



## TSX AMENDS DISCLOSURE RULES

By Lisa Andrews and Nick Karakochuk

Recently, the Toronto Stock Exchange (“TSX”) has adopted amendments to the TSX Company Manual (the “Manual”) relating to the disclosure of certain corporate governance documents and disclosure relating to security based compensation arrangements. We have provided a brief summary of the changes with a more comprehensive discussion further below.

### SUMMARY

Effective April 1, 2018, each TSX-listed company will need to maintain a publicly accessible website (if it does not do so already) and must post on their website the following corporate governance documents, as applicable:

- articles of incorporation, amalgamation, continuation or any other constating or establishing documents of the issuer, together with the issuer’s bylaws;
- majority voting policy;
- advance notice policy;
- position descriptions for the chairman of the board and the lead director;
- board mandate; and
- board committee charters.

The company must ensure that the most recent versions of such documents are posted on the company’s website at all times. The webpage containing the above-noted documents must be easily identifiable and accessible from the company’s homepage. If the website is for more than one TSX-listed company, each company should have its own webpage containing the applicable corporate governance documents.

For fiscal years ending on or after October 31, 2017, if the company has or wishes to adopt a security based compensation arrangement (a “Plan”), the company must include in its management information circular an annual “burn rate” (as further discussed below) for the three prior fiscal years of each Plan that results in the issuance or potential issuance of securities from treasury. Additionally, requirements relating to disclosure in the management information circular of the Plan maximum, outstanding

securities awarded under the Plan, remaining securities available for grant, vesting and term of grant have been added.

## DISCUSSION

### Website Disclosure

The TSX has introduced section 473 and amended section 461.3 of Part IV of the Manual in order to require listed issuers (other than Non-Corporate Issuers, Eligible Interlisted Issuers and Eligible International Interlisted Issuers, as such terms are defined in the Manual) to maintain a publicly accessible website and publish current versions of the following documents:

- By-laws and Constatings or establishing documents, including as applicable, articles of incorporation, amalgamation or continuation; and
- Where any of the following have been adopted:
  - Majority voting policy;
  - Advance notice policy;
  - Descriptions for the positions of chairman of the board and lead director;
  - Board mandate; and
  - Board committee charters.

In addition, section 473 requires that the webpages containing the above listed documents be easily identifiable and accessible from the listed issuer's home page or investor relations page.

### Required Disclosure when Seeking Approval of Security Based Compensation Arrangement

The TSX introduced section 613(p) and amended the disclosure requirements under section 613(d) of Part VI of the Manual. These amendments introduced a formula for calculating the annual burn rate applicable to each Plan of a listed issuer, clarified the disclosure required in respect of each Plan, and established the timing requirements for such disclosure.

Where materials are to be presented to security holders in connection with the approval of a Plan, the requirement for prior TSX approval of such materials remains unchanged under the amended section 613(d). In addition to those disclosure requirements already existing under section 613(d), the TSX now requires a listed issuer to provide the following information in its meeting materials:

- the maximum number of securities issuable under each Plan as either (i) a fixed number, together with the percentage this number represents relative to the listed issuer's issued and outstanding securities; or (ii) a fixed percentage of the listed issuer's issued and outstanding securities;
- the number of outstanding securities awarded under each Plan, together with the percentage this number represents relative to the listed issuer's issued and outstanding securities;

- the number of securities under each Plan available for grant, together with the percentage this number represents relative to the listed issuer's issued and outstanding securities; and
- the annual burn rate of each Plan, calculated in accordance with section 613(p).

Section 613(d) further requires that all disclosure materials be made effective as of:

- the end of the listed issuer's most recently completed fiscal year, where such materials are presented at an annual meeting; or
- the date of the meeting materials, where such materials are presented at any security holder meeting, other than an annual meeting, where security holder approval is sought in connection with a Plan.

Section 613(p) requires that the annual burn rate be calculated in accordance with the following formula:

- $$\frac{\text{(Number of securities granted under the Plan during the applicable year)}}{\text{(Weighted average number of securities outstanding for the applicable year)}}$$

Listed issuers must disclose each Plan's annual burn rate for the three most recently completed fiscal years.

If you have any questions with respect to these amendments, please feel free to contact us.

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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