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April 22, 2008

Mr. John Stevenson, Secretary  
Ontario Securities Commission  
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Ms. Anne-Marie Beaudoin, Directrice du secrétariat  
Autorité des marchés financiers  
Tour de la Bourse  
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Montréal, Québec H4Z 1G3

**Re: February 2008 Request for Comment on Proposed Form 51-102F6 *Statement of Executive Compensation***

Dear Sirs and Mesdames:

Hugessen Consulting Inc. (“Hugessen”) is pleased to respond to the Canadian Securities Administrators’ (CSA) request for comment on Form 51-102F6 *Statement of Executive Compensation* (the “2008 Proposal”) released February 22, 2008. The 2008 Proposal is a republication of a proposed set of changes to the requirements for executive and director compensation disclosure for publicly held companies in Canada. The 2008 Proposal has been amended to reflect comments to the original proposal previously released in March 2007 (the “2007 Proposal”). In our view the CSA has done an excellent job of addressing the most significant comments made by Hugessen and others on the 2007 Proposal while maintaining its commitment to a concise, principles-based set of rules that, we believe, will improve the quality and transparency of executive compensation disclosure. We commend the CSA on this accomplishment.

Hugessen is a leading provider of executive compensation consulting advice to the boards and compensation committees of many large issuers in Canada and the United States; as such, we are actively involved in working with our clients to improve their executive compensation disclosure. We believe that the amended proposal will go a long way towards the goal of making this disclosure consistent and meaningful and helping investors understand and assess how decisions about executive compensation are made.

While we support substantive alignment with the SEC rules, given the number of public companies in Canada that are listed on U.S. stock exchanges and the benefits that arise from harmonization between the two jurisdictions, we are nevertheless pleased that the CSA has proposed alternative approaches in areas where investors have expressed dissatisfaction with the U.S. approach. In particular, the different approach to several entries in the Summary Compensation Table constitutes a significant change for the better from the 2007 Proposal.

The observations and suggestions included herein reflect the views of Hugessen. We start with our views on the very positive improvements made to the 2008 Proposal before touching on the remaining areas where we believe there is still room for improvement.

**Comments:**

We strongly endorse the following changes:

***1. Stated Objective***

The CSA's statement within the 2008 Proposal that the objective of the disclosure is "to communicate what the board of directors intended to pay or award certain executive officers". We believe that this provides the appropriate reference point for a principles-based system whose purpose is to provide investors with the ability to assess the appropriateness and reasonableness of the executive compensation decisions of the board and compensation committee.

***2. Summary Compensation Table (SCT)***

- a. *Equity-based awards* - value of equity awards in the SCT will now reflect the intended grant date fair value rather than the accounting expense value.
- b. *Change in pension value* - pension value in the SCT will now reflect only the compensatory change in accrued obligation rather than the change in actuarial value.
- c. *Value of defined contribution plan* - will now be included in SCT column along with that of a defined benefit plan.
- d. *Non-equity incentives* - standard distinction based on length of performance period (i.e., annual vs. multi-year) replaces distinction between wholly discretionary (bonus) and those with pre-determined performance objectives.

**3. Performance Graph** - clarification that if a company believes measures other than indexed TSR show a more meaningful link with compensation than does share price, the company can disclose such measures and explain why.

**4. Termination and Change of Control Benefits** – reduction in the number of termination scenarios to be disclosure from six to four (provided any other potentially significant scenarios are also disclosed) and clarification that only incremental payments and benefits be disclosed.

### **Further Comments**

While applauding the significant improvements found in the 2008 Proposal, we propose that the CSA consider the following additional changes going forward:

**5. Long-term cash plans** - We would reiterate from our earlier comment letter on the 2007 Proposal that long-term cash plans (that are not equity-based) should be treated on essentially the same basis as equity plans and the estimated grant date value disclosed in the SCT in the year of grant, rather than in the year of vesting or payout. This change would lead to a more accurate picture of the intended value of compensation granted in any particular year and make year over year comparisons more meaningful.

By not requiring an estimated value in the SCT as of grant date, disclosure in the SCT is delayed until an actual payout, with the result that the SCT is incomplete and could, in fact, be misleading. While we do not see a large number of long-term cash incentive plans currently being used, the proposed delayed disclosure of such plans in the SCT could have the unintended consequence of encouraging the use of such plans more widely in the future.

**6. Disclosure of forward looking targets** – We believe that the rules regarding the disclosure of specific forward-looking targets continue to be unclear. For example, the 2008 Proposal seems to contemplate that circumstances requiring such disclosure would be unusual: "... there may be limited cases where reported compensation is subject to the achievement of performance targets in future periods". However, in our experience it is common for large issuers to adopt long term incentive plans that have three year forward-looking targets. It appears that under the 2008 Proposal each of these three year targets would have to be disclosed unless to do so would seriously prejudice the issuer. It would be very helpful if the 2008 Proposal could provide guidance that would help to clarify whether this is a reasonable interpretation of the rules. It would also be helpful to confirm that issuers would be correct in distinguishing between disclosure of certain types of targets based on their interpretation of the risk of serious prejudice, for example, choosing to disclose a three year relative TSR target but not a three year EPS target.

**7. Compensation Committee Report** - We believe that it is important that the responsibility of boards and compensation committees for executive compensation decisions be clear and unambiguous and to that end believe that a compensation committee report, similar to the audit committee report, should be required, as is the case in the U.S. The compensation committee report should state:

- Whether the compensation committee has reviewed and discussed the CD&A with management;
- Whether, based on the review and discussions, the compensation committee recommended to the board of directors that the CD&A be included in the proxy circular; and
- The name of each member of the compensation committee

**8. Compensation advisor disclosure** – We believe that it is appropriate that shareholders have adequate information about any compensation advisors engaged by the company and that the appropriate place for this disclosure is alongside other executive compensation disclosure in the CD&A (we realize that some of the information related to advisors is required to be supplied elsewhere in connection with other public disclosure). The issue of advisor conflicts continues to garner attention (for example, the Waxman hearings in the U.S.). Adequate disclosure in this area would include:

- Name and fees of any compensation advisors engaged by the compensation committee with fees broken down between executive compensation services for the compensation committee and all other work done for the issuer
- A full description of the advisor's mandate and the Compensation Committee's instructions
- A statement as to any potential professional and/or commercial conflicts of such advisors
- A statement that the compensation committee is satisfied as to an advisor's independence

**9. Termination payments and determination of NEOs** – The 2008 Proposal requires that termination amounts paid or payable as a result of an event that occurred before the end of the covered financial year be included in the SCT (paragraph 3.1(10)(d)). For purposes of determining who is an NEO in any given year, this could lead to the anomalous result of an

employee being included as an NEO on the basis of one-time retirement payments, for example, when he or she would not otherwise qualify. It would be more in keeping with the goal of disclosing the intended value of compensation for the financial year to exclude these one-time payments. The requirement to disclose termination payments under section 6.1 would ensure that investors are made aware of such payments.

**10. “Grants of Plan-Based Awards” Table** – Clear and complete disclosure would be greatly enhanced if the 2008 Proposal was amended to require a table, as is required under SEC rules, showing the estimated future payouts at threshold, target and maximum for existing plan-based awards. While narrative disclosure of this information in the CD&A is valuable, a concise tabular form makes the data much easier to transmit.

**11. Option awards** – Section 2.3 requires that issuers describe the process used to grant options to executive officers but does not extend this requirement to other types of equity awards. It is not clear why this requirement should apply only to option awards.

**12. Reporting equity instead of cash** – Section 3.1(8)(d) stipulates that any annual cash compensation that is foregone (e.g. bonus) in favour of shares or other non-cash compensation should be included in the salary column of the SCT. To avoid confusion, we suggest that the amount should be included in the same column in which it would otherwise be reportable (e.g. bonus column) and that a footnote be used to explain the exchange.

**13. Disclosure of vested share awards** – Under section 4.1, the issuer must disclose as part of a table the “number of shares or units of shares that have not vested”. To be consistent with the disclosure required for option awards under the same table (which includes all “unexercised in-the-money options”), vested shares that have not yet paid out or been distributed should also be disclosed. We have seen plans (and expect to see more) where, for tax purposes, the vesting and distribution dates of share awards have been separated.

**14. Headings for Table 4.2** – While the column headings refer to the “value on vesting”, the explanatory note refers to the “dollar value realized on the exercise”. We believe the table is intended to summarize the actual payouts or realizations under the relevant grants, and therefore we suggest should the headings be changed, for example, to “value on exercise”.

**15. Public disclosure of CSA/issuer Correspondence** - Given the complex nature of the new disclosure requirements, the CSA may want to consider publicly releasing any recommendations to, and correspondence with, individual issuers that deal with executive compensation issues resulting from the CSA’s on-going general continuous disclosure review. The disclosure of the follow-up letters and correspondence from the SEC has been widely reviewed by issuers, their advisors and the media and has proven very useful in attempts to draft acceptable disclosure for 2008. The adoption of a similar process by the CSA would be

very valuable for stakeholders. It may also be timelier than waiting for further guidance in the form of the publication of staff notices.

**16. Phase-in period** – The Commentary for the SCT provision (section 3.1(1)) is ambiguous about whether the SCT should be completed for each financial year ending after December 31, 2008 even if a full three years is not yet available.

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Again, we would like to commend the CSA on the revised proposed Form 51-102F6 and believe that its adoption will significantly further the goal of clear and meaningful disclosure of executive compensation in Canada.

If you require any further clarification of the views reflected in this response, please feel free to contact any of the undersigned.

Sincerely,

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