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OPINION

CSA's proposal for company disclosures has downsides for investors

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On April 7, the Canadian Securities Administrators issued a proposal to implement an "access equals delivery," or AED, model for certain public-company disclosures. According to the CSA, the purpose of the model "is to modernize the way documents are made available to investors" and to "reduce regulatory burden without compromising investor protection."

In our view, the proposal misses an opportunity to modernize investor communications and falls short on reducing regulatory burden. We question the CSA's assertion that the changes will not compromise investor protection.

Currently, public companies must deliver financial statements and related management's discussion and analysis (MD&A) to their shareholders, as well as provide prospectuses to investors buying newly issued securities. In the case of financial statements and MD&A, companies can send a notice each year indicating that shareholders can request that copies be delivered.

The CSA's AED proposal would provide another alternative under securities law to public companies. Instead of delivering documents or sending an annual notice to shareholders, the documents would be "deemed" to be delivered if the company meets two conditions. It would have to post them on SEDAR – an electronic database that has been around for decades, but that few investors know about or use – and, on the same day, issue a press release (also filed on SEDAR) advising shareholders that the documents are available.

While existing delivery requirements should be modernized, this proposal has more downsides than upsides for investors and may result in them becoming less engaged with the companies they own. This is because AED will require investors to find a way to monitor company press releases, or regularly track its public filings; become aware of the SEDAR database and know how to use it; and monitor and download documents they need from SEDAR.

The CSA's policy choice is too focused on eking out minor costs savings for some public companies rather than better protecting investors. We are also concerned that it may be expanded over time to other delivery requirements (such as mutual-fund-related disclosures or proxy materials).

While the CSA may claim that AED will enhance investors' access to information, prospectuses, financial statements and MD&A have long been required to be posted on SEDAR. Most investors are not aware of the database, and most media outlets will typically not pick up routine press releases.

Our concerns are supported by research. A True North Canada investor survey commissioned by Broadridge Financial Solutions last year found that 82 per cent of retail investors are either not aware of SEDAR or do not use it. This lack of awareness is greater among investors with lower income or wealth, less education, and of older age.

The survey also revealed that 94 per cent of retail investors wish to either receive financial statements and MD&A automatically or be sent a notice of their availability.

Further, while the CSA argues that AED will reduce regulatory burden for public companies without compromising investor protection, the analysis that accompanied the proposal is incomplete and based on assumptions rather than data. It selectively considers the costs and benefits to public companies while ignoring them for investors.

The CSA does acknowledge that, for companies choosing to use it, AED will impose an estimated $6,000 annual "SEDAR filing charge" on those that do not currently issue press releases when filing prospectuses or financial statements. The benefit derived for them is unclear.

Finally, while some alternatives to AED are discussed in the proposal, little supporting explanation is provided as to why they are not feasible and preferable. This makes them difficult to assess.

One alternative recommended by many commentators is to move from paper to electronic delivery (to facilitate digital access to a broader range of corporate information). Why shouldn't the investor experience (including their ability to indicate preferences on how to receive information) keep pace with other areas?

For example, most consumers can easily subscribe to updates or receive alerts. The CSA, however, dismisses electronic delivery because of "legal uncertainties" that "may require legislative changes," and other complications, including potentially having to revise other rules and policies.

Another alternative is to expand the existing "notice-and-access" process, which allows for the greater use of electronic delivery by providing actual notice that disclosure documents are available to investors. Expanding it was rejected because "certain requirements … may deter some issuers."

Yet an increasing number of public companies are overcoming these uncertainties to deliver information to their shareholders electronically. Some are being resolved. For example, 2018 amendments to the Canada Business Corporations Act, when enacted, will facilitate greater use of the existing notice-and-access process.

What is needed are more effective tools for fostering investor engagement while also reducing paper burden and regulatory costs. This is the path regulators are taking in other jurisdictions. Both objectives are easily within reach (and SEDAR could be part of the solution). Investors deserve no less.

We encourage the CSA to listen to investors about how they want to receive information and modify the regulatory framework accordingly.