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CANADIAN REGULATION OF DIRECTOR NOMINATION AND ASSESSMENT

This Canadian corporate governance policy, entitled “National Policy 58-201 Corporate Governance Guidelines,” (the “Policy”) is reflective of policies within a number of jurisdictions. However, this Policy is somewhat unique, *e.g.*, compared to the United States’ equivalent NYSE Corporate Governance Rules (see Table 1), given the emphasis within the Canadian Policy on the recruitment and assessment of individual directors, with a view to considering their competencies and skills and applicable position descriptions.

What this means for TSX-listed companies is that the ramifications of this Policy carry important implications for the recruitment and assessment practices of directors of listed company boards in Canada. There are emerging ‘best practices’ that are being recognized by a large consortium of institutional shareholders, the Canadian Coalition for Good Governance (2006), within company boards that are innovative in their approach to implementing the above Policy in the area of director selection. Two companies recognized by this consortium in the area of director selection, for instance, were Nexen Inc. and the Canadian Imperial Bank of Commerce. Both of these companies, advised by the author, were cited for their competency skills matrix for directors, among other factors, such as continuing education disclosure. Second, companies were recognized for innovative practices in the area of director assessment, including “peer reviews,” whereby directors assess one another on their effectiveness.

The effect of this recognition means that large institutional shareholders are beginning to focus their efforts on the rigor and transparency with which directors are recruited and assessed. Novel tools and approached, *e.g.*, confidential peer and self assessment questionnaires, “evergreen” lists of potential directors, competency and skills matrixes for each director, 360 degree assessments (whereby a review by management is included in the director evaluation program, *e.g.*, Nexen Inc.) will continue to emerge as TSX-listed companies begin to comply with the above Policy, and disclose to shareholders that rigorous, transparent and viable director recruitment and evaluation programs are in place.

It is premature to determine, at this point, whether, empirically, such practices contribute, in a causal manner, to board effectiveness, director effectiveness, or shareholder performance; however, preliminary qualitative research suggests that there may be a relationship, yet to be demonstrated quantitatively, between how individual directors are recruited and assessed, the effectiveness of the directors and the board, and, ultimately, corporate financial performance for shareholders and returns for other non-shareholder stakeholders.

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