

SECURITIES

BULLETIN

*Electronic Delivery of
Documents*

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**NATIONAL POLICY 11-201 - DELIVERY OF DOCUMENTS BY
ELECTRONIC MEANS**

INTRODUCTION

National Policy 11-201 (“NP 11-201”) sets out the suggested guidelines of the Canadian Securities Administrators (the “CSA”) for effecting electronic delivery of documents. The benefits of effecting delivery of documents to securityholders electronically include the reduction of both costs and paper consumption.

PURPOSE AND APPLICATION

NP 11-201 states the views of the securities regulatory authorities with respect to whether, or in what circumstances, delivery of documents by electronic means would satisfy the delivery requirements of securities legislation if the method of delivery is not mandated.

Generally, NP 11-201 applies to any documents required to be delivered by securities legislation. This includes prospectuses, financial statements, trade confirmations, account statements and proxy-related materials. The policy applies to documents that are delivered by issuers, registrants or persons or companies acting on behalf of issuers or registrants (such as transfer agents or other service providers).

NP 11-201 does not apply to deliveries where the method of delivery is mandated by securities legislation and that method does not include electronic means. Market participants should also consider that certain corporate statutes may impose requirements concerning the method of delivery in some circumstances, without permitting electronic delivery.

FOUR BASIC COMPONENTS OF ELECTRONIC DELIVERY

The CSA guidelines provide for the following four basic components to the electronic delivery of documents:

1. The recipient of the document must receive notice that the document has been, or will be, sent electronically or otherwise electronically made available.
2. The recipient of the document must have easy access to the document.
3. The deliverer of the document must have evidence that the document has been delivered or otherwise made available to the recipient.
4. The document that is received by the recipient must not be different from the document delivered or made available by the deliverer.

According to NP 11-201, if one of the basic components were absent, the effectiveness of the delivery would be uncertain. Subject to certain caveats, a deliverer may generally satisfy the notice, access and evidence components of electronic delivery by obtaining the informed consent of an intended recipient to the electronic delivery of a document, and then delivering the document according to the consent. According to NP 11-201, the process of seeking and obtaining a consent permits the deliverer to inform the recipient of the manner in which the deliverer proposes to make electronic delivery of documents, and permits the recipient to consider and agree to that manner of delivery.

An attempt to deliver documents by referring an intended recipient to a third party provider of the document, such as SEDAR, will likely not constitute valid delivery of the document, in the absence of express consent given by the intended recipient to such method of delivery.

The following summarizes the principal guidelines of NP 11-201 with respect to each of the four basic components of electronic delivery:

Notice

- If electronic delivery is intended to be made by placing a document on a website, the consent should indicate this fact and indicate how the deliverer will notify the intended recipient that a document is available.
- Alternatively, the consent could evidence the agreement of the recipient to monitor the deliverer's website on a regular basis, eliminating any need to provide separate notice to the recipient.
- In certain circumstances (e.g. in the case of a special meeting of shareholders), it may be appropriate for a deliverer to provide special or additional notice of the electronic delivery of a document to a recipient, even if the recipient has agreed, for example, to monitor a website on an ongoing basis.

Access

- Reasonable steps should be taken to ensure that electronic access to documents is not burdensome or overly complicated for recipients.
- Documents should remain available to intended recipients for whatever period of time is appropriate and relevant, given the nature of the document.
- Documents sent by electronic delivery should be sent in a way that enables the recipient to retain a permanent record of the document, if the recipient so chooses.
- It is recommended that a paper version of every document delivered by electronic means be made available at no cost to a recipient upon request of such recipient.

Evidence

- If a consent to the electronic delivery of a document is obtained in accordance with NP 11-201, the deliverer is entitled to infer that a recipient actually received the document if it was sent in accordance with the terms of the consent.

Delivery of Unaltered Document

- All reasonably appropriate and necessary technical steps should be taken to ensure that documents sent by electronic delivery arrive at their destination in a complete and unaltered form.

Consent to Electronic Delivery

To ensure that an adequate and informed consent has been obtained, NP 11-201 recommends that a consent deal with the following matters:

1. A list of the types of documents that are electronically deliverable.
2. A detailed explanation of the electronic delivery process, including whether separate notice will be

provided and, if so, how and when that notice will be provided.

3. Technical requirements for proper electronic retrieval of a document.
4. Software requirements for proper viewing of a document.
5. Notice of the availability at no cost to the recipient of a paper version of a document upon request and instructions on how to make such a request.
6. Information about the length of time that a document will be available for electronic delivery.
7. Details of the process for revoking consent to electronic delivery.
8. Procedures to be used by the deliverer for maintaining the confidentiality of information regarding the recipient, where necessary.
9. A statement that the intended recipient is not required to consent to electronic delivery.

A consent form may be used to obtain the consent of a recipient to the electronic delivery of more than one type of document on an ongoing basis. However, NP 11-201 cautions against the use of blanket consents to “any documents” sent by a deliverer.

Under NP 11-201, it is reasonable to consider a consent to be valid until the deliverer is notified otherwise by the recipient, either in writing or electronically.

MISCELLANEOUS ISSUES

NP 11-201 also sets out guidance on certain ancillary issues such as unsuccessful transmission of documents, confidentiality of certain documents and the use of hyperlinks.

PROXY DOCUMENTS

On February 14, 2003, amendments to NP 11-201 dealing with the application of the policy to proxy documents came into effect. The CSA has identified that certain securities law requirements may affect the electronic delivery of proxy documents and the use of electronic formats. For instance, securities law requires (a) that a form of proxy or proxy be in written or printed form, and that a registered owner vote securities in accordance with written voting instructions (the “in writing requirements”); and (b) that a proxy be executed (the “proxy execution requirements”).

The proposed amendments to NP 11-201 provide that forms of proxy, proxies and voting instructions in electronic format will satisfy the in writing requirements provided certain conditions are met. The proposed amendments also provide that the proxy execution requirements may be satisfied if the form of proxy has been executed by an electronic signature of the securityholder provided certain information can be verified. Reference should be made to the proposed amendments to NP 11-201 for a more detailed discussion of these matters.

CONCLUSION

Through the introduction of NP 11-201, the securities regulatory authorities have recognized that information technology is an important and useful tool in improving communications to securityholders and investors. Issuers may want to consider the guidance provided by NP 11-201 to effect the delivery of certain documents to securityholders electronically. The delivery of documents by electronic means has the potential to reduce both costs and paper consumption, which is likely to appeal to both issuers and securityholders alike.

The foregoing provides only an overview. Readers are cautioned against making any decisions based on this material alone. Rather, a qualified lawyer should be consulted.

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