

Corporate Securities

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Canadian Corporate Governance Reforms

The corporate governance landscape in Canada is continuing to evolve. Over the past week, the Ontario Securities Commission and the Toronto Stock Exchange confirmed that they will be releasing for comment new rules and guidelines respecting corporate governance matters. It appears that these initiatives will involve a reallocation of responsibility between securities regulators, with the Commission beginning to assume greater responsibility for corporate governance in respect of certain matters that previously had been within the purview of the Exchange.

Commission Initiatives

With certain provisions of *Bill 198* now having been proclaimed and the Commission having been granted expanded rulemaking authority, it is expected that the Commission will publish for comment before the end of June a package of rules that parallel those of the *Sarbanes-Oxley Act of 2002* relating to CEO/CFO certification, an accounting oversight board and audit committees. Recently, David Brown, the Chairman of the Commission, stated that:

"We must introduce reforms that are every bit as robust as US reforms; but tailored specifically to our markets and their unique needs. ... But it is important to recognize that any proposed solution must actually solve the problems. It must ensure that Canada is an appealing place to invest. It must ensure that Canadian listed companies can raise money on the global capital markets. And it must ensure that our market rules are compatible with our largest trading and investment partner. ... The North American markets are too integrated for Canadians to think that the US could adopt a new, robust set of market standards, that we could simply ignore, as though our markets have no relationship with each other."

In this context, it is unlikely that the rules will "re-invent the wheel", and it appears that the practices that many Canadian issuers have been adopting to comply with requirements and market expectations south of the border should meet the new Canadian standards without significant modification. The Commission has suggested that the new rules will recognize the cost of compliance to smaller companies through somewhat less stringent requirements.

Exchange Initiatives

The Exchange is proposing to defer to the Commission for the regulation of audit committees, although not the other aspects of the Exchange's governance guidelines. In this context, the Exchange is expected to remove audit committee guidelines 13 and 14 from section

THE UPDATE

474(1) of the Company Manual. It also appears that the Exchange will move to harmonize its concept of “independence” with the criteria to be adopted by the Commission. Additionally, the Exchange will be requiring, rather than simply “recommending”, that boards of listed companies be composed of a majority of unrelated directors and that board committees be composed solely of non-management directors and a majority of unrelated directors. To enforce these requirements, the Exchange will be seeking additional remedial powers to publish names of issuers who fail to comply and to require a company to re-publish deficient disclosure.

The proposed rules are unlikely to be finalized for several months.

Please do not hesitate to contact any member of the Goodmans corporate/securities team to discuss your governance structures as these requirements and associated practices continue to evolve.

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