Canada

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI Ratings about 132 companies in Canada as of 31 August 2012.

Shareowners in the Canadian market enjoy strong shareowner rights, with most boards elected annually. Although shareowner rights plans are not uncommon, they must be approved by shareowners; because of the shareowner-friendly Canadian legal environment, they generally do not offer companies a strong defense against takeover. Shareowners representing 5% of a company's voting power can convene a special meeting at any time and for any purpose, including the removal of board members. Ordinary corporate transactions require majority shareowner approval, but extraordinary corporate transactions require a supermajority vote. Because the largest Canadian public companies are listed on the Toronto Stock Exchange (TSX), the Ontario Securities Commission is generally regarded as the lead securities regulatory authority in Canada; however, 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%	
What percentage of companies have fully independent audit committees?	87.9%	
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	21.2%	
Is voting by proxy permitted?	Yes	Always allowed
Must shares be deposited or blocked from trading in order to vote?	No	

(continued)

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
Are there share ownership limitations in this market?	No, mostly	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 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	
Do companies adhere to a majority voting standard in the election of board members?	Yes, but adherence is company specific	Majority voting is becoming more common in Canada.
Do companies allow for cumulative voting in the election of board members?	No, mostly	
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 something comparable?	No	
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or something comparable?	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 allowed under most 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.

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
What percentage of companies include golden shares in their capital structure?	0%	
Are shareholder rights plans (poison pills) allowed in this market?	Yes	
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 (66.67% of the votes cast).
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 their shares.
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, lawsuits. Although Canadian investors traditionally are more restrained when it comes to activism than their U.S. counterparts, this dynamic is changing.

Ownership in Canadian corporations is highly concentrated, with a small number of shareowners controlling 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 more willing to express their views publicly and to take direct action against boards they consider unresponsive to shareowners.

Legislative changes, the increasing use of third-party proxy advisory organizations, and rising participation rates in investment fund associations have all led to higher levels of coordinated voting among institutional investors in Canada.

Canadian shareowners 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 *Varity Corporation v. 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, however, 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 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 targeted were Bell Canada Enterprises and Dofasco. Since then, activists have routinely filed shareowner proposals with banks, with the practice gradually spreading to other types of companies.

Unsolicited takeover bids in Canada are fairly common, 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 with 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 ample 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 are inclined to allow such plans to remain in place. This significant difference suggests that the environment in Canada is much more conducive to hostile bidders.

"Crown jewel" defenses—which involve the selling of assets to a friendly third party to frustrate an attempted takeover—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 interests 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, according to the Canada Business Corporations Act, 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 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% to 45%. The relatively high levels of support indicated that some large institutional investors, in addition to Meritas, supported the proposals. However, there was also significant opposition to the proposals, 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 (CPP) 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 but would assess such proposals in the United States on a case-by-case basis.

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Since that time, the views on say on pay have evolved. In 2010, the CCGG offered boards of directors a model say-on-pay policy after arriving at the view that the say-on-pay advisory vote "is an important part of an ongoing integrated engagement process between shareholders and boards."[1]

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.

In 2011, the CPP Investment Board and the CCGG began a "Majority Voting Initiative" to encourage companies to adopt a majority voting standard at Canadian public companies. Currently, election of directors at Canadian companies is based on a "plurality system" in which shareholders vote either "for" a director or "withhold" their vote (i.e., do not vote). In a plurality system, "withhold" votes do not count and, technically, a director needs only one "for" vote to be elected to the board.

Legal and Regulatory Framework

The corporate governance of Canadian public companies is regulated by corporate 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 10 provincial and 3 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 for all companies publicly traded on the Canadian markets, and 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

[1]www.ccgg.ca/site/ccgg/assets/pdf/CCGG_Say_on_Pay_Policy_Final_Formatted_Sept_2010.pdf (p. 1).

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 Act of 2002 and the rules and guidelines established by the U.S. Securities and Exchange Commission and U.S. stock exchanges.

In 2011, the Canadian Supreme Court struck down a government plan to establish a national securities regulator intended to streamline regulation and enforcement. Currently, Canada is the only OECD[2] country without a single securities regulator. The government has since resurrected efforts to set up a national securities regulator, and in April 2012, it announced it was consulting with provinces and territories, a number of which have reaffirmed their interest in working on a cooperative basis toward a common securities regulator.

In 2012, the TSX announced amendments to its listing requirements effective on 31 December 2012. The amendments require all issuers listed on the TSX to

1. elect directors annually (slates will no longer be allowed),
2. hold annual elections for all directors,
3. disclose annually in management information circulars (a) whether they have adopted a majority voting policy for directors for uncontested meetings and (b) if not, an explanation of their practices for electing directors and why they have not adopted a majority voting policy,
4. notify the TSX if a majority of shareholders withhold their votes from any particular director, and
5. promptly issue a news release providing detailed disclosure of the voting results for the election of directors.

The OBCA, similar to other corporate statutes, requires a corporation to 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% of the corporate board residing in Canada.

[2]Organisation for Economic Co-Operation and Development.

An annual meeting of shareowners may be called no later than 15 months following the last annual meeting, but special meetings may be called at any time. Business that requires shareowner approval can be transacted between annual meetings by calling a special meeting of shareowners. Shareowners who hold at least 5% 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, which are provided for under most of the corporate law statutes of the provinces and territories as well as 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% 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 owing to the concentration of share ownership in Canada, management's nominees are usually elected. Proxy contests in Canada are rare; however, 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 multiyear 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 "coattail" rights (are permitted to participate on identical terms) in the event of a takeover bid or similar transaction.

Ordinary corporate transactions require majority shareowner approval (greater than 50% 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 (66.67%, or two-thirds, 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% 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 Canadian and U.S. exchanges because it gives them the option of legal redress in the United States.

Key organizations with information relevant to shareowner rights in Canada 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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