THE UPDATE

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NYSE Releases "Frequently Asked Questions" Regarding Corporate Governance Listing Standards

On January 29, 2004, the New York Stock Exchange (NYSE) released answers to frequently asked questions (FAQs) related to its corporate governance listing standards. The complete text of the FAQs can be viewed at www.nyse.com/pdfs/section303Afaqs.pdf.

FAQs of particular relevance to Canadian companies that are listed on the NYSE and are foreign private issuers include:

1. NYSE Standards Applicable to Foreign Private Issuers.

Foreign private issuers are required only to (i) comply with the audit committee requirements promulgated by the Securities and Exchange Commission[1], (ii) disclose any significant ways in which their corporate governance practices differ from the NYSE standards applicable to US issuers, and (iii) have their CEO promptly notify the NYSE in writing after any executive officer of the listed company becomes aware of any material non-compliance with either of the foregoing.

2. Transition Periods for Foreign Private Issuers.

Foreign private issuers have until July 31, 2005 to comply with the audit committee requirements. The remaining requirements are effective on the earlier of the company's first annual meeting after January 15, 2004 and October 31, 2004.

3. Independence Requirement for Audit Committee Members.

An audit committee member must satisfy the general independence requirements of the NYSE and additionally, an audit committee member may not accept (directly or indirectly) any consulting, advisory or other compensatory fees from the company (other than board and committee fees and pension or other forms of deferred compensation for prior service, provided it is not contingent on continued service) and may not be an "affiliated person" of the company or its subsidiaries. Certain exemptions exist in respect of the "affiliated person" restriction.

To be considered independent under the requirements of the NYSE, the board must affirmatively determine and disclose that a director does not have a material relationship with the company. In this regard, a company may adopt and disclose categorical standards for determining independence. Additionally, a director who (i) is an employee or whose immediate family member is employed as an executive officer of the company, (ii) receives or whose immediate family member receives more than US$100,000 per year in direct compensation (other than

[1] The requirements relate to:
- independence of audit committee members,
- responsibility for the appointment, compensation, retention and oversight of the independent auditor,
- responsibility for establishing a complaint procedure regarding accounting, internal accounting controls, other auditing matters and other general accounting matters,
- authority to engage independent advisors, and
- funding of the audit committee for payment of compensation to the independent auditor, independent advisors and ordinary expenses.

board and committee fees and pension or other forms of deferred compensation for prior service, provided it is not contingent on continued service), (iii) is affiliated with or employed by, or whose immediate family member is affiliated with or employed by, the present or former auditor of the company, (iv) is employed or whose immediate family member is employed as an executive officer of another company whose compensation committee includes an executive of the listed company, or (v) is an executive officer or employee or whose immediate family member is an executive officer or employee of another company that makes payments to or receives payments from the company for property or services in an amount which, in any single fiscal year, exceeds the greater of US$1,000,000 or 2% of such other company's consolidated gross revenues, will not be independent for these purposes until three years after the end of the relevant affiliation to meet the independence requirement. Until November 4, 2004, a company must only look-back twelve months to make this determination. Beginning November 4, 2004, the three year look-back period will begin to apply.

References to "company" include any parent or subsidiary in a consolidated group with the listed company. However, a relationship that would impair independence ends on the date that the listed company ceases to be part of a consolidated group with its former parent. Accordingly, the look-back period should be measured from the date of de-consolidation.

With respect to the direct compensation test described in paragraph (ii) above, the NYSE has indicated that dividend or interest income is investment income and, accordingly, not considered compensation for purposes of the independence requirement. Additionally, to the extent that reimbursed expenses are bona fide and documented, such amounts will not be considered direct compensation.

With respect to the revenue test described in paragraph (v) above, the NYSE has stated that loans from financial institutions are not considered payments for these purposes. Interest payments or other fees paid in association with such loans, however, would be considered payments. The NYSE has also indicated that charitable organizations are not to be considered for these purposes, provided however that the company discloses in its annual report any charitable contribution made by it to any charitable organization in which a director serves as an executive officer, if within the preceding three years contributions in any single fiscal year exceeded the greater of US$1,000,000 or 2% of such charitable organization's consolidated gross revenues.

4. Disclosure of Significant Differences from NYSE Domestic Corporate Governance Standards.

A foreign private issuer is required to disclose any significant ways in which its corporate governance practices differ from the NYSE standards applicable to US issuers either in its annual report or on its website. It would be sufficient to present a point by point comparison (as has been done by issuers listed on the Toronto Stock Exchange (TSX) in disclosing their compliance with the TSX guidelines), but the NYSE is not prescribing a specific form of disclosure.

If a company chooses to include the required disclosure on its website, it must do so promptly after it makes that determination (although not before the earlier of the company's first annual meeting after January 15, 2004 and October 31, 2004). If a company provides this disclosure on its website, that disclosure must be updated promptly after a change occurs in its governance practices that are relevant to the comparison that has been disclosed. No such "real time" updating is contemplated where disclosure is provided in annual reports.

If the company chooses to include the disclosure in its annual report to shareholders, the disclosure requirement applies to the next annual report distributed to shareholders after the company's 2004 annual shareholder meeting or to annual reports mailed after October 31, 2004, whichever is sooner.

5. Foreign Private Issuer Opting to Comply with all NYSE Corporate Governance Listing Standards.

A foreign private issuer that chooses to voluntarily comply with the NYSE corporate governance listing standards should state in the disclosure on its website or in its annual report that there are no

significant differences between its corporate governance practices and the NYSE standards applicable to US issuers.

Please do not hesitate to contact any member of the Goodmans corporate securities team to discuss the NYSE corporate governance listing standards, possible responses by you and your company, and corporate governance more broadly as it continues to evolve in Canada and the United States.

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