



2009-0003

April 27, 2009

**Subsection 604(e)
Securityholder approval
Financial hardship exemption**

STAFF NOTICE TO APPLICANTS, LISTED ISSUERS, SECURITIES LAWYERS AND PARTICIPATING ORGANIZATIONS

Toronto Stock Exchange ("TSX") staff is providing guidance on submissions it will expect to receive in connection with the use of the financial hardship exemption from securityholder approval for certain transactions provided in Subsection 604(e) (the "financial hardship exemption") of the TSX Company Manual (the "Manual"). This Staff Notice does not provide guidance on what TSX staff believes constitutes financial hardship under the financial hardship exemption.

Subsection 604(e) was introduced in the Manual on January 1, 2005 as it was considered to be in the best interest of securityholders and the marketplace to allow listed issuers to enter into transactions in a timely manner when in financial difficulty. It was also deemed appropriate for TSX to defer to the decision of a listed issuer's unrelated directors in this regard.

As required under Subsection 604(e), listed issuers using this exemption must issue a press release at least five business days in advance of the closing of the transaction, disclosing the material terms of the transaction and that they are relying on the financial hardship exemption. TSX will not provide conditional approval of the transaction until five days after issuance of the press release. It has also been the practice of TSX to place a listed issuer relying on the financial hardship exemption under review for continued listing. While TSX believes that these measures contribute to limiting reliance by listed issuers on the financial hardship exemption, particularly because of the current challenging economic times, TSX seeks to ensure that the financial hardship exemption is being used appropriately.

A listed issuer which has determined that it may rely on the financial hardship exemption must meet all conditions listed in Subsection 604(e) and must provide TSX with the following information in support of the appropriateness of its use of the financial hardship exemption:

1. detailed description of the events and factors which led to and contributed to the listed issuer being in serious financial difficulty (e.g. breach or potential breach of debt covenants, inability to meet debt obligations, working capital deficiencies, inability to fund property payment, etc.) and whether such information has previously been publicly disclosed;
2. detailed description of alternatives considered by management and the board of the listed issuer to improve the listed issuer's financial situation;
3. in light of any other alternatives considered by the management and the board of the listed issuer, an explanation as to why the proposed transaction is reasonable for the listed issuer under the circumstances;

4. if insiders are participating in the transaction: (a) confirmation that no such insider was involved in the negotiations on behalf of the listed issuer, (b) information about other parties that have been approached by the listed issuer to participate in the proposed transaction and what role, if any, such insider played in those negotiations on behalf of the listed issuer, and (c) any other contemplated transactions (as applicable);
5. manner in which the proposed transaction will remedy the financial problems of the listed issuer, which should include a budget of sources and uses of capital for a six month period, a description of how long the funds raised in the proposed transaction will sustain the issuer and how the issuer will address any anticipated capital deficiencies;
6. details concerning why the listed issuer is not able to seek securityholder approval, including consideration of whether approval in writing is possible, particularly if the listed issuer is closely held;
7. names of financial and legal advisors retained by the listed issuer, its board of directors or the committee of the board (if applicable) and the role such advisors, board of directors or the committee of the board have played in considering alternatives and in structuring the transaction and, in particular, details as to any opinion they have arrived at in relation to the transaction and its fairness to securityholders;
8. any other material information in respect of the proposed transaction and the financial situation of the listed issuer which may be relevant to TSX;
9. a draft press release, which should detail the reasons for the issuer's serious financial difficulty and the proposed use of proceeds, as well as the material terms of the transaction and that the listed issuer has relied on this exemption; and
10. all other documents required under Subsection 604(e).

The ability of a listed issuer to use this exemption will be based on the unique facts and circumstances of such issuer and transaction. Subsection 604(e) of the Manual was adopted to provide listed issuers with the opportunity to improve their financial situation in a timely manner when in serious financial difficulty. TSX will consider previous reliance by the listed issuer on the financial hardship exemption. TSX expects that listed issuers will use the financial hardship exemption for transactions which improve their financial situation, as must be stated in the resolution of the board of directors required to be filed pursuant to Subsection 604(e). Accordingly, TSX will generally not accept that listed issuers use the financial hardship exemption for transactions that do not lead to an inflow of cash or reduction of a financial liability.

TSX will continue to monitor the use of the financial hardship exemption and may provide additional guidance in the future.

Please contact your listings manager if you have any questions about this Staff Notice.