

## New Compensation Disclosure Rules for TSX Venture Exchange Issuers – July 2015

On April 9, 2015 after almost three years of proposals and discussion, the Canadian Securities Administrators [CSA] announced a number of changes to the shareholder disclosure requirements for publicly traded entities whose securities are listed on the TSX Venture Exchange.

The changes include a number of significant modifications to the annual director and executive compensation disclosures that Venture issuers can apply in their proxy circulars for year-ends after June 30, 2015.

Key differences between the new Venture “Form 51-102F6V” rules and the CSA’s “Form 51-102F6” compensation disclosure requirements that apply to all issuers listed on the main Toronto Stock Exchange are as follows:

### NEO Group

- The Named Executive Officer [NEO] group for Venture companies will normally only include up to *three* individuals: the CEO, the CFO, and the most highly paid executive officer, provided the non-CEO/CFO person’s “total compensation” in the fiscal year exceeds \$150,000 (vs. the current CEO, the CFO and the three most highly paid non-CEO/non-CFO officer requirement).
  - “Total compensation” for purpose of the \$150,000 NEO threshold will essentially be the total *cash* compensation for the year, and *will not* include the value of equity awards or the “All other compensation” column of the compensation table.
  - *Gallagher McDowall Associates comment: the practical result of this total compensation threshold is that many Venture companies will only have two active NEOs (the CEO and the CFO), as their cash compensation tends to be relatively low.*

### Compensation Table

- The main compensation table (called the “[Table of compensation excluding compensation securities](#)” table) will require each NEO’s compensation be disclosed for *two* fiscal years, rather than for three years.
- The compensation of each member of the Board of Directors must be included in the *main compensation table* after the NEOs, rather than in a separate director table. At the same time, each director’s compensation must be shown for *two* years, not just for one year.
- *No* equity compensation values are required to be included in the main compensation table, *nor* is there a requirement that the grant date fair values of share-based awards or of option-based awards be disclosed anywhere else in the proxy.
- The perquisite exclusion threshold ranges from \$15,000 (for salaries below \$150,001) to \$50,000 for salaries at or above \$500,000.

### Equity Tables

- A new “[Compensation Securities](#)” table will be required showing each stock option or other equity-based compensation award *granted or issued* to each individual director and NEO *in the fiscal year*. Footnote disclosure to this table will be required of the total number of outstanding options and the total number of other equity compensation securities held by each NEO and director at the fiscal year end.

- A new “Exercise of Compensation Securities by Directors and NEOs” table will provide details on each exercise by a director or NEO of a stock option or equity-based compensation award made during the fiscal year.
  - *Gallagher McDowall Associates comment: this exercise table will provide the kind of information on stock option exercises that institutional investors have been requesting, but the CSA has to date chosen not to require from companies listed on the main Toronto Stock Exchange.*

#### Contracts

- The material terms of any agreement or arrangement under which compensation was provided for the fiscal year will have to be disclosed for each director, as well as for each NEO, including the incremental payments that would be triggered by or result from a change of control, severance, termination or constructive dismissal.
  - *Gallagher McDowall Associates comment: while this is not new for Venture company NEOs, it is a new requirement for the directors.*

#### Compensation Discussion

- While a Venture company will not have to provide a “Compensation Discussion and Analysis” section, it will be required to provide a somewhat similar “*Oversight and description of director and named executive officer compensation*” discussion that would include performance goals.
- The Oversight section would, however, *not* require a compensation risk discussion, nor require the names of the companies used in a peer group, nor the names or fees of any executive compensation consultants to be disclosed.
- A Venture company would *not* be required to include a five year performance graph in its proxy circular.

It should be noted that a Venture company can, if it wishes, use the standard CSA Form 51-102F6 disclosure rules.

The appendix compares the key requirements of the two disclosure rules.

#### Conclusion

We would expect most existing Venture companies to continue using the current rules, as the required administrative procedures are already in place, while newly-listed Venture companies are more likely to adopt the Venture compensation disclosure rules.

One wonders whether the additional pension benefit and termination compensation disclosure requirements for directors of companies using the Venture rules may be incorporated in the main disclosure rules at some time in the future.

Key Areas	Form 51-102F6  (Applies to all Toronto Stock Exchange Companies)	Form 51-102F6V  (Available to TSX Venture Exchange Companies)	Comments on TSX Venture Exchange Disclosure Differences
"Total compensation" for purposes of determining the Named Executive Officers (NEOs) for the fiscal year	Total compensation as reported in the "Summary compensation table" (SCT) excluding the "Pension value" column, and excluding certain special payments and/or foreign assignment costs	Total compensation as reported in the "Table of compensation excluding compensation securities table" (CT) excluding the "Value of all other compensation" column	The fair value of stock-based awards and option-based awards is not to be included in the CT.  The CSA comments that <i>"In the venture issuer context, options are granted with a view to future growth of the company rather than a specific value attributed at the grant date."</i>
Number of NEOs	All CEOs and CFOs during the fiscal year, plus the next three highest paid year-end executive officers whose total compensation (as defined above) for the year exceeded \$150,000, plus any former executive officers whose total compensation for the year exceeded the third lowest paid year-end non-CEO/non-CFO officer	All CEOs and CFOs during the fiscal year, plus the most highly paid year-end executive officer whose total compensation (as defined above) for the year exceeded \$150,000, plus any former executive officer whose total compensation for the year exceeded the most highly paid year-end non-CEO/non-CFO officer	The CSA indicates that in practice most Venture issuers only have three NEOs in any event.
Compensation program discussion	<p>"Compensation discussion and analysis" (CD&amp;A) section.</p> <p>The following CD&amp;A requirements are <i>not</i> included in the Venture Form:</p> <ul style="list-style-type: none"> <li>• Risk discussion</li> <li>• Whether or not a director or NEO is permitted to hedge equity compensation</li> <li>• The performance graph and related discussion</li> <li>• Compensation committee members and governance</li> <li>• Use of compensation consultants and their fees</li> </ul>	<p>"Oversight and description of director and named executive officer compensation" section.</p> <ul style="list-style-type: none"> <li>• Who determines director compensation and executive compensation and how and when are they both determined?</li> <li>• If a peer group was used, describe the peer group and why it is considered appropriate?</li> <li>• Other requirements for the "Oversight" section are similar to the CD&amp;A, including the need for performance disclosure and the limits on using the "seriously prejudice" exemption</li> </ul>	



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Compensation table: title and column headings	<p>“Summary compensation table” (SCT)</p> <ul style="list-style-type: none"> <li>• Salary</li> <li>• Share-based awards</li> <li>• Option-based awards</li> <li>• Annual incentive plans</li> <li>• Long-term incentive plans</li> <li>• Pension value</li> <li>• All other compensation</li> <li>• Total compensation</li> </ul>	<p>“Table of compensation excluding compensation securities”</p> <ul style="list-style-type: none"> <li>• Salary, consulting fee, retainer or commission</li> <li>• Bonus</li> <li>• Committee or meeting fees</li> <li>• Value of perquisites</li> <li>• Value of all other compensation</li> <li>• Total compensation</li> </ul>	<p>If an NEO is also paid director fees, a footnote to the CT must identify how much compensation the NEO received for each of the two positions.</p> <p>Perquisites are highlighted by having a separate column, whereas pension values, if any, are included as “Other compensation”</p>
Number of fiscal years to be reported in the compensation table	Three years in the SCT	Two years in the CT	The CSA comments that the third year compensation is already publicly available (i.e. on SEDAR)
Directors compensation	Separate table – only report compensation for the most recent fiscal year	All year-end (and partial year) directors must be included in the CT (no minimum threshold)	The directors are to be listed in the CT after the NEOs
Incentive award tables	<p>“Outstanding equity awards” table</p> <p>“Value vested” table</p> <p>Separate tables required for the NEOs from the directors</p> <p>No option or equity award exercise disclosure requirements</p>	<p>“Compensation securities” table. Discloses current year individual NEO and director equity award information</p> <p>“Exercise of compensation securities” table. Discloses gains made by each NEO and director on exercising individual options or benefiting from other equity award payouts.</p>	<p>Number of outstanding equity awards to be footnoted.</p> <p>No “Value vested” table requirement.</p>
Pension benefits	<p>NEO defined benefit plan table</p> <p>NEO defined contribution pension plan table</p>	Use the same table or tables if a pension benefit is provided to one or more director or NEO	Pension benefit disclosure for Venture directors is new (but will be rare)
Termination and change of control agreements and arrangements	<p>Detailed descriptions required for NEOs</p> <p>Need to quantify potential year-end incremental values in connection with any potential NEO termination, but not for directors.</p>	<p>Similar overall requirements, but somewhat less detailed</p> <p>Need to quantify potential year-end incremental NEO or director termination values, but not for resignation or retirement.</p>	Termination and change of control agreements and arrangements disclosure for Venture directors is new