COMPLIANCE AND GOVERNANCE FOR PUBLIC MINING COMPANIES - RULES, RISKS AND EXPOSURES - HOW TO DEAL WITH THEM

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CORPORATE GOVERNANCE

“The recent financial crises … have made amply clear to … countries around the world why the issues of transparency and accountability in corporate governance are so important to investor confidence and to overall national economic performance. Corporate governance relates to the internal means by which corporations are operated and controlled. While governments play a central role in shaping the legal, institutional and regulatory climate within which individual corporate governance systems are developed, the main responsibility lies with the private sector.”

(OECD Principles of Corporate Governance, 1999)

“Different legal systems, institutional frameworks and traditions mean that a range of different approaches have developed around the world. Common to all good corporate governance regimes, however, is a high degree of priority placed on the interest of shareholders, who place their trust in corporations to use their investment funds wisely and effectively.”

(OECD Principles of Corporate Governance, 1999)

OECD Principles - followed in Chile and Peru.

WHO IS RESPONSIBLE FOR WHAT?
OECD Principles of Corporate Governance, 1999 state that a board of directors is responsible for:

- monitoring managerial performance
- achieving an adequate return for shareholders
- preventing conflicts of interest
- balancing competing demands on the corporation
- implementing systems designed to ensure that the corporation obeys all applicable laws including tax, competition, labour and other laws
- other stakeholder interests including those of employees, creditors, customers, suppliers and the local community

Stated in another manner:

“The board of directors of every corporation should explicitly assume responsibility for the stewardship of the corporation and, as part of the overall stewardship responsibility, should assume responsibility for the following matters:

(a) adoption of a strategic planning process;
(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 communications policy for the corporation; and
(e) the integrity of the corporation’s internal control and management information systems.”

Where were the Directors? - Guidelines for Improved Corporate Governance in Canada, Toronto Stock Exchange- 1994 Report on Corporate Governance

“Good governance is an organic process, with many changing parts comprising an evolving whole. One board’s checklist may be another board’s ‘Charybdis’— an experience to be avoided at all costs”. *Translation – like a “nightmare”

(Report of the NACD Blue Ribbon Commission on Board Evaluation: Improving Director Effectiveness, 2001)
Watch out for the foolhardy who think that their companies have little to worry about because their governance models are second to none.

- Make sure your governance models are well oiled, monitored and followed.

- You can have all the best codes of conduct, systems of checks and balances and other governance procedures established, but:
  
  (a) if you do not apply them well or you do not have the right people, you realize very quickly that it is the HUMAN FACTOR that can make or break you;

  (b) “Corporate governance is as complex as humanity itself, because that is what it’s about, human behaviour”.

  (Barbara G. Stymiest, President, Toronto Stock Exchange, 2002)

- To have an effective board, you must have the right people, the right culture, the right issues, the right information, the right process, the right follow-through and the “right stuff”.

  (NACD Report on Board Evaluations: Improving Director Effectiveness, 2001)

- All of this demands better boards of directors, better senior management, integrity and more attention; and creates more onerous board and senior management responsibilities, and greater personal exposure.

- The road to success involves Competence, Attention, Integrity and Compliance.

- Success equates to risk taking.

- As is well known in the mining industry, you must Anticipate risk, Understand it and Embrace it!

- Never forget: the role of a board of directors is to oversee the business of a company, set policies and to insist on policies being applied.

- The role of a board is not to micro-manage (leave that to management).

- Best practices today demand a far more proactive approach in executing the overseeing role.

- Companies today must have well balanced boards and can ill afford inadequately qualified directors. However, you may have to live with some of them.
• Also very important: structure your business so that directors do not become so preoccupied with concerns of personal liability that they are not applying their best business judgement or other special talents (for which they have been brought onto a board).

• Avoid old casual practices that equate to serious personal risks to directors, management, auditors, advisors and shareholders.

• Complexities and risks of today require that boards of directors and their committees go far beyond previous conventional standards and beliefs to meet new governance demands and minimize their exposures.

• Old conventional ways and beliefs are not always right!

• Aside from usual reasons, why has all of this new governance business become so important for your mining companies?

• If your companies want to be or are involved in seeking equity or other financing in North America or if they have or plan to have a presence in North America then they will need to comply with new North American corporate governance standards.

**Corporate Governance - Why Doing It Right Is Important**

• Enron/Worldcom and other global governance disasters drastically changed the corporate world of governance.

• What appeared to be the very best boards of directors, management, auditors and codes of conduct were just the opposite (Enron board named in 2000 by Chief Executive magazine as one of the five best boards in America).

• Disasters like Enron and Worldcom have triggered a rushed demand for much higher standards of corporate compliance, auditor independence and the enactment of much tougher enforcement laws, the likes of which the business and professional community would have never imagined just a few months ago.

**SARBANES-OXLEY ACT OF 2002 (“SOx”) – THE BONE CRUSHER OF GOVERNANCE**

• New, hard-hitting law on corporate governance.

• Extensive rules requiring extremely careful review and compliance.

• Severe penalties for some non-compliance:

  (i) millions in fines
(ii) imprisonment

- The Securities and Exchange Commission (“SEC”) and the U.S. Stock Exchanges have followed suit with SOx and there is fallout everywhere.

- Canada is carefully assessing corporate governance changes which will not be as severe.

**IMPORTANCE OF CANADA - MINING FINANCING AND CORPORATE GOVERNANCE**

- The number of equity mining financings on the Toronto Stock Exchange (“TSX”) and TSX Venture Exchange exceeds that of all other major global jurisdictions combined.

- Canada is an excellent source of financing for foreign mining companies even under changing corporate governance times.

- In addition to its Rules, the TSX has Guidelines (not laws or regulations) to effectively and reasonably address today’s corporate governance concerns. The TSX has proposed further additions to these Guidelines. Details are in the materials provided with this presentation.

- Canadian lawmakers, securities regulators and stock exchanges are in the process of sizing up the U.S. SOx legislation and in the process of enacting their own legislation, regulations and guidelines.

- The SOx legislation is under careful scrutiny at home and abroad.

- SOx is viewed by many to be over reactive, over reaching and in need of more realistic refinement in a number of areas. One of them is trying to restrict the extent to which SOx applies to foreign companies.

- Canada has taken a sensible corporate governance approach long before SOx in dealing with any combination of:
  
  (a) aggressive accounting;
  
  (b) conflicts of interest;
  
  (c) immoral conduct;
  
  (d) lack of transparency;
  
  (e) lack of adequate accountability;
(f) poor overseeing of management by boards;
(g) inadequate checks and balances;
(h) incompetence; and
(i) timely disclosure.

Improving Corporate Governance

- Areas that must constantly improve to achieve sound corporate governance and financial success include:

  (a) accountability and transparency;
  (b) timely and full material disclosure;
  (c) sound codes of conduct and ethics disclosures (whistleblowers);
  (d) avoidance of conflicts by officers, directors, auditors and legal counsel;
  (e) enforcing codes of conduct (actions speak louder than words);
  (f) importance of having “independent” or “unrelated” directors;
  (g) sound systems of controls and detection;
  (h) sound risk management practices;
  (i) good mandates for boards, committees and management;
  (j) reasonable rights for all shareholders; and
  (k) knowledge of and compliance with laws and regulations.

USE OF MINING DUE DILIGENCE APPROACH

- The world’s mining industry has gone through an enormous “due diligence” and governance transformation, particularly since Bre-X.

- Even though “mining due diligence” is slightly different from “corporate governance due diligence”, many of the principles involved are the same.

- Keep “mining due diligence” principles and standards in mind when implementing good corporate governance practices.

- For instance, keep in mind the care you apply in:
(a) mineral valuation standards and reporting;
(b) hedging reporting;
(c) accounting principles related to reporting on exploration, reserves and mines that differ from jurisdiction to jurisdiction;
(d) environmental compliance;
(e) cross border caution;
(f) accurate and timely disclosures of material changes; and
(g) distinctions between civil and common law requirements of various jurisdictions.

GO BACK TO BASICS - EVERYTHING OLD IS NEW AGAIN!

• In most common law and civil law countries, standards of care required by law for senior officers and boards of directors have been of the highest standards.

• These basics are sound and effective and have been well enforced in the past. What is happening, however, is that new legislation and regulations have created greater regulatory enforcement powers and legislative requirements for detailed corporate governance practices, which have much sharper legislative teeth than ever before.

• When facing all these governance changes, you still have to first go back to the basics.

• For example, the Canada Business Corporations Act, like many other corporate statutes and civil law provisions, sets the standard of care for directors and officers as follows:

  “Every director and officer of a corporation in exercising his powers and discharging his duties shall:

  (i) act honestly and in good faith with a view to the best interests of the corporation; and

  (ii) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.”

• In doing so, a director has a fiduciary responsibility and a duty of loyalty (that is to act in good faith and avoid a conflict between his interest and his duty).
• These duties as described, and each and every noun and modifier used in defining them, have been examined with microscopes in a maze of cases and articles.

• These duties for years have demanded the highest of standards for officers and directors and continue to do so in these turbulent times.

• See tips for officers and directors on how to develop checklists for fulfilling duties in material provided with this presentation.

DIRECTORS EXERCISING GOOD JUDGEMENT

• The U.S. has a very important business judgement rule applied by their courts in assessing the conduct of directors.

• You should study it carefully.

• One of the better descriptions of the business judgement rule is contained in the Corporate Director’s Guidebook produced by the Section of Business Law of the American Bar Association, which reads as follows:

> ‘This rule…protects a disinterested director from personal liability to the corporation and its shareholders, even though a corporate decision the director has approved turns out to be unwise or unsuccessful. In reviewing a disinterested director’s conduct, a court will not substitute its judgement (particularly in hindsight) for the judgement of the director, provided the director:

  (i) acted in good faith;

  (ii) was reasonably informed; and

  (iii) rationally believed the action taken was in the best interests of the corporation.’

(Section of Business Law, American Bar Association, “Corporate Directors Guidebook”, 2d ed. (American Bar Association, 1994) at pp. 11-12.)

• Accordingly, the business judgement rule, unlike the standards of conduct encompassed in the duties of care and loyalty, is not a description of a duty or of standards used to determine whether a breach of duty has occurred.

• It is an element of judicial review used in analyzing director conduct to determine whether a director should be held personally liable.
• If the rule applies, directors are presumed to have exercised their judgement in good faith and in the rational belief that the actions were taken in the best interests of the corporation.

• In such circumstances, a court will not examine the merits of a decision of directors or substitute its judgement regarding the wisdom of a decision within the business judgement of director.

• Canadian courts follow similar rules in assessing whether or not directors have acted prudently in fulfilling their duties.

BUSINESS JUDGEMENT

• See also a leading U.S. case, In Re: Caremark International Inc.,* in which a derivative action was brought against directors alleging they breached their fiduciary duties by failing to monitor effectively the conduct of company employees who violated state and federal laws involving multiple felonies, including unlawful kickbacks. The decision was in favour of the directors who showed that they had set up and applied sound policies to detect wrongdoings.

  *698 A.2d 959 Del. Ch. Lexis 125.

• Important to Note: Many new legislative and guideline standards being reviewed today have been created based on standards and practices required of the very largest of the public companies.

• It is difficult for many large public companies to maintain these new high threshold standards.

• It is much more difficult for smaller public companies.

• Has the corporate governance pendulum swung too far?

• What is clear: the Old Ways of many boards cannot continue.

NOW A QUICK PEEK AT THE U.S. SARBANES-OXLEY ACT OF 2002 (“SOx”)

• There is no shortcut to understanding the impact of this legislation.

• SOx is extremely complex and still evolving.

• You must get the very best of advice from top counsel.

• If you do not and you are subject to it, you are in serious trouble.
• You may already be subject to it and you do not know it.

• SOx requires companies to make major structural governance changes, and to meet more extensive reporting and disclosure obligations; and involves new and major civil and criminal offences.

**Does SOx Apply To You? Implications?**

• SOx applies to non-U.S. companies if securities are listed on a U.S. stock exchange or are registered under the *Securities Exchange Act* or if the companies are otherwise required to file reports under the Act.

• SOx applies to their officers, directors and outside auditors.

• SOx has tough and extensive rules on:
  
  (a) independence of auditors;
  
  (b) overseeing audits;
  
  (c) prohibiting non-audit consulting by auditors (with some exceptions);
  
  (d) independence of directors;
  
  (e) governing relationships among officers, board, audit committee and auditor;
  
  (f) strengthening the role, responsibility and reporting of audit committees;
  
  (g) protection of whistleblowers;
  
  (h) banning most types of personal loans to executives with grandfathering exceptions;
  
  (i) enhancing disclosure to the public; “real time” disclosure of material information;
  
  (j) addressing further restrictions for requirements and enforcement selective disclosure;
  
  (k) forfeiture of funds from insider profits;
  
  (l) insider trading;
  
  (m) more duties on lawyers to play a watchdog role (very contentious when considering the principles of solicitor/client privilege);
(n) creating new public board to oversee public auditors and give SEC new powers; and

(o) heavier civil and criminal penalties.

- The SEC has made complimentary and more extensive revisions for corporate governance and compliance.

- The New York Stock Exchange (“NYSE”), the American Stock Exchange and NASDAQ are in unison with SOx and have introduced new corporate governance listing standards and guidelines that substantively tie in with the objectives of SOx, with a number of differences between the exchanges, but they follow consistent principles.

- SOx does grant the SEC authority to provide certain exemptions for non-U.S. companies.

- The SEC has provided for certain very limited accommodations to non-U.S. companies in some cases, and in other cases has offered no accommodations.

- This entire U.S. governance and compliance area is in transition requiring further changes with submissions being made by many different parties and regulatory bodies for clarification, edification and revisions. The impact on non-U.S. companies involve a maze of rules and exceptions requiring advice of U.S. legal counsel.

**Sample of Rules:**

- Chief Executive and Chief Financial Officers (“CEO/CFOs”) must certify in writing that:

  (a) quarterly and annual financial statements comply with the *Securities Exchange Act*;

  (b) information “fairly presents, in all material respects, the financial condition and results of the operating issuer”;

  (c) there are no untrue statements of material fact or omissions of material facts;

  (d) internal controls and procedures are established and that the design ensures information is made known to them;

  (e) they evaluated effectiveness of disclosure controls and procedures; and
they presented to their board their conclusions on controls and procedures.

*Note:* Very difficult and unrealistic to fully meet a number of the certification requirements in the real world.

- Criminal penalties in connection with “knowingly” and “willfully” certifying financial statements when they do not comply (up to a $5 million fine or 20 years in prison or both).

- Huge fines and:
  - up to 20 years for concealing documents;
  - up to 10 years for failing to preserve audit work papers; and
  - up to 25 years for securities fraud.

  *Note:* Some of the penalties under SOx may not be enforceable against officers or directors outside the U.S.

**STEPS BEING TAKEN IN CANADA BY TSX AND SECURITIES REGULATORS**

- Predict that they will not be as severe as SOx.

**TSX Corporate Governance Guidelines**

- These Guidelines are not “rules-based”, unlike a good deal of the current and proposed U.S. standards which are mandatory.

- A Canadian approach for Guidelines is “principle-based”, emphasizing good Guidelines, combined with mandatory requirements.

- See present Guidelines in material provided with this presentation.

- Amendments are being made to the TSX voluntary Corporate Governance Policy.

- Objective of amendments: a more accommodating approach for achieving new corporate governance standards.

**Proposed TSX Guidelines**

Include:

(a) board responsibilities should be enlarged to adopt a strategic planning process (including policies on opportunities and risks), succession
planning and a communication policy, and adopt responsibilities for the integrity of internal control and management information systems;

(b) board should have an independent lead director and a majority of individuals who are “unrelated”. Note: “unrelated” director generally means a director who is independent of management and is free from any interest and any business or other relationship which could, or be reasonably be perceived to, materially interfere with the director’s ability to act with a view to the best interest of the corporation, other than interest and relationships arising from shareholding; *

(c) committees of boards should be composed exclusively of outside directors, a majority of whom are unrelated directors;

(d) a committee should be formed to assess effectiveness of a board;

(e) board should bear responsibility of determining if board members are “unrelated” directors and annually report that a majority are unrelated directors;

(f) independent director committee should be made responsible for nominees for the board and for assessing effectiveness of board;

(g) orientation and education programs for new board recruits;

(h) board should determine size that facilitates effective decision-making and should examine its size accordingly;

(i) board should review the adequacy and form of compensation of directors and ensure the compensation realistically reflects the responsibilities and risk involved in being a director;

(j) board should expressly assign to a committee the responsibility for developing an approach to corporate issues and governance guidelines;

(k) there should be a process for board assessment of the CEO;

(l) board should put in place structures and procedures that help to function independently of management (e.g. an appropriate structure being a chair of a board who is not a member of management but is an outside director, normally described as “lead” director);

* Note: the proposed Guidelines provide that if a company has a significant shareholder, in addition to a majority of unrelated directors, a board should include a number of directors who do not have interests in or relationships with either the corporation or the significant shareholder and who fairly reflect the investment in the corporation by shareholders other than the significant shareholder.
(m) audit committee should be composed only of unrelated directors, with all members being financially literate and with at least one member having accounting or related financial expertise;

(n) board should determine the definition of and criteria for “financial literacy” and “accounting or related financial expertise”;

(o) board should adopt a charter for the audit committee (roles and responsibilities specifically defined); and

(p) listed issuers should disclose their corporate governance systems and disclose when they differ from TSX Guidelines.

Proposed TSX Practice Notes

- The TSX will provide practical suggestions for meeting Guidelines. These include detailed suggestions on formal written mandates of boards and majority of individuals who qualify as “unrelated” directors.

Comments Given in Proposed Practice Notes

- 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.

- The audit committee charter should specify that the external auditors ultimately are accountable to the board of directors and the audit committee as representatives of shareholders. The board should review and re-assess the adequacy of the audit committee charter on an annual basis.

- 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 with the auditors on a regular basis in the absence of management.

- The board should implement a system which enables an individual director to engage an outside advisor at the expense of the company in appropriate circumstances.
TSX Venture Exchange

- For junior issuers, with smaller and relatively simplistic operations and governance structures, many of the corporate governance requirements being imposed by SOx or NYSE listing requirements are stated by the Exchange as not being relevant to the Exchange’s issuers.

Ontario Securities Commission

- Legislation is being proposed to provide the Ontario Securities Commission (“OSC”) with more powers of enforcement with increased fines and imprisonment for violations of the Province of Ontario Securities Act. The proposed legislation:
  
  (a) prohibits engaging in acts that a person or company knows or reasonably ought to know perpetrates a fraud or results in a misleading appearance of trading activity in, or an artificial price for, a security.

  (b) contains a general prohibition on making statements that a person or company knows or reasonably ought to know are misleading or untrue and significantly affect, or would reasonably be expected to have a significant effect on, the market price or value of a security.

  (c) provides powers to make rules requiring the appointment of and prescribing requirements for audit committees, requiring systems of internal controls, requiring disclosure and procedures, requiring CEOs and CFOs to provide certifications relating to internal controls, as well as to disclosure controls and procedures, and defining auditing standards for reporting on internal controls.

- Note: Anticipate more realistic and appropriate Canadianized provisions in a number of areas than are found in SOx.

Other Proposed Governance Legislation in Canada

- Further proposed legislation provides for restructuring public accounting, establishing an oversight board for accountants, establishing and enforcing quality control and accounting standards, reviewing processes, investigating and disciplining.

NEED TO BUILD A STRONG BOARD AND COMMITTEES OF A BOARD - EVEN IF YOU ARE NOT INVOLVED IN NORTH AMERICA

- A Perfect Mining Company Board?
  
  (a) A rare bird for any company.
(b) Go for an “effective” board not a “perfect” board. Be realistic.

- This Report is a “must” read!
- An executive summary from the Report is included in the materials provided with this presentation.
- The Report provides further insight on an effective board, including how to find:
  ✓ the right people;
  ✓ the right culture;
  ✓ the right issues;
  ✓ the right information;
  ✓ the right process; and
  ✓ the right follow-through.

RECOMMENDATIONS ON A BOARD

- Look for a chair or lead director who is an exceptional business person (preferably with a strong mining background) with practical and financial expertise.
- Look for an individual who meets the SOx qualifications of a financial expert, with great judgement, even a sixth sense, who knows the business and has great instincts to sense when there is “monkey business” going on whether it be financial, ethical or poor judgement.
- Plus:
  ✓ have a first class candidate to chair your audit committee, a financial expert;
  ✓ have two exceptionally seasoned mining directors;
  ✓ one of the directors should be well suited for the role of chair of the governance committee;
  ✓ one director has to be very good on compensation;
  ✓ one must be a smart risk taker who is a good assessor of performance;
✓ a well versed corporate legal counsel;
✓ someone astute in corporate governance;
✓ a marketing director; and
✓ a technology and communication director;
✓ The smaller the number of directors, the more diversified they must be. Get directors who can meet a combination of these qualifications.

Note: Senior management should also be equally balanced.

While you are thinking about your board (or senior management), think about these words:

- Proactive  
- Courageous  
- Timely
- Prepared  
- Asks tough questions  
- Integrity
- Focused  
- People Skills  
- Principled
- Available  
- Expertise  
- Creative
- Independent thinker  
- Balance Inquisitive  
- Culture positive

In contrast, look out (avoid):

- the nitpicker;
- the busy-bee;
- the retired golfer or fisherman;
- the internet nerd;
- the stock ticker;
- the bump-on-the-log; and
- the know it all.*

- Throughout all this, you must have a sense of humour and face the real world.
- A difficult issue: how do you get rid of imperfect directors without materially upsetting things?
- The setting up of a good board (or a senior management team) is only the beginning.

* Check out the creator of some of these wonderful incompetent characters, Robert W. Lear, as reported in the Director’s Monthly of the National Association of Corporate Directors, Vol. 25, No. 4, April, 2001 in a column called The Imperfect Board; and his article in Chief Executive Magazine, December, 2001 in which he composed a “Perfect Board”.

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Vital to success is the implementation and application of good corporate governance, practices, written policies, mandates, terms of reference or charters for the board, its committees, management, internal auditors and staff.

Remember again, however, it is not enough to just set things up. Too often companies have reasonably good corporate governance rules and standards, but they ineffectively apply them (Enron is a good example).

It is vital to put sound governance rules and standards into action and have them constantly monitored both at the board and management levels.

The same principles apply for committees of boards, with three of the most important committees being the audit, compensation and governance committees.

**AUDIT COMMITTEES OF BOARDS - A GOVERNANCE HOT SPOT**

Enron’s audit committee failed miserably:

(a) Cursory approach.

(b) Denied important information.

(c) Did not fully understand some important specific information.

(d) Committee failure compounded by management’s and auditor’s failure.

(e) First, be clear on the responsibilities of an audit committee.

The role of an audit committee is to act on behalf of a board of directors in overseeing all material aspects of the company’s financial reporting, control, and audit functions, except those specifically related to the responsibilities of another standing committee of a board. The audit committee monitors the qualitative aspect of financial reporting to shareholders and on company processes for the management of financial risk and for compliance with significant applicable legal and regulatory requirements in respect of the financial affairs of a company.
Many companies are making a serious mistake in overloading their audit committees or having unrealistic expectations as to the responsibilities of audit committees.

This creates greater liability exposure on audit committee members.

Many risk management issues go far beyond financial risk management.

Consider the formation of a risk management committee or shifting some of the overburdening responsibilities to the governance or strategic planning committees where they are more appropriately suited.

An audit committee’s prime focus is on external auditors, internal auditors, accurate and transparent financial reporting and financial risks.

Financial risks lead to risks involved in matters such as environmental concerns, faulty products, related transactions, ethics and codes of conduct.
**CONCERN WITH OVERLOADING THE AUDIT COMMITTEE - MANY RISK MANAGEMENT ISSUES BEYOND THE AUDIT COMMITTEE**

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**RISK AREAS INVOLVED WITH SCANDALS WHICH ARE A PRIME CONCERN TO AUDIT COMMITTEES**

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<tr>
<td>Conflicts of Interest</td>
<td>Inadequate Supervision</td>
<td>Lack of Good Systems and Controls</td>
</tr>
<tr>
<td>Ineffective Management, Boards or Board Committees</td>
<td>Lack of Timely Follow-ups</td>
<td>Poor Checks &amp; Balances</td>
</tr>
</tbody>
</table>
• SOX requires all listed companies to have an audit committee comprised solely of “independent” directors (exemptions in appropriate cases), and requires the SEC to direct public companies to disclose in periodic reports whether the company’s audit committee members are financially literate. There must be at least one member who is a “financial expert”; and if not, the company must disclose in periodic reports why not.

• TSX Guidelines on this are similar, as noted previously.

• U.S. Rules have extensive definitions on who is “independent”, with their basic test being comparable to the TSX’s basic “unrelated” test. Check the definitions carefully.

• SOX requires (TSX recommends) that audit committees have written charters (mandates), continual charter review and reporting thereon. Note: again, it is one thing to have a charter, it is another thing to act on it.

• For “best practices” for audit committees, see reference material provided with this presentation.

OTHER MATTERS TO CONSIDER

• Minimizing exposure outside of your country.

• Become much more informed of the risk that you face as companies, officers and directors in doing business in other jurisdictions. It is not safe to loosely assume that the laws are virtually the same or that risks and liability exposures of companies, directors and officers are the same as in your jurisdiction.

• Have a good international code of conduct and continually review and apply it.

• Foreign court judgements: If there is a foreign lawsuit pending with your company, get the very best of advice. Rules on the enforcement of foreign judgements in various jurisdictions can be quite different and in some cases far-reaching.

• Never assume that you as officers or directors are not personally exposed. Get the very best of legal advice from the foreign jurisdiction.

• Directors and officers should have expert advice on what their company can do for them through insurance, indemnification and possible protective funding, regardless of whether the company stays at home or goes abroad for any reason.

• Keep up to date on insurance with insurance experts.
• Less for more: Be ready for more serious exemptions on insurance coverage with enormous premium increases.

See reference material provided with this presentation on protecting directors and officers.

CONCLUSION

• Get on side NOW!

• New and evolving corporate governance laws, regulations and guidelines demand action for protection and success.

• Controlling shareholders or CEO’s can no longer load up their boards with weak directors.

\[ \text{Strong Board} = \text{Strong Management (sooner than later, if not already)} = \text{Sound Corporate Governance} = \text{Greater Opportunity for a Preferred Return to Shareholders} \]

• All roads lead to the human factor, and success depends on the respect and trust of boards and management.

• Weakness in any of the areas of Competence, Attention, Integrity and Compliance = Trouble.

• Risk is an integral part of business, well known to the mining industry.

• Anticipate Risk, Understand it and Embrace it!

• Sound rules of corporate governance must not and need not blunt good business acumen.

• In natural resource language, there are exceptional proven reserves for equity financing on the Toronto Stock Exchange. Start drilling!