

SECURITIES LAW UPDATE

FEBRUARY 2005

CSA Provides Guidance on Enhanced Disclosure of Retirement Benefits

On January 14, 2005, CSA Staff Notice 51-314 – Retirement Benefits Disclosure (the Notice)¹ was issued to provide guidance to those issuers who choose to provide enhanced disclosure of retirement benefits payable to executives that goes beyond the strict securities law requirements specified in Form 51-102F6 *Statement of Executive Compensation of National Instrument 51-102 Continuous Disclosure Obligations* (the Form). The release of the Notice follows increased recent public attention to the pension portion of corporate executives' remuneration packages.

Additional disclosure considered by some issuers might include information about the value of certain retirement benefit plans, for example, supplementary executive retirement plans (SERPs). According to the Form, an issuer is required to provide general information regarding estimated annual benefits payable under defined benefit plans. An issuer must also disclose certain other information, including the relationship between the amount of compensation covered under the plan and the compensation reported elsewhere in the proxy circular, as well as the estimated credited years of service for each named executive officer.

The Notice includes three different types of additional disclosure that issuers may consider. The examples are not designed to be exhaustive and the guidance contained in the Notice would also apply to any other type of additional disclosure regarding retirement benefits. The additional disclosure can be provided in either narrative or tabular form, and can be included with an issuer's executive compensation disclosure. Examples of additional disclosure could include, among other information:

- the total retirement benefit liability of the issuer associated with each executive,
- the total service costs in respect of the plan during the past year, and
- the estimated annual benefits payable on retirement to specific executives.

Although this additional disclosure is not mandatory, the Notice indicates that when issuers choose to provide such information, it is important that the disclosure includes specific information that will assist an investor in understanding it. For example, the disclosure

¹ Staff in BC did not participate in the Notice.

should specify: (a) that the amounts are estimates based on assumptions that represent contractual entitlements which may change over time (and to disclose key contractual terms of benefit plans if they are unusual or their impact is significant), (b) that the methods used to determine any estimated amounts will not be identical to the methods used by other issuers and that, as a result, the figures may not be directly comparable across companies, and (c) the key assumptions made.

These key assumptions should be consistent with those used by the issuer for financial statement purposes, and any major differences in the assumptions used should be explained. The Notice indicates that, where appropriate, it may be helpful to investors if information is disclosed using different assumptions, such as different vesting dates or different retirement ages of executives. Examples of key assumptions in determining the value of benefit plans include:

- **Retirement:** Issuers will need to make assumptions about the length of time an officer will remain employed.
- **Vesting:** Some pension benefits will not vest until a future date and their current value will need to be estimated for disclosure purposes.
- **Increases in compensation:** Issuers must take into account future pay increases granted to executives when estimating a value for retirement benefits since benefits are typically based on the executive's income in the years immediately before retirement. Issuers must also consider how to reflect any changes to the disclosure when actual amounts differ from what was originally estimated and disclosed.
- **Interest rates:** Issuers must determine whether to use pre-tax or after-tax interest rates when determining the value of benefits granted to executives.
- **Employee contributions:** When the pension plan includes employee contributions, issuers may wish to disclose whether such contributions are included in estimated figures for benefits or liabilities and how they are taken into account.

The Notice is only a guideline for optional additional disclosure and does not purport to be exhaustive. It does, however, provide some insight into how the securities regulators (excluding in BC) may review the sufficiency of information disclosed by an issuer.

This newsletter provides a summary of recent developments. For further information, please contact one of the authors below, your usual Stikeman Elliott LLP contact, or one of our office representatives listed on this page.

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