

Corporate Securities Law

September 26, 2014

TSX Announces Rule Changes on Share Incentives and Backdoor Listings

The Toronto Stock Exchange (TSX) has adopted amendments relating to security-based compensation arrangements in acquisitions (the “**Compensation Arrangement Amendments**”) and to the circumstances in which the TSX will consider a transaction to be a backdoor listing (the “**Backdoor Listing Amendments**”). The amendments will become effective on October 1, 2014.

Highlights of the Adopted Amendments

Greater Flexibility for Listed Issuers

The Compensation Arrangement Amendments will provide listed issuers with greater flexibility to adopt security-based incentives for employees of target issuers in connection with an acquisition.

Listed issuers will be permitted to provide arrangements to target issuer employees without security holder approval, provided that:

1. the number of securities issuable under such arrangements does not exceed 2% of the listed issuer’s issued and outstanding securities; and
2. the number of securities issuable pursuant to the acquisition, including any related arrangement, does not exceed 25% of the listed issuer’s issued and outstanding securities.

Under the current regime, without discretionary relief, listed issuers may only assume existing arrangements in an acquisition, and may not grant new awards to target issuer employees without shareholder approval.

However, the TSX often provides relief from such approval requirements on a discretionary basis. The new amendments will formalize this existing practice.

Enhanced Clarity and Investor Protection

The Backdoor Listing Amendments will broaden the scope of transactions that may be considered backdoor listings (also referred to as reverse takeovers or reverse mergers). Entities that engage in backdoor listings must meet TSX original listing requirements.

Under the current framework, a transaction is characterized as a backdoor listing if (i) the transaction would or could result in the existing security holders of the listed issuer holding less than 50% of the securities or voting power in the entity resulting from the transaction, and (ii) the transaction would result in a change in effective control. As a result, transactions pursuant to which listed issuers were effectively acquired by unlisted entities (sometimes with greater than 100% dilution) were not considered back door listings because there was no effective change of control (for example, because the acquirer was widely held and/or there was a concurrent financing).

The Backdoor Listing Amendments will:

1. clarify the definition of a “backdoor listing” as occurring when a transaction (or series of transactions) results in the acquisition of a listed issuer by an entity not currently listed on the TSX;
2. articulate a series of factors to be considered by the TSX in determining whether a backdoor listing has occurred, such as the business of the listed issuer and the unlisted entity, changes in management (including the board of directors), voting power, ownership, name changes and the capital structure of the listed issuer, as well as concurrent (public or private) financings; and
3. clarify the discretion of the TSX in characterizing a transaction as, or exempting a transaction from the requirements applicable to, a backdoor listing.

Please contact any member of our Corporate Securities Group to discuss the implications of these changes.