



TSX to Require Securityholder Approval of Public Company Acquisitions

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On September 25, 2009, the Toronto Stock Exchange (the "TSX") announced that the Ontario Securities Commission has approved an amendment (the "Amendment") to Part VI of the TSX Company Manual in respect of the acquisition of public companies by listed issuers.

Pursuant to the Amendment, a TSX listed issuer will be required to obtain securityholder approval when a TSX listed issuer proposes to issue securities as full or partial consideration for the acquisition of a target where the issuance of such securities would increase the number of the listed issuer's outstanding securities by 25% or more (on a non-diluted basis), regardless of whether the target is a private or public company.

The Amendment modifies the TSX's current shareholder approval requirements, removing the current public company exception which provides an exemption from securityholder approval requirements for the issuance of securities as consideration for an acquisition where such number of securities exceeds 25% of the issued and outstanding securities of the listed issuer where the listed issuer is acquiring a reporting issuer or issuer of equivalent status having 50 or more beneficial securityholders, excluding insiders and employees.

The Amendment was most recently published for public comment on April 3, 2009. In its request for comments, the TSX had proposed to require securityholder approval for the issuance of securities in payment of the purchase price for an acquisition of a public company which exceeds 50% of the number of issued and outstanding securities of the listed issuer on a non-diluted basis. In determining to lower the threshold to 25%, the TSX noted that a vast majority of the comments it had received in response to the April 2009 request for comments had submitted that the threshold dilution level should be lower than the 50% level proposed. Details regarding the April 2009 request for comments are provided in the Wildeboer Dellelce LLP May 2009 Securities Law update.

In the notice of the approval of the Amendments, the TSX indicated that while the TSX Company Manual

provides discretion to the TSX to impose or exempt listed issuers from the securityholder approval requirements in appropriate circumstances, the TSX "strives to consistently and transparently apply its rules, and not to rely on discretion to alter those rules other than in extraordinary circumstances or where the rules do not apply to the circumstances". To this end, the TSX indicated that it will continue to apply [subsection 611\(c\)](#) of the TSX Company Manual (which requires securityholder approval for transactions above the 25% threshold) in this manner and that the exercise of discretion by the TSX "is, and should be, limited, particularly where there is a bright line test that applies".

The Amendment will become effective on November 24, 2009. The Amendment will not have any retroactive effect, so that any transaction of which the TSX has been notified in writing prior to such date will be unaffected by the Amendment.

The TSX has indicated that it will monitor the effect of the Amendment on its issuers and the marketplace and will seek to monitor the costs and benefits of the Amendment, for its smaller issuers in particular.

This update is intended as a summary only and should not be regarded or relied upon as advice to any specific client or regarding any specific situation.

If you would like further information regarding the issues discussed in this update or if you wish to discuss any aspect of this commentary, please feel free to contact us.

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