Goodmans LLP Update

TSX Venture Exchange Amends Security Based Compensation Policy

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On November 24, 2021, the TSX Venture Exchange (TSXV) implemented changes to Policy 4.4 – *Incentive Stock Options* (the "**Former Policy**"). The Former Policy, which only addressed stock options, was renamed Policy 4.4 – *Security Based Compensation* ("**Policy 4.4**") and was expanded to address various types of security based compensation, including deferred share units, performance share units, restricted share units, and stock appreciation rights. Policy 4.4 applies to new plans adopted after November 24, 2021. Plans in effect as of November 24, 2021, and any grants under those plans, will not have to comply with Policy 4.4 until such time as shareholder approval is required to amend or reapprove the plan. This update summarizes certain key components of Policy 4.4.

Security Based Compensation

The amendments to Policy 4.4 provide for an expanded definition of security based compensation. Where previously security based compensation referred strictly to stock options, the amended policy applies to any compensation mechanism that involves the issuance or potential issuance of securities of the issuer from treasury to a participant. Importantly, the requirements of Policy 4.4 do not apply where security based compensation is settled solely in cash and/or where securities are purchased on the secondary market.

Vesting Requirement

Policy 4.4 now provides that all security based compensation, other than stock options and securities issued pursuant to a stock purchase plan, is subject to a minimum one year vesting requirement. Issuers seeking to avoid the one year vesting requirement may consider granting cash-settled awards, which would allow for immediate vesting.

Categories of Security Based Compensation Plans

Under the Former Policy, only two types of stock option plans were permitted. Policy 4.4 provides for a new regime, permitting issuers to choose from four categories of security based compensation plans:

(a) **"rolling up to 10%"** – the number of listed shares that are issuable under all security based compensation plans in aggregate is equal to up to a maximum of 10% of the issued shares of the issuer at the date of grant or issuance; or

(b) **"fixed up to 20%"** – the number of listed shares that are issuable under all security based compensation plans in aggregate is a specified number up to a maximum of 20% of the issued shares of the issuer at the date the most recent security based compensation plan is implemented; or

(c) **"rolling up to 10% and fixed up to 10%"** – a "rolling" stock option plan under which the number of listed shares that are issuable pursuant to stock options is equal to up to a maximum of 10% of the issued shares of the issuer at the date of any stock option grant, and "fixed" security based compensation plans (other than stock option plans) under which the number of listed shares that are issuable pursuant to all such security based compensation plans (other than stock option plans) in aggregate is a fixed specified number up to a maximum of 10% of the issued shares of the issuer at the date the most recent security based compensation plan (other than stock option plans) was implemented; or

(d) **"fixed stock option plan up to 10%"** – the number of listed shares that are issuable pursuant to the exercise of stock options is a specified number of listed shares to a maximum of 10% of the issued shares of the issuer at the date the stock option plan was implemented.

While the Former Policy allowed subsidiaries of an issuer to implement security based compensation plans, Policy 4.4 clearly provides that all security based compensation must be granted by the issuer.

Shareholder Approval

Policy 4.4 now provides that every security based compensation plan must be approved by the issuer's shareholders at the time it is implemented and at the time of any amendment, except in limited circumstances. Shareholder approval is not required in connection with an issuer's adoption of a "fixed stock option plan up to 10%" so long as it complies with the provisions set out in Policy 4.4.

Consistent with the Former Policy, Policy 4.4 provides for a variety of circumstances in which disinterested shareholder approval must be obtained.

Disclosure Requirement

Consistent with the Former Policy, the implementation of a security based compensation plan, and every agreement to grant security based compensation to a director, officer or investor relations service provider must be disclosed to the public in a news release on the relevant date.

Other Security Based Awards

Section 6 of Policy 4.4 addresses the limited circumstances in which security based compensation may be granted outside of a plan. Typically, such arrangements will require disinterested shareholder approval, which may be obtained at a meeting or by written consent. The TSXV will consider the following grants of security based compensation outside of a plan: (i) securities for services; (ii) compensation owed to non-arm's length parties; (iii) one time payments as inducement or severance; and (iv) loans.

Transition Provisions

Policy 4.4 provides transition provisions for security based compensation plans currently in effect. All plans which have been filed with the TSXV before November 24, 2021 are grandfathered in, and issuers can continue to grant awards under those plans in accordance with their terms without having to comply with Policy 4.4. However, any outstanding security based compensation plan that does not comply with Policy 4.4 will need to be revised in advance of being placed before an issuer's shareholders for approval.

For further information on Policy 4.4, please contact any member of our Corporate Finance and Securities Group.