

Blakes Bulletin

Securities Regulation

TSX Adopts New Rules Relating to Acquisitions of or by Listed Investment Funds

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On July 16, 2010, the Toronto Stock Exchange (TSX) published a notice (the Notice) indicating that it has adopted amendments (the Amendments) to the TSX Company Manual relating to the acquisitions of, or by, investment funds that are listed on the TSX. The Amendments were originally published by the TSX for public comment in a request for comments on November 13, 2009.

EFFECTIVE DATE

The Amendments will become effective on August 16, 2010 (the Effective Date). The Amendments will not have any retroactive effect. However, the Notice advises that the TSX will consider applications by listed investment funds made prior to the Effective Date for a discretionary exemption from the security holder approval requirement in Subsection 611(c) (discussed below) provided the terms set out in the Notice are present.

THE AMENDMENTS

1. Security Holder Approval for Target Investment Funds

The TSX will require security holder approval of a listed investment fund that (a) is the subject of an acquisition or (b) transfers its assets, unless certain conditions are met.

Set out below is the text of the Amendment:

“Sec. 604(g). Security Holder Approval

(g) When a listed issuer that is an investment fund: (i) is being acquired, or (ii) transfers its assets; and after the transaction will cease to continue and its security holders will become security holders of another investment fund, TSX will require that such listed issuer obtain security holder approval for the transaction, unless all of the following conditions are met:

- (i) the listed issuer has a permitted merger clause in its constating documents which permits the transaction by the listed issuer without security holder approval;
- (ii) the consideration offered to security holders of the listed issuer for the transaction has a value that is not less than NAV [net asset value, as defined in National Instrument 81-106 - *Investment Fund Continuous Disclosure*];
- (iii) the manager of the listed issuer has determined that the investment objectives, valuation procedures and fee structure of the listed issuer and the acquiring issuer are substantially the same, has made such representations to its IRC [the independent review committee of an investment fund established under National Instrument 81-107 - *Independent Review Committee for Investment Funds*], and has referred the transaction to its IRC for approval;

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Highlights

- The TSX adopts amendments to the TSX Company Manual relating to the acquisitions of, or by, investments funds that are listed on the TSX. The Amendments will become effective on August 16, 2010.
- The TSX will require security holder approval of a listed investment fund that (a) is the subject of an acquisition or (b) transfers its assets, unless certain conditions are met.
- The TSX will exempt a listed investment fund from the requirement on the investment fund to obtain approval of its security holders for acquisitions exceeding 25% dilution, provided that certain conditions are met.

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(iv) the IRC of the listed issuer has approved the transaction;

(v) the listed issuer is providing its security holders with a redemption right for cash proceeds which are not less than NAV, together with not less than 20 business days notice by press release including a description of such redemption right and the transaction; and

(vi) the investment funds participating in the transaction bear none of the costs and expenses associated with the transaction.”

2. Exemption for Acquiror Investment Funds from Security Holder Approval Required under Subsection 611(c) of the TSX Company Manual

Currently, Subsection 611(c) of the TSX Company Manual requires a listed issuer to obtain the approval of its security holders where such listed issuer is proposing to issue its securities in connection with an acquisition and where the number of securities issued or issuable in payment of the purchase price for the acquisition exceeds 25% of the number of securities of the listed issuer that are outstanding, on a non-diluted basis. The Amendment will exempt an investment fund from this security holder approval requirement, provided that certain conditions are met.

Set out below is the text of the Amendment:

“Sec. 611. Acquisitions.

(d) Subject to Subsection 611(b), TSX will not require security holder approval where the acquiring listed issuer is an investment fund and all of the following conditions are met:

(i) the issuer being acquired is an investment fund(s) that calculates and publishes its NAV at least once a month;

(ii) the consideration being offered for the acquisition does not exceed the NAV of the investment fund that is the subject of the acquisition;

(iii) the manager of the acquiring listed issuer has determined that the assets being acquired are consistent with the acquiring issuer’s investment objectives, has made such representations to its IRC, and has referred the transaction to its IRC for approval;

(iv) the IRC of the acquiring listed issuer has approved the acquisition;

(v) the number of securities issued or issuable in payment of the purchase price for the acquisition does not exceed 100% of the number of securities of the listed issuer which are outstanding, on a non-diluted basis; and

(vi) the investment funds participating in the transaction bear none of the costs and expenses associated with the transaction.”

For further details, or if you have any questions concerning this bulletin, please contact Anoop Dogra at 416-863-3052 or anoop.dogra@blakes.com or any other member of our Securities Group.

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