

May 2, 2007

Good evening John –

Here is my response

Regards

Don Hathaway

Comments to the OSC on CD&A

The following was written to respond to the OSC request for commentary on the proposed repeal and substitution of Form 51-102F6 (Executive Compensation), NI 51-102 (Continuous Disclosure) and MI 58-101, (Corporate Governance).

Following the overview the comments are keyed to the numbering scheme in the Notice and request for Comments

Overview

In my opinion the objective is to disclose management and governance practices in a manner that informs investor and shareholder decisions, alerts them to risks and allows important insights into the stewardship of their company and its operations. As a generality, that would be a reasonable objective for almost all governance and disclosure practices and certainly for compensation. Thus while the phrase “to improve the quality and transparency of executive compensation disclosure” is a great goal, one must recognize that “pay and allowances” are usually complex issues that can become emotional in many contexts.

My responses to the specific questions are set out below and they are in a particular context. Drawing on a few years of experience and some modest understanding – and having made the requisite mistakes along the way – I have concluded that the word “compensation” is often too narrow, or at least it is in common use. I suggest that when we look at a company to analyse overall and specific performance we ought to be interested in every item in a list that might be called “things I like”. That list is somewhat different for each person, but those items collectively termed “compensation” are common to most. I believe that we need to take due regard for those things which may not be common, the parts of the TIL list that reflect personalities, operating styles, ego and so forth. In my experience these can cost more than automobiles and they migrate onto the TIL list in wonderfully assorted ways. A couple of examples will serve to illustrate.

Office furnishings which, though company property, are there because someone liked them, regardless of cost. I am thinking of a situation where the CEO loved antiques and you can guess the rest.

Corporate dining rooms are, I suggest, an obvious example

Corporate aeroplanes – ditto

I once helped a company dispose of the art collection accumulated by a previous CEO and the proceeds were over \$2.5 million

I suggest that the OSC devise a method to disclose the TIL list.

Answers to Specific Questions

1. Generally the answer is yes, with two caveats. First, the aspects in the overview to this response and, second, there may be issues related to the determination of perquisites. The document states “integrally and directly related to job performance” and leaves it to management’s analysis to determine if an item is a perquisite
2. At least the top five NEO and – if feasible – consider both policy influence and decision-making power
3. I favour aggregate information for all five, perhaps more than five – but I can also accept specifics for the CEO and CFO and aggregate for the rest
4. I believe that it will
5. Specific information on performance targets could be quite dangerous, so I would avoid it. On the other hand I believe that structure and processes of the performance management plan, its design, ought to be disclosed, with information on the percentage split between objective and subjective assessment.
6. Moving the graph may be useful but I am not in favour of providing an analysis of the link between stock performance and compensation. First, it is after the fact and fraught with opinion and, second, there are or could be instances when the Board has decided to take a strategic direction that has an adverse effect on share price in the short term, and
7. I have no strong opinion
8. Yes
9. Yes – and I think the explanation is clear
 10. Yes
 11. Yes
 12. Yes

13. Yes
14. Yes – and as noted earlier, my view is that there is a lack of clarity in most situations. Part of the problem comes from the fact that management determines whether an item is a perquisite or not, while another aspect is the TIL list
15. Yes
16. I believe so
17. I am not in favour of the rules-based approach, preferring a principles-based approach. I believe the latter is LESS likely to miss material information
18. No comment –
19. For all NEO – this is a significant risk factor
20. Estimates are only as difficult as their degree of accuracy
21. Yes
22. It should remain in the
23. There probably are although they do not spring to mind. I suggest three NEO as appropriate for the venture companies in year one after listing, four in year two and then five
24. I would keep all elements in place but allow companies to ask for relief based on reasons which they must provide.
25. Whether it would or not, this is a management prerogative
26. Yes – there is enough time