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Sent By E-mail

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Our reference
01016599-0027

Dear Madam:

Amendments to Parts IV and VI of the Toronto Stock Exchange Company Manual (the Manual) (April 6, 2017)

This letter is submitted in response to the notice of the Toronto Stock Exchange (**TSX**) dated April 6, 2017 (the **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 $80 billion (the **Participants**). We thank you for the opportunity to comment on the Proposals.

I. General Comments on the Proposals

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. They are of the view that current disclosure obligations already provide comprehensive, meaningful and sufficient disclosure and that the burden to comply with the Proposals will be significant. Many issuers will ask their legal counsel to review new documents to be posted on their website and 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 believe that the current corporate governance disclosure obligations imposed by the CSA are sufficient. 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

Having to comply with a multitude of requirements is time consuming, costly and inefficient for issuers. For the TSX to add new disclosure obligations seems inconsistent with recent initiatives to reduce the regulatory burden of issuers and to eliminate overlap in regulatory requirements, such as CSA Consultation Paper 51-104 entitled *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* published on the same day as the Proposals.

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 its website all corporate "timely disclosure" documents and other investor relations information

that it deems appropriate. Furthermore, the benefits of posting policies on websites when many of these policies are already described in other documents such as the circular are not obvious as investors will continue to look at the circular, where the information is summarized and explained in plain language.

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 requirements of Section 473 of the Manual 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. Some observers might also 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. As such, 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.

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. *Should Section 473 require an issuer to disclose, if adopted, its (a) code of business conduct and ethics, (b) diversity policy, (c) anti-corruption policy, (d) human rights policy, (e) environment policy, or (f) health and safety policy?*

Most Participants publish their code of business conduct and ethics on their website and on SEDAR. Therefore, although not of immediate concern, the Participants do not believe it is necessary to include this document in Section 473 of the Manual. The other policies, however, can be very wide in scope, are not standardized as to content and can be very voluminous. They often constitute documents that are internal to the organization and could contain competitively sensitive or confidential information. These policies have not been adopted by all issuers and are of little utility to an investor's decision making process. Therefore, the Manual should not require their disclosure. To the extent the TSX decides to include these policies in Section 473, the Participants would appreciate some guidance as to what they encompass, as well as a specific exclusion for competitively sensitive or confidential information.

2. *Should certain types of issuers (e.g., Eligible Interlisted Issuer or Eligible International Interlisted issuers) be exempt from the requirements of Section 473? If so, please provide an explanation of why they should be exempt.*

Interlisted issuers face a considerable challenge in meeting the listing requirements of different exchanges. The Participants are of the view that interlisted issuers should be deemed to have met the disclosure requirements of Section 473 if they already disclose some of the policies listed in the Manual under the requirements of another exchange or regulatory agency.

3. *Are there other modifications TSX should make to the list of documents proposed to be made available?*

To the extent the TSX decides to introduce mandatory website disclosure, the Participants believe that the new Section 473 of the Manual, as drafted in the TSX Notice, is preferable to the initial draft submitted for review by the TSX in May 2016, as it provides more clarity as to the documents expected to appear on their website. However, listed issuers should be exempted to post documents which may include competitively sensitive or confidential information.

Furthermore, the Participants are of the view that Section 473 should not refer to the position descriptions of "key officers" but instead refer to the position description of the CEO. Some issuers do not have position descriptions for officers other than the CEO. To the extent they exist, the position descriptions of key officers are dynamic and vary from one issuer to the other whereas the position description of the CEO delineates the responsibilities of management. If the TSX decided to require disclosure for officers other than the CEO, it should clarify which officers precisely.

The Participants also do not see the usefulness of posting constating documents on their website. Such documents are already available on SEDAR and their significant provisions are already summarized and explained in plain language in offering documents, Annual Information Forms or Annual Reports. The Participants are particularly concerned with the considerable costs associated with the creation of unofficial versions of their constating documents and by-laws in the other official language of Canada, especially when constating documents have not been restated in a long time. The Participants submit that since an issuer's website is often available in both languages, mandatory website disclosure rules create pressure to have these documents translated whereas there is not the same pressure when filing on SEDAR. Hence, they would prefer not to have to post such documents on their website.

Finally, listed issuers should be given a sufficient period of time to comply with the requirements of Section 473, as some documents may need to be amended and will need to be translated. The Participants believe such period should be at least 18 months.

(b) Part VI Amendments

1. *Should the requirement to disclose static terms of a Plan (e.g., financial assistance, vesting, etc.) be limited to Approval Meetings?*

Yes, the requirement to disclose static terms of a Plan should be limited to Approval Meetings and other types of meetings where shareholders are being asked to approve changes to such static terms.

2. *Is the burn rate and the formula for calculating it useful and appropriate disclosure?*

The Participants are of the view that the annual burn rate alone is not appropriate disclosure since the burn rate can fluctuate widely from one year to the next depending on the value of options and can therefore be misleading.

III. Conclusion

In short, the Participants are of the view that the Proposals create a significant burden on issuers as well as some overlap in regulatory requirements. This seems inconsistent with recent initiatives from regulatory agencies to reduce the regulatory burden of issuers. They believe that issuers should have the flexibility to post documents on their website or not and thus prefer the status quo.

We would be happy to discuss these matters with you.

Yours truly,

(s) *Norton Rose Fulbright Canada LLP*

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