



Canadian Foundation *for*
Advancement *of* Investor Rights

November 12, 2012

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Re: Proposed Amendments to Toronto Stock Exchange Company Manual (the “Manual”) and Amendments to the Toronto Stock Exchange Rule Book (the “TSX Rules”) dated October 11, 2012 (the “TSX Request for Comments”)

FAIR Canada is pleased to offer comments on the Proposed Amendments that provide for amendments to the Manual and to the TSX Rules in respect of appeals from decisions of the listings committee.

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.

1. FAIR Canada believes that the Proposed Amendments contain insufficient detail in order for stakeholders and, in particular, individual shareholders to provide constructive comments. The research comparing other major international stock exchanges which has been conducted by the TSX should have been disclosed in the consultation document in order to obtain more informed and meaningful input regarding the Proposed Amendments. Simply stating that “[m]ost exchanges provide for internal appeals of their decisions” without any further detail or context is insufficient.
2. FAIR Canada also recommends that the TSX provide more time for stakeholders to comment on the Proposed Amendments. A thirty day consultation period is simply too short to obtain quality public comments. Stakeholders (including FAIR Canada) have requested that adequate time be given to provide comments in response to previous requests for comment issued by the TSX. The Canadian Securities Administrators (“CSA”), the Investment Industry Regulatory Organization of Canada (“IIROC”), the Mutual Fund Dealers Association of Canada (“MFDA”) and individual provincial securities commissions generally provide for 60-, 90- or 120-day comment periods. We see no reason for the TSX to provide for less time to respond.
3. FAIR Canada continues to be concerned about the absence of adequate safeguards to manage the inherent conflict of interest arising between the for-profit status of TMX Group and the TSX, and

TSX and TSX-V's role as regulators of listed companies. The TSX is a regulatory outlier of developed country exchanges in that it has not acted to adequately manage conflicts of interest inherent in its listing business and listings regulatory objectives. There is a need to take steps to address the conflicts of interest in its listings regulation. FAIR Canada urges regulators to act so that the TSX meets the minimum international "best practice" standard for the management of conflicts of interest.¹

4. Given the aforementioned conflict of interest, the appeal process and the Proposed Amendments to that appeal process are necessarily flawed and do not, in our view, meet the international "best practice" standard. The decisions made cover such matters as whether to approve an original listing, changes in capital structure, and suspensions and de-listings. These are important matters for Canada's capital markets and for retail investors.
5. FAIR Canada believes that the lack of any structural separation of the listings services unit from business development unit of the Issuer Services business line at the TSX is problematic in respect of listing regulatory decisions. It is also problematic that appeals from those decisions are not made to any type of independent listings committee but rather to the Senior Vice-President of the TSX (and, as contemplated in the Proposed Amendments, to a minimum of one and up to three senior officers of the TSX).
6. FAIR Canada recommends that the TSX consider implementing a process for appeals from original decisions of the TSX Listings Committee which allows for reviews of the decisions of the listings services unit in a manner which is, and is perceived to be, independent of business development concerns. The TSX could refer to its review of other international jurisdictions which have addressed this issue in determining how best to structure the process.
7. In addition, FAIR Canada recommends that the TSX consider the appropriateness of utilizing the Regulatory Oversight Committee ("ROC") to determine the appropriate process for appeals from the TSX Listings Committee. The ROC, in accordance with the OSC's Recognition Order² at section 20 of Schedule 3, has an obligation to:

"(iii)...consider real or perceived conflicts of interest that may arise, including but not limited to the following contexts: ...

(C) the profit-making objective and the public interest responsibilities of Maple, including general oversight of the management of the regulatory and public interest responsibilities of TMX Group, TSX...

(iv) oversees the establishment of mechanisms to avoid or appropriately manage conflicts of interest or potential conflicts of interest, perceived or real, including any policies and procedures that are developed by Maple, TMX Group, TSX, ... including those that are required to be established pursuant to the Schedules to the Order;

¹ Approaches to managing the conflict of interest are set out in FAIR Canada's submission dated November 7, 2011 in respect of the Maple Group Acquisition Corporation, online: <http://faircanada.ca/wp-content/uploads/2011/01/111107-FAIR-Canada-Submission-re-Maple-Proposal.pdf> and in the independent report of John Carson, "Managing Conflicts of Interest in TSX Listed Company Regulation" (2010), online: FAIR Canada <<http://faircanada.ca/wp-content/uploads/2008/12/TSX-Listings-Conflicts-final-report-23-Jul1.pdf>> [Carson].

² See Section 20 of Schedule 3 to the OSC's Exchange Recognition Order, available online at http://www.osc.gov.on.ca/en/Marketplaces_xxr-maple_20120704_recognition-orders.htm.

(v) monitors the operation of mechanisms that deal with conflicts of interest, including oversight of reporting of issuer regulation activities and conflicts of interest by TSX”

The mandate of the ROC, therefore, would include reviewing the process of appeals and establishing appropriate mechanisms to address perceived or real conflicts of interest. The ROC, unfortunately, is not discussed in the TSX Request for Comments.

8. FAIR Canada is pleased that the TSX has set up a Listings Advisory Committee, comprised of persons in the securities industry, to make determinations on complex or unique applications and to be a resource for policy consultation and has now published the list of the members of that committee. FAIR Canada recommends that members should be expanded beyond securities industry professionals to institutional and retail investor advocates and academics who are experts in the capital markets. In accordance with international best practice, the Listings Advisory Committee could be given a broader role.

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