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VIA E-MAIL AND COURIER

British Columbia Securities Commission
Alberta Securities Commission
Saskatchewan Financial Services Commission
– Securities Division
Manitoba Securities Commission
Ontario Securities Commission
Authorité 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,
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Re: Proposed Amendments to NI 51-102F6

Dear Sirs/Madams:

I am pleased to provide comments on the proposed amendments to Form 51-102F6.

As a general concern, given the significant overall revision of the requirements just two years ago after an extensive consultative process, I believe that it would not be appropriate at this time to make yet another set of changes to the requirements, other than minor clarifications.

Sections 1.1 and 3.1

My previous comment letter on the current Form 51-102F6 noted that the insertion of the new objective as to disclosure of amounts the board intended to pay might be confusing. However, the CSA determined at that time to provide for this additional objective, and the related change to section 3.1 with respect to option value disclosure. Those requirements have now been in place for a couple of years and will be in place for the upcoming proxy season. A number of issuers have provided disclosure in compliance with the provision in section 3.1 relating to option value disclosure and presumably will do so again this year. This disclosure has principally occurred in connection with disclosure of a board's compensation intentions with respect to multi-year option grants, in situations where annual grants of options are not made and the grant was not intended to be compensation for one year only. This has provided better and more useful disclosure to investors to reflect the actual intended annual compensation for the executive consistent with the Form's required disclosure of compensation on an annualized basis. Issuers have accordingly prepared their disclosure in accordance with this instruction to provide appropriate and more meaningful disclosure in situations where such disclosure was appropriate for shareholders and investors. Accordingly, the proposed change should not be made as it is detrimental to appropriate and meaningful disclosure. It is also inappropriate to now change a requirement, with real implications, so soon after its introduction. This is particularly so, as information relating to annual compensation values is presented on a multi-year basis in the Summary Compensation Table and disclosure based on the existing requirements has been made in recent past years based on this approach under the new Form 51-1-2F6. It is accordingly suggested that, even if it is thought desirable to clarify the "objectives" section 1.1, the requirements in section 3.1 relating to the board's intended annual compensation for option disclosure in particular not be changed.

Section 1.2

The proposal to clarify the definition of NEOs to clearly include certain officers of subsidiaries is a useful addition, although it would not appear to change the current requirements.

However, to assist in this clarification, the change is likely better made to the definition of "executive officer" in the definitions section of NI 51-102.

Secondly, the reference to "vice president in charge" in that definition should accordingly be changed to "executive" in charge, to capture presidents of principal business units (or subsidiaries).

However, given the prevalence in Canada of reporting issuers which are in turn subsidiaries of other reporting issuers, there should be a specific exception, in either the definition of NEOs, or in the Form disclosure requirements, for disclosure of executive officers of subsidiaries which themselves are reporting issuers. The parent shareholder may not necessarily be entitled to appropriately obtain such information prior to public disclosure by the public subsidiaries. In addition, such information is more appropriately disclosed by the reporting issuer of which the officer is an executive officer, and which provides such compensation, in the context of the other disclosure by such issuer. (If such officers would otherwise be executive officers for the parent company, they inevitably would be executive officers for the subsidiary reporting issuer.) In this connection, the CD&A of the parent company could do nothing more useful than reference the disclosure of the public subsidiary in any event. Thirdly, such disclosure would at best provide redundant disclosure and possibly confusion as to which entity is paying the amounts and investors "double counting" the same disclosure. It may well also "bump" an executive officer of the parent reporting issuer out of the NEO definition and thus exempt an individual in respect of whom disclosure would otherwise be made.

Section 1.3 (2)

Similar to my comments on section 1.3 in relation to option disclosure, the existing requirements relating to tabular disclosure, adopted after an extensive process, specifically contemplate and permit the addition of columns to the Summary Compensation Table where that does not detract from the prescribed information in the Summary Compensation Table. A number of issuers have relied on this provision in preparing the form of their disclosure with a view to providing additional meaningful disclosure to shareholders. In particular, adding a column to the Summary Compensation Table has allowed a number of issuers to better reference the disclosure in the Summary Compensation Table to their Compensation Discussion & Analysis, providing more meaningful disclosure to shareholders. As the CD&A explanation itself is required to relate

to amounts in the Summary Compensation Table, if the company is of the view that a description and explanation of compensation in the Summary Compensation Table should refer to certain aggregated items so as to reflect the company's actual compensation decision making process and policies to properly fulfil the CD&A requirements, as such CD&A disclosure is to relate to the Summary Compensation Table, it follows such additional columns should be permitted to be included in the Summary Compensation Table. It would be odd to prevent issuers from providing this additional disclosure directly related to fulfilling the CD&A requirements relating to a description and explanation of compensation for the covered year. Protection against addition of a column which is confusing or misleading is provided by the existing conditions for such additions.

Section 2.1 - Compensation Discussion & Analysis Materiality

Unlike the U.S. version of the requirements, and unlike practically all other required disclosure in Canadian securities legislation, no concept of materiality attaches to current Canadian executive compensation disclosure. This is anomalous and provides a confusingly different threshold for de minimus disclosure for this one aspect of disclosure. MD&A requirements contain a materiality qualification and it is appropriate that the parallel requirements relating to CD&A should be similarly qualified. It is suggested that the words "material aspects of" be inserted following the word "include" and preceding the words "the following" in section 2.1(1) so that there is an element of materiality added to the requirements for CD&A disclosure.

Section 2.1 – Serious Prejudice Exemption

The provisions with respect to disclosure of performance objectives were the subject of extensive comment and consideration in the previous recent revisions to executive compensation disclosure rules. These in turn significantly changed the "competitive" exemption previously provided. Substantive requirements such as these should not be constantly changed, for a number of reasons, including consistency over time, and familiarity to investors and issuers.

It is inappropriate in my view to again change these requirements, to further limit the use of the serious prejudice exemption. Requiring issuers to state the basis on which they are not providing certain disclosure is anomalous in securities regulation, as issuers generally are not required to disclose when they are not

disclosing something on the basis the requirements do not require it. For example, issuers are not required to disclose that they have indebtedness of employees or executives, but they have not made disclosure because it is not required because disclosure of routine indebtedness is not required.

Secondly, deeming corporate wide performance measures as not being seriously prejudicial, when in fact they are, substitutes the regulator's views as to serious prejudice to a company (in fact, all companies) in place of the existing objectively applied test. It appears to be over reaching to compel a company to disclose information which is seriously prejudicial to it and its shareholders, especially when the information is of limited use to investors (as the monetary results of the application of the objectives are disclosed) and potentially of maximum use to competitors to the detriment of the company and its shareholders. It also indirectly potentially discloses the companies' future expectations in a way which is out of context and not subject to normal requirements relating thereto.

Proposed Section 2.1(5)

I reiterate my concern as to significant changes to the existing requirements after the extensive process leading up to the relatively recent adoption of the current requirements.

The new proposed disclosure requirements would highlight one aspect of a company's risks, in a document where there is no other risk-related disclosure, and without regard to materiality of the information. If risks relating to compensation practices and policies are material and relevant, they should appear together with the disclosure of the company's other risks in the MD&A, so an investor can see such disclosure in the context of a disclosure of the issuer's business and results. I accordingly question not just the usefulness of this new additional requirement, but the possibility that such disclosure may be misleading.

Section 2.4

As an overall comment, it is not clear that the existing extensive disclosure of the directors' biographical and other experience, and other public company directorships, is not sufficient for purposes of shareholder consideration for elections to the board, and appointment to committees. While shareholders elect the directors, and that is the business of the shareholders meeting, shareholders do not appoint directors to specific committees.

It also assumes as a basic guiding principle that directors should be specifically elected for certain roles based on specific expertise, not generally on their ability to supervise the management of the company, which is at least a debatable proposition.

It is also not at all apparent, if specific skills and experience for compensation committee members in particular are to be identified, why disclosure of those skills and experience are to be limited to the narrow ambit of experience and experience relevant only to making "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". That appears to be an unduly narrow focus on the skills and experience that are relevant to a compensation committee member's duties and responsibilities. If such disclosure is required, should not all experience and expertise relevant to members making decisions as to compensation policies and practices be appropriately disclosed in this case?

Section 4.2

The column for non-equity incentive plan compensation should be deleted. The purpose of the disclosure of the option-based and share-based awards is to show at a point in time subsequent to the grant the value at the time of vesting of such award for items, which were in prior years previously disclosed in the Summary Compensation Table, and accordingly complements such prior disclosure. The non-equity incentive plan compensation column merely reiterates exactly the same amounts shown in the Summary Compensation Table for the current year. Issuers have been required as a practical matter to add footnote disclosure to indicate that the disclosure is of exactly the same amounts as shown in the Summary Compensation Table, to avoid confusion. Duplicate and repetitive disclosure, especially when it can be misleading or confusing, should be eliminated.

Section 5.2

I agree with the proposal to eliminate all but the compensatory information from defined contribution plans table information. The other information is irrelevant to investors, and an unjustified intrusion into the personal investment decisions and assets of executives unrelated to the reporting issuer and its shareholders.

Form 51-102F5 – Indebtedness

As revisions are proposed to executive compensation disclosure, it may also be appropriate to consider appropriate changes to the related matter of indebtedness disclosure, which has not been changed for a number of years. Among the changes that should be considered are:

- restricting the disclosure to NEO's and directors;
- in 10.3(c)(i), increasing the threshold from $50,000 to $250,000, to reflect a more relevant current threshold of materiality;
- in 10.3(c)(ii), substituting "annual cash compensation" for salary. With an continuing emphasis on performance related incentives as opposed to base salary, the restriction of this exemption distinguishes issuers who choose to have larger amounts of compensation based on variable annual compensation, inconsistent with the objection of the exception to relate the loan amount to an executive's annual realizable income; and
- in 10.3(c)(iii), for financial institutions and others in the loan business, the restriction of the exception to persons other than full-time employees results in disclosure of indebtedness which is not particularly meaningful for investors in issuers engaged in the business of extending loans. This exemption should be available to loans made to employees as well, or if not a complete exemption in these circumstances for employees, for loans under a certain amount (e.g. $250,000).

Yours very truly,

John M. Tuzyk

JMT/cml

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