

CSA Releases Amendments to Executive Compensation Disclosure Rules

Background

On July 22, 2011, the Canadian Securities Administrators (CSA) released amendments to the executive compensation disclosure rules (Form 51-102F6 *Statement of Executive Compensation*) (the “Rules”) that were originally adopted in December 2008. The amendments on key risk, governance and compensation matters (the “Amendments”) are based on draft proposals released in November of 2010 (the “Draft Proposals”) that were the subject of a comment period that closed in February of this year. The final Amendments have not changed materially from the Draft Proposals. A copy of our earlier Briefing of December 2010 on the Draft Proposals is attached and we direct you to that document for a more detailed discussion of the key changes now incorporated into the Amendments.

The Amendments will be in force for the 2012 proxy season and apply to companies with financial years ending after October 31, 2011. We also direct you to our earlier Briefing for a discussion of the steps that boards and compensation committees can take to prepare for the adoption of the Amendments.

Summary of Key Amendments

While there are many changes, the substantive changes that we believe will be of the most interest to boards and compensation committees are:

- Clarification of use of “seriously prejudice” exemption for disclosure of performance targets
 - A company’s interests will not be considered to be seriously prejudiced solely because of the disclosure of the company’s use of broad corporate financial performance metrics such as EBITDA or EPS
 - A company must explicitly state that it is relying on the exemption and explain why disclosing the performance goals would seriously prejudice the company’s interests

- Disclosure of risk management in relation to compensation practices
 - Disclose whether the board or committee has considered risk implications of company's compensation practices and, if so, the nature and extent of the oversight along with any practices taken to mitigate risk
- Compensation governance
 - Disclosure of relevant skills and experience of compensation committee as a whole and the relevant direct experience of any committee members to compensation responsibilities
 - Expanded disclosure of compensation consultants' services and fees with the goal of revealing any potential conflicts of interest

Implications

The Amendments make changes to the executive compensation disclosure Rules in the areas of risk and compensation governance disclosure. They also provide clarification in areas such as the disclosure of performance targets. However, the new requirements are not a major change in course.

The boards and compensation committees of companies that are already committed to spending the time and resources to provide 'best practice' CD&A disclosure will not be concerned about the additional disclosure obligations imposed by the Amendments. Others will find, however, that the Amendments add to the already significant burden imposed by regulatory disclosure requirements. In particular, the new risk-related and committee expertise disclosure provisions will require that boards and compensation committees that have not already done so turn their attention to these areas. Our December 2010 Briefing sets out the issues that should be considered and the practical steps that committees should take to prepare for next year's disclosure.

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Hugessen Consulting is an independent consulting firm dedicated to meeting the executive compensation consulting requirements of boards and their compensation committees. With offices in Toronto and Calgary, the firm's mission is to be the leading provider of advice on executive compensation, performance measurement and assessment, and related governance to the compensation committees of medium and large companies in Canada, the U.S., and the U.K.

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