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CCGG publishes 2009 Best Practices in Disclosure of Director Related Information

The Canadian Coalition for Good Governance (CCGG) recently published its 2009 edition of Best Practices in Disclosure of Director Related Information, a guide intended to "improve disclosure about directors." According to the CCGG, the purpose of the document is to "recommend disclosure practices that exceed the minimum requirements set out in the regulations." The guide also states that the most effective disclosure is easy to find and understand, accurate and complete and given in a context that gives the information meaning. Specifically, the guide deals with disclosure of director-related information in five separate sections, as outlined below.

Section A – Shareholder voting

This section discusses the methods of voting for directors preferred by the CCGG. An example of a form of proxy considered to be a "best practice" is included as well a list of issuers who have adopted a majority voting policy for their director elections. As the CCGG has previously stated, it recommends individual director voting using a checkbox to indicate voting preference (vote “for” or “withhold”) along with adoption of a majority voting policy. The CCGG also recommends that a report of voting results should be posted on SEDAR within 10 business days of an AGM and should include the results based on the number of proxy votes cast for or withhold from the election of directors and auditors, along with those cast for or against any company or shareholder sponsored resolutions. There is also a discussion on the results from the CCGG’s annual study on voting methods. Among other results highlighted from the study, the guide notes that 74% of companies in the S&P/TSX Composite Index now allow their shareholders to vote with respect to individual directors (contrasted with the 26% that still employ slate voting).

Section B – Director information

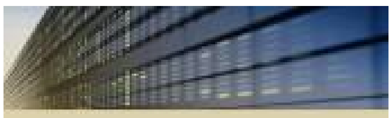
Section B provides guidance for companies that want to adopt “exemplary” disclosure practices and provides examples of how certain issuers have chosen to communicate information on matters such as director selection and orientation, background, share ownership, compensation and performance assessment. The CCGG encourages issuers to either adopt or adapt these disclosure practices.

Section C – Proxy circular layout

Section C includes examples of enhanced proxy circular layout. Best practices include one page summaries for each section of the proxy, section summaries within the discussion on corporate governance and the use of summary tables for committee reports.

ALSO, ON FOLLOWING PAGE:

RiskMetrics Group releases voting policies for 2010 proxy season



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This newsletter was prepared by members of the Securities Group at Stikeman Elliott.

Section D – Innovations

In the 2009 guide, innovative disclosure practices have been incorporated into the guide as best practices where feasible. Section D provides examples of innovations in disclosure practices adopted by various companies, including disclosure regarding the year-over-year changes in share holdings for the board as a whole.

Section E – Guide to providing “best practice” disclosure checklist

Section E consists of a checklist that issuers can use to compare their disclosure practices against the CCGG’s "best practices" and is a meant as a tool for drafting 2010 proxy disclosure.

RiskMetrics Group releases voting policies for 2010 proxy season

On November 20, RiskMetrics Group released its 2010 updates to its proxy voting guidelines. The publication of the guidelines follows a comment period on draft policies that ended on November 11. Notably, updates to its Canadian benchmark corporate governance policy were also released. Citing the recent attention in Canada on slate ballots and executive compensation, the updates focus particularly on these two issues.

With respect to slate ballots, RiskMetrics will now recommend a withold vote on directors with slate ballots where it has identified corporate governance practices falling short of best practice or where there exist concerns regarding compensation practices and the alignment of pay with performance. Such governance practices that, in addition to a slate ballot, could result in a withhold recommendation include: the participation of insiders on key committees, the lack of a separate nominating or compensation committee, a disconnect between pay and performance, disclosure concerns, or a board or key committee that has less than a majority of independent members. The policy, however, will not apply to contested director elections. Compelling reasons against the application of the policy are also provided, including a company's recent graduation to the TSX or a commitment to replace slate elections with individual director elections within a year. Meanwhile, RiskMetrics also stated that under "extraordinary circumstances", it may recommend a vote against or withhold in certain cases, including material failures of governance or certain egregious actions related to the director's service on other boards.

Respecting executive compensation, RiskMetrics will now recommend that management proposals for an advisory shareholder vote on compensation (say-on-pay) be considered on a case-by-case basis. RiskMetrics provides general principles regarding pay-for-performance and provides a list of factors to be considered in determining how to vote on managements' say-on-pay proposals. Such factors include: the evaluation of peer group benchmarking, an assessment of compensation components, the clarity of disclosure and the mix of fixed versus variable pay.

The definition of excessive severance payments is also being changed in RiskMetrics' policy respecting problematic pay practices. Severance payments are currently considered excessive if they are greater than three times cash compensation, and the threshold will now be dropped to two times cash compensation. A section on risk-mitigating pay practices is also being added to the policy. In the case of problematic compensation practices, RiskMetrics will generally recommend a vote against management advisory vote proposals on say-on-pay and/or a withhold vote from compensation committee members. Equity plans considered to be vehicles for problematic compensation practices will also garner a vote against.

Further, while RiskMetrics stated that a vote is generally based on a "preponderance of problematic elements", certain practices may lead to a withhold or against vote on a stand-alone basis. Such practices may include: a general omission of timely information necessary to comprehend the rationale for compensation process and outcome, an overly generous new hire package for a new CEO, contracts containing multi-year guarantees for salary increases and bonuses, interest free or low interest loans to employees for exercising options, excessive severance or change-in-control provisions, unjustifiably large bonus payouts, excessive perks and problematic option granting practices.

RiskMetrics also released policy updates for the United States, Europe and international markets.

For further information, please contact your Stikeman Elliott representative or any member of our Corporate Finance and Securities Group listed at www.stikeman.com

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