

13.2.5 Toronto Stock Exchange – Request for Comment – Amendments to Toronto Stock Exchange Company Manual

TORONTO STOCK EXCHANGE

REQUEST FOR COMMENTS

AMENDMENTS TO TORONTO STOCK EXCHANGE COMPANY MANUAL

Toronto Stock Exchange (“TSX” or the “Exchange”) is publishing proposed public interest amendments to the voluntary delisting requirements (the “Amendments”) found in Section 720 of the TSX Company Manual (the “Manual”). The public interest changes will be published for public comment for a 30-day period.

The Amendments will be effective upon approval by the Ontario Securities Commission (the “OSC”) following public notice and comment. Comments should be in writing and delivered by **February 23, 2015** to:

Catherine De Giusti
Legal Counsel, Regulatory Affairs
Toronto Stock Exchange
The Exchange Tower
130 King Street West
Toronto, Ontario M5X 1J2
Fax: (416) 947-4461
Email: tsxrequestforcomments@tsx.com

A copy should also be provided to:

Susan Greenglass
Director
Market Regulation
Ontario Securities Commission
20 Queen Street West
Toronto, Ontario M5H 3S8
Fax: (416) 595-8940
Email: marketregulation@osc.gov.on.ca

Comments will be publicly available unless confidentiality is requested.

Overview

TSX is seeking public comment on the Amendments to the Manual. This Request for Comments explains the reasons for, and objectives of, the Amendments. Following the comment period, TSX will review and consider the comments received and implement the Amendments, as proposed, or as modified as a result of comments.

Text of the Amendments

The Amendments to the Manual are set out as blacklined text at **Appendix A**. For ease of reference, a clean version of the Amendments to the Manual is set out at **Appendix B**. The Amendments relate to the requirements and process for an issuer to voluntarily delist from TSX under Section 720 of the Manual.

Background

Section 720 of the Manual sets out the current requirements and process for an issuer to voluntarily delist from TSX. Currently, an issuer must apply to TSX in writing, outlining the reasons for the request. The issuer must also submit a certified copy of a resolution of the issuer’s board of directors authorizing the voluntary delisting request. Security holder approval is not currently a requirement for a voluntary delisting.

In certain circumstances, security holders may be prejudiced because a voluntary delisting may severely curtail liquidity. In the absence of another marketplace or near term liquidity event, security holders may be unable to sell their securities while having expected such investment to be reasonably liquid. This may leave security holders vulnerable to predatory take-over bids, management buy-outs or other similar transactions. In addition, security holders will no longer have the additional protection of TSX’s oversight of the issuer for dilutive and other capital transactions.

Summary of the Amendments

The new proposed Section 720 requires an issuer to submit an application for voluntary delisting to TSX, accompanied by: (a) a resolution of the issuer's board of directors authorizing the application to delist; and (b) a draft copy of the press release to be pre-cleared by TSX.

Under the Amendments, TSX proposes to generally require approval by the holders of the affected class or series of securities for a voluntary delisting application for the principal equity class(es) of a listed issuer's securities, unless TSX is satisfied that: (a) an acceptable alternative market exists or will exist for the listed securities on or about the proposed delisting date; (b) security holders have a near term liquidity event, such as a going private transaction, for which all material conditions have been satisfied and the likelihood of non-completion is remote; or (c) the listed issuer is under delisting review and it is unlikely that TSX will be satisfied that the deficiencies will be cured within the prescribed period. If any insider has an interest which materially differs from other security holders, such insider will not be eligible to vote its securities. Furthermore, a security holder that controls 50% or more of the affected class or series of securities of a listed issuer will generally not be eligible to vote in respect to the voluntary delisting.

TSX will also generally require security holder approval for the voluntary delisting of other classes of listed securities, if such securities are not convertible, exercisable or exchangeable into another class of listed securities.

A draft copy of the information circular or form of written consent used to obtain security holder approval for the voluntary delisting application must be submitted to TSX for pre-clearance at least five business days prior to finalization.

The delisting date for the securities is not to be earlier than the tenth business day following the later of: (a) dissemination of the press release pre-cleared by TSX announcing the voluntary delisting; and (b) the issuer having obtained security holder approval for the voluntary delisting, if applicable.

Rationale for the Amendments

TSX is proposing the Amendments to protect security holders and to preserve the integrity of the marketplace. TSX is concerned about the prejudice to security holders who may otherwise be deprived of a fair and orderly market for their securities without their approval. Security holder approval is not proposed to be required if the issuer has or will obtain a listing on another marketplace, or there is a near term liquidity event.

Without the proposed requirement, an issuer that is proposing a dilutive acquisition may apply for a voluntary delisting in order to avoid security holder approval. Without the security holder approval requirement for the voluntary delisting, security holders may be deprived of an opportunity to vote on such dilutive acquisition and TSX's oversight of future transactions. In light of directors' fiduciary duties, it is rare for a board to approve a voluntary delisting in the absence of another marketplace or a near term liquidity event. Nonetheless, TSX has from time to time received such applications and is accordingly proposing the Amendments to protect security holders while providing a transparent process.

In order to balance the interests of the investing public with those of security holders of an issuer that is under delisting review, the proposed Amendments allow a voluntary delisting without security holder approval for listed issuers that are under delisting review where it is unlikely that the issuer will regain compliance. We believe the Amendments will allow TSX to properly administer continued listing privileges to the benefit of the market as a whole.

TSX is also proposing to exclude insiders from voting on the resolution to approve the voluntary delisting application when, in TSX's opinion, the insiders' interests materially differ from those of other security holders. Conflicts of interest could arise in the case of an announced going-private transaction led by management. This approach is consistent with TSX requirements for transactions involving insiders and related parties and is consistent with protecting the interests of the public and promoting the integrity of the Canadian capital market.

In addition, if a security holder controls 50% or more of the issued and outstanding securities of the affected class or series, such holder will be deemed to have interests materially differing from those of other security holders and will be excluded from the vote. Typically, a security holder with a majority controlling interest in an issuer has a significantly different interest than smaller security holders. The nature of the investment for such security holders tends to be of a longer term investment, often strategic and therefore typically a liquid market for the securities is less important. Excluding major controlling security holders from the vote is consistent with the approach by most of the other exchanges reviewed by TSX.

The Amendments will also improve the consistency of information about the voluntary delisting available to the market because the news release, information circular and form of consent, if applicable, will be subject to TSX review and pre-clearance. We believe that this will be beneficial to the quality of the marketplace and promote investor confidence.

To ease the cost and regulatory burden, issuers who are required to obtain security holder approval for a voluntary delisting will be able to rely on the procedure in Subsection 604(d) of the Manual to obtain the requisite security holder approval in writing rather than at a security holder meeting.

Review of Other Exchange Rules

We conducted a review of the voluntary delisting requirements among various other stock exchanges. With respect to the requirement for security holder approval for voluntary delistings, apart from the U.S. exchanges, other major exchanges require security holder approval. The U.S. exchanges operate in a different market environment from other countries with two major exchanges competing for similar listings and a vibrant OTC market, which together with the litigious nature of shareholders in the US may alleviate some of the concerns around voluntary delisting without security holder approval. Domestically, Aequitas requires security holder approval, while the Canadian Stock Exchange does not. By way of reference, on TSX Venture Exchange, approval of the majority of minority security holders is required if an acceptable alternative market does not exist for the securities to be delisted. Public disclosure of an issuer's intention to voluntarily delist is a common requirement amongst the exchanges reviewed. Therefore, we believe that the proposed amendments are in line with most practices at peer exchanges for voluntary delisting.

Questions

In responding to any of the questions below, please explain your response.

1. Is it appropriate for TSX to require security holder approval when issuers wish to voluntarily delist if they are not under delisting review and no other acceptable market exists?
2. Should security holder approval be required to be obtained at a meeting? Is it sufficient to allow security holder approval in writing by a majority of the holders?
3. Is security holder approval from a simple disinterested majority appropriate? Some stock exchanges require a two-thirds or 75% security holder approval.
4. Should security holder approval exclude certain security holders such as the controlling security holder, management and/or the board?
5. Should we be requiring a longer notice period for jurisdictions in which it may be more difficult to trade?
6. Are the circumstances in which TSX will not require security holder approval for voluntarily delisting appropriate? Are there additional circumstances in which TSX should not require security holder for voluntary delisting?

Public Interest

TSX is publishing the Amendments for a 30-day comment period, which expires **February 23, 2015**. The Amendments will only become effective following public notice and the approval of the OSC.

APPENDIX A

TEXT OF PROPOSED AMENDMENTS TO THE TSX COMPANY MANUAL

G. Voluntary Delisting

Sec. 720.

A listed issuer wishing to have all its listed securities, or any class of its securities, delisted from TSX must apply formally to TSX to do so. The application should take the form of a letter addressed to TSX. The letter should outline the reasons for the request and be accompanied by a certified copy of a resolution of the listed issuer's board of directors (or other similarly situated body) authorizing the request.

(a) A listed issuer may apply to have all or any class of its listed securities voluntarily delisted from TSX. The application should take the form of a letter addressed to TSX and should outline: (i) the reasons for the application to delist; (ii) whether security holder approval will be sought and if not, why; and (iii) the proposed date of delisting. The application should be accompanied by:

- (i) a certified copy of a resolution of the listed issuer's board of directors (or other similar body) authorizing the application to delist; and
- (ii) a draft copy of a press release to be pre-cleared by TSX, disclosing:
 - 1. the application to voluntarily delist, together with the reasons for the application;
 - 2. the anticipated date of the security holder meeting, if applicable;
 - 3. the satisfaction of any of the conditions set out in Subsection 720(b) below, if applicable; and
 - 4. the proposed delisting date.

(b) TSX will generally require approval by the holders of the affected class or series of securities as a condition of acceptance of a voluntary delisting application for the principal equity class(es) of the listed issuer's securities, unless TSX is satisfied that:

- (i) an acceptable alternative market exists or will exist for the listed securities on or about the proposed delisting date;
- (ii) security holders have a near term liquidity event, such as a going private transaction, for which all material conditions have been satisfied and the likelihood of non-completion is remote; or
- (iii) the listed issuer is under delisting review for failure to comply with any of the delisting criteria in this Part VII of the Manual and it is unlikely that TSX will be satisfied that the deficiencies will be cured within the prescribed period.

If, in TSX's opinion, any insider of the listed issuer has a beneficial interest, directly or indirectly, in the voluntary delisting which materially differs from other security holders, such insiders are not eligible to vote their securities in respect of the voluntary delisting. Any security holder that beneficially owns, or controls or directs, directly or indirectly 50 percent or more of the issued and outstanding securities of the affected class or series will be deemed as having an interest which materially differs from other security holders and are not eligible to vote their securities in respect of the voluntary delisting.

TSX will also generally require security holder approval as a condition of acceptance of a voluntary delisting application for other classes of listed securities, if such securities are not convertible, exercisable or exchangeable at the holder's option into another class of listed securities.

A draft copy of the information circular or form of written consent used to obtain security holder approval for the voluntary delisting application must be submitted to TSX for pre-clearance at least five (5) business days prior to finalization.

The delisting date for the class of securities subject to the voluntary delisting shall not be earlier than the tenth (10th) business day following the later of: (i) dissemination of the press release pre-cleared by TSX announcing the voluntary delisting; and (ii) the issuer having obtained security holder approval for the voluntary delisting, if applicable.

APPENDIX B

TEXT OF PROPOSED AMENDMENTS TO THE TSX COMPANY MANUAL (CLEAN)

G. Voluntary Delisting

720.

(a) A listed issuer may apply to have all or any class of its listed securities voluntarily delisted from TSX. The application should take the form of a letter addressed to TSX and should outline: (i) the reasons for the application to delist; (ii) whether security holder approval will be sought and if not, why; and (iii) the proposed date of delisting. The application should be accompanied by:

- (i) a certified copy of a resolution of the listed issuer's board of directors (or other similar body) authorizing the application to delist; and
- (ii) a draft copy of a press release to be pre-cleared by TSX, disclosing:
 - 1. the application to voluntarily delist, together with the reasons for the application;
 - 2. the anticipated date of the security holder meeting, if applicable;
 - 3. the satisfaction of any of the conditions set out in Subsection 720(b) below, if applicable; and
 - 4. the proposed delisting date.

(b) TSX will generally require approval by the holders of the affected class or series of securities as a condition of acceptance of a voluntary delisting application for the principal equity class(es) of the listed issuer's securities, unless TSX is satisfied that:

- (i) an acceptable alternative market exists or will exist for the listed securities on or about the proposed delisting date;
- (ii) security holders have a near term liquidity event, such as a going private transaction, for which all material conditions have been satisfied and the likelihood of non-completion is remote; or
- (iii) the listed issuer is under delisting review for failure to comply with any of the delisting criteria in this Part VII of the Manual and it is unlikely that TSX will be satisfied that the deficiencies will be cured within the prescribed period.

If, in TSX's opinion, any insider of the listed issuer has a beneficial interest, directly or indirectly, in the voluntary delisting which materially differs from other security holders, such insiders are not eligible to vote their securities in respect of the voluntary delisting. Any security holder that beneficially owns, or controls or directs, directly or indirectly 50 percent or more of the issued and outstanding securities of the affected class or series will be deemed as having an interest which materially differs from other security holders and are not eligible to vote their securities in respect of the voluntary delisting.

TSX will also generally require security holder approval as a condition of acceptance of a voluntary delisting application for other classes of listed securities, if such securities are not convertible, exercisable or exchangeable at the holder's option into another class of listed securities.

A draft copy of the information circular or form of written consent used to obtain security holder approval for the voluntary delisting application must be submitted to TSX for pre-clearance at least five (5) business days prior to finalization.

The delisting date for the class of securities subject to the voluntary delisting shall not be earlier than the tenth (10th) business day following the later of: (i) dissemination of the press release pre-cleared by TSX announcing the voluntary delisting; and (ii) the issuer having obtained security holder approval for the voluntary delisting, if applicable.