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June 29, 2007

Mr. John Stevenson,
Secretary
Ontario Securities Commission
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Toronto, Ontario M5H 3S8

Madame Anne-Marie Beaudoin,
Directrice du secrétariat
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Dear Mr. Stevenson et Madame Beaudoin:

RE: PROPOSED REPEAL AND SUBSTITUTION OF
FORM 51-102F6 *STATEMENT OF EXECUTIVE COMPENSATION*

Towers Perrin appreciates the opportunity to provide comments to the Canadian Securities Administrators ("CSA") on the amendments to the Form 51-102F6 (the "Form") disclosure requirements for executive and director compensation proposed in your March 29, 2007 Notice and Request for Comment (the "Notice").

Towers Perrin is a global professional services organization whose HR Services business provides global human resource consulting in areas including executive compensation and the valuation and design of retirement benefits programs.

Background

We support the CSA's objective of improving the quality of executive compensation disclosure. Many Canadian companies have recently made significant progress in this connection, partially in response to

- the CSA's November 2002 Staff Notice 51-304 (*Report on Staff's Review of Executive Compensation Disclosure*),
- the January 2005 Staff Notice 51-314 (*Retirement Benefits Disclosure*), and
- the September 2006 Staff Notice 51-320 (*Options Backdating*),

but also to the ongoing corporate governance efforts of organizations such as the Canadian Coalition of Good Governance ("the Coalition"), the Clarkson Centre at the Rotman School of Management and most recently the Institute of Corporate Directors' Blue Ribbon Commission.

It is our hope that the final version of the new Form will build on these improvements. We do have a concern that certain of the adaptations the CSA has proposed to the Securities and Exchange Commission ("SEC") Item 402 disclosure rules (the "SEC rules") do not fully take

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into account the critical differences between the way in which compensation is delivered to executives in Canada and the US. In addition, a number of US investors [1] have expressed significant concerns with certain aspects of the SEC rules that need to be carefully considered by the CSA.

We believe it is very important that the changes to the Form meet the information requirements of Canadian investors in a manner that will allow them to readily understand the decision-making processes and actions of Boards of Directors. In our view, however, a number of revisions are required to the March 29, 2007 proposals before these goals can be accomplished, as we discuss in our submission.

As stated in your Notice, the proposed Form is intended to expand the disclosure of executive compensation in key areas, namely:

1) The total annual value of each Named Executive Officer ("NEO")'s total compensation
2) The rationale for specific compensation programs for executives
3) The dollar value of all equity compensation awards
4) The estimated value of each NEO's termination and retirement benefits under various scenarios, and
5) The value of each non-executive director's compensation.

Our key concerns with the draft proposals can be summarized as follows:[2]

1) The "total compensation" values to be reported in the Summary Compensation Table ("SCT") will not be consistent with the way in which executive compensation decisions are typically made by Compensation Committees, thereby making the results of their decisions unnecessarily difficult to explain to investors. [3]

2) The proposed Total Compensation value column in the Summary Compensation Table ("SCT") is the sum of individual compensation column values that are not calculated in a consistent manner from one column to the other and furthermore reflect a combination of

[1] For example, the Council of Institutional Investors noted in their January 25, 2007 letter to the SEC that while the eleven organizations that expressed support in their comment letters for using the accounting expense approach to reporting equity awards in the SCT included the American Institute of Certified Public Accountants and the US Chamber of Commerce, they did not appear to include *a single investor or investor-based organization*. (their emphasis)

[2] References to "shareholders", "shares" and "companies" in our submission are intended to include unitholders, trust units and operating entities respectively of income trusts.

[3] Moody's Investors Service published a special report in April 2007 commenting on how they will use the information reported under the new SEC rules to evaluate a board's decision-making approach with respect to incentive compensation as part of its credit analysis. The following comments are very relevant here:

> "*We have taken the view that the best way to evaluate total pay, and therein the quality of board decision-making surrounding executive pay, is to evaluate total pay from the perspective of 'what did the board decide to give to the executives in a given year?*'"

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current, historical and estimated future compensation that may not make sense to investors.

3) The proposed Bonus and Non-Equity Incentive Plan Compensation columns do not reflect compensation committee decisions, nor do we believe they will be helpful to the investor. We believe that annual incentives should be reported separately from other forms of non-equity incentive compensation. Guaranteed bonus payments and discretionary bonuses could be included in the All Other Compensation column with appropriate footnotes, rather than in a separate column.

4) We believe that the proposal to base the dollar value of all equity compensation awards "*on the basis of the compensation cost of these awards over the requisite service period, as reflected in a company's financial statements*" (the "accounting expense approach") in particular would mix **current** compensation decisions with **past** compensation decisions, the impact of which will vary depending on
    - the vesting terms of the equity awards,
    - whether fixed or variable accounting applies under CICA Handbook Section 3870,
    - whether probability estimates have to be adjusted for prior accounting accruals,
    - the accounting expense attribution method chosen by each company (i.e. straight-line vs. front-loaded), and
    - each executive officer's length of service and closeness to retirement.

   The use of the accounting expense approach will affect the determination of the three most highly paid NEOs aside from the CEO and CFO, which we believe will have unintended consequences.

   We believe the CSA should adopt the grant date approach rather than the accounting expense approach adopted by the SEC in late December 2006.

5) In addition to the foregoing, the inappropriateness of using the accounting expense approach for disclosing the value of equity compensation awards in the SCT is compounded in Canada by the fact that, in order to be able to deduct the value of stock awards for income tax purposes, many Canadian companies choose to settle these awards in a manner that results in variable "marked-to-market" accounting expense under CICA Section 3870 (whereas fixed accounting expense usually occurs under FAS 123R in the US).

   Variable accounting treatment occurs for example with cash-settled equity-based awards and with equity awards whose value is settled by purchasing shares on the open market. The resulting accounting expense has the effect of making longer service executive officers more likely to be deemed to be NEOs than short service NEOs who have the same current compensation: the reason for this is that longer service executives will have larger outstanding equity compensation balances which in turn will have greater exposure to the impact of variable accounting) than short service executives.

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Companies may elect to minimize these complications by simply granting stock options with fixed accounting, rather than through stock awards with variable accounting: this would be an unintended consequence of the new disclosure rules that might not be in the best interests of the shareholders.

The CSA can avoid these aberrations and unintended consequences by adopting the grant date approach instead of the SEC's accounting expense approach.

6) Furthermore, the accounting expense approach may result in negative values in the SCT, most commonly in the Stock Awards column due to the liability accounting issue, but also from time to time in the Option Awards column due to forfeitures of non-vested grants that have previously been reported.

   We believe that negative values will not make sense to investors, especially if new equity awards are made in the year that clearly have significant current compensation value. In addition, negative values will reduce the number of NEOs that have to be reported by companies because the $150,000 total compensation threshold will be exceeded in fewer situations than would otherwise be the case.

   Brookfield Homes Corporation's negative 2006 total compensation disclosure for its CEO and CFO under the SEC rules is a well known example of the kind of situations that may result if the CSA does not change its views in this regard.

   Once again, these aberrations will be avoided if the CSA decides to adopt the grant date approach as we recommend.

7) Pension benefits often have meaningful value in an executive's overall compensation package, and given the objective of disclosing the total compensation package, disclosure of pension-related pay is warranted. We observe, however, that the proposed measurement and related disclosure of pension value includes elements that are not compensatory in nature, such as interest on the previous year end liability. The proposed disclosures will at times understate pension compensatory value, and will at other times overstate pension compensatory value, the results of which could be material.

   We strongly suggest that pension amounts reported in the SCT include only those elements of the change in present value of defined benefit pension credits that are truly compensatory in nature. Concurrently, we recommend that employer contributions to defined contribution retirement plans be included with the defined benefit compensatory values in a newly named "Pension Compensation Value" column, rather than in the All Other Compensation column.

   These changes would in our view make it unnecessary to exclude the pension column values from the Total Compensation values in determining who are the most highly paid executive officers.

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8) The US experience indicates that quantifying the value of each and every potential component of compensation under the various termination scenarios for each NEO can be very complicated to explain and time consuming to prepare, especially if the NEOs reside in different countries and participate in local compensation and benefit programs.

   We recommend that the CSA be consistent with the SEC by only requiring companies to disclose any *incremental* compensation payable to the NEOs in the various termination scenarios; for example, the in-the-money value of stock options that have not vested should be included to the extent that their vesting would be accelerated on termination, whereas previously vested stock options should be excluded. In addition, we recommend that the CSA monitor companies' attempts to comply with these requirements with a view towards developing a suggested table format at a later date.

9) The proposals do not require companies to disclose their executive and director equity ownership guidelines, as desired by many institutional investors. We note that the SEC rules suggest that equity ownership guidelines be discussed in the CD&A.

   We believe companies should be encouraged to disclose their equity ownership guidelines for executives and directors.

10) Based on the experience to date with the SEC rules, companies have had considerable difficulty discussing the rationale for their executive compensation programs and in justifying compensation decisions in their compensation discussion & analysis (CD&A) disclosures. It has proved to be virtually impossible to provide the required information in a readily understood form, and certainly not in one or two pages of "plain English". The CSA proposals for the CD&A are similar to the SEC requirements, even though they appear at face value to be less detailed. As a result, we expect many Canadian companies to have similar difficulties. In addition, we expect many companies to be concerned about disclosing information that may be confidential or which may have forward-looking implications.

   We suggest that the CSA monitor the CD&As of leading Canadian companies with a view to developing "best practice" examples to help all issuers improve the understanding of their programs over time.

The approach we have taken in preparing our submission is as follows:

I. The main body of the submission provides our comments on each Item in the proposed Form in the order in which they appear in the Notice.
II. Appendix A provides an overview of the most common forms of equity compensation with illustrations of their potential compensation disclosure implications under the CSA's proposed approach.

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III. Appendix B provides illustrations of the potential implications of the defined benefit pension disclosure proposals.
IV. Appendix C provides our responses to certain specific requests for comment in the Notice to the extent not otherwise covered by the main body of the submission.

Conclusion

We appreciate that the proposed Form is intended to improve the comprehensiveness and readability of proxy disclosures in a manner that is consistent in the main with the SEC rules.

The CSA is in the enviable position of being able to learn from the SEC experience and to make appropriate enhancements, especially in the following areas:

- Replace the proposed accounting expense allocation in the year with the grant date compensation value of stock options and stock awards in the SCT;
- Replace the proposed change in the actuarial value of pension benefits during the year with the compensatory value of the additional pension accruals; and
- Continue the current method of reporting annual incentives in the bonus column separately from longer term incentive payments.

We would be happy to further discuss our views or answer any questions you may have.

Sincerely yours,

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Comments on Item 1: General Provisions

1.1 Purpose
We note that the Purpose section does not include an underlying objective, such as to require companies to communicate to their investors their executive compensation goals, objectives and decisions in a comprehensive yet understandable manner that will enable shareholders to assess the decision-making of the Board of Directors. Including such an objective in the Purpose section would help companies in preparing their disclosures and would also provide CSA staff with a context when reviewing companies' proxy circulars and in considering possible future enhancements to the Form.

While the term "executive officer" has not changed, we believe it would be useful for you to note for the benefit of the lay reader that this term is as defined in National Instrument 51-102, rather than simply referring to the "Instrument".

1.2 Format
We think it would be helpful, given the recent publicity in the US with respect to the "plain English" requirements of the SEC rules and the concerns that SEC officials have expressed in this regard, [4] to bring to the attention of the reader when preparing the Form that "plain language" must be used in all aspects of the executive compensation disclosure, as already required by Forms 58-101F1 and 58-101F2 under National Instrument 58-101.

1.3 Definitions
The Definitions section could be improved in a number of areas, given the fact that completion of the Form will require the involvement of many individuals, not all of whom will have full access to the relevant Securities Acts, Regulations and CSA Notices. The following clarifications would be helpful in particular:

- There is no definition of "salary". Should this include fixed regular compensation such as that found in the retainers payable under some consulting agreements?
- Item 1.3 does not include a definition of "bonus", yet it does define "incentive plan" and "incentive plan award". Meanwhile, point 1(iii) under Item 3.1 requires the company to "include in the SCT Bonus column any discretionary cash awards that were not based on pre-determined performance criteria that were communicated to a NEO", which sounds like the basis of a possible definition.
- The definition of "equity incentive plan" could be expanded to note that Section 3870 applies not just to equity-settled awards, but also to awards that are based on the stock price or unit price and which are settled in cash and/or by purchasing shares or units in the open market as the awards come due. It has been our observation that it is not commonly understood by non-accountants that these non-equity settled but equity-based arrangements also fall within the scope of Section 3870.
- It would be useful to know whether it is the CSA's intention that the $150,000 threshold in the Item 1.3 definition for determining whether and executive officer is a NEO be in

[4] See for example SEC Chairman Christopher Cox's March 23, 2007 speech in Los Angeles and SEC Director, Division of Corporation Finance John White's May 3, 2007 speech in Chicago.

Canadian funds or in the financial statement currency, e.g. in US dollars. The same currency question applies to the $50,000 perquisite threshold under point 7(i) of Item 3.1.

Comments on Item 2: The Compensation Discussion & Analysis

We are aware that a number of companies have a significant concern with respect to the disclosure of performance targets in the CD&A, especially on the part of issuers whose policy is not to provide earnings guidance. At the same time, SEC officials have expressed a great deal of dissatisfaction with US companies' performance disclosures in this regard. [5] It should also be noted that, unlike in the US, there is little guidance in Canadian case law with respect to whether the disclosure of a particular item of information would or would not be competitively harmful to a company.

The CSA proposes on the one hand to require companies that wish to "*exclude target information if it means disclosing confidential information that would result in competitive harm to them*" to "*state what percentage of an executive officer's total compensation relates to these undisclosed targets*". On the other hand, in the related Item 2 Commentary, the CSA would require companies to "*give readers a sense of … expected compensation levels for future periods, under various performance scenarios*". These requirements are in conflict with each other and have potential forward-looking information implications.

As discussed in our covering letter, the use of the accounting expense approach for purposes of both identifying the NEOs and for determining the value to be disclosed in the SCT of their equity-based compensation will result in distortions that will have to be explained in the CD&A. We believe the time and expense that companies will need to incur to make these explanations will not be in the investors' best interest.

If, however, the CSA does not change its views in this regard, then we believe that companies will be forced to include a more meaningful SCT of their own in their CD&As in order to provide the information their investors need, with the result that the SCT required by the Form may, in turn, become somewhat redundant. [6]

We note that the current Form requires the names of the members of the compensation committee to be listed in the Report on Executive Compensation. Most compensation committee charters that we see make this committee responsible for approving the content of the Report. The CD&A requirements in the proposed Form are silent in this regard. We believe that investors will assume that, in practice, the compensation committee is responsible for the CD&A. In addition, investors will want the committee members to assess whether the content and the style of the CD&A can be readily understood by the typical reader. Accordingly, we believe that there is considerable merit in continuing to make the

[5] See for example, John White's May 3, 2007 speech.

[6] Moody's report states that "Moody's believes that the SEC has diminished the potential value of the new SCT as a forward-looking analytical tool for assessing the incentives executives pay awards create in the near and longer term."

compensation committee (or other board committee performing equivalent functions, or, in the absence of any such committee, the entire board of directors) ultimately responsible for the content of the CD&A, in which case their names should continue to be included.

2.2 Performance Graph

With respect to the requirement in Item 2.2 to discuss how the total investor return trend shown by the Performance Graph in the CD&A "*compares to the trend in the company's compensation to executive officers over the same period*", we are uncertain as to who the executive officers should be for this purpose, given that the composition of the NEO group will often have changed over the previous five fiscal years. For example, in a high turnover situation, there may be more than 5 NEOs in some years due to special severance payments and/or overlapping CEO/CFO appointments, and less than 5 in other years if the $150,000 threshold is not met. In addition, should one time special payments be included or not for this purpose?

Perhaps this compensation comparison should be limited to the holder or holders of the CEO position during the five year period, which would be somewhat consistent with the "look back/total take" disclosure recommendations of the Canadian Coalition.

It should be noted that we agree that it would be difficult to devise a single performance measurement tool that would yield relevant information on the link between executive pay and company performance, including total investor returns, for all companies.

Comments on Item 3.1: The Summary Compensation Table

The content of the SCT, as proposed, needs to be revised in a number of key areas, as indicated in our previous comments.

Bonus Disclosure

The proposed SCT has separate columns for "bonus" compensation and for other "non-equity incentive" plan compensation, consistent with the SEC rules. The experience of US companies with this approach is that it will be confusing in practice to differentiate these two types of compensation when a portion of a non-equity award (usually an annual incentive) is tied to performance objectives and a portion is in the form of a discretionary adjustment factor (both positive and negative). It is also unclear how the impact of qualitative performance measures should be reported where some judgment (i.e. discretion) is needed to assess performance.

In addition, we believe that investors want to continue to see annual incentive compensation reported separately from longer term cash compensation as required by the current Form. [7] Discretionary and/or guaranteed payments could be disclosed by footnotes in a separate

[7] Moody's comments on annual incentives are relevant here:
"Investors have to comb through the CD&A … to determine if a multi-year cash-based incentive plan exists….. Moody's aggregates all annual bonus payouts into one figure. Where disclosures make it possible, we remove from the bonus figure any payout from multi-year cash-based incentive plans."

table or, alternatively, included in the All Other Compensation column, rather than in the Bonus column.

Notwithstanding the foregoing, if the CSA proceeds to enact the Bonus column as proposed in the Notice, it would be helpful for the CSA to provide guidance as to whether both “guaranteed” incentive compensation and discretionary cash awards should appear in the Bonus column, as per the SEC rules. If so, the definition of “bonus” should include such guarantees. Otherwise, it would appear that such guaranteed incentives should be reported in the All Other Compensation column, even though the proposals are silent in this regard.

Stock Awards and Option Awards

We believe that investors want to be able to scrutinize companies’ long term incentive plan (LTIP) and equity compensation in the following order of priority:

1. The compensation value of the LTIP awards granted to each NEO during the current fiscal year
2. The “in-the-money” value of all outstanding LTIP grants at the end of the current year, both non-vested and vested, for each NEO
3. The values each NEO has realized in the year from the exercising or settling of LTIP grants during the year
4. Each NEO’s actual equity holdings, and lastly
5. The *total* accounting expense of the LTIP program during the year (but **not** the expense by individual executive).

The proposed SCT disclosure contains two new columns for stock-based elements: “Stock Awards” (column e) and “Option Awards” (column f), which companies would use to report the awards’ total accounting expense accruals for the year, measured in accordance with Section 3870.

As discussed in our covering letter, and as illustrated in the examples in Appendix A, we have many concerns with using the accounting expense approach in the SCT. In our view, only the grant date compensation value of stock awards and option awards should be disclosed in the SCT if the goal is to help the investors to understand and assess the decisions of the compensation committee during the year.

Note: A separate table could be provided that would show the accounting expense attributable to each NEO during the year under each of the compensation elements, if such additional information is deemed desirable by investors in their comments to you on the proposals.

Change in Pension Value

The CSA has proposed to require companies to disclose any positive year-over-year change in the actuarial present value of each NEO’s accumulated benefit under all defined benefit (“DB”) and actuarial pension plans, including supplemental plans.

The present value of a DB pension promise can change quite significantly from one year-end to another, as illustrated in Appendix B. Moreover, the factors giving rise to change are many – some of which are compensatory in nature (e.g. the accrual of employer-provided benefits for an additional year of service), whereas other factors are clearly not compensatory in nature (e.g. interest on amounts that were reported as pension compensation in previous years). We strongly suggest that pension amounts reported in the SCT include only those elements of change in present value of pension benefits that are truly compensatory in nature, and that the column label be concurrently changed to "Pension Compensation Value". Generally speaking, the resulting amount reported in the SCT would then be the present value of additional pension benefits earned during the year.

The CSA's discussion document acknowledges that change in pension value includes both compensatory and non-compensatory elements, and it indicates that consideration was given to including in the SCT's "Change in Pension Value" column only the compensatory elements of change. The commentary further notes that this approach was rejected as it was felt "most appropriate to require disclosure of the entire amount of the increase in pension value since this more accurately reflects the company's liability". We observe that the purpose of the SCT is to report compensation; reporting of the company's *liability* is a different matter. Hence, the rationale for including non-compensatory elements in the SCT is unclear us. In the interest of assisting users with this distinction between compensatory and non-compensatory elements, we suggest that a reconciliation of DB present values from end-of-prior-year to end-of-current-year be considered for the Retirement Plan Benefits table - including segmentation of this change between its compensatory and non-compensatory elements.

We see no need to isolate defined contribution (“DC”) from DB pension entitlements and to report them in a different column (notably in All Other Compensation). We observe that our suggested approach of reporting in the SCT the compensatory change in value of pension entitlements, with a beginning-to-end-of-year reconciliation in the Retirement Benefit Plans table, would work equally well for DC pension arrangements – and would do so consistently for both pension types.

We also note that negative changes in pension value are to be footnoted, but not shown in the SCT. Based on the proposed measurements, negative values emerging for a year indicate that, with the benefit of hindsight, DB pension compensation values reported in previous years were overstated. As such, we fail to see why negative values should not be reported in the SCT. Having said that, we observe that inclusion in the SCT of only the compensatory element of the change in pension value would make this issue somewhat moot; the compensatory element of change in pension value can result in a negative amount only if a pension program is amended to reduce already accrued benefits – a situation that is extremely rare.

Lastly, we suggest that the CSA replace the U.S. term ”nonqualified” with the equivalent Canadian term “non-registered” in point 7(vii) of Item 3 in the document, to be consistent with Income Tax Act (ITA) terminology.

All Other Compensation
We mentioned earlier that it would be useful to clarify for the reader whether the $50,000 perquisite disclosure threshold is intended to be in Canadian dollars or in the currency used in the financial statements.

We believe that above market earnings on non-registered deferred compensation represent compensation and should be reported as such in the All Other Compensation column, as you have proposed.

However, as noted earlier, we believe that annual DC contributions and allocations should be reported in the Pension column, rather than in the All Other Compensation Column.

Comments on Item 3.2 - Grants of Equity Awards, Item 4 – Equity-Based Awards and Item 5 – Plan-Based Awards

We wish to comment on these three proposed Items on a collective basis.

As discussed previously, we believe that investors want to be able to scrutinize companies' long term incentive plan (LTIP) and equity compensation in the following order of priority:

1. The compensation value of the LTIP awards granted to each NEO during the current fiscal year
2. The “in-the-money” value of all outstanding LTIP grants at the end of the current year, both non-vested and vested, for each NEO
3. The values each NEO has realized in the year from the exercising or settling of LTIP grants during the year
4. Each NEO's actual equity holdings, and lastly
5. The *total* accounting expense of the LTIP program during the year (but **not** the expense by individual executive).

We believe that the CSA equity incentive disclosure proposals will not meet these investor objectives. As discussed earlier, we believe that the grant date compensation value of equity awards used by the Compensation Committee should be disclosed in the SCT, rather than the accounting expense. The **Grant of Equity Awards** table will not be needed if the CSA agrees to use the grant date approach for the SCT.

Our understanding is that investors and their advisors want to see how much *vested and non-vested* upside leverage (and downside risk) the executives have with respect to

changes in the stock price. [8] The previous outstanding options in-the-money value disclosure was of much interest to the investors, but was lacking because it did not similarly show the leverage or risk represented by other outstanding equity incentive awards.

The proposed **Outstanding Equity-Based Awards** table in Item 4.1 provides some, but not all of this leverage/risk information. For example, it requires companies to show the value of each unexercised option, *but* it does *not* provide the total in-the-money value for each NEO broken down between exercisable and non-exercisable options, as was previously required. Furthermore, the disclosure of outstanding stock awards applies only to *non-vested* awards, not to *previously vested* stock units that continue to be outstanding and will be settled in a subsequent year. A further concern is the inconsistency between the detail required to be reported for *each* outstanding option vs. the *aggregate* information required for outstanding non-vested stock awards. The experience to date with the SEC disclosure requirements in this regard is frequently a lengthy list of awards for each NEO that in total can carry on for several pages, which in turn can frustrate the reader and make the determination of their total value unnecessarily time consuming. [We note that this grant by grant information in many cases is already publicly available through insider trading reports.]

We suggest that *both* the outstanding options and outstanding stock awards be shown in *aggregate*, separated as between those that are vested and those that are not vested, along the lines of the current option table. Alternatively, if the CSA decides that details on each and every outstanding option should be provided, then in our view the same full disclosure approach should be applied to each outstanding stock award.

The **Value Realized on Exercise or Vesting Of Equity-Based Awards** table proposed in Item 4.2 does not show the number of shares or units that were exercised or realized in the year, only the dollar value realized on those that *vested* in the year. Furthermore, it does not show the value realized from the settlement of previously vested equity-based awards, such as deferred stock units. [This table was adapted from the SEC regulations which reflect the common US practice of issuing restricted shares from treasury at the beginning of the vesting period. When these shares vest, the executives are free to do whatever they want with them — vesting and settlement coincide.]

The Canadian context is different due to the extensive use of cash-settled, liability-type stock award structures under which vesting and settlement may not necessarily occur in the same year. For example, restricted stock units may vest at the rate of 1/3 per year, but settlement (payouts) would not occur until the end of the third year. If companies with such plans were to follow the proposed CSA rules, they would have to report the amounts vested after one year as value realized, even though there are two more years before their actual settlement.

[8] Moody's for example "views as a retrograde step the SEC's decision to no longer mandate the disclosure of the aggregate unrealized value of exercisable and unexercisable stock options."

Then there is the issue of deferred share units. They may vest immediately upon grant or a few years thereafter, but settlement occurs only after the executive terminates or retires (which could be another 10 or more years). Reporting the value realized only upon vesting would miss much subsequent potential value derived from price growth and dividends while these awards remain outstanding.

We suggest that the terminology for stock awards in the **Value Realized** table be changed to refer to "Value realized during year on settlement."

Finally, the beneficial equity ownership of each NEO is currently required to be disclosed only if the NEO is also a member of the Board of Directors, which seldom applies beyond the CEO in today's Canadian governance model. We believe that the SEC requirement to disclose the beneficial equity ownership of each of the executive officers should be considered by the CSA.

Comments on Item 6 - Retirement Plan Benefits

Measuring the Present Value of Accumulated Benefit

Present value measurements are to be determined using the same assumptions employed for GAAP financial accounting purposes. An exception to this is that "*retirement age shall be assumed to be the normal retirement age as defined in the plan. If it is not defined, use the earliest time at which a participant may retire without any benefit reduction due to age.*"

We note that the SEC's January 24, 2007 staff guidance in response to Question 9.02 on this issue is that companies should use the earliest age at which a NEO will be entitled to unreduced benefits, rather than to use the normal retirement age ("NRA") if later – this being notwithstanding the actual wording of the SEC rules. The CSA proposals thus differ from the SEC's subsequent deliberations on this issue.

We observe that mandating the use of the NRA for purposes of disclosing the value of DB pension benefits has the advantage that it will provide information that is comparable for different executives, even across companies, as NRAs in DB plans are heavily concentrated at a few ages, primarily age 65. The disadvantage of using the NRA is that it would not capture the value of early retirement subsidies, which for example, can be worth around 30% of the value of an age 65 benefit if unreduced at age 60.

If the use of the earliest unreduced age is used as per the SEC guidance, the present value of any potential early retirement subsidies will be reflected. The disadvantage of this approach is that the present value of the accumulated benefits will ultimately be overstated if the executive continues working past his or her earliest unreduced retirement age, e.g. until or past age 65.

Either retirement age approach has pros and cons, with no clear winner. In any event, item *(i)* of the Commentary to Item 6.2 would require companies to "describe the plan's early retirement payment and benefit formula, and eligibility standards."

Another area of difference exists in that the SEC rules require the assumption for executive pay disclosure purposes of continued employment through to the retirement date (even if the financial accounting measurements contemplate a less-than-100% likelihood of retirement due to termination, disability or death). Silence on this matter in the CSA proposals would suggest that the default assumptions must apply – that is, the same assumptions are to be used as for financial accounting purposes, including all decrements. We suspect that these departures from the SEC approach might be unintended and hence bring them to your attention.

Separation by Plan

The proposed rule introduces a new table that would provide information with respect to each DB plan that provides for payments or other benefits at, following, or in connection with retirement (excluding registered and non-registered DC plans).

In light of the foregoing proposal, consider an expatriate executive who has served in different countries or subsidiaries and who has acquired several "slices" of pension entitlement for different service periods. Following the proposed CSA rules would require that each pension slice be valued separately using, for that slice, the measurement assumptions employed in the company's financial accounting. These measurement assumptions may well differ by plan, meaning that a straight sum of each plan's reported value will not yield an appropriate value for the overall program.

We also note that many organizations commit to an overall level of pension benefit and offset this by whatever entitlements are accumulated in the programs of various subsidiaries. In a similar vein, a very common situation is for an employer to maintain a non-registered "top-up" plan that has an offset for whatever benefits are payable under its registered plans.

These situations all serve to illustrate that no useful purpose is served by the proposed requirement to separately disclose and separately value each slice of pension entitlement. The requirement to determine and report each DB plan separately will substantially increase the effort needed to complete the table, and has the potential to result in information that is unnecessarily difficult for a reader to understand.

We suggest that, for each individual, the reported pension values focus instead on the value of the aggregate entitlement across all plans.

Segmenting Compensatory Changes from Non-Compensatory Changes

The present value of the accumulated DB pension will change from one year to the next due to a number of factors, as follows:

a) Additional employer-provided pension may have been earned for service rendered during the year
b) The pension plan's benefit terms may have been amended
c) The accumulated pension for service in prior years may have increased due to a change during the current year in the executive's cash compensation

In addition,

d) New information may have become available, causing a modified outlook for the future - that is, assumptions about future events (like mortality and potential spousal benefits) as set at the current year-end might differ from what they were at the end of the previous year
e) Certain events may have transpired in the meantime, for example currency rates or interest rates could have changed, causing end-of-current-year measurements to differ from end-of-previous-year measurements
f) Unless all benefits accumulated at the previous year-end were immediately paid out, the current value of previously-accumulated entitlements will now reflect interest for the intervening period
g) The individual may have contributed to the pension plan (from compensation disclosed elsewhere) and in doing so earned additional pension benefits

Some of these factors are very clearly compensatory in nature – notably (a) and (b). Some of these factors are very clearly non-compensatory in nature – notably (e), (f) and (g). In fact, these last three factors relate less to a pension benefit’s terms and more to how the pension program is financed.

In our view, factor (c) should be considered compensatory as changes in an executive's cash compensation are a Board decision and are to be disclosed. Accordingly, investors should be made aware of any cascading impact that these decisions may have on accumulated pension entitlements. The impact of new non-compensation information in factor (d) should, however, not be deemed to be compensatory.

Our conclusion is equivalent to determining the compensatory element as:

i. the present value at year-end of the pension accumulated to year-end, less
ii. the present value at year-end of the pension that had been accumulated at the prior year-end, less
iii. any contributions made to the pension program during the year by the executive.

As measurements (i) and (ii) would both be undertaken using the same assumptions, notably those in effect at the current year-end, the impact of any changes in financing assumptions would be eliminated.

With this structure, we envision four "present value columns" appearing in the Retirement Plan Benefits table – namely:

- present value of accumulated benefits at prior year-end
- change in present value due to compensatory factors (this being shown in the SCT)
- change in present value due to non-compensatory factors, and
- present value of accumulated benefits at current year-end.

Treatment of Defined Contribution Pension Entitlements

We can see merit to disclosing all pension entitlements in the Retirement Benefit Plans table, including DC entitlements, and doing so in a manner consistent with DB entitlements. The above structure easily accommodates such an inclusion, as follows:

- value of accumulated benefits at prior year-end is the DC account accumulation as it was at the prior year-end
- change in present value due to compensatory factors equals the amount of any employer contributions to the account plus the value of any above-market or preferential earnings on the DC account
- change in present value due to non-compensatory factors would include any member contributions and market-based investment growth, and
- present value of accumulated benefits at current year-end is the DC account accumulation as it is at the current year-end.

Again, the change in present value arising solely from compensatory factors would appear in the SCT.

Comments on Item 7 – Termination and Change of Control Benefits

The proposals call for narrative disclosure and quantification of potential termination payments for each NEO. We have three suggestions with respect to this proposed disclosure.

First, we recommend that this disclosure focus only on the "*incremental*" value of pay and benefit elements the executive officer would contractually receive solely as a result of the particular form of termination (e.g., severance, tax gross-ups, enhanced pension benefits, etc.), rather than settlements of already-earned compensation elements, such as the in-the-money value of previously vested but still outstanding stock options. Reporting these already-earned elements would create the potential for double-counting since they would be reported elsewhere in current or prior proxy statements – for example as stock option or restricted stock unit grants, or in tables showing retirement benefits. We note that the SEC staff has indicated in this regard that only the incremental value is to be disclosed.

Second, if it is the CSA's intent that the various potential contractual payments be quantified for each NEO, we believe a formal tabular structure would provide more comprehensible

disclosure and recommend the CSA set forth a prescribed format at a future date based on best practice research.

Third, if a specific contractual obligation or policy does not exist for a particular termination scenario or scenarios (for example where there is no employment agreement), it is our view that the company should not be required to estimate the related payments and benefits. Item 7 of the proposals, however, would require companies to "*quantify estimated annual payments and benefits even if it is uncertain what amounts might be paid in given circumstances under the various plans and arrangements*." Reporting the estimated value of such non-contractual pay or benefits to the investors could potentially have negative legal implications in Canada for the company in the event of a wrongful dismissal suit. Having to report the estimated value of such pay or benefits to the investors may, in turn, result in an impetus for companies to formalize their executive termination benefit obligations through employment contracts in order to contain their legal exposure. We suggest that this result could be an undesirable consequence of legislated disclosure.

Comments on Item 8 – Director Compensation

The comments we have made with respect to the SCT and the Grant of Equity Awards table apply equally to the proposed Director Compensation table and related disclosures.

It would be useful for this item to note that compensation should be reported for former directors who received compensation for part of the fiscal year and that compensation should include any consulting arrangements, as per the SEC rules.

Comments on the Transition Period

The preamble to the proposed Form states that you "*intend the proposed executive compensation form to be in effect at the end of 2007 and will require companies to comply with the new form for financial years ending on or after December 31, 2007*".

We believe it is that your intent to transition the new rules over 2007, 2008 and 2008 as they relate to the SCT and not make them retroactive for 2005 and 2006. Your intention could, however, be made clearer to the reader as there has been some confusion in this regard.

It should be noted that the SEC staff has undertaken a major review of the disclosures filed under their new rules and will be considering if there are any changes to the rules that may be advisable to recommend to the Commission in areas such as the treatment of negative numbers and the disclosure of performance targets. [9] We strongly believe it would be advisable for the CSA to consider the results of the SEC review and to benefit from their experience.

[9] See John White's May 3, 2007 speech.

If, however, it is appears that no action will be taken by the SEC in time for the 2008 proxy season, then we suggest that the CSA consider whether to:

1. proceed with the changes to the Form largely as currently proposed and only make substantive changes when and if the SEC makes changes

2. delay implementation of the changes to the Form until 2009, or

3. decide now to make the necessary changes to the SEC approaches that have received the most criticism for January 2008 implementation, i.e. most notably to

   - Replace the proposed accounting expense allocation in the year with the grant date compensation value of stock options and stock awards in the SCT;

   - Replace the proposed change in the actuarial value of pension benefits during the year with the compensatory value of the additional pension accruals; and

   - Continue the current method of reporting annual incentives in the bonus column separately from longer term incentive payments.

We encourage the CSA to decide now, and thus build on the progress that has made by Canadian companies in the disclosure of their executive compensation.

Appendix A

Long-Term Incentives

Equity (CICA 3870) and Non-Equity Compensation Issues

EQUITY versus NON-EQUITY

The terms "*equity*" and "*non-equity*" are used in the proposed rules.

"*Equity*" is a bit of a misnomer – particularly in the Canadian context. It is defined in the CSA proposals as "*an incentive plan or portion of an incentive plan under which awards are granted that fall within the scope of 3870 of the [CICA] Handbook*". Section 3870 governs stock based compensation that encompasses both equity and liability structures (as defined therein). Liability structures are essentially stock-based compensation that is to be settled with cash (including cash allocated to buy shares in the open-market). Liability arrangements are far more prevalent in Canada than in the United States.

Equity in the proposed rules is subdivided for the purpose of disclosure into:

- *Option Awards*. Options, stock appreciation rights (SARs) and other option-like arrangements;
- *Stock Awards*: Encompasses any other arrangement governed by Section 3870 that does not have option-like characteristics, including full value shares which are described in more detail below.

Non-equity refers to "*incentive plan or portion of an incentive plan that is not an equity incentive plan*". In terms of long-term incentives, this represents multi-year cash incentives (or portions thereof) that are not calibrated in shares or share units or that are not based on performance in relation to a share price.

This Appendix addresses all of these arrangements.

FULL VALUE SHARES OR UNITS

- Share units with time and/or performance vesting restrictions ("Restricted Share Units");
- Share units that are held until employment termination ("Deferred Share Units")

Restricted Share Unit Plan

Restricted Share Units ("RSUs") are full value phantom shares that reflect the value of the company's underlying publicly traded shares.

RSUs are granted at the start of a performance period (usually 3 years) and vest based solely on time and/or performance:

- *Time vesting only*. These RSUs generally only require ongoing employment to receive a payout;
- *Performance vesting (usually in combination with a time period)*. Sometimes referred to as performance share units (PSUs). Typically, a contingent target award of PSUs is made at the beginning of the performance period. The actual award payout may range from zero to a multiple of the initial target award based on performance achieved, and, as with RSUs, may be settled in cash and/or shares purchased in the open market

Dividend equivalents may be credited on the RSU/PSUs over the performance period and generally vest if and when the RSUs vest. Vested awards may be settled in cash, in shares purchased in the open market, or a combination.

Most RSU/PSUs in Canada are subject to variable/liability accounting under CICA Section 3870. This is very different from the normal U.S. structure which would be a promise to issue shares from treasury and therefore eliminate the impact of post-grant date share price movements and dividend payments on the accounting expense – and in turn would have no impact on compensation amounts disclosed in the SCT.

Deferred Share Unit Plan (DSU)

DSUs are similar to RSUs, except that under the Canadian tax regime they can usually only be settled on termination of employment or retirement. DSUs may be used in one of three ways:

- As a bonus deferral mechanism. Some organizations permit executives to elect to receive their annual bonus in DSUs rather than cash.

- As a standalone award. In some cases, a special grant of DSUs may be given to an executive, e.g. coincident with a promotion.

- As part of a board member's compensation. Many publicly traded companies permit directors to receive all or a portion of their cash compensation in DSUs and/or award standalone grants of DSUs on appointment to the Board, etc.

This vehicle is not as common in the US.

In the Canadian context, most institutional investors regard DSU holdings as being akin to ownership as their value is aligned to the share price and they must be maintained until employment termination/retirement. Through this vehicle, board members and executives are able to utilize pre-tax compensation to achieve their share ownership requirements more readily. On the settlement date (e.g., retirement) amounts are fully taxable, with a

corresponding tax deductible expense for the company if they are settled in cash or if shares are purchased with the proceeds in the open market.

DSUs are most often settled in cash. They are therefore subject to variable/liability accounting under CICA Section 3870.

EQUITY COMPENSATION

The approach of the SEC (and of the proposed CSA rules) to align equity pay disclosure with financial statement disclosure gives rise to three key problem areas:

- *Accounting time period allocation versus year of grant value*. The amount to be disclosed in the SCT for equity awards is not the value of the current year's grant or grants. Rather, is the total accounting expense amount that is allocated for that year for a number of current and prior year equity awards over their vesting periods. Although this reflects an estimated cost of the awards to the company from an accounting perspective, it does not reflect how Compensation Committees or shareholders think about compensation for a NEO in a given year.

- *Accounting cost (CICA Handbook 3870) versus compensation value*. The grant date compensation value that a Compensation Committee applies to an equity grant or award may be greater than the accounting value of the grant to be included in the proxy disclosure.

- *Equity versus liability structures*. Under the requirements of CICA 3870, equity structures (i.e., those settled with shares issued from treasury) have an expense that is fixed at date of grant. Hence, the amount disclosed in the proxy would be stable. Conversely, the expense for liability structures (i.e., those settled using cash or shares purchased on the market) must be marked to market to reflect changes in share prices, including any related dividend equivalents, until ultimate settlement. Thus variable, and possibly negative amounts will be disclosed over the entire life of the award for these plans.

  Consequently, the disclosure in the SCT will be very different even though the recipient and the Compensation Committee would view the value as the same.

  For most US companies, the difference in equity versus liability disclosure is a minor issue since the majority use equity settled compensation structures. For tax reasons (equity type structures are generally tax deductible for US but not for Canadian companies), liability-type plans are much more common in Canada, particularly in medium term incentive programs such as restricted share units. While the intent of

using CICA 3870 as a guide to disclosing the value of equity awards in the SCT was presumably for comparability with the US (which uses FAS 123R in the same way), the results will be very different because of the prevalence of liability plans in Canada.

Finally, as Canada moves toward harmonization with international accounting standards, the CICA may modify the definition of “Equity” in Section 3870 which in turn, could affect the distinction between equity and liability within the overall Equity classification for disclosure purposes.

ILLUSTRATIVE DISCLOSURE: FULL VALUE SHARES OR UNITS

RSUs

Table 1 below assumes an RSU grant with a starting market value of $300,000 is made at the start of the fiscal year. It shows the Section 3870 accounting expense and, in turn, the SCT “Stock Award” column disclosure for the first year based on various year end share price assumptions. While most Boards and investors would assume $300,000 to be the grant year compensation value, the actual SCT amount for a liability structure depends on both the year end (versus grant date) price and the annual expense attribution of the amount.

Table 1: RSU Grant Year 1 SCT Amount

Assumptions:				
Number of Restricted Shares/RSUs	30,000			
Grant Price	$10			
RSU/Restricted Share Grant Value	**$300,000**			
Accounting Fair Value At Grant	$10			
Dividend Yield	0%			
Accounting Accrual	1/3 a year			
	Year 1 Amounts			
Share Price at End of Year 1	**$8**	**$10**	**$12**	**$15**
Canadian-Style RSUs (Liability)				
Per RSU (latest price)	$8	$10	$12	$15
Total	$240,000	$300,000	$360,000	$450,000
Impact on SCT (1/3 accrued value)	**$80,000**	**$100,000**	**$120,000**	**$150,000**
US-Style RSUs (Equity)				
Per Share (accounting fair value)	$10	$10	$10	$10
Total	$300,000	$300,000	$300,000	$300,000
Impact on SCT (1/3 accrued value)	**$100,000**	**$100,000**	**$100,000**	**$100,000**
Difference Between Cdn & US Acctg	***($20,000)***	***$0***	***$20,000***	***$50,000***

Difference Between Equity and Liability Plan Disclosure
Amounts shown for liability (cash settled) LTI plans are variable, whereas amounts for equity plans are predictable.

Assuming the $12 year end price in the above example, the Board awarded $300,000 in RSUs during the year. These have an underlying value of $360,000 at the fiscal year end – which drives that year's accounting expense under Canadian GAAP. Moreover, also included in the "Stock Awards" column in the SCT would be allocations from marked-to-market adjustments for prior year's grants that are still outstanding, including vested stock awards.

Table 2 below provides an example of the allocation of the same $300,000 RSU grant over the 3-year vesting period.

Table 2: RSU Grant Allocated over Vesting Period

Assumptions:			
Number of Restricted Shares/RSUs	30,000		
Grant Price	$10		
RSU/Restricted Share Grant Value	$300,000		
Accounting Fair Value At Grant	$10		
Dividend Yield	3%		
Accounting Accrual	1/3 a year		
	Year 1	**Year 2**	**Year 3**
Share Price at End of Year	**$12**	**$17**	**$18**
Canadian-Style RSUs (Liability)			
Per RSU (latest price)	$12	$17	$18
Dividend Equivalents RSUs	900	927	955
Total Number of RSUs at Year-End	30,900	31,827	32,782
Total Value	$370,800	$541,059	$590,076
% Accrued	33.3%	66.7%	100.0%
Impact on SCT (1/3 accrued value)	**$123,600**	**$237,106**	**$229,370**
(equals Total x % Accrued less amounts accrued in previous years)			
US-Style RSUs (Equity)			
Per Share (accounting fair value)	$10	$10	$10
Total	$300,000	$300,000	$300,000
% Accrued	33.3%	66.7%	100.0%
Impact on SCT (1/3 accrued value)	**$100,000**	**$100,000**	**$100,000**
(equals Total x % Accrued less amounts accrued in previous years)			
Difference Between Cdn & US Acctg	***$23,600***	***$137,106***	***$129,370***

Differences Between Equity and Liability Plan Disclosure

1) Amounts shown for liability (cash settled) LTI plans are variable and can potentially be negative, whereas equity plan values are predictable and always positive.

2) Accruals for Canadian-style RSU plans need to reflect dividend equivalents as well as price fluctuations. For equity plans, the dividend component is built into the accounting fair value at grant.

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The intended compensation value and the ultimate payouts for the executives under the US and Canadian approaches is the same, yet the disclosed SCT compensation can be very different.

In summary, basing SCT disclosure on the CICA 3870 accounting expense results in compensation disclosure that is misaligned with the Board's decision making process, and potentially confusing and misleading for investors since the reported values do not represent compensation awarded for a given year.

Finally, some companies hedge their share price and dividend exposure to income. Hedging strategies are not reflected in CICA 3870 accounting and therefore the resulting SCT disclosure would not capture the full effect of stock-based compensation on the income statement.

DSUs

As noted above, DSUs are another form of full value shares or units and are used to compensation both executives and directors.

DSU Impact on the SCT and Director Compensation Table
Example: An executive and a board member have both elected to receive pay in the form of DSUs and, with subsequent shareholder return performance, have accumulated DSU account values of $2,000,000 and $200,000 respectively at the beginning of the year. The total shareholder return ("TSR") for the year is 15% (share price increase and dividends). The impact on these ownership positions for the year would be $300,000 for the executive and $30,000 for the Board member. These amounts would be captured under section 3870 for that year and would have to be included as part of the Stock Awards amount under the SCT and Director Compensation tables respectively.

We believe these amounts are viewed by most shareholders as a change in the value of an ownership position (note: and can be disclosed as such under Director ownership) and not annual compensation. Moreover, the company may in fact hedge the TSR exposure. In this case, the disclosed value would represent neither the overall accounting expense or compensation amount.

ILLUSTRATIVE DISCLOSURE: STOCK OPTIONS / STOCK APPRECIATION PLANS

A stock option is the right to buy company shares at a predetermined price (the exercise price) for a specified period (option term) once vested. Stock options are normally structured as equity since they are always settled in treasury shares. This structure results in fixed fair value accounting: using an option pricing model, the accounting fair value is fixed at the date of grant and is then allocated (amortized) over the vesting period.

Stock option valuation approaches have been hotly debated – particularly in the US - culminating in the ultimate adoption of mandated option expensing. The main issue is that accounting fair values of an option grant (as an equity structure) are never "trued up" for the actual experience / payouts associated from exercising the options. Depending on such factors as share price volatility and size of dividends, option accounting values may be perceived as understating the option compensation value. Assuming that the CSA decides not to use the accounting expense approach for SCT disclosure purposes, we believe it is more appropriate for the Compensation Committee to determine the compensation value of an option. One approach could be to allow for the greater of the Committee approved compensation value or the accounting grant date fair value (before allocation by accounting period).

The use of the accounting annual allocation raises similar issues to those noted above under RSUs. The important information for proxy readers is the value of an option award in a given year, the accumulated in-the-money positions and actual option exercises. This information cannot be derived from the SCT in the form currently proposed.

Table 3 below illustrates the difference between the accounting fair value of a grant and the allocated expense that would be captured under the "Option Awards" column of the SCT:

Table 3: Option Grants: Allocation and Accounting versus Compensation Value

Assumptions:				
Compensation Option Value	30%	of share price on grant date		
Accounting Option Fair Value	20%	of share price on grant date		
Accounting Accrual	25% a year			
	2007	**2008**	**2009**	**2010**
Share Price	$6.00	$8.00	$10.00	$20.00
Number of Options Granted	10,000	10,000	10,000	10,000
Proposed Accounting Accrual Treatment				
Per Option (accounting option value)	$1.20	$1.60	$2.00	$4.00
Total Accounting Value	**$12,000**	**$16,000**	**$20,000**	**$40,000**
Accrual/Allocation				
2004 Grant	$2,250			
2005 Grant	$2,500	$2,500		
2006 Grant	$2,875	$2,875	$2,875	
2007 Grant	$3,000	$3,000	$3,000	$3,000
2008 Grant		$4,000	$4,000	$4,000
2009 Grant			$5,000	$5,000
2010 Grant				$10,000
Impact on SCT	**$10,625**	**$12,375**	**$14,875**	**$22,000**
	2004-07 Grants	2005-08 Grants	2006-09 Grants	2007-10 Grants
How Compensation Committee Sets Pay				
Per Option (compensation value)	$1.80	$2.40	$3.00	$6.00
Compensation Value	**$18,000**	**$24,000**	**$30,000**	**$60,000**
	2007 Grant	2008 Grant	2009 Grant	2010 Grant
Difference in Value	***$7,375***	***$11,625***	***$15,125***	***$38,000***

Complications of Incorporating Accounting Accruals in Disclosure
The accrued accounting expense approach makes it very difficult to see the impact of the latest grant. In some situations, the accounting value tends to understate the value the Compensation Committee is considering in its deliberations.

Tandem SARs

Tandem SARs give the participant the right to receive a cash payment equal to the option gain in lieu of exercising the option itself (which is cancelled). These plans are used by a number of Canadian companies and accounted for as intrinsic value liabilities under CICA 3870. Similar to the RSUs, the related CICA 3870 expense is dependent on the year end price and not the grant price.

Table 4 below assumes that options with tandem SARs are granted at the start of the year, shows the year one expense dependent on the year one ending price, and compares this to the expense of a regular option with no tandem SAR. While most compensation committees and investors would attribute $200,000 or higher for the grant year compensation value, the actual SCT amount for a Canadian structure depends on both the year end price [versus the grant date price] and the annual accounting allocation of the amount.

Table 4: Tandem SAR Grant Year 1 SCT Amount

Assumptions:				
Number of Options	100,000			
Exercise Price	$10			
FASB Fair Value per Option	$2	(CICA 3870 intrinsic value at grant = $0)		
FASB Fair Value of Grant	**$200,000**			
Accounting Accrual	25% a year			
	Year 1 Amounts			
Share Price at End of Year 1	**$8**	**$10**	**$12**	**$15**
Stock Appreciation Rights (Liability)				
Per Option (in the money)	$0 *	$0	$2	$5
Total (in the money)	$0	$0	$200,000	$500,000
Impact on SCT (25% accrued value)	**$0**	**$0**	**$50,000**	**$125,000**
* In the money value cannot fall below $0				
Stock Options (if no SARs)				
Impact on SCT (25% accrued value)	**$50,000**	**$50,000**	**$50,000**	**$50,000**
Difference in Impact on SCT	***$50,000***	***$50,000***	***$0***	***$75,000***

Difference Between Equity and Liability Plan Disclosure
Amounts shown for liability (cash settled) LTI plans are variable, whereas amounts for equity plans are predictable.

The CICA 3870 rules differ from both FASB and the IASB in terms of the starting point fair value for SARs. As indicated in the table above, FASB 123R has a starting value which is akin to the CICA 3870 stand alone option starting fair value, whereas the CICA 3870 starting intrinsic value of an option with a tandem SAR is nil. As harmonization of accounting standards continues, it is likely that the allocation of this expense, and in turn the allocation for each year in the SCT, will change.

Table 5 below illustrates the allocation of a stock option with tandem SARs. The cumulative expense, and in turn the SCT amounts, total $500,000 for the tandem SAR grant and $200,000 for the regular option with no SAR. In both cases, the actual compensation value and ultimate benefit to the executive is the same.

Table 5: Tandem SAR Grant Allocation (over a 5 year term)

Assumptions:

Number of Options	100,000	
Exercise Price	$10	
FASB Fair Value per Option	$2	(CICA 3870 intrinsic value at grant = $0)
FASB Fair Value of Grant	**$200,000**	
Accounting Accrual	25% a year	

Options/SARs assumed exercised in year 5

	Year 1	**Year 2**	**Year 3**	**Year 4**	**Year 5**
Share Price	$11.00	$12.00	$14.00	$19.00	$15.00
Stock Appreciation Rights (Liability)					
Per Option (in the money)	$1.00	$2.00	$4.00	$9.00	$5.00
Total (in the money)	$100,000	$200,000	$400,000	$900,000	$500,000
% Accrued	25%	50%	75%	100%	100%
Impact on SCT	**$25,000**	**$75,000**	**$200,000**	**$600,000**	**($400,000)**
(equals Total x % Accrued less amounts accrued in previous years)					
Stock Options (no SARs)					
% Accrued	25%	50%	75%	100%	100%
Impact on SCT	**$50,000**	**$50,000**	**$50,000**	**$50,000**	**$0**
(equals Total x % Accrued less amounts accrued in previous years)					
Difference in Impact on SCT	**($25,000)**	**$25,000**	**$150,000**	**$550,000**	**($400,000)**

Differences Between Equity and Liability Plans Under Proposed Rules
1) Amounts shown for liability (cash settled) LTI plans are variable and may be negative, whereas equity plan values are predictable and always positive.
2) Accrual for liability plans continues until year it is settled/paid out. Accrual for equity plans is completed when all options/units are vested.

As is the case with the RSU/PSUs, some companies will hedge their share price. Therefore, our comments on page A7 above apply equally to options.

NON-EQUITY COMPENSATION

The draft Form defines a non-equity incentive plan as "an incentive plan or portion of an incentive plan that is not an equity incentive plan". That is, it is a long-term incentive not captured under Section 3870. Rather, it represents multi-year cash incentives (or portion thereof) that are not calibrated in shares or share units or are not based on performance in relation to a share price or total shareholder return.

Compensation professionals often refer to these programs as performance cash plans. These multi-year performance bonuses generally have a target dollar payout, with actual payouts dependent on performance against pre-set objectives or goals.

A performance cash plan and a PSU plan can be somewhat similar – in fact they can be structured to have very similar payouts in relation to identical levels of performance. For example:

- Total shareholder return and ROE could be equally weighted and incorporated into either a performance cash plan or a PSU plan with a 3 year performance period

- Performance cash. E.g. Target and maximum awards equal $100,000 and $225,000 respectively

- PSU settled in cash. E.g. Target and maximum awards equal 10,000 and 15,000 share units respectively. If the ending price at target is $10 and maximum is $15, the corresponding payouts would be the same as under the performance cash plan.

In the above example, the full PSU plan would fall under Section 3870 and be subject to disclosure under Stock Awards. It is our understanding that half of the performance cash plan would be subject to Section 3870 (and would therefore need to be disclosed in the SCT under Stock Awards) due to the 50% TSR feature, while the other half would be classified as a Non-Equity award and only disclosed in the SCT at payout.

In the current environment, performance cash plans are not as common as RSUs or PSUs. However, these programs could become more popular (as they were 5 to 10 years ago). They provide greater transparency in terms of dollars paid for specific performance than a more open-ended plan calibrated in share units.

As noted above, in our experience, most performance cash plans have a target award, such as a percentage of salary or a dollar amount. Under the current CSA disclosure rules, the target payouts are disclosed in the 3.1 LTIP Awards Table at the beginning of the performance period. The actual cash payouts are disclosed under the Long-Term Compensation LTIP Payouts column of 2.1 Summary Compensation Table.

Ideally the target award during the grant year would be reported in the SCT and the payouts and cumulative positions of grants awarded but not settled would be provided in a separate table. [Please note the discussion later in this Appendix on Separating Annual Compensation Decisions from Equity Positions.]

UNINTENDED CONSEQUENCES

There have been numerous examples of regulatory or tax rules that have produced unintended consequences. An unintended consequence of the CSA proposals is to place conventional stock options in a more favourable light than other long-term incentives. Stock options will provide the greatest expected compensation value at the lowest potential disclosed total compensation amount in the SCT.

In summary, cash-settled share award plans:

- Are commonly used in Canada but are rarely used in the US
- Would result in annual compensation in the SCT that would be misleading and lack comparability, given their variable accounting expense
- Will often generate higher disclosed compensation than a treasury-settled instrument that provides the same economic value to the executive
- May or may not be hedged for share price exposure wherein any hedge may be inside or outside the accounting item to be disclosed under the CSA proposals
- Are further discriminated against in that the benefit associated with the corporate tax deductibility available for these plans is not included in the accounting item being used for compensation disclosure.

Already, there are examples of US companies that provide an Alternative Summary Compensation Table in addition to the prescribed SCT. The Alternative table shows total compensation for a given year in the manner that the Compensation Committee feels is better reflective of both how it views and benchmarks pay and seems to be more in keeping with the Canadian Coalition guidelines.

SEPARATING ANNUAL COMPENSATION DECISIONS FROM EQUITY POSITIONS

Table 6 illustrates a change in equity position of options, PSUs and DSUs. The example excludes tandem SARs, and therefore the change in the "in-the-money" value does not flow through the SCT. However, the change in the outstanding positions of the PSUs and DSUs does flow through the SCT as annual compensation.

Table 6: Change in Equity Position and Inclusion in SCT

	2007	2008	Increase/ Payout	Inclusion in SCT
Options In-The-Money	$10,000,000	$14,000,000	**$4,000,000**	**No**
PSU Position	$5,000,000	$6,000,000	**$1,000,000**	**Yes**
DSU Position	$10,000,000	$11,500,000	**$1,500,000**	**Yes**
Total Change			**$6,500,000**	
Additional Compensation Disclosed in SCT			**$2,500,000**	
Change not Disclosed in SCT			**$4,000,000**	

Notes:
Assumes regular options (no SARs)
Ignores accounting allocation of the compensation disclosed

Most users of the proxy circular, and most executives, would view a change in the in-the-money position of an option in much the same way as the change in the RSU/PSU positions. Yet, these are treated differently in relation to annual compensation disclosure in the SCT. Moreover, the changes in equity positions that flow through the SCT make the resulting amounts less clear and cross company comparisons difficult.

We believe the SCT should focus on the annual compensation value of the awards provided for a certain year including salary and annual bonus decisions, and the present value or target value of the long-term incentive grants awarded.

The change in the equity positions of outstanding options, RSU/PSUs and DSUs are equally important, but could be fully disclosed in a separate table(s), as illustrated below.

Changes In Equity Positions – Possible Table

	Employment Share Units [1]			Restricted Share Units [2]			Options/SARs In-The-Money [3]		
	Yr. 0 Balance	Yr. 1 Payout	Yr. 1 Balance	Yr. 0 Balance	Yr. 1 Payout	Yr. 1 Balance	Yr. 0 Balance	Yr. 1 Payout	Yr. 1 Balance
CEO									
CFO									

[1] Share units that are held while employed (e.g., DSUs)
[2] Share units that have time or performance restrictions
[3] Stock options, stock appreciation rights or similar appreciation type plans

We would suggest giving latitude to the particular company to provide an amended version of the above table. This would be done in situations where the company believes an alternative format would provide more complete and/or clearer information to shareholders. For instance, a company with a performance cash plan might incorporate a column for year end account balance and actual payouts in the year with respect to these plans.

In fact, a principle could be established that long-term incentive grant or target payouts be included in the SCT and that actual payouts and cumulative long-term incentives and equity positions be disclosed in another table.

Appendix B

Illustration Of Retirement Benefit Values

ILLUSTRATION OF RETIREMENT BENEFIT VALUES

Introduction

This appendix is intended to illustrate concepts in the measurement of a defined benefit pension's value. To do so, we use a simplified example.

For instance, a Named Executive Officer will retire on December 31, 2011, will receive pension on an annual basis each January 1st during retirement, and will die during 2036 after having received 25 years of benefit. Our example treats these as hard facts, whereas in practice the timing and length of the retirement period will not be known at the time the disclosure measurements are undertaken.

For service through to December 31, 2006, the NEO has accrued an annual pension of $240,000. For service through to December 31, 2007, the NEO has accrued an annual pension of $260,000.

Pension value measurements are determined coincident with the employer's fiscal year end, which is December 31.

Illustration 1

For its 2006 reporting, a valuation of the NEO's accumulated pension benefits is undertaken. At December 31, 2006, long-term interest rates were 5%. This rate is used for purposes of the employer's pension accounting (under section 3460 of the CICA Handbook), and this same rate is used to value the NEO's accumulated pension entitlements.

The value, at December 31, 2006, of a $240,000 annual pension commencing 5 years hence is determined to be $2,780,000.

For its 2007 reporting, a valuation of the NEO's accumulated pension benefits is undertaken. At December 31, 2007, long-term interest rates were also 5%.

The value, at December 31, 2007, of a $260,000 annual pension commencing 4 years hence is determined to be $3,170,000.

During 2007, the value of this NEO's accumulated pension benefit will have increased by $390,000. Upon inspection, we see that the increase is attributable to two factors, namely:

- For service rendered during 2007, the NEO's pension increased from $240,000 to $260,000. In a 5% interest environment, the increase of $20,000 in annual pension has a present value of $250,000.

- The $2,780,000 value reported at the end of 2006 relates to $240,000 in annual pension that will become payable in future. In fact, by the end of 2007, no payments have actually been made in respect of this previously-accumulated benefit – and interest on the unpaid amount equals $140,000.

To summarize, the year-over-year change in value of accumulated pension is as follows:

Value as disclosed at Dec 31/06:	$2,780,000
Increase for interest during 2007 on amounts that were unpaid and reported as compensation in prior years:	$140,000
Increase for additional pension accrued for services rendered during 2007:	$250,000
Value as disclosed at Dec 31/07:	$3,170,000

Had the NEO been paid $2.78 million back at the end of 2006 in lieu of having an entitlement to $240,000 in future annual pension, then the executive could have invested the funds on his or her own. It should also be noted that the $140,000 increase relates solely due to the timing of payment – or lack of payment – and is in no way connected to services the executive rendered during 2007. In fact, the $140,000 interest-related increase in pension value arises even if the NEO was not an employee of the employer during 2007.

In this illustration, the $250,000 increase clearly is compensatory in nature. However, the illustration also shows that the $140,000 increase is clearly not compensatory in nature.

Illustration 2

The second illustration is a variation on the first where long-term interest rates have increased to 6% at the end of 2007.

For its 2007 reporting, a valuation of the NEO's accumulated pension benefits is undertaken using the 6% rate. The resulting value, at December 31, 2007, of a $260,000 annual pension commencing 4 years hence is $2,790,000.

During 2007, the value of this NEO's accumulated pension benefit will have increased from $2,780,000 to $2,790,000. Upon inspection, we see that the $10,000 increase is attributable to three partially-offsetting factors, namely:

- Like in the first illustration, an increase of $140,000 arises due to 5% interest on the $2,780,000 value reported at the end of 2006

- As it happens, the combined $2.92 million ($2.78 million opening balance plus $140,000 in interest) is $340,000 more than is needed to provide the $240,000 annual pension in a 6% environment. Less money is needed in a higher interest rate environment to provide the same future pension entitlement, and change in interest rates from 5% to 6% has caused a $340,000 reduction in the value of previously-accumulated pension.

- For service rendered during 2007, the NEO's pension increased from $240,000 to $260,000. In a 6% environment, the increase of $20,000 in annual pension has a present value of $210,000.

To summarize, the year-over-year change in value of accumulated pension is as follows:

Value as disclosed at Dec 31/06:	$2,780,000
Increase for interest during 2007 on amounts that were unpaid and reported as compensation in prior years:	$140,000
Decrease due to change in interest rates applicable for 2008 and beyond:	$(340,000)
Increase for additional pension accrued for services rendered during 2007:	$210,000
Value as disclosed at Dec 31/07:	$2,790,000

Had the NEO been paid $2.78 million back at the end of 2006 in lieu of having an entitlement to $240,000 in future annual pension, then the executive could have invested the funds on his or her own. This personal investment made by the executive would reflect both interest earnings as well as change in capital values arising from change in future interest rates. As such, both the $140,000 increase and the $340,000 decrease relate solely due to financial decisions regarding the timing of a pension's payment. Both of these two factors arise even if the NEO was not an employee during 2007.

In this illustration, the $210,000 increase clearly is compensatory in nature. However, the illustration also shows that the two other elements of change are clearly not compensatory in nature.

In Summary

Pension is often a significant element in executives' compensation packages. Recognition of pension is thus warranted given the objective of disclosing the compensation package's total value.

The illustrations show that the year-over-year change in value of accumulated pension is not an appropriate measure of a pension program's compensatory value. Use of such an erroneous measurement will, in some cases, meaningfully overstate the compensatory value and will, in other cases, meaningfully understate the compensatory value.

The elements of change in value of pension can, however, be isolated and thereby enable proper segmentation of compensatory factors from non-compensatory factors. We strongly suggest that the CSA pursue such an approach.

Appendix C

Towers Perrin Responses To Specific Requests For Comments

TOWERS PERRIN RESPONSES TO SPECIFIC REQUESTS FOR COMMENTS

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? *All current and potential compensation forms appear to be captured, albeit under the proposals they will not be disclosed in the most appropriate manner in all cases.*
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? *No changes are needed to the definition of an executive officer for this purpose. We believe the selection of the top five should be based on their total compensation, assuming total compensation is determined in an appropriate manner.*
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? *We believe the current practice should be continued.*
4.	Will the proposed CD&A requirements elicit a meaningful discussion of a company's compensation policies and decisions? *We believe the CD&A requirements will need to be refined over time based on company experience and investor input.*
5.	Should we require companies to provide specific information on performance targets? *Yes, provided the concerns of providing confidential forward-looking information can be adequately addressed.*
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? *This proposal has practical limitations which we discuss in the main body of our submission. We suggest that the comparison be limited to the CEO's 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? *We believe the current practice should be continued. Clearer guidance is required with respect to the phase-in period.*
8.	Do you agree with the way bonuses and non-equity incentive plans will be disclosed in the summary compensation table? *No, we believe that annual incentives should continue to be reported separately from other cash incentives with terms longer than one year.*
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? *No, we do not agree, as discussed in our submission. In addition, the definitions need to be improved in some cases.*
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? *No, they should be valued based on their compensation value (or alternatively on their accounting value) in the year of grant.*

TOWERS PERRIN

11.	Should the change in the actuarial value of defined benefit pension plans be attributed to executives as part of the summary compensation table? *Pension often has meaningful value and, hence, disclosure of total compensation warrants inclusion of pension. However, the year-over-year change in actuarial present value of accumulated benefit is not a appropriate metric for this purpose.*
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? *Firstly, inclusion of the service cost (i.e. the value of the benefit earned for services rendered during the current year) <u>in addition to</u> the change in actuarial value would be inappropriate. As demonstrated in Appendix B to our submission, service cost is already included in the year-over-year change in actuarial value.* *As outlined in our submission, we feel that the compensatory elements of change in value of pension should be reported in the SCT. This would include the service cost and potentially other elements.*
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? *We believe the current practice should be continued.*
14.	Should we provide additional guidance on how to identify perquisites? *While additional guidance would likely be welcomed by some, there will always be issues that require some judgment.*
15.	Will a total compensation number calculated as proposed provide investors with meaningful information about compensation? *A total compensation number would be meaningful if the components are calculated in a consistent and appropriate manner, which is not the case under the proposals.*
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? *We believe that the grant date fair value should be disclosed in the SCT in order to provide an appropriate picture of current year executive compensation.*
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? *The two tables do not include stock awards that vested in a prior year and which were either outstanding at the end of the year, or were settled during the year (even though changes in the stock price and dividend equivalents on these awards would affect the SCT if the accounting approach is used).*
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? *We recommend that company contributions and allocations to DC plans be included in the Pension column in the SCT and that their year-end account values be included in the Retirement Plan table.*
19.	Should we require estimates of termination payments for all NEOs or just the CEO? *The estimates are important for investors to know re the CEO, but less so for the other NEOs. In any event, investors need to have assurances that the directors are aware of the financial implications of potential termination payments.*

20.	Will it be too difficult to provide estimates of potential payments under different termination scenarios? *As discussed in our submission, the calculations can become very complicated and should not inadvertently expose companies to legal action by forcing to them to make estimates for scenarios for which they have no contractual commitments.* Should we only require an estimate for the largest potential payment to the particular NEO? *No. It is unlikely that disclosing the largest potential payment will meet the information requirements of investors.*
21.	Will expanded disclosure of director compensation provide useful information? *Yes, provided the director information requirements are consistent with those required for the NEOs.*
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? *Yes, in should remain in the circular.*
23.	Are there elements of compensation disclosure that are not relevant to venture issuers and that they should not be required to provide? For example, should we allow venture issuers to disclose compensation for a smaller group of executives as the SEC has done? *The $150,000 compensation threshold is likely to reduce the number of NEOs that venture issuers are required to disclose.*
24.	Are there other specific elements of the requirements that are not relevant for venture issuers? *No.*
25.	Would the prescription of a performance measurement tool provide useful information on the link between pay and performance? *No one such measurement tool exists, as noted in our submission.*
26.	Do you think the suggested timeline will give companies enough time to implement these proposed disclosure requirements? *If additional time will be required on the part of the CSA after September 30, 2007 in order to ensure that the changes to the Form are appropriate and effective, then we believe that companies in turn will need more time to implement the changes. "Pre-Christmas" surprises should be avoided if at all possible.*