

Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.2 Marketplaces

13.2.1 TSX – Consultation Paper on Public Company Acquisitions

TORONTO STOCK EXCHANGE

CONSULTATION PAPER ON PUBLIC COMPANY ACQUISITIONS

Toronto Stock Exchange (“**TSX**”) is publishing for consultation the following proposed amendments (the “**Amendments**”) to Staff Notice 2012-0003 (the “**Staff Notice**”). While Staff Notices are generally not published for consultation or comment, TSX is publishing the Amendments due to the sensitive nature of the related rule and the proposed change of practice. The Amendments are being published for public consultation for a thirty (30) day period.

The Amendments will only become effective following public notice and comment. Comments should be in writing and delivered by July 16, 2018 to:

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Comments will be publicly available unless confidentiality is requested.

Background

TSX conducted public consultations and published two requests for comments in 2007 and 2009 regarding security holder approval requirements for dilutive acquisitions of public companies. Commentary through the public consultation process and more formal requests for comments was highly divisive with proponents voicing strong concerns either in favour or against an amendment imposing security holder approval for dilutive acquisitions of public companies. Effective November 24, 2009, TSX amended its rules to require security holder approval for securities issued or made issuable pursuant to an acquisition of a public company where dilution exceeded 25% of the listed issuer’s issued and outstanding securities. These requirements were effected through an amendment to Section 611 of the TSX Company Manual (the “**Manual**”), an extract of which is attached as **Appendix A**.

In addition to the requirements under Section 611 of the Manual, TSX requires specific, prescribed disclosure whenever security holder approval is required in connection with transactions involving the issuance of securities such as private placements and acquisitions. The disclosure requirements for such security holder approval are set out in the Staff Notice, an extract of which is attached as **Appendix B**. The disclosure requirements include a description of the specific terms of the transaction and the maximum number of securities issuable pursuant to the transaction both as an absolute number and the percentage such number represents of the listed issuer’s outstanding number of securities (pre-transaction), on a non-diluted basis. In addition, security holders must approve the maximum number of securities issuable in connection with the transaction. Listed issuers are not permitted to exceed the maximum number of securities approved for issuance without obtaining further security holder approval.

Although listed issuers may request security holder approval for any specified fixed number of securities, issuers generally will not request approval for more securities than the number of securities contemplated by the publicly announced transaction. In the context of an unsolicited offer, a request for the approval of an excess number of securities will signal that the bidder is willing to increase the share consideration under the bid which is generally undesirable from a tactical perspective.

Given the passage of time, TSX’s general experience in reviewing acquisitions of public companies and the changes to the take-over bid regime adopted by the Canadian Securities Administrators (“**CSA**”) in May 2016 (see National Instrument 62-104 *Take Over Bids and Issuer Bids* (“**NI 62-104**”)), TSX is proposing to amend the Staff Notice to provide additional flexibility to listed issuers once security holder approval has been obtained.

The Amendments

The Amendments provide additional flexibility to listed issuers that have obtained security holder approval under Section 611(c) for the acquisition of widely held securities of a public company. Specifically, the Amendments allow issuers to increase the number of securities issuable pursuant to the transaction beyond the amount originally approved by its security holders up to an additional 25% of the number of securities originally approved by security holders of the listed issuer without obtaining further security holder approval.

For example:

Total number of issued and outstanding shares of issuer	10,000,000
Total number of shares approved by shareholders to be issued in connection with transaction (approval required where dilution exceeds 25% of the issued and outstanding shares)	3,000,000 (30% of 10,000,000)
Maximum number of additional shares issuable without obtaining further shareholder approval (no approval required for increase in amount of shares issuable up to 25% of the number of shares originally approved by shareholders)	750,000 (25% of 3,000,000)
Total number of shares permitted to be issued in connection with the transaction	3,750,000 (3,000,000 + 750,000)

The Amendments are limited in scope; the additional securities must be issuable to target security holders pursuant to an increase in the consideration under the transaction and cannot be issuable under any other circumstance.

Pursuant to the Amendments, listed issuers would not be required to disclose their intention with respect to an additional issuance of securities beyond the number originally approved by security holders for the transaction. Instead, the Amendments would require additional disclosure by the listed issuer stating that TSX will generally not require further security holder approval for the issuance of up to an additional 25% of the number of securities approved by security holders for the transaction. Accordingly, listed issuers would be required to disclose the following in the materials provided for security holder approval:

“TSX will generally not require further security holder approval for the issuance of up to an additional [X] securities, such number being 25% of the number of securities approved by security holders for the transaction.”

TSX believes that the inclusion of a mandatory standard statement in the listed issuer’s disclosure does not put the listed issuer at a significant disadvantage in the acquisition process as it does not reveal to the target or others the listed issuer’s willingness or intention to increase the share consideration being offered in the transaction. In addition, given the disclosure required, TSX believes that the security holders of the listed issuer will be provided with sufficient information to make a reasonably informed decision and can vote accordingly.

The full text of the Amendments is attached as **Appendix C** and a blacklined version of the Amendments is attached as **Appendix D**.

Rationale

At the time of the public consultations in 2007 and 2009, in opposition of the implementation of the security holder approval requirement, the following concerns were raised with TSX:

1. *Heightened Execution Risk* – The added risk associated with another condition (i.e. security holder approval) would increase execution risk and break fees, adversely affecting the economics of the deal.
2. *Tactical Disadvantage* – The requirement to obtain security holder approval is a tactical disadvantage in a competitive situation and would negatively stifle TSX listed issuers’ global competitiveness. Specific security holder approval also makes it more difficult to vary an offer if more share consideration was necessary to compete with another offer.

These concerns persisted following the implementation of the security holder approval requirements and increasing challenges and burdens for Canadian public companies competing globally. We also considered the CSA initiatives to reduce regulatory burdens for non-investment fund reporting issuers. Finally, we considered the impact of the changes to the takeover bid regime under NI 62-104, including:

1. The minimum 105 day initial deposit period (instead of 35 days under the previous regime); and
2. The minimum tender requirement of at least 50% of the outstanding securities (instead of no minimum tender requirement under the previous regime).

In the context of an unsolicited offer, a bidder will generally have a longer exposure period given the increased minimum initial deposit period. In addition, the bidder must obtain a deposit of at least 50% of the voting securities it does not already own. These changes may expose a bidder offering its own securities to fluctuations tied to commodity prices, volatility in the target's securities, general volatility in the market place, as well as changes in the target's business and other general environmental changes.

The changes may provide additional opportunities for another party to make a competing offer. The initial bidder may have difficulty reacting to a competing offer where security holder approval has already been sought or obtained. Based on the current TSX practices, the bidder would need to amend its information circular if security holder approval had not yet been obtained or if security holder approval had already been obtained, a subsequent security holder vote would be required for any additional dilution.

By way of background, there have been 108 hostile transactions in Canada since 2002. 85 (79%) of these transactions resulted in a change of control, of which initial hostile bidders were successful in 54 (50%) of these transactions. In 91% of these transactions, the consideration was increased by 25% on average and 15% by median from the initial offer. White knights were successful in 31 (29%) of these transactions and offered a premium to the initial hostile bid of 29% on average and 19% by median. The average premium was 66% to the pre-announcement price. The median premium was 43% to the pre-announcement price. 23 (21%) of the total number of hostile transaction were not successful and the target remained independent.

TSX is re-considering the requirements and practices for security holder approval for take-over bids, as well as plans of arrangement and amalgamations due to similar timing issues. In addition, a board's fiduciary obligations apply to transactions beyond take-over bids in considering superior proposals that may be made prior to completion of a transaction. TSX is proposing the Amendments to provide flexibility for all of these transactions regardless of the form they may take.

Provided that security holder approval has been obtained, the Amendments would allow the listed issuer to compete with superior proposals. Overall, providing additional flexibility to allow listed issuers to compete with other parties by increasing security consideration within certain limits should strike an appropriate balance. Listed issuers requiring additional flexibility will continue to be able to seek security holder approval for the issuance of any fixed number of securities.

Alternatives Considered

TSX considered the following alternatives to the Amendments:

1. General Security Holder Approval

TSX considered continuing to require the prescribed disclosure for security holder approval pursuant to the Staff Notice while permitting the approval sought from security holders to be more general in nature, thereafter providing the board of directors with the ability to vary the consideration fully at its discretion. As noted above, the current TSX practice is to require approval of a specific number of securities to be made issuable pursuant to a transaction and generally, listed issuers are prohibited from making issuable any additional securities beyond the maximum number of securities that security holders have specifically approved.

Under this alternative, TSX would continue to require disclosure based on the announced terms of the transaction with a reasonable estimate of the maximum number of securities issuable.

Overall, TSX felt that this alternative did not provide sufficient information for security holders to make a reasonably informed decision and that providing unlimited discretion to the listed issuer's board of directors was too significant a departure from TSX's general approach to security holder approval.

2. Maintain Current Requirements

TSX considered continuing to maintain the current requirements for disclosure and security holder approval.

TSX understands that security holder approval of a specific number of securities to be issued for any transaction is required by both the New York Stock Exchange and NASDAQ. However, since the framework for tender offers in the US is significantly different from the Canadian requirements, TSX believes that a comparison would not be directly relevant or meaningful. The US exchanges, however, provide broader relief provisions for issuers to comply with home country practices as compared to TSX's interlisted relief.

Given the passage of time, our experience with acquisitions of public companies, practical considerations with calling another securityholder meeting and the changes in the take-over bid regime, all as described above, TSX felt that some additional flexibility was warranted and reasonable provided that there were limitations associated with the flexibility.

Other Exchange Requirements

TSX reviewed other published exchange requirements that generally apply to issuers listed on those exchanges. This review included the following exchanges: Alternative Investment Market (“AIM”), American Stock Exchange (“AMEX”), Australian Securities Exchange (“ASX”), Johannesburg Stock Exchange (“JSE”), London Stock Exchange (“LSE”), NASDAQ National Market (“NASDAQ”), New York Stock Exchange (“NYSE”), Stock Exchange of Hong Kong (“HKSE”) and TSX Venture Exchange (“TSXV”). These exchanges were selected because of geographical proximity, the number of interlisted issuers and/or the similar nature of listed issuers.

Notwithstanding that the other exchanges reviewed did not have published guidance with respect to their practices regarding the issuance of any excess securities in connection with public company acquisitions, TSX is proposing the Amendments given the size and sectors of our listed issuers, the global competition for target companies and assets, and the Canadian take-over bid regime.

The following is a summary overview of other exchange requirements:

Exchange	Requirement
AIM	No requirement for security holder approval for arm's length acquisitions, other than in connection with reverse takeovers. (See sections 12 and 14 of the AIM Rules for Companies) However, corporate laws that apply to the issuer must be followed, many of which in European countries require security holder approval for significant dilution.
NYSE American (formerly, AMEX)	Security holder approval is required for the issuance or potential issuance of common stock that could result in an increase in outstanding common shares of 20% or more. (See Section 712(b) of the NYSE American LLC Company Guide)
ASX	Security holder approval is required for issuances of equity securities resulting in more than 15% dilution, but there is an exemption for issuances under a takeover bid or under a merger by way of scheme of arrangement, any issuances to fund the cash consideration payable under a takeover bid or under a merger by way of scheme of arrangement completed in accordance with the Australian Corporations Act. Eligible entities may also seek shareholder approval by special resolution at an annual general meeting to have the additional capacity to issue equity securities. (See Sections 7.1, 7.1A, 7.1B, and 7.2 of ASX Listing Rules)
JSE	Security holder approval is required for a transaction with 30% or more dilution (measuring market capitalization, equity dilution and cash consideration). (See Sections 9.5, 9.6 and 9.20 of the JSE Limited Listing Requirements)
LSE	Security holder approval is required for a transaction with 25% or more dilution. (See Sections 10.2 and 10.5 of the London Stock Exchange's Listing Rules)
NASDAQ	Security holder approval is required for the issuance of stock where the issuance will have upon issuance voting power equal to or in excess of 20% of the voting power outstanding before the issuance, or where the number of stock will be upon issuance equal to or in excess of 20% of the number of stock outstanding before the issuance. (See Section 5635 of the Nasdaq Marketplace Rules)
NYSE	Security holder approval is required for the issuance of stock where the issuance will have upon issuance voting power equal to or in excess of 20% of the voting power outstanding before the issuance, or where the number of stock will be upon issuance equal to or in excess of 20% of the number of stock outstanding before the issuance. (See Section 312.03 of the NYSE Listed Company Manual)
HKSE	Security holder approval is required for a transaction or series of transactions with 25% or more dilution (measuring assets, profits, revenue, consideration and equity capital ratios). (See Sections 14.06, 14.07, 14.33 and 14.40 of the HKEX Main Board Listing Rules)
TSX	Security holder approval is required for acquisitions resulting in more than 25% dilution. (See Section 611 of the TSX Company Manual)

Exchange	Requirement
TSX Venture	No requirement for security holder approval for arm's length acquisitions. Shareholder approval generally required for any transaction which results in the creation of a new control person, any transaction where the number of securities issued or issuable to non-arm's length parties that exceeds 10% of the number of outstanding securities (on a non-diluted basis) prior to the closing date of the transaction, and a reviewable disposition. (See Section 5.14 of Policy 5.3 – Acquisitions and Dispositions of Non-Cash Assets of the TSX Venture Exchange Corporate Finance Manual)

Questions

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

1. Are the Amendments an appropriate balance in terms of providing flexibility to compete with superior proposals and security holder approval? If not, why not?
2. Are either of the alternatives more appropriate? If so, why?
3. If TSX varies the disclosure and approval requirements as proposed in the Amendments, should the amended more flexible requirements be limited to formal take-over bids subject to the full 105 day initial deposit period? Should the relief be available to friendly deals where the initial deposit period is 35 days? Should it be available for all public company acquisitions (i.e. plans of arrangement, amalgamations, etc.)?
4. Should TSX consider expanding the Amendments to other security holder approval requirements under TSX rules, such as private placements and acquisitions more generally (i.e. asset acquisitions and private company acquisitions)? If so, why?
5. Is the additional 25% limit based on the number of securities approved for issuance an appropriate threshold? Is there a lower or higher number that would be more appropriate? Is it appropriate to base the limitation on the number of securities subject to security holder approval?

APPENDIX A

SECTION 611(C) OF THE TSX COMPANY MANUAL

Sec. 611. Acquisitions

[...]

(c) Security holder approval will be required in those instances where the number of securities issued or issuable in payment of the purchase price for an acquisition exceeds 25% of the number of securities of the listed issuer which are outstanding, on a non-diluted basis.

[...]

APPENDIX B

CURRENT VERSION OF STAFF NOTICE EXTRACT

[...]

Security Holder Approval — Disclosure Requirements

The following guidance generally applies to transactions involving the issuance of securities such as private placements and acquisitions. This guidance also applies to transactions involving insiders or related parties of non-exempt issuers which do not involve the issuance of securities but which require security holder approval under Subsection 501(c) of the Manual. Listed issuers are reminded that disclosure requirements for security-based compensation arrangements are specifically set out under Subsection 613(d) of the Manual.

In order for security holders to make an informed decision whether to approve a transaction, listed issuers must disclose the material terms of the transaction either in the circular that will be mailed to security holders or in the form of written consent (as may be permitted under Subsection 604(d) of the Manual). The disclosure guidance provided below is also applicable to press releases disclosing the material terms of a transaction where a listed issuer is: i) seeking security holder approval in writing; (ii) relying on the financial hardship exemption under Subsection 604(e) of the Manual; or iii) using the 90% control block exemption under Subsection 604(f) of the Manual.

The disclosure included in the circular, form of written consent or press release, as applicable, should include the following items, as applicable:

1. The principal terms of the transaction and the securities issuable such as the issue price, exercise or conversion price, interest rate, term, anti-dilution provisions, whether or not the transaction has been negotiated at arm's length and any other material features of the securities and conditions of the transaction. Pricing information should also include a statement disclosing the discount or premium in relation to the market price (as defined in the Manual) at the time the listed issuer has entered into the binding agreement to issue the securities or letter notice has been filed with TSX.
2. If security approval is required under Subsection 501(c) of the Manual, the principal terms of the transaction, including the identity of the insiders or related parties involved, their relationship with the listed issuer, the value of the consideration and a summary of the independent report required under Subsection 501(c)(ii).
3. The maximum number of securities issuable under the transaction both as an absolute number (breaking down, for example, number of shares, warrants, broker warrants, etc.) together with the percentage such number represents of the listed issuer's outstanding number of securities, pre-transaction, on a non-diluted basis. If the number of securities issuable is based on the market price of the securities in the future so that the maximum number of securities issuable cannot be determined, the formula to calculate the number of securities issuable must be disclosed together with several pricing and dilution scenarios, including the maximum number of securities issuable under each such scenario (expressed both as an absolute number and as a percentage of the listed issuer's outstanding securities on a pre-transaction, non-diluted basis).
4. The effect, if any, the transaction may have on the control of the listed issuer. The identity of any new control person or entity must also be disclosed together with the number of securities held by such person or entity (taking into account all securities issuable to such person or entity) both on a pre- and post-transaction basis (expressed both as an absolute number and as a percentage of the listed issuer's outstanding securities on a non-diluted basis).
5. The identity of any persons or entities who will hold more than 10% of the listed issuer's outstanding securities post-transaction and the number of securities held by each such person or entity (taking into account all securities issuable to such person or entity) on a post-transaction basis (expressed both as an absolute number and as a percentage of the listed issuer's outstanding securities on a non-diluted basis).
6. The material terms of any voting trust or similar agreement or arrangement to be entered into in connection with the transaction, including a description of the matters and resolutions subject to the voting trust, the term of the agreement, the parties to the agreement and the aggregate number of securities that are subject to the voting trust (expressed both as an absolute number and as a percentage of the listed issuer's outstanding securities on a post-transaction, non-diluted basis).
7. If insiders of the listed issuer are participating in the transaction, the identity of such insiders, the nature of the relationship with the listed issuer (e.g., director, officer, control security holder) together with the number of securities issuable to each insider (expressed both as a absolute number and as a percentage of the issuer's outstanding securities on a pre transaction, non-diluted basis). Where insider participation is *de minimis*, such information may be provided on an aggregate basis; for example, the number of securities issuable to directors and officers may be disclosed as a group, rather than on an individual basis.

8. The reasons why security holder approval is required under TSX rules (e.g., dilution in excess than 25%, material effect on control, issuance of securities at a price that is lower than market price less the maximum applicable discount, etc.), citing the appropriate rule and reference in the Manual.

9. If security holder approval is required on a disinterested basis, it must be disclosed together with the identity of the security holders excluded from the vote and the number of securities held by such security holders (expressed both as an absolute number and as a percentage of the listed issuer's outstanding voting securities as at the date of the circular or form of written consent).

10. If security holder approval is being sought by way of written consent, it must be disclosed in the news release issued in connection with the transaction. Alternatively, if security holder approval is not required because of reliance on the financial hardship exemption or the 90% control block exemption, it must be disclosed in the news release.

11. If the financial hardship exemption in Subsection 604(e) of the Manual is being relied on, the press release must include the specific disclosure that is required under Subsections 604(e) (i), (ii), (iii) and (iv) of the Manual.

12. All other information deemed necessary by TSX to ensure that security holders have sufficient information to make an informed decision with respect to whether to approve the transaction and to ensure that the principal terms of the transaction are available to market participants.

If TSX requires security holder approval or exempts an issuer from security holder approval, all related disclosure, whether in a circular, form of written consent or press release, must be pre-cleared and approved by TSX. Listed issuers and their advisors must provide a draft of a circular to TSX for review at least five business days in advance of finalization of the circular. Press releases and forms of written consent related to security holder approval or exemptions should be provided to TSX for review at least two business days in advance of expected dissemination. Listed issuers are reminded that press releases required in connection with security holder approval by written consent or security holder approval exemptions must be issued at least five business days in advance of closing of the transaction. TSX will generally conditionally approve the transaction five business days after the issuance of such press release provided that it is then in a position to accept notice of the transaction.

If security holder approval is being sought at a meeting, issuers are reminded that in accordance with Section 604(c) of the Manual, security holders must be asked to ratify a resolution specific to the matter(s) for which TSX requires security holder approval, even where security holders must also approve the transaction under corporate law. For example, if security holder approval is required as a result of dilution being in excess of what is permitted under TSX rules, the resolution should ask security holders to ratify the maximum number of securities issuable pursuant to the transaction. In addition, TSX expects the proxy to allow security holders to vote "for" or "against" the transaction.

[...]

APPENDIX C
BLACKLINE VERSION OF AMENDED STAFF NOTICE EXTRACT

[Staff Notice 2018-000](#)

[...]

[This Staff Notice replaces TSX Staff Notice 2012-0003, which is repealed in its entirety. Other than the section entitled "Security Holder Approval – Disclosure Requirement & Other Guidance", all sections of this Staff Notice remain unchanged from TSX Staff Notice 2012-0003. The Security Holder Approval – Disclosure Requirements & Other Guidance has been amended as set forth in the Consultation Paper on Public Company Acquisitions published on ●, 2018.](#)

[...]

Security Holder Approval — Disclosure Requirements & Other Guidance

The following guidance generally applies to transactions involving the issuance of securities such as private placements and acquisitions. This guidance also applies to transactions involving insiders or related parties of non-exempt issuers which do not involve the issuance of securities but which require security holder approval under [Subsection 501\(c\)](#) of the Manual. Listed issuers are reminded that disclosure requirements for security-based compensation arrangements are specifically set out under [Subsection 613\(d\)](#) of the Manual.

[If security holder approval is required under Section 611\(c\) for the acquisition of widely held securities of a reporting issuer \(or equivalent\) pursuant to a formal take-over bid, plan of arrangement, amalgamation or similar transaction \("Public Company Acquisition"\), TSX will generally not require further security holder approval for the issuance of up to an additional 25% of the number of securities approved by security holders, provided that the securities are issued or made issuable to target security holders pursuant to an increase in the consideration under the transaction.](#)

In order for security holders to make an informed decision whether to approve a transaction, listed issuers must disclose the material terms of the transaction either in the circular that will be mailed to security holders or in the form of written consent (as may be permitted under [Subsection 604\(d\)](#) of the Manual). The disclosure guidance provided below is also applicable to press releases disclosing the material terms of a transaction where a listed issuer is: i) seeking security holder approval in writing; (ii) relying on the financial hardship exemption under [Subsection 604\(e\)](#) of the Manual; or iii) using the 90% control block exemption under [Subsection 604\(f\)](#) of the Manual.

The disclosure included in the circular, form of written consent or press release, as applicable, should include the following items, as applicable:

1. The principal terms of the transaction and the securities issuable such as the issue price, exercise or conversion price, interest rate, term, anti-dilution provisions, whether or not the transaction has been negotiated at arm's length and any other material features of the securities and conditions of the transaction. Pricing information should also include a statement disclosing the discount or premium in relation to the market price (as defined in the Manual) at the time the listed issuer has entered into the binding agreement to issue the securities or letter notice has been filed with TSX.
2. If security [holder](#) approval is required under [Subsection 501\(c\)](#) of the Manual, the principal terms of the transaction, including the identity of the insiders or related parties involved, their relationship with the listed issuer, the value of the consideration and a summary of the independent report required under [Subsection 501\(c\)\(ii\)](#).
3. The maximum number of securities issuable under the transaction both as an absolute number (breaking down, for example, number of shares, warrants, broker warrants, etc.) together with the percentage such number represents of the listed issuer's outstanding number of securities, pre-transaction, on a non-diluted basis. If the number of securities issuable is based on the market price of the securities in the future so that the maximum number of securities issuable cannot be determined, the formula to calculate the number of securities issuable must be disclosed together with several pricing and dilution scenarios, including the maximum number of securities issuable under each such scenario (expressed both as an absolute number and as a percentage of the listed issuer's outstanding securities on a pre-transaction, non-diluted basis).
4. [If security holder approval is required under Section 611\(c\) for a Public Company Acquisition, the following must be included in the issuer's disclosure document:](#)

["TSX will generally not require further security holder approval for the issuance of up to an additional \[X\] securities, such number being 25% of the number of securities approved by security holders for the transaction."](#)

5. The effect, if any, the transaction may have on the control of the listed issuer. The identity of any new control person or entity must also be disclosed together with the number of securities held by such person or entity (taking into account all securities issuable to such person or entity) both on a pre- and post-transaction basis (expressed both as an absolute number and as a percentage of the listed issuer's outstanding securities on a non-diluted basis).

5-6. The identity of any persons or entities who will hold more than 10% of the listed issuer's outstanding securities post-transaction and the number of securities held by each such person or entity (taking into account all securities issuable to such person or entity) on a post-transaction basis (expressed both as an absolute number and as a percentage of the listed issuer's outstanding securities on a non-diluted basis).

6-7. The material terms of any voting trust or similar agreement or arrangement to be entered into in connection with the transaction, including a description of the matters and resolutions subject to the voting trust, the term of the agreement, the parties to the agreement and the aggregate number of securities that are subject to the voting trust (expressed both as an absolute number and as a percentage of the listed issuer's outstanding securities on a post-transaction, non-diluted basis).

7-8. If insiders of the listed issuer are participating in the transaction, the identity of such insiders, the nature of the relationship with the listed issuer (e.g., director, officer, control security holder) together with the number of securities issuable to each insider (expressed both as an absolute number and as a percentage of the issuer's outstanding securities on a pre transaction, non-diluted basis). Where insider participation is *de minimis*, such information may be provided on an aggregate basis; for example, the number of securities issuable to directors and officers may be disclosed as a group, rather than on an individual basis.

8-9. The reasons why security holder approval is required under TSX rules (e.g., dilution in excess than 25%, material effect on control, issuance of securities at a price that is lower than market price less the maximum applicable discount, etc.), citing the appropriate rule and reference in the Manual.

9-10. If security holder approval is required on a disinterested basis, it must be disclosed together with the identity of the security holders excluded from the vote and the number of securities held by such security holders (expressed both as an absolute number and as a percentage of the listed issuer's outstanding voting securities as at the date of the circular or form of written consent).

10-11. If security holder approval is being sought by way of written consent, it must be disclosed in the news release issued in connection with the transaction. Alternatively, if security holder approval is not required because of reliance on the financial hardship exemption or the 90% control block exemption, it must be disclosed in the news release.

11-12. If the financial hardship exemption in [Subsection 604\(e\)](#) of the Manual is being relied on, the press release must include the specific disclosure that is required under [Subsections 604\(e\) \(i\), \(ii\), \(iii\) and \(iv\)](#) of the Manual.

12-13. All other information deemed necessary by TSX to ensure that security holders have sufficient information to make an informed decision with respect to whether to approve the transaction and to ensure that the principal terms of the transaction are available to market participants.

If TSX requires security holder approval or exempts an issuer from security holder approval, all related disclosure, whether in a circular, form of written consent or press release, must be pre-cleared and approved by TSX. Listed issuers and their advisors must provide a draft of a circular to TSX for review at least five business days in advance of finalization of the circular. Press releases and forms of written consent related to security holder approval or exemptions should be provided to TSX for review at least two business days in advance of expected dissemination. Listed issuers are reminded that press releases required in connection with security holder approval by written consent or security holder approval exemptions must be issued at least five business days in advance of closing of the transaction. TSX will generally conditionally approve the transaction five business days after the issuance of such press release provided that it is then in a position to accept notice of the transaction.

If security holder approval is being sought at a meeting, issuers are reminded that in accordance with [Section 604\(c\)](#) of the Manual, security holders must be asked to ratify a resolution specific to the matter(s) for which TSX requires security holder approval, even where security holders must also approve the transaction under corporate law. For example, if security holder approval is required as a result of dilution being in excess of what is permitted under TSX rules, the resolution should ask security holders to ratify the maximum number of securities issuable pursuant to the transaction. In addition, TSX expects the proxy to allow security holders to vote "for" or "against" the transaction.

[...]

APPENDIX D

CLEAN VERSION OF AMENDED STAFF NOTICE

Staff Notice 2018-000•

[date]

Section 604

Subsection 501 (c)

Security Holder Approval:

Disclosure requirements

Section 355

Stock Symbol Reservations

STAFF NOTICE TO APPLICANTS, LISTED ISSUERS, SECURITIES LAWYERS AND PARTICIPATING ORGANIZATIONS

Toronto Stock Exchange ("TSX") is providing guidance with respect to: (i) disclosure and other related requirements where a transaction is subject to security holder approval pursuant to the *TSX Company Manual* (the "Manual"); and (ii) procedures relating to stock symbol reservations.

This Staff Notice replaces TSX Staff Notice 2012-0003, which is repealed in its entirety. Other than the section entitled "Security Holder Approval – Disclosure Requirement & Other Guidance", all sections of this Staff Notice remain unchanged from TSX Staff Notice 2012-0003. The Security Holder Approval – Disclosure Requirements & Other Guidance has been amended as set forth in the Consultation Paper on Public Company Acquisitions published on •, 2018.

Security Holder Approval — Disclosure Requirements & Other Guidance

The following guidance generally applies to transactions involving the issuance of securities such as private placements and acquisitions. This guidance also applies to transactions involving insiders or related parties of non-exempt issuers which do not involve the issuance of securities but which require security holder approval under [Subsection 501\(c\)](#) of the Manual. Listed issuers are reminded that disclosure requirements for security-based compensation arrangements are specifically set out under [Subsection 613\(d\)](#) of the Manual.

If security holder approval is required under Section 611(c) for the acquisition of widely held securities of a reporting issuer (or equivalent) pursuant to a formal take-over bid, plan of arrangement, amalgamation or similar transaction ("Public Company Acquisition"), TSX will generally not require further security holder approval for the issuance of up to an additional 25% of the number of securities approved by security holders, provided that the securities are issued or made issuable to target security holders pursuant to an increase in the consideration under the transaction.

In order for security holders to make an informed decision whether to approve a transaction, listed issuers must disclose the material terms of the transaction either in the circular that will be mailed to security holders or in the form of written consent (as may be permitted under [Subsection 604\(d\)](#) of the Manual). The disclosure guidance provided below is also applicable to press releases disclosing the material terms of a transaction where a listed issuer is: i) seeking security holder approval in writing; (ii) relying on the financial hardship exemption under [Subsection 604\(e\)](#) of the Manual; or iii) using the 90% control block exemption under [Subsection 604\(f\)](#) of the Manual.

The disclosure included in the circular, form of written consent or press release, as applicable, should include the following items, as applicable:

1. The principal terms of the transaction and the securities issuable such as the issue price, exercise or conversion price, interest rate, term, anti-dilution provisions, whether or not the transaction has been negotiated at arm's length and any other material features of the securities and conditions of the transaction. Pricing information should also include a statement disclosing the discount or premium in relation to the market price (as defined in the Manual) at the time the listed issuer has entered into the binding agreement to issue the securities or letter notice has been filed with TSX.
2. If security holder approval is required under [Subsection 501\(c\)](#) of the Manual, the principal terms of the transaction, including the identity of the insiders or related parties involved, their relationship with the listed issuer, the value of the consideration and a summary of the independent report required under [Subsection 501\(c\)\(ii\)](#).

3. The maximum number of securities issuable under the transaction both as an absolute number (breaking down, for example, number of shares, warrants, broker warrants, etc.) together with the percentage such number represents of the listed issuer's outstanding number of securities, pre-transaction, on a non-diluted basis. If the number of securities issuable is based on the market price of the securities in the future so that the maximum number of securities issuable cannot be determined, the formula to calculate the number of securities issuable must be disclosed together with several pricing and dilution scenarios, including the maximum number of securities issuable under each such scenario (expressed both as an absolute number and as a percentage of the listed issuer's outstanding securities on a pre-transaction, non-diluted basis).

4. If security holder approval is required under Section 611(c) for a Public Company Acquisition, the following must be included in the issuer's disclosure document:

"TSX will generally not require further security holder approval for the issuance of up to an additional [x] [securities], such number being 25% of the number of securities approved by security holders for the transaction."

5. The effect, if any, the transaction may have on the control of the listed issuer. The identity of any new control person or entity must also be disclosed together with the number of securities held by such person or entity (taking into account all securities issuable to such person or entity) both on a pre- and post-transaction basis (expressed both as an absolute number and as a percentage of the listed issuer's outstanding securities on a non-diluted basis).

6. The identity of any persons or entities who will hold more than 10% of the listed issuer's outstanding securities post-transaction and the number of securities held by each such person or entity (taking into account all securities issuable to such person or entity) on a post-transaction basis (expressed both as an absolute number and as a percentage of the listed issuer's outstanding securities on a non-diluted basis).

7. The material terms of any voting trust or similar agreement or arrangement to be entered into in connection with the transaction, including a description of the matters and resolutions subject to the voting trust, the term of the agreement, the parties to the agreement and the aggregate number of securities that are subject to the voting trust (expressed both as an absolute number and as a percentage of the listed issuer's outstanding securities on a post-transaction, non-diluted basis).

8. If insiders of the listed issuer are participating in the transaction, the identity of such insiders, the nature of the relationship with the listed issuer (e.g., director, officer, control security holder) together with the number of securities issuable to each insider (expressed both as an absolute number and as a percentage of the issuer's outstanding securities on a pre transaction, non-diluted basis). Where insider participation is *de minimis*, such information may be provided on an aggregate basis; for example, the number of securities issuable to directors and officers may be disclosed as a group, rather than on an individual basis.

9. The reasons why security holder approval is required under TSX rules (e.g., dilution in excess than 25%, material effect on control, issuance of securities at a price that is lower than market price less the maximum applicable discount, etc.), citing the appropriate rule and reference in the Manual.

10. If security holder approval is required on a disinterested basis, it must be disclosed together with the identity of the security holders excluded from the vote and the number of securities held by such security holders (expressed both as an absolute number and as a percentage of the listed issuer's outstanding voting securities as at the date of the circular or form of written consent).

11. If security holder approval is being sought by way of written consent, it must be disclosed in the news release issued in connection with the transaction. Alternatively, if security holder approval is not required because of reliance on the financial hardship exemption or the 90% control block exemption, it must be disclosed in the news release.

12. If the financial hardship exemption in [Subsection 604\(e\)](#) of the Manual is being relied on, the press release must include the specific disclosure that is required under [Subsections 604\(e\)](#) (i), (ii), (iii) and (iv) of the Manual.

13. All other information deemed necessary by TSX to ensure that security holders have sufficient information to make an informed decision with respect to whether to approve the transaction and to ensure that the principal terms of the transaction are available to market participants.

If TSX requires security holder approval or exempts an issuer from security holder approval, all related disclosure, whether in a circular, form of written consent or press release, must be pre-cleared and approved by TSX. Listed issuers and their advisors must provide a draft of a circular to TSX for review at least five business days in advance of finalization of the circular. Press releases and forms of written consent related to security holder approval or exemptions should be provided to TSX for review at least two business days in advance of expected dissemination. Listed issuers are reminded that press releases required in connection with security holder approval by written consent or security holder approval exemptions must be issued at least five business days in advance of closing of the transaction. TSX will generally conditionally approve the transaction five business days after the issuance of such press release provided that it is then in a position to accept notice of the transaction.

If security holder approval is being sought at a meeting, issuers are reminded that in accordance with [Section 604\(c\)](#) of the Manual, security holders must be asked to ratify a resolution specific to the matter(s) for which TSX requires security holder approval, even where security holders must also approve the transaction under corporate law. For example, if security holder approval is required as a result of dilution being in excess of what is permitted under TSX rules, the resolution should ask security holders to ratify the maximum number of securities issuable pursuant to the transaction. In addition, TSX expects the proxy to allow security holders to vote "for" or "against" the transaction.

Stock Symbol Reservations

Applicants and listed issuers may request a specific stock symbol when applying to list or in the context of a name change, corporate reorganization or similar transaction. Applicants and listed issuers must provide a request in writing to the applicable listing manager and such request should include: i) up to three symbols (ranked in order of preference) composed of not more than three letters of the alphabet; and ii) the name of the issuer.

Only one symbol may be reserved per issuer. TSX will confirm which symbol has been reserved for the issuer. If none of the symbols requested are available, the applicant or listed issuer will be provided with a list of available symbols in the requested alphabetical range. Applicants and listed issuers must promptly confirm their choice in order to ensure that the symbol does not become unavailable. The chosen symbol will be allocated to the applicant or listed issuer, assuming that it is still available at the time the choice is provided to TSX. Upon confirmation from TSX of the allocated symbol, the symbol will remain reserved for an initial period of 90 days, and upon request in writing by the issuer, such period may be extended for up to two additional 90-day periods, for an aggregate maximum period of 270 days. The issuer is responsible for requesting an extension in writing before the end of any reservation period. If a reservation is not extended by the issuer by the end of any reservation period, the reserved symbol will automatically be released and may not be reserved by or for the same issuer for a period of 10 days.

At any time, ETF providers, fund families and other entities issuing multiple securities (each considered a separate issuer) may reserve up to 15 symbols for the initial reservation period of 90 days and up to 10 symbols for any second renewal of a reservation beyond the 180 days for an additional 90-day period, for an aggregate maximum period of 270 days.

Currently reserved symbols which have been reserved for 270 days or more as of October 1, 2012 may be extended for no more than an additional 180 days from October 1, 2012. Currently reserved symbols which have been reserved for less than 270 days as of October 1, 2012 may be extended for no more than an additional 270 days from October 1, 2012.

If you have any questions about this Staff Notice, please contact your listings manager.