

13.2.2 Toronto Stock Exchange – TSX Company Manual – Notice of Housekeeping Rule Amendments

TORONTO STOCK EXCHANGE

NOTICE OF HOUSEKEEPING RULE AMENDMENTS TO
THE TSX COMPANY MANUAL

Introduction

In accordance with the Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 (the “**Protocol**”), Toronto Stock Exchange (“**TSX**”) has adopted, and the Ontario Securities Commission has approved, certain housekeeping amendments (the “**Amendments**”) to Parts IV and VI of the TSX Company Manual (the “**Manual**”). The Amendments are Housekeeping Rules under the Protocol and therefore have not been published for comment. The Ontario Securities Commission has not disagreed with the categorization of the Amendments as Housekeeping Rules.

Summary and Rationale of the Non-Public Interest Amendments

	Section of the Manual	Amendment	Rationale
1.	Part IV – Maintaining a Listing – General Requirements – Sections 461.3 and 461.4 – Contents of Meeting Materials	Add language to clarify that “votes cast” in this section includes both votes “for” and votes “withheld”.	<p>Amend language in Section 461.3 to clarify that for the purposes of TSX’s majority voting requirements (the “Majority Voting Requirement”) for director elections, issuers must count both votes “for” and votes “withheld” when counting the total votes cast for the election of a director, and consequential amendment to Section 461.4.</p> <p><i>Plurality Voting versus Majority Voting</i></p> <p>Under plurality voting for director elections, security holders vote “for” or “withhold” their vote for each director or the slate of directors. The director or slate is elected if one vote is cast “for” the director or the slate, regardless of the number of “withhold” votes. This voting standard is plurality voting since the director or the slate is elected even if the majority of security holders that voted “withheld” their vote rather than voted “for” the election of the director or slate. As a result, virtually every nominee director or slate is elected with plurality voting.</p> <p>When a majority voting policy is adopted pursuant to the Majority Voting Requirement, a plurality voting standard still applies, and security holders generally vote “for” or “withhold” their vote for each individual board nominee. In the case of plurality voting, a vote that is simply not cast, is not counted toward either, the votes “for” or the votes “withheld”. However, for the purposes of the Majority Voting Requirement, “withheld” votes are considered “against” votes, and such votes are <i>counted as part of the total votes cast</i> with respect to the election of the individual board nominee.</p> <p>A typical majority voting policy that is acceptable to TSX provides that a director who receives a majority of “withheld” votes must tender his or her resignation, that the board will generally accept that resignation absent exceptional circumstances, and that the board will publicly announce its decision by news release. A director who receives a majority of “withheld” votes is elected as a matter of corporate law, but the Majority Voting Requirement is designed to ensure that only those directors who receive more votes cast “for” their election compared to votes cast as “withheld”, remain on the board.</p> <p>The <i>Canada Business Corporations Act</i> (“CBCA”) was recently</p>

	Section of the Manual	Amendment	Rationale
			<p>amended to require mandatory majority voting for the election of directors of public corporations other than at contested meetings.¹ Under mandatory majority voting, security holders vote “for” or “against” each individual board nominee, instead of “for” or “withheld”. Once in effect, these amendments to the CBCA will likely satisfy the Majority Voting Requirement, and TSX will likely not require issuers incorporated under the CBCA to have a majority voting policy in place.</p> <p>The Majority Voting Requirement requires that a director who is not elected by a majority of the votes <i>cast</i> with respect to his or her election must immediately tender his or her resignation to the board of directors. The board is required to determine whether or not to accept the resignation within 90 days after the date of the relevant security holders’ meeting. The board is required to accept the resignation absent <i>exceptional circumstances</i>.</p> <p><i>Exceptional Circumstances</i></p> <p>TSX does not require majority voting policies to list examples of exceptional circumstances. While many majority voting policies provide guidance regarding which factors the board may determine to constitute exceptional circumstances, such guidance is not required pursuant to the Majority Voting Requirement. While TSX believes that generally the board is in the best position to determine what constitutes exceptional circumstances when determining whether to accept a resignation, TSX will contact the issuer to discuss the exceptional circumstance when a board of directors determines not to accept a director’s resignation. TSX reviews each situation on a case-by-case basis, taking into account the unique factors applicable to each issuer. TSX expects “exceptional circumstances” to meet a high threshold. The board should not use “exceptional circumstances” as a means to circumvent the policy objectives of the Majority Voting Requirement. As TSX has previously stated, TSX will consider avoidance or frustration of the Majority Voting Requirement, through any means, a failure to comply with it. Issuers should review TSX Staff Notice 2017-0001 for TSX’s guidance regarding factors that TSX would likely accept as exceptional circumstances and factors that TSX does not consider exceptional circumstances.</p> <p>Finally, TSX notes that a director who refuses to tender his or her resignation in accordance with the Majority Voting Requirement would be in breach of Section 716 of the Manual. Such refusal may cause TSX to review the director’s suitability to be involved in the capacity of a director, officer or other insider of TSX-listed issuers.</p>
2.	Part IV – Maintaining a Listing – General Requirements – Section 428 – Dividends and Other Distributions to Security Holders – Notice to the	Replace references to “Non-Corporate Issuer” with “listed issuer”.	<p>Amend language to clarify that the dividend notification requirement under Section 428 is not applicable for distributions made by all listed issuers (i.e. both Corporate and Non-Corporate Issuer) where there is an immediate consolidation.</p> <p>Currently, Section 428 requires that all listed issuers declaring a dividend on listed shares must provide notice to TSX and a bulletin is then issued by TSX to commence “ex” trading of the shares. This notification requirement is currently not applicable in the case of a</p>

¹ These amendments are not yet in force.

	Section of the Manual	Amendment	Rationale
	Exchange		distribution by a Non-Corporate Issuer that is to be paid entirely in securities which are immediately consolidated following the distribution, resulting in no change to the number of securities held by security holders (and thereby requiring such notification by Corporate Issuers in similar circumstances). In practice, because TSX does not trade "ex" on such distributions (whether for Corporate or Non-Corporate Issuers), TSX is of the view that a TSX bulletin serves no purpose and may confuse the market.
3.	Part VI – Changes in Capital Structure of Listed Issuers - Section 632(4) – General Rules for Control Block Sales on the Exchange; Section 632(7) – Term; and Section 632(8)- First Sale	Delete subsection (4) – Report of Sales. Fix typographical errors in Sections 632(7) and 632(8).	Remove the requirement for a participating organization to report monthly sales regarding control block sales as such report may be redundant due to other reporting requirements for block trades under section 2.8 of National Instrument 45-102 <i>Resale of Securities</i> . Fix typographical errors by replacing references to ""Form 45-102 F1" with "Form 45-102 F1".

Text of the Amendments

The Amendments are set out as blacklined text at **Appendix A**. For ease of reference, a clean version of the Amendments are set out at **Appendix B**.

Effective Date

The Amendments become effective on June 4, 2020.

APPENDIX "A"

BLACKLINE OF
NON-PUBLIC INTEREST AMENDMENTS TO THE TSX COMPANY MANUAL

Amendment 1

Contents of Meeting Materials

Sec. 461.3.

Each director of a listed issuer must be elected by a majority (50% +1 vote) of the votes cast⁵ with respect to his or her election other than at contested meetings⁶ ("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 post a copy of the Policy on its website in accordance with Section 473.

Listed issuers that are majority controlled⁷ 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.

⁵ [For the purposes of this section, when counting the total votes cast in respect of the election of a director, "withheld" votes are considered "against" votes and must be counted in the total.](#)

⁶ 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.

⁷ 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.

[...]

Sec 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,⁸ and must forthwith provide a copy of the news release to TSX by email to disclosure@tsx.com if one or more director is not elected by at least a majority of the votes cast with respect to his or her election.

⁸⁷ 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.

[...]

Amendment 2

D. Dividends and Other Distributions to Security Holders

Notice to the Exchange

Sec. 428.

All listed issuers declaring a dividend on listed shares must promptly notify the Exchange's Listed Issuer Services of the particulars, except as provided below. Listed issuers must complete and file a Form 5—Dividend/Distribution Declaration (Appendix H: Company Reporting Forms) with the Exchange. For the purposes of Exchange requirements, "dividends" also includes distributions to holders of listed securities other than shares, such as units.

The Exchange must have sufficient time to inform its Participating Organizations and the financial community of the details of each dividend declared. There must be a clear understanding in the market-place as to who is entitled to receive the dividend declared. Due to practical considerations, such as long holidays and weekends, the Exchange requires prior notice be given to the Exchange in advance of the dividend record date, the record date being the date of closing of the transfer books of the listed issuer. Listed issuers with tentative dividend plans should schedule their board meetings well in advance of the proposed record date.

A minimum five trading days notification period applies to all distributions, including special year end distributions by income trusts and other similar non-taxable entities, whether or not:

- (a) the exact amount of the distribution is known; or
- (b) the distribution is to be paid in cash, trust units and/or other securities.

Where the exact amount of the distribution is unknown, listed issuers should provide, at the time they file their Form 5, their best estimate of the anticipated amount of the distribution and indicate that such amount is an estimate. Details regarding the payment of the distribution in cash, trust units and/or other securities must be provided.

Upon determination of the exact amount of any estimated distribution, listed issuers must disseminate the final details by press release and provide TSX's dividend administrator with a copy of the press release.

The dividend notification requirement does not apply to a distribution by a ~~listed issuer~~~~Non-Corporate Issuer~~ that is to be paid entirely in securities which are immediately consolidated following the distribution, resulting in no change to the number of securities held by security holders. In such case, the ~~listed issuer~~~~Non-Corporate Issuer~~ must disseminate a news release with the estimated distribution amount at least four (4) trading days prior to the record date. Upon determination of the exact amount of any estimated distribution, the ~~listed issuer~~~~Non-Corporate Issuer~~ must disseminate the final details by way of news release in accordance with the TSX timely disclosure policy.

Amendment 3

Sec. 632. General Rules for Control Block Sales on the Exchange

1. **Filing**—The seller shall file Form 45-102F1 Notice of Intention to Distribute Securities under subsection 2.8 of N1 45-102, *Resale of Securities* with TSX at least seven calendar days prior to the first trade made to carry out the distribution.
2. **Notification of Appointment of Participating Organization**—The seller must notify TSX of the name of the participating organization which will act on behalf of the seller. The seller shall not change the participating organization without prior notice to TSX.

3. **Acknowledgement of Participating Organization**—The participating organization acting as agent for the seller shall give notice to TSX of its intention to act on the sale from control before any sales commence.
4. **Report of Sales**— ~~[Deleted] The participating organization shall report in writing to the TSX on the last day of each month the total number of securities sold by the seller during the month, and, if and when all of the securities have been sold, the participating organization shall so report forthwith in writing to TSX.~~
5. **Issuance of TSX Bulletin**—TSX shall issue a bulletin respecting the proposed sale from control which bulletin will contain the name of the seller, the number of securities of the listed company held by the seller, the number proposed to be sold, and any other information that TSX considers appropriate. TSX may issue further bulletins from time to time regarding the sales made by the seller
6. **Special Conditions**—TSX may, in circumstances it considers appropriate, require that special conditions be met with respect to any sales. Possible conditions include, but are not limited to, the requirement that the seller not make a sale below the price of the last sale of a board lot of the security on TSX which is made by another person or company acting independently.
7. **Term**—The filing of Form 45-102F~~1~~ is valid for a period of 30 days from the date the form was filed.
8. **First Sale**—The first sale cannot be made until at least seven calendar days after the filing of Form 45-102F~~1~~.

APPENDIX "B"

CLEAN VERSION OF
NON-PUBLIC INTEREST AMENDMENTS TO THE TSX COMPANY MANUAL

Amendment 1

Contents of Meeting Materials

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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 post a copy of the Policy on its website in accordance with Section 473.

Listed issuers that are majority controlled⁷ 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.

⁵ For the purposes of this section, when counting the total votes cast in respect of the election of a director, "withheld" votes are considered "against" votes and must be counted in the total.

⁶ 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.

⁷ 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.

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Sec 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,⁸ and must forthwith provide a copy of the news release to TSX by email to disclosure@tsx.com if one or more director is not elected by at least a majority of the votes cast with respect to his or her election.

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[...]

Amendment 2

D. Dividends and Other Distributions to Security Holders

Notice to the Exchange

Sec. 428.

All listed issuers declaring a dividend on listed shares must promptly notify the Exchange's Listed Issuer Services of the particulars, except as provided below. Listed issuers must complete and file a Form 5—Dividend/Distribution Declaration (Appendix H: Company Reporting Forms) with the Exchange. For the purposes of Exchange requirements, "dividends" also includes distributions to holders of listed securities other than shares, such as units.

The Exchange must have sufficient time to inform its Participating Organizations and the financial community of the details of each dividend declared. There must be a clear understanding in the market-place as to who is entitled to receive the dividend declared. Due to practical considerations, such as long holidays and weekends, the Exchange requires prior notice be given to the Exchange in advance of the dividend record date, the record date being the date of closing of the transfer books of the listed issuer. Listed issuers with tentative dividend plans should schedule their board meetings well in advance of the proposed record date.

A minimum five trading days notification period applies to all distributions, including special year end distributions by income trusts and other similar non-taxable entities, whether or not:

- (a) the exact amount of the distribution is known; or
- (b) the distribution is to be paid in cash, trust units and/or other securities.

Where the exact amount of the distribution is unknown, listed issuers should provide, at the time they file their Form 5, their best estimate of the anticipated amount of the distribution and indicate that such amount is an estimate. Details regarding the payment of the distribution in cash, trust units and/or other securities must be provided.

Upon determination of the exact amount of any estimated distribution, listed issuers must disseminate the final details by press release and provide TSX's dividend administrator with a copy of the press release.

The dividend notification requirement does not apply to a distribution by a listed issuer that is to be paid entirely in securities which are immediately consolidated following the distribution, resulting in no change to the number of securities held by security holders. In such case, the listed issuer must disseminate a news release with the estimated distribution amount at least four (4) trading days prior to the record date. Upon determination of the exact amount of any estimated distribution, the listed issuer must disseminate the final details by way of news release in accordance with the TSX timely disclosure policy.

Amendment 3

Sec. 632. General Rules for Control Block Sales on the Exchange

1. **Filing**—The seller shall file Form 45-102F1 Notice of Intention to Distribute Securities under subsection 2.8 of N1 45-102, *Resale of Securities* with TSX at least seven calendar days prior to the first trade made to carry out the distribution.
2. **Notification of Appointment of Participating Organization**—The seller must notify TSX of the name of the participating organization which will act on behalf of the seller. The seller shall not change the participating organization without prior notice to TSX.
3. **Acknowledgement of Participating Organization**—The participating organization acting as agent for the seller shall give notice to TSX of its intention to act on the sale from control before any sales commence.

4. **Report of Sales**— [Deleted]
5. **Issuance of TSX Bulletin**—TSX shall issue a bulletin respecting the proposed sale from control which bulletin will contain the name of the seller, the number of securities of the listed company held by the seller, the number proposed to be sold, and any other information that TSX considers appropriate. TSX may issue further bulletins from time to time regarding the sales made by the seller
6. **Special Conditions**—TSX may, in circumstances it considers appropriate, require that special conditions be met with respect to any sales. Possible conditions include, but are not limited to, the requirement that the seller not make a sale below the price of the last sale of a board lot of the security on TSX which is made by another person or company acting independently.
7. **Term**—The filing of Form 45-102F1 is valid for a period of 30 days from the date the form was filed.
8. **First Sale**—The first sale cannot be made until at least seven calendar days after the filing of Form 45-102F1.