Chartered Accountants of Canada

Directors Briefing — Shareholder Engagement

WRITTEN BY
Andrew J. MacDougall LL.B and Robert Adamson LL.B, LL.M

QUESTIONS FOR DIRECTORS TO ASK

Canadian Investor Relations Institute
Institut canadien des relations avec les investisseurs

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Preface

The Risk Oversight and Governance Board of the Canadian Institute of Chartered Accountants commissioned this Briefing to assist boards in understanding the board's role in overseeing the company's constructive engagement with its shareholders.

Shareholder communications is a fundamental and long-standing aspect of the board's fiduciary oversight responsibility. Directors are obligated to provide shareholders with the information they need to reach reasoned decisions on corporate governance matters and issues of fundamental importance to the company's future.

However, boards are under rising pressure to engage more frequently and meaningfully with shareholders and provide more information to shareholders and other stakeholders on how the business is run. At the same time, traditional means of communicating with shareholders are becoming increasingly anachronistic and ineffective.

This Briefing highlights the regulatory, policy and social trends toward increased shareholder engagement and the related benefits and risks. It describes strategies and techniques to balance these benefits and risks and to enable boards to engage with their shareholders more effectively and efficiently. This Briefing also highlights how leading companies are using new mechanisms and technologies to interact with their shareholders in ways that increase shareholder confidence in the board's oversight of the company's affairs.

The Risk Oversight and Governance Board acknowledges and thanks the members of the Directors Advisory Group for their invaluable advice, the authors, Andrew MacDougall and Robert Adamson, and the CICA staff who provided support to the project.

Giles Meikle, FCA
Interim Chair, Risk Oversight and Governance Board

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Executive Summary

Shareholder engagement refers to all the ways that shareholders can communicate their views to the board and that boards can communicate their perspectives to shareholders (in addition to existing investor relations activities and processes).

As part of a growing, international trend, many shareholders want to increase their engagement with boards.

The board's interest in shareholder communications is a fundamental and long-standing aspect of the board's fiduciary oversight responsibility. To discharge their duty to the company, boards must take shareholder interests into consideration, and so directors have an interest in understanding shareholder views about the company, its governance and its operations.

Better shareholder engagement has the potential to provide useful information to the board, improve the company's relations with its shareholders, and increase shareholder value. Effective shareholder engagement practices can also enhance board credibility and increase shareholder's goodwill and trust—which can make the difference when the company is facing a proxy fight or crisis.

Nevertheless, board engagement with shareholders entails a number of concerns and risks that need to be considered and addressed.

There needs to be a clear understanding of the distinction between the board's role and management's responsibility in shareholder engagement. Management has a clear responsibility for shareholder communications, while the board approves the company's disclosure policy, oversees the processes for communicating to shareholders, and receives feedback from them. The board should consider which topics are appropriate for discussion with the board and which should be referred to management for handling.

Shareholder engagement needs to occur in a manner that is consistent with the company's disclosure controls and procedures. The company needs to have in place a sound disclosure policy, including procedures to prevent selective disclosure of material information and remedy inadvertent selective disclosure. These procedures need to be followed regardless of the manner in which engagement with shareholders occurs and the CEO and CFO need to be in a position to certify compliance with the company's disclosure controls and procedures.

The board also needs to consider the relative knowledge of management and directors on topics for discussion with shareholders and the capabilities and experience of those individuals who may be involved in responding to shareholder inquiries. Directors may require additional preparation and education regarding the company's stated position on topics they may be asked to engage in with shareholders and on the limits to permissible disclosure.

Boards need to be sensitive to differences among shareholder views on engagement. Shareholders are not homogenous. Their motivations for engaging with the board, their appetite for engagement and the topics on which they wish to engage vary with the level of their investment, their investment time horizon, their personal interests and resources, and other reasons. It also can be difficult for shareholder engagement efforts to reach those shareholders who have an economic interest in the company and the authority to exercise shareholder rights related to such interest. Companies must tailor their shareholder engagement practices accordingly.

Shareholder engagement requires an investment of time and effort by the company, its executive management, its investor relations function and its directors. In particular, directors must allocate appropriate time and attention among all of their oversight responsibilities. Communi-

cating the board's approach to shareholder engagement is important to ensure shareholders do not develop unrealistic expectations regarding the manner and timing for shareholder engagement.

One way to address these concerns is to adopt a formal policy for shareholder engagement setting out the company's processes with respect to the receipt and handling of communications with shareholders. Among other things, such a policy should:

- articulate the board's approach to shareholder engagement
- set criteria for engaging with different categories of shareholders in different ways
- clarify the framework of topics that may or may not be discussed
- set a process for addressing specific shareholder concerns.

To spur more meaningful, interactive dialogue, companies are experimenting with new ways of consulting with shareholders, such as through virtual Annual General Meetings, Internet-based shareholder surveys, electronic shareholder forums, governance roadshows and conference calls. Corporate websites have become essential tools for broadcasting a company's information and messages to shareholders, and they are well utilized by shareholders. Companies are also looking to social media to create more regular shareholder communication avenues. Boards should evaluate their existing shareholder engagement practices and consider whether improvements may be made.

Taking into account the trend toward shareholders' rising demands for more influence in corporate decision-making, the importance of building shareholder goodwill and trust, and the potential risks and advantages of greater shareholder engagement, this Briefing offers the following questions for directors to consider asking themselves or management, as appropriate.

Risks and benefits of shareholder engagement

1) How do we compare with peers at engaging shareholders through avenues such as regular communication, outward information, access to board members, and voting rights? Could this become a competitive advantage/disadvantage for the firm?
2) How do outside organizations perceive the robustness of our governance practices? What has been the trend in our rankings in recent years?
3) What is being said about the company and the board in social media?

Training and preparation

4) Have we appropriately defined the respective responsibilities of management and the board for shareholder engagement?
5) Is director involvement in shareholder engagement integrated with the company's engagement initiatives, or are directors involved only on an ad hoc basis in response to shareholder requests or at critical junctures?

Diverging shareholder perspectives

6) Who are our shareholders, and what are their principle interests in investing in our company?
7) What are the risks of not engaging with shareholders or certain categories of shareholders?
8) What are the company's strategies for engaging with different categories of shareholders?

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14) Has the board approved a policy on shareholder engagement that is consistent with the company's disclosure policy?

15) Are there other reasonable steps that can be taken to help shareholders feel more connected to the company and the board?

Introduction

Shareholders around the world want a greater say in the governance of companies in which they invest. Boards need to respond to this international trend in ways that do not compromise their mandate and duties.

This Director Briefing describes the trends toward increased shareholder engagement and the related benefits and risks of shareholder engagement. We also describe strategies and techniques to balance these benefits and risks and enable boards to engage with shareholders more effectively and efficiently. While this Briefing focuses on engagement with shareholders, many of the concerns and suggestions identified are equally applicable to enhancing engagement with the company's other stakeholders. This Director Briefing discusses engagement with shareholders as a whole. The relationship between a controlled company and its controlling shareholder gives rise to unique dynamics that are beyond the scope of this Briefing.

What is Shareholder Engagement?

Shareholder engagement refers to all the ways that shareholders can communicate their views to the board and that boards can communicate their perspectives to shareholders (in addition to existing investor relations activities and processes). Shareholder engagement should not be viewed as being limited to a particular forum or method. Rather, boards should consider multiple approaches to shareholder engagement. Boards should then identify those methods that it determines are appropriate in light of the company's needs and resources and incorporate them into the company's overall shareholder communications strategy.

This Briefing describes the rising importance shareholder engagement and highlights some approaches and methods that boards should consider in creating a shareholder communication strategy.

Why Shareholder Engagement is an Issue

Many shareholders want increased engagement with boards. A recent study of U.S. companies noted that 53 per cent of asset owners, 64 per cent of asset managers and 50 per cent of issuers said they are engaging more with boards.[1] In addition to pressures for engagement, several studies illustrate the value of increasing communications between shareholders and boards of directors.[2] Boards need to respond to these new dynamics by determining how they can improve constructive engagement with shareholders. In addition, companies should consider exploring new ways of engaging with their shareholders in order to benefit from improved shareholder relations.

Shareholder Engagement as a Global Trend

The desire of shareholders to engage is not new. Nor is it new that some boards are willing to create avenues for engagement and have attempted to do so.

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1 Marc Goldstein, *The State of Engagement between U.S. Corporations and Shareholders: A Study Conducted by Institutional Shareholder Services conducted for the Investor Responsibility Research Centre Institute*, February 22, 2011.

2 See Council of Institutional Investors and National Association of Corporate Directors, *Framework and Tools for Improving Board-Shareowner Communications: The Report of the Council of Institutional Investors and The National Association of Corporate Directors Task Force on Improving Board-Shareowner Communications*, February 2004; *Business Roundtable, Guidelines for Shareholder-Director Communications*, May 2005; and National Association of Corporate Directors, *Report of the NACD Blue Ribbon Commission on Board-Shareholder Communications*, 2008.

As the source of risk capital for Canadian businesses, shareholders are accorded a special role in corporate governance. Shareholders elect the directors and appoint the external auditors. Corporate statutes require certain matters of fundamental importance to be approved by shareholders, including changes to the articles and by-laws, amalgamations, reorganizations and the sale of all or substantially all of the company's assets. Stock exchange rules require shareholder approval of certain dilutive transactions.

Companies must provide information to the shareholders to enable them to reach reasoned decisions on such matters. In addition, all companies have some form of shareholder communications program through which the company communicates material information to shareholders. In many companies, this has traditionally been a management responsibility; where the Investor Relations group often plays a leading role in developing and implementing such communications, subject to the board's oversight and direction, through established shareholder communication policies.

What's new is the extent to which shareholders are advocating for and expecting better access to boards on an increasingly wide range of issues. Also new are the types of media and technology that can facilitate the flow of information between boards and shareholders.

Shareholders have views on how companies should be run. They want to understand and improve the governance of the companies they are invested in. This trend has been reflected in:

- shareholder-led initiatives regarding board composition, such as majority voting for directors, individual versus slate voting for directors, proxy access and board diversity
- regulatory and legislative changes in response to shareholder demands that a shareholder vote be required for dilutive merger and acquisition (M&A) transactions and to provide shareholders with a "say-on-pay" vote
- various initiatives undertaken at the insistence of shareholders, regulators and other stakeholders to improve disclosure regarding environmental, social welfare and other corporate responsibility issues.

To satisfy today's shareholders, traditional shareholder communication and investor relations practices are not enough. Written communications are viewed as legalistic and anachronistic. Shareholder meetings are dismissed: they generally occur only annually; shareholders are only asked to vote on limited matters; most shareholders vote by proxy and so personal attendance is generally low; and the formality of proceedings is not conducive to meaningful dialogue.

Shareholders are also concerned that when they express their views outside the shareholder meeting through traditional mechanisms, those views are not making their way to the board. Shareholders may suspect that management is filtering the message by emphasizing points that are consistent with management's own views and de-emphasizing other points, or that the integrity of the message is being affected by a "broken telephone" of unintended miscommunications as it is conveyed up the chain to the board.

Demands for shareholder engagement will likely continue to increase for the following reasons.

- The regulatory trend over the last decade has been to further increase shareholder communications, including corporate and securities law changes to limit the ability of companies to disregard shareholder proposals, to facilitate shareholder communications, including dissident proxy solicitations, to require shareholder approval for dilutive transactions and, in certain jurisdictions, most recently the United States, to legislate requirements for regular, advisory say-on-pay votes.
- National and regional initiatives are focusing on improving policies and regulatory frameworks for shareholder engagement, such as the European Union Shareholder Rights Directive[3] and the United Kingdom Stewardship Code created by the Financial Reporting

3 Directive 2007/36/EC.

Council (July 2010). Various national political committees also have made or implemented policy recommendations for improving shareholder engagement, such as the Australian Government's Parliamentary Joint Committee on Corporations and Financial Services' Inquiry Into Shareholder Engagement and Participation (September 2007).

- It is becoming more difficult for large institutional shareholders to "vote with their feet" by exiting an investment due to the prevalence of stock market indexing and the impact on stock prices of selling a large position in a company. As a result, institutional shareholders are seeking to improve the return on their investment by communicating more with directors and management and, if necessary, by submitting shareholder proposals and initiating proxy contests.
- Institutional shareholders are accountable to the beneficiaries whose funds they manage and becoming subject to increasingly higher standards of behaviour.[4]
- Technology is making it easier for shareholders to communicate their views on company matters, including through website publication, email distribution and social media interaction.

These changes and proposals are gathering momentum in Canada and the United States and even more so in places such as the United Kingdom, Europe and Australia. Whether or not these changes signal a power shift[5] from companies to shareholders, they are no passing fad and regulatory and policy changes will likely continue.

The Board's Role in Shareholder Engagement

The board's interest in shareholder communications is a fundamental and long-standing aspect of the board's fiduciary oversight responsibility.

Although directors are subject to a fiduciary duty to act in the company's best interests, this duty includes an obligation to treat individual shareholders and other stakeholders affected by corporate actions fairly and equitably. Boards must take shareholder interests into consideration, and so they have an interest in understanding shareholder views about the company, its governance and its operations.

Moreover, it has long been recognized that directors have a responsibility for approving a communication policy for the company that establishes a set of investor relations guidelines, including measures for receiving feedback from shareholders and other stakeholders. This responsibility is typically reflected in the company's board charter, as well as various regulatory instruments under securities laws or stock exchange listing requirements.[6]

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4 In 2003, the Securities Exchange Commission's "Final Rule: Proxy Voting by Investment Advisers" 17 CFR Part 275 became effective, requiring investment advisers that exercise proxy voting authority to adopt policies and procedures respecting the voting of proxies in the best interests of clients and to disclose to clients information about those policies and procedures and how the adviser has voted. Similar requirements were introduced in 2005 in Canada under Part 10 of National Instrument 81-106 *Investment Fund Continuous Disclosure*. In 2006, National Instrument 81-107 *Independent Review Committee for Investment Funds* came into effect, requiring certain Canadian investment funds to appoint independent review committee to oversee decisions involving a perceived conflict of interest. In its Green Paper on Corporate Governance in Financial Institutions and Remuneration Policies, issued in June, 2010, COM (2010) 284, the European Commission stated that it intends to carry out a review centred on, among other things, the disclosure by institutional investors of their voting practices at shareholders' meetings, institutional investors adherence to "stewardship codes" of best practice and identification and disclosure of potential conflicts of interest by institutional investors. In July 2010, the U.K. Financial Reporting Council the published "The U.K. Stewardship Code" for shareowners, and in December, 2010 the U.K. Financial Services Authority began requiring certain fund managers to disclose the extent of their commitment to the U.K. Stewardship Code.

5 "… (T)here has been somewhat of a power shift in the relationship between issuers and investors … but that this is more likely to be manifested on issues where shareholders are broadly in agreement, such as board declassification, and less likely on topics where shareholders (at least in the United States) are less united, such as the appointment of independent chairs; or on certain fundamental compensation issues where companies resist compromise." Marc Goldstein, *The State of Engagement between U.S. Corporations and Shareholders: A Study Conducted by Institutional Shareholder Services conducted for the Investor Responsibility Research Centre Institute*, February 22, 2011, at p.19.

6 See item 3.4 of National Policy 58-201—Corporate Governance Guidelines of the Canadian Securities Administrators and SEC Rule 3235-AI90 (2004).

Boards are increasingly recognizing the need to be proactive in addressing shareholder expectations for increased engagement with boards. Given its responsibility for overseeing the company's governance practices, the governance committee is well positioned to enhance the board's relationship with shareholders and other stakeholders.[7]

Good corporate governance includes transparency for corporations and investors, sound disclosure policies and communication beyond disclosure through dialogue and engagement as necessary and appropriate.[8]

The "Framework and Tools for Improving Board-Shareowner Communications" published in February 2004 by The Council of Institutional Investors and The National Association of Corporate Directors provides the following guidance for directors with regard to non-trivial and important concerns from shareholders.

- Commit to shareholders that they will receive a response to their direct communications.
- Attend annual shareholder meetings.
- Disclose ground rules for other meetings with shareholders.
- Make a good-faith effort to accommodate all legitimate and important requests for meetings.
- Respond in writing to all requests for meetings involving topics appropriate for board/shareholder communications.

There are benefits to improving shareholder engagement with boards, but there are also risks. Each board needs to find the right balance for the company in light of the company's business, its shareholder base, the competencies of management and directors, and the board's oversight role.

Benefits of Shareholder Engagement

Better shareholder engagement has the potential to provide useful information to the board, improve the company's relations with its shareholders, and increase shareholder value. Some of the ways boards can benefit from communications with shareholders are as follows.

- **Director education opportunity.** Board members may benefit from a better understanding of shareholders' views on the company, its management, and the company's performance, including the reasons shareholders invested in the company in the first place. A member of management, such as the Investor Relations Officer (IRO) or the Chief Financial Officer, can often provide regular updates to the board on the investor relations program to keep directors abreast of shareholder issues and perceptions on an ongoing basis, and not only in the event of a problem or concern. Directors need to be well informed of issues that are important to shareholders to fulfill their role as representatives of shareholder interests.

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7 For more information, see CICA, *20 Questions Directors Should Ask about Governance Committees*, June 2010.

8 Principle 6, *Report of the New York Stock Exchange Commission on Corporate Governance*, September 23, 2010.

- **Outside perspective on company's performance.** Shareholder views can provide an external measure of company performance. These views may be valuable in fine-tuning strategies and as a source of potential early warning signals.[9] As many short- and long-term factors affect stock trading prices, company stock price should not be the sole barometer for shareholder views on company performance. Moreover, information regarding shareholder views on compensation, company and executive performance, environmental responsibility and other matters can counter-balance management's influence on such matters.
- **Source of potential strategies.** Institutional shareholders, given their exposure to a broad spectrum of companies and business strategies in a given sector and even to comparable companies in different sectors, may be in a position to bring forward suggestions which may not have been considered by the company or which validate an existing or potential company initiative.
- **Build shareholder goodwill.** Effective shareholder engagement practices can enhance board credibility and authority, provide comfort on the "tone at the top", and increase the goodwill and trust of shareholders. Shareholder goodwill can make the difference when the company is facing a proxy fight or crisis. Indeed, giving shareholders a chance to voice their concerns early can reduce friction and perhaps avoid shareholder proposals and proxy fights, which are often initiated to establish dialogue with boards. In addition, when institutional shareholders and their advisory services publish views that are critical of the approach adopted by the company, shareholder goodwill built through effective shareholder engagement may lead other shareholders to give the company's perspective more credence. Better shareholder relations may also lead to increased long-term investment

The voting recommendations of proxy advisors have potential to significantly influence voting results. Companies may seek to meet with such advisors before the advisor issues a voting recommendation on a matter that may be controversial.

Many companies have successfully withstood a negative voting recommendation from a proxy advisory service. For example, during the first season of say-on-pay votes in the United States, Institutional Shareholder Services recommended that shareholders at 12.6 per cent of the almost 2,200 companies in the Russell 3000 index companies vote against approval of the company's say-on-pay resolution. Shareholders failed to approve the resolution at only 1.7 per cent of these companies. In many cases, the company succeeded by appealing directly to its shareholders, providing supplemental information or implementing changes to their compensation practices.[10]

- **Defuse potential issues.** A board that is sensitive to potential shareholder concerns may be able to address them early, defusing them before they become a rallying point or framing the debate more effectively. For example, unlike U.S. companies, Canadian companies are willing to voluntarily adopt a board policy requiring the resignation of a director who is elected despite having received more "withhold" votes than for votes to resign (unless the

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9 "Without effective monitoring of directors and management by shareholders, there is an increased risk of directors and managers underperforming." Australian Treasury submission on *Better Shareholders—Better Company Shareholder Engagement and Participation in Australia*, a report by the Parliamentary Joint Committee on Corporations and Financial Services, June 2008.

10 Institutional Shareholder Services, *2011 U.S. Season Review: "Say on Pay"*.

board otherwise determines). This partially explains why little headway has been made in Canada on initiatives to change laws or company by-laws so that a director who receives more "withhold" votes than "for" votes is not considered to have been elected in the first place.

- **Educate shareholders on the board's role.** Shareholders can develop unjustifiable expectations for directors due to a misapprehension of the board's oversight role or of constraints affecting decision-making. Shareholder engagement can help correct such misunderstandings when they occur. If shareholder criticism is uninformed or illegitimate, a board can respond to shareholders constructively and firmly to demonstrate the proper exercise of its oversight role.

Questions for Directors to Ask

1) How do we compare with peers at engaging shareholders through avenues such as regular communication, outward information, access to board members, and voting rights? Could this become a competitive advantage/disadvantage for the firm?
2) How do outside organizations perceive the robustness of our governance practices? What has been the trend in our rankings in recent years?
3) What is being said about the company and the board in social media?

Potential Risks and Concerns

Board engagement with shareholders entails a number of concerns and risks that need to be considered and addressed.

Defining the roles of the board and management

A key concern is the need to distinguish the board's role and management's responsibility in shareholder engagement. Management has a clear responsibility for shareholder communications. Historically, the board's responsibility has been viewed as being to approve the company's disclosure policy, oversee the processes for communicating to shareholders, and receive feedback from shareholders. Most disclosure policies identify the CEO (often with the assistance and support of the senior investor relations executive) as being the principal spokesperson for the company. Indeed, as both a director and senior executive, the CEO is usually in the best position to communicate the company's views and, particularly, those of the board. Some disclosure policies identify the board's chair as a spokesperson.

Directors may be concerned that getting more directly involved in shareholder engagement may reduce management's accountability for shareholder communications and potentially increase director liability. Management may feel threatened if it perceives that the board is overstepping its role, engaging in confidential discussions with shareholders behind its back, or sending a message that is inconsistent with the company's previously expressed position. Moreover, if the board or specific directors directly engage with shareholders too often, shareholders may become confused as to whether management has authority to communicate on the company's behalf. The process for shareholder engagement should be discussed in advance to ensure that the roles of the board and management are clearly understood and that management supports the initiative. Management support is especially important where the disclosure policy names the board's chair as one of the company's spokespersons. The company's disclosure policy, the position descriptions for the chair of the board and the CEO and the committee charters should reflect this understanding.

It is important to define which topics are appropriate for discussion with the board and which should be referred to management for handling. Areas that may properly be the subject of board engagement with shareholders include:

- board composition
- governance policies
- executive compensation philosophy
- CEO performance and succession planning
- concerns about accounting practices and ethics
- the board's views on fundamental business decisions which are being submitted to shareholders for approval, such as mergers, acquisitions, divestitures and capitalization issues.

Boards may also wish to be ready for shareholder concerns and communications regarding whistleblower issues, director compensation, board policies and shareholder proposals. By contrast, operational and strategic matters and questions regarding risk management systems and practices generally should be directed to management. However, even where the topics for board discussion have been settled, it can be difficult in practice to determine where to draw the line, especially when a director is prompted to provide an off-the-cuff response.

Inconsistencies between information communicated by management and directors need to be avoided. It is important that the company communicate with one voice, consistent with its disclosure policy.

Questions for Directors to Ask

4) Have we appropriately defined the respective responsibilities of management and the board for shareholder engagement?
5) Is director involvement in shareholder engagement integrated with the company's engagement initiatives, or are directors involved only on an ad hoc basis in response to shareholder requests or at critical junctures?

Training and Preparation

The board needs to consider the relative knowledge of management and directors on topics for discussion with shareholders and the capabilities and experience of those individuals who may be involved in responding to shareholder inquiries. Directors may require additional preparation and education regarding the company's stated position on topics in which they may be asked to engage with shareholders and on the limits to permissible disclosure. Media training and training on the use of social media may be necessary. The IRO may be able to provide background on the composition of the company's shareholder base and current shareholder concerns. Additional preparation may be necessary in responding to inquiries from certain categories of shareholders, such as activist shareholders.

Disclosure Controls and Procedures

Shareholder engagement needs to occur in a manner that is consistent with the company's disclosure controls and procedures.

The first step is to ensure the company has in place a sound disclosure policy, including procedures to prevent selective disclosure and remedy inadvertent selective disclosure. If the CEO or IRO is identified as being the company's principal spokesperson, amendments to the company's existing disclosure policy and committee charters may be needed to allow directors to speak on

the company's behalf. Communications by directors must be also consistent with the company's obligation not to selectively disclose material information. The disclosure policy should be communicated to directors, together with guidelines on what constitutes material information. For example, directors should avoid discussing internal financial projections, strategic plans, significant undisclosed developments, specific business opportunities, and potential dividend increases or stock repurchases. Indeed, because selective disclosure of previously undisclosed material information impacts their flexibility to trade in the company's stock, institutional shareholders who engage with the board share this concern. Communications by directors must also be made in a fashion that enables the CEO and CFO to certify compliance with the company's disclosure controls and procedures. Where directors are engaging in an interactive dialogue with shareholders, at a minimum, there must be some method of reporting back to the CEO and CFO on the nature and scope of discussions. That way, an assessment may be made as to whether information disclosed by the directors complied with the company's fair disclosure obligations and was free of any misrepresentation.

Other measures to consider in an effort to avoid selective disclosure may include:

- establishing ground rules for director meetings with shareholders
- developing agendas for meetings with shareholders so that discussion remains within the framework of allowable issues
- requiring that corporate counsel or IRO be present at meetings between directors and shareholders
- where it is proposed that a director meet with shareholders in the absence of management or legal counsel, requiring the presence of at least one other director
- adopting a "listen only" policy as a means to hear shareholders and their concerns
- briefing directors on the company's public disclosure record before each meeting with shareholders
- holding a debriefing immediately after the meeting to determine if selective disclosure or misleading disclosure has occurred and, if so, widely disseminating the information promptly.

In addition, if the company is proposing a public offering, additional constraints will limit shareholder engagement initiatives under securities laws on corporate communications before and during the offering period.

Diverging Shareholder Perspectives

Shareholders are not all alike. Their motivations for engaging with the board, their appetite for engagement and the topics on which they wish to engage vary with the level of their investment, their investment time horizon, their personal interests and resources, and other reasons. Shareholders may have relatively simple and benign motivations for engagement. For example, a strategic shareholder or a fund manager whose reputation and compensation depends on the company's performance may simply want to get a "feel" for management and the directors who oversee the company's business and assets. At the other end of the spectrum, the motivations of activist shareholders may be complex and not entirely transparent.

In general, there are three distinct types of shareholders.

- **Institutional shareholders**. Typically, these are long-term shareholders and their mandate generally does not allow them to vote with their feet.
- **Strategic or activist shareholders.** These shareholders, such as hedge funds, engage with a specific or strategic objective, but they are not necessarily long-term shareholders. For such shareholders, engagement may be a prelude to a proxy contest, take-over bid or litigation

and the response to their request for engagement may be used to further their objective. Additional caution and preparation is warranted before determining how to respond to their request.

- **Retail investors (i.e., individual shareholders).** Although their investment in the company may be small at the individual level and generally few of them may be inclined to participate in company outreach efforts, their collective interest in the company may be large and they can be influential when their interests are threatened.

Shareholders are not homogenous. Boards need to be sensitive to this fact and tailor their shareholder engagement practices accordingly.

Questions for Directors to Ask

6) Who are our shareholders, and what are their principle interests in investing in our company?
7) What are the risks of not engaging with shareholders or certain categories of shareholders?
8) What are the company's strategies for engaging with different categories of shareholders?

Shareholder Expectations and Resource Constraints

Shareholder engagement requires an investment of time and effort by the company, its executive management, its investor relations function, and its directors. Companies and directors have limited time and resources to devote to this area and directors in particular must also allocate appropriate time and attention to their other oversight responsibilities. In addition, boards can be concerned about inappropriate or frivolous requests.

Communicating the board's approach to shareholder engagement is important to ensure shareholders do not develop unrealistic expectations regarding the manner and timing for shareholder engagement. It is also useful to develop policies on what are and are not regarded as legitimate and relevant requests for information and engagement.

Questions for Directors to Ask

9) Are there better ways to use company and board resources to engage with shareholders?
10) Has the company built sufficient goodwill with its shareholders to enable the company to withstand an opportunistic bid or to engender support for major transactions that require shareholder approval?

Legal Constraints on Proxy Solicitation

Corporate and securities laws prohibit a company from soliciting proxies unless a proxy circular in prescribed form has been sent to each shareholder who is solicited. What constitutes a "solicitation" has been broadly interpreted to include communications that are part of a continuous plan ending in a formal "solicitation" and prepare the way for its success. Shareholder

communications may be viewed in hindsight as a step in a solicitation program, especially if shareholders will be asked to vote on the subject matter of the discussion or the discussion occurs in conjunction with or as a result of a threatened proxy battle.

Difficulties Reaching the Intended Audience

Shareholder engagement efforts will not be effective unless they reach shareholders who have an economic interest in the company's shares and the authority to exercise the shareholder rights related to such interest. However, the likelihood of successfully reaching such persons can be doubtful.

Shareholders may ignore communications and public disclosure. Most shareholders hold their shares indirectly through a broker, financial institution or other intermediary. The process to identify the beneficial owners of the company's shares takes time and is limited to identification only of holders of more than 10 per cent of the outstanding shares and holders who do not object to the disclosure of their names, addresses and holdings. Even if the company has identified its beneficial shareholders, their economic interest may not reflect their purported ownership as a result of equity monetization transactions and share lending arrangements, and the information will change in any event as shares are traded.

When meeting with representatives of a larger, long-term shareholder, it is not always clear whether the representative in attendance, even if they have responsibility for making investment decisions, actually has any authority or influence over how the shareholder casts its votes. (For many institutional shareholders, the fund manager is not the individual responsible for making voting decisions.) The tendency of many institutional shareholders to rely to varying degrees on recommendations from proxy advisory firms when casting votes causes the proxy advisory firm to act as a filter, which can impede effective communications.

Questions for Directors to Ask

11) Should we keep a proxy solicitation firm on annual retainer?

Forms of Shareholder Engagement: Managing the Risks to Derive the Benefits

Shareholder engagement can take many forms. All companies are required to provide certain board-approved information to shareholders. Most companies have procedures by which shareholders may, if they choose, provide feedback to the board. From time to time, boards will consult with company shareholders on specific topics of relevance to the board's mandate. Finally, boards may wish to engage in a two-way dialogue with certain shareholders, either electronically or through in-person meetings. While the form of engagement may vary, the content communicated should be consistent and suitable disclosure controls and procedures should be in place across all chosen forms of engagement.

Continuous Disclosure (and Beyond)

Through their investor relations and financial communications practices, public companies have long been subject to continuous disclosure requirements to send information to shareholders that has been approved by the board or contains the board's recommendations. Over the years, the range of topics and volume of such mandated disclosure has increased.

Companies have voluntarily supplemented such communications with information regarding the board's perspective on company performance and information on board and committee activities. This information is typically communicated through a Chairman's letter and committee reports published in the annual report or proxy circular. At the request of shareholders, many companies voluntarily provide additional reports and information regarding environmental practices, climate change and other corporate and social responsibility practices.

Since the company controls the content and timing of such outbound communications, they can be vetted before release through the company's disclosure controls and procedures, thereby alleviating any concerns regarding unfair access to undisclosed material information. However, such communications do not provide information to the board regarding shareholder views, they may not address all the concerns of a shareholder on the matter and they do not afford an opportunity to clarify any disclosure that shareholders find to be unclear.

Passive Feedback from Shareholders

Mechanisms for passive receipt of feedback from shareholders typically include the ability to send a written message to the chair of the board generally via mail and sometimes via email. These mechanisms are usually supplemented by whistleblower arrangements by which employees and others may raise ethical or accounting concerns with management or directors.[11] Many companies monitor discussions in social media to gather information regarding potential shareholder concerns and to determine whether and how to respond to inaccurate or objectionable discourse.

The passive receipt of communications does not raise concerns under the company's disclosure controls and procedures, but it does provide more information to the board. However, because it depends on interested shareholders taking the step of sending a communication, it does not provide information to the board regarding the degree to which other shareholders share the same concern. It also does not provide information to shareholders or an opportunity to clarify any unclear communication received.

In many instances, boards may request that communications directed to them be initially received, organized and summarized by management (the IRO or Corporate Secretary) or by a third party. However, communications sent to directors should not be blocked by these systems. No matter the topic, directors should receive copies of all shareholder correspondence addressed to them and be made aware of all shareholder correspondence intended for them.

Shareholder Consultation

Canadian companies have a long history of consultation with significant shareholders on governance-related topics such as executive compensation and in connection with certain M&A transactions. More recently, proxy advisory services have come to play an important role in advising, or in some cases voting on behalf of, their institutional shareholder clients. Some of these services have created consulting arms that provide feedback to companies on the voting recommendations their advisory arms are likely to make when certain matters are presented to shareholders for approval.

Some companies have begun seeking more inclusive ways of receiving feedback from members of their shareholder base. Consultation provides more information but only on discrete topics. Moreover, where a specific initiative or proposal is under consideration, the board needs to

11 These mechanisms also address the requirement under item 2.3(7) of National Instrument 52-110 Audit Committees that the audit committee establish procedures for the receipt, retention and treatment of complaints received by the issuer regarding accounting, internal accounting controls, or auditing matters and the confidential, anonymous submission by employees of concerns regarding questionable accounting or auditing matters.

be sensitive to concerns about selective disclosure of material information. Depending on the subject matter, timing and form of the consultation, due consideration must be given to the risk that the consultation may be subject to proxy solicitation rules.

Interactive Communications

An interactive dialogue directly between shareholders and directors offers the best potential for meaningful and effective communication. But whether interaction is conducted in a time-delayed manner or through in-person meetings, it can be time-consuming. It will always be important for boards to identify appropriate parameters for interactive communication in order to avoid inappropriate forms, time delays and poor use of resources.

Written interactive communications between shareholders and directors, including through the exchange of emails or postings to electronic forums, provide an alternative to traditional, formal shareholder communication mechanisms. However, directors need to be aware that this perceived informality is an illusion. The record of written communications will be available in the event of a dispute relating to the content and/or timing of any communications. Before responding, it is important to consider whether to vet the response through the company's existing disclosure controls and investor relations procedures.

In-person meetings offer the best opportunity to build rapport between shareholders and directors. For example, representatives of the Canadian Coalition for Good Governance (CCGG) have met with directors from several dozen Canadian boards. CCGG members and directors who participated in those meetings have reported that the meetings have been beneficial.[12]

But shareholder engagement risks are highest when directors meet with shareholders in person. Directors need to be sensitive to their obligation to provide to existing and potential shareholders only that material information regarding the company that has been previously disclosed to the public. While the need to guard against selective disclosure may seem obvious, it is sometimes difficult in practice to avoid providing important information during an ad hoc meeting.

Similarly, communications by the company should be accurate and consistent. Providing an immediate response to a shareholder question can be tempting, for example, on a technical issue. However, if management is not present at the meeting and the directors do not have sufficient background on the subject, responding immediately runs the risk that inaccurate or incomplete information may be provided or that the information provided is inconsistent with the company's publicly stated views.

A Shareholder Engagement Policy

One way to address these and other concerns is to adopt a formal policy for shareholder engagement setting out the company's policies with respect to the receipt and handling of communications with shareholders, including shareholder requests for direct communications with directors. A shareholder engagement policy can set out the ground rules for communications. An example of a form of engagement policy is set out in Appendix 1. Such a policy should address the following elements.

- **Articulate the board's approach**. A policy can articulate the board's philosophy respecting shareholder engagement and the allocation of responsibility for shareholder engagement between the board and management.

12 According to its 2011 Board Engagement Strategy, in 2010-11, CCGG intends to meet with approximately 45-50 companies.

- **Criteria for shareholders.** If the board chooses to engage with different categories of shareholders in different ways, the policy can describe what forms of engagement are generally available to differing categories of shareholder. For example, the policy can set out the expectation that shareholders wishing to engage in direct communications with directors be larger, long-term shareholders and that the representatives of institutional shareholders wishing to engage with the board be the individuals with decision-making authority for the exercise of voting rights in respect of the company.
- **Clarify the agenda in advance.** The policy can let shareholders know what topics may or may not be discussed within the framework of allowable issues and that it will be necessary to clarify these further in order to avoid discussion on areas that might give rise to fair disclosure concerns and to allow for advance preparation.
- **Confirm when counsel or the IRO will be present.** The presence of internal or external counsel and/or the IRO can help ensure that all parties respect the ground rules. Counsel or the IRO can also step in if the conversation appears to encroach on areas that might give rise to fair disclosure concerns.
- **Process to address specific shareholder concerns.** The policy can stipulate that directors speak only to their area of responsibility. For example, the policy can specify that only the representative of the Compensation Committee may engage with shareholders on executive compensation issues. The policy could address the need for directors to clarify when they are expressing personal opinion rather than the company's position.
- **Conduct a post-meeting review.** A debriefing with corporate participants immediately following the meeting can identify any selective or misleading disclosure so that prompt public dissemination of the information can be pursued in accordance with the established disclosure policy and continuous disclosure requirements.

Articulating ground rules for board-shareholder communications in advance demonstrates that the board has considered its views on such communications. Communicating the policy also provides a reference point when certain requests will not be honoured that may reduce the likelihood that a shareholder whose request has been turned down may view the decision as reflecting a disregard for shareholder concerns, a personal bias or an indication of a possible lack of independence by directors.

Questions for Directors to Ask

12) What avenues currently exist at our firm for shareholders to communicate with management and directors? Could these avenues be improved? Could other avenues and techniques for shareholder engagement be adopted? Could existing techniques be improved?
13) Does the board receive a regular briefing from the investor relations group on communications and feedback received from shareholders?
14) Has the board approved a policy on shareholder engagement that is consistent with the company's disclosure policy?

Enhancing Shareholder Engagement

There are many innovative ways to enhance communications with shareholders. A Bank of New York Mellon study shows that companies worldwide are taking new and innovative steps to enhance their outreach to shareholders and are developing more comprehensive investor relations strategies. Increasing numbers of companies now meet with hedge funds and sovereign

wealth funds. Resources and staff are being added to companies' investor relations teams, both within and outside the company's home jurisdiction. Companies are also considering embracing social media to create more regular avenues for communication with shareholders.[13]

Boards should evaluate their existing shareholder engagement practices and consider whether improvements may be made. Some suggested enhancements and their merits are discussed below.

Improving the Quality of Written Disclosure

Public companies are required to prepare, file and/or distribute large (and growing) volumes of written disclosure materials respecting their business, operations and financial results. While these materials must meet form requirements, must not contain a misrepresentation and may need to include cautionary language, all too often the result is disclosure that is lengthy, badly organized and difficult to read. Poor written materials are less likely to be read or understood by shareholders, and shareholders may perceive that the company is not being candid.

Shareholders crave communications that are clear, logically organized and easy to read. Merely improving the quality, rather than the quantity, of written disclosure to shareholders can increase shareholder confidence and goodwill.

Website Communications (webcasts, podcasts and video)

Corporate websites have become essential tools for broadcasting a company's information and messages to shareholders, and they are well utilized by shareholders. To date, most governance-oriented information has been similar to that offered though published disclosure documents (e.g., annual report, proxy circular, annual information form). Websites can offer an opportunity for directors to become better known to and appreciated by shareholders.

One well-executed example is Potash Corporation of Saskatchewan Inc.'s use by of videos posted on the home page of its website. PotashCorp's board chair and the chair of its Compensation Committee are presented in short one- to three-minute video clips answering key compensation-related questions about the board's role in the design of the executive compensation policy and how it relates to the achievement of long-term valuation objectives. The video presentations also address the board's responsibility to manage the relationships between risk and pay and between executive compensation and corporate performance. PotashCorp has also posted video responses to queries regarding such high-profile issues as say-on-pay, shareholder activism and succession planning.

On the Dell Inc. website, recent video presentations for shareholders have been improved, at the shareholders' request, by giving users the option to read and download a transcript of the video content. It seems some shareholders would rather review such comments from corporate executives in print as well as or instead of on video.

Tools already exist to increase the media through which the annual report and other mandatory corporate governance disclosure is accessed by shareholders and to make the experience of viewing the information contained in them more personal or and interactive. For example, most portions of TD Bank's 2010 online annual report, other than the financial statements and management's discussion and analysis, may be viewed as a series of videos that are accessible through a variety of social media.

13 Bank of New York Mellon, *Global Trends in Investor Relations, Fifth Edition – A Survey Analysis of IR Practices Worldwide*, January 2009.

Virtual Annual General Meetings

Electronic communication has also been applied in the form of virtual annual shareholder meetings. Although the first U.S. company to hold such a meeting was Inforte Corp. in 2001, the practice was not often repeated in the United States until 2009, when Intel Corporation's virtual meeting introduced live shareholder voting. Other companies have also employed live web-based voting at their meetings, including Broadridge and Warner Music Corporation. In an effort to increase shareholder participation, some U.S. companies (e.g., Best Buy, American Water Works, Charles Schwab) have tried hybrid virtual meetings, holding a classic physical meeting and incorporating Internet voting to allow non-present shareholders to be directly involved in the process. One Canadian resource company, TVI Pacific Inc., recently asked shareholders to submit questions to be addressed its annual meeting via e-mail or company Twitter and Facebook accounts. To date, many of the companies experimenting with virtual or virtual hybrid shareholder meetings have been either closely held companies or companies where relatively few institutional shareholders have held a substantial portion of outstanding shares. The debate on the value of such meetings is just beginning.

Shareholder Surveys

Easy-to-use Internet-based polling technologies have increased the use of surveys and questionnaires as cost-effective and fairly rapid means to foster increased communication with target audiences. This technology has begun to find its way into investor relations and shareholder engagement efforts.

In 2010, as part of PotashCorp's commitment to better understand and serve its shareholders, the corporation launched a survey on its website to gather feedback on executive compensation practices. The positive results of that initial effort convinced the board's Compensation Committee to gather additional feedback with a similar vehicle in 2011.

The online survey outlined the board's six core philosophies on executive compensation and briefly explained the alignment of PotashCorp's compensation program with these philosophies. Respondents were able to select "very comfortable", "somewhat comfortable", "somewhat uncomfortable", "very uncomfortable" or "not enough information to assess", and space was provided for respondents to provide additional comments.

Electronic Shareholder Forums

In January 2008, the U.S. Securities and Exchange Commission (SEC) enacted changes[14] to effectively "facilitate the use of electronic shareholder forums by public companies and their shareholders." Despite this move and its rationale of fostering interest in new technologies to increase communications with shareholders, only a few companies have actually used this type of technology. Shareholders also have largely ignored this approach to date.

Board Blogs

While the use of corporate blogs has grown substantially in the past few years, and blogs by senior management are growing in number, there appears yet to be few instances where such blogs are authored or consistently used by board members. Certainly there are examples where the chair of the board, who is often also serving as the CEO, have used blogs to deliver specific

14 Rule 14a-17 and amendments to Rule 14a-2.

messages, but such outbound communication is more often used by executives responsible for marketing, brand building, financial reporting, technical and customer service and community outreach (for example, Dell has several blog categories). Technology companies appear to be at the forefront in adopting this type of shareholder outreach, and the use of video blogs (or "vlogs) is becoming more common as access to broadband and high-speed Internet services becomes more widespread.

Governance Roadshows

The idea of having senior management travel to various cities to meet face-to-face with existing and potential institutional shareholders is not new. Such non-deal roadshows typically form a major portion of most investor relations strategies, and they often occur following the release of financial results or a strategic announcement.

More recently, shareholders have sought to better understand some key governance issues such as compensation policies, director election procedures, board compensation, succession planning, risk assessment and other issues believed to influence valuation. Some companies, such as Nexen Inc., have gone so far as to conduct a roadshow specifically designed to foster a dialogue with stakeholders around governance, rather than operational or financial issues. Nexen's 2007 Sustainability Report explains the rationale and value of their roadshow as follows.

Governance Roadshows

One of the most innovative ways Nexen gathers insights on corporate governance improvements is by engaging stakeholders during annual governance roadshows. Members of Nexen's governance office meet with shareholders, shareholder representatives, rating agencies, external consultants, service companies and our two listing exchanges—the Toronto and New York stock exchanges. These face-to-face meetings create opportunities for discussion of governance issues, contribute to greater understanding of current concerns and generate ideas for workable, informed solutions. For example, roadshow feedback led us to provide a detailed description of the respective roles of management, the CEO, an outside consultant, the Compensation Committee and the board as a whole in setting executive compensation.

The time and cost of conducting a governance roadshow, not to mention the logistical difficulties of finding a suitable date and venue, may make this option impractical for most companies.

Fifth Analyst Call

Another vehicle for additional shareholder engagement has recently been introduced in the United States. A group of major shareholders from North America, Europe and Australia have proposed an idea that they call a "fifth analyst call."

The fifth analyst call is a conference call hosted by companies in the same manner as the four quarterly earnings calls held by management for analysts. This call, however, is held for institutional shareholders with board members responsible for one or more of the board's governance, compensation or audit functions. The initial concept is to provide shareholders with an opportunity to question independent directors in advance of the annual meeting about information disclosed in the proxy circular and other governance issues, particularly compensation plans. The conference call format is meant to reduce the time and costs associated with face-to-face meetings and governance roadshows. The fifth analyst call also serves as an

efficient mechanism for companies to reach beyond the handful of their largest shareholders to their broader shareholder base since a recorded call can be easily posted on a company's website for wider market access.

Proponents of the fifth analyst call claim that such direct engagement on corporate governance issues is routine in other markets, such as the United Kingdom, Australia and the Netherlands, where board directors devote substantial time and attention to discussing corporate governance issues with their shareholders.

Questions for Directors to Ask

15) Are there other reasonable steps that can be taken to help shareholders feel more connected to the company and the board?

Conclusion

Shareholders both large and small are exerting their influence to demand a greater role in corporate decision-making. This is more than a passing fad—it's an international trend with many proponents and lots of momentum. Done right, shareholder engagement can provide directors with a better perspective on shareholder views. By increasing transparency in a manner consistent with the company's disclosure controls and procedures and communication program, shareholder engagement can enhance the company's reputation with shareholders. The challenge for directors is not whether to engage with shareholders but how to best harness the potential advantages that various forms of shareholder engagement have to offer.

List of Questions for Directors to Ask

1) How do we compare with peers at engaging shareholders through avenues such as regular communication, outward information, access to board members, and voting rights? Could this become a competitive advantage/disadvantage for the firm?
2) How do outside organizations perceive the robustness of our governance practices? What has been the trend in our rankings in recent years?
3) What is being said about the company and the board in social media?
4) Have we appropriately defined the respective responsibilities of management and the board for shareholder engagement?
5) Is director involvement in shareholder engagement integrated with the company's engagement initiatives, or are directors involved only on an ad hoc basis in response to shareholder requests or at critical junctures?
6) Who are our shareholders, and what are their principle interests in investing in our company?
7) What are the risks of not engaging with shareholders or certain categories of shareholders?
8) What are the company's strategies for engaging with different categories of shareholders?
9) Are there better ways to use company and board resources to engage with shareholders?
10) Has the company built goodwill with its shareholders to enable the company to withstand an opportunistic bid or to engender support for major transactions that require shareholder approval?
11) Should we keep a proxy solicitation firm on annual retainer?
12) What avenues currently exist at our firm for shareholders to communicate with management and directors? Could these avenues be improved? Could other avenues and techniques for shareholder engagement be adopted? Could existing techniques be improved?
13) Does the board receive a regular briefing from the investor relations group on communications and feedback received from shareholders?
14) Has the board approved a policy on shareholder engagement that is consistent with the company's disclosure policy?
15) Are there other reasonable steps that can be taken to help shareholders feel more connected to the company and the board?

Appendix 1 : Shareholder Engagement Policy

The Company is committed to engaging in constructive and meaningful communications with its owners, the Company' shareholders. To this end, the Board of Directors ("Board") has adopted this Shareholder Engagement Policy (the "Policy"), as proposed by the Corporate Governance Committee of the Board, in order to promote open and sustained dialogue with the Company' shareholders consistent with the Company' Disclosure, Confidentiality and Insider Trading Policy (the "Disclosure Policy") and our obligations to provide fair disclosure and maintain effective disclosure controls and procedures.

Copies of this Policy and the Disclosure Policy are available online on the corporate governance page of our website.

Communications with Shareholders

The Company seeks to communicate with its shareholders through a variety of channels, including through its annual report, proxy circular, quarterly reports, annual information form, news releases, website and presentations at its annual meeting of shareholders and at industry and/or investor conferences. The Company also holds conference calls for quarterly earnings releases and major corporate developments as soon as practical after they are publicly disclosed, and these calls are accessible to the public simultaneously and through archived material posted on our website.

Shareholder feedback is received through one-on-one or group meetings between management and institutional and/or retail shareholders and brokers and at the annual meeting, as well as through email, social media channels or telephone. Shareholder concerns are addressed promptly by the Investor Relations **[or Corporate Secretary]** department[s] and contact details for the Investor Relations department are published in the Company' annual and quarterly reports and on our website. Shareholders also make their views known through [individual] voting for directors, an annual say-on-pay advisory vote and other matters submitted to shareholders for approval. In addition, shareholders may put forward shareholder proposals in accordance with applicable rules.

Management's Responsibility for Shareholder Engagement

Management is principally responsible for shareholder communications and engagement and the Company' President and Chief Executive Officer (CEO) is the Company' official spokesperson. As a both a director and senior executive, the CEO is in the best position to communicate the views of the Board and the Company. From time to time the CEO authorizes a limited number of spokespersons, such as the Chief Financial Officer, Chief Operating Officer or Investor Relations Officer to communicate to the media or the investor community about the Company and/or its financial results.

Shareholders may communicate their views to management and the Board through the Company' Investor Relations group by contacting or sending a message to:

Vice-President, Investor Relations
[The Company]
[Company's address]
Tel: •
Fax: •
Email: •

In addition, shareholders may report concerns regarding actual or suspected improper activities in respect of the Company' accounting, internal controls or auditing matters, violations of law and other violations of its Code of Conduct on a confidential and, at the election of the reporting person, anonymous basis pursuant to the Company' Whistleblower Policy, by delivering a written report in a sealed envelope addressed as set out below. The report should be sent to the attention of the Corporate Secretary, but if the matter relates to such individuals or the reporting person is otherwise uncomfortable with making a report to either of them, it may be sent (i) in the case of accounting financial and auditing matters to the attention of the Chair, Audit Committee c/o the Corporate Secretary or (ii) in the case of other matters, to the attention of the Chair, Corporate Governance Committee c/o the Corporate Secretary.

PRIVATE & CONFIDENTIAL
[The Company]
[Company's address]
Attention: ______________________________

To be opened by the designated recipient only, being submitted pursuant to the Company's Whistleblower Policy.

The Corporate Secretary will forward the envelope, unopened, to the applicable committee Chair.

Board—Shareholder Communications

The Board oversees the discharge by management of its shareholder communication and engagement responsibilities and the Board has approved the Disclosure Policy. Management reports regularly to the Board on shareholder comments and feedback it receives. Directors may also from time to time participate with management in initiatives to engage with shareholders and elicit shareholder views.

Shareholders may themselves initiate communications directly with the Board. To do so, shareholders should communicate their questions or concerns to the independent directors through the Independent Chair of the Board by delivering a sealed envelope, marked "confidential", to:

The Independent Chair of the Board
c/o the Corporate Secretary
[The Company]
[Company's address]

Alternatively, the Independent Chair of the Board may be contacted directly by telephone at [INSERT phone #].

Although communications may be submitted anonymously, parties are encouraged to identify themselves so that the Independent Chair of the Board may acknowledge the communication. All correspondence, with the exception of solicitations for the purchase or sale of products and

services and other similar types of correspondence, will be forwarded to the Independent Chair of the Board. Purely for administrative purposes, correspondence to the Independent Chair of the Board may be opened or viewed by the Secretary to the Board.

Shareholders may direct a request for a meeting with directors to the Independent Chair of the Board who will consider such request, in consultation with the Corporate Secretary, having regard to the Company' Disclosure Policy. Ideally, the request should:

- explain whether the person(s) making the request is (are) a Company shareholder or a representative of the Company's shareholders and the level of shareholdings held or represented;
- identify the persons wishing to attend the meeting;
- provide a description of the topics to be discussed; and
- describe any intention or arrangements for communicating the nature and results of the meeting to other persons.

The Board has the right to decline requests for such meetings for any reason it deems appropriate, including where the proposed topics are not appropriate, and in order to limit the number of such meeting requests to a reasonable level and prioritize acceptances based on the interests of all shareholders. The Independent Chair of the Board will determine which directors will attend any such meeting. Topics suitable for board – shareholder communications include:

- board structure and composition;
- board performance;
- Chief Executive Officer performance;
- executive compensation;
- CEO succession planning;
- corporate governance practices and disclosure;
- matters submitted by the Company to shareholders for approval; and
- overall corporate performance.

Where a meeting request is granted, the Corporate Secretary will either directly contact the person(s) making the request to confirm arrangements for the meeting or be informed of the arrangements by the Independent Chair of the Board.

Where a meeting request is granted, the **[Corporate Secretary or Investor Relations Officer]** will contact the person(s) making the request to confirm arrangements for the meeting. The **[Corporate Secretary or Investor Relations Officer]** may be asked to attend the meeting in order to confirm compliance with the Company' obligations respecting fair disclosure and the maintenance and assessment of disclosure controls and procedures. Where the agenda involves particularly sensitive matters, the Independent Chair of the Board may grant a shareholder request to have any such meeting held in the absence of all members of management, although if such a request is granted generally the directors will adopt a "listen-only" approach and shareholders should be aware that the directors in attendance at the meeting reserve the right to review the matters discussed with management.

Appendix 2 : Additional Sources of Information

Canadian Coalition for Good Governance, *Board Engagement with Shareholders Policy*, September 2010.

Canadian Coalition for Good Governance, *Shareholder Engagement and "Say on Pay" Policy*, April, 2009.

Canadian Investor Relations Institute, *Standards and Guidance for Disclosure and Model Disclosure Policy*, 4th ed.

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European Commission, *Green Paper on Corporate Governance in Financial Institutions and Remuneration Policies*, COM (2010) 284.

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Marc Goldstein, *The State of Engagement between U.S. Corporations and Shareholders: A Study Conducted by Institutional Shareholder Services for the Investor Responsibility Research Centre Institute*, February 22, 2011.

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The National Association of Corporate Directors, *Report of the NACD Blue Ribbon Commission on Board-Shareholder Communications*, 2008.

Report of the New York Stock Exchange Commission on Corporate Governance, September 23, 2010.

Report of the Parliamentary Joint Committee on Corporations and Financial Services, *Better Shareholders—Better Company Shareholder Engagement and Participation in Australia*, June 2008.

Where to Find More Information

CICA Publications on Governance*

The Director Series

The 20 Questions Series

20 Questions Directors and Audit Committees Should Ask about IFRS Conversions (Revised)

20 Questions Directors Should Ask about Building a Board

20 Questions Directors Should Ask about CEO Succession

20 Questions Directors Should Ask about Codes of Conduct (2nd ed)

20 Questions Directors Should Ask about Crisis Management

20 Questions Directors Should Ask about Crown Corporation Governance

20 Questions Directors Should Ask about Director Compensation

20 Questions Directors Should Ask about Directors' and Officers' Liability Indemnification and Insurance

20 Questions Directors Should Ask about Executive Compensation (2nd ed)

20 Questions Directors Should Ask about Governance Assessments

20 Questions Directors Should Ask about Governance Committees

20 Questions Directors Should Ask about Insolvency

20 Questions Directors Should Ask about Internal Audit (2nd ed)

20 Questions Directors Should Ask about IT

20 Questions Directors Should Ask about Management's Discussion and Analysis (2nd ed)

20 Questions Directors Should Ask about Responding to Allegations of Corporate Wrongdoing

20 Questions Directors Should Ask about Risk (2nd ed)

20 Questions Directors Should Ask about the Role of the Human Resources and Compensation Committee

20 Questions Directors Should Ask about their Role in Pension Governance

20 Questions Directors Should Ask about Special Committees

20 Questions Directors Should Ask about Strategy (3rd ed)

Director Briefings

Climate Change Briefing—Questions for Directors to Ask

Controlled Companies Briefing—Questions for Directors to Ask

Diversity Briefing—Questions for Directors to Ask

Long-term Performance Briefing—Questions for Directors to Ask

Sustainability: Environmental and Social Issues Briefing—Questions for Directors to Ask

*Available at www.rogb.ca.

Director Alerts

The ABCP Liquidity Crunch—questions directors should ask

Executive Compensation Disclosure—questions directors should ask

Fraud Risk in Difficult Economic Times—questions for directors to ask

The Global Financial Meltdown—questions for directors to ask

Human Resource and Compensation Issues during the Financial Crisis —questions for directors to ask

New Canadian Auditing Standards—questions directors should ask

Shareholder Engagement—questions directors should ask

The Not-for-Profit Director Series

NPO 20 Questions Series

20 Questions Directors of Not-for-Profit Organizations Should Ask about Board Recruitment, Development and Assessment

20 Questions Directors of Not-for-Profit Organizations Should Ask about Fiduciary Duty

20 Questions Directors of Not-for-Profit Organizations Should Ask about Governance

20 Questions Directors of Not-for-Profit Organizations Should Ask about Human Resources

20 Questions Directors of Not-for-Profit Organizations Should Ask about Risk

20 Questions Directors of Not-for-Profit Organizations Should Ask about Strategy and Planning

Liability Indemnification and Insurance for Directors of Not-for-Profit Organizations

NPO Director Alerts

Pandemic Preparation and Response—questions for directors to ask

Increasing Public Scrutiny of Not-for-Profit Organizations—questions for directors to ask

New rules for charities' fundraising expenses and program spending—questions for directors to ask

New Accounting Standards for Not-for-Profit Organizations—questions for directors to ask

Other Publications

Accountants on Board—A guide to becoming a director of a not-for-profit organization

The CFO Series

Deciding to Go Public: What CFOs Need to Know

Financial Aspects of Governance: What Boards Should Expect from CFOs

How CFOs are Adapting to Today's Realities

IFRS Conversions: What CFOs Need to Know and Do

Risk Management: What Boards Should Expect from CFOs

Strategic Planning: What Boards Should Expect from CFOs

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Robert has worked at international law firms, university think-tanks as well as with international intergovernmental and non-governmental organizations. He has worked in over 20 countries in Asia, Europe and North America on projects dealing with corporate governance and risk management and other areas of legal development, regulatory strategies and international negotiation.

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