Goodmans LLP Update

TSX Proposes Enhanced Flexibility for TSX-Listed Issuers in Securities Exchange Acquisitions

The Toronto Stock Exchange (TSX) is seeking comments on proposed amendments to the TSX's rules that require listed issuers to obtain approval from their own security holders when issuing more than 25% of their outstanding listed securities as consideration for an acquisition. Under the proposed amendments listed issuers would be allowed to increase the number of securities they issue as consideration for acquisitions of public companies whose securities are "widely held" by up to 25% in excess of the number of securities approved by their own security holders. The proposed amendments, set out in a recently published *Consultation Paper*, are intended to provide additional flexibility to listed issuers and allow them to compete more effectively when pursing acquisitions of publicly-listed targets either domestically or abroad.

Background

Since 2009, the TSX has required listed issuers to obtain security holder approval if they propose to issue more than 25% of their outstanding securities (pre-transaction, on a non-diluted basis) as payment of the purchase price for an acquisition (or in connection with a concurrent private placement). When seeking security holder approval, listed issuers are required to disclose, among other things, the maximum number of their securities issuable under the transaction, and are not permitted to subsequently increase the number of securities issuable under the transaction without obtaining further security holder approval. While a listed issuer could obtain security holder approval for the issuance of more securities than it has agreed to issue pursuant to the transaction, doing so may jeopardize its ability to obtain the approval of its security holders and/or may put it at a tactical disadvantage by signalling a potential willingness to increase its purchase price.

Proposed Amendments

The proposed amendments would allow listed issuers, that have already obtained security holder approval for the issuance of securities under an acquisition of "widely held" securities of a domestic or foreign public company, to increase the number of securities issuable under the transaction by up to an additional 25% of the number of securities originally approved by security holders, without obtaining further security holder approval. To rely on this exemption, the additional securities must be issuable to target security holders pursuant to an increase in the purchase price offered under the transaction, and cannot be issued for any other purpose.

In seeking security holder approval for the issuance of securities under an acquisition, listed issuers would not be required to disclose any intention to rely on this exemption. Instead, all listed issuers – whether or not they wish to reserve the ability to rely on this exemption – would be required to include a generic statement in the materials distributed to their security holders disclosing that the 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.

The TSX believes that the amendments will allow listed issuers to compete more effectively when pursuing acquisitions of domestic or foreign public company targets, including by providing listed issuers with the flexibility to increase the number of securities issuable as consideration under the transaction in response to superior proposals that may emerge from competing bidders. The TSX's perspectives are based on its general experience in reviewing acquisitions of public companies since the adoption of the security holder approval rules in 2009, as well as recent changes to the take-over bid regime adopted by the Canadian Securities Administrators (CSA) in May 2016 (see our May 9, 2016 update, *New Takeover Bid and Early Warning Rules Take Effect Today*). The TSX is accepting comments on the proposed amendments until July 16, 2018.

For more information or to discuss these developments, please contact any member of our Corporate Securities practice group.

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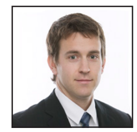

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