

THE MANITOBA SECURITIES COMMISSION
MSC RULE 2005-12
(Section 149.1, *The Securities Act*)

National Instrument 58-101
Disclosure of Corporate Governance Practices

PART 1 – DEFINITIONS AND APPLICATION

Definitions

1.1 In this Instrument,

"**AIF**" has the same meaning as in National Instrument 51-102 *Continuous Disclosure Obligations*;

"**CEO**" means a chief executive officer;

"**code**" means a code of business conduct and ethics;

"**executive officer**" has the same meaning as in National Instrument 51-102;

"**marketplace**" has the same meaning as in National Instrument 21-101 *Marketplace Operation*;

"**MD&A**" has the same meaning as in National Instrument 51-102;

"**MI 52-110**" means Multilateral Instrument 52-110 *Audit Committees*, as enacted or adopted by the securities regulatory authority in each jurisdiction in Canada except British Columbia;

"**SEDAR**" has the same meaning as in National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*;

"**significant security holder**" means, in relation to an issuer, a security holder that

(a) owns or controls 10% or more of any class of the issuer's voting securities, or

(b) is able to affect materially the control of the issuer, whether alone or by acting in concert with others;

"**subsidiary entity**" has the meaning set out in MI 52-110;

"**U.S. marketplace**" means an exchange registered as of the effective date of this Instrument as a 'national securities exchange' under section 6 of the 1934 Act, or the Nasdaq Stock Market; and

"**venture issuer**" means an issuer that, at the end of its most recently completed financial year, does not have any of its securities listed or quoted on the Toronto Stock Exchange, a U.S. marketplace, or a marketplace outside of Canada and the United States of America.

Meaning of independence

1.2(1) In a jurisdiction other than British Columbia, a director is independent if he or she would be independent within the meaning of section 1.4 of MI 52-110.

1.2(2) In British Columbia, a director is independent if

(a) a reasonable person with knowledge of all the relevant circumstances would conclude that the director is independent of management of the issuer and of any significant security holder, or

(b) the issuer is a reporting issuer in a jurisdiction other than British Columbia, and the director is independent under subsection (1).

Application

1.3 This Instrument applies to a reporting issuer other than:

(a) an investment fund or issuer of asset-backed securities, as defined in National Instrument 51-102;

(b) a designated foreign issuer or SEC foreign issuer, as defined in National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*;

(c) a credit support issuer or exchangeable security issuer that is exempt under sections 13.2 and 13.3 of National Instrument 51-102, as applicable; and

(d) an issuer that is a subsidiary entity, if

(i) the issuer does not have equity securities, other than non-convertible, non-participating preferred securities, trading on a marketplace, and

(ii) the person or company that owns the issuer is

(A) subject to the requirements of this Instrument, or

(B) an issuer that has securities listed or quoted on a U.S. marketplace, and is in compliance with the corporate governance disclosure requirements of that U.S. marketplace.

PART 2 – DISCLOSURE AND FILING REQUIREMENTS

Required disclosure

2.1(1) If management of an issuer, other than a venture issuer, solicits a proxy from a security holder of the issuer for the purpose of electing directors to the issuer's board of directors, the issuer must include in its management information circular the disclosure required by Form 58-101F1.

2.1(2) An issuer, other than a venture issuer, that does not send a management information circular to its security holders must provide the disclosure required by Form 58-101F1 in its AIF.

Venture issuers

2.2(1) If management of a venture issuer solicits a proxy from a security holder of the venture issuer for the purpose of electing directors to the issuer's board of directors, the venture issuer must include in its management information circular the disclosure required by Form 58-101F2.

2.2(2) A venture issuer that does not send a management information circular to its security holders must provide the disclosure required by Form 58-101F2 in its AIF or annual MD&A.

Filing of code

2.3 If an issuer has adopted or amended a written code, the issuer must file a copy of the code or amendment on SEDAR no later than the date on which the issuer's next financial statements must be filed, unless a copy of the code or amendment has been previously filed.

PART 3 – EXEMPTIONS, EFFECTIVE DATE AND CITATION

Exemptions

3.1(1) The securities regulatory authority or regulator may grant an exemption from this rule, in whole or in part, subject to any conditions or restrictions imposed in the exemption.

3.1(2) Despite subsection (1), in Ontario, only the regulator may grant an exemption.

Effective date

3.2(1) This Instrument comes into force on June 30, 2005.

3.2(2) Despite subsection (1), sections 2.1 and 2.2 only apply to management information circulars, AIFs and annual MD&A, as the case may be, which are filed following an issuer's financial year ending on or after June 30, 2005.

Citation

3.3
58-101.

This Instrument may be referred to as MSC Rule 2005-12 or National Instrument

Form 58-101F1
Corporate Governance Disclosure

1. Board of Directors —

- (a) Disclose the identity of directors who are independent.
- (b) Disclose the identity of directors who are not independent, and describe the basis for that determination.
- (c) Disclose whether or not a majority of directors are independent. If a majority of directors are not independent, describe what the board of directors (the **board**) does to facilitate its exercise of independent judgement in carrying out its responsibilities.
- (d) If a director is presently a director of any other issuer that is a reporting issuer (or the equivalent) in a jurisdiction or a foreign jurisdiction, identify both the director and the other issuer.
- (e) Disclose whether or not the independent directors hold regularly scheduled meetings at which non-independent directors and members of management are not in attendance. If the independent directors hold such meetings, disclose the number of meetings held since the beginning of the issuer's most recently completed financial year. If the independent directors do not hold such meetings, describe what the board does to facilitate open and candid discussion among its independent directors.
- (f) Disclose whether or not the chair of the board is an independent director. If the board has a chair or lead director who is an independent director, disclose the identity of the independent chair or lead director, and describe his or her role and responsibilities. If the board has neither a chair that is independent nor a lead director that is independent, describe what the board does to provide leadership for its independent directors.
- (g) Disclose the attendance record of each director for all board meetings held since the beginning of the issuer's most recently completed financial year.

2. Board Mandate — Disclose the text of the board's written mandate. If the board does not have a written mandate, describe how the board delineates its role and responsibilities.

3. Position Descriptions —

- (a) Disclose whether or not the board has developed written position descriptions for the chair and the chair of each board committee. If the board has not developed written position descriptions for the chair and/or the chair of each board committee, briefly describe how the board delineates the role and responsibilities of each such position.

(b) Disclose whether or not the board and CEO have developed a written position description for the CEO. If the board and CEO have not developed such a position description, briefly describe how the board delineates the role and responsibilities of the CEO.

4. Orientation and Continuing Education —

(a) Briefly describe what measures the board takes to orient new directors regarding

(i) the role of the board, its committees and its directors, and

(ii) the nature and operation of the issuer's business.

(b) Briefly describe what measures, if any, the board takes to provide continuing education for its directors. If the board does not provide continuing education, describe how the board ensures that its directors maintain the skill and knowledge necessary to meet their obligations as directors.

5. Ethical Business Conduct —

(a) Disclose whether or not the board has adopted a written code for the directors, officers and employees. If the board has adopted a written code:

(i) disclose how a person or company may obtain a copy of the code;

(ii) describe how the board monitors compliance with its code, or if the board does not monitor compliance, explain whether and how the board satisfies itself regarding compliance with its code; and

(iii) provide a cross-reference to any material change report filed since the beginning of the issuer's most recently completed financial year that pertains to any conduct of a director or executive officer that constitutes a departure from the code.

(b) Describe any steps the board takes to ensure directors exercise independent judgement in considering transactions and agreements in respect of which a director or executive officer has a material interest.

(c) Describe any other steps the board takes to encourage and promote a culture of ethical business conduct.

6. Nomination of Directors —

(a) Describe the process by which the board identifies new candidates for board nomination.

(b) Disclose whether or not the board has a nominating committee composed entirely of independent directors. If the board does not have a nominating committee composed entirely

of independent directors, describe what steps the board takes to encourage an objective nomination process.

(c) If the board has a nominating committee, describe the responsibilities, powers and operation of the nominating committee.

7. Compensation —

(a) Describe the process by which the board determines the compensation for the issuer's directors and officers.

(b) Disclose whether or not the board has a compensation committee composed entirely of independent directors. If the board does not have a compensation committee composed entirely of independent directors, describe what steps the board takes to ensure an objective process for determining such compensation.

(c) If the board has a compensation committee, describe the responsibilities, powers and operation of the compensation committee.

(d) If a compensation consultant or advisor has, at any time since the beginning of the issuer's most recently completed financial year, been retained to assist in determining compensation for any of the issuer's directors and officers, disclose the identity of the consultant or advisor and briefly summarize the mandate for which they have been retained. If the consultant or advisor has been retained to perform any other work for the issuer, state that fact and briefly describe the nature of the work.

8. Other Board Committees — If the board has standing committees other than the audit, compensation and nominating committees, identify the committees and describe their function.

9. Assessments — Disclose whether or not the board, its committees and individual directors are regularly assessed with respect to their effectiveness and contribution. If assessments are regularly conducted, describe the process used for the assessments. If assessments are not regularly conducted, describe how the board satisfies itself that the board, its committees, and its individual directors are performing effectively.

INSTRUCTION:

(1) This Form applies to both corporate and non-corporate entities. Reference to a particular corporate characteristic, such as a board, includes any equivalent characteristic of a non-corporate entity.

Income trust issuers must provide disclosure in a manner which recognizes that certain functions of a corporate issuer, its board and its management may be performed by any or all of the trustees, the board or management of a subsidiary of the trust, or the board, management or employees of a management company. In the case of an income trust,

references to "the issuer" refer to both the trust and any underlying entities, including the operating entity.

(2) If the disclosure required by Item 1 is included in a management information circular distributed to security holders of the issuer for the purpose of electing directors to the issuer's board of directors, provide disclosure regarding the existing directors and any proposed directors.

(3) Disclosure regarding board committees made under Item 8 of this Form may include the existence and summary content of any committee charter.

Form 58-101F2
Corporate Governance Disclosure
(Venture Issuers)

1. Board of Directors — Disclose how the board of directors (the board) facilitates its exercise of independent supervision over management, including

- (i) the identity of directors that are independent, and
- (ii) the identity of directors who are not independent, and the basis for that determination.

2. Directorships — If a director is presently a director of any other issuer that is a reporting issuer (or the equivalent) in a jurisdiction or a foreign jurisdiction, identify both the director and the other issuer.

3. Orientation and Continuing Education — Describe what steps, if any, the board takes to orient new board members, and describe any measures the board takes to provide continuing education for directors.

4. Ethical Business Conduct — Describe what steps, if any, the board takes to encourage and promote a culture of ethical business conduct.

5. Nomination of Directors — Disclose what steps, if any, are taken to identify new candidates for board nomination, including:

- (i) who identifies new candidates, and
- (ii) the process of identifying new candidates.

6. Compensation — Disclose what steps, if any, are taken to determine compensation for the directors and CEO, including:

- (i) who determines compensation, and
- (ii) the process of determining compensation.

7. Other Board Committees — If the board has standing committees other than the audit, compensation and nominating committees, identify the committees and describe their function.

8. Assessments — Disclose what steps, if any, that the board takes to satisfy itself that the board, its committees, and its individual directors are performing effectively.

INSTRUCTION:

(1) This form applies to both corporate and non-corporate entities. Reference to a particular corporate characteristic, such as a board, includes any equivalent characteristic of a non-corporate entity.

Income trust issuers must provide disclosure in a manner which recognizes that certain functions of a corporate issuer, its board and its management may be performed by any or all of the trustees, the board or management of a subsidiary of the trust, or the board, management or employees of a management company. In the case of an income trust, references to "the issuer" refer to both the trust and any underlying entities, including the operating entity.

(2) If the disclosure required by Items 1 and 2 is included in a management information circular distributed to security holders of the issuer for the purpose of electing directors to the issuer's board of directors, provide disclosure regarding the existing directors and any proposed directors.

(3) Disclosure regarding board committees made under Item 7 of this Form may include the existence and summary content of any committee charter.