

2023-0001

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Voting Agreements

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

Toronto Stock Exchange (“**TSX**”) is providing guidance with respect to how TSX currently addresses voting agreements between or among a listed issuer and one or more of its security holders. Specifically, TSX is providing guidance on voting agreements that require a security holder to vote, or cause to be voted, any voting securities that it holds, or over which it exercises control or direction, directly or indirectly, as directed by management or in favour of one or more management proposals (a “**Voting Agreement**”). Most commonly, Voting Agreements are seen in the context of director elections, where a security holder covenants to vote in favour of one or more of management’s director nominees; however, Voting Agreements may also relate to transactions or corporate actions.

Material Effect on Control

TSX generally considers Voting Agreements to have a material effect on control of the issuer to which the Voting Agreement relates. As a result, TSX reviews Voting Agreements in the context of: (i) original listings under Part III - *Original Listing Requirements* of the *TSX Company Manual* (the “**Manual**”) as part of the TSX review of existing material agreements; and (ii) transactions under Part V - *Special Requirements for Non-Exempt Issuers* (“**Part V**”), Part VI - *Changes in Capital Structure of Listed Issuers* (“**Part VI**”) of the Manual, and more specifically, Section 501(c) (Special Requirements for Non-Exempt Issuers) and Section 604(a)(i) (Security Holder Approval) of the Manual.

TSX reminds stakeholders that transactions materially affecting control of an issuer require disinterested security holder approval.

Part I - *Introduction* of the Manual defines “**materially affect control**” as including the ability of any security holder or combination of security holders acting together to influence the outcome of a vote of security holders. Holdings of voting securities by a combination of security holders acting together may be considered to materially affect control, depending on the individual circumstances of the issuer. Whether a Voting Agreement materially affects control of an issuer is a factual analysis and is affected by an issuer’s individual circumstances and a variety of factors.

Acceptance Conditions

TSX will generally accept a Voting Agreement if one of the following conditions is met:

1. the listed issuer has obtained disinterested security holder approval for the Voting Agreement; or
2. the Voting Agreement allows a covenanting security holder to abstain, or not participate, in a security holder vote.

Discretionary Considerations

If a Voting Agreement does not meet one of the conditions set out above under “Acceptance Conditions”, TSX will consider the following factors to determine whether the Voting Agreement would have a material effect on control of the issuer:

- A. the proposed term of the Voting Agreement (i.e. is it time-limited, or based on the completion of a specific transaction, such as a lock-up agreement or voting support agreement in the context of a merger or acquisition, or does the Voting Agreement continue for a multi-year or indefinite period?);
- B. whether the Voting Agreement results in a block sufficient to influence the outcome of a vote (which may occur at as low as 10% and is typically regarded as more than 20% of the issued and outstanding voting securities of the issuer, on a non-diluted basis, including the securities controlled by management, including in connection with other Voting Agreements, and any other security holders acting jointly and in concert);
- C. the context in which the Voting Agreement is being entered into; and
- D. the consequences to the covenanting security holder for breaching the Voting Agreement.

Voting Agreements Generally Not Reviewed by TSX

Voting Agreements that are: (i) entered into by a listed issuer independent of a treasury issuance of listed or convertible securities to the covenanting security holder or its affiliates; or (ii) not linked, directly or indirectly, to a transaction that is otherwise reviewable by TSX under Part V or Part VI of the Manual, are generally not reviewed by TSX.

If you have any questions about this Staff Notice, please contact: (i) Anne Child (Managing Director, TSX Listings) at anne.child@tmx.com; (ii) Valerie Douville (Senior Compliance & Governance Advisor) at valerie.douville@tmx.com; or (iii) Selma Thaver (Managing Director, TSX Listings) at selma.thaver@tmx.com.