

Torys on Mergers and Acquisitions

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TSX to Require Shareholder Approval for Dilutive Public Company Acquisitions


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The Toronto Stock Exchange is proposing to amend its rules to require a listed company to obtain shareholder approval for an acquisition of another public company if the transaction involves the issuance of more than 50% of the listed company's outstanding shares (on a non-diluted basis). This development will have a significant effect on public company M&A transactions in Canada and comes in the wake of the recent ruling by the Ontario Securities Commission that led to the withdrawal of HudBay Minerals' proposed acquisition of Lundin Mining.

The TSX believes that shareholders should have the opportunity to vote on public company acquisitions that are highly dilutive, notwithstanding that requiring shareholder approval will likely lead to increased acquisition costs and deal uncertainty.

The TSX will continue to require that a listed company obtain shareholder approval to acquire a private company where the number of shares required to pay the purchase price will exceed 25% of the listed company's outstanding shares (on a non-diluted basis). The TSX will also retain the ability to require shareholder approval on a discretionary basis, having regard to other factors. However, the TSX expects that its use of this discretion will be more limited as a result of the new bright-line threshold.

Comments on the proposal are due by May 4, 2009.

Copies of the request for public comment can be found at http://tsx.complinet.com/en/display/display_main.html?rbid=2072&element_id=707. 

To discuss these issues, please contact the authors.

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