

THE MANITOBA SECURITIES COMMISSION
MSC RULE 2011-8
(Section 149.1, *The Securities Act*)

AMENDMENTS TO
NATIONAL INSTRUMENT 51-102
CONTINUOUS DISCLOSURE OBLIGATIONS

Although this amendment instrument amends section headers in Form 51-102F6, section headers do not form part of the instrument and are inserted for ease of reference only.

1. *National Instrument 51-102 Continuous Disclosure Obligations is amended by this Instrument.*
2. *Section 1.1 of Form 51-102F6 Statement of Executive Compensation (in respect of financial years ending on or after December 31, 2008) is amended by*
 - (a) *deleting “the board of directors intended”,*
 - (b) *replacing “to pay, make payable, award, grant, give or otherwise provide” with “paid, made payable, awarded, granted, gave or otherwise provided”,*
 - (c) *adding “, and the decision-making process relating to compensation” after “financial year”, and*
 - (d) *adding “and subsections 9.3.1(1) or 11.6(1) of the Instrument” after “objective”.*
3. *Section 1.2 of Form 51-102F6 is amended by*
 - (a) *in the definition of “NEO or named executive officer”,*
 - (i) *adding “of the company, including any of its subsidiaries” after “executive officers”, and*
 - (ii) *adding “or its subsidiaries” after “company”.*
4. *Section 1.3 of Form 51-102F6 is amended by*
 - (a) *in subsection 1.3(1), adding “and for services to be provided” after “services provided”,*
 - (b) *in subsection 1.3(2),*
 - (i) *replacing paragraphs (a) and (b) with the following:*
 - (a) *Although the required disclosure must be made in accordance with this form, the disclosure may*
 - (i) *omit a table, column of a table, or other prescribed information, if it does not apply, and*
 - (ii) *add a table, column, or other information if*
 - (A) *necessary to satisfy the objective in section 1.1, and*
 - (B) *to a reasonable person, the table, column, or other information does not detract from the prescribed information in the summary compensation table in section 3.1.*

(b) Despite paragraph (a), a company must not add a column in the summary compensation table in section 3.1.

(c) in subsection 1.3(4),

(i) in paragraph (c), repealing clause (c)(i), and

(ii) in paragraph (c), replacing paragraph (c) with the following:

(c) If an external management company provides the company's executive management services and also provides executive management services to another company, disclose the entire compensation the external management company paid to the individual acting as an NEO or director, or acting in a similar capacity, in connection with services the external management company provided to the company, or the parent or a subsidiary of the company. If the management company allocates the compensation paid to an NEO or director, disclose the basis or methodology used to allocate this compensation.

(d) in subsection 1.3(8), replacing "for any part of that" with "at any time during the most recently completed", and

(e) adding the following subsections:

Currencies

1.3(9) Companies must report amounts required by this form in Canadian dollars or in the same currency that the company uses for its financial statements. A company must use the same currency in the tables in sections 3.1, 4.1, 4.2, 5.1, 5.2 and 7.1 of this form.

If compensation awarded to, earned by, paid to, or payable to an NEO was in a currency other than the currency reported in the prescribed tables of this form, state the currency in which compensation was awarded, earned, paid, or payable, disclose the currency exchange rate and describe the methodology used to translate the compensation into Canadian dollars or the currency that the company uses in its financial statements.

Plain language

1.3(10) Information required to be disclosed under this form must be clear, concise, and presented in such a way that it provides a reasonable person, applying reasonable effort, an understanding of,

(a) how decisions about NEO and director compensation are made; and

(b) how specific NEO and director compensation relates to the overall stewardship and governance of the company.

Commentary

Refer to the plain language principles listed in section 1.5 of Companion Policy 51-102CP Continuous Disclosure Obligations for further guidance.

5. Section 2.1 of Form 51-102F6 is amended by

(a) replacing subsection 2.1(4) with the following:

If applicable, disclose performance goals or similar conditions that are based on objective, identifiable measures, such as the company's share price or earnings per share. If performance goals or similar conditions are subjective, the company may describe the performance goal or similar condition without providing specific measures.

If the company discloses performance goals or similar conditions that are non-GAAP financial measures, explain how the company calculates these performance goals or similar conditions from its financial statements.

Exemption

The company is not required to disclose performance goals or similar conditions in respect of specific quantitative or qualitative performance-related factors if a reasonable person would consider that disclosing them would seriously prejudice the company's interests.

For the purposes of this exemption, a company's interest's are not considered to be seriously prejudiced solely by disclosing performance goals or similar conditions if those goals or conditions are based on broad corporate-level financial performance metrics which include earnings per share, revenue growth, and earnings before interest, taxes, depreciation and amortization.

This exemption does not apply if it has publicly disclosed the performance goals or similar conditions.

If the company is relying on this exemption, state this fact and explain why disclosing the performance goals or similar conditions would seriously prejudice the company's interests.

If the company does not disclose specific performance goals or similar conditions, state what percentage of the NEO's total compensation relates to this undisclosed information and how difficult it could be for the NEO, or how likely it will be for the company, to achieve the undisclosed performance goal or similar condition.

(b) adding the following subsections:

2.1(5) Disclose whether or not the board of directors, or a committee of the board, considered the implications of the risks associated with the company's compensation policies and practices. If the implications were considered, disclose the following:

(a) the extent and nature of the board of directors' or committee' role in the risk oversight of the company's compensation policies and practices;

(b) any practices the company uses to identify and mitigate compensation policies and practices that could encourage an NEO or individual at a principal business unit or division to take inappropriate or excessive risks;

(c) any identified risks arising from the company's compensation policies and practices that are reasonably likely to have a material adverse effect on the company.

2.1(6) Disclose whether or not an NEO or director is permitted to purchase financial instruments, including, for greater certainty, prepaid variable forward contracts, equity swaps, collars, or units of exchange funds, that are designed to hedge or offset a decrease in market value of equity securities granted as compensation or held, directly or indirectly, by the NEO or director.

(c) replacing Commentary 3 with the following:

3. *If the company used any benchmarking in determining compensation or any element of compensation, include the benchmark group and describe why the benchmark group and selection criteria are considered by the company to be relevant.*

4. *The following are examples of items that will usually be significant elements of disclosure concerning compensation:*

- *contractual or non-contractual arrangements, plans, process changes or any other matters that might cause the amounts disclosed for the most recently completed financial year to be misleading if used as an indicator of expected compensation levels in future periods;*
- *the process for determining perquisites and personal benefits;*
- *policies and decisions about the adjustment or recovery of awards, earnings, payments, or payables if the performance goal or similar condition on which they are based are restated or adjusted to reduce the award, earning, payment, or payable;*
- *the basis for selecting events that trigger payment for any arrangement that provides for payment at, following or in connection with any termination or change of control;*
- *any waiver or change to any specified performance goal or similar condition to payout for any amount, including whether the waiver or change applied to one or more specified NEOs or to all compensation subject to the performance goal or similar condition;*
- *whether the board of directors can exercise a discretion, either to award compensation absent attainment of the relevant performance goal or similar condition or to reduce or increase the size of any award or payout, including if they exercised discretion and whether it applied to one or more named executive officers;*
- *whether the company will be making any significant changes to its compensation policies and practices in the next financial year;*
- *the role of executive officers in determining executive compensation; and*
- *performance goals or similar conditions in respect of specific quantitative or qualitative performance-related factors for NEOs.*

5. *The following are examples of situations that could potentially encourage an executive officer to expose the company to inappropriate or excessive risks:*

- *compensation policies and practices at a principal business unit of the company or a subsidiary of the company that are structured significantly differently than others within the company;*
- *compensation policies and practices for certain executive officers that are structured significantly differently than other executive officers within the company;*
- *compensation policies and practices that do not include effective risk management and regulatory compliance as part of the performance metrics used in determining compensation;*

- *compensation policies and practices where the compensation expense to executive officers is a significant percentage of the company's revenue;*
- *compensation policies and practices that vary significantly from the overall compensation structure of the company;*
- *compensation policies and practices where incentive plan awards are awarded upon accomplishment of a task while the risk to the company from that task extends over a significantly longer period of time;*
- *compensation policies and practices that contain performance goals or similar conditions that are heavily weighed to short-term rather than long-term objectives;*
- *incentive plan awards that do not provide a maximum benefit or payout limit to executive officers.*

The examples above are not exhaustive and the situations to consider will vary depending upon the nature of the company's business and the company's compensation policies and practices.

6. Section 2.3 of Form 51-102F6 is amended by

- (a) replacing the section header with "Share-based and option-based awards",
- (b) adding "share-based or" after "grant",
- (c) replacing "an" with "a share-based or" after "under which", and
- (d) deleting "of option-based awards" after "previous grants".

7. Form 51-102F6 is amended by adding the following after section 2.3:

Compensation governance

2.4(1) Describe any policies and practices adopted by the board of directors to determine the compensation for the company's directors and executive officers.

2.4(2) If the company has established a compensation committee

- (a) disclose the name of each committee member and, in respect of each member, state whether or not the member is independent or not independent;
- (b) 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;
- (c) describe the skills and experience that enable the committee to make decisions on the suitability of the company's compensation policies and practices; and
- (d) describe the responsibilities, powers and operation of the committee.

2.4(3) If a compensation consultant or advisor has, at any time since the company's most recently completed financial year, been retained to assist the board of directors or the compensation committee in determining compensation for any of the company's directors or executive officers

- (a) state the name of the consultant or advisor and a summary of the mandate the consultant or advisor has been given;

- (b) disclose when the consultant or advisor was originally retained; and
- (c) if the consultant or advisor has provided any services to the company, or to its affiliated or subsidiary entities, or to any of its directors or members of management, other than or in addition to compensation services provided for any of the company's directors or executive officers,
 - (i) state this fact and briefly describe the nature of the work,
 - (ii) disclose whether the board of directors or compensation committee must pre-approve other services the consultant or advisor, or any of its affiliates, provides to the company at the request of management, and
- (d) For each of the two most recently completed financial year, disclose,
 - (i) under the caption "Executive Compensation-Related Fees", the aggregate fees billed by each consultant or advisor, or any of its affiliates, for services related to determining compensation for any of the company's directors and executive officers, and
 - (ii) under the caption "All Other Fees", the aggregate fees billed for all other services provided by each consultant or advisor, or any of its affiliates, that are not reported under subparagraph (i) and include a description of the nature of the services comprising the fees disclosed under this category.

Commentary

For section 2.4, a director is independent if he or she would be independent within the meaning of section 1.4 of NI 52-110 Audit Committees.

8. Section 3.1 of Form 51-102F6 is amended by

- (a) replacing subsection (5) with the following:

For an award disclosed in column (d) or (e), in a narrative after the table,

- (a) describe the methodology used to calculate the fair value of the award on the grant date, disclose the key assumptions and estimates used for each calculation, and explain why the company chose that methodology, and
- (b) if the fair value of the award on the grant date is different from the fair value determined in accordance with IFRS 2 *Share-based Payment* (accounting fair value), state the amount of the difference and explain the reasons for the difference.

- (b) in Commentary 2,

- (i) replacing "board of directors intended to pay, make payable, award, grant, give or otherwise provide" with "company paid, made payable, awarded, granted, gave or otherwise provided".

- (c) in Commentary 3,

- (i) replacing "it intends to award or pay" with "to be awarded or paid", and
 - (ii) replacing "it intends to transfer" with "to be transferred".

(d) in subsection (10), adding the following paragraph:

(i) any company contribution to a personal savings plan like a registered retirement savings plan made on behalf of the NEO.

9. Section 3.3 of Form 51-102F6 is repealed.

10. Section 4.1 of Form 51-102F6 is amended by

(a) in subsection 4.1(1), adding column “(h)” entitled “Market or payout value of vested share-based awards not paid out or distributed (\$)”,

(b) in subsection 4.1(3), adding “If the option was granted in a different currency than that reported in the table, include a footnote describing the currency and the exercise or base price.” after “each award reported in column (b).”, and

(c) adding the following subsection:

4.1(8) In column (h), disclose the aggregate market value or payout value of vested share-based awards that have not yet been paid out or distributed.

11. Section 5.1 of Form 51-102F6 is amended by

(a) in paragraph 5.1(4)(a), adding “. For purposes of this calculation, the company must assume that the NEO is eligible to receive payments or benefits at year end” after “most recently completed financial year”, and

(b) adding the following after paragraph 5.1(4)(b):

Commentary

For purposes of quantifying the annual lifetime benefit payable at the end of the most recently completed financial year in column (c1), the company may calculate the annual lifetime benefit payable as follows:

annual benefits payable at the presumed retirement age used to calculate the closing present value of the defined benefit obligation X $\frac{\text{years of credited service at year end}}{\text{years of credited service at the presumed retirement age}}$

The company may calculate the annual lifetime benefit payable in accordance with another formula if the company reasonably believes that it produces a more meaningful calculation of the annual lifetime benefit payable at year end.

12. Section 5.2 of Form 51-102F6 is amended by

(a) in subsection 5.2(1),

(i) removing in column (d) “Non-compensatory (\$)”, and

(ii) in column (d) “Accumulated value at year end (\$)”, replacing “(e)” with “(d)”,

(b) repealing subsection 5.2(3),

(c) in subsection 5.2(4), replacing “(e)” with “(d)” after “column”, and

(d) replacing the Commentary with the following:

1. For pension plans that provide the maximum of: (i) the value of a defined benefit pension; and (ii) the accumulated value of a defined contribution pension, companies should disclose the global value of the pension plan in the defined benefit plans table under section 5.1.

For pension plans that provide the sum of a defined benefit component and a defined contribution component, companies should disclose the respective components of the pension plan. The defined benefit component should be disclosed in the defined benefit plans table under section 5.1 and the defined contribution component should be disclosed in the defined contribution plans table under section 5.2.

2. Any contributions by the company or a subsidiary of the company to a personal savings plan like a registered retirement savings plan made on behalf of the NEO must still be disclosed in column (h) of the summary compensation table, as required by paragraph 3.1(10)(i).

13. Section 6.1 of Form 51-102F6 is amended by adding the following after Commentary 3:

4. A company may disclose estimated incremental payments, payables and benefits that are triggered by, or result from, a scenario described in subsection (1), in a tabular format.

14. This Instrument only applies to documents required to be prepared, filed, delivered or sent under National Instrument 51-102 Continuous Disclosure Obligations for periods relating to financial years ending on or after October 31, 2011.

15. This Instrument comes into force on October 31, 2011.

**AMENDMENTS TO
NATIONAL INSTRUMENT 51-102
CONTINUOUS DISCLOSURE OBLIGATIONS**

1. *National Instrument 51-102 Continuous Disclosure Obligations is amended by this Instrument.*

2. *Subsection 9.3.1(1) is replaced by the following:*

9.3.1(1) Subject to Item 8 of Form 51-102F5, if a reporting issuer sends an information circular to a securityholder under paragraph 9.1(2)(a), the issuer must

(a) disclose all compensation paid, payable, awarded, granted, given, or otherwise provided, directly or indirectly, by the issuer, or a subsidiary of the issuer, to each NEO and director, in any capacity, including, for greater certainty, all plan and non-plan compensation, direct or 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 issuer or a subsidiary of the issuer, and

(b) include detail and discussion of the compensation, and the decision-making process relating to compensation, presented in such a way that it provides a reasonable person, applying reasonable effort, an understanding of

(i) how decisions about NEO and director compensation are made,

(ii) the compensation paid, made payable, awarded, granted, given or otherwise provided to each NEO and director, and

(iii) how specific NEO and director compensation relates to the overall stewardship and governance of the reporting issuer.

3. *Subsection 11.6(1) is replaced by the following:*

11.6(1) A reporting issuer that does not send to its securityholders an information circular that includes the disclosure required by Item 8 of Form 51-102F5 and that does not file an AIF that includes the executive compensation disclosure required by Item 18 of Form 51-102F2 must

(a) disclose all compensation paid, payable, awarded, granted, given, or otherwise provided, directly or indirectly, by the issuer, or a subsidiary of the issuer, to each NEO and director, in any capacity, including, for greater certainty, all plan and non-plan compensation, direct or 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 issuer or a subsidiary of the issuer, and

(b) include detail and discussion of the compensation, and the decision-making process relating to compensation, presented in such a way that it provides a reasonable person, applying reasonable effort, an understanding of

(i) how decisions about NEO and director compensation are made,

(ii) the compensation paid, made payable, awarded, granted, given or otherwise provided to each NEO and director, and

(iii) how specific NEO and director compensation relates to the overall stewardship and governance of the reporting issuer.

4. This Instrument comes into force on October 31, 2011.

5. This Instrument may be cited as MSC Rule 2011-8.