

Corporate Securities Law

May 11, 2005

Corporate Governance Policy and Disclosure Rule Finalized

Canadian securities regulators have recently released National Policy 58-201 *Corporate Governance Guidelines* (the “Policy”) and National Instrument 58-101 *Disclosure of Corporate Governance Practices* (the “Instrument”). It is expected the Instrument and the Policy will come into force on June 30, 2005.

Once the Instrument and Policy are in force, the TSX Company Manual will be amended so that the current TSX governance guidelines applicable to listed issuers will be replaced by a requirement to comply with the Instrument.

Summary of the Policy and the Instrument

Similar to the existing corporate governance guidelines of the TSX, the Policy sets out corporate governance guidelines that reflect best practices. The Instrument requires disclosure by issuers in management information circulars of the corporate governance practices they have adopted as measured against the guidelines. There are no mandatory governance practices, unlike the specific rules for Audit Committees contained in Multilateral Instrument 52-110 (the “Audit Committee Instrument”). We expect, however, that market pressures will force issuers to substantially conform to the Policy’s guidelines.

The following corporate governance guidelines are contained in the Policy:

- *Independence*: maintaining a majority of independent directors on the board;
- *Chair*: appointing a chair of the board or a lead director who is independent;

- *Committees*: appointing both a nominating committee and a compensation committee composed entirely of independent directors;
- *Meetings*: holding regularly scheduled meetings of independent directors at which non-independent directors and members of management are not in attendance;
- *Written Mandate and Code of Ethics*: adopting both a written board mandate and a code of business conduct and ethics;
- *Position Descriptions*: developing position descriptions for the chair of the board, the chair of each board committee, and the chief executive officer;
- *Director Education*: providing each new director with a comprehensive orientation and providing all directors with continuing education opportunities;
- *Recruitment Objectives*: adopting a process for determining the competencies and skills the board as a whole should have and applying the conclusions to the recruitment process for new directors; and
- *Board Assessment*: conducting regular assessments of board effectiveness, as well as the effectiveness and contribution of each board committee and each individual director.

Significant changes in the final version of the Policy and the Instrument from the draft published for comment in October, 2004 (please see our Goodmans Update dated November 5, 2004) are that issuers, other than issuers listed on the TSX Venture Exchange, must disclose: (i) the attendance record of each director for all board meetings held since the beginning of the issuer’s most recently completed financial year; and (ii) whether or not a compensation consultant or advisor has, at any time since the beginning of the most recently completed financial year, been retained to assist in determining director and officer compensation. If a compensation consultant has been retained, the identity, mandate and other work the consultant performs for the issuer must be disclosed.

Goodmans^{LLP} Update

Income Trusts

The Policy gives direction as to how the guidelines apply to issuers that are income trusts. The Policy provides that income trust issuers, in applying the guidelines, should recognize that certain functions of a corporate issuer, its board and its management may be performed by any or all of the trustees, the board or management of a subsidiary of the trust or by a management company and, as such, references in the guidelines to “issuer” include both an income trust and any underlying entities, including the operating entity.

Independence

For the purpose of determining director independence, the Policy and the Instrument import certain, but not all, of the criteria set out in the Audit Committee Instrument. The definition of “independence” for the purposes of the Policy and the Instrument provide that a director is independent if he or she has no direct or indirect material relationship with the issuer. The following individuals are deemed to have a material relationship with an issuer:

- an individual who is, or has been within the last three years, an employee or executive officer of the issuer;
- an individual whose immediate family member is, or has been within the last three years, an executive officer of the issuer;
- an individual who: (i) is a partner of a firm that is the issuer’s internal or external auditor, (ii) is an employee of that firm, or (iii) was within the last three years a partner or employee of that firm and personally worked on the issuer’s audit within that time;
- an individual whose spouse, minor child or stepchild, or child or stepchild who shares a home with the individual: (i) is a partner of a firm that is the issuer’s internal or external auditor, (ii) is an employee of that firm and participates in its audit, assurance or tax compliance (but not tax planning) practice, or (iii) was within the last three years a partner or employee of that firm and personally worked on the issuer’s audit within that time;
- an individual who, or whose immediate family member, is or has been within the last three years, an executive officer of an entity if any of the issuer’s current executive officers serves or served at that same time on the entity’s compensation committee; and

- an individual who received, or whose immediate family member who is employed as an executive officer of the issuer received, more than \$75,000 in direct compensation from the issuer during any 12 month period within the last three years.

It is important to note that “issuer” for this purpose will include subsidiary entities and a parent of the issuer.

An individual will not be considered to have a material relationship with the issuer solely because he or she had a relationship identified above if the relationship with the issuer directly ended before March 30, 2004, or if he or she had a relationship identified above with an issuer’s subsidiary or parent that ended before June 30, 2005.

Direct compensation does not include remuneration for acting as a member of the board of directors or of any board committee of the issuer, or the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the issuer if the compensation is not contingent in any way on continued service.

An individual will not be considered to have a material relationship with the issuer solely because the individual or his or her immediate family member has previously acted as an interim chief executive officer of the issuer, or acts, or has previously acted, as a chair or vice-chair of the board of directors or of any board committee of the issuer on a part-time basis.

Please contact a member of the Goodmans’ securities team should you wish to discuss the corporate governance guidelines or the disclosure requirements.

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