

TSX PROVIDES GUIDANCE ON DIRECTOR ELECTION REQUIREMENTS

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The Toronto Stock Exchange recently issued a staff notice (the "Staff Notice") providing guidance on the director election requirements (the "Requirements") set out in the TSX Company Manual (the "Manual") (for a summary of the Requirements, please see the McMillan bulletin titled [new director election requirements for TSX companies](#)). Guidance was provided with respect to the following six areas:

1. waiver applications by interlisted international issuers

The TSX will accept applications from interlisted international issuers for a waiver from the Requirements. In deciding whether or not to grant the waiver, the TSX will consider both the level of activity of the issuer in the Canadian market, and whether the broader corporate governance framework to which that issuer is subject demonstrates a commitment to the policy objectives of the Requirements. The Staff Notice sets out factors that the waiver application should address, including: (i) the stock exchange on which the issuer primarily trades; (ii) the issuer's jurisdiction of incorporation; (iii) the level of trading in Canada and in the issuer's home market; (iv) if the issuer's jurisdiction of incorporation is outside of Australia, the UK, or a U.S. state with corporate laws comparable to Delaware (a "Known Jurisdiction"), a detailed description of the issuer's compliance with director election standards and practices of its jurisdiction; (v) if the issuer is incorporated in a Known Jurisdiction, a description of the corporate governance regime for director elections in its home market; (vi) if the issuer is incorporated outside of a Known Jurisdiction, a description of the corporate governance regime for director elections in its home market; and (vii) any other material information in respect of the requested waiver which may be relevant to the application.

If the TSX grants a waiver, it will only be effective for one year. The relief granted and the reasons for requesting such relief must be disclosed by the issuer in its annual information circular.

2. application of requirements to interlisted international issuers at the time of listing

Interlisted international issuers will not be required to meet the Requirements at the time of listing. The Requirements will begin to apply when the issuer mails materials for its first AGM after listing on the TSX, provided that it has been listed on the TSX for at least six months at that time. For issuers who have been listed

for less than six months, the Requirements will not come into effect until the next AGM.

3. director recommendation requirements

In instances where a board of directors must recommend amendments to an issuer's articles of incorporation in order to implement annual elections, and where the board concludes that recommending such amendments will be contrary to its fiduciary duties, the TSX will consider that an issuer has satisfied that requirement if the board states that such amendment is "as required by TSX". In such instance, the circular must provide balanced information about annual elections and the proposed amendment to implement annual elections.

4. news release requirement

The Manual requires that all issuers disseminate a news release disclosing detailed results of a directors election vote. The Staff Notice states that issuers should disclose one of the following in their news release (i) the percentages of votes received 'for' and 'withheld' for each director; (ii) the total votes cast by proxy and ballot, together with the number that each director received 'for'; or (iii) the percentages and total number of votes received 'for' each director.

5. requirements for the election of all directors and appointment rights

The Manual requires that security holders must be allowed to vote for each director to be elected by such class or series. These provisions do not apply to issuers with appointment rights that have been accepted by the TSX. The TSX will continue to review and evaluate appointment rights in accordance with the TSX restricted securities policy set out in the Manual.

6. compliance with the policy objectives of the requirements

The policy objectives of the Requirements are to strengthen the Canadian corporate governance regime and support the integrity and reputation of the Canadian capital markets. The Staff Notice is clear that avoidance or frustration of the policy objectives of the Requirements will be considered a failure to comply with the Requirements.

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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