

# Goodmans<sup>LLP</sup> Update

## Canadian Securities Regulators Provide Update on Approach to Director and Audit Committee Member Independence

On July 26, 2018, the Canadian Securities Administrators (CSA) published [CSA Staff Notice 52-330 Update on CSA Consultation Paper 52-404 Approach to Director and Audit Committee Member Independence](#). The Staff Notice was published in response to CSA Consultation Paper 52-404 *Approach to Director and Audit Committee Member Independence*, published on October 26, 2017 to facilitate discussion about the current approach to determining director and audit committee member independence in Canada; and in particular, whether to abandon current “bright-line” disqualification categories in favour of a purely principles-based approach that would provide greater discretion when determining director independence (see our October 30, 2018 Update, [Canadian Securities Regulators Re-evaluating Criteria for Director and Audit Committee Member Independence](#)).

Following the receipt of comments from various market participants, the CSA decided to maintain the current approach to director and audit committee member independence. Most commentators expressed general support for the current approach as it provides certainty, consistency and predictability in determining independence, in addition to being well-understood by market participants and generally aligned with the approach applicable in the United States.

The current approach to determining director and audit committee independence is outlined in National Instrument 52-110 *Audit Committees* (“**NI 52-110**”), which provides that a director of a reporting issuer is independent only if he or she does not have a direct or indirect material relationship with the issuer. A “material relationship” is defined by the CSA as a relationship that could, in the board’s view, reasonably be expected to interfere with the exercise of a member’s independent judgement. NI 52-110 deems a number of relationships (e.g., being an executive officer or employee of the company, or a partner with the company’s auditor) to be “material relationships”. If a director has one of the enumerated relationships, then the director cannot be independent for the purposes of the regime established by the CSA, regardless of the board’s view as to the potential for that relationship to interfere with the director’s judgement.

The CSA recognizes that while the current approach to determining director and audit committee member independence has limitations, upon review, it was satisfied that the current approach strikes an appropriate balance between allowing boards to exercise their judgment when determining if an individual can exercise independent judgement, while ensuring certain relationships preclude an individual from being considered independent. As the current approach has been in place since 2004, the CSA expressed concerns that changing or replacing the current approach with an alternative could result in additional costs for issuers and efforts for investors to adapt to such changes.

Please contact any member of our [Corporate Securities Group](#) to discuss these developments.

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