

OCTOBER 2012

- 1 Proposed Amendments to the TSX Company Manual – Majority Voting
- 2 Comment Period

Proposed Amendments to the TSX Company Manual – Majority Voting

Introduction

Pursuant to [recent amendments to the TSX Company Manual](#) (the “Manual”), which will become effective on December 31, 2012, issuers listed on the Toronto Stock Exchange (the “TSX”) will be required to disclose whether they have adopted a “majority voting” policy in respect of director elections.

The TSX is currently seeking comments on a proposal for further amendments to the Manual, which would require TSX-listed issuers to elect directors by way of “majority voting” at uncontested meetings.

Majority Voting

Under Canadian corporate law, in the context of the election of directors, shareholders who vote by proxy have only two options: vote “for” or abstain from voting for each director nominee or slate of directors. Given that votes abstained do not count and that, in practice, most shareholders of Canadian public companies vote by proxy, a director nominee or slate of directors will generally need only one “for” vote to be elected. According to the Canadian Coalition for Good Governance (the “CCGG”), this system is not in the best interests of shareholders “as it does not permit [them] to vote against an underperforming director and allows an entrenched board to continue to be in charge of the company, even if they are opposed by a majority of the owners of the company”.

Under the proposed majority voting policy, votes abstained will be considered “against” votes and will be counted as part of the total votes cast. Consequently, a director who receives a majority of votes abstained is considered not to have

received the support of the shareholders and would be required to tender his or her resignation. The CCGG notes that 61% of listed issuers on the S&P/TSX Composite Index have a majority voting policy.

Amendments

The main passage of the proposed amendments reads as follows:

“Listed issuers must have majority voting for the election of directors at uncontested [shareholder] meetings. In satisfaction of this requirement, a listed issuer may adopt a majority voting policy that requires a director that receives a majority of the total votes cast withheld from him or her to immediately tender his or her resignation to the board of directors, to be effective on acceptance by the board. The policy must also provide that the board shall consider the resignation and disclose by news release the board’s decision whether to accept that resignation and the reasons for its decision no later than 90 days after the date of the resignation.”

It should be noted that in order to avoid conflict with applicable corporate or securities law requirements, issuers will be able to adopt a non-binding majority voting policy (also called a “holdover rule”) in satisfaction of the amendments. Under such a policy, directors who receive a majority of votes abstained are still elected but resign at a later date so as to provide the board of directors with time to reconstitute and reorganize itself.

Rationale

The TSX asserts that the amendments will improve corporate governance standards by increasing the accountability of directors, enhancing dialogue between issuers, shareholders and stakeholders as well as improving transparency. Glass, Lewis & Co. and Institutional Shareholder Services, two important

proxy advisory firms operating in Canada, have indicated that they generally support proposals calling for majority voting.

There are also negative aspects to majority voting. For example, more time and money may be spent on director elections through telephone solicitation, second mailings of proxy materials, etc. There is also a risk of “failed” elections (where one or more directors are not seated on the board), which can, however, be mitigated by a non-binding majority voting policy.

Comment Period

Please note that the comment period in respect of these amendments ends on November 5, 2012.

If you are interested in submitting comments, please feel free to contact a member of our [National Securities | Corporate Finance Group](#) or address them directly to the TSX following the [instructions](#).