

## Chapter 13

# SROs, Marketplaces, Clearing Agencies and Trade Repositories

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### 13.2 Marketplaces

#### 13.2.1 Toronto Stock Exchange – Notice of Approval Amendments to Parts III, VI and VII of the Toronto Stock Exchange Company Manual and to Parts 2 and 7 of The Toronto Stock Exchange Rule Book

##### TORONTO STOCK EXCHANGE

##### NOTICE OF APPROVAL AMENDMENTS TO PARTS III, VI AND VII OF THE TORONTO STOCK EXCHANGE COMPANY MANUAL AND TO PARTS 2 AND 7 OF THE TORONTO STOCK EXCHANGE RULE BOOK

#### 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 (the “Protocol”), Toronto Stock Exchange (“TSX”) has adopted, and the OSC has approved, amendments (the “Amendments”) to Part III, VI and Part VII of the TSX Company Manual (the “Manual”) and to Parts 2 and 7 of the Toronto Stock Exchange Rule Book (the “TSX Rules”). The Amendments are public interest amendments to the Manual. The Amendments were published for public comment in a request for comments on October 11, 2012 (“Request for Comments”).

#### Reasons for the Amendments

In accordance with Section 35 of the OSC Recognition Order recognizing TSX as an exchange (the “Recognition Order”), TSX must provide due process, ensuring that the requirements of TSX in relation to access to the trading and listing facilities of TSX, the imposition of limitations or conditions on access and denial of access are fair and reasonable, including in respect of the provisions for appeals. Pursuant to the Recognition Order, TSX must establish written procedural requirements governing the process for appeals or review of exchange decisions. TSX is in compliance with these Recognition Order requirements, however the Amendments clarify and provide transparency for certain appeal related matters in the Manual and the TSX Rules.

#### Summary of the Final Amendments

TSX received two 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**.

TSX respects the public comment process and appreciates the value such public input provides. TSX thanks the commenters for their submissions.

TSX is making some drafting changes to the Amendments which do not represent a substantive change to the Amendments. In addition to clarifying certain drafting, the revisions to the Amendments clarify that the senior officer(s) of TSX hearing an appeal from an original decision were not participants in making the original decision. Further, the Amendments will specify a 30-day time limit to appeal the senior officer(s)’ decision to TSX’s Board of Directors. A blackline to the Amendments showing changes made since the Request for Comments is attached as **Appendix B**.

The Amendments will be finalized in the form provided in **Appendix C**.

#### Text of the Amendments

The Amendments are attached as **Appendix C** and a blackline to the Amendments showing changes made since the Request for Comments is attached as **Appendix B**.

#### Effective Date

The Amendments will become effective today, September 4, 2014.

## APPENDIX A

## SUMMARY OF COMMENTS AND RESPONSES

## List of Commenters:

1. Canadian Foundation for Advancement of Investor Rights (FAIR)
2. Stikeman Elliott LLP (Stikeman)

Capitalized terms used and not otherwise defined shall have the meaning given in the Request for Comments for public interest amendments to amend the TSX Company Manual and the TSX Rule Book published in the OSC Bulletin on October 11, 2012.

<i>Summarized Comments Received</i>	<i>TSX Response</i>
A comment was received that it is unrealistic to expect a Participating Organization to give “prompt written notice” of non-compliance with the requirements of a self-regulatory organization (Rule 2-304(2)). The comment suggests that the rule instead require notice to be provided of any proceedings instituted, or determination made, by a self-regulatory organization regarding non-compliance. (Stikeman)	While TSX understands the commenter’s potential concern, TSX believes it is not an unduly onerous requirement. In TSX’s view, it is not sufficient to only be notified when proceedings are instituted or a determination is made, as monitoring or other actions may be required by TSX before formal proceedings are initiated or determinations are made.
A comment was received that the Request for Comments contains insufficient detail for stakeholders and shareholders to provide constructive comments. For example, the research conducted of practices at other major international stock exchanges should have been disclosed. (FAIR)	TSX has always provided for due process including appeals of its decisions. The Request for Comments clarifies and provides transparency with respect to certain appeal related matters in the Manual and the TSX Rules. TSX is therefore of the view that the Request for Comments contains the appropriate level of detail to engage constructive comments in line with the nature of the Proposed Amendments. TSX also believes that it has provided the relevant information from its analysis of appeal practices at other exchanges in line with the context of the Proposed Amendments.
A comment was received that a 30-day consultation period is too short. (FAIR)	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.
A comment was received concerning conflicts of interest in listing regulation at the exchange, submitting that the appeals process and Proposed Amendments are therefore necessarily flawed and not in line with international “best practice” standards. (FAIR)	This comment is outside of the scope of the Proposed Amendments. TSX is of the view that it meets all relevant standards with respect to due process and appeals of exchange decisions, and that any perceived potential conflicts of interest in listing regulation at the exchange are appropriately managed and comply with applicable regulatory requirements.

<i>Summarized Comments Received</i>	<i>TSX Response</i>
<p>A comment was submitted that appeals of listing regulatory decisions are not made to any type of independent listing committee. The same commenter recommends TSX consider a process for review of decisions which is independent of business development concerns and further suggests that appeals be made to the Regulatory Oversight Committee. (FAIR)</p>	<p>The Proposed Amendments provide applicants for listing and listed issuers with the opportunity to have decisions of the listing committee reviewed by a minimum of one and a maximum of three senior officer(s) of TSX, depending of the complexity of the matter.</p> <p>The Manual also provides for a further appeal to a three person panel of the TSX Board of Directors should the applicant for listing or listed issuer remain dissatisfied with the decision of the senior officer(s) of TSX.</p> <p>Finally, applicants for listing, listed issuers, and others have rights of review of TSX decisions before the OSC. TSX is of the view that these three levels of appeal, in the Manual and now in the TSX Rules, thoroughly provide ample opportunities for review of listing and trading regulatory decisions, providing an appropriate balance between timeliness, formality, knowledge, expertise, independence, and fairness.</p>
<p>A comment was received recommending the members of the exchange Listing Advisory Committee be expanded beyond securities industry professionals to institutional and retail investor advocates and academics who are experts in the capital markets. It was also suggested that the committee could be given a broader role "in accordance with international best practice". (FAIR)</p>	<p>This comment is outside of the scope of the Proposed Amendments. Although we are of the view that the composition of the committee is appropriate given the role and mandate of the committee, we have noted this comment for consideration when the membership of the committee is being considered.</p>

APPENDIX B

BLACKLINE OF THE FINAL AMENDMENTS TEXT OF  
PROPOSED AMENDMENTS TO THE TSX COMPANY MANUAL

**Sec. 354.1.**

~~If Decisions in respect of the application of Part III are made by the Listings Committee does not approve the applicant's securities for listing or its delegates. If an applicant is dissatisfied with a decision under Part III,~~ the applicant may, within 30 calendar days of the original decision by Listings Committee, request an appeal of such decision. The matter will be considered by a minimum of one and a maximum of three senior officer(s) of ~~Toronto Stock Exchange~~ TSX who were not participants in making the original decision, as determined by the Exchange, ~~who~~ The senior officer(s) may uphold the original decision or may render a new decision. Applicants must request the appeal in writing and make written submissions in support of an appeal under this section. If after being heard, the applicant remains dissatisfied with the decision, the applicant may, within 30 calendar days of the appeal decision by the senior officer(s) of TSX, appeal the decision to a three-person panel of ~~the Toronto Stock Exchange~~ TSX's Board of Directors. Applicants must request the appeal in writing and make written submissions in support of an appeal to TSX's Board of Directors.

**Sec. 642.**

Decisions in respect of the application of Part V and this Part VI are made by the Listings Committee or its delegates. If ~~notice of a transaction submitted~~ an issuer is dissatisfied with a decision under Part V or Part VI ~~is not accepted~~, the issuer may, within 30 calendar days of the original decision, request an appeal of such decision. The matter will be considered by a minimum of one and a maximum of three senior officer(s) of ~~Toronto Stock Exchange~~ TSX who were not participants in making the original decision, as determined by the Exchange, ~~who~~ The senior officer(s) may uphold the original decision or may render a new decision. Issuers must request the appeal in writing and make written submissions in support of an appeal under this section. If after being heard, the issuer remains dissatisfied with the decision, the issuer may, within 30 calendar days of the appeal decision by the senior officer(s) of TSX, appeal the decision to a three-person panel of ~~TSX's Board of Directors of TSX Inc.~~ Issuers must request the appeal in writing and make written submissions in support of an appeal to TSX's Board of Directors.

**Sec. 719.**

Decisions in respect of the application of Part VII are made by the Continued Listing Committee, which is a subset of the Listing Committee, or its delegates. If an issuer ~~remains~~ is dissatisfied with a decision under this Part VII, after having been given an opportunity to be heard, the issuer may, within 30 calendar days of the original decision, request an appeal of such decision. However, requests to appeal delisting decisions under Section 707 must be submitted within 5 business days of the decision to ensure the appeal can be dealt with in the 30-day delisting period. The matter will be considered by a minimum of one and a maximum of three senior officer(s) of ~~Toronto Stock Exchange~~ TSX, who were not participants in making the original decision, as determined by the Exchange, ~~who~~ The senior officer(s) may uphold the original decision or may render a new decision. Issuers must request the appeal in writing and make written and/or oral submissions in support of an appeal under this section. If after being heard, the ~~listed~~ issuer remains dissatisfied with the decision, the ~~listed~~ issuer may, within 30 calendar days of the appeal decision by the senior officer(s) of TSX, appeal the decision to a three-person panel of ~~TSX's Board~~ TSX's Board of Directors. Issuers must request the appeal in writing and make written submissions in support of an appeal to TSX's Board of Directors.

## TEXT OF PROPOSED AMENDMENTS TO THE TSX RULES

### 2-105 Rights of Applicant (sub(b) Repealed)

If the Exchange proposes to accept an applicant subject to terms and conditions pursuant to Rule 2-104(b) or to refuse an applicant pursuant to Rule 2-104(c), the applicant shall be:

- (a) provided with a statement of the grounds upon which the Exchange proposes to accept the applicant subject to terms and conditions or to reject an applicant with the particulars of those grounds; and
- (b) Repealed ([September 4, 2012](#)~~2014~~).

## DIVISION 2 – INTERESTS AND OWNERSHIP

### 2-201 Change in Control (Sub (3) and Sub (5)(b) Repealed)

- (1) For the purposes of this Rule, the acquisition of, directly or indirectly, or obtaining the ability to exercise control over, a significant equity interest in a Participating Organization shall, in the absence of evidence to the contrary, be deemed to be a change in control of the Participating Organization.
- (2) A Participating Organization shall apply, in such form and with such information as the Exchange may require, to the Exchange for prior approval of a change in control of the Participating Organization.
- (3) Repealed (October 20, 2000).
- (4) The Exchange may:
  - (a) approve a change in control unconditionally;
  - (b) approve a change in control subject to such terms and conditions as may be considered appropriate or necessary to ensure continued compliance with Exchange Requirements by the Participating Organization;
  - (c) refuse to approve a change in control if, after having regard to such factors as the Exchange may consider relevant including, without limitation, the past or present conduct, business or condition of the proposed controlling person or persons, the Exchange is of the opinion that:
    - (i) the Participating Organization will not comply with Exchange Requirements after the change in control,
    - (ii) the proposed controlling person is not qualified by reason of integrity, or
    - (iii) such approval is otherwise not in the public interest.
- (5) If the Exchange proposes to approve a change in control subject to terms and conditions pursuant to Rule 2-201(4)(b) or to refuse to approve a change in control pursuant to Rule 2-201(4)(c), the applicant shall be:
  - (a) provided with a statement of the grounds upon which the Exchange proposes to approve the change in control subject to terms and conditions or to refuse to approve the change in control with the particulars of those grounds.
  - (b) Repealed ([September 4, 2012](#)~~2014~~).

## DIVISION 3 – CONTINUING QUALIFICATIONS

### 2-301 Membership in SRO

- (1) If a Participating Organization ceases to be a member of a recognized self-regulatory organization, its status with the Exchange shall be terminated automatically.
- (2) If a Participating Organization's status with a recognized self-regulatory organization has been suspended or if the Exchange determines that a Participating Organization is in non-compliance with the requirements of a recognized self-regulatory organization of which the Participating Organization is a member, the Exchange may impose such terms and conditions on the Participating Organization as the Exchange deems appropriate in the circumstances, including suspension and termination of its status.

## 2-304 Notifications

- (1) A Participating Organization shall give the Exchange prior written notice of:
  - (a) a change in its name or the name under which it carries on business; and
  - (b) a change in the address of its head office.
- (2) A Participating Organization shall give the Exchange prompt written notice of:
  - (a) securities of it or its holding company being held contrary to the provisions of Division 2 of this Part;
  - (b) the death, retirement, resignation or termination of employment or association of a partner, director or officer of the Participating Organization or its holding company;
  - (c) any non-compliance with the provisions of Division 3 of this Part as they apply to the Participating Organization, its directors, shareholders, officers and employees;
  - (d) any non-compliance with the requirements of a recognized self-regulatory organization of which the Participating Organization is a member; and
  - (e) a termination or suspension of the Participating Organization's status as a member of a recognized self-regulatory organization.

## DIVISION 6 SUSPENSION AND TERMINATION

### 2-602 Termination

- (1) A Participating Organization may terminate its status as such by giving not less than 3 months' written notice to the Exchange.
- (2) The Exchange may postpone the effective date of termination until it is satisfied that the Participating Organization has:
  - (a) complied with Exchange Requirements; and
  - (b) obtained the necessary consents from the recognized self-regulatory organization of which it is a member.
- (3) The Exchange may terminate a Participating Organization's status as a Participating Organization, if it determines that a Participating Organization has:
  - (a) contravened or is not in compliance with an Exchange Requirement; or
  - (b) engaged in conduct, business or affairs that is unbecoming, inconsistent with just and equitable principles of trade or detrimental to the interests of the Exchange or the public.

## PART 7– APPEAL PROCEDURE

### 7-101 Appeal Right

- (1) A Participating Organization may appeal a decision of the Exchange within 30 days from the date of such decision, by submitting a request in writing.
- (2) The Participating Organization must make written submissions in support of an appeal under this section.
- (3) The matter will be considered by a minimum of one and a maximum of three senior officer(s) of ~~Toronto Stock~~the Exchange who were not participants in making the original decision, as determined by the Exchange, ~~who~~ The senior officer(s) may uphold the original decision or may render a new decision.
- (4) If after being heard ~~in the manner contemplated by subsection (3) above, a~~ the Participating Organization remains dissatisfied with the decision, the Participating Organization may within 30 calendar days of the appeal decision by the senior officers of the Exchange, appeal the decision to a three-person panel of the Exchange's Board of Directors ~~of the Exchange~~. Participating Organizations must request the appeal in writing and make written submissions in support of an appeal to the Exchange's Board of Directors.

## APPENDIX C

### THE FINAL AMENDMENTS TEXT OF PROPOSED AMENDMENTS TO THE TSX COMPANY MANUAL

#### Sec. 354.1.

Decisions in respect of the application of Part III are made by the Listings Committee or its delegates. If an applicant is dissatisfied with a decision under Part III, the applicant may, within 30 calendar days of the original decision by Listings Committee, request an appeal of such decision. The matter will be considered by a minimum of one and a maximum of three senior officer(s) of TSX who were not participants in making the original decision, as determined by the Exchange. The senior officer(s) may uphold the original decision or may render a new decision. Applicants must request the appeal in writing and make written submissions in support of an appeal under this section. If after being heard, the applicant remains dissatisfied with the decision, the applicant may, within 30 calendar days of the appeal decision by the senior officer(s) of TSX, appeal the decision to a three-person panel of TSX's Board of Directors. Applicants must request the appeal in writing and make written submissions in support of an appeal to TSX's Board of Directors.

#### Sec. 642.

Decisions in respect of the application of Part V and this Part VI are made by the Listings Committee or its delegates. If an issuer is dissatisfied with a decision under Part V or Part VI, the issuer may, within 30 calendar days of the original decision, request an appeal of such decision. The matter will be considered by a minimum of one and a maximum of three senior officer(s) of TSX who were not participants in making the original decision, as determined by the Exchange. The senior officer(s) may uphold the original decision or may render a new decision. Issuers must request the appeal in writing and make written submissions in support of an appeal under this section. If after being heard, the issuer remains dissatisfied with the decision, the issuer may, within 30 calendar days of the appeal decision by the senior officer(s) of TSX, appeal the decision to a three-person panel of TSX's Board of Directors. Issuers must request the appeal in writing and make written submissions in support of an appeal to TSX's Board of Directors.

#### Sec. 719.

Decisions in respect of the application of Part VII are made by the Continued Listing Committee, which is a subset of the Listing Committee, or its delegates. If an issuer is dissatisfied with a decision under this Part VII, after having been given an opportunity to be heard, the issuer may, within 30 calendar days of the original decision, request an appeal of such decision. However, requests to appeal delisting decisions under Section 707 must be submitted within 5 business days of the decision to ensure the appeal can be dealt with in the 30 day delisting period. The matter will be considered by a minimum of one and a maximum of three senior officer(s) of TSX, who were not participants in making the original decision, as determined by the Exchange. The senior officer(s) may uphold the original decision or may render a new decision. Issuers must request the appeal in writing and make written and/or oral submissions in support of an appeal under this section. If after being heard, the issuer remains dissatisfied with the decision, the issuer may, within 30 calendar days of the appeal decision by the senior officer(s) of TSX, appeal the decision to a three-person panel of TSX's Board of Directors. Issuers must request the appeal in writing and make written submissions in support of an appeal to TSX's Board of Directors.

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If the Exchange proposes to accept an applicant subject to terms and conditions pursuant to Rule 2-104(b) or to refuse an applicant pursuant to Rule 2-104(c), the applicant shall be:

- (a) provided with a statement of the grounds upon which the Exchange proposes to accept the applicant subject to terms and conditions or to reject an applicant with the particulars of those grounds; and
- (b) Repealed (September 4, 2014).

### DIVISION 2 – INTERESTS AND OWNERSHIP

#### 2-201 Change in Control (Sub (3) and Sub (5)(b) Repealed)

- (1) For the purposes of this Rule, the acquisition of, directly or indirectly, or obtaining the ability to exercise control over, a significant equity interest in a Participating Organization shall, in the absence of evidence to the contrary, be deemed to be a change in control of the Participating Organization.
- (2) A Participating Organization shall apply, in such form and with such information as the Exchange may require, to the Exchange for prior approval of a change in control of the Participating Organization.
- (3) Repealed (October 20, 2000).
- (4) The Exchange may:
  - (a) approve a change in control unconditionally;
  - (b) approve a change in control subject to such terms and conditions as may be considered appropriate or necessary to ensure continued compliance with Exchange Requirements by the Participating Organization;
  - (c) refuse to approve a change in control if, after having regard to such factors as the Exchange may consider relevant including, without limitation, the past or present conduct, business or condition of the proposed controlling person or persons, the Exchange is of the opinion that:
    - (i) the Participating Organization will not comply with Exchange Requirements after the change in control,
    - (ii) the proposed controlling person is not qualified by reason of integrity, or
    - (iii) such approval is otherwise not in the public interest.
- (5) If the Exchange proposes to approve a change in control subject to terms and conditions pursuant to Rule 2-201(4)(b) or to refuse to approve a change in control pursuant to Rule 2-201(4)(c), the applicant shall be:
  - (a) provided with a statement of the grounds upon which the Exchange proposes to approve the change in control subject to terms and conditions or to refuse to approve the change in control with the particulars of those grounds.
  - (b) Repealed (September 4, 2014).

### DIVISION 3 – CONTINUING QUALIFICATIONS

#### 2-301 Membership in SRO

- (1) If a Participating Organization ceases to be a member of a recognized self-regulatory organization, its status with the Exchange shall be terminated automatically.
- (2) If a Participating Organization's status with a recognized self-regulatory organization has been suspended or if the Exchange determines that a Participating Organization is in non-compliance with the requirements of a recognized self-regulatory organization of which the Participating Organization is a member, the Exchange may impose such terms and



conditions on the Participating Organization as the Exchange deems appropriate in the circumstances, including suspension and termination of its status.

### **2-304 Notifications**

- (1) A Participating Organization shall give the Exchange prior written notice of:
  - (a) a change in its name or the name under which it carries on business; and
  - (b) a change in the address of its head office.
- (2) A Participating Organization shall give the Exchange prompt written notice of:
  - (a) securities of it or its holding company being held contrary to the provisions of Division 2 of this Part;
  - (b) the death, retirement, resignation or termination of employment or association of a partner, director or officer of the Participating Organization or its holding company;
  - (c) any non-compliance with the provisions of Division 3 of this Part as they apply to the Participating Organization, its directors, shareholders, officers and employees;
  - (d) any non-compliance with the requirements of a recognized self-regulatory organization of which the Participating Organization is a member; and
  - (e) a termination or suspension of the Participating Organization's status as a member of a recognized self-regulatory organization.

## **DIVISION 6 SUSPENSION AND TERMINATION**

### **2-602 Termination**

- (1) A Participating Organization may terminate its status as such by giving not less than 3 months' written notice to the Exchange.
- (2) The Exchange may postpone the effective date of termination until it is satisfied that the Participating Organization has:
  - (a) complied with Exchange Requirements; and
  - (b) obtained the necessary consents from the recognized self-regulatory organization of which it is a member.
- (3) The Exchange may terminate a Participating Organization's status as a Participating Organization, if it determines that a Participating Organization has:
  - (a) contravened or is not in compliance with an Exchange Requirement; or
  - (b) engaged in conduct, business or affairs that is unbecoming, inconsistent with just and equitable principles of trade or detrimental to the interests of the Exchange or the public.

## **PART 7– APPEAL PROCEDURE**

### **7-101 Appeal Right**

- (1) A Participating Organization may appeal a decision of the Exchange within 30 days from the date of such decision, by submitting a request in writing.
- (2) The Participating Organization must make written submissions in support of an appeal under this section.
- (3) The matter will be considered by a minimum of one and a maximum of three senior officer(s) of the Exchange who were not participants in making the original decision, as determined by the Exchange. The senior officer(s) may uphold the original decision or may render a new decision.
- (4) If after being heard, the Participating Organization remains dissatisfied with the decision, the Participating Organization may, within 30 calendar days of the appeal decision by the senior officers of the Exchange, appeal the decision to a

three-person panel of the Exchange's Board of Directors Participating Organizations must request the appeal in writing and make written submissions in support of an appeal to the Exchange's Board of Directors.