

## Corporate Securities Law

March 15, 2006

### Canadian Securities Administrators Decide not to Require Internal Control Audit Opinions from External Auditors

The Canadian Securities Administrators (the “CSA”) have issued a notice which provides market participants with an update as to the status of the CSA’s earlier proposals with respect to internal control reporting requirements. The most important change is that the CSA no longer proposes to require internal control audit opinions from external auditors concerning management’s assessment of the effectiveness of internal control over financial reporting.

#### Proposed MI 52-111

After an extensive review and consultation, and in light of the delays in the United States with respect to the rules implementing section 404 of the *Sarbanes-Oxley Act of 2002* with respect to internal controls, the CSA has determined not to proceed with proposed Multilateral Instrument 52-111 which was published for comment in February 2005.

Proposed MI 52-111 contained requirements that were substantially similar to the requirements in the United States. MI 52-111 would have required issuers to file the following with securities regulatory authorities:

- a report of management on its assessment of the effectiveness of the issuer’s internal control over financial reporting, including a statement as to whether the issuer’s internal control over financial reporting is effective; and
- a report of the issuer’s auditor prepared in accordance with the CICA’s auditing standard for internal control audit engagements.

#### Proposed Amended and Restated MI 52-109

The CSA proposes to expand existing Multilateral Instrument 52-109 which provides for CEO and CFO certification of disclosure in annual and interim filings to include the following internal control reporting requirements:

- The CEO and CFO of a reporting issuer, or persons performing similar functions, will be required to certify in their annual certificates that they have evaluated the effectiveness of the issuer’s internal control over financial reporting as at the end of the financial year. They will also be required to certify that, based on their evaluation, they have caused the issuer to disclose in its annual MD&A their conclusions about the effectiveness of internal control over financial reporting as of the end of the financial year.
- The issuer’s MD&A will include disclosure regarding its internal control over financial reporting. This disclosure will include a description of the process for evaluating the effectiveness of the issuer’s internal control over financial reporting and the conclusions about the effectiveness of internal control over financial reporting as of the end of the financial year.

An issuer will not be required to obtain from its auditor an internal control audit opinion concerning management’s assessment of the effectiveness of internal control over financial reporting. There is no doubt these audit opinions would have been costly to obtain. The CSA notes that a board of directors and its audit committee, in consultation with management, may, however, choose to engage the issuer’s auditor to assist in discharging their respective responsibilities with respect to the issuer’s internal control systems and MD&A review.

#### Application

The CSA is of the view that the proposed internal control reporting requirements should apply to all reporting issuers (venture or non-venture), other than investment funds. Cognizant of the fact that the process of evaluating the effectiveness of internal control over financial reporting may be a significant undertaking for many issuers, the CSA proposes that the earliest any of the proposed requirements will apply

# Goodmans<sup>LLP</sup> Update

---

will be in respect of financial years ending on or after December 31, 2007. The implementation date will be consistent for all issuers.

## Effect on Existing Requirements

The CSA notice states that the proposed additional internal control reporting requirements will not change the present requirement under MI 52-109 that beginning with financial years ending on or after June 30, 2006, CEOs and CFOs certify they have designed internal control over financial reporting and caused certain changes in internal control over financial reporting to be disclosed in the issuer's MD&A. The implementation of these requirements will not be deferred even though the CSA proposes to implement the requirement to certify the evaluation of the effectiveness of internal control over financial reporting at a later date.

The CSA notice provides a high-level summary of the CSA's proposed internal control reporting requirements. An amended and restated MI 52-109 with the details of the proposal is to be published for comment later this year.

We invite you to contact any member of the Goodmans corporate securities team if you would like to discuss these developments.

## Toronto

### Justin Beber

jbeber@goodmans.ca 416.597.4252

### Sheldon Freeman

sfreeman@goodmans.ca 416.597.6256

### Lawrence Chernin

lchernin@goodmans.ca 416.597.5903

### Allan Goodman

agoodman@goodmans.ca 416.597.4243

### William (Bill) Gorman

wgorman@goodmans.ca 416.597.4118

### Francesca Guolo

fguolo@goodmans.ca 416.597.4238

### Stephen Halperin

shalperin@goodmans.ca 416.597.4115

### Tim Heeney

theeney@goodmans.ca 416.597.4195

### Jonathan Lampe

jlampe@goodmans.ca 416.597.4128

### Dale Lastman

dlastman@goodmans.ca 416.597.4129

### Kari MacKay

kmackay@goodmans.ca 416.597.6282

### David Matlow

dmatlow@goodmans.ca 416.597.4147

### Neill May

nmay@goodmans.ca 416.597.4187

### Grant McGlaughlin

gmcgloughlin@goodmans.ca 416.597.4199

### Shevaun McGrath

smgrath@goodmans.ca 416.597.4217

### Michael Partridge

mpartridge@goodmans.ca 416.597.5498

### Stephen Pincus

spincus@goodmans.ca 416.597.4104

### William Rosenfeld

wrosenfeld@goodmans.ca 416.597.4145

### Meredith Roth

meroth@goodmans.ca 416.597.6260

### Neil Sheehy

nsheehy@goodmans.ca 416.597.4229

### Bob Vaux

rvaux@goodmans.ca 416.597.6265

### Kenneth Wiener

kwiener@goodmans.ca 416.597.4106

## Vancouver

### Paul Goldman

pgoldman@goodmans.ca 604.608.4550

### Steven Robertson

srobertson@goodmans.ca 604.608.4552

### Bruce Wright

bwright@goodmans.ca 604.608.4551

All Updates are available at [www.goodmans.ca](http://www.goodmans.ca). If you would prefer to receive this client Update by e-mail, require additional copies or would like to inform us of a change of address, please e-mail: [updates@goodmans.ca](mailto:updates@goodmans.ca). This Update is intended to provide general comment only and should not be relied upon as legal advice. © Goodmans LLP, 2006.