

SHAREHOLDER ACTIVISM

OR HOW INVESTOR OVERSIGHT IS
SUPPOSED TO WORK

JUNE 2005



INSTITUTIONAL SHAREHOLDER SERVICES

Enabling the Business of Corporate Governance

Presentation Outline

- General Trends that are Influencing Activism
- Hot Issues 2005 Proxy Season
- Global Activism
- Canadian Activism Continues to Evolve

General Trends & Influences in Activism

North America

■ In North America

- More issuers targeted, slight increase in number of proposals taken to a vote.
- Shift in shareholder power into institutional hands results in more constructive dialogue.
- Socially responsible investors file a higher number of proposals addressing corporate governance concerns (boards, compensation, dual class capital, etc.)
- Shareholder initiatives are taking forms other than shareholder resolutions – Canadian Coalition for Good Governance has become a powerful voice for corporate governance change – have taken on stock option expensing, regulatory corporate disclosure requirements particularly of compensation, board evaluations, dual class share structures and by liaising with global shareholder organizations with similar governance goals.
- Securities Class Actions are increasing in North America – likely effect is that issuer boards are more receptive to shareholder concerns.

Majority Vote Initiative

Participants of Corporate-Institutional Working Group

Issuers

Baxter International, Inc.
Chevron Texaco Corp.
Cinergy Corp.
Citigroup Corp.
Constellation Energy Group Inc.
Dow Chemical Co.
El Paso Corp.
The Gap Inc.
Intel Corp.
JPMorganChase & Co.
Merrill Lynch & Co.
Time Warner Inc.
Wyeth

Unions

United Brotherhood of Carpenters and
Joiners

Laborers' International Union of North
America

Sheet Metal Workers International
Association

United Association of Plumbers & Pipe-fitters

Influencing Trends continued...

Globally

▪ In Major Markets

- Codes of best practice now coming into effect 2005/2006 (Germany, Netherlands, UK, Australia) most are similar to Canadian “comply or explain” approach.
- New regulation mandating that Funds vote shares/disclose votes (Canada, France).
- Shareholder groups forming to initiate dialogue/proposals (Shareholder Ombudsman in Japan, Association pour la Defense des Actionnaires Minoritaires [ADAM] in France).
- Shareholder proposal mechanism being used less frequently – more engagement.
- Mostly governance based initiatives as opposed to SRI.
- Board access, dissident board slates and proxy contests, executive compensation are key issues.

Hot Issues for 2005*

Corporate Governance

In Canada

- Disclose ratio of executive compensation to net revenue (15%)
- Increase independent directors (14%)
- Disclose votes by the Company's mutual funds (12.7%)
- Establish SERP disclosure policy (10.8%)
- Require SV shareholder approval of dual class share structure (9.7%)
- Replace stock option plan with restricted stock plan (6.8%)
- Set a maximum salary level for senior executives (6.7%)
- Set minimum 50% required quorum (6%)
- Max.10 yr. term for Ind. Directors (5.7%)
- Adopt cumulative voting (4.9%)

In U.S.

- **Implement Majority Vote Requirement for election of directors (avg support 42%)**
- Reduce supermajority vote requirement for certain issues (66%)
- Declassify board of directors (65%)
- Rescind or require shareholder approval of poison pill (58%)
- Require shareholder approval of future golden parachutes (50%)
- Require performance-based/indexed options (35%)
- Adopt separate Chairman/CEO (31%)
- Adopt or restore cumulative voting (30%)

*In order of vote support

Majority Vote Initiative Results

Issuer and Vote

Altera 59%

Raytheon 57%

Freeport McMoran 52%

NiSource 50%

Gannett 48%

Motorola 46%

Citigroup 42%

Advance Micro Devices 58%

Marathon Oil 52%

Federal Realty Inv. Trust 51%

MeadWestwaco 49.5%

Shurgard Storage Centers 48%

Verizon Communications 43%

Capital One Financial 42%

Hot Issues for 2005*

SRI

In Canada

- Report on efforts to reduce GHG emissions (8.6%)
- Produce sustainability report using GRI reporting guidelines (7.9%)
- Close branches in tax haven countries (3.8%)

In U.S.

- Sexual orientation discrimination (34.7%)
- Global warming - Kyoto compliance (28.3%)
- PCB costs of delay (27.5%)
- Emissions reduction report (25.6%)
- HIV Reporting (23.9%)
- Environmental impact report (15.68%)
- Implement McBride Principles (14.0%)
- Report on export of pesticides (13.25%)
- Energy efficiency report (12.5%)
- Adopt, implement and report on Board inclusiveness policy (12.0%)

*In order of vote support

SRI Proposals – Global

2004

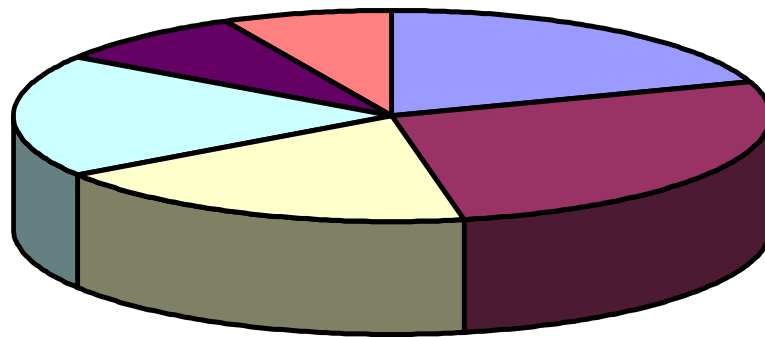
- 200 SRI proposals filed U.S., Canada, U.K., Bermuda (156 in 2003)
- International operations and Codes of Conduct addressing labour and human rights dominated ballots
- Environmental proposals were third behind requests for information on Political Contributions (all U.S.)
- Environmental proposals focused on electric utility companies
- Consumer Issues next most popular in number

2005 Year to Date

- 277 SRI proposals filed U.S., Canada, Denmark, Finland
- Environmental/climate change now dominate with 64 proposals
- Environmental proposals are targeting oil and gas companies
- Labour/Human Rights now second with 63 proposals
- Consumer Issues (including tobacco) again
- Diversity and Equality resolutions have increased by more than 3x

SRI Proposals Filed by Category

U.S. – Where the Action Was This Year



- Governance & Compensation
- Environmental
- International Codes/Standards
- Consumer, Health & Safety
- EEO & Diversity
- Miscellaneous

Global Activism

Global Funds Turn Activist

▪ Switzerland

- The **Ethos Investment Foundation**, which manages pension fund assets using sustainable development criteria, was supported by 36% of the votes cast for its proposal to block the **Nestle S.A.** CEO from also becoming the company's Chairman, as well as from becoming Vice Chair at **Credit Suisse Group** on the grounds that he has too many board memberships for a CEO of a global company.

▪ France

- Minority shareholder advocacy group **ADAM** filed shareholder proposals requesting the removal of two directors at **Rhodia SA**, for disclosure failures after the Company was spun off from Aventis along with substantial liabilities (including environmental risks exposure).
- **Proxinvest Active Investors Fund** filed proposals at **Lafarge** to remove voting right limitations from articles.

▪ Germany

- **Wyser-Pratt Management** submitted proposals at **IWKA AG** regarding a vote of non confidence for the management board, removal of two supervisory board members and election of two shareholder sponsored nominees.

▪ U.S.

- **NYCERS** filed more than 50 resolutions at U.S. companies addressing sustainability reporting, sexual orientation discrimination, and vendor and human rights standards resulting in some of the highest votes in support of these types of proposals.

The Rise of the Hedge Funds

Hedge Funds Turned Activist are Having an Effect

▪ In Canada

- Dissidents Goodwood and Burton Capital Management filed a dissident slate of directors at **Creo**.
- Catalyst Fund shut down Conrad Black's bid to take **Hollinger Inc.** private.
- **Masonite** shareholders can thank Eminence Capital LLC for the higher price paid for their shares by Kohlberg Kravis Roberts earlier this year.
- Greenlight Capital took a run at **MI Developments'** dual class structure by rallying an overwhelming majority of the subordinate voting shareholders to vote in favour of spinning off the racetrack assets.

▪ In Germany

- Hedge funds TCI (U.K.) and Atticus Capital (U.S.) proposed the ouster of the Supervisory Board Chair of the Deutsche Boerse.

▪ In the U.S.

- Financier Carl Icahn prevailed in the Blockbuster proxy fight. Hedge funds also helped fuel a 28% WH vote from MCI's CEO in protest over the board's acquiescence of the Verizon bid. OfficeMax averted a proxy contest in late April after agreeing to a hedge fund's demands to appoint an independent director.

Canadian Proxy Activism- the Numbers

2004

- 117 proposals
- 51 withdrawn or not included in proxy
- 38 companies targeted
- 3 majority + 12 over 20% votes in support
- Average support – 13.6% (based on 61 proposals for which numbers are available)

2005 Year to Date

- 133 proposals
- 50 withdrawn or not included in proxy
- 45 companies targeted
- 0 majority + 0 over 20% votes in support
- Average support – 4.8% (based on 73 proposals for which numbers are available)

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