

Corporate Securities Law

February 14, 2014

Toronto Stock Exchange Announces Amendments to Director Voting Requirements

The Toronto Stock Exchange (“**TSX**”) has adopted amendments to its director voting requirements. Currently, issuers are required to disclose annually in proxy circulars (i) if they had adopted a majority voting policy (a “**Policy**”) for directors for uncontested meetings and (ii) if not, to explain their practices for electing directors and why they had not adopted a Policy. (For a description of the current requirements, see our July 11, 2013 update, *Toronto Stock Exchange Provides Guidance on Director Election Requirements*). The amendments will require listed issuers to adopt a Policy requiring each director of a listed issuer who does not receive a majority (50% + 1) of the votes cast with respect to his or her election, to tender his or her resignation. These rules do not apply in relation to contested meetings.

Each listed issuer is required to have a Policy that in substance provides that:

1. any director must immediately tender his or her resignation if he or she is not elected by at least a majority of votes cast;
2. the issuer’s board of directors must determine whether or not to accept the resignation within 90 days after the relevant meeting;
3. the resignation becomes effective when accepted by the board;
4. the director who tenders a resignation pursuant to a Policy cannot participate in any board meeting at which the resignation is considered; and
5. the issuer must promptly issue a news release disclosing the board’s decision. If the board does not accept the resignation, the news release must fully state the reasons for that decision.

Proxy advisory firms such as Institutional Shareholder Services Inc. indicate that they will scrutinize any non-acceptance of a resignation and the reasons given for a board’s decision. This will, in turn, influence a proxy advisory firm’s recommendations for withholding from continuing directors in future elections.

The new rules provide an exception from the requirement to adopt a Policy for:

1. majority controlled issuers (entities where voting shares are more than 50% owned by a single individual or entity). A majority controlled issuer, however, must still disclose in its annual materials (i) that it is exempt from the requirement to adopt a Policy, and (ii) its reasons for not adopting a Policy; and
2. issuers that otherwise satisfy the Policy adoption requirement “in a manner acceptable to the TSX, for example, by applicable statutes, articles, by-laws or other similar instruments.”

All issuers must provide a full description of their Policy in the proxy materials sent annually to security holders in connection with meetings to elect directors.

The amendments will become effective June 30, 2014. Issuers with fiscal years ending on or after June 30, 2014 must comply with the amendments at their first annual meeting following that date. Effectively for issuers with a calendar year end these requirements will not apply to the 2014 proxy season but will apply to 2015.

Please contact any member of our Corporate Securities Group to discuss the implications of these changes.