TSX Pares Back Proposal to Amend Website and Security-Based Compensation Disclosure

April 26, 2017

Introduction

The Toronto Stock Exchange (TSX) has proposed revised amendments to the TSX Company Manual relating to website and security based compensation arrangement disclosure requirements.

The TSX had previously proposed amendments to these rules in its Request-for-Comment in May 2016 (the Prior Proposal). The current proposal includes "notable modifications" from the Prior Proposal and reflects comments from market participants that the Prior Proposal increased the regulatory burden on issuers and created uncertainty as to the type of documents required to be posted on an issuer's website.

The current amendments will only become effective following public notice and comment, and approval by the Ontario Securities Commission. Comments should be in writing and delivered to the TSX by May 8, 2017.

Website Disclosure

The current amendments pare down the type of governance documents a listed issuer would be required to make available on its website from those proposed in the Prior Proposal. Despite scaling back the types of documents that must be made available, the TSX stated that it remains committed to the idea that website disclosure will provide ready access to key information pertinent to investors and that there is value in providing investors with a centralized location for a listed issuer's corporate governance information.

Under the current amendments, the following documents would need to be disclosed:

- Articles of incorporation, amalgamation, continuation or any other constating or establishing documents of the issuer and its by-laws; and
- If adopted, copies of:
    - majority voting policy,
    - advance notice policy,

- position descriptions for the chairman of the board, the lead director, and key officers,
- board mandate, and
- board committee charters.

The revised proposal no longer would require a listed issuer to make available security rights plans, security based compensation arrangements and various other ethical, anti-corruption and other social and governance policies as was proposed in the Prior Proposal.

Security Based Compensation Disclosure

The current amendments remove the Form 15 for security based compensation disclosure that was proposed as part of the Prior Proposal. Instead, the Prior Proposal governing security based compensation disclosure will remain in effect with a few amendments, including disclosure of annual burn rate for security based compensation arrangements, and clarifications and additions to disclosure relating to the number of awards issuable, outstanding and available for grant.

Burn Rate. Under the current amendments, issuers will be required to disclose an annual burn rate for each security based compensation arrangement. The TSX has suggested that this was a relatively well received feature from the Prior Proposal and has been modified to reflect the feedback received. As proposed, the current amendments require disclosure of the burn rate and provide a formula for calculating the burn rate. Listed issuers seeking shareholder approval for a plan will be required to disclose the annual burn rate for each of its three most recently completed fiscal years. Where shareholder approval is not being sought for a plan, listed issuers will only be required to disclose the annual burn rate for the most recently completed financial year.

Awards Issuable, Outstanding and Available for Grant. The current amendments clarify and augment disclosure required in respect of the maximum number of awards issuable, outstanding and available under each stock based compensation plan of the issuer. Issuers will be required to disclose both the number of awards issuable, outstanding or available for grant as well as the percentage that such number represents compared to the number of the issuer's outstanding securities.

Timing. Consistent with the Prior Proposal, the current amendments require that disclosure for security based compensation arrangements prepared for an annual meeting be made as of the end of the prior financial year whereas disclosure included for special meetings should be as of the date of the meeting materials.

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