

# TSX's proposed website disclosure rules will expand corporate governance and security based compensation disclosure



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The Toronto Stock Exchange (TSX) recently published proposed amendments to its Company Manual that would introduce mandatory website disclosure requirements for TSX-listed issuers and revise the disclosure requirements for security based compensation arrangements. If implemented, the new rules and related revisions to proxy circular disclosure requirements will necessitate substantial changes to disclosure practices of all issuers listed on the TSX. Issuers only have until June 27, 2016 to comment on the proposed amendments.

## Key takeaways

- The TSX proposes requiring website disclosure of documents relating to the corporate governance of the issuer, including documents which are rarely voluntarily disclosed by issuers.
- The TSX also proposes requiring website disclosure of all security based compensation arrangements, including plans and individual awards not granted pursuant to a plan.
- Issuers will no longer be required to summarize in their proxy circulars the terms of their majority voting policies and certain key terms of their security based compensation arrangements as the full text of these will be available through the issuer's website.
- Proxy circulars of TSX-listed issuers would be required to
  - disclose the annual burn rate for each security based compensation plan for the last three years
  - provide additional disclosure regarding the effect of any performance multiplier on outstanding security based compensation awards
  - summarize default vesting provisions and disclose whether vesting is time and/or performance based
- No change is proposed to existing requirements respecting the pre-clearance, shareholder approval or substantive content of security based compensation arrangements. And

compensation arrangements which do not involve newly issued securities or the potential issuance of newly issued securities still do not constitute security based compensation arrangements under the TSX rules.

## Website disclosure

Listed issuers would need to post and maintain the following documents on a web page that is easily identifiable and accessible from the issuer's home page or investor relations page:

- constating documents
- corporate policies that may have an impact on meetings of security holders and voting, including majority voting policies and policies on advance notice of director nominations
- security holder rights plans, commonly known as poison pills
- security based compensation arrangements, including the text of such plans and individual awards not granted pursuant to a plan
- corporate governance documents, including the board mandate, committee charters, position descriptions, code of conduct, anti-corruption policies, other environmental and social policies and whistleblower policies

Although some of these documents are required to be filed on the System for Electronic Document Analysis and Retrieval (SEDAR), the TSX believes they should also be posted on the issuer's website as they may be difficult to find on SEDAR. Many issuers do post the board mandate, committee charters and code of conduct on their websites. However, the extent to which issuers post other documents relating to their corporate governance practices, including internal policies respecting environmental and social matters, varies. In some cases, issuers will have difficulty identifying what documents are subject to a filing requirement as some of the categories are vague and defined in a non-exhaustive manner. The TSX does not specify the timing for when a new or amended document must be posted on the website.

## Changes to proxy circular disclosure requirements respecting security based compensation disclosure

The amendments to disclosure requirements concerning security based compensation arrangements are proposed to simplify the disclosure required in meeting materials and introduce a new Form 15 with a user-friendly table. Issuers will be required to disclose the following for **each** security based compensation plan and disclose the substantive elements of the following for **each** individual award not granted pursuant to a plan:

Plan maximum	The maximum number of securities issuable, as a number and a percentage of the outstanding securities.
Outstanding awards	The number of outstanding awards and the percentage of the outstanding securities it represents. If the award includes a multiplier, the maximum payout under the multiplier must be used to calculate the number of listed securities issuable under the award. The details regarding the multiplier are to be included in a footnote to the disclosure.

Burn rate	The annual burn rate for each of the three most recently completed financial years determined as a quotient of the number of awards granted under the plan, net of any cancellations, during the most recently completed fiscal year (multiplied by the multiplier, if applicable) divided by the number of issued and outstanding securities as at the beginning of the most recently completed fiscal year.
Eligibility	Eligibility requirements.
Vesting	Applicable vesting requirements, including default vesting provisions and whether vesting is time and/or performance based.
Amendments	Any amendments made in the most recently completed financial year that were not approved by shareholders. Prior amendments made with securityholder approval would no longer need to be disclosed.
Other key terms	No disclosure is required unless securityholder approval is being sought in connection with a security based compensation matter. If securityholder approval is being sought, disclosure must be sufficient to enable reasonable securityholders to form a reasoned judgment on the matter.
Date of disclosure elements	Form 15 disclosure will now be provided as at the end of the most recently completed fiscal year, unlike under the current requirement, which requires disclosure as of the date of the circular. But if securityholder approval is being sought in connection with a security based compensation matter, the information in Form 15 must be provided as of the date of the circular, as currently required.

Issuers will no longer be required to disclose in the proxy circular: (i) the maximum securities available to insiders; (ii) the maximum securities available to one person or company; (iii) the method for determining exercise price; (iv) the method for determining purchase price; (v) the formula for calculating market appreciation of stock appreciation rights (SARs); (vi) the ability to transform stock options into SARs involving issuance of securities from treasury; (vii) the term of awards; (viii) causes of cessation of entitlement and the effect of employee termination; (ix) assignability; (x) the procedure for amendments; (xi) any related financial assistance; and (xii) entitlements previously granted but subject to security holder ratification.

» [View the full TSX publication](#). Should you have any questions about the proposed amendments, or if you would like specific guidance on how these proposed amendments may affect you, please do not hesitate to contact [Andrew MacDougall](#), [François Paradis](#) or

Jeremy Brisset.