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Canadian Securities Regulators Seek Feedback on "Access Equals Delivery" Model for Prospectuses and Other Documents

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The Canadian Securities Administrators (CSA) has published a consultation paper seeking input on the potential implementation of an "access equals delivery" model – an electronic access alternative for satisfying prospectus and other documentary delivery obligations under Canadian securities legislation. If implemented, this model would be a substantial step forward in achieving the CSA's objective of modernizing the way documents are made available to investors and significantly reducing the associated printing and mailing costs.

In its consultation paper, the CSA notes that an access equals delivery model could benefit both issuers and investors, as it could further facilitate the communication of information by enabling issuers to reach more investors in a faster, more cost-effective and more environmentally friendly manner. However, at this stage, the CSA is still in the process of evaluating whether and to what extent this model would be appropriate.

The access equals delivery model being considered by the CSA would deem public access to a prospectus or other relevant document as sufficient for meeting delivery obligations to investors under Canadian securities legislation. Specifically, delivery would be effected once (i) the document has been filed with the applicable Canadian securities regulators and posted on the issuer's website and (ii) a news release is issued indicating the document is available electronically and that a paper copy can be obtained on request. The CSA notes this model could be implemented for the delivery of various types of documents; however, as an initial step, it is considering whether to prioritize implementation of this model only for the delivery of prospectuses, financial statements and MD&A.

The CSA has invited stakeholders to submit their comments on this access equals delivery model. In addition to seeking more general commentary on its benefits or limitations and any suggested changes, the consultation paper raises a number of more focused questions for comment, including:

- whether the same model should apply for all types of prospectuses (i.e., long-form, short-form, supplement, preliminary, final, etc.);
- whether the model should be implemented for other documents, in addition to prospectuses, financial statements and MD&A, that must be delivered to investors;
- if this model is implemented for the delivery of proxy-related materials or circulars for takeover bids, issuer bids or rights offerings, whether that might raise any investor protection or engagement concerns;
- whether implementing this model for proxy-related materials could also require significant changes to the proxy voting infrastructure (e.g., operational processes surrounding solicitation and submission of voting instructions);
- whether the condition to make the document publicly available through a website posting should be expanded to allow for participants to use technologies other than a website;
- whether a news release is sufficient to alert investors that a document is available; and
- whether any aspects of the proposed model are impractical or misaligned with current market practices.

Comments are due by March 9, 2020.

This consultation stems from separate earlier stated policy initiatives of each of the CSA and the Ontario Securities Commission to reduce undue regulatory burden on issuers by enhancing electronic delivery of documents. While each had previously identified opportunities for electronic delivery among their burden reducing initiatives, this consultation paper is the first time any of the Canadian securities regulators has proposed an "access equals delivery" model as a possible regulatory framework.

Davies has been at the forefront in contributing to this and other burden-reducing initiatives of the Canadian securities regulators. In July 2017, in response to the initial request of Canadian securities regulators for ideas on ways to reduce undue regulatory burden, it was Davies that recommended an "access equals delivery" model for prospectus delivery. We look forward to contributing our further views to the CSA on this important initiative and invite you to contact us with any comments that we might raise.

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