

## Corporate Securities Law

November 30, 2010

### Changes to Executive Compensation Disclosure in Canada

#### Introduction

The Canadian Securities Administrators (the “CSA”) have published for comment proposed amendments to the executive compensation disclosure requirements. The proposed amendments are open for comment until February 17, 2011 and are expected to be implemented for the 2012 proxy season, applicable to companies with a year end on or after October 31, 2011. Companies should be aware of these proposals and be taking steps concerning 2011 executive compensation and compensation processes to best position themselves to be able to comply with these new rules once they take effect, including by:

- Conducting a review of past disclosure practices to determine where enhanced disclosure will be required;
- Ensuring that compensation policies are effectively integrating risk and performance;
- Evaluating the composition of the Compensation Committee in light of the new requirements; and
- Reviewing the roles played by compensation consultants and determining if they are in a position of conflict.

#### Summary of Key Changes

##### *Risk Management in Compensation Policies and Practices*

A key element of the new proposals is the requirement to disclose the risks associated with compensation poli-

cies. The proposal is borne of concern that at some issuers compensation policies have become disconnected from long-term performance, creating risks for the issuer. Of particular concern for regulators is the misalignment of short-term compensation policies and long term performance objectives created incentives for executives inconsistent with the interests of the issuer. As a consequence the CSA, following the lead of the U.S. Securities and Exchange Commission (the “SEC”), have proposed that issuers be required to consider, analyze and disclose risks associated with their compensation policies and practices.

To address this matter, issuers may wish to consider commencing processes to assess and if necessary address the risks in its compensation policies.

##### *Disclosure Regarding Executive Officer and Director Hedging*

The CSA have also proposed to require issuers to disclose whether executives or directors are permitted to purchase financial instruments that are designed to hedge or offset a decrease in the market value of equity securities.

##### *Composition of the Compensation Committee*

In an effort to ensure the Compensation Committees members are appropriately experienced and expertised in the area of executive compensation, the CSA are proposing that companies disclose:

- whether or not one or more of the committee members has any direct experience that is relevant to his or her responsibilities in executive compensation; and
- the skills and experience that enable the committee to make 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.

In addition to possibly affecting the composition of compensation committees these proposed requirements may result in boards placing a greater emphasis on director education in the area of executive compensation.

# Goodmans<sup>LLP</sup> Update

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## *Disclosure of Fees Paid to Compensation Advisors*

In response to the perception that there may be a conflict of interest when compensation consultants work on projects both for the company and its board of directors, the SEC introduced new rules in 2010 requiring disclosure of the fees paid to compensation consultants and their affiliates in certain circumstances. The CSA have proposed a similar amendment to require disclosure of all fees paid to compensation advisors for each service provided.

## **Other Proposed Amendments**

The CSA have proposed a number of additional amendments, including:

### *Disclosure of Performance Goals - Serious Prejudice Exemption*

The current rules provide an exemption from the requirement to disclose specific performance goals or similar conditions on the basis that disclosure would “seriously prejudice the interests of the company”. Reliance is often placed on this exemption to avoid disclosure of competitively or commercially sensitive performance thresholds. The CSA have proposed requiring issuers to specifically disclose reliance on the exemption and provide an explanation as to why disclosing the relevant performance goals or similar conditions would result in serious prejudice.

### *Summary Compensation Table (SCT) Format*

Issuers are currently permitted to add tables, columns, and other information, if necessary, to the SCT to meet

the objectives of executive compensation disclosure. The CSA have indicated that some companies have presented the SCT in a format different than the form requirement. As a result, the CSA have proposed to clarify that issuers may not alter the presentation of the SCT itself by adding columns or other information, but that issuers may instead choose to add other tables and other information, so long as the additional information does not detract from the SCT’s form requirements.

### *Reconciliation to “Accounting Fair Value”*

For share-based and option-based awards reported in the SCT, the current form requires issuers to reconcile any difference between the grant date fair value reported in the SCT and the accounting fair value of share-based and option-based awards. The CSA expressed some concern that issuers have not always satisfied this requirement. As a result, the CSA have concluded that it would be useful to also disclose this information in a footnote to the SCT and have proposed to require all issuers to disclose the methodology used to calculate grant date fair value of all equity-based awards, including key assumptions and estimates used for each calculation and why the issuer chose that methodology, regardless of whether there are any differences with the accounting fair value.

Please contact any member of the Goodmans’ Corporate Securities Group to discuss the implications of these proposed amendments.