SHARE
SHAREHOLDER ASSOCIATION for RESEARCH & EDUCATION

April 22, 2008

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Nova Scotia Securities Commission
Prince Edward Island Securities Office
Securities Commission of Newfoundland and Labrador
Registrar of Securities, Department of Justice, Government of the Northwest Territories
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut
Registrar of Securities, Government of Yukon

c/o John Stevenson, Secretary,
Ontario Securities Commission,
20 Queen Street West,
Suite 1900, Box 55,
Toronto, Ontario M5H 3S8

-and-

c/o Anne-Marie Beaudoin, Directrice du secretariat,
Autorité des marches financiers,
Tour de la Bourse,
800, square Victoria,
C.P. 246, 22^{e} étage,
Montréal, Québec H4Z 1G3

RE: Notice and Request for Comment - Executive Compensation Disclosure and Related Matters

Thank you for providing a second opportunity to comment on the repeal and substitution of Form 51-102F6.

The Shareholder Association for Research and Education (SHARE) is a national, not-for-profit organization working with institutional investors to promote responsible investment practices through research, education activities and advocacy. SHARE has

contributed to consultations with respect to NI 81-106 in 2002, the *Blueprint for Uniform Securities Laws for Canada* in 2003 and made a previous contribution to the current process.

Overall, SHARE is satisfied with the changes to the proposals made by the CSA in 2007 for replacing Form 51-102F6. We believe that they are geared to improve the form and substance of the executive compensation disclosure made by Canada's public companies.

The following comments address areas that continue to be of concern to us and explore an opportunity for future regulatory action that flows out of the changes to executive compensation disclosure currently being finalized by the CSA.

Disclosure Regarding Compensation Consultants

SHARE continues to believe that disclosure with respect to compensation consultants should be a prescribed element of Form 51-102F6. Without information about fees, there is the potential for a conflict of interest to exist, undisclosed, at the root of the entire NEO compensation structure.

Disclosure Regarding the Compensation Committee

The current CSA Notice with respect to Form 51-102F6 indicates that requiring that the compensation committee be named in connection with the CD&A was considered and rejected by the CSA. In response to comments it received about the involvement of the compensation committee in CD&A preparation, the CSA indicates that:

> The level of involvement of the board of directors or a compensation committee in the preparation of the company's CD&A is a matter for each company to determine based on its own circumstances.[1]

While we acknowledge that "companies are responsible for their CD&A",[2] SHARE is of the view that acknowledging the central role of the compensation committee in the development of executive compensation policies and practices in a public company's disclosure is crucial to effective accountability.

Form 51-102F6 should retain the connection between disclosure and the directors who are responsible for executive compensation that currently exists by virtue of the requirement that the Report on Executive Compensation include the names of the members of the compensation committee.

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[1] CSA Notice and Request for Comments, Appendix A, 3.3, CSA Response.
[2] Ibid.

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We agree with the CSA that requiring a separate Report on Executive Compensation attributed to the compensation committee members would not be a desirable addition to the revised Form 51-102F6.

An Opportunity Presented by Improved Executive Compensation Disclosure

SHARE appreciates the time and attention that the CSA has dedicated to developing Form 51-102F6. We anticipate that the new disclosure requirements will be of significant benefit to those who take a keen interest in executive compensation at Canada's public companies.

SHARE views an advisory vote on executive compensation as a necessary companion to pay disclosure. Information about NEO compensation is necessary in order to enable investors to properly evaluate the quality of their portfolio holdings. We believe that shareholders require an efficient and inclusive mechanism that will allow them to provide their respective views of the information about executive compensation that they receive from companies. The shareholder vote on compensation that we are advocating is advisory to the board, so that it provides directors with feedback on the decisions they have made about executive pay without compromising their ultimate responsibility for it.

Substantial Support for an Advisory Vote in Canada

Recently, SHARE filed a proposal on behalf of Meritas Financial Inc. asking that five of Canada's largest banks adopt an advisory vote on executive compensation. The proposal was supported by an average of over 40% of bank shareholders who cast ballots. [3]

Prior to the vote on the shareholder proposal, issuers often argued that a non-binding shareholder vote on executive compensation could not be implemented until more comprehensive disclosure was required of public companies by the CSA's members. The implementation of new disclosure standards for executive compensation will remove one hurdle to the implementation of the advisory vote in Canada.

In the U.S., a handful of companies have elected to put NEO compensation to a non-binding shareholder vote. Three have done so in the wake of majority votes in favour of shareholder proposals asking that it be adopted: Verizon, Blockbuster and Par

[3] According to SEDAR filings, the results of voting on the shareholder proposal to adopt an advisory vote on executive compensation at 2008 AGMs were as follows: Canadian Imperial Bank of Commerce: 44.96% For, 55.04% Against; Royal Bank of Canada: 42.13% For, 57.87% Against; Bank of Montreal: 34.7% For, 65.3% Against; Bank of Nova Scotia: 39.24% For, 60.76% Against; and, The Toronto-Dominion Bank: 41.5% For, 58.5% Against.

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Pharmaceuticals. Two other issuers, Aflac Inc. and RiskMetrics Group Inc., have decided to implement the advisory vote without waiting for a shareholder proposal asking that they do so.

Mandating the Advisory Vote on Executive Compensation

Pursuing the implementation of an advisory vote on executive compensation in Canada can proceed by way of the shareholder proposal mechanism. As a way of bringing about improved governance policy and practice at Canadian public issuers, however, there are significant practical limitations inherent in the way proposal rights may be exercised.

The TSX/S&P Composite Index (the Index) currently includes 257 issuers, 62 of which operate as trusts. These issuers are not governed by the provisions of any of Canada's corporations acts, which are the source of the right to file shareholder proposals. A trust may enable its unitholders to submit proposals by incorporating this right into its declaration of trust or other constating documents, but most trusts do not elect to do so.

The Index constituents also include 12 companies incorporated under the Quebec Companies Act (QCA). The QCA has provisions that establish the right of shareholders to file proposals, but these sections are not currently in force.

There are 28 companies incorporated under the Alberta Business Corporations Act (ABCA). The ABCA Regulation enables companies to refuse to circulate a shareholder proposal unless the filer can demonstrate that it and any co-filers hold 5% or more of a company's shares. The effect of the 5% requirement is to preclude the overwhelming majority of non-management shareholders from filing a proposal and there have been no shareholder proposals on the ballots of ABCA companies since the 5% requirement was established in 2005.

Finally, there are 25 companies in the Index that maintain a dual class capital structure. Typically, a dual class structure puts voting control in the hands of one shareholder or a group of related shareholders who are closely aligned with management. Although in some cases this structure is adopted in order to ensure compliance with Canadian ownership requirements mandated in the industry in which the company operates, most often the purpose is to enable certain shareholders to maintain voting control without an equivalent capital investment in the company.

SHARE's analysis shows that the shareholder proposal mechanism is only a viable for introducing new governance, environmental and other related developments at 140 of the current 257 Index constituents. It is therefore not legally or strategically possible

to advance the advisory vote toward implementation across Canada's flagship index by way of shareholder proposals.

The UK Requirement for an Advisory Vote

In the UK, the government has required FTSE All Share companies to include an advisory vote on executive compensation on the agenda for Annual General Meetings (AGMs) of shareholders since 2003. Research Recommendations Electronic Voting (RREV), a proxy advisory firm owned by Riskmetrics Group (formally ISS) has published comments on the influence that the advisory shareholder vote on executive compensation has had on corporate NEO compensation practice in the UK RREV has observed that "…in order to minimize the risk of defeat [on the advisory vote resolution], companies have expanded their remuneration disclosures and improved communication with shareholders, especially when implementing non-routine pay arrangements."[4]

There is also evidence from the U.K. that the institution of an advisory vote on executive compensation provides issuers with a powerful incentive to make their pay decisions sensible and their disclosure straightforward. In a Yale School of Management Policy Briefing, Stephen Davis recounts comments by a UK company secretary to the effect that the vote has :

> "…caused Remuneration Committees and boards to consider even more carefully their approach to executive remuneration….The nature of disclosures made in the remuneration report is now subject to even greater scrutiny to ensure full transparency…The risk of an adverse vote has caused a refocusing of attitudes—no RemCo or board chairman would want to have their name linked what would be seen to be a 'failure' in this respect."[5]

The evidence from the U.K. suggests that an advisory vote on executive compensation mandated for all issuers will further the objectives of the repeal and substitution of Form 51-102F6. A non-binding vote on compensation disclosure will encourage companies to communicate what the directors intended to pay or award NEOs in a clear and comprehensive manner. The vote is advisory only, so that it has the power to inform corporate boards. It does not usurp the directors' responsibility for decision-making about executive compensation.

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[4] Research Recommendations Electronic Voting (RREV),*Trends in Executive Remuneration in 2006,* 2007.

[5] Stephen Davis, *Does 'Say on Pay' Work?*, The Millstein Centre for Corporate Governance and Performance, Yale School of Business, 2007. p. 23.

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SHARE understands that the current comment process is limited to executive compensation disclosure. In an effort to look to the future, however, we hope that comments as to an additional benefit of enhanced executive compensation disclosure are useful to you.

Sincerely,

Laura O'Neill
Director of Law and Policy

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