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Re: Proposed Amendments to Part IV of the Toronto Stock Exchange (“TSX”) Company Manual (the “Proposed Amendments”) outlined in the Amendments to Part IV of the TSX Company Manual – Request for Comments dated September 9, 2011 (the “TSX Request for Comments”).

FAIR Canada is pleased to offer comments on the Proposed Amendments which would require issuers listed on the TSX to elect directors individually, hold annual elections for all directors, disclose whether they have adopted a majority voting policy for directors for uncontested meetings and advise the TSX if a director receives a majority of “withhold” votes.

FAIR Canada is a national, non-profit organization dedicated to putting investors first. As a voice of Canadian investors, FAIR Canada is committed to advocating for stronger investor protections in securities regulation. Visit www.faircanada.ca for more information.

FAIR Canada Comments and Recommendations – Executive Summary

1. FAIR Canada supports the Proposed Amendments which would improve the corporate governance practices of TSX listed issuers. However, we believe that some of the Proposed Amendments to the TSX Company Manual should be modified in order to make a substantial improvement to the corporate governance practices of TSX listed issuers and ensure that TSX listed issuers meet current international best practices¹.
2. FAIR Canada supports the Proposed Amendments that will eliminate slate voting in favour of electing directors individually.

¹ The United States is the only other major jurisdiction that still has plurality voting. In its February 2, 2009 submission to the CSA, the Canadian Coalition for Good Governance noted that changes to Delaware corporate laws to permit bylaw amendments to require majority voting for directors had resulted, at that time, in different versions of majority voting bylaws and policies being adopted by over two-thirds of S&P500 companies. See the letter online at http://www.ccg.ca/site/ccgg/assets/pdf/Letter_to_CSA_-_February_2,_2009.pdf.

3. FAIR Canada supports the Proposed Amendments which will prevent staggered boards and will require annual elections for all directors.
4. FAIR Canada urges the TSX to mandate majority voting rather than implementing an “adopt or explain why they have not” approach to voting. Majority voting policies would support good governance by providing a meaningful way for security holders to hold directors accountable and remove underperforming or unqualified directors. It would also align the TSX Company Manual with international best practices.
5. FAIR Canada recommends that the TSX require disclosure to the public of the voting results for each item on the proxy, including voting results for individual directors, in order to improve communications between shareholders and issuers and in order to improve accountability to shareholders.
6. FAIR Canada has also provided responses to the specific questions posed in the consultation paper.

1. FAIR Canada supports the Proposed Amendments regarding election of directors of TSX listed issuers

- 1.1. FAIR Canada views the Proposed Amendments to be a positive step toward improving the Canadian proxy voting system for the benefit of all shareholders. We provide some additional recommendations for improvement with respect to some of the Proposed Amendments below. FAIR Canada also recommends that Canadian securities regulators consider additional reforms in the interests of shareholders and good governance. In particular, FAIR Canada recommends that securities regulators undertake a public consultation to examine reforms that would allow shareholders to put forward nominees for election to the board of directors and have their nominees listed in the management proxy circular without the onerous and expensive current legal requirements. FAIR Canada also recommends that securities regulators undertake a public consultation to examine ways to allow shareholders to communicate or solicit other shareholders without the need to file a dissident proxy circular. We recognize that changes to corporate laws and securities laws may be required to institute these changes.
- 1.2. FAIR Canada believes that Canadian regulators should reform securities regulations so that all voting is required to be conducted by ballot in order to protect shareholders and improve corporate governance. If votes are conducted by ballot, then the number of votes cast for or withheld from the vote will be disclosed to shareholders. If voting is done by a show of hands under plurality voting, then very little of information of use is provided to the shareholders.

2. FAIR Canada supports the Proposed Amendments that will eliminate slate voting in favour of electing directors individually

- 2.1. We support the abolition of slate voting in favour of voting for each individual director. This will allow shareholders to voice their level of support for each individual director and hold each individual director accountable. It will also provide insight into the level of support of security holders for each director.

- 2.2. Slate voting should be abolished as it does not provide shareholders with choice – the shareholder is forced to either vote for all of the directors on the ballot or withhold their vote from all directors. This form of voting does not allow shareholders to distinguish those directors who meet a high level of competence, integrity, and capability versus those who have fallen below an acceptable standard of performance.
- 2.3. As noted by the TSX Request for Comments, approximately eighty-three per cent (83%) of listed issuers in the S&P/TSX Composite Index hold individual director elections and the other major international markets have already implemented the practice of individual director elections. FAIR Canada supports the elimination of slate voting as it will bring TSX listed issuers in line with international best practices.

3. FAIR Canada supports the Proposed Amendments which will prevent staggered boards and will require annual elections for all directors

- 3.1. We support the Proposed Amendments which will prohibit staggered boards as staggered elections can limit shareholders' ability to make changes to the board since not all directors will come up for re-election at the same time. In addition, if individual director elections are implemented, it is more logical to also formally require annual elections so that shareholders can implement changes to the composition of the board at a given date rather than over a period of years.
- 3.2. The TSX Request for Comments notes that ninety-eight per cent (98%) of issuers in the Index hold annual director elections. The Proposed Amendment should not, therefore, be controversial and will simply implement the status quo as a requirement.

4. FAIR Canada urges the TSX to mandate majority voting

- 4.1. FAIR Canada urges the TSX to mandate majority voting rather than implementing an "adopt or explain why they have not" approach to voting. As noted in the TSX's Request for Comments, "[m]ajority voting policies support good governance by providing a meaningful way for security holders to hold directors accountable and remove underperforming or unqualified directors."
- 4.2. The fact that issuers have not adopted mandatory voting policies to the same degree as the other Proposed Amendments is not a sufficient justification for not implementing majority voting. It is FAIR Canada's understanding that a significant number of Canada's leading companies have adopted majority voting as recommended by the Canadian Coalition for Good Governance as set out in its Majority Voting Policy of March 2011.
- 4.3. The plurality system where a single vote for a director (with the rest of the votes being "withheld") is sufficient to be duly elected to the board is inconsistent with good governance and is not in the best interests of shareholders. It does not allow underperforming directors to be voted off the board or permit directors to be voted off the board even if a majority of the shareholders withhold their vote for those directors. This disengages shareholders from the proxy voting process and impedes good corporate governance.
- 4.4. FAIR Canada supports mandatory voting given that most other international jurisdictions have adopted mandatory voting practices. Canadian investors should have as effective a voice as do investors in other jurisdictions.
- 4.5. In the TSX Request for Comments, the TSX acknowledges that the concerns militating against mandatory voting do not appear to have been the experience of those issuers in Canada that have

adopted majority voting policies. It states, “[f]unctionally, with a non-binding majority voting policy, directors that do not receive sufficient support are still elected, but they resign at a later time giving time for the board to reconstitute and reorganize if necessary without being offside any laws or creating any governance issues.”

- 4.6. The “concerns” of being offside corporate or securities law (that have not come to pass in Canada) and the lack of understanding or acceptance by all listed issuers of majority voting (fifty-seven per cent (57%) of listed issuers in the Index have adopted a majority voting policy) are not sufficient to delay the passage of an important reform which will benefit shareholders and corporate governance.
- 4.7. FAIR Canada also believes that implementing a majority voting requirement would entail less regulatory oversight than that required by the disclosure model proposed by the TSX as the TSX will not have to increase its resources or engage in evaluative processes in order to “...follow up with such issuers where a director has not received a majority of votes, to understand the issuer’s intentions and corporate governance practices in light of the voting results. TSX also would follow up with the director to understand how the vote results may affect his/her views about serving as a director”.

5. FAIR Canada recommends that the TSX require disclosure to the public of voting results

- 5.1. FAIR Canada recommends that the TSX require disclosure to the public by press release (and not just to the TSX) of voting results for each item on the proxy, including voting results cast “for” or “withheld” for individual directors, in order to improve communications between shareholders and issuers and in order to improve accountability to shareholders.
- 5.2. Only being required to publicly disclose to the public whether a director was elected or not, or whether a resolution passed or not, does not give shareholders sufficient information by which they can gauge the level of support for any given director or matter.

6. FAIR Canada provides responses to the specific questions posed in the consultation paper

***Question 1:** Is this initiative appropriate for TSX to pursue or are other organization(s) better suited to pursue it? Please consider whether all exchanges should require their issuers to have these corporate governance standards in responding to this question.*

- 6.1. FAIR Canada believes that it is within the mandate and appropriate for the TSX to pursue the Proposed Amendments. We believe that instituting all of the Proposed Amendments, including the recommendations of FAIR Canada discussed above in this submission, would be beneficial to shareholders and would bring corporate governance standards up to international best practices.
- 6.2. FAIR Canada would encourage the CSA to also move forward with such proposals. Should they do so, such initiatives would be complementary to the Proposed Amendments.

***Question 2:** Has TSX struck the appropriate balance between requirements and disclosure? If not, what revisions do you recommend, and why?*

- 6.3. Please see the discussion at section 5 above. We agree with Kenmar Associates’ submission that benchmarking against the requirements for listed issuers of other major international exchanges should be conducted annually.

Question 3: Will disclosure of majority voting practices encourage issuers to consider this practice and improve investors' understanding of an issuer's corporate governance practices?

- 6.4. FAIR Canada believes that disclosure would help in providing transparency and increasing understanding by shareholders, but requiring listed issuers to adopt a majority voting policy and to disclose voting results would result in substantive improvements to the corporate governance regime and shareholder rights.

Question 4: Do you support TSX mandating that its issuers have a majority voting policy for uncontested director elections? Please identify potential positive and negative impacts that may result if issuers are required to have a majority voting policy.

- 6.5. Please see section 4 above.

Question 5: Do you foresee any negative impact of the Amendments on issuers or other market participants?

- 6.6. We do not foresee any negative implications resulting from the Proposed Amendments.

Question 6: Should TSX consider requiring disclosure of vote results? In the alternative, should TSX consider requiring that the election of directors be conducted by ballot to ensure public disclosure of the vote results?

- 6.7. Yes, see above in section 5.

We thank you for the opportunity to provide our comments and views in this submission. We welcome its public posting and would be pleased to discuss this letter with you at your convenience. Feel free to contact Ermanno Pascutto at 416-572-2282/ ermanno.pascutto@faircanada.ca or Marian Passmore at 416-572-2728/ marian.passmore@faircanada.ca.

Sincerely,



Ermanno Pascutto
Canadian Foundation for Advancement of Investor Rights