

June 27, 2007

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Securities Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
New Brunswick Securities Commission
Securities Office, Prince Edward Island
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Nunavut
Registrar of Securities, Yukon Territory

c/o Ontario Securities Commission
20 Queen Street West, Suite 1903, Box 55,
Toronto ON M5H 3S8

Attention: John Stevens, Secretary

and

c/o Autorité des marchés financiers,
Tour de la Bourse,
800, square Victoria,
C.P. 246, 22^e étage,
Montréal, Québec H4Z 1G3

Attention : Anne-Marie Beaudoin, Directrice de secrétariat

Re: Proposed Repeal and Substitution of Form 51-102F6 *Statement of Executive Compensation*, Proposed Amendments to National Instrument 51-102 *Continuous Disclosure Obligations* and Proposed Consequential Amendments to Multilateral Instrument 52-110 *Audit Committees* and National Instrument 58-101 *Disclosure of Corporate Governance Practices*

Please find enclosed a submission made by Institutional Shareholder Services Canada Corp. in response to the request for comments on the proposed repeal and substitution of Form 51-102F6 *Statement of Executive Compensation* and related instruments as above.

ISS supports improvements in executive compensation disclosure and believes that the proposed requirements are a positive step in mandating improved disclosure. The increase in shareholder concerns related to executive compensation brings immediacy to

the proposed amendments and we therefore strongly support the proposed timeframe for implementation of the new disclosure requirements.

Executive compensation arrangements have become much more complicated in recent years and ISS is of the opinion that the purpose of the amended disclosure requirements should be to increase transparency and clarity of understanding for shareholders, regulators and other users of this disclosure. We believe that, with a few changes to the proposed Form and Instruments, this goal will be substantially achieved.

ISS would like to thank you for the opportunity to provide feedback on the proposed amendments to the executive compensation disclosure requirements, and we offer the following comments for your consideration.

Sincerely,

Debra L. Sisti,
Vice President, Research,
Institutional Shareholder Services Canada Corp.

Specific request for comment regarding NI 51-102

Item 1 – General provisions

1. Will the proposed executive compensation form clearly capture all forms of compensation? Have we achieved our objective in drafting a document that will capture disclosure of compensation practices as they change over time?

Answer:

ISS is of the opinion that the proposed CSA compensation rules will improve disclosure of compensation practices and for the time being capture all forms of compensation. With the proposed changes suggested here, ISS believes this disclosure will be enhanced to provide meaningful information that shareholders can rely on to make informed voting decisions and positively affect executive compensation trends and promote pay-for-performance. We believe that rapid market changes will likely require that the CSA revisit these requirements on a more frequent basis.

2. Do you agree with our proposal not to substantially change the criteria for determining the top five named executive officers? Should it be based on total compensation or some other measure, such as those with the greatest policy influence or decision-making power at the organization?

Answer:

ISS agrees with the proposed criteria for determining the five NEOs for compensation reporting purposes. It is essential that the CEO and CFO be included as the two most senior and influential executives with the highest responsibility for accountability, which in most cases results in the CEO and CFO being the highest paid. The next three highest remunerated officers should be the basis for the next level of disclosure based on Total Compensation (as defined in the Instrument) in order that comparisons are more easily facilitated and more meaningful. Also, with the proposed changes to the Bonus column in the Compensation Summary Table, it is very likely that there will be much less disclosure under this heading which may lead to some confusion and/or inconsistency in the determination of who to report if based solely on Salary and Bonus. Using salary and bonus as the criteria for disclosure as is currently the case, may have led to some very significant disclosure omissions of certain senior executive officers due to the substantial increase in equity-based compensation in recent years. Using Total Compensation as the criteria for disclosure should capture the officers with the greatest pay packages taking all forms of compensation into account.

It is our understanding that amounts to be disclosed in the Pension column (e) which covers defined benefit plans including Supplemental Employee Retirement

Plans which can involve substantial amounts, will not be included in Total Compensation for identifying NEOs for reporting purposes. However, amounts disclosed under defined contribution pension plans, that is, the amount contributed by the company, will be captured for this purpose. We believe these types of plans will continue to increase and view this difference in disclosure requirements for the two types as having the potential to impact the selection of NEOs for disclosure purposes. Therefore, we submit that all pension amounts, both defined benefit and the employer commitment under defined contribution plans should be subject to the same disclosure requirements.

3. Should information be provided for up to five people individually, or should the information be provided separately for the CEO and CFO, then on an aggregate basis for the remaining three named executive officers?

Answer:

ISS also believes that compensation disclosure for the next three NEOs should be broken out individually so that investors and users of this information have more comprehensive, detailed disclosure and thus understanding of the issuer's entire compensation structure. It has been ISS' experience in reviewing this disclosure, that there can be significant variations in compensation between the next three levels of NEO disclosed which would not be apparent if aggregated. This depth of detailed disclosure will also afford the ability to assess and compare differences, ranges and any pay gaps that exist between different levels and permit more thorough evaluation of whether a pay-for-performance structure exists at more than the CEO level. While useful currently, this more detailed disclosure may become crucial information if the Canadian market takes up a "Say on Pay" stance.

Item 2 - Compensation discussion and analysis (CD&A)

4. Will the proposed CD&A requirements elicit a meaningful discussion of a company's compensation policies and decisions?

Answer:

ISS believes the CD&A discussion is a key part of the compensation disclosure that should tie all the other elements of disclosure together and provide sufficient detail, in plain language, so that investors have a good understanding of the overall pay process and amounts. We would however, recommend that the CSA require that the CD&A be approved by the Compensation Committee to ensure their accountability in this process.

We agree with the CSA that it would be inappropriate to require CEO/CFO certification of the CD&A and which would in our view present an obvious conflict.

With regard to the specific requirements to be detailed in the CD&A, given that broad guidance has been provided by the CSA, and based on the experience of ISS in the U.S. after one full proxy season of the new U.S. compensation disclosure requirements, we expect that we will see a huge variance in the type of narrative, the amount of detail provided and therefore, the usefulness of the discussion to investors. It will likely be necessary, in our view, for the CSA to provide further guidance, perhaps by way of example and highlighting “best practice” disclosure under the new format. ISS believes there are already a small number of large Canadian issuers providing the level of ‘best practice’ disclosure that could be used as samples. However, we also recognize the potential for implementing ‘boilerplate language’ once examples are disseminated into the market and suggest this be discouraged in the strongest terms possible.

While we agree with the overall principles based approach taken by the CSA, ISS recommends that one of the items to be discussed should be how the compensation program is linked to (i) company performance and (ii) share price performance, if at all, discussing both short-term and long-term elements of both pay and performance. Alternatively this discussion could be provided along with the performance graph (discussed in #6 below).

ISS also submits that the CD&A should include a requirement for disclosure related to compensation consultants retained by the Compensation Committee, identifying the firm, terms of engagement, fees paid for compensation plan consulting performed for the Committee, as well as all other fees paid to the same firm for consulting services provided to the board or management for other services. The disclosure of fees paid to external audit firms has had a profound effect on the auditor conflict issue and ISS believes that transparency of compensation consultant fees will have the same reducing effect on the compensation consultant conflict issue that has been well publicized recently.

5. Should we require companies to provide specific information on performance targets?

Answer:

ISS believes that issuers should be required to disclose in the CD&A specific quantitative and qualitative performance-related targets or factors, both objective and subjective, used by the Compensation Committee to determine performance-based pay.

The disclosure of specific performance targets does not create an adverse competitive effect, as evidenced by the growing number of companies that have

voluntarily disclosed specific hurdles for the payment of performance-based awards both in the U.S. and Canada. For purposes of assessing the rigor of a pay-for-performance link for any issuer, this information is extremely important. It also serves to enhance an understanding of the Compensation Committee's intent and methods for implementing such a link and supports their narrative claim in this regard.

The disclosure of performance criteria and targets should be such that an investor is able to calculate the award payable over a specified performance period. This is the single most important piece of information that verifies for investors that the actual amount and type of compensation paid at a company is warranted and effective.

6. Will moving the performance graph to the CD&A and requiring an analysis of the link between performance of the company's stock and executive compensation provide meaningful disclosure?

Answer:

As part of the CD&A, the graph would have a clear purpose, to show the share price performance as it relates to the rewards paid to senior executives for achieving that performance. In our view, this is useful if it is accompanied by narrative discussion related to all elements of the pay-for-performance methodology implemented at the company. As per our response to question #4, this discussion should cover both long-term and short-term pay versus performance. Share price as a measure of performance is only one measure of what ISS would view to be a rigorous pay-for-performance methodology and we recommend that the CD&A contain a more complete discussion of the other elements or measures of performance used by the Compensation Committee and how these various performance measures are linked to all elements of pay over both the short and long term.

ISS notes that the CSA proposes to require that the Performance Graph of the company's cumulative total shareholder return over the most recent five year period be compared to that of one broad equity market index. It is our view that this provides little useful information if not supplemented by a comparison of the total cumulative return of an index of the issuer's peer companies. ISS recommends that the CSA make it a requirement to include a comparison to a peer group index in this performance graph.

Item 3 - Summary compensation table

7. Should the summary compensation table continue to require companies to disclose compensation for each of the company's last three fiscal years, or is a shorter period sufficient?

Answer:

ISS believes that compensation disclosure is only useful when it is complete and comparable. A one year snapshot of executive compensation is not useful unless information related to several prior years is provided. In order to assess whether a pay-for-performance link exists, just as it is necessary to have disclosure in the form of the Performance Graph covering several years, it is also necessary to have at a minimum three years worth of compensation disclosure in the Compensation Table.

In addition, compensation paid in one year is not an indicator of the executive's accumulated wealth over a period of time, particularly with regard to equity-based awards. This longer term view of accumulated wealth provides a more accurate picture of compensation. ISS recommends optimally that the Compensation Table cover a five year period consistent with the five-year Performance Graph as a more useful tool to enable this pay-for-performance assessment. This disclosure would also shed more light on the turnover and total compensation including severance of CEOs which ISS understands to be at all time highs.

8. Do you agree with the way bonuses and non-equity incentive plans will be disclosed in the summary compensation table?

Answer:

ISS agrees with the proposed split between disclosure of discretionary bonus and amounts paid under an incentive plan. We believe it is more appropriate to keep performance-based compensation separate from other amounts so that investors can more easily evaluate pay-for-performance.

9. Do you agree with the proposed disclosure of equity and non-equity awards? Are the distinctions between the types of awards and how they will be presented clearly explained?

Answer:

ISS agrees with the proposed columns in the Compensation Table that will require disclosure of stock related awards, options and option-like awards, and non-equity incentive awards separately. The various types of awards have different costs to shareholders and the company and therefore ISS believes they should be evaluated differently even though all may be incentive compensation.

10. Is it appropriate to present stock and option awards based on the compensation cost of the awards over the service period? If no, how should these awards be valued?

Answer:

ISS has some concerns with the proposed disclosure of stock and option awards using the cost as shown in the financial statements and amortized for only each of the three years that the Compensation Table covers. Despite the proposal to have the table immediately following disclose the fair market value of these awards, for purposes of calculating the NEOs total compensation for disclosure purposes and for assessment purposes, ISS believes this accounting cost amount can be very misleading. ISS experience in the U.S. has been that shareholders are seeing a minimizing effect as these amounts are amortized over three, four, five or more years, all of which are not captured in the Compensation Summary Table.

In addition, it appears that there is significant potential for disclosure of confusing negative amounts as a result of the necessity to mark to market the value of equity-based awards. As a result and as in the Brookfield Homes case, ISS views this negative disclosure to be useless. It is also our understanding that accounting treatment of the long term expense for executive amounts will require a change from amortization of the amount to acceleration into the current year when the executive qualifies for retirement. This too has the potential for a degree of variability that may impact the amounts shown in the Summary Compensation Table and again, the NEOs that will be covered in this table.

ISS would recommend that the Summary Compensation Table require disclosure of equity and equity-based awards based on fair market value at grant date, which can then be supplemented with a table following that would provide the accounting cost of the awards to provide more context for total pay evaluation.

11. Should the change in the actuarial value of defined benefit pension plans be attributed to executives as part of the summary compensation table?

Answer:

ISS recommends that the change in service cost be the basis for disclosure of pension compensation without taking into account the change in actuarial value. We believe that the change in actuarial value will not provide a true reflection of the compensation component of executive pensions, largely because actuarial values change in part due to changes in actuarial assumptions for items such as interest rates and mortality rates and other factors that are not derived from or based on compensation cost. For this reason, we believe the change in service cost provides better disclosure for compensation evaluation purposes.

12. Should we include the service cost to the company in the summary compensation table instead of the change in the actuarial value or in addition to it?

Answer:

Please refer to discussion of question number eleven.

13. Have we retained the appropriate threshold for perquisite disclosure given the changes to compensation amounts included in the bonus column of the summary compensation table?

Answer:

The threshold for perquisite disclosure seems to be acceptable, particularly given the changes to bonus amounts that may result in more benefits being caught for this purpose. The overall sense among institutional investors is that this is not a critical item of executive compensation focus in Canada for the most part.

14. Should we provide additional guidance on how to identify perquisites?

Answer:

At this point in time, it is likely unnecessary to provide additional guidance for identifying perquisites.

15. Will a total compensation number calculated as proposed provide investors with meaningful information about compensation?

Answer:

As mentioned above, ISS believes that the potential for inconsistent disclosure and possibly even negative total compensation numbers in this column will be of little value to investors. The total compensation number should reflect the actual payments to each NEO based on the compensation scheme put in place by the Compensation Committee. Accounting and actuarial adjustments provide no meaningful information for investors to evaluate and compare pay practices to performance and across peer companies.

16. Will the disclosure of the grant date fair value of stock and option awards, along with the disclosure provided in the summary compensation table, provide a complete picture of executive compensation?

Answer:

ISS believes that the combination of grant date fair value of stock and option awards and disclosure proposed to be provided in the Summary Compensation Table should provide a reasonably complete picture of equity-based compensation. However as noted previously, we recommend that the grant date fair value be included in the Summary Compensation Table for purposes of determining a total compensation figure and that the value used for accounting purposes as shown in the financial statements be disclosed in the accompanying table with appropriate explanation footnoted.

Item 5 – Plan-based awards

17. Is the information a company will provide in the tables required by item 4 the most relevant information for investors? Do you agree with our decision to take a different approach to the SEC? Could material information be missed by this approach?

Answer:

ISS finds all of the disclosure as currently proposed to be relevant and of value when evaluating executive compensation programs and pay-for-performance. In addition ISS would like to see the “grant date” of all equity awards allocated in the year disclosed which would give investors further insight into how pay practices are implemented at the company and would shed further sunlight on grant practices in the wake of the options backdating issues that have surfaced in the U.S. We recognize that reporting requirements for option grants are somewhat different in Canada, however we believe that there is still potential for abuse and that this added disclosure would provide one easily located source for this information.

Item 6 – Retirement plan benefits

18. Should we require supplemental tabular disclosure of defined contribution pension plans or other deferred compensation plans? Is a breakdown of the contributions and earnings under these plans necessary to understand the complete compensation picture?

Answer:

Retirement plan benefit disclosure has historically been lacking in meaningful and complete disclosure and often difficult to understand for the typical investor. ISS’s U.S. experience has been that the tabular disclosure of all pension and related benefits has made this reporting element easier to understand. Because tabular disclosure is generally more consistent in form than narrative disclosure, we would recommend that the CSA require tabular disclosure of all pension costs and

contributions, including defined contribution as well as defined benefit plan amounts supplemented by appropriate narrative.

Item 7 – Termination and change of control benefits

19. Should we require estimates of termination payments for all NEOs or just the CEO?

Answer:

In order for investors to have a complete picture of executive compensation, it is necessary to include termination payments for all NEOs including the material terms of all severance agreements, employment contracts containing change in control specifics, or any other entitlement promised and potentially payable to the NEO upon termination or change in responsibility. As we have seen in several instances over the past several years, notably the payout to Isadore Sharpe by Four Seasons, the amounts payable under these types of agreements can be significant and therefore comprise an important element of the overall executive compensation package.

20. Will it be too difficult to provide estimates of potential payments under different termination scenarios? Should we only require an estimate for the largest potential payment to the particular NEO?

Answer:

If an issuer's board of directors has approved this type of agreement or payment, the details should be well detailed in a written document and therefore not difficult to provide, albeit some may cover several different scenarios and be somewhat lengthy. In any event, investors are entitled to this potentially significant information which may in turn have significant implications on the terms of a takeover offer for the company or the board's ability to replace the CEO.

Item 8 – Director compensation

21. Will expanded disclosure of director compensation provide useful information?

Answer:

Director compensation is an important indicator of such things as board independence and incentive to make the hard decisions to maximize shareholder value. Director compensation is also a good barometer of overall compensation culture at a company. ISS contends that director compensation should be disclosed in the same amount of detail as executive compensation, although for obvious

reasons it should be simpler to do so. ISS believes the disclosure proposed by the CSA will improve the overall disclosure document and provide meaningful information to investors however the disclosure should cover the same three-year period as that of executives. Again, it is the accumulation of wealth over a period of time through grants of five or ten year options or restricted stock or DSUs that is often much more significant than annual fees. ISS recommends that disclosure be based on the grant date fair value of stock options and the total market value of all stock grants and deferred units as of the fiscal year end as opposed to the accounting value derived for financial reporting.

Item 9 – Companies reporting in the United States

22. Do you agree that executive compensation disclosure should remain in the management information circular? Would moving it to another disclosure document provide a clearer link between pay and performance?

Answer:

ISS strongly agrees that executive compensation disclosure should remain in the management information circular as the primary source of disclosure for shareholders considering appropriate voting decisions at an upcoming shareholder meeting. This disclosure is important not only to decisions related to specific proposals regarding compensation plans or grants but also informs voting decisions related to other issues such as directors elections and corporate transactions.

23. Are there elements of compensation disclosure that are not relevant to venture issuers and that they should not be required to provide? For example, should we allow venture issuers to disclose compensation for a smaller group of executives as the SEC has done?

Answer:

ISS believes that as users of public capital, venture issuers should be no less accountable for disclosure of executive compensation information. In fact, this disclosure is, in many instances, necessary to ensure shareholder protections where a lack of independent oversight may exist at the board level. Given that many venture issuers do not have separate compensation committees and commercial and other relationships between directors and the company or among directors is not uncommon, disclosure becomes key to ensuring independent oversight and management of conflicts. ISS fully supports the CSA's decision to require venture issuer compliance.

24. Are there other specific elements of the requirements that are not relevant for venture issuers?

Answer:

While the degree of disclosure for some items may be minimal, venture issuers should provide a response indicating at least the non-existence of certain elements of executive compensation, for example pension plans. Obviously no further disclosure would be required where this is the case. There will be a range of disclosures related to venture issuers from those who pay no compensation per se and grant a small number of stock options to senior management leading up to a qualifying transaction to those who are ready to graduate to the TSX main board and have instituted more extensive compensation schemes. It therefore seems inappropriate to eliminate some elements of the requirements for all venture companies.

25. Would the prescription of a performance measurement tool provide useful information on the link between pay and performance?

Answer:

ISS supports a non-prescriptive approach which affords issuers the ability to select the most appropriate measurement tools for their particular businesses and industries. Total shareholder return should be the basis for the disclosure presented in the Performance Graph but all other measurements used to link pay to performance should be relevant and meaningful, and therefore specific to the company and industry.

Transition and other amendments

26. Do you think the suggested timeline will give companies enough time to implement these disclosure requirements?

Answer:

ISS believes the timeline is appropriate.

Commentary of Part B of notice:

Report of Voting Results:

ISS recommends that whether or not a vote is conducted by ballot, that the vote results disclose the total number of votes received by proxy, as well as the number and percentage of proxy votes received For, Withheld, Against, and if provided

Abstained from voting for every item on the proxy ballot. As institutional shareholders have become much more committed to corporate governance activities, including voting and disclosing proxy votes, it is of great importance that all investors have information related to the results of the votes and that the voting process is transparent.

Reporting Format

ISS also recommends that numeric compensation data included in the proposed tables should be assigned XBRL tags to substantially improve ease of use for analysis purposes.