**Institutional Shareholder Canada Corp**
26 Wellington Street East Suite 820
Toronto ON M5E 1S2

Catherine De Giusti
Legal Counsel
Toronto Stock Exchange
The Exchange Tower
130 King Street West
Toronto, Ontario M5X 1J2
tsxrequestforcomments@tsx.com

Susan Greenglass
Director
Market Regulation
Ontario Securities Commission
20 Queen Street West
Toronto, Ontario M5H 3S8
marketregulation@osc.gov.on.ca

July 11, 2016

Re Toronto Stock Exchange Request for Comments
Amendments to Toronto Stock Exchange ("TSX") Company Manual

Dear Mesdames:

Thank you for the opportunity to provide comments with respect to the proposed amendments to the Toronto Stock Exchange Company Manual, including the addition of new Section 473 and ancillary amendments to Section 461.3.

Institutional Shareholder Services Inc. ("ISS") is a leading provider of corporate governance solutions to the global financial community, including corporate governance analysis and voting recommendations for institutional investors (also referred to as proxy advisory services). More than 1,700 global clients rely on ISS' expertise in providing background research and voting recommendations to help them make more informed voting decisions. In Canada, ISS operates through its wholly-owned subsidiary, Institutional Shareholder Services Canada Corporation, which is based in Toronto.

Our comments below reflect our views in our capacity as a proxy advisor and thought leader in the area of corporate governance, and not necessarily those of our clients.

Introduction of New Section 473

ISS' corporate governance research and voting recommendations are policy based. ISS' voting policies are the result of an inclusive and transparent annual update process that includes review and trend analysis of specific corporate governance practices. As in all markets covered by ISS, the application of ISS' Canadian proxy voting policies to the items on the ballots of issuers listed on the TSX, depends on the complete and timely availability of public disclosure filings by issuers and other publicly available information. The disclosures should, at a minimum, provide detailed information regarding those ballot items for which shareholders are asked to cast

their votes. Where shareholders are being asked to consider the adoption or amendment of provisions contained in constating or other legal contractual documents, we believe it is important that the entire document as proposed be available for review well in advance of the shareholder meeting in order for the company's shareholders to be able to carefully consider all of the provisions therein and their implications for shareholder rights and remedies.

ISS therefore considers the introduction of the TSX requirements set out in new Section 473 to be appropriate as they would provide investors with improved access to the documents referenced in the Proposed Amendments. In particular, the new requirement to post securityholder rights plans and security based compensation arrangements on the company website would be a significant improvement that would save shareholders considerable time and resources in attempting to locate these plans. Currently, these plans are often not publicly filed prior to the shareholders' meeting at which shareholders are being asked to vote on them. In ISS' experience, complete, updated constating documents and other documents such as security holder rights plans and equity based compensation plans are not always filed on SEDAR even after the shareholder meeting at which they were approved.

Reporting issuers should be required to disclose these documents at the same time that other shareholder meeting materials are disseminated and to clearly identify them on the company's website in advance of the shareholders' meeting for which they will be included on the ballot. A further requirement that the final shareholder-approved version of these documents be filed on SEDAR subsequent to the shareholders' meeting at which they were approved, is also recommended and supported. Once approved, shareholders should have access to these approved documents until such time as they are terminated, replaced or amended at another shareholders' meeting, in the same regulatory repository that contains the management information circular, annual and interim financial statements and other public disclosure documents.

ISS suggests that the proposed regulatory requirement for company website disclosure should specifically indicate that all documents disclosed in this manner must be kept current, otherwise the value of having website disclosure is diminished and may in practice have little utility for company shareholders. As well, we think that non-compliance with such disclosure requirements should result in a form of penalty to help assure complete and timely compliance.

The questions related to the costs and timing of compliance with the proposed requirements may be more appropriately answered by the reporting issuers who would be required to comply. However, given that reporting issuers already maintain websites with investor relations sections, and that the documents referred to are already available, the timing proposed does not seem to us to be onerous.

<u>Part VI Proposed Amendments</u>

In response to questions 1 through 4 in the request for comments, ISS believes that the proposed Section 613(d), Form 15 and the website requirements in Section 473 do not provide meaningful and/or sufficient disclosure in respect of "Arrangements", all as further detailed below.

ISS suggests that several of the disclosure requirements currently contained in Section 613(d) that are proposed for removal be retained as required material disclosure and added to the new Form 15 requirements as itemized below. We further suggest that the following disclosure requirements be retained for all annual and approval meetings, because these items inform institutional investors' votes on other ballot items such as advisory say on pay resolutions and votes on director nominees, particularly with respect to votes on compensation committee

members, and may also be instrumental in preparing for engagement activities undertaken by institutional investors.

A) Item iii – For both fixed limit and percentage limit plans, the number of securities issued is material key information for shareholders to accurately calculate the potential dilutive impact of a plan and/or determine the cost to shareholders of the transfer of shareholders' equity flowing out of the company to employees and directors as stock options and awards are exercised or paid out. This number may not necessarily be equal to the Outstanding Awards under the plan. Disclosing only securities issuable under each equity based arrangement presents incomplete information that alone is not very meaningful.

B) Item v – The method of determining the exercise price is important information for shareholders in order to understand the basis for payouts. Additionally, and perhaps more importantly, this particular disclosure also includes whether the exercise price of outstanding awards may be adjusted under different scenarios, and which may include a reduction in the exercise price or the exchange of outstanding stock options for options with a lower exercise price. Both of these may be considered to be "re-pricing". This information is a key material disclosure that is used by institutional investors to apply their voting policies on plans that permit repricing. This information may also influence investors' votes on other ballot items.

C) Item vi – The method of determining the purchase price for securities under security purchase arrangements, with specific disclosure as to whether the purchase price could be below the market price of the securities is also information that is of great relevance to shareholders. For example, this information is required in order for institutional shareholders to apply any voting guidelines for employee share purchase plans that typically provide for a discounted purchase price, or a company match which effectively provides a discounted purchase price for shares purchased by an employee, including executive officers and in some cases non-employee directors who are eligible participants under these types of plans. Further, the ability of insiders to receive discounted awards under the terms of any other type of equity compensation arrangements such as arrangements that require the employee participant to pay a percentage of the purchase price with the company providing financial assistance for the balance of the purchase price, is also extremely important information that may influence votes on other ballot items, such as say on pay resolutions or director nominees.

D) Item ix – ISS supports the proposed amendment which will require detailed disclosure with respect to award vesting requirements including whether these requirements are time-based or performance-based, as well as more specific disclosure regarding default vesting provisions for all types of equity compensation awards.

E) Item x – The term of stock options.

This information is critical to many institutional investors in considering stock option plans and applying their voting guidelines. Some institutional investors will not support a stock option plan that authorizes terms longer than a particular period. In addition, this is necessary information because the extension of the term of outstanding stock options is often deemed to be a form of re-pricing that potentially increases the value of an award that may have otherwise expired out-of-the-money. And finally, the term of the stock option award is an essential piece of information needed to value the award based on methodologies employed by many institutional investors and their advisors.

F) Item xi – The causes of cessation of entitlement under each arrangement, including the effect of an employee's termination, either for or without cause, is important information for shareholders to assess the rigor of award termination provisions for senior management and non-employee directors where applicable. This information provides insight into the potential for excessive arrangements for executives who no longer contribute to company performance, and insight into lingering ties that may align the interests of directors who

are former executives of the company with those of current management, rather than with the interests of shareholders. This may be critical information when considering committee members or cooling off periods for former executives who remain on the board of directors, for example.

G) Item xii – The assignability of security based compensation arrangement benefits and the conditions for such assignability, including transferability, is key information that is required in order for investors to apply voting policies in this regard. This information may also influence investor views and votes on other ballot items, as the maintenance of a plan that permits assignability or transferability other than for normal estate planning purposes, may be viewed as unacceptable and contrary to any incentive value provided by the plan to eligible participants.

H) Item xiii – The procedure for amending each arrangement including specific disclosure as to whether security holder approval is required for amendments is additional material information for the application of many institutional investor voting policies on plan amendment provisions.

The TSX's proposed change to require disclosure only of those amendments that have been made to a plan in the most recent year without shareholder approval, while important, is not in our view sufficient. Shareholders also need to know what amendments to the plan will require shareholder approval when determining support for a plan approval resolution, and potentially when considering other voting items such as director nominees or advisory say on pay proposals.

I) Item xiv – Financial assistance provided by the listed issuer to participants under each arrangement to facilitate the purchase of securities under the arrangement, including the terms of such assistance, is also material information for the application of institutional investor voting policies, as many institutional investors do not support the provision of loans for the purchase of shares or the exercise of stock options under compensation plans, particularly if such financial assistance is interest free or can be forgivable.

In the event that any of the foregoing disclosure items are deleted from the final amended disclosure requirements, it is all the more imperative that the full plan document becomes available on each reporting issuer's website on or before the date that the management information circular and any other meeting materials are made available to shareholders for review.

Burn Rate Disclosure and Considerations

In response to question number 5 in the request for comments, ISS offers the following comments. As currently structured, the proposed burn rate calculation fails to provide a useful representation of burn rate as typically considered by institutional investors and when applying their voting guidelines. The burn rate formula often used for the application of institutional investors' voting policies is equal to the number of equity award shares granted in any given year divided by the weighted average number of shares outstanding during the year (simple unadjusted burn rate).

The burn rate calculation, as currently proposed, would allow issuers to reduce the number of awards reported as granted during the most recently completed fiscal year by the number of awards cancelled during that year. This raises concerns about the usefulness of the calculation for purposes of determining annual equity award grants approved by the board since the discrepancy in the timing of the awards granted and cancelled within the formula could skew the burn rate percentage and could, in some cases, result in negative burn rates, reducing both the relevance and usefulness of this figure for shareholders. ISS therefore suggests that simple unadjusted

burn rate also be calculated and disclosed in order to provide more complete and meaningful information regarding burn rate.

Using the maximum multiplier for awards where applicable, provides shareholders with a full account of the potential shares which may be delivered upon vesting, especially in cases where the number of shares finally awarded is contingent upon performance (in the case of performance share units for example). However, there may be cases where the maximum multiplier allows for partial share counting in the determination of awards, such as fungible share ratios where the multiplier applied to an award results in less than one share. As such, ISS reiterates its suggestion that a separate calculation for simple unadjusted burn rate be included within the disclosure requirements for shareholders to be able to ascertain total burn rate without the application of the multiplier. Establishing a historic midpoint payout multiplier as contemplated within the proposed TSX updates would raise certain implementation issues, such as defining what would constitute 'historical' when applying such a multiplier and how to adjust for potential differences in multipliers among different participants, in addition to other administrative complexities.

The denominator in the proposed calculation also provides for a number of outstanding shares defined as the "number of issued and outstanding securities as at the beginning of the most recently completed fiscal year". This figure may have the effect of over-or understating annual burn rate as it does not reflect changes to the number of shares outstanding during the year in which award grants were made. ISS suggests that the weighted average number of common shares outstanding (basic non-diluted) be utilized for this purpose, as this number would take into account significant events impacting the shares outstanding (i.e. such as buybacks, equity issuances, private placements or other such events) in a fiscal year. As companies are already required to disclose the weighted average number of common shares outstanding as of fiscal year end within their annual financial statements, we do not consider that this would be an onerous disclosure requirement.

In response to question number 6 in the request for comments, we feel that three years of burn rate information should be made available for both Approval Meetings and Other Annual shareholder meetings. The inclusion of this information for the most recently completed fiscal year and for each of the prior two fiscal years would provide greater visibility into grant patterns and trends at a particular company while also allowing shareholders to immediately view and help account for apparent grant anomalies within any given year.

Disclosure of only one year's burn rate may present a significantly skewed picture of the use of equity awards if, for example, large one-time initial grants have been made to newly hired executives or if large awards are granted infrequently and intended to cover a multi-year period.

Additionally, in ISS' experience, institutional investors tend to consider the usage of equity awards, including burn rate, when evaluating compensation programs and in the application of their voting policies on management say on pay resolutions or on individual Compensation Committee members on an annual basis. As such, the inclusion of only one year of burn rate information would not provide the historical perspective needed by shareholders to properly consider and evaluate these resolutions effectively.

Other Comments

Date of Disclosure Elements

We believe that the proposed change to the date of disclosure elements for annual meetings versus for approval meetings creates unnecessary inconsistency from year to year depending on whether equity compensation

plans are on the ballot or not. From a shareholder perspective it is preferable to have the most up-to-date disclosure upon which to base votes for any compensation related proposal, including shareholder proposals, or votes for director nominees including contested meetings. Therefore it is recommended that the current requirement for disclosure as of the date of the materials be maintained for annual meetings as well as for approval meetings.

Recommended Additions

It is also suggested that required disclosure as set out in Form 15, Disclosure of Security Based Compensation Arrangements include:

i) Average weighted exercise price of awards as of date of materials, and
ii) Average weighted term of awards as of date of materials.

Disclosure of this information as of the date of the management information circular would provide disclosure consistent with the information provided as of the fiscal year end. This information could be of importance to shareholders when valuing awards outstanding as of the circular date, particularly if a significant period of time has elapsed since fiscal year end to the circular date and/or a number of awards have been granted under or outside of equity compensation plans since fiscal year end. This would be in keeping with the desire of many institutional investors to have the most up to date disclosure possible when making voting decisions for an upcoming shareholders' meeting.

Thank you again for the opportunity to provide these comments.

Respectfully,

Debra L. Sisti,
Executive Director,
Head of Canadian Research,
ISS
26 Wellington Street East,
Suite 820,
Toronto, ON M5E 1S2
debra.sisti@issgovernance.com

Anjeet Bening,
Vice President,
Canadian Research,
ISS
26 Wellington Street East,
Suite 820,
Toronto, ON M5E 1S2
anjeet.bening@issgovernance.com