

FAIR

Canadian Foundation *for*
Advancement *of* Investor Rights

January 21, 2009

Mr. Tom Kloet
Chief Executive Officer
TMX Group Inc.
Toronto Office
P.O. Box 450
3rd Floor, 130 King Street W.
Toronto, ON M5X 1J2

Dear Mr. Kloet:

Re: Shareholder Approval of Major Transactions and International Standards

The Canadian Foundation for the Advancement of Investor Rights (“FAIR”) is a non-profit, independent national organization founded in 2008 to represent the interests of Canadian investors in securities regulation. Attached is a copy of our press release announcing the establishment of FAIR, funding from the Investment Industry Regulatory Organization (IIROC) and our board of directors. Additional information on FAIR is available on our website www.faircanada.ca.

TSX Standards

TSX requirements on shareholder approval of major transactions fail to meet standards in the other major developed financial markets or standards set by international agencies that develop global corporate governance standards.

Following the Goldcorp-Glamis controversy of 2006, the TSX issued a Request for Comments on a concept paper entitled “Security Holder Approval Requirements for Acquisitions” (TSX Company Manual, Section 6.11). Since FAIR was created some time after the expiry of the comment period, we did not submit a comment letter. The TSX has not yet announced a decision on this important shareholder matter and dilutive transactions continue unchecked in Canada. The most notable recent example is the proposed acquisition of Lundin Mining by HudBay Minerals (“HudBay”).

HudBay-Lundin Transaction

The market reaction to the announcement by HudBay of its intention to acquire Lundin Mining illustrates the vital importance of shareholder approvals for highly dilutive transactions. On the day the transaction was announced, HudBay’s share price fell nearly 50 percent from the prior day’s close. The market reaction reflected the fact that the proposed transaction is highly dilutive and will proceed without HudBay shareholders’ approval. Despite exceptional market volatility at the time, the market reaction to the HudBay

announcement clearly shows that any transaction that could impact shareholder value to this extent should be subject to a shareholder vote.

The announcement of the acquisition of Glamis Gold by Goldcorp in 2006 triggered a similar dramatic reaction in the market. These are events that reduce shareholder confidence in the integrity of the TSX market.

Major International Markets

All the major international markets would have required that major transactions, such as the HudBay/Lundin and Goldcorp/Glamis transactions, be conditional on approval by a majority of votes cast by shareholders of the offeror company. For example, other major stock exchanges (NYSE, Amex, NASDAQ, London, and Hong Kong) prohibit listed issuers from issuing more than a specified percentage of its issued shares without shareholder approval. This specified percentage varies between 20 to 30% with 20% being most prevalent. There are no exceptions relating to acquisitions of listed companies.

International Agencies

The Organization for Economic Cooperation & Development (“OECD”) has issued the OECD Principles of Corporate Governance to which Canada has adhered. Chapter II of Part One of the OECD Principles entitled “II The Rights of Shareholders and Key Ownership Functions” includes the following statement of principle:

B. “Shareholders should have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes such as: 1) amendments to the statutes, or articles of incorporation or similar governing documents of the company; 2) the authorization of additional shares; and 3) extraordinary transactions, including the transfer of all or substantially all assets, that in effect result in the sale of the company.”

The International Corporate Governance Network (“ICGN”) founded in 1995 at the instigation of major institutional investors, represents investors, companies, financial intermediaries, academics and other parties interested in the development of global corporate governance practices. ICGN’s Statement on Global Corporate Governance Principles states as follows:

4.5: “**Shareholder Participation in Governance:** Shareholders should have the right to participate in key corporate governance decisions, including the right to nominate, appoint and remove directors on an individual basis as well as the external auditor and the right to approve major decisions of the nature referred to in Section 4.9.”

4.9: “**Major Decisions:** Major changes to the core businesses of a corporation and other major corporate changes which may in substance or effect materially dilute the equity or erode the economic interests or share ownership rights of existing shareholders, including major acquisitions and major dispositions and closures of businesses, should not be made without prior shareholder approval of the proposed change.”

Although not required to do so by law or regulation, the board of directors of some Canadian issuers listed on the TSX have considered the impact of an acquisition to be substantial enough that they have included shareholder approval as a condition.

Position of FAIR Canada

FAIR believes that adopting a shareholder approval requirement is necessary to protect the integrity of a shareholder's investment and is consistent with practices in other major markets and international governance standards. We believe the adoption of a shareholder approval requirement is consistent with the objectives of the TSX, specifically "...to provide the guidance issuers need to meet the combined expectations of investors and all other market participants."

While seeking shareholder approval would represent an extra step for an acquiring corporation, we note that dealing with angry shareholders who do not get a chance to vote may be far more distracting to the corporation and the marketplace. In the case of Goldcorp/Glamis, Goldcorp had to spend considerable effort fighting a campaign led by its largest shareholder and former CEO. The objective of the campaign was to force Goldcorp to obtain shareholder approval for the acquisition. In the case of HudBay/Lundin, some HudBay shareholders are pursuing legal action against the corporation.

FAIR does not subscribe to the notion that a shareholder vote would have a meaningful negative impact on a reasonable acquisition. With the minimum takeover period now 35 days, the requirement to hold a shareholder meeting should not significantly impact the length of time it takes to complete an acquisition.

Shareholders of TSX-listed companies, are not interested in limiting the growth prospects of these companies by making transactions difficult to complete. What matters to investors is the proposed combined business strategy and how it will lead to an increase in shareholder value. A vote requirement is a straightforward channel through which TSX issuers can build sustained trust and commitment from capital providers. It will not curtail acquisitions that are acceptable to the majority of shareholders. Shareholder approval is a means to ensure fairness and accountability, and to facilitate ongoing company and market success.

FAIR is encouraged that the TSX conducted a public consultation on the question of shareholder approval. It is confirmation that the Exchange is interested in keeping its listing standards current with best global practices.

FAIR advocates that the board of directors of a public company 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.

It is time for the TSX to bring its standards in line with the other major international markets and corporate governance best practice as set by leading international bodies. Failure to do so can only undermine confidence in the TSX continuing to play a major role in the regulation of listed companies.

Therefore, we encourage the TSX and the Ontario Securities Commission to act immediately to adopt listing standards that protect shareholders, whether it by way of removal of section 6.11 (d) from the TSX Company Manual or other regulatory initiative.

We welcome the opportunity to meet with you to discuss this important matter and to brief you on FAIR and its priorities. We are also interested in hearing your views on the role of FAIR in the Canadian financial markets.

Sincerely,

A handwritten signature in black ink, appearing to read 'E. Pascutto', written over a horizontal line.

Ermanno Pascutto,
Executive Director

Cc: Mr. David Wilson, Chair, Ontario Securities Commission

Encl.: Foundation for Advancement of Investor Rights Press Release, September 29, 2008