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British Columbia Securities Commission
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Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
New Brunswick Securities Commission
Registrar of Securities, Prince Edward Island
Nova Scotia Securities Commission
Superintendent of Securities, Newfoundland and Labrador
Registrar of Securities, Northwest Territories
Registrar of Securities, Yukon Territories
Registrar of Securities, Nunavut

<p>To the attention of:</p> <p>Mr. John Stevenson Secretary Ontario Securities Commission 20 Queen Street West 19th Floor, Box 55 Toronto, Ontario M5H 3S8 e-mail: jstevenson@osc.gov.on.ca</p>	<p>Ms. Anne-Marie Beaudoin Directrice du secrétariat Autorité des marchés financiers Tour de la Bourse 800, Square Victoria C.P. 246, 22^e étage Montréal, Québec H4Z 1G3 e-mail: consultation-en-cours@lautorite.qc.ca</p>
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Dear Sirs/Mesdames:

**RE: Proposed Repeal and Replacement of Form 51-102F6
*Statement of Executive Compensation***

This letter is submitted in response to the Notice and Request for Comment made by the Canadian Securities Administrators ("CSA") on the proposed repeal and substitution of Form 51-102F6 *Statement of Executive Compensation* (the "Proposed Rule"). Canadian National Railroad Company ("CN") is a publicly traded company listed on both the Toronto and New York Stock Exchanges with operations in Canada, the U. S. and abroad. For many years, CN has, on a voluntary basis, disclosed information in its Management

Information Circular, beyond the Canadian securities law requirements. We appreciate the opportunity to comment on the proposed disclosure rules on executive compensation. You will find below our comments on specific questions of the CSA. We also take this opportunity to address the following two issues:

- Reporting currency

As a Canadian company, CN prepares its financial statements in Canadian dollars. However, CN has been reporting the compensation of its executives in U.S. dollars because it is benchmarked against the U.S. market and major U.S. railroads. It should also be noted that our directors and many of our executives are paid in U.S. dollars. The requirement of the Proposed Rule pursuant to which compensation should be reported in the same currency as the financial statements could result in large variations in compensation amounts strictly due to a change in the exchange rate.

To avoid such distortion, we recommend that issuers be permitted to report compensation either in Canadian or U.S. dollars.

- Reporting on prior years practices

The new SEC rules were implemented on an on-going basis (as opposed to requiring the reporting of prior year practices). The proposed CSA rules are silent on this important transition question. We believe that the Canadian rules should also be implemented on an on-going basis since reporting previous years practices using either the old or the new methodology would produce inconsistent or confusing results.

Specific Requests for Comments

For convenience of reference the paragraph numbers set out below are the same as the ones set out in the CSA request for comments.

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?*

Using the Total Compensation as the criteria for determining the top five named executive officers ("NEOs") is appropriate, as it is imperative for shareholders that the measure be objective and facilitate comparisons among issuers.

Our concern, however, relates to the manner in which Total Compensation is to be determined rather than its actual usage as the measure. The proposed Total Compensation calculations will likely result in more variability in the NEOs since it will, as an example, consider one-time events as an integral part of the compensation.

More specifically, we are concerned that certain payments may inflate the actual value of disclosed compensation and change the NEOs list, for instance Total Compensation capturing:

- the immediate expensing of equity awards for Executives who become eligible to retire, providing they are eligible to vesting continuation after retirement, the whole in accordance with accounting standards.
- special grants made upon hiring or for retention purposes to specific individuals who, at that time, do not have “a great policy influence or decision-making power” and which are not part of a recurring arrangement.
- large payouts from a long-term non-equity incentive plan which are not available to newly hired executives.
- large deferred compensation values.

Recommendation: Only salary, bonus, annual incentive and annual equity awards value should be used to determine the NEOs. Furthermore, as discussed in paragraph 10 below, the equity award value should not be based on the accounting standards and special grants should be excluded from the calculation.

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

CN is one of the few companies that provide information on performance targets. Many companies do not provide any such guidance nor any guidance on expected financial results to the market. Requesting that performance-related factors (and particularly forward-looking factors) be disclosed could be the equivalent of requesting guidance on financial results, which is not necessarily appropriate for all issuers.

Requesting detailed disclosure of performance targets may furthermore have an adverse effect on the way compensation is designed. Companies may decide to avoid specific quantified targets and adopt broad guidelines. Over time, it may even “defeat the purpose” of shareholders wanting greater links between the companies’ performance and executive compensation.

A distinction can be made between disclosure of past performance objectives and disclosing forward-looking objectives. The disclosure of the latter may be particularly harmful to a company and therefore we are of the view that the requirement should only focus on past performance.

Moreover, we believe that issuers should be entitled to exclude performance criteria if the disclosure of such performance criteria would

result in confidential or competitively sensitive information being disclosed. Hence, in our view, the reference to “competitive harm” in the Proposed Rule is too narrow and should instead refer to “confidential and competitively sensitive information”.

Recommendation: Only require disclosure of past performance objectives, and only to the extent that it is not considered “confidential and competitively sensitive information”.

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 link between the performance of the Company’s stock price and executive compensation is not necessarily meaningful for all issuers or all compensation vehicles.

Requesting an analysis with the performance graph may suggest that the total shareholder return is the only pertinent measure for an issuer’s performance. Furthermore, an analysis based on 5 years may not be appropriate for all compensation vehicles (ex. stock options with a 10-year life-term).

Recommendation: Issuers should instead be required to describe in the CD&A the link between pay and performance.

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

We believe it will lead to confusion. As proposed, the non-equity incentive column captures both annual and multi-year incentives that are not purely discretionary. They should be kept separate.

With respect to incentives which are purely discretionary, the Proposed Rule defines bonuses as “discretionary payments that do not have predetermined performance conditions”. We are of the view that the current requirements whereby annual incentives are shown in the bonus column and long-term equity and non-equity incentives are separately disclosed under long-term compensation is a more appropriate manner of disclosure. In the mind of many, an annual bonus is often linked to pre-determined performance conditions. We are of the view that limiting the concept to purely discretionary amounts will be confusing.

Recommendation: Maintain the current requirements whereby annual performance and discretionary bonuses (whether or not based on performance factors) are shown in the bonus column and long-term equity and non-equity incentives are separately disclosed under long-term compensation.

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?*

We agree with the Proposed Rules but we are concerned with the meaning of “amounts earned” in item 3.1(5), and more particularly the circumstances in which amounts would be considered to be earned.

Recommendation: Clearly define the meaning of “amounts earned”.

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?*

In order to improve transparency and clarity for shareholders, the CSA require that the financial statements and the management information circular report the same value for the stock and option based awards. We believe that reporting the compensation cost of the awards using the accounting standards will create some distortion, as the disclosed value will encompass the value of multi-year awards. This will increase complexity for the reader and will not improve their understanding of the compensation decisions made by directors.

Also, the accounting rules provide for early expensing when an executive reaches the retirement age. Under these rules, an equivalent grant will produce a greater value for the executive who is eligible for retirement, thus considerably affecting comparability within or outside the organization. Similarly, a new senior executive would not qualify as a NEO until several tranches of long-term incentive plan vesting have occurred. A method based on the accounting fair value of the award at the time it was granted would be more appropriate.

Recommendation: Include only the current year grant’s fair value in 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?*

The Proposed Rule requires disclosure of the aggregate change in the actuarial present value of accumulated benefits under all defined benefit and actuarial pension plans. We are of the view that it is more appropriate to use the change in actuarial value in the Summary Compensation Table, provided that such calculation does not include any changes in value due to factors that are not based on compensation policies or decisions. Such factors would include interest rates, age, length of service and value of the portfolio investments in the plan. The compensatory and non-compensatory elements of the value of the plan

should be separated so that disclosure shows the value of the increase in the pension plan benefit alone.

We believe that the service cost should be disclosed as well (in the retirement plan section) because it provides valuable information as to the design of the plan, thus permitting investors to clearly understand the value that can be expected from the plan, under normal circumstances.

Recommendation: Disclose the service cost in the Retirement Plan Benefits section and adjust the concept of “aggregate change in the actuarial present value of accumulated benefits” as discussed above.

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

Having “one” number is a good disclosure improvement. However, we are concerned that the Total Compensation number will be misleading to investors.

As already expressed, we do not believe that using the accounting standards to report the value of equity-based awards is appropriate. Furthermore, as proposed, the Summary Compensation Table blends annual and multi-year awards, as well as compensation opportunity (value at grant) and realized compensation (actual payout). This approach does not in our view provide meaningful information about compensation. In addition, please refer to our comments above regarding pension reporting.

It should be noted that CN has been providing on a voluntary basis in its circular, a Total Compensation Table reporting the value of the compensation opportunity awarded to executives, as a summary of the actual compensation decisions made by the Board.

Recommendation: Request an additional Total Compensation Table or modify the Summary Compensation Table, to report the value at target for the non-equity incentive plans and the value at grant for the equity-based awards. Also, as recommended above, modify the pension disclosure so that adjustments are made to account for variations that have nothing to do with additional benefits.

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?*

Information requested in the Grant of equity awards table is for the last fiscal year only and on an aggregate basis for all plans. The Outstanding equity-based awards table in its proposed format will also

provide information for stock awards on an aggregate basis. The number of units granted in the last fiscal year is however missing. Therefore, information on stock awards will be incomplete and difficult to extract for the shareholders.

Recommendation: The Grants of equity awards table should also reflect the number of options and stock award units granted.

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?*

We support the decision to take a different approach than the SEC. As stated in our comment on question 16, the information on the number of stock or units granted should be included. Furthermore, clarification of the term "vested" will be required.

Recommendation: Provided further clarification of the term "Vested" as used in column (f) and (g) of the Outstanding equity-based awards table.

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?*

Tabular information is easier to understand and increases clarity. We agree that contribution and earnings be reported.

Reporting requirements for deferred compensation should however be clarified. For instance, should we report the value of the deferred amounts or simply the increase in value? When a company matches the deferred amounts with deferred share units (DSUs) which vest over time, should all DSUs be reported (vested / unvested) or only the vested portion?

Recommendation: Tabular disclosure should be required but further definition of the reporting requirements for deferred compensation is needed.

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?*

Investors and Boards should understand the potential payment under various termination scenarios.

Recommendations: Tabular disclosure for standard termination scenarios such as retirement, voluntary termination, involuntary termination, termination for cause and change in control should be

required. Disclosed payment should exclude already vested rights such as accumulated "in-the-money value" for stock options.

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?*

We are of the view that the management information circular is the appropriate disclosure document to include executive compensation disclosure. Executive compensation practices are fundamental to the good governance of an issuer. The information circular already describes the corporate governance practices of the issuer and as this executive compensation is primarily a responsibility of the board, the management information circular is the appropriate document. Disclosure related to executive compensation should not be split into different documents. We further are of the view that requiring the executive compensation disclosure to be made in an issuer's MD&A, to enforce the link between pay and performance, is inappropriate as MD&A is often prepared in advance of the circular and compensation decisions may be finalized after the MD&A.

Recommendation: Maintain executive compensation disclosure in the Management Information Circular.

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

We agree with the position of the CSA that it would be extremely difficult to create a single performance measurement tool that would provide relevant and meaningful information for all issuers.

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

As some of the new requirements may require the involvement of many people from different departments (legal, human resources, pension, etc.), should the rules not be finalized by the end of the summer of 2007, the CSA should postpone their application by one year.

Should you have any questions concerning our comments, please contact the undersigned at (514) 399-7091 or by e-mail at sean.finn@cn.ca or Cristina Circelli at (514) 399-4135 or by e-mail at cristina.circelli@cn.ca.

Yours truly,

