

## Chapter 13

# SROs, Marketplaces and Clearing Agencies

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## 13.2 Marketplaces

### 13.2.1 Toronto Stock Exchange – Notice of Approval – Amendments to Part IV of the TSX Company Manual

#### TORONTO STOCK EXCHANGE

#### NOTICE OF APPROVAL

#### AMENDMENTS TO PART IV OF THE TORONTO STOCK EXCHANGE (“TSX”) COMPANY MANUAL

#### Introduction

In accordance with the Protocol for Commission Oversight of Toronto Stock Exchange Rule Proposals (the “Protocol”) between the Ontario Securities Commission (the “OSC”) and Toronto Stock Exchange (“TSX”), TSX has adopted, and the OSC has approved, amendments (the “Amendments”) to Part IV of the TSX Company Manual (the “Manual”). The Amendments are public interest amendments to the Manual. The Amendments were published for public comment in a request for comments on September 9, 2011 (“Request for Comments”). TSX notes the concurrent publication today of a new request for comments proposing further amendments to TSX rules in respect of mandating majority voting for TSX listed issuers.

#### Reasons for the Amendments

TSX proposed the Amendments to improve corporate governance standards and disclosure for all TSX listed issuers, in support of upholding security holder interests and the integrity and reputation of the Canadian capital markets. TSX has monitored the corporate governance landscape in Canada and in other jurisdictions and believes that director election practices in Canada are lagging other major international jurisdictions. Canadian investors may not therefore have as effective a voice in electing directors as investors in other jurisdictions. As neither securities nor corporate law in Canada requires individual director voting, annual director elections, or disclosure of all voting results and majority voting policies, and having considered the comments received on the Request for Comments, TSX has determined to implement the Amendments for its listed issuers.

The Amendments require issuers listed on Toronto Stock Exchange to:

1. elect directors individually;
2. hold annual elections for all directors;
3. disclose annually in Management Information Circulars:
  - (a) whether they have adopted a majority voting policy for directors for uncontested meetings; and
  - (b) if not, to explain:
    - i) their practices for electing directors; and
    - ii) why they have not adopted a majority voting policy;
4. advise TSX if a director receives a majority of “withhold” votes (if a majority voting policy has not been adopted); and
5. promptly issue a news release providing detailed disclosure of the voting results for the election of directors.

Annual elections provide security holders with the opportunity to hold directors accountable on an annual basis. Individual director elections provide insight into the level of support of security holders for each director. Majority voting policies also support good governance by providing a meaningful way for security holders to hold individual directors accountable and require issuers to closely examine directors that do not have the support of a majority of security holders. Disclosure of an issuer’s adoption or non-adoption of a majority voting policy is valuable information for security holders and will ensure that boards of

directors consider director election practices. Disclosure of the votes received for each director is also valuable information for security holders and other stakeholders.

As proposed, TSX will require issuers that have not adopted a majority voting policy to advise TSX if a director receives a majority of "withhold" votes. TSX will follow up with the issuer and the director where a director has not received a majority of votes.

### **Summary of the Final Amendments**

TSX received thirty-five (35) comment letters in response to the Request for Comments. A summary of the comments submitted, together with TSX's responses, is attached as **Appendix A**. Overall, a majority of commenters support the Amendments. However, there are some submissions which question TSX's involvement in director election practices and disclosure and which do not support the Amendments.

TSX respects the public comment process and appreciates the value such public input provides. TSX thanks all commenters for their submissions. TSX believes that security holders should be provided with an opportunity to vote annually for each director. TSX has a longstanding interest and commitment to disclosure, and believes that security holders should be informed about majority voting policies of its listed issuers and the outcome of votes. A majority of commenters support TSX requiring public disclosure of detailed voting results. TSX agrees with these commenters and has amended the Amendments accordingly. TSX has also clarified the process for implementing annual director elections in the event that security holders do not approve changes required to be made to articles or by-laws to enable annual elections.

As a result of the comment process, TSX has also made some drafting changes to the Amendments which do not represent a substantive change to the Amendments. A blackline of the Amendments showing changes made since the Request for Comments is attached as **Appendix B**.

In addition, the transition period for compliance with the Amendments is set out below in this Notice of Approval.

### **Text of the Amendments**

The Final Amendments are attached as **Appendix C**.

### **Effective Date**

The Amendments will become effective on **December 31, 2012** (the "Effective Date"). The Amendments will not have any retroactive effect, so that security holder meetings (i) which have already been set and (ii) for which proxy materials have already been approved, will be unaffected by the Amendments until their next security holder meeting at which directors will be elected.

All applicants for listing on TSX after the Effective Date and applicants with listing applications in progress are expected to explain to TSX if they are in compliance with the Amendments, and if not, the plan and time frame in which they will be in compliance with the Amendments.

By December 31, 2013, all TSX listed issuers and applicants are expected to be in compliance with the Amendments. Issuers will otherwise be considered to be in breach of the Manual. If changes to an issuer's articles or by-laws are required to implement annual elections, and the issuer's security holders do not support the required resolution, TSX will respect the security holder vote and the issuer will not be considered to be in breach of the Manual. However, the issuer must present the resolution to security holders again in not more than three years and must support the approval of the resolution.

TSX will continue to monitor the corporate governance landscape in Canada and internationally, as well as the effect of the Amendments on its issuers and the marketplace. TSX will also complete its rule review process with respect to the amendments proposed today that would require majority voting for its listed issuers.

**APPENDIX A  
SUMMARY OF COMMENTS AND RESPONSES  
PART IV – MAJORITY VOTING**

**List of Commenters:**

British Columbia Investment Management Corporation (bcIMC)	NEI Investments (NEI)
Bennett Jones on behalf of Atco Group (Atco)	Norton Rose (Norton)
Bennett Jones on behalf of a foreign senior listed issuer who wishes to remain confidential (BJ)	Oromin Explorations Ltd. (Oromin)
Bombardier Inc. (Bombardier)	Osler LLP (Osler)
California State Teachers Retirement System (CalSTRS)	PGGM Investments (PGGM)
Canadian Coalition for Good Governance (CCGG)	Pension Investment Association of Canada (PIAC)
CGI Group Inc. (CGI)	Power Corporation of Canada and Power Financial Corporation (Power)
Canadian Investor Relations Institute (CIRI)	PSP Investments (PSP)
CPP Investment Board (CPPIB)	Chris Reed (Reed)
Davies Ward Phillips & Vineberg (Davies)	The Roxborough Initiative (Roxborough)
Emerson Advisory (Emerson)	Shareholder Association for Research & Education (SHARE)
Canadian Foundation for Advancement of Investor Rights (FAIR)	Social Investment Organization (SIO)
Hermes Equity Ownership Services Limited (Hermes)	Standard Life Investments
Institute of Corporate Directors (ICD)	Stock Research DD Inc. (Stock Research)
Institutional Shareholder Services (ISS)	Ontario Teachers' Pension Plan (OTPP)
Kenmar Associates (Kenmar)	Torys LLP (Torys)
Local Authority Pension Fund Forum (LAPFF)	Transcontinental Inc. (Transcontinental)
Magna International Inc. (Magna)	

Capitalized terms used and not otherwise defined shall have the meaning given in the Request for Comments for public interest amendments to amend Part IV of the TSX Company Manual relating to the election of directors, published in the OSC Bulletin on September 9, 2011.

Summarized Comments Received	TSX Response
<p><b>6. Is this initiative appropriate for TSX to pursue or are other organization(s) better suited to pursue it? Please consider whether all exchanges should require their issuers to have these corporate governance standards in responding to this question.</b></p> <p>Yes, this initiative is appropriate for TSX to pursue. (bclMC, CCGG, CPPIB, Hermes, Kenmar, NEI, PIAC, PSP, OTPP)</p> <p>Not in a position to comment on the appropriateness of TSX to pursue the proposed amendments, but supportive of the amendments. (CIRI)</p> <p>Some commenters did not specifically address the question, but expressed support for TSX implementing at least part of the amendments. (ICD, ISS, LAPFF, Oromin, SHARE, SIO, Stock Research)</p> <p>It is within the mandate and appropriate for TSX to pursue. (FAIR) TSX has the authority to impose higher corporate governance standards for its listed issuers. (PSP)</p> <p>It is undoubtedly within the appropriate jurisdiction of TSX, as a recognized exchange in Ontario, to implement the amendments. The subject matter of the amendments, corporate governance of TSX listed issuers, is a central issue for shareholders concerning the management of the companies in which they invest and concerning stakeholder confidence in our capital markets. (Emerson)</p> <p>TSX has the ability to act more quickly than the OSC and CSA. (CCGG) Canadian securities regulators have been largely inactive over the last 10 years. (Davies)</p> <p>There is an important role for TSX in corporate governance matters. There are many jurisdictions around the world in which stock exchanges are important influencers of corporate governance practices. (Davies)</p> <p>TSX is the most prominent exchange in Canada and has generally been the standard setter for changes in the Canadian corporate governance system. (Standard) The consideration of these corporate governance matters will encourage other exchanges to consider them as well. (Standard) Some commented that they appreciate the leadership role that TSX is taking on these reform proposals. (CalSTRS, NEI)</p> <p>A securities exchange's listing standards are an appropriate and effective way of maintaining a minimum and upgrading the governance practices of issuers. (PGGM, Standard, Hermes, Kenmar)</p> <p>These standards are appropriate for all exchanges. (CPPIB, NEI, PIAC, CalSTRS, Osler)</p>	<p>A majority of commenters who responded to this question agree that it is within TSX's jurisdiction for TSX to pursue the Amendments and these commenters support some or all of the proposed Amendments. As the senior exchange in Canada, TSX agrees that it is within its jurisdiction to set standards for its listed issuers.</p>

<b>Summarized Comments Received</b>	<b>TSX Response</b>
<p>TSX has the authority to pursue the Amendments but may not be best positioned to implement such regulatory changes because it has limited enforcement tools compared to the CSA. Proxy disclosure requirements should be consolidated. (Osler)</p>	
<p>No, TSX does not have jurisdiction in this area. (Atco, Transcontinental) The TSX proposal to mandate certain director practices is a notable departure from the Canadian regulatory norm and runs contrary to the theme of issuer diversity. (BJ)</p>	<p>Although TSX understands there are various sources of legal and regulatory requirements regarding corporate governance and director election practices, TSX does not believe that these other sources limit TSX's jurisdiction to adopt the Amendments. TSX has a longstanding interest in corporate governance, as evidenced by its role in monitoring corporate governance disclosure of its listed issuers. TSX Venture Exchange has existing requirements around director elections. Exchange involvement in these areas is not unique and has not created undue confusion or issues.</p>
<p>Corporate governance enforcement should be the responsibility of one level of authority and the securities commissions are in a better position to intervene. (CGI, Norton, Bombardier)</p>	<p>While there may be various organizations suited to adopt these measures, TSX does not believe that this limits its ability to be involved in this area. TSX believes that these measures are important to strengthen Canadian corporate governance.</p>
<p>Involvement of TSX in the election of directors and related disclosure would be confusing and inefficient. (Norton, CGI, Bombardier)</p>	<p>As noted, TSX Venture Exchange has existing requirements for director elections. Exchange involvement in this area is therefore not unique, and has not resulted in confusion or inefficiency.</p>
<p>Director election practices are the subject of corporate law. (Transcontinental, Atco, CGI, Norton, Bombardier) TSX should only regulate within its expertise, which in the case of listed issuers relates to disclosure and securities issuances. (Power)</p> <p>Amendment of business corporation statutes is the most appropriate way to address the issues of director elections. Intervention by TSX in matters that are issues of federal and provincial jurisdiction would result in layers of potentially conflicting regulation. TSX ceded jurisdiction over corporate governance disclosure to provincial securities commissions, so the commissions are best positioned to establish such disclosure rules, to avoid both overlap and conflict which could result from the involvement of regulators at multiple levels. (Magna)</p>	<p>TSX currently has requirements for its issuers for the timing of annual meetings that are more stringent than requirements under corporate law. TSX views the Amendments similarly, as minimum standards for its listed issuers. Further, setting standards for listed issuers is within the expertise of TSX.</p> <p>TSX is committed to continuing to monitor the landscape of corporate governance and director election practices in Canada. As securities law and/or corporate law evolves in Canada, TSX will ensure its rules work within the evolving framework.</p>

<b>Summarized Comments Received</b>	<b>TSX Response</b>
<p><b>7. Has TSX struck the appropriate balance between requirements and disclosure? If not, what revisions do you recommend, and why?</b></p>	
<p>Several commenters believe that TSX should also require a majority voting standard for director elections and mandatory disclosure of voting results. (bcIMC, CCGG, CPPIB, Hermes, ISS, PGGM, PIAC, SHARE, SIO, Standard) Any board nominee who does not have a majority of support should not serve on the board. (SHARE, SIO, CPPIB)</p>	<p>TSX understands that a number of commenters, institutional investors in particular, would prefer that TSX require its issuers to adopt a majority voting standard. Although TSX proposed the Amendments based on its understanding of where Canada is on the continuum of education and awareness regarding majority voting, as a result of comments and further consideration, TSX has today published a new request for comments proposing further amendments that would require TSX listed issuers to adopt a majority voting standard.</p>
<p>One commenter suggests the rules be revised to exclude foreign issuers and issuers whose listed securities do not carry rights to vote on the election of directors. This commenter also recommends a transition period be provided. (Osler)</p>	<p>TSX recognizes that the practices among jurisdictions may differ. TSX has clarified that if security holders do not approve a change required for an issuer to hold annual elections of directors, TSX will respect their decision. Issuers will, however, be required to recommend the required amendments and to give shareholders an opportunity to reconsider this decision.</p> <p>TSX has also revised the drafting of the Amendments to clarify that these rules apply only to securities eligible to vote for the election of directors.</p> <p>TSX has also provided for a transition period until December 31, 2013 for issuers to adopt annual elections.</p>
<p>TSX should require majority voting for non-controlled corporations (where a shareholder controls over 50% of the voting rights). Controlled corporations should be required to disclose and explain whether they have a majority voting policy, and if they don't have one, to comment on how they take into account the views of minority shareholders. (PSP)</p>	<p>TSX understands that controlled corporations have unique considerations regarding majority voting. In accordance with the Amendments, all listed issuers, including controlled corporations, may choose to adopt or not adopt a majority voting policy providing they disclose their considerations of majority voting and how their choice is appropriate for them.</p> <p>TSX agrees that issuers who do not adopt a majority voting policy should address how they take into account the views of minority shareholders when discussing their corporate governance practices.</p>
<p>Some commenters support the proposed disclosure model at this time. (CalSTRS, CIRI, Davies, Emerson, ICD) Some commenters who support mandatory majority voting support the TSX proposal as an interim measure. (CPPIB, Hermes, ISS, Kenmar, LAPFF, PIAC, OTPP)</p> <p>One commenter supports the adoption of a majority voting policy as a best practice. (ICD)</p>	<p>TSX understands that several commenters would prefer a majority voting standard be imposed, but support the Amendments in the mean time. TSX has today adopted the Amendments, and also published a new request for comments proposing further amendments that would require TSX listed issuers to adopt a majority voting standard.</p>

<b>Summarized Comments Received</b>	<b>TSX Response</b>
<p>The disclosure model might be acceptable but it appears to be a first step toward mandatory majority voting which this commenter does not support. (Oromin) The proposed model implies that such a policy is a best practice for all issuers, which negatively affects those issuers who may legitimately not adopt such policies. (Power) Controlled corporations should be excluded from the majority voting disclosure requirements. (Osler)</p>	<p>TSX proposed the Amendments based on its understanding of where Canada is on the continuum of education and awareness regarding majority voting, rather than as a step toward mandatory majority voting. However, as a result of comments and further consideration, TSX has today published a new request for comments proposing further amendments that would require TSX listed issuers to adopt a majority voting standard.</p> <p>As noted above, while TSX understands that controlled corporations may have unique considerations regarding majority voting, TSX believes that controlled corporations should disclose and explain their choice to adopt or not adopt a majority voting policy.</p>
<p>The rules should be reviewed at least annually and benchmarked against other exchanges. (Kenmar, FAIR)</p>	<p>TSX will continue to monitor corporate governance and director election practices in Canada and abroad.</p>
<p>One commenter suggests that where shareholders have alternative ways to express concerns about the board nominees, board agenda, or where the issuer does not apply a majority voting standard, then annual elections are not a vital requirement. Consider that annual elections may only be required in jurisdictions, and for issuers, where plurality voting applies and the calling of resolutions or meetings is restricted. (Hermes)</p>	<p>TSX understands staggered elections are more common internationally, and that those international jurisdictions also often have a majority voting standard.</p> <p>TSX has clarified that if security holders do not approve a change required to implement annual elections of directors, TSX will abide by their decision. Issuers will be required to give security holders an opportunity to reconsider this decision at subsequent security holder meetings.</p>
<p>Issuers who have a majority election standard under their governing statute or constating documents should not have to adopt a majority voting policy. (Osler)</p>	<p>TSX agrees. Issuers that have a majority voting standard can meet TSX requirements by disclosing the details of their director election practices, including majority voting.</p>
<p>A majority of commenters support individual voting for directors. (bcIMC, CalSTRS, CCGG, CIRI, Davies, Emerson, FAIR, Hermes, ICD, ISS, Kenmar, LAPFF, NEI, Oromin, PGGM, Reed, SHARE, SIO, Standard, OTPP)</p> <p>Shareholders can then feel more involved in the election process and provide feedback on director suitability. It is a common practice, does not impose any significant costs and does not adversely affect the election process. (ICD)</p> <p>Slate elections do not permit adequate exercise of rights by shareholders. (LAPFF) Presenting directors as a slate is a very poor governance practice. (SHARE, SIO) It will help TSX listed issuers meet international best practices. (CCGG, FAIR)</p>	<p>Individual voting is simple for issuers to adopt and supports security holder rights to vote for directors. TSX further agrees with commenters that it is an area in which Canada is lagging with respect to corporate governance practices. TSX is of the view that the reputation of Canada's capital markets and TSX listed issuers will improve by having voting for individual directors.</p>

Summarized Comments Received	TSX Response
<p>A majority of commenters also support annual director elections. (bcIMC, CalSTRS, CCGG, CIRI, FAIR, ICD, ISS, Kenmar, LAPFF, NEI, Oromin, Reed, OTPP) Annual elections enhance accountability to shareholders (ICD, NEI) and director responsiveness to shareholder concerns. (LAPFF) When directors are elected under staggered terms, they are held accountable to shareholders only at the end of their term. (OTPP) Most large Canadian companies have moved to annual director elections (CIRI), without disruption to their boards or ability to engage in long-term planning. (CCGG) This amendment will simply implement the status quo. (FAIR)</p>	<p>TSX acknowledges the support for this Amendment.</p>
<p>A Toronto-based resource company research website conducted a survey of support for the Amendments. The results were strongly positive for individual voting, positive but slightly less so for annual elections, and positive for majority voting policy disclosure too. (Stock Research)</p>	<p>TSX appreciates the input to the comment process.</p>
<p><b>8. Will disclosure of majority voting practices encourage issuers to consider this practice and improve investors' understanding of an issuer's corporate governance practices?</b></p>	
<p>Yes, disclosure will increase issuer awareness, and possibly the adoption of majority voting as a governance best practice. (bcIMC, CIRI, CPPIB, Davies, Emerson, Hermes, ISS, Kenmar, LAPFF, NEI, PGGM, PIAC, PSP, Standard) However, one commenter submits there are no credible arguments against adoption of majority voting for non-controlled corporations. (PSP)</p> <p>Disclosure will bring majority voting to the attention of directors, and force them to consider the underlying rationale for adopting majority voting policies. (Emerson, NEI) Issuers will have an opportunity to better understand the long term implications of majority voting and establish policies appropriate to the potential future introduction of mandatory majority voting. (CIRI) Disclosure will also provide material information to investors. (Emerson) Disclosure will turn attention at listed issuers to the core issue of getting boards of directors that truly have the support of shareholders. (Hermes)</p> <p>Disclosure will help provide transparency and increase shareholder awareness. (FAIR, Hermes)</p> <p>Disclosure of majority voting policies will encourage and enhance the dialogue among stakeholders. (CIRI)</p> <p>A standard requirement for disclosure will ease tracking of majority voting policies of issuers, and help shareholders be aware of the repercussions of their vote and know where to find the disclosure. (ISS)</p>	<p>TSX agrees that by considering majority voting practices in the process of preparing disclosure, issuers will become more aware and educated about this practice.</p> <p>TSX agrees that the disclosure requirement will help standardize reporting about majority voting practices for security holders.</p>
<p>Disclosure will encourage issuers to adopt a majority voting policy but not have any impact on investors' understanding of corporate governance practices. (Osler)</p>	<p>TSX believes that clear and accurate disclosure about majority voting will be helpful for investors.</p>



Summarized Comments Received	TSX Response
<p><b>9. Do you support TSX mandating that its issuers have a majority voting policy for uncontested director elections? Please identify potential positive and negative impacts that may result if issuers are required to have a majority voting policy.</b></p> <p>Yes. (bclMC, CCGG, CPPIB, FAIR, Hermes, ISS, Kenmar, LAPFF, NEI, PGGM, PIAC, PSP, Reed, SHARE, SIO, Standard, OTPP)</p> <p>Majority voting has been well publicized in the business community and should be well understood. It can be implemented without business interruption and without conflicting with laws. (CCGG) The concerns of majority voting creating corporate or securities law issues have not come to pass in Canada. (FAIR, NEI)</p> <p>The positives of mandating majority voting far outweigh any negatives. In the event a majority of directors are not elected, issues can be overcome with by-law provisions for bridging terms, co-option of substitute directors, and the like. (PGGM, Standard)</p> <p>The adoption will improve Canada's international reputation and help TSX-listed issuers meet internationally accepted best practices. (PGGM, PIAC, Standard, CPPIB) Canada and the US are the only countries that do not use a majority vote standard. (CCGG, FAIR)</p> <p>A mandatory policy will be easier to enforce and require less regulatory oversight. (FAIR)</p>	<p>A number of submissions support TSX requiring its listed issuers to have a majority voting standard. TSX acknowledges that these comments are largely from institutional investors and investor advocates. Several of these commenters have also expressed some understanding of TSX adopting a disclosure requirement at this time. TSX has therefore determined to adopt the Amendments, and as a result of comments and further consideration, TSX has today published a new request for comments proposing further amendments that would require TSX listed issuers to adopt a majority voting standard.</p>
<p>Directors can only be truly accountable to shareholders if shareholders have a realistic opportunity to remove them from the board. (bclMC, PGGM, Standard, LAPFF)</p> <p>The plurality system is inconsistent with good governance and is not in the best interests of shareholders. Shareholders cannot vote directors off of the board which disengages shareholders and impedes good governance. (FAIR)</p>	<p>TSX believes that with individual voting and annual elections, TSX listed issuers are moving in a positive direction toward improving the accountability of directors to their shareholders.</p>
<p>Issuers should be allowed to consider and explain their own unique situation, so a comply or explain approach is currently appropriate. (CIRI, Davies, ICD, Osler) A majority voting standard could result in failed elections. (ICD) However, failed elections have not been the experience. (NEI)</p>	<p>Although TSX understands the comments, and proposed the Amendments based on its understanding of where Canada is on the continuum of education and awareness regarding majority voting, as a result of comments and further consideration, TSX has today published a new request for comments proposing further amendments that would require TSX listed issuers to adopt a majority voting standard.</p>

<b>Summarized Comments Received</b>	<b>TSX Response</b>
<p>There is no need for a mandatory majority voting requirement nor special disclosure. (Power) Majority voting has been inspired by US developments and there are important differences between Canada and the US. (Norton, CGI, Bombardier)</p>	<p>Majority voting is the dominant practice internationally. Although TSX proposed the Amendments based on its understanding of where Canada is on the continuum of education and awareness regarding majority voting, as a result of comments and further consideration, TSX has today published a new request for comments proposing further amendments that would require TSX listed issuers to adopt a majority voting standard. TSX welcomes comments on the new proposed amendments with respect to relevant differences between Canada and international jurisdictions that have mandatory majority voting.</p>
<p>There is no compelling reason for TSX to impose mandatory majority voting. (Davies)</p>	<p>TSX believes that Canada is lagging international jurisdictions with respect to director election practices. TSX believes that these measures are important to strengthen Canadian corporate governance and may therefore benefit the Canadian capital market as a whole.</p>
<p>Mandating majority voting is premature at this time. There are legal issues that should first be studied and alternatives considered. Ancillary issues like proxy access for shareholders should also be considered. (Emerson)</p>	<p>TSX has today published a new request for comments proposing further amendments that would require TSX listed issuers to adopt a majority voting standard. TSX welcomes comments on any legal issues and ancillary issues</p>
<p><b>10. Do you foresee any negative impact of the Amendments on issuers or other market participants?</b></p>	
<p>No. (Emerson, FAIR, Kenmar, NEI, PGGM, PSP, SHARE, Standard, OTPP) However there should be a transition time for issuers to comply with the proposed amendments. (CIRI, Osler)</p>	<p>TSX appreciates the comments received and has provided a transition period.</p>
<p>One commenter questions whether TSX has considered either excluding foreign issuers or has it been determined that the Amendments are permitted under the laws of foreign jurisdictions. (Osler) Another commenter similarly submits that foreign issuers should be exempt if exempt under 71-102 or 58-101. (BJ)</p>	<p>As discussed earlier, TSX recognizes that the practices in other jurisdictions may differ and has clarified that if security holders do not approve a change to enable annual elections of directors, TSX will abide by their decision. Issuers will be required to give security holders an opportunity to reconsider this decision. The other Amendments largely already exist in other jurisdictions or are only disclosure related.</p>
<p>Consider that not all TSX listed securities carry the right to vote for directors. For example, there are limited partnership units, investment trust units, split share corporations, and non-equity securities. It is submitted that the Amendments should not dictate the terms of securities. (Osler)</p>	<p>TSX has revised the drafting to clarify this point.</p>
<p>The proposed amendments are quite benign. Doubtful that qualified, responsible and eligible individuals would not stand for election as directors because of the amendments. (Emerson)</p> <p>Most of the amendments already reflect common practice. Only majority voting disclosure is new, and it is only disclosure. Therefore there should not be any negative impact. (PGGM, Standard, Kenmar, NEI)</p>	<p>TSX appreciates the input.</p>

<b>Summarized Comments Received</b>	<b>TSX Response</b>
<p>A prescriptive one size fits all approach does not accommodate the diversity of issuers. Issuers should have flexibility to adopt their own corporate governance according to their needs, objectives and circumstances. (BJ, ICD, Power, Atco) Other commenters also caution against rigid prescriptive rules and regulations. (ICD, Power)</p>	<p>While TSX understands the diversity of its issuers and the caution around adopting prescriptive rules, it believes it has an important role in setting minimum standards for its listed issuers which support investor confidence and the reputation of Canada's capital markets.</p>
<p>Whether or not a majority of corporations have decided to elect directors individually should not mean the rules should change for everyone. (Transcontinental) The majority practice is not and should not be taken as conclusive evidence that all listed issuers should adhere to the same practice. (BJ) However, others submit that the fact that not as many have adopted majority voting should not be used to delay requiring majority voting. (FAIR)</p>	<p>Statistics can provide useful information, and TSX agrees they must be weighed in determining the appropriate action.</p>
<p>It would be unwise for shareholders to pick and choose among directors without regard for the group's dynamics. A move to individual director voting is unnecessary and could have an adverse impact on boardroom dynamics. (Atco)</p>	<p>Issuers may disclose relevant information about board composition and dynamics to assist investors in making informed vote on individual directors.</p>
<p>Staggered boards should be permitted. (Norton, CGI, Bombardier, Davies) Staggered boards are a common practice in four identified major international markets. TSX has previously identified some of these markets as acceptable jurisdictions with respect to shareholder rights. (BJ) Dodd-Frank does not include a restriction on staggered boards which had been contemplated. (BJ) The UK is also not restrictive and follows a comply or explain approach. (BJ)</p> <p>There may be valid reasons to have a staggered board, such as longer term succession planning. (ICD)</p> <p>There is no evidence that mandatory annual elections outweigh negative consequences. (Norton, CGI, Bombardier)</p>	<p>TSX notes that the international jurisdictions where staggered boards are a common practice have a majority voting standard. TSX has also clarified its practice in the event that security holders do not approve changes required to enable annual director elections.</p> <p>Overall, TSX believes that annual elections are an important corporate governance practice.</p>
<p>It is not clear there is a problem caused by staggered boards that needs to be addressed. Issuers should be able to have a staggered board if there is a reason. Further, shareholders can make a proposal for change or requisition a meeting to make changes. (Davies) Constraining issuers unnecessarily has a negative impact on the ability of issuers to adopt corporate governance practices that are appropriate for them. (Davies)</p>	<p>Staggered boards may entrench management. Shareholder proposals and requisitions may be difficult and costly.</p>
<p>It appears that the market may be effectively self-regulating in the areas of annual elections. (ICD) and staggered boards. (BJ, Davies)</p>	<p>TSX agrees that the standard in Canada is the annual election of directors. By establishing the requirement, it will ensure no change from that practice.</p>
<p>Mandatory majority voting could result in the loss of directors with particular experience or expertise. (Norton, CGI, Bombardier)</p>	<p>A loss of directors has not been the experience in jurisdictions that have majority voting or of issuers that have adopted majority voting.</p>

Summarized Comments Received	TSX Response
<p>Votes may be withheld for reasons unrelated to the director's discharge of duties, i.e. political reasons, which discredits the election process. (Norton, CGI, Bombardier)</p>	<p>TSX notes that this is the case today, with any security holder vote, and does not view this as a reason to restrict individual director voting.</p>
<p>Mandating a majority voting policy would have a profoundly negative impact on issuers with large institutional holders. This commenter does not believe that senior management should be prohibited from serving as directors. (Oromin)</p>	<p>TSX is not mandating a majority voting policy at this time. However TSX has today published a new request for comments proposing further amendments that would require TSX listed issuers to adopt a majority voting standard. TSX welcome comments on the new proposed amendments.</p>
<p>The usefulness of majority voting for controlled corporations is questionable since the controlling shareholder generally has sufficient votes to elect each director. (Norton, CGI, Bombardier, Power, Transcontinental, Atco) One commenter also submits that there would be increased costs and complexity and not in the best interests of shareholders as a whole. (Power)</p>	<p>As noted above, while TSX understands that controlled corporations may have unique considerations regarding majority voting, TSX believes that controlled corporations should disclose and explain their choice to adopt or not adopt a majority voting policy.</p> <p>Issuers that have adopted individual director voting have not experienced significant increased costs or complexity.</p>
<p>CCGG has recognized acceptable differences in majority voting policies for controlled companies. In addition, the CSA committed to reviewing how existing governance policies affect controlled companies. (Power)</p>	<p>TSX will stay abreast of any such reviews published by the CSA.</p>
<p><b>11. Should TSX consider requiring disclosure of vote results? In the alternative, should TSX consider requiring that the election of directors be conducted by ballot to ensure public disclosure of the vote results?</b></p>	
<p>Yes. (bcIMC, CalSTRS, CCGG, CIRI, CPPIB, Davies, Emerson, FAIR, Hermes, ISS, Kenmar, NEI, PGGM, PIAC, PSP, SHARE, SIO, Standard, OTPP)</p> <p>Consider the disclosure requirements elsewhere. (CIRI) In the US, the only other major global market that has plurality voting, detailed voting results are required to be published. Why should TSX listed issuers not be subject to similar disclosure requirements. (ISS) Every company that uses the public's money to fund its activities should be held to the highest standards of disclosure and accountability to its shareholders. (ISS)</p> <p>Such disclosure is not a burdensome requirement. (NEI) There is no additional cost. (SHARE) It is contradictory to provide shareholders with the right to vote but then not to require issuers to provide complete and full disclosure on the results of those votes. (OTPP)</p> <p>Accountability is not complete without transparency. All stakeholders can then have confidence in the outcome, and result in a truly democratic process for shareholder meetings. (bcIMC)</p> <p>It is material information. Directors should also be interested in such assessment by their constituents. (Emerson)</p>	<p>The majority of commenters that addressed this question agreed that TSX should require detailed public disclosure of vote results.</p> <p>TSX agrees that there are many positive benefits of such disclosure and minimal additional cost to issuers.</p> <p>TSX has revised the Amendments to require prompt disclosure of voting results by news release.</p>

<b>Summarized Comments Received</b>	<b>TSX Response</b>
<p>It is good practice to report the number and percentage of proxy votes based on proxies appointing persons nominated by management. Proxies appointing other persons are not reliable. The use of appointees is higher in contested meetings so any obligation to disclose proxy tabulation reports should not apply where the meeting is contested. (Osler)</p> <p>Disclosure of votes is very valuable to shareholders as they evaluate directors. (CalSTRS)</p> <p>Listed issuers should be required to disclose publicly detailed vote results of all proxy matters. (CCGG)</p>	
<p>Some commenters did support ballot voting, noting that show of hands voting has been largely phased out in the UK. (PGGM, Standard) Canadian securities regulators should require ballot voting to protect shareholders and improve corporate governance. (FAIR)</p>	<p>TSX has determined not to dictate the form of voting, but rather only require that the vote results be disclosed promptly by news release.</p>
<p>No, majority voting should not be mandatory, and therefore the results of majority voting should not be disclosed. This is not the role of TSX to be involved in the election of directors or related disclosure, and its involvement would be inefficient and confusing. (Norton, CGI, Bombardier)</p>	<p>TSX believes that the proposed rules are appropriate for it to adopt given TSX's continued role in corporate governance. TSX notes that TSX Venture Exchange has rules regarding the election of directors, which have not resulted in undue confusion or inefficiency.</p>
<p>Several commenters did not support TSX requiring votes by ballot. (CIRI, CPPIB, Davies, PIAC, PSP)</p> <p>There is declining attendance at shareholder meetings so it is not the appropriate mechanism to ensure disclosure. (CIRI)</p> <p>Ballots are cumbersome and time-consuming. (CPPIB)</p>	<p>TSX will not require votes by ballot at this time.</p>
<p>Ballots should only be required if it becomes evident that it is the only way to ensure complete disclosure of voting results. (OTPP)</p>	
<p><b>12. Are there additional ancillary rule amendments not discussed in this Request for Comments that should be considered in adopting the Amendments?</b></p>	
<p>If the board has an unlimited, overly broad or arbitrary discretion whether to accept the resignation of a director who does not receive a majority of votes, the vote becomes advisory and the majority voting policy is ineffective and illusory. Section 461.3 should be expanded to require meaningful disclosure of the principles and policy that the board will apply to a decision on receipt of a resignation after a director receives a majority of withhold votes (Hermes), as well as prompt and effective disclosure of the board's reasons if the resignation is not accepted. (Emerson)</p>	<p>TSX agrees that fulsome disclosure of an issuer's majority voting policy, if there is one, would include information with respect to what the board will do if a director does not receive a majority of support.</p> <p>TSX has today published a new request for comments proposing further amendments that would require TSX listed issuers to adopt a majority voting standard.</p>

<b>Summarized Comments Received</b>	<b>TSX Response</b>
Disclosure in circulars by companies without majority voting policies should address actions that would be taken in the event a director receives less than a majority of support. (Hermes)	TSX agrees that information about what the board will do when a director receives a majority of withhold votes may be part of appropriate disclosure.
Recommendation that Canadian securities regulators consider additional reforms to allow shareholders to put forward director nominees and to solicit or communicate with other shareholders. (FAIR)	The CSA has the benefit of these comments for their consideration.
<p>It was suggested that the role of TSX in proposed 461.4 be considered and clarified. If TSX will be involved when a director receives a majority of withhold votes, given concerns with the accuracy of proxy voting, it is suggested issuers be given time to confirm the voting results before disclosure to TSX. (ICD)</p> <p>Another commenter notes that the requirement to advise TSX of a majority withhold vote is appropriate as an interim step until there is mandatory majority voting. (LAPFF)</p>	TSX would expect to be promptly advised when a director receives a majority of withhold votes. If the results of the vote are close and an issuer is in the process of confirming the results, that can be part of the discussion with TSX.
<p>Several commenters noted that they would like the CSA and corporate law to also address these reforms. (ISS, BJ, Hermes)</p> <p>Ideally all of these rules would be in one instrument. (ICD)</p>	TSX understands that the CSA and corporate law may address similar reforms and will continue to monitor the landscape for such changes and will adapt as necessary.
<p>Proxy delivery, influence of unregulated proxy advisory firms and lack of transparency in the OBO/NOBO system should also be addressed. The early warning system should be lowered to 5%, and to incremental changes of 1%, to enhance share ownership disclosure. HRCC committees should have the same legal stature and prominence as audit committees, and should be mandated. (Kenmar)</p> <p>The integrity of the proxy voting process must also be addressed. (CIRI, ICD, Norton, CGI, Bombardier) Amending the requirements for electing directors will not have a significant impact if the quality of the proxy voting process is not also addressed. (CIRI) The more fundamental problems relating to the voting of securities in Canada should be addressed before these new requirements are added. (Norton, CGI, Bombardier)</p>	TSX thanks commenters for their input but these concepts are outside the scope of the current Amendments.
One comment letter proposes systemic changes to the election of directors and how candidates for boards are selected. (Roxborough Initiative)	TSX appreciates the comments provided but has determined to focus its efforts in the proposed areas that are within the scope of the current Amendments.
One commenter suggested we adopt a clarifying note with the director election requirements in the Manual along the lines of Section 19.6 of the TSX Venture Corporate Finance Manual to provide that issuers may still enter into contractual arrangements with shareholders or third parties for board appointment or nomination rights. (Torys)	TSX does not believe that the proposed rules prohibit an issuer from entering into a contractual arrangement that gives shareholders or third parties nomination rights.

<i>Summarized Comments Received</i>	<i>TSX Response</i>
One commenter submitted that the 30-day period allowed for comment is unreasonably short given the significant nature of the proposed Amendments and the nature of their organization. (CIRI)	The 30-day period is standard for exchange rule amendments. Accommodation for comments to be submitted after the comment period has ended may be provided in appropriate circumstances.

APPENDIX B  
BLACKLINE OF THE FINAL AMENDMENTS

Part I — Interpretation

"board of directors" has the same meaning as in National Instrument 51-102 – *Continuous Disclosure Obligations*.

"director" has the same meaning as in the OSA.

Section 461.1

At each annual meeting of ~~security-holders of listed securities~~, the board of directors must permit security holders of each class or series to vote on the election of all directors: to be elected by such class or series.<sup>4</sup>

Section 461.2

Materials sent to ~~security-holders of listed securities~~ in connection with a meeting ~~of security holders~~ at which directors are being elected must provide for voting on each individual election of directors ~~director~~.

Section 461.3

Materials sent to security holders by listed issuers that are subject to National Instrument 51-102 – Continuous Disclosure Obligations, in connection with a meeting of security holders at which directors are being elected, must disclose (a) whether the issuer has adopted a majority voting policy for the election of directors for non-contested meetings; and (b) if not, explain (i) their practices for electing directors; and (ii) why they have not adopted a majority voting policy.

Section 461.4

Following each meeting of security holders at which there is a vote on the election of directors, ~~each~~ listed issuer (a) that has not adopted a majority voting policy for the election of directors must provide notice to TSX by email to disclosure@tsx.com if a director receives a majority of "withhold" votes; and (b) must forthwith issue a news release disclosing the detailed results of the vote for the election of directors.

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<sup>4</sup> If security holder approval is required to implement this requirement, for example because an amendment must be made to the issuer's articles of incorporation, the Exchange will not consider the issuer to be in breach of this section if the issuer has submitted and recommended the necessary amendments for approval by security holders and security holder approval is not attained; however if the amendments are not approved by security holders, the issuer must submit and recommend the necessary amendments for approval by security holders at the annual meeting of the issuer not later than three years after the security holder meeting, until such time as the necessary amendments are approved.



**APPENDIX C**  
**THE FINAL AMENDMENTS**

Part I — Interpretation

"board of directors" has the same meaning as in National Instrument 51-102 – *Continuous Disclosure Obligations*.

"director" has the same meaning as in the OSA.

Section 461.1

At each annual meeting of holders of listed securities, the board of directors must permit security holders of each class or series to vote on the election of all directors to be elected by such class or series.<sup>4</sup>

Section 461.2

Materials sent to holders of listed securities in connection with a meeting at which directors are being elected must provide for voting on each individual director.

Section 461.3

Materials sent to security holders by listed issuers that are subject to National Instrument 51-102 – *Continuous Disclosure Obligations*, in connection with a meeting of security holders at which directors are being elected, must disclose (a) whether the issuer has adopted a majority voting policy for the election of directors for non-contested meetings; and (b) if not, explain (i) their practices for electing directors; and (ii) why they have not adopted a majority voting policy.

Section 461.4

Following each meeting of security holders at which there is a vote on the election of directors, each listed issuer (a) that has not adopted a majority voting policy for the election of directors must provide notice to TSX by email to [disclosure@tsx.com](mailto:disclosure@tsx.com) if a director receives a majority of "withhold" votes; and (b) must forthwith issue a news release disclosing the detailed results of the vote for the election of directors.

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<sup>4</sup> If security holder approval is required to implement this requirement, for example because an amendment must be made to the issuer's articles of incorporation, the Exchange will not consider the issuer to be in breach of this section if the issuer has submitted and recommended the necessary amendments for approval by security holders and security holder approval is not attained; however if the amendments are not approved by security holders, the issuer must submit and recommend the necessary amendments for approval by security holders at the annual meeting of the issuer not later than three years after the security holder meeting, until such time as the necessary amendments are approved.