SHARE | Shareholders Association for Research and Education

June 29, 2007

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

c/o John Stevenson, Secretary,
Ontario Securities Commission,
20 Queen Street West,
Suite 1900, Box 55,
Toronto, Ontario M5H 3S8

-and-

c/o Anne-Marie Beaudoin, Directrice du secretariat,
Autorité des marches financiers,
Tour de la Bourse,
800, square Victoria,
C.P. 246, 22^{e} étage,
Montréal, Québec H4Z 1G3

RE: Notice and Request for Comment - Executive Compensation Disclosure and Related Matters

Thank you for providing the opportunity to furnish comments on the proposed amendments to NI 51-102 and NI 58-101 as well as, and most particularly, the repeal and substitution of Form 51-102F6.

The Shareholder Association for Research and Education (SHARE) is a national, not-for-profit organization working with institutional investors to promote responsible investment practices through research, education activities and advocacy. SHARE has contributed to consultations with respect to NI 81-106 in 2002 and the *Blueprint for Uniform Securities Laws for Canada* in 2003.

The following comments address specific questions set out in the CSA Notice, and follow the numbering of the questions set out therein.

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?

The challenging component of this question is the feasibility of finalizing a disclosure package that "will capture disclosure of compensation practices as they change over time".

SHARE is of the view that five years is a reasonable time frame for regulatory reconsideration of executive compensation disclosure requirements. In part, we take this position due to the fast pace of change in the compensatory practices of corporations generally. However, a more compelling reason to build in a scheduled thorough review of the disclosure Form is to ensure that the requirements are delivering clear and useful information to shareholders.

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?

SHARE agrees with retaining the current method of identifying the executives subject to the proposed compensation disclosure rules. The current criteria have clarity as their strong point. The selection of NEOs "based on an assessment of each person's overall influence on policy-making within the company"[1] is likely to be viewed by shareholders as open to manipulation by corporations seeking to avoid disclosure with respect to some executives. The "most highly paid" yardstick for disclosure is clear to shareholders and to corporate personnel and their advisers.

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?

SHARE does not think that compensation amounts paid to different NEOs should be aggregated. A reduction in the size of the tables required by the disclosure rules would appear to be the only possible motivation for aggregating compensation for the three NEOs. It seems reasonable that shareholders be provided with individually tabulated information about at least five NEOs as representative of the compensatory practice of an issuer.

If shareholders decide to evaluate executive compensation based on its aggregate quantum for any grouping of executives, they could perform the simple addition required to obtain this information.

[1] CSA Notice and Request for Comment, Part A, p. 5

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

As to the CD&A generally, SEC Chairman Christopher Cox has expressed considerable disappointment regarding the failure of U.S. issuers to use plain English in their CD&A disclosure. Chairman Cox also observed that "the overarching purpose [of the CD&A] seems no longer to be informing the investor, but above all else erecting a sturdy defense against potential claims that something was left out or improperly expressed". [2]

Canadian securities regulators should consider incorporating some mechanism into the new compensation disclosure framework that addresses circumstances in which shareholders express dissatisfaction with CD&As produced by Canadian public corporations. Shareholders should be able to bring their concerns about the informative inadequacy of CD&A disclosure to securities regulators directly. Those regulators, in turn, must be able to review disclosures in order to determine if the requirement that it "contain a meaningful analysis of factors relevant to the actual compensation decisions" has been met.[3] In cases where a corporation's CD&A is found to have serious deficiencies, the relevant commission should have a pre-approval process for the subsequent year's reporting to ensure that it meets the established requirements.

In SHARE 's view, disclosure with respect to compensation consultants retained by an issuer is a crucial addition to the proposed CD&A. The information about compensation consultants that it currently required by NI 58-101F1 7(d) should be moved to the CD&A.

The current provision requires the identification of the compensation consultant(s), a summary of the mandate of the consultant(s) and a brief description of other work performed by the consultant(s). The CD&A should incorporate those elements in addition to disclosure of the following:

a. all fees paid to the consulting firm(s) for all services provided by firm(s) to the corporation;
b. whether there is a pre-approval process for work other than compensation consultancy that is provided by the consultant(s) to the company;
c. whether the compensation committee reviews the performance of compensation consultants, and if so, how often such assessments are carried out; and,
d. whether the compensation committee relies solely on data provided by the consultant(s) in making decisions about executive compensation.

[2] Speech by SEC Chairman: Closing Remarks to the Second Annual Corporate Governance Summit, USC Marshall School of Business Los Angles, California, March 23, 2007.
[3] CSA Notice and Request for Comment, Part A, p. 6.

An assessment of the compensation decisions made by a corporation's board is not complete without detailed information about the consultants upon which it relies and the consultation process.

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

Yes. Performance targets constitute crucial information for shareholders. Ever increasing levels of executive compensation grab headlines, but for many shareholders it is the perception that executive pay is not sufficiently linked to corporate performance that is the real cause of concern. The lack of requirements that performance targets be disclosed has meant that shareholders are often unable to determine whether the link between pay and performance meets their particular expectations or indeed actually exists.

SHARE is opposed to the proposed "competitive harm" exception to the requirement that corporations disclose any "objective, identifiable measures" of performance established with respect to executive pay awards.

The first year of corporate disclosure under the SEC's executive compensation disclosure Rule is instructive on this point. The Rule contains a "competitive harm" exception. According to Watson Wyatt Worldwide, 50 of the 100 largest U.S. issuers that were among the first to file reports in accordance with the new Rule did not disclose the specific financial targets used to determine the incentive compensation of NEOs.[4] A similar study by DolmatConnel & Partners, a consulting firm, found that just one-third of the U.S. corporate disclosures it reviewed included exact financial performance targets.[5]

The proposed Canadian disclosure requirements follow the SEC Rule in providing a "competitive harm" exception with respect to performance targets. The SEC signaled its intention to review corporate decisions regarding non-disclosure based on competitive harm in order to determine the validity of the exclusions. Unless Canadian securities regulators are willing to institute a systematic review process, SHARE is of the view that the "competitive harm" exception must be abandoned.

In comments to the SEC about its executive compensation disclosure Rule, some investors noted that corporations routinely disclose performance targets to

[4]Watson Wyatt Worldwide. Specific Executive Pay Goals Often Omitted From Proxy Statements, Watson Wyatt Analysis Finds (March 28, 2007) From http://www.watsonwyatt.com/news/press.asp?ID=17222.

[5]DolmatConnel & Partners. Insights Into the New Executive Compensation Disclosure from the First Proxies: Has More Become Less? (March, 2007) From: http://www.dolmatconnell.com/resources.asp#studies.

investors in the form of ‘guidance’ without endangering their competitive position. Firms can therefore be expected to have considerable expertise with making disclosures that tell the whole story without jeopardizing future prospects.

Increased voluntary disclosure of compensation consultancy services to issuers indicates that large sums are routinely spent seeking advice regarding appropriate executive compensation levels. Surely corporations could work with their compensation consultants to establish appropriate performance targets that do not in any way compromise the competitiveness of the business if they are publicly disclosed.

In the alternative, and as a far less attractive option, after the fact disclosure of performance targets should be required in order that shareholders be able to assess the adequacy of links that issuers declare to exist between pay and performance retrospectively. One important caveat to this approach is that corporations may craft performance hurdles that apply over many years, and thus delay disclosure unduly. Some time limit with respect to delayed disclosure would need to be set out in the revised requirements.

Despite the focus of the above comments on relatively short term performance targets and the timely disclosure of them to the marketplace, SHARE is of the view that corporate performance over the long term is, quite properly, the primary concern of institutional investors such as pension funds. The financial health of a corporation is ultimately determined by the capacity of its decision makers to ensure that its qualitative and quantitative goals encompass activities over multiple years, not months. The many shareholders who are also of this view look to all types of performance targets provided by a corporation for guidance regarding its ability to secure a sound future for all stakeholders.

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?

The CD&A is the preferred location for the performance graph. For shareholders, corporate performance as illustrated in the graph provides a sensible accompaniment to a corporation’s disclosure regarding how it has elected to link executive performance to compensation.

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?

Year over year disclosure is important, particularly for institutional and other investors that evaluate their investments on a long-term basis. For such investors, a complete picture of a corporation’s compensation practices is best measured, as with other aspects of performance, over more than a single year.

For ease of reference, a three-year compensation history for each NEO is required in the proxy circular.

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

Restricting income reported in the bonus column to non-salary cash amounts that are not linked to performance targets communicated to a NEO will initially cause some confusion for investors who are not fully versed in the particulars of the new requirements. This is because the term “bonus” has not generally been so restrictively defined. One way to address this problem is to use a different term such as “Discretionary Cash Amounts” to describe this component of executive compensation.

Regardless which term is used, SHARE supports this particular aspect of the proposed disclosure requirements despite the possible initial confusion. Some investors are opposed to substantial discretionary cash awards that are not based on pre-determined targets, and that do not therefore provide any incentive to an executive. Isolating these amounts as a single figure will aid such shareholders in their evaluation of the executive compensation structure of an issuer.

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?

The guidance provided to issuers on this point appears adequate. Issuers and their advisors designed the various types of incentive compensation and can be presumed to understand them well. Therefore, SHARE is confident that they will be able to determine whether or not a particular compensation component is an equity or non-equity award.

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?

Disclosure of the dollar value of equity awards using the accounting expense recognized in the issuer’s financial statements will provide shareholders with the issuer’s best estimation of what the awards’ accumulated cost to the issuer is as of a specific year. For this reason, we support the proposed disclosure requirement.

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

Yes. SHARE maintains that figures included in the Summary Compensation Table should address the question of the applicable cost to a corporation of executive DB pensions. We believe that this is the best approach to arriving at a total compensation figure.

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?

Change in actuarial present value of defined benefit pensions should be included in the Summary Compensation Table. It is this amount that will most accurately provide shareholders with an indication of the cost of executive compensation in the applicable year to the corporation.

With respect to Item 6, column (d), shareholders of Canadian corporations have indicated that present value of the accumulated benefit is a figure in which they are very interested. In 2004, a shareholder proposal requesting disclosure with respect to executive pension benefits asked for the actuarial cost of executive pension benefits specifically.[6] These proposals garnered from 10-50% support, and SHARE supported them. For this reason, shareholders should have access to information regarding what an executive's deferred pension is worth in a lump sum as of the reporting date.

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?

Perquisites are compensation amounts generally not linked in any way to corporate or individual performance. They may therefore be characterized as wholly discretionary bonus amounts, except that they are delivered in the form of good and services instead of cash or, ultimately, shares. As noted above, the amount of executive compensation not tied to performance is of significance to many shareholders who evaluate executive compensation with great care. In the interests of full disclosure, SHARE takes the position that the lower threshold established by the SEC in its compensation disclosure Rule is appropriate for the Canadian requirements. At and above a total of $10,000, perquisites should be disclosed as to type and amount; below $10,000, disclosure should be limited to inclusion of their value in the All Other Compensation column.

Another issue is the proposed inclusion of the incremental cost to the corporation of perquisites rather than their cost if the executive paid for them directly. This is acceptable for disclosure purposes because what shareholders are most concerned about with respect to executive compensation is the cost the corporation will bear.

[6] See proposals filed by APEIQ at Canadian banks and other large Canadian issuers in 2004.

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

The current guidance appears sufficient. This is an important question because items improperly excluded would result in incomplete disclosure. The indication that the exclusion of items "integrally and directly related to the performance of an executive officer's duties" is "a narrow one" will provide shareholders with reasonable assurance that all perquisites will be reported.

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

For all of the concerns about oversimplification, the 'one number' element of the proposed disclosure requirements is of enormous importance to some shareholders. Investors with a keen interest in compensation will take the time to examine individual pay elements carefully, and may be relatively unconcerned with the total compensation figure. Other investors with less time and expertise, particularly individual shareholders forming a view about ballot items that involve compensation, will likely find the tally of all compensation amounts very useful.

Publishing a single figure for total compensation serves another purpose. The sheer variety of components in the executive pay package in Canada, particularly at our largest issuers, has traditionally made it very difficult to calculate total pay.

Finally, a single total figure may also be useful to the corporation's directors, particularly those on the compensation committee. Under current disclosure requirements, the value of much equity-based compensation appears in proxy circulars as it is realized with little information that gives a 'warning' as to its quantum as it accrues. Directors, like shareholders, are sometimes taken aback by total realized executive compensation levels. There are few better indications of this point than a comment by James Fisher in 2006 during his tenure as Chair of the compensation committee of a large Canadian issuer: "…it's hard not to look at the numbers and say, 'Holy cow, did that person really earn that?'."[7]

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

Yes. Inclusion in the Summary Compensation Table of the expenses associated with equity awards that were recognized by the corporation during the applicable year again assists shareholders in determining what compensation actually costs for the period they are examining. Item 4.1 augments the fiscal year costs set out in the Summary Compensation Table by providing the full aggregate accrued

[7] McFarland, Janet. (2006, March 17). How Much is Too Much? *Globe and Mail*. From http://www.theglobeandmail.com/servlet/story/RTGAM.20060508.wexec-comp-main0509/BNStory/Business/home.

compensation amounts associated with stock-based compensation awards for each NEO.

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?

SHARE supports the Canadian regulators' decision to include a more streamlined table in item 4 of the substituted Form than is required under the SEC Rule. We also agree with the decision to separate information regarding stock and option type compensation from incentive compensation that is not based on the value of the corporation's shares.

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?

SHARE is satisfied with the inclusion of all compensation related to defined contribution pension plans under 'All Other Compensation' in the Summary Compensation Table and the mandated narrative description of the material terms of all such plans.

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

Disclosure of termination payments should be provided for each NEO. Many shareholders base their analysis of corporate executive compensation practices on the representative sample that the NEO disclosure affords them. Less complete disclosure will not adequately serve the important purpose of enabling shareholders to assess the practices of a corporation with respect to executive compensation.

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?

The proposed disclosure regarding potential payments under different termination scenarios is information that shareholders need in order to assess the compensatory regime of an issuer. Many shareholders are interested not only in maximum termination amounts, but also in the possible payouts under other scenarios. Once again, this detailed level of disclosure is made necessary by the complex structures that corporations have established. Were there fewer possible distributions of corporate funds, less detailed disclosure would be sufficient.

For the sake of optimal clarity, termination payment information should be presented in a chart format. As with the other charts included in the proposal, the NEOs names would appear along the horizontal axis and the various scenarios along the vertical axis, with corresponding payouts at the appropriate co-ordinates. A chart format would encourage issuers to express the various termination scenarios in the most straightforward manner possible. A narrative accompaniment to the chart is necessary.

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

Yes, but some additional clarification of the information to be provided in column (g) – 'All Other Compensation' - is necessary. The proposed requirements indicate that for amounts included in column (g), footnote disclosure should "identify any such amounts". Additional direction to issuers as to the regulator's expectations regarding the information required for identification would be helpful.

All too often, issuer proxy materials indicate that a particular director was paid a specified amount in the last fiscal year for "consulting" or "other" services not included in their work as a director. For some shareholders, any and all fees or income received by a director for services outside of directorship raise concerns about that director's independence, but some may be more concerned about the nature of the work provided.

A substituted direction to issuers should be to "clearly define the precise nature of the services provided by the director that are associated with the amounts paid in a footnote to the table".

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?

It is preferable that securities regulators continue to mandate that executive compensation disclosure be included in the information circular. This is where shareholders and other interested parties are used to looking for the information.

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

SHARE agrees with the regulators' decision not to include a standardized 'performance metric' in the proposed disclosure requirements. We also agree with the stated rationale for this decision. The fact that a mandated 'one size fits all' metric is not appropriate underscores the need for full disclosure of the performance measures that each corporation's board actually does determine to

be necessary to the evaluation of its executives. This point is emphasized above in our response to question 5.

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

The proposed timeline is reasonable given the shareholder interest in fuller and clearer executive compensation disclosure and the resources corporations have proven willing to make available to executive compensation planning generally.

27. Additional comments: Reform of proxy vote reporting requirements

SHARE supports the amendment of Section 11.3 of NI 51-102. Where a vote is conducted by show of hands, issuers should be required to furnish voting results that include the votes submitted by proxy prior to the meeting. As is the case with executive compensation disclosure, transparency and consistency of reporting are priorities for shareholders.

As indicated in the Notice materials, most of the shares voted at meetings of Canadian companies are voted by proxy. For this reason, percentage vote results are highly indicative of shareholder support for ballot items, even in cases where voting at a meeting is conducted by a show of hands.

Information about the degree of support for issues voted at meetings is important. Many shareholders and other interested parties monitor vote results closely. As but one example, votes cast with respect to shareholder proposals are very important. Few such proposals receive majority support in Canada, but investors attempting to gauge nascent trends in corporate governance often look to shareholder proposal vote results for guidance.

As to the potential discrepancy between proxies received and actual votes cast by show of hands, the onus is clearly on Canadian corporations to eschew voting by show of hands so that complete voting results are invariably available to shareholders.

Thank you for the opportunity to comment on these proposals. Should you require any clarification of the points raised above or additional supporting information, please do not hesitate to contact the undersigned.

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