

February 29, 2024

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

*****This Staff Notice replaces TSX Staff Notice 2009-0006, which is repealed in its entirety.*****

Toronto Stock Exchange ("**TSX**") staff is providing guidance on the following provisions of the TSX Company Manual (the "**Manual**"):

1. Anti-dilution provisions for Convertible Securities (defined below) that are acceptable to TSX; and
2. Amendments to security based compensation arrangements ("**Arrangements**") to add a cashless exercise feature.

1. Anti-Dilution Provisions

Anti-dilution provisions are designed to compensate holders of securities convertible into or exchangeable for listed equity securities, including, for the purposes of this Staff Notice, warrants (collectively, "**Convertible Securities**"), when a listed issuer makes changes to its capital structure, such as stock splits, consolidations, spin-offs and special distributions. Anti-dilution adjustments are made to the terms of Convertible Securities to proportionately offset the change made to the underlying securities. A listed issuer must, prior to effecting any adjustment, notify TSX if a listed security may be affected by a dilutive event. Such notification must include a sample calculation illustrating the impact of the adjustment. The listed issuer must apply to list any additional securities issuable as a result of the proposed adjustment.

Exchangeable securities, which are economically equivalent and have the same voting rights as the underlying listed equity securities, are not considered Convertible Securities for the purposes of this Staff Notice. TSX expects such exchangeable securities to have appropriate anti-dilution provisions.

Generally, the aim of TSX in reviewing anti-dilution provisions is to ensure that adjustments (i) are proportionate to equity; and (ii) treat holders of Convertible Securities on par with, but in no case,

better than, holders of equity securities, upon exercise or conversion, as applicable. TSX will generally accept the following types of anti-dilution provisions for Convertible Securities:

(a) Stock splits and consolidations

Anti-dilution provisions where both the exercise (or conversion) price and number of securities issuable upon exercise (or conversion) are adjusted are acceptable if the adjustments are proportionate. The adjustment to the number of securities must be inversely proportionate to the price adjustment. The adjustment can be made to the number of Convertible Securities or to the number of securities underlying the Convertible Security.

For example:

	Split (2:1)	Consolidation (1:2)
100 warrants to buy 100 shares at \$1.00	200 warrants to buy 200 shares at \$0.50 per share	50 warrants to buy 50 shares at \$2.00 per share
	or	
100 warrants to buy 100 shares at \$1.00	100 warrants to buy 200 shares at \$0.50 per share	100 warrants to buy 50 shares at \$2.00 per share

(b) Special distributions and rights offerings

Adjustments to the exercise (or conversion) price of securities to compensate for the loss of value to security holders where there is a special distribution or a rights offering are generally acceptable.

The adjustment may be equal to an amount that is no greater than:

(a) the actual distribution amount; and

(b) the difference between:

(i) the trading price of the underlying securities immediately prior to such underlying securities trading on an "ex-distribution" basis; and

(ii) the trading price of the underlying securities immediately after the underlying securities have commenced trading on an "ex-distribution" basis.

TSX generally accepts that the trading prices be based on volume weighted average trading price for a reasonable time period (generally five days but up to twenty days) ending immediately prior to the "ex-distribution" date and a reasonable time period commencing on the "ex-distribution" date.

Rather than an adjustment to exercise (or conversion) price, listed issuers may wish to adjust the number of securities purchasable upon exercise. TSX will generally accept a proportionate adjustment to either the exercise (or conversion) price, or the securities purchasable upon exercise, but not both.

(c) Cash dividends

Anti-dilution provisions for dividends or distributions in the ordinary course of business are generally not acceptable, however TSX may accept adjustments in the following instances:

- (i) for listed issuers that do not have a history of paying ordinary course dividends, if the issuer implements a normal course dividend in the future (see Example #1 below);
- (ii) for listed issuers currently paying a normal course dividend, if the dividend is increased to greater than a certain, pre-determined, threshold by the issuer in the governing terms of the security (i.e. as a percentage or dollar amount) (see Example #2 below); and
- (iii) for listed issuers which are income funds.

Example #1 - One Time Cash Distribution or Implementation of New Dividend Program

If the listed issuer fixes a record date for the payment of cash dividends or distributions to holders of the underlying equity security, the conversion price of the Convertible Security may be adjusted immediately after such record date so that it will be equal to the price determined by multiplying the conversion price in effect on such record date by a fraction:

- (a) the denominator of which will be the volume weighted average trading price of the security for a reasonable time period ending two trading days prior to such record date (the “**Pre Record Date Price**”), and
- (b) the numerator of which will be the Pre Record Date Price less the amount in cash per security distributed to securityholders.

Example #2 - Existing Dividend Program

In the case of dividends or distributions payable that are in excess of the dividend threshold, the conversion price of the Convertible Security may be adjusted to a price determined by multiplying the conversion price in effect on the record date, by a fraction, the denominator of which will be the Pre Record Date Price, and the numerator of which will be the Pre Record Date Price less the amount in cash per security of the dividends or distributions paid (or payable) in such calendar year in excess of the dividend threshold.

(d) Spin-off securities

TSX will generally accept an adjustment to the conversion price to reflect a distribution of spin-off securities, if the conversion price in effect on the record date is multiplied by a fraction, the denominator of which will be the sum of:

- (a) the volume weighted average trading price of one equity security for a reasonable time period commencing after the “ex-distribution” date; and
- (b) the product of:
 - (i) the volume weighted average trading price for the same time period for one spin-off security, (or if no such prices are available, the fair market value of a spin-off security as determined by the board of directors and subject to TSX approval) multiplied by

(ii) the number of spin-off securities distributed in respect of one equity security, and the numerator of which will be the volume weighted average trading price of one equity security over the same time period.

TSX views a reasonable time period in this context as generally five trading days but up to twenty trading days.

For example, where a listed issuer is conducting a spin-off of one spinco security for one common share, where the listed issuer has outstanding warrants with an exercise price of \$10.00, and:

- the five-day volume weighted average trading price of the security of the common share is \$6.00 for the five days commencing after the ex-distribution date; and
- the five-day volume weighted average trading price of the spinco security is \$2.00 for the five days commencing after the ex-distribution date:

The new exercise price of the warrant to purchase the common share would be \$7.50 ($\$10.00 \times (\$6.00 / (\$6.00 + (\$2.00 \times 1))) = \7.50). If the listed issuer chooses to also distribute a warrant of the spinco issuer on a 1:1 basis, the exercise price of the warrant to purchase the spinco security would be \$2.50 ($\$10.00 - \$7.50 = \2.50).

(e) Participation in “regular” distributions

Holders of Convertible Securities may not participate in “regular” distributions made to common shareholders (or similar underlying equity securities). In the event that holders of Convertible Securities are eligible to participate in distributions made to common shareholders (or similar securities), such participation is subject to the prior consent of TSX.

(f) Issuer Bids

Adjustments for issuer bids, other than normal course issuer bids, where the tender price exceeds at least 95% of market price, are generally acceptable. Note that TSX will not accept adjustments for normal course issuer bids.

The adjustment may be equal to the conversion price multiplied by a fraction, the denominator of which will be the sum of:

(a) the fair market value of the aggregate consideration (as determined by the board of directors and subject to TSX approval) payable to security based on the acceptance (up to any maximum specified in the terms of the issuer bid) of all securities validly tendered and not withdrawn from the bid, and

(b) the product of:

(i) the number of securities outstanding (less any purchased common shares) at the expiration of the bid, and

(ii) the market price (as defined at Part I of the Manual) per security at the expiration of the bid, and the numerator of which shall be the product of:

(a) the number of securities outstanding (including purchased securities) at the expiration of the bid multiplied by

(b) the market price (as defined at Part I of the Manual) per security at the expiration of the bid.

For example, for a warrant with a conversion price of \$5.00, where:

- the issuer bid consideration is \$7.25 per common share;
- the five day volume weighted average price of the common share is \$7.00 for the five trading days leading up to the expiration of the bid;
- there are 10,000,000 common shares outstanding at the time of the bid; and
- 1,000,000 shares are bought back:

The new conversion price would be \$4.98 $(\$5.00 \times (10,000,000 \times \$7.00) / ((\$7.25 \times 1,000,000) + (9,000,000 \times \$7.00))) = \$4.98$).

(g) Cash change of control

In the event that, during the term of a debenture, a change of control transaction takes place in which equity holders are paid cash consideration, an adjustment to the conversion price of the debenture is generally acceptable to TSX. In this case, the holders of the debentures receive a “cash change of control premium” in the form of additional securities as compensation for the cash they would have otherwise received if they had chosen to convert and participate in the change of control transaction.

The minimum effective conversion price (based on the conversion rate of the principal amount plus the applicable premium per principal amount) must be no less than the market price (as defined at Part I of the Manual) less the applicable private placement discount at the time of issuance of the debenture. Where this style of adjustment clause is present, the listed issuer must apply to TSX to list the maximum number of securities issuable upon triggering of such clause.

(h) Adjustments due to subsequent issuance of securities

Subsection 607(e) of the Manual provides that anti-dilution adjustments made to Convertible Securities (i) for which not all security holders are compensated, and (ii) which may result in securities being issued at an exercise (or conversion) price lower than market price (as defined in Part I of the Manual) minus the maximum allowable discount, as applicable, will not be permitted, unless approved by security holders (excluding securities held by insiders who are benefiting from the anti-dilution provisions).

TSX therefore does not accept downward adjustments to the exercise (or conversion) price of a Convertible Security when a listed issuer completes a subsequent issuance of securities at a lower subscription price, unless:

- 1) such adjustment, in the case of warrants and options, results in an exercise price that is not lower than the market price at the time when the Convertible Security was issued;
- 2) such adjustment, in the case of a convertible instrument (such as debentures and preferred shares), results in a conversion price that is not lower than the market price at the time when the Convertible Security was issued less the maximum allowable discount provided in Subsection 607(e) of the Manual; or

- 3) security holder approval (excluding the votes attached to securities held by insiders who are benefiting from the anti-dilution provisions) has been obtained if the exercise price is: (i) lower than market price (in the case of warrants and options); or (ii) lower than market price less the maximum allowable discount provided in Subsection 607(e) of the Manual (in the case of Convertible Securities such as debentures and preferred shares).

Where the terms of the Convertible Securities are adjusted by the issuance of an additional number of underlying securities (e.g. common shares), rather than by an adjustment to the exercise or (conversion price), TSX will consider the effect of the issuance of such additional securities on the effective subscription (or conversion) price. Such issuances will not be permitted unless the effective subscription (or conversion) price meets the conditions enumerated above.

(i) "Basket" clauses

Where the terms of the Convertible Security have a basket clause which provides that the board of directors (or equivalent body) can amend the exercise (or conversion) price at its discretion in the event of a dilutive event not specifically contemplated by the anti-dilution provisions in the instrument, any such amendment to the exercise (or conversion) price is subject to the prior consent of TSX. Such a clause must state that the adjustment is subject to TSX approval.

2. Addition of a cashless exercise feature to Arrangements

The Notice of Approval for certain amendments to Part VI of the Manual dated September 18, 2009 noted that security holder approval is required to add a cashless exercise feature to a fixed maximum plan if there is no full deduction of the underlying securities. TSX considers such an amendment to be equivalent to an increase in the maximum number of securities issuable under the Arrangement, and in accordance with Subsection 613(i)(iv), security holder approval is required, notwithstanding that the Arrangement may contain detailed amendment provisions.

If you have any questions about this Staff Notice, please contact (i) Anne Child (Managing Director, TSX Listings) at anne.child@tmx.com; or (ii) Selma Thaver (Managing Director, TSX Listings) at selma.thaver@tmx.com.