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June 29, 2016

Sent By E-mail

Catherine De Giusti
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e-mail: tsxrequestforcomments@tsx.com

RE: Amendments to Parts IV and VI of the Toronto Stock Exchange Company Manual (the Manual) (May 26, 2016)

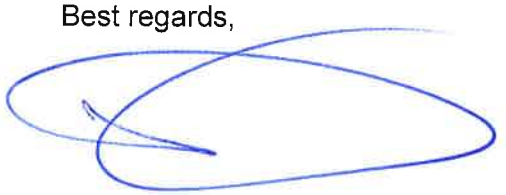
Dear Madam:

This letter is submitted in response to the notice of the Toronto Stock Exchange dated May 26, 2016 requesting public comments on proposed amendments to Parts IV and VI of the Manual.

You will find attached a letter prepared by Norton Rose Fulbright. We wish to indicate that we concur with the views stated in such letter.

If you have any questions concerning these comments, please contact the undersigned at (514) 861-9481.

Best regards,



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June 28, 2016

Sent By E-mail

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Our reference
01016599-0024

Dear Madam:

Amendments to Parts IV and VI of the Toronto Stock Exchange Company Manual (the Manual) (May 26, 2016)

This letter is submitted in response to the notice of the Toronto Stock Exchange (**TSX**) dated May 26, 2016 (**TSX Notice**) requesting public comments on proposed amendments to Parts IV and VI of the Manual (the **Proposals**). Our letter reflects comments generated from a working group of issuers having a combined market capitalization of more than $100 billion (the **Participants**). We thank you for the opportunity to comment on the Proposals.

I. General

The Participants believe that the Canadian approach to corporate governance, whereby the Canadian Securities Administrators (**CSA**) prescribe disclosure requirements relating to governance practices in annual documentation on the basis of a "comply or explain" formula, has worked well historically. Issuers should have the flexibility to adopt governance practices that they believe are best suited to their structure and needs, subject to appropriate disclosure. As a general comment, Participants are also of the view that current disclosure obligations already provide comprehensive, meaningful and sufficient disclosure.

As more fully described below, the Participants believe that the burden to comply with the Proposals will be significant. Many issuers will ask their legal counsel to review all new documents that must be posted on their website and most issuers will want to translate such documents in the other official language of Canada. Additional resources will also need to be dedicated to maintaining the website up-to-date.

The Participants appreciate the TSX's effort to reduce the regulatory burden for listed issuers in updating the disclosure requirements regarding security-based compensation arrangements. However, the Proposals create potential conflicts with current disclosure requirements under applicable securities legislation and impose additional disclosure obligations on issuers already facing a significant compliance burden. Accordingly, the Participants believe that the current provisions of Section 613 of the Manual are preferable to what is being proposed.

II. Comments on each question set forth in the TSX Notice

Please see below comments on each of the questions set forth in the TSX Notice. We have reproduced in italics each question for your convenience.

(a) Part IV Amendments

1. *Is it appropriate for TSX to introduce the requirements set out in Section 473?*

The Participants believe that the CSA are in a better position than the TSX to prescribe, regulate and monitor continuous disclosure requirements. They also believe that there is significant benefit in including the description of all corporate governance practices in annual documentation as opposed to creating a second set of disclosure obligations by describing certain practices in annual documentation and posting documents on websites.

While the Participants acknowledge that in certain cases, it might be difficult to find certain documents on SEDAR, they suggest that this is a problem which should be addressed by the CSA with the view to improving SEDAR capabilities, rather than by imposing additional requirements on issuers. SEDAR offers the advantage of centralizing the required documentation, rendering it more readily accessible for the investing public. It also allows issuer-specific searches for investors who wish to see all documents of an issuer in one place. The TSX recognizes in its Filing Guide that TSX's filing requirements will have been met if documents that the TSX requires to be filed are posted on SEDAR within the required timeframe. This is also specifically reflected in Part IV of the Manual.

The Participants also believe that the current corporate governance disclosure obligations imposed by the CSA are enough. Although years ago, TSX used to prescribe similar disclosure requirements in the Manual, it vacated the field when the CSA adopted rules and regulations prescribing the disclosure of governance practices. The requirements set out in Section 473 would create a second disclosure regime which would cause potential for duplications and confusion. Market participants will continue to review information circulars when assessing the governance of an issuer and issuers will still summarize their practices in the circular. Having to comply with a multitude of requirements is time consuming, costly and inefficient for issuers.

With respect to the practices of other exchanges, while we recognize that certain of them have requirements for website disclosure, none seems to be as broad as what is being proposed by the TSX. Taking into account the average market capitalization of issuers on the TSX, some of them might not have sufficient resources to comply with the Proposals. In some cases, these additional requirements and the associated costs and resources might just be the tipping point in a decision to go private, not go public or to select a jurisdiction having less burdensome requirements for the listing of securities.

2. *Are there any additional documents that should be included under Section 473?*

No.

3. *Are there any documents that should not be included?*

The Participants are of the view that the language used in the proposed text of new section 473 is broadly inclusive (non-exhaustive), which could lead to uncertainty as to the extent of the disclosure required by the provision. While there are examples of the type of documents the provision is intended to capture, the section could be interpreted as applying to a much broader set of documents than is intended. An example of this risk is with respect to corporate governance documents in which the catch-all of "other environmental and social policies", might be interpreted very broadly. The Participants wish to ensure that certain policies will remain private, including certain "social" policies, such as their

donation policy, to cite only one example. The scope of this requirement must be narrowed and limited to policies which by nature do not deal with sensitive matters, to avoid the disclosure of potentially confidential or commercially / competitively sensitive information or practices. TSX should consider the approach of the New York Stock Exchange, which prescribes a very limited list of documents that should be included on websites.

Ideally, issuers should have the flexibility to post documents on their website or not. Section 423.12 (2) (a) of the Manual already encourages an issuer to take advantage of the Internet technology and make available through the issuer website all corporate "timely disclosure" documents and other investor relations information that it deems appropriate.

In addition to the costs of preparing, reviewing and posting the documents, such posting might create additional liability risks under provisions of securities legislation (secondary market liability provisions, for instance). There is a risk that the broader and more inclusive TSX rules may be leveraged by an opportunistic plaintiff securities class action bar to sue any issuer who experiences a significant share price decline and whose disclosure does not conform to perceived "best practices" or whose employees have appropriately responded to an issue but not entirely in accordance with suggested practices in a particular corporate policy. Furthermore, some observers might compare policies of senior issuers to those of less sophisticated ones and require the latter to comply with "best practices" that are not tailored to their needs.

With respect to security-based compensation arrangements, Form 51-102F6 (**Form 51-102F6**) to National Instrument 51-102 (**NI 51-102**) already requires some level of disclosure in the proxy circular. Such disclosure is accompanied by relevant background and contextual information which provides better information for investors, whereas such contextual information would obviously not be present in the case where the text of plans would be posted alone on an issuer's website.

Furthermore, security-based compensation arrangements and plans may include targets or other competitively sensitive information, the disclosure of which would be detrimental to the interests of issuers. Form 51-102F6 directly addresses this issue. It provides that issuers are not required to disclose performance goals or similar conditions in respect of specific quantitative or qualitative performance-related factors if a reasonable person would consider that disclosing them would seriously prejudice the issuer's interests. Similarly, a provision in a material contract required to be filed pursuant to Part 12 of NI 51-102 may be omitted or marked to be unreadable if an executive officer reasonably believes that disclosure of that provision would be seriously prejudicial to the interests of the reporting issuer or would violate confidentiality provisions. In the event the Proposals proceed, the Participants would want to have, at a minimum, the ability to redact any information which they consider sensitive. In addition, they should be allowed not to post security-based compensation arrangements which are still in existence but for which no securities are outstanding.

On a related note, there is uncertainty around what constitutes security-based compensation arrangements that must be posted, in part because this definition in the Manual is drafted in broadly inclusive (non-exhaustive) terms and could be interpreted as including the award grants themselves. Participants would appreciate clarifications to the effect that the award grants do not have to be posted on websites.

Similarly, the obligation to post trust indentures and partnership agreements should be clarified to include only constituting documents of income trusts or partnerships and not indentures related to debt securities or joint venture agreements, for instance.

4. *Are there any additional material costs or efforts required to comply with the proposed requirements?*

Yes. If corporate policies, security-based compensation arrangements and corporate governance documents are required to be posted on websites, issuers will need to consider potential liability risks as

well as whether sensitive information is disclosed in such documentation and make necessary amendments prior to their public disclosure, as appropriate. In addition, issuers may need to update their website more frequently, which will also result in additional costs, as required by Section 423.11(1)(a) of the Manual. Finally, some smaller issuers may not currently have a website, or the necessary investor relations personnel to manage these matters on a regular basis. Where a majority of this documentation is available on SEDAR to the members of the public, it is questionable whether there is a significant benefit to the public that would justify the increased costs.

Canadian reporting issuers are already subject to extensive rules with respect to the content and timing of public disclosure prescribed by the CSA. Participants are concerned with the lack of harmonization between different sets of rules, the possible different interpretation given to continuous disclosure requirements by the TSX and the individual members of the CSA and the potential inefficiency of creating a second set of disclosure obligations for issuers to track, at their time and expense.

For example, the TSX rules are silent as to the timing of filing various documents, while the CSA rules are specific and a common practice has evolved concerning the timing of disclosure under those rules. There is the possibility of confusion if the TSX requirements on their face prescribe certain documents to be disclosed at a certain time and CSA rules prescribe otherwise.

As another example, posting on a website does not meet the requirement for "general disclosure" under CSA rules and, accordingly, it would seem the Proposals will only add to the significant compliance burden that issuers already face, as issuers would still need to describe the content of many of the documents in their annual documentation.

Also, the Proposals will impose substantial translation costs on issuers. Indeed, most issuers make an effort to ensure that everything posted on their website is available in Canada's both official languages. Translating constating documents, policies and security-based documentation will be very expensive and mistakes could trigger potential liability.

Furthermore, the benefits of posting documents on websites are not obvious. The Participants believe that most investors will not look at the website when evaluating their governance. They will look at the circular, where the information is summarized and explained in plain language.

Finally, the new disclosure requirements may well create a new *de facto* comply or explain regime, as issuers will be pressured to adopt policies that others have adopted, even though they may not be best suited to their needs.

5. *Are there concerns that security holders may rely on the website disclosure which may not be kept current?*

Yes. By imposing the posting of additional documentation on issuers website, the Proposals heighten the risk of misleading information in the market, as some of the documents might not be up-to-date, all the time. We also refer to our comments above with respect to the possibility of confusion if the TSX rules on their face require certain documents to be disclosed at a certain time and CSA rules prescribe otherwise.

6. *How long should issuers have after Section 473 comes into effect to establish or update their website with the required documents? Is 60 days from the date the rule comes into effect sufficient time to comply with the requirements?*

The Participants believe that they should have at least 12 to 18 months to review best practices and prepare appropriate procedures to comply with any new obligation imposed on them to disclose additional documentation. As mentioned above, in light of potential secondary market liability, the Participants' existing policies will need to be thoroughly and carefully reviewed and any required

amendments will need to be submitted to board and board committees for approval, which will require significant time and effort. In addition, many documents will need to be translated.

(b) Part VI Amendments

1. *Do proposed Section 613(d), Form 15 and the website requirements in Section 473 provide meaningful and sufficient disclosure in respect of Arrangements?*

We believe that the current requirements of Section 613 of the Manual (as opposed to the Proposals) already provide meaningful and sufficient disclosure in respect of Arrangements, and that the market is now accustomed to the practices established in Section 613 of the Manual.

2. *Are there any other key Disclosure Elements that should be included in Form 15? If so, should the disclosure be required in Meeting Materials for both Approval Meetings and Other Annual Meetings or for Approval Meetings only? Please consider the value of the additional disclosure in light of the efforts by the issuer to prepare the additional information.*

It is not clear to the Participants how the new requirements will overlap with some of the disclosure rules prescribed by Form 51-102F6 of CSA's NI 51-102 with respect to security-based compensation arrangements. In the event the Proposals are to proceed, in order to minimize potential duplication with the disclosure requirements prescribed under Canadian securities legislation, the additional disclosure required by Form 15 should only apply in respect of Approval Meetings.

3. *Are there any disclosure items that should be removed from Form 15? If so, should the disclosure be removed from the Meeting Materials for both Approval Meetings and Other Annual Meetings?*

As mentioned earlier, the Participants believe that the current provisions of Section 613 are sufficient. That being said, Participants agree that some of the requirements, such as maximum securities available to insiders and maximum securities available to one person or company, should be deleted. What should be disclosed in circulars are the material terms and conditions of the security-based compensation plans and issuers should have some flexibility to determine what is material.

4. *Should the Disclosure Elements which are static terms of an Arrangement be required given that the information is available in an Arrangement on a listed issuer's website? I.e. Plan Maximum, Eligibility and Vesting. Please consider whether these items ought to be excluded for Approval Meetings and/or Other Annual Meetings?*

Pursuant to NI 51-102, some material terms of security-based compensation arrangements are already provided in the information circulars. Participants believe that such disclosure and the one required under current Section 613 of the Manual is preferable to the posting of plans on an issuer's website, in light of the efforts and costs to the issuer of preparing, reviewing and posting the documents, and in light of the fact that shareholders do not necessarily consult issuers' websites prior to casting their votes at shareholder meetings. However, in the event the Proposals were to proceed, the meaning of the expression "default vesting provisions" should be clarified.

5. *Is the burn rate and the formula for calculating it useful and appropriate disclosure? In particular, is the use of the maximum payout of the multiplier appropriate? If not, please provide other measure would be preferable. Would it be more appropriate to permit the use of a historic midpoint payout of the multiplier, rather than the maximum?*

The Participants believe that using the maximum payout of the multiplier artificially inflates the burn rate, and creates further potential for confusion in light of existing disclosure requirements adopted by the CSA.

For instance, Item 4.1(7) of Form 51-102F6 requires that, when a share-based award provides for different payouts depending on the achievement of different performance goals or similar conditions, the aggregate market value or payout value of share-based awards shall be calculated based on the minimum payout. However, if a performance goal or similar condition was achieved that on vesting could provide for a payout greater than the minimum payout, then the value must be calculated based on the payout expected as a result of the achievement of this performance goal or similar condition. This standard is different from that proposed by the TSX and will potentially create confusion for investors.

Issuers already find it difficult to understand and comply with certain requirements under Form 51-102F6. TSX should not add confusion by requesting different disclosure items.

6. *Is it sufficient to have the burn rate only for the most recently completed year, rather than the last three years for both Approval Meetings and Other Annual Meetings?*

Participants believe that providing the burn rate for the last three years would be more useful to market participants as many investors make their decisions on compensation-related matters based on a three-year period.

III. Conclusion

In short, the Participants are of the view that TSX should be very prudent in incorporating new disclosure requirements in its Manual. The proposed amendments create significant burdens on issuers, including additional liability, and may lead to confusion.

We would be happy to discuss these matters with you.

Yours truly,

(s) *Norton Rose Fulbright Canada LLP*

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