Canadian Coalition for GOOD GOVERNANCE

THE VOICE OF THE SHAREHOLDER

June 30, 2007

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

SENT VIA EMAIL
Ontario Securities Commission
Attention: John Stevens, Secretary
and
Autorité des marches financiers,
Attention : Anne-Marie Beaudoin, Directrice de secrétariat

Re: Submission of the Canadian Coalition for Good Governance to the Canadian Securities Administrators re: 6.2.1 Notice and Request for Comments

This submission is made on behalf of the members of the Canadian Coalition for Good Governance (CCGG). The members of the CCGG are institutional investors that manage, in aggregate, approximately C$1 trillion. The submission is divided into three sections as follows:

Part A.	Commentary on proposed repeal and substitution of Form 51-102F6
Part B.	Commentary on Proposed Amendments to NI 51-102, Forms 51-102F2 and 51-102F5, MI 52-110 and NI 58-101
Appendix	Responses to specific questions on proposed repeal and substitution of Form 51-102F6

Part A Commentary on proposed repeal and substitution of Form 51-102F6

The Members of the CCGG rank executive compensation as one of the most important issues of corporate governance facing shareholders. The CCGG has been an advocate for improved compensation disclosure and recognizes that setting executive compensation is a

very difficult job. To help boards of directors, the CCGG has provided guidance through the creation and promotion of its Best Practices in Compensation Disclosure. The changes proposed by the CSA in proposed Form 51-102F6 better align regulatory requirements with CCGG best practices. However, we find deficiencies or have concerns in the following areas:

1. Inappropriate valuation of equity-based compensation and pension benefits in summary compensation table
2. Potential for poor disclosure through reliance on competitive harm exemption
3. Gaps in proposed disclosure

Disclosure of executive compensation must include robust explanation to enable shareholders to fully understand their company's compensation regime and provide sufficient detail to enable a shareholder to make a case against unwarranted or excessive compensation practices. By incorporating the suggestions noted below and in the appendix (where we provide specific answers to questions posed by the CSA) the CCGG believes the revised form will clearly present the value of all compensation paid or accrued to senior executives, the reasons for paying the amounts and the criteria on which pay is based.

The CCGG believes that through the requirement for full disclosure of executive compensation, some boards may recognize, perhaps for the first time, the enormity of certain compensation packages or arrangements and take action to reduce them before they become public.

Details of CCGG Concerns

1. Valuation of equity based compensation and pension benefits

Valuation of equity-based awards in the summary compensation table should reflect the value as seen by the compensation committee at the time the award was made (ie: to answer the question - what did the Compensation Committee think the value of the reward really was?). The proposed methodology (consistent with reporting under CICA 3870 that requires certain pay elements be marked to market at year end) does not necessarily provide such information and may lead to reporting of over-exaggerated or even negative total compensation as was reported by Brookfield Properties this year. Although this method of valuation ties into a company's financial reporting, CCGG members would prefer values in the summary compensation table reflect those at the time compensation was awarded.

This view is shared by investors outside Canada. The Council of Institutional Investors (CII) is an organization of US-based institutional investors managing, in aggregate, approximately $3 trillion. In a letter written on January 23, 2007, the CII called for grant-date valuation of share-based awards, calling the SEC's move to bring valuations closer to Financial Accounting Standards No. 123R as "step backward for investors" and a "year end bonus for corporate America." We note that the detailed equity-based compensation tables will present values calculated at the time of grant (representing the value as seen by the compensation committee) and believe that these values should appear in the summary compensation table.

The change in actuarial value of the supplemental executive retirement pension (SERP) proposed to be included in the summary compensation table may reflect the influence of market conditions and actuarial assumptions as well as service costs and believe the latter more appropriately represents compensation to the executive. The CCGG recommends that disclosure include in a footnote a breakdown of the change in actuarial value, specifically:

1. the amount related to changes in actuarial assumptions (if any);
2. the annual service cost; and
3. the aggregate amount of additional benefit created by an increase in pay on which the SERP payout is based (if any).

2. Poor disclosure through reliance on competitive harm exemption

Under the proposed rules, disclosure of specific criteria on which performance pay is based may be avoided in circumstances when the issuer believes these benchmarks must be kept confidential for competitive reasons. In these cases, the amount of compensation related to the undisclosed benchmark must be disclosed. We recognize that there may be justified cases where specific metrics should be kept confidential, but we are concerned that this loophole may be used excessively in order to avoid detailed disclosure, thus reducing the value of disclosure.

We expect that the quality of disclosure will be closely monitored by regulators and investors and recommend that after two years, that the adoption of the new Form include an undertaking that the competitive harm exemption will be put forward for a second comment period with proposed changes based on the findings of continuous disclosure reviews by the Commissions no later than 24 months after the new Form becomes effective. The CCGG believes that the potential to lose the exemption will lessen the likelihood that it will be over-used as a loophole (see also Appendix).

3. Gaps in proposed disclosure

a. SERPs - Disclosure should include the aggregate annual service cost and aggregate actuarial value of all Supplemental Executive Retirement Pension (SERP) arrangements. These two numbers will include current executives as well as retired beneficiaries and heirs. Disclosure should note whether the SERP unfunded, partially funded or fully funded.

b. Share-based compensation table – indicate whether options are vested or unvested and include option grant dates (recommendation also noted in appendix)

c. Disclose the final payout of a share-based award granted under a performance-based medium term incentive plan (recommendation also noted in appendix).

d. CD&A - Make clear that the discussion of performance targets in the CD&A includes disclosure of the use of comparator companies in benchmarks and include the names of those companies.

e. The CD&A should include disclosure stating:

- whether the compensation committee or board engaged a compensation consultant to help determine executive and director compensation;
- the name of the consultant and the fee paid in connection with the work done for the committee or board;
- whether the consultant had also been engaged to provide services to management of the issuer and the fees associated with this work; and
- if no consultant is used, give reason(s).

f. Numeric compensation data from tables should be assigned XBRL tags to improve access for analysis.

Part B. Commentary on Proposed Amendments to NI 51-102, Forms 51-102F2 and 51-102F5, MI 52-110 and NI 58-101

Disclosure of Cease Trade Orders

Given that the cease trade disclosure would only have to be made with respect to individuals who were directors, CEOs or CFOs of the issuer when the cease trade was issued, it is difficult to see why the disclosure period would be reduced from ten to five years. Why would this information become unimportant after five years? We would argue that a 10 year look-back is appropriate, if not too short. We are not aware of any issuers who have great long lists of cease-trade information in their disclosure documents. If this were the case at any issuer, CCGG members would certainly be interested to know.

It is worth noting that a cease trade order does not always mean "bad news" or "bad behavior", so it is possible that a person could be wrongly characterized by the disclosure of a cease trade order, whether against the individual or the company over which he or she presided. Disclosure could include an explanation. Generally, the circumstances under which a cease trade order is issued against a corporation or senior officer or director do not reflect well on the issuer or its officers and directors. Also, limited search capabilities on the securities regulators' websites make the task of uncovering past cease trade orders against a corporation difficult, and against an individual, very difficult. Consequently, we think that because the amended rule casts the disclosure net less widely and we find that acceptable, maintaining a 10 year disclosure requirement should be considered a minimum, and a lifetime disclosure requirement would be preferable.

Report of Voting Results

Given that the option exists to report vote results by show of hands only, some issuers may avoid taking a poll in order to suppress a potentially embarrassing result that would otherwise be reflected in the report of the proxy ballot scrutineer. Since the implementation of Section 11.3 of NI 51-102, the CCGG has seen an increase in the number of companies reporting vote results by show of hands. In 2005, 40% of companies tracked by CCGG that reported results (78 out of 195) indicated that the election was completed via a show of hands. In 2006, the number of companies indicating that voting took place via a show of hands increased to 52% of companies reporting results (103 out of 197). From the

Coalition's perspective, this trend is troublesome as the reports are becoming less transparent when in fact the opposite should be happening.

Many corporations state in their proxy materials that they consider the vote of their shareholders to be very important. Shareholders who make the effort to vote should reasonably expect to be able to have access to the proxy vote results, even if the issue was decided by a show of hands vote. Disclosing only the result of a vote by show of hands sends the inappropriate message that attending and voting at a shareholder meeting is important, and (counter to claims in proxy materials) voting by proxy ballot is not.

The CCGG believes that access to proxy ballot vote results, even if a vote is not conducted by a count of proxy ballots, is a fundamental shareholder right. Besides, the information is useful as some Institutional investors research voting patterns to tune their proxy voting guidelines where appropriate. Most proxy voting is handled by intermediaries who do not provide confirmation that votes have been received by the proxy scrutineer. Transparency is necessary to identify and fix problems in the proxy voting system which in turn will bolster investor confidence.

Appendix: CCGG Responses to specific questions on repeal and substitution of Form 51-102F6

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?

It remains to be seen to what extent performance metrics on which variable pay is based remain undisclosed for "competitive" reasons. Valuation of stock-based pay based as proposed (CICA 3870) may not reflect the pay as determined by the compensation committee, making the summary compensation table potentially confusing.

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?

Yes the criteria as proposed in the new Form are appropriate.

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?

Individual disclosure is best as it allows investors to fully understand what each executive is being paid. It also better demonstrates the "pay gap" between executives. Individual disclosure is consistent with Canadian past practice and current practice in the US and it would take about the same amount of work for an issuer to calculate an aggregate number.

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

It remains to be seen whether the confidentiality loophole facilitates "boiler plate" discussion of performance targets.

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

Yes, but give some leeway to protect competitive information. The most appropriate performance targets should always be used and it makes sense that some of these would be confidential metrics tied to the achievement of goals in a business plan. Requiring the disclosure of specifics on all targets may result in the use of less appropriate benchmarks or larger numbers reported as "discretionary" bonus, even though they were tied to performance.

However, disclosure by U.S. issuers in 2007 suggests that this loophole leads to meaningless, boiler-plate disclosure. As noted above, the CCGG recommends that after two years of disclosure under the new rules, this disclosure issue along with the results from CD reviews should be reopened for comment with a view to possible tightening of the requirement to disclose performance targets.

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?

Yes a discussion of the relationship between TSR and executive compensation is valuable if it is compared over an extended period. The required performance graph covers five years which is long enough to provide meaningful information. Over the longer term of five years of more, corporate performance emerges as the major driver of TSR, and it would be more reasonable to expect executive compensation to track TSR over this amount of time.

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?

To evaluate the pay practices at a corporation, recognizing trends is important. Having three years is adequate. Since the CD&A will incorporate a discussion of pay versus shareholder return over a minimum five year period, including five years of pay information would be helpful for the CEO position.

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

Yes. Separation of discretionary from performance based bonus is reasonable.

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?

Yes.

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. These awards should be valued at the time of grant, without any year-end adjustment to mark them to market (CICA 3870). That will give a true picture of the value of the compensation package as determined by the Compensation committee and approved by the board.

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

Service cost (as described in 12 below) is a better representation of compensation. However, change in actuarial value as proposed is acceptable as long as a footnote is also required to identify how much is service cost (as described under 12 below) and how much is driven by changes in actuarial assumptions.

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?

This would be preferable to the change in actuarial value because this number better represents the amount the compensation committee of the board would expect to pay without taking into account fluctuations driven by the markets. This is consistent with our recommendation for disclosure of valuation of stock-based compensation. However, disclosing both would be ideal. Disclosure of service cost should reflect not only the annual service cost, but also the amount representing the impact of any increase in base pay in that year on the present value of the aggregate pension obligation.

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?

Yes, the effect of the splitting of the bonus will reduce the threshold in some cases and the level of detail, although less than prescribed by the SEC, seems adequate.

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

Yes, that might be helpful to some issuers as well as to those analyzing compensation. Perhaps recommendations made by regulators to issuers as part of the ongoing continuous disclosure review process could be made available to other issuers for guidance.

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

Not always. As mentioned above, for purposes of properly representing executive compensation for this table, the proposed methodology for valuing equity-based pay and the use of change in actuarial pension values will often distort the award-date value of total compensation.

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?

Yes, but the CCGG believes that the valuation at grant date is the most appropriate number, and the valuation for accounting purposes, to be of secondary importance (perhaps included a footnote item, to reduce confusion by presenting a single valuation number in all tables).

17. Is the information a company will provide in the tables required by item 4 the most relevant information for investors? Do you agree with our decision to take a different approach to the SEC? Could material information be missed by this approach?

We believe that the most important information on share awards will be captured in the tables. However, we note that the SEC has required that option grants listed in the table be designated as exercisable or unexercisable. We believe this information is relevant information, as it demonstrates how vesting provisions have been used and there is no clear requirement that specific vesting information be disclosed in the narrative

accompanying the table. Minimum vesting requirements are strongly supported by investors, yet with few exceptions, option plans adopted by Canadian issuers allow options to be granted without minimum vesting requirements.

We also recommend including the grant date of the listed option grants. Such disclosure, in the wake of the options back-dating scandal, should help restore investor confidence.

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?

Yes, disclosing the aggregate value of a NEO defined contribution pension plan would be relevant information in the spirit of full and true disclosure.

Also, deferred compensation may not be adequately disclosed within the proposed tables. For example, the final payment under a medium term incentive plan (MTIP) plan that uses deferred shares as compensation would be hard to track under the proposed tabular format. At the time of grant, these are valued based on a "target" award. However, the payout in deferred shares may in fact be larger or smaller than the initially reported target. This differential would have to be calculated from the change in holdings of deferred shares and could be difficult to calculate.

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

Estimate all NEOs or at least the three with the highest estimated payouts because CEOs do not always have severance agreements.

20. Will it be too difficult to provide estimates of potential payments under different termination scenarios? Should we only require an estimate for the largest potential payment to the particular NEO?

No, it should not be difficult to estimate payouts for all scenarios. The largest estimated payment scenario is not sufficient. Events that trigger lesser payouts may in fact be more contentious, for example, single trigger events (for example, there is a change of control yet the CEO keeps his or her job with no diminishment of responsibility).

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

Yes. Director pay is clearly increasing and outside directors are the one and only group of individuals employed by corporations who determine their own pay. It is important that all aspects of their pay be disclosed so that investors can identify excessive packages and engage boards when necessary.

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?

Keep it in the circular where other governance information is generally presented. A detailed examination by an analyst would not be made more difficult by the separation of financials and MD&A from the compensation disclosure in the proxy 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?

No. For example if there are only two officers, that is all that will be disclosed. For small issuers, there will simply be more blanks in the tables.

24. Are there other specific elements of the requirements that are not relevant for venture issuers?

No, some venture issuers are sizable and complex businesses.

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

A presentation of the relationship between total pay and company performance would be very useful. However a very prescriptive, one-size-fits-all method may be of limited value. This may be best left to the companies themselves to discuss, as is now being proposed (with reference to the five year TSR performance graph in the CD&A), or by a qualified analyst who applies industry-specific measurement tools to asses the pay/performance link.

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

Yes, it seems reasonable. Proxy circulars are generally prepared in the beginning of the year for meetings beginning in late April. The timeline will generally be tightest for the larger issuers, but they also have substantial compliance resources.