

13.2.2 Toronto Stock Exchange – Request for Comment – Amendments to Part IV of the TSX Company Manual

**TORONTO STOCK EXCHANGE
REQUEST FOR COMMENTS
AMENDMENTS TO PART IV OF THE
TORONTO STOCK EXCHANGE (“TSX”) COMPANY MANUAL
(THE “MANUAL”)**

TSX is publishing proposed changes to Part IV of the Manual (the “Amendments”). The Amendments are being published for a 30-day comment period.

The Amendments will be effective upon approval by the Ontario Securities Commission (the “OSC”) following public notice and comment. Comments should be in writing and delivered by ●, 2012 to:

Michal Pomotov
Legal Counsel
Toronto Stock Exchange
The Exchange Tower
130 King Street West
Toronto, Ontario M5X 1J2
Fax: (416) 947-4461
Email: tsxrequestforcomments@tsx.com

A copy should also be provided to:

Susan Greenglass
Director
Market Regulation
Ontario Securities Commission
20 Queen Street West
Toronto, Ontario M5H 3S8
Fax: (416) 595-8940
Email: marketregulation@osc.gov.on.ca

Comments will be publicly available unless confidentiality is requested.

Overview

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

Summary of the Amendments

The Amendments would require issuers listed on Toronto Stock Exchange to have majority voting for director elections at uncontested meetings. To comply with the requirement, issuers may adopt a majority voting policy.

Background to the Amendments

On September 9, 2011, TSX published a request for comments with a number of proposed rule amendments concerning director election practices for TSX listed issuers (the “September RFC Amendments”). The September RFC Amendments are being finalized today and require issuers to:

1. annually elect directors;
2. elect directors individually;
3. publicly disclose the votes received for the election of each director;
4. disclose whether or not they have adopted a majority voting policy and if they have not, to explain this decision; and

5. disclose to TSX if a director receives a majority of “withhold” votes (if they do not have a majority voting policy).

TSX received a number of comments on the September RFC Amendments supporting mandating a majority voting process for TSX listed issuers. TSX therefore has determined to adopt the September RFC Amendments and simultaneously propose the Amendments.

Description of Director Election Policy Choices in Canada

(a) Plurality Voting

Under plurality voting for director elections, security holders vote “for” or “withhold” for each director or the slate of directors. The director or slate is elected if one vote is cast “for” the director or the slate, regardless of the number of “withhold” votes cast. This voting standard is plurality voting since the director or the slate may be elected without receiving a majority of votes.

As a result, virtually every nominee director or slate is elected with plurality voting.

(b) Majority Voting

Under mandatory majority voting, security holders vote “for” or “against” each individual board nominee.

When a majority voting policy is adopted, a plurality voting standard still applies, and security holders generally vote “for” or “withhold” for each individual board nominee. However the number of “withhold” votes are considered “against” votes and counted as part of the total votes cast. A typical majority voting policy provides that a director who receives a majority of “withhold” votes must tender his/her resignation, and the board will generally accept that resignation, absent exceptional circumstances, and publicly announce its decision by news release. Some majority voting policies provide that the board must accept the director’s resignation, although those policies are less common. In either type of policy, a director who receives a majority of “withhold” votes would still be elected as a matter of law, but a majority voting policy is designed to ensure that only those directors who receive a majority of votes in their favour remain on the board.

According to the Canadian Coalition for Good Governance, sixty-one percent (61%) of the listed issuers in the S&P/TSX Composite Index (the “Index”) have majority voting.

Comparison of Practices in Major International Markets

Canada, together with the United States, are among the few major developed jurisdictions that still have plurality voting. TSX believes that Canadian investors may not therefore have as effective a voice in electing directors as investors in other jurisdictions.

Rationale for the Amendments

Improve Corporate Governance Standards

Majority voting supports sound corporate governance by providing a meaningful way for security holders to hold directors accountable. TSX believes the Amendments will enhance the governance dialogue between issuers, security holders and other stakeholders and improve transparency. In addition, sixty-one percent of issuers in the Index already have majority voting, which reflects support for mandating the practice for all TSX listed issuers.

Amendments Work within Existing Regime

TSX is aware of concerns that mandatory majority voting may put issuers offside corporate or securities laws because if sufficient director nominees aren’t supported, too few directors may be elected to achieve quorum or committee requirements.

The concerns expressed for mandatory majority voting do not, however, appear to have been the experience in Canada of those issuers that have majority voting. In particular, TSX listed issuers have generally adopted non-binding majority voting policies and maintained compliance with their legislative and regulatory requirements. Functionally, with a non-binding majority voting policy, directors that do not receive sufficient support are still elected, but they resign at a later time giving time for the board to reconstitute and reorganize the board if necessary without being offside any laws or creating any governance issues.

Issuers will be able to adopt a non-binding majority voting policy in satisfaction of the proposed Amendments and, as a result, there should be no conflict with current applicable corporate or securities rules or requirements.

Strengthen International Reputation

TSX believes that this initiative will bolster Canada's reputation for supporting strong governance standards, and bring Canada closer to the practices of other major international jurisdictions.

Public Support

As noted above, TSX received a number of comments on the September RFC Amendments supporting mandating majority voting for TSX listed issuers. Further, the comments received on the September RFC Amendments that did not support majority voting were largely based on submissions regarding failed elections, a loss of directors, TSX jurisdiction and timing.

Failed elections or a loss of directors have not however been the experience of issuers that have adopted majority voting. Further, the strong backing that we received for TSX proposing these Amendments supports TSX jurisdiction.

Jurisdiction of TSX

TSX received some comments with respect to the September RFC Amendments submitting that TSX was not the appropriate organization to pursue the Amendments. However, more comments were submitted supporting the jurisdiction of TSX and the appropriateness of TSX pursuing the Amendments. As such, TSX continues to believe that the Amendments are within its jurisdiction and appropriate for it to pursue.

Timing of the Amendments

TSX anticipates that the Amendments would become effective as of December 31, 2013.

Questions

1. Do you support TSX mandating that its listed issuers have majority voting, which may be satisfied by adopting a majority voting policy for uncontested director elections? Please identify potential positive and negative impacts if issuers are required to have majority voting.
2. Do you believe it would be useful for TSX to provide specific guidance that it expects that the board of directors will typically accept the resignation of a director that receives a majority of "Withhold" votes, absent exceptional circumstances? If you agree, please suggest the preferred means to provide it (for example in a Staff Notice, in commentary about the Amendment or in the drafting of the Amendment itself).
3. What positive or negative impacts may the Amendments have on other market participants or the market in Canada in general?
4. Do you support the jurisdiction of TSX to adopt and enforce the Amendments? If not, please support your response, and differentiate the Amendments from the September RFC Amendments being finalized today.
5. Are there additional ancillary rule amendments or other relevant issues not discussed in this Request for Comments that should be considered in adopting the Amendments?

Public Interest

TSX is publishing the Amendments for a 30-day comment period, which expires November 5, 2012. The Amendments will only become effective following public notice and the approval of the OSC.

**APPENDIX A
TEXT OF PROPOSED AMENDMENTS**

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.~~

Listed issuers must have majority voting for the election of directors at uncontested security holder meetings. In satisfaction of this requirement, a listed issuer may adopt a majority voting policy that requires a director that receives a majority of the total votes cast withheld from him or her to immediately tender his or her resignation to the board of directors, to be effective on acceptance by the board. The policy must also provide that the board shall consider the resignation and disclose by news release the board's decision whether to accept that resignation and the reasons for its decision no later than 90 days after the date of the resignation.

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 votes received for the election of each directors⁵.~~

⁵ If the vote is by show of hands, the issuer will disclose the number of securities voted by proxy in favour or withheld for each director and the outcome of the vote by a show of hands.