MERCER

MARSH MERCER KROLL
GUY CARPENTER OLIVER WYMAN

161 Bay Street, PO Box 501
Toronto, Ontario
Canada M5J 2S5
416 868 2000 Fax 416 868 9634
www.mercerHR.com

22 April 2008

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

Anne-Marie Beaudoin, Directrice du secrétariat
Autorité des marchés financiers
Tour de la Bourse
800, square Victoria
C.P. 246, 22e étage
Montréal, Québec, H4Z 1G3

Private & Confidential
Subject: Proposed Form 51-102F6 Statement of Executive Compensation

Ladies and Gentlemen:

This letter is submitted on behalf of Mercer (Canada) Inc. ("Mercer") in response to the Canadian Securities Administrators' (CSA) request for comment on Proposed Form 51-102F6 *Statement of Executive Compensation* (issued February 22, 2008 and referred to herein as the "Proposed Rules") regarding proposed amendments to the rules governing the disclosure of information about the compensation of executive officers and directors in management information circulars.

Mercer is a global company providing human resources and related financial advice, products, and services, including compensation consulting services to corporations, boards of directors, and board compensation committees concerning the compensation of executives and directors. Mercer's Human Capital Executive Remuneration Services provides executive compensation consulting services to companies around the globe, including major Canadian and US publicly-traded companies. Therefore, we have extensive experience in designing and implementing executive and director remuneration programs.

We understand how compensation committees function and we have assisted many companies in improving their executive compensation disclosure under the current reporting requirements.

Mercer is a wholly-owned subsidiary of Marsh & McLennan Companies, Inc. The comments and recommendations expressed in this letter reflect the views of Mercer and do not necessarily represent the views of Marsh & McLennan Companies, Inc. or its affiliated companies, or those of our clients.

General Observations

We would like to express our overall support for the objectives of the Proposed Rules: to improve the quality and transparency of executive and director compensation disclosure and to enhance investors' understanding of pay-for-performance linkages. Investors are entitled to review clear, comprehensive, and understandable information about a company's executive and director compensation programs to assess whether a company is properly deploying its resources to achieve its business objectives.

In light of the new executive and director compensation proxy disclosure rules adopted by the US Securities and Exchange Commission ("SEC") ("US Rules"), we believe it is the right time for the CSA to consider amendments. We appreciate that the CSA carefully considered the US Rules in drafting the Proposed Rules and sought alignment between them. There are significant benefits to alignment, particularly from a business perspective, such as maintaining a relatively uniform North American securities market.

However, we are supportive of the CSA's decision to depart from the US Rules in a few specific aspects of the Proposed Rules, particularly with respect to the disclosure of equity awards and pension benefits. We believe this will result in disclosure that is more consistent with current Canadian company best practices and may avoid some of the problems companies have encountered in complying with the new US Rules. Although we view the Proposed Rules as superior to the proposal issued by the CSA in March 2007 (2007 proposal), there are a few aspects of the Proposed Rules that could be modified to further enhance the quality and transparency of executive pay disclosure. Accordingly, we are providing the following comments and suggesting the following changes to the Proposed Rules to better achieve the CSA's stated objectives:

1- Pension and retirement plan values

We believe that the proposed pension plan disclosure in the Summary Compensation Table (SCT) will result in significantly better disclosure in Canada than under the US Rules. We particularly support the inclusion of only the compensation-related value of both defined benefit and defined contribution pension plans being disclosed in the SCT. The Proposed Rules for defined benefit pension plans will result in disclosures that are substantially consistent with the practices adopted by many large issuers in Canada following the prior guidance published by the CSA in 2005.

2- Retirement plan benefit tables

We support the proposed retirement plan benefit tables for both the defined benefit and defined contribution plans, subject to the following comments:

- The credited service column b could be split to show credited service at year end and credited service at age 65 for consistency with the annual benefit payable columns c1 and c2.

- The annual benefits payable in column c2 is described as being at age 65. Current practice of many large Canadian issuers is to show benefits payable at either the plan's normal retirement age (which might be earlier than age 65) or at the plan's earliest unreduced retirement age (which might be earlier than the plan's normal retirement age). Consideration should be given to allowing issuers the choice of using the plan's normal retirement age or the plan's earliest unreduced retirement age, with appropriate disclosure.

- With respect to column c2 of the defined benefit plan table, we suggest that the wording under note (4) be adjusted to clearly describe that the annual benefits payable at both year end and age 65 are based on pensionable earnings at the end of the most recently completed financial year (similar to the current practice followed by most Canadian issuers). This clarification can be achieved by replacing the phrase "years of credited service and pensionable earnings" with "years of credited service as at each date and pensionable earnings".

- We recommend clarifying Item 5.1(2) as the intent is to use the financial statement assumptions to determine the obligation amounts. The current wording suggests that employers that use an early measurement date for financial reporting purposes should disclose credited service and benefits payable based on service to an early measurement date rather than fiscal year end. We suggest the following: "For accrued obligations and compensatory and non-compensatory disclosures in the table, use the assumptions used in the company's audited financial statements for the most recently completed financial year."

- Consideration should be given to adding columns in each retirement plan benefit table to reflect that payments may be made from the retirement arrangements in a given year that would reduce the value at year end. In the absence of such a column, any benefit payments would be included in the non-compensatory column f.

We note that the inclusion of future earnings projections in the accrued obligation for the defined benefit plan disclosures differs from the accrued obligation disclosures under the US Rules and will prevent comparisons between Canadian and US liability disclosures. The inclusion of future earnings projections will also result in the possibility of negative compensation figures in a given year if earnings grow by less than the projection. Also, the accrued obligations will in most cases exceed the value of the benefits accrued to date if employment is to terminate prior to retirement for each named executive officer (NEO).

We also note that the accrued obligation excludes the value to the NEO of receiving tax deferral from any non-registered defined benefit or defined contribution pension plan. We acknowledge that calculating the value of tax deferral is difficult in practice. While excluding the value of tax deferral is consistent with the financial statement reporting of pension obligations, the value of such tax deferral can be substantial to an NEO.

3 - Performance targets

We recommend using the competitive harm standard in lieu of the "serious prejudice to the company's interests" standard or, at a minimum, clarifying the meaning of the serious prejudice standard. Interpreted on the most restrictive basis (i.e., a reduction in legal rights or remedies), this serious prejudice standard would set the bar higher for nondisclosure than the "competitive harm" standard (included in the 2007 proposal and US Rules). On the other hand, it could be interpreted as broader than the competitive harm standard; i.e., simply as "harm" rather than "competitive harm". For example, if a goal of the company's incentive plan is to achieve cost savings through a reduction-in-force and this goal was revealed to employees, it might harm the company's employee relations, but this may not be considered to cause competitive harm. If companies interpret the serious prejudice standard broadly, it could result in many companies opting not to report. Because of this potential breadth and lack of clarity, the standard might be more difficult to apply and interpret consistently than the competitive harm standard.

We are also concerned that requiring the disclosure of specific information on performance targets might have unintended negative consequences. Requiring disclosure of actual performance targets in advance of the end of the performance period may raise “forecasting” concerns and prevent companies from setting “stretch” targets. In our experience, many companies legitimately believe that disclosing even the performance *measure* for a specific compensation arrangement in advance (for example, new product revenue growth) would reveal proprietary business information that could be useful to competitors. However, we believe it is reasonable to disclose the goals *after* the end of the performance period and many Canadian companies already provide a comparison of actual and targeted performance after the fact as a best practice. This approach facilitates a comparison of pay and performance and allows investors to assess whether the awards appear reasonable and helps to make compensation more transparent.

We are also concerned that if the rules place too much emphasis on the disclosure of specific performance measures and targets, companies will begin to move away from business or industry-specific performance measures and, instead, revert to so-called “plain vanilla” measures, such as earnings-per-share. While this might satisfy investors who must know all of the details, it may ultimately lead to “one-size-fits-all” incentive plans that are poorly aligned with each company’s unique business strategy. If this were to happen, it would be an unfortunate step backward in executive compensation practices.

Furthermore, if the rule is adopted as proposed, the CSA should regulate and enforce the disclosure of performance measures, weights and targets consistently. In the US in 2007, fewer than half of companies disclosed specific performance targets and the SEC focused much of its attention on this disclosure in its review of 2007 corporate proxy statements. Despite this attention, according to a recent Watson Wyatt survey of 75 large companies that have filed their 2008 proxy statements, only about two-thirds (68%) of companies disclosed specific performance targets for annual plans and 57% for long-term plans. We are concerned that the serious prejudice standard may be more difficult to interpret and apply consistently since it appears to be broader than the competitive harm standard and it could encompass consequences that are not related to business competition. This could therefore result in even lower levels of compliance and consistency than is currently being seen in the US.

4. Equity and non-equity awards

We support the proposed equity award disclosure in the SCT and believe that disclosing the grant date fair value is superior to disclosing the accounting cost and will result in more meaningful disclosure. However, we are concerned that the timing of the disclosure of certain pay elements in the SCT is not consistent. The Proposed Rules would provide inconsistent treatment of long-term cash awards, which are disclosed as they are earned, and equity awards, which are disclosed at grant. This inconsistent treatment might result in anomalous disclosure. For example, the disclosure of performance share units (PSUs) and long-term cash awards that are based on the same performance measure and are both ultimately settled in cash would be different even though they are essentially equivalent from a compensation standpoint. This would make it more difficult for investors to factor the grant of long-term cash awards into total compensation. To improve the disclosure, we recommend that all long-term incentive compensation be disclosed using the fair value at grant, regardless of whether equity-based or cash-based awards are used.

5. All Other Compensation

In the SCT, the list of compensation Items in 3.1(10) could be expanded to include:

- employer contributions to a registered retirement savings plan (RRSP) since it is not a pension plan and employers cannot necessarily control or track changes in the account balance to report it as a defined contribution pension plan; and

- employer matching contributions to stock savings plans.

We believe further guidance on Item 3.1(10)(b), compensation disclosure of other post-retirement benefits such as health insurance or life insurance after retirement, is required. It is not clear whether the intent is to include these compensation amounts only if the executive retired during the year and actually received such compensation or if the intent is to include an accounting service cost each year similar to a pension plan service cost. If the intent is the latter, it is not clear whether disclosure would be required only if the benefits are not part of a broad-based plan. We note there would be an added cost to companies to have their actuaries identify these amounts and the amounts would often be immaterial. Perhaps this requirement could be waived if the service cost is less than a certain threshold or if all retiring employees will receive the same benefit.

In addition, we note that Item 3.1(10)(i)(ii) and Item 6.1(4) seem to be related, yet the descriptions are different (that is, “accelerated benefits” vs. “incremental benefits”). Additional clarity may be useful.

6. Value on pay-out or vesting of incentive plan awards
We would appreciate clarification of the value on pay-out or vesting of incentive plan awards table. In particular, please provide clarifying comments for column d similar to those provided for columns b and c because it is not clear what is intended to be included in that column.

****

We appreciate the opportunity to comment on the Proposed Rules, and respectfully request that the CSA consider the recommendations set forth in this letter. We are prepared to meet and discuss these matters with the CSA at its convenience. Any questions about this letter may be directed to Lisa Slipp (416) 868-7665 or Scott Clausen (416) 868-7658.

Respectfully submitted,

Lisa Slipp Scott Clausen