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Montréal, February 16, 2011

BY EMAIL

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

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Dear Sirs/Mesdames:

RE: Proposed Amendments to Form 51-102F6 *Statement of Executive Compensation* and consequential amendments

This letter is submitted in response to the Request for Comments (the "**Request for Comments**") published by the Canadian Securities Administrators (the "**CSA**") on proposed amendments to Form 51-102F6 *Statement of Executive Compensation* ("**Form 51-102F6**") and certain consequential amendments (collectively, the "**Proposed Amendments**"). It reflects the comments generated by a working group of capital market participants having a combined market capitalization of more than $100 billion (the "**Participants**").

I. GENERAL

The Participants generally support the CSA's aim to enhance the quality of information on executive compensation provided to investors by clarifying existing disclosure requirements. However, they are concerned about certain aspects of the Proposed Amendments, as described in this letter. Our general comments are in the same order as the headings outlined in the Request for Comments and are followed by our answers to the specific questions raised by the CSA in the Request for Comments.

II. GENERAL COMMENTS

1. <u>Serious Prejudice Exemption in Relation to the Disclosure of Performance Goals or Similar Conditions</u>

The CSA propose to amend subsection 2.1(4) of Form 51-102F6, which provides an exemption from disclosing performance related goals used in executive compensation. Under the proposal, an issuer would be required to (i) explicitly state in its Compensation discussion and analysis ("**CD&A**") that it is relying on the "serious prejudice" exemption; and (ii) explain why disclosing the relevant performance goals or similar conditions would seriously prejudice its interests. While the CSA has indicated as a result of their disclosure review that it is difficult to determine why the exemption is being relied upon, most of the Participants felt they already provided such disclosure.

More importantly, the Participants are concerned with the proposed presumption to the effect that an issuer's interests should not be considered to be seriously prejudiced solely by disclosing performance goals or similar conditions if those goals or conditions are based on broad corporate-level financial performance metrics, such as earnings per share, revenue growth and earnings before interest, taxes, depreciation and amortization ("**EBITDA**"). The Participants strongly object to this new provision. An issuer should not be precluded from relying on the current exemption where the issuer has tied a named executive officer's ("**NEO**") compensation to financial performance metrics targets such as EBITDA.

There is a fundamental difference between disclosing general financial information and financial targets used for setting compensation. For example, targets used for compensation are frequently subject to exceptions and not in accordance with GAAP/IFRS. In addition, targets used for compensation are often based on the results of a NEO's business unit, division or subsidiary. The disclosure of compensation targets to competitors may often, in itself, be detrimental to an issuer's interest. Aggressive performance goals (i.e. "stretch targets") designed to encourage executive performance are often very sensitive and subjective information. In most cases, they should not be disclosed, even on an historical basis.

Furthermore, many issuers do not currently provide any earnings or other guidance to shareholders and resist doing so. Those who provide such guidance must comply with securities rules regulating the use of future-oriented financial information (“**FOFI**”). The disclosure of targets used for setting compensation may be perceived by the market as FOFI. In addition, the disclosure of such targets could require issuers that operate through divisions or subsidiaries and which disclose financial information on a consolidated basis to disclose financial information on an unconsolidated basis. Issuers should not be forced to provide such information.

2. Risk Management in Relation to the Issuer’s Compensation Policies and Practices

Citing recent amendments to U.S. executive compensation disclosure introduced in 2010 by the SEC, the Proposed Amendments require enhanced disclosure about an issuer’s compensation policies and practices for all employees if they create risks that are reasonably likely to have a material adverse effect on the issuer. The Proposed Amendments provide that issuers disclose in their CD&A whether the board of directors considered the implications of their compensation policies and practices on the issuer’s risk profile. If an issuer has completed a risk analysis, subsection 2.1(5) of the Proposed Amendments requires it to discuss and analyse its broader compensation policies and, more specifically: (i) the nature and extent of the board’s role in the risk oversight of compensation policies and practices; (ii) any practices used to identify and mitigate compensation policies and practices that could potentially encourage an NEO or individual at the principal business unit or division to take inappropriate or excessive risks; and (iii) the identified risks arising from the policies and practices that are reasonably likely to have a material adverse effect on the issuer.

With respect to the disclosure of material risks, most Participants were of the view that the current requirements relating to risk factor disclosure prescribed by Forms 51-102F1 *Management Discussion & Analysis* and 51-102F2 *Annual Information Form* are broad enough to cover material risks, including those related to compensation. The compensation risks that are “reasonably likely to have a material effect on the company” should not be required to appear in the CD&A if they are not required to be listed in the Management Discussion & Analysis or the Annual Information Form.

With respect to the new commentary following subsection 2.1(5) of the Proposed Amendments which requires an issuer to disclose whether it will be making any significant changes to its compensation policies and practices in the next financial year, the Participants were of the view that this disclosure would be a very difficult and delicate exercise to undertake. Disclosure requirements are generally historical in nature and it is inappropriate, in this context especially, to require forward-looking information.

Finally, we would suggest that subsection 2.1(5) refer to the board of directors “or one of its committees” to recognize that compensation-related duties can be and often are indeed delegated. In other instances, the word “committee” is used where it should again be the “board of directors or one or its committees”. We would recommend reviewing the form to improve consistency.

3. Disclosure Regarding Executive Officer and Director Hedging

Most Participants were of the view that requiring disclosure on whether NEOs or directors are permitted to engage in hedging activities is not useful to an investor. The insider reporting requirements on SEDI already require issuers to provide disclosure of transactions of this nature made by NEOs and directors. Should the CSA nevertheless decide to include such a requirement in Form 51-102F6, it should not focus on whether any NEO or director is permitted to purchase financial instruments but whether or not any NEO or director has in fact done so, which is the important disclosure to the market. This would nonetheless be duplicative since it is precisely the type of information that is disclosed on SEDI.

4. Disclosure of Fees Paid to Compensation Advisors

The Participants are of the view that a threshold should be met before compensation advisors fee disclosure is required. Similar to the 2010 SEC Executive Compensation Disclosure Amendments, we would suggest that if the board of an issuer has engaged a compensation consultant to provide executive and director compensation consulting services to the board, fee disclosure be only required if the consultant or its affiliates also provide other services to the issuer and the fees paid for the other services exceed $120,000 for the issuer’s fiscal year. Like the SEC, we believe that when aggregate fees paid to the compensation consultant are limited, the potential conflict of interest is likely to be commensurately reduced. As in the US, if both the issuer and its board of directors have different consultants and the board consultant does not provide services to management, then no disclosure should be required of these fees.

5. Methodology Used to Calculate Grant Date Fair Value of Equity-Based Awards

Participants are of the view that they should be allowed to make a cross-reference to their financial statements with respect to the methodology used to calculate grant date fair value of equity-based awards. Such methodology is often very complex and lengthy and often needs to be qualified by assumptions that are described in the financial statements. Such disclosure should be read in the appropriate context.

6. Amount Realized Upon Exercise of Equity Awards

The Participants agree with the CSA that executive compensation disclosure should be focused on a board’s compensation-based decisions rather than the executive officers’ investment decisions and that sufficient information is already available on SEDI with respect to amounts realized by NEOs upon exercise of equity awards.

Any requirement to disclose amounts realized upon exercise of equity awards would not be in line with the philosophy of Form 51-102F6 and would be duplicative and confusing. The current disclosure requirements with respect to grant date fair value already assume that the issuer takes into account the fair market value of equity grants. A requirement to disclose the amount realized upon exercise of equity awards is duplicative and misleads the reader to think that the executive has obtained a new benefit from the issuer, where the expected benefits were already disclosed at the time of the grant.

7. <u>Other comments</u>

(a) Plain Language

Subsection 1.3(10) of the Proposed Amendments states that information should provide a reasonable person an understanding of “how specific NEO and director compensation relates to the overall stewardship and governance of the company”.

We believe this new requirement is unclear and confusing. It seems to tie compensation disclosure with board and NEO fiduciary duties. These duties exist under corporate law and we do not see why a disclosure requirement relating to their performance should be included in Form 51-102F6 and especially in the “Plain Language” section.

(b) Skills and Experience

With respect to the amendments contained in subsection 2.4(2) requiring an issuer to disclose the “skills and experience that enable the committee to make decisions on the suitability of the company’s compensation policies and practices that are consistent with a reasonable assessment of the company’s risk profile”, we believe that the disclosure should refer to the “board of directors or a committee of the board”. In addition, it would be helpful to provide guidance on the expected disclosure. Such guidance could be similar to the one that exists under Part 4 of Companion Policy 52-110 to National Instrument 52-110 *Audit Committees* (“**CP 52-110**”) with respect to financial literacy, financial education and experience. From a substantive point of view, the proposed requirement seems to be more difficult to meet and less clear than what is required under NI 52-110, since it refers to a “reasonable assessment of the company’s risk profile”. We would suggest to amend item 2.4(2)(c) so that it reads “describe the skills and experience that enable the board of directors or a committee of the board to make decisions on the suitability of the company’s compensation policies and practices;”.

(c) Definition of NEO

Paragraphs (c) and (d) of the definition of "Named Executive Officer" contained in Form 51-102F6 refer to executive officers of the company "including any of its subsidiaries". We believe that it should be clarified that it is only to the extent that those executive officers have policy-making functions at the issuer level that they should be considered as "Named Executive Officers". Otherwise, irrelevant information may be communicated to shareholders in cases where a non-material subsidiary has done extremely well and one of its executives has received a bonus or other compensation that would exceptionally make him or her a NEO. As a collateral effect, some of the executive officers who would normally be included as NEOs would not appear in the disclosure of the issuer if one year, for peculiar reasons, an executive officer of a subsidiary has a very high compensation. The required performance graph would also include different NEOs from one year to the other, which would affect comparability.

Some issuers have subsidiaries which are themselves reporting issuers. We believe that in those cases, executive officers of those subsidiaries should not be considered NEOs of the parent company unless they play a policy-making role at the parent company level.

(d) Summary Compensation Table

We noticed that the CSA propose to remove, under the commentary following item 3.1(5) of Form 51-102F6, the concept relating to what the "board of directors intended to pay" with respect to share-based and option-based awards. The CSA would instead require that disclosure reflect what the company paid, made payable, awarded, granted, gave or otherwise provided as compensation on the grant date. Many of the Participants object to this change as they find the current wording to be more in line with the philosophy behind the compensation disclosure rules. For instance, in cases where an issuer approves multi-year awards, the issuer may determine that a third of the award would take effect in the first year, another third in the second year and the balance in the third year of the board decision. In these circumstances, the issuer would normally disclose each grant in the year it comes into effect. In that example, the effective date of the award is not to be confused with its vesting date, which could occur later. In many companies, board members are of the view that it is more convenient to plan many years in advance. Under the Proposed Amendments, such planning would be more difficult as the full value would likely have to be disclosed in the year the board decision is made (as opposed to the effective date of the award).

III. SPECIFIC REQUESTS FOR COMMENTS

Our comments below relate to the questions set forth in the Request for Comments.

1. *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 disclosures to investors?*

   As mentioned above, we believe that the information required to satisfy the material risk disclosure under Forms 51-102F1 and F2 is sufficient. Philosophically, we do not see why prevalence should be given to risks related to compensation policies and practices over other types of risks. The Canadian markets have not suffered from exuberant compensation practices to the same extent as other economies. We question the necessity for adopting a remedy when the same concerns do not exist in the Canadian context.

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

   The CSA seem to have been inspired by the US guidance in that respect. The examples provided are indeed situations that could increase risks to the issuer.

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

   We think the list provided is generally relevant and sufficiently detailed.

4. *Are there any other specific items we should list as possibly material information?*

   Please see the response to question number 3 above.

5. *The proposed disclosure requirement calls for disclosure of all fees paid to compensation advisors for each service provided. Should we impose a materiality threshold in disclosing the fees paid to compensation advisors based on a certain dollar amount?*

   Yes.

6. *Does the disclosure of the non-compensatory amounts for defined contribution plans that an NEO may elect to make with funds received from their salary (currently required by subsection 5.2(3)) provide appropriate and relevant information for an investor?*

   No, we do not think it provides relevant information for an investor.

7. *If we removed column (d) of section 5.2, which would limit the disclosure to the compensatory amounts such as employer contributions and above-market or preferential earnings credited on employer and employee contributions, would this provide adequate transparency of a company's pension obligations to its NEOs?*

   Yes, we believe that the remaining disclosure requirements are sufficient.

IV. CONCLUSION

The Participants generally support the clarifications described in the Proposed Amendments. However, as discussed in this letter, certain specific requirements should be amended or removed. Finally, as a general comment, we believe that issuers would benefit from a simplification of the rules and that the CSA should focus on avoiding duplications and removing regulatory burdens to issuers.

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If you have any questions concerning these comments, please contact Thierry Dorval at (514) 847-4528 (direct line) or by e-mail at tdorval@ogilvyrenault.com or Tracey Kernahan at (416) 216-2045 (direct line) or by e-mail at tkernahan@ogilvyrenault.com.

Yours very truly,

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