

TSX ISSUERS TO REVIEW MAJORITY VOTING POLICIES AFTER TSX IDENTIFIES DEFICIENCIES

Posted on March 20, 2017

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In a [Staff Notice](#) published on March 9, 2017, the Toronto Stock Exchange (TSX) has provided guidance on majority voting policies for TSX-listed issuers. This guidance follows amendments to the TSX Company Manual (the “**Manual**”) [made in 2014](#) that require TSX-listed issuers to adopt majority voting policies (“**Majority Voting Policies**”) requiring that each director be elected by a majority of votes cast with respect to his or her election, except for at a contested meeting.

Following a review by the TSX of 200 randomly selected Majority Voting Policies, the Staff Notice pinpoints a number of serious deficiencies that the TSX identified in the reviewed Majority Voting Policies, including the following deficiencies relating to director resignation:

- A failure to require a director to resign immediately if he or she was not elected by a majority of votes cast.
- A failure to provide a time frame for the board of directors to formally decide whether or not to accept a resignation (or the time frame being outside the 90 day period permitted by TSX), and the absence of the requirement to provide a copy of the news release with the board of directors' decision to TSX.
- The absence of the requirement that the board of directors accept the resignation of a director who was not elected by a majority of votes cast, absent exceptional circumstances.

Other deficiencies identified by the TSX relate to the inclusion of additional requirements in certain Majority Voting Policies that have the effect of circumventing the policy objectives of majority voting, as well as the identification of factors as “exceptional circumstances” in a manner inconsistent with TSX’s stated policy objectives of the majority voting requirement.

In response to these deficiencies identified by the TSX, the Staff Notice outlines certain expectations as to how TSX-listed issuers should comply with the majority voting requirement:

- Issuers should ensure that their Majority Voting Policy has the effect of requiring a director to resign immediately if he or she is not elected by a majority of votes cast.
- Majority Voting Policies must state that the issuer’s board will accept a director’s resignation within 90

days, absent exceptional circumstances (and only a reference to “exceptional circumstances” is acceptable).

- “Exceptional circumstances” are expected to meet a high threshold and do not include reoccurring events or a director’s length of service, qualifications, attendance at meetings, experience or contributions to the issuer.
- Given that the Manual requires that a director who has tendered his or her resignation abstain from participation in any meeting of the board where that resignation is considered, the director should not even be in attendance at such a meeting (except where necessary to satisfy quorum requirements).
- Avoidance or frustration of the majority voting requirement, through any means, will be considered a failure to comply with it. As such, Majority Voting Policies should not include any provisions that have the effect of circumventing the policy objectives of minority reporting, including:
 - a higher quorum requirement for the election of directors compared to the quorum requirement for other resolutions; and
 - provisions that exclude certain nominees, such as insider nominees or incumbent directors, from certain requirements or that otherwise treat certain nominees more favourably than other nominees.

The Staff Notice suggests that TSX-listed issuers review and assess their existing Majority Voting Policies against the Manual requirements (specifically Section 461) and correct any non-compliance as soon as practicable and sufficiently in advance of their next shareholder meetings at which directors are to be elected.

The TSX is currently conducting another review of Majority Voting Policies adopted by TSX-listed issuers to assess compliance with the Manual requirements.

For further information about the Staff Notice, please see [TSX Staff Notice 2017-0001](#).

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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