Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

NOTICE AND REQUEST FOR COMMENT
PROPOSED REPEAL AND SUBSTITUTION OF FORM 51-102F6 *STATEMENT OF EXECUTIVE COMPENSATION*

and

PROPOSED AMENDMENTS TO NATIONAL INSTRUMENT 51-102 *CONTINUOUS DISCLOSURE OBLIGATIONS,* FORM 51-102F2 AND FORM 51-102F5

and

PROPOSED CONSEQUENTIAL AMENDMENTS TO MULTILATERAL INSTRUMENT 52-110 *AUDIT COMMITTEES* AND NATIONAL INSTRUMENT 58-101 *DISCLOSURE OF CORPORATE GOVERNANCE PRACTICES*

This notice is in two parts. First, Part A of this notice accompanies the proposed repeal and substitution of Form 51-102F6 *Statement of Executive Compensation* (the proposed executive compensation form) and proposed amendments to National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102), all of which we are publishing for comment.

Second, Part B of this notice accompanies proposed amendments to NI 51-102 and to Forms 51-102F2 *Annual Information Form* and 51-102F5 *Information Circular* as well as proposed consequential amendments to Multilateral Instrument 52-110 *Audit Committees* and National Instrument 58-101 *Disclosure of Corporate Governance Practices*.

We invite comment on these materials generally. In addition we have raised a number of specific questions for your consideration relating to Part A of the notice.

We are publishing the text of the materials concurrently with this notice. You can obtain it from the websites of CSA members.

A. EXECUTIVE COMPENSATION

Introduction

The proposed executive compensation form and instrument amendments (together, the executive compensation materials), are an initiative of all members of the Canadian Securities Administrators (CSA or we). The proposed executive compensation form is intended to replace the current Form 51-102F6 *Statement of Executive Compensation*.

The executive compensation instrument amendments provide a transition provision for the proposed executive compensation form. They will also require venture issuers that do not send a management information circular to their securityholders to file a completed Form 51-102F6.

The purpose of the executive compensation materials is to improve the quality and transparency of executive compensation disclosure. Greater transparency will allow users to assess the process by which compensation decisions are made at a company. It will also provide insight into a key aspect of a company's overall stewardship and governance.

The proposed executive compensation form will require reporting issuers to disclose all compensation awarded to certain executive officers and to provide this disclosure in a new format. Our intention in revising the form is to create a document that will present executive compensation information in a meaningful way, and that will continue to provide a framework for disclosure as compensation practices change over time.

If the proposed executive compensation form is adopted, it will replace the current form.

Background

The requirements for executive compensation disclosure have not significantly changed since we introduced the current requirements in 1994. Since then, compensation practices have evolved and become increasingly complex. Under the existing requirements, investors are provided with fragmented compensation information, which makes it difficult for them to asses the total compensation paid to executive officers. Many reporting issuers are already providing executive compensation disclosure that goes beyond what is required by Form 51-102F6.

In August 2006, the Securities and Exchange Commission in the United States (the SEC) introduced new rules for executive compensation disclosure (the SEC rule). This rule substantially changes the requirements in this area and is intended to result in clearer, more comprehensive disclosure.

We have carefully considered the SEC rule in drafting the proposed executive compensation form. However, we do not propose to follow every aspect of the SEC's approach. In many areas, we have attempted to articulate our requirements in a less prescriptive manner. We have also considered factors specific to Canada where relevant. In some cases, this means we are proposing different disclosure than the SEC rule. We identify the differences between our proposal and the SEC's requirements in this notice.

Summary of significant changes to the disclosure requirements

The proposed executive compensation form will expand disclosure of executive compensation in key areas. The most significant changes are:

i) For the first time, the summary compensation table includes a column showing the total compensation provided to each named executive officer (NEO). This will represent the total of the figures disclosed in all the other columns in the table.

ii) A new compensation discussion and analysis section (CD&A) will explain the rationale for specific compensation programs for executives.

iii) All equity compensation in the summary compensation table is disclosed on the basis of the compensation cost of these awards over the requisite service period, as reflected in a company's financial statements. This is a change from the current form, which discloses items such as stock and options according to the number of shares or other securities granted.

iv) There is more specific disclosure of potential payments to NEOs upon termination of their position at the company, including more detail on retirement benefits.

v) The proposed executive compensation form will require expanded disclosure of director compensation, including a summary table and equity disclosure similar to what is required for NEOs.

Summary and discussion of the proposed executive compensation form

The proposed executive compensation form has nine parts.

Item 1 – General provisions

(a) Definitions

Item 1 contains the definitions of terms and phrases used in the proposed executive compensation form and general instructions. A number of definitions are new because they correspond to additional items in the form.

The definition of "incentive plan" includes any plan providing compensation intended to serve as an incentive for performance to occur over a specified period. When applying this definition, many companies will find that items they previously would have included in the bonus column of the summary compensation table will now belong in the "non-equity incentive plan" column, or in the columns for stock or option awards.

The bonus column will now include any discretionary payments that do not relate to pre-determined performance conditions. This is a change from the current form, which distinguishes between bonus and long-term compensation based on the time period that a given award relates to. It will no longer matter whether an award is tied to a specific year or a longer period. If it contains specific performance factors that are identified and communicated to the executive, then

the award is disclosed as a non-equity performance award. Bonuses are limited to discretionary items that do not involve any pre-determined performance criteria.

(b) External management companies

We have provided additional instructions in item 1.4, paragraph 4 for external management companies. These instructions clarify that amounts paid to individuals acting in the capacity of a NEO that are not compensated directly by the company but by some other entity must be disclosed.

Non-corporate entities must disclose compensation paid to persons acting in the capacity of CEO, CFO or in other positions, even if technically they have no officers. We previously added most of this instruction to the existing form and have slightly expanded these instructions in the proposed executive compensation form.

(c) Prospectus disclosure

Item 1.4, paragraph 7 clarifies that if a company or other entity is a new reporting issuer, it does not need to provide information for completed fiscal years when it was not a reporting issuer.

However, we ask new reporting issuers to discuss the compensation objectives for the newly public company.

(d) Definition of NEO

We have retained essentially the same definition of "named executive officer" that exists in the current form. Both the CEO and CFO must be disclosed, regardless of their compensation. Up to three other executive officers must also be disclosed, if their total compensation is greater than $150,000. This determination will now be made based on total compensation, rather than on salary and bonus.

The definition of "executive officer" is set out in section 1.1 of NI 51-102 and means an individual who is:

(a) a chair, vice-chair or president;
(b) a vice-president in charge of a principal business unit, division or function including sales, finance or production; or
(c) performing a policy-making function in respect of the issuer.

The change in pension value in column (h) of the summary compensation table will be excluded from the calculation of total compensation for the purposes of identifying NEOs. The figure in this column may fluctuate significantly from year to year. It may even be a negative number in some years, depending on how the pension assets have been invested and are performing. As a result, this figure could have a distorting effect on the selection of NEOs to be included in the table.

There are other possible ways to present the compensation information for executive officers that we could have chosen. For example, one option would be to separately disclose the CEO and CFO, as the two most visible and influential executives at a company, and then provide aggregate disclosure for the remaining three (or other number of) executives. This approach would still provide a detailed breakdown for the top two executives, as well as insight into the total value transfer from the company to a broader group of executives. The information would be supplemented by the disclosure about the company's compensation objectives and philosophy contained elsewhere in the form.

We could have chosen to allow greater flexibility in selecting the individuals to be disclosed. For example, a company could determine the people disclosed in the form based on an assessment of each person's overall influence on policy-making within the company.

Specific request for comment

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?

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?

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?

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

(a) General

Item 2 requires a discussion and analysis of the executive compensation provided to NEOs in the most recently completed financial year. The purpose of this analysis is to provide the context for the detailed compensation numbers that are set out in the tables in the proposed executive compensation form. We identify six key principles that reporting issuers must discuss, as well as a number of examples of the types of issues that they could address when explaining those principles. Part of the discussion will involve describing what compensation could have been under different performance scenarios.

We have tried to ensure that the principles are sufficiently broad to capture key strategic information and to remain relevant as compensation practices change. The examples provided in the instructions to the CD&A are illustrative and are not meant to represent an exclusive list of items to be discussed. The CD&A

should contain a meaningful analysis of factors relevant to the actual compensation decisions made at your company. Boilerplate language should be avoided.

(b) Performance graph

Companies that are not venture issuers must include a performance graph in their CD&A that illustrates their cumulative total shareholder return over the last five most recently completed fiscal years compared to the cumulative total return of at least one broad equity market index. This is essentially the same requirement that is under item 10 of the current form. However, we propose requiring an additional level of analysis that will explain how the trend shown by the graph compares to the trend in the company's compensation to executives over the same period.

As is currently the case, we do not propose to require venture issuers to include the performance graph in their compensation disclosure.

(c) Corporate governance disclosure

When drafting the CD&A companies should consider the disclosure they have provided in Form 58-101F1 or Form 58-101F2 under National Instrument 58-101 *Corporate Governance Disclosure*. These forms specifically address the process the board of directors uses to determine executive compensation.

(d) Targets

We require companies to disclose specific quantitative and qualitative performance-related factors for NEOs. In our view, this information is important for readers to fully understand how executive pay relates to company performance. However, companies do not have to disclose targets if this would result in competitive harm to the company.

For example, where a target is based on an objective measure, such as the company's stock price, it should generally be disclosed. In this case, the measure is readily available to the public and is unlikely to result in competitive harm if it is identified as being linked to executive performance.

However, if the target is based on more subjective, internal processes, then it might be appropriate to provide a narrative description of the target, rather than a specific figure. If a target is not specifically disclosed, companies must identify the percentage of an executive's total compensation that relates to the undisclosed target.

(e) Option grants

We included an instruction for companies to disclose practices related to granting options and whether executives are involved in determining who is awarded options.

Specific request for comment

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

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

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?

Item 3 - Summary compensation table

(a) General

Item 3 requires companies to complete the summary compensation table for NEOs. Consistent with the current requirements, the revised table requires disclosure of compensation for each of the company's last three completed fiscal years. This table will serve as the principal disclosure vehicle for executive compensation. It will also be accompanied by a narrative description of any material factors that are necessary to understand the information in the table.

(b) Salary and bonus

These columns will include salary and bonus executives earn in a given year, including any salary and bonus earned, but for which payment is deferred. Any salary or bonus that an executive foregoes for equity or other compensation is also included in the salary or bonus column. A footnote to the summary compensation table will identify any non-cash compensation that is received instead of salary or bonus.

Some payments that companies would previously have included in the bonus column may now fit in the non-equity compensation column of the table.

The new definition of 'incentive plan' includes any plan that is intended to serve as an incentive for performance over a specified period, even if only for a year or less. This means a plan that includes specific performance objectives, whether for a short or long period, will not be considered a bonus. Payments that are purely discretionary will continue to be reflected in the bonus column.

(c) Plan-based awards

The next three columns in the table (stock awards, option awards and non-equity incentive plan compensation) relate to equity and other plan-based awards. These columns are new and capture the dollar value of each award recognized for financial statement reporting purposes (for stock and option awards), or on the

date earned (for non-equity incentive plan awards), rather than the number of securities granted as is currently required.

The stock awards column (column (e)) discloses stock-related awards that derive their value from the company's equity securities or allow settlement by issuance of a company's equity securities. This includes instruments such as restricted stock, restricted stock units, phantom stock or units or any similar instruments.

The options awards column (column (f)) includes options, stock appreciation rights, and similar equity-based compensation instruments that have option-like features. As with stock awards, the value disclosed is the compensation cost of option awards as they vest over the requisite service period.

The awards in both columns must be valued using the same methodology and assumptions used for determining the compensation cost of these awards as reported in the company's financial statements.

(d) Non-equity incentive plans

Column (g) reports the dollar value of all other amounts earned through non-equity incentive plans. It includes awards for which the relevant performance measure under the plan is not based on the price of the company's securities, or that will not be settled by the issuance of the company's securities. Amounts will be disclosed in this column when they have been earned.

This column will also include any earnings (such as interest or dividends) on outstanding non-equity incentive plan awards, which will be identified in a footnote to the table.

(e) Change in Pension Value

Column (h) has been created to disclose the increase in the actuarial present value of the NEOs accumulated benefit under all defined benefit and actuarial plans (including supplemental plans).

The amounts included in this column will be included in the total compensation number, but will be excluded from the calculation of total compensation for determining the highest paid executive officers who must be included in the table. This is because the actuarial value of a pension plan can fluctuate significantly from year to year, which could have a disproportionate impact on determining who the five highest paid officers are in a given year.

Any amount attributable to the defined benefit and actuarial plans that is a negative number will not be reflected in the amount reported in the column, but should be disclosed in a footnote.

Instead of disclosing the total change in actuarial value, another possibility would be to distinguish between the portion of actuarial value that is attributable to

compensatory elements of a defined-benefit pension plan, such as the service cost to the company, and those elements that relate to non-compensatory factors such as a change in interest rates. Disclosure could focus solely on the elements that reflect actual compensation to an executive.

However, similar to the SEC's approach, we concluded that it was most appropriate to require disclosure of the entire amount of the increase in pension value since this more accurately reflects the company's liability.

(f) All other compensation

This column discloses all other compensation that is not required in any other column of the table. Consistent with current requirements, perquisites and personal benefits must be included in this column, along with a number of other items. We clarify that all items that do not fit into any other column must be included in this column, including potentially significant payments, such as any amounts paid to a NEO at or following termination.

The threshold for disclosing perquisites and other personal benefits has not changed. We plan to retain the current standard for valuing perquisites and other personal benefits based on aggregate incremental cost to the company. Perquisites and other personal benefits are currently disclosed, unless the aggregate amount of this compensation to a NEO is less than $50,000 and 10% of the total annual salary and bonus of the NEO for the financial year.

Each perquisite or other personal benefit exceeding 25% of the total perquisites and other personal benefits reported for a NEO must also be identified by type and amount in a footnote to the column.

This is an area where we differ from the SEC. The SEC has lowered its threshold for disclosing perquisites to $10,000.

Although we have not changed the existing test for perquisite disclosure, a greater number of perquisites may be captured under the proposed executive compensation form. This is because of the potential change to the items included in the bonus column. Under the proposed executive compensation form, a bonus is limited to purely discretionary payments. Any payment that relates to pre-established performance factors that are communicated to a NEO will now be considered non-equity incentive plans for the purposes of the summary compensation table.

As a result, there may be less compensation reported in the bonus column and thus the amount of compensation used to determine perquisite disclosure may also be reduced. This could mean more perquisites will be caught by the existing threshold test.

In considering whether something is a perquisite, we are proposing a similar test to the SEC's approach. Companies should consider whether an item is integrally and directly related to an executive's duties. This is a narrow test that focuses on whether the item is required by a person to do his or her job. If it is, the item is not a perquisite. For example, a wireless device that allows the person to remain in contact with work when away from the office could be considered integrally and directly related to a person's job. Even though the person could also use the device to send personal email, it would not be considered a perquisite if it is necessary for that person to do his or her job.

Where the item is not integrally and directly related to a person's job, companies must consider whether the executive receives a personal benefit from the item that is not generally available to all employees. If something confers a personal benefit and is not integrally and directly related to the job, the item is a perquisite, even if it also had a business purpose or is beneficial to the company. For example, transportation to work provided by the company that is not available to all employees could be a perquisite.

If an item is not integrally and directly related to job performance and provides no personal benefit to a NEO, it is not considered a perquisite. For example, if an executive uses a club membership solely for business purposes without any personal benefit, the club membership is not considered a perquisite, even though it is not integrally and directly related to performance of duties.

(g) Total compensation

We have added a new total compensation column (column (j)). This column aggregates the total dollar value of each form of compensation quantified in the other columns. To arrive at a total compensation number, companies must determine the fair value of all non-cash forms of compensation.

(h) Grants of equity awards

Immediately following the summary compensation table, companies must disclose the value of all stock and options awarded to a NEO during the last fiscal year. This value will be dollar value of each award on the date of grant, as determined by section 3870 *Stock-based compensation and other stock-based payments* of the Handbook. This disclosure will give readers a clear idea of the total amount of equity compensation that a company decided to award to its top executives in the past year. Some of this compensation will be subject to performance-based or vesting conditions and may never be received by the executive. The amounts that do vest will be reflected in the summary compensation table.

Specific Request for Comment

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?

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

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?

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?

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

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

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?

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

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

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?

Item 4 – Equity-based awards

Item 4 requires reporting issuers to disclose specific information about equity and non-equity awards in two new tables. For equity awards, the first table will require companies to disclose:

- Information on outstanding options, including the number of securities underlying these options, the exercise prices and expiry dates;
- the value of unexercised in-the-money options, and

- information on outstanding stock awards, including the market value of shares or other rights that have not vested as at the most recently completed financial year for each NEO.

A second table will show any amounts a NEO realized during the year from exercising option awards and from the vesting of stock and similar awards.

The purpose of these tables is to give investors information about the position of outstanding options (both in and out-of-the money), as well as the value accrued to and realized by NEOs during the last year. We think this information will provide a clearer picture of what has happened to a given award after it was disclosed in the summary compensation table.

Item 5 – Plan-based awards

Item 5 requires companies to explain, in narrative form, the material terms of all awards, both equity and non-equity. In this section, in addition to explaining the terms of the option and stock awards disclosed in the table, companies must provide information about non-equity incentive plan awards, including information on estimated future payouts under these plans (threshold, target and maximum amounts). Companies may aggregate information for different awards that have substantially the same terms.

For both Item 4 and Item 5 we have diverged from the SEC's approach. While the SEC rule requires the same number of tables in addition to the summary compensation table, the SEC tables include greater detail with respect to the grant of each award, outstanding equity awards at fiscal year-end and outline option exercises and stock vested in the last fiscal year.

Our approach may not capture all of the detail required by the SEC rule. For example, we will not require tabular disclosure of the date of each equity grant or the potential payouts under equity awards. However, companies should use the narrative discussion that follows the table to disclose any material terms of these awards, including such items.

By taking a condensed approach to this information, we are attempting to focus on the elements that are most relevant to investors. We believe that too much detail in the tables could reduce the overall efficacy of the compensation disclosure.

Specific Request for Comment

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?

Item 6 - Retirement plan benefits

We are proposing a new table that will disclose the details of all defined benefit retirement plans, including the present value of the accumulated benefit.

This table is a significant change from the current disclosure requirements for executive pensions. Many have criticized the existing table because it simply discloses benefit entitlements for specified compensation levels and years of service, without regard to the actual circumstances and potential benefit entitlement of specific executives. We think the proposed new table will improve transparency in this area.

In addition to the disclosure for defined benefit pension plans, the SEC also requires new disclosure of deferred compensation and defined contribution plans in a table. We do not propose to require this tabular disclosure. Instead, we are asking companies to explain, in narrative form, the material terms of any of these plans.

Our understanding is that these types of compensation plans are not as prevalent in Canada as they are in the United States, partly because the tax treatment of these plans is not as flexible in Canada. As a result, we feel that sufficient information will be captured in the summary compensation table and additional narrative disclosure in this section of the form.

Specific Request for Comment

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?

Item 7 - Termination and change of control benefits

Item 7 requires companies to provide detailed disclosure of payments made to NEOs that are related to their termination or a change of control of the company. The item will require disclosure of the material terms of any written or unwritten agreements that provide for payments to a NEO at termination. Termination will mean resignation, severance, retirement, constructive termination of a NEO, a change of control of the company or a change in a NEO’s responsibilities.

Companies will now have to provide estimated annual payments and benefits that NEOs would receive under various termination scenarios. When calculating these payments, companies should assume that:

- the triggering event took place on the last business day of the company’s last completed financial year and

- the price per share was the closing market price of the company's securities on that day.

This item will require companies to provide more disclosure about payments to executives at termination than is currently required. This may require companies to provide estimated payments for a number of potential termination scenarios. However, these payments can represent substantial obligations of the company that should be clearly identified and quantified.

We confirm in the proposed executive compensation form that when a NEO received some type of termination payment during the last fiscal year and is no longer serving as a NEO, the only disclosure that needs to be provided under this item relates to the actual triggering event that occurred for that NEO.

Specific request for comment

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

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?

Item 8 – Director compensation

Item 8 introduces a new table of director compensation. This table is similar to the summary compensation table for executives. It will provide a more complete picture of director compensation than is currently required. We will also require companies to provide the same disclosure about equity-based and plan-based awards for directors that will be required for NEOs.

Over the years, compensation for directors has become more complex. While directors at one time may only have received straightforward payments for attending meetings, today it is not uncommon, for example, for directors to receive stock options. The proposed new disclosure will improve transparency in this area.

Specific Request for Comment

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

Item 9 – Companies reporting in the United States

We have retained the accommodation for SEC issuers in the proposed executive compensation form. Item 9 permits SEC issuers to satisfy the requirements of the proposed executive compensation form by providing the information they are required to

file with the SEC. However, this is not available to companies that qualify as foreign private issuers in the United States.

Other major issues considered

(a) Location of the disclosure

We considered a number of possibilities for the appropriate location of executive compensation disclosure. Historically, it has been included in the management information circular that is distributed to shareholders before a company's annual meeting.

We considered requiring companies to include part or all of the executive compensation disclosure in their annual management's discussion & analysis (MD&A). In some ways, the MD&A could be the most logical place for compensation disclosure because it might promote a closer scrutiny of how compensation reflects company performance. During our consultations, many expressed concerns that this approach would present timing problems for companies. The MD&A is usually prepared at the time the financial statements are filed, which is typically before compensation decisions are finalized.

Questions were also raised about the suitability of having the executive compensation disclosure be subject to the certificates required by National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (NI 52-109). By including this information in the MD&A, it would automatically become part of the information covered by these certificates. The SEC is requiring the CEO and CFO to certify the CD&A in accordance with s. 302 of the Sarbanes-Oxley Act.

We propose that the disclosure remain in the management information circular for the time being. We will continue to consider whether this is the most appropriate place for companies to present executive compensation information to investors and may revisit this issue in the future.

We are not proposing to require certification of any part of the executive compensation disclosure at this time. We decided that the CD&A should be a report of the group ultimately responsible for determining executive compensation, namely the board of directors or a compensation committee of the board. It did not seem appropriate to us to require certification by management of this aspect of executive compensation disclosure.

(b) Venture Issuers

The current form allows venture issuers to provide less disclosure than non-venture issuers. Venture issuers do not need to provide disclosure on option and SAR repricings (item 5), defined benefit or actuarial plan disclosure (item 6), composition of the compensation committee (item 8), the report on executive compensation (item 9) or the performance graph (item 10).

In general, we are not proposing that venture issuers be subject to different disclosure requirements under the proposed executive compensation form. Small companies with fewer employees and simpler compensation structures will generally find the form requirements easier to comply with, and no company is required to fill out a section of the form if they have nothing to report.

However, we do accept that the performance graph may be difficult for venture issuers to prepare and does not provide as much relevant information for these companies. Accordingly, the proposed executive compensation form does not include this requirement for venture issuers.

We also indicate in the proposed executive compensation form that if a company's process for determining executive compensation is very simple, then this should be made clear in the CD&A. In this case, a company may not have anything to discuss for some of the listed items in the CD&A. Venture issuers that have relatively straightforward compensation structures may find that their CD&A disclosure is focused on just a few key elements.

The SEC has exempted small business issuers from providing some of the information required by the SEC rule. For example, the SEC will only require compensation disclosure for the principal chief executive officer and principal financial officer plus one other executive for these issuers, instead of a possible five executives.

(c) Performance metric

We considered requiring a standardized measure of how executive compensation relates to company performance. For example, an increase in the CEO's compensation in a defined period could be compared graphically to the increase in the company's stock price over that period or to the increase in total return on equity. Alternatively, these measures could be adjusted to highlight the difference between the company's performance and that of its industry group.

However, we thought it would be difficult to devise a single performance measurement tool that would yield relevant information for all companies. As a result, we are not proposing disclosure of any specific performance calculation.

Specific request for comment

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?

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?

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

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

Transition and other amendments

We plan to amend Part 14 – Effective Date and Transition of NI 51-102 to add a provision relating to the repeal and substitution of the current form with the proposed executive compensation form.

We intend the proposed executive compensation form to be in effect at the end of 2007 and will require companies to comply with the new form for financial years ending on or after December 31, 2007. Given the length of our comment process, we feel companies will have enough time to consider these changes and prepare for the proposed executive compensation form.

We are also adding a provision to Part 11 of NI 51-102. This new section will require venture issuers that do not send a management information circular to securityholders to file a completed Form 51-102F6 within 140 days of the company's financial year-end. Currently, non-venture issuers that do not send an information circular to securityholders are required to provide executive compensation information in the annual information form. As venture issuers are not required to file an annual information form, some do not provide executive compensation disclosure. We have added this provision to ensure that all reporting issuers provide executive compensation disclosure at least once a year.

Specific Request for Comment

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

Alternatives considered

We considered leaving the current requirements as they are. However, the current form was created more than 12 years ago and does not fully capture recent developments in executive compensation practices.

Unpublished materials

We did not rely on any significant unpublished study or other written materials in drafting the proposed form.

B. ADDITIONAL AMENDMENTS TO NI 51-102, FORM 51-102F2 AND FORM 51-102F5 AND CONSEQUENTIAL AMENDMENTS TO MULTILATERAL INSTRUMENT 52-110 AND NATIONAL INSTRUMENT 58-101

Introduction

The CSA is also publishing for comment proposed amendments to National Instrument 51-102 Continuous Disclosure Obligations (NI 51-102) and to Forms 51-102F2 *Annual Information Form* and 51-102F5 *Information Circular*.

We are publishing proposed amending instruments for NI 51-102 in Appendix A, and Forms 51-102F2 and 51-102F5 in Appendix C. We are publishing proposed amending instruments for consequential amendments to Multilateral Instrument 52-110 *Audit Committees* and National Instrument 58-101 *Disclosure of Corporate Governance Practices* in Appendix D. You can also find the proposed amendments on websites of CSA members.

Background

On October 13, 2006 we published notice of adoption of amendments to NI 51-102, its related forms and companion policy and related instruments and these came into force on December 29, 2006. The proposed amendments in this notice are in addition to the amendments published on October 13, 2006.

Substance and Purpose and Summary of the Proposed Amendments

The amendments we are publishing for comment would

- amend the definition of *venture issuer* to remove large debt-only issuers from the definition,
- reduce the requirement for directors, executive officers and significant shareholders to disclose cease trade and similar orders issued against other companies they were involved with.

1. Definition of venture issuer

NI 51-102 distinguishes between venture issuers and issuers that are not venture issuers for some requirements. For example, venture issuers do not have to file annual information forms and have longer to file their financial statements than issuers that are not venture issuers. Currently, there is no specific classification system for debt-only issuers; they are classified, using the same criteria as equity issuers, as either venture or non-venture on the basis of their exchange listing.

The policy rationale for the venture issuer definition was to recognize the disproportionate burden of complying with continuous disclosure obligations on smaller

issuers. We recognize that the definition results in some large issuers that are only listed on the TSX Venture Exchange being classified as venture issuers while small issuers listed on the Toronto Stock Exchange are classified as non-venture issuers. Despite these anomalies, we determined that the exchange-listing criterion was the preferred approach as it provided the market with a test that was easily applied and transparent.

Most debt-only issuers do not list their debt on any exchanges and so are currently venture issuers. However, some debt-only issuers have foreign-listed debt, and so are not venture issuers. Debt-only issuers that list their securities on foreign exchanges generally do so to satisfy certain “legal for life” requirements in Europe. Those issuers are not fundamentally different from debt-only issuers that do not offer or list their securities in Europe. As is the case with equity issuers, there is a difference in treatment between debt-only issuers as they are not treated the same under NI 51-102.

After studying the profile of debt-only reporting issuers in Canada, we realized that most are extremely large issuers – with almost all of them having net assets of over $500,000,000. Given their size, categorizing them all as venture issuers would not be consistent with the policy rationale behind the definition.

Given the current composition of debt-only issuers and the fact that an exchange listing does not appear to be an appropriate test for size for debt-only issuers, we propose to amend the definition of venture issuers to remove debt-only issuers with total assets of over $25 million from the definition. This would result in large debt-only issuers being classified as non-venture issuers.

The proposed amendment to the definition also does not apply to issuers of debt securities that are asset-backed securities as defined in NI 51-102. Asset-backed securities that are pay-through securities typically evidence limited-recourse, secured debt obligations of the issuer. Issuers of asset-backed securities that are pay-through securities are debt-only issuers. Other issuers of asset-backed securities, however, issue pass-through securities that typically evidence undivided co-ownership interests in a pool of commercial mortgage loans and accordingly do not represent debt obligations of the issuer. Issuers of asset-backed securities that are pass-through securities are not debt-only issuers. We are monitoring the implementation of new requirements for issuers of asset-backed securities in the United States and are considering developing certain rules for issuers of asset-backed securities in Canada. While we are considering this, we are proposing that all issuers of asset-backed securities that are not listed would remain as venture issuers.

2. Disclosure of Cease Trade Orders

The proposed amendment to the requirement to disclose cease trade and similar orders would reduce the disclosure required in annual information forms and information circulars. Currently, directors, executive officers and significant shareholders must disclose if, during the past 10 years, they were directors or executive officers of an issuer that was subject to a cease trade or similar order, while that order was outstanding. It has

been argued that the current disclosure requirement captures too many individuals to be useful and does not have regard to the individuals' role in the issuer's default that led to the imposition of a cease trade order or to the individuals' ability to cause the issuer to remedy the default. It has also been argued that the current disclosure requirement may result in an inappropriate stigma that may discourage individuals from joining boards of directors where the issuer is or may go into default.

The proposed amendments would

- eliminate the disclosure requirement for significant shareholders
- reduce the disclosure from the previous 10 years to the previous 5 years
- require the disclosure only for directors and executive officers who were directors, Chief Executive Officers or Chief Financial Officers of an issuer when a cease trade or similar order was actually issued, or when the event occurred that led to the order being issued.

Report of Voting Results

In addition to the two amendments above, we are also seeking comment on the content of the report of voting results required by section 11.3 of NI 51-102. Currently non-venture issuers that conduct a vote by ballot are required to report the number or percentage of votes cast for, against or withheld from the vote. For a vote that is not conducted by ballot (i.e. it is conducted by a show of hands), issuers are required to disclose only a description of the matter voted upon and the outcome of the vote, and not the results of the voting instructions contained in the proxies submitted to the issuer prior to the meeting.

The Alberta Securities Commission questions the relevancy of this information and in any event is of the view that an additional requirement for issuers to report voting results of proxies received when a vote is by show of hands is unnecessary given the rights of shareholders and proxyholders under statutes to demand a vote by ballot and thereby trigger full reporting of voting results under the existing regime.

Regulators in some jurisdictions think that disclosure of the results of the proxies (in particular, the number of shares "withheld from voting") will provide useful information for investors and greater transparency and will improve the board's accountability to shareholders. Because shareholders who attend a meeting in person need not submit a proxy in advance, the results of the proxies received would not include the votes of any shareholder who attended the meeting and voted in a show of hands. However, our research shows that the majority of shareholders who wish to vote submit their votes by proxy.

Therefore, we are seeking comment on whether the issuer should also disclose the results of the proxies received for each matter voted upon, even if the vote is not conducted by ballot. Would disclosing this additional information about the results of proxies provide a

benefit to shareholders? Does the potential discrepancy between proxies received and actual votes cast by show of hands impact the usefulness of the information?

Alternatives considered

We considered making all debt-only issuers venture issuers, or maintaining the status quo. We rejected both those options.

With respect to the cease-trade order disclosure, we considered eliminating the disclosure, rather than reducing it. We rejected this option, as we feel that the disclosure provides important background about a reporting issuer's directors and executive officers.

Anticipated costs and benefits

Making all debt-only issuers non-venture issuers may result in some increased costs to those issuers that are currently venture issuers. The primary increased cost would be from the accelerated filing deadlines for financial statements and MD&A. We believe the costs will not be overly burdensome to debt-only issuers, and will make their treatment under NI 51-102 consistent with other large issuers.

The proposed amendments to the Forms to reduce the cease trade order disclosure will reduce disclosure costs to issuers.

Related amendments

We propose to amend Multilateral Instrument 52-110 *Audit Committees* and National Instrument 58-101 *Disclosure of Corporate Governance Practices* to reflect (i) the proposed change to the definition of venture issuer to remove all debt-only issuers from the definition and (ii) the change, which we previously made to NI 51-102, to the definition of venture issuer to include issuers whose securities are listed on the Alternative Investment Market of the London Stock Exchange and the PLUS markets (formerly known as OFEX) operated by PLUS Markets Group plc. Those amendments are set out in Appendix D. We are also revising the definition of venture issuer in NI 51-102 to reflect the recent change of name of OFEX (see Appendix A).

Local amendments

We propose to amend Form 41-501F1 *Information Required in a Prospectus* of Ontario Securities Commission Rule 41-501 *General Prospectus Requirements* to make corresponding changes with respect to disclosure of cease trade orders. Those amendments are set out in Appendix E.

Unpublished materials

In proposing amendments to NI 51-102 and the Forms 51-102F2 and 51-102F5, we have not relied on any significant unpublished study, report, or other written materials.

Comments on Parts A and B of the Notice

We request your comments on the materials outlined above. Please provide your comments by June 30, 2007. Address your submissions to all of the CSA member commissions.

Please deliver your comments to the addresses below. Your comments will be distributed to the other participating CSA members.

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If you do not submit your comments by e-mail, a diskette containing the submissions in Word should also be provided.

We cannot keep submissions confidential because securities legislation in certain provinces requires that a summary of the written comments received during the comment period be published.

Questions

Please refer your questions to any of the people listed below:

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Amendments

The text of the amendments follow or can be found elsewhere on a CSA member website.

March 29, 2007