Recent Significant Amendments to the TSX Company Manual

by Jack Tannerya
Minden Gross LLP

Introduction

Effective as of January 1, 2005, the Toronto Stock Exchange (the **"TSX"**) adopted amendments with respect to:

i. security based compensation arrangements; and

ii. private placements with a view towards, "more efficient, cost effective access to Canadian capital markets, while maintaining a quality of marketplace for all capital market participants."

This special client bulletin provides a summary of the impact of such amendments.

The Highlights

Security-based Compensation Arrangements

- "rolling maximum" plans and "evergreen" plans are now permitted, subject to shareholder approval every three years
- 10 year maximum entitlement deleted
- assignments now permitted
- restrictions on number of shares reserved for issuance to any one person lifted
- proxy circular must contain specified disclosure that must be pre-cleared with the TSX

Private Placements

- above market private placements will no longer be reviewed by the TSX
- below market private placements within the allowable discount band will not be reviewed by the TSX if the number of securities to be issued are equal to or less than 25% of the outstanding issue
- private placements below the allowable discount requires disinterested shareholder approval

Security-based Compensation Arrangements

The TSX views security-based compensation arrangements as including any compensation or incentive arrangement that involves the issuance or potential issuance of shares from treasury. Typical security-based compensation arrangements include stock option plans, stock purchase plans, certain stock appreciation rights and financially assisted purchases of shares from treasury.

Prior to the amendments, all share compensation arrangements were required to have a fixed maximum number of securities issuable pursuant to such arrangement. The amendments introduce greater flexibility for TSX issuers as such arrangements may now have either:

i. a fixed maximum number; or

ii. a rolling maximum number based on a fixed percentage of the issuer's outstanding securities (commonly referred to as a "rolling maximum").

In addition, the amendments permit the recycling of shares that make up the available pool once the options or rights have been exercised (commonly referred to as an "evergreen" plan).

In light of the amendments requiring all security-based compensation arrangements to be approved by shareholders:

i. the TSX will no longer require entitlements to expire within 10 years of the date of grant;

ii. the TSX will not prevent such entitlements from being assigned;

iii. the TSX will not restrict the number of shares reserved for issuance to any one person.

On the other hand, as the TSX has now effectively empowered the shareholders to make their own informed decisions regarding security-based compensation arrangements, proxy circulars for shareholders' meetings must now contain specified disclosure about security-based compensation arrangements that must be pre-cleared with the TSX. Moreover, TSX issuers must also disclose any amendments to such arrangements.

Private Placements

The amendments also provide greater transparency and flexibility with respect to private placements. Prior to the amendments, any transaction resulting in an issuance of more than 25% of a TSX issuer's share capital in a six month period required shareholder approval. Pursuant to the amendments, private placements at or above market price will not be reviewed and the 25% limit on share capital issuances will be on a per transaction basis.

In addition, the amendments now permit private placements below the maximum allowable discount, provided that such placements are specifically approved by disinterested shareholders.

Further Information

If you are interested in obtaining further information regarding the foregoing, please contact one of the members of our securities group listed below.

Lawyer	Direct Line	E-mail
Phillip G. Bevans, LL.M.	(416) 369-4102	pbevans@mindengross.com
Stephen N. Witten	(416) 369-4118	switten@mindengross.com