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May 18, 2007

Canadian Securities Administrators, delivered electronically to:  
Secretary, Ontario Securities Commission, Toronto, and  
Autorité des marchés financiers, Tour de la Bourse, Montréal.

Dear Sir/Madam:

Proposed new 51-102F6 disclosure of executive remuneration

This is a response to the request for comment on the above noted proposal dated March 29, 2007.

The writer supports the process of updating these disclosure requirements, and certain of the specific proposed changes. However, the writer encourages the CSA to bear in mind the CSA's oft-repeated instruction to write and present to readers "in plain language".

Consider that the draft Summary Compensation Table requires:

- One column for salary
- Four columns for bonuses of one kind or another
- Two columns for other remuneration

The writer agrees that all these forms of remuneration should be included in the disclosure. However, the detail of differentiation between the seven columns is far beyond that necessary for readers to gain an appreciation of the fundamental and simple purpose of the table: the level of compensation awarded to NEOs. Indeed, the definitional complexity may detract from (not add to) a broad-based shareholder understanding. The attached detailed comments, among other things, strongly encourage reducing the "bonus" columns from four to two and redefining those two as cash-based and stock-based.

Detailed comments are attached, as well as those specifically sought by the CSA.

Yours truly,

*/s/ Murray G. Johnston*  
Vice-President and Chief Financial Officer

## **DETAILED COMMENTS**

### **(a) “Bonus” vs “Incentive” instead of “short-term” vs “long-term”**

- AGREE with the proposal to drop the differentiation between short-term and long-term bonuses. This differentiation is often unclear in practice and even when clear, may not be meaningful to the reader.
- DISAGREE with substituting the new definitions “bonus” and “incentive” as described in the proposal. The proposed rule is based on differentiating between performance factors determined in advance and communicated to the executive on the one hand and discretionary factors on the other. In practice, many factors are subjective to a greater or lesser degree and this is difficult to define for practical use. An incentive may be based upon performance factors determined in advance and be communicated to the individual, but may also contain significant discretionary elements. Further, the inclusion of the degree of uncertainty of outcome as a further differentiation factor is confusing and appears counterintuitive. Finally, differentiating between awards based on the level of discretionary judgment applied or on the degree of uncertainty may not be meaningful to the average securities reader.
- ALTERNATIVE proposal: the column next after salary should include only incentives that are ultimately “cash-based”, so that the other category includes only “stock-based” incentives awards. The latter category should include awards whereby the recipient is granted the option to receive one or more shares of the company’s stock and requires different treatment of the liability according to GAAP. Readers are interested in traditional stock options because they are dilutive and require a different accounting treatment for the associated liability compared to cash-based awards.
- COMMENT: The proposed new regulation does not contain definitions or single and consistent descriptions of “bonus” and “incentive”. P3 in discussion 1(a), last paragraph, provides comments; italics comment (i) on p38 provides other comments; item 1(iii) on p36 adds comments; and on p28 the new concept of any other performance measures is introduced.

### **(b) “Stock awards” col. (e), and “Option awards” col. (f)**

- DISAGREE with splitting stock options into two categories. The purpose of the separation is not clear to the ordinary reader and therefore the separation carries little value to the reader. Further, such additional detail is more than is called for when the fundamental point of these disclosures is to declare remuneration to executives in a commonly understandable manner, not to seek detailed disclosures of different kinds of awards that cannot be understood by the ordinary reader. Ordinary readers are likely to understand “stock options” but are unlikely to understand the difference between “stock” awards in column (e) and “option” awards in column (f).

- DISAGREE with mixing purely cash-based SARs or RSUs and the like with stock options. An SAR is a tool to measure performance that determines a cash incentive payment. The fact the measure is the stock price should not be confused with a plan that ultimately pays out a unit of stock. For example, another plan that uses as measure the e.p.s. or Enterprise Value of a company to determine payout is not significantly different to an SAR, in that both pay out cash based on some performance measure, not shares. Under the proposed definition, one is categorized either with stock or options, while the other is an incentive.
- ALTERNATE proposal: Include in one category the stock based plans that require different GAAP treatment and all other plans that are cash-based such as SARs in a second category. Thus, reduce the reports of “bonus” earnings of any kind from four columns to two. (see also (a))

**(c) Stock performance graph**

- DISAGREE with moving the graph itself to the CDA or anywhere in the compensation section. To make this move would be suggesting (a) that the performance of the company’s stock vs the stock market does not have any meaning broader than in reference to remuneration, and (b) that the primary factor in measuring executive’s remuneration can only be the stock price performance.
- ALTERNATIVE proposal: leave the graph where it is, but require a comment in the CDA comparing remuneration to stock price performance.

**(d) Definition of NEOs (1)**

- DISAGREE with restricting disclosure specifically to the CEO and CFO only, and a number of other NEOs in total only. To adopt this definition would inappropriately spotlight these two executives to the exclusion of others and incorrectly suggest that the CFO has greater influence on business operations than certain senior business executives other than the CEO.
- PREFER the existing definition, or,
- As second preference, add (not replace) a requirement for disclosure of “all other NEOs”, so that the accumulated disclosure coincided with requirements of the CBCA.

**(e) Definition of NEOs (2)**

- DISAGREE with the potentially confusing definition of an NEO.
- PROPOSE delete criteria (c) regarding individuals in policy-making functions. This criteria may to some extent duplicate (b) wherein functions such as “sales” are already listed. Further, the requirement could, if desired, be more clearly included under (b) by including examples of the functions envisaged, such as “legal” or “human resources”. The criteria (b) already includes the appropriate distinction, “a vice president in charge of a principal...”

so that a functional “director” or “chief” of any function who is not also a vice president is excluded.

**(f) Defined benefit plans**

- AGREE with a new methodology for disclosure of costs of DB plans. Prior regulations were unclear as to whether, where, and how defined benefit costs were to be disclosed. The new method is clear.
- AGREE with eliminating the current table of pension benefits. The current disclosure requirement presents problems when more than one such plan existed for different individuals often in different countries with different standards. Further, the defined benefit table did not recognize that certain NEOs may be entitled to benefits from defined contribution plans.
- DISAGREE with the need to show defined benefit pension costs in a separate column. Other pension costs, such as defined contribution plans, are already included in “other”.
- ALTERNATE proposal: include these pension costs as another of the “other” costs. Defined contribution pension costs are already included in this category. Thus, reduce the reports of “other” earnings from two columns to one. (See also (g))

**(g) Other limits**

- AGREE that disclosure of perquisites should be limited to occasions when the total exceeds the value as defined.
- DISAGREE that the limits do not apply to remaining forms of other remuneration. Insurance premiums of perhaps \$8,000 in a year are no more relevant than a parking allowance of a similar amount.
- ALTERNATIVE proposal. That the total of all “other” compensation be subject to the same absolute limits as currently proposed for perquisites alone. Further, that any one of the listed items for inclusion (currently eight; nine with defined benefit pensions) should be footnoted with explanation when exceeding the limit on its own.

**(h) Earned remuneration**

- AGREE with the existing criteria that compensation should be reported when earned. Amounts “earned” represent an expense to the company and a firm obligation of the company to pay, irrespective of the actual payment date or payment method.
- DISAGREE with the need to disclose deferrals of awarded compensation or that awards must be reported in the year of service. The interest of the reader is in what has been awarded to beneficiaries when it is awarded, representing at that point a firm and unchangeable expense and commitment by the company. The CSA’s proposal already acknowledges that there is no need to report when the amount is actually paid; this suggests there should be no interest in the event of the delay in the first place. The reader is unlikely to be interested in details of compensation paid in a form

other than cash, so long as the value paid out equaled the obligation first established. The proposal is not clear that all conditions of the incentive plan should be fulfilled before the award is made and obligation established. For example, performance measures in a service year might be satisfied, but other criteria prerequisite for the award might not be, such as continued employment with the company for a period of time after the year has ended.

- DISAGREE with the necessity for Item 3.1 part 5 (i). This appears to require quantification and description (of incentives) that has already been quantified in the table and should be described in the CD&A or elsewhere.
- ALTERNATIVE proposal: (1) add the word “Earned” to the table heading, viz: “Summary Table of Compensation Earned”; (2) Retain the lead-in wording of Item 3.1 part 5, but delete sub (i) and sub (ii) of 5; (3) delete the last sentence of Item 3.1 part 1(ii), i.e. “Identify ... salary or bonus.” Add into Item 3.1 part 5: “The period in which the expense is recorded, potentially as an estimate, may be different to the period in which the award is ultimately confirmed, granted and therefore reported”.

**(i) Equity-based awards**

- DISAGREE with three separate tables disclosing options.
- ALTERNATIVE proposal: Combine the two tables in section 4 and the table in section 3.2, to facilitate the presentation of one table disclosing continuity of awards, for plans with awards that extend beyond one year and where the value of the benefit may change:
  - Grants on the left of the table
  - Exercises in the middle of the table
  - Outstanding on the right of the table

**(j) Correct apparent contradictions**

- Item 3.1 part 6 on p36/37: In the opening paragraph p36, “...accumulated benefit under all defined benefit and actuarial pension plans...” appears to contradict the continuing paragraph on p37 “This disclosure relates to each plan...” – “each plan” should be “all plans”
- Item 3.1 part 7(vi) on p 38, continue after “3.2.” with “or unless reported as earnings under any other column.” to avoid potential conflict with the opening of part 5 of item 3.1 on p 36.

## **SPECIFIC COMMENTS requested by CSA.**

1. The form should capture all forms of compensation, including as compensation changes over time.
2. Agree to not substantially change the criteria for determining the top five NEOs. See also (d) and (e).
3. Do not substantially change current disclosure requiring the top five individually. See also (d).
4. Yes. However, see also (c) and (h).
5. No. Too much detail will only add confusion. Shareholders may question the cost of targets set, but should not be involved in setting targets.
6. No. See also (c).
7. Yes. Current requirement satisfactory.
8. Strongly disagree. See also (a), (b) and (i).
9. Strongly disagree. No, the distinctions are not clear to the average reader. See also (a), (b) and (i).
10. Yes, appropriate to reflect the cost in the service period. However, see also (h).
11. The cost of this item is difficult to measure. The proposal at least is calculable.
12. Prefer service cost to change in actuarial value, but not in addition. Either service cost or change in actuarial value is a clearer requirement than current.
13. No. See also (f) and (g).
14. No.
15. Yes. However, see also (g).
16. Yes. However, see also (i)
17. The information is relevant, but too voluminous and disparate for ease of understanding. See also (i).
18. No, agree with deleting the tabulations. Do not provide further breakdown: this would add unnecessarily complex detail. See also (f) and (g).
19. Only the CEO. Consider inclusion in the CD&A of general terms covering terminations of other NEOs, without specific financial estimates.
20. Refer 19.
21. Yes.
22. Leave compensation disclosure in the circular, as is. Do not add another disclosure document.

23. No. Consider increasing the existing lower limit of \$150,000 for inclusion as an NEO, thus allowing venture and other issuers broader dispensation to exclude lower paid executives.
24. No.
25. No. Do not add prescriptive measures that cannot address all situations. See also (d).
26. Yes.