Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 Request for Comments – Amendments to Part VI of the TSX Company Manual

TORONTO STOCK EXCHANGE

REQUEST FOR COMMENTS

AMENDMENTS TO PART VI OF THE
TORONTO STOCK EXCHANGE ("TSX") COMPANY MANUAL
(THE "MANUAL")

TSX is publishing proposed changes to Part VI of the Manual relating to security holder approval requirements for acquisitions (the "Amendment"). The Amendment is being published for a 30-day comment period.

The Amendment 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 May 4, 2009 to:

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Legal Counsel
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The Exchange Tower
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Toronto, Ontario M5X 1J2
Fax: (416) 947-4461
Email: tsxrequestforcomments@tsx.com

A copy should also be provided to:

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Manager
Market Regulation
Ontario Securities Commission
20 Queen Street West
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Comments will be publicly available unless confidentiality is requested.

Overview

On October 12, 2007, TSX published a Request for Comments (the "2007 RFC") on its security holder approval requirements for acquisitions. The 2007 RFC was prompted by the view expressed by certain market participants that issuers should not be exempted above some prescribed level of dilution from the requirement to obtain security holder approval for the issuance of securities as consideration for an acquisition where the target is a public company. In the 2007 RFC, TSX committed to determining whether to propose an amendment to its current security holder approval requirements for acquisitions, based on the comments it received.

Twenty-two (22) comment letters were submitted, each of which has been carefully reviewed and considered. A summary of the comments received in response to the 2007 RFC and TSX's responses is attached at Appendix A. The comments received generally reflect two widely divergent views without compromise or consensus. However, the comments were helpful in addressing the range and complexity of the issues under consideration. In formulating this proposed Amendment, TSX also commenced discussions with OSC staff in February 2008 regarding the 2007 RFC and the comments received in response to the 2007 RFC.

Currently, TSX requires security holder approval for the issuance of securities as full or partial consideration for an acquisition where such number of securities exceeds 25% of the issued and outstanding securities of the listed issuer (Subsection 611(c)[1]). However, this requirement does not apply where the listed issuer is acquiring a public company (a reporting issuer or issuer of equivalent status having 50 or more beneficial security holders, excluding insiders and employees) (Subsection 611(d)).

This exemption from security holder approval for acquisitions of public companies was formally incorporated in the Manual on January 1, 2005 in conjunction with a substantial number of other amendments to Parts V, VI and VII of the Manual. Prior to January 1, 2005, TSX practice for many years was to waive the requirement for security holder approval for acquisitions of public companies even where the securities to be issued in payment of the purchase price resulted in more than 25% dilution.

As neither securities nor corporate law in Canada requires security holder approval by the issuer for arm's length dilutive transactions, TSX has required security holder approval for certain dilutive acquisitions (other than acquisitions of public companies), private placements and security-based compensation arrangements, such as stock option plans.

This Request for Comment outlines the comments received, explains the rationale and objective of the Amendment and seeks further public comment. Following the comment period, TSX will review and consider the comments received and implement the Amendment, as proposed or as modified. Modifications of the Amendment may include an alternative dilution level to the proposed 50%. If such a modification is made it would not be considered material given the scope of this Request for Comments. Unless the Amendment is otherwise materially modified, TSX will not request further comments prior to implementing the Amendment as proposed or modified.

Summary of the Amendment

TSX is proposing to require security holder approval for the issuance of securities in payment of the purchase price for an acquisition of a public company which exceeds 50% of the number of issued and outstanding securities of the listed issuer which are outstanding on a non-diluted basis.

To implement the Amendment, TSX is proposing to delete Subsection 611(d) and amend Subsection 611(c) to include reference to security holder approval requirements applicable to all acquisitions.

Text of the Amendment

TSX is proposing to amend Subsection 611(c) as follows:

> 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:
>
> (i) 25% of the number of securities of the listed issuer which are outstanding, on a non-diluted basis, for an acquisition other than an acquisition of a reporting issuer (or equivalent status) having 50 or more beneficial security holders, excluding insiders and employees, or
>
> (ii) 50% of the number of securities of the listed issuer which are outstanding, on a non-diluted basis, for an acquisition of a reporting issuer (or equivalent status) having 50 or more beneficial security holders, excluding insiders and employees.

A blackline of Section 611 showing the proposed amendments is attached at Appendix B.

Rationale and Discussion of the Amendment

In this section we discuss the rationale for (i) maintaining the exemption from security holder approval for acquisitions of public companies and requiring security holder approval for certain dilutive acquisitions; and (ii) determining that dilution is the appropriate factor on which to base security holder approval and setting the level of dilution which would trigger security holder approval.

Maintaining the Exemption and Requiring Security Holder Approval

TSX strives to balance the interests of issuers, security holders and other market participants in order to support a quality market for securities. Accordingly, TSX seeks to develop and apply rules that are consistent and transparent, within the scope of its jurisdiction.

[1] See Appendix A for the text of Section 611, together with the Amendment.

TSX believes that an exemption from security holder approval should be maintained for public company acquisitions. In addition to the comments received, TSX has considered the following to support its proposal of the Amendment: (i) acquisitions of public companies are significantly different than those of private companies; and (ii) even in light of increased globalization, we must take into account the unique nature of the Canadian marketplace.

I. Acquisitions of Public versus Private Companies

After careful consideration of the divergent comments received in response to the 2007 RFC, TSX believes that security holders should be provided with an opportunity to vote on acquisitions which may significantly alter their investment through dilution.

The Amendment will continue to differentiate between acquisitions of public and private companies (or assets). TSX believes that acquisitions of public companies are different than acquisitions of private companies in fundamental ways and therefore merit different approaches. Public company transactions are different given the availability of public information on the target. Accordingly, market participants are able to better assess the merits of a transaction. This is not the case when the target is a private company with no, or limited, information available to the public.

In addition, there is a degree of discipline imposed on the acquiror because materials produced for take-over bids and plans of arrangement must contain prospectus level disclosure on the resulting issuer. Public scrutiny of the available information will generally discipline management in structuring acquisitions.

When the target is publicly listed, the market value of the target is readily available. A premium may be offered to reflect potential synergies post acquisition or for other reasons. Analysts and investors often focus on the premium paid in order to assess the merits of a transaction. This also contributes to the discipline of management and the board when acquiring public companies.

Considering the interests of issuers, security holders and the markets, we believe that it is appropriate to maintain an exemption from security holder approval for public company acquisitions, albeit with a maximum dilution threshold.

TSX appreciates that directors are in a better position to make timely decisions regarding acquisitions, because they have access to information and professional advisors which are not generally available to security holders. TSX also recognizes that security holders may have divergent interests in a transaction and different time horizons for their investment. We also do not underestimate the significance of a director's fiduciary duty and the public scrutiny afforded to the acquisition of a public company. These factors further support maintaining the exemption from security holder approval for public company acquisitions. However, we also believe that security holders of the acquiror should have the opportunity to approve acquisitions which may significantly alter their investment and control rights through dilution. We do not believe that seeking security holder approval in such instances is inconsistent with the exercise of the directors' fiduciary duties.

As neither securities nor corporate law in Canada requires security holder approval of arm's length dilutive transactions, we believe that it is appropriate for TSX to limit a listed issuer's ability to significantly alter the investment made by security holders through dilutive acquisitions. Furthermore, we believe that it is appropriate for TSX to require security holder approval as outlined in the Amendment because other remedies available to security holders such as derivative actions, oppression remedies or proxy contests may not be viable alternatives for security holders that do not have significant economic resources or sufficient economic incentive to initiate such actions.

II. The Unique Nature of the Canadian Marketplace

As noted in the 2007 RFC, the majority of other exchanges canvassed (or corporate law in the jurisdiction in which each exchange is domiciled) require some form of security holder approval for dilutive acquisitions. Attached as Appendix C is the summary overview of other exchange requirements which was included as part of the 2007 RFC.

We are proposing the Amendment in part because of similar requirements of most other exchanges and the increasing globalization of investments. In proposing the Amendment, we have also taken into consideration the significant number of resource issuers listed on TSX. As at December 31, 2008, 474 resource issuers[2] were listed on TSX, representing 30% of all listed issuers on TSX.[3] As discussed in the 2007 RFC, these issuers tend to be more active in mergers and acquisitions ("M&A") and they generally offer securities as consideration rather than cash, to preserve cash for exploration and development. On a combined basis, in 2007 and 2008, 85% of public company acquisitions where securities were offered by TSX listed issuers were completed by resource issuers.[4]

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2 Resource issuers include issuers listed in the Mining and Oil & Gas sectors.
3 TMX Group analysis of internal data.
4 Ibid.

We have also taken into consideration the comparative size and maturity of issuers listed on TSX as compared to US and other exchanges. As at December 31, 2008, the median market cap of issuers listed on TSX was CDN$51 million,[5] compared to US$595 million on NYSE[6]. Generally, TSX is a listing venue for small to medium size enterprises which have a market capitalization of CDN$500 million or less. Although TSX believes that it must stay abreast of the requirements of other exchanges, it also recognizes that simply imposing requirements from other marketplaces may not necessarily lead to an appropriate regulatory regime for our market.

We recognize that requiring security holder approval for certain dilutive acquisitions will increase direct and indirect costs of acquisitions, which may dampen M&A activity. Direct costs may include additional consideration and higher break fees for the acquisition because of increased deal uncertainty associated with the security holder approval, as well as additional costs related to calling and holding the security holder meeting. The Amendment may also negatively affect a TSX listed issuer's ability to compete globally and domestically in acquiring other public companies where foreign acquirors are not subject to a security holder approval requirement. In a competitive takeover bid situation with a TSX listed issuer and foreign acquiror competing for strategic assets, the TSX listed acquiror may be subject to a security holder approval requirement, where the foreign acquiror is not for a number of reasons including the following: (i) the foreign acquiror is not a listed issuer; (ii) some foreign exchanges (or corporate law in the jurisdiction in which each exchange is domiciled) do not require security holder approval for such transactions; or (iii) the issuer may be more mature in terms of both size and ability to offer cash rather than securities. Ultimately, the requirement for security holder approval may result in TSX listed issuers losing the opportunity to acquire strategic assets, as the target company will prefer the offer that is less contingent.

Questions:

Please comment on the following questions:

1. Is it appropriate to maintain the exemption from security holder approval for the acquisition of public companies, provided the acquisition does not significantly alter the nature of the security holder's investment through dilution?

2. Will the Amendment dampen M&A activity? Will it make transactions more difficult to complete? How much of an impact will the Amendment have on deal certainty?

3. Do you think the Amendment will affect the competitiveness of issuers listed on TSX? If so, how?

Dilution

TSX believes that (i) there should be a bright line test requiring security holder approval for the acquisition of public companies based on dilution, and (ii) 50% dilution is the appropriate level at which to require security holder approval.

I. Dilution is the appropriate factor on which to base security holder approval

In the 2007 RFC, we asked whether factors other than dilution, such as the relative premium or enterprise value, should be taken into consideration in setting a bright line test for security holder approval of significant transactions. All commenters agreed that factors other than dilution should not be considered by TSX in determining whether security holder approval should be required. Commenters universally agreed that dilution was the only appropriate factor to consider when setting a bright line test for security holder approval.

While the Amendment proposes a requirement for security holder approval based on dilution, it is TSX's view that other factors, such as the premium paid by listed issuers for the target, may be more contentious than dilution alone. Therefore, we have concluded that regardless of the threshold dilution level at which security holder approval is required, there may be transactions below this level of dilution that will be objectionable because dilution alone does not address all of the relevant factors. However, we expect that there will be a relatively limited number of these objectionable transactions if the TSX sets a reasonable dilution level beyond which security holder approval is required.

The Amendment introduces a bright line dilution test which is consistent with our goal of developing and applying transparent and consistent rules. A bright line dilution test is also easy to understand and apply, which is positive for the market and its participants. Lastly, most of the other exchanges which require security holder approval for acquisitions of public (or private) companies use a dilution test.

We recognize that listed issuers may partially or wholly fund acquisitions with cash obtained by way of a debt or equity financing or from their working capital. TSX does not generally review arm's length cash acquisitions since they do not result in the issuance of equity securities from treasury or in a change in the capital structure of the issuer. Cash transactions which are

[5] Ibid.
[6] TMX Group analysis of NYSE data.

partially or wholly funded by way of a debt or equity financing are also likely to impose greater discipline on management than direct equity issuances for acquisitions without security holder approval. Accordingly, acquisitions where the consideration is solely paid in cash and no securities are issued or issuable will not be reviewed under Section 611, as is currently the case.

If the consideration for an acquisition is comprised of securities of the listed issuer and cash that has been raised by way of a private placement, such transaction would be subject to Subsection 611(g) of the Manual. Accordingly, the number of securities issuable under the private placement will be aggregated with the number of securities issued as part of the consideration for the acquisition in order to determine the dilution level and whether or not security holder approval would be required. Subsection 611(g) does not apply to equity financings by way of public offering and it is conceivable that acquisitions will be wholly funded by a public offering and therefore not require security holder approval. We recognize that the Amendment may affect the structuring of transactions which may create additional costs and transactional inefficiencies.

II. 50% dilution level

In the 2007 RFC, we asked at what dilution level security holder approval should be required for the acquisition of public companies. The responses were extremely divided, between preferring the status quo (no security holder approval requirements regardless of dilution) and setting security holder approval requirements at the same level of dilution as for the acquisition of private companies, being 25%.

As discussed above, requiring security holder approval based on a dilution level will not directly address all factors, such as the premium paid for a target company. We believe, however, that it is not appropriate for publicly traded issuers to have the ability to issue an unlimited number of securities for acquisitions without obtaining security holder approval. We believe that an acquisition of a company which may significantly alter a security holder's investment through dilution should be approved by security holders.

Under the Amendment, security holder approval would be required for public company acquisitions resulting in more than 50% dilution. TSX believes that it is appropriate to require security holder approval at that level of dilution because it is reasonable to consider that a security holder's investment may be significantly altered through dilution at that level. Specifically, where dilution will exceed 50%, the implied value of the target company is equivalent to at least half that of the listed issuer and, post-transaction, will represent at least one-third of the resulting issuer.

As discussed in the 2007 RFC, many of the other exchanges we reviewed have security holder approval requirements at different dilution levels. In particular, the US exchanges require security holder approval at a 20% dilution level. Notwithstanding our geographic proximity to the US and the number of issuers listed both on TSX and a US exchange, the Amendment takes into account the size and nature of TSX listed issuers. We believe it would be unduly burdensome and unnecessary to set a requirement based on US exchanges whose issuers are generally of a very different size and nature. Issuers listed on US exchanges generally have market capitalizations that are greater than those listed on TSX and stronger balance sheets, and therefore better access to cash or debt to finance acquisitions.

During 2007 and 2008, TSX listed issuers completed an aggregate of 106 acquisitions of public companies where the consideration was wholly or partially paid for in securities of the acquiror. Statistical information regarding these transactions by dilution level is at Appendix D.

Based on the historical 2007 and 2008 data, the Amendment would have required security holder approval in 24% of all public company acquisitions offering securities as all or part of the purchase price, with approximately a dozen transactions being subject to security holder approval each year. We believe that number is reasonable, and not unduly burdensome, but that more fundamentally, dilution levels exceeding the 50% level may represent a significant acquisition for an issuer which should be approved by security holders.

In setting the level of dilution, we have also considered the application of Section 603 of the Manual which provides TSX with the discretion to allow exemptions from security holder approval requirements or to impose additional conditions on a transaction, such as security holder approval, on a discretionary basis. The Amendment provides a bright line test for the security holder approval requirement for a public company acquisition. Accordingly, TSX expects that the Amendment will result in improved deal certainty for public company acquisitions resulting in dilution of less than 50%.

We expect that the application of Section 603 will be correlated with the dilution level which is implemented under an Amendment. For example, if a 100% dilution level is implemented under the Amendment, issuers could reasonably expect that TSX would be more likely to require security holder approval on a discretionary basis, having regard to other factors, as dilution approached the threshold level. Conversely, if a 25% dilution level is implemented under the Amendment, issuers could reasonably expect that TSX would be more likely to exempt a transaction from security holder approval on a discretionary basis, having regard to other factors, as dilution exceeds the threshold level. Therefore with a dilution level of 50%, the application of Section 603 should be more limited, providing consistency and transparency for market participants.

TSX notes that Sections 603 and 604 have general application to Part VI, including the security holder approval requirements in Section 611, and are not proposed to be amended at this time.

TSX is not proposing to amend Subsection 604(d) which permits security holder approval to be obtained in writing from holders of more than 50% of the voting securities of the listed issuer. Accordingly, if the Amendment is adopted as proposed, issuers may satisfy the requirement for security holder approval in writing in accordance with Subsection 604(d).

Questions:

Please comment on the following questions:

4. Do you think the Amendment strikes the appropriate balance between the interests of security holders, issuers and other market participants? Why or why not?

5. What are the principal costs and benefits of the approach proposed in the Amendment? Please explain your response with reference to the various stakeholders.

6. Do you expect that the Amendment will lead to transactions being structured to avoid security holder approval? If so, do you believe that this would be inappropriate and if so, why?

7. Is a level of dilution other than that set out the Amendment more appropriate e.g. 25%, 30%, 40%, 75%, 100%? If so, why?

8. If your response to question 7 is positive, please consider the costs and benefits of requiring security holder approval at such a dilution level. Please explain your response with reference to the various stakeholders.

9. Would the 50% dilution proposed in the Amendment provide a bright line test which would obviate the application of Section 603 with respect to public company acquisitions in all but extraordinary circumstances? If not, why not.

10. Is it appropriate to permit security holder approval of acquisitions in writing rather than at a meeting? If not, why?

Alternatives Considered

I. Alternative dilution levels

No basis for imposing a bright line test requiring security holder approval was considered other than dilution.

Various dilution levels were considered, including 100%. Specifically, we considered whether it was more appropriate to require security holder approval on the basis of the acquisition of a public company which had an implied value which was greater than the acquiror. We carefully considered the decision of the OSC, *In the Matter of HudBay Minerals Inc. and In the Matter of a decision of the Toronto Stock Exchange* dated January 23, 2009 (the "HudBay decision"), which took note of the dilution which exceeded 100% and described it as "extreme". We found the rationale for security holder approval at 100% supportable. However having considered rules of other exchanges, market participant expectations and uncertainties around the application of Section 603 as a result of the HudBay decision, we concluded that a 50% dilution level was more appropriate.

A 25% dilution level was also considered. As shown in Appendix D, 43% of public company acquisitions completed in 2007 and 2008 exceeded 25% dilution. At that dilution level, in TSX's view, there is insufficient evidence of corresponding benefit to justify the increased costs, delays and uncertainty which may be incurred by requiring security holder approval at that level. Introducing such a requirement may unnecessarily dampen M&A activity and unduly limit competitiveness and growth opportunities for listed issuers. At this level, dilution is not extreme, and there is not a significant alteration in the investment through dilution. TSX also similarly finds undue costs at dilution thresholds less than 50% given the considerable number of transactions that would be affected at such levels.

A number of commenters submitted that a dilution based test for security holder approval of public company acquisitions would have a disproportionate negative effect on smaller and resource-based issuers and therefore there should be an exemption for issuers with smaller market capitalizations. However, TSX believes that security holder approval requirements should be imposed equally on all issuers listed on TSX. As the senior equities market in Canada, there is an expectation that all issuers listed on TSX should meet the same standards. Therefore, TSX does not support an exemption for listed issuers based on market capitalization.

II. Advance security holder approval

One other alternative which was considered was to permit security holders to vote on a blanket resolution at an issuer's annual meeting in advance of a specific transaction that could be completed by the listed issuer. Such a resolution would allow the issuer to complete a dilutive public company acquisition without any further security holder approval being required. The intent is to provide flexibility for smaller issuers and for those issuers whose business involves regularly making acquisitions. The presumption is that if security holders have confidence in management and the board, they will vote in favour of such a proposal and no further approvals will be necessary if such an acquisition is made before the next annual meeting.

TSX is not proposing such an alternative. TSX experience has been that the flexibility intended by such advance blanket approvals creates more difficulty than benefit because of the uncertainty of application. For example, there are typically questions about whether the resolution passed by the security holders covers an actual transaction, opening up the resolution to interpretation. This uncertainty is detrimental to issuers and security holders and does not serve the public interest.

In addition, TSX rules moved away from permitting blanket approvals by security holders because they do not meet the purpose and intent of the approval requirement.[7] Security holders should have detailed information about a specific transaction at the time of the vote. In addition, security holders at the time of the vote may be different than those at the time of the transaction. We recognize that such a blanket approval could reduce deal uncertainty and associated costs and delays of having to seek security holder approval at the time of a transaction, particularly for smaller issuers or issuers whose business strategy involves acquisitions, while at the same time permitting a greater level of security holder involvement than may be required in a particular transaction. However, TSX believes that the negative aspects and uncertainty outweigh any positive benefits of such a blanket approval mechanism.

Questions:

Please comment on the following questions:

11. Should security holders have the flexibility to vote on the security holder approval requirements for dilutive acquisitions on an annual basis? Why or why not?

12. What costs and benefits are there in providing such flexibility? Do you agree that the costs outweigh the benefits?

Future Initiatives

If the Amendment is adopted as proposed or modified, TSX will monitor and review the acquisitions of public companies for a two-year period following adoption. Following the two-year period, TSX will consider whether to retain the Amendment or republish the matter for further proposed changes based on the experience to such date. In this regard, TSX will maintain statistics on dilution levels in public company acquisitions by issuers, acquirors seeking security holder approval (whether required or voluntary) and anecdotal evidence of the impact of the security holder approval requirement on the marketplace.

TSX may review Section 603 *Discretion* in the future, after having had the opportunity to review the OSC's full reasons for the HudBay decision. Such a review may impact the exercise of discretion in relation to Part VI of the Manual, including security holder approval requirements for acquisitions.

Public Interest

TSX is publishing the Amendment for a 30-day comment period, which expires May 4, 2009. The Amendments will only become effective following public notice and the approval of the OSC.

[7] In January of 2005, TSX eliminated the ability of listed issuers to obtain blanket security holder approval for private placements on an annual basis. Subsection 604(c) was added at that time and provides that security holder approval of a transaction must relate specifically to the transaction in question, rather than an unspecified transaction that may take place in the future.

APPENDIX A
SUMMARY OF COMMENTS
SECURITYHOLDER APPROVAL REQUIREMENTS FOR ACQUISITIONS

List of Commenters:

Amalgamated General Partner Ltd. (AGP)	Ontario Teachers' Pension Plan (OTPP)
BC Investment Management Corporation (bcIMC)	Osler, Hoskin & Harcourt LLP (Osler)
Canadian Coalition for Good Governance (CCGG), representing 49 institutional investors	Paramount Energy Trust (PET)
CPP Investment Board (CPPIB)	Pension Investment Association of Canada (PIAC)
Duvernay Oil Corp. (Duvernay)	Saxon Energy Services Inc. (Saxon Energy)
Investment Industry Association of Canada (IIAC)	Securities Group, Burnet Duckworth Palmer LLP (BDP)
Jeff Whyte (J. Whyte)	Sun Life Financial Inc. (Sun Life)
Lang Michener LLP (Lang)	TELUS (TELUS)
McCarthy Tetrault (McCarthy)	Thallion Pharmaceuticals Inc. (Thallion)
Nexen Inc. (Nexen)	Tristone Capital Inc. (Tristone)
Ogilvy Renault LLP (Ogilvy)	Triton Energy Corp. (Triton)

Summarized Comments Received	*TSX Response*
Question 1: Should securityholder approval be required for the issue of securities as full or partial consideration for the acquisition of a public company in a transaction negotiated at arm's length where insiders receive 10% or less of the securities issued? Why?	
General: 5 of the 22 comment letters received supported a requirement for securityholder approval, while 17 of the 22 comment letters opposed such a securityholder requirement.	
Of those in support of a requirement for securityholder approval for the issuance of securities as full or partial consideration for the acquisition of a public company, reasons provided include ensuring fairness, accountability and input into the corporation's strategy to build shareholder trust and commitment (bcIMC); to protect investors and maintain investor confidence through a system of checks and balances (CCGG); and because the issuance of a large percentage of shares is likely to have a significant effect on the operations, financial position and value of the issuer, securityholders should have the right to participate in decisions that may involve such fundamental changes and affect their investment. (OTPP, CPPIB, PIAC)	TSX agrees that securityholders should have the right to approve decisions that may significantly alter their investment through dilution.
Some commenters in support of securityholder approval disagreed with the rationale for the current exception for acquisitions of public companies, regarding the wide distribution of securities of public companies and the prospectus level disclosure publicly available, citing that the "economic effect on the existing shareholders is the same whether securities are widely distributed or not" and "the availability of prospectus level disclosure is also irrelevant…because, while shareholders may be able to use this information to assess the economic impact on the issuer, it would only be after the fact." (OTPP) "The fact that	TSX believes that the wide distribution of securities and the availability of information when the target is a public company are differentiating factors from an acquisition of a private company where there generally is no detailed public disclosure. The requirement to produce a prospectus level disclosure document for the target company increases public scrutiny and therefore imposes greater discipline on management and boards in structuring acquisitions.

Summarized Comments Received	*TSX Response*
prospectus level disclosure regarding a potential acquisition is available should not eliminate the rights of securityholders to determine whether they wish to be diluted…" (CPPIB, PIAC) Four commenters in favour of securityholder approval noted that the prevalence among Canadian issuers to have unlimited authorized share capital creates the potential for unlimited dilution, and is a differentiating factor from other stock exchanges. (OTPP, CPPIB, CCGG, PIAC) All of the commenters in favour of securityholder approval noted the existence of similar requirements of other stock exchanges, as set out in the Request for Comments, and supported bringing TSX in line with them for consistency and to instill investor confidence.	TSX agrees that unlimited dilution without securityholder approval is outside of market and securityholder expectations. Therefore, TSX is proposing that securityholder approval be required where dilution exceeds 50%. At that level, the implied value of the target company is equivalent to at least half that of the listed issuer and, post-transaction, will represent at least one-third of the resulting issuer. TSX believes that such transactions may significantly alter the nature of the securityholders' investment through dilution. We note that corporate law requirements in other jurisdictions also impact stock exchange requirements. Dilution levels at which securityholder approval is required by other exchanges cannot therefore be viewed in isolation. Further, TSX believes that each jurisdiction must balance the interests of issuers, securityholders and other market participants within the existing framework provided by corporate and securities laws. While TSX agrees that it must stay abreast of requirements on other exchanges, it also recognizes that adopting the same requirements as other exchanges may not necessarily strike the proper balance of interests for its marketplace. The dilution level at which securityholder approval is required varies from one jurisdiction to the next. In particular, the differences in the size and nature of issuers listed on NYSE and NASDAQ compared to TSX should not be overlooked.
A number of commenters against requiring securityholder approval stated that the issuance of securities is a matter of corporate law, to be determined by the directors of the corporation. (McCarthy, BDP, Ogilvy, Thallion, Triton, TELUS, Osler, AGP, Lang, Tristone, IIAC, Saxon Energy, Sun Life, Nexen) Directors not only have the responsibility under the law, but possess the information and ability to best assess a transaction in accordance with corporate strategy and available alternatives. (BDP, TELUS, McCarthy, Ogilvy, Thallion, Triton, Osler, AGP, Lang, Tristone, IIAC, Saxon Energy, Sun Life, Nexen) Many commenters stated that such a requirement would have a severe negative impact on the market for acquisitions. (PET, BDP, Ogilvy, Saxon Energy, Lang, Sun Life) Many also submitted there will be a disproportionate negative impact on smaller issuers and resource-based issuers. (Saxon Energy, BDP, IIAC, Duvernay, Osler, J. Whyte, Lang, Tristone, Nexen) However, it was noted that the detrimental effects would not be limited to small or resource-based issuers, as even mature issuers may be small compared to international competitors. (Sun Life) It was repeatedly noted that the reduction in deal certainty and the disadvantage in competitive bidding would negatively affect both acquirors and targets. (BDP, IIAC, J. Whyte, Lang, Tristone, Ogilvy, Sun Life, Nexen) A number also noted the detrimental effect it would have on market efficiency by impairing the bidding process through the effect on the price paid, the level of cash and debt used, and break fees. (IIAC, Ogilvy, BDP, Osler, J. Whyte, Nexen)	While the issue of securities may principally be a corporate law matter, TSX disagrees that this means it should not require securityholder approval when warranted. This argument would otherwise suggest that TSX should never require securityholder approval under its rules. We believe that companies listed on TSX must meet higher standards than private, unlisted issuers. This belief is well anchored in many TSX rules which require securityholder approval for transactions, such as private placements and acquisitions of private companies. TSX believes that, in appropriate circumstances, the directors and management must impart information on a transaction so that securityholders can understand and consider such transaction. TSX agrees that a securityholder approval requirement at a relatively low level of dilution may disproportionately affect smaller issuers. Resource issuers have frequently relied on the exemption in Subsection 611(d) of the Manual. On a combined basis, in 2007 and 2008, 85% of public company acquisitions where securities were offered by TSX-listed issuers were completed by resource issuers. These issuers tend to be more active in merger and acquisition (M&A) activity, and they generally offer securities as consideration rather than cash, to preserve cash for exploration and development.

Summarized Comments Received	*TSX Response*
One commenter noted that the current regulatory regime has been priced into the value of shares of listed issuers and that the regulatory regime in Canada is generally very "shareholder friendly". (Osler) Remaining globally competitive was also cited as a rationale for leaving the existing regime as is, to permit competition with foreign and private competitors who do not face the shareholder approval requirement, and to foster growth through acquisitions and competitiveness. (Osler, Lang, Sun Life)	TSX acknowledges and supports the importance of maintaining a proper balance between a flexible framework for issuers and the interests of securityholders. TSX agrees that Canada's regulatory regime is generally friendly to securityholders, which should not be disregarded in a comparison of jurisdictions.
It was argued that issuers may choose to stay private, or go private, or list elsewhere to avoid the approval requirement, therefore decreasing the efficiency of Canada's capital markets. (BDP, Saxon Energy) A number of commenters noted the negative impact such a requirement will have on the competitiveness of TSX-listed issuers, who have little if any competitive advantages in the marketplace. (Osler, IIAC, PET, BDP, J. Whyte, Lang, AGP, Ogilvy, Sun Life) One described that it would eliminate one of the unique advantages of TSX and would create a serious impediment to the growth of the issuers it serves. (AGP) Another noted that it could be "materially detrimental…to adopt rules that are similar to those that apply in certain markets that are not comparable to Canada but in which …Canadian firms seek to compete." (Sun Life)	TSX agrees that if securityholder approval is required at a relatively low dilution level that M&A activity could be negatively impacted without generating corresponding benefits to securityholders or the marketplace. TSX also recognizes that the make-up of its issuers is different than that of other stock exchanges. TSX is therefore proposing to focus the rule on transactions where the nature of a securityholder's investment may be significantly altered through dilution.
A number of commenters opposed to adding the requirement for securityholder approval compared the issuance of shares in a public company acquisition to shares issued in a public financing, for which shareholders would have no approval rights. The issuance of securities on an acquisition is akin to securities issued in a prospectus offering given the availability of public prospectus level disclosure. (Saxon Energy) It was further noted that this differentiation could create artificial processes whereby securities are issued in a public financing, the proceeds of which are used to make a cash bid, thereby avoiding securityholder approval requirements. (Osler, J. Whyte, Lang)	TSX believes that there are relevant differences between a prospectus offering and an acquisition of a public company. In a prospectus offering, there is prospectus level disclosure, the securities are available for public purchase and the consideration received (cash) is transparent and easily valued. Even if the prospectus offering is dilutive, it is not considered within the exchange's jurisdiction to impose securityholder approval when there is public disclosure, underwriter or agent involvement and no insider concerns. TSX has never reviewed the use of proceeds in a public offering. TSX recognizes that transactions may potentially be structured to avoid securityholder approval, which may lead to increased costs and inefficiencies.
Many comment letters expressed the opinion that there is no apparent abuse or problem evident in the market with the current exemption, and that the benefits of securityholder approval are not apparent, yet changing the requirement would impose a number of negative consequences that aren't offset by any demonstrated positive outcome such as increased shareholder returns or protection or decreased corporate abuse. (IIAC, J. Whyte, Lang, Ogilvy, Tristone, Sun Life, Nexen) "The requirement of a vote imposes a cost for which there must be a benefit". (Sun Life) "Notions of 'good corporate governance' should not be confused with increased deference to disparate shareholder interests." (Nexen) Other comment letters explored the sufficiency of avenues open to shareholders today, such as the oppression remedy and derivative actions, fiduciary duties of directors and by-laws that may contain provisions for securityholder proposals. (Lang, J. Whyte)	TSX notes that securityholder approval acts as a check on management and boards in structuring acquisitions. TSX also notes that there are already checks and balances in place given the information available on the target company (including the information circular), as well as the rights and remedies available to securityholders under corporate and securities laws. Therefore, on balance, TSX finds that requiring securityholder approval in cases where dilution exceeds 50% should provide an appropriate balance in most, if not all, circumstances.

Summarized Comments Received	*TSX Response*
Question 2: If you responded affirmatively to Question 1, please comment on whether approval should be required only if the issue exceeds a certain dilution level and, if so, what constitutes an appropriate dilution level. Should Subsection 611(d) (which provides for the securityholder approval exemption) simply be eliminated? Is a level of dilution other than that set out in Subsection 611(c) (which provides that securityholder approval is required where the number of securities issued in payment of the purchase price for an acquisition exceeds 25% of the number of outstanding securities of the issuer) more appropriate e.g. 35% or 50%? If so, why?	
Three commenters supported that securityholder approval be required if dilution exceeds 25%, through the elimination of Subsection 611(d). (OTPP, CPPIB, PIAC)	TSX believes that the appropriate balance between flexibility for issuers and securityholder interests is struck where securityholder approval is required for transactions resulting in dilution of more than 50%. At 25% dilution, many acquisitions will require securityholder approval, leading to increased costs, delays and uncertainty, which may also have a dampening effect on M&A activity and also limit competitiveness and growth opportunities for issuers, without evidence or support of corresponding benefits for issuers, securityholders or the marketplace.
Two commenters took the view that transactions where dilution exceeds 20% should be subject to securityholder approval. (bcIMC, CCGG) It was noted that 20% is consistent with the requirements of U.S. exchanges. (CCGG) One of these commenters also noted, however, that 25%, in line with Subsection 611(c) of the Manual in respect of private placements, would be acceptable. (CCGG)	
Sixteen commenters rejected securityholder approval at any dilution level. Two of these commenters noted that if it is determined to amend the Manual to require securityholder approval for public company acquisitions, a much higher threshold would be appropriate to the Canadian marketplace, such as 100%. (Ogilvy, Triton) Another commenter suggested that if securityholder approval is required, it should only be required in extraordinary circumstances such as where the dilution is accompanied by a fundamental change in the acquiror's business. (BDP) Another suggested that at a dilution level of 100%, there is a shift in ownership and therefore securityholder approval could be appropriate. (AGP) A higher threshold would provide greater flexibility to acquirors in structuring their transactions. (McCarthy)	TSX agrees that a higher threshold is more appropriate to the Canadian marketplace. The size and nature of issuers listed on TSX have to be taken into account. Therefore, it would be inappropriate to copy rules from other jurisdictions. TSX agrees that 100% dilution may have some logical underpinning, but nonetheless proposes that the lower level of 50% dilution still provides sufficient flexibility and is of such an impact on the acquiror to warrant securityholder approval.
Question 3: Should factors other than voting dilution, such as the relative premium to a target company's stock price or enterprise value, be taken into consideration in determining if securityholder approval is required? If so, what are the appropriate factors and why?	
All commenters supporting securityholder approval cited voting dilution as the appropriate determining factor. Shareholders will take other factors into consideration as they see fit. All commenters who responded to this question noted that considering other factors was problematic given difficulties in assessing the value of a transaction and the impact of external market influences. It was also submitted that factors such as premium should not be regulated. (TELUS, Osler) It was further noted that no other exchange appears to use such other factors. (Osler)	TSX agrees that other factors, such as premium paid for a target, are subject to a number of influences and are therefore difficult to measure. Dilution level provides a bright-line test that can be simply understood and applied. This is supported by the fact that other exchanges also use dilution as the relevant factor.

Summarized Comments Received	*TSX Response*
Question 4: Does imposing securityholder approval requirements discourage acquisitions?	
Three commenters did not think that imposing securityholder requirements would discourage acquisitions. (CPPIB, CCGG, PIAC) Securityholder approval requirements on other exchanges do not appear to have discouraged acquisitions on those exchanges, even by smaller technology-based companies. (CPPIB, CCGG, PIAC) It will not be an obstacle to worthy transactions, but will discourage those where shareholders cannot be convinced to support it, which is a positive outcome. (OTPP) Many commenters believe that a requirement for securityholder approval will discourage acquisitions. (IIAC, PET, Saxon Energy, BDP, McCarthy, Ogilvy, Duvernay, TELUS, Lang, Tristone, Osler, J. Whyte) The uncertainty will prevent some bids from being made in the first place.	There is no substantive evidence to support whether securityholder approval requirements will discourage acquisitions. The nature of issuers listed on TSX compared to issuers listed on other markets is relevant and merits consideration. TSX issuers are generally significantly smaller and have less access to capital. On balance, TSX believes that securityholder approval requirements will have a dampening effect on M&A activity. Therefore, the level of dilution at which securityholder approval must be set at an appropriate level to ensure a balance of interests appropriate for our marketplace.
Many proposed that such a requirement will unduly impact the structure of acquisitions in order to avoid the requirement for securityholder approval, with a disproportionate negative effect on smaller and resource-based issuers. A number of these commenters noted that cash bids would be favoured, thereby favouring acquirors who have or can access cash more easily, and financing of bids through debt would also be favoured, yet is not necessarily a positive outcome for shareholders. One commenter noted that acquisitions may not be discouraged, but companies with larger market capitalization will be unfairly advantaged. (Triton)	See the response in Question 1.
Question 5: Does the requirement for securityholder approval of the acquiror make transactions more difficult to complete, particularly where a premium is being paid for the securities of the target?	
Four commenters did not believe that a requirement for securityholder approval for the acquiror will make transactions significantly more difficult to complete. It was noted that the approval requirement may affect tactics used in an acquisition, but will preserve investor confidence and build shareholder trust. (CCGG) Two commenters stated that while there may be additional marginal costs in holding a meeting for such securityholder approval, they support a company incurring these on their behalf. (CPPIB, PIAC) Two commenters noted that the 35-day deposit period currently required under take-over bid legislation permits time for a securityholder meeting to be held by an acquiror without causing any delay in the bid process. (CCGG, OTPP) However, other commenters disagreed, believing it is not feasible for an acquiror to obtain its own securityholder approval in that time frame. (TELUS, Saxon Energy) It was also noted that the requirement for approval on other stock exchanges does not seem to have significantly affected the level of acquisitions. (OTPP)	There is no substantive evidence to support whether securityholder approval requirements will make transactions more difficult to complete. However, such requirements will make at least some transactions more difficult to complete as it reduces deal certainty and will lead to additional direct and indirect costs.
The remainder of commenters that addressed this question agreed that acquisitions would be more difficult to complete. The introduction of uncertainty into the already complex acquisition process was often cited as a factor making transactions more difficult to complete, and overall less likely to even be undertaken. (Lang, TELUS, McCarthy,	TSX finds that, on balance, transactions where securityholder approval is required may be more difficult to complete, as it introduces an additional element of uncertainty.

Summarized Comments Received	*TSX Response*
BDP, PET, Saxon Energy, Sun Life, Osler, Nexen) Public companies, particularly smaller ones, will be discouraged from launching take-over bids because of the extra cost of meetings, higher premiums and break fees payable, as well as additional time delays. (AGP, Thallion, BDP, PET, Saxon Energy, Sun Life, Nexen) The added costs are ultimately borne by securityholders of the acquiror, but targets may bear some of the cost because of fewer bidders. (BDP, PET) It was further cited that the added burden of a meeting does not provide securityholders with a commensurate benefit. (IIAC, J. Whyte, Lang, Ogilvy, Tristone, Sun Life)	
In addition, the preparation of materials for the shareholders' meeting at the same time as a take-over bid is launched is difficult. In particular, it is then difficult to change the terms of the bid. (Osler, Saxon Energy) TSX-listed issuers would be unfairly disadvantaged compared to other issuers not subject to securityholder approval whether because of where they are listed, or because they are privately held, or because they are larger and therefore do not trigger the threshold for approval. (TELUS, Osler, IIAC, PET, BDP, J. Whyte, Lang, AGP, Ogilvy, Sun Life) One commenter noted that a focus on premiums is inappropriate and should not be a material factor in seeking shareholder approval, believing that take-over premiums are well established concepts relating to control premiums and merger synergies. (Tristone)	
Question 6: Is this an appropriate issue for securityholder approval or should the decision to make an arm's length acquisition using securities be left to the business judgement of the board of directors of the acquiror?	
Five commenters submitted that it is an appropriate issue for securityholder approval. It was set forth that a lack of such requirement decreases investor confidence in companies listed on TSX and may cause investors to invest elsewhere. (CPPIB, PIAC) One commenter submitted that it is a fundamental tenet of corporate governance that major decisions should be made by shareholders. (OTPP) This same commenter went on to submit that to suggest otherwise would limit shareholders to the election of directors and approval of related party transactions. Another commenter coming to a different conclusion stated that securityholder rights are primarily exercised through their choice of directors. (TELUS)	TSX agrees that in certain circumstances, acquisitions and other dilutive transactions are appropriate matters for securityholder approval. For transactions where there is a lack of public disclosure and transparency, such as private placements, or where there is insider participation, securityholder approval is generally required. TSX also agrees that securityholders should have the right to participate in decisions that may significantly alter their investment through dilution. See also the response in Question 1.
The prevalence among Canadian issuers to have unlimited authorized share capital was again noted, as making the case stronger for securityholder approval requirements for significant transactions involving the issuance of equity. (CCGG)	
Those opposed to a securityholder approval requirement each cited that in an arm's length transaction, the board of directors of an acquiror should apply its business judgement. Corporate law charges directors with these duties, and their judgement should not easily be superseded. Directors have a fiduciary duty to the corporation that shareholders do not, may possess better	See the response in Question 1.

Summarized Comments Received	*TSX Response*
information that is publicly available, and are in the best position to assess an acquisition. (BDP, TELUS, McCarthy, Ogilvy, Thallion, Triton, Osler, AGP, Lang, Tristone, IIAC, Saxon Energy, Sun Life, Nexen) Directors were elected to manage and operate their corporation and to maximize shareholder value, and their duties should not be eroded. (Saxon Energy) This was noted of particular value in the technical arena of the oil and gas sector. (Duvernay) It was also noted that there are other significant decisions for which securityholders have no rights of approval, and that corporate law has drawn these lines. (BDP, PET, McCarthy, Osler, Lang) Shareholders do not have a reasonable expectation of voting rights in these situations. (Lang, Osler) Shareholder rights are also sufficiently protected under the law, by director's liability and by other remedies available to shareholders. (TELUS, Osler, IIAC, J. Whyte, Lang) Although the Request for Comments points out that there may be economic resource issues for securityholders to invoke such rights, institutional investors can and do invoke both these formal and other informal mechanisms and do impact issuer's behaviour. (BDP)	
Question 7: What are the possible unintended consequences of requiring securityholder approval of an acquiror in a share exchange bid? Will this favour cash bids over share exchange bids? Will this result in acquirors increasing their leverage to make cash bids so as to avoid the need for securityholder approval or the need to provide disclosure about the acquiror's strategy that could benefit its competitors?	
A majority of commenters cited a possible increased reliance on cash and debt to finance acquisitions. (CCGG, OTPP, J. Whyte, Lang, Tristone, Osler, TELUS, Triton, Ogilvy, McCarthy, Saxon Energy, BDP, PET) It was also expressed that acquirors would be likely to structure their bids with more leverage to avoid securityholder approval requirements. (Saxon Energy, Triton, McCarthy, Ogilvy, Tristone, Nexen) However, it was noted by some commenters that the discipline imposed by the market limits leverage. (OTPP, Sun Life, Duvernay) Increased deal uncertainty was also noted by many commenters, and that the uncertainty might lead to higher bids and break fees, and lost opportunities altogether. (CCGG, Lang, Tristone, TELUS, Sun Life, IIAC, Saxon Energy, BDP, PET, Nexen) A number noted that there would also be unintended consequences in competitive bid situations, possibly favouring privately held bidders and foreign bidders who do not face similar approval requirements. (TELUS, Duvernay, Sun Life, BDP, PET) Commenters were divided on the issue of whether disclosure about the acquiror's strategy was a significant deterrent to share exchange bids since there is disclosure in the target circular anyway. (CCGG, CPPIB, PIAC) However, other commenters did feel it could be a deterrent to share exchange bids. (Saxon Energy, Triton, McCarthy)	TSX agrees with the majority of commenters that securityholder approval requirements will be a consideration in structuring a transaction. However, TSX believes that requiring securityholder approval for certain dilutive acquisitions will balance such potential negative impact with other relevant interests. See also the response in Question 1.

Summarized Comments Received	*TSX Response*
Question 8: If securityholder approval is required, is approval by a majority vote of the securityholders the right threshold?	
Commenters in support of securityholder approval agreed that a simple majority vote is the appropriate threshold. One commenter did note that the threshold for most fundamental corporate changes is two-thirds of votes cast, but that a simple majority would be satisfactory. (OTPP)	TSX accepts the view of the majority of commenters that a simple majority vote is appropriate.
Other commenters opposed to a requirement for securityholder approval did submit that if it is nonetheless required, a simple majority vote is the appropriate threshold. (BDP, McCarthy, Ogilvy, Triton, Duvernay, TELUS) It was also suggested that securityholder approval in writing be permitted. (BDP) One commenter suggested that a requirement for securityholder approval should be initiated by a change of corporate law. (McCarthy)	TSX agrees with the submission that securityholder approval in writing be permitted since there is publicly available information in the circular provided to target shareholders and the target issuer has a public disclosure record.
Question 9: Should issuers with a smaller market capitalization be exempted from the new proposal?	
A number of commenters responded that if there is a requirement for securityholder approval, it should apply equally to all issuers without any exemptions. (OTPP, CPPIB, bcIMC, CCGG, McCarthy, PIAC) One noted that the rules should be the same for all issuers on the same exchange so that business decisions are made on the basis of economics rather than because of shareholder approval rules, but overall this commenter opposes any security approval requirement. (Duvernay)	TSX will not propose a rule that is based on the size of the issuer, as it believes that securityholder approval requirements should be imposed equally on all issuers listed on TSX.
Other commenters opposed to a securityholder approval requirement submitted that if it is nonetheless required, there should be an exemption for issuers with smaller market capitalization to permit them to compete with larger issuers in a bidding process. (BDP, Ogilvy, Triton)	TSX understands that a securityholder approval requirement at a relatively low level of dilution may disproportionately affect smaller issuers. However, as the senior equities market in Canada, there is an expectation that all issuers listed on TSX should meet higher standards. Therefore, TSX does not support an exemption for companies based on market capitalization.
General:	
Each commenter in support of a securityholder approval requirement also supported a requirement for securityholder approval of all share issuances that are dilutive including in connection with acquisitions of public companies. This same factor was cited by a number of commenters who are not in support of securityholder approval as a reason to leave the regime as is, since it is long established that public offerings do not require securityholder approval. One commenter suggested that if securityholder approval of acquisitions of public companies is required, by extension, securityholder approval should also be required for cash offers which are dilutive to enterprise value and earnings, and that would place offerors on a more level playing field. (AGP) One commenter stated that if TSX were to pursue a requirement for securityholder approval at a low level of dilution such as 20%, it should also look at requiring securityholder approval in all situations where dilution is more than 20%, including in prospectus offerings. (AGP)	TSX seeks to apply rules that are consistent and transparent, within the confines of its jurisdiction. TSX does not have jurisdiction over all activities of listed issuers, such as the use of cash, even if economically dilutive. Historically, TSX has generally limited securityholder approval matters to transactions involving the issuance of securities and/or the involvement of insiders. At this time, TSX does not intend to change this approach and will not review transactions solely funded with cash.

Summarized Comments Received	*TSX Response*
With respect to considering the discount to market price in a public offering, it was submitted that the discount did not take into account underwriter or agent commissions, or any warrants or securities issued as consideration, such that the actual discount is more than the 5-10% stated in the Request for Comments. In an acquisition, these costs would not be incurred. Therefore, a comparison of premiums and discounts in private placements and public offerings is not appropriate. (BDP)	
Other Stock Exchanges: Commenters took varying views as to the unique nature of the Canadian marketplace and how the rules should tie in to that.	
It was submitted that TSX rules should be designed to serve TSX issuers, who tend to be smaller and more growth oriented than those on U.S. exchanges and that each stock exchange must determine what is appropriate for a majority of its issuers. (AGP) There must be a balance between effective and efficient governance and a regulatory regime that fosters international competitiveness and facilitates cross border transactions. (Sun Life) The current regulatory regime in Canada was stated to be "uniquely and acutely sensitive to the protection on shareholders", protecting minority shareholders in related party transactions and non-arm's length transactions. (Osler) One commenter did not agree that the rules of the U.S. exchanges represent the best standard, nor the most relevant standard, for Canadian issuers. (Nexen)	TSX agrees that its rules must be designed for its issuers and be appropriate for the nature of its marketplace.
Those in favour of securityholder approval generally preferred the view that the TSX rules must be the same as those on other exchanges in order to maintain investor confidence. (OTPP, bcIMC, CPPIB, PIAC) However, another commenter submitted it is unreasonable to think that U.S. investors expect the TSX requirements to be the same as the U.S. requirements. U.S. exchanges defer to the principal stock exchange of interlisted issuers, knowing TSX does not have this securityholder requirement. (BDP)	TSX notes that the majority of other exchanges (or the corporate law in the jurisdiction in which each exchange is domiciled) require some form of securityholder approval for dilutive acquisitions and on balance agrees that TSX rules should be reflective of international standards. However, TSX finds the appropriate balance and flexibility for its marketplace and participants are struck where dilution is in excess of 50%. TSX agrees that copying standards of other exchanges may not be appropriate, and finds support in the fact that other exchanges will defer to TSX if it is the principal or home exchange of an issuer.
One commenter noted that by average market capitalization, NASDAQ is the most similar exchange to TSX and has a requirement for approval of dilutive transactions at 20%. (OTPP) It was also suggested that TSX should compare itself to other senior stock exchanges, not to junior exchanges, since it is the senior stock exchange in Canada. (OTPP)	
A number of commenters noted that since TSX requires securityholder approval based on dilution in the case of private placements and for security-based compensation	TSX agrees that there is value in securityholder approval in certain circumstances, particularly where dilution is coupled with a conflict of interest such as insider participation, or a

Summarized Comments Received	*TSX Response*
plans, TSX recognizes the value of securityholder approval for dilutive share issuances. (OTPP, CPPIB, PIAC) TSX has rules concerning the issuance of shares in a private placement at a discount to market price, yet no pricing or value restriction for acquisitions of a public company. Since existing shareholders do not necessarily get to participate in either the private placement or public acquisition scenario, it was suggested that the same rules should apply. (OTPP) Two commenters in support of securityholder approval noted the NYSE, when it introduced its shareholder approval rule, considered it "closing a loophole", and that the OSC has expressed support for listing standards that exceed corporate law standards. (OTPP, CCGG)	lack of public disclosure or participation, such as in private placements and private company acquisitions. However, TSX does not have jurisdiction over all dealings of an issuer nor is it intended that TSX be used as a tool to replace corporate and securities legislation. For example, matters such as how a company spends its cash are not generally considered within the purview of TSX.

APPENDIX B

PROPOSED SECTION 611 OF THE TORONTO STOCK EXCHANGE COMPANY MANUAL

Sec. 611. Acquisitions.

(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 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), s~~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:

(i) 25% of the number of securities of the listed issuer which are outstanding, on a non-diluted basis, for an acquisition other than an acquisition of a reporting issuer (or equivalent status) having 50 or more beneficial security holders, excluding insiders and employees, or

(ii) 50% of the number of securities of the listed issuer which are outstanding, on a non-diluted basis, for an acquisition of a reporting issuer (or equivalent status) having 50 or more beneficial security holders, excluding insiders and employees.

(d) ~~Subject to Sections 603 and 604 and to Subsection 611(b), TSX will not require security holder approval where a reporting issuer (or equivalent status) having 50 or more beneficial security holders, excluding insiders and employees, is acquired by the listed issuer.~~ [Deleted.]

(e) Where an acquisition by a listed issuer includes the assumption of security based compensation arrangements of a target issuer, 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(c). For the purpose of this Section 611, the assumption of security based compensation arrangements includes a direct assumption of a security based compensation arrangement as well as the cancellation of security based compensation arrangements in the target issuer and their replacement with arrangements in the listed issuer.

(f) Where an acquisition by a listed issuer includes 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.

(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.

APPENDIX C

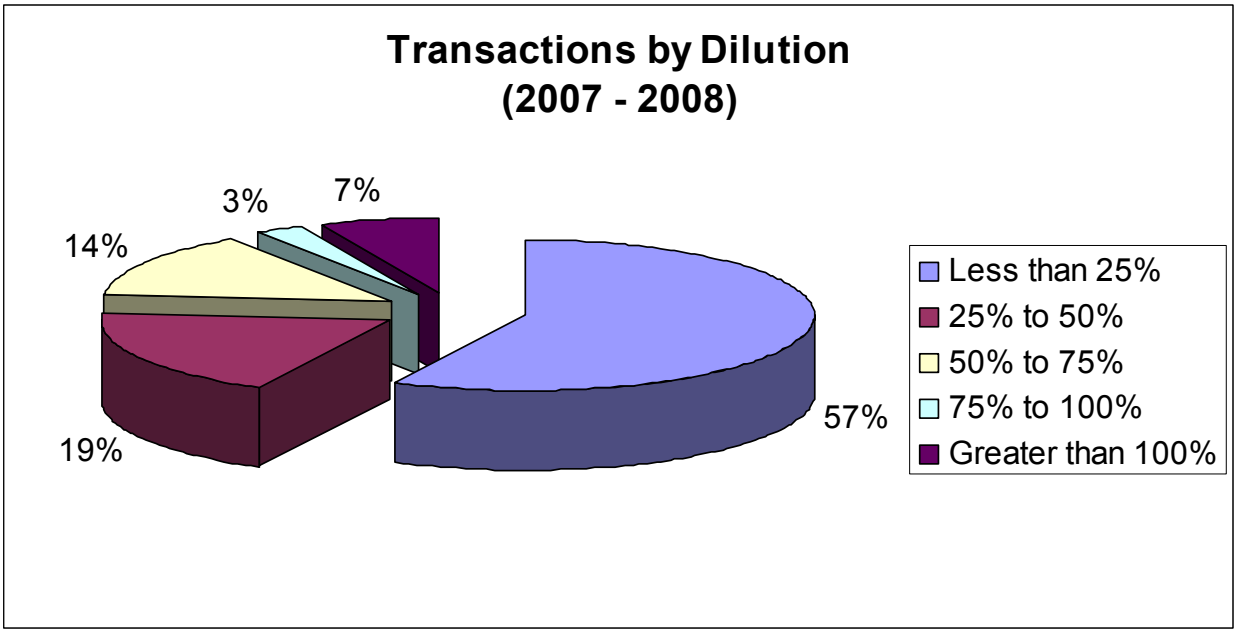
SUMMARY OVERVIEW OF OTHER EXCHANGE REQUIREMENTS

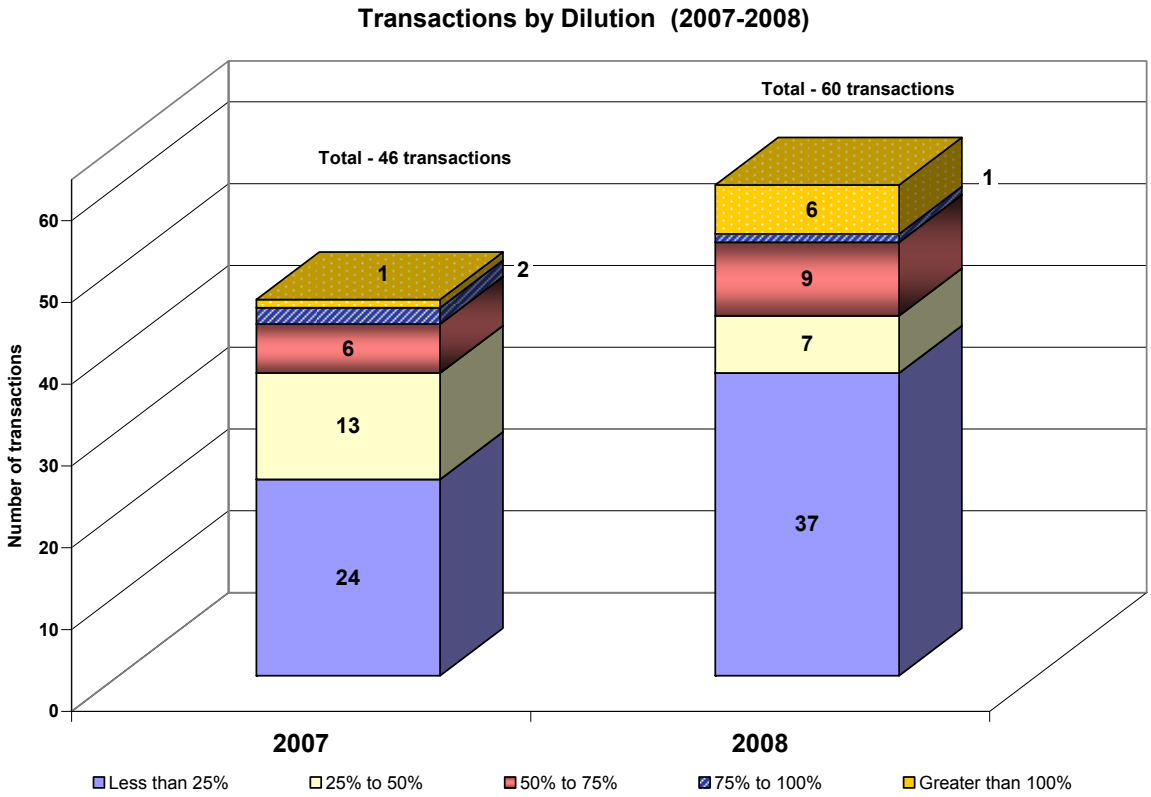
Exchange	Requirement
AIM	No requirement for security holder approval for arm's length acquisitions, other than in connection with reverse takeovers. However, corporate laws that apply to the issuer must be followed, many of which in European countries require security holder approval for significant dilution.
AMEX (Now NYSE Alternext)	Security holder approval is required for the issuance or potential issuance of common stock that could result in an increase in outstanding common shares of 20% or more.
ASX	Provides an exemption from security holder approval equivalent to TSX relief. Security holder approval is required for acquisitions resulting in more than 15% dilution, but there is an exemption for schemes of arrangement (similar to Canadian plans of arrangement) and off market bids (similar to Canadian takeover bids) which are completed in accordance with the Australian Corporations Act.
EuroNext / OM	No exchange requirement for security holder approval for dilutive acquisitions provided there is compliance with corporate requirements. European corporate law generally requires shareholder approval for dilution above a certain level if the shares are not offered to existing shareholders. For example, under French corporate law, shareholder approval is required for dilution of more than 10% where the shares are not issued first to existing shareholders.
JSE	Security holder approval is required for a transaction exceeding 30% dilution (measuring market cap, equity dilution and cash consideration).
LSE	Security holder approval is required for a transaction exceeding 25% dilution.
NASDAQ	Security holder approval is required for the issuance of stock where the issuance will have upon issuance voting power equal to or in excess of 20% of the voting power outstanding before the issuance.
NYSE	Security holder approval is required for the issuance of stock where the issuance will have upon issuance voting power equal to or in excess of 20% of the voting power outstanding before the issuance.
HKSE	Security holder approval is required for a transaction exceeding 50% dilution (measuring assets, profits, revenue, consideration or nominal value).
TSX	Security holder approval is required for acquisitions resulting in more than 25% dilution, but there is an exemption for the acquisition of public companies.
TSX Venture	No requirement for security holder approval for arm's length acquisitions, other than in connection with a change of control, reverse takeover or change of business.

APPENDIX D

Cumulative Transactions by Dilution

% Dilution Level Exceeded	Number of Acquisitions	% of Total Acquisitions
0	106	100
25	45	43
30	38	36
40	28	26
50	25	24
75	10	9
100	7	7




Transactions by Dilution (2007-2008)
Total - 46 transactions
Total - 60 transactions
Number of transactions
0
10
20
30
40
50
60
24
13
6
1
2
37
7
9
6
1
2007
2008
Less than 25%
25% to 50%
50% to 75%
75% to 100%
Greater than 100%