

# TSX issues final rules for corporate governance website disclosure and disclosure of security-based compensation arrangements

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## In this Update

- The Toronto Stock Exchange (TSX) has issued final amendments to the Company Manual relating to corporate governance website disclosure and disclosure of security-based compensation arrangements
- Timing for posting corporate governance documents on the listed issuer's website and for reflecting updated security-based compensation disclosure requirements in proxy circulars
- Key takeaways concerning corporate governance website disclosure requirements
- New burn rate disclosure and revised effective date for security-based compensation disclosure

The Toronto Stock Exchange (the TSX) has issued final amendments to the Company Manual which: (a) require listed issuers to post on their websites certain corporate governance documents by April 1, 2018 and (b) revise disclosure requirements for security-based compensation arrangements effective for fiscal years ending on or after October 31, 2017.

## Key takeaways

### Corporate governance website disclosure requirements

By no later than April 1, 2018, TSX-listed issuers are required to post and maintain the following documents, if adopted, on a web page that is easily identifiable and accessible from the listed issuer's home page or investor relations page:

- articles of incorporation, amalgamation, continuation or any other constating or establishing documents of the listed issuer and its bylaws;
- majority voting policy;
- advance notice policy;
- position descriptions for the chairman of the board and the lead director (if applicable);
- board mandate; and
- board committee charters.

The corporate governance website disclosure requirement does not apply to eligible interlisted issuers, eligible international interlisted issuers, exchange-traded funds, closed-end funds, issuers of exchange-traded notes, or issuers of certain structured products where

an investor's returns are contingent upon, or highly sensitive to, changes in underlying values.

## Changes regarding disclosure of security-based compensation arrangements

Effective for fiscal years ending on and after October 31, 2017, TSX-listed issuers are required to disclose in their proxy circulars:

- the annual burn rate for each security-based compensation plan for the last three years;
- where a security-based compensation arrangement includes a multiplier that increases the number of shares to be issued on settlement based on performance, the effect of that multiplier on the burn rate; and
- vesting and term requirements for all security-based compensation plans, not just stock option plans.

In addition, information on security-based compensation arrangements now should be given as at the end of the most recently completed financial year instead of the date of the meeting materials (a change consistent with executive compensation disclosure requirements under securities laws). However, if shareholder approval of a security-based compensation arrangement is being sought at the relevant shareholders meeting, the information must be provided as at the date of the meeting materials.

## Analysis

### Corporate governance website disclosure requirements

The notice of approval for the final amendments to the TSX Company Manual (the "Amendments") states that the TSX believes that corporate governance information for a listed issuer should be posted on the listed issuer's website, even though certain of the documents are already required to be filed on the System for Electronic Document Analysis and Retrieval (SEDAR), since the information can be difficult to find on SEDAR and since not all corporate governance documents which the TSX is requiring its listed issuers to post on their websites are required to be filed on SEDAR.

Many listed issuers already post their board mandate, committee charters and certain key policies on their websites. However, the Amendments will now require most TSX-listed issuers to post additional documents as listed above, but these documents should be readily obtainable by issuers. Moreover, listed issuers may post documents in their current form, even if they are contained within larger documents, so long as the issuer makes it easy to identify the portion that the TSX requires to be posted. Listed issuers will need to review and revise their corporate governance website disclosure practices to include the additional documents which the TSX now requires them to post.

The corporate governance website disclosure rules originally proposed by the TSX in 2016 (the 2016 Proposals), summarized in our Osler Update available [here](#), included a longer, more open-ended list of documents for publication on the website. However, in response to comments on the 2016 Proposals, the TSX reduced the list of documents subject to website disclosure. For example, securityholder rights plans (commonly known as poison pills), position descriptions for "key officers," anti-corruption policies, other environmental and social policies and whistleblower policies, are not required to be posted on the listed issuer's

website under the Amendments. Surprisingly, although codes of conduct are required under securities laws to be filed on SEDAR, the Amendments do not include codes of conduct in the list of corporate governance documents to be posted on a listed issuer's website.

## Changes regarding disclosure of security-based compensation arrangements

The changes to the security-based compensation disclosure obligations affect all issuers with fiscal years ending on or after October 31, 2017, and, accordingly, will apply to proxy circulars for the upcoming proxy season starting with Canada's banks - i.e., they are effective almost immediately.

### New burn rate disclosure

TSX-listed issuers are now required to disclose, on an annual basis, a burn rate for each security-based compensation arrangement for each of the listed issuer's three most recently completed fiscal years. However, if an arrangement (or a similar predecessor arrangement) has not existed for at least three fiscal years, the listed issuer will only need to disclose the annual burn rate for each year completed since the arrangement was first adopted. The 2016 Proposed Amendments would only have required disclosure of the burn rate over the prior three years in the case of a meeting where shareholder approval is being sought in connection with a security-based compensation arrangement, and required disclosure of the burn rate over just the prior fiscal year for other meetings.

Some issuers already voluntarily provide burn rate disclosure. However, listed issuers will need to revisit their approach as the TSX prescribes a methodology for calculating the burn rate that may differ from their existing practices. The burn rate is calculated by dividing: (i) the number of awards granted in the applicable fiscal year; by (ii) the weighted average number<sup>[1]</sup> of outstanding securities of the listed issuer for the applicable fiscal year.

If the security-based compensation arrangement includes a multiplier that increases the number of shares to be issued on settlement based on performance, the effect of the multiplier on the burn rate must be disclosed. The 2016 Proposals contemplated that the burn rate would be calculated assuming the maximum multiplier level is achieved. However, in response to comments received on the 2016 Proposals, the Amendments require a narrative description of the potential impact of the multiplier on the burn rate and do not require that listed issuers reflect the multiplier in calculating the burn rate.

### Effective date for disclosure

Disclosure on security-based compensation arrangements, other than disclosure regarding the annual burn rate, must be given as at the end of the most recently completed financial year (consistent with executive compensation disclosure requirements under securities laws), provided that if shareholder approval of a security-based compensation arrangement is being sought at the meeting, disclosure is to be provided as at the date of the meeting materials. Previously, the Company Manual required disclosure of security-based compensation arrangements to be as of the date of the meeting materials.

### Other changes not made

The 2016 Amendments would have required the listed issuer to post on its website the text

of all security-based compensation arrangements and individual awards not granted pursuant to a plan, would have reduced the level of disclosure respecting such arrangements required to be included in the listed issuer's proxy circular, and would have required that disclosure of security-based compensation arrangements included in the proxy circular be presented in accordance with a new Form 15 disclosure table (see the summary in our Osler Update available [here](#)) However, the TSX abandoned such proposals in response to comments on the 2016 Proposals and, accordingly, those proposed changes are not included in the Amendments.

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[1] The weighted average number of securities outstanding during the period is the number of securities outstanding at the beginning of the period, adjusted by the number of securities bought back or issued during the period multiplied by a time-weighting factor. The time-weighting factor is the number of days that the securities are outstanding as a proportion of the total number of days in the period; a reasonable approximation of the weighted average is adequate in many circumstances. The weighted average number of securities outstanding is to be calculated in accordance with the CPA Canada Handbook, as such may be amended or superseded from time to time.