APPENDIX C: OTHER REGULATORY DEFICIENCIES

CSA Staff assess issuer compliance with requirements of our securities laws. Our objective is to promote clear and informative disclosure that will allow investors to make informed investment decisions. We have identified the following areas where we continue to see lack of compliance: mineral projects, executive compensation and governance practices.

1. Standards of Disclosure for Mineral Projects

National Instrument 43-101, *Standards of Disclosure for Mineral Projects* (NI 43-101), sets out the requirements when a mining company discloses scientific or technical information on mineral projects. Under these requirements, the disclosure must be based on information prepared by a qualified person. Deficiencies identified include:

- incomplete or inadequate disclosure of preliminary economic assessments, mineral resources and mineral reserves;
- non-compliant certificates and consents of qualified persons for technical reports;
- incomplete or inadequate disclosure of historical estimates and exploration targets; and
- name of the qualified person omitted in documents containing scientific and technical information.

We remind issuers that the amendments to NI 43-101 came in force on June 30, 2011.

2. Statement of Executive Compensation

All direct and indirect compensation provided to certain executive officers and directors for, or in connection with, services they have provided to the issuer or subsidiary of the issuer must be disclosed. The objective of this requirement is to provide insight into executive compensation as a key aspect of the overall stewardship and governance of issuers and to help investors understand how decisions about executive compensation are made. Many issuers continue to provide insufficient disclosure related to the summary compensation table, as well as in their compensation discussion and analysis.

a. Summary compensation table

Section 3.1 of Form 51-102F6, *Statement of executive compensation* (Form 51-102F6), requires issuers to provide a summary compensation table (SCT). We noted that some issuers did not disclose in the SCT the grant date fair value of share-based awards and option-based awards. We remind issuers that the grant date fair value of these types of awards must be reported in the SCT in the year of grant irrespective of whether part or the entire award relates to multiple financial years or payout is subject to performance goals and similar conditions. We also remind issuers that they must disclose key assumptions and estimates used to calculate the fair value of the grant.

Example of deficient application

In 2011, a company grants restricted share units (RSUs) to a named executive officer (NEO). Under the terms of the award, the NEO will be entitled to a payout of 1,000 RSUs in each of 2011, 2012, and 2013 if certain performance goals, including vesting, are satisfied in those years. The performance goals, including vesting, in respect of the 2011 part of the award have been satisfied and the company reports the grant date fair value of that part of the award in the 2011 SCT but decides to defer reporting the part of the award related to 2012 and 2013.

What should have been done
The company should have reported the grant date fair value of the entire award, including the parts related to 2012 and 2013, in the 2011 SCT. The grant date fair value methodology used should have taken into account the fact that the NEO will not receive those RSUs unless the performance goals, including vesting, for 2012 and 2013 are satisfied.

b. Compensation discussion and analysis

Section 2.1 of Form 51-102F6 requires issuers to describe and explain all significant elements of compensation awarded to, earned by, paid to, or payable to NEOs. The compensation discussion and analysis must include the following:

(a) the objectives of any compensation program or strategy;
(b) what the compensation program is designed to reward;
(c) each element of compensation;
(d) why the company chooses to pay each element;
(e) how the company determines the amount (and, where applicable, the formula) for each element; and
(f) how each element of compensation and the company's decisions about that element fit into the company's overall compensation objectives and affect decisions about other elements.

A number of issuers did not provide the required disclosure. Many issuers provided an analysis expressed in boilerplate language; others did not fully and accurately explain significant elements of compensation awarded to NEOs.

Example of deficient disclosure
The objective of the Corporation's compensation is to: (i) compensate management in a manner that encourages and rewards a high level of performance with a view to increasing long-term shareholder value; (ii) align management's interests with the long term interests of shareholders; and (iii) provide a compensation package that is commensurate with other junior companies in order to enable the Corporation to attract and retain talent.

Example of entity-specific disclosure
The Compensation Discussion and Analysis section explains the pay program for the financial year ended December 31, 2011 for our NEOs, which include our President and Chief Executive Officer, Executive Vice President and Chief Financial Officer, and our three other most highly compensated executive officers as follows: [list of names].

Executive Compensation Philosophy and Policy
Executive compensation at XYZ Inc. (XYZ) is aligned in several ways with our strategic business plan. Our key long-term objective is to motivate executives to achieve targets that are aligned with the Corporation's strategic goals and that are expected to enhance shareholder value over the long term. Our shorter-term corporate goals, business unit objectives, and individual contributions to business success are reflected in the annual

incentive plan. A significant portion of the executive pay program consists of “at-risk” pay meaning that compensation is dependent on achieving corporate, business unit and individual performance objectives both in the short and long term.

XYZ’s executive pay program is also designed to attract and retain experienced executives who have the skills required to help the Corporation achieve its strategic and organizational goals. XYZ is committed to providing compensation plans that are consistent with best practices in corporate governance.

The Corporation’s executive compensation policy is to provide total compensation that is generally competitive with the median of its peer group, taking into consideration additional Corporation-specific issues such as the achievement of financial and operational objectives, and the specific roles and responsibilities of different executive positions. Total compensation plans are structured to provide compensation that is above market median when results exceed the Corporation’s business objectives and below market median when results are below target.

Executive Compensation Components

The following describes the different compensation components, which together provide compensation packages that meet the objectives of XYZ’s compensation philosophy.

Base Salary: Market-competitive fixed rate of pay to attract and retain executives with experience and skills required to achieve strategic and organizational goals.

Annual Incentive Plan (AIP): Annual cash bonus with target awards established for each NEO as a percentage of base salary to motivate executives to drive superior short-term performance through Corporation, business unit and individual objectives.

Long-term Incentive Plan (LTIP): Option grant levels are based on individual performance and options are time-vested rateably over 4 years with a 10-year term to promote retention and encourage executives to pursue opportunities that will increase shareholder value over the long term.

To achieve the objectives described above, each element of pay is targeted at the market median with adjustments based on meeting specific performance goals as follows:

- Base salary is adjusted above and below the median to reflect specific circumstances such as experience, individual performance and changes in responsibility;
- AIP payouts may exceed market median target levels when results exceed objectives and may be below median levels (down to zero) when results are below targets; and
- LTIP grants of stock options can be adjusted from 0% to 200% of target levels based on each individual’s performance and contribution to the Corporation’s overall results.

The Corporation has chosen to reward achievement of overall Corporation performance goals defined as earnings before income taxes and non-controlling interest (adjusted EBT). The Corporation believes that adjusted EBT is the most appropriate indicator of the operational and financial performance of the business. For 2011, there was no payout in respect of the corporate objective of the AIP and LTIP, as the minimum performance threshold of $3.5 M in respect of adjusted EBT was not achieved.

For more information and guidance about the compensation discussion and analysis, see [CSA Staff Notice 51-331 – *Report on Staff's Review of Executive Compensation Disclosure*.] Although, we remind issuers that new amendments to Form 51-102F6 came in force on October 31, 2011.

3. Disclosure of corporate governance practices

Issuers must adequately disclose their corporate governance practices. For example, Item 6 of Form 58-101F1, *Corporate Governance Disclosure,* and Item 5 of Form 58-101F2, *Corporate Governance Disclosure (Venture Issuers),* require issuers to describe the process by which the board identifies new candidates for board nomination. Disclosure by issuers reviewed was often deficient.

Some issuers simply indicated that the nominating committee or another board committee was responsible for identifying candidates. Others merely stated that the nominee committee was responsible for recommending candidates for board nomination. This type of disclosure is insufficient, as it does not explain the process for identifying new board nominees.

Example of deficient disclosure
Members of the Human Resources, Corporate Governance and Nomination Committee, the Board and management are responsible to determine the nomination of new candidates for Board nomination.

The following example illustrates full disclosure of the board nominee selection process.

Example of entity-specific disclosure
The board of directors has conferred on the Corporate Governance Committee responsibility for identifying new candidates for director positions and for proposing these candidates to the board of directors. The process by which the Corporate Governance Committee identifies new candidates for director positions begins with the approval by the board of a statement of competencies and experience sought with respect to each new candidate. The board of directors or management may propose candidates to the committee. On occasion, the services of a recruitment adviser may be used. Potential candidates are interviewed by the chairman of the board of directors and the lead director as well as by the other members of the board, as necessary. An invitation to join the board is made only where board consensus regarding the proposed candidate is obtained.