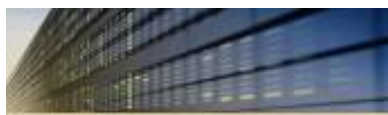


Because of related content, this newsletter is also being sent to those with an interest in securities law.

## TSX publishes proposals regarding security holder approval requirements and exemptions for investment fund acquisitions



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On November 13, the TSX published for comment proposed changes to Part VI of its Company Manual proposing specific requirements and exemptions with respect to security holder approval in the case of investment fund acquisitions. These proposed amendments relate to the impact on investment fund acquisitions of recent changes to the TSX Company Manual requiring approval of security holders of an acquiror for the issuance of securities as consideration for an acquisition where the number of securities exceeds 25% of the issued and outstanding securities of the acquiror. The proposed amendments would exempt investment funds from this requirement provided certain conditions were satisfied. The proposed amendments would also require security holder approval by investment funds that are the subject of an acquisition unless certain conditions are satisfied.

Specifically, acquiror investment funds would be exempted from the new requirement to obtain security holder approval for acquisitions over the 25% dilution threshold under section 611(c) of the Manual where:

1. the issuer being acquired is an investment fund that calculates and publishes its net asset value (NAV) at least once a month;
2. the consideration being offered for the acquisition does not exceed the NAV of the investment fund that is the subject of the acquisition;
3. the independent review committee of the acquiring listed issuer has: (i) determined that the investment objectives of the listed issuer and the issuer being acquired are substantially the same; and (ii) approved the acquisition; and
4. the number of securities issued or issuable in payment of the purchase price for the acquisition does not exceed 100% of the number of securities of the listed issuer which are outstanding, on a non-diluted basis.

With respect to investment funds subject to an acquisition, under the amendments, a target investment fund would have to obtain security holder approval for the acquisition unless the following conditions are satisfied:

1. the listed issuer has a permitted merger clause in its constating documents which permits the acquisition of the listed issuer without security holder approval;
2. the consideration offered to security holders of the listed issuer for the acquisition has a value that is not less than NAV;

This newsletter was prepared by members of the Investment Funds Group at Stikeman Elliott.

3. the independent review committee of the listed issuer being acquired has: (i) determined that the investment objectives, valuation procedures and fee structure of the listed issuer and the acquiring issuer are substantially the same; and (ii) approved the acquisition; and
4. the listed issuer is providing its security holders with a redemption right for cash proceeds which are not less than its NAV, together with adequate notice and description of such redemption right and the acquisition.

In its request for comments, the TSX has set out specific concerns relating to investment funds subject to an acquisition as investment funds are not subject to protections of a corporate statute which may generally require target security holder approval and may have a “permitted merger” clause in their constating documents that allows for acquisitions without approval. As a matter of practice, while such a permitted merger clause has been allowed by the TSX, it has typically required investment funds to provide a redemption right to its security holders for cash proceeds based on NAV unless security holder approval is sought. The proposed amendments are an attempt to codify this practice and provide additional protections to target security holders in an acquisition.

Comments on the proposed amendments are being accepted until December 14, 2009. The TSX will determine whether or not to implement the proposed amendments based on comments that it receives.

For further information, please contact your Stikeman Elliott representative or any member of our Investment Funds Group listed at [www.stikeman.com](http://www.stikeman.com)