

13.2.3 Amendments to Part IV of the TSX Company Manual – Request for Comments

**TORONTO STOCK EXCHANGE
REQUEST FOR COMMENTS
AMENDMENTS TO PART IV OF THE
TORONTO STOCK EXCHANGE (“TSX”) COMPANY MANUAL
(THE “MANUAL”)**

TSX is publishing proposed changes to Part IV of the Manual (the “Amendments”). The Amendments are being published for a 30-day comment period.

The Amendments will be effective upon approval by the Ontario Securities Commission (the “OSC”) following public notice and comment. Comments should be in writing and delivered by Tuesday, October 11, 2011 to:

Michal Pomotov
Legal Counsel
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The Exchange Tower
130 King Street West
Toronto, Ontario M5X 1J2
Fax: (416) 947-4461
Email: tsxrequestforcomments@tsx.com

A copy should also be provided to:

Susan Greenglass
Director
Market Regulation
Ontario Securities Commission
20 Queen Street West
Toronto, Ontario M5H 3S8
Fax: (416) 595-8940
Email: marketregulation@osc.gov.on.ca

Comments will be publicly available unless confidentiality is requested.

Overview

TSX is seeking public comment on Amendments to the Manual. This Request for Comments explains the rationale and objectives of the Amendments. Following the comment period, TSX will review and consider the comments received and implement the Amendments, as proposed or as modified as a result of comments.

Summary of the Amendments

The Amendments would require issuers listed on Toronto Stock Exchange to:

1. elect directors individually;
2. hold annual elections for all directors;
3. disclose annually in Management Information Circulars:
 - (a) whether they have adopted a majority voting policy for directors for uncontested meetings; and
 - (b) if not, to explain:
 - (i) their practices for electing directors;
 - (ii) why they have not adopted a majority voting policy; and
4. advise TSX if a director receives a majority of “withhold” votes (if a majority voting policy has not been adopted).

Background of Board Election Policy Choices in Canada

1. Slate vs. Individual Director Elections

Slate Elections

Under corporate law in Canada, boards of directors may be elected by slate. Security holders therefore cast one vote “for” or “withhold” for all proposed directors (commonly known as the slate of directors). All nominated directors are therefore elected if the slate is elected.

Individual Elections

With individual voting, security holders cast one vote “for” or “withhold” for each proposed board nominee. Approximately eighty-three percent (83%) of listed issuers in the S&P/TSX Composite Index (the “Index”) hold individual director elections.

2. Staggered vs. Annual Elections

Staggered Elections

With a staggered election, a subset of directors is elected each year.

Annual Elections

With annual elections, all directors are elected each year. Ninety-eight percent (98%) of issuers in the Index hold annual director elections.

3. Plurality vs. Majority Voting

Plurality Voting

Under plurality voting, security holders vote “for” or “withhold” for each director or the slate. The director or slate is elected if one vote is cast “for” the director or the slate, regardless of the number of “withhold” votes cast. This voting standard is plurality voting since the director or the slate may be elected without receiving a majority of votes.

As a result, virtually every nominee director or slate is elected with plurality voting.

Majority Voting

Under mandatory majority voting, security holders vote “for” or “against” each individual board nominee.

When a majority voting policy is adopted, a plurality voting standard applies, and security holders generally vote “for” or “withhold” for each individual board nominee. However the number of “withhold” votes are considered “against” votes and counted as part of total votes cast. A typical majority voting policy provides that a director who receives a majority of “withhold” votes must tender his/her resignation, and the board will generally accept that resignation, absent exceptional circumstances, and publicly announce its decision by news release. Some majority voting policies provide that the board must accept the director’s resignation, although those policies are less common. In either type of policy, a director who receives a majority of “withhold” votes would still be elected as a matter of law, but a majority voting policy is designed to ensure that only those directors who receive a majority of votes in their favour remain on the board.

According to the Canadian Coalition for Good Governance, fifty-seven percent (57%) of the listed issuers in the Index have adopted a majority voting policy.

Comparison of Common Director Election Practices in Major International Markets

Country	Annual or Staggered Elections	Individual or Slate Voting	Plurality or Majority Voting
Canada	Annual	Individual and Slate	Plurality
USA	Annual and Staggered	Individual	Plurality
UK	Staggered (Annual elections recommended for FTSE 350 companies)	Individual	Majority
Australia	Staggered	Individual	Majority
Hong Kong	Staggered	Individual	Majority

Canada remains one of the few major jurisdictions that has plurality voting. While Canadian issuers more commonly hold annual elections, Canadian issuers lag in other election practices. TSX believes that Canadian investors may not therefore have as effective a voice in electing directors as investors in other jurisdictions.

Rationale for Amendments

Improve Corporate Governance Standards and Disclosure

Staggered elections may be viewed as a means of entrenching a board, since it would take security holders a number of years to refresh a board with staggered terms. While few issuers in Canada have staggered elections for the board of directors, by adopting the requirement for annual election, TSX will ensure annual elections are held by all issuers.

In contrast to slate voting, individual director elections provide insight into the level of support of security holders for each director. Disclosure of the votes received for each director¹ is also valuable information for security holders and other stakeholders. Note that we are requesting feedback on whether disclosure of proxy results should be mandated.

Majority voting policies support good governance by providing a meaningful way for security holders to hold directors accountable and remove underperforming or unqualified directors. Although the Amendments would not mandate majority voting or the adoption of a majority voting policy, TSX believes that the disclosure model proposed is the appropriate measure at this time. Disclosure of an issuer's adoption or non-adoption of a majority voting policy will enhance the governance dialogue between issuers, security holders and other stakeholders and improve transparency.

To further support improved corporate governance standards, if the issuer has not adopted a majority voting policy, TSX will require such issuers to advise TSX if a director receives a majority of "withhold" votes. TSX intends to follow up with such issuers where a director has not received a majority of votes, to understand the issuer's intentions and corporate governance practices in light of the voting results. TSX also would follow up with the director to understand how the vote results may affect his/her views about serving as a director.

Significant Number of TSX Issuers Have Adopted Individual Director Elections and Annual Elections

As noted above, a large number of listed issuers in the Index have voluntarily adopted individual director elections and annual director elections, which lends credibility and acceptability to these practices. Adopting these requirements for all listed issuers may therefore be seen as a natural evolution toward improving security holder democracy.

A lower percentage of listed issuers in the Index have adopted majority voting policies. The practice is becoming better understood and supported by the largest issuers on TSX, but it has not yet evolved to a state where TSX recommends any requirements to adopt majority voting policies be mandated.

Amendments Work within Existing Regime

TSX is aware of concerns that mandatory majority voting may put issuers offside corporate or securities laws because if director nominees aren't supported, too few directors may be elected to achieve quorum or committee requirements. However, the Amendments only propose a disclosure model for majority voting policies and do not conflict with current rules or requirements.

Further, the concerns expressed for mandatory majority voting do not appear to have been the experience in Canada of those issuers that have adopted majority voting policies. TSX listed issuers have generally adopted non-binding majority voting policies and maintained compliance with their legislative and regulatory requirements. Functionally, with a non-binding majority voting policy, directors that do not receive sufficient support are still elected, but they resign at a later time giving time for the board to reconstitute and reorganize if necessary without being offside any laws or creating any governance issues.

It is notable that TSX Venture Exchange has annual election requirements and prohibits slate votes unless security holders can also vote individually for directors. Therefore all TSX Venture Exchange listed issuers already comply with these requirements.

Finally, TSX currently monitors corporate governance disclosure, and these Amendments can be added to those compliance efforts and managed within TSX's existing framework.

¹ National Instrument 51-102 - Continuous Disclosure Obligations, S.11.3, requires disclosure of (a) a brief description of each matter voted upon and the outcome of the vote; and (b) if the vote was conducted by ballot, including a vote or a matter in which votes are cast both in person and by proxy, the number or percentage of votes cast for, against or withheld from the vote. Therefore, there may not be disclosure of the votes received for each director under the current legislation, if the vote is conducted by a show of hands.

Strengthen International Reputation

TSX believes that this initiative will bolster Canada's reputation for supporting strong governance standards, bringing Canada closer to the practices of other major international jurisdictions with respect to director election practices.

Alternatives to Amendments

Mandate All Requirements

TSX considered requiring its listed issuers to adopt a majority voting policy, in addition to annual elections and individual director elections. However, issuers have not adopted majority voting policies to the same degree as annual elections and individual director elections. TSX understands that there are concerns with mandatory majority voting and that majority voting policies are not yet widely understood and accepted. TSX is therefore proposing to start with the disclosure model for majority voting and then to continue to monitor the corporate governance landscape to determine if a rule requiring listed issuers to adopt a majority voting policy may be more appropriate at a later point. TSX is not considering mandatory majority voting for its listed issuers at this time, but is requesting feedback on mandating the adoption of majority voting policies by its listed issuers.

Adopt Disclosure Only Model

TSX considered adopting a disclosure model for all aspects of the Amendments but determined that sufficient issuers have adopted annual election and individual director election practices to support mandating those requirements.

Let Another Entity Address Issues

TSX understands that some may not consider these issues part of TSX's jurisdiction. Given TSX Venture Exchange has existing requirements around director elections, exchange involvement in these areas is not unique. In addition, as noted above, TSX currently monitors corporate governance disclosure, and these Amendments can be added to those compliance efforts and managed within TSX's existing framework.

On January 10, 2011, the Ontario Securities Commission ("OSC") published OSC Staff Notice 54-701 - Regulatory Developments Regarding Shareholder Democracy Issues. OSC staff asked interested parties to provide comments on whether staff should develop proposals and the appropriate scope of such proposals in specific areas, including slate voting and majority voting for uncontested director elections. However this proposal is at an early stage so any proposals that may result are not imminent. In addition, any initiatives will be complementary.

Questions

1. Is this initiative appropriate for TSX to pursue or are other organization(s) better suited to pursue it? Please consider whether all exchanges should require their issuers to have these corporate governance standards in responding to this question.
2. Has TSX struck the appropriate balance between requirements and disclosure? If not, what revisions do you recommend, and why?
3. Will disclosure of majority voting practices encourage issuers to consider this practice and improve investors' understanding of an issuer's corporate governance practices?
4. Do you support TSX mandating that its issuers have a majority voting policy for uncontested director elections? Please identify potential positive and negative impacts that may result if issuers are required to have a majority voting policy.
5. Do you foresee any negative impact of the Amendments on issuers or other market participants?
6. Should TSX consider requiring disclosure of vote results? In the alternative, should TSX consider requiring that the election of directors be conducted by ballot to ensure public disclosure of the vote results?

Ancillary Proposed Rule Amendments

TSX is also proposing ancillary non-public interest rule amendments in Part I to add definitions which will be made at the effective time of the Amendments. See the proposed definitions at Appendix B.

Questions:

7. Are there additional ancillary rule amendments not discussed in this Request for Comments that should be considered in adopting the Amendments?

Text of the Amendments

TSX is proposing the Amendments as set out in **Appendix A**.

Public Interest

TSX is publishing the Amendments for a 30-day comment period, which expires October 11, 2011. The Amendments will only become effective following public notice and the approval of the OSC.

APPENDIX A
TEXT OF THE AMENDMENTS

Section 461.1

At each annual meeting of security holders, the board of directors must permit security holders to vote on the election of all directors.

Section 461.2

Materials sent to security holders in connection with a meeting of security holders at which directors are being elected must provide for individual election of directors.

Section 461.3

Materials sent to security holders by listed issuers that are subject to National Instrument 51-102 – Continuous Disclosure Obligations, in connection with a meeting of security holders at which directors are being elected, must disclose (a) whether the issuer has adopted a majority voting policy for directors for non-contested meetings; and (b) if not, explain (i) their practices for electing directors; and (ii) why they have not adopted a majority voting policy.

Section 461.4

Following each meeting of security holders at which there is a vote on the election of directors, a listed issuer that has not adopted a majority voting policy must provide notice to TSX by email to disclosure@tsx.com if a director receives a majority of “withhold” votes.

APPENDIX B
ANCILLARY PROPOSED RULE AMENDMENTS

Part I – Interpretation

“board of directors” has the same meaning as in National Instrument 51-102 – Continuous Disclosure Obligations.

“director” has the same meaning as in the OSA.