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Sent By E-mail

Catherine De Giusti
Legal Counsel
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Toronto, Ontario M5X 1J2
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Dear Madam:

Amendments to Parts IV and VI of the Toronto Stock Exchange Company 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 **TSX Proposed Amendment**s). This letter supplements our comment letter dated June 28, 2016 and represents conversations with additional issuers that did not participate in the original consultation. We thank you for the opportunity to comment on the TSX Proposed Amendments.

We believe that there are a number of issues for TSX-listed issuers that are raised by the TSX Proposed Amendments. A high level summary of our concerns are as follows (some repeat our letter dated June 28, 2016):

Our Concerns

Problems with the TSX Proposed Amendments include:

- Over-kill. The current CSA corporate governance disclosure obligations are enough. Issuers should have the flexibility to adopt governance practices best suited to their needs, subject to *appropriate* disclosure requirements. The TSX Proposed Amendments are broader than the disclosure requirements of other stock exchanges.

- Scope is Ambiguous. The inclusive (non-exhaustive) language could capture:

  - Individual award agreements comprising security-based compensation arrangements; and

  - A broad range of internal corporate governance documents such as audit committee pre-approval requirements for the engagement of non-audit services, charitable donations policies, travel policies, etc.

- Sensitive Subject Matter. Anti-corruption policies and environmental and social policies are examples of policies that relate to sensitive matters. Many companies improve their policies from time to time to reflect emerging best practices and if improvements made in sensitive areas are made public, opportunist plaintiff securities litigators or social activists could use those improvements as evidence that corporate practices in line with the earlier policies were deficient (even in circumstances where the corporate practices and policies reflected best practices at the relevant time). Similarly, a corporation may have reasons for not exactly following corporate policy and context is sometimes needed to understand those reasons.

- The CSA is the Better Regulator of Disclosure. The CSA are in a better position than the TSX to prescribe, regulate and monitor continuous disclosure requirements:

  - The TSX Proposed Amendments would create conflicts between CSA disclosure requirements and TSX disclosure requirements and would effectively create two different sets of obligations relating to the same subject matter. An example of conflict raised in the June 28 comment letter is disclosure of performance metrics contained in security-based compensation arrangements. This area is already covered under National Instrument 51-102F6 – *Statement of Executive Compensation* (**NI 51-102F6**) (and there are exceptions and exclusions under that instrument).

  - The TSX disclosure would cover "security-based compensation arrangements" (as defined in the *TSX Company Manual*). This definition only captures compensation arrangements settled in treasury shares and not compensation arrangements settled in cash or shares purchased on the open market. NI 51-102F6 on the other hand requires disclosure of the broader range of equity-based compensation arrangements. Accordingly, the TSX disclosure would be lop-sided and not helpful.

  - Requiring duplicate filings on corporate websites and SEDAR would only add confusion. SEDAR is centralized and accessible.

  - The CSA have a materiality thresholds that are not reflected in the TSX Proposed Amendments.

  - The TSX Proposed Amendments do not take into account secondary market disclosure risk.

- Significant Additional Regulatory Burden (without Meaningful Benefit to Stakeholders).

  - Posting long and technical legal documents on websites (as opposed to describing corporate governance practices or summarizing documents, hopefully in plain language, as appropriate) does not provide meaningful disclosure to stakeholders.

  - Calculating outstanding awards as a percentage of outstanding shares and burn rates based on maximum payouts is distorting and the disclosure is not helpful.

  - Translation costs and related disclosure issues have not been considered.

  - Most companies will ask their lawyers and accountants to review documents before they are posted.

  - The disclosure requirements will drive companies to cut commercially sensitive information before posting documents on websites.

- Timing. Companies are expected to prepare for this in 60 days. Realistically, it will take 12-18 months for companies to review best practices; to determine what documents need to be disclosed (taking into account the ambiguous scope of the TSX Proposed Amendments), and whether documents that have not previously been disclosed are suitable for disclosure (taking into account secondary market disclosure risk); to consider and complete appropriate translations of documents; and to take any other action as appropriate to mitigate

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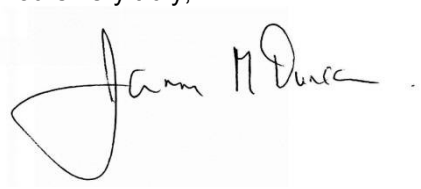
disclosure risk. As mentioned above, many companies will ask their lawyers and accountants to review materials prior to disclosure.

Yours very truly,



Janne Duncan
Senior Partner

JD/am

Cop(y/ies) to: Susan Greenglass (Director, Market Regulation, Ontario Securities Commission)
Thierry Dorval (Partner, Norton Rose Fulbright Canada LLP)