

## Securities and Mergers & Acquisitions Bulletin

January 2005

Fasken Martineau DuMoulin LLP

### Canadian Securities Regulators issue notice regarding Corporate Governance Guidelines

On January 21, 2005 the Canadian Securities Administrators (the “CSA”) released a notice which indicates that, subject to receiving all necessary approvals, they anticipate that proposed National Policy 58-201 *Corporate Governance Guidelines* (the “Policy”) and proposed National Instrument 58-101 *Disclosure of Corporate Governance Practices* (the “Instrument”) will apply to information circulars or annual information forms, as the case may be, for issuers with financial years ending on or after June 30, 2005. By way of illustration, an issuer with a June 30th year end would include the disclosure required by the Instrument in the first information circular it files after June 30, 2005 and an issuer with a December 31st year end would include the disclosure required by the Instrument in its information circular filed after December 31, 2005.

It is anticipated that the Instrument and the Policy will be substantially in the form published by the CSA for comment on October 29, 2004, subject to consideration of comments received and incorporation of appropriate changes by the CSA.

The Policy, as published on October 29, 2004 (the “Draft Policy”), contains guidelines to assist issuers in forming

their corporate governance regimes. In particular, the following guidelines are contained in the Draft Policy:

- maintaining a majority of independent directors on the board of directors (the “Board”)
- appointing a chair of the Board or a lead director who is an independent director
- holding regularly scheduled meetings of independent directors at which members of management are not in attendance
- adopting a written Board mandate
- developing position descriptions for the chair of the Board, the chair of each Board committee, and the chief executive officer
- providing each new director with a comprehensive orientation, and providing all directors with continuing education opportunities
- adopting a written code of business conduct and ethics
- appointing a nominating committee composed entirely of independent directors.

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- adopting a process for determining what competencies and skills the Board as a whole should have, and applying this result to the recruitment process for new directors
- appointing a compensation committee composed entirely of independent directors
- conducting regular assessments of Board effectiveness, as well as the effectiveness and contribution of each Board committee and each individual director

The Instrument, as published on October 29, 2004 (the “Draft Instrument”) requires an issuer to disclose its corporate governance practices relative to the Draft Policy. If the issuer’s practices are not consistent with the guidelines in the Draft Policy, the issuer is required to disclose generally its corporate governance practices and describe how they respond

to the matters addressed by the guidelines contained in the Draft Policy. Issuers that are “venture issuers” will have reduced disclosure requirements under the Draft Instrument, as compared to non-venture issuers. The specific disclosure items are set out in Form 58-101F1 (non-venture issuers) and Form 58-101F2 (venture issuers) to the Draft Instrument.

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