Goodmans LLP

New Disclosure Rules and Guidance Related to the 2018 Proxy Season

Reporting issuers in Canada are subject to continuous disclosure obligations imposed by securities laws and the rules of stock exchanges. From time to time, the securities regulators and stock exchanges revise these disclosure rules or publish guidance to clarify points that may be ambiguous in the rules themselves. In addition, proxy advisory firms such as Institutional Shareholder Services Inc. and Glass, Lewis & Co. publish annual voting guidelines, providing issuers with guidance on what the advisors consider best practices for disclosure. Finally, the Canadian Coalition for Good Governance publishes annual "best practice" guidelines for disclosure by reporting issuers and additional policies relating to specific matters.

Overview

This Update does not provide a comprehensive description of the documents referenced below. It is advisable to review each of those documents in connection with the preparation of this year's annual proxy materials. Copies of any or all of the materials can be provided by any member of our Corporate Securities group upon request.

Summary of Relevant Updates and Guidance

The following briefly summarizes the primary updates to, and guidance in respect of, the disclosure and proxy rules for the 2018 proxy season described in this update.

Guidance and Areas of Focus for 2018

- the Canadian Securities Administrators (CSA) published a review of compliance with gender diversity disclosure requirements;
- the Ontario Securities Commission (OSC) published its corporate finance branch annual report highlighting concerns in respect of continuous disclosure including deficient disclosure in management's discussion and analysis ("**MD&A**"), non-GAAP financial measures and forward-looking information, among others;
- the CSA published a summary of a CSA roundtable on responses to cyber security incidents re-iterating the CSA's focus on cyber security as set out in CSA Multilateral Staff Notice 51-347 - *Disclosure of Cyber Security Risks and Incidents* ("**Staff Notice 51-347**");
- the CSA provided disclosure expectations for reporting issuers using social media;
- the CSA published a consultation paper on re-evaluating the criteria for director and audit committee member independence; and
- Institutional Shareholder Services Inc. ("**ISS**") and Glass, Lewis & Co. ("**Glass Lewis**") released their annual proxy paper guidelines in the areas of gender diversity, director overboarding, pay for performance, board responsiveness, advance notice provisions and dual-class share structures, among other matters.

Changes in Disclosure and Proxy Rules

- the Toronto Stock Exchange (TSX) issued final amendments to the TSX Company Manual (the "**Company Manual**"), which (a) require TSX-listed issuers to make available on their websites the current, effective versions of certain corporate governance documents (the "**Website Amendments**") by April 1,

2018 and (b) revise the disclosure requirements for security-based compensation arrangements effective for financial years ended on or after October 31, 2017 (the "**Security-Based Compensation Amendments**");

- the TSX provided guidance on majority voting and advance notice policies;
- Bill C-25, which proposes to amend the *Canada Business Corporations Act* (CBCA) with respect to director election matters, notice and access and gender diversity disclosure, among other matters, received second reading in the Senate on November 23, 2017 and is currently at the committee stage, with the committee report presented with amendments on December 14, 2017; and
- Bill 101, a private member's bill, was introduced to amend the *Business Corporations Act* (Ontario) (OBCA) with respect to director election matters, shareholder thresholds, diversity disclosure and shareholder proposals on executive compensation, among others. Bill 101 received second reading on March 9, 2017 and was referred to a standing committee.

Guidance and Areas of Focus for 2018

The following summarizes the areas where the CSA and OSC have provided new guidance or have indicated they intend to focus during their subsequent reviews of continuous disclosure materials. Please refer to the text of the applicable staff notices for a full description of the guidance provided by the CSA and OSC.

CSA Multilateral Staff Notice 58-309 – Staff Review of Women on Boards and in Executive Officer Positions – Compliance with NI 58-101

On October 5, 2017, the CSA published its third consecutive annual review of compliance by 660 reporting issuers with the gender diversity disclosure requirements set out in National Instrument 58-101 - *Disclosure of Corporate Governance Practices* ("**NI 58-101**").

The findings revealed a small 2% improvement in the number of women on boards, compared to the results reported in the CSA's review published in 2016. The number of issuers having at least one female executive officer has improved from 55% in 2016 to 61% in 2017.

The CSA drew issuers' attention to the following disclosure requirements, where disclosure was found to be vague, boilerplate or not provided at all:

- disclosure of both the number and percentage of women on the issuer's board and in its executive officer positions each year;
- if the issuer discloses it has adopted a written policy regarding the representation of women on its board, a description of that policy, including a clear explanation of how the policy applies to the identification of women directors;
- if the issuer discloses it has adopted targets regarding the representation of women on its board and in its executive officer positions, annual and cumulative progress in achieving the targets;
- if the issuer discloses it considers the representation of women in the director identification and selection process and/or when making executive officer appointments, a description of how it does so; and
- if the issuer discloses it has adopted term limits or other mechanisms of board renewal, a description of those limits or other mechanisms and how they contribute to board renewal.

The CSA reminded issuers the gender diversity disclosure requirements in NI 58-101 are intended to provide transparency to assist investors when making voting and investment decisions. The CSA noted this objective is most effectively achieved if the disclosure provides a clear description of the corporate governance practices an issuer has adopted in relation to women on boards and in executive officer positions, or the reasons for not adopting such practices, as the case may be. Issuers should expect continued scrutiny and review of their gender diversity disclosure in 2018.

OSC Staff Notice 51-728 - Corporate Finance Branch 2016-2017 Annual Report

On September 21, 2017, the OSC published key issues raised by the Corporate Finance Branch's annual continuous disclosure

review program. The following is a summary of some of the key findings:

- *MD&A Generally* – The OSC noted many issuers continue to struggle with providing meaningful disclosure in their MD&A, especially in the following areas: (i) changes in accounting policies including initial adoptions; (ii) results of operations; (iii) risks and uncertainties; and (iv) liquidity and capital resources. The OSC reminded reporting issuers to avoid boilerplate disclosure in the MD&A that merely repeats information from the financial statements and to avoid disclosing information investors do not need or that does not provide insight into the issuer's past or future performance.

- *Non-GAAP Financial Measures* – The OSC expressed concerns with reporting issuers (particularly those in the mining, real estate, technology and biotechnology industries) using non-GAAP financial measures in news releases, MD&A, prospectus filings, websites and marketing materials. The OSC noted that non-GAAP financial measures lack clarity regarding the manner in which adjustments and calculations are made. The OSC cautioned issuers it may take regulatory action if an issuer discloses information in a manner considered misleading or otherwise contrary to the public interest. The OSC noted it will continue to actively review this topic in the coming financial year.

- *Forward-Looking Information* – The OSC raised concerns with forward-looking information, and in particular, disclosure of the assumptions and risks associated with such information, as well as the requirement to update previously disclosed forward-looking information. The OSC noted issuers must not disclose "financial outlook" unless it is based on assumptions that are reasonable in the circumstances and limited to a period for which the information can be reasonably estimated. The OSC cautioned issuers it may raise comments in respect of the reasonableness of the time period of forward-looking information presented.

The report also cautioned against early or selective disclosure on social media and strongly encouraged issuers to adopt a social media governance policy. The OSC also reiterated the need to provide detailed and entity-specific risk disclosure if cyber security is a material risk. Disclosure on social media and cyber security are two areas of focus for the CSA, as described in more detail below.

For a further discussion of the OSC's annual report and other findings highlighted by the OSC, refer to our September 28, 2017 Update, *Highlights of OSC Corporate Finance Branch 2016-2017 Annual Report*.

CSA Staff Notice 11-336 – Summary of CSA Roundtable on Response to Cyber Security Incidents

On April 6, 2017, the CSA published the results of its February 27, 2017 roundtable on cyber security issues. The discussions at the roundtable highlighted the interconnected nature of the Canadian securities markets and the importance of cooperation and information sharing in responding to a cyber security incident. The discussions covered elements of robust Incident Response Plans (IRPs) for entities and the importance of testing and updating IRPs, including communication and coordination protocols.

Cyber security continues to be one of the CSA's priorities through 2019. As such, the CSA expects regulated entities to continue to comply with ongoing requirements outlined in securities legislation, including the need to have internal controls over their systems and reporting security breaches.

The roundtable follows Staff Notice 51-347, which was published on January 19, 2017 and outlined the CSA's review of cyber security related disclosure by 240 issuers included in the S&P/TSX Composite Index. The results of the review were outlined in our January 24, 2017 Update, *CSA Provides Guidance on Disclosure of Cyber Security Risks*.

CSA Staff Notice 51-348 – Staff's Review of Social Media Used by Reporting Issuers

On March 9, 2017, the CSA published a report on its review of disclosure provided on social media (e.g. Facebook, Twitter, YouTube, LinkedIn and Instagram, among others) by 111 reporting issuers. The review was conducted to assess whether such disclosure adheres to the principles outlined in National Policy 51-201 - *Disclosure Standards* and the requirements of National Instrument 51-102 - *Continuous Disclosure Obligations*. As a result of the CSA's review, 30% of the reporting issuers

reviewed were required to take corrective action to improve their social media activities.

The results identified the following three areas where issuers are expected to improve their disclosure practices:

- selective or early disclosure when some investors receive material information through social media that other investors do not receive because it is not generally disclosed;
- misleading and unbalanced social media disclosure where information is not sufficient to provide a complete picture or is inconsistent with information already disclosed by issuers on the System for Electronic Analysis and Retrieval (SEDAR); and
- insufficient social media governance policies in place to support social media activity.

The CSA found that 77% of issuers did not have the policies, procedures or controls in place for social media which would be required to ensure the same integrity of disclosure provided in formal regulatory filings. The CSA noted a strong social media governance policy should include consideration of at least the following items: (i) who can post information about the issuer on social media; (ii) what type of sites (including personal social media vs corporate) can be used; (iii) what type of information about the issuer (financial, legal, operational, marketing, etc.) can be posted on social media; (iv) what, if any, approvals are required before information can be posted; (v) who is responsible for monitoring the issuer's social media accounts, including third party postings about the issuer; and (vi) what other guidelines and best practices are followed (e.g. if an employee posts about the issuer on a personal social media site, they should identify themselves as an employee of the issuer).

For a further discussion of the CSA's social media review, refer to our March 10, 2017 Update, *CSA Provides Disclosure Expectations for Reporting Issuers Using Social Media*.

CSA Consultation Paper 52-404 – Approach to Director and Audit Committee Member Independence

On October 26, 2017, the CSA published a consultation paper on the approach to director and audit committee independence. The consultation paper is intended to facilitate a discussion about the appropriateness of the current approach to determining director and audit committee independence and, in particular, whether to abandon current "bright-line" disqualification categories in favour of a purely principles-based approach, which is currently employed in Australia, Sweden and the U.K.. A principles-based approach effectively provides greater discretion to boards to determine whether a director is independent.

The CSA clarified the reason for this review is that some stakeholders have expressed concern that the current approach unduly restricts the pool of potential directors by presumptively precluding individuals with the requisite expertise and sound judgement from being eligible to be independent members of the board or to serve as nominating committee, compensation committee or audit committee members, to the detriment of certain issuers. The CSA has not proposed a specific alternative approach to determining independence.

The period for comment on whether the current approach should be changed was open until January 25, 2018. More than 20 response letters were received.

For a further discussion of the items covered in the consultation paper, refer to our October 30, 2017 Update, *Canadian Securities Regulators Re-evaluating Criteria for Director and Audit Committee Member Independence*.

ISS and Glass Lewis Canadian Proxy Voting Guidelines 2018 Updates

The following summarizes certain policy changes ISS and Glass Lewis are adopting in Canada, which are also summarized in our November 20, 2017 Update, *ISS Releases Final 2018 Voting Policy Updates for Canada* and our December 4, 2017 Update, *Glass Lewis Releases 2018 Canadian Proxy Voting Guidelines*.

- *Gender Diversity Policy* – ISS and Glass Lewis have each introduced new gender diversity policies. ISS will generally recommend a "withhold" vote for the chair of the nominating committee (or the chair of the board if no nominating committee has been established), if both of the following apply: (i) the company has not disclosed a formal written gender diversity policy; and (ii) there are zero female directors on the board. Such policy will be effective for the 2018 proxy season for all S&P/TSX Composite Index companies, but will not apply to non-index companies until the 2019 proxy season. Similar to ISS, Glass Lewis has implemented its own

new gender diversity policy, though it will not take effect until the 2019 proxy season. In 2018, Glass Lewis will not make voting recommendations based solely on the diversity of a board. Rather, it will be one of many considerations when evaluating a company's oversight structures. Beginning in 2019, however, Glass Lewis will generally recommend voting "withhold" for the nominating committee chair (and potentially other nominating committee members) if the board either: (i) has no female members; or (ii) has not adopted a formal written gender diversity policy. Unlike the new ISS gender diversity policy, which operates as a double trigger, Glass Lewis will implement a single-trigger in its policy.

- *Director Overboarding* – ISS has amended the criteria for determining whether a director is "overboarded" (serving on too many boards to carry out his or her responsibilities properly). Effective February 1, 2019, ISS will define an overboarded director as: (i) a CEO of a public company who sits on more than two (previously one) outside public company boards in addition to the company of which he/she is a CEO; or (ii) a director who is not a CEO of a public company and sits on more than five (previously four) public company boards in total. ISS will no longer consider a director's meeting attendance in its director overboarding policy, effectively moving towards a single-trigger. ISS's current criteria for overboarded directors will apply for the 2018 proxy season. Glass Lewis has clarified that, in considering whether public company executives (other than a CEO) are "overboarded", it will take into consideration the scope of their executive duties and responsibilities.

- *Pay for Performance* – ISS has updated its pay for performance evaluation policy to include the relative financial performance assessment ("**RFPA Test**") in its quantitative pay for performance evaluation. ISS uses a set methodology to determine voting recommendations for compensation issues, including equity incentive plans. ISS will recommend voting against management say-on-pay proposals or vote "withhold" for compensation committee members (or, in rare cases where the full board is deemed responsible, all directors including the CEO) and/or against an equity-based incentive plan proposal if there is a "significant long-term misalignment between CEO pay and company performance". The new RFPA Test – which is now one of the four quantitative tests that ISS will apply – compares the company to a peer group with respect to: (i) CEO pay; and (ii) financial performance (which will vary depending on industry) in each case measured over a three-year period. ISS plans on publishing a white paper providing more specific details about this new test.

- *Board Responsiveness* – Glass Lewis clarified it considers a board generally has an obligation to respond to shareholder dissent from a proposal at an annual meeting of more than 20% of votes cast – particularly in the case of a compensation or director election proposal. Glass Lewis has lowered its shareholder dissent threshold from 25% to 20% of the votes cast. Glass Lewis may recommend voting against members of the compensation committee if the committee fails to address shareholder concerns following a company's failure to secure majority approval of a "say-on-pay" advisory vote. While the 20% threshold alone will not automatically generate a vote against from Glass Lewis on a future proposal (e.g. to recommend against a director nominee or against a say-on-pay proposal, etc.), it may be a contributing factor to Glass Lewis's recommendation to vote against management's proposal in the event it determines a board did not respond appropriately.

- *Dual-Class Share Structures* – Glass Lewis will typically recommend shareholders vote in favour of recapitalization proposals to eliminate dual-class share structures as it considers a dual-class share structure to reflect negatively on a company's overall corporate governance. Glass Lewis will also consider the presence of dual-class share structures as an additional factor in its overall assessment of a company's corporate governance practices. When analyzing voting results from meetings of shareholders at companies controlled through dual-class structures, Glass Lewis will examine the level of approval or disapproval attributed to unaffiliated shareholders when determining whether board responsiveness is warranted. In that regard, where vote results suggest a

majority of unaffiliated shareholders support or oppose a management proposal, Glass Lewis expects the board to demonstrate an appropriate level of responsiveness.

- *Virtual Shareholder Meetings* – Glass Lewis has expressed concern regarding companies who elect to hold shareholder meetings by virtual means only. While Glass Lewis will not make voting recommendations in 2018 based solely on companies that hold virtual-only meetings, it will consider it when analyzing a company's governance profile. Beginning in 2019, however, Glass Lewis will generally recommend voting against members of the governance committee of a board where the board is planning to hold a virtual-only shareholder meeting and the company does not provide adequate disclosure of shareholder rights in its proxy circular.

- *Advance Notice Provisions* – ISS will recommend voting against an advance notice provision for the nomination of directors if it includes language which requires the nominator to represent it will be in attendance at the meeting in person or by proxy. ISS is of the view such a provision would contravene the stated purpose of an advance notice provision, which is to (i) provide an orderly and efficient shareholder meeting process; (ii) ensure all shareholders receive adequate notice of any director nominations and sufficient information with respect to all nominees; and (iii) allow shareholders to register an informed vote having been afforded reasonable time for appropriate deliberation.

- *Majority-Owned Issuers* – ISS has removed the following independence and governance criteria from its majority-owned exemption policy (TSX issuers only): (i) providing shareholders with the ability to vote on each individual director on the ballot; and (ii) the adoption of a majority voting director resignation policy for uncontested elections or a public commitment to doing so if it ceases to be a controlled issuer. These changes are intended to remove provisions now required by the TSX or deemed extraneous in the policy's application.

- *Climate Change Reporting* – Glass Lewis expanded its policy on climate change-related shareholder proposals. Glass Lewis will generally recommend voting in favour of shareholder resolutions requesting that companies in certain extractive or energy-intensive industries having increased exposure to climate change-related risks provide information to shareholders concerning their climate change scenario analyses and other climate change-related considerations. Though Glass Lewis supports the disclosure recommendations recently developed by the Task Force on Climate Change-related Financial Disclosure (TCFD), it will review proposals requesting companies report in accordance with these recommendations on a case-by-case basis.
  When reviewing proposals asking for increased disclosure on the aforementioned issues, Glass Lewis will evaluate: (i) the industry in which the company operates; (ii) the company's current level of disclosure; (iii) the oversight afforded to issues related to climate change; (iv) the disclosure and oversight afforded to climate change-related issues at peer companies; and (v) whether companies in the company's market and/or industry have provided any disclosure that aligns with the TCFD's recommendations.

For a full description of each new policy initiative, including the application of, and rationale for, those initiatives, refer to ISS's *Americas Proxy Voting Guidelines Updates – 2018 Benchmark Policy Recommendations*[1] and Glass Lewis's *2018 Proxy Paper Guidelines - Canada*[2] as well as its *2018 Shareholder Initiatives Guidelines*.[3]

Canadian Coalition for Good Governance 2017 Updates

The Canadian Coalition for Good Governance (CCGG) released its annual guide on best practices for proxy circular disclosure and made the following new suggestions, among others:

- *Director Nominee Profiles* – The CCGG recommended identifying key skills required of directors and using a skills matrix to ensure these skills are accounted for among current and prospective directors. The CCGG

[1] Available online at: https://www.issgovernance.com/file/policy/active/updates/Americas-Policy-Updates.pdf.

[2] Available online at: http://www.glasslewis.com/wp-content/uploads/2017/11/Canada_2018_Guidelines.pdf.

[3] Available online at: http://www.glasslewis.com/wp-content/uploads/2017/11/ShareholderInitiatives_2018_Guidelines.pdf

added that, in some cases, issuers have limited each director's skill set, as identified in their director skills matrices, to a director's top three or four skills and competencies. In other cases, issuers have differentiated between directors who are experts and those with general or limited experience in a given area. The CCGG finds either of these approaches acceptable best practices.

- *Director Compensation and Share Ownership* – The CCGG noted the equity-based component of director compensation should consist of full value awards such as common shares or deferred share units rather than stock options. The CCGG has again encouraged adoption of formal director share ownership requirements as a best practice.

- *Board, Committee and Director Assessments* – The CCGG recommended that companies avoid providing boilerplate language on their director assessment process. Rather, the CCGG recommended providing details on the practical impact of assessments conducted in the previously completed year.

- *Executive Share-Ownership Requirements* – The CCGG stated issuers should differentiate between an officer's common share ownership and any share-based awards included in the computation of share ownership.

For a full description of all guidelines and best practices, including the application of, and the rationale for, those guidelines and best practices, please refer to *CCGG 2017 Best Practices for Proxy Circular Disclosure* available online at www.ccgg.ca.

Changes in Disclosure and Proxy Rules

Amendments to the TSX Company Manual

The following summarizes the final Website Amendments and Security-Based Compensation Amendments published by the TSX, also summarized in our October 31, 2017 Update, *TSX Publishes Final Amendments to Website and Security-Based Compensation Disclosure Requirements*. The Website Amendments will become effective for TSX-listed issuers on April 1, 2018. The Security-Based Compensation Amendments became effective for TSX-listed issuers for financial years ending on or after October 31, 2017.

- *Website Amendments* – The TSX introduced a new Section 473 to the Company Manual that, effective April 1, 2018, will require issuers to post copies of the following key documents on their website: (i) constating documents; and (ii) if adopted, copies of the issuer's (a) majority voting policy, (b) advance notice policy, (c) position descriptions for the chairman of the board and the lead director, (d) board mandate, and (e) board committee charters. The key documents are required to be posted in an easily identifiable, centralized and accessible place on the listed issuer's home page or investor relations page.

- *Security-Based Compensation Amendments* – Under the new rules for security-based compensation disclosure, listed issuers must disclose the following information in their proxy circulars effective for financial years ending on or after October 31, 2017: (i) disclosure, on an annual basis, of a "burn rate"[4] for each security-based compensation arrangement maintained by the issuer for the issuer's three most recently completed financial years; and (ii) disclosure regarding the vesting and term of securities awarded under all security-based compensation (not just stock option plans). The amendments also clarify and enhance the disclosure required in respect of the maximum number of awards issuable under each plan, the number of outstanding securities awarded under each plan and the number of awards still available for grant under each plan. For any annual meeting (whether an approval meeting or not), the information should be prepared as at the end of the listed issuer's most recently completed financial year. For any approval meeting, which is not also an annual meeting, the information (other than the annual burn rate) should be prepared as at the date of the materials, which would remain unchanged from the current requirements.

[4] The annual burn rate, expressed as a percentage, equals: the number of securities under the arrangement during the applicable year; divided by the weighted average number of securities outstanding for the applicable year.

TSX Guidance on Majority Voting and Advance Notice Policies

On March 9, 2017, the TSX published a new Staff Notice regarding its review of listed issuers' majority voting and advance notice policies. The Company Manual sets out majority voting requirements, that among others, requires that any director must immediately tender his or her resignation to the board if he or she is not elected by at least a majority of the votes cast with respect to his or her election (other than at a contested meeting) and the board must accept such resignation absent "exceptional circumstances". Based on a review of 200 randomly selected majority voting policies, the TSX identified a number of deficiencies and inconsistences with the policy objectives set out in the Company Manual. Most significantly, the TSX addressed what is meant by "exceptional circumstances" and noted it would contact an issuer to discuss the exceptional circumstances when a board determines not to accept a director's resignation. "Exceptional circumstances" are expected to meet a high threshold and are not reoccurring events. A director's length of stay, qualifications, attendance at meetings, experience and contribution to the issuer are not considered to be "exceptional circumstances".

The TSX also discussed advance notice policies and by-laws which prescribe timeframes and procedures to nominate directors for election to the board. Based on a review of 25 advance notice policies adopted by TSX-listed issuers, the TSX noted policies that (i) provide for an unreasonable short period before a shareholders meeting to nominate directors; and (ii) impose burdensome or unnecessary disclosure (more onerous than requirements for management or board nominees) on a nominating securityholder are not consistent with policy objectives. The TSX reminded issuers that advance notice policies must be adopted sufficiently in advance of meetings in order to allow securityholders to comply with the notice periods.

The TSX advised issuers to review their majority voting and advance notice policies in light of the Staff Notice and noted it will continue to monitor these policies to ensure they are not being used inconsistent with the policies' objectives.

For a further discussion of the TSX's guidance on such policies, refer to our March 13, 2017 Update, *Toronto Stock Exchange Provides Guidance on Majority Voting and Advance Notice Policies*.

Bill C-25: Proposed Amendments to the CBCA

Bill C-25 received its second reading in the Senate on November 23, 2017 and is currently at the committee stage, with the committee report presented with amendments on December 14, 2017. To be enacted into law, Bill C-25 must pass a third reading in the Senate and receive Royal Assent.

The proposed amendments, include, among others:

- *Director Election Matters* – (i) Enshrining majority voting into the CBCA such that a director will only be elected if the number of votes cast in his or her favour represents a majority of the total number of votes cast at the meeting; (ii) requiring the practice of "individual voting" rather than "slate voting" for directors; and (iii) shortening the maximum duration of director terms from three years to one year for public companies.
- *Notice and Access* – Permitting CBCA companies to make use of notice and access procedures available under Canadian provincial securities legislation by broadening the scope of exemptions available under the CBCA related to the requirement to deliver proxy-related materials to shareholders so the CBCA is consistent with applicable securities laws relating to notice and access.,
- *Gender Diversity Disclosure* – Requiring all public CBCA companies to comply with gender diversity disclosure rules similar to those currently mandated by Canadian provincial securities laws, as well as disclosure requirements regarding diversity other than gender.

Some of the proposed amendments, such as those relating to individual voting and director limits, are already mandated by the TSX.

Bill 101: Proposed Amendments to the OBCA

Bill 101, a private member's bill, received second reading on March 9, 2017, and was referred to a standing committee. Some of the proposed changes to the OBCA are similar to the proposed CBCA changes set out above.

The proposed amendments, include, among others:

- *Director Election Matters* – Adopting the same changes being proposed to the CBCA, however, with application to all OBCA companies, not just public companies. In addition, the proposed amendments to the OBCA would impose a new mandatory voting requirement whereby all shareholders entitled to vote in a director election and who are present in person at a shareholder meeting where directors are being elected are required to vote in favour or against every candidate.
- *Shareholder Thresholds* – Lowering shareholder thresholds for (i) director nominations from 5% to 3%; and (ii) requisitioning a shareholder meeting from 5% to 3%.
- *Diversity Disclosure* – Requiring prescribed companies to provide shareholders with prescribed information regarding the diversity of its directors and officers. It is unclear if "prescribed information" would relate solely to gender diversity or, as with the proposed CBCA amendments, extend to disclosure of diversity beyond gender.
- *Shareholder Proposals on Executive Compensation* – A new provision that allows shareholders to put forth proposals to adopt an executive compensation policy with respect to the remuneration of directors or officers of the company and the directors would be required to fix director and officer remuneration in accordance with any such adopted policy. This proposal goes a step further than traditional say-on-pay advisory votes where directors are not required to comply with shareholder proposals.

To be enacted into law, Bill 101 must pass a third reading in the House and receive Royal Assent.

About Goodmans

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