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Sent By Electronic Mail

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- and -

Ms Susan Greenglass
Director
Market Regulation
Ontario Securities Commission
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Dear Mesdames:

Amendments to Toronto Stock Exchange Company Manual (May 26, 2016) respecting website disclosure and security based compensation disclosure ("Proposed Requirements")

This letter is submitted in response to the request for public comment on the Proposed Requirements and represents the views of Osler, Hoskin & Harcourt LLP (Osler) and of a group of 4 Toronto Stock Exchange (TSX) listed issuers (the Issuers) with a collective market capitalization of over $83 billion. (Collectively, the Issuers and Osler are referred to as "we"). We understand that the Proposed Requirements are intended to provide Canadian capital market participants with ready access to key security holder documents and to simplify proxy circular disclosure requirements.

We support those objectives. Indeed, each Issuer currently maintains a publicly-accessible website where investors may obtain information about the Issuer's corporate governance practices and corporate social responsibility practices and each Issuer provides information respecting its security based compensation arrangements in its proxy circular in accordance with TSX requirements. However, we believe the amendments need to be revised to provide additional clarity regarding the Proposed Requirements, especially since the Proposed Requirements are continuing listing requirements, non-compliance with which would constitute grounds for a delisting of the securities of a listed issuer from the TSX.

Website Disclosure Requirements

We would recommend the following changes to proposed new section 473 to conform to the stated goal of the initiative, provide clarity regarding what materials are required to be posted on the website and, where applicable, harmonize with disclosure requirements under Canadian securities laws.

473(a) – We recommend revising this section to say "The documents required to be filed under Section 12.1(1) of National Instrument 51-102." Doing so clarifies that the documents to be disclosed on the website are not more extensive, nor any less extensive, than the documents affecting the rights of securityholders that TSX listed issuers are required to make public under Canadian securities law.

473(b) – We recommend revising this section to say "Majority voting policies adopted pursuant to Section 461.3 and policies requiring advance notice to the listed issuer of nominees for director". A requirement to post corporate policies that "may" impact meetings of security holders and voting is vague and potentially wide-ranging. We are comfortable with the requirement to post the listed issuer's majority voting policy as there is a description in section 461.3 of what a majority voting policy should address. We expect that the reference to "advance notice" policies is intended to reference policies requiring advance notice to the listed issuer of nominees for director which some issuers have adopted as policies in lieu of or in addition to provisions set out in their by-laws or articles of association. If section 473(a) is revised as recommended above, we think it would be unnecessary to reference such policies in section 473(b) as they will be covered by section 473(a). However, a separate reference could be included in section 473(b) with some additional clarity about what constitutes an "advance notice" policy as per our recommended language.

473(c) – If section 473(a) is revised as recommended above, section 473(c) can be deleted.

473(d) – There is potential for confusion regarding what documents are required to be posted in response to this item.

- Section 613 states that "arrangements which do not involve the issuance from treasury or potential issuance from treasury of securities of the listed issuer are not security based compensation arrangements for the purposes of this Section 613." Either Section 613 should be revised to state that such arrangements are not security based compensation arrangements for the purposes of the TSX Company Manual or a similar clarification needs to be added to Section 473.

- It is unclear whether Section 473(d) requires disclosure of not only the text of each plan, but also every award document granted under the plan or outside of the

We are comfortable with posting the plan text on the website, but disclosure of award documents would raise concerns. First, disclosing all award documents would be administratively burdensome and would not provide meaningful information to shareholders. Second, since award documents contain personal information, we are concerned that disclosing an award document (whether the award was granted pursuant to a Plan or outside a Plan), would contravene privacy legislation, especially to the extent that the award relates to an employee who is not a named executive officer whose compensation is subject to executive compensation disclosure requirements in accordance with Form 51-102F6. We note that the TSX recognizes the distinction between plans and awards in its general instructions to the proposed new Form 15, which state that security based compensation arrangements "may take the form of plans ("Plans") which set out the general terms and conditions of options, performance stock units, deferred stock units, restricted stock units or other awards (collectively, "Awards")" and "individual Awards not granted pursuant to a Plan". Disclosure in accordance with Form 15 is required for each "Plan" and disclosure of the "substantive elements of the information" is required for "individual Awards not granted pursuant to a Plan". Section 473(d) should follow a consistent approach and should be revised to require disclosure only of the text of the Plan. Given the need to disclose in the proxy circular the substantive elements of Form 15 for individual awards not granted pursuant to a plan, the TSX should not require website disclosure of awards granted outside a plan or should permit the listed issuer to omit or redact information which would identify a specific individual or which is personal information, except to the extent disclosure of such information is provided in the listed issuer's compensation discussion and analysis or the individual has reported it in an insider report.

473(e) – This section requires disclosure of all "corporate governance documents", including certain listed items. There are numerous documents which can be considered to be "corporate governance documents". The term potentially includes any document evidencing a delegation of decision-making authority, an assumption of accountability for a responsibility or function or the establishment of controls or constraints over decision-making, at all levels and functions of the issuer as well as at subsidiary entities of the issuer. We think it is necessary to provide clarity to ensure that only the key corporate governance documents of the listed issuer need to be posted. We also recommend that the website disclosure requirement be tied to documents required to be filed on SEDAR or described in continuous disclosure rules under Canadian securities laws.

- We recommend that section 473(e) be revised to require website disclosure of:

(i) any code of business conduct and ethics filed on SEDAR pursuant to National Instrument 58-101,

(ii) the text of the board's written mandate, if any, disclosed pursuant to Form 58-101,

(iii) the text of the audit committee's charter disclosed pursuant to Form 52-110F1,

(iv) the text of the charter of any nominating or compensation committee as contemplated by Form 58-101F1 and of any standing committee (other than the audit, nominating or compensation committee) whose function is required to be described pursuant to Form 58-101F1, and

(v) the text of the position descriptions for the chair, the chair of each board committee and the CEO as contemplated in Form 58-101F1, if any, and of any lead director, if applicable.

- As there is no universal standard or practice respecting anti-corruption policies and other environmental and social policies and whistleblower policies, and as the subject matters may be addressed in a wide variety of documents internally within the issuer (and are often addressed to some degree in the listed issuer's code of business conduct and ethics in addition to more detailed policies internally within the issuer), we would recommend that Section 473(e) not require website disclosure of such policies.

Form 15 – Disclosure of Security Based Compensation Arrangements

We support the idea of streamlining disclosure required to be included in proxy circulars respecting security based compensation arrangements. We also support the proposed tabular presentation format with flexibility to modify the presentation to better present the information. We welcome the move to disclose information as at the end of the most recent fiscal year for annual securityholder meetings where securityholder approval is not being sought in connection with the security based compensation matter as it enhances consistency with disclosure required under Form 51-102F5, Item 9.

The discontinuation of certain disclosure elements respecting security based compensation arrangements is premised on the assumption that details respecting such elements will be readily identified by reviewing the text of the plan that will be posted on the listed issuer's website. If, however, such details are set out in individual award documents issued under the Plan or such elements vary between awards, it may be difficult or impossible for an investor to readily identify such information. The TSX should consider specifying that if one or more of the TSX's discontinued disclosure

element(s) is(are) not included in the text of the plan, summary information regarding such disclosure element(s) should be provided either (i) in a document posted on the listed issuer's website or (ii) in the listed issuer's proxy circular.

The proposed form contemplates that where awards include a multiplier, the maximum payout of the multiplier should be used to calculate the number of listed securities issuable and the percentage this number represents relative to the number of issued and outstanding securities. We believe this will result in unrealistically high calculated amounts and percentages and that a better approach would be to use the target performance multiplier. However, if the maximum multiplier is to be used, some guidance should be provided respecting compliance with this instruction where there is no cap on the potential multiplier.

The proposed form also states that details regarding the multiplier are to be included in a footnote. It is not clear what "details" the TSX is contemplating should be disclosed in that footnote. The size of the multiplier will vary the level of performance against the performance metrics established for the award and the multiplier range can vary from year to year and from award to award. The footnote disclosure could be extensive and is unlikely to provide additional useful information to investors given existing disclosure obligations under Form 51-102F6 and the proposed requirement under From 15 to disclose potential dilution amounts calculated based on the maximum payout of the multipliers.

The formula for calculating the burn rate contemplates that the net grants during the fiscal year will be multiplied by the maximum multiplier, where there are performance based awards subject to a multiplier. The proposed approach assumes that the maximum multiplier is the same for all grants and all cancellations during the fiscal year – which may not be the case. For the burn rate it would be better to use the target amounts (i.e. without giving effect to any multipliers) and doing so would better align with the Board's intent in granting the awards by reflecting the burn rate implied by the target level of performance.

The requirement to disclose any other key terms of the plan in sufficient detail to enable reasonable security holders to form a reasoned judgment whether to approve the plan or amendments thereto when security holder approval is being sought in connection with a security based compensation arrangement matter should be deleted. It is redundant as such obligation already exists under Form 51-102F5, Item 14.

Timing

The Proposed Requirements do not set out the timing for when documents are to be posted on the listed issuers website. For corporate governance documents, we recommend they be posted within a reasonable period, such as 30 days, after the

document, or any revised version, becomes effective. For the plan text of any security based compensation arrangements, we recommend it be posted a reasonable period after the plan has been approved by the listed issuer's securityholders or, in the case of subsequent amendments, a reasonable period after the amendment has been approved by shareholders (if applicable) or the later of (i) acceptance of notice of the change by the TSX or (ii) approval of the directors.

We appreciate the opportunity to comment on the Proposed Requirements. I would be pleased to discuss any of the above comments with you at your convenience.

Yours very truly,

Andrew J. MacDougall

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