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Saskatchewan Financial Services Commission – Securities Division
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut

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Re: Proposed Amendments to Form 51-102F6 Statement of Executive Compensation and Consequential Amendments

Dear Sir/Madame:

We are pleased to submit comments in response to the CSA's recently proposed amendments to the rules governing executive compensation disclosure. This letter represents the views of Institutional Shareholder Services in its capacity as a proxy advisor and thought leader in the area of corporate governance, not necessarily the views of our clients, although their interests are at the forefront of all comments offered herein.

The proposed rule amendments and the disclosure reviews undertaken by the regulator are particularly welcomed and we commend the regulator's initiative to improve corporate governance disclosure generally, including that related to executive compensation.

A. ITEM 2 – Compensation Discussion and Analysis (CD&A)

1. Disclosure of performance goals – serious prejudice exemption

The pay-for-performance question continues to be the foremost concern of institutional investors when assessing executive pay. Portfolio managers devoting considerable time and effort to the investment decision-making process have indicated their expectations that in order to meet their investment criteria, their portfolio companies are expected, over the long term, to outperform other companies in the same industry group or sector, as well as the rate of return offered by less risky investments. Failing the goal of outperformance should result in a commensurate contraction of incentive-based payouts, and may even necessitate repayments of previously earned compensation, if warranted by reductions or restatements to previously reported financial results and particularly if made as a result of illegal or inappropriate executive behaviour. In addition, long-term and sustainable performance should include non-financial performance metrics that are measurable and effectively link the company's compensation payments to its financial, environmental and social goals. Each element of performance or non-performance should be discussed in the same manner as described above.

Executive pay structures should demonstrate a robust pay-for-performance link in support of the goal of outperformance. The use of "stretch" performance targets is one means of ensuring the link to superior performance. In addition to disclosure of the performance criteria used for any respective performance period, investors require detailed disclosure of specific performance goals upon which incentive compensation payouts will be determined in order to evaluate the rigour of performance targets in relation to company earnings guidance, strategic direction, "street" expectations and actual results. The ability to compare pay versus results with industry peers is important information that continues to be elusive under the current disclosure practices of many reporting issuers.

The argument that disclosure of relevant detailed performance targets would seriously prejudice the interests of the Company is questionable and should not, at a minimum, prohibit disclosure of performance targets for performance periods already completed in most cases. If a company is relying on the "serious prejudice exemption" and will not disclose this important information to investors, there should be a detailed discussion of the reasons for relying on this exemption in the CD&A along with supplemental information demonstrating how the company has historically implemented a robust pay-for-performance pay structure in recently completed performance periods.

We support the proposed amendment requiring more explicit explanation of a company's reason for relying on this exemption and recommend that supplemental information demonstrating how the company has historically implemented a robust pay-for-performance pay structure in recently completed performance period(s) also be required. In the absence of this further supplemental information, the company should also include a detailed explanation describing why it believes this additional supplemental information may be seriously competitively harmful.

Additional Information which may be beneficial to shareholders:

- Including commentary from the Compensation Committee on rationale for the performance metrics used in incentive plans and how these metrics align with the company's strategic plan and long-term priorities.
- Conversely, if a company does not utilize performance-based metrics within its compensation structure, there should be rationale from the Compensation Committee regarding how compensation is determined, how pay and performance are aligned, and whether discretion is used by the Committee with respect to payouts.
- Transparent information regarding whether performance metrics have been changed for a performance-based plan, during what part of the performance cycle the change will take place, what the change is and how it will affect potential payouts under the plan, as well as the rationale for the change in metrics.
- Non-financial and financial metrics for incentive plans; where non-financial metrics are measureable (i.e. employee satisfaction measured by employee turnover rates) and weighted as to importance. The future risks associated with non-financial aspects of a business, such as environmental, social and health and safety factors are not often given much consideration in determining executive incentive compensation, if at all. However, the inclusion of these types of metrics in incentive

plans may provide executives with additional motivation to take both financial and non-financial risks and opportunities into account when making long-term decisions that affect the company as a whole.

- Meaningful peer group benchmarking information. It has been our experience that disclosure of peer group benchmarking information has been, at best, inconsistent and lacking in supporting rationale and in some cases non-existent. The use of benchmarking is a basic first-step in establishing pay levels and pay structure. The question of appropriate peer group selection is fundamental to a review of a company's compensation practices on a comparative or relative basis. Disclosure related to the rationale and makeup of a company's peer group for compensation purposes can be very informative to shareholders in assessing not only the appropriateness of executive remuneration, but also in assessing the quality of board oversight and performance with regard to this important responsibility. A discussion of the rationale for the benchmarking group used or the rationale for not using any benchmarking peer group is valuable and should be required.

2. Risk management in relation to the company's compensation policies and practices

Q1 Would expanding the scope of the CD&A to require disclosure concerning a company's compensation policies and practices as it relates to risk provide meaningful disclosure to investors?

ISS strongly supports the proposal to expand the scope of the CD&A to require disclosure addressing potential risks raised by a company's compensation policies and practices. Pay structure and risk alignment has been a topic of review and recommendation particularly in the financial services industry recently. It is generally acknowledged that risk management related to compensation structure is now an oversight function of the board of directors at all reporting issuers. The proposed new provision requiring that the board of directors disclose whether a risk analysis has been conducted with respect to the risk implications of a company's compensation policies and practices is a basic first step that we would support. The additional disclosure requirements proposed would also provide meaningful information to investors and indicate the extent to which the board has addressed risks associated with executive compensation.

Q2 Is the commentary of the issues that a company may consider to discuss and analyze sufficient?

ISS has closely followed the governance and disclosure practices of other major markets that have already dealt with shareholders requirements for advisory votes on executive and/or director compensation such as the U.S. and U.K. Corporate governance structure and practices in the U.K. may be of particular interest due to the existence of a "comply-or-explain" governance regime somewhat similar to that found in Canada.

For example, in the U.K, Sir David Walker who was responsible for an extensive review of corporate governance in U.K. financial institutions and most specifically banks which were impacted by the global financial crisis, worked closely with the Financial Reporting Council in its review of the U.K.'s Combined Code on Corporate Governance. The Walker review culminated in a number of conclusions and recommendations worth repeating here. It states, "It is clear that governance failures contributed materially to excessive risk taking in the lead up to the financial crisis. Weaknesses in risk management, board quality and practice, control of remuneration, and in the exercise of ownership rights need to be addressed in the U.K. and internationally to minimize the risk of recurrence. Better governance will not guarantee that there will be no repetition of the recent highly negative experience for the economy and for society as a whole but will make a rerun of these events materially less likely."

Interestingly, the findings of the Walker review included that in so far as the failure of boards of directors at financial reporting issuers leading up to the financial crisis was concerned, the failures had much more to do with patterns of behaviour than with process or structure. That boards missed a critical and essential step in discussions on major issues which should have seen directors effectively challenge executive management before decisions were taken on these major issues; as well as a heightened level of engagement that should have ensued with regard to a company's risk appetite and tolerance underpinned by independent directors with the appropriate experience and qualifications and commitment of time and dedication. The Walker report goes on to link insufficient board level oversight of remuneration policies especially related to variable pay and associated disclosure as a further contributing factor to failures in governance that aided and abetted the financial crisis.

Complicating the call for increased attention to board leadership, independence and capability to effectively challenge executive strategy, risk management and compensation practices, is the substantial challenge that investors face in trying to assess leadership, independence and capability of board nominees and the dynamics of a highly effective board in advance of a crisis situation. A further recommendation in the Walker report highlighting the need for institutional investors to engage more productively with investee companies to promote long-term performance, we believe also points to the need for substantially improved disclosure of the board's role; discussion of structure and independence; qualifications related to risk management; process for overseeing risk management and for regularly monitoring ongoing risk; and for mitigating risk through pay structure and practices focused on the long-term versus short term view of company performance. The nature and even extent of disclosure provided in a company's public disclosure documents can be indicative of the board/management dynamic as well as the qualifications, experience, commitment and independent mindset of directors, giving shareholders greater comfort or concern upon which to base engagement efforts with the goal of reducing portfolio risk.

In addition, as Canadian reporting issuers continue to include U.S. and other global industry and related industry peers in their benchmarking groups, the ability to complete a comparative analysis of pay levels and structure versus performance becomes increasingly difficult. In order to facilitate this type of comparison, there is a need for disclosure of comparative metrics that would be common to all companies and meaningful to investors. A recommendation has also emanated from the U.K., calling for all major markets to require disclosure of the number of senior bank employees in remuneration bands above a certain level that in the U.K. would be £1 million. The rationale for the request is not only compelling but can be applied to all reporting issuers. The requested disclosure is aimed at the entire executive management team including those below the NEO level and is meant to facilitate a comparison ratio of total compensation to total earnings, a potentially meaningful comparison given that compensation expense is generally a company's largest expense and therefore has a significant impact on a company's ability to pay dividends to shareholders and finance future growth. We see no reason why this ratio would not also be useful to investors in assessing compensation in the resource or technology sectors for example. Requiring such disclosure would enable company to company, industry to industry and market to market comparisons, giving shareholders further useful information to support their investing, proxy voting and engagement activities.

Q3 Are there certain risks that are more clearly aligned with compensation practices the disclosure of which would be material to investors?

We believe that risks aligned with compensation practices will vary in degree from industry to industry and company to company. However, ISS has identified a number of pay practices that we view as problematic, such as:

- guaranteed compensation set out in multi-year employment contracts that effectively prevent true alignment with performance or risk;
- single trigger change in control and severance agreements that can result in excessive payouts to executives and directors for supporting a (often liberally defined) change in control that can create conflicts of interest for those same individuals charged with orchestrating the change in control;
- discretion on the part of board and/or management to grant themselves equity awards;
- the ability of senior executives to hedge downside risk related to variable compensation undermining the pay-for-performance link and potentially encouraging excessive risk-taking;
- any extremely large retention bonuses or "make-whole" payments that set unrealistic expectations and are not linked to performance;
- interest-free or low interest loans extended by a company to senior executives for the purpose of exercising options or acquiring equity which can obligate employees beyond their means, create morale concerns, result in forgiveness in the event of the inability to repay, and undermine the intent of linking management pay risk with shareholder portfolio risk; and
- general omission of timely information necessary to understand the rationale for compensation setting process and outcomes, including omission of material contracts, agreement or other shareholder disclosure documents.

Q4 Are there any other specific items we should list as possibly material information?

We note that the proposed disclosure requirement does not include an item requiring that companies discuss whether the board of directors has considered the implications of the company's compensation policies and practices related to non-financial risks, specifically environmental and social performance risks. We would recommend that the supporting commentary include as an item that could materially increase risks to the company:

- compensation policies and practices that do not include effective risk management of environmental or social issue risks, which may include compensation policies and practices that provide risk mitigation through maximization of environmental or social issue opportunities.

Increasingly, institutional investors are stressing the need for disclosure regarding the extent of the board's oversight of non-financial risk, and if and how executive compensation is linked to environmental and social issue performance.

3. Disclosure regarding Executive Officer and Director Hedging

We highly support and recommend the proposed amendment that would require inclusion in the CD&A of information disclosing whether any named executive officer or director is permitted to use hedging investment vehicles for the purpose of offsetting any decrease in the value of equity securities granted as compensation. We believe that the proposed disclosure would provide extremely important information to investors, which is difficult to track due to the use of off-market transactions.

The increase in variable equity-based compensation in recent years has given rise to the creation of substantial wealth in the form of company stock in the hands of company insiders - executive officers and directors. The use of equity-based compensation is meant to align the interests, or portfolio risk, of company executives with that of shareholders. When considering the ability of shareholders to minimize investment risk through hedging instruments versus the ability of management and directors to offset risk related to equity received as compensation, there are two important differences. The use of derivative instruments to hedge downside risk undermines the incentive value of compensatory stock awards. In addition, academic research[1] evidences that abnormal gains have been achieved by directors and executives as a result of hedging arrangements that raise serious concerns regarding the use of inside information.

The proposed required disclosure is consistent with the requirements of the recently enacted Dodd-Frank Act in the U.S. that requires the SEC to institute rules requiring disclosure of employee and director hedging policies for reporting issuers. At a minimum, investors should have information regarding a company's hedging policy, if any, as it would apply to directors and named executive officers.

4. Disclosure of fees paid to compensation advisors

As indicated in our comment letter in response to proposed amendments to executive compensation disclosure in 2007, we wrote, " *ISS also submits that the CD&A should include a requirement for disclosure related to compensation consultants retained by the Compensation Committee, identifying the firm, terms of engagement, fees paid for compensation plan consulting performed for the Committee, as well as all other fees paid to the same firm for consulting services provided to the board or management for other services. The disclosure of fees paid to external audit firms has had a profound effect on the auditor conflict issue and ISS believes that transparency of compensation consultant fees will have the same reducing effect on the compensation consultant conflict issue that has been well publicized recently."*

Transparency related to paid mandates of compensation consultants and their affiliates should quell shareholder concerns regarding conflicts.

Q5 Should we impose a materiality threshold in disclosing the fees paid to compensation advisors based on a certain dollar amount?

A materiality threshold is difficult to establish due to various factors such as the breadth of the Canadian market in terms of company size and stage of development. As well, the nature of

[1] See "An Analysis of Insiders' Use of Prepaid Variable Forward Transactions" by Alan D. Jagolinzer (Stanford University), Steven R. Matsunga (University of Oregon), and Eric Yeung (University of Georgia), May 2007, accessible at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=816945.

work conducted and the overall impact of services provided to management and/or the board need to be considered. For instance, ongoing management consulting commitments may end up below the established annual threshold (and therefore not require disclosure) but actually be higher than the annual amount paid for board-related services (if also under threshold). In addition, annual management consulting fees could result in more lucrative compensation amounts than board consulting fees when disclosed annually if calculated over the long term. Once a threshold is set, it is essentially impossible for shareholders to ascertain whether a fee was paid if below threshold and if so, whether the amount paid was closer to zero or closer to the established threshold. This makes it even more difficult for investors to determine whether or not a potential conflict of interest exists. As such, establishing thresholds may actually result in inaccurate or incomplete information being disclosed to investors. Investors should be able to evaluate all aspects of the work conducted by a compensation advisor and determine whether or not there is reasonable potential for conflict of interest concerns. Without having access to all the available information possible, this determination could be jeopardized. As such, all information pertaining to compensation consultants' fees should be disclosed irrespective of the amounts involved. It is worth noting that fees paid to external auditors for services unrelated to the company audit are not subject to a disclosure threshold.

B. ITEM 3 – Summary Compensation Table (SCT)

1. Format

The ability of investors to evaluate and compare compensation relative to peer companies is dependent on consistency of disclosure of all elements of the annual executive compensation. ISS supports the CSA's move to clarify that the format of the SCT may not be altered by adding columns or other information.

2. Reconciliation to "accounting fair value"

We also support the proposed amendment to subsection 3.1(5) to require all companies to disclose in a footnote to the SCT, the key assumptions and estimates used in calculating the grant date fair value of all equity-based awards along with a discussion of the methodology used for the calculation and the reason for using the methodology chosen, regardless of whether there is any difference with the accounting fair value.
The current requirement results in disclosure only *if* there is a difference between grant date fair value and accounting fair value. We believe information regarding the methodology used and reason it was chosen, as well as the key assumptions used are all important in order that shareholders better understand compensation decisions.

ITEM 5 – Pension Plan Benefits

1. Non-compensatory amount for defined contribution pension plans

(i) Personal registered retirement savings plan (**RRSP**)

Having an amendment to clarify "All other compensation" includes RRSP contributions made by an employer on behalf of an employee is welcomed. Although both RRSP and pension plans are retirement savings vehicles, they are subject to different regulatory and taxation regimes. Unlike registered pension plans, RRSPs do not require registration with any minimum standards jurisdiction and vesting of employer monies is immediate. In addition, from the perspective of personal taxation, employer RRSP contributions are deemed as additional employment income, drawing employment insurance, and C/QPP contributions.

(ii) Tabular disclosure of non-compensatory amounts

Notwithstanding the various hybrid pension plans, the fundamental difference between DB and DC pension plans lies in their relative positioning on the risk-sharing spectrum. DC plan participants shoulder both investment and longevity risks in entirety; whereas under DB plans, employers (plan sponsors) assume these two uncertainties.

This distinction is evident in the accounting treatment of these two plan types. DB sponsors, with the uncertain liabilities stemming from their guarantees of pension benefits, follow a complicated financial recognition regime involving actuarial valuation on accounting basis and a pension asset (liability) on the balance sheet. On the other hand, a DC plan sponsor's financial responsibility is limited to its annual contributions, which is simply expensed for the year.

From an investor's point of view, the chief relevant figure is the financial commitment made by sponsors. For DC plans, it is the annual employer contributions ("Compensatory" figures) as stipulated by plan provisions or in employment contracts. Augmenting the table with DC contribution formala(e) for each respective NEO will foster comparability of the compensatory element.

The "Non-compensatory" figures, defined as employee contributions and regular investment earnings, can mislead some readers, unless sufficient information is there to stress the extent of employer obligation. First and foremost, unlike their DB cousins, DC plan sponsors do not guarantee, as monetary commitment goes, investment returns[2]. Second, albeit investment returns depend on the underlying investments menu offered by sponsor, in most cases, DC plan members are permitted to direct or switch their monies among the various investment funds on the menu, tailoring the expected return according to individual risk aversion level. Consequently, to aid comparability, disclosure of the underlying annualized rates of return would be desirable. Likewise, the accumulated values at the beginning of the year do not represent the company's pension rewards for the NEO.

For companies with both DB and DC pension plans, readers will be inclined to cross-compare the two types of pension contracts. Having the two tables similarly structured encourages comparison by simplification and standardization. However, any such exercise is only useful when readers are keenly aware of the nature of the items they wish to compare. Should the tabular format for DC plan remain in its suggested form, additional information should be added to assist readers in making meaningful comparison, particularly in respect of the risk-sharing responsibility between employees and employers.

F. Other Issues

Timing of Awards

We have noted a significant challenge with respect to disclosure of equity awards versus their relevance to performance in a year other than the year of grant. For example, many companies make equity grants near the beginning of each year, which are then part of the disclosure of that year's reported compensation. However, it is sometimes indicated that the grants (generally a portion of total grants for the current year) relate to company or executive performance evaluated in the immediately preceding year. This disconnect is problematic for shareholders attempting to assess the link between pay and performance. The value of equity grants and awards generally represents a substantial portion of top executives' pay, and if the grants are made subsequent to the "performance" year, disclosures may distort the pay-for-performance link. This becomes a

[2] For the variation of DC plans where the employer would guarantee a minimum annual rate of return, such guarantee should be accounted for as "Compensatory".

more significant challenge with the advent of shareholder advisory votes on executive compensation.

In late2009, the Washington based Center on Executive Compensation[3] attempted to address this disclosure disconnect with the recommendation that a company's CD&A provide two tables along with a short executive summary, the first of which would disclose actual pay earned in the reporting year and the corresponding performance that earned it, and the second table would disclose the estimated potential future pay from long-term incentives, compared with the performance required to earn the estimated amounts. We find the "Pay for Performance at a Glance" approach contemplated here to be a potentially useful and beneficial addition to the current disclosure requirements and would encourage further examination of the Center's recommendation in this regard.

Alternatively, in the absence of the Center's approach, companies should be encouraged to clearly denote in the CD&A how the size and terms of equity-based awards are determined with respect to performance and other factors, and whether grants reported in the SCT are relevant to a previous year's performance. If that is the case, the company should separately disclose the number and value of the stock and option awards made in the current year that are related to service in the most recently completed year, for shareholders to consider when evaluating the pay for performance link.

Special Meetings

In reviewing the proxy circulars of several hundred TSX reporting issuers on behalf of our institutional clients, the issue of "special meeting" disclosure has surfaced as a concern. A company asking shareholders to approve a compensation plan (new or materially amended) should not have the ability to circumvent the intent of the executive compensation disclosure requirements in NI 51-102. If nine months have passed since the company's annual meeting materials were published, which would have included disclosure as to executive and director compensation policies and practices, and the company has included a new or substantially amended equity plan proposal on the special meeting agenda, shareholders should have the benefit of updated information with regard to equity awards granted since the annual meeting disclosure and total equity granted under all compensation plans (overhang). This becomes even more of an issue and very important information when directors and/or senior executives have discretionary authority to make equity compensation grants under one or more plans. A reporting issuer should not have the ability to use a special meeting to sidestep disclosing information necessary for shareholders to assess the compensation plans they are being asked to approve.

In closing, thank you for the opportunity to comment on the proposed amendments.

Respectfully submitted,

Debra L. Sisti,
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[3] www.ExecComp.org Pay for Performance at a Glance: A Simpler, Clearer Model for Explaining CEO Compensation in Proxy Statement, November 2, 2009