13.2.2 TSX – Request for Comments – Amendments to Toronto Stock Exchange Company Manual

TORONTO STOCK EXCHANGE

REQUEST FOR COMMENTS

AMENDMENTS TO TORONTO STOCK EXCHANGE COMPANY MANUAL

Toronto Stock Exchange ("TSX" or the "Exchange") is publishing proposed amendments (the "Amendments") to the TSX Company Manual (the "Manual"). The Amendments provide for public interest rule changes in Part VI of the Manual. The Amendments will be published for public comment for a 45-day period.

The Amendments will be effective upon approval by the Ontario Securities Commission (the "OSC") following public notice and comment. Comments should be in writing and delivered by January 13, 2014 to:

Melissa Ghislanzoni
Legal Counsel
Toronto Stock Exchange
The Exchange Tower
130 King Street West
Toronto, Ontario M5X 1J2
Fax: (416) 947-4461
Email: tsxrequestforcomments@tsx.com

A copy should also be provided to:

Susan Greenglass
Director
Market Regulation
Ontario Securities Commission
20 Queen Street West
Toronto, Ontario M5H 3S8
Fax: (416) 595-8940
Email: marketregulation@osc.gov.on.ca

Comments will be publicly available unless confidentiality is requested.

Overview

TSX is seeking public comment on Amendments to the Manual. This Request for Comments explains the reasons for, and objectives of, the Amendments. Following the comment period, TSX will review and consider the comments received and implement the Amendments, as proposed, or as modified as a result of comments.

Text of the Amendments

The Amendments to the Manual are set out as blacklined text at Appendix A. For ease of reference, a clean copy of the Amendments to the Manual is set out at Appendix B. The Amendments relate to:

A. the adoption of security based compensation arrangements in the context of acquisitions under Section 611 of the Manual; and

B. when TSX will consider a transaction to be a backdoor listing (also called a reverse takeover or reverse merger by other stock exchanges) under Section 626 of the Manual

A. SECTION 611 – ACQUISITIONS:

Background

Section 613 of the Manual provides that any security based compensation arrangement (an "Arrangement") adopted by a listed issuer must be approved by its security holders.

There are two exceptions from this general rule[1]:

1. Under Subsection 613(c) of the Manual, listed issuers can provide an Arrangement as an inducement for employment to an officer, provided that the number of securities issuable does not exceed 2% of the issued and outstanding securities over a 12-month period under such exemption.

2. Under Subsection 611(e) of the Manual, listed issuers may assume an Arrangement of a target issuer in the context of an acquisition. In this instance, the number of securities issuable under such Arrangement will be taken into account to determine whether security holder approval is required for the acquisition pursuant to Subsection 611(c) of the Manual.

Summary of the Amendments to Section 611

The Amendments to Section 611 will allow listed issuers to adopt Arrangements for employees of a target issuer in the context of an acquisition without security holder approval, provided that the number of securities issuable under such Arrangement and the acquisition (including any related Arrangement) does not exceed 2% and 25% of the number of issued and outstanding securities, respectively.

The Amendments also clarify that the securities issuable to insiders under an Arrangement are included in determining whether security holder approval for an acquisition, on a disinterested basis, is required, as provided in Subsection 611(b) of the Manual.

Where a listed issuer assumes an Arrangement of a target issuer, it has been TSX practice to only allow such securities to be issued for awards outstanding at the time of the acquisition and for no other purpose. Accordingly, new awards may not be granted and any cancelled awards may not be re-allocated to any other participant or be used for any other purpose. TSX will extend this practice to newly created Arrangements intended for employees of the target issuer. Therefore, while the securities issuable are exempt from obtaining security holder approval under Subsection 613(a) of the Manual, they can only benefit employees of the target issuer and cannot be used for other Arrangements of the listed issuer. Newly adopted Arrangements may only be created in conjunction with an acquisition of a target issuer, whether or not such acquisition entails the issuance of listed securities.

Notwithstanding that the assumption of awards of a target issuer or the creation of an Arrangement for the employees of a target company may be exempt from security holder approval, such awards will: i) be subject to the annual disclosure requirements of Subsection 613(g) of the Manual; ii) count towards dilution incurred as a result of security based compensation arrangements; and iii) be considered in the insider participation limit.

Rationale for the Amendments to Section 611

The current regime provides that existing options, awards and entitlements under Arrangements of a target issuer may continue following the completion of an acquisition without having to seek security holder approval. Listed issuers have, from time to time, requested additional flexibility to adopt Arrangements for employees of a target issuer in the context of an acquisition.

For example, certain listed issuers have requested the ability to provide new incentives to employees of a target issuer as a retention mechanism in the context of an acquisition without requiring security holder approval. Listed issuers have submitted that certain Arrangements are being made and adopted as an integral part of acquisitions to retain employees of the target issuer. In such instance, they further submit the issuance of securities to employees should be considered as part of the acquisition cost.

On a discretionary basis, TSX has permitted such Arrangements, taking into consideration: i) that the Arrangement has resulted in limited dilution; ii) that such additional dilution was ultimately taken into account to determine whether security holder approval was required for the acquisition; iii) that the Arrangement was for the benefit of individuals who are neither insiders of, nor previously employed by, the listed issuer; and iv) that the ability to retain employees of the target company is a key component and an integral part of the acquisition and its success.

TSX is proposing the Amendments to Section 611 for transparency and to formalize this exemption. We believe that the Amendments strike the proper balance between flexibility for listed issuers and preserving the quality of the marketplace for the following reasons:

1. The dilution is limited as the number of securities issuable will be capped to 2% of the issued and outstanding securities on a non-diluted basis. This limit on dilution is consistent with the exemption under Subsection 613(c) that is available to listed issuers which allows the adoption of Arrangements as employment inducements for officers;

[1] In addition, pursuant to Subsection 602 (g) of the Manual, interlisted issuers may, in certain circumstances, be exempted from the requirements set out in Section 613 of the Manual (security based compensation arrangements).

2. The number of additional securities issuable under such Arrangements will be included in determining whether security holder approval is required for the transaction as a result of dilution exceeding 25%. For example, if the number of securities that are issued in consideration for an acquisition of assets results in dilution of 24.2% for the listed issuer, an Arrangement adopted for the employees of the target issuer resulting in 2% dilution will result in aggregate dilution of 26.4% and will therefore require shareholder approval; and

3. The exemption provided by the Amendments is only available for Arrangements adopted for persons who are employees or insiders of a company being acquired by a listed issuer. Employees and insiders of the listed issuer are prohibited from participating in Arrangements adopted in such circumstances. As a result, the exemption provided by the Amendments cannot be used to circumvent the general requirement that listed issuers obtain security holder approval for Arrangements pursuant to Section 613 of the Manual.

Questions:

In responding to any of the questions below, please explain your response.

1. Is it appropriate to allow listed issuers to create new or supplemental Arrangements in the context of an acquisition without requiring security holder approval?

2. Is the proposed 2% dilution limit for Arrangements adopted in the context of an acquisition appropriate? If not, what would be an acceptable limit?

3. Should the number of securities issuable under Arrangements that are adopted in the context of an acquisition be included in the calculation to determine whether security holder approval is required for the acquisition?

4. Is it appropriate to permit the adoption of a newly created Arrangement for acquisitions where securities are not otherwise issuable? For example, in circumstances where the acquisition is paid for entirely in cash?

5. Are the proposed limits and conditions linked to the creation of new Arrangements in the context of an acquisition appropriate? Should other limits and conditions be implemented? If so, what would those other limits and conditions be and why are they important?

B. SECTION 626 – BACKDOOR LISTINGS

Background

All issuers applying to list on TSX must meet the original listing requirements set out in Part III of the Manual, regardless of the means by which they become public (initial public offering, listing from another market, backdoor listing, etc.). Section 626 of the Manual provides that a transaction resulting in the acquisition of a TSX-listed issuer by an unlisted entity is to be considered as a backdoor listing (also called a reverse takeover or reverse merger by other stock exchanges) and the entity resulting from the transaction (or the unlisted entity) must meet TSX original listing requirements. Section 626 allows TSX to support investor protection and to maintain the integrity of its stock list by ensuring that all issuers meet the original listing requirements in order to list on TSX.

Section 626 of the Manual currently provides that the following two factors must both be present in order for a transaction to be considered a backdoor listing:

1. The transaction will 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. That is, the transaction will or could result in more than 100% dilution, taking into account the securities issuable pursuant to the transaction and including securities issuable pursuant to a concurrent private placement.

2. The transaction must result in a change in effective control of the listed issuer. TSX has generally applied the definition of “materially affect control”[2] contained in the Manual in making this determination.

[2] "**materially affect control**" means the ability of any security holder or combination of security holders acting together to influence the outcome of a vote of security holders, including the ability to block significant transactions. Such ability will be affected by the circumstances of a particular case, including the presence or absence of other large security holdings, the pattern of voting behaviour by other holders at previous security holder meetings and the distribution of the voting securities. A transaction that results, or could result, in a new holding of more than 20% of the voting securities by one security holder or combination of security holders 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.

Section 626 complements the "Change in Business" provisions in Section 717 of the Manual which state that listed issuers substantially discontinuing their business or materially changing the nature of their business will normally be required to meet original listing requirements. The principal difference between the provisions is that Section 626 is only engaged when there is an issuance of securities while Section 717 can also be triggered by transactions such as asset sales or significant cash acquisitions.

Where a listed issuer contemplates a transaction which could result in excess of 100% dilution, security holder approval may be required on the following bases: i) dilution exceeding 25% as a result of an acquisition (Section 611 of the Manual); ii) dilution exceeding 25% as a result of a private placement (Section 607 of the Manual); and/or iii) the transaction materially affecting control of the issuer (Section 604 of the Manual). Therefore, the principal issue raised in Section 626 is whether the entity resulting from the transaction (or the unlisted entity) will be required to meet original listing requirements. Section 626 also requires that security holder approval must be obtained at a meeting of security holders, and not in writing, as may otherwise be permitted under Section 604(d) of the Manual in certain circumstances.

Summary of the Amendments to Section 626

The Amendments to Section 626 are intended to better define backdoor listings to help support investor protection and preserve the quality of the stock list and the quality of the marketplace as follows:

1. We propose to consider a series of factors in determining whether there is a backdoor listing. These factors include, but are not limited to, 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 financial structure of the listed issuer. We believe that these factors are all relevant indicia of whether a transaction results in an unlisted entity becoming listed by acquiring a listed issuer.

2. The Amendments clarify the discretion of TSX to either: i) exempt a transaction from the requirement to meet original listing requirements that may otherwise constitute a backdoor listing; or ii) consider a transaction as a backdoor listing even if it may not otherwise constitute a backdoor listing.

3. The Amendments to Section 626 clarify the drafting of the definition of a "backdoor listing".

4. In assessing whether the transaction will 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 in assessing the various factors set out in Subsection 626(b), we will take into account securities issued or issuable upon a concurrent financing, whether it is by way of private placement or public offering (rather than only by private placement).

Rationale for the Amendments to Section 626

In the last few years, there have been transactions that have effectively resulted in the acquisition of a TSX-listed issuer by an unlisted entity with significant dilution (in excess of 100%) but without an accompanying change in effective control, as currently defined and applied by TSX. For example, this may happen where the unlisted entity is widely held or where there is a concurrent offering diluting the security holders of the unlisted entity. Section 626 may not therefore always adequately meet its intent as there may be transactions where unlisted entities use TSX-listed issuers to go public without having to meet original listing requirements, unless TSX exercises its discretion to apply its backdoor listing requirements.

The Amendments are being proposed to clarify drafting and more fully and transparently support the policy objectives of the rules for backdoor listings. We believe that transactions resulting in the listing of an issuer not previously listed on the exchange should be closely scrutinized and should generally be required to meet original listing requirements. The application of Section 626 is important to support investor protection and to preserve the integrity of the stock list and the quality of the marketplace. The Amendments will broaden the scope of transactions that may be considered as backdoor listings by taking into account a variety of factors, in addition to taking a more comprehensive view of dilution by including all securities issued in a concurrent financing, whether by way of private placement or public offering.

However, we are mindful that there may be highly dilutive acquisitions that do not result in a need to meet original listing requirements. We will continue to require shareholder approval for dilutive transactions which do not constitute backdoor listings. We believe that the Amendments will provide appropriate and meaningful factors that will distinguish backdoor listings from such highly dilutive acquisitions. The distinguishing factors to be considered include the business of the listed issuer and of the unlisted entity, the relative sizes of the listed issuer and the unlisted entity, changes to management (including the board of directors), as well as changes in voting power, security ownership, name changes and capital structure, among other factors that may be relevant in the particular circumstances. These factors do not constitute bright line tests and will be assessed both individually and collectively in determining whether a transaction results in a backdoor listing. Listed issuers will have the opportunity to make detailed submissions as to whether a transaction should be considered a backdoor listing and (if applicable) how the resulting entity will meet TSX original listing requirements.

Examples of the Amendments to Section 626

To help explain the Amendments to Section 626, consider the following examples. These examples are provided for illustrative purposes only and they are not determinative or exhaustive of the types of factors that TSX will consider in determining whether a transaction is a backdoor listing

Example #1: A mining company listed on TSX with exploration assets proposes to enter into a transaction resulting in: i) the acquisition of a significant exploration property from a private, closely held company in consideration for the issuance of securities, resulting in dilution in excess of 100%; ii) the same management team being retained upon completion of the transaction; iii) the addition of two new directors to the board which is currently composed of five directors; and iv) the emergence of a new controlling shareholder as a result of the acquisition. In this case, approval from the listed issuer's shareholders will be required under Section 611 as the acquisition results in excess of 25% dilution and Section 604 applies as there is a material effect on control. However, the entity resulting from the transaction may not be required to meet original listing requirements as the transaction could be considered as a large and dilutive acquisition rather than a backdoor listing because the business of the company will remain the same and there are no significant changes to management.

Example #2: A mining company listed on TSX with exploration assets proposes to enter into a transaction resulting in: i) the acquisition of a private company with a portfolio of revenue-generating royalty interests in consideration for the issuance of securities and cash raised by way of a public offering of convertible debt, resulting in dilution in excess of 100%; ii) changing senior executives; iii) the addition of two new directors to the current board of five directors; iv) the name of the company being changed to "Mining Royalty Corporation" from "Mining Exploration Corporation"; and v) securities of the company continuing to be widely held. In this case, approval from the listed issuer's shareholders will be required under Section 611 as the acquisition results in excess of 25% dilution. The entity resulting from the transaction will also be required to meet original listing requirements pursuant to Section 626 as the transaction would be considered as a backdoor listing because the business of the company will be materially altered (as also evidenced by the proposed name change) and there are significant changes to senior management.

Review of other exchange rules

We have also reviewed the backdoor listing rules of other exchanges. In determining whether a transaction constitutes a backdoor listing, most exchanges take into account a wide range of factors such as changes to the board and management, the nature of the business and financial tests in regard to the capital structure. In all cases, where a transaction is deemed to be a backdoor listing, the resulting entity is required to meet the original listing requirements of the exchange. We have prepared the proposed list of indicia in the Amendments based in part on the factors applied by other exchanges.

Questions:

In responding to any of the questions below, please explain your response.

1. Are the proposed factors used to assess whether a transaction constitutes a backdoor listing appropriate and relevant? Should any factors either alone or in combination be determinative of whether original listing requirements should be applied? e.g. entering into a new business and/or significant dilution. Are there any additional factors that should be considered? e.g. financial ratios, indicia, etc.

2. When determining whether a transaction constitutes a backdoor listing, should any special consideration be given to circumstances where the listed issuer will develop a significant connection to an emerging market jurisdiction (e.g. mind and management or principal active operations) as a result of such transaction? If so, how?

3. Do the Amendments allow TSX to appropriately identify transactions that constitute a backdoor listing with the view to preserving the integrity of the stock list and the market?

4. Do the Amendments strike the appropriate balance to distinguish highly dilutive (in excess of 100%) transactions from backdoor listings?

5. Is it appropriate to include all securities issued or issuable upon a concurrent financing, whether by way of private placement or public offering in assessing whether existing security holders of the listed issuer before the transaction will hold less than 50% of the securities or voting power of the entity resulting from the transaction?

6. Should original listing requirements be automatically applied to transactions where existing security holders will own less than 50% of the resulting entity? In other words, should the requirements to meet original listing

requirement for a backdoor listing simply be a "bright line test" based on the level of dilution resulting from the transaction?

Public Interest

TSX is publishing the Amendments for a 45-day comment period that expires on January 13, 2014. The Amendments will only become effective following public notice and the approval of the OSC.

APPENDIX A

TEXT OF PROPOSED AMENDMENTS TO THE TSX COMPANY MANUAL

Acquisitions

Section 611

(a) Where a listed issuer proposes to issue securities as full or partial consideration for property (which may include securities or assets) purchased from an insider of the listed issuer, TSX may require that documentation such as an independent valuation or engineer's report be provided.

(b) Security holder approval will be required in those instances where the number of securities issued or issuable to insiders as a group, together with any securities issued or made issuable to insiders as a group for acquisitions during the preceding six months, in payment of the purchase price for an acquisition exceeds 10% of the number of securities of the listed issuer which are outstanding on a non-diluted basis, prior to the date of closing of the transaction. Insiders receiving securities pursuant to the transaction are not eligible to vote their securities in respect of such approval.

(c) Subject to Subsection 611(d), security holder approval will be required in those instances where the number of securities issued or issuable in payment of the purchase price for an acquisition exceeds 25% of the number of securities of the listed issuer which are outstanding, on a non-diluted basis.

[…]

(e) Where an acquisition by a listed issuer includes the assumption of security based compensation arrangements of a target issuer or the creation of security based compensation arrangements for employees of a target issuer as a result of the acquisition, securities issuable under such arrangements will be included in the securities issued or issuable for the purposes of the security holder approval requirement in Subsection 611(b) and (c). For the purpose of this Section 611, the assumption of security based compensation arrangements includes: i) a direct assumption of ~~a~~ security based compensation ~~arrangement as well as~~ arrangements of the target issuer; and ii) the cancellation of security based compensation arrangements ~~in~~ of the target issuer and their replacement with arrangements ~~in~~ of the listed issuer .

(f) Subsection 613(a) does not apply where an acquisition by a listed issuer includes: i) the assumption of security based compensation arrangements of a target issuer~~, securities issuable under such arrangements are not subject to Subsection 613(a)~~ if the number of assumed securities (and their exercise or subscription price, if applicable) is adjusted in accordance with the price per acquired security payable by the listed issuer; and ii) the creation of security based compensation arrangements for employees of a target issuer if the aggregate number of securities issuable does not exceed 2% of the number of securities of the listed issuer which are outstanding, on a non-diluted basis, prior to the date of closing of the transaction, and such employees are not insiders or employees of the listed issuer prior to the acquisition.

(g) In calculating the number of securities issued or issuable in payment of the purchase price for an acquisition, any securities issued or issuable upon a concurrent private placement upon which the acquisition is contingent or otherwise linked will be included.

[…]

C. SECURITY BASED COMPENSATION ARRANGEMENTS

Section 613.

(a) When instituted, and when required for amendment, all security based compensation arrangements must be approved by:

(i) a majority of the listed issuer's directors; and

(ii) subject to Subsection 613(c), the listed issuer's security holders.

[…]

(b) For the purposes of this Section 613, security based compensation arrangements include;

(i) stock option plans for the benefit of employees, insiders, service providers or any one of such groups;

(ii) individual stock options granted to employees, service providers or insiders if not granted pursuant to a plan previously approved by the listed issuer's security holders;

(iii) stock purchase plans where the listed issuer provides financial assistance or where the listed issuer matches the whole or a portion of the securities being purchased;

(iv) stock appreciation rights involving issuances of securities from treasury;

(v) any other compensation or incentive mechanism involving the issuance or potential issuances of securities of the listed issuer; and

(vi) security purchases from treasury by an employee, insider or service provider which is financially assisted by the listed issuer by any means whatsoever.

For greater certainty, arrangements which do not involve the issuance from treasury or potential issuance from treasury of securities of the listed issuer are not security based compensation arrangements for the purposes of this Section 613.

For the purposes of Section 613, a "service provider" is a person or company engaged by the listed issuer to provide services for an initial, renewable or extended period of twelve months or more.

Exception to the Requirement for Security Holder Approval—Employment Inducements

(c) Security holder approval is not required for security based compensation arrangements used as an inducement to person(s) or company(ies) not previously employed by and not previously an insider of the listed issuer, provided that: i) such person(s) or company(ies) enters into a contract of full time employment as an officer of the listed issuer; and ii) the number of securities made issuable pursuant to this Subsection during any twelve month period do not exceed in aggregate 2% of the number of securities of the listed issuer which are outstanding, on a non-diluted basis, prior to the date this exemption is first used during such twelve month period.

[…]

BACKDOOR LISTINGS

Section 626

~~A "backdoor listing" occurs when an issuance of securities of a listed issuer results, directly or indirectly, in the acquisition of the listed issuer by an unlisted issuer with an accompanying change in effective control of the listed issuer.Transactions will normally be regarded as backdoor listings if they will, or could result in the security holders of the listed issuer owning less than 50% of the securities or voting power of the entity resulting from the transaction, with an accompanying change in effective control of the listed issuer.~~

~~Any securities issued or issuable upon a concurrent private placement upon which the backdoor listing is contingent or otherwise linked will be included in determining if the backdoor listing results in the security holders of the listed issuer owning less than 50% of the securities or voting power of the resulting company, with an accompanying change in effective control of the listed issuer.~~

A "backdoor listing" occurs when a transaction results in the acquisition of a listed issuer by an entity not currently listed on TSX. The transaction may be a series of transactions and may take one of a number of forms, including an issuance of securities for assets, an amalgamation or a merger.

(a) Subject to Subsection 626(c), where TSX determines that a transaction is a backdoor listing, the approval procedure is similar to that of an original listing application. Generally, the listed issuer resulting from the transaction must meet the original listing requirements of TSX. TSX will also approve the transaction where the unlisted entity meets the original listing requirements of TSX (except for the public distribution requirements) and the entity resulting from the transaction:

i) meets the public distribution requirements for original listing;

ii) would appear to have a substantially improved financial condition as compared to the listed issuer; and

iii) has adequate working capital to carry on the business.

(b) A transaction resulting, or that could result, in the security holders of the listed issuer owning less than 50% of the securities or voting power of the entity resulting from the transaction, will generally be considered a backdoor listing.

Furthermore, in certain circumstances, TSX may determine:

i) not to consider a transaction as a backdoor listing, notwithstanding that existing security holders of the listed issuer will own less than 50% of the securities or voting power of the entity resulting from the transaction. In such instance, TSX must be satisfied that the transaction should not be regarded as a backdoor listing; or

ii) to consider a transaction as a backdoor listing, notwithstanding that existing security holders of the listed issuer will continue to own 50% or more of the securities or voting power of the entity resulting from the transaction.

In making its determination, TSX will consider a variety of factors such as the business of the listed issuer and of the unlisted entity, the relative sizes of the listed issuer and the unlisted entity, changes to management (including the board of directors), as well as changes in voting power, security ownership and capital structure, among other factors that may be relevant in the particular circumstances.

In calculating whether security holders of the listed issuer will or could own less than 50% of the securities or voting power of the entity resulting from the transaction, any securities issued or issuable upon a concurrent financing that is contingent on or otherwise linked to the transaction will be included.

(c) The transaction must be approved by the security holders of the listed issuer's participating securities at a meeting prior to completion of the transaction. For this purpose, holders of Restricted Securities, as defined in Part I, must be entitled to vote with the holders of any class of securities of the listed issuer which otherwise carry greater voting rights, on a basis proportionate to their respective residual equity interests in the issuer.

TSX's approval of a backdoor listing must be obtained before the transaction is submitted to security holders for approval. If this is impracticable, the information circular sent to security holders must include a statement that the proposed transaction is subject to the acceptance of TSX. The listed issuer must file a draft of the information circular with TSX for review before the sending of the circular to the security holders.

APPENDIX B

TEXT OF PROPOSED AMENDMENTS TO THE TSX COMPANY MANUAL (CLEAN)

Acquisitions

Section 611

(a) Where a listed issuer proposes to issue securities as full or partial consideration for property (which may include securities or assets) purchased from an insider of the listed issuer, TSX may require that documentation such as an independent valuation or engineer's report be provided.

(b) Security holder approval will be required in those instances where the number of securities issued or issuable to insiders as a group, together with any securities issued or made issuable to insiders as a group for acquisitions during the preceding six months, in payment of the purchase price for an acquisition exceeds 10% of the number of securities of the listed issuer which are outstanding on a non-diluted basis, prior to the date of closing of the transaction. Insiders receiving securities pursuant to the transaction are not eligible to vote their securities in respect of such approval.

(c) Subject to Subsection 611(d), security holder approval will be required in those instances where the number of securities issued or issuable in payment of the purchase price for an acquisition exceeds 25% of the number of securities of the listed issuer which are outstanding, on a non-diluted basis.

[…]

(e) Where an acquisition by a listed issuer includes the assumption of security based compensation arrangements of a target issuer or the creation of security based compensation arrangements for employees of a target issuer as a result of the acquisition, securities issuable under such arrangements will be included in the securities issued or issuable for the purposes of the security holder approval requirement in Subsection 611(b) and (c). For the purpose of this Section 611, the assumption of security based compensation arrangements includes: i) a direct assumption of security based compensation arrangements of the target issuer; and ii) the cancellation of security based compensation arrangements of the target issuer and their replacement with arrangements of the listed issuer.

(f) Subsection 613(a) does not apply where an acquisition by a listed issuer includes: i) the assumption of security based compensation arrangements of a target issuer if the number of assumed securities (and their exercise or subscription price, if applicable) is adjusted in accordance with the price per acquired security payable by the listed issuer; and ii) the creation of security based compensation arrangements for employees of a target issuer if the aggregate number of securities issuable does not exceed 2% of the number of securities of the listed issuer which are outstanding, on a non-diluted basis, prior to the date of closing of the transaction, and such employees are not insiders or employees of the listed issuer prior to the acquisition.

(g) In calculating the number of securities issued or issuable in payment of the purchase price for an acquisition, any securities issued or issuable upon a concurrent private placement upon which the acquisition is contingent or otherwise linked will be included.

[…]

BACKDOOR LISTINGS

Section 626

A "backdoor listing" occurs when a transaction results in the acquisition of a listed issuer by an entity not currently listed on TSX. The transaction may be a series of transactions and may take one of a number of forms, including an issuance of securities for assets, an amalgamation or a merger.

(a) Subject to Subsection 626(c), where TSX determines that a transaction is a backdoor listing, the approval procedure is similar to that of an original listing application. Generally, the listed issuer resulting from the transaction must meet the original listing requirements of TSX. TSX will also approve the transaction where the unlisted entity meets the original listing requirements of TSX (except for the public distribution requirements) and the entity resulting from the transaction:

i) meets the public distribution requirements for original listing;

ii) would appear to have a substantially improved financial condition as compared to the listed issuer; and

iii) has adequate working capital to carry on the business.

(b) A transaction resulting, or that could result, in the security holders of the listed issuer owning less than 50% of the securities or voting power of the entity resulting from the transaction, will generally be considered a backdoor listing.

Furthermore, in certain circumstances, TSX may determine:

i) not to consider a transaction as a backdoor listing, notwithstanding that existing security holders of the listed issuer will own less than 50% of the securities or voting power of the entity resulting from the transaction. In such instance, TSX must be satisfied that the transaction should not be regarded as a backdoor listing; or

ii) to consider a transaction as a backdoor listing, notwithstanding that existing security holders of the listed issuer will continue to own 50% or more of the securities or voting power of the entity resulting from the transaction.

In making its determination, TSX will consider a variety of factors such as the business of the listed issuer and of the unlisted entity, the relative sizes of the listed issuer and the unlisted entity, changes to management (including the board of directors), as well as changes in voting power, security ownership and capital structure, among other factors that may be relevant in the particular circumstances.

In calculating whether security holders of the listed issuer will or could own less than 50% of the securities or voting power of the entity resulting from the transaction, any securities issued or issuable upon a concurrent financing that is contingent on or otherwise linked to the transaction will be included.

(c) The transaction must be approved by the security holders of the listed issuer's participating securities at a meeting prior to completion of the transaction. For this purpose, holders of Restricted Securities, as defined in Part I, must be entitled to vote with the holders of any class of securities of the listed issuer which otherwise carry greater voting rights, on a basis proportionate to their respective residual equity interests in the issuer.

TSX's approval of a backdoor listing must be obtained before the transaction is submitted to security holders for approval. If this is impracticable, the information circular sent to security holders must include a statement that the proposed transaction is subject to the acceptance of TSX. The listed issuer must file a draft of the information circular with TSX for review before the sending of the circular to the security holders.