



2013-0001

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**Section 461  
Contents of Meeting Materials**

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**Sections 634–637  
Security Holder Rights Plans**

**STAFF NOTICE TO APPLICANTS, LISTED ISSUERS, SECURITIES LAWYERS AND  
PARTICIPATING ORGANIZATIONS**

Toronto Stock Exchange ("TSX") is providing guidance with respect to: (i) annual meetings and director elections; and (ii) security holder rights plans.

**Annual Meetings and Director Elections**

In anticipation of the upcoming annual meeting season, TSX is reminding listed issuers of the following provisions of the *TSX Company Manual* (the "Manual") in relation to annual meetings and director elections:

1. The new provisions in Section 461 in relation to director elections came into effect on December 31, 2012. Listed issuers are required to:
  - a. elect directors annually;
  - b. elect directors individually;
  - c. publicly disclose the votes received for the election of each director by news release;
  - d. if subject to National Instrument 51-102 — *Continuous Disclosure Obligations*, disclose in materials sent to security holders if they have adopted a majority voting policy for uncontested director elections and if not, to explain (i) their practices for electing directors; and (ii) why they have not adopted a majority voting policy; and
  - e. disclose to TSX if a director receives a majority of "withhold" votes, if the listed issuer does not have a majority voting policy.

### Majority Voting Policy

TSX has provided a description of a majority voting policy in the Requests for Comment dated September 9, 2011 and October 4, 2012. For reference, the description is reproduced below. TSX expects that issuers will have reference to this majority voting policy description in responding to the requirements in Subsections 461.3 and 461.4 of the Manual.

*TSX expects that when a majority voting policy is adopted, a plurality voting standard still applies, and security holders generally vote "for" or "withhold" for each individual board nominee. However the number of "withhold" votes are considered "against" votes and counted as part of the total votes cast. A typical majority voting policy provides that a director who receives a majority of "withhold" votes must tender his/her resignation, and the board will generally accept that resignation, absent exceptional circumstances, and publicly announce its decision by news release. Some majority voting policies provide that the board must accept the director's resignation, although those policies are less common. In either type of policy, a director who receives a majority of "withhold" votes would still be elected as a matter of law, but a majority voting policy is designed to ensure that only those directors who receive a majority of votes in their favour remain on the board.*

### Security Holder Approval

If security holder approval is required to enable a listed issuer to hold annual director elections (for example because an amendment must be made to the issuer's articles of incorporation), the listed issuer must submit and recommend the necessary amendments for approval by security holders at the first meeting of security holders held after December 31, 2012. If the amendments are not approved by security holders, the listed issuer must resubmit and recommend the necessary amendments for approval by security holders. Such amendments must be resubmitted and recommended not later than three years after each security holder meeting where the amendments are not approved, until such time as they are approved.

2. Listed issuers are reminded of the requirement to notify TSX of changes and new appointments in directors, officers and trustees by submitting a Form 3 — Change in Officers/Directors/Trustees through TSX SecureFile. The Form 3 must be filed within 10 days of any change in officers, directors or trustees (including change in title, removal or appointment).
3. Listed issuers are reminded of the requirement to file Form 9 — Request for Extension or Exemption for Financial Reporting/Annual Meeting through TSX SecureFile. Form 9 must be filed well in advance of the prescribed deadline for the meeting.

If you have any questions about TSX requirements regarding annual meetings or director elections, please contact Compliance & Disclosure at 416.947.4767. If you have questions about filing on TSX SecureFile, please contact your reporting agent. Contact information for your reporting agent is available at: <http://www.tmx.com/en/listings/contact.html>.

## **Renewal of Security Holder Rights Plans**

TSX understands that the Canadian Securities Administrators ("CSA") are currently working on certain proposals which, when implemented, may impact TSX requirements for security holder rights plans ("Plans"). TSX will monitor CSA rules and policies and, if appropriate, modify TSX requirements.

In the meantime, TSX has recently received inquiries regarding the application of Sections 634 to 637 of the Manual to Plans that have a set expiry date and are being amended to provide for a new expiry date (a "Plan Renewal"). TSX is providing the following reminders and guidance in connection with Plans:

1. Section 637 of the Manual requires that any proposed amendment to a Plan must be filed with TSX for approval.
2. Plan Renewals entail an amendment to the Plan and must therefore be filed with TSX for approval. Plan Renewals will be reviewed by TSX in the same manner as an initial adoption of a Plan. Consequently, the relevant provisions of the Manual will apply, including the requirement to obtain security holder approval for the Plan in accordance with Section 636 of the Manual.
3. TSX recognizes that some Plans may contain specific terms addressing renewal of the plan. For example, some Plans require interim or periodic ratification by security holders prior to the Plan's expiry date (an "Interim Ratification"). Provided that the Interim Ratification does not entail an amendment to the Plan, TSX will not consider an Interim Ratification as a Plan Renewal. As such, there are no TSX filing or approval requirements for the Interim Ratification of a Plan. Listed issuers or their advisors who are uncertain whether a filing in connection with a Plan is required are encouraged to contact their listed issuer services manager.
4. Listed Issuers are reminded that the current version of a Plan is expected to be filed and publicly available through SEDAR as material agreements. Listed Issuers are also reminded that disclosure relating to the initial adoption of a Plan or a Plan Renewal is expected to accurately reflect the terms of the Plan.

If you have any questions about Plans, please contact your listed issuer services manager. Contact information for your listed issuer services manager is available at: <http://www.tmx.com/en/pdf/TSXLIS-IssuerManagerReport.pdf>.