Chapter 13

SRO Notices and Disciplinary Proceedings

13.1.1 TSX Notice of Approval – Amendments to Part VI of the Toronto Stock Exchange ("TSX") Company Manual

TORONTO STOCK EXCHANGE

NOTICE OF APPROVAL

AMENDMENTS TO PART VI OF THE

TORONTO STOCK EXCHANGE ("TSX") COMPANY MANUAL

Introduction

In accordance with the Protocol for Commission Oversight of Toronto Stock Exchange Rule Proposals (the "Protocol") between the Ontario Securities Commission (the "OSC") and Toronto Stock Exchange ("TSX"), TSX has adopted and the OSC has approved an amendment (the "Amendment") to Part VI of the TSX Company Manual (the "Manual"). The Amendment is a public interest amendment to the Manual. The Amendment was published for public comment in a request for comments on April 3, 2009 ("Request for Comments").

Reasons for the Amendment

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)). 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.

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 from the requirement to obtain security holder approval, above some prescribed level of dilution, 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.

In response to the 2007 RFC, TSX received twenty-two (22) comment letters. The comments received at that time generally reflected two widely divergent views regarding whether TSX should amend its security holder approval requirements for public company acquisitions.

On April 3, 2009, TSX published another Request for Comments (the "2009 RFC") proposing the Amendment, which would 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. The Amendment proposed in the 2009 RFC was intended to strike an appropriate balance between the divergent views received on the 2007 RFC.

TSX received twenty-three (23) comment letters in response to the 2009 RFC. A summary of the comments submitted, together with TSX's responses, is attached as **Appendix A**. The comments received were generally more uniform than those submitted for the 2007 RFC. A vast majority of commenters submitted that the threshold dilution level should be lower than the proposed 50%. A majority also submitted that the threshold dilution level should be the same for public and private company acquisitions. Many commenters submitted that they did not see any basis for treating public and private company acquisitions differently.

TSX respects the public comment process and appreciates the value such public input provides. TSX thanks all commenters for their submissions. TSX believes that security holders should be provided with an opportunity to vote on acquisitions which may significantly alter their investment through dilution and has determined to align the threshold dilution level for security holder approval for public company acquisitions with the threshold dilution level applicable to private company acquisitions. In accordance with Subsection 611(c), TSX will require security holder approval for the issuance of securities as full or partial consideration for all acquisitions where such number of securities exceeds 25% of the issued and outstanding securities of the listed issuer.

TSX strives to consistently and transparently apply its rules, and not to rely on discretion to alter those rules other than in extraordinary circumstances or where the rules do not apply to the circumstances. TSX will continue to apply Subsection 611(c) in this manner. The exercise of discretion by TSX is, and should be, limited, particularly where there is a bright line test that applies. However, Section 603 of the Manual does provide discretion to TSX to impose or exempt issuers from requirements in the Manual in appropriate circumstances.

Summary of the Final Amendment

As described in the 2009 RFC, modifications of the Amendment could include an alternative dilution level to the proposed 50% which would not be considered material given the scope of the 2009 RFC. TSX has amended the dilution level to require security holder approval for securities issued or made issuable in payment of the purchase price for an acquisition of a public company which exceeds 25% of the number of issued and outstanding securities of the listed issuer (the "Final Amendment"). Subsection 611(d) will therefore be deleted from the Manual.

Text of the Amendment

The Final Amendment is attached as **Appendix B**.

Effective Date

The Final Amendment will become effective on **November 24**, **2009** (the "Effective Date"). The Final Amendment will not have any retroactive effect, so that any transaction of which TSX has been notified in writing prior to the Effective Date, whether or not TSX has already granted conditional approval, will be unaffected by the Final Amendment. TSX will monitor the effect of the Final Amendment on its issuers and the marketplace and will seek to monitor the costs and benefits of the Final Amendment, for its smaller issuers in particular.

APPENDIX A
SUMMARY OF COMMENTS
PART VI – CHANGES IN CAPITAL STRUCTURE OF LISTED ISSUERS

List of Commenters:

British Columbia Investment Management Corporation (BCIMC)	Investment Industry Association of Canada (IIAC)
Burnet Duckworth & Palmer LLP, Securities Law Group (BDP)	McLean Budden (MB)
Canada Pension Plan Investment Board (CPPIB)	OMERS Capital Markets (OMERS)
Canadian Advocacy Council of CFA Institute Canadian Societies (CAC)	Ontario Teachers Pension Plan (OTPP)
Canadian Coalition for Good Governance (CCGG)	Osler, Hoskin & Harcourt LLP (Osler)
Canadian Foundation for Advancement of Investor Rights (FAIR)	Pension Investment Association of Canada (PIAC)
Colleges of Applied Arts & Technology Pension Plan (CAAT)	Power Corporation du Canada (Power)
Crown Hill Capital Corporation (Crown Hill)	Railpen Investments (Railpen)
F&C Management Ltd. (F&C)	Sionna Investment Managers (Sionna)
Hermes Equity Ownership Services Limited (Hermes)	Standard Life Investments (Standard Life)
IGM Financial Inc. (IGM)	Wachtell Lipton Rosen & Katz (Wachtell)
	Confidential Commenter (Confidential)

Capitalized terms used and not otherwise defined shall have the meaning given in the Request for Comments for public interest amendments to amend Part VI - *Changes in Capital Structure of Listed Issuers* to the TSX Company Manual relating to security holder approval requirements for acquisitions, published in the OSC Bulletin on April 3, 2009.

Summarized Comments Received	***TSX Response***
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?	
Generally, commenters agreed that it is appropriate to maintain the exemption from security holder approval for the acquisition of public companies, but opinions varied as to the level of dilution at which the exemption should be maintained.	TSX agrees that it is appropriate to maintain an exemption from security holder approval for acquisitions at a certain prescribed dilution level.
A number of comments suggested that there should be no distinction made between acquisitions of a public or private company, such that the exemption only applies as it would for a private company acquisition. (BCIMC, CCGG, CAAT, CPPIB, FAIR, Hermes, IGM, MB, OMERS, Sionna, OTPP, IGM, Wachtell, PIAC) It was suggested that there is no reason to apply the principle of security holders voting on acquisitions that may significantly alter their investment through dilution differently for public and private company acquisitions. Two commenters however submitted that the public company exemption is appropriate and necessary. (IIAC, Osler) One commenter submitted that where dilution is not transformative, security holder approval is not necessary. (Confidential)	TSX believes there are relevant differentiating factors between public and private company acquisitions and that the availability of public information disciplines management and permits public scrutiny which should be balanced with the costs of requiring security holder approval. However, TSX recognizes the prevalent view submitted by commenters suggesting that public and private company acquisitions should be treated the same for security holder approval purposes.

Summarized Comments Received	*TSX Response*
One commenter did not agree with the concept of a security holder's investment being altered through dilution, questioning how dilution can alter an investment. If the acquisition does not affect control of the issuer and does not result in a change of business, this commenter submits that a percentage reduction in the security holder's voting rights does not alter that investment. (BDP)	TSX appreciates this commenter's view point, but overall believes that significant dilution may alter an investment.
Several commenters responded that prospectus level disclosure is not relevant if security holders do not get to vote on whether they wish to be diluted by such transaction. (CPPIB, CCGG, Wachtell, FAIR, CAAT, BCIMC, IGM, MB, Confidential, PIAC, Sionna, OTTP) Another submission provides that there are many factors providing sufficient safeguards to maintain the current exemption. (IIAC) It was submitted that public disclosure does not provide a large increase of management discipline and other remedies available to security holders are inadequate. (CPPIB, PIAC)	TSX believes that public disclosure, which underlies securities regulation, contributes to management discipline. However, TSX recognizes the prevalent view submitted by commenters on this point.
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?**	
The comments received on this question varied. Commenters preferring the proposed 50% or a higher dilution threshold submit that the Amendment will dampen M&A activity. It was submitted that the recent general decline in issuer market capitalizations means that what would have been considered a significant acquisition may no longer be significant because of a decline in market value. In addition, premiums are currently high for acquisitions, a situation that does not represent the norm. (BDP) This commenter further suggests that TSX must also take into account the impact of the Amendment on issuer trading prices and multiples. It was also submitted that the impact will be more significant for junior issuers and issuers with smaller market capitalizations. Direct and indirect costs of the Amendment are cited, as well as added risk in the form of higher break fees, risk premiums and execution risk. (IIAC, Osler) Transactions will be more difficult to complete because of added risks. Commenters in support of a lower threshold dilution level than the proposed Amendment do not believe that the Amendment will dampen M&A activity in a negative way. (OTPP, CCGG, FAIR, CPPIB, PIAC) One commenter submitted that the Amendment may affect tactics. (CCGG) It was remarked that a security holder meeting for the offeror may be planned simultaneously with the target's security holder meeting, therefore not causing any additional delay. (FAIR) It was proposed that the Amendment will be better for the integrity of the market. (FAIR) Comments received also submit that deterring M&A deals that are not economically beneficial to security holders would in fact improve the Exchange and the ability of its issuers to attract capital. (Confidential)	On balance, TSX believes that security holder approval requirements will dampen M&A activity, at least in the shorter term, because of the associated costs and increased uncertainty. TSX thanks all commenters for their input and consideration of relevant factors with respect to the Amendment.

Summarized Comments Received	*TSX Response*
It was submitted that deal certainty will not be impacted once a dilution level is set. (CCGG, FAIR) Another submission proposed that if deal certainty is impacted, it is a desirable outcome for less desirable deals. (Confidential) It was also submitted that the impact on deal certainty will be the same as for U.S. issuers. (OTPP)	TSX agrees that the impact on deal certainty will dissipate over time as a result of the transparency and certainty of rules.
3. **Do you think the Amendment will affect the competitiveness of issuers listed on TSX? If so, how?**	
Comments received in support of the proposed 50% threshold or higher submit that the Amendment will affect the competitiveness of TSX listed issuers in a negative way, by increasing costs, opportunity costs and the loss of a potential tactical advantage or level playing field in bidding situations. (IIAC, Osler) It was also submitted that the impact will be worse for junior issuers and issuers with smaller market capitalizations who will have even more difficulty staying competitive. (BDP) Commenters in support of a lower threshold dilution level do not believe the Amendment will negatively affect the competitiveness of TSX listed issuers, and will in fact enhance competitiveness. Commenters maintained that competitiveness will not be affected given that other exchanges have similar requirements, and because the Amendment will foster confidence in Canada's capital markets. (CCGG, Confidential, CPPIB, FAIR, PIAC) Another commenter further added that a failure to be in line with other exchange requirements is detrimental to competitiveness. (FAIR) One commenter submitted that the Amendment is too weak to improve competitiveness of issuers for capital, and not a significant barrier to deal making. This commenter believes however that competitiveness will improve if a 25% dilution level is set, which will decrease the cost of capital and decrease the risk of investing in issuers listed on TSX. (OTPP)	TSX thanks the commenters for their views. TSX recognizes that competitiveness can be affected directly and indirectly, positively and negatively, and that such effects are difficult to predict and measure. TSX will monitor the effect of the new rule on its issuers and the marketplace going forward.
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?**	
Generally, those commenters who believe the Amendment proposes too high a dilution level believe that the Amendment does not strike the appropriate balance between the interests of stakeholders. However, many commenters did not specifically address this question. Some comment letters submit that at a 50% dilution level, investors could conclude that Canada has lower standards than other exchanges, therefore not striking the appropriate balance. (BCIMC, CAAT, CPPIB, Hermes, IGM, MB, OMERS, Railpen, Sionna) It was also submitted that while 50% is a legal change of control, 20% is a change in effective control, as defined under take-over bid legislation. This commenter submits that a 20% dilution threshold would strike the appropriate balance between the legitimate interest of the board of directors and the ownership rights of shareholders. (CCGG) Another commenter submits that the Amendment is not	The Amendment was intended to strike an appropriate balance between the divergent views received on the 2007 Request for Comments. However, TSX understands the concerns expressed by commenters regarding the proposed 50% dilution threshold. TSX adds that it does not believe that its standards can be appropriately judged based on one rule alone. Rather, the Exchange's standards as a whole must be considered when comparing to other exchanges. In addition, Canada's regulatory framework is generally friendly to security holders, which should not be disregarded in a comparison of jurisdictions.

Summarized Comments Received	*TSX Response*
balanced and is facilitating the business interests of listed issuers at the expense of good corporate governance and shareholder protection. (FAIR) One commenter submitted that at 50%, the range of transactions that could be completed without security holder approval was too broad, and would permit transactions that would materially affect an issuer's financial position or that present a strategic shift, without security holder input. (F&C) Another commenter submitted that the dilution level should be decreased to prevent regulatory arbitrage and maintain competitiveness. (IGM) The 50% proposal was described as too weak. (OTPP)	
The Amendment was also described as a step in the right direction, but not going far enough. (Confidential, CPPIB, PIAC) It was acknowledged that no bright-line test can perfectly address all situations, but at 50% there is too much risk for shareholders to be left without effective remedies. (Confidential)	TSX agrees that bright line tests do not perfectly address all situations, but do meet the legitimate goals of transparency and regulatory certainty which benefit all stakeholders in the Canadian capital markets.
Generally, those commenters who believe the Amendment sets a dilution threshold that is too high also do not believe it strikes the appropriate balance between the interests of stakeholders. (BDP, IIAC) One commenter submitted that the proposal is too narrowly focused on the interests of shareholders of an acquiror, and gives disproportionate weight to potential and uncertain benefits to this small group of stakeholders. (IIAC) To achieve balance, the ease of raising capital, competition, governance and costs must all be considered, on an industry-wide basis, not transaction by transaction. This commenter encourages further analysis at the issuer level and whether transactions caught at this level would not have been pursued in light of such an approval requirement. Another commenter supports the balance in the Amendment, and would not support a lower dilution threshold. (Osler)	The Amendment was intended to strike an appropriate balance between the divergent views received on the 2007 Request for Comments. However, most commenters now appear to favour a lower threshold dilution level. TSX thanks all commenters for their submissions.
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.**	
Commenters cite a variety of benefits, although some commenters suggest the benefits are greater at a lower dilution level. It was submitted that at a lower dilution level, the rule would be aligned with other exchanges and international best practices, which would foster confidence, encourage investment and decrease the cost of capital. (FAIR, CCGG, Confidential, CPPIB, OTPP, PIAC) Discouraging M&A activity that is inconsistent with maximizing shareholder value is another benefit cited. (Confidential). Increased discipline on management was also noted. (OTPP) The Amendment was also described as empowering shareholders, which is a benefit, but inconsistent with corporate and securities law in Canada. (Osler)	TSX agrees that there are costs and benefits to the Amendment and has considered them in making the Amendment effective.
There were a number of costs listed, such as meeting costs, higher premiums, higher break fees, and added risk and uncertainty. (CCGG, IIAC, Osler, OTPP). Some comments submitted that these costs are not material in the context of	TSX continually monitors the effects of its rules on its issuers and the marketplace and will seek to monitor the costs and benefits of the Amendment, for its smaller issuers in particular. TSX understands that a security holder

Summarized Comments Received	*TSX Response*
a transaction and are justified to provide fairness to shareholders and support the integrity of the market. (CCGG, CPPIB, FAIR, PIAC) One commenter suggested, however, that these costs are borne by all shareholders even though the benefits are not shared the same way. (IIAC) This commenter also cited the cost for smaller and resource based issuers who are dependent on equity financing and need an environment that permits them to grow.	approval requirement at a relatively low level of dilution may disproportionately affect smaller issuers.
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?**	
It was generally agreed that the Amendment may lead to transactions being structured to avoid security holder approval. (CCGG, FAIR, IIAC, Osler, OTPP) However, some commenters agreed that this is not inappropriate as security holder approval is a legitimate consideration (Osler, IIAC) and because other structures do not affect the integrity of shareholders' ownership interest in the same way (CCGG, FAIR). Another commenter submitted that TSX should exercise discretion to require a vote if an issuer is circumventing the rule with similar dilutive effect on shareholders. (Confidential) Two other commenters submitted that it is difficult to speculate as to the impact on structuring transactions, but note that acquisitions occur on other exchanges that have such a requirement. (CPPIB, PIAC) Further, there are limits on the amount of leverage an acquiror can access, acting as a check on the issuer's ability to avoid security holder approval. (OTPP)	TSX agrees that its rules and approval requirements are legitimate considerations for issuers when structuring transactions. An important benefit of a bright line rule is regulatory certainty which permits issuers to structure transactions and market participants to formulate appropriate expectations.
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?**	
A number of commenters submitted that 20% is the appropriate level, because that is the dilution level set by NYSE. (BCIMC, CCGG, CAAT, FAIR, Hermes, MB, Sionna, Standard Life) Other commenters submitted that 25% is the appropriate level, because of international standards. (CAC, F&C, OMERS, Confidential, CPPIB, Railpen, OTPP, Wachtell, Power, PIAC) One commenter suggested 20-25%. (IGM) Some commenters view the right to vote on materially dilutive transactions as a basic shareholder right. (OMERS, FAIR, Railpen) Some commenters noted that a lower threshold for approval is necessary in Canada because Canadian issuers usually have unlimited authorized capital. (Hermes, FAIR, CCGG, CPPIB, PIAC) One submission preferred that security holder approval only be required in extraordinary circumstances (BDP), with another suggesting there be no requirement, or a level as high as 100% if necessary. (IIAC) Another commenter submitted that nothing lower than the proposed 50% is appropriate. (Osler)	TSX is aware of the dilution thresholds set by other exchanges. TSX generally agrees that TSX rules should be reflective of international standards, but must also take into consideration the Canadian marketplace, regulatory regime and the size and nature of its listed issuers. TSX also agrees that security holders should have the right to approve decisions that may significantly alter an investment through dilution. TSX recognizes that there is a diversity of opinion as to the appropriate dilution threshold.

Summarized Comments Received	*TSX Response*
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.**	
Comments provided in response to Question 5 generally took into account the dilution level preferred by the commenter. Please see the responses at Question 5. Additional costs noted in response to this question were management hesitation in deal making because of deal uncertainty and restricted ability to grow through M&A. (Confidential) One additional benefit noted is increased attention to shareholder concerns and perspective. (Confidential)	Please see the responses at Question 5.
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.**	
Commenters who prefer a lower level of dilution generally submit that the application of Section 603 in the context of the Amendment is important because it is more likely that transactions with that level of dilution will have a negative impact on the quality of the marketplace. (CPPIB, FAIR, CCGG, PIAC) It was also agreed that the application of Section 603 is reduced at lower dilution thresholds of 20% or 25%. (CPPIB, CCGG, FAIR, OTPP, PIAC) The importance of predictability of regulatory requirements was submitted. The exercise of discretion, particularly where there is a bright-line test, is undesirable and should be limited to extraordinary circumstances. (IIAC, Osler) In addition, such discretion enables shareholders to access litigation objectives where the dispute is in respect of the business judgement of directors, which is properly addressed in the courts. (Osler) Two commenters submitted that TSX should not use Section 603 to waive security holder approval if dilution is above the bright-line threshold, and may use it if dilution is below the bright-line threshold where the factors listed in Section 603 are present. (CCGG, FAIR) They submit there should be no discretion to exempt issuers because security holders opposed to such exemption do not have the opportunity to make submissions and there is no such discretion in the U.S. One commenter responded that TSX should review each transaction on a case-by-case basis and require a vote if warranted regardless of any bright-line test because factors such as common directors or purposeful circumvention of the rule could be present. (Confidential) Another submitted discretion must be retained for similar reasons. (OTPP)	TSX agrees that the application of Section 603 is correlated with the dilution level implemented under the Amendment. The level of dilution in an acquisition is however only one factor that should be taken into account in considering the application of discretion and the impact of the acquisition on the quality of the marketplace. TSX agrees that the importance of regulatory transparency and certainty to the overall functioning of the Canadian capital markets cannot be overlooked. The exercise of discretion by TSX is, and should be, limited, particularly where there is a bright line test that applies. TSX strives to consistently and transparently apply its rules, and not to rely on discretion to alter those rules other than in extraordinary circumstances or where the rules do not apply to the circumstances.
10. **Is it appropriate to permit security holder approval of acquisitions in writing rather than at a meeting? If not, why?**	
All comments submitted in response to this question supported permitting security holder approval in writing. (CPPIB, CCGG, FAIR, IIAC, Osler, Confidential, OTPP,	Subsection 604(d) will be available to issuers to obtain security holder approval for acquisitions. Issuers will be required to meet the terms and conditions set out in

Summarized Comments Received	*TSX Response*
PIAC) It was submitted this can reduce costs for the issuer and there is no diminishing of security holder rights. (IIAC) Some commenters noted that such approvals must represent 50% of share ownership, not voting rights through multiple voting shares (CCGG, FAIR). Also, there must be adequate disclosure to permit an informed decision (Confidential) and no conflicted shareholders may participate. (OTPP) Lastly, it was noted that undisclosed material information being given to some shareholders and not others may be problematic. (FAIR)	Subsection 604(d) in order to obtain security holder approval in writing.
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?**	
Many commenters agree with TSX that annual blanket approval is not appropriate. (CPPIB, CCGG, FAIR, Confidential, PIAC) However, one commenter questioned why annual blanket approvals do not meet the intent and purpose of the approval requirement, since investors are aware either because they vote on it or acquire the securities with knowledge of the outcome of such a vote. (BDP) This commenter also submitted that if it's unclear whether a resolution applied to a particular transaction, then approval would be required. Another commenter submitted it is fair to allow shareholders to determine whether to grant the issuer the flexibility and certainty of having advance approval and cost savings. (IIAC) It would be up to the issuer whether to seek such approval.	TSX and a number of commenters believe that security holders should have detailed information about a specific transaction at the time of a vote in order for the vote to be meaningful. TSX recognizes that investors should be able to know if a blanket approval has been adopted by an issuer, but believes that practically speaking, this is not the ideal way to give effect to security holder approval. In particular, security holders at the time of the vote may be different than those at the time of the transaction. We recognize that blanket approval could reduce deal uncertainty and associated costs by eliminating delays from having to seek security holder approval at the time of a transaction.
12. **What costs and benefits are there in providing such flexibility? Do you agree that the costs outweigh the benefits?**	
Please see the comments at Question 11.	
General	
A number of the comment letters received contain virtually identical submissions, and rely primarily on the fact that the Amendment is not the appropriate dilution level because other major exchanges require security holder approval at a lower level. (BCIMC, CAAT, Hermes, MB, OMERS, Sionna)	TSX appreciates the importance of staying abreast of requirements on other exchanges. However, the dilution levels at which security holder approval is required by other exchanges is only one factor in the regulatory framework provided by those exchanges and by applicable corporate and securities laws. Dilution levels should not therefore be viewed in isolation in determining an appropriate dilution level for the Canadian marketplace or in judging the corporate governance standards of TSX.
One commenter urges TSX to consider having two different thresholds, one for larger issuers, and another for more junior issuers, to permit smaller issuers to remain competitive. (BDP) Other commenters noted that the profile of issuers on TSX is not distinct enough to warrant a different threshold than other exchanges. (CCGG, FAIR, Wachtell, OTPP)	TSX understands the concerns of its smaller issuers. However, as the senior Canadian equities exchange, TSX currently believes that its security holder approval requirements should be imposed equally on all of its listed issuers. TSX will monitor the effect of the new rule on its issuers and the marketplace going forward.

Summarized Comments Received	*TSX Response*
Several commenters refer liberally to the HudBay Decision to support their position in favour of security holder approval requirements by assertion that their views are aligned with the views of the OSC. (CPPIB, CCGG, FAIR, PIAC) Another commenter expressed concern that applying the outcome of an isolated regulatory decision to all transactions involving acquisitions of public issuers will have a significant detrimental effect on Canadian public markets. (IIAC) Although there may be isolated situations where discretion to impose security holder approval in such circumstances is appropriate, it is important to ensure that the interests of the marketplace as a whole are not compromised by regulating in response to an individual decision. Some respondents also referred to the Organization of Economic Cooperation and Development (OECD) Principles of Corporate Governance as support for shareholder rights to participate in fundamental corporate changes, including the authorization of additional shares. (CCGG, FAIR)	The OSC states in its reasons for HudBay that this policy review is not relevant to their interpretation of the provisions of the Manual. The HudBay Decision is an application of the provisions of the Manual, not an opinion on the security holder approval exemption in Subsection 611(d). TSX also agrees that it would not be appropriate to determine the outcome of a policy review based on the specific facts and circumstances of one case.
One commenter submitted that the Amendment should not apply to "permitted mergers" involving closed end funds because: (i) acquisitions are completed on the basis of an exchange ratio determined with reference to the respective net asset values per unit, therefore, security holders will be diluted only in respect of their percentage ownership of the acquiring fund, so they will not suffer economic dilution; and (ii) there are sufficient safeguards in connection with "permitted mergers" to protect security holder interests without the requirement for security holder approval. Further, security holders are entitled to redeem their units in connection with the merger. Mergers of affiliated funds are also subject to the conflict of interest provisions under securities regulation, including review by the funds' independent review committees. The costs and administrative burden of having security holder approval in these circumstances are not justified in this context and should be excluded from the Amendment. (Crown Hill)	TSX believes there is validity to this concern and is considering relevant rule amendments or other alternatives for investment funds.
One comment was received suggesting that TSX is not in a position to impartially determine the corporate governance standard because TSX is a public company and acts as a regulator of listed companies. This commenter proposes the listed issuer regulatory function should operate separately with its own board of directors or with other appropriate checks and balances. (FAIR)	TSX is an active and committed participant in corporate governance in Canada. TSX seeks to implement rules and standards that are appropriate for all of the stakeholders and engages in a public comment process to assist it in achieving this goal. Further, all amendments to the Manual are approved by the Ontario Securities Commission. There are therefore a number of checks and balances on TSX to counter any real or perceived conflicts in its rulemaking function.
Some commenters requested that Subsection 611(d) simply be eliminated. (CPPIB, OTPP, PIAC)	TSX has determined to eliminate Subsection 611(d) from the Manual.

APPENDIX B
THE FINAL AMENDMENT

Sec. 611. Acquisitions

(d) [Intentionally deleted.]