

Corporate Securities Law

January 5, 2005

Toronto Stock Exchange Provides Clarification of New Rules for Security Based Compensation Arrangements

Introduction

The Toronto Stock Exchange (the “TSX”) has issued a Staff Notice to provide clarification of the interpretation of recent amendments (the “Amendments”) to its Company Manual relating to security based compensation arrangements (“SBCAs”) such as stock option plans. The Amendments became effective on January 1, 2005 and are described in the Goodmans Update dated November 26, 2004.

Security Based Compensation Arrangements

Insider Definition

Pursuant to the Amendments, “insider” will have “the same meaning as found in the *Securities Act* (Ontario) and also includes associates and affiliates of the insider”. The TSX has clarified that it will not consider a director or senior officer of a subsidiary or affiliate of a listed issuer as an insider of that listed issuer unless such director or senior officer:

- in the ordinary course receives or has access to information as material facts or material changes concerning the listed issuer before the material facts or material changes are generally disclosed;
- is a director or senior officer of a major subsidiary of the listed issuer; or

- is an insider of the listed issuer in a capacity other than as a director or senior officer of the subsidiary or affiliate.

Market Price Definition for Stock Options

Notwithstanding the requirement in the Company Manual that the exercise price for any stock option not be less than “market price” (which under the Amendments is the value weighted average price for the five trading days preceding the option grant), the TSX has clarified that it will continue to accept as the exercise price for stock options: (a) a closing market price at the time of the grant; or (b) a reasonable pre-determined formula, based on a weighted average trading price or average daily high and low board lot trading prices for a short period of time prior to the time of the grant. Any SBCA must specify the method used for determining market price and that method must be consistently used.

Amendments to SBCAs

The Amendments require that any SBCA with a built-in amendment procedure contain specific details as to whether security holder approval is required for an amendment. This procedure must be specifically disclosed at the time of the original security holder approval of the SBCA. In the absence of an amendment procedure, security holder approval is required for any amendment.

With respect to existing SBCAs that have a general amendment provision that permits amendments “subject to the approval of the board of directors and, if required, the TSX”, the TSX has clarified that such general amendment provisions will not be sufficient to escape the security holder approval requirement. However, the TSX will not require security holder approval for the following types of amendments:

- amendments of a “housekeeping” nature;
- a change to the vesting provisions of a SBCA;
- a change to the termination provisions of a security or the SBCA itself that does not entail an extension beyond the original expiry date (of an option for example); and

Goodmans^{LLP} Update

- the addition of a cashless exercise feature, payable in cash or securities, that provides for a full deduction of the number of underlying securities from the SBCA reserve.

The TSX will require security holder approval for the following types of amendments for SBCAs with a general amendment provision:

- any amendment to the number of securities issuable under the SBCA, including an increase to a fixed maximum number of securities or a change from a fixed maximum number of securities to a fixed maximum percentage. A change to a fixed maximum percentage that was previously approved by security holders will not require an additional security holder approval;
- any change to the eligible participants that would have the potential of broadening or increasing insider participation;
- the addition of any form of financial assistance;
- any amendment to a financial assistance provision that is more favourable to participants;
- the addition of a cashless exercise feature, payable in cash or securities that does not provide for a full deduction of the number of underlying securities from the SBCA reserve; and
- the addition of a deferred or restricted share unit or any other provision that results in participants receiving securities while no cash consideration is received by the issuer.

Generally, security holder approval will be required, notwithstanding the amendment procedures contained in a SBCA, where an amendment may lead to significant or unreasonable dilution in the issuer's outstanding securities, or may provide additional benefits to eligible participants, especially insiders, at the expense of the listed issuer and its existing security holders.

Increases in SBCA Maximums

Increases to SBCA maximums will not be permitted without specific security holder approval for the increase (regardless of the amendment provision in a SBCA). An increase to a SBCA includes an increase in the fixed maximum number of securities issuable, an increase to the fixed maximum percentage of securities issuable and a change from a fixed maximum number SBCA to a fixed maximum

percentage SBCA. An increase does not include reloading of securities after exercise under a fixed maximum percentage SBCA provided that the fixed maximum percentage of securities is not increased and the SBCA specifically provides for this reload.

Annual Disclosure Expanded

The requirement that listed issuers provide expanded annual disclosure with respect to SCBAs will only apply to listed issuers for fiscal year ends on or after December 31, 2004. A listed issuer with a fiscal year end prior to December 31, 2004 is not required to provide the disclosure for such year end.

Reloading Fixed Percentage Plans

The Amendments permit "rolling maximum" or "evergreen" SBCAs that fix a maximum number of securities issuable under a SBCA as a percentage of the issued and outstanding securities of the issuer from time to time. The TSX has clarified that evergreen plans and other similar plans containing the appropriate provisions that have been properly disclosed and approved by security holders may be automatically reloaded upon the exercise of options, deferred share units, restricted share units or similar securities. However, any SBCA with a reloading provision will be subject to the renewal security holder approval requirement every three years.

Please contact a member of the Goodmans securities team should you wish to discuss how the Amendments affect your SBCAs.

Toronto

Justin Beber
jbeber@goodmans.ca 416.597.4252

Sheldon Freeman
sfreeman@goodmans.ca 416.597.6256

Lawrence Chernin
lchernin@goodmans.ca 416.597.5903

Allan Goodman
agoodman@goodmans.ca 416.597.4243

William (Bill) Gorman
wgorman@goodmans.ca 416.597.4118

Francesca Guolo
fguolo@goodmans.ca 416.597.4238

Goodmans^{LLP} Update

Stephen Halperin

shalperin@goodmans.ca 416.597.4115

Tim Heeney

theeney@goodmans.ca 416.597.4195

Jonathan Lampe

jlampe@goodmans.ca 416.597.4128

Dale Lastman

dlastman@goodmans.ca 416.597.4129

David Matlow

dmatlow@goodmans.ca 416.597.4147

Neill May

nmay@goodmans.ca 416.597.4187

Grant McGlaughlin

gmcgloughlin@goodmans.ca 416.597.4199

Michael Partridge

mpartridge@goodmans.ca 416.597.5498

Stephen Pincus

spincus@goodmans.ca 416.597.4104

William Rosenfeld

wrosenfeld@goodmans.ca 416.597.4145

Meredith Roth

meroth@goodmans.ca 416.597.6260

Neil Sheehy

nsheehy@goodmans.ca 416.597.4229

Bob Vaux

rvaux@goodmans.ca 416.597.6265

Kenneth Wiener

kwiener@goodmans.ca 416.597.4106

Vancouver**Paul Goldman**

pgoldman@goodmans.ca 604.608.4550

Steven Robertson

srobertson@goodmans.ca 604.608.4552

Bruce Wright

bwright@goodmans.ca 604.608.4551

Hong Kong**Leo Seewald**

lseewald@goodmans.ca 852.2522.1061

All Updates are available at www.goodmans.ca. If you would prefer to receive this client Update by e-mail, require additional copies or would like to inform us of a change of address, please e-mail: updates@goodmans.ca. This Update is intended to provide general comment only and should not be relied upon as legal advice. © Goodmans LLP, 2005.