Goodmans LLP Update

Corporate Securities Law

October 13, 2016

TSX Provides Guidance on Pricing Prospectus Offerings and Private Placements

The Toronto Stock Exchange (TSX) has issued a staff notice (the "**Staff Notice**") providing guidance on pricing prospectus offerings and private placements where an issuer possesses material undisclosed information.

The TSX generally requires private placements and prospectus offerings to be priced at "market price" less an allowable discount. Market price should reflect all material events, changes or announcements, which effectively means that issuers cannot price financings when in possession of material undisclosed information.

The TSX has historically allowed an exception to this restriction in circumstances where an undisclosed event would not occur without a financing agreement (the "**Pricing Exception**"). The Pricing Exception has been most commonly relied upon where the financing proceeds are used to fund an acquisition and the principal terms of the financing, including the price, are announced concurrently with the acquisition.

The Staff Notice confirms that the TSX will continue to allow the Pricing Exception for acquisitions so long as the TSX is satisfied that the acquisition would not have been approved by the issuer's board of directors without also having entered into the financing agreement. Going forward, the TSX will generally require an officer's certificate confirming this fact. Where a listed issuer cannot provide the officer's certificate, it should consider announcing the material information before pricing a financing. The TSX also noted that, in exceptional circumstances, it may accept alternative submissions to support an issuer's use of the Pricing Exception.

The Staff Notice also identifies two circumstances where the TSX may not allow an issuer to use the Pricing Exception:

- *The net proceeds of the financing significantly exceed the cash consideration of the acquisition.* The TSX notes that proceeds raised as a result of the Pricing Exception should generally only be used to fund the acquisition and related expenses. Where the proceeds of a financing exceed the cash consideration and applicable expenses for the acquisition by 30% or more, the TSX will generally conclude that the acquisition is not dependent on the financing and may require the issuer to: (a) reduce the gross proceeds of the financing to more closely align the acquisition and the financing; (b) price the financing after the acquisition has been disclosed; or (c) obtain security holder approval as a condition of the financing.
- *The financing provides for significant insider participation.* The TSX will generally continue to allow insider participation in prospectus offerings up to pro rata holdings. The Pricing Exception may not be available where insider participation exceeds pro rata holdings.

While the Staff Notice generally codifies existing TSX practice for approving the pricing of private placements and public offerings, it highlights the importance of considering disclosure matters well in advance of pricing and announcing a financing.

Please contact any member of our Corporate Securities Group to further discuss the implications of the Staff Notice.