

May 27, 2009

## Update on Say on Pay

Since the release of our briefing *Say on Pay in Canada: Implementation and Implications* in April of this year, there have been further developments on this issue.

- There are now a total of 13 issuers in Canada (11 of which are financial institutions comprised of all of the major banks, Manulife, Sun Life, and several others), who have adopted an advisory vote on executive compensation practices (see list of companies at the end of this note)
- Many of these “early adopters” are working together on an informal basis to draft model wording for the advisory vote that they plan to present to shareholders for next year’s proxy season.
- The Canadian Coalition for Good Governance has also begun work on a model advisory vote on compensation that could be used by issuers, expected to be available in September
- More generally, issuers and investors in Canada are starting to focus on:
  - Defining “the question” (i.e. a vote on “what”, in particular) and
  - The framework or scorecard to evaluate and decide how to cast their ballot

The evolution in Canada is consistent with the developments in the UK and US:

- In the UK, where say on pay has been required by law since 2002, investors are this year showing more readiness to express their concerns – remuneration reports recently received a majority of negative votes at the following companies:
  - Royal Dutch Shell
  - Provident Financial
  - Royal Bank of Scotland
  - Bellway
  - Amec

These results are notable because negative votes have been very rare in the past

- Investor support for say on pay continues to increase in the US:
  - So far in 2009, proposals to adopt say on pay at 11 companies received majority votes and the average support was 46.8% at 31 more companies (up from last year’s 42.1% (abstentions not counted))
- None of the US companies that have adopted a say on pay vote has to date lost the vote and, according to the *Wall Street Journal*, of 15 companies canvassed,

support for the issuers' compensation policies ranged from 63.5% of votes cast in favour (Motorola) to approximately 98% at Goldman Sachs (which had agreed to implement an advisory vote as required as a TARP recipient).

- Shareholders are finding value in the process: for example, Tim Smith of Walden Asset Management (which last year submitted a say on pay proposal at Goldman), saw the high level of support this year for Goldman's new compensation principles as another way in which say on pay has advanced significant dialogue with shareowners.
- A "Shareholders' Rights Bill" was submitted to the Senate on May 19th that would, among other proposals, require a shareholder advisory vote on executive compensation
- The say on pay movement continues to evolve, with the Carpenters' Pension Fund in the US, for example, who had previously been opposed to say on pay, submitting its own variation of a say on pay proposal. The "triennial executive pay" proposal (known as "TEP") would require a vote every three years along with a mandated shareholder forum between the compensation committee and shareholders and, in addition, separate votes on a company's:
  - annual incentive plan
  - long-term incentive plan, and
  - post-employment benefits (including retirement, severance, and change-in-control payments)

### **Canadian Companies who have adopted Say on Pay**

*(First vote will take place at the end of fiscal 2009)*

- Bank of Montreal
- Bank of Nova Scotia
- BCE
- CIBC
- Industrial Alliance
- Laurentian Bank
- Manulife Financial
- National Bank
- Potash Corporation
- Royal Bank of Canada
- Sun Life Financial
- TD Bank
- TMX Group