

Corporate Securities Law

October 10, 2012

Toronto Stock Exchange Announces New Director Voting Requirements

The Toronto Stock Exchange (TSX) has adopted new director voting requirements for listed issuers. The stated purposes of the amendments is to uphold security holder interests and the integrity and reputation of the Canadian capital markets in light of the TSX's perception that "director election processes in Canada are lagging other major international jurisdictions." The amendments will require listed issuers to do the following:

1. Individual Elections. Provide for election of directors on an individual basis. In effect, this will mean that voting for directors by slate voting will no longer be permitted.
2. Annual Election Requirement. Hold annual elections for all directors. Though Canadian corporations are subject to the requirement to have annual elections, some international issuers were able to have staggered boards (with only a portion of the board up for election each year).
3. Governance Disclosures. Disclose annually in proxy circulars:
 - a. If they have adopted a majority voting policy for directors for uncontested meetings (being a policy that generally requires a director nominee to resign if they receive more "withhold" votes than "for" votes); and
 - b. if not, to explain their practices for electing directors; and why they have not adopted a majority voting policy.

4. Notification Requirement. Advise the TSX if a director receives a majority of "withhold" votes (if a majority voting policy has not been adopted). The amendments do not explain what the TSX may require or do in the event that a director receives a majority of "withhold" votes absent a majority voting policy.
5. Prompt Disclosure of Election Results. Promptly issue a news release providing detailed disclosure of the voting results for the election of directors (in addition to current requirements under securities laws to file a brief description on SEDAR).

The amended rules will become effective on December 31, 2012, and will apply to any meeting which has not been set and for which proxy materials have not yet been approved by that date.

The new rules provide an exception for those issuers which require security holder approval in order to implement the changes (for example, because an amendment must be made to the issuer's articles of incorporation) and which seek (and recommend) but do not obtain security holder approval. Such issuers must go back to securityholders for approval within three years.

The TSX also announced that it is seeking comment on additional proposed amendments that would require all issuers to have majority voting for uncontested director elections. Such a requirement would follow the "recommendation" of a number of commentators on corporate governance in Canada, such as the Canadian Coalition for Good Governance, which has been urging listed issuers to voluntarily adopt majority voting policies for a number of years. The comment period ends on November 5, 2012.

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