

# TORONTO STOCK EXCHANGE

## NOTICE OF APPROVAL

### AMENDMENTS TO PART IV OF THE

### TORONTO STOCK EXCHANGE ("TSX") COMPANY MANUAL

#### Introduction

In accordance with the Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits thereto for recognized exchanges, Toronto Stock Exchange ("**TSX**") has adopted, and the Ontario Securities Commission ("**OSC**") has approved, amendments (the "**Amendments**") to Part IV of the TSX Company Manual (the "**Manual**"). The Amendments are public interest rule amendments to the Manual. The Amendments were published for public comment in a request for comments on October 4, 2012 ("**Request for Comments**").

#### Reasons for the Amendments

The Amendments are further to the set of amendments to Parts I and IV of the Manual published on October 4, 2012 (the "**2012 Amendments**"). The 2012 Amendments introduced the requirement for issuers listed on TSX to: (i) elect directors individually; (ii) hold annual elections for all directors; (iii) disclose annually in their materials sent to security holders in connection with a meeting of security holders at which directors are being elected: (a) whether they have adopted a majority voting policy for directors at uncontested meetings; and (b) if not, to explain their practices for electing directors; and explain why they have not adopted a majority voting policy; (iv) advise TSX if a director receives a majority of "withhold" votes (if a majority voting policy has not been adopted); and (v) promptly issue a news release providing detailed voting results for the election of directors.

TSX proposed the Amendments to improve corporate governance standards in Canada by providing a meaningful way for security holders to hold individual directors accountable. TSX believes these Amendments enhance transparency and improve the governance dialogue between issuers, security holders and other stakeholders.

TSX has monitored the corporate governance landscape in Canada and other jurisdictions and believes that adopting majority voting will better align Canadian practices with those of other major jurisdictions. Currently, Canadian investors have a less effective voice in electing directors than investors in certain other jurisdictions because neither securities nor corporate law in Canada require issuers to have majority voting for director elections at uncontested meetings.

TSX considered the comments received on the Request for Comments. In addition, TSX surveyed a cross-section of 200 listed issuers for their compliance with the director election requirements during the summer of 2013. TSX found that 76% of the surveyed issuers had adopted majority voting policies and that almost 46% of those issuers adopted their policies in 2013. As a result, TSX has determined to implement the Amendments.

As a result, TSX has determined to implement the Amendments.

The Amendments require each director of a TSX listed issuer, other than a listed issuer that is a majority controlled issuer (as defined below), to be elected by a majority of the votes cast with respect to his or her election other than at contested meetings (the "**Majority Voting Requirement**"). An issuer must adopt a majority voting policy (a "**Policy**") if it does not otherwise satisfy the Majority Voting Requirement in a manner acceptable to TSX, for example, by applicable statutes, articles, by-laws or other similar instruments.

Issuers that are majority controlled are exempt from the Majority Voting Requirement. A majority controlled issuer, however, must disclose annually in its materials sent to holders of listed securities in connection with a meeting at which directors are being elected that (1) it is exempt from the Majority Voting Requirement and (2) its reasons for not adopting majority voting. Majority controlled is defined as a security holder or company that beneficially owns, or controls or directs, directly or indirectly, voting securities carrying 50 percent or more of the voting rights for the election of directors, as of the record date for the meeting.

### **Summary of the Final Amendments**

TSX received thirty-four (34) comment letters in response to the Request for Comments. A summary of the comments submitted, together with TSX's responses, is attached as **Appendix A**. Overall, a majority of commenters support the Amendments. Some, however, question TSX's jurisdiction in setting requirements for director elections and therefore do not support the Amendments.

TSX thanks all commenters for their feedback and suggestions.

A number of commenters submitted that TSX should exempt majority controlled corporations from the requirement to adopt majority voting as contemplated in the Amendments. Majority controlled corporations are concerned that if they were to be subject to the requirement to adopt majority voting, minority security holders may be misled into believing that their vote may impact the outcome of director elections, when the election results are predetermined.

TSX agrees with these commenters and has modified the initially proposed Amendments accordingly. As a result of the comment process, TSX has also made certain other non-material revisions to the drafting of the Amendments. A blackline of the Amendments showing changes made since they were published in the Request for Comments, is attached as **Appendix B**.

### **Text of the Amendments**

The final Amendments are attached as **Appendix C**.

### **Effective Date**

The Amendments will become effective for listed issuers on June 30, 2014 (the "**Effective Date**"). Issuers with fiscal years ending on or after June 30, 2014 must comply with the Amendments at their first annual meeting following the Effective Date.

Applicants for listing on TSX after the Effective Date and applicants with a listing application in progress after the Effective Date are expected to explain to TSX if they are in compliance with the Amendments, and if not, to describe their plan and time frame in which they will become compliant with the Amendments.

Unless exempted, all TSX listed issuers are expected to be in compliance with the Amendments by June 30, 2015. After that date, issuers who are not in compliance with the Amendments will be considered to be in breach of the Manual.

TSX will continue to monitor the corporate governance landscape in Canada and internationally, as well as the effect of the Amendments on its issuers and the marketplace.

## **APPENDIX A**

### **SUMMARY OF COMMENTS AND RESPONSES**

#### **Part IV -- Majority Voting**

##### **List of Commenters:**

Addenda Capital (AC)	ATCO Group (includes ATCO Ltd. and Canadian Utilities Limited) (ATCO)
British Columbia Investment Management Corporation (bcIMC)	Blackrock, Inc. (Blackrock)
The Canadian Advocacy Counsel for Canadian CFA Institute Societies (CFA)	Canadian Coalition for Good Governance (CCGG)
Canadian Investor Relations Institute (CIRI)	Canada Pension Plan Investment Board (CPPIB)
Canadian Tire Corporation, Limited (Canadian Tire)	Confidential Comment Letter
Council of Institutional Investors (CII)	FAIR Canada (Canadian Foundation for Advancement of Investor Rights) (FAIR)
George Weston Limited (Weston)	Hermes Equity Ownership Services (Hermes)
IGM Financial Inc. (IGM)	International Corporate Governance Network (ICGN)
Imperial Oil Limited (Esso)	LeClerc, Robert L. Q.C. (LeClerc)
Nash, Elizabeth M. (Nash)	Northwest & Ethical Investments Inc. (NEI)
Norton Rose LLP <sup>(1)</sup> (Norton Rose)	Ontario Bar Association -- Business law -- Securities Subcommittee (OBA)
Ontario Teachers' Pension Plan (OTPP)	PIAC (Pension Investment Association of Canada) (PIAC)

PGGM Investments{2} (PGGM)	Power Corporation of Canada (PCC)
Power Financial Corporation (PFC)	PSP Investments (PSP)
Qube Investment Management Inc. (QIM)	Shareholder Association for Research and Education, F&C Management Ltd. (SHARE)
Social Investment Organization (SIO)	State Board of Administration of Florida (Florida)
Tethys Petroleum Limited (Tethys)	USS Investment Management Limited (Universities Superannuation Scheme) (USS)

Capitalized terms used and not otherwise defined in the Notice of Approval shall have the meaning in the TSX Request for Comments -- Amendments to Part IV of the Toronto Stock Exchange Company Manual dated October 4, 2012.

*Summarized Comments Received*

*TSX Response*

**1. Do you support TSX mandating that its listed issuers have majority voting, which may be satisfied by adopting a majority voting policy for uncontested director elections? Please identify positive and negative impacts if issuers are required to have majority voting.**

Yes, we support TSX mandating majority voting. (CII, NEI, PGGM, PIAC, PSP, SHARE, SIO, OTTP, USS, CCGG, ICGN, Florida, OBA, bcIMC, Blackrock, CFA, CPPIB, FAIR, Hermes, AC)

A majority of commenters support TSX mandating majority voting for its listed issuers and see positive benefits for the Canadian market, including enhanced engagement and accountability. TSX agrees that the Canadian market will benefit if TSX adopts the Amendments.

Majority voting for uncontested director elections will enhance the accountability of directors to security holders (SHARE, Blackrock) and will increase transparency and open communication. (CIRI, CFA)

Canada's reputation will be enhanced for supporting strong governance. (AC, CFA, OTTP)

Mandatory majority voting will require less oversight and resources from TSX because TSX will not need to allocate resources to evaluate disclosure of issuers who have not adopted majority voting. (FAIR)

Plurality voting reduces investor confidence in the public markets so, while market regulation is not the commenter's primary choice, the TSX Amendments are the only practical alternative to address the issue at this time. (QIM)

Majority Voting can be satisfied by adopting a non-binding majority voting policy that incorporates the requirements set out in Section 461.3 of the Manual.

***Summarized Comments Received***

(CIRI)

TSX should replace the "withhold" votes under plurality voting with a majority vote allowing security holders to vote "for" or "against" directors. (AC)

The adoption of mandatory majority voting is not universally supported by major stock exchanges and plurality voting has been the standard for North American corporations. (Tethys)

If issuers adopt majority voting policies, they may lose directors with unique experience or expertise that complements the board of directors. (Norton Rose)

TSX should not impose majority voting unless it can find a way to exclude the "withhold" votes of US brokers who believe that "withhold" means the same as a non-vote. (Nash)

Issuers should have the flexibility to adopt director election practices that comply with applicable laws and suit their unique governance concerns. Regulation is not required. (ATCO)

TSX should not impose a "one size fits all" standard for all issuers. If TSX determines to move forward with the Amendments, controlled companies should be exempted from them. (Canadian Tire, Weston, ATCO, Norton Rose, PCC, PFC)

Majority voting is impractical for controlled companies and serves no valuable purpose. (Weston)

While supportive of efforts by the CSA, the Amendments by TSX are premature and are not suitable for controlled companies. (IGM)

The adoption of a majority voting policy by a majority controlled company may be misleading to security holders as they cannot meaningfully impact the election of directors. (Canadian Tire, IGM, Esso, Norton Rose, PCC, PFC, ATCO)

Adopting majority voting for controlled companies would result in the imposition of additional complexity without

***TSX Response***

TSX appreciates the feedback, however, determining the form of proxy is a matter of corporate and securities law and is outside of the jurisdiction of TSX.

TSX thanks the commenter for its input. TSX, however, believes that adopting majority voting is an important tool in strengthening the Canadian corporate governance regime.

TSX notes that issuers may lose directors for a number of reasons unrelated to majority voting results. TSX encourages its issuers to prepare for such a situation by maintaining an 'evergreen' list of potential board candidates.

TSX notes that several TSX listed issuers that are interlisted in the US have adopted majority voting and have not raised this as a concern.

TSX thanks the commenter for its input.

TSX has exempted majority controlled issuers from the majority voting requirement in the Amendments. The Amendments also contemplate dual share class companies.

***Summarized Comments Received***

any meaningful change to the outcome of director elections. (ATCO)

The CCGG recognizes that controlled companies have unique governance considerations and exempts these companies from majority voting guidelines. (Weston, IGM, Norton Rose, PCC, ITG, PFC)

NYSE has exempted controlled companies from certain NYSE rules. (Weston)

TSX should devise an alternate model for controlled corporations (Hermes, Esso) as well as for companies with dual share classes. (Hermes)

TSX has acknowledged that controlled corporations have unique considerations regarding majority voting. (Norton Rose)

Binding majority voting can present significant corporate, securities and operational problems. (CIRI)

TSX should not impose mandatory majority voting. (ATCO, IGM, Norton Rose, PCC, PFC, Tethys, Confidential Comment Letter)

Directors could be put in a difficult situation in fulfilling their fiduciary duties if bound to accept director resignations. (Norton Rose)

Mandatory majority voting may create unexpected negative consequences if an issuer has given nominating rights to an entity with which it has partnered and the nominee does not receive a majority of "for" votes. (Confidential Comment Letter)

**2. Do you believe it would be useful for TSX to provide specific guidance that it expects that the board of directors will typically accept the resignation of a director that receives a majority of "Withhold" votes, absent exceptional circumstances? If you agree, please suggest the preferred means to provide it (for example in a Staff Notice, in commentary about the Amendment or in the drafting of the Amendment itself).**

It is useful for TSX to provide guidance and it should be part of the Amendments. (AC, bcIMC, CIRI, CII, CPPIB,

***TSX Response***

TSX has not mandated binding majority voting. The Amendments allow issuers to adopt a majority voting policy which TSX believes satisfactorily addresses these concerns.

TSX neither intends for nor believes that the Amendments interfere with the exercise of the board of directors' fiduciary duties. TSX believes that the board is better positioned to determine what constitutes 'exceptional circumstances' for itself when determining whether to accept a resignation.

TSX recognizes that exceptional circumstances may exist. A majority voting policy allows the directors to examine these situations to determine whether or not to accept the resignation of the director.

In the event that the board determines not to accept the resignation of a director, TSX has

***Summarized Comments Received***

FAIR, NEI, PGGM, PIAC, PSP, SIO, OBA, OTPP, CCGG)

Guidance would be useful but no comment (Hermes, SHARE) and no preference (PGGM) on what form this guidance should be in. TSX should encourage issuers to fully disclose the Policy and engage in dialogue with security holders. (Hermes)

TSX should provide guidance in a Staff Notice or other commentary outside of the Amendments to preserve flexibility in reorganizing a board or board committee, particularly for smaller or closely held issuers. (CFA)

In instances where the board reasonably concludes that accepting a resignation is not in the best interests of the issuer, the board needs to clearly explain why it will not accept the resignation. Requiring this disclosure will ensure that boards undertake a thoughtful review of the voting outcome and do not reject the will of security holders absent special circumstances. (Blackrock)

TSX should provide guidance as to what would amount to an "exceptional circumstance" and this should be limited to considerations of timing and finding replacements. (SIO)

The guidance in the Amendment should require the board to accept the resignation of a director that receives a majority of withhold votes. (CII)

Allowing the board to determine whether to accept resignation allows the board to override a security holder vote. (USS)

***TSX Response***

included in the Amendments the requirement to issue a press release disclosing in detail the reasons for not accepting the resignation. TSX believes that the board is in the best position to determine what those exceptional circumstances may be.

TSX has included in the Amendments the requirement that issuers with a Policy provide a detailed description of the Policy in their Management Information Circulars.

TSX appreciates the input.

The Amendments require an issuer to fully state the reasons why the board did not accept the resignation in a news release.

TSX has concluded that, at this time, the board of directors is better positioned to determine what constitutes 'exceptional circumstances' for itself.

TSX does not believe that it should require the board to accept a resignation if the board, exercising its fiduciary duty, determines that there are exceptional circumstances. TSX believes that the board, in exercising its fiduciary duty, should retain the latitude to determine whether exceptional circumstances exist in each case and whether or not to accept the resignation. The board must fully state the reasons for its decision in a press release if it does not accept the resignation.

***Summarized Comments Received***

Where a majority of security holders have voted against a director, the time period for the board to decide whether to accept the resignation should be reduced from 90 days to 45 days following the meeting. (CFA)

A 90-day time frame within which the board can accept a resignation is too long. The maximum time should be 60 days and then, only when the board or committee quorums are compromised. In all other situations, boards should act without delay. (Hermes)

Guidance should clarify that delaying the acceptance of a resignation may be appropriate under extraordinary circumstances related to the composition of the board or voting results and that rejecting a resignation should only be considered in the rarest of cases. Board discretion must be exercised consistent with fiduciary duties. (CPPIB, PIAC, FAIR, PSP, OBA, OTHP)

Once a director fails to receive the required support from security holders, even if there are exceptional reasons as to why the board cannot immediately accept the resignation, a transition plan to enable the board to accept the resignation should immediately be enacted. (CCGG)

Section 461.3 does not clearly define what "majority voting" means and a definition is required. (LeClerc)

It would be inappropriate for TSX to provide this guidance since directors are subject to a statutory standard governing whether to accept a resignation. (Canadian Tire, Norton Rose, Tethys)

Directors have more information about a director's performance than security holders who do not sit on the board. While the number of "withhold" votes should be an important consideration, boards may come to a reasonable conclusion not to accept a director's resignation. (Canadian Tire)

Decisions should be made on a case by case basis by the board exercising their fiduciary duties. TSX cannot provide meaningful guidance and anticipate all scenarios. (Norton Rose)

Corporate law and Supreme Court of Canada decisions provide guidance on fiduciary duties so TSX guidance is unnecessary and could constrain directors in the exercise

***TSX Response***

TSX believes that 45 days for responding may be too short as a universal standard. The 90-day time frame is the accepted standard found in current Canadian majority voting policies.

TSX believes that the board, in exercising its fiduciary duty, should retain latitude to determine whether or not to accept the resignation within the timeframe, provided that the issuer fully states the reasons for its rationale in a press release if it does not accept the resignation.

TSX thanks the commenter for its input.

TSX has provided a definition of majority voting in the Amendments.

TSX acknowledges that the board of directors of an issuer must fulfill its fiduciary duty and agrees that the board is best positioned to determine what constitutes exceptional circumstances.



***Summarized Comments Received***

***TSX Response***

of their duties. (Norton Rose)

Boards should be allowed to decide what "exceptional circumstances" mean for each issuer. (Tethys)

Issuers should be allowed to follow a principles-based determination of what constitutes "exceptional circumstances" under which the board might reject a director's resignation, provided that there is appropriate disclosure. (CIRI)

**3. What positive or negative impact may Amendments have on other market participants or the market in Canada in general?**

The Canadian markets' reputation will be improved for supporting strong governance standards. (AC, CFA, CPPIB, NEI, TPP, CCGG, OBA)

TSX agrees that the Canadian market, as a whole, will benefit from the adoption of the Amendments.

The Amendments strengthen investor protection and the confidence of foreign investors (CFA, CPPIB, PIAC, PSP, OTPP, CCGG, OBA) and enhance accountability. (Hermes, QIM, bcIMC, Blackrock, FAIR, CFA)

The Amendments improve dialogue with security holders. (Hermes, USS, Florida)

Majority voting allows security holders to exercise their most fundamental right. (bcIMC, Blackrock)

Other markets such as the U.K., the Netherlands, Australia, New Zealand, Germany and France have had positive experiences with majority voting. (USS)

No negative consequences are foreseen (NEI) based on evidence from issuers that have already adopted majority voting. (bcIMC, Hermes)

Fears of failed elections or loss of directors with particular experience/expertise have not actually occurred or are unwarranted in Canada. (CPPIB, OTPP, PIAC, OBA, AC)

Investors only need to remove directors in exceptional circumstances where the director is no longer serving security holders, therefore most issuers will not be impacted. (bcIMC)

Potential negative effects, such as governance or other issues arising from director departure, can be managed by delaying the departure for a reasonable period of time until the board can be reconstituted. (CFA)

A majority voting policy whereby a plurality voting standard still applies has the advantage (over binding

TSX thanks the commenter for its views.

***Summarized Comments Received***

majority voting) of giving security holders a significant say in director elections while not removing the fiduciary duties of the board. A non-binding majority voting policy allows the board the final say in the make-up of the board in the rare, but possible, situations where exceptional circumstances may cause the board to reject a director's resignation. (CIRI)

Boards could lose directors with particular experience or expertise and the loss could compromise board stability at a time when executive tenure is becoming shorter. In some instances, mandatory majority voting results in votes being withheld for political reasons as opposed to reasons related to director performance. (Norton Rose)

Until shareholder organizations enhance transparency about their roles, solicit input of issuers prior to making voting recommendations or become accountable to a majority of an issuer's security holders, majority voting will have negative consequences. Issuers may be forced to have higher quorum requirements to ensure that the will of a few institutional shareholders does not result in unrepresentative elections which may prejudice minority security holders. Issuers will be encouraged to solicit votes more aggressively and, in turn, drive up costs to security holders. (Tethys)

The "comply or explain" model already implies that the adoption of a majority voting policy is best practice and there are corollary negative implications for issuers with legitimate explanations for non-adoption. (PCC, PFC)

In responding to comments received regarding the 2012 Amendments, TSX indicated its understanding that controlled corporations have unique considerations in this regard but that TSX believes controlled corporations should disclose and explain their choice to adopt or not adopt majority voting. The Proposed Amendments do not mention the unique considerations of controlled corporations. The commenter strongly urges TSX to consider and recognize controlled corporations in the Amendments. (ATCO)

May create confusion or uncertainty without advancing the interests of affected parties. (ATCO)

Could create the impression that a "withhold" vote would result in a director resignation and could result in

***TSX Response***

The Amendments will allow the board of directors to manage these issues, should they arise.

TSX thanks the commenter for its response. TSX believes that one of the fundamental rights of security holders is to elect directors. The Amendments provide a workable solution to give investors a stronger voice in director elections.

TSX believes that the Amendments represent important enhancements to the dialogue between issuers and stakeholders and that mandatory majority voting will improve director accountability.

TSX has exempted majority controlled companies from the requirement to adopt majority voting in the Amendments.

***Summarized Comments Received***

***TSX Response***

meaningless disclosure. (Canadian Tire, Norton Rose)

Creates increased complexity (Norton Rose) and increased costs that are not in the best interests of security holders. (IGM, PCC, PFC)

TSX should address the issue of dual class capital structures and controlled corporations, since a majority voting policy does not have the same benefits for those structures as in widely held companies. TSX should find an appropriate model, such as the election by holders of subordinate voting securities of a minority of directors. (Hermes)

TSX notes that certain majority controlled companies provide minority security holders with the right to elect a minority of directors. TSX, however, has determined not to mandate majority voting for majority controlled issuers. The Amendments also contemplate dual share class issuers.

**4. Do you support the jurisdiction of TSX to adopt and enforce the Amendments? If not, please support your response, and differentiate the Amendments from the September RFC Amendments being finalized today.**

We believe that TSX has the jurisdiction to adopt and enforce the Amendments. (AC, CFA, CIRI, CPPIB, FAIR, Hermes, NEI, PGGM, PIAC PSP, SIO, OTPP, CCGG, OBA)

TSX thanks the commenters for their input.

The OSC's approval of recent governance-related amendments to the Manual shows that TSX has jurisdiction. (CCGG)

TSX efforts are complementary to similar efforts underway by securities regulators and will expedite the adoption of commonly accepted best practices in Canada. (CPPIB, CCGG, OBA)

Certain commenters were silent about whether TSX has jurisdiction with respect to the Amendments but were supportive of TSX's efforts to improve director election practices. (bcIMC, Blackrock, ICGN)

The preferred solution is to see corporate law revised to eliminate plurality voting altogether. The Amendments are an excellent first step in establishing the majority voting standard. (OTPP)

Market regulation is not the commenter's primary choice but, on the matter of majority voting, the commenter sees no other practical alternatives at this time since plurality voting reduces investor confidence and undermines the markets. (QIM)

TSX does not have jurisdiction since director elections are a matter of corporate law. (ATCO, IGM, Norton Rose, PCC, PFC)

TSX understands various sources of legal and regulatory requirements exist regarding corporate governance and director election

***Summarized Comments Received***

Changes to majority voting should be considered by relevant legislative authorities. (Tethys)

It is inappropriate for TSX to impose requirements in addition to the 2012 Amendments for director elections. (ATCO, PCC, PFC)

TSX jurisdiction is primarily over disclosure of material information and the issuance of securities. Issuers should adopt and disclose whatever corporate governance policy works best for each issuer, provided that the policy is in accordance with applicable laws. (IGM)

TSX has generally exited the field of corporate governance and should defer to the CSA since the CSA are in a better position to intervene and have more efficient and effective enforcement tools. (Norton Rose)

The Amendments are unnecessary as Canadian security holders already have the ability to express dissatisfaction with one or more directors. The *Canada Business Corporations Act* allows security holders holding 5% or more of the issuer's securities to submit a proposal from security holders. In addition, security holders can nominate directors from the meeting floor. (Norton Rose)

**5. Are there additional ancillary rule amendments or other relevant issues not discussed in the Request for Comments that should be considered in adopting the Amendments?**

We support the CCGG's [\[3\]](#) call for reform of the proxy voting system (FAIR, PCC, PFC) and request for the OSC to take steps in 2013 to develop specific proposals in respect of the proxy voting scheme. (FAIR)

Broader issues surrounding the proxy-voting process also need to be addressed for security holders to see an improvement in governance. Director election measures are an improvement, but accuracy of director votes remains suspect. (CIRI, Norton Rose, USS)

Majority voting requirements should apply to TSX and TSX Venture Exchange listed issuers. (CCGG)

TSX should require disclosure of voting results for each

***TSX Response***

practices. TSX does not believe that these other sources restrict TSX's jurisdiction to adopt the Amendments, as supported by the director election requirements reflected in the 2012 Amendments.

While other mechanisms may exist for security holders to express their views, TSX believes the Amendments provide security holders with an important and accessible way to engage with issuers.

TSX thanks the commenters for these views. They are outside the scope of the current Amendments but have been brought to the attention of the Ontario Securities Commission.

TSX has provided this input to TSX Venture Exchange for its consideration.

TSX thanks the commenter for its views.

***Summarized Comments Received***

***TSX Response***

item on the proxy by press release, not just for voting results cast "for" and "withheld", to improve communication between security holders and issuers and to improve accountability. (FAIR)

TSX should coordinate its review and development of the Amendments and other shareholder democracy initiatives with the CSA to minimize the burden on issuers. (CIRI)

Under the Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits thereto, the OSC must approve amendments to TSX rules. TSX will monitor CSA shareholder democracy developments and review the appropriateness and need for its rules in light of any CSA proposals.

Issuers should be required to move beyond an initial board policy and to implement majority voting by obtaining security holder approval to add majority voting to the issuer's articles or by-laws. (AC)

TSX thanks the commenter for its input.

If majority voting were to be mandatory, the proposed text of Subsection 461.3 should be amended to read: "Whether <<or not>> to accept the resignation." (Norton Rose)

TSX has incorporated this suggestion in the final Amendments.

The 30 day comment period is unreasonably short given the nature and impact of the Amendments. (CIRI)

The 30 day period is standard for exchange rule amendments. Accommodation for comments to be submitted after the comment period has ended may be provided upon request in appropriate circumstances.

The December 31, 2013 effective date is appropriate. (CIRI)

The Amendments will come into effect on June 30, 2014. Issuers with years ending on or after that date must comply with the Amendments at their first annual meeting following June 30, 2014.

The Amendments should not be applicable until the 2014 proxy season, at the earliest, to allow issuers to make any required changes to their structure and practices in preparation of mandatory majority voting. (Norton Rose)

The commenter sets out a proposed regime (that it has suggested should be implemented in the US) that would allow for directors who receive a majority of affirmative votes to appoint the number of directors necessary to constitute a lawful board in the event that certain directors were to have to resign. (CII)

TSX thanks the commenter for its input. The proposal is outside the current scope of the Amendments.

Canadian regulators should reform securities regulation to require all voting to be conducted by ballot to protect security holders and improve accurate disclosure. They

TSX thanks the commenter for providing this input but notes that securities regulation reform is outside of the jurisdiction of TSX.

***Summarized Comments Received***

***TSX Response***

should undertake a public consultation of reforms that would allow security holders to put forward nominees for election to the board and have their nominees listed in the issuer's information circular without the current onerous and expensive legal requirements. Security holders should be allowed to communicate with or solicit other security holders without the need for a dissident circular. (FAIR)

Binding majority voting should be the long-term goal since the proposed reform does not go far enough. (Hermes)

Support for provisions that will balance the power between security holders and issuers, such as proxy access and the right to nominate directors. (PGGM)

If majority voting is mandated, it should be limited to uncontested elections. (Norton Rose)

Enhanced disclosure about a director's skills, planned contribution to the board and perspectives on key issues that are relevant to the issuer would be helpful, as well as a discussion of how the individual nominee adds value to the board. (USS)

TSX thanks the commenter for its input.

TSX thanks the commenter for the suggestion but notes that proxy access and nomination rights are outside the jurisdiction of TSX.

The Amendments reflect that majority voting applies only to uncontested elections.

TSX agrees that investors may find the suggested information helpful. TSX encourages issuers to provide enhanced corporate governance disclosure to help investors better understand the issuer's practices, processes and people.

[\[1\]](#) On behalf of a working group of capital market participants having a combined market cap of more than \$50 million.

[\[2\]](#) On behalf of Pensionenfonds Zorg en Welzijn, among others.

[\[3\]](#) CCGG's Policy -- *Governance Differences of Equity Controlled Corporations*, October 1, 2011 recommends boards of controlled companies adopt a policy to: 1) allow shareholders to vote for each individual director; 2) disclose the results of director elections promptly after each AGM; and 3) immediately adopt CCGG Majority Voting policy if at any time controlling shareholder holds less than 50%.

**APPENDIX B**

**BLACKLINE OF THE FINAL AMENDMENTS**

Section 461.3

Each director of a listed issuer must be elected by a majority (50% +1 vote) of the votes cast with respect to his or her election other than at contested meetings{1} ("Majority Voting Requirement").

A listed issuer must adopt a majority voting policy (a "Policy"), unless it otherwise satisfies the Majority Voting Requirement in a manner acceptable to TSX, for example, by applicable

statutes, articles, by-laws or other similar instruments. The Policy must, substantially, provide for the following:

(a) ~~Listed issuers must have majority voting for the election of directors at uncontested security holder meetings. In satisfaction of this requirement, a listed issuer may adopt a majority voting policy that requires a director that receives a majority of the total votes cast withheld from him or her to any director must immediately tender his or her resignation to the board of directors, to be effective on acceptance by the board. The policy must also provide that the board shall consider the resignation and disclose by news release the board's decision whether to accept that resignation and the reasons for its decision no later than 90 days after the date of the resignation, if he or she is not elected by at least a majority (50% +1 vote) of the votes cast with respect to his or her election;~~

(b) the board shall determine whether or not to accept the resignation within 90 days after the date of the relevant security holders' meeting. The board shall accept the resignation absent exceptional circumstances;

(c) the resignation will be effective when accepted by the board;

(d) a director who tenders a resignation pursuant to this Policy will not participate in any meeting of the board or any sub-committee of the board at which the resignation is considered; and

(e) the listed issuer shall promptly issue a news release with the board's decision, a copy of which must be provided to TSX. If the board determines not to accept a resignation, the news release must fully state the reasons for that decision.

If an issuer adopts a Policy to satisfy the Majority Voting Requirement, it must fully describe the Policy on an annual basis, in its materials sent to holders of listed securities in connection with a meeting at which directors are being elected.

Listed issuers that are majority controlled{2} are exempted from the Majority Voting Requirement. Listed issuers with more than one class of listed voting securities may only rely on this exemption with respect to the majority controlled class or classes of securities that vote together for the election of directors. A listed issuer relying on this exemption must disclose, on an annual basis in its materials sent to holders of listed securities in connection with a meeting at which directors are being elected, its reliance on this exemption and its reasons for not adopting majority voting.

#### *Section 461.4*

Following each meeting of security holders at which there is a vote on the election of directors at an uncontested meeting, each listed issuer must forthwith issue a news release disclosing the detailed voting results of the votes received for the election of each directors{5}-director{5}.

{5} The news release is intended to provide the reader with insight into the level of support received for each director. Accordingly, 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 ballot with the number that each director received "for"; or (iii) the percentages and total number of votes received "for" each director.

If no formal count has occurred that would meaningfully represent the level of support received by each director, for example when a vote is conducted by a show of hands, TSX expects the disclosure at least to reflect the votes represented by proxy that would have been withheld from each nominee had a ballot been called, as a percentage of votes represented at the meeting.

{1} A contested meeting is defined as a meeting at which the number of directors nominated for election is greater than the number of seats available on the board.

{2} Majority controlled is defined as a security holder or company that beneficially owns, or controls or directs, directly or indirectly, voting securities carrying 50 percent or more of the voting rights for the election of directors, as of the record date for the meeting.

{5} If the vote is by show of hands, the issuer will disclose the number of securities voted by proxy in favour or withheld for each director and the outcome of the vote by a show of hands.

## APPENDIX C

### THE FINAL AMENDMENTS SECTION 461.3

Each director of a listed issuer must be elected by a majority (50% +1 vote) of the votes cast with respect to his or her election other than at contested meetings{4} ("Majority Voting Requirement").

A listed issuer must adopt a majority voting policy (a "Policy"), unless it otherwise satisfies the Majority Voting Requirement in a manner acceptable to TSX, for example, by applicable statutes, articles, by-laws or other similar instruments. The Policy must, substantially, provide for the following:

- (a) any director must immediately tender his or her resignation to the board of directors if he or she is not elected by at least a majority (50% +1 vote) of the votes cast with respect to his or her election;
- (b) the board shall determine whether or not to accept the resignation within 90 days after the date of the relevant security holders' meeting. The board shall accept the resignation absent exceptional circumstances;
- (c) the resignation will be effective when accepted by the board;
- (d) a director who tenders a resignation pursuant to this Policy will not participate in any meeting of the board or any sub-committee of the board at which the resignation is considered; and
- (e) the listed issuer shall promptly issue a news release with the board's decision, a copy of which must be provided to TSX. If the board determines not to accept a resignation, the news release must fully state the reasons for that decision.

If an issuer adopts a Policy to satisfy the Majority Voting Requirement, it must fully describe the Policy on an annual basis, in its materials sent to holders of listed securities in connection with a meeting at which directors are being elected.



Listed issuers that are majority controlled<sup>{5}</sup> are exempted from the Majority Voting Requirement. Listed issuers with more than one class of listed voting securities may only rely on this exemption with respect to the majority controlled class or classes of securities that vote together for the election of directors. A listed issuer relying on this exemption must disclose, on an annual basis in its materials sent to holders of listed securities in connection with a meeting at which directors are being elected, its reliance on this exemption and its reasons for not adopting majority voting.

#### *Section 461.4*

Following each meeting of security holders at which there is a vote on the election of directors at an uncontested meeting, each listed issuer must forthwith issue a news release disclosing the detailed voting results for the election of each director<sup>{5}</sup>.

<sup>{5}</sup> The news release is intended to provide the reader with insight into the level of support received for each director. Accordingly, 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 ballot with the number that each director received "for"; or (iii) the percentages and total number of votes received "for" each director.

If no formal count has occurred that would meaningfully represent the level of support received by each director, for example when a vote is conducted by a show of hands, TSX expects the disclosure at least to reflect the votes represented by proxy that would have been withheld from each nominee had a ballot been called, as a percentage of votes represented at the meeting.

<sup>{4}</sup> A contested meeting is defined as a meeting at which the number of directors nominated for election is greater than the number of seats available on the board.

<sup>{5}</sup> Majority controlled is defined as a security holder or company that beneficially owns, or controls or directs, directly or indirectly, voting securities carrying 50 percent or more of the voting rights for the election of directors, as of the record date for the meeting.