

July 6, 2022

Without Prejudice
By E-mail

Me Philippe Lebel
Corporate Secretary and Executive Director,
Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
2640, boulevard Laurier, bureau 400
Québec (Québec) G1V 5C1
Fax: 514 864-8381
Email: consultation-en-cours@lautorite.qc.ca

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416 593-2318
Email: comments@osc.gov.on.ca

Dear Sirs/Mesdames:

Re: CSA Notice and Request for Comment Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers

We submit the following comments in response to the Notice and Request for Comment (the “**Notice**”) published by the Canadian Securities Administrators (the “**CSA**”) on April 7, 2022 with respect to proposed amendments (the “**Proposed Amendments**”) to certain National Instruments, Companion Policies and National Policies to create a proposed “access equals delivery model” (the “**AED Model**”).

We have organized our comments below with reference to the proposed rule, policy or form to which the comments relate and, where applicable, with reference to the specific consultation question posed. All references to parts and sections are to the relevant parts or sections of the applicable rule, policy or form.

Thank you for the opportunity to comment on the Proposed Amendments and the AED Model. This letter represents the general comments of certain individual members of our securities practice group (and not those of the firm generally or any client of the firm) and are submitted without prejudice to any position taken or that may be taken by our firm on its own behalf or on behalf of any client.

A. NEWS RELEASE REQUIREMENTS

We acknowledge and applaud the intention behind the proposed AED Model. The CSA’s continued commitment to reducing regulatory burdens for reporting issuers and other market participants is beneficial to the efficiency of Canadian capital markets and should be at the forefront of all of the CSA’s regulatory initiatives. We are also of the opinion that any initiatives that reduce the volume of paper to be printed and mailed is of general benefit from both a cost savings and an environmental perspective.

However, despite the foregoing, we have some concerns that notification by way of news release may not be sufficient from the perspective of investors. First, based on our experience, mainstream and financial media outlets will not generally amplify these types of news releases. As such, investors will need to be aware of a filing and familiar with SEDAR in order to access the news release in the first instance. The Notice states that the CSA generally expects that (a) prospective purchasers under a prospectus will be sophisticated and generally aware that information about an offering is available on SEDAR, and (b)

investors are generally aware of various filings because they will have interest in a distribution or know that documents are available on SEDAR and can predict the timing of such filings since they are subject to prescribed filing deadlines. If an investor or prospective purchaser is already aware of and accessing a filing on SEDAR, the additional news release filed on SEDAR will simply be redundant.

Secondly, if significant numbers of reporting issuers are issuing news release to announce the filing of documents on SEDAR, the influx of these types of news releases may serve to drown out more material news releases and only add confusion to the market. This is especially true for public offerings under a prospectus, which already involve numerous news releases, including separate and sometimes formulaic announcements for (at least) the launch of the proposed offering, final pricing terms and closing of the offering. While we recognize that availability and notification are intended to serve a particular purpose in the case of prospectuses by governing the period of time during which statutory rights of withdrawal and rescission remain available, we respectfully submit that the exercise of such rights by an investor – being a very significant investment decision – is not likely to hinge on whether a filing was or was not announced by way of news release. Moreover, given that the exercise of such rights remains extremely rare (relative to aggregate transaction volumes), we further submit that such rights should not on their own justify a less efficient design for the AED Model.

While we do not believe that issuing and filing a news release will be unduly onerous to issuers from a preparation perspective, we note that there is an added cost to issuing a news release and we do not believe that such cost will provide significant benefit to the issuer, investors or Canadian capital markets. Given the foregoing, we do not believe that news releases should be the only or primary method of notification of a filing. As such, we respectfully suggest that the CSA consider alternative means of notifying investors of SEDAR filings (for example, through email notification, filings on the issuer's website, alerts provided by intermediaries, etc.). Given that the SEDAR+ project is also scheduled to be completed in February 2023, we also suggest that the CSA time the implementation of the AED Model with the launch of SEDAR+ to take full advantage of a more functional filing website that will be easier for investors to use. To the extent that the functionality of SEDAR+ can be tailored to allow investors to "subscribe" to issuer filings and notifications thereof, we think that would be beneficial under the AED Model. If that is not practicable, then perhaps an issuer wanting to take advantage of the AED Model should be required to implement or cause to be implemented a system whereby investors could subscribe to a free email service to receive news releases.

To the extent that the CSA determines that notification by way of news release should be the only or primary method of notification of a filing, the Proposed Amendments could nevertheless be significantly improved by allowing news releases announcing document availability to be issued and filed *prior* to the SEDAR filing date of the applicable prospectus or financial reports. Such a construct could require the news release to prospectively specify the date on which (or by which) the applicable document would be filed. For example, the news release announcing the pricing of an offering made under a short form base shelf prospectus could be allowed to fulfill the AED Model requirements by indicating that the prospectus supplement in respect of the offering will be filed on SEDAR within the next two business days, the whole consistent with subparagraph 6.4(2)(a)(ii) of National Instrument 44-102 *Shelf Distributions*. Similarly, for the numerous issuers which issue and file news releases announcing comprehensive annual or quarterly financial results before the SEDAR filing date for the corresponding financial statements and MD&A, the AED Model requirements could be fulfilled by indicating on which date such documents are intended to be filed. Then, if ever an issuer would become unable complete the filing of the applicable document on or by the date prospectively specified, a separate news release could be issued to update the market.

B. APPLICATION – MTN PROGRAMS AND OTHER CONTINUOUS DISTRIBUTIONS

The AED Model should apply equally for all types of prospectuses and we do not believe that any differentiation is required in this respect. As such, we respectfully submit that MTN programs and other continuous distributions (collectively referred to as "continuous distributions") should not be excluded from the AED Model as is currently being proposed. In particular, we note that issuers undertaking continuous

distributions will often frequently file prospectus supplements (potentially in a short period of time including several in a single day) and, as a result, the related delivery obligations can often be quite burdensome for such issuers. In addition, we have found that there is generally ample opportunity for such issuers and/or registered dealers and advisers to notify investors that the relevant prospectus and ancillary documentation related to the offering have been filed. Given the foregoing, it is our view that the AED Model would provide significant benefit and efficiency to issuers undertaking continuous distributions, as well as investors, and we do not see any compelling policy reason to exclude such offerings from the AED Model.

In light of our view that the AED Model should be available to continuous distributions, we reiterate our concerns with respect to the news release requirements in the proposed AED Model particularly with respect to the potential for an influx of immaterial news releases to overshadow those that are material and result in market confusion. We do not believe that an MTN issuer should have to issue and file multiple news releases in connection with an MTN program in order to notify investors that a prospectus or pricing supplement has been filed on SEDAR.

C. APPLICATION – DISTRIBUTION OF RIGHTS

We further submit that the term “rights” in Section 2A.1(a) of NI 41-101 should be defined in order to reduce ambiguity in the rule.

* * * * *

Thank you for the opportunity to comment on the AED Model. Please do not hesitate to contact any of the undersigned if you have any question in this regard.

Yours truly,

Laura Levine,

on my own behalf and on behalf of

Ramandeep K. Grewal
Jeff Hershenfield
Simon A. Romano
David Tardif