



2015-0002

September 10, 2015

**Subsections 461.1–461.4 and Section 464
Director Elections and Annual Meetings**

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

Toronto Stock Exchange ("TSX") is providing updated guidance in respect of the requirements in Sections 461.1 to 461.4 (the "Director Election Requirements") and Section 464 (the "Annual Meeting Requirements", and together with the Director Election Requirements, the "Requirements") of the TSX Company Manual (the "Manual"). This updated guidance is being provided as a result of the recently adopted Section 401.1 of the Manual which sets out exemptions available to certain interlisted international issuers in respect of TSX director election and annual meeting requirements.

More specifically, this Staff Notice provides updated guidance regarding: (i) applications from International Interlisted Issuers¹ that do not qualify as Eligible International Interlisted Issuers² ("Other International Interlisted Issuers") for a waiver from the Requirements; and (ii) the application of the Requirements to Interlisted International Issuers at the time of listing on TSX.

This Staff Notice replaces TSX Staff Notice 2013-0002, which is repealed in its entirety. The following sections of this Staff Notice remain unchanged from TSX Staff Notice 2013-0002: (iii) director recommendation requirements where an amendment must be made to the issuer's articles of incorporation to meet annual election requirements; (iv) the application of the Requirements where an issuer has appointment or similar rights for its board of directors; and (v) compliance with the policy objectives of the Requirements. The guidance regarding the content of the news release disclosing director election results in TSX Staff Notice 2013-0002 has been removed from this Staff Notice because this guidance is now included in footnote 7 to Section 461.4 of the Manual.

1. Waiver Applications by Other Interlisted International Issuers

TSX will consider applications for a waiver from the Requirements from Other International Interlisted Issuers and this Staff Notice is intended to provide guidance on the key factors that TSX will consider in granting a waiver from the Requirements, having regard to the policy objectives set out below.

¹ **"International Interlisted Issuer"** means an issuer incorporated or organized outside of Canada and listed on another exchange.

² **"Eligible Interlisted Issuer"** means a listed issuer that is also listed on a Recognized Exchange and that had less than 25% of the overall trading volume of its listed securities occurring on all Canadian marketplaces in the 12 months immediately preceding the date of an application or notice, as applicable, pursuant to Section 401.1 or 602.1 of the Manual;

The Requirements were adopted to strengthen the Canadian corporate governance regime and support the integrity and reputation of the Canadian capital markets. In considering applications from Other International Interlisted Issuers for waivers from the Requirements, TSX will consider the issuer's submission in the context of the level of activity of the issuer in the Canadian market and whether the broader corporate governance framework to which the issuer is also subject demonstrates a comparable commitment to these policy objectives.

Applications for waivers from the Requirements should address the following factors in support of TSX granting the waiver:

- the name of the stock exchange or market on which the issuer primarily trades ("Home Market");
- the jurisdiction of incorporation or organization;
- the level of trading in Canada and the Home Market. TSX will be more receptive to an application where less than 25% of the overall trading volume of the issuer's listed securities occurred on all Canadian marketplaces in the 12 months immediately preceding the date of the application;
- if the issuer's jurisdiction of incorporation is not a Recognized Jurisdiction³, a detailed description of: (i) the issuer's compliance with director election standards and practices of its jurisdiction of incorporation; and (ii) the comparative director election practices of similar-sized issuers in its sector in its Home Market;

If the issuer is incorporated in a Recognized Jurisdiction, confirmation that the issuer is in compliance with director election standards and practices of its jurisdiction of incorporation and of its Home Market;

- if the issuer's jurisdiction of incorporation is not a Recognized Jurisdiction, a description of the corporate governance regime for director elections in the Home Market, including a description of current practices and trends; and
- any other material information in respect of the requested waiver which may be relevant to the application.

If TSX grants a waiver, the relief granted and the reasons for requesting such relief must be disclosed by the issuer in its annual information circular.

A waiver from the Requirements, once granted, will be effective for only one year (or until the issuer's next annual general meeting). Following an initial waiver, subsequent applications must address changes, if any, from the initial application. In the event that no changes have occurred, a submission confirming such fact will be sufficient. For greater certainty, Other International

³ "**Recognized Jurisdiction**" includes the following: Australia, England, Hong Kong and the State of Delaware and other jurisdictions with corporate statutes substantially modelled after these jurisdictions. Other jurisdictions may also be acceptable, as may be determined by TSX from time to time. In making its determination, TSX will compare the corporate statutes of these jurisdictions against the *Canada Business Corporations Act*.

Interlisted Issuers may not continue to rely on such exemption by filing a prior notification with TSX as provided for in Section 401.1 of the Manual.

2. Application of Requirements to Interlisted International Issuers at the Time of Listing

International Interlisted Issuers will not be required to meet the Director Election Requirements at the time of listing.

The Director Election Requirements will begin to apply when the issuer mails its materials for its first annual general meeting after listing on TSX provided that the issuer has been listed on TSX for at least twelve months at that time. For issuers who have been listed for a period of less than twelve months, the Director Election Requirements will not come into effect until the next annual general meeting.

Once subject to the Director Election Requirements, Other International Interlisted Issuers wishing to obtain a waiver from the Director Election Requirements should make an application to TSX, as outlined above.

3. Director Recommendation Requirements

TSX has received questions about the requirement that the board of directors recommend amendments to an issuer's articles of incorporation if necessary, in order to implement annual elections as contemplated in Section 461.1 of the Manual. If the board of directors of an issuer concludes that recommending the amendments will be contrary to its fiduciary duties, TSX will consider that an issuer has satisfied the requirement if the board states that such amendment is "as required by TSX". In such instance, the circular must provide balanced information about annual elections and the proposed amendment to implement annual elections.

4. Requirements for the Election of All Directors and Appointment Rights

Sections 461.1 and 461.2 require that security holders must be allowed to vote for each director to be elected by such class or series. These provisions do not apply to issuers with appointment rights that have been accepted by TSX at the time of original listing or otherwise. Issuers are reminded that TSX will continue to review and evaluate appointment rights in accordance with the TSX restricted securities policy set out in Section 624 of the Manual.

5. Compliance with the Policy Objectives of the Director Election Requirements

As previously stated, TSX adopted the Requirements to strengthen the Canadian corporate governance regime and support the integrity and reputation of the Canadian capital markets. Avoidance of the policy objectives through by-law provisions, other than those in the Requirements, or other means that have the effect of frustrating or avoiding the Requirements will be considered as a failure to comply with the Requirements. Such provisions, among other things, may include an extraordinary quorum requirement for the election of directors.

Please contact Eleanor Fritz (eleanor.fritz@tmx.com or 416.947.4541) or Scott Ainslie (scott.ainslie@tmx.com or 416.947.4767) if you have any questions about this Staff Notice.