

Corporate Securities Law

October 31, 2017

TSX Publishes Final Amendments to Website and Security Based Compensation Disclosure Requirements

The Toronto Stock Exchange (TSX) has published final amendments to the TSX Company Manual related to disclosure of securities based compensation arrangements and the requirement to post certain key governance documents on their websites. The new securities based compensation disclosure rules are effective for financial years ending on or after October 31, 2017, and the deadline for compliance with the website disclosure rules is April 1, 2018.

Background

The amendments were originally proposed by the TSX in May 2016 (see our May 27, 2016 Update, *TSX Proposes Amendments to Disclosure Requirements Related to Issuer Websites and Security Based Compensation Arrangements*) and were revised in April 2017 in response to comments received from market participants (see our April 21, 2017 Update, *TSX Publishes Revised Proposal For Amendments to Disclosure Requirements Related to Websites and Security Based Compensation Arrangements*).

Website Disclosure Amendments

The website disclosure rules require listed issuers (other than non-corporate issuers, eligible interlisted issuers and eligible international interlisted issuers, as such terms are defined in the TSX Company Manual) to post the following documents on their websites by no later than April 1, 2018:

- 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 and the lead director;
 - board mandate; and
 - board committee charters.

The above documents should be on a web page that is easily identifiable and accessible from the listed issuer's home page or investor relations page.

Securities Based Compensation Disclosure Amendments

Under the new rules for securities based compensation disclosure, listed issuers must disclose the following information in their proxy circulars effective for financial years ending on or after October 31, 2017:

- *Burn Rate*. Listed issuers must disclose, on an annual basis, a burn rate – calculated in accordance with a prescribed methodology – for each security based compensation arrangement maintained by the issuer for the issuer's three most recently completed financial years (or each financial year since adoption if the plan or a predecessor has not existed for three years). If the securities awarded include a multiplier, issuers are required to provide details in respect of such multiplier. In the final amendments, the TSX now requires issuers to disclose the burn rate for the three most recent financial years for all shareholders meetings (previously only one year's burn rate was required unless security holder approval of a plan matter was being sought).
- *Awards Issuable, Outstanding and Available for Grant*. The amendments clarify and enhance 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 still available for grant under each plan. Disclosure regarding the vesting and term of securities awarded under

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all security based compensation arrangements, not just stock option plans, will now also be required (which is a change from previous versions of the amendments).

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 financial 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 (other than the annual burn rate) would continue to be prepared as of the date of the meeting materials.

Please contact any member of our Corporate Securities Group to discuss these developments.