

Preparing your Annual Information Circular

Corporate Finance Branch

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Presentation Outline

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10:35 – 11:00	Questions	N/A

Welcome and Introduction to the OSC SME Institute

OSC SME Institute – Objectives

Our goal is to:

- Help SMEs navigate the regulatory waters
- Demystify disclosure requirements so companies can focus on building their business
- Reduce SMEs' cost of compliance so that this money can be better spent on strategic initiatives
- Provide an opportunity for informal dialogue with OSC staff

Executive Compensation Disclosure Requirements

Sources

- Form 51-102F6 *Statement of Executive Compensation (Form 51-102F6)* (published September 18, 2008)
- CSA Staff Notice 51-331 *Report on Staff's Review of Executive Compensation Disclosure (the Staff Notice)* (published November 20, 2009)
- Amendments to Form 51-102F6 (published July 22, 2011)
- Proposed National Instrument 51-103 *Ongoing Governance and Disclosure Requirements for Venture Issuers (NI 51-103)* (published September 13, 2012)
 - Executive compensation disclosure requirements are set out in Proposed Form 51-103F4 *Information Circular*

Objective of Executive Compensation Disclosure

- All direct and indirect compensation provided to certain executive officers and directors in connection with services provided to the company or a subsidiary of the company must be disclosed
- Objective of this disclosure is to
 - communicate what the board of directors intended the company to pay or award each NEO and director for financial year
 - provide insight into executive compensation as a key aspect of the overall stewardship and governance of the company, and
 - help investors understand how decisions about executive compensation are made

Named Executive Officer (NEO)



- Reference to individuals acting in a similar capacity of CEO or CFO are generally the same individuals who signed and filed annual and interim certificates to comply with National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*

NI 51-103: Instead of five individuals, the form will require executive compensation disclosure for three individuals of a venture issuer (CEO, CFO and 1 executive officer)

Executive Compensation Disclosure Requirements

Item 1 – General Provisions

General Provisions (Preparing the form)

- Disclose all compensation for each of the three most recently completed financial years, paid, payable, awarded, granted, given, or otherwise provided, directly or indirectly, by the company or a subsidiary of the company to each NEO or director in any capacity

NI 51-103: The disclosure requirement is the same but only requires disclosure for the last two most recently completed financial years

General Provisions (Preparing the form)

- Compensation includes payments, grants, awards, gifts and benefits and would generally include
 - Salaries
 - Consulting fees, management fees or other types of “retainer fees”
 - Bonuses
 - Stock options, compensation securities and similar instruments (i.e., SARs, DSUs)
 - Pensions and employer paid RRSP contributions
 - Perquisites such as club memberships, parking, financial assistance and other allowances

General Provisions – External management companies

- If an external management company provides executive management services to the company directly or indirectly, disclose any compensation that
 - the company paid directly to an individual retained by the external management company who is acting as an NEO or director of the company, and
 - the external management company paid to the individual that is attributable to services provided to the company directly or indirectly

Example: ABC Co. has retained the services of a CFO and CEO from EMS Ltd. The Company pays EMS Ltd. \$200,000 for CFO and \$300,000 for the CEO.

General Provisions – External Management Companies

- If an external management company provides the company's executive management services and also provides executive management services to another company (i.e., the parent or a subsidiary of the company)
 - disclose the entire compensation the external management company paid to the individual
 - if the management company allocates the compensation paid to an NEO or director, disclose the basis or methodology used to allocate this compensation

Example: ABC Co. has retained the services of a CEO from EMS Ltd. And has also retained the services of the same CEO for its subsidiary. The Company pays \$200K for his work at ABC Co. and \$75,000 for his services at the subsidiary.

Should report full \$275K as compensation on the SCT.

General Provisions - Points to Consider

Areas	Consideration
<p>Plain Language</p>	<ul style="list-style-type: none"> Information should be clear and concise Refer to Item 1.5 of Companion Policy 51-102CP
<p>New reporting issuers</p>	<ul style="list-style-type: none"> We expect a minimum amount of disclosure in the CD&A and SCT CD&A should disclose how the Board intends to compensate its NEOs and directors
<p>Departures from format</p>	<ul style="list-style-type: none"> Adding tables is permissible Omit columns or table if not relevant However, do not change Summary Compensation Table
<p>External Management Companies</p>	<ul style="list-style-type: none"> Disclose details of the management services agreement with external management company

Item 2 – Compensation Discussion and Analysis (CD&A)

Compensation Discussion & Analysis (CD&A)

Purpose

- To provide a narrative overview that will put into perspective the disclosure and the numbers in the tables that follow
- Focuses on how and why a company arrived at specific executive compensation decisions and policies

Compensation Discussion & Analysis (CD&A)

- Describe & explain all significant elements of compensation, including
 - the objectives of any compensation program or strategy
 - what the compensation program is designed to reward
 - each element of compensation and why the company chooses to pay each element
 - how the company determines the amount for each element, and
 - how each element of compensation and the company's decisions about that element fit into the company's overall compensation objectives

Compensation Discussion & Analysis (CD&A)

NI 51-103:

- Describe and explain all significant elements of compensation, including at a minimum each element of compensation that accounts for 10% or more of the NEO's total compensation.
- Disclose any significant events that have occurred during the most recently completed financial year that have significantly affected compensation including whether any performance criterion or goal was waived or changed and, if so, why.
- Disclose how the venture issuer determines the amount to be paid for each significant element of compensation including whether the process is based on objective, identifiable measures or a subjective decision.

CD&A – Benchmarking

- Clearly state the benchmark and explain its components, including the companies included in the benchmark group and the selection criteria
 - should also describe why the benchmark group and selection criteria are considered by the company to be relevant
- Examples of relevant selection criteria may include
 - geography where the companies are located (i.e. Canada and the U.S.)
 - similar industry
 - similar revenue range
 - similar market capitalization range
 - companies with whom it competes for executive talent

Example – Boilerplate Disclosure Benchmarking

No discussion of
how benchmark is
used

List of benchmark
group is not disclosed

The CEO's compensation is based upon compensation ranges for comparable positions at publicly traded, TSX-listed companies or direct comparable companies the industry.

Example – Entity-Specific Disclosure Benchmarking

Describes selection criteria

Describes how benchmark is used

Lists benchmark group

The CEO's compensation is based upon compensation ranges for comparable positions at publicly traded, TSX-listed companies or direct comparable companies the xx industry. The criteria considered for the selection of comparator or peer group of companies was total revenue (\$25M-\$75M), market capitalization (> \$100M) and net income (\$10M-\$50M). The benchmark group is used by the company to confirm whether the company has established comparable executive compensation levels to their peers. The Company's compensation is positioned at the median of its peer group and is consistent with the Company's stated compensation philosophy. The list of comparable companies that the Compensation Committee reviewed consisted of the following:

- ABC Co.
- XYZ Ltd.
- Peanut Co.
- Almond Ltd.
- CDG Co.
- xx Co.
- yy Co.
- zz Co.

CD&A – Performance goals or similar conditions

- Disclose performance goals or similar conditions that are based on objective, identifiable measures, such as the company's share price or earnings per share.
- If based on non-GAAP financial measures, explain how the company calculates these performance goals from its financial statements
- If performance goals or similar conditions are subjective, the company may describe the performance goal or similar condition without providing specific measures
 - examples of subjective measures may include milestones, agreements or transactions

Example – Boilerplate Disclosure

Performance goals or similar conditions

No quantification of objective measures

In determining annual bonuses under the short term incentive plan and long term incentive plan, the Board takes into consideration both corporate and individual performance measures of the NEO. 50% of the STIP is based on achievement of specific corporate performance measures such as net earnings, share price performance, among others, and the remaining component relates to the individual performance of the NEO, which is more subjective and is based on individual measures established at the beginning of the year.

No disclosure of achievement of measures

Example – Entity-Specific Disclosure

Performance goals or similar conditions

In determining annual bonuses under the short term incentive plan and long term incentive plan, the Board takes into consideration both corporate and individual performance measures of the NEO. The Compensation Committee does not have discretion to award the short term incentive component without attainment of relevant individual and corporate performance goals. Under the terms of the plan, the NEO's maximum short term incentive as a percentage of base salary is 50%. The following is the structure and objectives for the NEO's short term incentive program:

	Performance Measure	Relative Weighting	Achievement in fiscal year
Corporate Performance Financial Measures (50% of total)	Net Earnings above \$xx million	15%	xx%
	Share price performance above xx%	10%	xx%
	Cash Flow from operations > \$xx million	10%	xx%
	Growth of sq footage of leasing	15%	xx%

Example – Entity Specific Disclosure (Cont'd)

Performance goals or similar conditions

The remaining 50% of the total short term incentive program is based on the NEO's individual performance component and includes subjective measures. The individual performance objectives include the following:

- *Grow sales through development and implementation of strategic plan*
- *Advance operational and strategic initiatives*
- *Improve financial systems*
- *Improve operating efficiencies in the xx division*
- *Build new relationships with suppliers*
- *Successfully implement new IT system*

The NEO achieved all of its individual performance components. As a result, the total bonus paid based on corporate performance (xx%) and individual performance measures (xx%) is 38%.

CD&A – Exemption to performance goals or similar conditions

- Disclosure of performance goals is not required if a reasonable person would consider that disclosing them would seriously prejudice the company's interests
- Company relying on the “serious prejudice” exemption must disclose the following
 - State that it is relying on the exemption
 - Explain why disclosing the performance goal would seriously prejudice its interests
 - Disclose the percentage of the NEO's total compensation that relates to the undisclosed goal
 - Disclose the anticipated difficulty in achieving the performance goal
- Exemption does not apply if performance goals or similar conditions are publicly disclosed

Example – Boilerplate Disclosure Exemption to performance goals or similar conditions

Company relying on serious prejudice exemption

No quantification of
growth target

No statement of
reliance on
exemption

*NEO bonuses are based, in part,
on the company achieving target
growth in square footage of
leasing and building opportunities
in the financial year.*

Example – Entity Specific Disclosure Exemption to performance goals or similar conditions

Statement of reliance
on exemption

Explanation of why
disclosing goal would
seriously prejudice
interests

NEO bonuses are based, in part, on the company achieving target growth in square footage of leasing and building opportunities in the financial year. We are relying on the serious prejudice exemption in respect of the performance goal noted above. Quantification of the growth target would adversely impact our competitive position by compromising the company's ability to negotiate competitive lease rates with prospective tenants or affecting its ability to acquire assets at the lowest cost. Approximately 15% of the maximum bonus of the NEO is related to this goal. Based on current market conditions, the Company believes that this goal is reasonably attainable.

CD&A – Compensation-related Risk Management

- Disclose whether the board of directors considered the implications of the risks associated with the company's compensation policies and practices
- If the company has completed a risk analysis, the company must disclose the following:
 - the extent and nature of the board's role in risk oversight
 - any practices the company uses to identify and mitigate compensation policies and practices that could encourage inappropriate or excessive risks, and
 - any identified risks that are reasonably likely to have a material adverse effect on the company

NI 51-103: Does not include a comparable disclosure requirement

Examples of Risk Mitigation Policies

- Examples of compensation policies and practices that may mitigate excessive risk taking from NEOs include
 - Stock ownership guidelines,
 - Clawback policies
 - Short-term incentives that are capped and do not provide minimum payouts
 - Long-term incentives that are directly tied to the company's financial performance
 - Pay-mix ratio and a high percentage of “at risk” pay
 - Considering strategic objectives and past performance in setting future pay
 - Non-compete and non-disclosure agreements with key management

Example – Boilerplate Disclosure

Compensation-related Risk Management

Does not disclose nature and extent of role

Does not discuss practices used to identify and mitigate risk

The Compensation Committee considers the implications of the risks associated with the Company's compensation policies and practices as part of its responsibilities to review and recommend the compensation policies and practices of the Company. The Committee did not determine that any risk associated with the Company's compensation policies and practices could negatively impact the Company. Please refer to the company's MD&A for risk factor disclosure.

Example – Entity Specific Disclosure

Compensation-related Risk Management

Extent and Nature of Role

Risk Mitigation Policies

The Compensation Committee is responsible for assessing risks in relation to the compensation policies and practices, and for developing policies and practices to mitigate and address any such risks. The Compensation Committee concluded that the compensation policies and practices of the Corporation do not give rise to risks likely to have any adverse effect on the Company. The fixed salary compensation component does not provide incentives for actions that might give rise to risk, and the bonus entitlements and LTIP are aligned with corporate performance achievements, are capped, and are not focused on a single performance measure. In addition, the Company has risk mitigation practices that include a clawback policy for both short and long term compensation, share ownership requirements for the NEOs and trading restrictions.

CD&A – Executive Officer & Director Hedging

- Disclose whether any NEO or director is permitted to purchase financial instruments that are designed to hedge or offset a decrease in the market value of equity securities granted as compensation or held, directly or indirectly, by them
- The ability to hedge may be a potential risk that could have a material adverse effect on the company

NI 51-103: Does not include a comparable disclosure requirement

CD&A – Compensation Governance

- Describe any policies and practices adopted by the board of directors to determine the compensation of executive officers and directors
- If the company has established a compensation committee, disclose
 - the **name** of each members and whether or not they are **independent**
 - whether any member has any **experience** that is relevant to his responsibilities in executive compensation
 - the **skills and experience** that enable the committee to make decisions on the suitability of the company's compensation policies and practices
 - the **responsibilities, powers and operation** of the committee

Example - Boilerplate Disclosure Compensation Governance

The Board relies on the knowledge and experience of the directors and the members of the Compensation Committee to set appropriate levels of compensation for executive officers. The Compensation Committee currently consists of Messrs. X and Y, both of who are independent directors and have direct and indirect expertise, experience and education relevant to their role as members of the Committee.

No discussion of
experience

Example – Entity Specific Disclosure Compensation Governance

Statement of
independence

Disclosure of
individual
experience

The Compensation Committee is comprised of two (2) directors: Messrs. X and Y. All members of the Compensation Committee are “independent” within the meaning of the CSA rules. The members of the Compensation Committee have experience in compensation matters through holding a variety of senior executive roles. In addition each of the members has sat or currently sits on the boards of other companies and the Chair has had significant experience in the area of human resources and compensation with prior line responsibility for human resources and as Chair of a Human Resources Committee for another publicly-traded company, XX Co. The Chair has also sat on the Company’s Audit Committee and presently sits on the Company’s Risk Committee of the Board. The Board believes that collectively, this experience provides the Compensation Committee with the knowledge, skills, experience and background to fulfill its mandate effectively.

CD&A – Compensation Governance (Consultant)

- If a compensation consultant was retained to assist the board in determining compensation for any of the company's directors or executive officers
 - State the name of the consultant and describe the mandate given
 - If the consultant provided ancillary services other than or in addition to compensation services
 - State this fact and explain the nature of the work
 - Disclose whether the board must pre-approve these other services
 - Disclose the fees paid for each of the two most recently completed financial years
 - Fees paid for executive compensation-related services
 - Fees paid for all other services

CD&A – Points to Consider

Areas	Considerations
Benchmarking	<ul style="list-style-type: none"> ▪ Disclose even if list extensive ▪ Disclose selection criteria of benchmark group ▪ If industry survey used → when only to provide <u>context</u> but not <u>main basis</u> for setting pay, then companies do not need to disclose list
Performance Goals	<ul style="list-style-type: none"> ▪ Quantify objective measures ▪ Specify the subjective measures ▪ Report on achievement of measures
Significant Elements of Compensation	<ul style="list-style-type: none"> ▪ If the Company did NOT award a bonus to the NEO during the year, company must disclose WHY <ul style="list-style-type: none"> • Did NEO not meet performance goals or similar conditions? • Adverse and unfavourable economic factors • Because of the strategy and objectives of the company in the short term
Risk	<ul style="list-style-type: none"> ▪ Avoid boilerplate disclosure ▪ Commentary in Item 2.1 lists situations where an NEO could potentially be encouraged to take inappropriate or excessive risks

Item 3 – Summary Compensation Table (SCT)

Summary Compensation Table (SCT)

- Main vehicle for the presentation of executive compensation
- Captures all forms of compensation
 - Includes dollar value for all cash and non-cash awards
 - Share and option-based awards are valued at the date of grant (GDFV)

Summary Compensation Table (SCT)

Name and principal position (a)	Year (b)	Salary (\$) (c)	Share awards (\$) (d)	Option awards (\$) (e)	Non-equity incentive plan compensation (\$) (f)		Pension value (\$) (g)	All other compensation (\$) (h)	Total compensation (\$) (i)
					Annual incentive plans (f1)	Long-term incentive plans (f2)			
CEO									
CFO									
A									
B									
C									

Share-Based and Option-Based Awards

- Grant date fair value of compensation is included in the SCT
 - Should reflect what the board of directors intended to award as compensation
 - Fair value may be based on the valuation methodologies set out in IFRS 2 or another reasonable methodology
 - Reconciliation to accounting fair value required if another methodology used
 - Aim is to provide an acceptable benchmark and allow for greater comparability between companies

NI 51-103: Disclosure of exercise of securities rather than grant date fair value. We are of the view that in the venture issuer context, options are granted with a view to future growth of the company rather than a specific value attributed at the grant date.

Item 4 - Incentive Plan Awards

Incentive Plan Awards

- Outstanding share & option based awards table
 - Provides snapshot of all outstanding unexercised option & share based awards
 - Disclose number and value of each unexercised award
- Non-equity incentive awards
 - Presents dollar value of share and option based awards if they were exercised at the vesting date
 - Presents value realized during the year for any non-equity incentive awards

Incentive Plan Awards

- Narrative discussion of all significant terms of all plan-based awards, including
 - **Process** the company uses to grant incentive plan awards
 - **Significant terms** of any award reported in the SCT, including the formula applied in determining amounts payable and vesting schedule
 - Any **repricing** or other significant **changes** to the terms of any incentive plan awards
 - **Performance goals** or similar conditions, or other significant conditions

Item 5 – Pension Plan Benefits

Pension Disclosure

- SCT includes all compensation relating to defined benefit (DB) or defined contribution (DC) plans
 - Captures compensatory items only
- Separate disclosure tables for DB and DC plans reflects best practice in Canada
 - Continuity table required for both types of plans
 - Intended to provide complete and consistent disclosure of pension obligations and provide a better basis to compare across issuers
- Describe and explain for each retirement plan in which an NEO participates any significant factors necessary to understand the information disclosed in the tables

Item 6 – Termination and Change of Control Benefits

Termination and Change of Control Benefits

- Required disclosure for all NEOs for four standard scenarios:
 - termination
 - resignation (whether voluntary, involuntary or constructive)
 - retirement
 - change of control

Termination and Change of Control Benefits

- Describe, explain, and where appropriate, **quantify** the following items:
 - Circumstances that trigger payments or benefits
 - Estimated incremental payments or benefits (using reasonable estimates where necessary)
 - How payment and benefit levels are determined
 - Any significant conditions or obligations to receiving payments or benefits
 - Any other significant factors
- Quantify the potential payments as if the triggering event occurred as the end of the most recent financial year

Example – Boilerplate Disclosure Termination and Change of Control Benefits

No quantification of
Termination benefits

The Company entered into an employment agreement with its NEO. The NEO is entitled, in the event of termination without cause and subject to certain limitations, to six months of their base salary plus an amount equal to the average bonus paid to the NEO over the past two preceding years...

Example – Entity Specific Disclosure Termination and Change of Control Benefits



Quantification of
Termination benefits

The Company entered into an employment agreement with its NEO. The NEO is entitled, in the event of termination without cause and subject to certain limitations, to six months of their base salary plus an amount equal to the average bonus paid to the NEO over the past two preceding years. As a result, upon termination without cause, the NEO would be entitled to \$1 million in salary and \$500,000 in bonus, assuming the termination took place on December 31, 2012.

Termination and Change of Control Benefits – Points to Consider

- Avoid solely providing narrative discussion
 - Quantify
- Provide disaggregated amounts rather than an aggregate amount for all NEOs
- Consider including information in tabular presentation
 - Effective and meaningful way of disclosing information

Item 7 – Director Compensation

Item 7 – Director Compensation

- Director compensation table similar to the SCT
 - Table captures compensation provided to directors for most recently completed financial year only
 - Includes similar columns found in SCT
- Narrative to describe and explain any factors necessary to understand information in the table, including
 - Standard arrangements and any compensation arrangements that are different from the standard arrangements
 - Any aspects of the CD&A that are different for directors

NI 51-103: Combines the disclosure of executive and director compensation and all forms of compensation in one table

Corporate Governance Disclosure

Corporate Governance Overview

- Corporate governance framework
- Corporate governance disclosure compliance review
- Corporate governance disclosure in information circular

Corporate Governance Framework

Regulatory framework

- National Policy 58-201 *Corporate Governance Guidelines*
- National Instrument 58-101 *Disclosure of Corporate Governance Practices*

Staff guidance

- CSA Staff Notice 58-303 *Corporate Governance Disclosure Compliance Review*
- CSA Staff Notice 58-306 *2010 Corporate Governance Disclosure Compliance Review*

National Policy 58-201 *Corporate Governance Guidelines*

Policy

- Adopted in every Canadian jurisdiction in 2005

Application

- Applies to all reporting issuers other than investment funds

Purpose

- Provides guidance to issuers on corporate governance practices
- Non-prescriptive guidelines - issuers are encouraged to consider guidelines in developing their own governance practices
- Recognizes that corporate governance is evolving

National Instrument 58-101 *Disclosure of Corporate Governance Practices*

Policy

- Adopted in every Canadian jurisdiction in 2005

Application

- Applies to all reporting issuers other than investment funds
- Subject to other limited exceptions

Purpose

- Requires issuers to disclose their corporate governance practices and file their code of business conduct and ethics

National Instrument 58-101 *Disclosure of Corporate Governance Practices* (cont'd)

- Disclosure of corporate governance practices in information circular

TSX-listed issuers

- Form 58-101F1 Corporate Governance Disclosure
- Must disclose corporate governance practices with reference to the guidelines

Venture issuers

- Form 58-101F2 Corporate Governance Disclosure (Venture Issuers)
- Must disclose corporate governance practices in areas addressed by the guidelines

Importance of Disclosure to Investors

- Protection of shareholders
 - Strong corporate governance disclosure regime is
 - Key feature of market-based monitoring of corporate conduct
 - Central to the ability of shareholders to exercise their voting rights effectively
 - Shareholders and potential investors require access to regular, reliable and comparable information in sufficient detail for them to assess the stewardship of the board and management and make informed decisions about the valuation, ownership and voting of shares

2010 Corporate Governance Disclosure Review

Review program

- 72 reporting issuers (TSX-listed and venture issuers)
- Corporate governance disclosure filed in spring 2010
- Follow-up to similar review in 2007

Results of review

- Unacceptable level of non-compliance with disclosure requirements
- 55% were required to make prospective enhancements to disclosure
- Disclosure issues largely related to
 - Use of boilerplate language
 - Insufficient detail in disclosure

CSA Staff Notice 58-306 *2010 Corporate Governance Disclosure Compliance Review*

Published on December 2, 2010

- **Primary purpose of notice**
 - Educational tool → help issuers improve their understanding of
 - Corporate governance disclosure requirements
 - Staff expectations regarding compliance
- **Guidance**
 - Examples of entity-specific disclosure
 - Questions to consider when drafting disclosure
 - Supplements guidance in CSA Staff Notice 58-303 *Corporate Governance Disclosure Compliance Review* (June 29, 2007)

Guidance on key areas of deficiency

- Board of directors
- Position descriptions
- Orientation and continuing education
- Ethical business conduct
- Nomination of directors
- Assessments

Corporate Governance Disclosure Requirements

1. Board of directors – non-independent directors

■ Requirement

- Disclose identity of directors who are not independent and describe basis for determination

■ Guidance

- Not sufficient to only describe a director as non-independent

Corporate Governance Disclosure Requirements

1. Board of directors – non-independent directors (cont'd)

■ Key points to consider

- Where a director has been identified as non-independent, the issuer must disclose, at a minimum:
 - that the non-independent director has a direct or indirect material relationship with the issuer, or a subsidiary or parent, which could, in the view of the board of directors, be reasonably expected to interfere with the exercise of his or her independent judgement
 - how it determined that the director has such a material relationship, and
 - the nature of the material relationship in sufficient detail for investors to understand it.

Corporate Governance Disclosure Requirements

1. Board of directors – meetings of independent directors

■ Requirement – TSX-listed issuers

- Disclose whether or not independent directors meet regularly without non-independent directors and members of management
 - If so, disclose number of meetings held
 - If not, describe what board does to facilitate open and candid discussion among independent directors

■ Guidance

- Reminder to disclose number of meetings (if applicable)
- If no regular meetings, explain steps taken to facilitate open and candid discussion among independent directors

Corporate Governance Disclosure Requirements

1. Board of directors – meetings of independent directors (cont'd)

■ Key points to consider

- Do the independent directors have a forum in which to address issues or concerns?
- At each board meeting, is a portion of the meeting reserved for independent directors where the non-independent directors and members of management are not in attendance?
- At each committee meeting, is a portion of the meeting reserved for independent directors where the non-independent directors and members of management are not in attendance?
- If not, do the independent directors have the opportunity to meet regularly and discuss matters of interest?

Corporate Governance Disclosure Requirements

1. Board of directors – independence of chair or lead director

■ Requirement – TSX-listed issuers

- Describe what board does to provide leadership for independent directors if it has neither a chair nor a lead director that is independent
- If not independent, explain steps taken to provide leadership to independent directors

■ Guidance

- Clearly disclose whether chair or lead director is independent
- If not, disclose specific steps taken to provide leadership to independent directors
- If no steps taken, explain rationale for that decision

Corporate Governance Disclosure Requirements

1. Board of directors – independence of chair or lead director (cont'd)

■ Key points to consider if not independent

- Has an independent director been tasked with the function of identifying whether the board's mandate is being effectively carried out by the board and its committees?
- How does the board create a balance of authority and provide for objective leadership?
- How does the issuer ensure that the responsibilities of the board are understood by both the board and management and that the boundaries between board and management responsibilities are understood and respected?

Corporate Governance Disclosure Requirements

1. Board of directors – independence of chair or lead director (cont'd)

■ Key points to consider if not independent (cont'd)

- Does the board provide all directors, including its non-independent directors, with unfettered access to information regarding the issuer's activities?
- How does the board ensure that the views of its independent directors are heard?
- Do the independent directors have the ability to engage outside advisors?

Corporate Governance Disclosure Requirements

2. Position descriptions

Example of disclosure

The issuer has not developed written position descriptions for the chair, the chair of each board committee and the CEO as each person has a mutual understanding of their respective roles.

- **Adequate?**
- **Useful information for investors?**

Corporate Governance Disclosure Requirements

2. Position descriptions (cont'd)

■ Requirement – TSX-listed issuers

- Disclose whether written position descriptions exist for chair, chair of each board committee and CEO
- If none, disclose how board delineates roles and responsibilities

■ Guidance

- Reminder to disclose whether written position descriptions exist
- If not, include brief summary of roles and responsibilities
- Not sufficient to merely indicate mutual understanding of roles

Corporate Governance Disclosure Requirements

3. Orientation

■ Requirement

- Briefly describe what measures, if any, the board takes to orient new directors regarding
 - Role of board, its committees and directors
 - Nature and operation of issuer's business

■ Guidance

- Describe measures taken to orient new directors, regardless of whether there is a formal program
- Not sufficient to simply disclose whether a formal orientation program exists

Corporate Governance Disclosure Requirements

3. Orientation (cont'd)

■ Key points to consider

- Do new directors meet with the chair, other directors and CEO? If so, when?
- Are they given the opportunity to ask questions about the role of the board, its committees and its directors, and about the nature of the issuer and its operations?
- Are they provided with briefings and copies of the issuer's key documents?
- Do they receive an orientation session in order to familiarize themselves with the issuer, its business, industry, senior management team and the contribution individual directors are expected to make?

Corporate Governance Disclosure Requirements

3. Orientation (cont'd)

■ Key points to consider (cont'd)

- Are they informed of the legal duties and obligations required of a director of a publicly-held entity?
- Are they provided with up-to-date information on the issuer's corporate organization, operations and strategy, its current year business plan and financial information?
- Does the issuer offer on-site visits to its corporate headquarters and main facilities?
- Has the board assigned a standing committee to be responsible for carrying out its orientation function?

4. Continuing education

■ Requirement

- Briefly describe what measures, if any, the board takes to provide continuing education for directors
- If none, a TSX-listed issuer must also describe how board ensures that its directors maintain necessary skill and knowledge

■ Guidance

- Not sufficient to simply state only whether education is provided or to provide a generic statement that education is available when needed
- Disclosure could include
 - Continuing education, briefings, or other educational activities
 - Director participation
 - Persons responsible for program

Corporate Governance Disclosure Requirements

5. Ethical business conduct

Example of disclosure

The issuer has adopted a written code of ethical and business conduct, and the board is responsible for monitoring compliance with the code.

- **Adequate?**
- **Useful information for investors?**

Corporate Governance Disclosure Requirements

5. Ethical business conduct (cont'd)

■ Requirement

- **TSX-listed issuer**
 - Disclose whether board has adopted written code of business conduct and ethics, and if so, how the board monitors compliance with the code, or
 - If the board does not monitor compliance, whether and how the board satisfies itself regarding compliance with the code
- **Venture issuer**
 - Disclose what steps, if any, the board takes to encourage and promote a culture of ethical business conduct

■ Guidance

- Not sufficient to simply state board monitors compliance
- State specific procedures/actions taken
- Responsibility for compliance (review of non-compliance, employee certification, whistleblower program)

Corporate Governance Disclosure Requirements

5. Ethical business conduct (cont'd)

■ Key points to consider

- Has the board delegated oversight of compliance with the code to one of its standing committees?
- Does the board or a designated standing committee annually or quarterly review with management compliance with the code and any issues arising from non-compliance?
- How does the board or a designated standing committee become aware of non-compliance with the code?

Corporate Governance Disclosure Requirements

5. Ethical business conduct (cont'd)

■ Key points to consider (cont'd)

- Does the issuer require its directors, officers and employees to complete an acknowledgement (on an annual, semi-annual or other basis) whereby they confirm they have read the code and agree to follow its terms and fully comply? If not, is there a process whereby members of management and employees confirm they have read and understand the code?
- Has the issuer appointed a compliance officer? If so, what are the compliance officer's roles and responsibilities?
- Does the compliance officer report regularly to the board (or its designated standing committee) on compliance with the code?

Corporate Governance Disclosure Requirements

5. Ethical business conduct (cont'd)

■ Key points to consider (cont'd)

- Does the issuer have a process in place whereby directors or officers disclose transactions or holdings that may be, or appear to be, in conflict with the code?
- Does the issuer have a whistleblower program or other compliance program available to employees that allows for anonymous reports to be made?
- Has the issuer designated a person with whom employees can discuss any issues regarding the code?

Corporate Governance Disclosure Requirements

6. Nomination of directors

■ Requirement

- Describe process for identifying new board candidates

■ Guidance

- Not sufficient to simply state a process exists
- Must describe process, regardless of whether it has been formalized

Corporate Governance Disclosure Requirements

6. Nomination of directors (cont'd)

■ Key points to consider

- Is there a formal policy on the recruitment of new directors?
- Who leads the candidate selection process?
- What role, if any, does the CEO play in the process?
- Does the board invite suggestions from directors, management, shareholders or other external sources?
- Does the board review its composition and expertise to identify any skills or expertise gaps?
- Is the size of the board taken into account?
- What criteria does the board look for in candidates (for example, specific industry or geographic experience)?
- Are diversity of experience, background and views considered?

7. Assessments

■ Requirement

● **TSX-listed issuer**

- Disclose whether or not the board, committees and individual directors are regularly assessed
- Describe process for assessing performance of board, committees and individual directors
- If none exists, how board satisfies itself that board, committees and individual directors are performing effectively

● **Venture issuer**

- Disclose what steps, if any, the board takes to satisfy itself that the board, committees and individual directors perform effectively

■ Guidance

- Not sufficient to simply indicate regular assessments conducted
- Describe process used for assessments

Corporate Governance Disclosure Requirements

7. Assessments (cont'd)

■ Key points to consider

- Are assessments conducted annually, semi-annually or at different intervals?
- Are assessments undertaken through the use of questionnaires and/or confidential interviews, or by third parties hired for this purpose?
- Who is responsible for conducting the assessments?
- If a questionnaire is the method used for the assessment:
 - Is it reviewed and approved by the board or a board committee in advance of its use?
 - Is it submitted on a confidential basis?

Corporate Governance Disclosure Requirements

7. Assessments (cont'd)

■ Key points to consider (cont'd)

- Does it facilitate a written evaluation of the performance and effectiveness of the board and each board committee?
- Does it incorporate peer assessments and self-assessments on the part of individual board members?
- Does it cover such matters, among other things, as the operation of the board and its committees, the adequacy and timeliness of the information provided to directors, agenda planning for board meetings and contributions of board and committee members?
- Are the findings analyzed and presented to the board for further consideration?
- Upon review of the results of the assessment, do the board and members of each board committee consider whether any changes to the composition, structure or charter of the board or committee are appropriate?

Risk Management

Board mandate – TSX-listed issuers

- Disclose text of board’s written mandate (or if board does not have a written mandate, describe how board delineates its role and responsibilities)
- Guideline that board should adopt written mandate in which it explicitly acknowledges responsibility for
 - Strategic planning process, including approval of strategic plan which takes into account opportunities and risks
 - Identification of principal risks of issuer’s business and implementation of appropriate systems to manage those risks

Risk Management

Board committees

- Board standing committees
 - If any, identify committees and describe functions
 - May include responsibility for risk management
- Audit committee
 - Disclose text of audit committee's charter
 - May include responsibility for risk management

Risk Management

■ Guidance

- Important for investors to understand how issuers manage risks
- Disclosure should indicate who has responsibility for oversight and management of risk
 - Board, board committee and/or management-level committee
- Provide insight into
 - Development and periodic review of risk profile
 - Integration of risk oversight and management into strategic plan
 - Identification of significant elements of risk management
 - Board's assessment of effectiveness of risk management policies and procedures

Questions?

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