

Revised Guidelines with Practice Notes

TSX COMPANY MANUAL

M. CORPORATE GOVERNANCE

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.

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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. 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.

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- (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. 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 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 undertake, where appropriate, a program to establish a board size which facilitates 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 director.

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- (9) Subject to Guideline 13, committees of the board of directors should generally be composed of outside directors, a majority of whom are unrelated directors, although some board committees 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 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 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) assign this responsibility to an outside director, sometimes referred to as the "lead director". 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 and may involve 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 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 the 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

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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.

