

Corporate Securities Law

November 26, 2004

Toronto Stock Exchange Amends Rules For Listed Issuers

Introduction

The Ontario Securities Commission has recently approved amendments proposed by the Toronto Stock Exchange (the "TSX") to its Company Manual (the "Manual") that will become effective on January 1, 2005.

The amendments include significant changes to TSX policies for listed issuers with respect to:

- prospectus offerings,
- private placements,
- security based compensation arrangements, and
- special requirements for non-exempt (junior) issuers.

In addition, the amendments formally set out a number of standards and practices that the TSX had not published and provide definitions for various terms used in the Manual but not previously defined.

The stated purpose of the amendments is to provide listed issuers with a complete and transparent set of standards and practices to allow issuers and investors to have certainty when planning and completing transactions.

Prospectus Offerings

Listed issuers proposing to issue additional securities of a listed class pursuant to a prospectus must file a copy of the preliminary prospectus concurrently with the TSX and the provincial securities commissions, together with a letter to the TSX that states: (i) whether any insider has an interest

in the transaction (and the nature of such interest); (ii) if and how the transaction could materially affect control of the issuer; (iii) the number of purchasers; and (iv) whether an "if, as and when issued" market may be requested. As a result of the amendments, the Manual will specifically provide that the TSX may apply the provisions of its private placement rules to the prospectus offering depending on such factors as the: (i) method of distribution; (ii) participation of insiders; (iii) number of places; (iv) offering price; and (v) economic dilution.

Private Placements

Size

Currently, securityholder approval is required for any transaction that may result in more than 25% of an issuer's capital being issued or issuable in a six month period pursuant to private placements, calculated on a non-diluted basis. Under the amendments, subject to the TSX's discretion to impose restrictions on transactions involving insiders or materially affecting control, private placements involving the issuance of securities priced at or above market price will not require shareholder approval regardless of the number of securities issuable.

Pricing and Discounts

Currently, the TSX does not permit private placements to be priced below the allowable discount set out in the Manual in any circumstances. The amendments provide that securityholders not participating in a placement may approve a price that is below the stated discount. This amendment to a longstanding TSX rule provides additional flexibility to issuers.

Warrants

The TSX has prescribed requirements for warrants issued in connection with a private placement. However, certain standards have remained unpublished. The amendments specify that the TSX will permit warrants to be exercisable at a price below market price, provided that securityholder approval is obtained. The amendments also provide for a cashless exercise of warrants, codifying current staff practice.

Goodmans^{LLP} Update

Participation of insiders

The TSX is formally limiting insider participation in private placements without securityholder approval to transactions over the course of a six month period where insiders have the ability to receive 10% or less of the issuer's capital, calculated on a non-diluted basis. The amendments contemplate disinterested securityholder approval if the 10% limitation is to be exceeded.

Security Based Compensation Arrangements

Current TSX standards and practice require securityholder approval for security based compensation arrangements when certain factors, such as total securities issuable under all arrangements exceeding 10% of the issuer's capital, exist. The existence of additional factors, such as insider participation above 10% of the issuer's capital, triggers the requirement for disinterested securityholder approval.

The amendments provide that virtually all security based compensation arrangements will be submitted to securityholders for approval. Limited exceptions to securityholder approval for such arrangements include inducements to employment and assumption of arrangements in the context of an acquisition. In addition, disinterested securityholder approval will be required if the participation of eligible insiders in all arrangements could exceed 10% of the issued and outstanding securities.

All compensation arrangements must have a maximum number of securities issuable, either as a fixed number or as a fixed percentage of outstanding securities. The amendments permit "rolling maximum" or "evergreen" plans that fix a maximum number of shares issuable under an arrangement as a percentage of the issued and outstanding securities of an issuer. All unallocated options under such arrangements are subject to a renewal securityholder approval every three years after institution.

The current rules require that any material amendments to a plan or options held by an insider require the specific approval of disinterested securityholders at a meeting. Under the amendments, specific disinterested securityholder approval will be required for any amendment which would have the effect of reducing the exercise price or purchase price, or extending the original term, of a security based compensation arrangement which benefits an insider. Otherwise, provided that an issuer has received the appropriate securityholder approval for an arrangement

that provides for amendments to the arrangement itself or securities granted or issued thereunder, amendments may be made in accordance with the provisions of the arrangement. Should an arrangement not provide for a procedure for amending the arrangement, securityholder approval will be required for such amendments, excluding the insiders benefiting from the amendments.

In addition, a listed issuer will be required to provide disclosure annually, updating its securityholders with respect to its security based compensation arrangements. This will entail providing details regarding any amendments made to any such arrangements, any discretionary powers exercised by the board of directors and all other material terms of its security based compensation arrangements.

Non-exempt Issuers

Currently non-exempt (junior) issuers must pre-clear all material transactions with the TSX even when no securities are to be issued. The amendments provide that non-exempt issuers will continue to notify the TSX of all proposed material transactions but the TSX will only review those transactions involving insiders, materially affecting control or certain other specifically listed transactions.

Definitions

The amendments include a definition of "materially affect control" to mean the ability of any securityholder or combination of securityholders acting together to influence the outcome of a vote of securityholders, including the ability to block significant transactions. A transaction that results, or could result, in a new holding of more than 20% of the voting securities by one securityholder or combination of securityholders acting together will be considered to materially affect control, unless the circumstances indicate otherwise. Transactions resulting in a new holding of less than 20% of the voting securities may also materially affect control, depending on the circumstances outlined above.

The TSX presently does not require securityholder approval for transactions which materially affect control of an issuer unless the dilution of the transaction exceeds 25% of the capital of the issuer or involves participation of insiders of the issuer. The amendments require that any transaction involving the issuance of securities that materially affects control, independent of other factors, will require securityholder approval.

Goodmans^{LLP} Update

Use of Discretion

The amendments set out that in exercising its discretion to grant relief from certain provisions of the Manual or in imposing additional requirements, the TSX will consider the effect that the proposed transaction may have on the quality of the TSX marketplace, based on factors which include the following:

- involvement of insiders or other related parties of the listed issuer in the transaction or the negotiation of the transaction;
- the material effect on control of the issuer;
- the issuer's corporate governance practices;
- the issuer's disclosure practices;
- the size of the transaction relative to the liquidity of the issuer; and
- an order of a court or similar administrative regulatory body that has considered the securityholders' interests.

Please contact a member of the Goodmans securities team should you wish to discuss the changes to the Manual or how the changes might affect a specific transaction.

Toronto

Justin Beber

jbeber@goodmans.ca 416.597.4252

Sheldon Freeman

sfreeman@goodmans.ca 416.597.6256

Allan Goodman

agoodman@goodmans.ca 416.597.4243

Francesca Guolo

fguolo@goodmans.ca 416.597.4238

Stephen Halperin

shalperin@goodmans.ca 416.597.4115

Tim Heeney

theeney@goodmans.ca 416.597.4195

Jonathan Lampe

jlampe@goodmans.ca 416.597.4128

Dale Lastman

dlastman@goodmans.ca 416.597.4129

David Matlow

dmatlow@goodmans.ca 416.597.4147

Neill May

nmay@goodmans.ca 416.597.4187

Stephen Pincus

spincus@goodmans.ca 416.597.4104

William Rosenfeld

wrosenfeld@goodmans.ca 416.597.4145

Meredith Roth

meroth@goodmans.ca 416.597.6260

Neil Sheehy

nsheehy@goodmans.ca 416.597.4229

Bob Vaux

rvaux@goodmans.ca 416.597.6265

Kenneth Wiener

kwiener@goodmans.ca 416.597.4106

Vancouver

Paul Goldman

pgoldman@goodmans.ca 604.608.4550

Steven Robertson

srobertson@goodmans.ca 604.608.4552

Bruce Wright

bwright@goodmans.ca 604.608.4551

Hong Kong

Leo Seewald

lseewald@goodmans.ca 852.2522.1061

All Updates are available at www.goodmans.ca. If you would prefer to receive this client Update by e-mail, require additional copies or would like to inform us of a change of address, please e-mail: updates@goodmans.ca. This Update is intended to provide general comment only and should not be relied upon as legal advice. © Goodmans LLP, 2004.