

## **REGULATION TO AMEND REGULATION 51-102 RESPECTING CONTINUOUS DISCLOSURE OBLIGATIONS**

Securities Act

(R.S.Q., c. V-1.1, s. 331.1, par. (1), (9), (11), (19.5), (20) and (34))

**1.** Section 9.3.1 of Regulation 51-102 respecting Continuous Disclosure Obligations is amended, in paragraph (1):

(1) by replacing, in the part preceding subparagraph (a), the words “If a reporting issuer” with “Subject to Item 8 of Form 51-102F5, if a reporting issuer”;

(2) by replacing, in subparagraph (a), the words “direct and indirect pay” with the words “direct or indirect pay”;

(3) by replacing subparagraph (ii) of subparagraph (b) with the following:

“(ii) the compensation paid, made payable, awarded, granted, given or otherwise provided to each NEO and director, and”.

**2.** Section 11.6 of the Regulation is amended, in paragraph (1):

(1) by replacing, in subparagraph (a), the words “direct and indirect pay” with the words “direct or indirect pay”;

(2) by replacing subparagraph (ii) of subparagraph (b) with the following:

“(ii) the compensation paid, made payable, awarded, granted, given or otherwise provided to each NEO and director, and”.

**3.** Form 51-102F6, Statement of Executive Compensation (in respect of financial years ending on or after December 31, 2008), of the Regulation is amended:

(1) in section 1.1:

(a) by replacing the first sentence of the second paragraph with the following:

“The objective of this disclosure is to communicate the compensation the company paid, made payable, awarded, granted, gave or otherwise provided to each NEO and director for the financial year, and the decision-making process relating to compensation.”;

(b) by adding, at the end of the third paragraph, “and subsections 9.3.1(1) or 11.6(1) of the Regulation”;

(2) in the definition of the expression “NEO or named executive officer” of section 1.2:

(a) by inserting, in paragraph (c) and after the words “executive officers”, “of the company, including any of its subsidiaries”;

(b) by inserting, in paragraph (d) and after the word “company”, the words “or its subsidiaries”;

(3) in section 1.3:

(a) by inserting, in paragraph (1) and after the words “services provided”, the words “and for services to be provided”;

(b) by replacing paragraph (2) with the following:

**“(2) Departures from format**

(a) Although the required disclosure must be made in accordance with this form, the disclosure may

(i) omit a table, column of a table, or other prescribed information, if it does not apply, and

(ii) add a table, column, or other information if

(A) necessary to satisfy the objective in section 1.1, and

(B) to a reasonable person, the table, column, or other information does not detract from the prescribed information in the summary compensation table in section 3.1.

(b) Despite paragraph (a), a company must not add a column in the summary compensation table in section 3.1.”;

(c) by replacing subparagraph (c) of paragraph (4) with the following:

“(c) If an external management company provides the company’s executive management services and also provides executive management services to another company, disclose the entire compensation the external management company paid to the individual acting as an NEO or director, or acting in a similar capacity, in connection with services the external management company provided to the company, or the parent or a subsidiary of the company. If the management company allocates the compensation paid to an NEO or director, disclose the basis or methodology used to allocate this compensation.”;

(d) by replacing, in subparagraph (c) of paragraph (8), the words “for any part of that” with the words “at any time during the most recently completed”;

(e) by inserting, after paragraph (8), the following:

**“(9) Currencies**

Companies must report amounts required by this form in Canadian dollars or in the same currency that the company uses for its financial statements. A company must use the same currency in the tables in sections 3.1, 4.1, 4.2, 5.1, 5.2 and 7.1 of this form.

If compensation awarded to, earned by, paid to, or payable to an NEO was in a currency other than the currency reported in the prescribed tables of this form, state the currency in which compensation was awarded, earned, paid, or payable, disclose the currency exchange rate and describe the methodology used to translate the compensation into Canadian dollars or the currency that the company uses in its financial statements.

**“(10) Plain language**

Information required to be disclosed under this form must be clear, concise, and presented in such a way that it provides a reasonable person, applying reasonable effort, an understanding of,

(a) how decisions about NEO and director compensation are made; and

(b) how specific NEO and director compensation relates to the overall stewardship and governance of the company.

**“Commentary**

*Refer to the plain language principles listed in section 1.5 of Policy Statement to Regulation 51-102 respecting Continuous Disclosure Obligations for further guidance.”;*

(f) in section 2.1:

(i) by replacing paragraph (4) with the following:

“(4) If applicable, disclose performance goals or similar conditions that are based on objective, identifiable measures, such as the company’s share price or earnings per share. If performance goals or similar conditions are subjective, the company may describe the performance goal or similar condition without providing specific measures.

If the company discloses performance goals or similar conditions that are non-GAAP financial measures, explain how the company calculates these performance goals or similar conditions from its financial statements.

*Exemption*

The company is not required to disclose performance goals or similar conditions in respect of specific quantitative or qualitative performance-related factors if a reasonable person would consider that disclosing them would seriously prejudice the company’s interests.

For the purposes of this exemption, a company’s interest’s are not considered to be seriously prejudiced solely by disclosing performance goals or similar conditions if those goals or conditions are based on broad corporate-level financial performance metrics which include earnings per share, revenue growth, and earnings before interest, taxes, depreciation and amortization.

This exemption does not apply if it has publicly disclosed the performance goals or similar conditions.

If the company is relying on this exemption, state this fact and explain why disclosing the performance goals or similar conditions would seriously prejudice the company’s interests.

If the company does not disclose specific performance goals or similar conditions, state what percentage of the NEO’s total compensation relates to this undisclosed information and how difficult it could be for the NEO, or how likely it will be for the company, to achieve the undisclosed performance goal or similar condition.

“(5) Disclose whether or not the board of directors, or a committee of the board, considered the implications of the risks associated with the company’s compensation policies and practices. If the implications were considered, disclose the following:

(a) the extent and nature of the board of directors’ or committee’ role in the risk oversight of the company’s compensation policies and practices;

(b) any practices the company uses to identify and mitigate compensation policies and practices that could encourage an NEO or individual at a principal business unit or division to take inappropriate or excessive risks;

(c) any identified risks arising from the company's compensation policies and practices that are reasonably likely to have a material adverse effect on the company.

“(6) Disclose whether or not an NEO or director is permitted to purchase financial instruments, including, for greater certainty, prepaid variable forward contracts, equity swaps, collars, or units of exchange funds, that are designed to hedge or offset a decrease in market value of equity securities granted as compensation or held, directly or indirectly, by the NEO or director.”;

(ii) by replacing paragraph (3) of the commentary with the following:

*“3. If the company used any benchmarking in determining compensation or any element of compensation, include the benchmark group and describe why the benchmark group and selection criteria are considered by the company to be relevant.*

*“4. The following are examples of items that will usually be significant elements of disclosure concerning compensation:*

- *contractual or non-contractual arrangements, plans, process changes or any other matters that might cause the amounts disclosed for the most recently completed financial year to be misleading if used as an indicator of expected compensation levels in future periods;*

- *the process for determining perquisites and personal benefits;*

- *policies and decisions about the adjustment or recovery of awards, earnings, payments, or payables if the performance goal or similar condition on which they are based are restated or adjusted to reduce the award, earning, payment, or payable;*

- *the basis for selecting events that trigger payment for any arrangement that provides for payment at, following or in connection with any termination or change of control;*

- *any waiver or change to any specified performance goal or similar condition to payout for any amount, including whether the waiver or change applied to one or more specified NEOs or to all compensation subject to the performance goal or similar condition;*

- *whether the board of directors can exercise a discretion, either to award compensation absent attainment of the relevant performance goal or similar condition or to reduce or increase the size of any award or payout, including if they exercised discretion and whether it applied to one or more named executive officers;*

- *whether the company will be making any significant changes to its compensation policies and practices in the next financial year;*

- *the role of executive officers in determining executive compensation; and*

- *performance goals or similar conditions in respect of specific quantitative or qualitative performance-related factors for NEOs.*

“5. *The following are examples of situations that could potentially encourage an executive officer to expose the company to inappropriate or excessive risks:*

- *compensation policies and practices at a principal business unit of the company or a subsidiary of the company that are structured significantly differently than others within the company;*

- *compensation policies and practices for certain executive officers that are structured significantly differently than other executive officers within the company;*

- *compensation policies and practices that do not include effective risk management and regulatory compliance as part of the performance metrics used in determining compensation;*

- *compensation policies and practices where the compensation expense to executive officers is a significant percentage of the company’s revenue;*

- *compensation policies and practices that vary significantly from the overall compensation structure of the company;*

- *compensation policies and practices where incentive plan awards are awarded upon accomplishment of a task while the risk to the company from that task extends over a significantly longer period of time;*

- *compensation policies and practices that contain performance goals or similar conditions that are heavily weighed to short-term rather than long-term objectives;*

- *incentive plan awards that do not provide a maximum benefit or payout limit to executive officers.*

*The examples above are not exhaustive and the situations to consider will vary depending upon the nature of the company’s business and the company’s compensation policies and practices.”;*

(g) by replacing section 2.3 with the following:

**“2.3 Share-based and option-based awards**

Describe the process the company uses to grant share-based or option-based awards to executive officers. Include the role of the compensation committee and executive officers in setting or amending any equity incentive plan under which a share-based or option-based award is granted. State whether previous grants are taken into account when considering new grants.

**“2.4 Compensation governance**

(1) Describe any policies and practices adopted by the board of directors to determine the compensation for the company’s directors and executive officers.

(2) If the company has established a compensation committee

(a) disclose the name of each committee member and, in respect of each member, state whether or not the member is independent or not independent;

(b) disclose whether or not one or more of the committee members has any direct experience that is relevant to his or her responsibilities in executive compensation;

(c) describe the skills and experience that enable the committee to make decisions on the suitability of the company's compensation policies and practices; and

(d) describe the responsibilities, powers and operation of the committee.

(3) If a compensation consultant or advisor has, at any time since the company's most recently completed financial year, been retained to assist the board of directors or the compensation committee in determining compensation for any of the company's directors or executive officers

(a) state the name of the consultant or advisor and a summary of the mandate the consultant or advisor has been given;

(b) disclose when the consultant or advisor was originally retained; and

(c) if the consultant or advisor has provided any services to the company, or to its affiliated or subsidiary entities, or to any of its directors or members of management, other than or in addition to compensation services provided for any of the company's directors or executive officers,

(i) state this fact and briefly describe the nature of the work,

(ii) disclose whether the board of directors or compensation committee must pre-approve other services the consultant or advisor, or any of its affiliates, provides to the company at the request of management, and

(d) For each of the two most recently completed financial year, disclose,

(i) under the caption "Executive Compensation-Related Fees", the aggregate fees billed by each consultant or advisor, or any of its affiliates, for services related to determining compensation for any of the company's directors and executive officers, and

(ii) under the caption "All Other Fees", the aggregate fees billed for all other services provided by each consultant or advisor, or any of its affiliates, that are not reported under subparagraph (i) and include a description of the nature of the services comprising the fees disclosed under this category.

#### ***“Commentary***

*For section 2.4, a director is independent if he or she would be independent within the meaning of section 1.4 of Regulation 52-110 respecting Audit Committees.”;*

(h) in section 3.1:

(i) by replacing paragraph (5) with the following:

“(5) For an award disclosed in column (d) or (e), in a narrative after the table,

(a) describe the methodology used to calculate the fair value of the award on the grant date, disclose the key assumptions and estimates used for each calculation, and explain why the company chose that methodology, and

(b) if the fair value of the award on the grant date is different from the fair value determined in accordance with IFRS 2 Share-based Payment (accounting fair value), state the amount of the difference and explain the reasons for the difference.”;

(ii) by replacing, in paragraph 2 of the commentary, the words “*board of directors intended to pay, make payable, award, grant, give or otherwise provide*” with the words “*company paid, made payable, awarded, granted, gave or otherwise provided*”;

(iii) by replacing, in paragraph 3 of the commentary, the words “*it intends to award or pay*” with the words “*to be awarded or paid*” and the words “*it intends to transfer*” with the words “*to be transferred*”;

(iv) by adding, after subparagraph (h) of paragraph (10), the following:

“(i) any company contribution to a personal savings plan like a registered retirement savings plan made on behalf of the NEO.”;

(i) by deleting section 3.3;

(j) in section 4.1:

(i) by inserting, in paragraph (1), a column “(h)” entitled “Market or payout value of vested share-based awards not paid out or distributed (\$)”;

(ii) by inserting, at the end of paragraph (3), the following sentence:

“If the option was granted in a different currency than that reported in the table, include a footnote describing the currency and the exercise or base price.”;

(iii) by adding, after paragraph (7), the following:

“(8) In column (h), disclose the aggregate market value or payout value of vested share-based awards that have not yet been paid out or distributed.”;

(k) in section 5.1:

(i) by inserting, in subparagraph (a) of paragraph (4) and after the words “as at the end of the most recently completed financial year”, “. For purposes of this calculation, the company must assume that the NEO is eligible to receive payments or benefits at year end”;

(ii) by inserting, after paragraph (4), the following:

“***Commentary***”

*For purposes of quantifying the annual lifetime benefit payable at the end of the most recently completed financial year in column (c1), the company may calculate the annual lifetime benefit payable as follows:*

$$\begin{array}{c} \text{annual benefits payable at the presumed} \\ \text{retirement age used to calculate the closing} \\ \text{present value of the defined benefit} \\ \text{obligation} \end{array} \quad \times \quad \frac{\begin{array}{c} \text{years of credited} \\ \text{service at year end} \end{array}}{\begin{array}{c} \text{years of credited} \\ \text{service at the} \\ \text{presumed retirement} \\ \text{age} \end{array}}$$

*The company may calculate the annual lifetime benefit payable in accordance with another formula if the company reasonably believes that it produces a more meaningful calculation of the annual lifetime benefit payable at year end.”;*

(l) in section 5.2:

(i) in the table of paragraph (1):

(A) by deleting the column entitled “Non-compensatory (\$)”;

(B) by replacing, in the column entitled “Accumulated value at year end (\$)”, “(e)” with “(d)”;

(ii) by deleting paragraph (3);

(iii) by replacing, in paragraph (4), “column (e)” with “column (d)”;

(iv) by replacing the commentary with the following:

**“Commentary**

1. *For pension plans that provide the maximum of: (i) the value of a defined benefit pension; and (ii) the accumulated value of a defined contribution pension, companies should disclose the global value of the pension plan in the defined benefit plans table under section 5.1.*

*For pension plans that provide the sum of a defined benefit component and a defined contribution component, companies should disclose the respective components of the pension plan. The defined benefit component should be disclosed in the defined benefit plans table under section 5.1 and the defined contribution component should be disclosed in the defined contribution plans table under section 5.2.*

2. *Any contributions by the company or a subsidiary of the company to a personal savings plan like a registered retirement savings plan made on behalf of the NEO must still be disclosed in column (h) of the summary compensation table, as required by paragraph 3.1(10)(i).”;*

(m) by inserting, after paragraph (3) of the commentary of section 6.1, the following:

“4. *A company may disclose estimated incremental payments, payables and benefits that are triggered by, or result from, a scenario described in subsection (1), in a tabular format.”;*



(n) by replacing, in the French text of paragraph (1) of section 7.1, the word “versée” with the word “fournie”.

**4.** This Regulation only applies to documents required to be prepared, filed, delivered or sent under Regulation 51-102 respecting Continuous Disclosure Obligations for periods relating to financial years ending on or after October 31, 2011.

**5.** This Regulation comes into force on October 31, 2011.