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Re: Proposed Amendments to Part IV of the Toronto Stock Exchange (“TSX”) Company Manual (the “Proposed Amendments”) outlined in Amendments to Part IV of the TSX Company Manual – Request for Comments dated October 4, 2012 (the “TSX Request for Comments”)

FAIR Canada is pleased to offer comments on the Proposed Amendments that would require issuers listed on the TSX to have majority voting for uncontested director elections and the TSX’s request as to whether there are ancillary rule amendments or other relevant issues not discussed in the TSX Request for Comments that should be considered in adopting the Proposed Amendments.

The Proposed Amendments are in addition to amendments to the TSX Company Manual that have been approved by the Ontario Securities Commission (“OSC”) that relate to how a listed issuer elects its board of directors. The new rules that have been approved include requirements to elect directors annually, to elect directors individually, to publicly disclose the votes received for the election of each director, to disclose if they have adopted a majority voting policy for uncontested director elections and to disclose to TSX if a director received a majority of “withhold” votes, if they do not have a majority voting policy. These amendments were proposed by the TSX in September 2011 and will come into effect December 31, 2012.

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 that would require issuers listed on the TSX to have majority voting for director elections at uncontested meetings. Requiring majority voting policies will support good governance by providing a meaningful way for security holders to hold directors accountable and remove underperforming or unqualified directors. It will also help to align the TSX Company Manual with international best practices.

2. FAIR Canada recommends that the TSX require disclosure to the public by press release of voting results for each item on the proxy, and not just the voting results cast “for” and “withheld” for individual directors, in order to improve communications between shareholders and issuers and in order to improve accountability to shareholders.
3. 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 can be accurately disclosed to shareholders. If voting is done by a show of hands, then very little information of use is provided to shareholders.
4. FAIR Canada supports the Canadian Coalition for Good Governance (“CCGG”) in its call for reform of the proxy voting system and its call for the OSC to take concrete steps in the upcoming year to develop specific proposals that will address systemic problems in the proxy voting system. FAIR Canada makes some specific recommends in section 4 below.
5. FAIR Canada has also provided responses to the specific questions posed in the consultation paper.

1. FAIR Canada Supports the Requirement for Majority Voting for Director Elections

- 1.1. FAIR Canada supports the Proposed Amendments that would require issuers listed on the TSX to have majority voting for director elections at uncontested meetings. Requiring majority voting policies will support good governance by providing a meaningful way for shareholders to hold directors accountable and remove underperforming or unqualified directors.
- 1.2. The existing 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. Under this model, underperforming directors are not voted off the board if a majority of the shareholders withhold their vote for such directors. This disengages shareholders from the proxy voting process and impedes good corporate governance.
- 1.3. Other international jurisdictions have adopted mandatory voting practices and, therefore, FAIR Canada supports the Proposed Amendments as they will assist in aligning the TSX Company Manual with international best practices. Canadian investors should have as effective a voice in electing directors as investors in other jurisdictions.
- 1.4. If issuers are concerned about the potential for failed elections or a loss of sufficient directors to constitute a quorum (which has not been the experience in Canada where majority voting policies have been voluntarily adopted and the risk of which is greatly overstated by listed issuers given corporate law statutory provisions) the issuer may adopt a majority voting policy that requires a director that receives a majority of the total votes withheld from him or her to immediately tender his or her resignation to the board, but the board retains the discretion as to whether to accept the resignation or not. In such instances the board must disclose by news release the decision of the board and its reasons. Such concerns, therefore, are addressed in the Proposed Amendments and should not prevent the Proposed Amendments from being implemented.

- 1.5. FAIR Canada supports the requirement to have majority voting as it will require less regulatory oversight than the “adopt or explain why they have not” disclosure approach to majority voting (which is set to come into effect on December 31, 2012). The latter approach puts an obligation on the TSX to allocate sufficient resources to engage in an evaluative process to follow up with those issuers who have chosen to “explain why they have not” in order to understand the issuer’s intentions and corporate governance practices in light of the voting results and the need to follow up with the director to understand how the vote results may affect his/her views about serving as a director.¹

2. FAIR Canada Supports Disclosure to the Public of all Voting Results

- 2.1. FAIR Canada recommends that the TSX require public disclosure by press release of the voting results for each item on the proxy, and not just the voting results cast “for” and “withheld” for individual directors, in order to improve communications between shareholders and issuers and to improve accountability to shareholders.
- 2.2. For example, information disclosed on the voting results for a resolution that was passed or did not pass provides more information to shareholders on the level of support for that resolution.

3. FAIR Canada Recommends that All Votes Be Conducted by Ballot and the Results Be Disclosed to the Public

- 3.1. FAIR Canada supports the requirement that the results of the vote on the election of directors be disclosed to the public through a news release in which the detailed results of the votes received for the election of each director is provided. That is, the number of securities voted by proxy in favour of or withheld for each director is disclosed, as is the outcome of the vote by a show of hands.
- 3.2. FAIR Canada recommends 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 the election of directors is conducted by ballot, then the number of votes cast for or withheld from the vote will be known and can be disclosed. This provides more accurate reporting and information than the result of a show of hands. Similarly, the level of support on a resolution that was the subject of a vote can also be determined. This is not the case for voting conducted through a show of hands.

4. FAIR Canada Supports Reform of Proxy Access and Proxy Process

- 4.1. FAIR Canada supports the CCGG in its call for a reform of the proxy voting system and its call for the OSC to take concrete steps in the upcoming year to develop specific proposals that will address systemic problems in the proxy voting system.
- 4.2. FAIR Canada notes that the OSC has committed in its Statement of Priorities for 2012-2013 to improve the proxy voting system through:
 - “conducting an empirical analysis to review concerns raised about the accountability, transparency and efficiency of the voting system

¹TSX Request for Comments: Amendments to Part IV of the TSX Company Manual (2011) 34 OSCB 9500 at page 9502.

- facilitating discussions amongst market participants on improving the functioning of the proxy system, taking into account the needs and concerns of retail investors, and
 - working with the CSA to review the role of proxy advisers in our capital markets by soliciting feedback from issuers, investors and other market participants.”
- 4.3. FAIR Canada agrees with the comments made by the CCGG to the OSC regarding the OSC’s Statement of Priorities for 2012-2013 that the concerns about the proxy voting system have been comprehensively identified and regulators should be identifying steps to address the systemic problems in the proxy voting system rather than conducting a “review” of those concerns or “facilitating discussions” on improving the proxy system.
- 4.4. 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.
- 4.5. 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.

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

Question 1: *Do you support TSX mandating that its listed issuers have majority voting, which may be satisfied by adopting a majority voting policy for uncontested director elections? Please identify potential positive and negative impacts if issuers are required to have majority voting.*

5.1. Yes, please see section 1 above.

Question2: *Do you believe it would be useful for TSX to provide specific guidance that it expects that the board of directors will typically accept the resignation of a director that receives a majority of “Withhold” votes, absent exceptional circumstances? If you agree, please suggest the preferred means to provide it (for example in a Staff Notice, in commentary about the Amendment or in the drafting of the Amendment itself).*

5.2. FAIR Canada recommends that it be stipulated in the Proposed Amendments that the board must accept the resignation and can only delay the acceptance of such resignation in exceptional circumstances which are set out in the Proposed Amendments (such as failed elections) and which allow an issuer to deal with any transition issues from the removal of one or more directors.

Question3: *What positive or negative impacts may the Amendments have on other market participants or the market in Canada in general?*

5.3. Please see section 1 above. We do not see any negative impact that the Proposed Amendments will have on other market participants or the market in Canada in general.

Question4: *Do you support the jurisdiction of TSX to adopt and enforce the Amendments? If not, please support your response, and differentiate the Amendments from the September RFC Amendments being finalized today.*

5.4. FAIR Canada supports the jurisdiction of the TSX to adopt and enforce the Proposed Amendments. We believe it is within the TSX's mandate and appropriate for the TSX to pursue the Proposed Amendments. We believe that instituting the Proposed Amendments, including the recommendations of FAIR Canada, set out in section 1 to 3 above would be beneficial to shareholders and would bring corporate governance standards up to international best practices.

Question5: *Are there additional ancillary rule amendments or other relevant issues not discussed in this Request for Comments that should be considered in adopting the Amendments?*

5.5. Yes, see above in sections 3 and 4.

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 416-214-3443 (ermanno.pascutto@faircanada.ca) or Marian Passmore at 416-214-3441 (marian.passmore@faircanada.ca).

Sincerely,



Ermanno Pascutto
Canadian Foundation for Advancement of Investor Rights