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National Regulator Debate: Progress to Date and Momentum Forward

Anjeet Bening and Michelle Tan

During the recent past and further beyond, it is fair to say that there has been a varying level of interest circulating within the investment community, regarding the establishment of a national securities regulator, and not just among Canadians.

This summer the International Monetary Fund (IMF) pointedly noted Canada as being the only member of the Group of Seven wealthy nations without a national regulator. "Establishment of a common securities regulator would be good policy, and it would be conducive to mutual recognition of securities regulation with other countries, including the United States," said, IMF managing director Rodrigo Rato, in a June speech in Toronto. Given the continued and varied venues of this debate, we decided to take a quick stroll through some of the more recent contributions to both sides of this issue.

In 2004, the provinces and territories (with the exception of Ontario) all signed the *Provincial/Territorial Memorandum of Understanding Regarding Securities Regulation*. This memorandum outlined several steps that the signed parties agreed to undertake, one of which was the establishment of a provincial passport system. The passport system intended to harmonize securities regulation between all of the "passport jurisdictions" which include all of the provinces and territories with the exception of Ontario.

Since 2004, the provinces have pushed ahead and a passport system has been created in an effort to unify securities regulation (and the processes associated with it) between different provincial regulators. In particular,

the passport system will allow prospectus clearances, dealer and advisor registrations, and discretionary exemptions, once cleared by the participant's home province or principal regulator, to be automatically accepted in each passport jurisdiction. The Canadian Securities Administrators (CSA) (excepting Ontario) has announced its intention to fully implement the passport system within the next year.

Earlier this year, The Ontario Securities Commission (OSC) stated that it would not be adopting the passport rule proposed under *National Instrument 11-102 – Passport System*. In its comment on the passport system, the OSC indicated that although the system may help to improve inefficiencies within the current regulatory structure, it does not provide long term solutions to existing problems with the framework itself. These issues, as identified by the OSC, which remain unsolved by the passport system include:

- The need to enhance competitive position through the elimination of fees, costs and duplication created by 13 different regulatory agencies. Not only does the passport system maintain all 13 commissions, argues the OSC, it also keeps many of the same fee structures.
- The need for 'consistency in regulatory decision making to promote fairness' and equal opportunity for all market participants. According to the OSC, the passport system will give each regulator the ability to make decisions that have effect in other passport jurisdictions, without a means for ensuring consistent decision-making in each jurisdiction.

- The call for advanced investor protection through improved enforcement within all of Canada. Ontario believes that a single national regulator would be better able to ‘interpret, apply and enforce securities laws for all market participants in Canada’.

Ontario has committed to developing interface mechanisms between Ontario and the passport jurisdictions within the passport system, but continues to advocate for the development of a single regulator. The OSC has stated that it will not adopt the passport system until such intention is shown by the other regulators.

Other proponents for the creation of a single national securities regulator share many of the same concerns voiced by the OSC. One regulator, they argue, with one set of rules and one basic fee structure would increase access to Canada’s capital markets and reduce costs to the economy.

In May 2005, the Ontario Minister responsible for securities regulation in the province established a seven-member panel headed by Purdy Crawford (the Crawford Panel). Working independently from government, the panel was charged with recommending a model for achieving a securities regulatory framework that features a common securities regulator, a common body of securities law, and a single fee structure. In June 2006, the Crawford Panel released its final report, *Blueprint for a Canadian Securities Commission*, which proposed a single unified voice that would oversee stock markets across the country, without being dominated by any one jurisdiction. A subsequent follow-up report, *One Year On: Seeing the Way Forward* was released in June 2007, which pressed that, “consistent and fair enforcement of investor rights on a national

basis are persuasive reasons supporting the need for a single securities regulator.”

The **Canadian Coalition for Good Governance** has published a **short statement** strongly supporting a move “to a single, national Canadian regulator for capital market regulation. We believe that all regulators should be working toward this goal and that a framework agreement and proposed structure should be put in place within two years.”

An issue continually attributed to a lack of a single securities regulator is Canada’s reputation for “lax” enforcement of securities laws and regulations. The Federal Government has indicated that many of the problems associated with securities enforcement in Canada stem from inefficiencies generated by 13 different regulators, many of which have different police forces to conduct investigations. The government partly blames the problems on a lack of communication and co-ordination between different jurisdictions, making it difficult to share relevant information pertaining to investigations, resulting in less enforcement.

One estimate pegs the cost of this seemingly lenient enforcement at approximately \$10 billion and 65,000 jobs per year. According to John Coffee, a U.S. securities law expert who calculated this estimate, this cost to the Canadian economy is attributed to a “discount on Canadian securities” whereby Canadian companies must sell more shares in order to raise the same amount of funds as a similar counterpart in another country such as the U.S. This discount, he argues, is due to investors’ perception of Canada having less stringent enforcement, possibly making Canadian securities a higher risk option for investors.

Another issue which concerns single regulator advocates is the cost of raising capital within Canadian markets. These advocates indicate that multiple jurisdictions with different legal requirements and fees make it difficult for companies to raise capital in all jurisdictions. They argue that the expense of complying with each jurisdiction’s requirements limits accessibility to investors – especially for smaller companies that cannot afford the fees associated with each regulator. A single regulator, they insist, would lower the cost of financings and compliance; resulting in greater opportunity for all market participants.

The Canadian Bankers Association published a paper in February 2007 titled, *The Impact of Multiple Regulators on the Cost of Raising Capital for Small- and Medium-Sized Businesses*. This paper concluded that the current regulatory system increases the cost of raising capital across multiple jurisdictions such that issuers must weigh “the advantages of making their offer available more broadly against the costs that are incurred with each additional provincial board that is crossed.”

Although advocates acknowledge that the passport system is an excellent start to the harmonization process, some further concur that the end goal should be the establishment of a single national securities regulator. They believe that this regulator, once established, will reduce costs of compliance and financings, enhance enforcement strategies throughout Canada and standardize securities laws and regulations for a streamlined and consistent approach to decision making.

However, it is not universally acknowledged that one securities regulator would be the

solution to all of these issues. In response to repeated calls by federal Finance Minister, Jim Flaherty in early 2007 to create a national securities regulator, some provinces point out that securities regulation is in the provinces' sphere of responsibility, and as such, it is imperative that each province and territory maintain its own commission. Many of the passport jurisdictions emphasize the need for synchronized securities laws between the provinces and territories as a starting point for solutions to these and other issues. But they worry that Ontario would "take over" a single regulatory regime. Given that Ontario already regulates approximately 85 percent of Canada's stock trading activity through the TSX, single regulator supporters argue that a national regulator would give the other provinces more control, as they would have an equal voice at the table.

Flaherty has confirmed that a national regulator would remain under the jurisdiction of the provinces and will not become a federal commission. He appears to have stepped back from his original optimistic spring goal of a single securities regulator within a year or two to maintaining the momentum of discussion that came from a June Ministerial meeting with Ottawa and the thirteen provinces and territories. The federal government intends to name an expert panel which is expected in the near future to recommend approaches for improving the current system, which could range from an analysis of a simple harmonization of securities systems across the country or go as far as to outline what a national securities act would look like.

Some provinces argue that only regional regulators have the knowledge and understanding of their local markets and that a single regulator would most likely be launched within a centralized province, where large capital markets are located. As a result of this, they claim, a single regulatory framework would be catering to the needs of these larger markets and may not take into account the unique and complex interests of smaller businesses in localized markets. As such, these regulators believe that this would eventually lead to a province and/or territory losing control over its own economic policies.

The Crawford Panel Blueprint favours a national rather than federal agency, based upon cooperative federalism, which is a departure from previous reports such as the 2002 *Wise Persons' Committee to Review the Structure of Securities Regulation in Canada*, which favoured a federally controlled securities regulator.

Some provinces also insist that problematic enforcement issues are not due to the regulators, but to the lenient laws under the criminal justice system. In a recent speech made by Doug Hyndman, the chair of the British Columbia Securities Commission (BCSC), he refuted the notion that securities regulators are weak on enforcement and stated that "If Canadians want stronger deterrence against securities fraud, our governments have to remove the obstacles in the criminal justice system." He further expressed the notion that the responsibility for prosecuting and convicting guilty individuals lies with the justice system, not the regulators. He pointed out that as this is the case, a single regulator would not resolve this issue.

At the end of 2006 a working group was established by federal, provincial and territorial ministers responsible for justice to review ways to improve enforcement initiatives against securities fraud and other commercial crime in Canada. The working group involves representatives from police, securities regulators, Crown prosecutors and criminal law policy officials and is co-chaired by David Wilson, OSC Chair, and Louis Dionne, Director of Criminal and Penal Prosecutions for the Quebec Department of Justice. A final report is expected in the fall of 2007.

Both sides of the regulator debate offer compelling arguments for and against the creation of a single national regulator. Although it may seem as though these two camps are at an impasse, this is not necessarily the case. Ontario is working with the passport jurisdictions to create interfaces between it and the other regulators and has a two-year timeline in which to weigh the benefits of the passport system (and perhaps come to adopt it) before the current proposed interfaces between Ontario and the remaining regulators will be revisited. By the same token, the passport jurisdictions may discover a method by which to create and participate meaningfully within a single national regulatory framework without feeling left out of the decision making process. We can only hope that the momentum continues and the next few years are more productive than has historically been the case.

Enhancing Vote Result Disclosure Obligations – All Those In Favour, Say Aye!

By Anjeet Bening

Earlier this year, the Canadian Securities Administrators (CSA) requested comments on proposed amendments to the executive compensation disclosure requirements under National Instrument 51-102 – Continuous Disclosure Obligations. As part of this process, commenters were also asked to provide feedback on the current vote result disclosure requirements included under NI 51-102 section 11.3. In particular, the CSA was looking for opinions on whether issuers should disclose proxy vote results for each matter voted upon, even if the vote was not conducted by ballot; and, if so, whether this information would be beneficial to shareholders. In addition, the CSA wanted to determine how useful this information would be, given that there would most likely be discrepancies between the proxies received and the actual votes cast by show of hands.

The specific request for comment was due in part to the position of the Alberta Securities Commission that questions the relevancy of vote result disclosure and does not believe that an additional requirement to report voting results of proxies received when a vote is by show of hands is necessary given the rights of shareholders and proxyholders under statutes to demand a vote by ballot and thereby trigger full reporting of voting results under the existing regime.

Nine of forty-one commenters whose replies were posted on the [Ontario Security Commission's \(OSC\) website](#) responded to the vote result questions posed by the CSA. Of these, eight were in favour of having vote results available for each matter voted upon, regardless of how the vote was conducted.

The lone dissenter in the group represented a law firm and based his disagreements with the proposed changes on a number of factors. He begins his argument by stating that as a matter of law, the disclosure of proxy votes, which have not been voted or counted should not be included in a vote tally. Additionally, he states that this requirement would ensure disclosure of proxy results even in circumstances where shareholders present at the meeting choose not to exercise their right to request a ballot. Lastly, he argues, proxy vote results could give inaccurate reflections of support levels for proposals at the meeting and may give preference to those shareholders who do not attend the meeting over those who do.

Although the majority of the eight proponents for change were institutional investors; it should be noted that one of them was an issuer. This issuer indicated that as most shareholders vote by proxy,

reporting proxy vote results in addition to the results of shares voted at the meeting would be beneficial and "...of interest to shareholders."

The replies received by the CSA in favour of changes to the existing vote result requirements expressed concern regarding the usefulness of the current information being disclosed. These proponents for change identified the current lack of transparency and the need for standardized reporting as the key problematic issues under the status quo.

Under current vote result regulations, a majority of issuers simply indicate that a vote took place by a show of hands and record whether the corresponding proposals were passed. In its comment addressing vote results, The **Canadian Coalition of Good Governance (CCGG)** stated that the number of issuers reporting results by way of show of hands has increased significantly within the past couple of years. According to a study conducted by the CCGG, they witnessed a 12 percent rise in the number of issuers on the S&P TSX Composite Index reporting in this manner between the years 2005 and 2006.

Similarly, ISS' 2006 annual survey of voting results uncovered a similar trend. While our survey of a broader universe of TSX and TSXV-listed companies shows 16 percent of all 2005 agenda items were disclosed as being approved by SOH only, in 2006 the number increased to a whopping 46 percent. We note that a large portion of this increase can be attributed to the increased number of issuers who now provide for individual director rather than single slate elections. More distressing was the fact that SOH voting on more routine and ordinary resolutions

such as boards and auditors decreased while SOH voting on generally-accepted contentious resolutions such as equity-based compensation and shareholder rights plans increased. Finally our survey also revealed that where SOH votes are taken very few issuers provide the details of the preliminary votes submitted prior to the poll conducted at the meeting. We have also found that the issuers providing basic disclosure per resolution are the same issuers neglecting to provide voter turnout data. These oversimplified Voting Reports are of little use to shareholders as they lack transparency and accountability.

As such, commenters have requested a number of changes, including but not limited to: the disclosure of proxy vote results, the percentage of vote results regardless of whether the vote was taken by ballot or not, and vote tallies for votes conducted by proxy ballot and by show of hands for each proposal voted upon.

ISS recommends that whether or not a vote is conducted by ballot, that the vote results disclose the total number of votes received by proxy, as well as the number and percentage of proxy votes received For, Withheld, Against, and if provided Abstained from voting, for every item on the proxy ballot. As institutional shareholders have become much more committed to corporate governance activities, including voting and disclosing proxy votes, it is of great importance that all investors have information related to the results of the votes and that the voting process is transparent.

If adopted, these changes could encourage alignment between Canadian and US vote disclosure regulations. There is currently a marked difference between the two countries' vote disclosure requirements.

In the US, the Securities and Exchange Commission (SEC) mandates issuers to

include shareholder vote result information within the next quarterly report after the meeting was held (at the latest). As a comparison, Canadian issuers are regulated by National Instrument 51-102, which states that issuers must disclose vote result information "...promptly following a meeting of securityholders at which a matter was submitted to vote...". As the word "promptly" is not defined, the implementation of this policy allows issuers the latitude to disclose this information within any timeframe they deem appropriate. For obvious reasons information pertaining to the outcome of an annual shareholders' meeting becomes less meaningful as more time passes. Voting results should be made available as soon as is reasonably possible after a meeting.

Within their reports, US issuers must include information pertaining to:

- the date and type of meeting held;
- the names of all directors elected at the meeting and those whose terms are continuing after the meeting;
- a brief description of each matter voted upon at the meeting; and
- the number of votes cast for, against or withheld from each item.

The number of abstentions and non-broker votes must also be included, with separate tabulations for each nominee for office. In addition, these reports must contain a description of the terms of any settlement between the registrant and any other participant. Supplemental footnotes give detailed instructions and definitions of terms further defining the US requirements.

Under NI 51-102, Canadian issuers (excluding those on the TSX Venture exchange) must provide a brief description of the matter voted upon and the outcome of the vote. Only if the vote was conducted by ballot (including a vote on a matter in

which votes are cast both in person and by proxy), the report must disclose the number or the percentage of votes cast for, against or withheld from the proposed item.

As such, Canadian issuers that conduct votes via show of hands are only obligated to report the items voted on and whether they passed. Votes on "routine matters" are usually conducted by show of hands. If ballot votes are conducted, the issuer has a choice to include either the percentage or the number of votes cast for, against or withheld from each proposal. In those circumstances where percentages are used, the number of total votes is rarely provided, making this information less useful for shareholders. This is contrary to US requirements which do not allow issuers the option of providing percentages in lieu of the number of votes cast. In addition, unlike US issuers, Canadian issuers are not mandated to include abstentions in their reports, making it difficult to determine accurate vote results for certain proposals. Overall, the regulations governing vote result requirements in Canada are less rigorous when compared to those in the US.

In order to effect clear, concise guidelines, it would be beneficial for shareholders if modifications to the existing regulations were adopted, allowing for votes to be disclosed regardless of whether or not a vote is conducted by ballot. These vote results should include the total number of votes received by proxy, the number and percentage of proxy votes cast for, against or withheld from a proposal, and the number of abstentions per agenda item wherever applicable. Lastly, these results should be available within a defined and restricted time frame. These revisions would allow for a standardized method of reporting vote results which is transparent, useful and valuable to shareholders.

Optionholders Voting on Proposed Plan of Arrangement (Part II)

By Victor Li

Since January 1, 2006, optionholders of at least 10 companies have been entitled to vote on proposals regarding plans of arrangement, as tracked by ISS Canada as of August 2007 (see Table 1, Part I of this article in the last issue). Two more companies, **Newwest Gold Corp.** and **Steeplejack Industrial Group Inc.**, entered into the list in September 2007. In addition, one company (**Producers Oilfield Services Inc.**, which was acquired by **Mullen Group Income Fund**, the meeting of which was shown in Table 1) was previously omitted and one meeting (**NEMI Northern Energy & Mining Inc.**) was not held as the arrangement agreement was terminated prior to a vote being taken.

Accordingly, Table 2 illustrates the updated data as well as the available disclosure of the related voting results and the governing corporate acts.

Our study permits some simple observations of the voting results of those meetings where optionholders were allowed to vote on arrangement resolutions.

First, the proposals were approved overwhelmingly by all securityholders voting together as a single class in the meetings. The average approval rate for the 12 meetings is as high as 97.69% and the lowest approval rate is 87.70%.

Second, seven out of the 12 companies have reported the approval rate by common shareholders only (without the dilutive effect of option voting), with an average approval level of 96.10%. If the three companies with 100% approval rate were excluded, the average approval rate by common shareholders would have decreased to 93.17%, compared to the average approval rate of 93.96% by all securityholders voting together as a single class, indicating an incremental approval rate of 0.79%. In other words, allowing optionholders to vote on proposed arrangement have increased the average passing rate by less one percentage point for the four companies with available data

Table 2: Voting Results for Companies Granting Optionholders Voting Rights since January 1, 2006

Company Name	Meeting Date	Approved by % of the votes cast by holders of					Actual Votes	Corporate Law	
		All			Minority				
		Securities	Shares	Options	Securities	Shares			
Steeplejack Industrial Group Inc.	9/18/2007	99.92	n/d	n/d	99.92	n/a	Yes	ABCA	
Newwest Gold Corp.	9/13/2007	100.00	100.00	100.00	n/a	n/a	Yes	BCBCA	
Energy Metals Corp. *	7/31/2007	99.73	99.68	100.00	n/a	n/a	n/d	BCBCA	
Tone Resources Ltd.	6/25/2007	100.00	100.00	100.00	n/a	n/a	n/d	BCBCA	
Lorus Therapeutics Inc.	6/25/2007	99.39	n/d	n/d	n/a	98.70	Yes	CBCA	
TIR Systems Ltd.	5/10/2007	97.40	95.60	n/d	n/a	95.40	n/d	BCBCA	
Sterling Centrecorp Inc.	4/30/2007	91.00	90.00	n/d	85.00	84.00	n/d	OBCA	
Domtar Inc. *	2/26/2007	87.70	87.40	n/d	n/a	n/a	Yes	CBCA	
TM Bioscience Corp.	2/23/2007	98.26	n/d	n/d	n/a	n/a	n/d	OBCA	
NEMI Northern Energy & Mining Inc.	7/6/2006	Arrangement terminated							
Mullen Group Income Fund *	5/31/2006	98.90	n/d	n/d	n/a	n/a	Yes	n/a	
Producers Oilfield Services Inc.	5/31/2006	99.99	n/a	n/d	n/a	n/a	n/a	ABCA	
Rolling Thunder Exploration Ltd.	1/10/2006	100.00	100.00	100.00	n/a	n/a	Yes	ABCA	

* Companies treated by ISS Canada as core companies; n/d: not disclosed; n/a: not applicable

(see Table 3). This also shows that holders of securities other than common shares are more inclined to support the transaction.

Looking further into the last column of Table 3 where the percentage of options of the then outstanding voting shares is shown, it is clear, that even allowing securities representing more than 24% of the voting shares to vote on the arrangement proposal, the improvement of the approval rate is still marginal. One obvious reason is that these proposals were also supported by a significant majority of common shareholders. For example, in the case

of **TIR Systems Ltd.** where 95.60% of common shareholders endorsed the deal, the support of other securities holders would not make any difference. However, allowing optionholders to have a say on a deal cannot simply be justified by the no-harm result. In a close call, optionholders could conceivably swing the voting results. One reason that this issue has not been a major concern since the Molson-Coors merger (October 2004) is because during the past two to three years, the M&A market has been booming and most of the transactions were structured in favourable terms including high premiums.

Third and last, despite the TSX requirement that all arrangements receive the approval of the majority of shareholders, without taking into account the votes cast by optionholders (broadly defined), we observe that three companies (**Steeplejack Industrial Group Inc.**, **Lorus Therapeutics Inc.**, and **TM Bioscience Corp.**) did not disclose such information in the report of voting results even after the relevant TSX notice had come into effect.

Table 3: Incremental Effect of Option Voting

Company Name	Meeting Date	Approval Rate (%)		Incremental Approval Rate	Options as % of Shares
		Securityholders	Shareholders		
Energy Metals Corp.	7/31/2007	99.73	99.68	0.05	8.84
TIR Systems Ltd.	5/10/2007	97.40	95.60	1.80	24.2 (note 1)
Sterling Centrecorp Inc.	4/30/2007	91.00	90.00	1.00	8.38 (note 2)
Domtar Inc.	2/26/2007	87.70	87.40	0.30	2.46 (note 3)
Average		93.96	93.17	0.79	

note 1: Options include options and warrants

note 2: Options include only in-the-money option and RSUs

note 3: Options include options, series A and B preferred shares

Shareholders and Issuers Engage in Advisory Vote Discussion

By Julie Scott

While many Canadian shareholders are talking about advisory votes on executive compensation, some are acting on it. In preparation for the 2008 proxy season the Shareholder Association for Research and Education (SHARE) has begun its engagement dialogues with Canadian corporations on behalf of institutional shareholders.

One of the issues SHARE is focusing on is an advisory vote on executive compensation. In the Q2 2007 **SHARE Shareholder Engagement Activity Report**, SHARE states it has been discussing advisory compensation votes with **Cognos Incorporated** and received confirmation that the company will not implement such an advisory vote at its 2008 annual shareholders' meeting. SHARE also wrote to an additional six financial services companies (**CIBC, Bank of Montreal, Bank of Nova Scotia, Manulife Financial, Royal Bank, TD Bank**) on behalf of **Meritas Mutual Funds**. To date the response from the banks has been decisive: When it comes to executive compensation, enhanced disclosure, not a shareholder vote, is the way to go.

Given the difference of opinion between these companies and SHARE on the subject of an advisory vote, bets are on that SHARE and Meritas will file one or more proposals on advisory compensation vote during the upcoming proxy season. Such a shareholder proposal is expected to request that shareholders be given the opportunity at each annual meeting of shareholders to

vote on an advisory resolution to ratify the report of the compensation committee. The proposal is expected to state that the shareholder vote on the compensation report should be non-binding and should not affect any compensation paid or awarded to any named executive officer. The rationale for the proposal is that an advisory vote on pay would ensure that directors are making efforts to link executive compensation to performance. Representatives of SHARE have been clear that their aim is not to cut executive pay, rather, it is to give shareholders a voice on compensation policies and practices.

Advisory votes on executive compensation policies, were introduced in Britain in 2002. In 2007 investors in the US filed more than 60 shareholder proposals on the subject yielding average support of around 44 percent. In the **policy briefing paper Does 'Say on Pay' Work? Lessons on Making CEO Compensation Accountable** author Stephen Davis of the Millstein Center for Corporate Governance and Performance (Yale School of Management), states "Advisory votes on executive pay policies are rational, timely, road-tested (in the UK) and practical for use in the United States." The advisory vote is likened to a lever that could strengthen both boards and shareholders in the quest to better align top corporate pay with performance. Davis cautions that the advisory vote is no panacea and should be fitted with other measures such as majority-rule director elections. The briefing paper, which assesses the track record of advisory votes in the

UK, concludes that advisory votes on compensation in the UK resulted in:

- **Dialogue between corporate boards and management and institutional investors.** In many cases dialogue has increased between investors and issuers and resulted in boards changing compensation plans to strengthen performance triggers.
- **Linkage between pay and performance.** Advisory votes have contributed to taming the rate of increase in executive pay (although executive pay exceeds inflation increases) and curbed opportunities for 'pay for failure'.
- **Scrutiny of executive pay packages.** Voting on compensation has required investors to increase the time and resources they spend analyzing compensation reports with some funds outsourcing the work to proxy advisory services.
- **Enhanced role for proxy analysis service providers.** Due to new demands proxy advisory services have had to improve the sophistication of their analysis of pay policies.

The policy briefing suggests the UK experience illuminates concerns that US players should address in the course of Americanizing advisory votes on pay. Canadian players should take heed as well!

Is Say on Pay Right for Canada?

By Bill Mackenzie, Director, Special Projects Canadian Coalition for Good Governance

What is Say on Pay? The simple answer is: a shareholder vote on executive remuneration. There are key variations:

- The vote may be binding (Netherlands, Norway and Sweden) or strictly advisory (UK, Australia)
- It is usually adopted in the form of a regulatory requirement (above-noted markets), but some companies adopt voluntarily (Aflac in the US)
- May include directors as well as officers (UK, Australia).

If Canada is to go down this path, I believe a model similar to that in effect in the UK and Australia would be most appropriate for our market.

Has an advisory vote helped in other markets? There is general consensus that a say on pay vote has led to greater issuer/shareholder dialogue on pay issues in both the UK and Australia. It has led to better linking of pay to performance and played a role in helping to rein in certain compensation elements. It has not led to a reduction in, or a **significant** slow-down in growth of executive pay.

In 2002, the U.K. became the first country to adopt requirements for shareholder votes on pay, effective the following year. The Directors' Remuneration Report Regulations 2002 requires that an annual Directors' Remuneration Report be given to shareholders and that shareholders be given an opportunity to cast an advisory vote on that report. The required report must cover both executive and non-executive directors, and its content must be both forward-looking and retrospective.

Although many predicted the vote would cause havoc, it has not been a problem for the vast majority of UK issuers. Approximately 11% of advisory votes on remuneration reports have received less than 80% positive votes, and very few resolutions have failed to gain majority support.

The most important benefit has been increased dialogue between issuers and shareholders resulting in a strengthened link of pay with performance. The advisory vote has also played a role in curbing certain compensation elements. In a say on pay vote at Glaxo Smith Klein in 2003, a majority of shareholder votes were cast against their remuneration report. Of particular concern were the US-style incentive and severance plans. The vote caused Glaxo to pare back some elements of the compensation package, and the resulting severance agreement at Glaxo has since represented the "high water mark" for severance plans in the UK.

Australia followed the UK and adopted similar legislation in 2004. The legislation requires that the board of an Australian company produce an annual Remuneration Report which will then be subject to an advisory shareholder vote each year. The report must disclose the compensation accrued or paid to directors and the top five named company executives.

Australian voting results on compensation are similar to those seen in the UK. According to Michael O'Sullivan, Executive Director of the Australian Council of Superannuation Investors, when strong opposition to a compensation report is

detected, the controversial compensation items are amended or removed. In other cases, strong "Against" votes at a company led to changes in the remuneration plans before the next AGM. In a recent ISS interview, Michael O'Sullivan noted that to be really effective, an advisory say-on-pay vote needs the "teeth" of a majority vote requirement for directors.

In the US, there is momentum behind a say on pay vote within the investor community, but so far, rare voluntary adoption by issuers. A say on pay bill passed in Congress earlier this year, but many expect it to be defeated in the Senate or by presidential veto. The US bill gives shareholders the right to cast an annual, nonbinding advisory vote on a corporation's executive pay package as outlined in the proxy statement.

Is it right for Canada?

Executive compensation remains a priority governance issue with Canadian institutional investors. There is no doubt that an advisory vote will be a helpful tool for shareholders who want to push back certain controversial pay practices. Most Canadian institutional investors I have contacted to discuss this topic support the idea of an advisory vote on pay.

However, in the Ontario Legislative Assembly, an act (Bill 230) to amend the Ontario Business Corporations Act to implement a say on pay vote passed first reading on May 29th 2007. Entitled the Conrad Black Executive Compensation Abuse Act, it goes far beyond an advisory vote on pay. Not only a vote on pay (as disclosed in the "Statement of Executive

SAY ON PAY cont.

Remuneration”), Bill 230 provides that in the event of a majority vote against, shareholders, by ordinary resolution, may fix the remuneration of, or even determine an amount to claw-back from, these “Named Executive Officers.”

Issuers and compensation consultants generally are not supportive of the implementation of even a mandatory vote on pay that is strictly advisory, let alone one that encompasses the attributes of Bill 230. Opposition is based on the view that executive compensation at North American corporations is extremely complex and only a very small minority of investors would understand or be willing to invest the time to understand complex pay packages. I approached an experienced director who chairs two compensation committees to discuss say on pay and he described Canadian institutional investors generally, as uninterested in having a detailed discussion on executive compensation.

Members of the Canadian Coalition for Good Governance (CCGG) in general seem supportive of the concept of an advisory vote on pay, but the organization has not yet established a formal position for the Canadian market. An endorsement by the CCGG represents a key step towards the acceptance of say on pay in Canada. A position paper is in the works and should be out before the holiday season. While CCGG members are unlikely to support Bill 230, preliminary discussions with some members suggest there is support in principle for an advisory vote on executive pay and with that, an increased willingness to engage in dialogue with issuers on the topic of compensation. It is the quality of engagement that will determine whether say on pay is right for Canada.

Moving beyond the sustainability report

By Valerie Chort and Andrew Craig, Deloitte & Touche LLP

A sustainability report is a key tool companies can use to communicate details of their corporate responsibility actions to internal and external stakeholders, however, the report is not an end in itself. Too often, organizations approach corporate responsibility and sustainability solely as a public relations initiative — focusing their efforts on external communications and producing a sustainability report.

Sustainability reporting is about more than producing a report or investing in the local community. It is about identifying where environmental and social benefits converge with good governance to create economic value. Leaders in corporate responsibility and sustainability are effectively leveraging the efforts of producing reports and are using the data to assist in informing and shaping their corporate responsibility and sustainability strategies.

We at Deloitte are honoured to have again chaired and participated as co-judges in the Chartered Accountants of Canada annual Corporate Reporting Awards (CRA). Over our three year tenure as CRA judges, and from working with leading organizations across North America and Europe, we have identified a number of trends and evolving practices in sustainability reporting – namely:

- Leading organizations tend to rely on internationally recognized key performance indicators to measure the performance of their sustainability

programs. This has been highlighted by widespread adoption of the Global Reporting Initiative (GRI) guidelines for reporting on sustainability issues, including cross-indexing report content to the new generation of Sustainability Reporting Guidelines (G3).

- To ensure corporate policies and reporting remain responsive to stakeholder needs, many companies are now creating sustainability advisory panels. These panels bring together independent and sometimes adversarial stakeholders to discuss their views on sustainability practices and reporting. For instance, an oil and gas corporation asked the Pembina Institute, a non profit organization that advocates sustainable energy solutions, to facilitate a multi-stakeholder assessment of their sustainability report.

- As reliance on sustainability reports by stakeholders such as the investor and financial communities continues to increase, so do the risks related to data quality and integrity. Leading organizations are increasingly managing this risk by obtaining third-party assurance on relevant non-financial performance information.

- It is becoming more common to see reporters use their web sites to enable layered reporting. Through the use of technology, these companies are effectively tailoring their sustainability communication to a range of target audiences. In some instances sustainability reports have become web documents with

only a summary document available in hardcopy.

Although the trends identified above are certainly positive, many challenges for reporters still lie ahead. With the exception of a few leading organizations, reporters are having difficulties providing adequate information on their climate change related risks and strategic responses, with only a handful of corporations setting greenhouse gas reduction targets. Also, many organizations are not adequately addressing how they are responding to global sustainability issues, such as natural resources scarcity, social inequalities and biodiversity.

Regardless of where companies are on the evolutionary path of sustainability, there are always opportunities to take strategy, operations, supply chain, and interactions with internal and external stakeholders to the next level. We challenge reporters to move beyond their reports and develop corporate responsibility and sustainability strategies. Working towards business sustainability is not only about meeting today's expectations and managing short-term risks, it is also about anticipating tomorrow's opportunities.

Valerie Chort is a Partner and the National Leader of Deloitte's Corporate Responsibility & Sustainability (CR&S) Practice. Andrew Craig is a Manager in CR&S Practice. The CRA award for Sustainable Development Reporting will be presented on December 5th at the Metro Toronto Convention Centre. For more information regarding the CRA please contact Mi Mi Tsui at mimi.tsui@cica.ca

Positive Carbon Management = Positive Corporate Management

Investors and companies alike have made clear, by participating in the Carbon Disclosure Project 5 (CDP5) - the fifth annual questionnaire on climate change emissions and policies, that positive carbon management is linked to overall positive corporate management. Canadian investors and companies can be counted among the honour roll of participants in this project which tracks carbon disclosure and attitudes to climate change.

As more companies respond to the climate change questionnaire, they are signaling that both reputation and performance benefit from disclosing carbon emissions and climate change strategies. The Carbon Disclosure Project (CDP) is a collaboration of investors who since 2002 have sent a questionnaire to the world's largest publicly traded companies. A total of 315 institutional investors, with assets under management totalling more than \$41 trillion, collaborated for CDP5 sending

questionnaires to the world's largest publicly owned companies on both the S&P 500 and FT500 indices.

In Canada the CDP5 questionnaire was sent to 200 of the largest companies by market capitalization on the Toronto Stock Exchange. A total of 88 companies,

or 44 percent, responded, compared to a response rate of 28 percent for CDP4.

Two reports summarize the findings of the questionnaire; the S&P500 report was written by RiskMetrics Group's very own Douglas Cogan; the FT500 report was written by Matthew Kiernan of Innovest. The S&P500 and FT500 Reports for CDP5 both conclude that companies are increasingly addressing climate change. However, compared to companies listed on the FT500 those on the S&P500 had a lower response rate and tended to view climate change more as a risk than an opportunity.

Some of the other findings are included in Table A below.

A third report, entitled **Carbon Disclosure Project Report 2007 Canada 200** written by the Conference Board of Canada, summarizes the innovations and findings of CDP5 in Canada. While the response rate in Canada has increased, there is concern that many companies still disregard the CDP or provide only limited information in their responses. For the first time, the report presents the Climate Disclosure Leadership Index which measures the quality of the company's disclosure. The report identifies 16 companies who, due to their superior transparency are the Climate Disclosure Leaders.

Table A

CDP5 At a Glance	S&P500	FT500
Response Rate (response rate for CDP4)	56% (47%)	77% (72%)
Perception of Climate Change		
Climate change as a risk	81%	79%
Climate change as an opportunity	69%	82%
Disclosure		
Disclosure includes targets and timelines	29% (n=81)	76% (n=286)

Table B: Some of the key findings of the CDP5 questionnaire in Canada

Carbon Disclosure Project 2003-2007					
	2003	2004	2005	2006	2007
Signatories to CDP	CDP1	CDP2	CDP3	CDP4	CDP5
Total number of institutional investors who have signed CDP (Assets under management)	35 (\$4 trillion)	95 (\$10 trillion)	155 (\$21 trillion)	225 (\$31.5 trillion)	315 (\$41.0 trillion)
Number and names of Canadian investors who have signed CDP	0	4	13	16	32
		Acuity Investment Management	All CDP2 signatories	All CDP3 signatories	All CDP4 signatories
		CI Mutual Funds Signature Group	BMO Financial Group	Caisse de Depot	Beutel Goodman and Co. Ltd
		Meritas Mutual Fund	BCIMC	CPP	CAAT Pension Plan
		Ontario Teachers Pension Plan	CIBC	Phillips, Hager & North	Canadian Friends Service Ctte.
			Batirente	The Ethical Funds Company	Fondaction
			HOOPP		Genus Capital
			Inhance Investment Management		Groupe Investissemanet Responsible Inc
			OMERS		Jarislowsky Fraser Limited
			Bank of Nova Scotia		Pension Plan for Clergy and Lay Workers of the Evangelical Lutheran Church in Canada
			Vancity Group of Companies		PSP Investments
					Royal Bank of Canada
					The Cooperators Group Ltd
					The United Church of Canaga - General Council
					York University Pension Fund

Response Rate to CDP Questionnaire

% of FT500 Global Index completed questionnaire	45%	60%	71%	72%	77%
Canadian Companies sent questionnaire	18	20	21	280	200
% of Canadian Companies completed questionnaire	44%	60%	81%	28%	44%

Source: Carbon Disclosure Project, The Conference Board of Canada

High-Carbon Impact Sector

Alcan Inc
 Suncor Energy
 TransAlta Corp
 Enbridge
 PennWest Energy Trust
 Emera Inc
 Nexen
 Gaz Metro LP

Low-Carbon Impact Sector

Royal Bank of Canada
 CIBC
 BCE Inc
 TELUS Corporation
 Alimentation Couche-Tard

- Responsibility for climate change: 65% of respondents in the high-carbon impact sector have board-level responsibility for climate change. This underlies the increasingly prevalent view that climate change is an operational and strategic issue warranting the highest level of oversight. There is also a narrowing of the gap between awareness and action with 64% of respondents having implemented a formal greenhouse gas (GHG) emissions management system.
- Targets for reducing emissions: 24% of respondents have a formal target, up slightly from CDP4
- Renewable fuels and clean technology: 35% of respondents have invested in renewable energy

While lauding Canadian companies for participating in CDP5 the conference Board Report concludes that formidable obstacles remain in addressing the challenge of climate change. One obstacle is the continued difficulty in comparing companies' carbon profiles because of the tendency to use

different measures and methods to quantify carbon emissions. Another obstacle cited by respondents to the questionnaire is the continued lack of regulatory certainty which makes it difficult to implement a carbon emissions reduction strategy and assess compliance costs.

See Table B on the previous page for some of the key findings of the CDP5 Questionnaire in Canada.

SIO Study shows Mutual Funds vote with Management

The new window into the proxy voting, effective since August 31, 2006 when new regulations required mutual funds to disclose their proxy voting records, reveals that Canadian mutual funds overwhelmingly follow management recommendations when voting on shareholder proposals. **A Survey of Canadian Mutual Funds on Proxy Voting**, which was written by the Social Investment Organization, a trade organization for socially responsible investment funds, and sponsored by the RiskMetrics Group, concludes that mutual funds supported management 67 percent of the time compared to 34 percent support for shareholder proponents of the shareholder proposals.

The survey examined proxy voting records at 990 individual mutual funds, including 55 socially responsible (SRI) funds, from 27 mutual fund families. A total of 57 shareholder proposals were selected for the survey based on whether they were relevant to investors and whether the proponents were reputable with known track records.

The results showed a correlation between voting patterns and type of fund family. SRI funds were most likely to support SRI proposals with 79 percent voting FOR

shareholder proposals compared with conventional funds which voted 31 percent FOR. Proposals relating to splitting the role of the chairman and CEO, voting on dual class voting structures, reporting on climate change impacts and reporting on human rights policies were the most likely to garner the support of conventional funds. Proposals least likely to win the support of conventional funds related to phasing out environmentally damaging practices, disclosing or voting on increases in executive compensation. Other notable findings about conventional mutual funds include:

- Mutual funds which voted against management and FOR shareholder proposals for over 50 percent of the proposals surveyed: AIM Trimark Investments, Guardian Group of Funds, National Bank Financial, RBC Asset Management;
- Mutual funds which voted with management and AGAINST shareholder proposals for 100 percent of the proposals surveyed: AIC Limited, Counsel Group of Funds, Fidelity Investments.

Since August 2006 Canadian mutual funds have had to disclose their proxy voting records to comply with National Instrument 81-106: Investment Fund Continuous Disclosure.

Executive Compensation Disclosure Rules go Back to the Drawing Board

Faced with strongly worded comment letters on proposed regulations for disclosing executive compensation, the Canadian Securities Administrators (CSA) has delayed implementing the new regulations. The CSA received a total of 41 letters after the March 2007 release of the draft Form 51-102F6 *Statement of Executive Compensation* at the end of the comment period on June 30, 2007. The comment letters raised issues that the CSA believes will take time to grapple with and will require re-drafting Form 51-102F6 and opening a second comment period. The CSA is estimating a final version of the regulation will take effect in time for the 2009 proxy season – a year later than originally anticipated.

A common theme arising from the comment letters was that the new regulations strike a balance between the needs of investors and issuers. Whereas many investors advocate for ample disclosure, many issuers warn such disclosure could breach confidentiality. One example is the provision on how to disclose performance targets (PT).

The draft Form 51-106F requires companies to disclose specific quantitative and qualitative performance-related factors for Named Executive Officers. In the **Notice and Request for Comment, dated March 29, 2007** the CSA states “In our view, this information (PT) is important for readers to fully understand how executive pay relates to company performance.” The draft regulations requires that a performance target based on an objective measure, like the company’s stock price, should generally be disclosed. However, if the target is more subjective, such as internal processes, it might be appropriate to provide a narrative description. The Notice, in effect, carves out disclosure of PTs if such disclosure threatens competitiveness: “Companies do not have to disclose targets if this would result in competitive harm to the company,” states the CSA.

The authors of the comment letters expressed a range of views on the subject of PTs. Of the 38 **comment letters** that we have access to, 7 letters were written by investors; 13 by issuers; 18 by service providers (lawyers, compensation consultants) or industry associations. Of the 38 comment letters, 25 expressed a view on PTs: a majority (16 or 64%) of the authors favoured disclosure

of PTs. Those favouring disclosure of PTs were predominantly investors (6 of 16) or service providers (7 out of 16); only 3 of 16 issuers supported such disclosure.

The comment letters run the gamut of opinions on PTs – from strong opposition to unqualified support.

- Disclose PTs -- Remove competitive harm exemption

Shareholder Association for Research and Education (SHARE): “The proposed Canadian disclosure requirements follow the SEC Rule in providing a “competitive harm” exception with respect to performance targets. .. Unless Canadian securities regulators are willing to institute a systematic review process, SHARE is of the view that the “competitive harm” exception must be abandoned... Increased voluntary disclosure of compensation consultancy services to issuers indicates that large sums are routinely spent seeking advice regarding appropriate executive compensation levels. Surely corporations could work with their compensation consultants to establish appropriate performance targets that do not in any way compromise the competitiveness of the business if they are publicly disclosed.”

- Disclose PTs – Keep competitive harm exemption

Ontario Teachers’ Pension Plan: “Companies should be required to provide specific information on performance targets. Or, if they absolutely cannot provide the specific quantitative thresholds for reasons related to competitive harm, then they should at least name the metrics used. This will provide investors with information to determine if there is adequate linkage between pay and performance and more importantly, determine the validity of changing performance measures.”

- Don’t disclose PTs – Include benchmarking procedure

Nexen Inc: “The request to portray expected compensation levels for future periods, under various performance scenarios we see as unduly burdensome and nebulous... With increased public scrutiny, shareholders now have many avenues to dialogue and propose improvements to companies where they feel the need to do so, but merely requiring all companies to provide sensitive data, that could result in competitive disadvantage, does not seem an appropriate course of action. Rather, we would suggest that disclosure be required to indicate whether benchmarking is done and on what basis companies are

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included or excluded in the benchmark, without divulging the specific companies used.”

- Disclose PTs with conditions – Include past not forward looking PTs

Canadian National Railway: “A distinction can be made between disclosure of past performance objectives and disclosing forward-looking objectives. The disclosure of the latter may be particularly harmful to a company and therefore we are of the view that the requirement should only focus on past performance... Hence in our view, the reference to “competitive harm” in the Proposed Rule is too narrow and should instead refer to “confidential and competitively sensitive information.”

Disclosure of PTs is also a hot button issue in the United States, where the Securities and Exchange Commission’s (SEC) executive compensation disclosure rule has been in effect since December 15, 2006. The SEC in August 2007 sent letters to nearly 300 companies critiquing disclosure in proxy statements during the first year of the new rule and requesting more information, including more specific PTs. The August letter underlies SEC concern about vague disclosure on individual PTs in the compensation disclosure

and analysis (CD&A) section of the proxy statement. The SEC says it wants companies to name competitors it uses to benchmark pay and explain the role the CEO plays in setting his or her pay.

For more analysis of the first year of the SEC’s disclosure rule and CD&A see the **Watson Wyatt report** entitled Compensation Discussion and Analysis Scorecard and the **DolmatConnell & Partners study** “The New SEC Proxy Disclosure Rules” Panacea or Pandora’s Box?

Provincial Passports Set to Take Flight

All Canadian Securities Administrator (CSA) members – except for the Ontario Securities Commission (OSC) – are continuing to move forward with the enhanced passport system by supporting the proposed passport rule *National Instrument 11-102 – Passport System*, which was published for comment earlier this year and is still under review.

As part of Phase II of this continuing journey, the CSA has requested comments on two new proposed policies, *National Policy 11-202 - Process for Prospectus Reviews in Multiple Jurisdictions* and *National Policy 11-203 – Process for Exemptive Relief*

Applications in Multiple Jurisdictions. Both of these policies are being submitted for comment in accordance with Phase II passport system, which is scheduled for gradual implementation next year. Comments on these proposed policies will be accepted until October 30, 2007. The proposed policies will aid in aligning different jurisdictions’ securities legislation to allow for improved inter-provincial market access and regulation under the passport system.

Proposed National Policy 11-202, if adopted, will outline the process for prospectus reviews in multiple jurisdictions and National Policy 11-203 will outline the process for exemptive relief applications in multiple jurisdictions. These policies will replace the existing Mutual Reliance Review System for Exemptive Relief Applications and Mutual Reliance Review System for Prospectuses.

The proposed process for prospectus filings in multiple jurisdictions under NI 11-202 will begin with the market participant filing its prospectus with its Principal Regulator (PR) and with each Non-Principal Regulator (NPR) in which the participant wishes to offer its securities. The participant would then file all relevant documents and pay

fees as required in each jurisdiction. The PR would then review the prospectus, either alone or in coordination with the OSC if it is a NPR. Once the prospectus is acceptable, the PR issues a receipt for the prospectus, which triggers a receipt from every NPR in a passport jurisdiction (this does not automatically include Ontario unless the OSC has made the same decision as the PR).

The process proposed under NI 11-203 is very similar to the one outlined above except that it relates to exemptive relief applications. Under NI 11-203, the applicant would begin by filing for exemptive relief with its PR and paying the relevant fees to its PR (and to the OSC as well if it is a ‘dual application’). If the PR grants an exemption, the participant will be deemed exempted from all equivalent provisions in each passport jurisdiction. If Ontario is an NPR, the OSC will review the application in coordination with the PR and provide any necessary comments. Also, the OSC will have to agree with the PR’s decision for the exemption to be applicable in Ontario. This process will eliminate the need to pay fees in each jurisdiction (except Ontario if it is a NPR).

The passport system is intended to give a public company or an investment

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firm access to markets across Canada by dealing only with its PR and complying only with harmonized laws. Although Ontario has opted out of the passport rule, it will be included in the list of principal jurisdictions for both of the proposed policies. Within the new system, Ontario filers will have direct access to all passport jurisdictions through the OSC. In addition, regulatory decisions made by the OSC (as a PR) will be automatically applicable in all passport jurisdictions. Similarly, passport jurisdictions will have access to Ontario through their principal regulators. However, the OSC will not automatically adopt any decisions made by passport jurisdictions.

Phase I of the passport system, which was implemented in 2005, will be largely replaced by Phase II and the implementation of mutual review systems which will be launched in stages throughout 2008. Phase II is also dependent on the adoption of two new proposed national instruments currently under review after being out for comment earlier this year; *National Instrument 31-103 Registration Requirements* and *National Instrument 41-101 General Prospectus Requirements*.

UK Pension Funds Actively Engage with Companies

Large pension funds in the UK are actively engaging with the companies in which they invest, according to the survey of pension funds with more than £1 billion under management. The **survey**, completed by the National Association of Pension Funds (NAPF) in August 2007, polled 39 funds with assets totaling more than £230 billion. Among the survey's conclusions were that almost two-thirds of respondents had incorporated engagement principles and three quarters of the respondents believed that engagement resulted in changes at the company.

In contrast to Canada, the UK has a history of pension funds disclosing principles relating to investment. UK pension fund legislation requires that pension trustees declare in their statement of investment principles the extent to which social, environmental and/or ethical considerations are taken into account in selecting investments and the policy, if any, directing the rights attached to investments. In 2002 the Institutional Shareholders Committee's (ISC)

Statement of Principles set out best practice for institutional shareholders and their agents regarding the companies in which they invest. The ISC Statement of Principles states that investors and their agents should:

- Clarify the priorities attached to particular issues and when they will take action;
- Establish where necessary a regular dialogue with investee companies;
- Intervene where necessary;
- Evaluate the impact of their engagement;
- Report back to clients/beneficial owners.

Two-thirds of the funds in the NAPF survey have incorporated the ISC Statement of Principles into managers' contracts.

Most UK pension funds in the survey report that engagement has had an impact. Three-quarters of funds believe that engaging with companies has helped to change directors' remuneration packages and the composition of the board of directors.

The UK experience with pension fund reform and increased transparency could contain lessons for Canada. A report, entitled a **Comparative Study of UK and Canadian Pension Fund Transparency Practices** concludes that Canada needs a public debate about the effective management and supervision of its pension funds. This might help investors become more familiar with best-practice standards elsewhere. UK-style engagement may yet shape corporate governance in Canada.

More Secondary Market Liability on the Horizon

On June 27, 2007, an act to amend the Securities Act and other legislative provisions under Bill 19 received a first reading in the National Assembly of Quebec. The statutory regime proposed in **Bill 19** establishes a framework of secondary market liability in Quebec's securities industry that is very similar to the framework introduced to Ontario under Bill 198.

UK Pension Funds' Engagement with Companies*

Impact of Engagement	Many times	At Least once	Never
Board Membership	26%	41%	8%
Company Strategy	26%	31%	13%
Remuneration	36%	38%	5%
Socia/Environmental Policies	23%	28%	15%

*Based on a survey of 39 UK pension funds. Source: NAPF: *Pension Funds' Engagement with Companies*

Company News

Poison Pill List

The number of issuers adopting or renewing shareholder rights plans for the first nine months of 2007 has reached 137, surpassing the numbers for the full year in both 2006 (127 rights plans) and 2005 (97 rights plans).

A total of 13 companies have brought shareholder rights plans to shareholders for approval at meetings in August and September 2007. Of these, 9 were resolutions to adopt new rights plans, three were resolutions to amend and reconfirm existing rights plans, one was to waive the plan pursuant to a rights offering, and one was to terminate a rights plan.

Of the 13 rights plans, eight met 'new generation' rights plans guidelines prompting us to recommend voting FOR, while seven did not meet the guidelines and we recommended voting AGAINST. Rights plans which failed to meet our guidelines provided definitions which did not limit the discretion of the board in administering the plan or did not ensure fair and equal treatment for all shareholders. Of the 13 rights plans on agendas between August and October, the most common definition to fall short of our guidelines was that of

Beneficial Owner (6 plans), followed by Lockup Agreement (5 plans), Pro Rata Acquisition, Acting Jointly and in Concert (4 plans each), and then Permitted Bids (3 plans).

Shareholder Rights Plans:
August - September 2007

Northern Hemisphere
Developments

Forum Uranium Corp.

D-Box Technologies

Serengeti Resources

Hudson Resources

Tres-Or Resources Inc.

Sulliden Exploration Inc.

Intertape Polymer Group

Major Drilling Group

International

Wex Pharmaceuticals Inc.

CanAlaska Uranium

Pulse Data Inc.

OSC Re-filing and Errors List

The following companies were added to the **Ontario Securities Commissions' Refilings and Errors List** over the last two months:

Anaconda Mining Inc.

Asian Television Network

International Limited

Atlantis Systems Corp.

Enablence Technologies Inc.

Excel-Tech Ltd.

Guyana Goldfields Inc.

Leader Capital Group Corp.

Mega Uranium Ltd.

Transition Therapeutics Inc.

Anaconda Mining Inc. re-filed its certificates of the CEO and CFO in respect of its annual filings for the 2007 fiscal year ending May 31, 2007. Both Lewis Lawrick, CEO and Stephen Gledhill, CFO signed certificates that incorrectly indicated the name of an issuer that was not that of the company. Shareholders of Baltic Resources Inc. can rest assured however that their CEO, Donald McKinnon and CFO, Gledhill both certified that they reviewed and signed off on the annual and interim filings for Baltic.

Excel-Tech Ltd also re-filed new certificates for the year ended January 31, 2007, and interim periods ended April 30, 2007 and July 31, 2007. In this case the original certificates were not in compliance with *MI 52-109 - Certification of Disclosure in Issuers' Annual and Interim Filings*.

Both **Transition Therapeutics Inc.** and **Mega Uranium Ltd** were required to file Business Acquisition Reports in connection with acquisition of **Redport Limited** and **Ellipsis Neurotherapeutics Inc.**, respectively. Transition did not initially file the BAR as its management believed the filing

unnecessary as the purchase of Ellipsis was an asset acquisition and not a business acquisition. Unfortunately, the Ontario Securities Commission did not concur with management's assessment. On the other hand, Mega Uranium "inadvertently failed to reconsider" the effect of its migration to the Toronto Stock Exchange from the TSX Venture Exchange and the different thresholds applicable to TSX- versus TSXV-listed issuers during the course of the Redport acquisition.

Majority Voting List

Since our last issue we are not aware of any additional issuers, who have recently adopted a modified majority voting (MMV) policy. While the total number of Canadian MMV adopters holds at 65 issuers for now, we note our list may not be complete, as some companies do not make public announcements of their policies. The Canadian Coalition of Good Governance is assembling a new list of targets to be approached on this issue heading into the 2008 proxy season.



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Please note our new publishing schedule for 2008.

Beginning with the first issue in 2008, the Corporate Governance Review will be moving to a quarterly publication schedule, as we endeavor to provide more in-depth coverage on a wider range of issues.

The October/November issue will be our last bi-monthly newsletter, as we look forward to a busy winter preparing for the 2008 proxy season.

We invite you to offer your suggestions to improve our newsletter. To comment, please contact Michelle Tan at 416-364-9000 x223 or michelle.tan@riskmetrics.com.