

## Corporate Securities Law

April 21, 2017

### TSX Publishes Revised Proposal For Amendments to Disclosure Requirements Related to Websites and Security Based Compensation Arrangements

The Toronto Stock Exchange (TSX) has published a revised proposal for amendments to the TSX Company Manual that would, among other things, require TSX-listed issuers to post certain key governance documents on their websites (the “**Website Amendments**”) and enhance and clarify the required disclosure regarding security based compensation arrangements (the “**Disclosure Amendments**”). The revised proposal scales back to some degree the amendments originally proposed by the TSX in May of 2016 (see our May 27, 2016 update, *TSX Proposes Amendments to Disclosure Requirements Related to Issuer Websites and Security Based Compensation Arrangements*) in response to comments received by the TSX from market participants.

#### Revised Website Amendments

Under the revised proposal, listed issuers would be required to make available on their websites the current, effective versions of the following documents (or their equivalents):

- Articles of incorporation, amalgamation, continuation or any other constating or establishing documents of the issuer and its bylaws, and
- If adopted, copies of any:
  - majority voting policy,
  - advance notice policy,
  - position descriptions for the chairman of the board, the lead director and key officers,
  - board mandate, and
  - board committee charters.

Most significantly, the revised proposal removes from the list of required documents security holder rights plans, security based compensation arrangements and certain ethical, anti-corruption and other social and governance policies (though the TSX is seeking comments on whether such policies, if adopted, should be included in the list of documents required to be posted).

#### Revised Disclosure Amendments

The revised proposal removes the new form (Form 15) for disclosure regarding security based compensation arrangements that was proposed in the TSX’s May 2016 proposal. As a result, the existing disclosure requirements for security based compensation arrangements will generally continue to apply. However, the revised proposal maintains certain proposed amendments to the existing regime:

- *Burn Rate*. Listed issuers would be required to disclose an annual burn rate for each security based compensation arrangement maintained by the listed issuer, as well as details of any multiplier applicable to awards granted under the plan. The burn rate would be calculated as the number of awards granted under the plan during the relevant fiscal year divided by the weighted average number of securities outstanding for the applicable year. For any meeting where security holder approval would be sought for a plan matter, the burn rate for the three most recent fiscal years would generally need to be disclosed, while only the most recent year’s burn rate would be required for other annual meetings.
- *Awards Issuable, Outstanding and Available for Grant*. The revised proposal clarifies and enhances the disclosure required in respect of the maximum number of awards issuable under each plan, the number of outstanding securities awarded under each plan, and the number of awards that are still available for grant under each plan.

# Goodmans<sup>LLP</sup> Update

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- *Timing of Disclosure.* For any annual meeting (whether or not security holder approval will be sought for a plan matter), the disclosure regarding security based compensation arrangements would be prepared as at the end of the listed issuer's most recently completed fiscal year (to better align the disclosure with executive compensation disclosure required under securities laws). For any meeting other than an annual meeting where security holder approval will be sought for a plan matter, the disclosure would continue to be prepared as of the date of the meeting materials.

Given the extent of the changes made to the May 2016 proposal, the TSX is seeking comments regarding the revised proposal. The deadline for submitting comments is May 8, 2017. The amendments outlined in the revised proposal will only become effective following public notice and comment, and if approved by the Ontario Securities Commission.

Please contact any member of our Corporate Securities Group to discuss these developments or the implications of any of the proposed amendments.