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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, Government of Nunavut

Attention:

John Stevenson, Secretary
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Anne-Marie Beaudoin, Corporate Secretary
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16 February 2011

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

Ladies and Gentlemen:

This letter is submitted on behalf of Mercer (Canada) Limited ("Mercer") in response to the Canadian Securities Administrators' (CSA) request for comment on Proposed Amendments to Form 51-102F6 *Statement of Executive Compensation* (issued November 19, 2010 and referred to herein as the "Proposed Amendments") regarding proposed amendments to the rules governing the disclosure of information about the compensation of executive officers and directors in management information circulars.

Mercer, along with its affiliates operating under the Mercer name, comprise 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 Amendments: to improve the disclosure shareholders receive regarding executive compensation and corporate governance contained in Form 51-102F6 *Statement of Executive Compensation*.

In light of the CSA's findings from its 2009 compliance review of executive compensation disclosure as well as recent amendments to the executive and director compensation proxy disclosure rules of 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 Amendments and sought alignment with them, where appropriate. There are significant benefits to alignment, particularly from a business perspective, such as maintaining a relatively uniform North American securities market.

However, we note there are a few aspects of the Proposed Amendments that depart from the US Rules, including with respect to the disclosure of information about the compensation consultant relationship. In addition, we believe some of the Proposed Amendments will result in disclosure that is too detailed and may not enhance shareholder understanding of companies' executive compensation arrangements and the nature of the consultant relationship.

Our primary concern is that several of the proposed provisions are anticompetitive. In particular, the provisions requiring pre-approval of other services provided by the consultant to the company and disclosure of fees paid to the consultant for compensation consulting and other services have the potential to severely disadvantage multi-service firms. The "cumulative" effects of these provisions could result in a market dislocation greater than what the US has seen between classes of consultants.

We believe the Proposed Amendments will create an unlevel playing field for multi-service firms compared to boutique consulting firms and discourage companies from using multi-service firms to provide consulting advice in more than one area. This would decrease the consulting resources available in the market, and may discourage multi-service firms from providing executive compensation services. This outcome is contrary to the interests of investors who benefit from the breadth and depth of resources that large, global multi-service firms such as Mercer bring to the issues of executive and director compensation. Furthermore, companies would likely turn to single service boutique consulting firms that would not typically provide any other services to the company, yet these firms may be influenced by the high percentage of revenues that a single client may represent.

We believe the economics of the compensation consulting business differ from the audit model. Audit fees for large companies can be very substantial (e.g., in the hundreds of thousands or millions of dollars per year) and the relationships last for multiple years because it is costly and onerous to change auditors. If an audit firm is precluded from performing other services for a given company, the audit fees still provide a healthy revenue stream from that company. On the other hand, executive compensation consulting fees for service to committees of large companies may only be in the tens or very low hundreds of thousands of dollars, while the revenue opportunity for human resource consulting services with a large company may be substantially more. Further, while companies may not choose to go out to bid on compensation consulting every year, the work is always at risk. It is neither particularly expensive nor burdensome to change consultants.

As a result of these economics, Mercer is generally unwilling to accept compensation committee engagements that are conditioned upon agreeing that Mercer or its affiliates will be excluded from other opportunities with the company. Therefore, an independence requirement, whether mandated directly or done indirectly through fee disclosure, may reduce competition in the consulting industry and reduce client choice.

This is not hyperbole. There has been evidence of this effect in the US consulting market as a result of the SEC fee disclosure rules. It is already occurring in the US as some directors are avoiding criticism by not using a firm also used by management for other services – a trend that will likely be exported to Canada with the proposed fee disclosure. In the US, the multi-service firms have lost market share according to Equilar's Executive Compensation Trends July 2009, which reported that the single service boutiques had a 39.3% market share in 2008, up from 35% in 2006.

This diminished choice has adverse implications for executive compensation program design. Only the large multi-service firms have global knowledge and presence, have the financial resources to invest in substantial databases and research, and the depth of talent to staff intensive projects such as those involving a merger or acquisition. As companies are being asked to assess risk in their incentive plans, multi-service firms have the analytic tools and the business consulting expertise to assist them.

Although we view other aspects of the Proposed Amendments as generally furthering shareholder understanding of executive pay and corporate governance matters, there are a few aspects of the Proposed Amendments that could be clarified or modified to further enhance the quality and transparency of executive pay disclosure. Accordingly, we are providing the following specific comments and suggesting the following changes to better achieve the CSA's stated objectives:

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

1 – Subsection 2.1(4) - Serious prejudice exemption in relation to the disclosure of performance goals or similar conditions

The Proposed Amendments would require an explicit statement when a company is relying on the serious prejudice exemption and an explanation of why disclosing the relevant performance goals or similar conditions would seriously prejudice the company's interests.

We support the serious prejudice exemption from the requirement to disclose performance goals and do not object to the proposed requirement that companies explicitly state when they are relying on the exemption. However, we are concerned that the rules do not include an explicit exemption from the requirement to disclose performance goals on a forward-looking basis for multi-year plans before the performance period has ended. Providing this clarification in the rules would be consistent with an informal position expressed by SEC staff

that companies do not need to disclose performance targets for ongoing pay programs in their CD&A.

Requiring the disclosure of specific information on performance targets for multi-year plans 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 provide investors more detailed disclosures, 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.

2 – Subsection 2.1(5) - Risk management in relation to the company's compensation policies and practices

An important component of the Proposed Amendments would require disclosure of whether the board of directors considered the implications of the risks associated with the company's compensation policies and practices and if the company has completed a risk analysis.

The Proposed Amendments would significantly expand pay policy disclosure by requiring companies to address compensation risk in their proxy circulars. However, it is not clear from the actual text of the Proposed Amendments, nor from the explanatory summary of the proposed changes, whether this new risk disclosure covers just NEO plans or broad-based plans as well. The summary of the Proposed Amendments states the proposal "would require a company to discuss and analyze its broader compensation policies and practices",

and references the US Rules that require disclosure in proxy and information statements about the company's compensation policies and practices for all employees if the compensation policies and practices create risks that are reasonably likely to have a material adverse effect on the company.

We recommend that the requirement be limited to NEOs to simplify the risk assessment and related disclosure and that this be clarified in the final rules. The premise for the US Rules was apparently to address the economic turmoil at that time, and the perception that incentive plans in the financial services sector contributed to excessive levels of risk. However, it is not clear that incentive plans at Canadian companies had a similar adverse effect and, thus, taking a one-size-fits-all approach and extending this beyond the executive level to include all employees or even all business unit executives at all companies in all industries may not result in the most effective disclosure. It could also be costly for companies to implement and without a commensurate benefit to investors.

3 – Subsection 2.1(6) - Disclosure regarding executive officer and director hedging

We support the proposal to require companies to disclose whether NEOs or directors are permitted to purchase financial instruments that are designed to hedge or offset a decrease in the market value of equity securities granted as compensation or held by the NEO or director. This disclosure is consistent with new US requirements, which are likely to be in effect for the 2012 proxy season, under the Dodd-Frank Wall Street Reform and Consumer Protection Act that companies disclose their hedging policies and is consistent with Canadian best practice disclosure, as noted by the Canadian Coalition for Good Governance in its report on *Best Practices in Executive Compensation Related Information (2009)*.

4 – Section 2.4 - Disclosure of fees paid to compensation advisors

The Proposed Amendments would require disclosure of information about compensation advisors and the process by which the board of directors determines compensation for the company's directors and officers in a new "Compensation Governance" section of the proxy circular. The disclosure regarding compensation advisors would include all of the information currently required under National Instrument 58-101 as well as a breakdown of all fees paid to compensation advisors for each service provided and other details about the consulting relationship, and is intended to be consistent with the disclosure currently required in National Instrument 52-110 *Audit Committees* for audit-related, tax and other fees.

The current rules under NI 58-101 require that if a compensation consultant or advisor has, at any time since the beginning of the company's most recently completed financial year, been retained to assist in determining compensation for any of its directors and officers, the company must disclose:

- the identity of the consultant or advisor
- a brief summary of the mandate for which they have been retained
- any other work the consultant or advisor does for the issuer, including a brief description of the nature of the work.

We support the proposal to move this disclosure from the Corporate Governance section of the proxy statement into the CD&A since many companies currently include this disclosure in the CD&A. However, there are other aspects of the Proposed Amendments regarding compensation consultants that we do not agree with and others that we believe require clarification.

Covered consultants and advisors. We support what appears to be a material change regarding consultants and advisors covered by the disclosure rules. The current rule states that disclosure is required about consultants and advisors "retained to assist in determining compensation for any of the issuer's directors and officers". The proposal modifies this language to require disclosure of compensation consultants "retained to assist the board of directors or the compensation committee in determining compensation for any of the company's directors or executive officers". However, it is not clear if this change would exclude from the proposed new disclosure requirements information about consultants and advisors retained by management that do no work for the board or compensation committee. We support the exclusion from these disclosure requirements of compensation consultants that work solely for management because the potential for conflicts of interest is not significant and, therefore, there is no basis for requiring this disclosure, particularly the disclosure of fees where **all** services performed by the consulting firm are at the behest of management.

Competitive neutrality. We recommend the Proposed Amendments be expanded to cover similar disclosure for legal counsel and other advisors to level the playing field. Legal counsel often advises companies and compensation committees on executive compensation and we believe they should be subject to the same disclosure requirements as compensation consulting firms. A requirement for competitive neutrality would be consistent

with a provision under the Dodd-Frank Act, which addresses independence considerations for legal counsel and other advisors as well as compensation consultants. Competitive neutrality is important to ensure that compensation committees can choose an advisor that is most suitable to their specific needs. The US Congress recognized the importance of giving compensation committees a choice of advisors and included language in the statute that the SEC must identify factors that affect the independence of a compensation consultant, legal counsel or other advisor to a compensation committee. "Such factors shall be competitively neutral among categories of consultants, legal counsel, or other advisers and preserve the ability of compensation committees to retain the services of members of any such category…" We believe the CSA should follow this lead and craft rules that would not have the effect of treating different categories of compensation consultants differently, and would cover legal and other advisors that provide advice on compensation issues.

Disclosure. As discussed below, we do not support certain proposed disclosures – some of which are inconsistent with US rules – that we believe would not be useful to investors and would unfairly target multi-service firms, further diminishing competitive neutrality as described above. We also ask that certain aspects of the proposal be clarified.

- *Consultant's name.* The Proposed Amendments would require disclosure of the name of the compensation consultant or advisor. It is not clear if this would require disclosure of the name of the individual consultant or the consulting firm. We believe disclosure of the consulting firm should be sufficient since most clients are served not by an individual consultant but by a team of consultants, frequently including technical reviewers, researchers, analysts and other professionals who might spend only an hour or two on a specific client. In addition, for most firms, the engagement is between the compensation committee and the consulting firm, and not with a specific individual at the firm. Thus, if issues arise, the committee's recourse is with the firm as a whole, not the individual consultant. We believe a requirement to include individual names would be onerous and of little value to shareholders, and would also be inconsistent with the US Rules which require disclosure of only the firm's name.

- *Retention date.* The Proposed Amendments would require disclosure of when the consultant or advisor was originally retained. We do not support this disclosure because we do not believe this information would be relevant to shareholders and do not understand how this information would benefit them. This requirement is also inconsistent with the US Rules, which do not require disclosure of the retention date.

- *Other services.* The Proposed Amendments would require a statement if the consultant or advisor, or any of its affiliates, has provided any non-executive compensation services to the company and a brief description of the nature of the work. This requirement would apply to multi-service firms that provide a broad range of human resource services to their clients but effectively exempt from disclosure the services of single service boutique operations, which generally do not have the capability to provide services beyond compensation consulting. Accordingly, only the clients of a handful of global, multi-service firms, such as Mercer, would be subject to this disclosure requirement. Further, to our knowledge, because of the size and breadth of our parent company, Mercer is the only firm that would be materially affected by the requirement to disclose fees and services performed by affiliates. This would create a disclosure requirement that is not competitively neutral.

  We recommend that with respect to “affiliates”, the provision of other services be limited to those services provided by affiliates that provide human resource-related services and not include other affiliates outside the human resources realm. For example, an affiliate of Mercer might provide services to a company but the individual Mercer consultants working for the company are often unaware of the relationship between Mercer and the affiliate. Although excluding affiliates that do not provide human resource services would be inconsistent with the US Rules, we believe it is a more appropriate approach to provide a level playing field among advisors while still providing shareholders with the information they need to make an informed decision on consultant independence.

- *Pre-approval.* The proposal requires disclosure of whether the board of directors or compensation committee must pre-approve other services the consultant or advisor, or any of its affiliates, performs for the company at the request of management. Our concern about this requirement is that, in many cases, particularly with large multi-service firms with many affiliates, companies often are not aware of all of the other services the consulting firm and its affiliates may provide. In addition, for most companies, pre-approval of services provided by the consultant or advisor would be administratively burdensome, since companies would either have to wait to engage an advisor until a previously scheduled board or committee meeting, or would have to convene a special meeting to obtain approval.

- *Fee disclosure.* The Proposed Amendments would require disclosure for each of the two most recently completed financial years (i) the aggregate fees billed by the consultant or advisor, or any of its affiliates, for services related to determining compensation for any

of the company's directors and executive officers, and (ii) the aggregate fees billed for all other services provided by the consultant or advisor, or any of its affiliates, that are not reported under subparagraph (i). A description of the nature of the services comprising the fees disclosed under this category would also be required.

We do not support this fee disclosure provision because it may diminish, rather than enhance, shareholder understanding of the nature of the consultant relationship. Unlike auditors, where the bulk of the work performed and related fees are largely consistent from year to year, the work conducted by compensation advisors can range from ongoing support to the committee to special projects, e.g., related to a new incentive plan design or regulatory requirement, with potentially significant fluctuations in fees as a result. Thus, requiring two years of fee disclosure may only lead to more questions in the absence of a great deal of detail on the work performed by the compensation advisor each year.

In addition, by requiring two years instead of just one year of fee disclosure and fee disclosure for other services without a dollar threshold, the proposal is not harmonized with US Rules. Under US Rules, fees paid to a compensation consultant for executive compensation work and for other services would be required only if the fees for the other services exceed US$120,000 annually. If the consultant does not provide other services to the company or its fees for those other services are below the threshold, no fee disclosure is required, not even disclosure of fees for executive compensation consulting. As with the US Rules, we recommend that a threshold be included in the final CSA rules.

However, in lieu of a dollar threshold, we recommend revenue concentration as a trigger for disclosure of fees along with a requirement to disclose protocols considered by the compensation committee to ensure consultant objectivity. This expanded disclosure (fees and protocols) would be triggered where the consulting firms' revenues from the company (including fees from the committee) exceed 0.5% of the consulting firm's total revenues. In this manner, fees can be put into the context of the consulting firm's total economic relationship with the company, the potential for conflict can be fairly assessed, and investors can see how the committee exercised its judgment to ensure that it is receiving objective advice.

- *Affiliates.* The Proposed Amendments would require companies to disclose fees for services performed not just by the compensation consulting firm but by all affiliated

entities of such firm. In the case of a consultant such as Mercer, which is owned by Marsh & McLennan Companies, the consultant's affiliates may have broad global reach across diverse sectors. The flawed premise of fee disclosure, that disparity between fees is the determinant of objective consulting advice, is put in sharp relief by a structure, such as that at Marsh & McLennan Companies, where affiliated companies have separate management. Executive compensation consultants at Mercer are unlikely to know the nature and scope of services provided by affiliated companies for clients around the world. There can be no conflict where there is no knowledge. And even where there is knowledge, there is no impact on the consultant's compensation since incentives for committee consultants are based solely on executive compensation revenues.

We believe that the consultants' or advisors' policies and procedures designed to prevent conflicts of interest are the most important factors for a compensation committee to consider in evaluating the objectivity of the compensation consultant, legal counsel or other advisor. In particular, we believe the following types of policies and procedures are important to consider:

- Procedures to manage potential conflicts related to the consulting relationship that are incorporated into engagement letters required for all client relationships

- Policies prohibiting the lead consultant who provides services to the committee from reporting to an individual with direct responsibility for expanding services to the client

- Procedures for establishing and documenting clear reporting relationships between the consultant and the committee, and rules regarding whether and how information and recommendations are shared with management team members

- Policies stating that consultants may not be paid bonuses or commissions for sales of other services to companies and their compensation may not depend on the compensation programs they design or the advice they give

- Policies prohibiting consultants from providing gifts or entertainment to or receiving gifts or entertainment from the company or compensation committee members

> The committee should determine that the consultant's qualifications, expertise and protocols ensure that the advice provided to the committee is both objective and of the highest quality available.
>
> Companies may choose to disclose that compensation committees considered the reach of affiliate relationships and the organizational structure of the consultant in determining whether it was obtaining objective advice, but fee disclosure of affiliate relationships will not provide any useful information to investors and could cause competitive harm to the advisor's company. We request that this requirement be eliminated in the final rule. We also request clarification of the definition of "affiliates" for purposes of this requirement since Mercer, as part of Marsh & McLennan Companies, has many related companies providing a wide range of human resources and other services.

B. Item 3 – Summary Compensation Table

B. 1 – Subsection 1.3(2) - SCT Format

We support the clarification that the SCT may not be altered by adding columns or other information and that other tables and other information would be permitted as long as the additional information does not detract from the required SCT.

B. 2 – Section 3.1 - Reconciliation to "accounting fair value"

The proposed amendment to Section 3.1 would replace subsection (5) with the following:

For an award disclosed in column (d) or (e) [of the SCT], in a narrative after the table,

(a) describe the methodology used to calculate the fair value of the award on the grant date, disclose the key assumptions and estimates used for each calculation, and explain why the company chose that methodology, and

(b) if the fair value of the award on the grant date is different from the fair value determined in accordance with IFRS 2 Share-based Payment (accounting fair value), state the amount of the difference and explain the reasons for the difference.

We believe the requirement proposed in subsection 3.1(5)(a) is unlikely to provide useful information to investors, would require significant time commitments for companies to

prepare and for investors to interpret which would outweigh any benefit from its disclosure, and may obfuscate rather than clarify the value of share-based awards. Therefore, we believe it should be deleted for all companies, regardless of the method used to determine awards.

Companies that use IFRS 2 to determine awards. For companies that use the IFRS 2 fair value to determine the number of share-based payments to award, we believe that referring investors to the financial statements is an optimal approach. As stated in the Request for Comments (section B2), some investors refer to a company's financial statement disclosure "to understand the key assumptions and estimates used to calculate the accounting fair value reported in the company's SCT and in its financial statements." Additional disclosure of accounting-based assumptions would result in information that is unwieldy and of little use to investors, as described below.

Under IFRS 2, companies are required to disclose in their financial statements a number of items related to share-based awards, including the weighted average grant-date fair value and, for options, the weighted average assumptions for grants made during the covered year(s). For many companies, individual fair values and assumptions for each NEO's awards are likely to differ from the overall averages disclosed in their financial statements, for the following reasons:

- Companies often use different sets of assumptions to value grants made to different groups of employees, such as a longer expected life assumption to value stock options granted to executives or a lower expected forfeiture rate for executives as compared with the broader employee population that receives share-based awards. Accordingly, the fair values for each employee group may differ.
- Companies often make share-based awards on various dates during the year. The underlying assumptions, such as volatility and interest rates used to value stock options, and resulting fair values, will almost certainly vary from one grant date to another.

To the extent a company has awarded grants to its NEOs on various dates, the proposed amendment would require disclosure for each individual grant – potentially an excessive amount of information. This information overload would be exacerbated for companies that modify outstanding awards triggering incremental fair value, since disclosure of the underlying assumptions would also be required in the SCT.

As a result, the proposed amendment may require investors to wade through extremely detailed data, spurring them to attempt to reconcile SCT disclosure of individual awards' fair values to the weighted averages disclosed in the financial statements – a potentially very time-consuming and futile task.

Companies that use other valuation methods to determine awards. Many companies -- particularly mid-sized and smaller companies, based on our experience – do not use accounting values to determine award sizes. There are a number of arguments against using accounting costs and in favour of alternative approaches to setting compensation levels. For example:

- Accounting costs are estimates of the cost to the company of awarding share-based payments, while compensation levels may be set instead by measuring the value to the employee. Accounting costs assume employees will exercise options early, but the maximum value of an option is realized, according to widely accepted economic doctrine, by waiting until the end of the option's life to exercise it.
- The use of accounting costs to set share-based payment levels may inappropriately reward employees who exercise options early. For accounting purposes, the expected life assumption used in option pricing models such as the Black-Scholes-Merton model is based on a company's historical exercise patterns. To the extent that options are exercised early and produce a lower expected life assumption, the accounting cost of the options, accordingly, will be lower. Thus, a company whose options have a lower accounting cost will be required to award a larger number of options to deliver a targeted competitive value.
- Some sources of market compensation levels, such as surveys, report the value of share-based payments using methodologies other than accounting costs. For example, some surveys report the value of the participating companies' options using the full contractual life, rather than the expected exercise date.

These alternatives to IFRS 2 valuations may require lengthy explanations. For example, in a typical Mercer report on competitive executive remuneration, the section describing the methodology for valuing share-based payments may comprise one or more full pages, including assumptions used to value awards with performance conditions. We believe inclusion of this information would confuse, rather than inform investors. Should the CSA wish to retain a requirement for companies to explain any differences between the accounting fair value and that used to determine the number of share-based payments to award, we recommend leaving subsection 3.1(5)(b) as stated in the Proposed Amendment,

without requiring a detailed explanation of assumptions and methodologies proposed in subsection 3.1(5)(a).

C. 1 – Non-compensatory amount for defined contribution pension plans

Subsection 5.1(4) – Commentary on calculation of annual benefits payable at year-end

We believe the added commentary "the company must assume at year end that the NEO is eligible to receive payments or benefits" provides added clarity.

However, we believe the proposed formula for calculating the benefit to be disclosed is inconsistent with what companies have been reporting. We see two issues with the proposed formula:

1) the phrase "annual benefit payable at the presumed retirement age used to calculate the closing present value of the defined benefit obligation" poses several issues.

   (i) First, the presumed retirement age for present value purposes may not be a single age, rather a company may be assuming probabilities of retirement at various ages.

   (ii) Even where a company may assume retirement at a single age, if the assumption was an early retirement age with the benefit being reduced for early commencement, the proposed wording would imply that such a reduction would be reflected. We believe this would not promote comparability between companies.

2) We believe that using a benefit payable at the presumed retirement age and multiplying by the ratio of years of credited service at year end to years of credited service at presumed retirement age is different than current practice. While this will not change the benefit payable for plans with uniform benefit accrual rates (e.g. 2% of earnings per year of service), it could dramatically change the disclosed benefit for a plan with an irregular benefit accrual rate (e.g. 3% for first 10 years and 2% thereafter) as we believe such plans calculate the benefit payable based on service to year-end.

We also note that some plans pay a flat percentage of earnings regardless of service (e.g., 70%), thus the ratio calculation would need clarification (e.g., the ratio could be 1.00 as there is no credited service or the ratio could be employment service at year-end over employment service at presumed retirement age). If the ratio is supposed to be based on employment

service, we believe disclosing a pro-rated benefit would be misleading to investors, particularly if the NEO was already fully vested in the full benefit.

In summary, we see no need for the proposed formula. We believe current practice is to show an annual benefit payable at normal retirement age using the plan's benefit formula and credited service to year-end, and we believe current practice provides relevant information to investors.

We suggest that in lieu of the proposed amendments, additional clarity could be added by instead revising 5.2(4)(a) to read as follows:

(a) the annual lifetime benefit payable at age 65 in column (c1) based on years of credited service reported in column (b) and actual pensionable earnings through the end of the most recently completed fiscal year. For the purpose of quantifying this amount, the company must assume that the NEO is eligible to receive payments or benefits.

5.2 – Commentary # 2 on RRSPs

Regarding the issue of RRSPs, we see merit in not requiring the inclusion of RRSPs in the defined contribution plans table as companies may not have access to account balances in personal RRSPs and the account balances are not relevant to an investor given that contributions going into RRSPs are limited. Of course any company contribution to an RRSP should be reported in the Summary Compensation Table.

However, the proposed wording refers to "contributions…that are not reported in the defined contribution plans table". Contributions are compensatory which would mean they can be excluded from column (c) of the defined contribution plans table. Presumably, the intent is to also be able to exclude RRSP account balances from columns (b) and (e), but the proposed wording does not say this.

Also, the proposed wording refers to "personal" RRSPs, rather than simply RRSPs. All RRSPs are personal, although some are administered on a group basis and referred to as "group" RRSPs. Employers offering group RRSPs will be left wondering whether this provision applies or not. There should be no difference in reporting for personal or group RRSPs

We suggest the proposed wording in 5.2 – Commentary # 2 be changed to:

Registered retirement savings plans can be excluded from the defined contribution plans table, however, any contributions made by the company or a subsidiary of the company to a registered retirement savings plan on behalf of the NEO must still be disclosed in column (h) of the Summary Compensation Table, as required by paragraph 3.1(10)(i).

and that the word “personal” be deleted from the proposed wording in 3.1(10)(i).

5.2 – Disclosure of Non-Compensatory Amounts

Question 6

We believe the non-compensatory amounts for defined contribution plans are not relevant to investors. However, the accumulated value at year-end of defined contribution plans may be relevant to investors, particularly when a large portion of the accumulated value is an unfunded obligation that is owed by the company to the NEO.

Question 7

The current defined contribution plans table reconciles accumulated values from the start of the year to the end of the year with a split of compensatory and non-compensatory amounts for the year. If the non-compensatory column (d) is deleted, then the accumulated value at start of the year column (b) should be deleted as well, leaving the table to simply show the compensatory amount (currently column c) and the accumulated value at year end (currently column e).

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We appreciate the opportunity to comment on the Proposed Amendments, 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.

Respectfully submitted,

Lisa Slipp
Partner