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April 30, 2008

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- and -

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Dear Sirs and Mesdames:

Proposed Repeal and Substitution of Form 51-102F6 (Statement of Executive Compensation)

This letter is being provided to you in response to the Request for Comments published at (2008) 31 OSCB 2015 concerning the proposed repeal and substitution of Form 51-102F6 (Statement of Executive Compensation) (the "Proposed Form").

We would note, at the outset, that the new Proposed Form is an improvement on the proposal made in 2007, and in particular, we support the CSA's decision to diverge from the SEC requirements with respect to the valuation and disclosure of equity awards reflected in the new Proposed Form. We also support the goal of improving the quality and utility of executive compensation disclosure.

Our specific comments on the Proposed Form follow:

1. Item 1 – General Provisions

The addition of a new item 1.1 setting out the objective of executive compensation disclosure is helpful in providing guidance on the approach which should be taken by most companies. However, some modification is needed in light of the approach taken by the Proposed Form with respect to external management companies. In the case of external management companies, disclosure is required even though the board of directors of the reporting issuer has no control over what is paid to executive officers and the reporting issuer does not compensate the executive officers. Accordingly, we suggest that the second paragraph in item 1.1 be revised to read as follows:

> "The objective of this disclosure is to communicate what the board of directors intended to pay or award certain executive officers and directors for the financial year or what portion of the compensation received by such individuals is reasonably attributable to their service to the company. This disclosure will provide insight into a key aspect of a company's overall stewardship and governance and will help investors understand practices for compensating the company's executives and directors."

With respect to the determination of who is an NEO for disclosure purposes, we note that "All other compensation" disclosed in the Summary Compensation Table may include payments of severance or lump sum payments of accumulated pension value paid to an executive officer whose employment has terminated during the fiscal year and, therefore, "Total compensation" will include such amounts. We think it would not further the objective of executive compensation disclosure to include such amounts in determining who is an NEO since such payments are not recurring. In addition, an executive officer for whom it was not historically necessary to provide executive compensation disclosure could be deemed to be an NEO for purposes of the disclosure prepared following the executive's termination of employment solely because of receiving such amounts post-termination. This would be an anomalous result. Moreover, including lump sum payments of accumulated pension value in the determination of who is an NEO is inconsistent with the CSA's response to the comments made on the earlier proposal made in 2007 in which the CSA expressed the view that pension compensation should not be included in the determination of who is an NEO. Accordingly, if payments of severance or lump sum payments of accumulated pension value paid to an executive officer whose employment has terminated during the fiscal year are to be included as "All other compensation", we suggest that the CSA add a new item 1.4(5)(a)(ii)(C) to expressly

exclude such amounts from the calculation of total compensation for determining who is an NEO.

In item 1.4(7)(b), the words "Despite paragraph (a)," should be deleted. Paragraphs (a) and (b) do not overlap since paragraph (a) deals with historical compensation disclosure while paragraph (b) deals with future compensation disclosure. It is not necessary to include the phrase "despite paragraph (a)" and it is confusing to do so since it appears to imply that where disclosure is being provided in a prospectus it is necessary to include historical executive compensation disclosure.

2. Item 2 – Compensation Discussion and Analysis

Item 2.1(3) appears to require the reporting issuer to name all of the companies included in the benchmark because of the phrase "including companies included in the benchmark". For some issuers, this could be a very long list, especially since there may be several different benchmarking groups used by the reporting issuer for benchmarking purposes, and including the entire list of names would not provide meaningful disclosure. It should be sufficient to provide the selection criteria used for selecting companies included in the benchmark. We note that the it appears that the CSA did not intend to mandate disclosure of company names in every case since the CSA's response to comments made on the 2007 proposal states that companies "must disclose the names of comparator companies in their CD&A if necessary to satisfy the objective of executive compensation disclosure as set out in section 1.1 of the Proposed Form". Accordingly we would suggest replacing "including companies included in the benchmark" with "including selection criteria for companies included in the benchmark". Also, the second sentence of item 2.1(3) is redundant and should be deleted.

We continue to be of the view that the performance graph does not provide any meaningful information to investors consistent with the objective of executive compensation disclosure as expressed in item 1.1 and that the performance graph should not apply to any reporting issuers.

If the performance graph is to be retained, then it should be limited to a three-year period to be consistent with the disclosure set forth in the Summary Compensation Table. In particular, it does not make sense to require a discussion of how the trend in a five-year performance graph compares to the trend in a three-year table of executive compensation.

3. Item 3 – Summary Compensation Table

The last sentence of item 3.1(8)(a) should be revised to read "The company is not required to report these amounts again in the table when they are actually paid to an NEO." While the subsequent payout of non-equity incentive plan compensation should

not appear in the Summary Compensation Table, it is required to be disclosed pursuant to item 4.2 in the "Value on pay-out or vesting of incentive plan awards table".

Item 3.1(8) still uses the term "bonus", which is confusing in light of the terminology proposed to be used elsewhere in the Proposed Form. It would be better to replace "bonus" with "annual non-equity incentive plan award".

The introduction to Item 3.1(10) states that the "All other compensation" column of the Summary Compensation Table should include all other compensation not reported elsewhere in the Summary Compensation Table. In addition, Item 3.1(10)(d) requires disclosure in the "All other compensation" column of amounts paid or payable to an NEO as a result of the scenarios listed in section 6.1. Item 3.1(10)(i) is duplicative of Item 3.1(10)(d) since "retirement" is one of the scenarios listed in section 6.1 However, Item 3.1(10)(i) also instructs that amounts identified in Item 3.1(10)(i)(i) and (ii) should not be included in the "All other compensation" column. That instruction is inconsistent with the introduction to item 3.1(10) and item 3.1(10)(d). To correct this inconsistency, the exceptions provided in Item 3.1(10)(i), (ii) and (ii) should apply to all of Item 3.1(10), not just Item 3.1(10)(i).

4. Item 4 – Incentive Plan Awards

In item 4.2 (or else in Item 3.1(10)), it would be helpful to clarify that amounts disclosed in Item 4.2 on vesting of option awards and share awards do not need to be reported in the "All other compensation" column of the Summary Compensation Table (since the grant date fair value was reported in that table in the year of grant). The broad language of Item 3.1(10) could be read as including such amounts.

5. Item 6 – Termination and Change of Control Provisions

Item 6.1 requires further clarification. The requirements of item 6.1 are inconsistent with the CSA's summary of changes to the Proposed Form. That summary states that the item now includes "a standard set of scenarios where companies are required to disclose payments or other benefits received. We have decided the following four termination scenarios are most appropriate:

- retirement
- resignation
- termination; and
- change of control."

We note that the actual obligation in item 6.1 is to disclose payments in connection with a "change of control", whether or not that change of control is part of a "termination scenario". We also note that item 6.1(1) includes "a change in an NEO's responsibilities". Presumably the reference to "a change in an NEO's responsibilities" should be deleted – if it results in a constructive termination, then it is already covered.

If the intent is to limit disclosure to the specified scenarios, then item 6.1(a) should be deleted. Alternatively, if the intent is to require reporting issuers to report on entitlements for different employment termination scenarios, then the introduction to item 6.1 should be revised to make it clear which termination scenarios need to be addressed. It is common to make distinctions between (i) voluntary termination, (ii) termination without cause or constructive dismissal, (iii) termination with cause and (iv) death. (If you add to those scenarios retirement, resignation and change in control, that would make 7 scenarios which reporting issuers would need to address in their disclosure.)

Guidance is needed as to what is meant by "estimated incremental payments and benefits" in item 6.1(b). For example, if options accelerate due to a change of control, does the reporting issuer report the in-the-money value of the NEO's outstanding options assuming that the triggering event took place at the end of the last fiscal year? Arguably, the incremental benefit to the NEO of an acceleration of options is the time value of having the money earlier, net of any lost tax deferral.

Item 6.1(2) requires the reporting issuer to "Disclose the estimated annual payments and benefits". Presumably it should read instead "Disclose the estimated incremental payments and benefits" to be consistent with item 6.1(1)(b).

* * *

We are pleased to have had an opportunity to provide you with our comments on the Proposed Form. If you have any questions or comments, please contact Andrew MacDougall at (416) 862-4732.

Yours very truly,

Osler, Hoskin & Harcourt LLP

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