Canada

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI about 137 companies in Canada (or 43 Ontario companies, as the case may be) as of 15 May 2008.

Shareowners in the Canadian market have strong shareowner rights. Most boards are elected annually. Although shareowner rights plans are not uncommon, they must be approved by shareowners and generally, because of the shareowner-friendly Canadian legal environment, do not offer companies a strong defense against a takeover. Shareowners representing 5 percent of a company's voting power can convene a special meeting at any time for any purpose, including the removal of board members. Ordinary corporate transactions require majority shareowner approval, although extraordinary corporate transactions require a supermajority vote. Because the largest Canadian public companies are listed on the Toronto Stock Exchange, the Ontario Securities Commission is generally regarded as the lead securities regulatory authority in Canada although each province or territory also has its own regulatory authority.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
What is the average percentage of independent board members on public company boards (% independent board members)?	71%	69% for companies incorporated in Ontario
What percentage of companies report significant related-party transactions (1% of revenue or more) within the last three years?	7%	9% for companies incorporated in Ontario
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	24%	35% for companies incorporated in Ontario
Is voting by proxy permitted?	Yes	Always allowed
Must shares be deposited or blocked from trading in order to vote?	No	
Are there share ownership limitations in this market?	Mostly, no	Share ownership limitations are not common, but the federal government limits the level of foreign ownership of companies in various regulated sectors, including telecommunications, broadcasting, media and entertainment, and airlines. No person or institution is allowed to own more than 10% of a Schedule I bank's shares. Schedule I banks are Canadian domestic banks and are authorized under the Bank Act to accept deposits, which may be eligible for deposit insurance provided by the Canada Deposit Insurance Corporation.
Are there [other] common restrictions on the rights of shareowners to vote in person or by proxy?	No	Proxy voting is unrestricted.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Do companies adhere to a majority voting standard in the election of board members?	Yes, but company specific	Majority voting is becoming more common in Canada; 46% of companies in Canada have adopted majority voting. In Ontario, 53% of companies have done so.
Do companies allow for cumulative voting in the election of board members?	Mostly, no	2% of companies in Canada; 5% of companies in Ontario
Are shareowners able to affect a company's remuneration policy through shareowner approval (binding or nonbinding) of the remuneration committee report, the proxy's Compensation Discussion and Analysis section, or otherwise?	No	Canadian shareowners do not have this right, but a shareowner proposal on say-on-pay appeared on the ballot at several Canadian companies for their 2008 annual meetings. Although none of the proposals passed, the vote was encouraging enough that similar proposals are being submitted for 2009 annual meetings.
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or otherwise?	Yes	This right is standard in Canada.
Are shareowners permitted to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	Yes	Binding and nonbinding proposals are provided for under most of the corporate law statutes of the provinces and territories.
Do shareowners have a right to convene a general meeting of shareowners outside the annual meeting process (e.g., an extraordinary general meeting or special meeting) if only 10% or less of the shares are represented in the group requesting the meeting?	Yes	This right is standard in Canada. Shareowners holding a minimum of 5% of the shares can call an extraordinary general meeting.
What percentage of companies include golden shares in their capital structure?	0%	Canadian companies do not have golden shares.
Are shareholder rights plans (poison pills) allowed in this market?	Yes	30% of Canadian companies have a shareholder rights plan; 16% of companies in Ontario have a shareholder rights plan.
If shareholder rights plans are in use, do they have to be approved by shareowners?	Yes	Corporations are required to submit shareowner rights plans to shareowners no later than the annual meeting following the adoption of the plan.
Do all shareowners have the right to approve significant company transactions, such as mergers and acquisitions?	Yes	This is a standard right in Canada.
Do companies require a supermajority vote to approve a merger?	Yes	Approving a merger with another company requires a supermajority shareowner approval (66 2/3% of the votes cast).

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Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Are companies subject to a fair price provision, either under applicable law or as stated in company documents (such as the charter or bylaws)?	Yes	Most corporate statutes give shareowners the right to dissent with respect to extraordinary corporate transactions and demand fair value for the shares held by them.
Are class action suits commonly used in this market?	Yes	
Are derivative suits commonly used in this market?	Yes	

Current Engagement Practices and Shareowner Rights Developments

Shareowners in Canada engage through active board participation, proxy voting, direct communication with management, and in some cases, even lawsuits. Canadian investors traditionally have been more restrained in their activism than their U.S. counterparts, but this characteristic is changing.

Ownership in Canadian corporations is highly concentrated; a small number of shareowners control a large proportion of traded equities. For many years, Canadian institutional investors quietly exerted influence over the activities of Canadian public issuers, but shareowner activism has changed as the financial clout of multi-billion-dollar equity, hedge, and pension funds has increased. Encouraged by the success of activist U.S. funds, investors in securities of Canadian public issuers are now willing to express their views publicly and to take direct action against boards that they believe are unresponsive to shareowners. Legislative changes, the increasing use of third-party proxy advisory organizations, and rising participation rates in investment fund associations have led to higher levels of coordinated voting among institutional investors in Canada.

Shareowners in Canada were not very active until 1997. For example, from 1982 to 1995, only 18 shareowner proposals were included in the proxy circulars of Canadian corporations. The relative lack of shareowner activism in Canada can be attributed to the legal constraints imposed after the 1987 court case of Varity Corporation versus Jesuit Fathers of Upper Canada et al. In this case, the court sided with Varity Corporation's decision to not circulate a shareowner’s proposal on disinvestment from South Africa.

Things changed in 1997, when the Quebec Superior Court and the Quebec Court of Appeals forced three banks (Laurentian Bank of Canada, National Bank of Canada, and the Royal Bank of Canada) to include activist Yves Michaud's proposals in their proxy circulars and to allow for voting on the proposals at their annual general meetings. This court victory has eased the process of shareowner activism in Canada, especially in cases involving shareowner proposals. Subsequently, in 1998, activists followed Michaud's example by sending proposals to other banks. The first nonbank companies to be targeted by activists were Bell Canada Enterprises and Dofasco. Since then, activists have routinely filed shareowner proposals with banks and the practice has gradually spread to other types of companies.

Unsolicited takeover bids in Canada are fairly commonplace, and they are considerably easier to accomplish and less time-consuming than in the United States because fewer structural and other takeover defenses exist in Canada. Most board members are elected annually; staggered board terms would offer no real defense against takeover bids because shareowners may call meetings to replace board members at any time. An unsolicited takeover bid in the United States can take as long as 18 months to complete, but in Canada, takeover bids typically take only 60–90 days.

In Canada, corporations are required to submit shareholder rights plans (poison pills) to shareowners no later than the annual meeting following the adoption of the plan. The rights plan must be confirmed at every third annual meeting thereafter. In addition, almost all shareholder rights plans are "chewable," meaning they contain a provision that a bidder who is willing to conform to the requirements of a permitted bid can acquire the company by takeover bid without triggering the plan.

Shareholder rights plans tend to be a weaker defensive tool in Canada than they are in the United States partly because Canada does not support many of the most prevalent defensive measures. Rights plans are challenged in Canada before provincial securities commissions, which have shown a preference for giving the target corporation's shareowners the decision to accept or reject the acquirer's offer, leaving Canadian corporate boards little power. The provincial commissions allow a rights plan to remain in place for only a limited period to allow the target corporation's board time to solicit a superior offer. Therefore, if a Canadian target company is put into play by an unsolicited takeover bid, a change-of-control transaction generally occurs because opposition to an unsolicited takeover bid in Canada usually amounts to the target company seeking a superior alternative transaction. In contrast, shareholder rights plans in the United States are challenged before the courts, where judges have been inclined to allow such plans to remain in place. This significant difference suggests that the environment in Canada is much more receptive than the environment in the United States to hostile bidders.

"Crown jewel" defenses involve the selling of assets to a friendly third party to frustrate an attempted takeover and may result in the sale of assets at less than their fair value. Both poison pills and crown jewel defenses are potentially detrimental to the interest of shareowners and may undermine shareowners' rights to determine the company's future plans. In Canada, however, such sales usually require the approval of a majority of the shareowners. In addition, if a transaction comprises "substantially all the assets of a corporation" or if the transaction "would change the essential nature of a corporation's business," dissent rights are granted to shareowners. Dissenting shareowners may seek a court-supervised appraisal of the fair value of their shares and may demand a cash payment of that amount from the acquirer.

In 2008, Meritas Mutual Funds petitioned Canada's "big five" banks at their annual meetings to adopt an advisory shareowner vote on executive compensation, better known as a "say-on-pay" resolution. Support ranged from 35 percent to 45 percent. The relatively high levels of support indicate that some large institutional investors in addition to Meritas supported the proposals. There was also significant opposition to the proposals, however, as voiced by the Canadian Coalition for Good Governance (CCGG), which advised its members to vote against say-on-pay proposals in 2008. In a position paper released in December 2007, the CCGG argued that Canadian companies were making progress on compensation issues and that say-on-pay resolutions were not necessary at that time. In a report released in February 2008 on its proxy-voting guidelines, the Canada Pension Plan Investment Board took a position similar to that of the CCGG. The CPP Investment Board said it would oppose say-on-pay proposals in Canada in 2008 but would assess such proposals in the United States on a case-by-case basis.

Montréal-based investor group MEDAC (*Mouvement d'Education et de Défense des Actionnaires*, or the Shareholder Education and Defense Movement), led by Yves Michaud, incorporated compensation resolutions in proxy submissions to 11 major Canadian companies in 2008, including seven large banks. Those resolutions called for compensation payments to be "previously adopted" by shareowners, suggesting an advance vote on pay that would be binding on the company.

The CCGG is one of the significant drivers for change in the Canadian landscape. The CCGG not only monitors corporate governance and reports on best practices but also actively engages with boards and regulatory bodies in an attempt to initiate and influence changes in the Canadian environment.

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Legal and Regulatory Framework

The corporate governance of Canadian public companies is regulated by corporate laws and securities laws. Canadian companies may be incorporated under the federal Canada Business Corporations Act (CBCA) or one of the similar provincial or territorial corporate statutes. Securities regulation is the responsibility of the ten provincial and three territorial governments, each of which has its own legislation and securities regulatory authority. Those authorities, in turn, coordinate their activities through the Canadian Securities Administrators (CSA), a forum for developing a unified approach to securities regulation across the country.

The CSA also maintains two electronic databases accessible to the public: the System for Electronic Document Analysis and Retrieval contains public records of all companies publicly traded on the Canadian markets; the System for Electronic Disclosure by Insiders contains reports on securities holdings and trading for insiders of Canadian public companies.

The CSA has developed a system of mutual reliance that designates one securities regulator as the lead agency when it comes to reviewing applications or disclosure documents from Canadian public companies. Because the largest Canadian public companies are listed on the Toronto Stock Exchange, the Ontario Securities Commission is generally regarded as the lead securities regulatory authority in Canada. Many Canadian public companies are also incorporated under the Ontario Business Corporations Act (OBCA). The CSA has introduced a series of national instruments and policies (CSA rules) that affect the corporate governance of Canadian public companies. The CSA rules closely follow the U.S. Sarbanes–Oxley legislation and the rules and guidelines established by the U.S. Securities and Exchange Commission and U.S. stock exchanges.

The OBCA, as with other corporate statutes, provides that a corporation must prepare and maintain in a designated place certain types of records, including the articles and bylaws of the corporation and all related amendments; copies of any unanimous shareowners' agreements known to the board members; minutes of meetings and resolutions of shareowners; a register of board members and specified information about them; and a securities register. The articles of incorporation and bylaws of the corporation may overrule the statutory provisions in certain situations. Under the OBCA, however, a corporation is required to have at least 25 percent of the board members of the corporation be resident Canadians. According to the Bank Act, no person or institution is allowed to own more than 10 percent of a Schedule I bank's shares. Schedule I banks are Canadian domestic banks and are authorized under the Bank Act to accept deposits that may be eligible for deposit insurance provided by the Canada Deposit Insurance Corporation.

An annual meeting of shareowners may be called not later than 15 months following the last annual meeting held, and special meetings may be called at any time. Business requiring shareowner approval can be transacted between annual meetings by calling a special meeting of shareowners. Shareowners who hold not less than 5 percent of the voting shares of a corporation may request that the board members call a meeting for any purpose stated in the requisition.

In Canada, shareowners may make both binding and nonbinding proposals. Binding and nonbinding proposals are provided for under most of the corporate law statutes of the provinces and territories and under the CBCA and the Bank Act.

If shareowners adopt a proposal to make, amend, or repeal a bylaw, Canadian corporate law requires the corporation to enact the proposal, which allows the shareowners to effect corporate change. In addition, shareowners who represent 5 percent of voting equity may initiate proposals, including nominations for the election of board members. Unlike U.S. companies, Canadian corporations do not typically use advance notice bylaws to limit shareowners' rights to make proposals and board member nominations. Because corporate management controls the solicitation of proxies for meetings of shareowners and because of the concentration of share ownership in Canada, management's nominees are usually elected. Proxy contests in Canada are rare. Shareowners are entitled to obtain lists of shareowners for the purpose of soliciting proxies at meetings of shareowners. Typically, a board member is elected for a one-year term. Staggered, multiple-year terms of up to three years are permitted but are not common in Canada.

Generally, shareowners are entitled to one vote per share. Some Canadian public companies have a dual-class share structure, with one class having multiple voting rights that give the holders of those shares voting control. In most cases, shareowners holding the other class of shares have "coat-tail" rights (permitted to participate on identical terms) in the event of a takeover bid or similar transaction.

Past restrictions on foreign investment encouraged the use of dual-class share structures. For example, the 1967 revision to the Bank Act placed a 10 percent voting cap on all chartered banks (no one voting shareowner could have more than 10 percent of the voting rights, no matter the number of shares owned) and capped aggregate foreign ownership at 25 percent. Although some of these restrictions have been lifted, the federal government continues to limit the level of foreign ownership of companies in various regulated sectors, including telecommunications, broadcasting, media and entertainment, and airlines. Companies that use dual-class shares tend to be largely concentrated in these sectors and often justify the continued use of such structures by stating that they need to avoid violating foreign-ownership restrictions while attracting adequate equity investment from foreigners.

Ordinary corporate transactions require majority shareowner approval (greater than 50 percent of the votes cast). Extraordinary corporate transactions (such as amending the corporate charter or bylaws or approving a merger with another company) require a supermajority shareowner approval (66 ⅔ percent of the votes cast). Most corporate statutes give shareowners the right to dissent with respect to extraordinary corporate transactions and to demand fair value for the shares they hold. The provinces of Ontario and Quebec have additional rules that apply in certain circumstances and are designed to ensure fair treatment of minority shareowners in connection with certain types of transactions involving related parties (which include shareowners holding 10 percent or more of the voting securities of the company).

A number of groups within Canada, including the CCGG, have argued for stronger regulatory and legal enforcement in Canada because those engaged in "white collar" crimes in Canada appear to go largely unpunished. Indeed, many institutional investors in Canada prefer to buy the shares of companies listed on both Canada and U.S. exchanges in order to have the option of legal redress in the United States.

Key organizations with information relevant to shareowner rights in Canada and/or Ontario include the following:

Canadian Securities Administrators (www.csa-acvm.ca)

Ontario Securities Commission (www.osc.gov.on.ca)

Toronto Stock Exchange (www.tsx.com)

Canadian Coalition for Good Governance (www.ccgg.ca)

Social Investment Organization (www.socialinvestment.ca)

Canadian Pension Plan Investment Board (www.cppib.ca)

System for Electronic Document Analysis and Retrieval (www.sedar.com)

System for Electronic Disclosure by Insiders (www.sedi.ca)

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