13.2.4 Toronto Stock Exchange – Request for Comments – Amendments to Toronto Stock Exchange Company Manual

TORONTO STOCK EXCHANGE

REQUEST FOR COMMENTS

AMENDMENTS TO TORONTO STOCK EXCHANGE COMPANY MANUAL

Toronto Stock Exchange ("TSX" or the "Exchange") is publishing proposed amendments to modify, expand and formalize certain exemptions available to interlisted issuers (the "Amendments") in the TSX Company Manual (the "Manual"). The Amendments provide for public interest changes in Parts IV and VI of the Manual, as well as certain ancillary changes to Parts I and III. The public interest changes will be published for public comment for a 45-day period.

The Amendments will be effective upon approval by the Ontario Securities Commission (the "OSC") following public notice and comment. Comments should be in writing and delivered by **March 9, 2015** to:

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The Exchange Tower
130 King Street West
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Fax: (416) 947-4461
Email: tsxrequestforcomments@tsx.com

A copy should also be provided to:

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Director
Market Regulation
Ontario Securities Commission
20 Queen Street West
Toronto, Ontario M5H 3S8
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Comments will be publicly available unless confidentiality is requested.

Overview

TSX is seeking public comment on Amendments to the Manual. This Request for Comments explains the reasons for, and objectives of, the Amendments. Following the comment period, TSX will review and consider the comments received and implement the Amendments, as proposed, or as modified as a result of comments.

Text of the Amendments

The Amendments to the Manual are set out as blacklined text at **Appendix A**. The Amendments would allow TSX to defer to other exchanges or jurisdictions for an expanded number of transactions as well as on certain corporate governance matters for interlisted issuers.

Interlisted Issuers on TSX

Certain issuers choose to list on two or more exchanges or marketplaces. We commonly refer to these issuers as interlisted issuers. Typically, these issuers first list on the market of their home jurisdiction (the home market) and, as they grow, seek a listing in another jurisdiction (an interlisted market) to increase their access to capital, enhance the liquidity of their securities, broaden their investor base, join their peers, increase analyst coverage or build brand recognition. A significant number of issuers, whether incorporated in Canada or in a foreign jurisdiction, are interlisted on TSX and another market and TSX expects this trend to continue.

As at November 30, 2014, there were 332 interlisted issuers on TSX. The vast majority of these issuers (273 or 82%) are incorporated in Canada ("Canadian-based Interlisted Issuers"), while the remaining 59 (or 18%) are foreign incorporated (for example in Australia or the State of Delaware) ("International Interlisted Issuers").

In 2013, 56 (22%) of the Canadian-based Interlisted Issuers and 37 (46%) of the International Interlisted Issuers had less than 25% of their trading volume on TSX.

Exemptions Currently Available to TSX Interlisted Issuers

TSX currently grants exemptions from its rules for a limited number of transactions, such as private placements and acquisitions, to certain interlisted issuers pursuant to Subsection 602 (g) of the Manual, which was adopted in 2005. This Subsection was adopted to reduce the regulatory burden on interlisted issuers without impacting the quality of the market. Subsection 602 (g) limits the availability of the exemptions to interlisted issuers where: (i) at least 75% of the issuer's trading volume and value over the six months preceding notification of the transaction occurs on another exchange (the "Trading Threshold"); and (ii) the other exchange is reviewing the transaction.

Certain interlisted issuers can also apply to TSX for relief on a discretionary basis from elements of TSX's corporate governance requirements. In July 2013, TSX issued Staff Notice 2013-0002 providing guidance to International Interlisted Issuers seeking to obtain relief from elements of the director election requirements in Sections 461.1 – 461.4 of the Manual. TSX has used the Trading Threshold as a factor in assessing whether to grant waivers to International Interlisted Issuers from the director election requirements.

Deference Practices of Other Exchanges for Interlisted Issuers

Most major exchanges (with the exception of the London Stock Exchange Main Board ("LSE") and AIM) have formalized rules or frameworks that allow an interlisted issuer to be exempted from certain exchange requirements. Based on this review, we have determined that exchanges that are peers of TSX have more comprehensive exchange deference frameworks than the model TSX currently has in place. LSE may provide certain exemptions to foreign incorporated entities upon application and on a discretionary basis. Almost all exchanges restrict the availability of these exemptions to foreign incorporated interlisted issuers. Most exchanges also use the level of trading in the home market or residency of security holders in determining whether an issuer is eligible for the exemption. The exemptions are typically for transactions and corporate governance matters and allow the issuer to rely on the regulatory regime of its home or principal market. The table below summarizes the deference rules of other exchanges.

	NYSE	NYSE MKT	NASDAQ	LSE	AIM	HKSE	ASX
Formalized rules / framework	✓	✓	✓	—	—	✓	✓(1)
Discretionary exemptions provided for in rules				✓			✓
Eligibility criteria							
Foreign incorporation	✓	✓	✓	✓	—	✓(2)	✓
Level of trading or residency of security holders	✓	✓	✓	—	—	✓	✓
Regulated by other market / must follow home country practice	✓	✓	✓	—	—	✓	✓
Exemptions / relief available for:							
Transactions	✓	✓	✓	✓	—	✓	✓
Corporate governance	✓	✓	✓	—	—	✓	✓

(1) ASX provides relief from its rules for only its largest foreign incorporated issuers (profits of $200M in the last 3 years or assets of at least $2B).
(2) One of several factors considered to assess whether the other market / exchange is the primary listing.

In Canada, the Canadian Securities Exchange does not have rules exempting interlisted issuers from its requirements. Aequitas Neo Exchange will consider granting exemptions from its requirements to foreign interlisted issuers in certain circumstances.

On TSX Venture Exchange ("TSXV"), there are no specific rules or frameworks that allow interlisted issuers to be exempted from TSXV rules.

Rationale for the Amendments

Interlisted issuers are generally subject to at least two sets of exchange requirements that may not be identical, but often address the same policy objectives of protecting security holders and preserving the quality of the market. These exchange requirements may be duplicative and sometimes contradictory, creating an unnecessary regulatory burden for interlisted issuers.

Many exchanges that are peers of TSX have either formal rules or informal practices that allow their interlisted issuers to be exempted from certain exchange requirements, deferring to the regulations of the interlisted market or the applicable laws in the home jurisdiction. The Manual currently provides interlisted issuers with exemptions from TSX requirements for certain transaction types, mainly on the basis of the interlisted issuer's level of trading on the other exchange, deferring in these cases to the review by the other exchange.

TSX has determined it is appropriate to adopt a broader deference model that would reduce the regulatory burden on certain eligible interlisted issuers in situations where the other exchange and corporate laws impose appropriate requirements. The Amendments would allow TSX to defer to other exchanges or jurisdictions for an expanded number of transactions as well as on certain corporate governance matters as they apply to certain interlisted issuers (the "Deference Model").

The Amendments are an incremental change to the exemptions currently available to interlisted issuers pursuant to Subsection 602(g) of the Manual and provide for greater transparency regarding the transactions for which TSX will defer to other exchanges or jurisdictions.

Over the last ten years, TSX has gained significant experience in administering the provisions of Subsection 602(g). TSX recognizes that corporate statutes and market requirements in other jurisdictions may differ from those in Canada while still addressing similar policy objectives, including protecting security holders and maintaining the quality of the market. In our view, the Deference Model is appropriate where the other exchange and corporate laws have appropriate requirements and TSX has a clear minority of trading, although such requirements may not be exactly the same as the requirements in Canada.

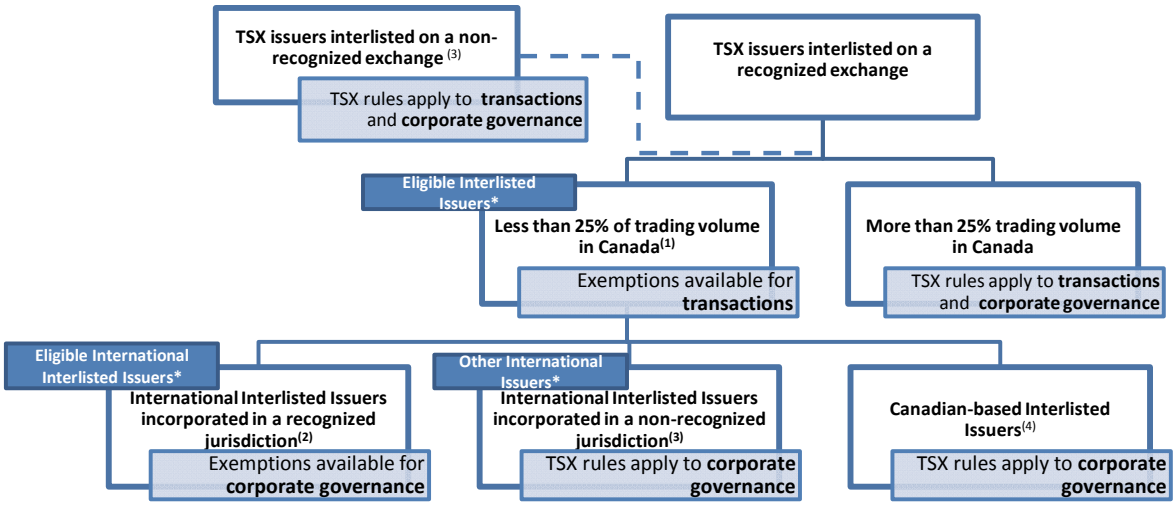
In proposing the Deference Model, TSX was guided by the following principles:

- Reduction of regulatory burden – The model should reduce unnecessary regulatory burden on certain interlisted issuers. The process for issuers seeking to rely on the Deference Model should be as simple and streamlined as possible;
- Transparency – Qualification for the Deference Model should be easy for issuers and other market participants to understand. Market participants should be able to easily identify issuers that have relied on the Deference Model;
- Quality of the marketplace – The Deference Model must not compromise (or be perceived to compromise) TSX's standards or present unacceptable risks to the Canadian capital markets. Therefore deference to another exchange is appropriate provided that:
    - trading in Canada is limited;
    - the issuer is subject to acceptable requirements on the other exchange and pursuant to its local corporate laws; and
    - such other exchange will not exempt the issuer from its requirements, leaving the issuer without exchange review and oversight.

Proposed Amendments to the Manual

The following diagram sets out the framework for issuer eligibility for the proposed exemptions.

Eligibility Framework with Proposed Amendments



(1) Relief will be granted under new Section 602.1 of the Manual for an expanded number of transactions.
(2) Relief will be granted under new Section 401.1 of the Manual for corporate governance matters such as individual director elections and majority voting.
(3) Relief may be granted on a discretionary basis pursuant to TSX Staff Notice 2013-2002.
(4) Relief may be available upon application, on a discretionary basis.

In summary, under the proposed Amendments, Eligible Interlisted Issuers[1] will be able to apply to be exempted from the following requirements relating to transactions:

The current exemptions available in Subsection 602(g):

- Security holder approval (Section 604)
- Private placements (Section 607)
- Unlisted warrants (Section 608)
- Acquisitions (Section 611)
- Security based compensation arrangements (Section 613)

and the following new exemptions:

- Special requirements for non-exempt issuers (Section 501[2])
- Prospectus offerings (Section 606)
- Convertible securities (Section 610)
- Securities issued to registered charities (Section 612)
- Rights offerings (Section 614)

[1] Issuers listed on a recognized exchange (e.g. NYSE, ASX) and that had less than 25% of the overall trading volume of their listed securities occurring on all Canadian marketplaces in the 12 months preceding the application.

[2] Section 501 provides the requirements for transactions undertaken by "junior" issuers in regards to: i) notification to TSX of material changes; and ii) transactions involving insiders and no potential issuance of securities.

Eligible International Interlisted Issuers[3] can apply to be exempted from the following corporate governance requirements:

- Director Election Requirements (Sections 461.1 – 461.4)
- Annual Meeting (Sections 464) (which is a new exemption)

More specifically, the Amendments will provide:

- For transactions, a new Section 602.1 – Exemptions for Eligible Interlisted Issuers will replace current Subsection 602(g). Section 602.1 will set out the sections of the Manual from which exemptions are available to Eligible Interlisted Issuers, together with the application process for such exemptions. This application process includes: (i) notification to TSX; (ii) evidence that the Recognized Exchange has accepted the transaction, or confirmation from qualified legal counsel in the local jurisdiction that the proposed transaction is in compliance with applicable rules of the other exchange or marketplace, as well as applicable laws; and (iii) disclosure in press releases issued in connection with the transaction that the issuer intends to or has relied on the exemption from TSX rules. Please refer to Appendix A for the full text of proposed Section 602.1.

  Instead of relying on the concept of deference to "another exchange", new Section 602.1 requires the issuer to be interlisted on a "Recognized Exchange". The Recognized Exchange concept provides the market with transparency regarding the level of exchange oversight that will be applied if TSX defers to that exchange's rules.

  We propose to continue with the current practice of making an exemption available for transactions based on the Trading Threshold but propose to recast the test based on: (i) less than 25% of trading occurring in Canada, rather than more than 75% of trading occurring outside Canada; (ii) the trading over a period of 12 months preceding the application, rather than 6 months; and (iii) trading volume only, rather than value and volume. We believe these changes will make the Trading Threshold more relevant, transparent and easily assessable for all market participants.

- For corporate governance matters, a new Section 401.1 – Exemptions for Eligible International Interlisted Issuers and Other International Interlisted Issuers will be introduced. This Section will set out the requirements from which Eligible International Interlisted Issuers may apply for an annual exemption, together with the application process for such exemptions. The process will be based on whether the issuer is an Eligible International Interlisted Issuer or Other International Interlisted Issuer. Please refer to Appendix A for the full text of proposed Section 401.1.

  The exemptions in Section 401.1 will not be available to Canadian-based Interlisted Issuers unless TSX grants a discretionary waiver from its requirements. When TSX adopted its director election requirements in 2012 (including the annual and the individual election of directors and the majority voting requirement), the stated purpose was to bolster the reputation of Canadian companies internationally by better aligning Canadian corporate governance practices with those of its international peers. Accordingly, TSX does not generally believe that it is appropriate to grant such waivers to Canadian-based Interlisted Issuers.

  In addition, the combination of Canadian (including provincial) corporate law and TSX's corporate governance requirements have established market expectations for director election requirements and the timing of annual meetings for Canadian companies. We believe that security holders are entitled to consistency as to how directors of Canadian incorporated companies are elected. We are of the view that allowing the corporate governance practices of Canadian incorporated issuers to shift based on the location of trading volumes would neither meet the expectations of market participants nor bolster the reputation of TSX or Canada's corporate governance practices.

- Ancillary amendments will be made to the Manual to introduce certain related definitions in Part 1.
- Ancillary amendments will also be made to Section 324 – Minimum Listing Requirements for International Issuers to reference the introduction of new Sections 401.1 and 602.1.
- TSX Staff Notice 2013-0002 will be updated to reflect the revised definitions being added to Part 1 of the Manual, as well as to refer to the volume of the issuer's trading for the 12 months immediately preceding the

[3] Issuers incorporated or organized in a recognized jurisdiction of incorporation (e.g. Australia, Delaware or England) listed on a recognized exchange (e.g. NYSE, ASX) and that had less than 25% of the overall trading volume of their listed securities occurring on all Canadian marketplaces in the 12 months preceding the application.

application for the exemption, instead of the value and volume of trading for the 6 months preceding the application for the exemption.

Application of the Amendments – Illustrative Scenarios

Scenario 1

Pursuant to the proposed Amendments, where the trading volume in the securities of an interlisted issuer is greater than 25% across all Canadian marketplaces, TSX rules will apply for both transactions and corporate governance matters, regardless of the issuer's jurisdiction of incorporation.

Scenario 2

A Canadian-based Interlisted Issuer listed on a Recognized Exchange that has less than 25% of its trading volume in Canada in the preceding 12 months could rely on the rules of the other exchange to complete a transaction, such as a private placement which may entail a requirement for security holder approval, provided that such other exchange has not exempted the issuer from its rules. However, such issuer would not be exempted from TSX's corporate governance requirements, such as the majority voting requirement.

Scenario 3

An Australian incorporated issuer listed on a Recognized Exchange that had less than 25% of its trading in volume Canada in the preceding 12 months would be eligible for exemptive relief for a transaction, such as a private placement, as well as for an exemption from TSX's corporate governance requirements. A similar interlisted Australian incorporated issuer not listed on a Recognized Exchange would not be eligible for the same exemptions. This issuer could, however, apply for discretionary relief from TSX's requirements. In such a case, TSX would require submissions in support of the appropriateness of granting the exemption.

Scenario 4

TSX rules for transactions and corporate governance matters would apply to an issuer that is incorporated in the Cayman Islands (which is not a recognized jurisdiction) and not interlisted on a Recognized Exchange. However, if that issuer was interlisted on a Recognized Exchange and less than 25% of the overall trading volume of its listed securities occurred on all Canadian marketplaces in the previous 12 months preceding the application, it could apply for an exemption from the rules related to transactions as set out in Section 602.1, but would need to apply for discretionary relief for corporate governance matters.

Questions

In responding to any of the questions below, please explain your response.

1. Do you think that the proposed trading threshold (less than 25% of trading occurring on all Canadian marketplaces in the year preceding the application) is appropriate to defer to the other exchange or jurisdiction?

2. Are the transactions for which TSX is proposing to allow deferral to another exchange appropriate? Are there any transactions that should be excluded? Are there additional transaction types that should be included?

3. Are there other requirements for which TSX should defer to another exchange or jurisdiction?

4. Is the proposed definition of "recognized exchange" appropriate? Should other exchanges or marketplaces be included? Should any of the proposed exchanges or marketplaces be excluded from the definition?

5. Is the proposed definition of "recognized jurisdiction" appropriate? Should other jurisdictions be included? Should any of the proposed jurisdictions be excluded from the definition?

Public Interest

TSX is publishing the Amendments for a 45-day comment period, which expires March 9, 2015. The Amendments will only become effective following public notice and the approval of the OSC.

APPENDIX A

TEXT OF PROPOSED AMENDMENTS TO THE TSX COMPANY MANUAL

324. Minimum Listing Requirements for International Issuers

~~International issuers are entities where the issuer is already listed on another recognized exchange, which is acceptable to the Exchange, and is incorporated outside of Canada.~~ There are no unique requirements for the management or the financial requirements for ~~i~~International Interlisted ~~i~~Issuers listed on a Recognized Exchange. However, these issuers are generally required to have some presence in Canada and must be able to demonstrate, as with all issuers, that they are able to satisfy all of their reporting and public company obligations in Canada. This may be satisfied by having a member of the board of directors or management, an employee or a consultant of the issuer situated in Canada.

Certain exemptions may be available to Eligible International Interlisted Issuers or Eligible Interlisted Issuers as set out in Sections 401.1 and 602.1 of the Manual, respectively.

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401.1 Exemptions for Eligible International Interlisted Issuers and Other International Interlisted Issuers

Subject to prior approval, TSX will not apply Sections 461.1 – 461.4 (Director Elections) and 464 (Annual Meetings) to Eligible International Interlisted Issuers. Eligible International Interlisted Issuers must obtain TSX's prior acceptance of the application of this exemption on an annual basis, at least five (5) and not more than thirty (30) business days in advance of finalizing the materials sent to holders of listed securities in connection with a meeting at which directors are being elected. The application should take the form of a letter addressed to TSX requesting the exemption and include: i) the Recognized Exchange(s) on which it is listed; ii) the jurisdiction of incorporation of the issuer; and iii) evidence that the volume of trading of the issuer's securities on all Canadian marketplaces in the 12 months immediately preceding the date of the application was less than 25%.

Other International Interlisted Issuers that do not qualify as Eligible International Interlisted Issuers may apply to TSX for an exemption on an annual basis from Sections 461.1 – 461.4 (Director Elections) and 464 (Annual Meetings), as provided in updated TSX Staff Notice [2013-0002].

Eligible International Interlisted Issuers and other International Interlisted Issuers must disclose the requirement from which they have been exempted for the year and their reliance on this Section 401.1 in a press release issued in connection with their annual meeting or in the materials sent to holders of listed securities in connection with a meeting at which directors are being elected, as applicable.

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~~**602. General.**~~

~~(g) TSX will not apply its standards with respect to security holder approval (Section 604), private placements (Section 607), unlisted warrants (Section 608), acquisitions (Section 611) and security based compensation arrangements (Section 613) to issuers listed on another exchange where at least 75% of the trading value and volume over the six months immediately preceding notification occurs on that other exchange[4], provided that such other exchange is reviewing the transaction. These issuers must still comply with Section 602, at which time TSX will notify the issuer of their eligibility under this Subsection 602(g) and the documents and fees required for TSX acceptance of the notified transaction~~

~~[4] For the purposes of determining whether an issuer is eligible under this subsection, TSX will consider aggregating trading value and volume occurring on multiple trading venues in the same jurisdiction as such other exchange.~~

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602.1 Exemptions for Eligible Interlisted Issuers

Subject to prior approval and provided that the proposed transaction is being completed in accordance with the standards of a Recognized Exchange, TSX will not apply its standards to Eligible Interlisted Issuers in respect of the following Sections: 501 (special requirements for non-exempt issuers), 604 (security holder approval), 606 (prospectus offerings), 607 (private placements), 608 (unlisted warrants), 610 (convertible securities), 611 (acquisitions), 612 (securities issued to registered charities), 613 (security based compensation arrangements) and 614 (rights offerings[1]).

Eligible Interlisted Issuers must obtain TSX acceptance of the proposed transaction by notifying TSX as required under Subsections 602 (a) or 501 (b), as applicable. The form of notice must comply with the requirements set out in Subsection 602 (e) or Subsection 501 (g) and also include: i) a notification that the listed issuer intends to rely on the exemption outlined in this Section 602.1; ii) the Recognized Exchange(s) on which it is listed; and iii) evidence that the volume of trading of the issuer's securities on all Canadian marketplaces in the 12 months immediately preceding the date of the application was less than 25%.

TSX will confirm its acceptance that the Eligible Interlisted Issuer may rely on the exemption as well as receipt of the documents and fees required for TSX acceptance. As a condition of acceptance, TSX will require evidence that the Recognized Exchange has accepted the transaction, or confirmation from qualified legal counsel in the local jurisdiction that the proposed transaction is in compliance with applicable rules of the other exchange or marketplace, as well as applicable laws. Eligible Interlisted Issuers must disclose that they intend to or have relied on the exemption under this Section 602.1 in the press release(s) issued in connection with the transaction.

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PART 1 – INTRODUCTION

Interpretation

Addition of the following definitions:

"Eligible Interlisted Issuer" means a listed issuer that is also listed on a Recognized Exchange and that had less than 25% of the overall trading volume of its listed securities occurring on all Canadian marketplaces in the 12 months immediately preceding the date of an application pursuant to Section 401.1 or 602.1 of the Manual;

"Eligible International Interlisted Issuer" means an Eligible Interlisted Issuer that is incorporated or organized in a Recognized Jurisdiction;

"International Interlisted Issuer" means an issuer incorporated or organized outside of Canada and listed on another exchange;

"Recognized Exchange" includes the following exchanges and marketplaces: New York Stock Exchange, NYSE MKT, NASDAQ, London Stock Exchange Main Board, AIM, Australian Securities Exchange, Hong Kong Stock Exchange Main Board and others, as may be determined by TSX from time to time;

"Recognized Jurisdiction" includes the following: Australia, England and the State of Delaware and other jurisdictions with corporate statutes substantially modelled after these jurisdictions. Other jurisdictions may also be acceptable, as may be determined by TSX from time to time. In making its determination, TSX will compare the corporate statutes of these jurisdictions against the *Canada Business Corporations Act*;

[1] Contact TSX to discuss the relief for rights offerings as certain elements related to trading, notice and mechanics will still be required.