



Pension Investment
Association of Canada

Association canadienne des
gestionnaires de caisses de retraite

December 12, 2007

Toronto Stock Exchange
The Exchange Tower
130 King Street West
Toronto, ON M5X 1J2

Attention: Deanna Dobrowsky
Legal Counsel, Market Policy and Structure

Dear Madam:

**Re: Security Holder Approval Requirements for Acquisitions –
Exemption in Subsection 611(d) of the TSX Company Manual**

This submission is made by the Pension Investment Association of Canada (“PIAC”) in reply to the request for comments published October 12, 2007 by Toronto Stock Exchange (“TSX”) on its security holder approval requirements for acquisitions.

PIAC has been the national voice for Canadian pension funds since 1977. Senior investment professionals employed by PIAC's member funds are responsible for the oversight and management of over \$910 billion in assets on behalf of millions of Canadians. PIAC's mission is to promote sound investment practices and good governance for the benefit of pension plan sponsors and beneficiaries.

General Comments

Security holder approval requirements for the acquisition of public companies through the issue of securities should be revised to remove the exemption currently provided under section 611(d) of the TSX Company Manual (the “Manual”).

As noted in our Corporate Governance Principles and Guidelines (“Guidelines”), PIAC believes that good corporate governance is the effective oversight, direction and control of a corporation. PIAC expects that the application of its Guidelines by PIAC members to the issuers in which they invest will assist in improving corporate governance, thereby enhancing long-term shareholder value, increasing confidence in capital markets and enhancing the competitiveness of the Canadian economy.

39 River Street, Toronto, Ontario M5A 3P1
Tel 1-416-640-0264 Fax 1-416-646-9460 Email info@piacweb.org Web
www.piacweb.org

Our Guidelines provide that Boards should submit substantial changes to the business of a corporation or proposals that may erode or dilute the rights of existing shareholders, such as a dilutive issuance of shares, equity-based compensation plans or material revisions thereto, to shareholders for approval. TSX requirements for security holder approval for dilutive private placements, security based compensation plans and acquisitions involving companies that are not reporting issuers indicate that TSX recognizes the importance of obtaining security holder approval for dilutive issuances and generally supports this principle. The fact that prospectus level disclosure regarding a potential acquisition is available should not eliminate the rights of security holders to determine whether they wish to be diluted as a result of the proposed transaction.

The New York Stock Exchange (“NYSE”), American Stock Exchange (“AMEX”), NASDAQ National Market (“NASDAQ”), London Stock Exchange (“LSE”), Johannesburg Stock Exchange (“JSE”) and Stock Exchange of Hong Kong (“HKSE”) each require security holder approval for issuances of shares in connection with an acquisition that would result in dilution in excess of 20-50%, depending on the exchange, and do not contain exemptions for acquisitions of public companies. In particular, NYSE, AMEX and NASDAQ, on which many TSX-listed issuers are interlisted, require security holder approval for stock issuances that would have, upon issuance, voting power equal to or in excess of 20% of the voting power outstanding before the issuance. Requiring security holder approval for all issuances exceeding 25% of the outstanding securities of the issuer would therefore generally bring TSX in line with other exchanges and would instil in investors the same confidence in the Canadian market that they have in other markets.

We believe that requiring shareholder approval in these instances is an important governance process, provides fairness for all shareholders and enhances confidence in capital markets. Security holders should have the right to participate in decisions involving fundamental changes to a company such as a significant acquisition, since it may involve significant changes in the structure, directors and officers and/or business operations of the company, all of which are ultimately related to the risk of their investment.

Specific Comments

The following are our comments on certain of the specific questions set out in the request for comments, which are reproduced below in italics and numbered to correspond to the request for comments.

1. Should security holder 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?

We believe that security holder approval should be required for all proposed issuances of shares that would significantly dilute the economic positions or voting rights of security holders, including in connection with acquisitions of public companies. Since most Canadian issuers have unlimited authorized share capital, there is no limit on the amount of dilution that security holders may experience as the result of an issuance of shares by an issuer acquiring a widely-held reporting issuer.

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 security holder approval exemption) simply be eliminated? Is a level of dilution other than that set out in Subsection 611(c) (which provides that security holder 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?

We are of the view that Subsection 611(d) should simply be eliminated so that security holder approval is required where the number of securities issued for an acquisition of a public company exceeds 25% of the outstanding securities of the acquiring issuer. A dilution limit of 25% is not overly restrictive considering that the U.S. exchanges have dilution limits that are lower than 25%.

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 security holder approval is required? If so, what are the appropriate factors and why?

No, shareholders should have the right to approve dilutive issuances in connection with acquisitions regardless of other factors such as the relative premium to a target company's stock price. Shareholders will take these factors into consideration when making their decision whether to support the proposed transaction. As noted in the request for comments, it is often difficult to determine the true premium and economic dilution; relative premium is therefore not an appropriate measure to determine whether shareholder approval would be required as it is not sufficiently certain.

4. Does imposing security holder approval requirements discourage acquisitions?

Imposing security holder approval requirements does not discourage acquisitions, as evidenced by the fact that companies listed on various other stock exchanges that require security holder approval regularly pursue acquisitions of public companies. As noted above, NYSE, AMEX, NASDAQ, LSE, JSE and HKSE each require security holder approval for issuances of shares in connection with an acquisition that would result in dilution in excess of 20-50%, depending on the exchange, and do not contain exemptions for acquisitions of public companies.

5. Does the requirement for security holder approval of the acquiror make transactions more difficult to complete, particularly where a premium is being paid for the securities of the target?

The requirement to obtain security holder approval should not make transactions significantly more difficult to complete, although we acknowledge that there would be additional marginal costs involved in holding a meeting to obtain such approval. As owners of the company, we support the company incurring these expenses on our behalf.

6. Is this an appropriate issue for security holder approval or should the decision to make an arm's length acquisition using securities be left to the business judgment of the board of directors of the acquiror?

We believe this is clearly an issue for security holder approval and that the lack of a requirement for security holder approval in the Manual decreases investor confidence in Canadian capital markets. Refusing to allow security holders the right to approve a dilutive issuance of shares in connection with an acquisition compromises the confidence of global investors, such as the members of PIAC, in companies listed on TSX and may cause them to invest elsewhere.

7. What are the possible unintended consequences of requiring security holder 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 security holder approval or the need to provide disclosure about the acquiror's strategy that could benefit its competitors?

It is difficult to speculate whether requiring an acquiring company to obtain security holder approval in a share exchange bid will favour cash bids. However, the fact that there are a significant number of share exchange bids by companies listed on the U.S. exchanges suggests that share bids will continue to be proposed by boards and approved by shareholders.

We do not agree that there is a legitimate argument to be made that requiring approval of the acquiror's security holders will result in additional disclosure about the acquiror's strategy that could benefit its competitors. Disclosure regarding these transactions is already being provided to target shareholders to solicit their approval.

8. If security holder approval is required, is approval by a majority vote of security holders the right threshold?

Yes, a majority vote of security holders, consistent with the other security holder approval requirements in the Manual, is the appropriate threshold for approving dilutive issuances in connection with acquisitions of public companies.

9. Should issuers with a smaller market capitalization be exempted from the new proposal?

No, issuers with a smaller market capitalization should not be exempted from the requirements applicable to other issuers. As noted above, we do not believe that requiring security holder approval in these circumstances will discourage acquisitions by either large or small issuers, both of which will still be able to proceed with value-creating acquisitions effected by dilutive share issuances after obtaining shareholder approval.

We appreciate the opportunity to respond to your request for comments and hope that you find our feedback relevant. We urge TSX to propose an amendment to the Manual and remove the security holder approval exemption in subsection 611(d).

Respectfully submitted on behalf of the members of the Pension Investment Association of Canada.

Yours sincerely,

Terri Troy
Chair

c.c. Cindy Petlock, Manager, Market Regulation
Ontario Securities Commission