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Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
New Brunswick Securities Commission
Office of the Attorney General, Prince Edward Island
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Government of Yukon
Registrar of Securities, Department of Justice, Government of the Northwest Territories
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Dear Sir/Mesdames,

Re: Proposed Form 51-102F6 Statement of Executive Compensation

The Canadian Bankers Association ("CBA") is pleased to submit this letter to the Canadian Securities Administrators (the "CSA") in response to the request for comments relating to the proposed repeal and substitution of Form 51-102F6 Statement of Executive Compensation, issued on February 22, 2008 (the "2008 Proposal").

As indicated in our response to the earlier request for comments that was issued on March 29, 2007, the CBA supports the CSA's objectives in undertaking this initiative to improve the quality and transparency of executive compensation disclosure. Canada's major banks have historically been committed to providing clear and meaningful executive compensation disclosure to shareholders.

Our detailed responses to the request for comments are set out below:

1. Item 1, General Provisions, 1.3 Definitions - Determination of Named Executive Officers ("NEOs")

The 2008 Proposals require the NEOs, other than the Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), to be determined by using the total compensation figure set out in column (i) of the Summary Compensation Table ("SCT"), excluding column (g) ("change in pension value"). In addition to excluding the pension value, we believe that certain unusual one-time compensation awards and payments should also be excluded as they are not reflective of an issuer's' compensation plans for the purposes of determining compensation in respect of performance and therefore will not be reflective of the Compensation Disclosure and Analysis (CD&A) commentary. Moreover, the CSA's proposed method will serve to increase the variability of NEOs from year to year. Such one-time compensation awards that we suggest should be excluded include:

1. Signing bonuses or equity replacement awards to new hires, as these are not related to the performance year but represent awards intended to replace cash or equity awards the individual forfeited at their previous employer.
2. Dividend equivalent payments, as these are not annual compensation but typically represent earnings on compensation awarded in previous years. Inclusion of dividend equivalents may skew the determination of NEOs in favour of long-time executive officers who have accumulated equity awards over many years versus more recently hired executive officers, even where the more recently hired executive officer is receiving greater total compensation (other than dividend equivalents) in the year for which disclosure is being provided.
3. Termination payments which do not represent annual salary or performance compensation but instead are severance related.

A similar comment was made by the CBA in its June 29, 2007 letter in respect of the amendments to Form 51-102F6 and it is one we believe continues to have merit. Recognizing that the CSA has indicated that the intention is to include everything in the determination of NEOs, as we previously noted, including items such as equity replacement awards and termination payments may result in more frequent year-over-year changes in the NEO group, making it more difficult for readers to track changes in compensation levels. For example, if an issuer has a relatively stable group of NEOs, readers are able to more directly see how compensation for that group has changed over time relative to the performance of the issuer. Inserting individuals who would not otherwise be NEOs into the SCT, as a result of an unusual one-time payment, will make it more difficult for readers to (a) compare and analyze compensation changes in the current year with those in previous years and (b) understand how the compensation awarded aligns with the CD&A.

2. Item 1, General Provisions, 1.3 Definitions – "shares"

"Shares" in ordinary usage and in other contexts would be understood to refer to securities. As such, we suggest that the word "shares" is a confusing choice as the defined term for a varied basket of compensation awards that include both securities and non-securities. For example, the definition includes items ranging from common shares to conditional commitments to pay in shares (share settled "restricted share units"), to conditional commitments to pay cash (cash settled "restricted share units"), to deferred cash payment of earnings to a future date (cash settled "deferred stock units.") Since it is common for the number of units and / or the payout value to be based on or refer to a formula including share price, we suggest "share-based compensation" or "share-based awards" is more suitable.

3. Item 2.1 Requirement to discuss Targets

We do not support the proposal to require disclosure of performance targets, in Item 2.1(4) of the CD&A. In our comment letter dated June 29, 2007, we indicated our concern that this disclosure could potentially reveal competitive information. For example, targets for executives who lead a business within the overall enterprise will include business-specific targets that may not otherwise be disclosed in other public filings. Such targets would be confidential, as contrasted with more high-level goals for the overall enterprise, such as earnings per share growth, which may be reported in public filings. We also pointed out that while performance against the various factors is considered in compensation decisions, there is rarely a precise formulaic approach taken. Many compensation decisions involve the application of informed judgment by non-executive directors, often with the advice of external consultants. As a result, it is unworkable in our view to reasonably explain such decisions in which subjective criteria play such a key role. In addition, the conditions attached to the exception (i.e., disclosure of the percentage of total compensation related to the undisclosed target and how difficult the undisclosed target is to achieve) are unworkable for the same reasons.

We appreciate that a meaningful link between pay and performance is sought. However, in the context of these disclosures, it will prove both impractical and imprecise, and will risk causing competitive harm despite the exception provided.

4. Item 2.2 Performance Graph

We fully support disclosure and discussion of the alignment of NEO pay and performance.

However, we note that the factors that are relevant to the company's compensation decisions will be discussed in the Compensation Discussion And Analysis ("CD&A"). The additional requirement in item 2.2 to compare executive compensation with the single measure of total shareholder return, rather than the key factors which are actually considered the company's compensation decisions, may not be in the best interest of the company or its shareholders, and may result in the unintended consequence of some companies gearing compensation decisions to short term stock performance, rather than to NEO performance.

In addition, while the CD&A requires discussion of NEO compensation, the trend analysis proposed in item 2.2 refers generically to compensation of "executive officers", leading to a potential mismatch in the two discussions.

Accordingly, we recommend against the requirement proposed in the last paragraph of item 2.2 for a discussion comparing the graph to executive officer compensation.

We also suggest that Item 2.2(a)(ii) be amended for consistency with other instruments (e.g. NI 44-101 and MI 52-110) to read:

> "(ii) companies that have distributed only debt securities or non-convertible, non-participating preferred securities to the public, and".

5. Item 3 Format of the SCT

We suggest that column (f) ("Non-equity incentive plan compensation") be moved to appear immediately to the right of column (c) ("Salary"). We believe that this will improve readability of the SCT as the progression of columns from salary to cash awards to equity awards to pension and other compensation, more closely tracks how people think about compensation. That is, moving from salary for the given year, to cash bonus that is typically earned in respect of the given year, to deferred equity awards that are typically mid to long term performance awards granted in respect of the given year. This will also group cash awards (i.e., salary and cash incentive awards) together.

6. Item 3.1 Deferrals of amounts under non-equity incentive plans into shares, options or other forms of non-cash compensation (e.g., deferred share units)

The 2008 Proposal should be clarified to provide that any voluntary deferrals of amounts earned **under non-equity incentive plans** in a financial year into shares, options or other forms of non-cash compensation should be disclosed in the SCT in column (f1) under the heading "Non-equity incentive plan compensation" rather than the Salary column (c), with a footnote describing and quantifying the form of non-cash compensation substituted. Currently Item 3.1 (8) (d) would require this amount to be disclosed in the Salary column despite the fact that these amounts would not represent salary to the NEO. Accordingly, Item 3.1 (8) (d) should be corrected as outlined above.

7. Item 3.1(5) SCT – Share Awards and Option Awards

We appreciate that the CSA incorporated into the 2008 Proposals the many comments that were submitted in response to the earlier proposals regarding the disclosure of stock option and similar awards (i.e. tandem stock appreciation rights) and share awards (i.e. restricted share units). We fully support the proposal that the SCT columns (d) and (e) disclose the dollar value of option and share awards granted based on the grant date fair value as that reflects the compensation intended to be awarded by the board of directors for the covered fiscal year. We agree with the CSA that this will provide greater comparability of NEO total compensation, and will reflect the decision making process undertaken by the board of directors as described in the proposed CD&A section.

We also support the requirement described in Item 3.1(5)(b) to describe the methodology used to determine the grant date fair value, including key assumptions and estimates. This additional information will help readers understand the value of the awards granted.

However, we do not support the requirement in Item 3.1(5)(a) to reconcile and describe the difference between the grant date fair value disclosed in the SCT and the fair value determined based on Canadian Generally Accepted Accounting Principles ("Canadian GAAP"). For the reasons noted below and provided in greater detail in the CBA letter and submission dated June 29, 2007, we suggest that this disclosure requirement be removed.

For many companies, there will be a difference between the accounting fair value and the fair value shown in the SCT. Providing the accounting related information in a footnote or narrative as well as an explanation of the difference will add a level of complexity that would not assist the readers with their assessment of whether the NEO's compensation is appropriately aligned with performance. We believe that disclosure of the information described in Item 3.1(5)(a) will confuse readers. To the extent that a reader is interested specifically in the accounting fair value of awards, they can find that general information in the company's notes to the financial statements in the annual report. In addition, we believe that readers would be more interested in the value of amounts realized by NEOs upon the exercise of options or vesting of share awards as per Table 4.2 as an indication of NEO alignment with shareholders.

To align with the discussion in the CD&A, the option and share award values reported in the SCT will often be the grants awarded just after the covered fiscal year end. As a result, the accounting fair value for those grants does not impact the accounting expenses recorded in the financial statements for the recently completed fiscal year and would not normally need to be determined until after the proxy circular is finalized. The requirement to reconcile the SCT award value with the accounting fair value amounts to be used in the next fiscal year's financial reporting will be a burden on issuers and will result in proxy disclosure of accounting information that would not yet be required to be disclosed for financial reporting purposes.

As outlined in greater detail in the CBA letter and submission dated June 29, 2007, the accounting cost and accounting fair value at the date of grant can vary significantly from company to company depending on a number of factors such as how the underlying equity plan is structured (equity vs liability plan). Specifically, options granted "at the money" with a tandem stock appreciation right attached would have an accounting fair value at the grant date of $0. As a result, greater comparability between companies will not be achieved with this disclosure, as the accounting fair value at grant of option awards will depend on whether or not the awards are structured as liability or equity plans under Canadian GAAP. However, if this requirement is retained, we also respectfully suggest that the CSA revise the sentence in point 6 of the Commentary to 3.1(5) to read "... accounting compensation expense at grant date for awards that call for settlement in cash and if the exercise price is equal to fair market value", as this reflects our understanding of the application of the current accounting requirements for these types of awards.

The CSA Commentary to 3.1(5), point 4, states that the "accounting fair value is amortized over the service period to obtain an accounting cost (accounting compensation expense)". As a result, the accounting expense amount recorded would normally differ from the accounting fair value at grant. We request that, if the CSA retains this requirement in 3.1(5)(a), that the CSA specifically clarify that the accounting amount to be disclosed in the footnote is the accounting fair value at the grant date (before amortization) of the particular grant disclosed in the SCT column and not any other accounting expense amount.

8. Item 3.1(9) – Disclosure of Pension Value in the SCT

Item 3.1(9) requires that all compensatory items, including service cost plus other compensatory items be reported in column (g), "Pension Value". We believe that aggregating these values does not provide transparency for readers and that they should instead be reported separately, with column (g) split into (g1) "Service Cost" and (g2) "Other Compensatory Items". Providing this breakdown will allow readers to differentiate between the general ongoing service cost of the current pension liabilities (i.e., Service Cost) from the costs incurred by the issuer as a result of promotions, increases in salary and/or incentive pay, plan amendments and service awards (i.e., Other Compensatory Items).

9. Item 3.1(10)(f) – Dividend disclosure

Item 3.1(10)(f) requires that dividends paid on share or option awards be disclosed under "All Other Compensation" if they were "not factored into the grant date fair value required to be reported in columns (d) and (e)". We request that the CSA clarify these requirements, as it is unclear under what circumstances dividends would or would not be considered to have been incorporated into the grant date fair value, particularly where the value of share or option awards are based on the market price of an issuer's securities.

10. Item 3.1 (10) Perquisite Disclosure

Changes to Item 3.1(10)(a) have the effect of reducing the threshold for perquisite disclosure of any NEO earning less than $500,000 per year in salary. Given the trend toward emphasizing variable compensation over salary to better align pay to performance, this change will affect many issuers and will particularly affect smaller issuers who often provide lower salaries.

Changing the threshold for perquisite disclosure as proposed will create an uneven disclosure standard for issuers that choose to emphasize variable compensation over salary, and will not provide readers with a consistent view of perquisites relative to NEO total compensation among issuers. We do not believe there is a sound policy rationale for this approach.

We believe that changing the threshold to a single dollar amount of $50,000 or reconsidering a percentage based on either salary plus cash bonus or total direct compensation would be more equitable for all issuers while still ensuring readers are provided with appropriate perquisite disclosure.

11. Item 4.1(1) Award by Award disclosure of options

In Item 4.1(1) of the 2008 Proposal, regarding outstanding share awards and option awards, we note the requirement to disclose outstanding awards at the end of each fiscal year for each NEO, including awards granted before the most recently completed fiscal financial year. The requirement to separate each award for each individual NEO, including those granted before the last fiscal financial year, would likely result in an unnecessarily voluminous table, which could carry over to multiple pages in any circular. We draw your attention to the US disclosure experience where a similar schedule in the most recently filed proxies of Citigroup Inc. and the General Electric Company was over 3 pages long. Moreover, we are of the view that this approach would not necessarily carry any additional meaning or value-add when compared to the aggregation approach which we propose.

As outlined in greater detail in our submission dated June 29, 2007, we support the disclosure of the number of options (table column b), value of unexercised options (table column e), number of share award units (table column f), and payout value of unvested share award units (table column g) on an aggregate basis, similar to the disclosure currently provided for outstanding stock option awards. We believe that the range of option exercise prices and option expiry dates is relevant information for investors. Therefore, we propose that for each NEO, column (c) should report the lowest and highest option exercise price for the unexercised grant (e.g. $35.00 to $42.00). Similarly, the option expiration date in column (d) should include the range of applicable option expiry dates.

12. Item 4.1(7) – Outstanding share awards and option awards
Under this item, outstanding share awards are to be disclosed on the assumption that an NEO has achieved the threshold performance goals, with the understanding that this would result in disclosure of the minimum amount payable. Amounts greater than the threshold level would be disclosed if the NEO's performance for the previous financial year exceeded the threshold.

Many large issuers employ performance share units as part of their compensation mix, where the number of units that are eventually distributed depends on performance against specific, multi-year performance measures. These performance measures are typically tied to the performance of the organization as opposed to individual NEO performance. The range of potential distributions varies, e.g. from a threshold of zero to a maximum performance multiplier of 150%.

If disclosure of unvested shares or units is dependent on the previous year's performance, there could be significant year-over-year variations in the number of units reported, reflecting the variability in the underlying performance metrics. We believe that it would be more appropriate to report the shares or units based on the target payout level, along with a footnote to describe the potential variability in the final payout level. This would result in a more stable picture of ongoing holdings, while still providing full disclosure on the range of potential outcomes.

13. Item 4.2 Column B of Table 4.2, Value on pay-out or vesting of incentive plan
Value is realized upon exercise of stock options, not upon their vesting. As a result, the title for column (b) of the Table required by Item 4.2 should read "Option awards – Value during the year on exercise" rather than read "Option awards – Value during the year on vesting". The instructions in Item 4.2 (2) correctly describe the disclosure to be provided in this column as the aggregate dollar value realized upon the exercise of option.

14. Item 5.1(1) – Defined Benefit Plans – Disclosure of Annual Benefit Payable
To provide the most meaningful information to readers, we believe that rather than disclosing the annual benefits payable at age 65 which is an arbitrary age that may not align with issuers pension plan(s), issuers should instead report benefits payable at the earliest unreduced retirement age (i.e., the earliest age at which an unreduced pension could be received) according to the terms of their actual pension plan(s). This provides alignment with each issuer's plan(s), and therefore provides the most accurate and relevant information to readers.

15. Item 5 Format of the defined benefit plans table
To provide full transparency to readers, we would suggest that in column (e) of table 5.1, the annual service cost and other compensatory items should be split in two separate columns (service cost in column (e1) and other compensatory items in column (e2)). This would be consistent with how companies disclose these amounts in their annual reports and with the approach voluntarily adopted by large banks in previous executive compensation disclosure. It is also consistent with our suggested change to the SCT in point 8 above.

16. Item 6 – Termination and Change of Control Benefits.
We appreciate the changes that have been made to item 6 as a result of these consultations. We continue to believe that shareholders will be most interested in amounts to be provided to the CEO, as those would likely be the most material amounts. As a result, we would suggest that disclosure of estimated termination payments and benefits should be required for the CEO, with parallel disclosure for the other NEO's required only to the extent the contracts, agreements, plans or arrangements applying to them are in aggregate materially different than the terms of the contract, agreement, plan or arrangement provided to the CEO.

In addition, Item 6.1 (1) (b) requires an issuer to disclose the "incremental payments and benefits" for each of the relevant circumstances. However, the disclosure requirement does not indicate the baseline that should be used for determining what constitutes the "incremental" amounts that are being paid. Further clarification of what "incremental" is in relation to would be appreciated.

17. Executive Compensation Disclosure for Certain Reporting Issuers
We are of the view that the requirement in proposed section 11.6 of NI 51-102 should not apply to either of the following issuers, for the reasons noted below:

(a) Issuers of asset backed securities.
Issuers of asset backed securities do not have directors and officers and are typically administered by a financial institution or other third party ("administrator"). The administrator, in turn, employs individuals who spend only an incidental portion of their time performing the functions of officers or directors of, or other administrative tasks on behalf of, the asset backed issuer. In any event, there is no compensation paid by the asset backed issuer or by the administrator to these individuals that could be attributed back to the functions they perform for the asset backed issuer, and hence no compensation to disclose. Moreover, investors would have adequate disclosure of the structure and administrative arrangements relating to these issuers under the offering documents filed in connection with offerings of securities by such issuers. Accordingly, it is submitted that compensation disclosure should not be applicable to these issuers.

(b) Issuers of capital trust securities.
Issuers of capital trust securities are typically trusts established and controlled by federally-regulated financial institutions. These issuers have been created and have issued capital trust securities as a cost-effective means of raising regulatory capital for their related financial institution. These issuers have typically received broad exemptions from the continuous disclosure obligations under National Instrument 51-102 on the basis that these issuers have no directors or officers and that, given the attributes of the capital trust securities they issue, the issuer of relevance to holders of their securities is the related financial institution. In the past, changes in continuous disclosure obligations have resulted in these issuers being required to apply for additional regulatory relief, which we believe has been granted in all cases on the basis noted. This extra expense has been an unintended, but real, consequence of previous changes to continuous disclosure obligations, which could be avoided if Section 11.6 did not apply to these issuers.

We submit, therefore, for the reasons noted that both of these kinds of issuers should be exempt from the requirement to provide the disclosure required by Form 51-102F6 under the proposed section 11.6.

In addition, as a separate comment, we believe that the reference to Item 8 of Form 51-102F2 in proposed section 11.6 of NI 51-102 should be a reference to Item 8 of Form 51-102F5.

Thank you for this opportunity to express our views on the 2008 Proposal. We would be pleased to answer any questions that you may have about our comments.

Yours truly,