HCI HUGESSEN CONSULTING INC

June 29, 2007

Mr. John Stevenson, Secretary
Ontario Securities Commission
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Ms. Anne-Marie Beaudoin, Directrice du secrétariat
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Re: Request for Comment on Proposed Form 51-102F6 *Statement of Executive Compensation*

Dear Sirs and Mesdames:

Hugessen Consulting Inc. (HCI) is pleased to respond to the Canadian Securities Administrators' (CSA) request for comment on Form 51-102F6 *Statement of Executive Compensation* (the "Form") released March 29, 2007. The Form proposes a set of changes to the requirements for executive and director compensation disclosure for publicly held companies in Canada. In developing their proposal, the CSA has taken an approach that is substantially similar to that of the U.S. Securities and Exchange Commission (SEC). However, in contrast to the voluminous, rules-based approach taken in the United States, in our view the CSA has done a good job of developing a concise, principles-based set of rules aimed at improving the quality and transparency of executive compensation disclosure. We commend the CSA on this approach.

HCI is a leading provider of executive compensation consulting advice to the boards and senior management of many large issuers in Canada and the United States; as such, we are actively involved in working with our clients to improve their executive compensation disclosure. We have been encouraged to observe that, although complete executive compensation disclosure is an unavoidably complex task, several large issuers in Canada have improved their disclosure to

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levels beyond what the current form requires and even, in certain areas, ahead of what is being proposed under the new form. In the U.S., too, the quality of executive compensation disclosure has improved markedly as a result of the new SEC rules. However, in many cases, disclosure sections are too long, and too often lack the analysis necessary to provide greater insight into the process by which compensation decisions are made.

We support substantive alignment with the SEC rules, given the number of public companies in Canada that are listed on U.S. stock exchanges and the benefits that arise from harmonization between the two jurisdictions. However, we do not support alignment if it means replicating those features of the new SEC disclosure rules which have already been widely identified as problematic. The CSA has had the benefit of observing the results of the new SEC rules (albeit for a limited time period) and should certainly consider alternative approaches in areas where investors have not been satisfied, a case in point being several entries in the Summary Compensation Table.

The observations and suggestions included herein reflect the views of HCI. We have put particular focus on those areas where we believe that modifying the current proposal would further the CSA in achieving its stated objective of ensuring greater transparency with respect to the process by which executive compensation decisions are made. Being aware of the views of many of our clients (several of whom will provide a response directly to the CSA), we have additionally prioritized our comments to reflect the level and consistency of concerns expressed on certain issues by a broad group of board members, senior executives and industry experts. We have also attached in the Appendix our responses to the twenty-six questions posed by the CSA in its proposal.

Specific Comments

1. ***Summary Compensation Table (SCT)***

Investors are keenly interested in the compensation decisions the board makes each year with respect to the Named Executive Officers (NEOs). As the centrepiece of executive compensation disclosure, the SCT should provide an easy-to-digest summary of those decisions and tie back to a Compensation Discussion and Analysis (CD&A) that explains the company's compensation philosophy, methodology, and decision criteria. Under the proposed rules, however, several of the entries in the SCT, as currently defined, fail to accurately depict the total compensation value granted by the board to each of the NEOs. Because the SCT entries as currently proposed use different accounting / valuation standards for different elements of compensation, it results in a total compensation number that, while it may reconcile with the financial statements of the company, does NOT reflect the board's compensation decisions made during the year in question. The accounting value of equity grants and the pension valuation numbers are all useful information for investors and should certainly be captured somewhere in a company's filings and reports (if only as aggregate values), but the SCT is the wrong place for this information if the

objective is to improve investor understanding of the compensation decisions made by the company's board.

We therefore suggest the following specific changes be made to the proposed SCT:

a. Equity-based Awards

Under the proposed rules, equity-based awards must be disclosed at the accounting expense value for that year (according to Section 3870 of the CICA Handbook) which can, and in many instances does, result in numbers that bear no relationship to the *intended* grant date fair value of the grants actually made during the year. In fact, disclosing equity-based awards using the accounting expense value can introduce considerable variability in year-to-year numbers, and, given mark-to-market accounting required on plans settled in cash rather than treasury shares, may even result in negative values being shown.

Such an approach would entirely obscure the compensation intent of the grants. Instead, we suggest that issuers be required to report *intended* grant date fair value at date of grant in the SCT, valued in accordance with accepted valuation methodologies.

b. Change in Pension Value

The proposed form would require an issuer to disclose the change in the actuarial present value (PV) of the accumulated benefit under all defined benefit (DB) and actuarial pension plans (including supplemental plans). The change in the PV of the accumulated pension benefit of a DB plan is comprised of three categories of changes:

- The cost of providing an additional year of service credit ("annual service cost");
- Other compensation-related changes, including (i) changes in pensionable earnings impacting *previous* years' service and (ii) pension plan design changes; and
- Non-compensation related changes, including changes in actuarial assumptions.

We believe investors want the SCT to tally comprehensive annual compensation for each NEO excluding changes in pension liability attributable to changes in valuation assumptions which have nothing to do with the intended level of compensation. We therefore suggest that issuers be required to disclose all compensation-related changes to the PV of the accumulated pension benefit of a DB plan (the first two bullets above) in the SCT.

In addition, as noted below in the Retirement Plans section, the compensation value of a defined contribution (DC) plan should also be included in this column.

As with the accounting cost of equity grants, the total change in the PV of the accumulated pension benefit of a DB plan is an important number for investors to be aware of and should be disclosed in supplementary pension tables, but is not one that should be shown in the SCT.

c. Bonus and Non-equity Incentive Plan Columns

Under the proposed rules, it is anticipated that there will be two columns, instead of one, for cash bonuses. The first column is labeled "bonus" and includes only discretionary payments that are not linked to pre-determined performance objectives. The second column is labeled "non-equity incentive plans" and includes awards that are linked to pre-determined performance objectives, whether they be programs involving annual or multi-year performance measurement periods. Almost all of the annual incentives granted by companies today fall into the second category (with pre-determined performance objectives), so we expect the first column to be used infrequently.

Having said that, we support having two columns for cash-based plans but would differentiate between the two columns based on the length of the performance period associated with the awards:

- The Bonus column (adjacent to the Salary column) should be used for all annual cash plans (discretionary and non-discretionary), payable in respect of a single year. Any discretionary amounts, (typically signing bonuses or ad hoc bonuses for special accomplishments) would also be included in the column, and described separately in a footnote.

- The Non-Equity Incentive Plans column should be renamed Multi-year Non-Equity Incentive Plans and would be used to show the *intended* grant date fair value of any multi-year cash award plan based on pre-determined objectives, payable in future years. This will result in multi-year cash incentive plans being treated the same way as stock based plans for the purposes of valuing compensation earned by an NEO in a given year.

2. Performance Graph

The draft form requires an issuer to include a performance graph in their CD&A, showing the company's cumulative total shareholder return (TSR) compared to the total return of at least one broad equity market index. The issuer is also required to discuss the trend shown in the graph in relation to the trend in the company's executive compensation.

Although TSR is an important metric against which to assess the performance of an issuer – particularly from the shareholder's point of view – it is not often the only metric, or indeed even one of the metrics, used to set the compensation of the issuer's executives. In such a case, it may be impractical for the issuer to explain the trend in executive compensation relative to the trend in their TSR. We do not underestimate the complexity that may be involved in selecting consistent and relevant performance measures that will allow issuers to succinctly explain how their total pay history has varied in relation to these metrics.

As a result, we suggest that the CSA require the TSR graph and discussion be included as proposed, but if other measures are used by the board to make executive compensation decisions, also require that a discussion of these measures be included.

3. Retirement Plans

The proposed rules require new tabular disclosure of defined benefit and actuarial pension plans (including supplemental plans) for each NEO. The new table, which includes credited years of service and the PV of the accumulated benefit, will clearly provide more meaningful information than the generic table it replaces. However, there are several large Canadian issuers that currently provide more information than is being required under the new form, and the CSA may wish to consider whether the proposed rules should be changed to reflect emerging best practices in Canada.

We also note that under the proposed rules, DC plans are treated very differently than DB plans:

- DC plans are required to be described in narrative, rather than tabular form, making it somewhat more difficult to compare pension offerings among issuers;
- DC plan contributions are included in total compensation for the purpose of defining NEOs, whereas the compensatory value of DB plans is not.

Investors, however, are interested in how much compensation value the issuer is providing each year to the pensions of its NEOs, whether it be through a DB plan or a DC plan. Therefore, the SCT's column H ("Change in Pension Value") should be re-titled "Pension Compensation" and issuers should use this column to show the annual compensation value (see our recommendations in Comment 1 (b), above) of whichever type of plan is used for that NEO. If an issuer uses both kinds of plans, the plans' combined annual compensation value should be shown in the column, with a breakout of value by type of plan provided in a footnote.

4. Termination and Change of Control Benefits

This section of the Form requires issuers to disclose all payments that must to be made to NEOs under various termination scenarios, including after a change of control. We believe that this is important information for investors to be aware of. However, in the interest of obtaining consistent information among issuers, we offer the following suggestions:

- We believe it would be useful for the CSA to prescribe an additional table which shows (i) as a baseline, what each NEO is entitled to receive, either immediately or in the future,

if they resign of their own free will and (ii) all incremental payments each NEO is entitled to receive either immediately or in the future in the event of a standard set of termination scenarios as described below.

- The proposed rules require that six distinct termination scenarios be calculated and presented, which when completed for five NEOs results in thirty separate scenarios. We anticipate this may be unnecessarily burdensome to produce every year. Instead, the standard table should contain information for the three most common and, typically, highest payout termination scenarios**:** retirement, termination without cause, and termination following change of control. If another scenario confers a higher incremental benefit to the NEOs, it should be added to the table by the issuer.

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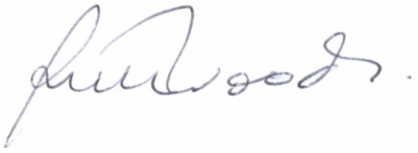
We appreciate the opportunity to submit our views on the draft form. We believe we have set forth some important points for the CSA to consider in our letter that should help provide more transparency on executive compensation decisions. We also believe that there is nothing currently being proposed that is contentious enough to cause the CSA to deviate from its current implementation schedule. Many of the suggestions in this letter reflect early observations on the experience of issuers in the U.S. The SEC will be reviewing its rules based on the past year's experience and will be issuing a report this fall. The SEC may make amendments in due course but these amendments could take several years to review and implement. We believe the CSA should proceed as planned but leave open the possibility for amendments down the road in light of possible changes in the U.S. and the implementation experience in Canada.

If you require any further clarification of the views reflected in this response, please feel free to contact any of the undersigned.

Sincerely,

HUGESSEN CONSULTING INC.



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Appendix: Response to specific request for comment

1. All forms of compensation are likely to be captured, but not clearly and not consistently. See general comments above, and answers to specific questions below, especially dealing with SCT and other related tables. The proposed rules are broad enough, and written in plain English – especially the CD&A, to capture changing practices over time. Through normal course compliance reviews, the regulators will be able to guide issuers to improved disclosure in areas that are grey.

2. We agree with the proposal not to substantially change the criteria for determining the top five NEOs. However, the determination of compensation should be based on the grant date compensation fair value (not the method as proposed in the new SCT) as described above, and in answer to various questions below.

3. Information should be provided for the top 5 NEOs individually.

4. We support the proposed CD&A requirements. However, the discussion and analysis, to be provided in plain English, needs to tie back to a SCT which makes sense and is clearly understood by investors. The proposed SCT rules do not achieve this, and therefore supplementary tables would be required (see Bank of America as an example of a US issuer which has chosen to do this in order to provide the necessary clarity of information). Providing extra tables would be burdensome and potentially confusing. As such, and as mentioned elsewhere in this response, the SCT should be amended to include the intended grant date fair value of compensation awards in order to tie back to a meaningful CD&A.

5. Companies should not be required to disclose competitively sensitive performance targets for periods that are not completed, and that otherwise are not already required to be disclosed under securities regulation. However, consideration should be given for a requirement for companies to report actual achievement against completed targets (i.e. report fully on achievement vs. targets for completed periods; but no requirement to disclose forward targets). In all cases, the discussion needs to be as specific as possible to provide a reader with an understanding of which performance measures were selected and why, the specific rationale for setting the specific targets, how achievement stacked up against the targets, and how discretion was used in the final awards.

6. The requirement for providing a link between performance and compensation should go beyond the placement of the stock performance graph and proposed discussion. Issuers should be encouraged to provide a more thorough description and analysis, with specifics provided, of how actual compensation was linked with the issuer's performance (and relative performance, as appropriate). To the extent an issuer's

compensation policy is linked to factors other than TSR, then the issuer should be required to include a discussion of such performance measures (without prescribing which measures), in addition as to how compensation was linked to TSR (and relative TSR) as proposed.

7. The last three fiscal years is appropriate assuming the alternatives we are proposing for the SCT are adopted. However, in the event the SCT is adopted as currently proposed by the CSA, then the requirement should be phased in over three years.

8. No. We recommend the continued use of a single "bonus" column as is the current requirement and the inclusion of all annual or short term non-equity awards in such column (including discretionary amounts). Separating into two columns creates unnecessary complexity, and is not consistent generally with how issuers or the investors think of such awards. Footnotes can be used to help with the description of special or discretionary awards as needed (e.g. one-time cash grants).

   On a related issue, we note that certain issuers use long-term cash plans (that are not equity-based), and that these should be disclosed on essentially the same basis as equity plans i.e. an estimate of the grant date value should be in the SCT at the time of award, and the ultimate payouts when earned should appear in a "value realized" table (similar to table 4.2 for equity awards). As currently drafted, such long-term cash awards are not included in the SCT (until earned, at which time they would be disclosed in the "Non-Equity Incentive Plan Compensation" column as currently proposed), and would only appear at the date of award in section 5.1 (narrative disclosure for plan-based awards). We see no reason for the difference in treatment vis-à-vis equity awards, and would therefore recommend that the award of such grants be displayed in the SCT (we suggest retaining a column entitled "Multi-Year Non-Equity Incentive Plans" for such purposes).

9. No. Please see our comments in Question 8 above.

10. We believe the most relevant method of presenting stock and option awards is on the grant date compensation fair value basis (as noted above in Question 2).

    In this response letter we refer to "grant date compensation fair value" to mean the full value of an award, from a compensation perspective, that is intended to be granted to a recipient. This is distinct from compensation cost of the awards over the service period (as contemplated in the proposed rules) and distinct from the accounting "grant date fair value" from the issuer's perspective (for example, the grant date compensation fair value of options may include the full term of the option, whereas the accounting GDFV would typically include the expected (i.e. shortened) term of the award).

11. No. See Question 12 below.

12. The disclosure should include the compensation-related changes of the PV of the accumulated pension benefit (not just the service cost). See description of this item in the cover letter, above.

13. Yes.

14. No.

15. No, unless the changes we are recommending to the SCT are adopted. As stated elsewhere in this response, the "as proposed" rules have serious drawbacks (especially relating to the use of the accounting basis for equity grants, and the change in liability for pension valuation); this will lead to confusion (at best) and misleading disclosure regarding executive "total compensation". There has been significant negative experience on this point in the US during the past proxy season, and Canada should learn from this lesson. Our alternatives have been described elsewhere in this response.

16. As stated earlier, for stock and option awards we strongly recommend against the use of an "accounting-based compensation cost over the service period" approach for the SCT, and the inclusion of a separate grant date fair value table for such awards would only go part way to correcting for this. The tables as proposed, when taken together, will not provide a complete nor clear picture of total executive compensation.

17. The prescribed tables and narrative in Items 4 and 5 will enhance the complete disclosure of equity and plan-based awards. However, we would favor more complete disclosure of individual grant details (including date of individual grants), and the use of tabular disclosure.

18. Tabular disclosure, similar to that required for DB plans, is preferred. Disclosure of DC plans should be in the "pension" column of the SCT (instead of the "Other" column), and thereby facilitate comparison of pension benefits from company to company. Disclosure of both contributions and earnings is recommended.

19. Disclosure for each NEO is preferred (vs. only for CEO).

20. 20. See the discussion in our letter, above. Selected scenarios should be specified starting with the "baseline" value of previously earned awards (i.e. entitlements under voluntary termination), then progressively showing the incremental amounts owing under different scenarios i.e. termination without cause; retirement; termination after a CoC; and any scenarios which have more lucrative payouts). The focus should be

on the incremental value of awards that get triggered by the underlying event. Tabular presentation is encouraged.

21. Yes, subject to the recommended changes to the SCT noted elsewhere.

22. Maintaining executive compensation disclosure in the MIC is appropriate (and would encourage a requirement for direct web access at issuer's website).

23. No special rules required. The disclosure for such issuers will be simpler because their compensation systems are typically simpler.

24. No comment.

25. It would be impractical to prescribe a single performance measure applicable to all issuers. As stated in question 6, issuers should be encouraged more specifically to identify the performance measures they use, and to describe the linkage with total compensation.

26. See cover letter, above.