

**13.1.3 TSX Request for Comments - Amendments to Parts III and VI of the TSX Company Manual**

**TORONTO STOCK EXCHANGE**

**REQUEST FOR COMMENTS**

**AMENDMENTS TO PARTS III AND VI OF THE  
TORONTO STOCK EXCHANGE ("TSX") COMPANY MANUAL**

TSX is publishing proposed changes to the original listing requirements in Part III of the Manual (the "Part III Amended Sections"). As well, on January 1, 2005, certain amendments to Parts V, VI and VII of the TSX Company Manual (the "Manual") became effective (the "January 1, 2005 Amendments"). Since that time, it has come to our attention that a subsection of the January 1, 2005 Amendments had been published incorrectly and required updating. TSX is proposing to correct and update this subsection (the "Part VI Amended Sections", together with the Part III Amended Sections, the "Amended Sections"). The Amended Sections are being published for a 30 day comment period.

The Amended Sections 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 January 17, 2006 to:

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A copy should also be provided to the:

Cindy Petlock  
Manager  
Market Regulation  
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20 Queen Street West  
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Comments will be publicly available unless confidentiality is requested.

**Overview**

TSX is seeking comments on the Amended Sections. The Amended Sections are required in order for TSX to continue to provide listed issuers with a complete and transparent set of TSX standards and practices allowing issuers and investors, and their respective advisors, to have certainty when planning and completing transactions.

With respect to the Part III Amended Sections, TSX is proposing to amend its requirements for Canadian directors in Sections 311, 316 and 321, and to repeal its original listing requirements for foreign issuers in Section 324. Sections 311, 316 and 321 are identical, with the exception of references to the applicable industry sectors.

With respect to the Part VI Amended Sections, TSX is amending a provision in Subsection 613(a) that was inadvertently published incorrectly. The provision deals with whether or not restricted security holders are able to vote on a basis proportionate to their equity interests on security holder resolutions relating to security based compensation requirements. Although we received several comments on the January 1, 2005 Amendments during the comment process, no comments were directly made on this error. TSX is also proposing to remove the requirement to obtain approval of the majority of unrelated directors for security based compensation arrangements.

### Part III Amended Sections

#### **Management – Sections 311, 316 and 321**

As part of the standards required for the management of an issuer applying for listing, TSX currently requires that issuers applying for listing have at least two Canadian directors, unless they are foreign applicants complying with the minimum listing requirements for foreign Issuers. TSX proposes to eliminate the Canadian director requirement, as we believe that focusing on management's experience with public issuers is more important than simply the residency of the issuer's board of directors. TSX believes that, while specific public company obligations and requirements vary across international jurisdictions, the fundamental first principles and framework to comply with such obligations and requirements exist, regardless of residency.

TSX is also adding a requirement that an issuer have a chief executive officer (CEO), a chief financial officer separate from the CEO and a corporate secretary. TSX is currently applying such standards to applicants for listing, as a working practice. TSX believes that its issuers should have a full complement of management in order to support its operations, and to ensure that issuers have the support in place to assist them in complying with TSX standards and with securities laws.

At this time, TSX does not propose to change the definition of "independent" currently used in the Manual. However, we are currently reviewing this definition to determine if TSX can be consistent with the definition of independence currently used in securities laws.

#### **Foreign Issuer Listing Requirements – Section 324**

In today's global economy, issuers continue to become more international in their scope, and as a result, a distinction in listing standards based on whether an issuer's operations are based in Canada is no longer appropriate. The criteria used for original listing requirements should be consistent, where applicable, for all issuers, regardless of where the issuer is based. As a result, TSX proposes to eliminate separate minimum listing requirements for foreign issuers, and to replace the term "foreign issuer" with "international issuer", which will be defined as an issuer which is already listed on another recognized exchange and is incorporated outside of Canada.

TSX believes the elimination of the foreign minimum listing criteria is appropriate for the following reasons:

- the foreign minimum listing criteria was intended to facilitate the listing of large multinational entities already listed, and do not reflect the key success factors for international listings in general;
- both the operations and financing of issuers have become more international in their scope; and
- one set of listing criteria is less confusing for market participants.

### Part VI Amended Sections

#### **Restricted Security Holders – Subsection 613(a)**

Section 613 went into effect on January 1, 2005 as part of the January 1, 2005 Amendments. The restricted security holder provision within Subsection 613(a) was published as follows:

"If any security holder approval for a security based compensation arrangement, when combined with all of the listed issuer's other security based compensation arrangements could exceed 10% of the listed issuer's total issued and outstanding securities, holders of Restricted Securities, as defined in Section 624, must be entitled to vote with the holders of any class of securities of the listed issuer which otherwise carry greater voting rights, on a basis proportionate to their respective residual equity interests in the listed issuer."

This provision was inadvertently drafted in a confusing manner, and does not reflect the original intention. The original intention of this provision was that holders of restricted securities would be entitled to vote together with other holders of equity securities for the approval of security based compensation arrangements whenever disinterested security holder approval was required. TSX proposes to amend this provision in its intended form as follows:

"If any security holder approval is required for a security based compensation arrangement and insiders of the listed issuer entitled to receive a benefit under the arrangement are not eligible to vote their securities in respect of the approval required by this Subsection 613(a), ~~when combined with all of the listed issuer's other security based compensation arrangements could exceed 10% of the listed issuer's total issued and outstanding securities~~, holders of Restricted Securities, as defined in Section 624, must be entitled to vote with the holders of any class of securities of the listed issuer which otherwise carry greater voting rights, on a basis proportionate to their respective residual equity interests in the listed issuer. "

No comments on the error in this provision were received during the comment process for the January 1, 2005 Amendments.

**Unrelated Director Approval – Sections 601 and 613(a)**

TSX is also proposing to remove the requirement to obtain approval of a majority of the listed issuer's unrelated directors for the implementation of, or amendment to, a security based compensation arrangement. The term "unrelated director" was defined under TSX's former corporate governance guidelines, which have now been repealed from the Manual. TSX believes that the approval of a majority of directors, in addition to the approval of security holders, is sufficient to ensure that the arrangement is fair and appropriate for the issuer. Consequently, the definition of "unrelated director" will be deleted from Section 601 since it is a defined term in used only for the purposes of Subsection 613(a).

**Public Interest**

TSX is publishing the Amended Sections for a 30 day comment period. TSX believes that it is important for its key stakeholders to have an opportunity to review the Amended Sections prior to their implementation. As a result, the Amended Sections will only become effective following public notice, a comment period and the approval of the OSC.

**Text of Amendments**

The Amended Sections are attached as **Appendix A**.

**APPENDIX A:  
PUBLIC INTEREST AMENDMENTS TO PARTS III AND VI OF THE TSX COMPANY MANUAL**

Toronto Stock Exchange ("TSX") proposes to amend the policies of the TSX Company Manual (the "Manual") as follows:

**Part III of the Manual**

1. Section 308 of the Manual will be amended by deleting the sentence "The requirements for foreign companies are set out in Section 324."
2. Section 311 of the Manual will be amended as follows:

**"Sec 311.** The management of an applicant company shall be an important factor in the consideration of a listing application. In addition to the factors set out in Section 325, the Exchange will consider the background and expertise of management in the context of the business of the company. Management (including the company's board of directors) should have adequate experience and technical expertise relevant to the company's business and industry and adequate public company experience which demonstrates that they are able to satisfy all of their reporting and public company obligations. ~~Companies will be required to have at least two Canadian directors unless they are foreign applicants that comply with all of the Minimum Listing Requirements for Foreign Companies as detailed in Section 324.~~ Companies will be required to have at least two independent directors,<sup>14</sup> a chief executive officer (CEO), a chief financial officer who is not also the CEO, and a corporate secretary.

<sup>14</sup> An independent director is defined as a person who:

- (a) is not a member of management and is free from any interest and any business or other relationship which in the opinion of the Exchange could reasonably be perceived to materially interfere with the director's ability to act in the best interest of the company; and
- (b) is a beneficial holder, directly or indirectly, or is a nominee or associate of a beneficial holder, collectively of 10% or less of the votes attaching to all issued and outstanding securities of the applicant.

The Exchange will consider all relevant factors in assessing the independence of the director. As a general rule, the following persons would not be considered an independent director:

- (i) a person who is currently, or has been within the past three years, an officer, employee of or service provider to the company or any of its subsidiaries or affiliates; or
- (ii) a person who is an officer, employee or controlling shareholder of a company that has a material business relationship with the applicant."

3. Section 316 of the Manual will be amended as follows:

**"Sec. 316.** The management of an applicant company shall be an important factor in the consideration of a listing application. In addition to the factors set out in Section 325, the Exchange will consider the background and expertise of management in the context of the business of the company. Management (including the company's board of directors) should have adequate experience and technical expertise relevant to a company's mining projects and adequate public company experience which demonstrates that they are able to satisfy all of their reporting and public company obligations. ~~Companies will be required to have at least two Canadian directors unless they are foreign applicants that comply with all of the Minimum Listing Requirements For Foreign Companies as detailed in Section 324.~~ Companies will be required to have at least two independent directors,<sup>27</sup> a chief executive officer (CEO), a chief financial officer who is not also the CEO, and a corporate secretary.

<sup>27</sup> See footnote 14."

4. Section 321 of the Manual will be amended as follows:

**"Sec. 321.** The management of an applicant company shall be an important factor in the consideration of a listing application. In addition to the factors set out in Section 325, the Exchange will consider the background and expertise of management in the context of the business of the company. Management (including the company's board of directors) should have adequate experience and technical expertise relevant to a company's oil and gas projects and adequate public company experience which demonstrates that they are able to satisfy all of their reporting and public company obligations. ~~Companies will be required to have at least two Canadian directors unless they are foreign applicants that comply with all of the Minimum Listing Requirements for Foreign Companies detailed in Section 324.~~

Companies will be required to have at least two independent directors,<sup>35</sup> a chief executive officer (CEO), a chief financial officer who is not also the CEO, and a corporate secretary.

<sup>35</sup> See footnote 14.”

5. Section 324 of the Manual will be repealed and replaced with the following:

**“Minimum Listing Requirements for International Issuers**

**“Sec. 324.** International issuers are entities where the issuer is already listed on another recognized exchange which is acceptable to the Exchange, and is incorporated outside of Canada. There are no unique requirements for the management or the financial requirements for foreign issuers. However, these issuers are generally required to have some presence in Canada and be able to demonstrate, as with all issuers, that they are able to satisfy all of their reporting and public company obligations in Canada. This may be satisfied by having a member of the board of directors or management, an employee or a consultant of the issuer situated in Canada.”

**Part VI of the Manual**

6. Section 601 of the Manual will be amended by deleting the definition of “unrelated director”.
7. Subsection 602(g) of the Manual will be amended by deleting the last sentence that begins with “The exemptions contained in this Subsection 602(g) ...”.
8. Section 613(a) of the Manual will be amended as follows:

**“613.** (a) When instituted all security based compensation arrangements must be approved by:

- (i) a majority of the listed issuer’s directors; and
- (ii) ~~a majority of the listed issuer’s unrelated directors; and~~
- ~~(iii)~~—subject to Subsections 613(b), (c), (g) and (i), by the listed issuer’s security holders.

Every three years after institution, all unallocated options, rights or other entitlements under a security based compensation arrangement which does not have a fixed maximum number of securities issuable, must be approved by:

- (i) a majority of the listed issuer’s directors; and
- (ii) ~~a majority of the listed issuer’s unrelated directors; and~~
- ~~(iii)~~—subject to Subsections 613(b), (c), (g) and (i), the listed issuer’s security holders.

Insiders of the listed issuer entitled to receive a benefit under the arrangement are not eligible to vote their securities in respect of the approvals required by this Subsection 613(a) unless the securities issued and issuable to insiders of the listed issuer under the arrangement, or when combined with all of the listed issuer’s other security based compensation arrangements, could not exceed 10% of the listed issuer’s total issued and outstanding securities.

If any security holder approval is required for a security based compensation arrangement and insiders of the listed issuer entitled to receive a benefit under the arrangement are not eligible to vote their securities in respect of the approval required by this Subsection 613(a), ~~when combined with all of the listed issuer’s other security based compensation arrangements could exceed 10% of the listed issuer’s total issued and outstanding securities,~~ holders of Restricted Securities, as defined in Section 624, must be entitled to vote with the holders of any class of securities of the listed issuer which otherwise carry greater voting rights, on a basis proportionate to their respective residual equity interests in the listed issuer.

Security holder approval required for a security based compensation arrangement must be by way of a duly called meeting. The exemption from security holder approval contained in Subsection 604(e) is not available in respect of security based compensation arrangements.”