Notice and Request for Comment

Draft Regulation to amend *Regulation 51-102 respecting Continuous Disclosure Obligations*, including Form 51-102F6, *Statement of Executive Compensation*,

and

Consequential Amendments

Introduction

- We, the Canadian Securities Administrators (CSA), are seeking comments on proposals to improve the disclosure shareholders receive regarding executive compensation and corporate governance contained in Form 51-102F6 *Statement of Executive Compensation (in respect of financial years ending on or after December 31, 2008)* (Form 51-102F6 or the Amended Form) of *Regulation 51-102 respecting Continuous Disclosure Obligations* (Regulation 51-102).

We are also publishing for comment related consequential amendments to Form 58-101F1 *Corporate Governance Disclosure* and Form 58-101F2 *Corporate Governance Disclosure (Venture Issuers)* (the Consequential Amendments) of *Regulation 58-101 respecting Disclosure of Corporate Governance Practices* (Regulation 58-101).

The changes to all these documents are referred to as the Proposed Amendments.

The Proposed Amendments have been prepared on the assumption that amendments made recently to Form 51-102F6 relating to the upcoming changeover to International Financial Reporting Standards (IFRS) have the force of law in all provinces and territories of Canada. These IFRS amendments, which were published by the CSA on October 1, 2010, come into force on January 1, 2011 subject to ministerial approval requirements in British Columbia, Ontario, Quebec, New Brunswick and Nova Scotia.

Provided the necessary approval is obtained, these amendments are expected to come into force on October 31, 2011.

We think the effect of the Proposed Amendments we are recommending, which range from drafting changes to clarify existing disclosure requirements to new substantive requirements, would enhance the quality of information provided to investors and assist companies in fulfilling their executive compensation disclosure obligations.

The Proposed Amendments are published with this Notice.

We invite comment on the Proposed Amendments generally. In addition, we have included specific questions for your consideration. The comment period will end on **February 17, 2011**.

Substance and Purpose of the Proposed Amendments

On September 18, 2008, we announced the adoption of Form 51-102F6, which became effective across all CSA jurisdiction on December 31, 2008. Form 51-102F6 replaced the previous version of Form 51-102F6 (in respect of financial years ending before December 31, 2008) (the Old Form). In adopting Form 51-102F6, the CSA's stated intention was to create a document that would continue to provide a suitable framework for disclosure as compensation practices change over time.

On November 20, 2009, CSA Staff Notice 51-331 *Report on Staff's Review of Executive Compensation Disclosure* (the Staff Notice) was issued and reported the findings of a targeted compliance review of executive compensation disclosure. 70 reporting issuers were selected for this review. Staff of the British Columbia Securities Commission, the

Alberta Securities Commission, the Ontario Securities Commission and the Autorité des marchés financiers participated in the targeted compliance reviews.

The focus of the reviews was to:

(i) assess compliance with Form 51-102F6,

(ii) use the review results to educate companies about the new requirements, and

(iii) identify any requirements that need clarification or further explanation to assist companies in fulfilling their disclosure obligations.

We asked most of the companies reviewed to improve their disclosure in future filings, in respect of the disclosure issues that were identified in the targeted reviews and discussed in the Staff Notice.

In addition, we have seen a number of recent international developments in the area of executive compensation. In particular, on December 16, 2009, the Securities and Exchange Commission (SEC) adopted rules amending compensation and corporate governance disclosure requirements for U.S. companies in the 2010 proxy season (the 2010 SEC Amendments). Under the 2010 SEC Amendments, companies are required to provide additional compensation-related disclosures about conducting a risk analysis, grant date fair value of equity-based awards and services provided by compensation advisors.

More recently, on July 15, 2010, the United States Congress passed a final version of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (the Dodd-Frank Act). The Dodd-Frank Act was signed into on July 21, 2010 and will affect the 2011 proxy disclosures. The Dodd-Frank Act includes a number of provisions aimed at greater shareholder and regulatory oversight of executive compensation and includes provisions that will affect corporate governance practices at many public companies. The impact of many of the changes to the rules and regulations applicable to U.S. public companies will not be known until the SEC adopts new regulations on the matters required by the Dodd-Frank Act.

We have reviewed the issues discussed in the Staff Notice and the amendments in the 2010 SEC Amendments and the Dodd-Frank Act that we think are also relevant to Canadian reporting issuers. As a result, we are recommending amendments to Form 51-102F6 to improve the information companies provide investors about key risks, governance and compensation matters. We think the Proposed Amendments will help investors make more informed voting and investment decisions.

Summary of Substantive Proposed Changes to Form 51-102F6

The Proposed Amendments include drafting changes to clarify certain existing disclosure requirements and new substantive requirements. This section describes only the substantive changes in the Proposed Amendments. It is not a complete list of all the changes.

A. ITEM 2 – Compensation Discussion and Analysis (CD&A)

1. Serious prejudice exemption in relation to the disclosure of performance goals or similar conditions

Subsection 2.1(4) provides an exemption from the requirement to disclose specific performance goals or similar conditions on the basis that disclosure would “seriously prejudice the interests of the company”. Our reviews have shown that it is difficult to recognize in the CD&A when the company is relying on this exemption.

We propose to amend subsection 2.1(4) to require the company to explicitly state that it is relying on the exemption and explain why disclosing the relevant performance goals or similar conditions would seriously prejudice the company's interests.

2. Risk management in relation to the company's compensation policies and practices

The 2010 SEC Amendments require disclosures in proxy and information statements about the company's compensation policies and practices for all employees if the compensation policies and practices create risks that are reasonably likely to have a material adverse effect on the company. These amendments were made in response to concerns that, at some companies, compensation policies have become disconnected from long-term company performance and create incentives that influence behaviour inconsistent with the overall interests of the company. One of the many contributing factors cited as a basis for the recent problems in the financial markets is that, at a number of large financial institutions, the short-term incentives created by their compensation policies were misaligned with their long-term objectives.

We propose to amend the CD&A requirements to broaden their scope to include a new provision that will require companies to disclose whether the board of directors considered the implications of the risks associated with the company's compensation policies and practices.

If the company has completed a risk analysis, the proposed subsection 2.1(5) would require a company to discuss and analyze its broader compensation policies and overall actual compensation practices for executive officers and at a business unit of the company, if risks arising from those compensation policies or practices are reasonably likely to have a material effect on the company. More specifically, a company would be required to disclose: (i) the nature and extent of the board's role in the risk oversight of compensation policies and practices; (ii) any practices used to identify and mitigate compensation policies and practices that could potentially encourage a named executive officer (NEO) or individual at a principal business unit or division to take inappropriate or excessive risks; and (iii) the identified risks arising from the policies and practices that are reasonably likely to have a material adverse effect on the company.

The disclosure required under this amendment will vary depending on the company and its particular compensation policies and practices. We have added commentary to illustrate situations where an executive officer or a business unit of the company could potentially be encouraged to take inappropriate or excessive risks.

Question:

In addition to any general comments, please consider the following questions:

1. Would expanding the scope of the CD&A to require disclosure concerning a company's compensation policies and practices as it relates to risk provide meaningful disclosures to investors?

2. Is the commentary of the issues that a company may consider to discuss and analyze sufficient?

3. Are there certain risks that are more clearly aligned with compensation practices the disclosure of which would be material to investors?

4. Are there any other specific items we should list as possibly material information?

3. Disclosure Regarding Executive Officer and Director Hedging

We propose to broaden the CD&A requirements to include a provision (subsection 2.1(6)) requiring the company to disclose whether any named executive officer (NEO) or director is permitted to purchase financial instruments (such as prepaid variable forward contracts, equity swaps, collars, or units of exchange funds) that are designed to hedge or offset a decrease in the value of equity securities granted as compensation or held, directly or indirectly, by the NEO or director.

Although investors can generate reports of securities transactions by reporting insiders, including NEOs and directors, from the System for Electronic Disclosure by Insiders (SEDI), we think investors will benefit from companies specifically disclosing their compensation policies and practices on this issue.

4. Disclosure of fees paid to compensation advisors

In response to the perception that there may be a conflict of interest when compensation consultants work on projects both for the company and its board of directors, the 2010 SEC Amendments introduced new rules requiring disclosure of the fees paid to compensation consultants and their affiliates in certain circumstances. This amendment was proposed in response to critics who contend that compensation advisors may be influenced in recommending executive compensation packages and policies in situations where the compensation advisor is providing additional services to the company, such as human resource, actuarial or benefit administration services.

We propose a similar amendment to expand our current requirements to disclose information about compensation advisors retained by the company, including a description of the advisor's mandate and any other work performed for the company, by including a requirement to provide a breakdown of all fees paid to compensation advisors for each service provided. The amendment proposed would be consistent with the disclosure currently required in *Regulation 52-110 respecting Audit Committees* for audit-related, tax and other fees.

Since the current disclosure requirements related to compensation advisors are found in *Regulation 58-101 respecting Corporate Governance Disclosure*, we also propose to include a new section 2.4 entitled "Compensation Governance", which would include these requirements and incorporate the other requirements found in Regulation 58-101 to describe the process by which the board of directors determines compensation for the company's directors and officers.

Question:

In addition to any general comments, please consider the following question:

5. The proposed disclosure requirement calls for disclosure of all fees paid to compensation advisors for each service provided. Should we impose a materiality threshold in disclosing the fees paid to compensation advisors based on a certain dollar amount?

B. ITEM 3 – Summary Compensation Table (SCT)

1. SCT Format

Subsection 1.3(2) permits companies to add tables, columns, and other information, if necessary to satisfy the objective of executive compensation disclosure in section 1.1. Our reviews have shown that some companies relied on this subsection to present the SCT in a format different than that required by subsection 3.1(1).

We propose to amend subsection 1.3(2) to clarify that a company may not alter the presentation of the SCT by adding columns or other information. We have included a

commentary to clarify that companies may choose to add another table and other information, so long as the additional information does not detract from the SCT prescribed in subsection 3.1(1).

2. Reconciliation to "accounting fair value"

For share-based and option-based awards reported in the SCT, subsection 3.1(5) requires companies to reconcile any difference between the grant date fair value reported in the SCT and the accounting fair value of share-based and option-based awards. Under this requirement, companies must both state and explain the difference and include a description of the methodology used to calculate the grant date fair value, a description of the key assumptions and estimates used for each calculation, and an explanation of why the company chose that methodology. Our reviews showed that companies did not always satisfy this requirement.

In addition, we received comments from investors in the course of our reviews that they currently refer to the company's financial statements to understand the key assumptions and estimate used to calculate the accounting fair value reported in the company's SCT and in its financial statements. We think it would be useful to also disclose this information in a footnote to the SCT.

We propose to amend subsection 3.1(5) to require all companies to disclose the methodology used to calculate grant date fair value of all equity-based awards, including key assumptions and estimates used for each calculation and why the company chose that methodology, regardless of whether there are any differences with the accounting fair value.

C. ITEM 5 – Pension Plan Benefits

1. Non-compensatory amount for defined contribution pension plans

*(i) Personal registered retirement savings plan (**RRSP**)*

Subsection 5.2(3) requires disclosure of non-compensatory amounts of all defined contribution pension plans, including employee contributions and regular investment earnings on employer and employee contributions. We have had several inquiries as to whether companies are required to disclose non-compensatory amounts in situations where an NEO is contributing to a personal RRSP.

We propose an amendment to clarify that any company contribution made on behalf of the NEO that is not reported in the defined contribution plan table under section 5.2 should be reported in column (h) (all other compensation) of the SCT, in accordance with paragraph 3.1(10)(i).

(ii) Tabular disclosure of non-compensatory amounts

When we first published for comment the proposed repeal and substitution of the Old Form on March 29, 2007 (the 2007 Proposal), we received submissions questioning the different disclosure requirements for defined benefit plans (DB Plans) and defined contribution plans (DC Plans).

The 2007 Proposal did not require the tabular disclosure of DC Plans. Instead, we proposed that companies explain, in narrative form, the material terms of any DC Plans, which made it somewhat more difficult to compare pension offerings among companies. To answer these comments, we modified our proposal to require the tabular format for DC Plans, similar to that proposed for DB Plans. The change was intended to provide complete and consistent disclosure of pension obligations and provide a better basis to compare across issuers.

Since Form 51-102F6 came into force, we received several inquiries questioning the relevance of the requirement in subsection 5.2(3) requiring companies to disclose in the table the non-compensatory amount, including employee contributions and regular investment earnings on employer and employee contributions, for DC Plans.

In addition to the amendment proposed above, we are contemplating the relative benefit of retaining column (d) of the DC Plans table currently required by section 5.2. Accordingly, we are requesting comment from market participants on whether there is value in requiring disclosure of non-compensatory amounts for DC Plans. Depending on the comments received, the final amendments to Form 51-102F6 may include an amendment to the requirements in section 5.2 that would remove column (d) of the DC Plans table.

Questions:

In addition to any general comments, please consider the following questions:

6. Does the disclosure of the non-compensatory amounts for defined contribution plans that an NEO may elect to make with funds received from their salary (currently required by subsection 5.2(3)) provide appropriate and relevant information for an investor?

7. If we removed column (d) of section 5.2, which would limit the disclosure to the compensatory amounts such as employer contributions and above-market or preferential earnings credited on employer and employee contributions, would this provide adequate transparency of a company's pension obligations to its NEOs?

D. Consequential Amendments and other amendments

We are making consequential amendments to Regulation 58-101 to clarify that companies may incorporate disclosure regarding compensation practices by reference to the information required to be included under proposed section 2.4 entitled "Compensation Governance" described above.

In addition, we are making consequential amendments to section 9.3.1 and section 11.6 of Regulation 51-102 to clarify the drafting amendments made to section 1.1 of the Amended Form.

E. Transition

We intend the Proposed Amendments to be in effect for the 2012 proxy season and will require companies to comply with the Proposed Amendments for financial years ending on or after October 31, 2011. Given the length of our comment process, we feel companies will have enough time to consider these changes and prepare for the additional disclosures that will result from the Proposed Amendments.

F. Other Issues

1. Amount realized upon exercise of equity awards

The Old Form included a requirement to disclose the aggregate dollar value realized upon the exercise of options or stock appreciation rights.

Under the new requirements of Form 51-102F6 adopted in 2008, companies are required to disclose specific information about equity-based and non-equity awards in two new tables. The table required under subsection 4.1(1) requires companies to disclose information about all outstanding share-based and option-based awards. The purpose of this table is to give readers information about the position of outstanding equity-based awards (both in and out-of-the-money). The table required under subsection 4.2(1) shows any

amounts an NEO realized during the most recently completed financial year from the vesting of equity-based awards if the equity-based award had been exercised on the vesting date. We think this information provides readers with a clear picture of what has happened to an award after it was disclosed in the SCT.

Form 51-102F6 focuses on the fair value of equity-based awards at the time the board of directors decided to grant the award, rather than the value the executive officer realized when they exercised the option. We continue to think that the executive compensation disclosure rules are focused on the board's compensation-based decisions, rather than the executive officer's investment decisions. We also think that the information to calculate gains on the exercise or sale of equity-based awards is available on SEDI and can be calculated for individual NEOs. In light of this, we do not intend to reintroduce this requirement at this time.

Local Notices

Certain jurisdictions will publish other information required by local securities legislation as appendixes to this Notice

Request for Comments

We would like your input on the Proposed Amendments. We need to continue our open dialogue with all stakeholders if we are to achieve our regulatory objectives while balancing the interest of investors and market participants. To allow for sufficient review, we are providing you with 90 days to comment.

Please provide your comments by February 17, 2011.

All comments will be posted on the *Autorité des marchés financiers* website at www.lautorite.qc.ca.

Thank you in advance for your comments.

All comments will be made publicly available

Please note that we cannot keep submissions confidential because securities legislation in certain provinces requires that we publish a summary of the written comment received during the comment period. In this context, you should be aware that some information which is personal to you, such as your e-mail and residential or business address, may appear in the websites. It is important that you state on whose behalf you are making the submission.

How to Provide Your Comments

Please address your comments to all the CSA member commissions, as follows:

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission – Securities Division
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Government of Yukon
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut

You do not need to deliver your comments to all CSA members. Please deliver your comments only to the following addresses. Your comments will be forwarded to the remaining CSA member jurisdictions.

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If you are not sending your comments by e-mail, please send your comments in Word, Windows format.

Questions

Please refer your questions to any of,

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