Canadian Coalition for
GOOD GOVERNANCE

THE VOICE OF THE SHAREHOLDER

February 8, 2011

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
New Brunswick Securities Commission
Securities Commission of Newfoundland and Labrador
Nova Scotia Securities Commission
Ontario Securities Commission
Registrar of Securities, Prince Edward Island
Saskatchewan Financial Services Commission – Securities Division
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon Territory
Registrar of Securities, Legal Registries Division, Department of Justice, Government of Nunavut

C/O: John Stevenson
Secretary
Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario
M5H 3S8

Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, square Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal, Québec
H4Z 1G3

Dear Sir/Madame:

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

We have reviewed the above proposed amendments (the "Proposed Amendments") and thank you for the opportunity to provide you with our comments.

Representing the interests of institutional shareholders, CCGG promotes good governance practices in Canadian public companies and the improvement of the regulatory environment to best align the interests of boards and management with those of their shareholders, and to promote the efficiency and effectiveness of the Canadian capital markets. CCGG has 45 members who collectively manage in excess of $1.5 trillion of savings on behalf of most Canadians. A list of our members is attached to this submission.

In general, we applaud the CSA for bringing the Proposed Amendments forward, as they will improve the executive compensation and corporate governance information available to shareholders. Our comments in response to specific Proposed Amendments are set out below.

Benchmarking

We recognize that s. 2.1(3) of the existing form requires companies to disclose benchmarks used, including the companies included in the benchmark group and the selection criteria. We maintain, however, that companies should be required to provide more specificity in this regard. If a company uses a broad-based peer group as a benchmark, it should be required to disclose the criteria used to identify the appropriate group and explain why those criteria are relevant.

Performance Goals

Although companies are required to disclose performance goals or conditions, the Proposed Amendments should include provisions that require companies to specifically explain why certain performance metrics were chosen.

In addition, the Proposed Amendments should require companies to explicitly link the metrics used in their compensation policies to the actual compensation decisions made. In our experience, companies often disclose the detailed metrics used in their compensation plan, but then simply disclose a bonus or salary increase without explaining how the metrics were used to arrive at that amount. In Staff Notice 51-331, CSA Staff specifically acknowledged the common failure of companies to make that link. In our experience, this is particularly true for equity based awards which often vest over time, with no disclosure as to whether any performance metrics are applied or how the value of the award has been determined. For example, if equity based awards are awarded at fixed grant date value or based on a fixed number of shares, share units or options (which often appears to be the case) the company should be required to explicitly state that fact.

Serious prejudice exemption

We agree with the CSA's approach to restrict the use of the 'serious prejudice' exemption which allows companies not to disclose specific performance goals or similar conditions on the basis that disclosure would "seriously prejudice the interests of the company". We have often seen the exemption relied upon to avoid disclosing information in the CD&A that is already disclosed elsewhere or is easily derivable from other financial information that has been disclosed elsewhere.

Risk management in relation to compensation policies & practices

We applaud the decision of the CSA to require companies to disclose in the CD&A whether the board considered the implications of the risks associated with the company's compensation policies and practices and if so, to disclose its analysis of those risks for named executive officers ("NEOs") or for a business unit, where those risks are reasonably likely to have a material effect on the company. We agree that this will provide important, meaningful information to investors. The examples you have included are useful guidance, although we suggest that you stress that the list of examples is not exhaustive and that issuers must continually assess their compensation policies and practices in order to determine whether they encourage executives to take inappropriate or excessive risks.

Disclosure regarding executive officer and director hedging

We agree with the decision to require companies to disclose in the CD&A whether NEOs or directors are permitted to purchase financial instruments designed to hedge a decrease in the market value of securities in the company granted to them as part of their compensation. This is very material information for investors and not easily available from SEDI.

Disclosure of fees paid to compensation advisors

We support the addition of these rules regarding the disclosure of fees paid to compensation advisors, including a description of their mandate, any other work they have performed for the company, and the fees paid for each service provided. We do not think that you should impose a materiality threshold for disclosure of those fees, as materiality varies between companies and investors can make that determination for themselves. Moreover, fees paid to a compensation consultant might not be material to the company but might be material to the consultant, which is most relevant to the assessment of any advisor conflicts of interest.

We recommend that two clarifications should be made to the compensation consultant provisions. First, it should be clear that companies must disclose the aggregate fees paid to each consultant retained on a 'per consultant basis' and may not aggregate the amounts paid to all consultants. Second, we agree that disclosing the fees paid by the company to the consultant for other services to the company will assist investors in assessing potential conflicts of interest. However, the Proposed Amendments should state that companies are required to disclose *all* potential conflicts of interest relating to their compensation consultants. For example, if a compensation consultant is involved in determining the compensation for a member of the compensation committee of a company who is also an executive at another company, that would be a potential conflict of interest that should be disclosed, but would not be captured by the Proposed Amendments.

Summary Compensation Table - Format

We have no objection to preventing issuers from adding additional columns to the Summary Compensation Table, since they are free to add additional charts or tables that may assist investors.

We do think, however, that the CSA should be more prescriptive about what should and should not be included in the "all other compensation" column "h". In our view, cash payments that are essentially part of a salary or bonus should not be included in column "h". For example, a company may make regular cash payments to its executives in lieu of pension benefits and includes that amount as "other compensation" when in fact it is properly characterized as salary. As another example, a board may use its discretion to increase an executive's bonus, and included that discretionary "top-up" as part of "other compensation". In our view, the "other compensation" column should be confined to perquisites that are not properly characterized as salary or bonus and should not be used as a way to obfuscate additional salary or bonus payments.

Summary Compensation Table - Reconciliation

We support the amendment requiring companies to disclose in the CD&A the methodology used to calculate grant date fair value of all equity based awards, including key assumptions and estimates used in each calculation, and why the company chose that methodology.

Pension Plan Benefits

We do not object to removing the requirement to disclose non-compensatory amounts that NEOs may elect to make to their defined contribution plan with funds received from their salary. However, if an employee is allowed to contribute additional amounts to his or her defined benefit plan, those amounts should also be disclosed as they may increase the future pension obligations of the company.

We stress the importance of continued disclosure of any payments made by the employer in respect of any defined contribution or defined benefit plan, including employer contributions and above-market or preferential earnings credited on employer and employee contributions and credits for additional years of service beyond an executive's actual years of service.

Amounts realized upon exercise of equity awards

We agree that the summary compensation table should list the grant date fair value of equity awards, as we agree that the intention of the board at the time compensation decisions are made is important information to investors.

We maintain, however, that companies should also be required to include a "look back" table showing the amounts actually realized by executives upon the exercise of all equity-based awards including options, PSUs and DSUs. This information is important to investors as it allows them to assess how well executives' actual compensation from their equity-based awards compare to what the board intended and how they compare to returns realized by shareholders during the same time period.

Plain Language Disclosure

The reminder to use plain language in the CD&A is important, particularly the emphasis on the CD&A providing investors with a clear explanation of how compensation decisions are made. However, we think that the requirement to explain "how NEO and director compensation relates to the overall stewardship and governance of the company" as set out in the Proposed Amendments is unclear. We think that issuers should be disclosing how their executive compensation policies and procedures incentivize management to achieve their companies' stated objectives, overall strategy and risk management objectives.

In particular, since one of the board's duties is to formulate a strategy for the company over the long term, the CSA should require boards to disclose how they are assessing their approach to executive compensation and their compensation decisions over the longer term, rather than limiting their analysis to the company's performance over the previous year.

In our view, including director compensation in the above provision makes the provision even less clear. Director compensation decisions should be guided by quite different principles from those applicable to executive compensation. In that regard, you may wish to refer to our *Principles of Director Compensation* which has just been released and is available on our website.

In addition, the CSA should make it clear that issuers are at liberty to provide additional narrative disclosure in the CD&A if it will assist investors in understanding the board's approach to compensation. We have been encouraging boards to take ownership of compensation disclosure and provide a plain language description of their approach to compensation. Several issuers did so, but did not include that narrative in their CD&A and did not file it on SEDAR out of concern that they would be seen to have run afoul of the requirements of 51-102F6. In our view, the CSA should encourage this type of additional disclosure because it is of significant assistance to investors.

We thank you again for the opportunity to provide you with our comments. If you have any questions regarding the above, please feel free to contact our Executive Director, Stephen Griggs, at 416.868.3585 or sgriggs@ccgg.ca.

Yours very truly,

David F. Denison
Chair of the Board

CCGG MEMBERS

Acuity Investment Management Inc.
Alberta Investment Management Corporation (AIMCo)
Alberta Teachers' Retirement Fund Board
Aurion Capital Management Inc.
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State Street Global Advisors, Ltd.
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TD Asset Management Inc.
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