

# Innovative Tools for Convenient and Transparent Disclosure and Effective Engagement

Market participants are increasingly calling on public companies to provide more transparent and convenient information. In this chapter, we explore how Canadian public companies can meet these expectations by making their communication (including and beyond traditional continuous disclosure documents) and engagement practices both clearer and more user-friendly. Through our review of all TSX 60 issuers' corporate websites, we identify principal barriers to having a user-friendly and effective website, and provide practical tools to optimize usability and stakeholder engagement. More generally, we discuss how leveraging a company website, making use of notice-and-access, hosting hybrid-virtual meetings and making (appropriate) use of social media outlets all provide enhanced opportunities for a company to more effectively convey its strategy and business plans, and foster long-term viability.

## Communication and Engagement: Building Transparency and Convenience

With sustained levels of shareholder activism and engagement, as well as increased attention on environmental, social and governance (ESG) issues, the stakes for boards and senior management to deliver clear disclosure and effective engagement are higher than ever. Broadly speaking, disclosure to shareholders consists of disseminating information about a corporation to the public, whereas engagement involves a corporation's communication with its shareholders (and, more broadly, stakeholders) and vice versa. Rethinking traditional modes of disclosure and engagement is imperative for most directors and senior management in order to satisfy both their stakeholders' desire for convenient and transparent information and their duties to act in the best interests of the corporation.

Canadian public companies' disclosure practices and engagement strategies have traditionally focused on fulfilling prescribed continuous disclosure requirements and shareholders' participation in analyst conference calls, quarterly earnings calls and annual shareholders' meetings. Reporting issuers have always been required to prepare, file and disseminate written disclosure materials with respect to their business, operations and financial results. With seemingly ever more demanding disclosure best practices and obligations, these materials are now often complex, lengthy, duplicative and difficult to consume. And annual shareholders' meetings and earnings calls are often carefully scripted, perfunctory and poorly attended events. Market participants are increasingly pressing for more transparent and convenient communication, as recently stressed by BlackRock Chairman and CEO Larry Fink and the U.S. Business Roundtable.<sup>170</sup>

How can corporations transform their communication and engagement practices to be both transparent and convenient? In our view, disclosure and engagement must evolve from a process too often undertaken solely to comply with securities regulatory obligations into a strategic priority that integrates diverse stakeholder feedback and input, thus allowing a board to fulfill its fiduciary oversight responsibility.

## Creating Effective Website Disclosure

Where SEDAR was once the first stop for capital market participants seeking access to company information, corporate websites are now the de facto source of information for investors and market participants. Projecting a strong public-facing presence should therefore start with maintaining a website that clearly broadcasts timely and relevant company information. If done right, a corporate website can be an effective and critical tool to increase and optimize stakeholder (and not just shareholder) engagement by communicating the corporation's vision, strategy and activities.

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## STOCK EXCHANGE WEBSITE DISCLOSURE REQUIREMENTS

As a baseline, issuers' websites should meet the applicable legal requirements. Currently, Canadian corporate statutes do not prescribe what public companies should post on their corporate websites. However, the Toronto Stock Exchange (TSX) imposes the following website disclosure requirements on listed issuers (subject to certain categories of excluded issuers):

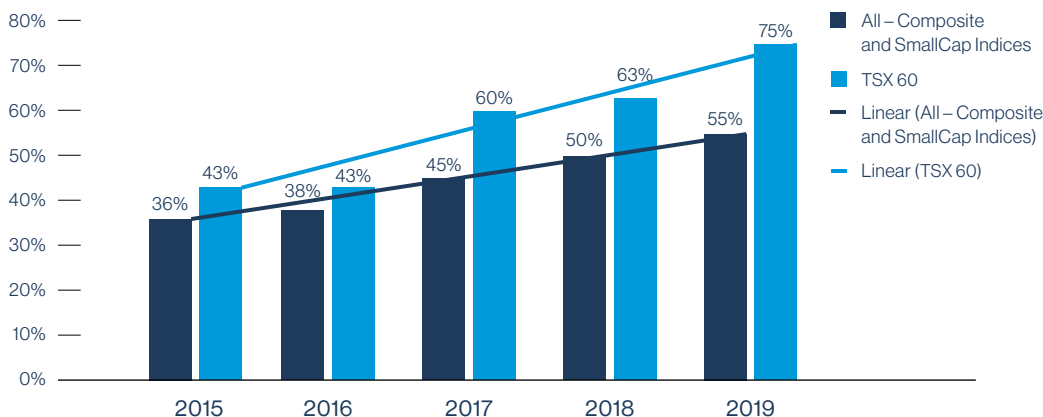
**TABLE 8-1:**  
**TSX and TSXV Disclosure Requirements**

Issuer Type	Disclosure Requirements
TSX-listed issuers' basic requirements	<p>Maintain a publicly accessible website and post the current, effective versions of the following documents (or their equivalent):<sup>171</sup></p> <ul style="list-style-type: none"> <li>a) articles or any other constating documents and all bylaws of the issuer;</li> <li>b) if adopted/applicable, copies of the               <ul style="list-style-type: none"> <li>– majority voting policy;<sup>172</sup></li> <li>– advance notice policy/bylaw;</li> <li>– position descriptions for the board chair and/or lead director;</li> <li>– board mandate; and</li> <li>– board committee charters.</li> </ul> </li> </ul>
TSX-listed issuers engaged in mineral exploration, development and production	<p>Must also ensure that:<sup>173</sup></p> <ul style="list-style-type: none"> <li>a) a website address is provided in all corporate disclosure documents;               <ul style="list-style-type: none"> <li>– any disclosure should be posted on the website immediately after it has been otherwise published; and</li> <li>– the information should remain posted “until such time as the company has disclosed that it has discontinued work on a property, or no longer has any interest in the property, or the information has been superseded by disclosure of further work on the property;” and</li> </ul> </li> <li>b) any information required to be disclosed under National Instrument 43-101 – <i>Standards of Disclosure for Mineral Projects</i> is readily obtainable from the company by email, fax or mail, or through a website.</li> </ul>
TSX Venture Exchange (TSXV)-listed issuers' basic requirements	<p>No requirements equivalent to those of TSX-listed issuers.</p>
TSXV-listed issuers engaged in mining	<p>Must ensure that:<sup>174</sup></p> <ul style="list-style-type: none"> <li>a) all geological reports referred to in a news release or as part of a TSXV filing are available from the issuer or posted on the issuer's website; and</li> <li>b) the disclosure of the company's mineral properties on its website complies with certain requirements, including being up to date and containing the names of qualified persons responsible for preparing scientific and technical information.</li> </ul>

In addition, where a company uses the notice-and-access regime for delivery of proxy-related materials to shareholders, Canadian securities laws require the issuer to post the meeting materials and the notice and form of proxy on SEDAR and another website (which could be the issuer’s website) at least 30 days prior to the meeting. Notably, as shown in Figure 8-1 below, in 2019, 75% of companies on the TSX 60 (up from 43% in 2015), and 55% of the Composite Index and SmallCap Index issuers (up from 36% in 2015) now use notice-and-access. And we expect these numbers will continue to rise with the recent amendments to the *Canada Business Corporations Act* (CBCA), which will now allow public companies existing under the CBCA to use the increasingly popular notice-and-access regime.

In 2019, 75% of companies on the TSX 60 (up from 43% in 2015), and 55% of the Composite Index and SmallCap Index issuers (up from 36% in 2015) now use notice-and-access.

**FIGURE 8-1:**  
Percentage of Issuers on the TSX Composite and SmallCap Indices that Use Notice-and-Access (2015–2019)



**ADDITIONAL GUIDANCE ON WEBSITE DISCLOSURE**

Of the various regulators in Canada, only the TSX and the Canadian Securities Administrators (CSA) offer practical tips for companies concerning the maintenance of an effective investor relations (IR) website. As shown in Figure 8-2, the TSX and CSA recommend that listed issuers do the following, among other things:<sup>175</sup>

**FIGURE 8-2:**  
**Overview of TSX's and CSA's Recommendations**  
**for an Effective Website**

### Post Information

- Make available all "timely disclosure" documents and other IR information.
- Post IR information as soon as possible following dissemination.
- Post IR contact information.
- Concurrently post on the company's website all documents filed on SEDAR.
- Separate promotional and investor information.
- Remove outdated or inaccurate information.

### Safeguard the Website

- Have a clear written policy on electronic communications.
- Regularly review and monitor the website's integrity.
- Avoid deep-linking (i.e., linking to a webpage that is not a homepage).
- Avoid posting media articles.
- Ensure all third-party links are accompanied by a disclaimer that the viewer is leaving the company's website and that the company is not responsible for the content, accuracy or timeliness of other sites.

### Practise Knowledge Management

- Maintain email distribution lists with subscription capabilities or automated software to provide updates to issuers (dissemination of information via a newswire service must occur first).
- Establish an archiving system.
- Date documents and maintain logs of material information that have been posted and removed from the website.

### Monitor Employee Conduct

- Prohibit employees from participating in Internet chat rooms, newsgroups or social media in discussions relating to the issuer or its securities.
- Require employees to report any online discussion pertaining to the issuer.

## SHAREHOLDER ENGAGEMENT POLICIES

Many of Canada's largest public companies have already adopted formal engagement policies; for those that have not, institutional investors, asset managers and corporate governance watchdogs continue to advocate for more active, ongoing and collaborative engagement with non-executive directors. A formal policy or framework setting out the board's approach to shareholder engagement, including whether, when and how the board will engage can:

- Provide guidance on which topics will properly be addressed by the board versus those that will be referred to management.
- Open up a direct dialogue between directors and shareholders.
- Create a forum to gain investors' views on corporate strategies, risk management, ESG topics and executive performance and compensation.

When creating a policy:

- Remember that the board's engagement efforts are intended to complement and not displace the CEO, management and investor relations' primary responsibilities in this area.
- Include a copy of the policy separately on the website instead of burying it in the annual report or information circular.

If you don't have a policy:

- Consider developing a framework for engagement, to set the parameters for when, if and how to engage with investors both during business as usual and in the case of a crisis.

## DISCLOSURE RULES APPLY TO ELECTRONIC COMMUNICATIONS

Information posted on a corporate website is subject to the same securities laws as information contained in traditional disclosure documents. Typically, disclosure of information through an issuer's website alone is insufficient to satisfy its disclosure obligations under securities laws. In addition, the following requirements apply:

- Electronic communications must not be misleading.
- Issuers have a duty to correct and update websites.
- Information must be presented in a consistent manner.
- Electronic communications must not be used to “tip” or leak material information.
- Special attention should be given to applicable foreign securities laws.

Ultimately, a standard of timely, up-to-date-and accurate information is the best practice.

Thus far, Canadian corporate governance commentators have published few website disclosure guidelines, despite the central role played by company websites in disseminating information and communicating with market participants. Of the two main proxy advisory firms, only Glass Lewis & Co. references a company's website, stating that it considers a company's website when evaluating board responsiveness.

## Case Study: TSX 60 Website Practices

In June 2019, we conducted a review of all TSX 60 issuers' corporate websites. The review focused on assessing compliance with the TSX's rules and identifying the factors that make a website more or less effective. The quality of websites surveyed varied, with some being significantly more informative and user-friendly than others. Generally speaking, many of the websites revealed opportunities for improvement. We note that some documents that we treated as being “unavailable” in our review may in fact be available but were so difficult to locate on the website that the average user would be unlikely to easily find or access them. At a high level, the results of our review are shown in Table 8-2 below.

**TABLE 8-2:**  
**TSX 60 Issuers' Compliance with TSX Website Disclosure Rules (2019)**

Prescribed Policy/Document(s)	Compliance
Articles and other constating documents and bylaws	92%
Majority voting policy	90%
Advance notice policy	Approximately 95%*
Position descriptions for the board chair and/or lead director	73%
Board mandate	92%
Board committee charters	98%

\* Approximate compliance rate, based on the number of TSX 60 issuers that disclosed having an advance notice bylaw or policy and whether the document was available on the website.

## BARRIERS TO A USER-FRIENDLY WEBSITE

From our review, we identified the following principal barriers to having a user-friendly and effective website:

- **Deep-linking.** Users had to click through multiple webpages and links to access corporate governance materials.
- **Materials spread across webpages.** Corporate governance materials were not listed and linked on a single webpage; instead, they were spread across multiple webpages.
- **Materials buried in annual reports or information circulars.** Governance materials were buried within larger annual reports and information circulars on the website, rather than being linked as separate documents.
- **Ineffective search toolbar.** Some websites had ineffective or poorly functioning search toolbars.
- **Failure to include optical character recognition (OCR).** Documents were linked only as images, and OCR was not available, so terms were not searchable.
- **Undated documents.** Documents were linked but undated, creating uncertainty whether the posted documents were current and accurate.
- **Multiple documents in a single PDF file.** Some companies combined several required documents within a single PDF file, rendering it difficult, for example, to find a majority voting policy within a broader set of governance policies or principles unless the user opened and reviewed the entire document.
- **Contact information.** Provide key contact details such as email addresses, phone numbers, office location(s) and hours.
- **Clearly labelled and visible links.** Include a direct link to a governance webpage containing all required documents, clearly labelled and hyperlinked to PDF files. While many companies have their advance notice requirements within their bylaws, indicating this in parentheses beside the bylaws makes them readily accessible.
- **Enabled search functions.** Equip websites with user-friendly search engines that search not only titles but also entire documents for keywords. The most user-friendly way of displaying search results is to sort them either by relevancy to the search terms or in chronological order. Having an advanced search function that filters results by date, topic, individual, type or document format is the most helpful.
- **Governance documents posted to the IR webpage.** Beyond meeting the TSX-mandated disclosure requirements described above, a number of companies post their codes of conduct, whistleblower policies, shareholder engagement policies and other corporate governance guidelines developed by the company.
- **Visual and audio tools.** Communicating complex information is shifting from traditional presentations and reports to more visual formats such as pictures, infographics and videos. Websites displaying pictures of the issuer's directors, executives and committee members provide a more intimate experience. Creating and maintaining an IR calendar also provides a more transparent and convenient way for investors and other market participants to track company information. Videos showcasing executives and employees can also humanize a company, fostering investor trust. Audio files are also useful for recording and making conference calls available.

## TOOLS TO OPTIMIZE USABILITY

On the other hand, some websites reviewed were very effective and employed leading-edge techniques to improve their usability and clarity, including the following recommended tools:



- **Optimized mobile viewing.** With global mobile and tablet viewing having surpassed desktop viewing, consider adapting website content for mobile users. For instance, consider prioritizing events, summaries of key governance policies and practices, and video content for mobile and tablet users over downloadable documents.
- **User behaviour data.** To successfully connect with stakeholders, consider using website data analytics to monitor visitor behaviour. Key metrics to track include the number, frequency and duration of visits; which documents are downloaded; popularity of webpages; source of traffic; user location; exit rates; and indirect traffic trends. We recommend designating an individual to provide regular reports on user behaviour to management.
- **Sufficient, but not excessive, information.** While there is sometimes a deficit of information made available to shareholders, there must also be a balance to avoid information overload. Consider the profile of website users – who will mostly be investors, analysts and other key stakeholders such as employees and regulators.

## Virtual and Hybrid Shareholders' Meetings

As discussed in *Davies Governance Insights 2018*,<sup>176</sup> one means whereby some issuers are beginning to leverage technology to engage with shareholders is through hybrid and virtual shareholder meetings. Virtual meetings can facilitate shareholder participation by enabling shareholders to view meetings, listen to discussions, ask questions and vote their shares, all through the means of secure technology and without the cost and time to attend in person.

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## A staggering 103 companies on the Composite Index and SmallCap Index held hybrid-virtual meetings for their 2019 annual shareholders' meetings.

There are two principal types of virtual shareholders' meetings:

- **Hybrid-virtual meetings.** These are traditional in-person meetings that are supplemented by an electronic participation component whereby shareholders can hear – and sometimes view – the meeting proceedings in real time, as well as ask questions and vote online contemporaneously.
- **Virtual-only meetings.** These meetings cannot be attended in-person by shareholders. Accessing an online portal is the sole means available to attend, ask questions and vote at the meeting.

The only two reporting issuers established under Canadian law to have held virtual-only meetings are Concordia International Corp. (in June 2017) and Canada Goose Holdings Inc. (in both August 2018 and August 2019). Both companies implemented audiovisual streaming technology, secured attendance authentication and real-time voting tabulation.

Canadian corporations have only recently begun adopting the hybrid-virtual meeting format. However, a staggering 103 companies on the Composite Index and SmallCap Index held hybrid-virtual meetings for their 2019 annual shareholders' meetings (see Figure 8-3).

A large, artistic splash of water in shades of blue and white, filling the background of the page. The water is captured in mid-air, creating a dynamic and refreshing visual.

# Spotlight: Social Media as a Tool for Engagement

Social media is increasingly being used by corporations to highlight key developments or events relating to their businesses, owing to the wide audience reach, ease of accessibility and high level of public engagement. Consider whether your company's social media usage reflects the following guidance:

## What and Where to Post

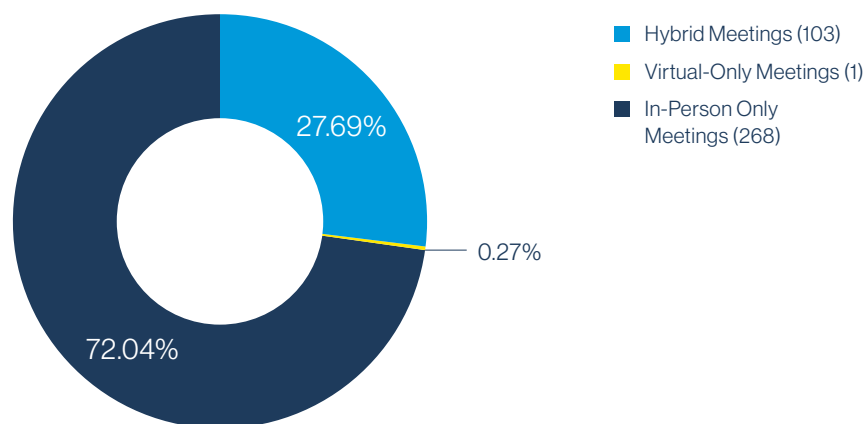
- Understand your audience. Different platforms call for different levels of sophistication.
- Issue news releases prior to social media posting.
- Ensure that announcements of material information are factual and balanced. Unfavourable news must be disclosed in the same manner as favourable news.
- Avoid unnecessary details, exaggerations or promotional commentary.
- Avoid hosting, linking to or participating in chat rooms or bulletin boards.

## How to Post<sup>177</sup>

- Consider adopting a social media governance policy.
- Designate an individual to supervise and approve all social media postings.
- Designate an individual to review the adequacy of systems and programs.
- Engage in “social listening,” which involves monitoring what is being said about the company (and its peers).
- Maintain adequate records when using social media websites.
- Protect clients from misleading or false statements.

Although caution should be exercised when utilizing social media, this tool can be an effective means of communicating with stakeholders due to its speed, convenience and real-time feedback.

**FIGURE 8-3:**  
Types of Shareholders' Meetings of Issuers on the TSX Composite and SmallCap Indices (Number and Percentage) (2019)



Use of remote meeting technology is a recent trend that is gaining increased attention in Canada. No longer does a shareholder have to travel distances or incur costs to hear from management or participate in a shareholders' meeting. Companies holding a hybrid-virtual meeting have recorded increased shareholder participation at their annual meetings,<sup>178</sup> and this is particularly helpful for shareholders who have time, geographic or economic constraints.

Investors, issuers and proxy advisory firms are closely examining the merits of adopting virtual-only meetings and debating whether and how they should be conducted. In the meantime, Canadian boards and senior management should consider whether the benefits of virtual-only meetings will serve to further enfranchise shareholders and improve access and engagement; if not, it may be premature to adopt a virtual-only meeting format, at least until all of the issues and associated benefits and costs are properly evaluated. Given many of the risks and criticisms of virtual-only meetings, hybrid-virtual meetings may be a more suitable alternative tool to provide enhanced access and opportunity for shareholders to participate in a company's shareholder meeting.

Companies holding a hybrid-virtual meeting have recorded increased shareholder participation at their annual meetings, and this is particularly helpful for shareholders who have time, geographic or economic constraints.

# Our Take: Treat Disclosure and Engagement as Tools to Promote the Company's Strategy and Purpose

The reality in the current governance landscape is that market participants use corporate websites as their first, and often primary, source of information. To share information and engage effectively, issuers should not only ensure that their websites are meeting all legal requirements, but also continuously optimize their websites, consider using notice-and-access, evaluate whether to host hybrid-virtual meetings and make (appropriate) use of social media outlets and other tools for stakeholder disclosure and engagement.

The benefits are clear: doing so can allow companies to (i) better control the content and clarity of their messaging; (ii) gain insights from their website users through data analytics; and (iii) educate and connect with a broad base of investors and other key stakeholders on the business and vision of the company. Such tools can also aid companies seeking to showcase their broader efforts at being good corporate citizens by bridging the access-to-information gap for potential stakeholders who may be, for example, unable to attend in-person events or who do not have the same influence as large institutional investors.

# Notes

## Chapter 8 – Innovative Tools for Convenient and Transparent Disclosure and Effective Engagement

- 170 CNBC News Release, “CNBC Exclusive: CNBC Transcript: BlackRock Chairman and CEO Larry Fink on CNBC’s ‘Squawk Box’ Today” (April 16, 2019), online: <https://www.cnn.com/2019/04/16/cnbc-exclusive-cnbc-transcript-blackrock-chairman-and-ceo-larry-fink-on-cnbc-squawk-box-today.html>; Business Roundtable, “Statement on the Purpose of a Corporation” (August 19, 2019), online: <https://opportunity.businessroundtable.org/ourcommitment/>.
- 171 If the issuer shares a website with another issuer, each issuer should have a separate dedicated webpage satisfying the requirements of section 473 of the *TSX Company Manual*.
- 172 Section 461.3 of the *TSX Company Manual* states, “If an issuer adopts a Policy to satisfy the Majority Voting Requirement, it must post a copy of the policy on its website in accordance with Section 473.”
- 173 *TSX Company Manual*, Appendix B Disclosure Standards for Companies Engaged in Mineral Exploration, Development & Production.
- 174 TSX Venture Exchange, *Corporate Finance Manual*, Appendix 3F Mining Standards Guidelines.
- 175 *TSX Company Manual*; National Policy 51-201 – *Disclosure Standards*.
- 176 Davies, online: <https://www.dwpv.com/en/Insights/Publications/2018/Governance-Insights-2018>.
- 177 “Social Media & IR: Rules and Best Practices for Publicly Listed Companies,” online: <http://www.cision.ca/resources/white-papers/socialmedia-ir/>. Also see: Canadian Securities Administrators, “Canadian Securities Regulators Highlight Need for Improved Social Media Disclosure Practices by Reporting Issuers” (March 9, 2017), online: <https://www.securities-administrators.ca/aboutcsa.aspx?id=1565&terms=social%20media>.
- 178 Computershare, “The future of shareholder meetings is virtually here,” online: <https://www.computershare.com/News/Virtual-Meetings.pdf>; Corporate Secretary, “Number of virtual shareholder meetings continues to rise, says Broadridge” (July 25, 2018), online: <https://www.corporatesecretary.com/articles/technology-social-media/31306/number-virtual-shareholder-meetings-continues-rise-says>; A. MacDougal and R. Adamson, “Director Briefing – Shareholder Engagement” (Canadian Institute of Chartered Accountants).