

## APPENDIX B

### Summary of Changes to the 2008 Proposal

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

#### **A. THE NEW FORM**

##### **(a) All compensation to be included**

We clarified the requirements in subsection 1.4(1) of the 2008 Form. Paragraph 1.3(1)(a) of the New Form provides that a company must disclose all compensation paid, payable, awarded, granted, given, or otherwise provided, directly or indirectly, by the company, or a subsidiary of the company, to each NEO and director, in any capacity. Paragraph 1.3(1)(a) of the New Form also provides that, for greater certainty, this includes all plan and non-plan compensation, direct and indirect pay, remuneration, economic or financial award, reward, benefit, gift or perquisite paid, payable, awarded, granted, given, or otherwise provided to the NEO or director for services provided, directly or indirectly, to the company or a subsidiary of the company.

As discussed below, we also added substantially the same language to sections 9.3.1 and 11.6 of NI 51-102.

##### **(b) Certain compensation excluded**

We clarified the requirements in the definition of “plan” in section 1.3 of the 2008 Form. The definition of “plan” in section 1.2 of the New Form does not include the exclusion for the Canada Pension Plan, similar government plans and group life, health, hospitalization, medical reimbursement and relocation plans that do not discriminate in scope, terms or operation and are generally available to all salaried employees: Rather, paragraph 1.3(1)(b) of the New Form provides that, despite paragraph 1.3(1)(a) of the New Form, a company is not required to disclose, as compensation, contributions paid or payable by the company on behalf of an NEO or of a director, or cash, securities and similar instruments or other property received by an NEO or by a director, in respect of these plans. Also, paragraph 1.3(1)(c) of the New Form provides that, for greater certainty, the plans described in paragraph 1.3(1)(b) of the New Form include plans that provide for such benefits after retirement.

Under the definition of “plan” in section 1.3 of the 2008 Form, it was unclear that companies are not required to provide executive compensation disclosure in respect of these types of plans.

##### **(c) Termination and change of control benefits in determining if an individual is an NEO**

We added subparagraph 1.3(6)(b)(ii) of the New Form to exclude incremental payments, payables, and benefits to an executive officer that are triggered by, or result from, a scenario listed in section 6.1 of the New Form that occurred during the most recently completed financial year.

Including termination and change of control benefits in the calculation to determine who is an NEO would not result in the disclosure of useful information because it may only trigger executive compensation disclosure for an individual for whom such disclosure was not historically required. Moreover, including termination and change of control benefits in the calculation may result in disclosure that would make it more difficult for users to track changes in compensation levels.

##### **(d) Disclosure of payments, payables, and benefits that are triggered by, or result from, a termination or change of control scenario that occurred in the most recently completed financial year**

We clarified the requirements in paragraphs 3.1(10)(d) and 3.1(10)(i) of the 2008 Form. Paragraph 3.1(10)(d) of the New Form requires disclosure of incremental payments, payables, and benefits to an NEO that are triggered by, or result from, a scenario listed in section 6.1 of the New Form that occurred before the end of the covered financial year in column (h) of the summary compensation table. Commentary 1 to subsection 3.1(10) of the New Form provides guidance on the meaning of incremental payments, payables, and benefits. Paragraph 3.1(10)(i) of the 2008 Form has been omitted from the New Form. This guidance is substantially similar to the guidance in Commentary 3 to section 6.1 of the New Form, as discussed below.

##### **(e) Exchanged compensation**

We clarified the requirements in paragraphs 3.1(2)(b) and 3.1(8)(d) of the 2008 Form. Subsection 3.1(13) of the New Form provides that the compensation an NEO elects to exchange must be reported as compensation in the column appropriate for the form of compensation exchanged.

##### **(f) Market or payout value of share-based awards that have not vested**

We clarified the methodology prescribed in subsection 4.1(7) of the 2008 Form for disclosing the market or payout value of share-based awards that have not vested under column (g) of the outstanding share-based awards and option-based awards table. Subsection 4.1(7) of the New Form provides that if the NEO achieved a performance goal or similar condition in a financial year covered by the share-based award that on vesting could provide for a greater than the minimum payout, a company must calculate this value based on the payout expected as a result of the NEO achieving this performance goal or similar condition.

**(g) Disclosure of payments, payables, and benefits that are triggered by, or result from, a termination or change of control scenario**

We clarified the meaning of incremental payments, payables, and benefits in section 6.1 of the 2008 Form. Paragraph 6.1(1)(b) of the New Form provides that a company must describe, explain, and where appropriate, quantify the estimated incremental payments, payables, and benefits that are triggered by, or result from, each circumstance described in subsection 6.1(1) of the New Form. Commentary 3 to section 6.1 of the New Form provides guidance on the meaning of incremental payments, payables, and benefits. This guidance is substantially similar to the guidance in Commentary 1 to subsection 3.1(10) of the New Form, as discussed above.

**(h) Transition**

We added paragraph 9.2(1)(b) of the New Form to clarify that the Old Form applies to a company filing executive compensation disclosure in respect of a financial year ending before December 31, 2008. To facilitate the completion of such executive compensation disclosure, we decided not to repeal the Old Form until March 31, 2010, by which date we expect all issuers required to file executive compensation disclosure in respect of a financial year ending before December 31, 2008, to have done so. We also added paragraph 9.2(1)(a) of the New Form to clarify that the Old Form does not apply to a company in respect of a financial year ending on or after December 31, 2008. We also omitted section 9.2 of the 2008 Form from the New Form. As discussed below, the amendment instrument for the Old Form includes an amendment providing for the repeal of the Old Form to be effective March 31, 2010.

**B. THE CONSEQUENTIAL AMENDMENTS**

**(a) NI 51-102**

In the amendment instrument for NI 51-102, we added new section 9.3.1 of NI 51-102 to clarify that, subject to Item 8 of Form 51-102F5, a reporting issuer that sends an information circular to a securityholder under paragraph 9.1(2)(a) of NI 51-102 must report executive compensation in accordance with the requirements of the New Form. We note that new subsection 9.3.1(1) of NI 51-102 only repeats requirements set out in the New Form.

In the amendment instrument for NI 51-102, we also clarified the requirements of new section 11.6 of NI 51-102. We also note that new subsection 11.6(1) of NI 51-102 only repeats requirements set out in the New Form. We also added subsection 11.6(5) of NI 51-102 to clarify that section 11.6 of NI 51-102 does not apply to an issuer that satisfies securities legislation requirements relating to information circulars, proxies and proxy solicitation under section 4.6 or 5.7 of National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*.

We also note that neither new section 9.3.1 nor 11.6 of NI 51-102 apply to an issuer in respect of a financial year ending before December 31, 2008. However, subject to Item 8 of Form 51-102F5, a reporting issuer that sends an information circular to a securityholder under paragraph 9.1(2)(a) of NI 51-102 in respect of a financial year ending before December 31, 2008 must include executive compensation disclosure in that information circular in accordance with the requirements of the Old Form.

**(b) The Old Form**

Because the Old Form will be in effect until March 31, 2010, we made an amendment to the Old Form to clarify, in the title, that the Old Form only applies to financial years ending before December 31, 2008. We also added an amendment providing for the repeal of the Old Form to be effective March 31, 2010.