Good Pay Practices
Interested Stakeholders Weigh-In

In recent months, many interested stakeholders heavily criticized excessive executive compensation schemes and held them at least partially responsible for the economic meltdown in developed countries. Following the mass criticism, interested stakeholders have been commenting on how to improve executive compensation practices to avoid another collapse of the financial markets.

Roger Martin, Dean of the University of Toronto Rotman School of Management has suggested eliminating all stock-based compensation, as it only measures market expectations, not executive performance. Henry Mintzberg, Professor of Management Studies at the Desautels Faculty of Management at McGill University has suggested eliminating all bonuses paid to executives including stock-based bonuses, as the problems associated with them cannot be fixed. Other stakeholders have suggested alternate performance measures and provided guiding principles for determining appropriate executive compensation structures.

This newsletter outlines some of the approaches to good pay practices suggested by various interested stakeholders. This newsletter also includes a summary of various regulatory updates on matters related to executive compensation.

Corporate Knights’ Performance Measures
In our May 2009 issue, we commented on the rising disparity in pay between CEOs and workers in the U.S. The Canadian Centre for Policy Alternatives confirmed a similar trend in Canada, in its recently released report, A Soft Landing, Recession and Canada’s Top 100 Highest Paid CEOs by Hugh Mackenzie. Pursuant to the report, in 2008, the total average compensation for Canada’s highest 100 paid CEOs of $7,300,884 was 174 times greater than the total average Canadian income of $42,305, which was up from 104 in 1998. Moreover, the increase in the 100 highest paid CEOs’ average compensation outpaced inflation by 70% from 1998 to 2008; whereas, Canadians earning an average income lost 6% to inflation over the same period.

The rising pay disparity is one of the factors that fuelled the outrage over excessive CEO pay packages in developed countries. Interestingly, this factor was also highlighted in a survey assessing the best corporate citizens. In June 2009, Corporate Knights, the Canadian magazine for responsible business, released its

From the Editor
Several organizations are looking to improve their compensation practices following the criticism they received for their role in the global economic crisis. This newsletter outlines some of the good pay practices being promoted by key industry stakeholders. I am pleased to welcome comments on diversity in the legal profession and the initiatives of A Call to Action Canada in major organizations, by Joy Casey, founder and a senior litigation lawyer.

— Nadine Côté LL.B.
The importance and value of diversity and inclusiveness are recognized by most organizations and the business case for diversity has been clearly established. Many companies emphasize that diversity and inclusion are part of their core values and promote their diversity initiatives for staff and, often, for their supply chain.

In spite of the current strong emphasis on diversity, the level of representation of women and minorities at senior levels of management and in professions continues to be a major disappointment. The legal profession is particularly slow in making progress. Although women have made up at least 50% of all law school classes for at least 20 years, and minorities are attending law school in rapidly increasing numbers, their numbers are not reflected at the partnership level in major law firms. Further, the number of women and minorities who choose to leave the profession is significantly disproportionate in comparison to white men.

A new initiative to promote diversity in the legal profession is A Call to Action Canada. It is inspired by the “Call to Action”, which was set in motion in 2004 by senior legal officers at several major U.S. companies. A Call to Action Canada is directed to in-house counsel in corporations and in government and provides encouragement and support to in-house counsel in advancing diversity and inclusiveness in the legal profession by:

- Requiring their outside law firms demonstrate true progress in the full participation and advancement of women and minority lawyers within law firms
- Limiting or terminating relationships with outside law firms that demonstrate a lack of commitment to being diverse and inclusive

Canadian corporate counsel are asked to sign A Call to Action Canada’s mission statement, pledging their organization’s commitment to advocate for diversity. Founding signatories include E.I. DuPont Canada Company, Royal Bank of Canada and Accenture Inc.

A Call to Action Canada also encourages organizations to look for opportunities to direct work to women-owned and minority-owned law firms and to commit a percentage of their budget for outside legal services to such firms. A website is being developed for women-owned and minority-owned law firms as a resource to ensure that organizations can find the right firms to meet their needs.

Joy Casey is a senior litigation lawyer at her firm and a founder of A Call to Action Canada. For more information, please contact Joy Casey at info@acalltoactioncanada.com or go to www.acalltoactioncanada.com.

The survey also ranked companies by the profits consumed by the compensation paid to the top three highest paid executives. Diverting excessive compensation to just a few executives in relation to the company’s earnings was used as a measuring stick because it could suggest conflicts of interest and sub-optimal resource deployment. Based on the S&P/TSX60 companies, the average compensation paid to the top three executives consumed 6.8% of profits.

The factors considered by the survey also included the ratio of pension assets to full-time equivalent employees, C-Suite diversity and C-Suite pay. In assessing C-Suite and board level diversity, based on the S&P/TSX60 companies, 8 companies had no female board members, 42 had no visible minorities or aboriginal board members and none had a female CEO.

Given the foregoing factors were used to measure the performance of these companies, query if they will evolve into new measures for assessing CEO performance. Time will tell whether CEO performance measures will evolve to include:

- Ratio of CEO-to-worker pay
- Per cent of company profits paid to top executives
- NEO diversity – females, visible minorities and aboriginal members

Financial Stability Board Compensation Principles

In April 2009, the G20 leaders agreed to establish a new Financial Stability Board (FSB) with a mandate broader than its predecessor, the Financial Stability Form (FSF). The FSB’s mandate includes assessing vulnerabilities affect-
CCGG’s Best Practices in Disclosure

CCGG also released its 2009 edition of Best Practices in Disclosure of Director Related Information, formerly titled Best Practices in Shareholder Communication. It provides guidance on how to improve the disclosure of information related to directors, including examples of best practices.7

CCGG’s Engagement and Say on Pay Policy
In 2009, CCGG published a draft model policy titled “Shareholder Engagement and Say on Pay”. The policy is intended to provide guidance to boards on their engagement with shareholders and their approach to executive compensation disclosure. It includes a recommended form of advisory resolution and comments on how to address the results of a say-on-pay vote. As part of this policy, CCGG issued its Board Engagement Policy. The policy outlines how CCGG will engage several Canadian public companies in discussions on compensation practices and board performance, including how companies will be selected, the purpose of the meetings and the process for engagement.8

Corporate Governance Review Postponed
In November 2009, the CSA announced the postponement of significant changes to Canada’s corporate governance regime. In December 2008, the CSA had published for comment proposed changes to the corporate governance regime affecting National Instrument 58-101 Disclosure of Corporate Governance Practices and National Instrument 52-110 Audit Committees and Companion Policy 52-110CP Audit Committees. The CSA received numerous comments about the proposal, including concerns with the timing of the changes. The comments indicated that issuers were currently focused on sustainability issues in the current economic climate and on the transition to the International Financial Reporting Standards. Taking into consideration the comments received, the CSA indicated that the proposed changes would not be implemented. The CSA further indicated that any subsequent proposed changes would not be effective until the 2011 proxy season, at the earliest.10

CSA’s 2008 Enforcement Report
The CSA released its 2008 Enforce-