

## CSA Notice of Consultation

### *Draft Amendments to Implement an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers*

April 7, 2022

#### Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing for a 90-day comment period, draft amendments to

- *Regulation 41-101 respecting General Prospectus Requirements;*
- *Regulation 44-101 respecting Short Form Prospectus Distributions;*
- *Regulation 44-102 respecting Shelf Distributions;*
- *Regulation 44-103 respecting Post-Receipt Pricing;*
- *Regulation 51-102 respecting Continuous Disclosure Obligations;*
- *Regulation 71-102 respecting Continuous Disclosure and Other Exemptions Relating to Foreign Issuers;*
- *Policy Statement to Regulation 41-101 respecting General Prospectus Requirements;*
- *Policy Statement to Regulation 44-102 respecting Shelf Distributions;*
- *Policy Statement to Regulation 44-103 respecting Post-Receipt Pricing;*
- *Policy Statement to Regulation 51-102 respecting Continuous Disclosure Obligations;*

as well as related draft consequential amendments to

- *Policy Statement 11-201 respecting Electronic Delivery of Documents;*
- *Notice 47-201 relating to Trading Securities Using the Internet and Other Electronic Means;*
- *Policy Statement to Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer;*

(collectively, the **Draft Amendments**).

The public comment period will end on **July 6, 2022**.

The text of the Draft Amendments is published with this notice and will also be available on websites of CSA jurisdictions, including:

[www.lautorite.qc.ca](http://www.lautorite.qc.ca)

[www.albertasecurities.com](http://www.albertasecurities.com)

[www.bcsc.bc.ca](http://www.bcsc.bc.ca)

[nssc.novascotia.ca](http://nssc.novascotia.ca)

[www.fcnb.ca](http://www.fcnb.ca)

[www.osc.ca](http://www.osc.ca)  
[www.fcaa.gov.sk.ca](http://www.fcaa.gov.sk.ca)  
[www.mbsecurities.ca](http://www.mbsecurities.ca)

## Substance and Purpose

The Draft Amendments implement an access equals delivery model for prospectuses generally, annual financial statements, interim financial reports and related management's discussion & analysis (**MD&A**) for non-investment fund reporting issuers.

The proposed access equals delivery model (the **AED Model**) contemplates the following:

- in all jurisdictions except British Columbia, providing public electronic access to a document and alerting investors that the document is available will constitute delivery for prospectuses under securities legislation;
- in British Columbia, an exemption from the requirement under securities legislation to send a prospectus (the **BC Exemption**) will permit access *instead* of delivery;
- for annual financial statements, interim financial reports and related MD&A, providing public electronic access to the documents and alerting investors that the documents are available will constitute delivery for the documents; and
- in all cases, delivery of a document will occur, or the conditions in the BC Exemption will be met, when:
  - the document is filed on the System for Electronic Document Analysis and Retrieval (**SEDAR**), and
  - where applicable, a news release is issued and filed on SEDAR indicating that the document is available electronically and that a paper or an electronic copy can be obtained upon request.

The purpose of the proposed AED Model is to modernize the way documents are made available to investors and reduce costs associated with the printing and mailing of documents, which are currently borne by issuers. The proposed AED Model provides a more cost-efficient, timely and environmentally friendly manner of communicating information to investors than paper delivery. In our view, the proposed AED Model reduces regulatory burden on issuers without compromising investor protection.

We recognize that information technology is an important and useful tool in facilitating communication with investors. The proposed AED Model is consistent with the general evolution of our capital markets, including how investors are increasingly accessing and consuming information electronically.

The proposed AED Model offers benefits for both issuers and investors. The proposed AED Model further facilitates the communication of information by enabling issuers to reach more investors in a faster and more effective manner than by mailing documents. SEDAR is a common, standardized platform that provides ease and convenience of use for investors, allowing them to access and search for specific information in a document more efficiently than they would otherwise be able to with paper copies of documents.

The proposed AED Model does not remove an investor's ability to request documents in paper or electronic form or prevent an issuer from delivering financial statements and related MD&A based on an investor's standing instructions.

The Draft Amendments would implement the proposed AED Model for prospectuses generally, annual financial statements, interim financial reports and related MD&A. In our view, the proposed AED Model is well suited for these types of documents, which are increasingly being accessed electronically by investors. At this time, we are not proposing an access equals delivery model for the delivery of documents that require immediate shareholder action and participation, such as proxy-related materials and take-over bid and issuer bid circulars.

## **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 equals delivery model in the Canadian market. We solicited views on whether an access equals delivery model should be introduced, the types of documents to which an access equals delivery model should apply and the mechanics of a potential access equals delivery model.

The comment period ended on March 9, 2020. We received 30 comment letters from various market participants, including issuers, investors, industry associations and law firms. We wish to thank all commenters for contributing to the consultation.

We have reviewed the comments received, and we note as follows:

- A large majority of commenters expressed general support for implementing an access equals delivery model.
- A majority of commenters expressed support for prioritizing implementing an access equals delivery model for prospectuses, annual financial statements, interim financial reports and related MD&A.
- Although many commenters expressed general support for extending an access equals delivery model to other types of documents, such as proxy-related materials and takeover bid and issuer bid circulars, some commenters indicated that the CSA should carefully consider the impact of introducing an access equals delivery model to documents that require a time sensitive response from investors.
- Several commenters submitted that filing a document on SEDAR (and not also posting the document on the issuer's website) is sufficient as it provides a common, standardized platform that allows investors to access issuers' documents.
- A majority of commenters agreed that a news release is sufficient to alert investors that the document is available electronically.
- Commenters identified several benefits of an access equals delivery model, including reducing regulatory burden and costs for issuers, modernizing the way documents are made available to investors and promoting a more environmentally friendly manner of communicating information than paper delivery.
- The main limitations to implementing an access equals delivery model identified by commenters are the delivery requirements outside of securities legislation (e.g. corporate law) and electronic transactions legislation. In addition, some commenters noted the potential negative impact on investor engagement.

In light of the comments received and our analysis, we think it is appropriate to propose the AED Model for prospectuses generally, annual financial statements, interim financial reports and related MD&A into the Canadian market.

## **Summary of the Draft Amendments**

### *Prospectuses*

The proposed AED Model applies to all types of prospectuses, except rights offerings by way of prospectus and medium-term note (MTN) programs and other continuous distributions under a shelf prospectus. The proposed AED Model may not be suitable for a rights offering by way of prospectus since this type of distribution requires a time sensitive response. MTN programs and other continuous distributions under a shelf prospectus are dealt with in a different manner in our rules and are not suited for the proposed AED Model. It also does not apply to a prospectus offering of investment fund securities.

Except in British Columbia, the Draft Amendments contemplate that a prospectus or any amendment must be delivered or sent by providing access to the document in accordance with the procedures set out in the rules, unless the document is delivered or sent pursuant to another procedure prescribed by securities legislation.

British Columbia is instead providing an exemption from the prospectus delivery requirements because it better aligns with British Columbia's legislative authority and approach to legislative drafting. The BC Exemption is intended to achieve the same outcome as the AED Model proposed in the other jurisdictions.

The Draft Amendments stipulate that, in all jurisdictions except British Columbia, access to the final prospectus or any amendment has been provided if:

- the issuer has filed the document on SEDAR and a receipt has been issued for the document, and
- the issuer has issued and filed a news release on SEDAR announcing that the document is available and accessible on SEDAR, indicating the securities that are offered and specifying that a paper or an electronic copy of the document can be obtained upon request.

Under the BC Exemption, a dealer is exempt from requirements under securities legislation to send a final prospectus or any amendment to a purchaser if these same conditions are met.

The Draft Amendments clarify that, under the proposed AED Model, the right to withdraw from an agreement to purchase securities may be exercised within 2 business days after the later of (a) the date that access to the final prospectus or any amendment has been provided, and (b) the date that the purchaser has entered into the agreement to purchase the securities. In British Columbia, it is a condition of the BC Exemption that an equivalent right be provided to a purchaser.

We are also proposing to require a cross-reference on the front page of the prospectus to alert investors to the section that explains how the withdrawal right period is calculated under the AED Model.

For the preliminary prospectus or any amendment, the Draft Amendments stipulate that access has been provided if the issuer has filed the document on SEDAR and a receipt has been issued for the

document. In this scenario, the Draft Amendments do not require that the issuer issue and file a news release on SEDAR to alert investors because investors should be aware of when the preliminary prospectus is available by virtue of their interest in the distribution. In our view the requirement to file a news release is important in connection with the final prospectus because the investor's withdrawal right period is calculated at this stage.

The Draft Amendments clarify how the AED Model applies to the advertising and marketing of a prospectus offering, including with respect to the preliminary prospectus, and update the statements contained in the marketing materials to inform investors that the prospectus or any amendment is available on SEDAR and that a copy of the document can be obtained upon request.

The proposed AED Model has been adapted to suit the particularities of different types of prospectuses, i.e. long-form prospectuses, short-form prospectuses, shelf prospectuses and post-receipt pricing prospectuses.

In certain jurisdictions, amendments to local securities acts may be required to fully implement the Draft Amendments.

#### *Financial Statements and related MD&A*

The Draft Amendments contemplate that the proposed AED Model applies to annual financial statements, interim financial reports and related MD&A.

The Draft Amendments provide that the issuer must issue and file a news release to inform investors that its financial statements and related MD&A are available on SEDAR, unless the issuer complies with the current delivery requirements. The Draft Amendments stipulate that access to the financial statements and related MD&A has been provided if

- the issuer has filed the documents on SEDAR, and
- on the same day that it has filed the documents, the issuer has issued and filed a news release on SEDAR announcing that the documents are available electronically and specifying that a paper or an electronic copy of the documents can be obtained upon request.

We think the proposed AED Model is especially well suited for these types of documents since investors are generally aware that the documents will be available on SEDAR. Investors can also predict when the documents will be available since they are subject to prescribed filing deadlines.

Issuers may still be required to comply with certain delivery requirements under corporate law and other applicable requirements to which they may be subject.

The proposed AED Model would also be available to SEC foreign issuers and designated foreign issuers.

#### **Consequential Amendments**

We are proposing changes to *Notice 47-201 relating to Trading Securities Using the Internet and Other Electronic Means* to clarify that the investment dealer conducting a road show must make an oral statement at the commencement of the road show that the relevant prospectus or any

amendment is available on SEDAR, or provide the investor with a copy of the relevant prospectus or any amendment.

We are proposing changes to *Policy Statement to Regulation 54-101 respecting Communication with Beneficial Owners of Securities of a Reporting Issuer* to clarify the interaction between the current delivery requirements and the proposed AED Model with respect to financial statements and related MD&A.

### **Local Matters**

Where applicable, an 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.

### **Request for Comments**

We welcome your comments on the Draft Amendments and also invite comments on the following specific questions.

1. With regards to financial statements and related MD&A, the Draft Amendments provide that an issuer must issue and file a news release on SEDAR announcing that the documents are available electronically and specifying that a paper or an electronic copy of the documents can be obtained upon request.
  - a. Would the requirement to issue and file a news release be unduly costly or onerous in these circumstances? If so, why? Would the burden differ depending on whether the issuer is a venture issuer or not?
  - b. Should we consider alternative ways to alert investors of the availability of a document that could be less onerous? Which ones and why?

Please submit your comments in writing on or before **July 6, 2022**. Please send your comments by email in Microsoft Word format.

Please address your submission to all members of the CSA as follows:

British Columbia Securities Commission  
Alberta Securities Commission  
Financial and Consumer Affairs Authority of Saskatchewan  
The Manitoba Securities Commission  
Ontario Securities Commission  
Autorité des marchés financiers  
Financial and Consumer Services Commission of New Brunswick  
Superintendent of Securities, Prince Edward Island  
Nova Scotia Securities Commission  
Superintendent of Securities, Newfoundland and Labrador  
Superintendent of Securities, Yukon  
Superintendent of Securities, Northwest Territories  
Superintendent of Securities, Nunavut

Deliver your comments only to the addresses below. Your comments will be distributed to the other participating CSA members.

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We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Alberta Securities Commission at [www.albertasecurities.com](http://www.albertasecurities.com), the Autorité des marchés financiers at [www.lautorite.qc.ca](http://www.lautorite.qc.ca) and the Ontario Securities Commission at [www.osc.ca](http://www.osc.ca). Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

## Questions

Please refer your questions to any of the following:

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