Toronto Stock Exchange
REQUEST FOR COMMENTS
CORPORATE GOVERNANCE POLICY – PROPOSED NEW DISCLOSURE REQUIREMENT and AMENDED GUIDELINES

On March 26, 2002 the Board of Directors of the Toronto Stock Exchange (the "TSX") approved amendments of the corporate governance disclosure guidelines (the "Amended Guidelines") applicable to TSX listed issuers. These amendments are in response to recommendations contained in the final report of the Joint Committee on Corporate Governance published in November 2001.

The Amended Guidelines will be effective upon OSC approval following public notice and comment. Comments should be in writing and delivered by May 31, 2002 to:

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Issuer Services
Toronto Stock Exchange
The Exchange Tower
130 King Street West
Toronto, Ontario M5X 1J2
Fax: (416) 947-4547
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A copy should also be provided to the:

Manager
Market Regulation
Capital Markets
Ontario Securities Commission
20 Queen Street West
Toronto, Ontario M5H 3S8

Comments will be publicly available unless confidentiality is requested.

OVERVIEW

In July 2000, the Toronto Stock Exchange (the "TSX"), the TSX Venture Exchange and the Canadian Institute of Chartered Accountants mandated the Joint Committee on Corporate Governance (the "JCCG") to review the state of corporate governance practices in Canada and recommend changes that will assure the ongoing development of Canadian corporate governance standards as among the best in the world. The JCCG tabled its preliminary report in March 2001 and, following extensive comments from various stakeholders, issued its final report in November 2001 (the "JCCG Report").

SUMMARY

The JCCG Report contains 15 recommendations, the majority of which propose modifications to the existing TSX Corporate Governance Guidelines (the "Guidelines") introduced in 1995. In response, the TSX is proposing that certain amendments be made to the Guidelines. Other recommendations of the JCCG will be reflected in Practice Notes to the Guidelines. The TSX has also amended the disclosure requirements in the TSX Company Manual, principally by consolidating sections 473 and 475.

BACKGROUND
The TSX has been a leader in the movement to improve the quality of corporate governance of Canadian corporations. In 1994, the TSX sponsored the committee that published the report "Where Were the Directors?". That report recommended the disclosure requirements set out in Sections 473 to 475 of the TSX Company Manual.

In 1999, the TSX and the Institute of Corporate Directors (ICD) produced a governance scorecard of Canadian companies, published in the report entitled "Five Years to the Dey", based on the Guidelines adopted in 1995. The objective was to assess the extent to which the corporate governance practices of public companies reflect the Guidelines, and to identify opportunities for the TSX and ICD to support sound practices.

Shortly thereafter, the committee that wrote the 1994 report held a reunion in the spring of 1999. The conclusion of that reunion was that, although significant improvement had occurred in the quality of governance of Canadian corporations, the response of Canadian corporations to the governance initiatives was more formal than substantive and that the corporate sector in Canada had not yet achieved a "culture of governance".

This led to the appointment of the JCCG in July 2000 with the mandate to suggest improvements to the corporate governance regime in Canada. The TSX and the TSX Venture Exchange sponsored this initiative, along with the CICA, in line with the leadership role it has played in the promotion of sound corporate governance in Canada. The TSX continues to be in a strong position to impact and influence corporate governance initiatives in Canada.

In preparing the amended Guidelines, the corporate governance disclosure regimes of stock exchanges in United States, Australia and the United Kingdom were reviewed. This review revealed that the corporate governance regime of the TSX compares favourably to those of NYSE, NASDAQ, ASX and LSE.

TSX RESPONSE TO JCCG RECOMMENDATIONS
The TSX response to the JCCG Recommendations is consistent with the TSX approach to corporate governance, which rests on the following principles:

- Each issuer must have the flexibility to develop its own approach to corporate governance.
- The role of the TSX is to provide a framework for issuers to disclose their corporate governance practices in order for the market to reward or sanction them.
- The development of a corporate governance culture goes beyond the Guidelines and requires a shared commitment and concentrated effort by boards, management and major institutional shareholders of every issuer.

The TSX has generally accepted all of the themes underlying the recommendations of the JCCG, with the exception of the independent board leader as a listing requirement.

The TSX has adopted these themes by way of amending the Guidelines and the addition of practice notes to the Guidelines.

Two central recommendations of the JCCG were specifically addressed. First, the JCCG recommends in Recommendation 3 that the appointment of an independent board leader (IBL) be a condition of listing. The JCCG recommended that each board appoint an IBL who would be the chair if the chair is not the CEO. The IBL would be responsible for ensuring the board actually carries out its responsibilities, e.g. assessing the effectiveness of the board. The theory behind this JCCG recommendation is that someone on the board should be made accountable for ensuring the board and its committees execute their governance responsibilities.

While agreeing with the general theme, the appointment of an IBL is not being made a condition of listing. The TSX's mandate in respect of corporate governance is to require disclosure of corporate governance systems rather than legislate corporate governance standards. As an alternative achieving the same objective, Guideline 12 relating to the functioning of the board independently of management has been amended to clarify the obligation of the chair or lead director to ensure that the board, board committees and directors discharge their obligations under the corporation's governance system.

Recommendation 8 of the JCCG requested that the TSX review and revise the definition of significant shareholder so that the intent of the existing guideline is met when a de facto control block exists that represents less than a majority of the voting shares. The definition of significant shareholder in Guideline 2 currently uses the bright line test of "a majority of the votes for the election of the board of directors". This test was chosen intentionally to eliminate uncertainty and to avoid requiring the board to carry out an investigation to ascertain whether a particular shareholder can elect a majority of the directors. In addition, because the definition of "significant" or "controlling" shareholder proposed by the JCCG may vary from the definition under laws regulating certain industries, such a standard for corporate governance purposes could raise issues of consistency. After careful consideration, the standard contained in Guideline 2 remains unchanged.

Finally, the general acceptance in the marketplace of the current structure and language of the Guidelines was considered in amending the Guidelines.

SPECIFIC CHANGES

The Guidelines have been amended to:

1. Reflect the JCCG recommendations in four changes to the Guidelines:

   - the role of the board in adopting a strategic planning process;
   - the role of the chair or other director to ensure the board functions independently of management;
   - the introduction of financial literacy and accounting expertise requirements for audit committee members; and
   - to conform to current practice, reference to the executive committee has been deleted from Guideline 9.

2. Add “Practice Notes” to the Guidelines. These Practice Notes will provide useful guidance to issuers on corporate governance. This represents a practical way to support the underlying principles of several of the Recommendations. The Practice Notes will be beneficial to listed issuers and provide a strong foundation to the TSX’s annual review initiative detailed below.

3. Revise the disclosure requirements in the TSX Company Manual for greater clarity, principally by integrating sections 473 and 475 and removing section 472. Over the years, the TSX has received many comments to the effect that the instructions found in Section 473 (Disclosure Requirement) and Section 475 (Complete Disclosure) were somewhat confusing. This measure will further clarify the existing obligation of each listed issuer to disclose its corporate governance system and, where its system differs from the Guidelines, to disclose the reasons for the difference.

4. Have the Guidelines apply to non-corporate issuers. The amended language in Section 473 (Disclosure Requirements) requires listed issuers which are not business corporations, such as trusts and partnerships, to disclose their governance systems with reference to the Guidelines to the extent the Guidelines are applicable to their form of organization.

The amended Guidelines, together with the relevant Practice Notes, and marked to show changes from the current Guidelines, are set out in Appendix A.

The TSX agrees with the JCCG that the development of good corporate governance is an ongoing process that is important to review periodically. Accordingly, the TSX has initiated a formal annual review of corporate governance disclosure practices of TSX listed issuers. The summary of such a review will be made available to listed issuers on an annual basis.

PUBLIC INTEREST ASSESSMENT

The proposed amendments to the Guidelines are more reflective of market and investor expectations of appropriate corporate governance practices. The amended Guidelines, with the addition of the Practice Notes, will facilitate issuer’s disclosure of their practices and assist them in meeting these expectations. Consequently, the TSX believes that these amendments are in the best interests of the capital markets of Ontario. Given the importance of corporate governance practices in today’s capital markets, the TSX believes that public comment on the amended Guidelines is warranted. As a result, the amendments to the Guidelines will therefore only become effective following public notice, a comment period and the approval of the OSC. It is anticipated that disclosure in accordance with the amended Guidelines will be mandatory for TSX issuers with a year-end on or after December 31, 2002.

BY ORDER OF THE BOARD OF DIRECTORS

LEONARD P. PETRILLO
VICE PRESIDENT, GENERAL
COUNSEL AND SECRETARY

APPENDIX A

M. CORPORATE GOVERNANCE

~~Introduction~~

~~Sec. 472~~
~~The Exchange's guidelines for effective corporate governance are drawn from the report entitled "Where Were the Directors?" that was issued in December 1994 by the Toronto Stock Exchange Committee on Corporate Governance in Canada. The Exchange subsequently adopted the disclosure requirement set out in Section 473, below, which has been in place since 1995.~~

Disclosure Requirements

Sec. 472

For the purposes of sections 472 and 473:

"company" includes a corporation, trust, partnership or other form of business organization;

"corporation" means a company incorporated under a business corporation act or similar legislation;

"inside director" means a director who is a member of management;

"outside director" means a director who is not a member of management;

"related director" means a director who is not an unrelated director or is a member of management;.

"significant shareholder" means a shareholder with the ability to exercise a majority of the votes for the election of the board of directors; and

"unrelated director" means a director who is independent of management and is free from any interest and any business or other relationship which could, or could reasonably be perceived to, materially interfere with the director's ability to act with a view to the best interests of the company, other than interests and relationships arising from shareholding.

Every listed corporation incorporated in Canada or a province of Canada shall make full and complete disclosure of its system of corporate governance on an annual basis in its annual report or information circular. The disclosure shall be made with reference to each of the guidelines set out in Section 473 and where the corporation's system is different from any of the guidelines, each difference and the reason for the difference shall be clearly disclosed. Every listed company which is not a corporation shall also make full and complete disclosure of its system of governance on an annual basis in its annual filing. The disclosure shall be appropriate to the listed company's form of business organization and shall, to the extent applicable, refer to the established guidelines set out in Section 473.

In addition to disclosures of its system of governance, every listed company shall disclose, in general terms, the operation of its system of governance.

Guidelines

Sec. 473

The following are the guidelines for effective corporate governance:

(1) The board of directors of every corporation should explicitly assume responsibility for the stewardship of the corporation[1.1] and, as part of the overall stewardship responsibility, should assume responsibility for the following matters:

(a) adoption of a strategic planning process and approval of a strategic plan which takes into account, among other things, the opportunities and risks of the business;

(b) the identification of the principal risks of the corporation's business and ensuring the implementation of appropriate systems to manage these risks;

(c) succession planning, including appointing, training and monitoring senior management;

(d) a communication policy for the corporation[1.2]; and

(e) the integrity of the corporation's internal control and management information systems.

[1.1] *Practice Note: In order to help boards discharge appropriately their stewardship responsibility, boards should adopt a formal mandate setting out their responsibilities. Such mandates can also be used in conducting regular assessments of board effectiveness referred to in Guideline 5. In describing the responsibilities of the board, it would be appropriate for the corporation to describe:*

- *the decisions requiring prior approval of the board;*
- *measures for receiving shareholder feedback; and*
- *the board's expectations of management.*

[1.2] *Practice Note: In assuming responsibility for the communication policy of the corporation, the board should ensure that the policy: (i) addresses how the corporation interacts with analysts and the public; (ii) contains measures for the corporation to avoid selective disclosure; and (iii) is reviewed annually.*

(2) The board of directors of every corporation should be constituted with a majority of individuals who qualify as unrelated directors. ~~An unrelated director is a director who is independent of management and is free from any interest and any business or other relationship which could, or could reasonably be perceived to, materially~~

~~interfere with the director's ability to act with a view to the best interests of the corporation, other than interests and relationships arising from shareholding. A related director is a director who is not an unrelated director.~~ If the corporation has a significant shareholder, in addition to a majority of unrelated directors, the board should include a number of directors who do not have interests in or relationships with either the corporation or the significant shareholder and which fairly reflects the investment in the corporation by shareholders other than the significant shareholder. ~~A significant shareholder is a shareholder with the ability to exercise a majority of the votes for the election of the board of directors.~~

(3) The application of the definition of "unrelated director" to the circumstances of each individual director should be the responsibility of the board which will be required to disclose on an annual basis whether the board has a majority of unrelated directors or, in the case of a corporation with a significant shareholder, whether the board is constituted with the appropriate number of directors which are not related to either the corporation or the significant shareholder. ~~Management directors are related directors.~~ The board will also be required to disclose on an annual basis the analysis of the application of the principles supporting this conclusion. [3.1]

[3.1] *Practice Note: Relevant points of discussion in making this analysis include:*

- *composition of the board;*
- *whether the board has a majority of unrelated directors and the basis of this analysis; and*
- *if the corporation has a significant shareholder, whether the corporation satisfies the requirement for fairly reflecting the investment of minority shareholders in the corporation and the basis for this analysis.*

(4) The board of directors of every corporation should appoint a committee of directors composed exclusively of outside~~, i.e., non-management,~~ directors, a majority of whom are unrelated directors, with the responsibility for proposing to the full board new nominees to the board [4.1] and for assessing directors on an ongoing basis.

[4.1] *Practice Note: The full board should engage in a disciplined process to determine, in light of the opportunities and risks facing the corporation, what competencies, skills and personal qualities it should seek in new board members in order to add value to the corporation. The results of such a discussion provide a framework for the work of those directors charged with developing lists of candidates. Prospective candidates, once identified, can be approached by the chair of the board, the chair of the nominating committee or another director appointed by the board to be responsible for recruiting directors, with or without the CEO, to explore their interest in joining the board.*

(5) Every board of directors should implement a process to be carried out by the nominating committee or other appropriate committee for assessing the effectiveness of the board as a whole, the committees of the board and the contribution of individual directors.[5.1]

[5.1] *Practice Note: In describing the process for assessing board, committee and director effectiveness, identify which director or committee of the board has responsibility for these assessments and how frequently these assessments are made.*

(6) Every corporation, as an integral element of the process for appointing new directors, should provide an orientation and education program for new recruits to the board.[6.1]

[6.1]*Practice Note: Boards should ensure that prospective candidates fully understand the role of the board, the role of the committees of the board and the contribution individual directors are expected to make, including in particular, the commitment of time and energy that the corporation expects of its directors.*

(7) Every board of directors should examine its size and~~, with a view to determining the impact of the number upon effectiveness,~~ undertake, where appropriate, a program to establish a board size ~~reduce the number of directors to a number~~ which facilitates ~~more~~ effective decision-making.

(8) The board of directors should review the adequacy and form of the compensation of directors and ensure the compensation realistically reflects the responsibilities and risk involved in being a~~n effective~~ director.

(9) Subject to guideline 13, c~~C~~ommittees of the board of directors should generally be composed of outside directors, a majority of whom are unrelated directors, although some board committees~~, such as the executive committee,~~ may include one or more inside directors.

(10) Every board of directors should expressly assume responsibility for, or assign to a committee of directors the general responsibility for, developing the corporation's approach to governance issues. This committee would, among ~~amongst~~ other things, be responsible for the corporation's response to these governance guidelines.

(11) The board of directors, together with the CEO, should develop position descriptions for the board and for the CEO, including the definition of the limits to management's responsibilities. In addition, the board should approve or develop the corporate objectives which the CEO is responsible for meeting and assess the CEO against these objectives.[11.1]

[11.1] *Practice Note: The board or a committee of the board should assess the CEO, and if a committee conducts the assessment, the results should be reported to the board.*

(12) Every board of directors should implement structures and procedures which ~~have in place appropriate structures and procedures to~~ ensure that the board can function independently of management. An appropriate structure would be to (i) appoint a chair of the board who is not a member of management with responsibility to ensure the board discharges its responsibilities or (ii) ~~adopt alternate means such as assigning~~ assign this responsibility to ~~a committee of the board or to a~~ an outside director, sometimes referred to as the "lead director". ~~Appropriate measures may~~The chair or lead director should ensure that the board carries out its responsibilities effectively which will involve the board meeting on a regular basis without management present ~~or~~ and may involve ~~expressly~~ assigning the responsibility for administering the board's relationship to management to a committee of the board.[12.1]

[12.1] *Practice Note: Discuss board effectiveness, management of the board and liaison between the board and management in describing the mandates of the board, committees of the board and of the chair of the board. If the board does not have a chair separate from management, it is essential that the corporation discuss the structures and processes that are in place to facilitate the functioning of the board independently of management. In addition, to ensure the board carries out its responsibilities:*

- *the chair or lead director should ensure the board understands the boundaries between board and management responsibilities;*
- *prospective candidates should fully understand the role of the board and the contribution they are expected to make; and*
- *the board should address its responsibilities under the governance system.*

(13) The audit committee of every board of directors should be composed only of unrelated ~~outside~~ directors. All of the members of the audit committee should be financially literate and at least one member should have accounting or related financial expertise. Each board shall determine the definition of and criteria for "financial literacy" and "accounting or related financial expertise".[13.1] The board should adopt a charter for the audit committee which sets out t~~T~~he roles and responsibilities of the audit committee which should be specifically defined so as to provide appropriate guidance to audit committee members as to their duties[13.2]. The audit committee should have direct communication channels with the internal and external auditors to discuss and review specific issues as appropriate[13.3]. The audit committee duties should include oversight responsibility for management reporting on internal control. While it is management's responsibility to design and implement an effective system of internal control, it is the responsibility of the audit committee to ensure that management has done so.

[13.1] *Practice Note: An acceptable definition of "financial literacy" is the ability to read and understand a balance sheet, an income statement and a cash flow statement. An acceptable definition of "accounting or related financial expertise" is the ability to analyze and interpret a full set of financial statements, including the notes attached thereto, in accordance with Canadian generally accepted accounting principles.*

[13.2] *Practice Note: The audit committee charter should set out explicitly the role and responsibility of the audit committee with respect to:*

- *its relationship with and expectation of the external auditors including the establishment of the independence of the external auditor;*
- *its relationship with and expectation of the internal auditor function;*
- *its oversight of internal control;*
- *disclosure of financial and related information; and*
- *any other matters that the audit committee feels are important to its mandate or that the board chooses to delegate to it.*

The audit committee charter should specify that the external auditor is ultimately accountable to the board of directors and the audit committee as representatives of shareholders.

The board of directors should review and reassess the adequacy of the audit committee charter on an annual basis.

13.3 *Practice Note: The audit committee should discuss with the auditor the quality and not just the acceptability of the corporation's accounting principles. The audit committee should implement structures and procedures to ensure that it meets the auditors on a regular basis in the absence of management.*

(14) The board of directors should implement a system which enables an individual director to engage an outside adviser at the expense of the company in appropriate circumstances. The engagement of the outside advisor should be subject to the approval of an appropriate committee of the board.

~~Complete Disclosure~~

~~Sec. 475~~

~~The disclosure regarding a company's system of corporate governance relative to each of the guidelines set out in Section 474 should be complete. While the disclosure regarding each guideline may be relatively brief it should address at least the following points:~~

~~mandate of the board, which should set forth duties and objectives;~~

- ~~the composition of the board, whether the board has a majority of unrelated directors and the basis for this analysis; if the company has a significant shareholder, whether the company satisfies the requirement for fairly reflecting the investment of minority shareholders in the corporation and the basis for this analysis;~~
- ~~if the board does not have a chair separate from management, the structures and processes which are in place to facilitate the functioning of the board independently of management;~~
- ~~description of the board committees, their mandates and their activities;~~
- ~~description of decisions requiring prior approval by the board;~~
- ~~procedures in place for recruiting new directors and other performance-enhancing measures, such as assessment of board performance;~~
- ~~measures for receiving shareholder feedback and measures for dealing with shareholder concerns; and~~
- ~~the board's expectations of management.~~