



Update on Corporate Governance

In September of 2007, the Canadian Securities Administrators (the "CSA") announced its intention to review the Canadian corporate governance regime currently found in National Instrument 58-101 (Disclosure of Corporate Governance Practices) and National Policy 58-201 (Corporate Governance Guidelines) and we are now informed that the CSA should propose a new principles-based corporate governance regime by the end of 2008. The definition of "independence" currently found in National Instrument 52-110 (Audit Committee) will be amended to also become principles-based and focused on management only.

Subject to further changes, the three key components of the proposed corporate governance policy and the related disclosure rules are as follows:

a. Definition of Independence

The CSA will propose maintaining a general definition of independence based on the existence of a "material relationship" that could materially interfere with the independent exercise of judgment, as determined by the Board, and applicable both to the Board and its committees. Employees and executive officers of an issuer are the only persons who should not be considered independent.

The bright-line tests currently found in National Instrument 52-110, which tests deem a material relationship to exist in prescribed circumstances, should be replaced with a list of factors included in the Companion Policy to 52-110 and to be considered by the Board when determining if such a material relationship exists.

Issuers will be required to: (i) disclose which directors are independent; (ii) identify any applicable factors that the Board need consider in assessing independence; and (iii) disclose why the Board considers the director to be independent, including a discussion of those factors referred to in (ii).

b. Corporate Governance Guidelines

National Policy 58-201 will be reformulated to include general principles of corporate governance instead of a list of "best practices". Each principle will be supplemented with explanatory commentary and some examples of corporate governance practices that issuers could implement to achieve the objectives of the principle.

The proposed principles revolve around the following themes:

1. Oversight and accountability;
2. Structure Boards to add value;
3. Attract and retain effective directors;

4. Improve Board's performance;
5. Promote integrity and deter wrongdoing;
6. Identify and manage conflicts of interest;
7. Remunerate appropriately; and
8. Communicate effectively with shareholders.

c. Disclosure Requirements

The CSA intends to replace the current "comply or explain" disclosure regime with a more general disclosure regime applicable to both venture and TSX issuers. Issuers will be required to describe the practices used to achieve the enumerated corporate governance principles. Issuers will be required to include the information in a corporate governance statement to be part of their management information circular and, if none, their annual information form and, if none, their MD&A.

Question of Controlled Issuer

The CSA recognises that the potential problems caused by relationships between the Board and a controlling shareholder are related to the potential existence of conflicts of interests or potential appropriation of benefits by controlling shareholders at the expense of the issuer. The issues of conflicts of interest and private appropriation of benefits are not related to the independence of directors from management of the issuer. These issues will be dealt with separately from the independence from management requirement through a separate principle, being that of "Recognizing and managing conflicts of interest".

This update is intended to provide general comment only and should not be relied upon as legal advice.

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