

13.2 Marketplaces

13.2.1 TSX – Amendments to TSX Company Manual – Request for Comments

TORONTO STOCK EXCHANGE REQUEST FOR COMMENTS AMENDMENTS TO TORONTO STOCK EXCHANGE COMPANY MANUAL

Toronto Stock Exchange (“**TSX**”) is publishing the following proposed amendments to the TSX Company Manual (the “**Manual**”): (i) introduction of website disclosure requirements for listed issuers (the “**Part IV Amendments**”); and (ii) amendment of the disclosure requirements regarding security based compensation arrangements (the “**Part VI Amendments**”). The Part IV Amendments, the Part VI Amendments, and certain ancillary changes are collectively referred to as the “**Amendments**”. The Amendments provide for public interest changes to Parts IV and VI of the Manual, and are being published for public comment for a thirty (30) day period.

The Amendments will only become effective following public notice and comment, and approval by the Ontario Securities Commission (the “**OSC**”). Comments should be in writing and delivered by May 8, 2017 to:

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

A copy should also be provided to:

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

Comments will be publicly available unless confidentiality is requested.

Overview

On May 26, 2016, TSX published a Request for Comments in respect of proposed amendments (the “**May RFC**”) to the Manual to introduce website disclosure requirements for TSX listed issuers, to amend the disclosure requirements regarding security based compensation arrangements, and to introduce Form 15 – *Disclosure of Security Based Compensation Arrangements* (“**Form 15**”) (collectively, the “**May Amendments**”). In response to the May RFC, some market participants expressed concerns with the May Amendments including the increase in regulatory burden, the uncertainty in the types of documents required to be posted on a listed issuer’s website, and the insufficiency of disclosure provided by Form 15.

TSX thanks all commenters for their feedback and suggestions. Following the May RFC, TSX modified the May Amendments as a result of the comments received. TSX is publishing this Request for Comment because the Amendments represent notable modifications from the May Amendments.

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

PART IV AMENDMENTS

Proposed Amendments

The Part IV Amendments introduce a new Section 473 to the Manual and amend Section 461.3 and Part XI of the Manual as ancillary matters.

As a result of comments received in connection with the May RFC, TSX has revised Section 473 to create greater certainty about the governance documents a listed issuer is expected to make available on its website. The Part VI Amendments would require listed issuers (other than Non-Corporate Issuers (as such term is defined in the Manual)) to make available the current, effective versions of the following documents (or their equivalent), as applicable:

1. Articles of incorporation, amalgamation, continuation or any other constating or establishing documents of the issuer and its by-laws; and
2. If adopted, copies of :
 - a. majority voting policy,
 - b. advance notice policy,
 - c. position descriptions for the chairman of the board, the lead director, and key officers,
 - d. board mandate, and
 - e. board committee charters.

Please refer to the text of new Section 473 and to the ancillary amendments to Section 461.3 and Part XI of the Manual as set out in **Appendix A**.

Rationale for the Part IV Amendments

TSX continues to believe that disclosure of certain governance documents is beneficial to participants in the Canadian capital markets as this will provide ready access to key information pertinent to investors. Following the May RFC and the comments received, TSX met and discussed the proposed disclosure requirements with interested parties, including institutional investors who are members of the Canadian Coalition for Good Governance. TSX continues to believe that there is value in providing investors with a centralized location for a listed issuer's corporate governance information.

TSX is aware that there are concerns that Section 473 will result in an increase in regulatory burden. However, TSX believes the modest increase in regulatory burden is outweighed by the benefits to investors.

Questions

In responding to any of the questions below, please explain your response.

1. Should Section 473 require an issuer to disclose, if adopted, its (a) code of business conduct and ethics, (b) diversity policy, (c) anti-corruption policy, (d) human rights policy, (e) environment policy, or (f) health and safety policy?
2. Should certain types of issuers (e.g., Eligible Interlisted Issuer or Eligible International Interlisted Issuers) be exempt from the requirements of Section 473? If so, please provide an explanation of why they should be exempt.
3. Are there other modifications TSX should make to the list of documents proposed to be made available?

PART VI AMENDMENTS

Proposed Amendments

The Part VI Amendments will clarify and amend Section 613(d) and introduce Section 613(p) as set out in **Appendix A**.

Section 613(d) will be amended to require disclosure of an annual burn rate for each security based compensation arrangement (a “**Plan**”) maintained by the listed issuer, and to clarify existing disclosure regarding securities awarded or to be awarded under a Plan (“**Awards**”). The Part VI Amendments will also introduce Section 613(p), which will provide the formula for calculating the annual burn rate.

The burn rate disclosure may be omitted for the first fiscal year of any newly adopted Plans, but would need to be included for new Plans adopted in replacement of similar Plans.

Disclosure of the annual burn rate of the Plan would be calculated as follows and expressed as a percentage:

$$\frac{\text{Number of Awards}^1 \text{ granted under the Plan during the applicable fiscal year}}{\text{Weighted average number of securities outstanding}^2 \text{ for the applicable fiscal year}}$$

If the Award includes a multiplier, a listed issuer would be expected to provide details in respect to such multiplier.

For security holder meetings where security holder approval will be sought for a Plan matter (“**Approval Meetings**”), listed issuers will be expected to disclose the annual burn rate for each of the listed issuer’s three most recently completed fiscal years for the relevant Plan. Where the Plan has not existed for a listed issuer’s last three fiscal years (including predecessor Plans which were similar) or where the Plan was approved by security holders within a listed issuer’s last three fiscal years, listed issuers will be expected to disclose the annual burn rate for each of the listed issuer’s fiscal years completed since adoption or the most recent security holder approval.

For annual security holder meetings where security holder approval will not be sought for a Plan matter, listed issuers will be expected to disclose the annual burn rate for the listed issuer’s most recently completed fiscal year.

In addition, Section 613(d) is being amended to clarify the type of disclosure required in respect of the maximum number of Awards issuable, the number of outstanding Awards, and the number of Awards available for grant.

Finally, Section 613(d) is being amended to change the time period covering the disclosure. For any annual meeting (whether an Approval Meeting or not), the information should be prepared as at the end of the listed issuer’s most recently completed fiscal year. For any Approval Meeting, which is not also an annual meeting, the information (other than the annual burn rate) should be prepared as at the date of the materials, which would remain unchanged from the current requirements.

Rationale for the Part VI Amendments

A significant number of commenters to the May RFC were not supportive of the introduction of Form 15. Therefore, TSX has deleted the previously proposed use of Form 15. A large majority of the comments were supportive of adding disclosure regarding burn rate, with certain modifications. The revised burn rate formula is derived from the comments received.

The amendments in respect of the time period covered by the disclosure for annual meetings (whether an Approval Meeting or not) are being made to better align the disclosure requirements of Section 613(d) with executive compensation disclosure requirements of National Instrument 51-102F6 *Statement of Executive Compensation*.

¹ Awards include, but are not limited to, options, performance stock units, deferred stock units, restricted stock units or other similar awards.

² The weighted average number of securities outstanding during the period is the number of securities outstanding at the beginning of the period, adjusted by the number of securities bought back or issued during the period multiplied by a time-weighting factor. The time-weighting factor is the number of days that the securities are outstanding as a proportion of the total number of days in the period; a reasonable approximation of the weighted average is adequate in many circumstances. The weighted average number of securities outstanding is to be calculated in accordance with the CPA Canada Handbook, as such may be amended or superseded from time to time.

Questions

In responding to any of the questions below, please explain your response.

1. Should the requirement to disclose static terms of a Plan (e.g., financial assistance, vesting, etc.) be limited to Approval Meetings?
2. Is the burn rate and the formula for calculating it useful and appropriate disclosure?

TSX is publishing the Amendments for a thirty (30) day comment period, which expires May 8, 2017. The Amendments will only become effective following public notice and comment, and the approval by the OSC.

**APPENDIX A
BLACKLINES OF PUBLIC INTEREST AMENDMENTS**

PART IV AMENDMENTS

Sec. 461.3.

[...]

If an issuer adopts a Policy to satisfy the Majority Voting Requirement, it must ~~fully describe~~ post a copy of 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 ~~its website in accordance with Section 473.~~

[...]

Website Disclosure of Security Holder Information

473. Listed issuers must maintain a publicly accessible website and post the current, effective versions of the following documents (or their equivalent), as applicable:

- (a) articles of incorporation, amalgamation, continuation or any other constating or establishing documents of the issuer and its by-laws; and
- (b) if adopted, copies of
 - (i) majority voting policy,
 - (ii) advance notice policy,
 - (iii) position descriptions for the chairman of the board, the lead director, and key officers,
 - (iv) board mandate, and
 - (v) board committee charters.

The webpage(s) containing the above noted documents should be easily identifiable and accessible from the listed issuer's home page or investor relations page. If a listed issuer's website is shared with other issuers, each listed issuer should have a separate, dedicated webpage on the website for the purposes of complying with Section 473. For greater certainty, if any document required to be made accessible pursuant to Section 473 is contained within or forms part of a larger document, a listed issuer may satisfy the requirements of Section 473 by posting the current, effective version of such larger document.

[...]

PART VI AMENDMENTS

Sec. 613.

[...]

Disclosure Required when Seeking Security Holder Approval & Annually

- (d) Materials provided to security holders in respect of a meeting at which the approval of security based compensation arrangements will be requested must be pre-cleared with TSX. ~~Such~~ Meeting materials must provide the following disclosure, as of the date of the materials, in respect of:
 - (i) the eligible participants under ~~the~~ each arrangement;
 - (ii) each of the following, as applicable:
 - i. ~~for plans with a fixed~~ Plan Maximum – the maximum number of securities issuable (A) ~~the total number of securities issued and securities issuable~~ under each arrangement and (B) ~~this total expressed as a fixed number (together with the percentage of this number represents relative to the number of issued and outstanding securities of the listed issuer's securities currently) or fixed percentage of the number of issued and outstanding securities of the listed issuer,~~

- ~~ii. Outstanding Securities Awarded – the number of outstanding securities awarded under each arrangement, together with the percentage this number represents relative to the number of issued and outstanding securities of the listed issuer, and~~
- ~~iii. Remaining Securities Available for Grant – the number of securities under each arrangement that are available for grant, together with the percentage this number represents relative to the number of issued and outstanding securities of the listed issuer;~~
- ~~(iii) the annual burn rate of each arrangement, as calculated in accordance with Section 613(p);~~
- ~~(iv) ii. for plans with a fixed the maximum percentage of securities issuable, the total number, if any, of securities issued and securities issuable under each arrangement as a percentage of the number of the listed issuer's securities currently outstanding, and~~
 - ~~iii. the total number of securities issuable under actual grants or awards made and this total as a percentage of the number of the listed issuer's securities currently outstanding;~~
- ~~(iii) the maximum percentage, if any, of securities under each arrangement available to insiders of the listed issuer;~~
- ~~(v) (iv) the maximum number of securities, if any, any one person or company is entitled to receive under each arrangement and the percentage of the listed issuer's currently outstanding capital represented by these securities;~~
- ~~(vi) (v) subject to Section 613(h)(i), the method of determining the exercise price for securities under each arrangement;~~
- ~~(vii) (vi) the method of determining the purchase price for securities under security purchase arrangements, with specific disclosure as to whether the purchase price could be below the market price of the securities;~~
- ~~(viii) (vii) the formula for calculating market appreciation of stock appreciation rights;~~
- ~~(ix) (viii) the ability for the listed issuer to transform a stock option into a stock appreciation right involving an issuance of securities from treasury;~~
- ~~(x) (ix) the vesting of stock options;~~
- ~~(xi) (x) the term of stock options;~~
- ~~(xii) (xi) the causes of cessation of entitlement under each arrangement, including the effect of an employee's termination for or without cause;~~
- ~~(xiii) (xii) the assignability of security based compensation arrangements benefits under each arrangement and the conditions for such assignability;~~
- ~~(xiv) (xiii) the procedure for amending each arrangement, including specific disclosure as to whether security holder approval is required for amendments;~~
- ~~(xiv) any financial assistance provided by the listed issuer to participants under each arrangement to facilitate the purchase of securities under the arrangement, including the terms of such assistance;~~
- ~~(xvi) (xv) entitlements under each arrangement previously granted but subject to ratification by security holders; and~~
- ~~(xvii) (xvi) such other material information as may be reasonably required by a security holder to approve the arrangements each arrangement.~~

Should a security based compensation arrangement not provide for the procedure for amending the arrangement, security holder approval will be required for such amendments, as provided for in Subsections 613(a) and (i). In addition, the votes attaching to any securities held by insiders who hold securities subject to the amendment will be excluded. Please see Subsection 613(l) for more information.

Other than the disclosure regarding the annual burn rate under Section 613(d)(iii), the disclosure required by this Section 613(d) should be presented as at (a) the end of the listed issuer's most recently completed fiscal year, in the case of an annual security

holder meeting, and (b) the date of the meeting materials, in the case of any security holder meeting (other than an annual meeting) where security holder approval is being sought in connection with a security based compensation arrangement matter.

[...]

Burn Rate

(p) Annual burn rate disclosure may be omitted for the first fiscal year of newly adopted arrangements, but must be included for new arrangements adopted in replacement of similar arrangements.

For purposes of the disclosure required under Section 613(d)(iii), the annual burn rate of the arrangement must be calculated as follows and expressed as a percentage:

$$\frac{\text{Number of securities}^1 \text{ granted under the arrangement during the applicable fiscal year}}{\text{Weighted average number of securities outstanding}^2 \text{ for the applicable fiscal year}}$$

If the securities awarded include a multiplier, listed issuers are required to provide details in respect to such multiplier.

For any security holder meeting where security holder approval will be sought for a security based compensation arrangement matter, listed issuers are required to disclose the annual burn rate for each of the listed issuer's three most recently completed fiscal years for the relevant arrangement. Where the arrangement has not existed for three fiscal years (including predecessor arrangements which were similar) or was approved by security holders within the last three fiscal years, listed issuers should disclose the annual burn rate for each of the listed issuer's fiscal years completed since adoption or the most recent security holder approval.

For annual security holder meetings where security holder approval will not be sought for a security based compensation arrangement matter, listed issuers are required to disclose the annual burn rate for the listed issuer's most recently completed fiscal year.

[...]

PART XI AMENDMENTS

Part XI Requirements Applicable to Non-Corporate Issuers

This section sets out the requirements that are specifically applicable to Non-Corporate Issuers.

In addition to the specific requirements outlined in this Part XI, Non-Corporate Issuers must also comply with the following sections of the Manual:

Part IV—MAINTAINING A LISTING

All Sections, other than Shareholders' Meeting and Proxy Solicitation (Sections 455-465) and Website Disclosure of Security Holder Information (Section 473)

[...]

¹ Securities awarded under an arrangement include, but are not limited to, options, performance stock units, deferred stock units, restricted stock units or other similar awards.

² The weighted average number of securities outstanding during the period is the number of securities outstanding at the beginning of the period, adjusted by the number of securities bought back or issued during the period multiplied by a time-weighting factor. The time-weighting factor is the number of days that the securities are outstanding as a proportion of the total number of days in the period; a reasonable approximation of the weighted average is adequate in many circumstances. The weighted average number of securities outstanding is to be calculated in accordance with the CPA Canada Handbook, as such may be amended or superseded from time to time.

**APPENDIX B
CLEAN VERSION OF PUBLIC INTEREST AMENDMENTS**

PART IV AMENDMENTS

Sec. 461.3.

[...]

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.

[...]

Website Disclosure of Security Holder Information

473. Listed issuers must maintain a publicly accessible website and post the current, effective versions of the following documents (or their equivalent), as applicable:

- (a) articles of incorporation, amalgamation, continuation or any other constating or establishing documents of the issuer and its by-laws; and
- (b) if adopted, copies of
 - (i) majority voting policy,
 - (ii) advance notice policy,
 - (iii) position descriptions for the chairman of the board, the lead director, and key officers,
 - (iv) board mandate, and
 - (v) board committee charters.

The webpage(s) containing the above noted documents should be easily identifiable and accessible from the listed issuer's home page or investor relations page. If a listed issuer's website is shared with other issuers, each listed issuer should have a separate, dedicated webpage on the website for the purposes of complying with Section 473. For greater certainty, if any document required to be made accessible pursuant to Section 473 is contained within or forms part of a larger document, a listed issuer may satisfy the requirements of Section 473 by posting the current, effective version of such larger document.

[...]

PART VI AMENDMENTS

Sec. 613.

[...]

Disclosure Required when Seeking Security Holder Approval & Annually

- (d) Materials provided to security holders in respect of a meeting at which the approval of security based compensation arrangements will be requested must be pre-cleared with TSX. Meeting materials must provide the following disclosure in respect of:
 - (i) the eligible participants under each arrangement;
 - (ii) each of the following, as applicable:
 - i. Plan Maximum – the maximum number of securities issuable under each arrangement expressed as a fixed number (together with the percentage this number represents relative to the number of issued and outstanding securities of the listed issuer) or fixed percentage of the number of issued and outstanding securities of the listed issuer,

- ii. Outstanding Securities Awarded – the number of outstanding securities awarded under each arrangement, together with the percentage this number represents relative to the number of issued and outstanding securities of the listed issuer, and
 - iii. Remaining Securities Available for Grant – the number of securities under each arrangement that are available for grant, together with the percentage this number represents relative to the number of issued and outstanding securities of the listed issuer;
- (iii) the annual burn rate of each arrangement, as calculated in accordance with Section 613(p);
 - (iv) the maximum percentage, if any, of securities under each arrangement available to insiders of the listed issuer;
 - (v) the maximum number of securities, if any, any one person or company is entitled to receive under each arrangement and the percentage of the listed issuer's currently outstanding capital represented by these securities;
 - (vi) subject to Section 613(h)(i), the method of determining the exercise price for securities under each arrangement;
 - (vii) the method of determining the purchase price for securities under security purchase arrangements, with specific disclosure as to whether the purchase price could be below the market price of the securities;
 - (viii) the formula for calculating market appreciation of stock appreciation rights;
 - (ix) the ability for the listed issuer to transform a stock option into a stock appreciation right involving an issuance of securities from treasury;
 - (x) the vesting of stock options;
 - (xi) the term of stock options;
 - (xii) the causes of cessation of entitlement under each arrangement, including the effect of an employee's termination for or without cause;
 - (xiii) the assignability of benefits under each arrangement and the conditions for such assignability;
 - (xiv) the procedure for amending each arrangement, including specific disclosure as to whether security holder approval is required for amendments;
 - (xv) any financial assistance provided by the listed issuer to participants under each arrangement to facilitate the purchase of securities under the arrangement, including the terms of such assistance;
 - (xvi) entitlements under each arrangement previously granted but subject to ratification by security holders; and
 - (xvii) such other material information as may be reasonably required by a security holder to approve each arrangement.

Should a security based compensation arrangement not provide for the procedure for amending the arrangement, security holder approval will be required for such amendments, as provided for in Subsections 613(a) and (i). In addition, the votes attaching to any securities held by insiders who hold securities subject to the amendment will be excluded. Please see Subsection 613(l) for more information.

Other than the disclosure regarding the annual burn rate under Section 613(d)(iii), the disclosure required by this Section 613(d) should be presented as at (a) the end of the listed issuer's most recently completed fiscal year, in the case of an annual security holder meeting, and (b) the date of the meeting materials, in the case of any security holder meeting (other than an annual meeting) where security holder approval is being sought in connection with a security based compensation arrangement matter.

[...]

Burn Rate

- (p) Annual burn rate disclosure may be omitted for the first fiscal year of newly adopted arrangements, but must be included for new arrangements adopted in replacement of similar arrangements.

For purposes of the disclosure required under Section 613(d)(iii), the annual burn rate of the arrangement must be calculated as follows and expressed as a percentage:

$$\frac{\text{Number of securities}^1 \text{ granted under the arrangement during the applicable fiscal year}}{\text{Weighted average number of securities outstanding}^2 \text{ for the applicable fiscal year}}$$

If the securities awarded include a multiplier, listed issuers are required to provide details in respect to such multiplier.

For any security holder meeting where security holder approval will be sought for a security based compensation arrangement matter, listed issuers are required to disclose the annual burn rate for each of the listed issuer's three most recently completed fiscal years for the relevant arrangement. Where the arrangement has not existed for three fiscal years (including predecessor arrangements which were similar) or was approved by security holders within the last three fiscal years, listed issuers should disclose the annual burn rate for each of the listed issuer's fiscal years completed since adoption or the most recent security holder approval.

For annual security holder meetings where security holder approval will not be sought for a security based compensation arrangement matter, listed issuers are required to disclose the annual burn rate for the listed issuer's most recently completed fiscal year.

[...]

PART XI AMENDMENTS

Part XI Requirements Applicable to Non-Corporate Issuers

This section sets out the requirements that are specifically applicable to Non-Corporate Issuers.

In addition to the specific requirements outlined in this Part XI, Non-Corporate Issuers must also comply with the following sections of the Manual:

Part IV—MAINTAINING A LISTING

All Sections, other than Shareholders' Meeting and Proxy Solicitation (Sections 455-465) and Website Disclosure of Security Holder Information (Section 473)

[...]

¹ Securities awarded under an arrangement include, but are not limited to, options, performance stock units, deferred stock units, restricted stock units or other similar awards.

² The weighted average number of securities outstanding during the period is the number of securities outstanding at the beginning of the period, adjusted by the number of securities bought back or issued during the period multiplied by a time-weighting factor. The time-weighting factor is the number of days that the securities are outstanding as a proportion of the total number of days in the period; a reasonable approximation of the weighted average is adequate in many circumstances. The weighted average number of securities outstanding is to be calculated in accordance with the CPA Canada Handbook, as such may be amended or superseded from time to time.