

**13.2.2 Toronto Stock Exchange – Request for Comments – Amendments to TSX Company Manual and Amendments to the TSX Rule Book**

**TORONTO STOCK EXCHANGE**

**REQUEST FOR COMMENTS**

**AMENDMENTS TO TORONTO STOCK EXCHANGE COMPANY MANUAL  
AND AMENDMENTS TO THE TORONTO STOCK EXCHANGE RULE BOOK**

TSX is publishing proposed amendments (the “Amendments”) to the Toronto Stock Exchange (“TSX” or the “Exchange”) Company Manual (the “Manual”) and the TSX Rule Book (the “TSX Rules”). The Amendments provide for public interest changes in Part III, Part VI and Part VII of the Manual and Part 2 and Part 7 of the TSX Rules. The public interest changes will be published for public comment for a 30-day period.

The Amendments 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 November 12, 2012 to:

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Toronto Stock Exchange  
The Exchange Tower  
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Toronto, Ontario M5X 1J2  
Fax: (416) 947-4461  
Email: [tsxrequestforcomments@tsx.com](mailto: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  
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Comments will be publicly available unless confidentiality is requested.

**Overview**

TSX is seeking public comment on Amendments to the Manual and the TSX Rules. 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 implement the Amendments, as proposed, or as modified as a result of comments.

**Text of the Amendments**

The Amendments to the Manual are set out as blacklined text at **Appendix A**. The Amendments to the TSX Rules are set out as blacklined text at **Appendix B**. The Amendments relate to the process for appeals of TSX decisions and related matters.

**Rationale 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 also establish written procedural requirements governing the process for appeals or review of exchange decisions, and file the procedures with the OSC for approval, within 60 days of the effective date of the Recognition Order.

In addition, as further described below, we are proposing to clarify certain appeal related matters in the Manual and the TSX Rules.

### ***The Manual***

There are provisions in the Manual which provide that an applicant for listing or a listed issuer may request to have decisions made by the TSX Listings Committee relating to original listings, change in capital structure and suspensions and delistings heard by the listings committee together with the Senior Vice-President, Toronto Stock Exchange ("SVP TSX").

The Manual also provides for a further appeal by an applicant for listing or a listed issuer that remains dissatisfied with a decision made by the TSX Listings Committee together with the SVP TSX. This appeal would be to a three person panel of the Board.

While provisions for appeals exist under the Manual, the Amendments will clarify certain appeal related matters in the Manual, as further described below.

### ***TSX Rules***

Part 7 of the TSX Rules, regarding investigation and enforcement, was repealed when the Universal Market Integrity Rules (UMIR) came into force, as of April 1, 2002. However, other sections of the TSX Rules still provide for appeals and hearings pursuant to Part 7. At the time, TSX enacted By-law No. 2 in order to provide for appeals of TSX decisions to the TSX Board, in lieu of Part 7. By-law No. 2 provides that any person directly or materially affected by a decision of the Exchange could appeal the decision to the Board of Directors of the Exchange, or a committee of the Board appointed by the Board, in accordance with such procedures as the Board may adopt from time to time. The Board also has discretion not to hear the appeal. The range of TSX decisions under the TSX Rules is quite narrow, and there have not been any appeals under By-Law No. 2.

We believe that it is appropriate for the appeals process for TSX decisions in the Manual and the TSX Rules to be the same and are therefore proposing to mirror the appeal rules under the Manual in the TSX Rules. The Amendments will also remove incorrect references to Part 7 hearings.

Once the Amendments are implemented, By-Law Two will be unnecessary and will be repealed.

### ***Comparison to Other Exchanges***

A comparison to other major international stock exchanges has been conducted. Most exchanges provide for internal appeals of their decisions.

### **Proposed Amendments**

#### ***Proposed Appeals Process***

##### **1. Who Hears the Appeal**

The current provision in the Manual provides for an appeal to the TSX Listing Committee together with the SVP TSX. In practice, the SVP TSX makes the decision on the appeal. The language in the Manual does not necessarily reflect the reality of the decision making by the SVP TSX at the appeal. Therefore the Amendments will clarify this language in the Manual.

Further, it has been determined that in cases of particular complexity, it may be beneficial for TSX to have the flexibility of having more than just one person (the SVP TSX) making the decision. The Amendments will therefore add that in the discretion of the Exchange, an appeal will be heard by a minimum of one and up to three senior executives of the Exchange.

In addition, the Amendments will delete the reference to rights of review to the OSC since these rights exist independently under the *Securities Act* (Ontario).

The Amendments will provide for the same appeal procedures in both the Manual and the TSX Rules. The second level appeal to a three-person panel of the Board will remain unchanged.

##### **2. Request appeal in writing**

The Amendments will codify the existing practice of requiring written requests for appeals and written submissions in support of the appeal. Written submissions are the mechanism for the opportunity to be heard. This practice is also aimed at preventing frivolous appeals and helps ensure the proper attention and use of time at the appeal.

3. Composition of Listing Committee

The language in Section 642 of the Manual may be wrongly construed as suggesting that all decisions made under Part VI are made by the Listing Committee. Many decisions made under Part V and Part VI are made in the ordinary course by listings managers. The Amendments will therefore clarify Section 642 to reflect the delegation of certain decision making under Parts V and VI to listing managers.

Similarly, decisions under Part VII are not all made by Listing Committee. For example, delisting decisions involve members of the Compliance & Disclosure ("C&D") group as voting members, which is a different capacity than they hold in the Listing Committee. The Amendments will therefore clarify Section 719 to reflect the delegation of certain decision making under Part VII to a subset of Listing Committee that includes members of C&D in a voting capacity.

4. Time for appeal

For practical reasons, appeals of delisting decisions generally follow a stricter timeline than appeals of other decisions. Upon deciding to delist an issuer, TSX generally provides that the delisting will be effective in 30 calendar days (as provided in Section 707). In order to hear an appeal before the delisting date, TSX practice has been to require written notice of appeal within five business days of the decision. Notice of an appeal does not stay the delisting decision. It is not in the interest of the market or its participants to delist a stock and then relist it if an appeal is successful, nor for an appeal to be used as a delay tactic to try and prevent the delisting of the stock. We therefore set the timeline as best efforts at avoiding these issues.

These time concerns do not generally arise in other appeals. The Amendments will therefore clarify the time frame in Section 719 for appeals of delisting decisions.

5. Participating Organization (PO) suspension and termination

The Amendments will revise the TSX Rules to remove references to Part 7, while at the same time clarifying drafting in connection with the suspension and termination of POs by TSX. TSX decisions in connection with the suspension and termination of POs will be subject to appeal in accordance with the new procedures.

**Public Interest**

TSX is publishing the Amendments for a 30-day comment period, which expires •, 2012. The Amendments will only become effective following public notice and the approval of the OSC.

APPENDIX A

TEXT OF PROPOSED AMENDMENTS TO THE TSX COMPANY MANUAL

**Sec. 354.1.**

~~If the Listings Committee does not approve the applicant's securities for listing, the applicant may request that the matter be heard by the Listings Committee with the additional participation of the Senior Vice President of the Toronto Stock Exchange and/or his/her designate, 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, as determined by the Exchange, who 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 appeal the decision to a three-person panel of the Toronto Stock Exchange's Board of Directors.~~

~~An applicant may request that the OSC review the Board's decision provided that the provisions of Section 21 of the OSA (or any replacement legislation) apply.~~

**Sec. 642.**

~~Decisions in respect of the application of Part V and this Part VI are made by the Exchange's Listings Committee. If the Listings Committee does not accept a change or its delegates. If notice of a transaction submitted under Part V or Part VI is not accepted, the issuer may request that the matter be heard by the Listings Committee, with the additional participation of the Senior Vice President of the Toronto Stock Exchange and/or his/her designate. An issuer may request that the OSC review the Board's decision provided that the provisions of Section 21 of the OSA (or any replacement legislation) apply, 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, as determined by the Exchange, who 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 appeal the decision to a three-person panel of the Board of Directors of TSX Inc.~~

**Sec. 719.**

~~Decisions in respect of the application of this Part VII are made by members of the Listings Committee after providing the listed issuer or its delegates. If an issuer remains dissatisfied with a decision under this Part VII, after having been given an opportunity to be heard. If a listed issuer wishes to contest a decision made under Part VII, the listed issuer may request that the matter be heard by the committee having made the original decision, with the additional participation of the Senior Vice President, TSX, and/or his/her designate. A listed issuer may request that the OSC review the Board's decision provided that the provisions of section 21 of the OSA (or any replacement legislation) apply, 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, as determined by the Exchange, who 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 listed issuer remains dissatisfied with the decision, the listed issuer may appeal the decision to a three-person panel of TSX's Board.~~

APPENDIX B

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) entitled to a hearing in accordance with the provisions of Part 7.~~
- ~~(b) Repealed (\*, 2012).~~

**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; ~~and,~~
  - ~~(b) entitled to a hearing in accordance with the provisions of Part 7.~~
  - ~~(b) Repealed (\*, 2012).~~

## 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, without hearing or notice, be suspended, such suspension to be deemed an interim order made pursuant to Rule 7-107, be terminated automatically.~~
- (2) ~~If, in the opinion of the Exchange, a Participating Organization breaches a requirement'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 it 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; and
  - (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 Board~~Exchange~~ may terminate a Participating Organization's status as a Participating Organization, if a Tribunal~~it~~ determines, after a hearing conducted according to the rules established under Part 7, 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 INVESTIGATIONS AND ENFORCEMENT (REPEALED)– APPEAL PROCEDURE**

Repealed (April 1, 2002)

**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 Exchange, as determined by the Exchange, who 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 Participating Organization remains dissatisfied with the decision, the Participating Organization may appeal the decision to a three-person panel of the Board of Directors of the Exchange.