Canadian Coalition for
GOOD GOVERNANCE

THE VOICE OF THE SHAREHOLDER

June 8, 2007

Richard Nesbitt
Chief Executive Officer
TSX Group
130 King Street West, 3rd Floor
Toronto, Ontario
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Dear Mr. Nesbitt,

I am writing to you on behalf of the members of the Canadian Coalition for Good Governance (CCGG). The members of the CCGG are institutional investors that manage, in aggregate, approximately C$1 trillion. A goal of the CCGG is to ensure that adequate protections are maintained to ensure ongoing investor confidence in our capital markets.

The Toronto Stock Exchange ("TSX") Company Manual requires shareholder approval where the number of shares issued in payment of the purchase price for an acquisition exceed 25% of the acquirer's outstanding securities (section 611(c)). However, under section 611(d), listed issuers acquiring other issuers are exempt from this requirement where the target is a reporting issuer with 50 or more beneficial securityholders, regardless of the dilutive effect of the new issuance.

The members believe that the protection afforded under section 6.11(c) is appropriate and forms part of an important system of checks and balances needed to protect investors and maintain investor confidence for the following reasons.

1. Other major stock exchanges (NYSE, Amex, NASDAQ, LSE, JSE, and Hong Kong) prohibit listed issuers from issuing more than a specified percentage of its issued shares without shareholder approval. This specified percentage is 20 to 30 percent and there are no exceptions relating to acquisitions.

2. The NYSE viewed the implementation of the rule in 1955 as "closing a loophole" in the laws requiring shareholder approval in the case of mergers, consolidations or recapitalizations, but not acquisitions. In 1989, it expressed its belief that approval of certain significant corporate transactions is an important aspect of its corporate governance listing standards and that the rule's purpose is to ensure shareholder ratification of significant issuances of securities. The purpose of the TSX or NYSE rule has also been described as "to ensure fair dealing prior to the consummation of a transaction", to "protect the integrity of [the shareholders'] investment", "to ensure fairness to all shareholders", "to preserve investor confidence in the capital markets", "to protect [investors] from dilution of their economic position or voting rights without a prior shareholder vote".

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3. The OSC has stated that it approves the principle that securities regulation (including the rules of the TSX) may apply a standard which is higher than the standard required at corporate law because securities regulation prescribes, on a very current basis, standards designed to preserve investor confidence in the capital markets.

4. Although the TSX published changes to Part 6 of the Company Manual in 2002 and 2004, section 611(d) did not appear until the final version with the result that interested parties did not have an opportunity to comment on this specific provision. The TSX did not provide any substantive discussion of the reason for the exemption, although it seems to have been in response to submissions that called for the codification of exemptions that were typically granted by TSX staff. There was no real public consultation on this change nor was there public consultation when discretionary exemptions were granted, so there is very little public information explaining the rationale or discussing the merits of the exemption.

5. We understand that the original rationale for granting discretionary exemptions was that there was wide distribution of securities and comprehensive disclosure documents (albeit not directed to the offeror securityholders). On more of a secondary basis, the exemption also allowed offerors in a competitive bid situation to react quickly to other offers. We do not agree with either of these rationales and believe the exemption is inconsistent with the standards required to preserve investor confidence. At least when granting discretionary exemptions one would presume that TSX staff must have been convinced that it was in the best interests of the listed company (and its shareholders) to be able to issue the shares to make the acquisition without being subject to the delay and potential uncertainty that would be caused by a shareholder vote. The delay issue (at least with respect to take-over bids) might have been more of an issue prior to 1999 when the minimum deposit period for a take-over bid was 21 days instead of the current 35 days.

Members of the Canadian Coalition for Good Governance believe that the board of directors of a public company should seek the approval of its shareholders before proceeding with an acquisition of significant size, whether the consideration for the acquisition is in the form of shares or some other form of compensation. But dilution through share issuances is of particular concern because Canadian issuers, unlike issuers incorporated in the United States, almost invariably have unlimited authorized common share capital. The potential for a board of directors to fundamentally change a Canadian corporation through acquisitions without seeking shareholder approval is alarming under current regulations. Therefore, we urge the TSX to initiate the steps necessary to remove section 611(d) from the TSX Company Manual in order to restore appropriate checks and balances.

Sincerely yours,

David R. Beatty

David R. Beatty
Managing Director

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