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Corporate Securities

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Toronto Stock Exchange Announces Proposed Changes to Corporate Governance Guidelines

Background

The Toronto Stock Exchange (TSX) has recently announced its response to the recommendations of the Joint Committee on Corporate Governance chaired by Guylaine Saucier. The Board of Directors of the TSX has approved amendments to its current corporate governance guidelines to implement certain of the recommendations of the Joint Committee. The amended guidelines have been submitted to the Ontario Securities Commission for a public comment period and final approval. Members of the public have until May 31, 2002 to submit comments on the proposed amendments. If approved by the Ontario Securities Commission, disclosure in accordance with the amended guidelines is expected to be mandatory for TSX-listed issuers that are incorporated in Canada or a province of Canada for fiscal years ending December 31, 2002 or later. In conjunction with the TSX's announcement, the TSX Venture Exchange announced that issuers listed on Tier I of the TSX Venture Exchange will be required to comply with the TSX corporate governance disclosure guidelines.

The Joint Committee was established by the TSX, the Canadian Venture Exchange (now the TSX Venture Exchange) and the Canadian Institute of Chartered Accountants with a mandate of reviewing the current state of corporate governance in Canada and making recommendations on how it might be improved. In November 2001, the Joint Committee published a report entitled Beyond Compliance: Building a Governance Culture which provided 15 recommendations focused on strengthening the role of the board of directors of TSX-listed issuers.

The Proposed Amendments

As is the case with the TSX's current corporate governance regime, the TSX has provided a framework for good corporate governance but has left it to the public markets to reward or sanction each issuer for its corporate governance system. Compliance with the specific provisions of the amended guidelines will not be mandatory, but TSX-listed issuers will be required to make full and complete disclosure of their systems of corporate governance on an annual basis. This annual disclosure will have to address each of the corporate governance guidelines and, where an issuer's system of corporate governance differs from any of the guidelines, will be required to identify and explain each difference. To assist in the interpretation of the guidelines, the TSX has added "Practice Notes" that support and expand upon the underlying principles of certain of the corporate governance guidelines.

The principal changes proposed by the TSX include:

- The revised guidelines will provide that all members of an issuer's audit committee should be "financially literate" and that a least one member of the audit committee should have accounting or related financial expertise. A Practice Note indicates the audit committee should discuss with the auditors the quality and not just the acceptability of the issuer's accounting principles. The audit committee should meet the auditors on a regular basis in the absence of management.

- The role of the board in adopting a strategic planning process will be expanded to include the approval of a strategic plan which takes into account, among other things, the opportunities and risks of the business.

- The revised guidelines will reinforce the need for boards, which do not have a non-executive chair, to appoint a director who is responsible to ensure that the board can function independently of management. The non-executive chair or lead director should ensure that the board carries out its responsibilities effectively which will involve the board meeting on a regular basis without management present.

- Disclosure of corporate governance practices will also be required for non-corporate TSX-listed issuers such as trusts and limited partnerships.

One key recommendation of the Joint Committee was rejected by the TSX. The Committee had recommended that the TSX adopt a requirement that the board of directors of every TSX-listed issuer appoint an "Independent Board Leader" who would be either the Chairman of the board (if the Chairman is independent of management) or, where the Chairman is a member of management or otherwise related to management, an independent director chosen by the full board. In rejecting this recommendation, the TSX explains that while agreeing with the concept of an Independent Board Leader, the TSX's mandate in respect of corporate governance is to require disclosure of corporate governance systems rather than to legislate mandatory corporate governance standards.

We invite you to contact any member of the securities team at Goodmans to obtain and/or discuss the amended corporate governance guidelines or if you wish to prepare comments on the proposed amendments.

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