into an agreement to purchase the securities or a contract to purchase or a subscription for the securities.”; ***and***

(c) adding the following section after section 20.2:

20.2.1 Access Procedures – Non-fixed Price Offerings

In the case of a non-fixed price offering, if a news release will be issued and filed announcing that the short form prospectus or any amendment is accessible through SEDAR+ in accordance with subsection 2A.5(2) or 2A.6(1) of NI 41-101, subsection 6A.5(2) or 6A.6(1) of NI 44-102, or subsection 2A.5(2) or 2A.6(1) of NI 44-103, replace, if applicable in the jurisdiction in which the short form prospectus is filed, the second sentence in the statement required under section 20.1 with a sentence in substantially the following form:

“Irrespective of the determination at a later date of the purchase price of the securities distributed, this right may only be exercised

within 2 business days after the later of (a) the date that the issuer (i) filed the prospectus or any amendment on SEDAR+ and a receipt is issued and posted for the document, and (ii) issued and filed a news release on SEDAR+ announcing that the document is accessible through SEDAR+, and (b) the date that the purchaser or subscriber has entered into an agreement to purchase the securities or a contract to purchase or a subscription for the securities.”.

Effective date

8. (1) This Instrument comes into force on April 16, 2024.
- (2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after April 16, 2024, this Instrument come into force on the day on which it is filed with the Registrar of Regulations.