



INVESTMENT INDUSTRY ASSOCIATION OF CANADA
ASSOCIATION CANADIENNE DU COMMERCE DES VALEURS MOBILIÈRES

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Director

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Dear Mesdames:

Re: TSX Request for Comments – Security Holder Approval Requirements for Acquisitions

The Investment Industry Association of Canada appreciates the opportunity to comment on the proposed amendment to TSX security holder approval requirements. We are concerned that the proposed new requirements will have a significant detrimental effect on Canadian public markets.

As noted in the request for comments document, there are a number of factors relating to ease of capital raising, competition, governance and costs to all parties involved in the transaction, that must be examined when dealing with the issue of security holder approval. It is important that the final position strikes an appropriate balance between these factors, which can represent competing objectives.

IIAC members are of the view that the existing security holder approval requirements are appropriate for the Canadian marketplace, and should not be amended. Although the analysis of the regulatory requirements of other exchanges is informative, it is important to recognize and support the unique character of the Canadian market in designing rules that will have a significant impact on the affected issuers. The existing requirements quite rightly take into account the nature of the Canadian public issuer environment, in terms of issuer size and sectoral considerations. As noted, the concentration of smaller, resource-based issuers on the TSX

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provide unique challenges in respect of fostering a competitive environment that will allow these issuers to grow using the capital available to them. While it may be possible for larger issuers, or those generating significant cash flows to undertake expansion using cash or debt, the Canadian public issuer market is primarily comprised of issuers for which those financings model are impractical or impossible.

Given that there has been no demonstrated abuse in respect of the use of the security holder approval exemption, it is unclear why the exemption, which serves the industry well, and provides Canadian issuers with a competitive advantage, in terms of deal certainty and timing considerations, should be amended. The exemption affords issuers flexibility in choosing whether it is appropriate to obtain security holder approval in response to the wishes of its security holders or in response to any other concerns it may have.

We are satisfied that the fiduciary obligations imposed on the issuers' directors under Canadian corporate law are sufficient to ensure that the boards of issuers will act in the best interests of the corporation in determining the appropriate share consideration for any given acquisition. There appears to be no evidence that the added burden of obtaining security holder approval will provide shareholder protection benefits commensurate with the direct costs and potential unintended consequences of such a requirement.

Aside from the significant direct costs of obtaining security holder approval, the abolition or reduction of the scope of the security holder approval exemption will likely have significant unintended negative consequences for Canadian listed issuers in terms of increased friction costs. Adding this requirement will introduce a new element of risk into proposed transactions, leading to higher break fees and higher risk premiums; ultimately driving up the cost of the acquisition to the issuer. It is also anticipated that introducing such a requirement may lead to increased arbitrage activity by certain security holders in an attempt to make short term market gains at the expense of the long term best interests of issuers and their security holders.

In addition to the increased costs, the element of uncertainty will factor into the decision process of both the acquiror and the target, and will likely have a detrimental effect on the number of transactions undertaken.

Unless there has been a clear demonstration of abuse that cannot be rectified by a less wide ranging and expensive regulatory solution, we oppose the repeal of the security holder approval exemption.

Thank you for considering our comments. If you have any questions, please contact me.

Yours sincerely,



Susan Copland
Director