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CONSULTING

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Mr. John Stevenson, Secretary
Ontario Securities Commission
20 Queen Street West
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Toronto, Ontario M5H 3S8

Ms. Anne-Marie Beaudoin, Directrice du secrétariat
Autorité des marchés financiers
Tour de la Bourse
800, square Victoria
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Montréal, Québec H4Z 1G3

Re: Request for Comment on Proposed Amendments to Form 51-102F6 *Statement of Executive Compensation*

Dear Sirs and Mesdames:

Hugessen Consulting Inc. (Hugessen) is pleased to respond to the Canadian Securities Administrators' (CSA) request for comment on proposed amendments to Form 51-102F6 *Statement of Executive Compensation* released November 19, 2010. While we are not convinced that expanded disclosure is needed at this time, we believe that certain clarifications contained in the proposals will provide welcome guidance for issuers in interpreting the existing rules, as we discuss below, and we commend the CSA in its ongoing efforts to improve disclosure in this area. Also, we acknowledge that developments in the US with respect to executive compensation disclosure merit a consideration from Canadian securities regulators given the number of public companies in Canada that are listed on U.S. stock exchanges and the benefits that arise from harmonization between the two jurisdictions.

Hugessen is a leading provider of executive compensation consulting advice to the boards and compensation committees of many large and mid-size issuers in Canada and the United States; as such, we are actively involved in working with our clients to improve their executive compensation disclosure. We have been encouraged to observe the improvements in the disclosure of many Canadian issuers since the current rules became effective in 2009. The benefit of observing the current rules in action for the past two years has provided us with the opportunity to see some of the issues and challenges for our clients presented by the existing rules and where additional clarifications or revisions may be helpful. The observations and suggestions included herein reflect the views of Hugessen after a review of input from our clients.

We have organized our comments based on the order set out in the Request for Comments, by topic and addressing specific questions under those topics. We conclude with Other Issues.

Comments

A. Compensation Discussion and Analysis

1. ***Serious Prejudice exemption in relation to the disclosure of performance goals or similar conditions***

We recognize that the requirement to disclose specific performance goals in respect of the previous fiscal year remains a controversial issue for some issuers and believe that the proposals provide helpful clarification as to CSA expectations. For issuers that struggle with whether the disclosure of certain financial measures would constitute 'serious prejudice' and thus qualify for an exemption under the current rules, the statement that the disclosure of broad corporate-level financial performance metrics will not in itself be considered by the CSA to result in 'serious prejudice' is a useful clarification to the rules. Further, the proposed requirement to have issuers who wish to rely on the exemption explicitly state their reliance and explain why serious prejudice would result from the disclosure of performance goals will assist issuers in formulating and articulating their use of this exemption.

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

Given the increasing focus by shareholders and the wider public following the financial crisis on the connection between corporate risk and compensation, we believe that it is appropriate that the CSA follow the SEC's lead and consider the issue in drafting its proposals.

However, the need for this focus outside of financial institutions is not widely understood and consequently it is not clear what is being asked for under the proposals and what would be involved in compliance. Evaluating the link between executive compensation and risk is a complex issue, one that is only just beginning to be understood. It was pointed out in comments made to the SEC when it proposed disclosure of the link between risk and compensation, that there is a risk that this requirement could result in boilerplate disclosure that would give investors a false sense of comfort regarding risk and risk-taking. We have spoken with a number of our director clients who are skeptical that meaningful information can be provided to investors by this disclosure.

However, if the decision is made to incorporate a discussion of board oversight of compensation-related risk, we believe that the CSA's methodology is preferable to that taken by the SEC, which requires disclosure of policies and practices related to risk management and risk-taking incentives *only if* risks arising from the compensation policies and practices are "reasonably likely to have a material adverse effect" on the company. The better alternative, we believe, is the CSA's proposal to require positive disclosure of whether the board considers the implications of the risks associated with the company's compensation policies and practices. We believe readers would be interested in board policies and practices in place to address risk even when there is no reasonable likelihood of a material adverse effect.

We note that the proposals would expand the ambit of the Compensation Discussion & Analysis ("CD&A") in this area beyond disclosure of compensation related to NEOs to include any "individual at a principal business unit or division". While concern has been expressed that this may extend liabilities associated with CD&A disclosure, it is our view that a meaningful discussion of risk in the context of compensation cannot exclude these other individuals given that they may participate in activities that could present significant risks to the organization. Accordingly, we agree with the CSA's decision to place this discussion in the CD&A rather than move it to another area of disclosure such as the MD&A.

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 disclosures to investors?*

Yes, we believe that understanding the steps that a board has taken to mitigate perverse incentives, that is, incentives that encourage undue risk-taking, is valuable information for investors. It will provide important reassurance to investors that directors have policies and practices in place to identify such incentives, as well as that they are being vigilant in monitoring them.

However, we believe that the proposal may lead to confusion on the part of many issuers who may interpret it to mean a requirement to discuss the inclusion of particular risks into performance measures themselves. Outside of companies in certain industries such as financial institutions and natural resource or extraction firms, where environmental and safety risks can be clearly articulated, it is challenging to think of meaningful examples of this. Some of our clients have expressed a concern that attempts to meet the requirement will lead to boilerplate attempts to satisfy a poorly understood requirement. By clarifying the issue along the lines suggested in the following item, we believe this confusion could be avoided.

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

We suggest adding as a lead-in to the examples provided in section 4 of the commentary, a statement as to the need for issuers to discuss how perverse incentives are dealt with by the board and, to the extent that they cannot be eliminated, the processes in place to monitor them (for example, stress testing incentive payouts under different scenarios, clawbacks).

Also, we note that it is difficult to find examples of performance metrics, apart perhaps from those related to compensation at financial institutions, which include regulatory compliance as referred to in the commentary. It would be helpful if examples could be provided.

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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 it may provide useful guidance to enumerate in the commentary some of the compensation practices that have been shown to be more clearly aligned with incentivizing undue risk-taking, such as:

- Uncapped rewards for the use of leverage

- Incentive programs based on financial results with no payout caps

Q4 – *are there any other specific items we should list as possibly material information?*

We suggest that the commentary specifically list examples of policies adopted to address risk, e.g., clawbacks, forfeiture, hold through retirement provisions, share ownership guidelines, proportion of deferred compensation deferred at least three years.

Just as shareholders will want to know of compensation policies and practices that are likely to expose the company to material risk, they will want to know of those that are in place that are intended to lessen the exposure to risk.

3. Disclosure Regarding Executive Officer and Director hedging

We agree that including a provision requiring a company to disclose its policy on whether NEOs or directors can hedge the company's securities is valuable information for shareholders.

4. Disclosure of fees paid to compensation advisors

We believe that the purpose of any requirement to disclose fees should be to highlight potential conflicts of interest on the part of the compensation advisors. In our view then, the only time that fees need to be disclosed is when (a) a consultant advises on executive compensation, whether to the board or management, and also provides other services to management and (b) the board or compensation committee does not have its own independent advisor, i.e., an advisor providing no services to management. Specifically, if the board advisors provide no services to management, there should be no obligation to disclose their fees or those of any other advisor used by management.

We therefore recommend a rule along the lines of the SEC's, which requires disclosure only in those situations where one firm is doing both executive compensation and other work, and the board has no independent advisor.

We also suggest that the proposal clarify that the "other services" provided by a consultant for which fees must be disclosed refers to any other services at all and not just other compensation services. Currently the proposal says "other non-executive compensation services" which could be interpreted to mean only other compensation-related services and not, for example, actuarial work.

We would like to commend the CSA for its proposal to include a discussion of compensation consultants' fees in the CD&A where it is most appropriate and would encourage that this be expanded so that a discussion of other relevant factors related to consultants, such as the nature of their mandate, also be located in the management proxy circular.

Q5 *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?*

We recommend against imposing a materiality threshold based on a dollar amount. Materiality is subjective and what may be insignificant for a large compensation consulting firm or a client company could nevertheless be significant for a particular compensation advisor, in terms of creating a potential conflict of interest.

B. **Summary Compensation Table**

1. SCT format

We believe that the disclosure of total direct compensation before the inclusion of pension benefits is of widespread interest and thus suggest that the proposal be amended to permit the addition of a column showing this number.

2. Reconciliation to "accounting fair value"

We think that requiring companies to disclose the methodology used to calculate grant date fair value of all equity-based awards, regardless of whether there are any differences with the accounting fair value, is a positive step since this information is helpful to investors' interpretation of the figures shown.

C. **Pension Plan benefits**

1. **Non-compensatory amount for defined contribution pension plans**

Q6 *does the disclosure of the non-compensatory amounts from 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?*

We believe that the disclosure of the non-compensatory amounts for defined contribution plans that an NEO may elect to make with funds received from salary is not appropriate or relevant information for an investor.

Q7 *If we remove column (d) of section 5.2, which would limit the disclosure to the compensatory amounts such as employee 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?*

We believe that the removal of column (d) of section 5.2 would still provide adequate transparency of the company's pension obligations to its NEOs.

F. Other Issues

1. Amount realized upon exercise of equity awards

The old rules in place before the current rules were adopted included a requirement to disclose the aggregate dollar value realized upon the exercise of options or stock appreciation rights. We believe that a return to this requirement would be valuable to readers of the CD&A. While the information is available on SEDI after calculation, the goal of the enhanced disclosure informing the current rules is to make relevant information easily accessible and we would argue that information as to option and SAR exercises is relevant to a complete picture of how NEOs have been compensated. While it can also be characterized as an investment decision on the part of the NEO, it is nonetheless relevant to a complete picture of actual compensation. In addition to the intended grant date value of compensation, investors are also interested in pay actually received since it provides information as to the overall alignment between executive compensation and the shareholders' experience.

2. Disclosure of Board Discretion

The proposal to require disclosure of whether the board of directors can exercise discretion in awarding compensation is a positive change. However, the provision does not clearly state that issuers must disclose how the discretion was exercised, or of what the discretion consisted. We suggest that a requirement to describe the discretion exercised and its rationale be added.

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We appreciate the opportunity to submit our views on the draft proposals and would welcome the opportunity to meet with you to discuss further. If you require any further clarification of the views reflected in this response, please feel free to contact any of the undersigned.

Sincerely,

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