2018-0005

August 28, 2018

Section 604
Subsection 501 (c)
Security Holder Approval:
Disclosure requirements

Section 355
Stock Symbol Reservations

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

Toronto Stock Exchange ("TSX") is providing guidance with respect to: (i) disclosure and other related requirements where a transaction is subject to security holder approval pursuant to the *TSX Company Manual* (the "Manual"); and (ii) procedures relating to stock symbol reservations.

This Staff Notice replaces TSX Staff Notice 2012-0003, which is repealed in its entirety. Other than the section entitled "Security Holder Approval - Disclosure Requirement & Other Guidance", all sections of this Staff Notice remain unchanged from TSX Staff Notice 2012-0003. The Security Holder Approval - Disclosure Requirements & Other Guidance has been amended as set forth in the Consultation Paper on Public Company Acquisitions published on June 14, 2018. TSX received four comment letters and carefully considered and reviewed them. A summary of the comments and responses are attached to this Staff Notice.

Security Holder Approval - Disclosure Requirements & Other Guidance

The following guidance generally applies to transactions involving the issuance of securities such as private placements and acquisitions. This guidance also applies to transactions involving insiders or related parties of non-exempt issuers which do not involve the issuance of securities but which require security holder approval under Subsection 501(c) of the Manual. Listed issuers are reminded that disclosure requirements for security-based compensation arrangements are specifically set out under Subsection 613(d) of the Manual.

If security holder approval is required under Section 611(c) for the acquisition of widely held securities of a reporting issuer (or equivalent) pursuant to a formal take-over bid, plan of arrangement, amalgamation or similar transaction ("Public Company Acquisition"), TSX will generally not require further security holder approval for the issuance of up to an additional 25% of the number of securities approved by security holders, provided that the securities are issued or made issuable to target security holders pursuant to an increase in the consideration under the transaction.

In order for security holders to make an informed decision whether to approve a transaction, listed issuers must disclose the material terms of the transaction either in the circular that will be mailed to security holders or in the form of written consent (as may be permitted under Subsection 604(d) of the Manual). The disclosure guidance provided below is also

applicable to press releases disclosing the material terms of a transaction where a listed issuer is: i) seeking security holder approval in writing; (ii) relying on the financial hardship exemption under Subsection 604(e) of the Manual; or iii) using the 90% control block exemption under Subsection 604(f) of the Manual.

The disclosure included in the circular, form of written consent or press release, as applicable, should include the following items, as applicable:

1. The principal terms of the transaction and the securities issuable such as the issue price, exercise or conversion price, interest rate, term, anti-dilution provisions, whether or not the transaction has been negotiated at arm's length and any other material features of the securities and conditions of the transaction. Pricing information should also include a statement disclosing the discount or premium in relation to the market price (as defined in the Manual) at the time the listed issuer has entered into the binding agreement to issue the securities or letter notice has been filed with TSX.

2. If security holder approval is required under Subsection 501(c) of the Manual, the principal terms of the transaction, including the identity of the insiders or related parties involved, their relationship with the listed issuer, the value of the consideration and a summary of the independent report required under Subsection 501(c)(ii).

3. The maximum number of securities issuable under the transaction both as an absolute number (breaking down, for example, number of shares, warrants, broker warrants, etc.) together with the percentage such number represents of the listed issuer's outstanding number of securities, pre-transaction, on a non-diluted basis. If the number of securities issuable is based on the market price of the securities in the future so that the maximum number of securities issuable cannot be determined, the formula to calculate the number of securities issuable must be disclosed together with several pricing and dilution scenarios, including the maximum number of securities issuable under each such scenario (expressed both as an absolute number and as a percentage of the listed issuer's outstanding securities on a pre-transaction, non-diluted basis).

4. If security holder approval is required under Section 611(c) for a Public Company Acquisition, the following must be included in the issuer's disclosure document:

   "TSX will generally not require further security holder approval for the issuance of up to an additional [x] [securities], such number being 25% of the number of securities approved by security holders for the transaction."

5. The effect, if any, the transaction may have on the control of the listed issuer. The identity of any new control person or entity must also be disclosed together with the number of securities held by such person or entity (taking into account all securities issuable to such person or entity) both on a pre- and post-transaction basis (expressed both as an absolute number and as a percentage of the listed issuer's outstanding securities on a non-diluted basis).

6. The identity of any persons or entities who will hold more than 10% of the listed issuer's outstanding securities post-transaction and the number of securities held by each such person or entity (taking into account all securities issuable to such person or entity) on a

post-transaction basis (expressed both as an absolute number and as a percentage of the listed issuer's outstanding securities on a non-diluted basis).

7. The material terms of any voting trust or similar agreement or arrangement to be entered into in connection with the transaction, including a description of the matters and resolutions subject to the voting trust, the term of the agreement, the parties to the agreement and the aggregate number of securities that are subject to the voting trust (expressed both as an absolute number and as a percentage of the listed issuer's outstanding securities on a post-transaction, non-diluted basis).

8. If insiders of the listed issuer are participating in the transaction, the identity of such insiders, the nature of the relationship with the listed issuer (e.g., director, officer, control security holder) together with the number of securities issuable to each insider (expressed both as an absolute number and as a percentage of the issuer's outstanding securities on a pre transaction, non-diluted basis). Where insider participation is *de minimis*, such information may be provided on an aggregate basis; for example, the number of securities issuable to directors and officers may be disclosed as a group, rather than on an individual basis.

9. The reasons why security holder approval is required under TSX rules (e.g., dilution in excess than 25%, material effect on control, issuance of securities at a price that is lower than market price less the maximum applicable discount, etc.), citing the appropriate rule and reference in the Manual.

10. If security holder approval is required on a disinterested basis, it must be disclosed together with the identity of the security holders excluded from the vote and the number of securities held by such security holders (expressed both as an absolute number and as a percentage of the listed issuer's outstanding voting securities as at the date of the circular or form of written consent).

11. If security holder approval is being sought by way of written consent, it must be disclosed in the news release issued in connection with the transaction. Alternatively, if security holder approval is not required because of reliance on the financial hardship exemption or the 90% control block exemption, it must be disclosed in the news release.

12. If the financial hardship exemption in Subsection 604(e) of the Manual is being relied on, the press release must include the specific disclosure that is required under Subsections 604(e) (i), (ii), (iii) and (iv) of the Manual.

13. All other information deemed necessary by TSX to ensure that security holders have sufficient information to make an informed decision with respect to whether to approve the transaction and to ensure that the principal terms of the transaction are available to market participants.

If TSX requires security holder approval or exempts an issuer from security holder approval, all related disclosure, whether in a circular, form of written consent or press release, must be pre-cleared and approved by TSX. Listed issuers and their advisors must provide a draft of a circular to TSX for review at least five business days in advance of finalization of the circular. Press releases and forms of written consent related to security holder approval or exemptions should be provided to TSX for review at least two business days in advance of expected dissemination. Listed issuers are reminded that press releases required in connection with

security holder approval by written consent or security holder approval exemptions must be issued at least five business days in advance of closing of the transaction. TSX will generally conditionally approve the transaction five business days after the issuance of such press release provided that it is then in a position to accept notice of the transaction.

If security holder approval is being sought at a meeting, issuers are reminded that in accordance with Section 604(c) of the Manual, security holders must be asked to ratify a resolution specific to the matter(s) for which TSX requires security holder approval, even where security holders must also approve the transaction under corporate law. For example, if security holder approval is required as a result of dilution being in excess of what is permitted under TSX rules, the resolution should ask security holders to ratify the maximum number of securities issuable pursuant to the transaction. In addition, TSX expects the proxy to allow security holders to vote "for" or "against" the transaction.

Stock Symbol Reservations

Applicants and listed issuers may request a specific stock symbol when applying to list or in the context of a name change, corporate reorganization or similar transaction. Applicants and listed issuers must provide a request in writing to the applicable listing manager and such request should include: i) up to three symbols (ranked in order of preference) composed of not more than three letters of the alphabet; and ii) the name of the issuer.

Only one symbol may be reserved per issuer. TSX will confirm which symbol has been reserved for the issuer. If none of the symbols requested are available, the applicant or listed issuer will be provided with a list of available symbols in the requested alphabetical range. Applicants and listed issuers must promptly confirm their choice in order to ensure that the symbol does not become unavailable. The chosen symbol will be allocated to the applicant or listed issuer, assuming that it is still available at the time the choice is provided to TSX. Upon confirmation from TSX of the allocated symbol, the symbol will remain reserved for an initial period of 90 days, and upon request in writing by the issuer, such period may be extended for up to two additional 90-day periods, for an aggregate maximum period of 270 days. The issuer is responsible for requesting an extension in writing before the end of any reservation period. If a reservation is not extended by the issuer by the end of any reservation period, the reserved symbol will automatically be released and may not be reserved by or for the same issuer for a period of 10 days.

At any time, ETF providers, fund families and other entities issuing multiple securities (each considered a separate issuer) may reserve up to 15 symbols for the initial reservation period of 90 days and up to 10 symbols for any second renewal of a reservation beyond the 180 days for an additional 90-day period, for an aggregate maximum period of 270 days.

Currently reserved symbols which have been reserved for 270 days or more as of October 1, 2012 may be extended for no more than an additional 180 days from October 1, 2012. Currently reserved symbols which have been reserved for less than 270 days as of October 1, 2012 may be extended for no more than an additional 270 days from October 1, 2012.

If you have any questions about this Staff Notice, please contact your listings manager.

APPENDIX A
SUMMARY OF COMMENTS AND RESPONSES

List of Commenters:

Burnet, Duckworth & Palmer LLP ("**BDP**")
McCarthy Tetrault LLP ("**McCarthy**")
Norton Rose Fulbright Canada LLP ("**Norton**")
Platinum Source Metals ("**Platinum**")

Capitalized terms used and not otherwise defined in this Appendix shall have the meaning in the TSX Consultation Paper on Public Company Acquisitions dated June 14, 2018.

Summarized Comments Received	***TSX Response***
1. Are the Amendments an appropriate balance in terms of providing flexibility to compete with superior proposals and security holder approval? If not, why not?	
Three commenters were generally supportive of the amendments because they provide additional flexibility to acquirors to assess what is in the best interests of the acquiror when faced with the need to enhance its original offer terms, while also ensuring that shareholders have an opportunity to provide informed approval of the issuance of securities (BDP, McCarthy, Norton).	TSX thanks these commenters for their comments.
2. Are either of the alternatives more appropriate? If so, why?	
Three of the commenters indicated that neither of the alternatives was more appropriate than the proposed Amendments (BDP, McCarthy, Norton)	TSX thanks these commenters for their comments.
One commenter indicated that TSX should clarify in the Amendments that it is still possible for an issuer to seek shareholder approval for the issuance of a number of securities in excess of that contemplated by the proposed transaction, if the issuer so desires (BDP).	TSX acknowledges that the issuer may seek shareholder approval for the issuance of a number of securities in addition to that contemplated by the proposed transaction. However, TSX has determined not to add clarifying language to the Staff Notice.
3. If TSX varies the disclosure and approval requirements as proposed in the Amendments, should the amended more flexible requirements be limited to formal take-over bids subject to the full 105 day initial deposit period? Should the relief be available to friendly deals where the initial deposit period is 35 days? Should it be available for all public company acquisitions (i.e. plans of arrangement, amalgamations, etc.)?	
Three commenters indicated that the Amendments should apply to all forms of takeover bids, whether friendly or hostile (BDP, McCarthy, Norton).	TSX thanks these commenters for their comments.
4. Should TSX consider expanding the Amendments to other security holder approval	

requirements under TSX rules, such as private placements and acquisitions more generally (i.e. asset acquisitions and private company acquisitions)? If so, why?	
Three commenters commented that the flexibility of the Amendments should not be limited to public company acquisitions (BDP, McCarthy, Norton). One of these commenters indicated that it would prefer that TSX issue a separate consultation paper on this question (McCarthy). Two commenters indicated that the flexibility of the Amendments should be extended to any acquisition transactions more generally where shareholder approval has been obtained, including closely-held public company acquisitions, private company acquisitions and asset acquisitions (McCarthy, Norton). One commenter submitted that the Amendments should be expanded to include private placements that are used to fund public company acquisitions where the consideration for the target securities is either cash only or cash and acquiror securities (BDP).	TSX thanks these commenters for their comments. TSX has not amended the Staff Notice in this regard. However, TSX will consider whether to expand the Amendments to other security holder approval requirements, including whether to issue a separate consultation paper on this issue.
5. Is the additional 25% limit based on the number of securities approved for issuance an appropriate threshold? Is there a lower or higher number that would be more appropriate? Is it appropriate to base the limitation on the number of securities subject to security holder approval?	
One commenter stated that if the additional 25% limit is increased substantially, institutional shareholders may be less likely to approve a prospective issuance of securities. This commenter stated that the additional limit should be set at a percentage that provides sufficient flexibility for a significant majority of transactions to be completed where price increases were necessitated. This commenter was unable to determine whether the 25% threshold meets those objectives. This commenter noted that if the additional limit is set at greater than 30%, shareholder approval may be less likely (BDP).	TSX acknowledges this comment. TSX has determined not to change the additional 25% limit based on the available historical information for competitive auctions.
One commenter indicated that having obtained shareholder approval to issue a fixed number of shares, an issuer should be	TSX acknowledges this comment and the supporting rationale. However, the Amendments were specifically considered in the context of a

thereafter entitled to issue an additional number of shares equal to 25% of the total number of shares of the issuer that would be outstanding after giving effect to the shares approved for issuance by shareholders. By way of analogy, this commenter noted that if the same issuer obtained shareholder approval to exceed the 25% dilution cap in relation to an acquisition and completed that transaction, the issuer would be permitted under TSX rules to issue further shares as consideration for a subsequent, unrelated acquisition without shareholder approval as long as the dilution was less than 25% (assuming the absence of insiders). Accordingly, this commenter recommended that the Staff Notice be amended to permit bidders with such flexibility in a competitive bid process (McCarthy).	competitive auction for public companies. In that context, TSX considered the historical information around increases to consideration, and specifically designed the Amendments to address the issue of competitive auctions. While TSX acknowledges the logic of the commenter's suggestion, at this time, TSX has not amended the Staff Notice as suggested given the broader impact such an amendment might have.
General Comments Received	
One commenter stated that as TSX is a public company, it should not restrict the business of other public companies. This commenter stated that the intrusion of TSX into business is unnecessary and not competitive (Platinum).	TSX acknowledges this comment and notes that the intention of the Amendments is to provide additional flexibility to listed issuers. TSX will bear in mind the commenter's comments. However, TSX continues to believe that it has an oversight role to play in the public markets, balancing the needs of all stakeholders.