

## **APPENDIX B**

### **Summary of Changes to the 2007 Proposal**

The following summarizes the notable changes to the 2007 Proposal reflected in the 2008 Proposal.

#### **A. THE PROPOSED FORM**

##### **(a) ITEM 1 – GENERAL PROVISIONS**

###### **(i) Objective**

Item 1 now includes a section setting out the objective of the Proposed Form. The Proposed Form is intended to disclose all direct and indirect compensation arrangements provided to a company's CEO, CFO, other highest paid executive officers, and members of the board of directors, for the services they have provided to the company or a subsidiary of the company. We believe that enhanced disclosure will:

- communicate what the board of directors intended to pay or award certain executive officers and directors for the financial year;
- provide insight into a key aspect of a company's overall stewardship and governance; and
- help investors understand how decisions about executive compensation are made.

###### **(ii) Definition of "stock"**

The definition of "stock" has been amended and substituted with "shares", which is a more commonly accepted term in Canada. For the purpose of the Proposed Form, shares include instruments such as common shares, restricted share units, deferred share units, phantom shares, phantom share units, common share equivalent units, stock or any similar instruments that do not have option features.

##### **(b) ITEM 2 – COMPENSATION DISCUSSION AND ANALYSIS (CD&A)**

###### **(i) Generally**

Item 2 requires a discussion and analysis of the executive compensation provided to NEOs (as defined in the Proposed Form) in the most recently completed financial year. The purpose of the CD&A is to provide a narrative overview at the beginning of the form that will put into perspective the disclosure that follows.

In addition to discussing its compensation policies and decisions, as reflected in the 2007 Proposal, companies will be required to analyze and discuss the significant elements of compensation awarded to, earned by, or paid to NEOs (as defined in the Proposed Form). The 2008 Proposal enhances disclosure by requiring companies to provide a discussion of how the board of directors determined the amounts of specific compensation elements paid to the NEOs and why they paid that compensation. In certain circumstances, companies will be required to disclose information about the current period to explain fully compensation decisions made during the most recently completed financial year.

(ii) Performance graph

We have amended the proposed executive compensation form to clarify that companies that have distributed only debt securities to the public are exempt from the performance graph requirements.

In addition, a performance graph is not required for companies that were not a reporting issuer in a jurisdiction in Canada for at least 12 calendar months. We believe that a company that has not been a public company for a 12 calendar months would not be able to prepare a meaningful discussion of the link between executive compensation and the performance graph.

(iii) Performance targets

Among the elements of a company's compensation policies and decisions that may be significant and warrant disclosure is the company's use of corporate and individual performance targets. Disclosure of performance targets used by companies to determine the compensation of NEOs, subject to the limited exemption provided for competitive harm, is necessary to bring about clear and informative disclosure of a company's compensation policies. Because CD&A will be subject to continuous disclosure review, a company relying on the competitive harm exemption may subsequently be required to demonstrate how disclosing specific target information would seriously prejudice its interests. If it cannot demonstrate serious prejudice, the company will be required to disclose the information.

(c) ITEM 3 – SUMMARY COMPENSATION TABLE (SCT)

(i) Plan-based awards

We propose including the grant date fair value of compensation to reflect the value of equity awards. We believe such an approach will more appropriately reflect the value of any awards given to a NEO in a given year and allow investors to assess decisions made by the board of directors.

As such, we have departed from the 2007 Proposal which followed the SEC approach of including in the SCT the value of equity awards equal to the accounting compensation expense for shares, options and other equity-based compensation. To obtain the accounting compensation expense, the fair value amount is amortized over the service

period which is generally the vesting period. Under this approach, cash-settled awards are revalued at year end, which can result in negative compensation in certain circumstances.

The commentary in our 2008 Proposal goes on to specify that the value should reflect what the board of directors intended to award as compensation. This value may be based on the valuation methodologies set in Section 3870 of the Handbook (Section 3870) or another reasonable methodology the board of directors used. We have added subsection 3.1(5) to require disclosure in a footnote to the table or in a narrative after the table, if the grant date fair value is different from the accounting fair value, the amount of the difference and an explanation of the difference. By requiring a reconciliation, our aim is to provide an acceptable benchmark and also to allow for greater comparability between companies. Subsection 3.1(5) also requires a description of the methodology used to calculate the grant date fair value, disclosure of the key assumptions and estimates used for each calculation, and an explanation of why the company chose that methodology.

(ii) Bonus and non-equity incentive plan columns

We have reconsidered how “bonus” and “non-equity incentive plans” in the Proposed Form are disclosed. We have decided that the distinction between bonuses and non-equity incentives could lead to potentially misleading or confusing disclosure. All payouts under non-equity incentive plans must be disclosed in column (f) of the SCT (“Non-equity incentive plan compensation”). This will be the case whether the amount of the non-equity payment was determined in accordance with a predetermined formula, or included discretionary elements.

In response to the comments, we have split the “Non-equity incentive plan compensation” column (f) into two columns based on the length of the performance period associated with the awards:

- column (f1) (“Annual incentive plans”) includes annual non-equity incentive plan compensation such as bonuses and discretionary amounts. Bonuses relate only to a single financial year.
- column (f2) (“Long-term incentive plans”) includes all non-equity incentive plan compensation related to a period longer than one year.

(iii) Pension value

We have departed from the 2007 Proposal of including in the SCT the change in the actuarial value, which combines compensatory and non-compensatory amounts. Instead, we propose including only compensatory values in the pension column in the SCT for both defined benefit and defined contribution plans. This value will be comprised of the service cost and other compensatory amounts.

We also note that Item 6 of the 2007 Proposal has also been revised to provide a disclosure of the total change in pension value, broken out to clearly illustrate the effect

of compensatory and non-compensatory factors. This level of detail will apply to both defined benefit and defined contribution plans.

(iv) Grants of equity awards

We have deleted the table under section 3.2 of the 2007 Proposal in keeping with our decision to use grant date compensation fair value in the SCT. Since compensation grant date fair value will now be captured in the SCT, this table is no longer required.

(d) ITEM 4 – EQUITY AND NON-EQUITY INCENTIVE PLAN AWARDS

The table required by subsection 4.2(1) captures the value of awards that is realized during the year regardless of when they are settled. We have focused on capturing equity based awards at vesting rather than at settlement.

We have added a new column (d) entitled “Non-equity incentive plan compensation – Pay-out during the year” to capture non-equity incentive payments. Non-equity incentive payments are captured when the payment is made.

(e) ITEM 5 – RETIREMENT PLAN BENEFITS

(i) Defined benefit plans

We have departed from the 2007 Proposal, which followed the SEC approach, in favour of a table more aligned with emerging best practices in Canada. We changed the format of the defined benefit retirement plan table so that it now provides a continuity schedule with respect to the accrued obligation to date. To this end, we deleted three columns from the table required under Item 6 of the 2007 Proposal:

- column (b) entitled “Plan Name”;
- column (d) entitled “Present Value of Accumulated Benefit”; and
- column (e) entitled “Payments During Last Fiscal Year”.

As a replacement, we added five new columns to the table required under subsection 5.1(1):

- column (c) entitled “Annual benefits payable”;
- column (d) entitled “Accrued obligation at start of year”;
- column (e) entitled “Compensatory”;
- column (f) entitled “Non-compensatory”; and
- column (g) entitled “Accrued obligation at year end”.

The requirements under these new columns better reflect emerging Canadian best practices in this area.

(ii) Defined contribution plans

We added a new table under subsection 5.2(1) for defined contribution plans, similar to that proposed for defined benefit plans, to provide complete disclosure of NEO pension obligations and provide complete and consistent disclosure of NEO obligations and a better basis to compare across issuers.

(f) ITEM 6 – TERMINATION AND CHANGE OF CONTROL BENEFITS

Item 6 requires issuers to provide detailed disclosure of payments made to NEOs that are related to a triggering event such as their termination or a change of control of the company. This Item now includes a standard set of scenarios where companies are required to disclose payments or other benefits received. We have decided the following four termination scenarios are most appropriate:

- retirement;
- resignation;
- termination; and
- change of control.

Item 6 applies to payments related to changes of control regardless of whether the change of control results in termination of employment. Companies must quantify, describe and explain only the incremental payments and benefits that would be provided in each circumstance. In addition, we are proposing that companies disclose why they structured the significant terms and payments provisions in their termination or change of control arrangements as they did.

(g) ITEM 7 – DIRECTOR COMPENSATION

The revised director compensation table in Item 7 is substantially similar to the SCT and reflects the changes made to the SCT, discussed above. As a result, the types of compensation paid to directors would be disclosed in the director compensation table or in the SCT in the same manner. If a director is also an NEO, compensation received for services rendered as a director will be reflected in the SCT. A footnote to the director compensation table will indicate that the relevant disclosure has been provided under section 3.4.

(h) ITEM 8 – COMPANIES REPORTING IN THE UNITED STATES

We have not changed Item 8 (formerly Item 9 of the 2007 Proposal) and continue to allow SEC issuers (generally, reporting issuers that are also reporting companies in the United States) to satisfy the requirements of the Proposed Form by satisfying certain requirements under the SEC compensation rule currently in force.

(i) **ITEM 9 – EFFECTIVE DATE**

(i) **Generally**

We anticipate that the 2008 Proposal will come into force on December 31, 2008 and will apply to companies with financial years ending on or after December 31, 2008. Given our 2007 Proposal and the length of our republication for comment, we believe companies will have enough time to consider these changes and prepare for the coming into force of the 2008 Proposal.

(ii) **Transition**

We have not added a general transition provision. A general provision is unnecessary because only the disclosure required under the SCT looks back to financial years prior to the company's most recently completed financial year. Accordingly, we have added a transition provision only in respect of the SCT.

Under subsection 3.1(1), the disclosure required by the SCT only applies to a company's three most recently completed financial years that occur on or after December 31, 2008. We have added commentary to subsection 3.1(1) providing guidance that a company may have less than three financial years completed on or after December 31, 2008 until about December 31, 2010 and that during this transition period, a company is not required to present SCT disclosure under Form 51-102F6 as it existed on December 30, 2008.

(j) **GENERALLY**

The terms "material" and "materially" modified certain requirements in the 2007 Proposal. We have changed those terms to "significant" and "significantly" to avoid confusion with the use of those terms under provincial and territorial securities legislation, and with the concept of materiality under generally accepted accounting principles. We believe that the concept of significance must be determined in relation to the objective of executive compensation disclosure set out in section 1.1.

**B. THE PROPOSED AMENDMENTS**

(a) **NI 51-102**

We have changed the proposed consequential amendment to section 11.6 of NI 51-102 to include any reporting issuer that does not send an information circular under Item 8 of Form 51-102F2 to its securityholders or file an AIF under section 18.1 of Form 51-102F2. These reporting issuers will be required to prepare and file a completed Proposed Form within 140 days of their most recently completed financial year. Our intention in proposing this change was to ensure that all reporting issuers provide executive compensation disclosure at least once a year.

**(b) Form 51-102F5**

We have added a proposed consequential amendment to the incorporation by reference provision in subpart 1(c) of Form 51-102F5. Under this proposed consequential amendment, a company may not incorporate by reference the information required to be included in a Proposed Form into its information circular.

The disclosure required by the Proposed Form will provide insight into a key aspect of a company's overall stewardship and governance and will also help investors understand how decisions about executive compensation are made. We believe this disclosure is critical information that securityholders need when making their voting decisions regarding director nominees. Consequently, we believe this disclosure must be delivered directly to securityholders with an information circular rather than being incorporated by reference.

We do not believe that this proposed consequential amendment will affect reporting issuers that do not send an information circular to their securityholders but rather provide the disclosure required by the Proposed Form through the requirement in section 18.1 of Form 51-102F2 or the proposed requirement in section 11.6 of NI 51-102.