THE UPDATE

GOODMANS

www.goodmans.ca

Corporate Securities

DECEMBER 3, 2001

The Saucier Report on Corporate Governance

Background

On November 22, 2001, the Joint Committee on Corporate Governance chaired by Guylaine Saucier released its final report entitled *Beyond Compliance: Building a Governance Culture*. The mandate of the Committee was to review the current state of corporate governance in Canada and make recommendations on how it might be improved. The Report was sponsored by The Toronto Stock Exchange (TSE), the Canadian Venture Exchange (CDNX) and the Canadian Institute of Chartered Accountants (CICA).

The Committee revisits the work of a previous committee chaired by Peter Dey and sponsored by the TSE which released a report (the Dey Report) entitled *Where Were the Directors? — Guidelines for Improved Corporate Governance in Canada* in December 1994. As a result of the recommendations in the Dey Report, in February 1995 the TSE introduced corporate governance disclosure requirements (the TSE Guidelines) which all Canadian companies listed on the TSE are required to comply with. The TSE Guidelines require that all Canadian TSE-listed issuers disclose, on an annual basis, a "Statement of Corporate Governance Practices" which includes "a complete description of the company's system of corporate governance with respect to each of the guidelines". The Saucier Report recommends that the TSE Guidelines be revised in order to improve corporate governance of Canadian public companies. The TSE is reviewing the recommendations but has not indicated its views on implementation.

The Report

The Report focuses on three key issues that the Committee felt were fundamental to building a healthy corporate governance culture:

- measures that can be taken to strengthen the capacity of the board to engage in a mature and constructive relationship with management - one that is grounded in a mutual understanding of respective roles and the ability of the board to act independently in fulfilling its responsibilities;
- the critical role that the board must play in choosing the Chief Executive Officer of a company and in contributing to and continually assessing a company's strategic direction; and
- particular issues that independent directors must face in corporations that have significant shareholders.

All but one of the Committee's recommendations focus on disclosure as a means of encouraging compliance. One of the recommendations, however, if implemented by the TSE, would create an additional TSE listing requirement. The Committee has recommended that it be a condition of listing on the TSE that an issuer's board of directors have a designated "Independent Board Leader". The concept of an Independent Board Leader is aimed at ensuring that boards possess strong, independent leaders and have the capacity to act independently in fulfilling their responsibilities. While the Committee clearly expresses its preference for a non-executive chairman of the board, the concept of an Independent Board Leader was recommended as a less intrusive alternative.

An Independent Board Leader would be a director who is chosen by the full board and who is an outside and unrelated director (independent of management and free from any other relationship with the issuer that could reasonably be perceived to materially interfere with the director's independence from management). For companies with a Chairman who is already an outside and unrelated director, the Committee recommends that the Chairman be the Independent Board Leader. It is recommended that an Independent Board Leader be accountable to the board for ensuring that a number of essential corporate governance functions are carried out including: (i) assessing the performance of the Chief Executive Officer; (ii) assessing the effectiveness of the board (both individuals and committees); (iii) succession planning and (iv) holding regular meetings of outside board members without management present chaired by the Independent Board Leader.

Other Highlights of the Report

- The CDNX should introduce, for Tier 1 companies, a disclosure requirement and guidelines similar to those applicable to TSE-listed companies.
- Boards' involvement in strategic planning must recognize that the role of directors is not to manage but to supervise management. The board should oversee and monitor systems for managing business risk and should regularly review the strategic plan with management.
- Audit committees should:
  - Be composed solely of outside directors who are also unrelated.
  - Be composed of "financially literate" members, at least one whom should have accounting or related financial expertise.
  - Adopt a formal written mandate that is approved by the full board and that sets out the scope of the committee's responsibilities and against which it should be regularly assessed. The mandate should set out explicitly the role and responsibility of the audit committee with respect to: (i) its relationship with and expectations of the external auditors; (ii) its relationship with and expectations of the internal auditor function; (iii) its oversight of internal control; and (iv) disclosure of financial and related information.
- The OSC should revise its rules to make it clear that either the audit committee or the board should review quarterly financial reports and related financial documents before any public disclosure of the information. Audit committees, as a matter of best practice, should ask external auditors to review this material before considering it.

We invite you to contact any member of the Goodmans' securities team to discuss corporate governance matters.

Toronto

Allan Goodman 416.597.4243
agoodman@goodmans.ca

Francesca Guolo 416.597.4159
fguolo@goodmans.ca

Stephen Halperin 416.597.4115
shalperin@goodmans.ca

Tim Heeney 416.597.4195
theeney@goodmans.ca

Jonathan Lampe 416.597.4128
jlampe@goodmans.ca

Dale Lastman 416.597.4129
dlastman@goodmans.ca

David Matlow 416.597.4147
dmatlow@goodmans.ca

Neill May 416.597.4187
nmay@goodmans.ca

Stephen Pincus 416.597.4104
spincus@goodmans.ca

William Rosenfeld 416.597.4145
wrosenfeld@goodmans.ca

Neil Sheehy 416.597.4229
nsheehy@goodmans.ca

Jeffrey Singer 416.597.4283
jsinger@goodmans.ca

Kenneth Wiener 416.597.4106
kwiener@goodmans.ca

Vancouver

Paul Goldman 604.608.4550
pgoldman@goodmans.ca

Steven Robertson 604.608.4552
srobertson@goodmans.ca

Bruce Wright 604.608.4551
bwright@goodmans.ca

Hong Kong

Leo Seewald 852.2522.1061
lseewald@goodmans.ca