

Modernizing the Distribution of Prospectuses: Canadian Securities Administrators Approve Electronic Delivery

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Overview

On January 11, 2024, the Canadian Securities Administrators (the "CSA") published its final amendments and changes to implement an "Access-Equals-Delivery" model (the "AED Model") to generally permit the electronic delivery of prospectuses in Canada for non-investment fund reporting issuers, including venture issuers, bidding farewell to mandatory printed prospectuses.² The AED Model is set to come into force on April 16, 2024, subject to receiving regulatory and ministerial approvals.

Background

The AED Model follows the CSA's consultation paper³ published on January 9, 2020, and proposal⁴ issued on April 7, 2022, and associated comment periods that sought feedback on permitting reporting issuers to deliver prospectuses and certain continuous disclosure documents, electronically. "Access-Equals-Delivery" models have been prevalent in U.S. prospectus offerings for many years.

What is the purpose of the AED Model?

The AED Model puts Canada on par with existing rules and practices of other major securities markets, such as the United States, and embraces the expansion towards electronic consumption of information. Additionally, the AED Model is a response to the widespread opinion that investors do not wait for, nor rely upon, paper delivery of a prospectus to inform their investment decisions.

Prior to the AED Model, Canadian securities laws required reporting issuers to physically deliver prospectuses to investors. As a result, reporting issuers incurred significant printing and postage costs in order to comply with Canadian securities legislation. The AED Model will transform the process of prospectus delivery in Canada by enabling a paperless approach and electronic filing for streamlined delivery under securities laws. Issuers will be able to save on significant printing

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² *CSA Notice of Publication of Amendments and Changes to Implement an Access Model for Prospectuses of Non-Investment Fund Reporting Issuers*, Ontario Securities Commission, OSC NI 41-101, (2024) OSCB 323.

³ *CSA Consultation Paper 51-405 - Consideration of an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers*, Ontario Securities Commission, (2020) 43 OSCB 354.

⁴ *CSA Notice and Request for Comment - Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers*, Ontario Securities Commission, (2022) 45 OSCB 3609.

and mailing costs, while investors can enjoy a timely and eco-friendly delivery of information by embracing this paper-saving approach.

What does the AED Model apply to?

- The AED Model applies to most prospectus offerings, including long-form prospectuses, short form prospectuses, preliminary prospectuses, shelf prospectuses, prospectus supplements, and post-receipt pricing prospectuses;
- The AED Model does not apply to rights offerings, medium-term note offerings, and other continuous distributions under a shelf prospectus;
- If the AED Model is used, prospective purchasers or purchasers still have the ability to request a copy of a preliminary prospectus or final prospectus in electronic or paper form and be provided without charge. Final prospectuses must be sent within two business days from the date of request;
- A dealer may rely on the AED Model to satisfy, or be exempt from, the requirement under securities legislation to deliver or send a prospectus and any amendment;
- A news release containing information relevant to the applicable offering may also include the information required under the AED Model; and
- The CSA has removed the two-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.

What does delivery under the AED Model look like?

Instead of requiring the delivery of a paper copy of a prospectus to investors, the AED Model allows (but does not require) reporting issuers to satisfy their delivery requirements by:

- filing the prospectus on System for Electronic Document Analysis and Retrieval ("SEDAR+"); and
- in the case of a final prospectus, filing the final prospectus and any amendment on SEDAR+ and issuing and filing a news release on SEDAR+ with the following required information:
 - (i) in the title of the news release, that the document is accessible through SEDAR+;
 - (ii) that access to the document is provided in accordance with securities legislation relating to procedures for providing access to a prospectus and any amendment;
 - (iii) that the document is accessible at www.sedarplus.ca;

- (iv) the securities that are offered under the document; and
- (v) the following statement: "An electronic or paper copy of the final prospectus and any amendment may be obtained, without charge, from [insert contact information for the issuer or dealer, as applicable] by providing the contact with an email address or address, as applicable."

British Columbia, Québec, and New Brunswick have structured the AED Model to be an exemption from the delivery obligation, as this approach better aligns with the legislative authority in those jurisdictions, while in all other jurisdictions the AED Model is structured to satisfy the delivery obligation under securities legislation. In each instance, the AED Model intends to provide investors with electronic access to a final prospectus or preliminary prospectus, as applicable.

Does the AED Model alter withdrawal rights?

The AED Model will alter the withdrawal rights that were previously available to investors under certain provincial securities laws. Historically, withdrawal rights available to investors under certain securities laws like Ontario, expired at midnight on the second day after the investor received the prospectus. In the event an investor agreed to purchase additional securities in the offering after the two-day period had passed, the investor would not have had a withdrawal right for those additional securities. Under the AED Model, investors may now exercise their withdrawal rights on the later of the date on which:

- (a) the prospectus was filed on SEDAR+ and the associated news release was issued; and
- (b) the investor entered into an agreement to purchase the security.

As such, if an investor agrees to purchase additional securities, the withdrawal period may commence when the additional purchase agreement was entered into.

The CSA has clarified that a request for a paper or electronic copy of a prospectus by an investor will not impact the duration of the investor's withdrawal rights.

Does the AED Model establish different requirements for news releases related to shelf distributions and post-receipt pricing (PREP) prospectuses?

The AED Model brings forward a distinct approach for shelf prospectuses and post-receipt pricing (PREP) prospectuses than prospectuses generally. Namely, rather than requiring that the prospectus is electronically available at the same time a news release is issued for a shelf or PREP prospectus, the AED Model allows the news release to include a forward-looking statement that the prospectus will be available on SEDAR+ within two business days.

The CSA acknowledges that under certain circumstances, an issuer may, prior to the filing of the final prospectus, issue a news release disclosing material information with respect to the offering. 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 National Instrument 44-102⁵ and section 4.8 of National Instrument 44-103⁶ 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.

In light of the specified time constraints on filing shelf prospectus supplements and supplemented PREP prospectuses, the CSA holds the opinion that, under the AED Model, it is appropriate to allow the prescribed news release to be issued within two business days before the date the document is filed. The AED Model also permits the reporting issuer to satisfy the news release requirements by filing only a single news release.

Does the AED Model have any impact on marketing and road shows?

The AED Model requires that all marketing communications, including road shows, refer to the final prospectus or amendment as being available on SEDAR+ for any offering that relies on the AED Model for delivery.

Future Developments

The CSA considered extending the AED Model to continuous disclosure documents; however, there were investor protection concerns amongst stakeholders. As a result, the paperless delivery remains exclusive to prospectuses. In due course, we may see a revised AED Model for continuous disclosure documents for stakeholder evaluation and comment. The Ontario Securities Commission Statement of Priorities for 2024-2025 indicates that this could happen as soon as the end of fiscal 2024.⁷

Conclusion

The AED Model is a welcomed development for the Canadian capital markets landscape and is consistent with the prevailing shift towards electronic disclosure consumption. From a reporting issuer's perspective, the AED Model significantly cuts down costs relating to printing and postage and eliminates the regulatory burden to deliver hard copies of a prospectus to each and every investor. From an investor's perspective, the AED Model provides timely and efficient access to information through SEDAR+ while still allowing for the distribution of paper copies of prospectuses for investors who prefer paper copies. Lastly, from an environmental perspective,

⁵ *Unofficial Consolidation: National Instrument 44-102 Shelf Distributions*, Ontario Securities Commission, OSC NI 44-102 (2020-08-31) at s 6.4(2).

⁶ *Unofficial Consolidation: National Instrument 44-103 Post-Receipt Pricing*, Ontario Securities Commission, OSC NI 44-103 (2013-08-13) at s 4.8.

⁷ *OSC Notice 11-798 - Statement of Priorities - Request for Comments Regarding Statement of Priorities for Fiscal Year 2024-2025*, Ontario Securities Commission, OSC NP 11-798, (2023) 46 OSCB 9219.

the AED Model brings forth the possibility of saving a substantial quantity of paper and reduction of carbon emissions associated with mailing.