



2017-0004

September 5, 2017

**Section 431
Special Year-End Distributions by Issuers**

**Section 624
Restricted Securities
Legal Designation**

**Subsection 613 (I)
Amendment Procedures
Security Based Compensation Arrangements**

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

*****This Staff Notice replaces TSX Staff Notice 2010-0002, which is repealed in its entirety.*****

Toronto Stock Exchange ("TSX") staff is providing guidance on:

1. special year-end distributions by income trusts ("Trusts") and other entities;
2. the application of the restricted securities policy in the *TSX Company Manual* (the "Manual") to issuers with special voting shares (or similar securities); and
3. amendment procedures for security based compensation arrangements impacted by federal tax changes with respect to employee stock options which are expected to become effective as of January 1, 2011.

1. Section 431

TSX staff reminds its issuers that Section 431 of the Manual requires that issuers provide TSX with notification of a distribution (including a dividend) declaration immediately following the meeting at which the decision to declare the distribution is made. In any event, a notice in the form of a Form 5: Dividend/Distribution Declaration ("Form 5") must be filed at least five (5) trading days prior to the record date. Form 5 must be filed using TSX SecureFile. Reference is made to Sections 428 to 435.2 of the Manual for additional details regarding dividends and other distributions to security holders.

This minimum five (5) trading day notification period applies to all distributions, including special year end distributions by Trusts, whether or not:

- a) the exact amount of the distribution known;
- b) the distribution is to be paid in cash, trust units and/or other securities; or

- c) if the distribution is to be paid in securities, the securities to be distributed are immediately consolidated after the distribution, resulting in no change to the number of securities held by security holders.

Where the exact amount of the distribution is unknown, issuers should provide, at the time they file their Form 5, their best estimate of the anticipated amount of the distribution and indicate that such amount is an estimate. Details regarding the payment of the distribution in cash, trust units and/or other securities and whether such securities will be immediately consolidated must be provided. Upon determination of the exact amount of any estimated distribution, the issuer must disseminate the final details by news release and provide TSX's Dividend Administrator with a copy of the news release, by email or fax.

(Paragraph repealed March 11, 2021)

TSX staff further reminds its issuers that notices of any distributions, other than those solely payable in cash, should also be filed with the appropriate Listed Issuer Services Manager, in addition to the TSX Dividend Administrator. The TSX Dividend Administrator, Kay Dhanraj, can be reached at (416) 947-4663 or kay.dhanraj@tsx.com.

2. Section 624

TSX has received applications involving the issuance of a special voting share or similar security (a "Special Share"). These applications have included, but are not limited to, original listing applications and income trust conversions into corporate entities (including conversions which are intended to replicate special rights which existed in the income trust). A Special Share is typically issued to a significant security holder or founder of the applicant or listed issuer, has limited or no equity value and confers rights to its holder that are different than those attached to the class of equity securities offered to the public (the "Equity Shares"). These rights may include board appointment rights, management appointment and removal rights, and veto rights over matters typically considered by the board or management.

TSX generally considers that a Special Share limits the voting rights attached to Equity Shares. Consequently, TSX will apply the provisions of Subsections 624 (c), (d), (e) and (f) of the Manual in respect of the legal designation of the Equity Shares. TSX will not permit Equity Shares to include the word "common" in the legal designation if a Special Share is issued or issuable. In such circumstances, pursuant to the restricted securities policy, TSX will require that the Equity Shares be designated as limited voting, restricted voting or another appropriate designation to alert investors that the Equity Shares are not "Common Securities" as defined in Part 1 of the Manual.

In accordance with Subsection 624(g), TSX may exempt applicants and listed issuers from these designation requirements. It has been TSX practice to provide an exemption if the holder of the Special Share has board appointment rights proportionate and correlated to its equity interest. For example, if the holder of the Special Share holds 50% of the Equity Shares, it may be permitted to appoint up to three out of six directors. In addition, where the holder of the Special Share also holds Equity Shares, such holder will only be permitted to either (and not both): i) exercise the right to appoint directors to the board as provided by the Special Share; or ii) exercise the votes attached to the Equity Shares in respect of the election of directors. Disclosure as to whether the holder will exercise the rights attached to the Special Share or exercise the votes attached to the Equity Shares will be required in each management information circular (or similar

document) while the Special Share is outstanding. However, TSX will also consider other rights attached to the Special Share in determining whether it is appropriate to grant an exemption.

In accordance with Subsection 624(g), TSX will consider the public interest and the principles underlying Section 624 of the Manual when applying its discretion under Section 624. In addition to the disclosure required under Subsection 624(i), TSX may also require specific disclosure in the listed issuer's continuous and timely disclosure documents in respect of the rights attached to the Special Share.

TSX will consider the Special Share together with other securities held by a significant security holder to assess whether the Equity Shares should explicitly contain take-over bid protections (e.g. coattails), as contemplated in Subsection 624 (l) of the Manual.

Listed Issuers and their advisors should also review OSC Rule 56-501 *Restricted Shares* to determine whether any exemptive relief is required under securities legislation.

3. Subsection 613 (l) — Amendment Procedures

(Section repealed January 10, 2024)

If you have any questions about this Staff Notice, please contact your listing manager. Please refer to the following link under Listed Issuer Services to find your Listed Issuer Services Manager: <https://www.tsx.com/listings/tsx-and-tsxv-issuer-resources/tsx-issuer-resources/tsx-listings-staff>.