Trends in

CORPORATE GOVERNANCE

2021

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2021

Trends in

CORPORATE GOVERNANCE

Laurel Hill's expert team provides unequalled strategic solutions, shareholder results, and client satisfaction.

Trusted Annual Meeting and Year-Round Governance Partner: We work collaboratively with a broad cross section of Canadian companies, delivering AGM and year-round corporate governance, executive compensation, shareholder engagement, and shareholder communications advice and execution. Our long-term relationships result from delivering unmatched service and value each and every year.

#1 Board Proxy Contest Win-Loss Record: We have Canada's best win-loss record in formal board-related proxy contests, with 48 wins to only 10 losses in our 14-year history, a win rate in excess of 80%, and a winning head-to-head record against each of our competitors. We are a highly sought-after advisor in board proxy contests by both management and activists.

Top Ranked in Friendly and Contested Transaction Mandates: We are consistently ranked in the top two in Canada each year, by number of friendly and contested merger and acquisition and recapitalization and reorganization meeting mandates, retained by both management and activists.

Top Ranked in Hostile Bid Mandates: We have led all competitors in unsolicited takeover bid mandates, acting on 15 of the 20 hostile bids since the takeover bid regime took effect in 2016.

Letter From the President

With the pandemic continuing into a second proxy season, corporate Canada's understanding of the effects on its respective businesses has been much clearer. For many companies, they have settled into a new equilibrium and, in some ways, we have returned to many of the pre-pandemic trends; while for others, there has been a definite change in how issuers and investors view the business. One thing is clear: environmental, social, and governance (ESG) is pervasive on all fronts for corporate Canada.

For many investors, the impacts of the pandemic, as well as social events and climate change, have empowered them and other stakeholders to intensify their demands related to ESG change. As we noted in last year's report, the corporate world is responding to the rising pressure of doing more then well, but doing good. We have moved beyond the question of "why" to "how." To use an old movie reference, we have moved from the world of Gordon Gekko's "Greed is good" to a more purposeful approach incorporating social licence, governance, and stakeholder engagement.

Investors are increasingly looking for ESG disclosure and oversight. This pressure is only increasing as the amount of capital focused in these areas continues to grow and provide strong returns. Companies that are leading these initiatives are putting themselves in the best position to be competitive, relevant, and respected. For these reasons, ESG is prominent in all key areas of our report.

At the shareholder activism level, environmental and social concerns have dominated headlines, driving a new "ESG activism." The scope of this new form of activism has ranged from court orders directing companies to cut greenhouse gas emissions; to a global say-on-climate campaign; to majority support for climate change shareholder proposals; to a successful board battle focused on the lack of progress on energy and emissions reduction; to a first-of-its-kind-in-Canada shareholder proposal related to Indigenous employment, community relationships, and procurement.

Activism in its more traditional forms has continued to remain strong. Board activism picked up significantly in the latter part of 2020 and continued into 2021. Transactional activism, with the return of M&A, has continued to build on the momentum that we reported on in 2019. Finally, unsolicited offers, short-selling activism, and mini-tenders continue to create risks that must be managed.

With strategy driving pay, it is not surprising that ESG is also becoming increasingly relevant on the compensation front as well. The use of non-financial ESG performance metrics in executive compensation is increasing, as evidenced by the fact that a vast majority of the S&P/TSX 60 Index discloses a climate-related goal, including a net-zero or carbon-neutral goal. As for say on pay, 2021 was a unique year, with a record-high number of vote failures and approximately 31% of the S&P/TSX Composite Index receiving negative proxy advisory firm vote recommendations.

Our report this year explores and provides insights on these topics and many other key trends. On behalf of the Laurel Hill team, it is my pleasure to present our seventh annual *Trends in Corporate Governance Report*. Laurel Hill is very proud of our deep and experienced team of capital markets professionals and our reputation as a trusted advisor. We thank you for your time and support and for allowing us the opportunity to work with the leaders of corporate Canada. We welcome your feedback and look forward to speaking with you as you prepare for 2022.

Sincerely,

David Salmon
President

October 2021

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Trends in Activism

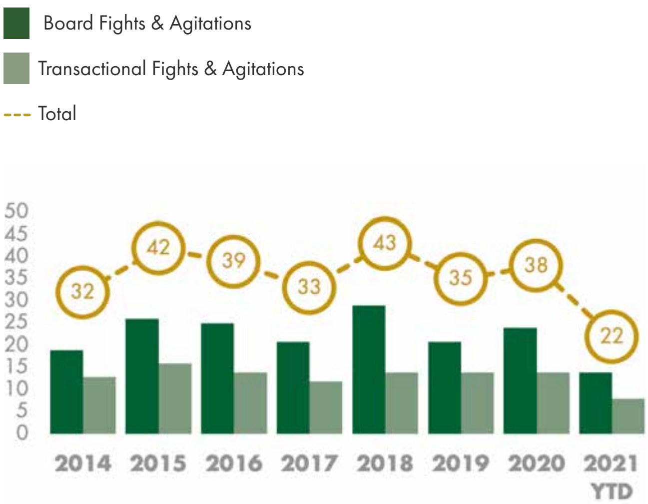
Introduction

Environmental, social, and governance (ESG) activism has arrived. Shareholder activism has always been driven by financial considerations and, in more recent years, by governance considerations. However, environmental and social concerns are now emerging as primary drivers for activism-driven change. From an activism perspective, the "E" and "S" are fast approaching the "G" in ESG. What is generally now termed "ESG activism" is really a new and heightened focus on environmental and social considerations as drivers for activism. We attribute this new form of activism to a confluence of trends, developments, and events in the past year:

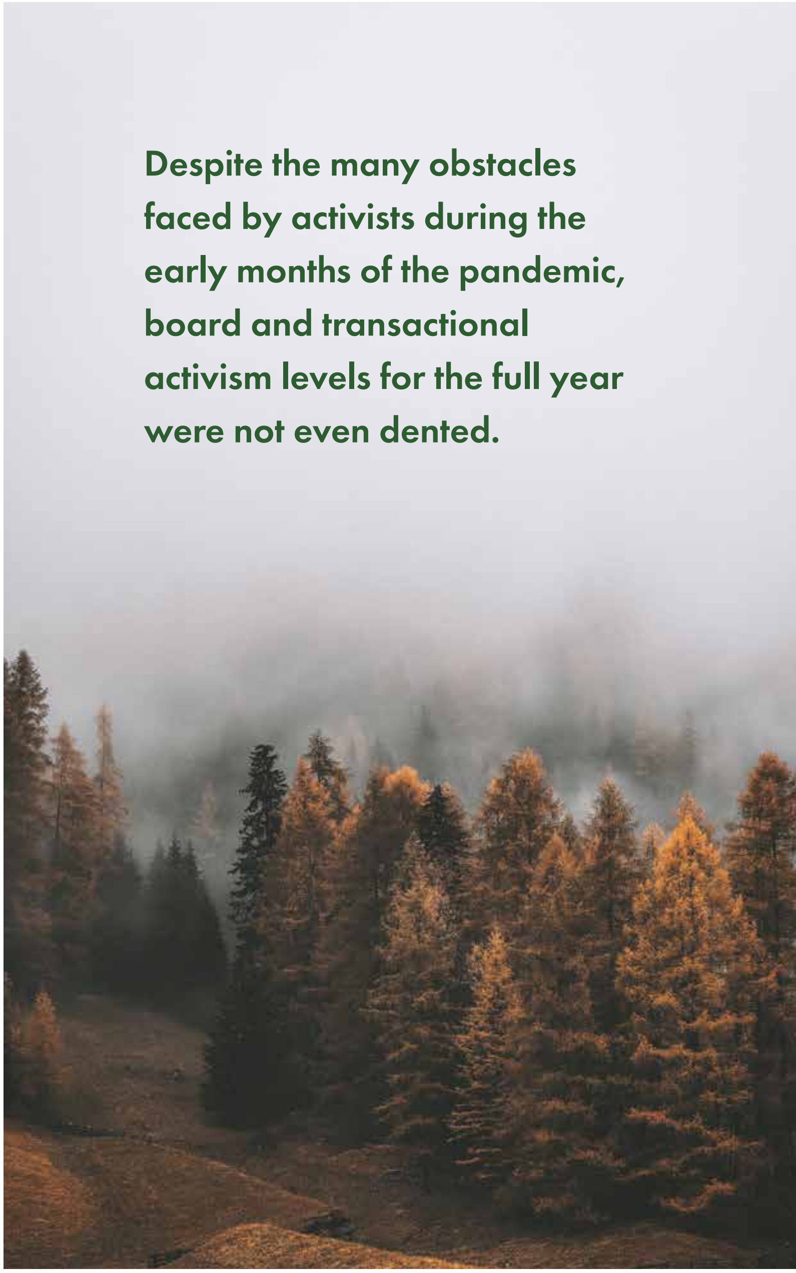
- The exponential rise in ESG investing and reporting in recent years has exposed ESG laggards and persuaded traditional activists that greater returns can be achieved by refocusing their efforts on those laggard sectors and companies. This has resulted in new activist ESG hedge funds in the past two years, such as Inclusive Capital Partners, Impactive Capital, and Engine No. 1.
- Institutional investors, and in particular the large fund managers such as BlackRock, Vanguard, State Street, and Canadian pension funds, are not only increasingly receptive to ESG-driven campaigns, they are themselves leading proponents of these changes.
- The new global say-on-climate campaign, spearheaded by the Children's Investment Fund Foundation, is focusing more scrutiny on leading companies' climate transition plans and progress. It has already seen success in Canada at Canadian National Railway Company (CN Rail) and Canadian Pacific Railway Limited (CP Rail). Other investor initiatives, such as Climate Action 100+, are driving change through engagement at the world's largest greenhouse gas emitters.
- The pandemic and other environmental and social experiences of the past year and a half, such as increasingly severe climate events and the Black Lives Matter and Indigenous movements, have inspired shareholders to push for greater accountability for climate change disclosures and plans; equity, diversity, and inclusion; and the health, safety, and fair treatment of employees.
- Finally, ESG activists are starting to win improbable battles and that success will be contagious: Engine No. 1, with only 0.02% ownership, won its board battle this year at Exxon Mobil Corporation to install directors with stronger environmental credentials. This will certainly pave the way for future campaigns.

While ESG activism has firmly taken root, shareholder activism in broader terms continues to gain momentum. In fact, the pandemic only held back activism until the second half of 2020. We saw many would-be activists sit out the early months of the pandemic to allow boards and management teams to focus on running their businesses, ensure the health and safety of employees, and preserve cash in case it was required to weather a long-term downturn. The optics of activist interventions were simply poor. Annual meetings were delayed later into 2020 and most companies held some form of virtual meeting – not generally viewed as activist-friendly. These meeting delays also allowed companies more time to mount defences to activist threats, including by signing friendly transactions. The weakened markets and damaged M&A environment precluded many transactional fights, threats, and demands. In particular, there were fewer new deals to push up against for improved deal terms or superior outcomes. Yet, as 2020 progressed and the markets rebounded, delayed campaigns were renewed and new campaigns were launched. **In Canada, board activism levels were marginally higher in 2020 than in 2019, while transactional activism levels remained steady year over year. In 2021, although we are on pace for fewer overall board and transactional activism situations than in 2020, activists have resumed their pursuit of change at Canada's large companies, including the nascent board battle at CN Rail. Despite the many obstacles faced by activists during the early months of the pandemic, board and transactional activism levels for the full year were not even dented.**

Board and Transactional Activism Situations



Source: Laurel Hill. Compiled from Activist Insight data and www.sedar.com filings through September 23, 2021, subject to our board and transactional activism classification methodology (as explained in our "Board Activism" and "Transactional Activism" sections below).



Shareholder proposals, on the other hand, did experience a drop-off last year: There were 32% fewer shareholder proposals submitted to a vote at 39% fewer targeted companies in 2020 as compared to 2019. This was driven by reduced year-over-year numbers of proposals related to executive compensation and general governance matters, although there was a year-over-year uptick in gender diversity proposals. The pandemic, for its part, likely had minimal impact on these numbers given that engagement with most of the proponents of the 2020 proposals would have occurred prior to the start of the pandemic. In 2021, the numbers of proposals and proposal-targeted companies were relatively flat as compared to 2020, but environmental and social proposals dominated all other categories, accounting for 62% of all proposals, which is up from 25% in 2020 – another clear indicator of the new ESG activism.

We are continuing to see the use of hostile bids, and even public threats of hostile bids, although primarily as a last resort. This year's headline hostile bid by Brookfield Infrastructure Partners L.P. for Inter Pipeline Ltd. was the largest hostile bid since 2019. The oil and gas sector – the most severely damaged during the pandemic, creating opportunities for would-be buyers in the face of reluctant sellers – has recently seen the most activity in this area, accounting for all of the four hostile bids launched since September 2020.

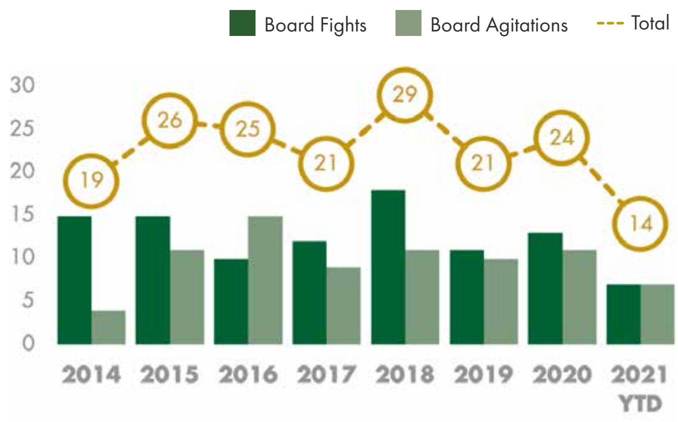
Finally, the "David versus Goliath" retail squeeze on short sellers at GameStop Corp. and other highly shorted "meme" stocks in January, which devastated short sellers and even pushed prolific short-selling activist Citron Research to declare that it would no longer publish its research, clearly demonstrates the power of retail investors. It may have even given other short-selling activists momentary pause. Yet, given that we saw the number of short-selling activism campaigns at Canadian companies double from 2019 to 2020, there is little reason to expect any long-term reduction in this type of activism. The regulators, however, are paying attention to concerns related to certain predatory and unfair short-selling practices: The Canadian Securities Administrators (CSA) this year published a consultation paper on activist short selling in which it acknowledged stakeholder concerns and sought feedback on the nature and extent of activist short selling, the regulatory framework, and issues related to enforcement and other potential remedial actions.

Board Activism

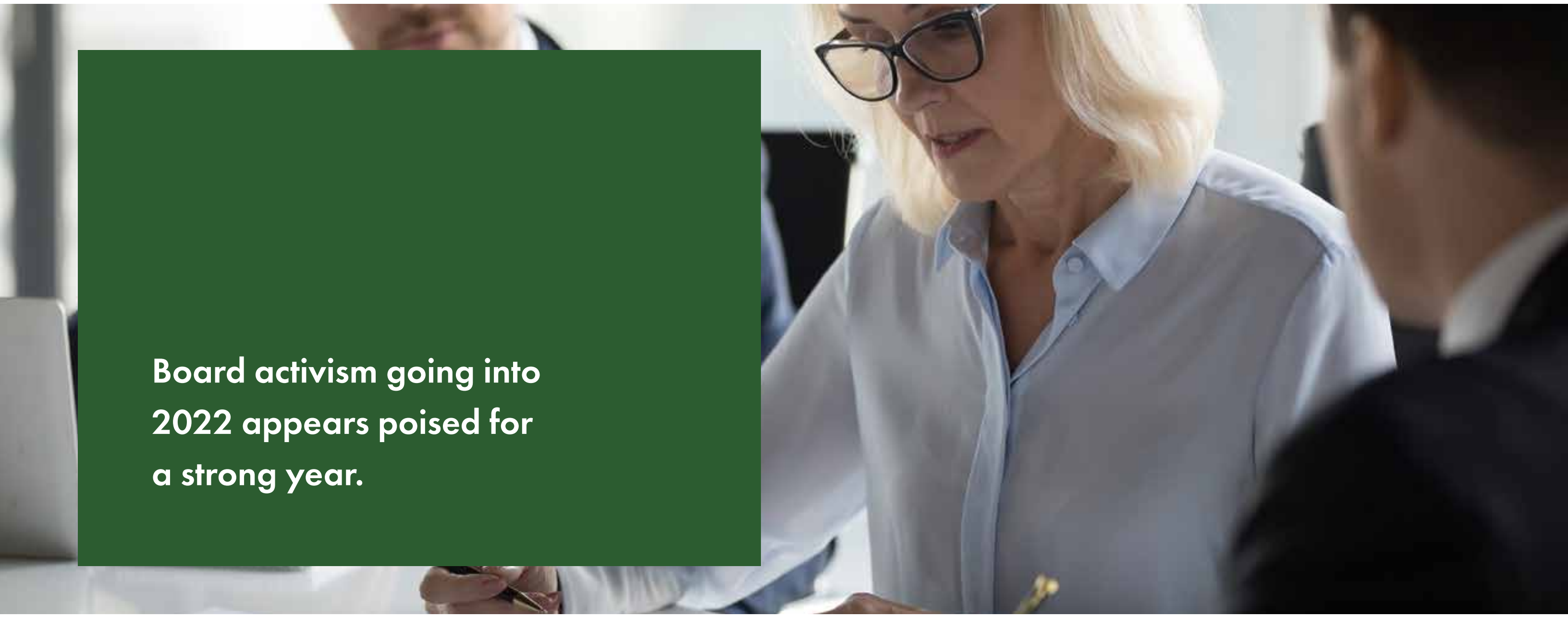
Canada's boardrooms and management teams have reason to pay attention: Despite the many challenges that activists faced during the pandemic, there were, in fact, more board activism situations in 2020 than in 2019. This year, we are on pace for fewer board activism situations than in 2020. Yet, given that large and more sophisticated activists have also resumed their pursuit of board change at larger targets (following a strong 2019 but a subdued 2020), including most recently at CN Rail, board activism going into 2022 appears poised for a strong year.

The last quarter of 2020 saw a flurry of board activism activity: A number of outstanding campaigns at companies whose meetings were delayed due to the pandemic were finally held; and several new campaigns were launched, some of which were at targets who had delayed their annual meetings until the final months of the year. In particular, we note Paulson & Co. Inc.'s 2020 requisitioned meeting at Midas Gold Corp., which quickly led to a successful overhaul of the entire company board. So far in 2021, K2 & Associates Investment Management Inc. has been responsible for the largest campaign to run its course, at GT Gold Corp. After K2 requisitioned a meeting to replace the GT Gold board, the company signed a deal to be acquired by Newmont Corporation and K2 supported the deal and withdrew its requisition. However, that situation has since been eclipsed by the new board battle by TCI Fund Management at CN Rail. There have also been two director withhold situations – namely a dissident disclosing opposition to a single director at BlackBerry Limited and a campaign to withhold votes on two directors at IMV Inc.

Board Fights and Agitations



Source: Laurel Hill. Compiled from Activist Insight data and www.sedar.com filings through September 23, 2021, subject to our determination of what is a Board Fight and what is a Board Agitation, as explained below.



How Laurel Hill classifies board activism situations:[1]

What is a "Board Fight"? We define a Board Fight as a board-focused activism situation where the dissident solicits shareholders to support its dissident nominees or, in the case of a withhold campaign, where the dissident solicits shareholders to withhold from management nominees, provided in either case that the dissident has filed an information circular or has issued a press release containing the National Instrument 51-102 public broadcast solicitation exemption disclosure. By this measure, we include instances where management has yet to issue its information circular. We also include the rare instances where the meeting is held despite management not having issued an information circular (such as when the dissident is compelled to call a meeting following a requisition because management has not done so within the required timeframe). We also include the occasional cases where the dissident does not conduct any such solicitation, but where dissident nominees are included in the management information circular. We use the meeting date to determine the year of the fight, except that if the fight is settled or withdrawn prior to the meeting date, we use the date of the settlement or withdrawal.

What is a "Board Agitation"? We define a Board Agitation as a board-focused activism situation that does not meet one of the Board Fight parameters described opposite. This includes situations such as: i) dissident campaigns that are settled or withdrawn prior to dissident solicitation (i.e., prior to a dissident information circular or a press release with public broadcast solicitation exemption disclosure); ii) dissident meeting requisitions or director nominations (pursuant to advance notice provisions) that are rejected by management as invalid, with no further action; iii) dissident threats or filings that the dissident may consider board nominations, with no further action; iv) dissident announcements that the dissident intends to withhold its vote for incumbent board members; v) dissident director nominee "ambushes" at a meeting with no advance notice; and vi) shareholder proposals related to adding or removing director nominees. We use the date of the last announcement related to any such activity to determine the year of the agitation.

2020–2021 Board Fight & Agitation Details

We are pleased to outline the Board Fights and Board Agitations in the past year (since our last report), with the targets in alphabetical order and by year.

Target	Target Sector	Target Capitalization	Dissident(s)	Fight or Agitation	Fights only: Settlement?	Fights only: Outcome
CF Energy Corp.	Utilities & Pipelines	Micro (<50M)	11882716 Canada Inc.	Fight	No	Management Win
(2020) The dissident solicited by proxy circular for its dissident nominees at the company's annual meeting. The dissident withdrew its nominees prior to the meeting.						
Destiny Media Technologies Inc.	Technology	Micro (<50M)	Steven Vestergaard	Agitation	N/A	N/A
(2020) The dissident submitted nominees for inclusion at the company's annual meeting per the company's advance notice provisions. The company responded that the submission was invalid.						
Mason Graphite Inc.	Mining	Small (50M–250M)	Fahad Al-Tamimi	Fight	No	Dissident Full Win
(2020) The dissident, an incumbent board member, successfully solicited by proxy circular for its dissident nominees.						
Media Central Corporation Inc.	Communications & Media	Micro (<50M)	"Concerned shareholders"	Agitation	N/A	N/A
(2020) The dissidents requisitioned a meeting to replace the board and the company set the meeting date. The company announced changes to the board which included some of the dissident nominees.						

1 The lines are, of course, often blurry between board and transactional activism. Activists seeking board change have underlying strategic concerns and want to see the company make certain fundamental changes, such as the ones we see in transactional situations. And the opposite is also true: Activists making transactional threats and demands often also threaten board change if their concerns are not addressed. We strive to assess each situation and place it in just one category according to what we view as most fitting and according to the activist's publicly stated primary objectives. However, some campaigns are ultimately placed in more than one category. To provide just one example, a dissident soliciting shareholder support for its dissident board nominees would be considered a Board Fight, but where that dissident concurrently solicits votes against that company's plan of arrangement, that would also be considered a Transactional Fight.

Target	Target Sector	Target Capitalization	Dissident(s)	Fight or Agitation	Fights only: Settlement?	Fights only: Outcome
Midas Gold Corp. (now Perpetua Resources Corp.)	Mining	Mid (250M–1B)	Paulson & Co. Inc.	Agitation	N/A	N/A
(2020) The dissident requisitioned a meeting to replace the board. The company announced the resignation of the incumbent board and the appointment of the dissident nominees.						
Rifco Inc.	Financial Services	Micro (<50M)	933672 Alberta Ltd., Tim Peterson, Ruth Peterson, Sorbrick Capital Corp., 812787 Alberta Ltd., Big Country Holdings Ltd., Norman Storch, Jeffrey Newhouse	Fight	No	Dissident Full Win
(2020) The dissidents successfully solicited by proxy circular for their dissident nominees at the company's annual meeting.						
AEX Gold Inc.	Mining	Small (50M–250M)	Livermore Partners	Agitation	N/A	N/A
(2021) The dissident sent a letter to the company requesting the addition of two of its nominees to the board. The company announced two additions, including one of the two dissident nominees.						
Axion Ventures Inc.	Communications	Small (50M–250M)	Cern One Limited, Michael Bonner	Fight	No	Management Win
(2021) The dissidents solicited by proxy circular for their dissident nominees.						
BlackBerry Limited	Technology	Large (1B–10B)	Dorsey R. Gardner	Agitation	N/A	N/A
(2021) The dissident announced that it would withhold its vote from one of the incumbent nominees (but did not conduct any solicitation).						
Canadian National Railway Company	Industrial Products & Services	Mega (>10B)	TCI Fund Management Limited (TCI)	Fight	TBD	TBD
(2021) TCI (CN Rail's second-largest shareholder), after a key U.S. regulator failed to approve CN Rail's voting trust for its bid for Kansas City Southern (KCS), announced (via public broadcast solicitation) its intention to requisition a meeting of CN Rail shareholders to replace four incumbent board members and the CEO. KCS has since terminated the deal with CN Rail in favour of CP Rail's competing bid. This follows on from TCI's Transactional Agitation (see "Transactional Activism" section) where it had called on CN Rail to abandon its pursuit of KCS unless the merger agreement is amended such that it is not conditional on a voting trust being approved.						
Cypherpunk Holdings Inc.	Technology	Micro (<50M)	Eagle Star International Ltd. and other "concerned shareholders"	Agitation	N/A	N/A
(2021) The dissidents announced an intention to submit a meeting requisition to replace the board. No further action.						
Dynacor Gold Mines Inc.	Mining	Small (50M–250M)	Red Oak Partners, LLC	Agitation	N/A	N/A
(2021) The dissident stated in a filing that it may put forward board nominees at the company's annual meeting. No further action.						
Fancamp Exploration Ltd.	Mining	Micro (<50M)	Peter H. Smith, James Hunter, Mark Fekete, Heather Hannan	Fight	TBD	TBD
(2021) The dissidents are soliciting by proxy circular for their dissident nominees. Notably, Fancamp received approval from BC Registries and Online Services to hold its annual meeting beyond December 31, 2020, by no later than June 30, 2021, and has since secured an additional extension. Following the start of this campaign, Fancamp struck a deal to acquire ScoZinc Mining Ltd. (for Fancamp share consideration). While the deal did not require Fancamp shareholder approval, the dissidents stated that they planned to terminate the arrangement if they prevailed at the annual meeting. The TSXV, in fact, required that the company hold its annual meeting prior to closing the transaction. The transaction has now been terminated, but the meeting has yet to be rescheduled and the fight outcome remains outstanding.						
FSD Pharma Inc.	Life Sciences (including cannabis)	Small (50M–250M)	Anthony Durkacz, Zeeshan Saeed, First Republic Capital Corp., Andrew Durkacz, Gloria Durkacz, Fortius Research and Trading Corp., Xorax Family Trust, Zachary Dutton	Fight	No	Dissident Full Win
(2021) The dissidents requisitioned a meeting and solicited by proxy circular for their dissident nominees.						

Target	Target Sector	Target Capitalization	Dissident(s)	Fight or Agitation	Fights only: Settlement?	Fights only: Outcome
GT Gold Corp.	Mining	Mid (250M–1B)	K2 & Associates Investment Management Inc.	Agitation	N/A	N/A
(2021) The dissident requisitioned a meeting to replace the board (and received a public statement of support from Muddy Waters Capital LLC). The company announced a plan of arrangement with Newmont Corporation, and K2 and Muddy Waters agreed to support the deal.						
IMV Inc.	Life Sciences (including cannabis)	Small (50M–250M)	Dr. Michael Gross	Fight	No	Management Win
(2021) The dissident solicited by public broadcast to withhold votes on two management nominees, seeking to have them resign pursuant to the company's majority voting policy if they failed to win at least 50% approval.						
Ready Set Gold Corp.	Mining	Micro (<50M)	CBLT Inc.	Agitation	N/A	N/A
(2021) The dissident requisitioned a meeting and the requisition included its nominees. The company has called an annual and special meeting in October and filed its proxy materials (which do not give shareholders the opportunity to vote for the dissident nominees). As of this writing, the dissident has not issued a proxy circular or undertaken any public broadcast solicitation.						
RT Minerals Corp.	Mining	Micro (<50M)	Ryan Kalt, Kalt Industries Ltd.	Agitation	N/A	N/A
(2021) The dissident has requisitioned a meeting, and the company has called the meeting but stated that it will cancel it unless the dissident provides additional biographical information on its proposed nominees in time for the company to prepare its proxy circular. This situation is still outstanding and may yet progress to a Board Fight.						
SIR Royalty Income Fund	Consumer Products & Services	Small (50M–250M)	Lembit Janes	Fight	Yes	Dissident Full Win
(2021) The dissident solicited by proxy circular for its dissident nominees. The parties reached a settlement that gave each of the dissident nominees a board seat.						
Viva Gold Corp.	Mining	Micro (<50M)	Humewood Ventures Corp., 868854 B.C. Ltd.	Fight	Yes	Management Win
(2021) The dissidents requisitioned a meeting and solicited by public broadcast, leveraging the management proxy which included the dissident resolutions and nominees.						

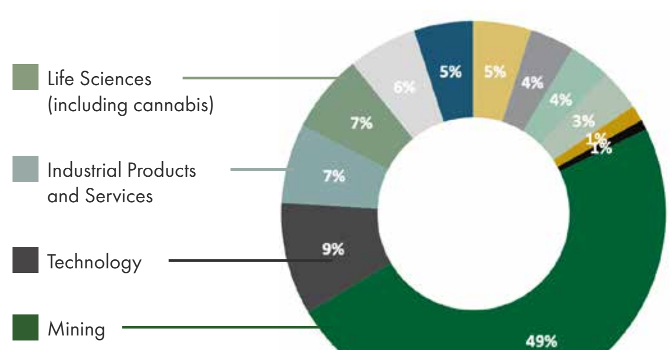
Source: Laurel Hill. Compiled from Activist Insight data and www.sedar.com filings through September 23, 2021.

Board Activism by the Numbers

Target Sectors

Target sectors for board activism – considering both Board Fights and Board Agitations combined – continue to be roughly representative of the composition of Canada's companies, with a few exceptions. Targets skewed heavily to the mining sector once again this year, accounting for 50% of all cases year to date and an average of 44% of all cases over the past eight years. We note, however, that mining stocks represent 49% of all TSX and TSXV issuers (excluding CPCs, SPACs, and ETFs), so they are, in fact, roughly proportionally represented (using the combined TSX/TSXV as representative of Canada's public companies). This correlation is generally true for most sectors and, over the years, we have seen targets in every sector. The bottom line: No sector should consider itself immune from activism.

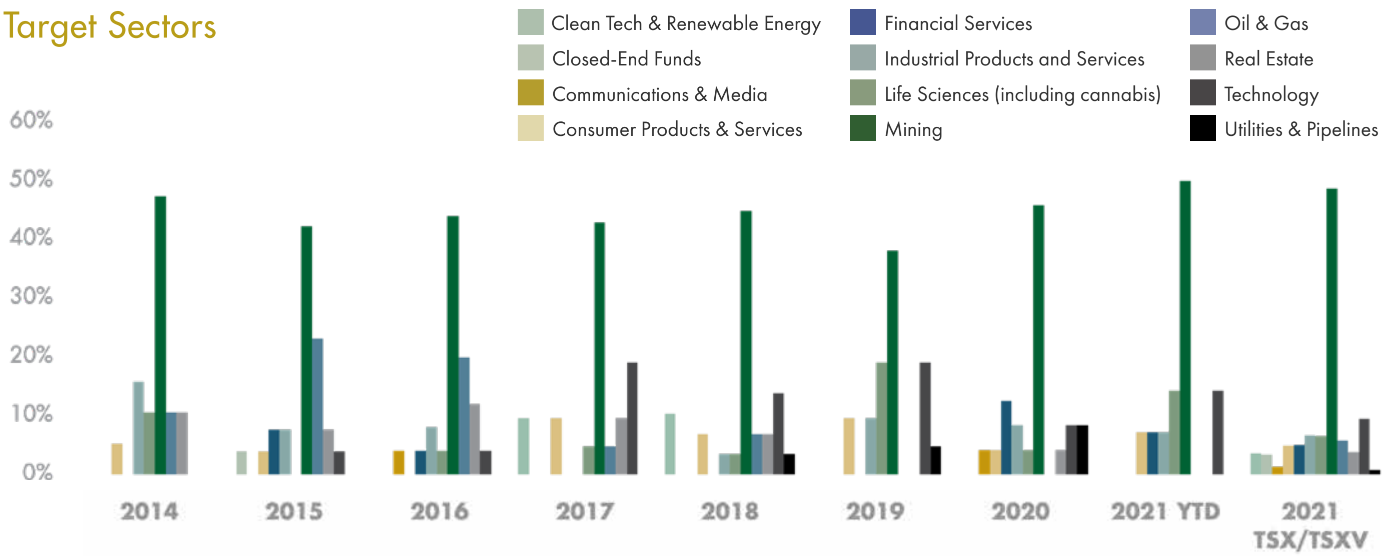
TSX/TSXV Actual Sector Representations 2021



Source: TSX/TSXV, May 2021, "The MiG Report"(adjusted to exclude CPCs, SPACs, and ETFs).[2]

[2] TSX/TSXV, May 2021, "The MiG Report" (adjusted to exclude CPCs, SPACs, and ETFs), https://www.tsx.com/resource/en/2663/mi-g-report-may-2021-en.pdf.

Target Sectors



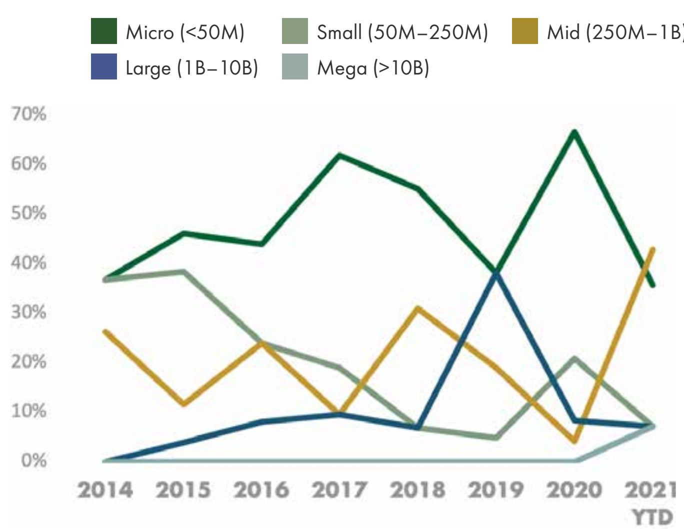
Source: Laurel Hill. Compiled from Activist Insight data and www.sedar.com filings through September 23, 2021 (for all Board Fights and Board Agitations). Sectors are as reported by the TSX/TSXV for companies listed on those exchanges or TSX/TSXV equivalents (as determined by us) for companies listed on other exchanges.

In the past three years, several sectors have stood out for increased levels of activism: Financial Services companies, untouched since 2016, accounted for 13% and 7% of targets in 2020 and 2021, respectively; Life Sciences (including cannabis) stocks, which spiked to 19% of targets in 2019, dropped down to 4% in 2020 but have returned to 14% this year; and Utilities & Pipelines companies, which had been targeted only once from 2014 to 2018, were a more significant target in 2019 and 2020, though not in 2021. On the other hand, a couple of sectors have been notable for their reduced levels of activism: Oil & Gas issuers, a perennial target from 2014 to 2018, have not been targeted since that time; and Real Estate, which experienced considerable board activism from 2014 to 2018, has since seen only one case.

Target Capitalizations

The size of targeted companies – as measured by market capitalization – is once again on the rise. We have historically seen most Board Fights and Board Agitations in the micro- and small-cap space, which aligns with the fact that the majority of Canada's public companies are listed on venture exchanges such as the TSXV, rather than the TSX. In 2018 and into 2019, however, we started to see an increasing number of cases at mid- and large-cap companies, accounting for a combined 38% and 57% of all cases, respectively. The pandemic cooled that off significantly, reducing mid- and large-caps to just 12% of targets last year. The reality was, many of the activist hedge funds, private equity firms, and other large and sophisticated investors who pursue these larger companies showed restraint. As we predicted in our report last year, however, this restraint has been short-lived: This year, mid- and large-caps have accounted for 50% of targets and we have our first mega-cap target in the past eight years, accounting for another 7%.

Target Capitalizations

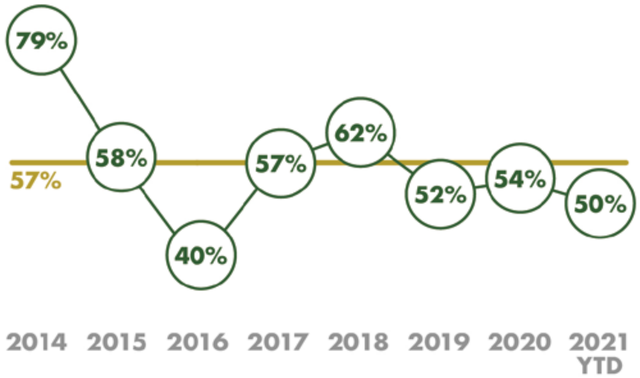


Source: Laurel Hill. Compiled from Activist Insight data and www.sedar.com filings through September 23, 2021 (for all Board Fights and Board Agitations), subject to our determination of the capitalization group per the capitalization reported on the primary stock exchange.

Fight Rates

Fight rates are the percentages of Board Fights calculated by dividing the number of Board Fights each year by the total number of all Board Fights and Board Agitations that year. This has remained fairly consistent in the past three years and, on average, Board Fights have accounted for 57% of all board activism situations. If you are publicly targeted for board activism, there is more than a 50/50 chance that you will find yourself in a full Board Fight.

Board Fight Rates

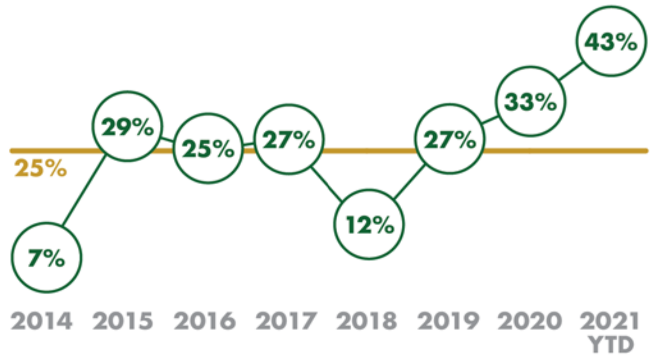


Source: Laurel Hill. Compiled from Activist Insight data and www.sedar.com filings through September 23, 2021, subject first to our determination of what is a Board Fight and what is a Board Agitation.

Public Broadcast Solicitation Rates

Public broadcast solicitation rates are the percentages of Board Fights in which dissidents solicit solely pursuant to the National Instrument 51-102 public broadcast solicitation exemption, rather than by proxy circular solicitation. The exemption offers dissidents a low-cost method to initiate campaigns and gives them an important timing advantage over management, as management cannot conduct solicitation beyond a maximum of 15 shareholders prior to sending its management information circular. In addition, it can be an effective way to conduct a "vote withhold" campaign against management's nominees if there is no intention to propose an alternative slate – as we saw this year at IMV Inc. It similarly lends itself well to a "vote against" campaign to oppose M&A transactions – such as at Inter Pipeline Ltd. and at Viva Gold Corp. this year. While this is a simplified view of the public broadcast solicitation exemption, it certainly has its advantages for activists. Public broadcast solicitation rates have been trending up over the past four years and, on average, public broadcast solicitation has accounted for 25% of all Board Fights over the past eight years.

Public Broadcast Solicitation Rates

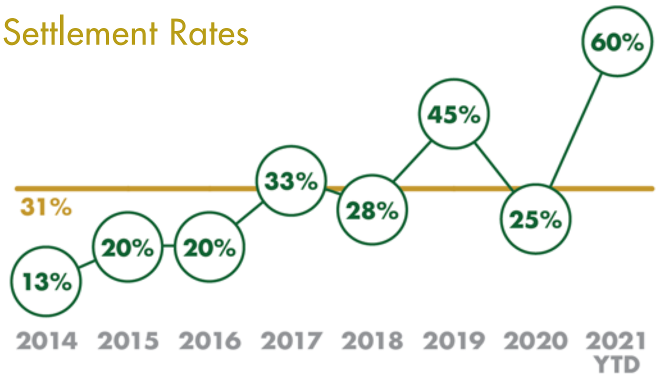


Source: Laurel Hill. Compiled from Activist Insight data and www.sedar.com filings through September 23, 2021, subject first to our determination of what is a Board Fight. In determining these rates, we do not count cases where dissidents initially conduct a public broadcast solicitation and later issue their own information circular – these are deemed proxy circular solicitations. However, we do count outstanding cases where only public broadcast solicitation has been used to date.

Settlement Rates

Settlement rates are the percentages of Board Fight outcomes in which management announces a settlement with the dissident (regardless of which side it may favour, if any) after a Board Fight has commenced and prior to the meeting date (if set). It is not uncommon for both sides to want to arrive at a settlement to avoid the costs, distractions, and reputational risks of a campaign that goes all the way to the meeting date. Settlement rates have been somewhat erratic from year to year, spiking this year to 60%, but the eight-year average of 31% nevertheless indicates a propensity to settle.

Settlement Rates

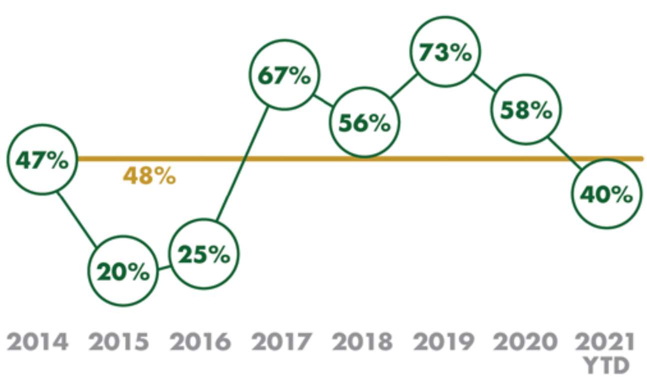


Source: Laurel Hill. Compiled from Activist Insight data and www.sedar.com filings through September 23, 2021, subject first to our determination of what is a Board Fight.

Dissident Win Rates

Dissident win rates are the percentages of Board Fight outcomes in which the dissident achieves some or all of its publicly stated objectives, either through a settlement in advance of the meeting or through the vote at the meeting. Dissidents continue to see strong levels of success, on average securing a partial win or a full win in 48% of cases. This trending may help explain a propensity, particularly on the management side, to arrive at a settlement as early as possible in the process.

Dissident Win Rates



Source: Laurel Hill. Compiled from Activist Insight data and www.sedar.com filings through September 23, 2021, subject first to our determination of what is a Board Fight.

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Majority Voting Developments

Shareholders seeking to effect board change typically put forward their own board nominees. However, the TSX-mandated majority voting requirement represents another way for shareholders to voice their concerns, by withholding on individual nominees. If the "withhold" votes outnumber the "for" votes, such nominees, if they are incumbent directors, are required to submit their resignations. Issuers should be prepared for the possibility that frustrated shareholders may publicly announce their intentions to "withhold" their votes from management nominees – as we saw this year at BlackBerry Limited – or that they may undertake a more aggressive proxy solicitation campaign (perhaps even using low-cost public broadcast solicitation) to "vote withhold" – as we saw this year at IMV Inc. Shareholders are also increasingly leveraging the majority voting mechanism to express dissatisfaction with management nominees, even in the absence of any public agitation. In 2020 and 2021, there was only one "failed" nominee each year. However, while in 2020 there were 16 director nominees at seven different companies that received 50–60% support, in 2021 there have been 20 directors at 16 different companies that received 50–60% support.[3]

In our report last year, we noted the 2019 Baylin Technologies Inc. case in which a "failed" nominee, David Gelerman, refused to resign and applied to the Ontario Superior Court of Justice for an order to allow him to complete his term. The court ruled in Gelerman's favour. The decision was appealed to the Court of Appeal for Ontario, which in January 2021 overturned the lower court ruling. The Court of Appeal upheld the notion that "withhold" votes are effectively "against" votes. There is now a court precedent that sustains how the TSX majority voting policy requirement is designed to function. Hansell McLaughlin Advisory Group wrote about both the original ruling[4] and the appeal ruling[5] and noted on the appeal ruling:

> *"The Court of Appeal decision in Baylin Technologies Inc. v. Gelerman corrected the errors in the application judge's decision about how the votes cast for and withheld from the election of each director are counted for the purposes of majority voting. It clarified that votes marked 'withheld' on a proxy are counted as votes against the election of the director. The vote total includes both those voted for and those withheld.*
>
> *"The Court of Appeal addressed whether the provision of a majority voting policy (which is simply a policy of the board) can be enforced against the director, requiring that director to resign. In its final order, the Court declared that the director in question was required to have submitted his resignation when he received less than a majority of the total votes."*

WHAT YOU NEED TO KNOW:

Similar to when there is weak support for say-on-pay resolutions, proxy advisors and shareholders alike will expect some kind of response in next year's circular in respect of what the company has done to address shareholder concerns about weak individual director votes. We also note that when the pending *Canada Business Corporations Act* (CBCA) majority voting requirement comes into effect, this will for the first time put CBCA-incorporated venture issuers – who are not currently required to have a majority voting policy – at risk for these forms of activism.

[3] 2020 and 2021 statistics compiled by Laurel Hill from ISS Corporate Solutions data at uncontested meetings held from January 1 to September 13 each year.

[4] Hansell McLaughlin Advisory Group, "Majority Voting Policy Found to Be Oppressive," https://www.hanselladvisory.com/publication/majority-voting-policy-found-to-be-oppressive/.

[5] Hansell McLaughlin Advisory Group, "Court of Appeal Issues Important Majority Voting Decision," https://www.hanselladvisory.com/publication/court-of-appeal-issues-important-majority-voting-decision/.

Transactional Activism

The volume of transactional activism that Canadian companies have experienced in the past three years has been relatively flat (taking into account the pace of this year's numbers), but those numbers alone don't tell the whole story. After a breakout 2019 for this type of activism, the pandemic's severe impact on Canadian M&A activity and on companies more generally during much of Q2–Q3 2020 meant that there were simply fewer opportunities during that time to oppose friendly deals and profit from "bumpitrage," and other traditional demands were simply unworkable. However, as 2020 turned to 2021 and as M&A activity returned and companies regained their footing, the past 12 months in this area of activism have been busy, with campaigns in size and scope that look a lot more like what we saw in 2019. Transactional activism is as strong as ever.

Activity in this space is frequently driven not by traditional activists, but by long-term institutional shareholders (e.g., Burgundy Asset Management, CI Global Asset Management, Letko, Brosseau & Associates), private equity firms (e.g., FC Private Equity Realty Management, Sandpiper Group), and even public companies (e.g., Brookfield Infrastructure Partners L.P.). And they are often winning – driving up deal prices, such as at EXFO Inc., Great Canadian Gaming Corporation, and Rocky Mountain Dealerships Inc., or killing deals or proposed deals altogether, such as at Dorel Industries Inc., Fancamp Exploration Ltd., SIR Royalty Income Fund, and Viva Gold Corp. In fact, we have never seen more deals being defeated through such activism than we have this year. And while there may not always be publicly announced opposition, we are also seeing examples where companies are only learning at the eleventh hour that shareholders don't like their deal (e.g., California Gold Mining Inc.),[6] by which time it may be too late, or where they are simply failing to receive the required levels of shareholder support (e.g., Regal Resources Inc.).[7] And despite robust and thorough processes, we continue to see that interlopers can emerge (e.g., Millennial Lithium Corp.).[8]

Activist strategies increasingly include low-cost public broadcast solicitation campaigns to drive deal voting "against," such as at EXFO Inc., Inter Pipeline Ltd., and Viva Gold Corp.

A mini-tender offer has also resurfaced this year as a strategy to block a proposed deal, at SIR Royalty Income Fund, and it was successful. And we are seeing examples of the power of retail investors through message boards and other social media, such as in the GameStop Corp. short squeeze, and how retail investors can further leverage those platforms to drive deal opposition: Following the merger of Aphria Inc. and Tilray, Inc., the "new" Tilray struggled to secure shareholder approval to increase the number of its authorized shares. It had to adjourn the meeting twice before it eventually secured majority support.

> *"Tilray's attempt to get the vote passed is also coming up against pushback on social media; sentiment on platforms such as Twitter and Reddit can be instrumental in swaying the average retail investor. A Twitter account run by Robert Doxtator, a frequent cannabis commentator who operates under the pseudonym BettingBruiser, has repeatedly urged investors not to vote in favour of the proposal, arguing that share dilution would not be in the interest of Tilray investors."*
> – The Globe and Mail[9]

One of the headline transactional activism stories this year – which has since evolved into board activism – has been the heated battle between Canadian National Railway Company (CN Rail) and Canadian Pacific Railway Limited (CP Rail) to acquire U.S. railway Kansas City Southern (KCS), involving

[6] California Gold Mining Inc., "California Gold CEO Delivers Open Letter to Shareholders," https://www.newswire.ca/news-releases/california-gold-ceo-delivers-open-letter-to-shareholders-873786297.html.

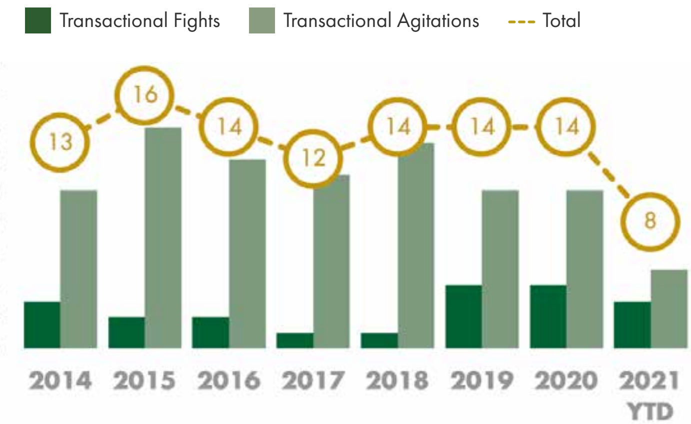
[7] Regal Resources Inc., "Regal Terminates Sunnyside Acquisition Transaction with Barksdale Resources," https://regalres.com/investors/news/regal-terminates-sunnyside-acquisition-transaction-with-barksdale-resources/.

[8] Millennial Lithium Corp., "Millennial Lithium Corp. Announces Receipt of Superior Proposal," https://www.newsfilecorp.com/release/95889.

[9] The Globe and Mail, "Tilray struggles to secure votes for equity raise in wake of MedMen deal," https://www.theglobeandmail.com/business/article-cannabis-company-tilray-struggles-to-secure-votes-required-to-fund/.

competing bids, terminated deals, and solicitation against deal votes, to say the least. Anticipating that U.S. Surface Transportation Board (STB) regulatory approval of CN Rail's proposed voting trust[10] in connection with the acquisition was at risk, TCI Fund Management, CN Rail's second largest shareholder, in May called on the company to abandon its pursuit of KCS unless the merger agreement was amended so that it would not be conditional on a voting trust being approved. After the STB in August rejected CN Rail's voting trust (which paved the way for KCS to deem the CP Rail bid to be "superior" and for KCS to terminate the CN Rail deal and renew its earlier deal with CP Rail), TCI disclosed in September its intention to requisition a meeting of CN Rail's shareholders to replace four incumbent board members (and the CEO), setting off the largest Board Fight in Canada since the 2012 battle at CP Rail.

Transactional Fights and Agitations



Source: Laurel Hill. Compiled from Activist Insight data and www.sedar.com filings through September 23, 2021, subject to our determination of what is a Transactional Fight and what is a Transactional Agitation, as explained below.

How Laurel Hill classifies transactional activism situations:

What is a "Transactional Fight"? We define a Transactional Fight as an activist solicitation to defeat a vote on a board-supported item other than the election of directors. This most often refers to a solicitation (using the same solicitation criteria as we use for a Board Fight) against a vote on a merger or acquisition, asset sale, recapitalization, reorganization, redomiciliation, or similar "transformative" matter. We use the meeting date to determine the year of the fight, except that if the fight is settled or withdrawn prior to the meeting date, we use the date of the settlement or withdrawal.

What is a "Transactional Agitation"? We define a Transactional Agitation as public opposition to a board-supported item other than the election of directors (such as the "transformative" examples opposite) that does not include active solicitation efforts. We also include actions that are designed to impede transactions, such as mini-tender offers to acquire blocking positions. Finally, we include public demands (excluding shareholder proposals) such as to undertake strategic reviews, to sell assets, or to make other changes such as those related to C-suite leadership, governance practices, executive compensation, capital allocation, and dividend policy. We use the date of the last announcement related to any such activity to determine the year of the agitation.

[10] Voting trusts are commonly used in U.S. railway mergers and allow the acquiring company to purchase the shares of the target company and place those shares into trust while the STB determines whether the merger is in the public interest. While the target company's shares are in trust, the power to vote them is held by an independent trustee and so the acquiring company is insulated from prematurely controlling the target company.

2020–2021 Transactional Fight & Agitation Details

We are pleased to outline the Transactional Fights and Transactional Agitations in the past year (since our last report), with the targets in alphabetical order and by year. We measure dissident transactional activism success by whether or not the dissident opposition or demands are successful outright or help achieve at least some degree of success, such as improved deal terms or some other superior outcome.

Target	Target Sector	Target Capitalization	Dissident(s)	Fight or Agitation	Dissident(s) Successful?
Great Canadian Gaming Corporation	Consumer Products & Services	Large (1B–10B)	Breach Inlet Capital, CI Global Asset Management, BloombergSen, Burgundy Asset Management	Agitation	Yes
(2020) The dissidents separately publicly opposed (and in some cases announced their intention to vote against) the company's arrangement with funds managed by affiliates of Apollo Global Management, Inc. The deal price was increased by 15.4% and approved by shareholders.					
Liberty Health Sciences Inc.	Life Sciences (including cannabis)	Mid (250M–1B)	James V. Baker	Agitation	No
(2020) The dissident publicly opposed the company's arrangement with Ayr Wellness Inc.					
Melcor Real Estate Investment Trust	Real Estate	Small (50M–250M)	FC Private Equity Realty Management	Agitation	TBD
(2020) The dissident publicly called on Melcor Developments Ltd. (as a 55% owner of Melcor REIT) to acquire the minority interest to maximize value for all unitholders. There have since been no further public developments.					
Rocky Mountain Dealerships Inc.	Industrial Products & Services	Small (50M–250M)	Burgundy Asset Management	Agitation	Yes
(2020) The dissident publicly opposed the company's arrangement with 2223890 Alberta Ltd. The deal price was increased by 6% and received shareholder approval.					
Aberdeen Asia-Pacific Income Investment Company Limited	Closed-End Funds	Small (50M–250M)	Metage Capital Limited	Agitation	No
(2021) The dissident publicly opposed the company's redomiciliation from Cook Islands to Singapore. The redomiciliation was nevertheless approved by shareholders.					
Canadian National Railway Company	Industrial Products & Services	Mega (>10B)	TCI Fund Management Limited	Agitation	No
(2021) TCI called on CN Rail to abandon its pursuit of KCS unless the merger agreement is amended such that it is not conditional on a voting trust being approved. The U.S. regulator later failed to approve CN Rail's voting trust and KCS then terminated the deal with CN Rail in favour of CP Rail's competing bid. TCI has since initiated a Board Fight (see "Board Activism" section).					
Dorel Industries Inc.	Consumer Products & Services	Mid (250M–1B)	Letko, Brosseau & Associates Inc., Brandes Investment Partners L.P.	Agitation	Yes
(2021) The dissidents separately announced they would vote against the company's arrangement with Cerberus Capital Management, L.P. and the controlling family shareholders. Letko reaffirmed its opposition even after a 10% increase in the deal price. The company announced that at the proxy deadline there was insufficient support and terminated the arrangement.					
EXFO Inc.	Industrial Products & Services	Mid (250M–1B)	Viavi Solutions Inc.	Fight	Yes
(2021) Viavi solicited (by public broadcast) against EXFO's arrangement with the company's founder and majority shareholder to acquire the minority interest after the company rebuffed the dissident's competing proposals to acquire the company at a 33.3% premium to the deal price, given the founder's refusal to sell his shares into any alternative transaction. The company announced a 4.2% increase in the deal price with the founder, and shareholders approved the arrangement.					

Target	Target Sector	Target Capitalization	Dissident(s)	Fight or Agitation	Dissident(s) Successful?
Fancamp Exploration Ltd.	Mining	Micro (<50M)	Peter H. Smith, James Hunter, Mark Fekete, Heather Hannan	Agitation	Yes
(2021) The dissidents, already embroiled in a Board Fight with the company (see "Board Activism" section), opposed the company's arrangement with ScoZinc Mining Ltd. (which did not require Fancamp shareholder approval), entered into following the start of the board contest, and planned to terminate the arrangement if successful in reconstituting the board. The TSX required that Fancamp hold its annual meeting at least two days prior to closing the arrangement. The arrangement was subsequently terminated. The Board Fight remains outstanding.					
Inter Pipeline Ltd.	Utilities & Pipelines	Large (1B–10B)	Brookfield Infrastructure Partners L.P. (and its institutional partners)	Fight	Yes
(2021) Brookfield solicited (by public broadcast) against IPL's arrangement with Pembina Pipeline Corporation, entered into following the commencement of Brookfield's hostile bid for IPL (see "Unsolicited Offers" section). After Brookfield improved its bid, the arrangement was terminated and the IPL board recommended that shareholders tender to the bid.					
SIR Royalty Income Fund	Consumer Products & Services	Small (50M–250M)	Janes Acquisition Corp. (Lembit Janes)	Agitation	Yes
(2021) The dissident, in an effort to further its opposition to a potential deal to acquire the fund, undertook a mini-tender offer to acquire units of the fund at a 34% premium to the proposed deal price. The dissident successfully increased its ownership from 10% to 14% pursuant to the offer. The company announced that the proposed deal would not proceed. The dissident later initiated a Board Fight (see "Board Activism" section).					
Viva Gold Corp.	Mining	Micro (<50M)	Humewood Ventures Corp. and its affiliates	Fight	Yes
(2021) The dissidents solicited (by public broadcast) against the company's arrangement with Golden Predator Mining Corp. The company announced that at the proxy deadline there was insufficient support and terminated the arrangement.					

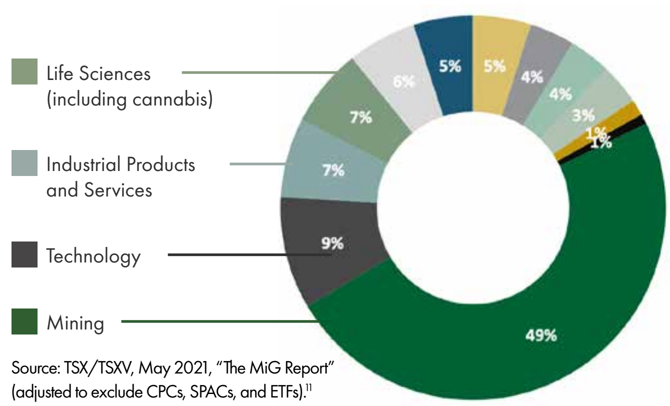
Source: Laurel Hill. Compiled from Activist Insight data and www.sedar.com filings through September 23, 2021, and our determination of dissident transactional activism success as described above.

Transactional Activism by the Numbers

Target Sectors

We note in our "Board Activism" section that there is a relatively strong correlation between target sectors for Board Fights and Board Agitations and the composition of Canada's markets. The same cannot be said for Transactional Fights and Transactional Agitations. As we demonstrate below, target sectors from year to year are erratic and do not suggest any consistent correlation with the combined TSX and TSXV percentage compositions. Having said that, mining – the largest TSX/TSXV sector – has in five of the past eight years led or tied for the highest percentage of targets.

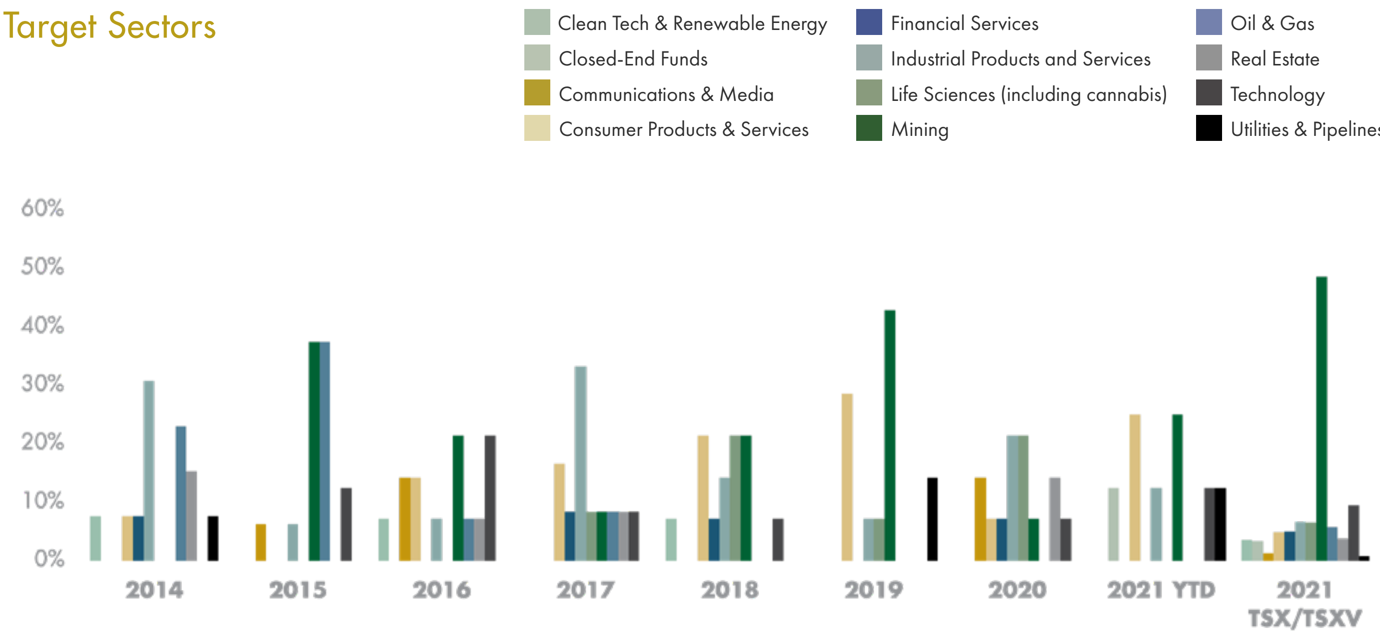
TSX/TSXV Actual Sector Representations 2021



Source: TSX/TSXV, May 2021, "The MiG Report" (adjusted to exclude CPCs, SPACs, and ETFs).[11]

[11] TSX/TSXV, May 2021, "The MiG Report" (adjusted to exclude CPCs, SPACs, and ETFs), https://www.tsx.com/resource/en/2663/mi-g-report-may-2021-en.pdf.

Target Sectors

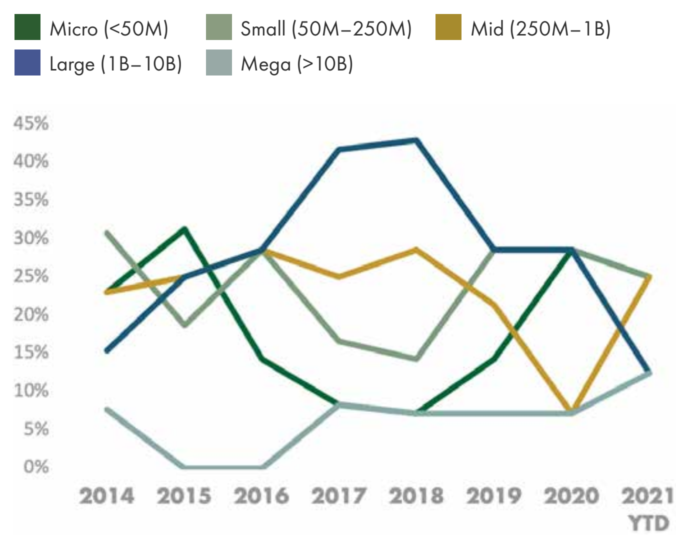


Source: Laurel Hill. Compiled from Activist Insight data and www.sedar.com filings through September 23, 2021 (for all Transactional Fights and Transactional Agitations). Target sectors are as reported by the TSX/TSXV for companies listed on those exchanges or TSX/TSXV equivalents (as determined by us) for companies listed on other exchanges.

Target Capitalizations

Target capitalizations may provide more meaningful insights into the drivers of this activity. At first glance, the size of companies targeted for Transactional Fights and Transactional Agitations does not appear to follow any clear and consistent trends, unlike what we see in board activism situations. What is notable, however, is that over the eight-year period opposite we have consistently seen larger companies – mid-caps and above – being targeted for transactional activism, whereas in board activism that trend has only more recently emerged. The fact is, we are generally seeing larger and more sophisticated investors – frequently long-term institutional investors – undertake transactional activism campaigns and these investors tend to be invested in larger companies. And while they may be less inclined to wage a board battle, they are clearly willing to publicly oppose deals and agitate for change.

Target Capitalizations



Source: Laurel Hill. Compiled from Activist Insight data and www.sedar.com filings through September 23, 2021 (for all Transactional Fights and Transactional Agitations), subject to our determination of the capitalization group per the capitalization reported on the primary stock exchange.

Mini-Tender Offers Prove Successful, Once Again

In our 2019 report, we detailed two mini-tender offers to acquire up to 19.9% of a target, namely at Transat A.T. Inc. and at Hudson's Bay Company. These offers were designed to avoid takeover bid requirements, as defined under National Instrument 62-104, and to drive voting opposition to proposed M&A transactions by offering shareholders above-deal prices. These two bids met with mixed results: The Transat offer was cease-traded, while the HBC offer was successful and put the dissident in a much stronger position to influence an outcome at HBC that it ultimately supported. Yet, even the Transat offer arguably helped push Transat to a significant improvement in price in its proposed deal with Air Canada (that deal was subsequently terminated in 2020 due to deteriorated market conditions resulting from the pandemic). We anticipated then that we had not seen the last of these offers in the toolkits of transactional activists and, in fact, there was another example this year, at SIR Royalty Income Fund (as detailed above), which was successfully used by the dissident to help thwart a potential deal to acquire the fund that the dissident viewed as unfavourable.

The Aphria–Tilray Share Exchange and the Reddit Army

The merger of Aphria Inc. and Tilray, Inc., though not a true example of transactional activism, is an interesting tale in share exchange dynamics and how shareholder approval can be at risk when share prices do not move in lockstep following deal announcement. The highly successful Reddit "army" squeeze on short sellers of GameStop and other highly shorted companies in January (we discuss that case in detail in our "Short-Selling Activism" section) saw GameStock's stock explode 1,750% in just two weeks and empowered further retail squeeze campaigns, including in the cannabis sector. This was fuelled by increased optimism that the new U.S. Biden administration would legalize marijuana. The proposed Aphria–Tilray share exchange merger was announced in December, but the short squeeze shot the two stocks up in January, at different rates: By February 10, Tilray had gained more than 670% year to date, while Aphria had gained "only" 280%,[12] creating a very attractive merger arbitrage opportunity. In other words, the exchange ratio for Tilray shares was much higher than the current stock price of the combined entity. The spread later narrowed and the deal finally closed, but clearly Tilray had its work cut out for it in securing shareholder support.

WHAT YOU NEED TO KNOW:

Retail shareholders often speak out on message boards and other social media and, at least in certain circumstances, they can drive post-deal-announcement trading in your stock. Your deal may also attract arbitrageurs to your stock as both retail and institutional shareholders lock in profits. All told, by the time you send out your proxy materials, your shareholder composition may have materially changed and it may now include unknown shareholders with unknown views on your deal. Our advice: Identify and engage all of your key voting constituents – long-term institutional shareholders, event-driven arbitrageurs, and retail shareholders – as early as possible in the process to address any concerns and avoid surprises.

[12] CNBC, "Cannabis stocks soar as Reddit crowd that spiked GameStop jumps in, Tilray surges 50%," https://www.cnbc.com/2021/02/10/cannabis-stocks-soar-as-reddit-crowd-that-spiked-gamestop-jumps-in-tilray-surges-25percent.html.

Shareholder Proposals

The story this year in shareholder proposals has been the dominance of environmental and social (E&S) proposals, including Canada's first say-on-climate advisory votes and a number of socially focused proposals, including a first-of-its-kind management-supported proposal related to Indigenous employment, community relationships, and procurement. Institutional shareholders, including fund managers BlackRock, Vanguard, and State Street, are now more than ever lending their support to environmental and, to a lesser extent, social proposals. As we detail below, we have, in fact, seen an uptick in Canada in the average support level, to a five-year high of 12.4% in 2021. More specifically, we have seen a significant uptick this year in the percentage of votes receiving support in the 10–20% range, as compared to the 0–10% range. And companies are showing signs that they are more receptive, at least on the environmental and social front: For the first time in three years, management recommended that shareholders support proposals, specifically two E&S proposals. And in one other case, a shareholder proposal was presented as a management proposal. The U.S. experience provides interesting insights:

" ... environmental shareholder proposals at U.S.-based companies have received a record average support of 45% so far in 2021, up from 33% in 2020 and 23% in 2015. Partly, this is due to passive index funds managers raising their level of support, after years of largely voting against them.

" ... shareholder support for socially minded resolutions has also increased, but not as much. So far in 2021, social proposals received an average backing of 31%, up from 28% in 2020 and 24% in 2019."[13]

Proposals by the Numbers

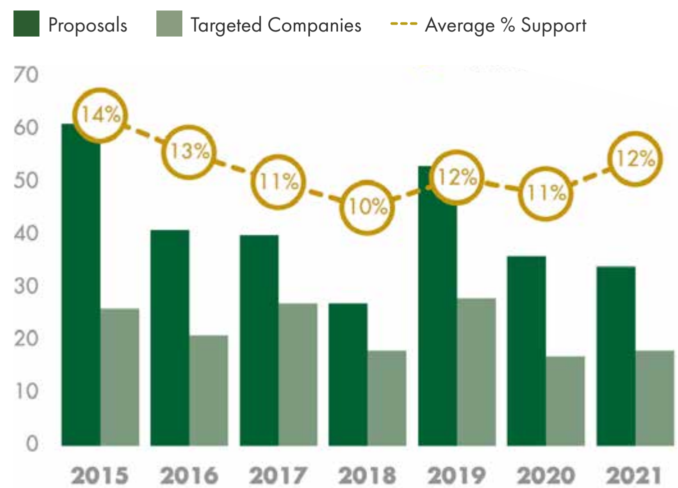
Total Proposals, Total Target Companies, and Average Support Levels

This year, the number of shareholder proposals submitted to a vote at Canadian companies dropped only marginally – by two – from 36 in 2020 to 34 in 2021. The number of targeted companies increased by one, from 17 in 2020 to 18 in 2021. The average shareholder support level (excluding proposals supported by management) increased by 13.8%, from 10.9% in 2020 to 12.4% in 2021, its highest level since 2016.

Distribution of Support Levels

We have observed higher numbers of proposals receiving support in the 10–20% range this year than in the past: In the years 2015–2020, the percentage of proposals receiving support in the 0–10% range was never less than 58.5% (in 2019) and as high as 80.0% (in 2020), while the percentage of proposals receiving support in the 10–20% range did not exceed 23.1% (in 2018) and was as low as 8.6% (in 2020). This year, however, the percentage of proposals receiving support in the 10–20% range was at a seven-year high of 40.0%, while the percentage of proposals receiving support in the 0–10% range was 44.0%.

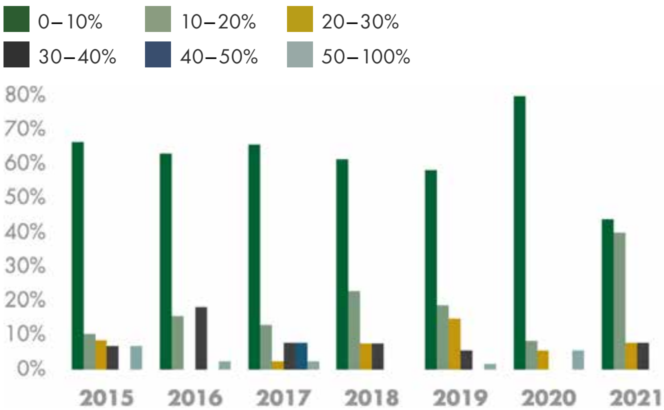
Shareholder Proposal Key Metrics



Source: Laurel Hill. Compiled from ISS Corporate Solutions data for proposals submitted to a vote at meetings held January 1 to June 30 each year. Average % support excludes any proposals supported by management.

[13] Insightia, "ESG Activism 2021," https://www.activistinsight.com/esgreport_2021/.

Distribution of Support Levels



Source: Laurel Hill. Compiled from ISS Corporate Solutions data for proposals submitted to a vote at meetings held January 1 to June 30 each year, excluding any proposals supported by management.

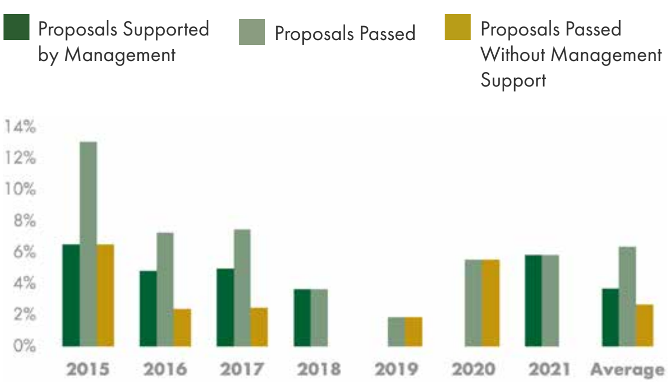
Management Support and Pass Levels

The percentage of proposals supported by management this year was 5.9%, its highest level since 2015 and above the seven-year average of 3.7%. The percentage of proposals that passed was also 5.9% (i.e., the proposals supported by management), slightly below the seven-year average of 6.4%. The percentage of proposals that passed this year without management support was 0.0%, below the seven-year average of 2.7%. The fact remains, very few shareholder proposals pass unless they are supported by management.

Distribution of Proposals by Category

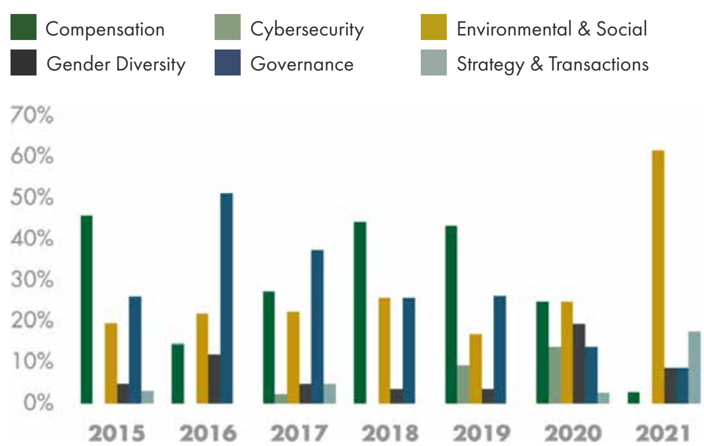
This year's proposals have been dominated by environmental and social proposals, accounting for 61.8% of all proposals, almost 2.5x the 25% in 2020 for that category.

Management Support and Pass Levels



Source: Laurel Hill. Compiled from ISS Corporate Solutions data for proposals submitted to a vote at meetings held January 1 to June 30 each year.

Distribution of Proposals by Category



Source: Laurel Hill. Compiled from ISS Corporate Solutions data for proposals submitted to a vote at meetings held January 1 to June 30 each year, subject to our determination of category.

2021 Proposal Details by Category

Environmental & Social: Following a relatively consistent number of E&S proposals in past years, the number of E&S proposals rose dramatically and dominated this year, from nine in 2020 to 21 in 2021, and from 25% to 62% of all proposals year over year.

Environmental & Social: There were four proposals whose scope encompassed both environmental and social considerations, namely to adopt a statement of corporate purpose and that a board committee have oversight to make this new purpose a reality. Corporate purpose "refers to the role (the company) intends to play within society beyond its mere economic activity ... Essentially, it is the contribution that the business wants to make to the main social, societal, environmental and economic issues in its industry ... "[14] This marks the first year that we have seen this type of proposal.

Environmental: There were five proposals to provide disclosure on loans granted in support of the circular economy, described as "a system of production, exchange and consumption designed to optimize the use of resources at all stages of the life cycle of a good or service, in a circular logic, while reducing the environmental footprint and contributing to the well-being of individuals and communities."[15] This marks the first year we have seen this type of proposal. There were also four proposals this year related to the adoption of greenhouse gas emission targets and plans, including with regard to underwriting and lending activities. One of the four proposals called on the company to set an ambition to achieve net-zero carbon emissions by 2050. A second of the four (one of only two of the 34 total proposals supported by management this year) also requested an annual say-on-climate advisory vote. In 2020, there was a total of five proposals with similar demands, though this year's cohort contained the first net-zero carbon-emission and say-on-climate demands. **We discuss say on climate in considerable detail below.**

Social: There were seven proposals that variously addressed policies and disclosures related to human capital management, including health, safety, and wages. In 2020, there were four proposals with similar demands. There was also one proposal to report on programs and policies related to Indigenous employment, community relationships, and procurement, the first such proposal in Canada. This proposal was initially opposed by management in its proxy circular, but further discussions resulted in the company supporting an amended, less prescriptive proposal, and this passed with overwhelming shareholder support.

Targeted companies: Bank of Montreal, Canadian Imperial Bank of Commerce, Canadian National Railway Company, Canadian Pacific Railway Limited, Cascades Inc., Chartwell Retirement Residences, Cogeco Inc., Dollarama Inc., Imperial Oil Limited, Laurentian Bank of Canada, Loblaw Companies Limited, Royal Bank of Canada, The Bank of Nova Scotia, The Toronto-Dominion Bank, Thomson Reuters Corporation, TMX Group Ltd.

Strategy & Transactions: In some years, we have seen a small number of proposals to undertake strategic reviews and to amend constating documents to further certain proposed strategies. There was only one such proposal in 2020, representing 3% of all proposals. This year, there were six proposals, representing 18% of all proposals. However, this is unique in that these were submitted by a single shareholder at a single company and they all related to providing increased disclosure around the various considerations that the company's board took into account in arriving at its recommendation that shareholders accept a friendly offer for the company.[16]

Targeted companies: Brampton Brick Limited

Gender Diversity: Following an increase in this category from 2019 to 2020, the number of gender diversity proposals declined this year, from seven in 2020 to only three in 2021, or from 19% to 9% year over year. This year's proposals, as they did last year, focused on setting gender diversity at the board level at 40%. The decline in this area is not unexpected given the widespread adoption of gender diversity policies at Canada's largest companies and a gradual shift in the past year to focus on other forms of diversity.

Targeted companies: Royal Bank of Canada, The Bank of Nova Scotia, The Toronto-Dominion Bank

[14] [15] Royal Bank of Canada, 2021 Management Information Circular, https://www.rbc.com/investor-relations/_assets-custom/pdf/2021englishproxy.pdf.

[16] The company disclosed in its Report of Voting Results that no motion was made by any shareholder on these six proposals at the meeting, and as a result no vote was conducted at the meeting on any of them.

Governance: There are generally a handful of proposals each year that can best be categorized as governance. In past years, this has included proposals to disclose how director independence is determined, to eliminate dual-class voting structures, to provide separate disclosure of voting by class, and to rotate long-tenured auditors, among other matters. In 2020, there were five governance proposals, while in 2021 there were three such proposals, a drop from 14% to 9% year over year. This year's three proposals consisted of two proposals to rotate long-tenured auditors and one proposal to adopt a virtual meeting policy.

Targeted companies: Cogeco Inc., iA Financial Corporation Inc.

Compensation: For the second year in a row, the most notable drop-off by category was in compensation proposals. We noted in our report last year that this is not surprising given that companies have continued to voluntarily adopt say-on-pay votes and incorporate environmental, social, and governance metrics into compensation decisions. The number of proposals dropped from nine in 2020 to only one in 2021, or from 25% to only 3% year over year. This year's single proposal was to disclose the CEO-to-median-employee compensation ratio.

Targeted companies: The Bank of Nova Scotia

Cybersecurity: Following five proposals each during 2019 and 2020 in this area, shareholders appear to have moved their focus away from cybersecurity proposals in 2021 and there were no such proposals this year. The oversight and management of cybersecurity risks, of course, continues to be a critical area of focus for boards and management teams.

Targeted companies: None

Source: Laurel Hill. Compiled from ISS Corporate Solutions data and www.sedar.com filings for proposals submitted to a vote at meetings held January 1 to June 30, 2021, subject to our determination of category.

The number of E&S proposals rose dramatically and dominated this year, from nine in 2020 to 21 in 2021, and from 25% to 62% of all proposals year over year.

Say on Climate – the New "Say on Pay"?

"Say on climate" is a global campaign with ambitious plans to call on leading companies to disclose carbon emissions each year in a manner consistent with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD), to publish a "credible" climate transition plan (including any progress made year over year), and to give shareholders an annual advisory vote on the plan. And it has started to gain traction. The campaign scored its first victory in 2020 at Aena, a Spanish airports operator. The vote garnered 98% shareholder support, including from BlackRock and Vanguard as well as from proxy advisors Institutional Shareholder Services (ISS) and Glass Lewis. According to the Say on Climate website,[17] approximately 20 companies have so far agreed to the model – either through management or shareholder proposals – including Nestlé, Unilever, Royal Dutch Shell, Rio Tinto, S&P Global, Moody's, Glencore, Anglo American, and Canada's CN Rail and CP Rail.

> *"[We] determined to support the request for an annual report on progress towards the climate action plan goals because this is inherently consistent with our expectations that companies have a plan to transition their business models and to explain and justify progress against the plan in their annual reporting. We believe such a report would be beneficial at Aena given the material risk to its business model and its need to accelerate its efforts. An annual advisory shareholder vote on the company's plans and progress would give management and the board a clear sense of the level of shareholder support for the steps necessary in the transition. We welcome the fact that the board has endorsed the proposal and recommended shareholders support it as that indicates they are taking this material business risk seriously and have acknowledged the need for action."* – BlackRock (in explaining its support for the vote at Aena)[18]

Say on Climate is an initiative of the Children's Investment Fund Foundation (CIFF), "the world's largest philanthropy that focuses specifically on improving children's lives," including "smart ways to slow down and stop climate change."[19] CIFF was co-founded in 2002 by Christopher Hohn, the chair of its board of trustees and also the founder and portfolio manager of activist hedge fund TCI Fund Management Limited (TCI).[20] CIFF is working with and funding NGOs, asset managers (including TCI), and asset owners to file more than a hundred say-on-climate resolutions globally, starting in 2021. CIFF notes in a presentation that "Over 35% of total emissions are due to companies. Most companies are failing to take sufficient action on climate change. Only 3% of listed companies have science based emissions targets and less than 0.3% have a plan to reach those targets. The biggest asset managers have appalling voting records on the few climate resolutions that are filed."[21]

> *"Companies are responsible for at least 35% of global emissions, but only a small fraction disclose their emissions or have a climate transition action plan specifying short-term targets and actions. The Say on Climate ... works because it is a reasonable request by shareholders which can garner widespread support, whilst requiring companies to commit to concrete actions that will deliver the transition to net-zero. The information disclosed provides clear, transparent evidence to enable engagement with the board and justify voting by investors for those companies that fail to take effective action to reduce their emissions."* – Christopher Hohn[22]

The campaign has received the endorsement of Canada's Caisse de dépôt et placement du Québec (CDPQ) and of Mark Carney, the co-founder of TCFD, the former governor of the Bank of England and Bank of Canada, and the current vice chair and head of transition investing at Brookfield Asset Management Inc. (which has itself this year closed a $7 billion fund focused on the global transition to a net-zero economy, discussed later in our report).

> *"By adopting a common language, Say on Climate makes the fight against climate change more tangible for companies in addition to strengthening and deepening discussions between investors and companies. Through this engagement, we encourage companies to be transparent in their climate disclosure and increase their transition efforts."* – CDPQ[23]

> *"Rather than have authorities be overly prescriptive on plans, it may be desirable to have investors have a say on transition. This would establish a critical link between responsibility, accountability and sustainability."* – Mark Carney[24]

[17] Say on Climate website, https://www.sayonclimate.org.

[18] BlackRock, "Voting Bulletin: Aena S.M.E. SA," https://www.blackrock.com/corporate/literature/press-release/blk-vote-bulletin-aena-oct-2020.pdf.

[19] Children's Investment Fund Foundation website, https://ciff.org/about-us/who-we-are/.

[20] TCI Fund Management website, https://www.tcifund.com.

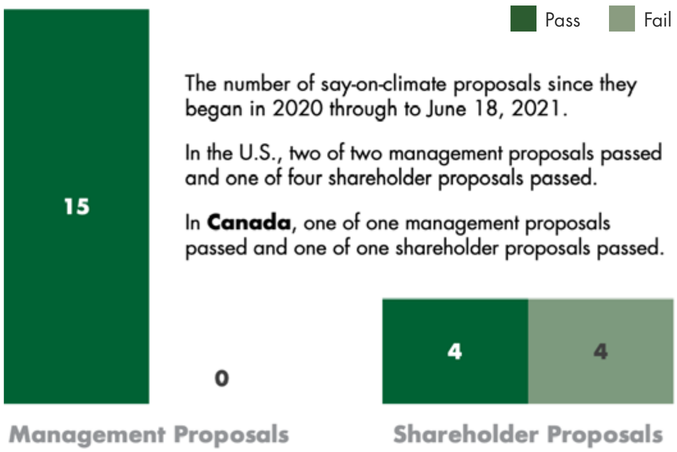
[21] Say on Climate presentation, "Shareholder voting on climate transition action plans," https://www.sayonclimate.org/wp-content/uploads/2021/04/Shareholder-votes-on-climate-transition-action-plans-09042021-1.pdf.

[22] Forbes, "Billionaire Chris Hohn Explains Why Increased Disclosure Will Force Companies To Cut Their Carbon Emissions," https://www.forbes.com/sites/antoinegara/2021/03/09/billionaire-chris-hohn-explains-why-increased-disclosure-will-force-companies-to-cut-their-carbon-emissions/?sh=1e2b570c52e5.

[23] CDPQ, "CDPQ supports the Say on Climate initiative – a proposal on managing climate issues and risks," https://www.cdpq.com/en/sayonclimate.

[24] Reuters, "U.N. envoy Carney backs annual investor votes on company climate plans," https://www.reuters.com/article/us-climatechange-britain-summit-idUSKBN27P10O.

Global Say-on-Climate Proposals by Proponent and Outcome



Source: Insightia, "ESG Activism 2021."[25]

In Canada, TCI (CP Rail's largest shareholder) proposed a say-on-climate vote at CP Rail's 2020 annual meeting, but reportedly submitted the proposal after the proposal deadline and it was not submitted to a vote (the company still included the proposal and its response in its 2020 proxy circular). TCI resubmitted the proposal in time for inclusion for a vote at CP Rail's 2021 annual meeting, and the company recommended that shareholders vote "for" the proposal – and it received 85.4% approval. TCI (CN Rail's second largest shareholder) also proposed a say-on-climate vote at CN Rail at the company's 2021 annual meeting. The company presented it in its proxy circular as a management proposal – such that shareholders were, in fact, voting on the company's plan, not on whether or not to hold a vote in the future – and it received 92.1% approval.

Despite these early successes, some shareholders, proxy advisors, and observers have expressed reservations. This includes concerns that say-on-climate votes, similar in principle to say-on-pay votes, could insulate directors from accountability and effectively act as a rubber stamp for unambitious plans. Further, some note that certain investors may have limited capacity or technical ability to properly assess these plans.

" ... we are mindful of a concern that this kind of 'say on climate' could shift accountability from boards to investors. Although advisory votes are non-binding in nature and have no legal impact on the company should a proposal be rejected by shareholders, this approach has the potential to weaken board accountability if used in isolation. BIS believes it is the board's responsibility to oversee all risks to the company, including climate, and ensure appropriate reporting to shareholders. Accordingly, we will continue to hold directors accountable by voting against their re-election where business practices or disclosures fall short of expectations." – BlackRock (despite its support for the vote at Aena)[26]

" ... Vanguard has stated that it would review each proposal independently while State Street has said that companies with strong environmental track records should not have their carbon emissions plans put to a shareholder vote. State Street also expressed concerns that, if these plans become routine, investors may become passive and approve practices of substandard companies. In addition, in a recent Glass Lewis webinar, representatives from the California Public Employees' Retirement System, New York State Common Retirement Fund, and the Office of New York City Comptroller also expressed some reservations with companies' providing shareholders with a Say on Climate. Largely, the pension giants were concerned that it limited board accountability for companies' climate strategies." – Glass Lewis[27]

"I say it is well-intentioned, futile, and a drain on the engagement bandwidth of investors who have more effective tools for getting their portfolio companies to mitigate and adapt to climate change. It is modeled after the 'Say on Pay' initiative and this has proven to be of no consequence in the U.S., although it may be a bit more effective in a few other jurisdictions. For the most part it has served to insulate directors for accountability on pay and it is likely that 'Say on Climate' will do the same. As explained by Anne Simpson, Managing Investment Director, Board Governance and Sustainability at CalPERS, 'Say on Pay' has provided a rubber stamp to various versions of pay, ever escalating and unlinked to performance. Hence on the CalPERS side we are returning to voting against board members who sit on the comp committee.'" – Robert G. Eccles, Tenured Harvard Business School professor, now at Oxford University[28]

[25] Insightia, "ESG Activism 2021," https://www.activistinsight.com/esgreport_2021/.

[26] BlackRock, "Voting Bulletin: Aena S.M.E. SA," https://www.blackrock.com/corporate/literature/press-release/blk-vote-bulletin-aena-oct-2020.pdf.

[27] Glass Lewis, "Say on Climate Votes: Glass Lewis Overview," https://www.glasslewis.com/say-on-climate-votes-glass-lewis-overview/.

[28] Robert G. Eccles, "Here Is My Say On 'Say On Climate,'" https://www.forbes.com/sites/bobeccles/2021/01/05/here-is-my-say-on-say-on-climate/?sh=2bd1c0f95c49.

A more effective approach, states Robert G. Eccles, would be for investors to undertake board activism campaigns at select Climate Action 100+ focus companies. Climate Action 100+ is an "investor-led initiative to ensure the world's largest corporate greenhouse gas emitters take necessary action on climate change."[29] The coalition of 575 investors representing $54 trillion in assets under management is focused on engagement with 167 companies that collectively account for over 80% of corporate industrial greenhouse gas emissions. The Canadian focus companies are Canadian Natural Resources Limited, Enbridge Inc., Imperial Oil Limited, Suncor Energy Inc., TC Energy Corporation, and Teck Resources Limited. Of course, we have already seen this type of board activism come to pass at Exxon.

> *"My theory of change is to target a select number of companies in a range of industries to get real change. This will send a strong signal to every other company in the industry: 'Shape up or you'll be next.' I believe that banging a few heads hard will lead to more rapid change than gently tapping on many heads at the same time. This will also be a much more effective use of limited engagement and stewardship resources, limited in even the largest investors. The question then becomes how to identify the company targets. Here disclosure, or the lack thereof, is the starting point. Fortunately, this starting point already exists through the work of Climate Action 100+ ... These (focus) companies are in six sectors: oil and gas, mining and metals, utilities, industrials, transportation, and consumer products. Each company is benchmarked according to its governance oversight, target setting, capital expenditure and related issues such political lobbying and executive compensation to ensure incentives are aligned. One approach would be to simply target the bottom companies in each sector and mobilize a vote against their directors."* – Robert G. Eccles[30]

The proxy advisory firms ISS and Glass Lewis, for their part, are generally taking a cautious approach in respect of say-on-climate voting policies. ISS has not made any public pronouncements and continues to apply its standard policy related to environmental and social shareholder proposals on a case-by-case basis: "While a variety of factors goes into each analysis, the overall principle guiding all vote recommendations focuses on how the proposal may enhance or protect shareholder value in either the short term or long term."[31] Glass Lewis, however, has publicly commented on many of the same pros and cons discussed above and other potential unintended consequences. It has stated that for the 2021 proxy season it will generally recommend against proposals to hold a say-on-climate vote, but where companies unilaterally adopt a vote, it will evaluate their climate plans on a case-by-case basis. It will continue to engage with market participants on the issue and codify its approach for the 2022 proxy season.[32]

The ISS and Glass Lewis voting recommendation records provide interesting insights: On say-on-climate proposals presented as management proposals at companies globally in 2021, at which management has recommended "for" in 100% of cases, ISS also recommended "for" in 100% of cases (including at CN Rail); while Glass Lewis has a mixed record, recommending "for" in 48% of cases, "against" in 19% of cases (including at CN Rail), and "abstain" in 33% of cases. We note that 100% of these votes passed (including at CN Rail). On say-on-climate proposals presented as shareholder proposals, however, at which management has only recommended "for" in 17% of cases (in one case, at CP Rail), ISS recommended "for" in 50% of cases (including at CP Rail), while Glass Lewis recommended "against" in 100% of cases (including at CP Rail). We note that only 17% of these votes passed (in one case, at CP Rail).[33]

Clearly, ISS' recommendations have consistently lined up with management support in every proposal presented as a management proposal, while Glass Lewis's recommendations have frequently split from management in such cases, lining up in only about one out of every five votes. For proposals presented as shareholder proposals, however, which management has mostly opposed, ISS has, in fact, still provided significant levels of support, in half of the votes, while Glass Lewis has opposed across the board. On the whole, on say-on-climate proposals to date, ISS appears to be considerably more supportive than Glass Lewis.

[29] Climate Action 100+ website, https://www.climateaction100.org/.

[30] Robert G. Eccles, "Here Is My Say On 'Say On Climate,'" https://www.forbes.com/sites/bobeccles/2021/01/05/here-is-my-say-on-say-on-climate/?sh=2bd1c0f95c49.

[31] ISS, "Canada Proxy Voting Guidelines for TSX-Listed Companies Benchmark Policy Recommendations (Effective for Meetings on or after February 1, 2021), https://www.issgovernance.com/file/policy/active/americas/Canada-TSX-Voting-Guidelines.pdf.

[32] Glass Lewis, "Say on Climate Votes: Glass Lewis Overview," https://www.glasslewis.com/say-on-climate-votes-glass-lewis-overview/.

[33] Data compiled by Laurel Hill from ISS Corporate Solutions data for say-on-climate proposals submitted to a vote at meetings held globally from January 1 to September 23, 2021.

Unsolicited Offers

Unsolicited offers, often referred to as hostile bids, continue to maintain an important place in Canada's capital markets. We have seen a fair amount of actual and threatened hostile bid activity in the past two years, particularly in the oil and gas sector. While there has only been one hostile bid so far in 2021, namely the headline Brookfield Infrastructure Partners L.P. bid for Inter Pipeline Ltd., we saw an uptick from just two in 2019 to four in 2020, and we note that four hostile bids have been launched in the past 13 months. As we have highlighted in recent years, the "new" 2016 National Instrument 62-104 takeover bid regime has fundamentally changed the thought process in undertaking an unsolicited offer and these are now undertaken almost only as a last resort. At a certain point, a hostile bid – or even a threatened hostile bid – may be a necessary step to decisively move forward where the target board refuses to engage or the parties cannot come to terms, and this type of bid may even create public pressure on a target to conclude a friendly transaction. In addition, as we saw in last year's Wilks Brothers, LLC hostile bid for Calfrac Well Services Ltd., it can even be employed to help achieve another strategic objective – in that case to disrupt a management recapitalization transaction.

Numbers of Hostile Bids

Source: Laurel Hill. Compiled from www.sedar.com filings through September 23, 2021, based on the date of the takeover bid circular.

There have been other examples this year of threatened and proposed hostile bids: In March and April, Canaccord Genuity Group Inc. disclosed that its private offers to the board of RF Capital Group Inc. (44% owned by Richardson Financial Group Ltd.) had been rebuffed and that it would consider all of its options, including taking the offer directly to RF Capital shareholders. In May, Wyloo Metals Pty Ltd. (a 24% shareholder) announced its intention to commence a bid for Noront Resources Ltd., subject first to the completion of a formal valuation. That proposed bid was trumped in July by a friendly bid by BHP (through a wholly owned subsidiary) for Noront, which received the support of the Noront board. In response, Wyloo announced that it did not support the BHP bid and has since proposed to acquire the company at a price above the BHP offer, subject to the completion of due diligence (which Noront has now facilitated).[34] And one final though somewhat curious example is the August announcement by Captiva Verde Wellness Corp. of its proposal to Binovi Technologies Corp. to acquire the company, followed only three days later by Captiva's announcement that is was no longer interested in pursuing the company.

One of the most aggressive cases this year of a public announcement of an offer for a company – though not a hostile bid or really even a threatened hostile bid – was Altice USA, Inc. and Rogers Communications Inc. going public with their offer to buy Audet-family-controlled Cogeco Inc. and Cogeco Communications Inc. Altice would acquire the companies and then sell all of their Canadian assets to Rogers. Promptly following both the initial and then a revised offer, the Cogeco board rejected both offers given that the Audet family communicated that it was not willing to sell, seemingly at any price. Altice and Rogers clearly sought to exert public pressure on the board and on the family to engage in a sale, but the Audet family would not be moved. We saw a similar example this year of a controlling shareholder's ability to refuse to sell into a deal, at EXFO Inc., which we detail in our "Transactional Activism" section.

> *"As we did on September 2nd, 2020, following the announcement of their first unsolicited proposal, members of the Audet family unanimously reject this further proposal. Since this is apparently not registering with Rogers and Altice, we repeat today that this is not a negotiating strategy, but a definitive refusal. We are not interested in selling our shares."* – Louis Audet, President of Gestion Audem.[35]

[34] As of this writing, there have been no further public announcements about either the RF Capital or Noront situations.

[35] Gestion Audem, "Gestion Audem Rejects Second Unsolicited Proposal From Rogers and Altice," https://www.newswire.ca/news-releases/gestion-audem-rejects-second-unsolicited-proposal-from-rogers-and-altice-862076988.html.

2020–2021 Hostile Bid Details

We are pleased to outline the hostile bids in the past year (since our last report), in alphabetical order by target.

<table>
<tr><th>Target</th><th>Target Sector</th><th>Target Capitalization</th><th>Bidder</th><th>Consideration</th><th>Outcome</th></tr>
<tr><td>Bonterra Energy Corp.</td><td>Oil & Gas</td><td>Micro (<50M)</td><td>Obsidian Energy Ltd.</td><td>Shares</td><td>Unsuccessful</td></tr>
<tr><td colspan="6">In September 2020, Obsidian launched an all-share bid for Bonterra, but only after fruitless merger discussions between the two companies dating back to January 2019, and following Obsidian's August announcement of a proposed merger with Bonterra. The directors of Bonterra recommended that shareholders reject the offer. Notably, the implied value of the Obsidian share consideration was, in fact, at a significant discount to the value of Bonterra shares. Obsidian twice extended the expiry time, resulting in a nearly seven-month-long offer, but ultimately announced in March that the conditions of the offer had not been met and that it would not take up any shares.</td></tr>
<tr><td>Calfrac Well Services Ltd.</td><td>Oil & Gas</td><td>Micro (<50M)</td><td>Wilks Brothers, LLC</td><td>Cash</td><td>Unsuccessful</td></tr>
<tr><td colspan="6">In September 2020, Wilks (through a wholly owned subsidiary) launched an all-cash hostile bid for Calfrac, with an offer of a significant premium to the recovery offered under Calfrac's proposed recapitalization transaction. The bid was subject to, among other customary conditions, non-completion of the management transaction. The directors of Calfrac recommended that shareholders reject the offer. At the same time, Wilks (a significant shareholder and debtholder) conducted a proxy solicitation campaign against the management transaction and related resolutions and proposed its own alternative transaction. Nevertheless, shareholders voted to approve the transaction and related resolutions. Wilks subsequently announced that the conditions to its bid were not capable of being fulfilled and that it would not take up and pay for any shares. The management transaction closed in December 2020. Notably, in March, Calfrac announced that one of its institutional shareholders should have, in fact, been excluded from the vote of "disinterested shareholders" on one of the transaction-related resolutions as Calfrac had learned that shareholder had participated in a financing of notes that also formed part of the transaction. Had these shares been properly excluded from the vote, the resolution in question would have failed, and the company would have failed to satisfy the TSX conditional listing approval requirement of disinterested shareholder approval. Calfrac sought exemptive relief from the TSX from the requirement, proposing to rescind and cancel the shareholder's notes. The TSX agreed to the proposed actions and relief, effectively waiving the disinterested shareholder approval requirement, and imposed a 12-month enhanced review of the company by the TSX Compliance and Disclosure Group.</td></tr>
<tr><td>Inter Pipeline Ltd. (IPL)</td><td>Oil & Gas</td><td>Large (1B–10B)</td><td>Brookfield Infrastructure Partners L.P.</td><td>Cash & Shares</td><td>Successful</td></tr>
<tr><td colspan="6">In February 2021, Brookfield (together with its institutional partners) launched a cash and share bid for IPL after unsuccessful discussions dating back to September 2020. In response, IPL undertook a strategic review, which resulted in IPL entering into an all-share arrangement agreement with Pembina Pipeline Corporation. The battle for IPL that ensued included the adoption by IPL of a tactical shareholder rights plan, multiple price increases and extensions by Brookfield of its bid, and several rulings by the Alberta Securities Commission (ASC), including related to: i) Brookfield's use of derivatives and associated disclosure, ii) IPL's tactical shareholder rights plan, and iii) the termination fee in respect of the Pembina–IPL transaction. The ASC required that the bid's minimum tender requirement be set at 55%, above the standard 50%, and that Brookfield provide additional disclosure on its use of derivatives.[36] Ultimately, Brookfield's revised offer led to the termination of the Pembina–IPL transaction. Notably, it took the IPL board two days following the termination of the Pembina–IPL deal to recommend that IPL shareholders accept the Brookfield bid. In August, Brookfield successfully took up and paid for IPL shares and proceeded to a second-step compulsory acquisition.</td></tr>
<tr><td>Osum Oil Sands Corp.</td><td>Oil & Gas</td><td>Mid (250M–1B)</td><td>Waterous Energy Fund</td><td>Cash</td><td>Successful</td></tr>
<tr><td colspan="6">In November 2020, Waterous, a 45% shareholder, launched an all-cash bid for 40% of privately held Osum, disclosing significant lock-ups towards the statutory 50% majority of the minority tender requirement. The directors of Osum (excluding conflicted directors) recommended that shareholders reject the offer. The company applied to the ASC for an order to cease-trade the bid on the grounds that it believed the financing arrangements were inadequate and that Waterous had not obtained the required independent valuation (asserting that Waterous was not entitled to rely on the exemption that it had claimed). The ASC ruled for Waterous and dismissed the application. Osum then initiated a corporate sale process (though Waterous asserted that it was entitled to consent to any alternative transaction and had no intention of doing so) and then undertook its own independent valuation. Prior to expiry in February, Waterous improved its offer and the board recommended that shareholders support the bid. Waterous successfully took up and paid for all deposited shares and proceeded to a second-stage compulsory acquisition.</td></tr>
</table>

Source: Laurel Hill. Compiled from www.sedar.com filings through September 23, 2021.

[36] The ASC reasons have not yet been released.

OSC Reinforces "Predictability" of NI 62-104

In our 2020 report, we discussed the background to the attempt by ESW Capital, LLC, the largest of three significant minority "control block" holders of subordinate voting shares (SVS) of Optiva Inc., to obtain an Ontario Securities Commission (OSC) exemption from the majority of the minority tender requirement as a pre-condition to launching a hostile bid for the SVS of the company. The two other control block holders, Maple Rock Capital Partners Inc. and EdgePoint Investment Group Inc., did not support the proposed bid and had enough combined SVS to block satisfaction of the requirement. Following hearings on September 10–11, 2020, the OSC dismissed the application on September 14, 2020, and published its reasons on February 23, 2021.

In its reasons[37] the OSC explained that its decision must be centred on upholding the new takeover bid regime principles of "protection of shareholder choice" and a "fair, open and even-handed bid environment."

> *"The minimum tender requirement is part of recent material amendments to the take-over bid regime designed to address the risks of coercion by facilitating collective shareholder decision-making. Any request for exemptive relief from the minimum tender requirement raises fundamental issues regarding the protection of shareholder choice and the integrity of the bid environment. Such a request must be considered in light of the recalibrated control dynamics among the bidder, the target and control block shareholders in the bid regime.*
>
> *"The main issue in this application is whether the Requested Exemption would be prejudicial to the public interest. Resolving this question requires an assessment of the circumstances of the proposed bid, the target, the bidder and the control block shareholders to determine whether excluding the control block shareholdings from the minimum tender requirement would be necessary to facilitate shareholder choice and to ensure a fair, open and even-handed bid environment."*

The OSC explained that in implementing the new bid regime, the Canadian Securities Administrators (CSA) recognized that the minimum tender requirement may provide control block shareholders with enhanced leverage to effectively preclude or dissuade bids, but that this could be addressed through exemptive relief, though the CSA declined to provide guidance on the circumstances in which it was likely to grant relief. In this case, the OSC explained that it considered a number of factors, specifically: "a. the nature and circumstances of the bid; b. the control dynamics of the target (both pre-existing control dynamics and any changes to the control dynamics); c. the impact of a grant or denial of exemptive relief on shareholders; d. the conduct of the control block holders and any special or differing interests or stake in the outcome of the bid; e. the conduct of the target and its board; f. the conduct of the bidder; and g. any other information indicating the views of the target shareholders with respect to the bid."

On the one hand, the OSC did not find that there were "exceptional circumstances or abusive or improper conduct that undermined minority shareholder choice to warrant intervention by the Commission." On the other hand, while ESW argued that exemptive relief would provide a premium exit opportunity for non-control block SVS holders and that the risk of coercion would be mitigated by the mandatory 10-day extension requirement, the OSC ruled against ESW, noting that exemptive relief may put pressure on minority SVS holders (including even Maple Rock and EdgePoint) to tender, or else risk being left holding highly illiquid stock in an ESW-controlled company.

This was the first time the OSC had ruled specifically on the minority tender requirement, but the second time the OSC had ruled on the new takeover bid rules. In 2018, we wrote about Canada's first hostile takeover bid in the cannabis space, the Aurora Cannabis Inc. bid for CanniMed Therapeutics Inc., which involved hearings before the Financial and Consumer Affairs Authority of Saskatchewan and the OSC. In that case, the two regulators

[37] OSC, "Reasons for Decision: In the Matter of ESW Capital, LLC and Optiva Inc.," https://www.osc.ca/en/tribunal/tribunal-proceedings/esw-capital-llc-re/document/5.

made several important rulings related to the new takeover bid rules, in connection with a tactical shareholder rights plan, "jointly or in concert" status, the 5% open market purchase exemption, and the 105-day minimum bid period. In all instances, they ruled against tactics and defences that conflicted with or attempted to shortcut the new rules. They commented that, in the future, parties should expect that the letter and the spirit of the rules would continue to be upheld, absent extenuating circumstances. Given the OSC ruling in Optiva, the regulators appear intent on holding firm on this view.

WHAT YOU NEED TO KNOW:

We have been repeating this for the past several years, but the facts continue to prove it out: Despite the low numbers of hostile bids, where potential acquirers cannot strike a deal with targets, or for other strategic considerations, a hostile bid remains a viable option, and companies must take that possibility seriously and be prepared. Additionally, the regulators have now signalled in two cases that bidders and targets must stay within the letter and the spirit of the new rules.

Short-Selling Activism

GameStop and the Power of Retail Investors

Short-selling activists have a new risk to contend with: angry retail investors. Just ask Citron Research, one of the most prolific activists in this controversial space where short sellers publish and disseminate negative reports and commentary, magnified through the speed and reach of social media, seeking to profit from the anticipated decline in the target's stock price.

In early January, following some positive developments in recent months at struggling U.S. video game retailer GameStop Corp., a group of retail investors on the Reddit forum r/WallStreetBets started buying up GameStop (and other heavily shorted companies, including AMC Entertainment Holdings, Inc., BlackBerry Limited, and Koss Corporation) in an anti-establishment move to squeeze hedge funds with large short positions, driving GameStop up from US$20 to US$40 in just one week. Citron took to Twitter to warn that "buyers at these levels are the suckers at this poker game"[38] and then made its case in a YouTube video that the stock would fall back down to US$20. The hedge fund's Andrew Left observed, "I've never seen such an exchange of ideas of people so angry about someone joining the other side of a trade."[39] The Reddit "army" continued the short squeeze, further fuelled by stock demand from call options market makers and by short sellers buying in to cover their positions,[40] and even encouraged by a tweet by Elon Musk, propelling the so-called "meme" stock over the next week to almost US$350, devastating short sellers and compelling them to close out their positions, including Citron. All told, the stock rose 1,750% in two weeks, on no company news.

The "David versus Goliath" battle forced trading halts and restrictions from retail trading apps such as Robinhood, which drew political outrage, and the U.S. Securities and Exchange Commission announced that it and other regulators and stock exchanges were reviewing the case for potential wrongdoing. Short sellers lost billions on GameStop and were forced to sell off other assets to cover their positions. Left went on to announce that his firm would

WHAT YOU NEED TO KNOW:

For issuers concerned about short-selling activism – or any form of activism for that matter – the GameStop lesson is simple and clear: Your retail investors have more power than you might imagine, particularly through social media platforms, and must not be overlooked in your engagement efforts. This important constituent is generally more emotionally driven than institutions and may prove instrumental – for you or against you – in the face of any activist attack or when you need their support on important votes.

[38] Citron Research tweet, https://twitter.com/CitronResearch/status/1351544479547760642.

[39] Markets Insider, "Short-seller Citron said its scheduled livestream on why GameStop buyers are 'suckers at this poker game' was halted by attempted Twitter hacks," https://markets.businessinsider.com/news/stocks/citron-research-livestream-gamestop-position-halted-twitter-hack-attempts-2021-1.

[40] USA Today, "How r/WallStreetBets took down a hedge fund and rode GameStop stock to the moon," https://www.usatoday.com/in-depth/news/2021/01/28/gamestop-how-did-stock-price-jump-so-quickly/4293221001/.

no longer publish short-selling research, stating, "When we started Citron, it was to be against the establishment, but now we've actually become the establishment."[41]

The episode has been a fascinating study in retail shareholder motivations and behaviours, which in this case were likely a combination of the desire to wield power and to simply have fun ("you only live once"), mostly at the expense of any fundamental analysis:

> *"There has been a lot of hand-wringing about the day-trading trend and this new crop of investors playing the markets, many of whom are treating stocks more like a spin at the roulette wheel than a long-term strategy to build wealth. It's not clear how many of them are looking at the underlying fundamentals of companies, or whether they're just 'YOLO-ing' themselves across the market. On GameStop, the answer is probably a mix. There's a reasonable business case to make for (some of) the game retailer's valuation; there's also a case that this whole thing has just been quite fun for everyone – the possible trolls of Reddit, market watchers, commentators, and certainly GameStop – except for the short sellers, who have been in for a pretty miserable ride.*
>
> *"The GameStop episode is a mix of factors serious and silly – part retail traders demonstrating some actual power in the market, part accepting that some of this just makes no sense. Whether GameStop took off because it's a meme stock – a stock in which interest is as much cultural or social as it is financial – or because there is something to the business case is unclear. There is a business case, there is a cultural interest; the balance between the two in driving the price is indeterminate. Part of it might basically be a joke. What is clear is that a lot of what's happening with the stock now isn't because of a potential turnaround; it's because the trade went viral."*[42]

Canadian Activity and Observations

While Citron Research, one of the top short-selling activists targeting Canadian companies, is out of the business, we are still seeing material levels of activity in this area and we expect that trend to continue. In fact, the number of campaigns targeting Canadian companies doubled from seven in 2019 to 14 in 2020, following a high of 22 campaigns in 2018. As we noted in our report last year, the 2019 decline in campaigns would likely be short-lived, given that the primarily U.S.-based activists in this space view Canada as an attractive market.

Short-Selling Activist Campaigns

Source: Insightia, "Shareholder Activism in Canada 2021."[43]

[41] The Globe and Mail, "U.S. SEC warns investors as GameStop shares jump, short-selling war resumes," https://www.theglobeandmail.com/investing/markets/article-traders-return-to-gamestop-plays-as-brokerages-ease-restrictions/.

[42] Vox, "The GameStop stock frenzy, explained," https://www.vox.com/the-goods/22249458/gamestop-stock-wallstreetbets-reddit-citron.

[43] Insightia, "Shareholder Activism in Canada 2021," https://www.activistinsight.com/canada_2021/.

The Canadian Securities Administrators (CSA) conducted research for its activist short-selling consultation paper[44] (discussed further below) consisting of an analysis of 116 activist campaigns at 73 Canadian target issuers during the period 2010 through September 2020 (based on campaigns identified by Activist Insight). The CSA made a number of observations about the campaign activists, targets, and outcomes:

- **Most activists were well-established:** Approximately 80% of the 48 activist short sellers behind the campaigns had been active for over five years, while 20% were anonymous or pseudonymous, or those with only a presence on seekingalpha.com.
- **The majority of activists were based in the U.S.:** Approximately 60% of the activists were based in the U.S., while 13% were based in Canada.
- **Canadian companies were less frequently targeted than their U.S. peers:** There had been no more than five Canadian targets annually for every 1,000 Canadian listed issuers, compared to an average of 21 U.S. targets annually for every 1,000 U.S. listed issuers.
- **Annual campaign activity was highly cyclical by sector:** Activists gravitated towards the securities of issuers and sectors where there was perceived overvaluation. In 2018 and 2019, healthcare (including cannabis) led all sectors and represented 41% and 43%, respectively, of all campaigns, while in 2020, basic materials and energy led all sectors and accounted for 33% of all campaigns.
- **Campaigns were focused on relatively larger issuers:** The targets had a median market capitalization of $867 million and an average market capitalization of $4.5 billion.
- **Fraud and business issues were the top activist allegations:** The primary allegations related to fraud (40%) (e.g., stock promotion, misleading accounting, business fraud), business issues (33%) (e.g., over-leverage, ineffective roll-up, industry issues), overvaluation (19%), and product issues (9%).
- **Most targets experienced negative price impacts:** 75% of targets experienced a negative price impact on the day of the first campaign announcement and up to one month after the first campaign announcement.
- **Most targets pursued some form of responsive action:** 73% of targets pursued certain responses during the campaign, such as changing or replacing the CEO or CFO, hiring a new auditor or independent investigator, halting the issuer's stock from trading, pursuing a lawsuit against the activist, or announcing a capital market transaction (e.g., divestiture, acquisition, private placement).
- **A minority of targets experienced a negative outcome (beyond price impacts):** 29% of targets experienced at least one negative outcome following the campaign, such as a delisting, auditor resignation, or class-action lawsuit.

The CSA Consultation Paper

In our report last year, we discussed that although it is generally recognized that short selling and short-selling activism provide undeniable market benefits related to price discovery and liquidity, industry participants in Canada had recently been drawing new and increased attention to certain predatory and unfair short-selling practices, such as "short and distort" campaigns, "naked" shorting and short trading in connection with financings. In its 2019–2022 Business Plan, the CSA identified the study of abusive short selling as one of its key priorities and efforts.

True to its priorities, in December 2020 the CSA published Consultation Paper 25-403 – Activist Short Selling.[45] The CSA acknowledged stakeholder concerns, primarily in the issuer community, related to activist short selling and its impact on our markets that are based on perceptions that: i) there is an increasing number of activist short-selling campaigns in Canada, ii) the Canadian regulatory framework addressing short selling is less strict in comparison to other jurisdictions, and iii) there is inadequate deterrence to problematic conduct given the limited number of enforcement proceedings involving problematic activist short selling as well as a lack of meaningful remedial actions for misconduct. The paper summarized the CSA's research and its understanding of the issues and concerns raised, and it set out questions for consultation related to: i) the nature and extent of activist short-selling activity in Canada, ii) the Canadian and international regulatory framework, and iii) issues related to enforcement and other potential remedial actions. The consultation period closed on March 3, 2021.

[44] [45] OSC, "CSA Consultation Paper 25-403 – Activist Short Selling," https://www.osc.ca/en/securities-law/instruments-rules-policies/2/25-403/csa-consultation-paper-25-403-activist-short-selling.

Trends in Governance

Environmental, Social, and Governance

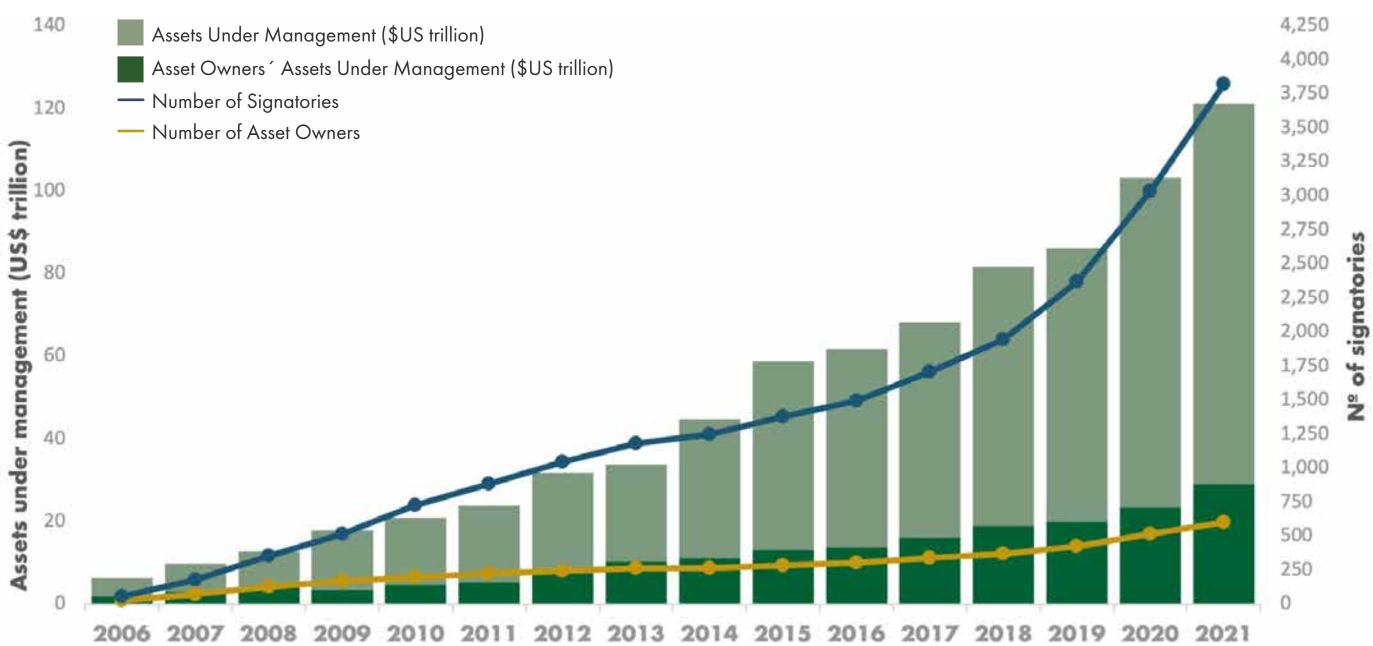
To no one's surprise, the focus on environmental, social, and governance (ESG) grew significantly in 2021. While last year's trending topics regarding diversity and inclusion, cybersecurity, and human capital remain highly relevant, climate change was at the centre of many of the key developments this year. Notable issues encompassed court orders directing companies to cut greenhouse gas emissions, the global say-on-climate campaign, majority support for climate change shareholder proposals at a number of prominent U.S. companies, and a successful board battle focused on the lack of progress on energy and emissions reduction. In short, environmental concerns – followed closely by social concerns – have become a key strategic consideration.

The ESG Landscape

Prior to outlining some of the headline developments related to environmental and social trends, it is worthwhile for us to frame the landscape of the accelerating impact of ESG in capital markets. ESG continues to gain momentum in the capital markets and is now being looked at more closely by investors around the globe. Bloomberg estimates that "ESG assets under management could climb to more than a third of the projected $140.5 trillion global total by 2025."[46]

As we noted in our report last year, the growth of signatories under the United Nations Principles for Responsible Investment (PRI), the "world's leading proponent of responsible investment," continues to increase year over year in the number of signatories and assets under management. In the past year alone, the number of PRI signatories has increased by nearly 26% to 3,826 and assets under management have increased by 17% to just over $121 trillion.[47]

PRI Growth 2006–2021



Source: Principles for Responsible Investment.

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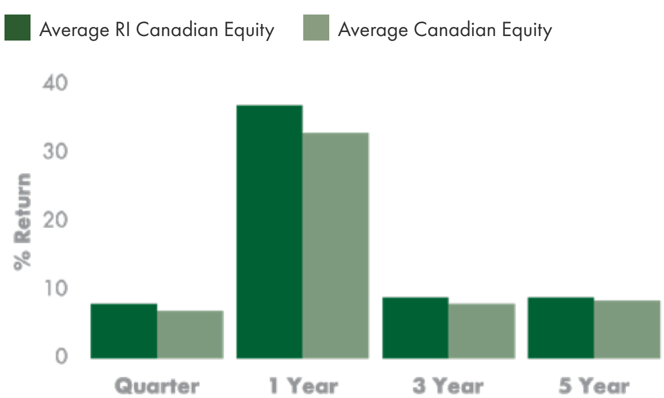
[46] Bloomberg, "ESG assets may hit $53 trillion by 2025, a third of global AUM," https://www.bloomberg.com/professional/blog/esg-assets-may-hit-53-trillion-by-2025-a-third-of-global-aum/.

[47] PRI, "About the PRI," https://www.unpri.org/pri/about-the-pri#:~:text=What%20are%20the%20six%20Principles%20for%20Responsible%20Investment%3F,entities%20in%20which%20we%20invest.%20More%20items...%20.

Impact investing – that is, investing focused on generating social and environmental impact as well as financial returns – has also been rapidly growing over the past decade.[48] Organizations such as the Global Impact Investing Network (GIIN) are working to increase the scale and effectiveness of impact investing around the world. The GIIN was formed in 2010 with just 24 members. According to its 2020 investor survey results, the group now includes nearly 300 of the world's leading impact investors, who collectively manage US$404 billion in impact investment assets.[49]

While we could cite numerous examples of an increase in responsible investing (and we will add to this in a later section), the question is, are these responsible investments performing better than the equity markets as a whole? The answer appears to be yes. The Responsible Investment Association (RIA), an organization of asset managers, asset owners, and service providers promoting responsible investment in Canada's retail and institutional markets that collectively manages over $20 trillion in assets, reported the recent and historical performance of its dedicated responsible investment products in its Q2 2021 highlights.[50] The RIA highlighted that in the Canadian equity fund class, 69% of the RIA funds outperformed the average asset class return in the quarter, while 71% of the RIA funds outperformed the average asset class return over the preceding 12-month period. These results follow a five-year trend of outperformance, as the majority of the RIA's funds in the Canadian equity class have outperformed their average asset class returns over their respective three- and five-year periods, as per the chart below:[51]



Source: Responsible Investment Association.

From the investor perspective, when we consider the above two points, namely the increase of responsible investments and that these investments are generally outperforming the average asset class, the demand for ESG is clearly strong and sustainable. From the corporate perspective, it is generally accepted that strong ESG disclosure and reporting is an indicator of a company's overall approach to managing risk, leadership, and trust. A company that has accounted for and mitigated ESG risks will perform better over the long term and is better positioned to weather disruptions than competitors that fall short in this area.

On the regulatory side, we are seeing more attention being given to ESG through the implementation of disclosure requirements aimed at increasing transparency and consistency among companies. More specifically, in January 2021, the Ontario Capital Markets Modernization Taskforce (Ontario Taskforce) issued a final report recommending the inclusion of mandatory ESG disclosure in Ontario through the adoption of the Task Force on Climate-related Financial Disclosures (TCFD) guidelines and called on the Canadian Securities Administrators (CSA) to implement a uniform reporting standard across all provinces. The Ontario Taskforce recommended a transition period that would take into consideration the market capitalization of the company, ranging from two years for the largest issuers to five years for the smallest issuers.[52]

A study from the Institute for Sustainable Finance at Queen's University found that two-thirds of TSX Composite Index constituents were already reporting on greenhouse gas emissions data. However, only 27% of these issuers had established targets relating to these emissions.[53] Furthermore, another study by ESG advisory service provider Millani found that only 23% of TSX Composite Index constituents had explicitly stated that their reporting was aligned with the TCFD recommendations, and over half of these issuers made no mention of TCFD in their reporting.[54]

Clearly, there is a sizeable gap in disclosure between where many issuers currently are and where they will be required to be in the years to come. This presents an opportunity for issuers to lead the charge in providing disclosure that not only meets TCFD requirements, but raises the bar for the capital markets industry as a whole.

[48] Forbes Advisor, "Environmental, Social And Governance: What Is ESG Investing?" https://www.forbes.com/advisor/investing/esg-investing/.

[49] GIIN, "Annual Impact Investor Survey 2020," https://thegiin.org/assets/GIIN%20Annual%20Impact%20Investor%20Survey%202020.pdf.

[50] RIA website, "About," https://www.riacanada.ca/about/.

[51] RIA, "Quarterly Responsible Investment Funds Report: Highlights from Q2 2021," https://www.riacanada.ca/news/ri-funds-in-canada-q2-2021-highlights/.

[52] McCarthy Tétrault LLP, "ESG continues to take centre stage in securities regulation in Canada and abroad," https://www.mccarthy.ca/en/insights/articles/esg-continues-take-centre-stage-securities-regulation-canada-and-abroad.

[53] Smith School of Business: Institute for Sustainable Finance, "With increased global demands for climate data, new research shows Corporate Canada must step up its game," https://smith.queensu.ca/centres/isf/news/tsx-emitters-report.php.

[54] TSX, "Millani's TCFD Disclosure Study: A Canadian Perspective," https://www.tsx.com/resource/en/2672/millani-s-tcfd-disclosure-study-a-canadian-perspective-2021-06-23-en.pdf.

Changes Are Coming Globally

Regulatory developments are underway on a global level with significant announcements being made this year in the United States, European Union, United Kingdom, and New Zealand. The U.S. Biden administration, just weeks after President Biden's inauguration, signalled change through the Securities and Exchange Commission (SEC) by announcing the future appointment of a senior policy advisor for climate and ESG, as well as the creation of a Climate and ESG Task Force in its enforcement division. In April, the European Union announced the implementation of a comprehensive sustainable finance package targeting both companies and investment advisors to increase disclosure and investment product oversight through a range of new requirements and amendments. The United Kingdom announced a plan last November to become the first country with mandatory TCFD-compliant disclosure by 2025. As part of this strategy, it announced that effective January 2021 all premium-listed companies are now required to disclose compliance with the TCFD recommendations. New Zealand announced that starting in 2022 certain financial sector companies would be required to provide disclosure around the impacts of climate change on their business.[55]

WHAT YOU NEED TO KNOW:

The demand for ESG disclosure from companies by investors and regulators continues to rise. Investors are utilizing ESG disclosure to help determine how a company manages and mitigates risks, identifies opportunities, and generates sustainable long-term financial growth. Those companies that choose not to provide strong ESG disclosure may be overlooked by investors, impacting their stock price and ultimately restricting their access to capital as a lack of transparency in these issues can be seen as a red flag to investors.[56]

ESG Reporting

Further to our report in 2020, where we outlined the various reporting formats, namely TCFD, Sustainability Accounting Standards Board (SASB), and Global Reporting Initiative (GRI), the overlap and collaborative approach of the frameworks continues to develop in an effort to create efficiency and ease for both investors and issuers. Further to the integration guide published by TCFD and SASB in 2019, to further develop consistency within each of the three frameworks, this year SASB and GRI released a practical guide to reporting that integrates both sets of standards.

We continue to see these collaborations. The International Integrated Reporting Council (IIRC) was formed in 2010 to push the development and adoption of integrated reporting, which is "a concise communication about how an organization's strategy, governance, performance and prospects, in the context of its external environment, lead to the creation of value over the short, medium and long term."[57] In 2013, the IIRC released its International Integrated Reporting Framework (IIRF), which received tremendous global support from over 350 respondents.[58] In June, the IIRC and SASB merged to form the Value Reporting Foundation. This newly merged organization will seek to move organizations from buy-in to action. This merger more closely aligns the IIRF and the SASB standards and will make it easier for companies to more effectively communicate their long-term strategy and business performance to current investors and other potential providers of capital.[59]

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[55] McCarthy Tétrault LLP, "ESG continues to take centre stage in securities regulation in Canada and abroad," https://www.mccarthy.ca/en/insights/articles/esg-continues-take-centre-stage-securities-regulation-canada-and-abroad.

[56] Sphera, "What Is ESG Reporting, and Why Is It Important?" https://sphera.com/glossary/what-is-esg-reporting-and-why-is-it-important/.

[57] International Integrated Reporting Council, "The International <IR> Framework," https://www.integratedreporting.org/wp-content/uploads/2015/03/13-12-08-THE-INTERNATIONAL-IR-FRAMEWORK-2-1.pdf.

[58] Value Reporting Foundation, "The International <IR> Framework Released with Business and Investor Support," https://www.integratedreporting.org/news/the-international-ir-framework-released-with-business-and-investor-support/.

[59] Value Reporting Foundation, "IIRC and SASB form the Value Reporting Foundation, providing comprehensive suite of tools to assess, manage and communicate value," https://www.valuereportingfoundation.org/news/iirc-and-sasb-form-the-value-reportingfoundation-providing-comprehensive-suite-oftools-to-assess-manage-and-communicate-value/.

ISS and Glass Lewis ESG Ratings

Both Institutional Shareholder Services (ISS) and Glass Lewis have been developing ESG ratings tools and data products to allow shareholders to manage portfolio risks, make investment decisions, and cast votes based on ESG profiles. ISS and Glass Lewis do not currently make voting recommendations based strictly on ESG ratings. These proxy advisors instead provide this data so that shareholders can make their own decisions. Even though the ESG ratings themselves do not impact voting recommendations, they could point to underlying or future voting issues that may be relevant to areas of the proxy advisors' voting policy guidelines.

ISS' ESG rating approach places a clear, sector-specific focus on the materiality of non-financial information. It is constantly reviewed and developed to cover all relevant environmental, social, and governance related topics. The ESG QualityScore is included on the cover page of each research report along with its designated section, which goes into more detail.

The goal of Glass Lewis's ESG rating is to provide summary data and insights that can be efficiently used by clients as part of their process to integrate ESG factors across their investment chain, including effectively aligning proxy voting and engagement practices with ESG risk management considerations. Glass Lewis uses data and ratings from Sustainalytics, a provider of ESG research, in the ESG profile section of its standard research reports for large-cap companies or in instances where a material oversight issue has been identified. This partnership between Glass Lewis and Sustainalytics was formed in October 2018. Sustainalytics' ESG risk ratings measure how well issuers proactively manage the ESG issues that are the most material to their business. Based on a structured, objective, and transparent methodology, Sustainalytics' ESG risk ratings provide an assessment of companies' exposure to and management of ESG risks.

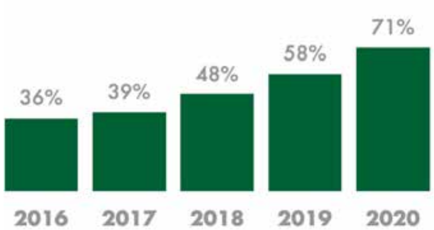
Similar to the model used by the proxy advisors in their voting policies, as organizations grow, it is worth noting that so do the proxy advisors' ESG analyses. ISS and Glass Lewis have historically provided more in-depth ESG rating analysis on larger public issuers. Our expectation is that when a company grows to be large enough to be included on a major index, then the proxy advisors will provide more in-depth research and reporting on the company's approach to ESG.

The table below shows the percentage of Canadian corporate issuers that have issued dedicated ESG reports over the past five years. This percentage has steadily grown and saw a 13% increase from 2019 to 2020, its biggest year-over-year increase. We expect this percentage to continue to rise in the years to come as these reports are a great tool for companies to tell their ESG story to investors and help secure strong ESG ratings with the proxy advisors and other ratings agencies.

WHAT YOU NEED TO KNOW:

Investors, proxy advisors, and other ratings agencies are paying increasing levels of attention to ESG disclosure. There is continual development in reporting that can assist companies with providing standardized and fulsome ESG disclosure that will help inform these constituents of company-specific risks and opportunities. Ensuring your ESG disclosure is easy to find will further assist them to evaluate and report as accurately as possible. However, since these evaluation standards are constantly evolving, and year-to-year ratings can shift, companies can avoid wasting resources chasing ratings by focusing on their own journeys and continuous improvements in ESG disclosure, using TCFD, SASB, IIRF, and GRI as guides. In short, tell your own story.

Canadian Issuers With Dedicated ESG Reports



Source: Millani.[60]

[60] TSX, "Millani's 5th Annual ESG Disclosure Study: A Canadian Perspective," https://www.tsx.com/resource/en/2722.

Climate Change

Within the environmental pillar of ESG, the topic of climate change continues to be an area of focus for investors and the capital markets as a whole. In his letter to CEOs this year, BlackRock's Larry Fink highlighted climate change as one of four issues that are pivotal to creating durable value. Fink believes that climate change awareness is rapidly changing and that we are on the edge of a fundamental reshaping of finance.[61] Events such as the global climate strike in September 2019, where millions took to the streets in 150 countries in advance of the UN climate summit to push for the adoption of preventive environmental catastrophe measures, is a prime example of how climate change awareness is accelerating.[62] We have reached a stage globally where the science behind the negative consequences of climate change is undisputable. It is no longer a question of whether we will respond to climate change, but rather a question of how we will respond to climate change. It is critical that companies identify and manage their climate-related risks, as failing to do so could be detrimental to the capital markets as a whole, and the attraction and retention of investors.[63]

Institutional Investors Focus on Climate Change

Initiatives like Climate Action 100+ are adding fuel to the movement by bringing global investors together to help drive business transition towards climate action. This initiative has seen investor participation growth of over 170% since its formation in December 2017. Climate Action 100+ along with its group of signatories has committed to engaging with the world's largest corporate greenhouse gas emitters to improve their climate performance and ensure transparent disclosure of emissions.[64]

A significant climate change movement is the push for net-zero and carbon-neutral commitments. These goals present mission-driven considerations for all market participants.[65] In July, Brookfield Asset Management Inc. announced the initial closing of its US$7 billion Brookfield Global Transition Fund (BGTF), an impact fund focused on investments that accelerate the global transition to a net-zero carbon economy, while delivering strong risk-adjusted returns to investors. Brookfield reports BGTF as the largest fund focused on the global transition to a net-zero economy.[66]

Each year, ISS conducts an Annual Benchmark Policy Survey to collect information from institutional shareholders, corporate issuers, corporate directors, and other market constituents on a number of questions in specific areas to evaluate potential policy changes. This year, ISS also introduced a Climate Survey to "determine views on minimum criteria for boards in overseeing climate-related risks, plus market sentiment on shareholders having the right to regularly vote on a company's climate transition plans. The Climate Survey is also designed to elicit feedback specifically relevant to ISS' specialty climate voting policy, launched last year, which incorporates market disclosures with ISS' unique and proprietary climate data, research, and issue expertise in analyzing votable items."[67] This new dedicated survey is likely to lead to a number of ISS policy developments and is a great example of how climate-related disclosure and practices at issuers are becoming increasingly important to investors.

A number of the largest institutional investors, including BlackRock, AIMCo, and RBC Global Asset Management, now have full sections within their proxy voting guidelines that are dedicated to climate change. For example, AIMCo's guidelines state that they will evaluate shareholder proposals on a case-by-case basis and generally vote for proposals that request the company adopt or disclose whether it has climate-related policies and procedures, such as TCFD disclosure. The adoption of ESG-specific voting guidelines like this shows just how climate change is becoming an increasingly important factor for investors.[68]

[61] BlackRock, "Larry Fink's 2021 letter to CEOs," https://www.blackrock.com/corporate/investor-relations/larry-fink-ceo-letter.

[62] CBC, "Millions in 150 countries protest for climate action," https://www.cbc.ca/news/world/students-global-strike-climate-action-1.5290893.

[63] State Street Global Advisors, "Why Climate Should Be Your ESG Priority," https://www.ssga.com/library-content/pdfs/insights/why-climate-should-be-your-esg-prioriti.pdf.

[64] Climate Action 100+, "About Climate Action 100+," https://www.climateaction100.org/about/.

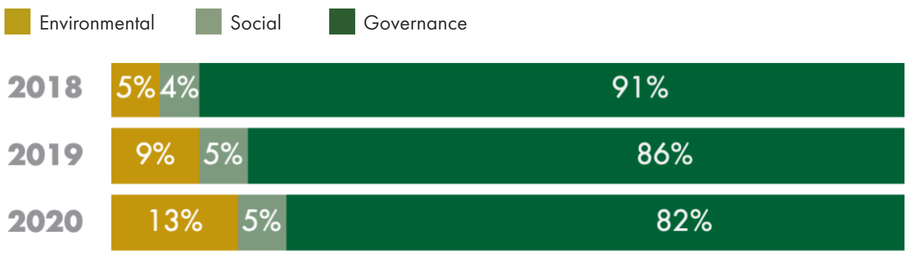
[65] S&P Global, "Informing the journey to net zero and carbon neutrality," https://pages.marketintelligence.spglobal.com/Net-Zero-Content-Demo-Request.html.

[66] Brookfield Asset Management, "Brookfield Announces Initial US$7 Billion Closing for Brookfield Global Transition Fund," https://bam.brookfield.com/press-releases/brookfield-announces-initial-us7-billion-closing-brookfield-global-transition-fund.

[67] ISS, "ISS Opens Global Annual Benchmark Policy Survey and Separate Climate Survey," https://insights.issgovernance.com/posts/iss-opens-global-annual-benchmark-policy-survey-and-separate-climate-survey/.

[68] AIMCo, "Proxy Voting Guidelines & Corporate Governance Principles," https://assets.ctfassets.net/lyt4cjmefjno/1Xc2BDu3jejmzIBKVjXh82/3979db8acb8b938877b3cc35d676d2ac/Proxy_Voting_Guidelines_February_2021.pdf.

Moreover, Hugessen's review of TSX60 company proxy materials in 2021 found that 54 issuers disclosed a climate-related goal, with 25 of these issuers declaring a net-zero/carbon-neutral goal, and 2050 being the most common timeframe for achievement.[69] Russell Investments' 2020 ESG survey of 400 asset managers from around the globe showed a significant increase in ESG as a factor impacting investment decisions over the past three years, as per the chart below:[70]



Source: Russell Investments.

Climate Change Driving Corporate Change

So far this year, there have been a number of significant climate-related shareholder proposals at U.S. companies that have received overwhelming support from shareholders: 98% of General Electric shareholders voted for a proposal seeking details of how the company will achieve net-zero emissions across its operations and products; 99% of Bunge shareholders voted to ask the company for a stronger no-deforestation policy; and 81% of DuPont shareholders voted to seek a stronger plastics pollution policy and disclosure on how much plastic the company releases into the environment. These proposal victories indicate that the investor appetite for climate-related shareholder proposals is increasing dramatically.

At two top U.S. oil companies, ExxonMobil and Chevron, a majority of shareholders voted in favour of climate-related change. At ExxonMobil, dissident hedge fund Engine No. 1 was successful in garnering support from shareholders to replace three of the current board members with its own nominees, and to approve annual reports on climate and grassroots lobbying efforts. At Chevron, a proposal from an oil and gas activist to require the company to cut greenhouse gas emissions received 61% support from investors.[71]

As we discussed in detail in our "Shareholder Proposals" section, the global say-on-climate campaign calling on leading companies to disclose carbon emissions each year in a manner consistent with TCFD recommendations, publish a "credible" climate transition plan (including any progress made year over year), and give shareholders an annual advisory vote on the plan, has started to gain traction, including at Canada's CN Rail and CP Rail.

WHAT YOU NEED TO KNOW:

Climate change is at the top of investors' minds and, based on the activism to date, companies need to ensure they are managing these risks and providing the necessary disclosure for investors. Keeping up to date with the custom policies of institutional investors and having regular dialogue with investors will help identify any disconnects between the company's current initiatives and investor expectations to help manage potentially negative investor action.

[69] Hugessen Consulting, "TSX60 Proxy Review, COVID-19 & Emerging Topics Webinar," https://www.hugessen.com/sites/default/files/news/2021%20TSX60%20Presentation.pdf.

[70] Russell Investments, "2020 Annual ESG Manager Survey," https://russellinvestments.com/publications/us/document/2020-Annual-ESG-Manager-survey-results.pdf.

[71] Guardian News & Media Limited, "ExxonMobil and Chevron suffer shareholder rebellions over climate," https://www.theguardian.com/business/2021/may/26/exxonmobil-and-chevron-braced-for-showdown-over-climate.

"S" Is on the Rise

The social pillar of ESG has continued to gain momentum, with the ongoing push for equity and racial justice coupled with the ongoing battle of human capital issues surrounding COVID-19. Insightia, a provider of shareholder voting data, stated, "Left unattended, social issues can ignite regulatory scrutiny, congressional oversight, and popular disdain in ways environmental and governance matters cannot. They have the potential to set the house on fire and burn it down and have led to the premature ouster of more than a few CEOs."[72] Cambridge Trust lists inequality, labour management, emergency preparedness and crisis management, and data privacy and security as four social trends to watch in the coming year.[73] It is now more important than ever that companies provide robust "S" disclosure to meet the accelerating expectations of investors.

The pandemic has put a greater focus on human capital management. More than ever, companies are under pressure from investors, consumers, and regulatory bodies to manage human capital effectively and provide sufficient disclosure. There are many potential risks associated with a company's human capital that investors are on the lookout for, including: low level of innovation, compliance risks, a non-diverse workforce or management team, low engagement and productivity, and the ability to attract and retain the right talent. On the other hand, human capital also presents tremendous opportunities for companies as there is potential for unlimited growth in performance, creativity, and value creation as employees are the main drivers of these advancements.[74]

In Larry Fink's 2018 letter to CEOs, the BlackRock chairman and CEO stated, "Society is demanding that companies, both public and private, serve a social purpose. To prosper over time, every company must not only deliver financial performance, but also show how it makes a positive contribution to society. Companies must benefit all of their stakeholders, including shareholders, employees, customers, and the communities in which they operate."[75] In response to this growing demand, there has been a push for corporate statements of purpose. However, many have questioned the meaningfulness of a statement of purpose. Their view is that these statements are not required at all based on the fact they appear to reflect what would simply be considered good business in the first place, and a lack of execution in these matters will lead to, at best, increased scrutiny and, at worst, a failing business. Furthermore, over the 2020 proxy season there were five proposals directed at U.S. financial services companies asking the board to review and report on incongruities between the company's statement of purpose and its corporate governance documents, policies, practices, long-term goals, metrics, and sustainability practices. ISS did not support any of these resolutions and shareholder support was minimal, at less than 10% in each case, but the incongruities nevertheless attracted investor scrutiny. For many issuers, undertaking these actions and disclosing

[72] Insightia, "ESG ACTIVISM," https://www.activistinsight.com/wp-content/uploads/dlm_uploads/2021/06/InsightiaESGActivism-1.pdf?utm_source=newsletter&utm_medium=email&utm_campaign=greenfin&utm_content=2021-06-30.

[73] Cambridge Trust, "Environmental, Social & Governance (ESG) 2021 Trends," https://www.cambridgetrust.com/insights/investing-economy/environmental,-social-governance-(esg)-2021-trends.

[74] Willis Towers Watson, "The intersection of human capital, risk and ESG," https://www.willistowerswatson.com/en-CA/Insights/2021/03/The-intersection-of-human-capital-risk-and-ESG.

[75] BlackRock, "LARRY FINK'S 2018 LETTER TO CEOS: A Sense of Purpose," https://www.blackrock.com/corporate/investor-relations/2018-larry-fink-ceo-letter.

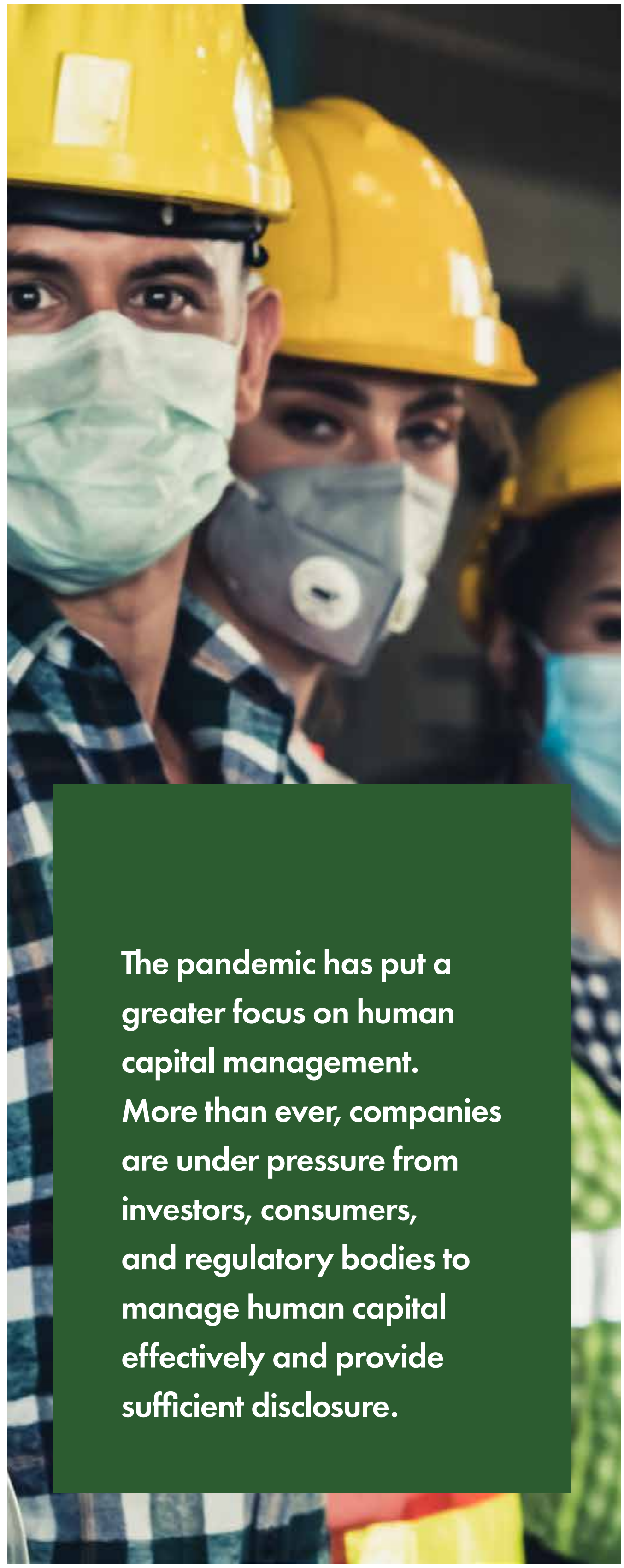
them may serve as a better alternative to a formal statement of purpose. We will see if the investor appetite for the development of a statement of purpose increases through future shareholder proposal support levels and statements from industry leaders.

The push for greater gender diversity on boards and management teams has gained traction over the past few years through numerous avenues, including groups such as the 30% Club, proxy advisor policies, custom policies of institutional investors, and regulation. We expand on the results of the diversity push in Canada later on in the report. A major regulatory development this year came in August, when the SEC approved Nasdaq's new board diversity listing requirement, which will necessitate most Nasdaq-listed company boards to include at least two diverse directors, one of which must be female. These requirements will be implemented on a staggered basis over the next four years, and the Nasdaq has stated it will be providing additional support to assist issuers in the recruitment of qualified diverse directors.[76]

Social issues are becoming more prominent within institutional investors' proxy voting guidelines. For example, RBC Global Asset Management has separate guidelines for human rights; community issues; Indigenous rights; and employee rights, diversity and relations. OPTrust has two separate sections: for labour and human rights, and for workplace diversity and discrimination. Its voting guidelines for workplace diversity and discrimination state: "Vote for proposals to adopt a policy or enhance disclosure related to prohibiting discrimination based on race, ancestry, place of origin, colour, ethnic origin, religion, age, citizenship, sex, sexual orientation, gender identity, gender expression, marital status, family status, record of offences, creed, or disability."[77] We believe that, more and more, institutions will continue to expand their guidelines and scrutiny on social issues and will expect to see adequate workplace practices and disclosure to meet these requirements.

WHAT YOU NEED TO KNOW:

There is increasing pressure for companies to keep an eye on their specific internal and external social issues such as diversity, human capital management, and product safety, and familiarize themselves with their unique set of investor expectations, as any "S" gaps could be the target of significant shareholder criticism, activism, and reputational damage.



The pandemic has put a greater focus on human capital management. More than ever, companies are under pressure from investors, consumers, and regulatory bodies to manage human capital effectively and provide sufficient disclosure.

[76] Osler, Hoskin & Harcourt LLP, "Nasdaq's new progressive board diversity listing requirement," https://www.osler.com/en/resources/regulations/2021/nasdaq-s-new-progressive-board-diversity-listing-requirement.

[77] OPTrust, "Proxy Voting Guidelines," https://www.optrust.com/documents/investments/Proxy-Voting-guidelines.pdf.

Board Stewardship

The pandemic has helped put ESG issues front and centre, especially as they relate to sustainability and inclusiveness. This increased attention puts the spotlight on company boards to oversee ESG risks. However, while the "why" of ESG oversight has been given a significantly higher level of importance, the "how" still remains an issue for investors and boards.

A great starting point for boards to move the needle on ESG and establish a more holistic view and strategy is to develop a clear goal of what they wish to achieve, namely by developing a statement of purpose. As stated earlier, companies need to evaluate their own organization to determine if a formal statement of purpose is suitable; however, an internal review of this statement at the board level is a helpful exercise to set the stage for ESG oversight at any organization. Regardless of whether it is an internal or external statement, it should set out a clear and compelling mission that aims to drive a company's efforts in creating positive impacts on the environment and society. It should acknowledge any potential negative impacts the company must mitigate to ensure it maintains a licence to operate and continues to gain public support. The initial draft statement of purpose should be undertaken by the board chair and the governance committee.

Once the company has undertaken this exercise, there are other areas the board must evaluate for ESG oversight before disclosing all of these topics and issues to investors. State Street has provided the following five questions as fundamental considerations for boards when establishing ESG oversight:[78]

1. Is our Board focused on the right issues?

The board needs to determine what the company-specific ESG issues are. For example, environmental risks will differ significantly between an oil and gas company and a software company. To help guide this baseline review, the SASB sector-specific materiality framework can be an effective tool.

2. Does our Board have the appropriate skills and governance process for effective ESG oversight?

As ESG continues to become a larger component of creating shareholder value, the board needs to critically evaluate its collective skill set and oversight processes. An example of an outcome from this evaluation is the formation of a dedicated sustainability committee.

3. Is the company taking a strategic or tactical approach to ESG?

It is paramount that the company is building an approach that integrates ESG risks into its long-term strategy, as opposed to taking a reactive, tactical response.

4. Is the company setting appropriate ESG KPIs and aligning incentives to them?

Simply talking about ESG oversight is not sufficient. Boards should be ensuring when possible that measurable ESG goals are established and disclosed, along with periodic meetings to track the progress against these goals.

[78] State Street, "The ESG Opportunity for Corporate Directors," https://www.statestreet.com/content/dam/statestreet/documents/Articles/ron-ohanley-esg-opportunity-for-corporate-directors.pdf.

5. How is your company reporting ESG Issues?

What framework is your company using to report on ESG issues? It is critical that you establish the most suitable framework for your company's specific industry.

If we take this one step further and focus just on the board stewardship of a single area of "E," i.e., climate change, below is a list of eight guiding principles for effective climate governance as outlined in the World Economic Forum's "How to Set Up Effective Climate Governance on Corporate Boards: Guiding principles and questions."[79]

Principle 1 – Climate accountability on boards

The board should be accountable for the company's long-term resilience with respect to potential shifts in the business landscape that may result from climate change.

Principle 2 – Command of the (climate) subject

The board should ensure that its composition is sufficiently diverse in knowledge, skills, experience and background to effectively debate and take decisions informed by an awareness and understanding of climate-related threats and opportunities.

Principle 3 – Board structure

The board should determine the most effective way to integrate climate considerations into its structure and committees.

Principle 4 – Material risk and opportunity assessment

The board should ensure that management assesses the short-, medium- and long-term materiality of climate-related risks and opportunities for the company on an ongoing basis.

Principle 5 – Strategic and organizational integration

The board should ensure that climate systemically informs strategic investment planning and decision-making processes and is embedded into the management of risk and opportunities across the organization.

Principle 6 – Incentivization

The board should ensure that executive incentives are aligned to promote the long-term prosperity of the company.

Principle 7 – Reporting and disclosure

The board should ensure that material climate-related risks, opportunities and strategic decisions are consistently and transparently disclosed to all stakeholders – particularly to investors and, where required, regulators.

Principle 8 – Exchange

The Board should maintain regular exchanges and dialogues with peers, policy-makers, investors and other stakeholders to encourage the sharing of methodologies and to stay informed about the latest climate-relevant risks, regulatory requirements, etc.

WHAT YOU NEED TO KNOW:

Companies should position themselves to take the necessary steps to build a robust process to incorporate all relevant areas of the ESG framework, as increased investor interest ultimately translates into additional pressure for companies to identify relevant ESG topics and provide sufficient disclosure.

Evolving Developments in ESG

Boards need to keep up with how ESG matters are developing in the market, with an eye on their individual investors as well as their unique regulators. For example, one ESG development from a regulatory standpoint this year was the final report by the Ontario Capital Markets Modernization Taskforce, which included 74 recommendations that propose to modernize governance standards and the proxy voting framework to make it easier for companies to address stakeholder concerns, increase transparency, and encourage shareholder participation.[80] The Ontario Securities Commission continues to evaluate these recommendations.

[79] World Economic Forum, "How to Set Up Effective Climate Governance on Corporate Boards: Guiding principles and questions," http://www3.weforum.org/docs/WEF_Creating_effective_climate_governance_on_corporate_boards.pdf.

[80] Capital Markets Modernization Taskforce, "Capital Markets Modernization Taskforce: Final Report," https://files.ontario.ca/books/mof-capital-markets-modernization-taskforce-final-report-en-2021-01-22.pdf.

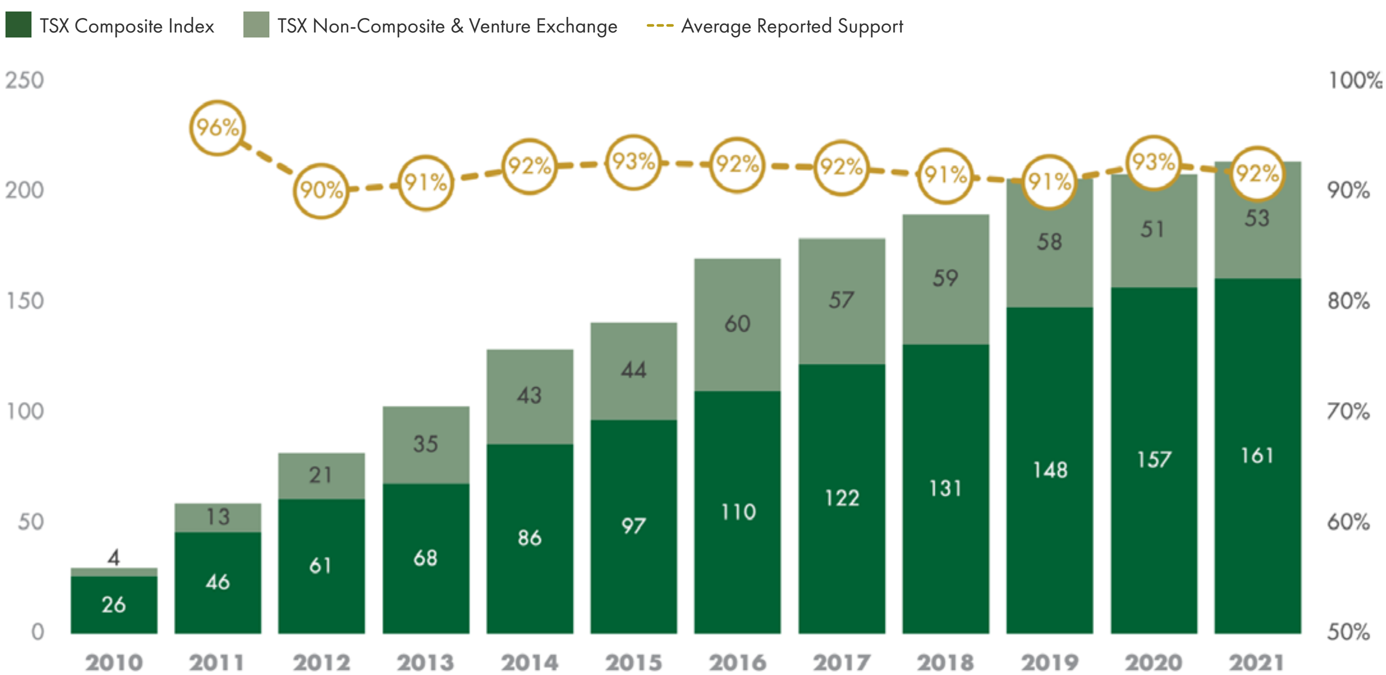
Executive Compensation

Trends in say-on-pay resolution adoption, net adoption rates, and overall shareholder support

Say-on-pay resolutions have been increasing in number every year since their introduction in Canada in 2010. During that year, there were only 30 say-on-pay resolutions, whereas we have seen 214 so far in 2021.

Of the 214 say-on-pay resolutions this year, 161 were for TSX Composite Index constituents, which represents about 69% of the number of companies in the index. The index currently has 234 constituents and contains the largest publicly listed companies in Canada, representing about 87% of the market capitalization of all publicly listed companies in the country. It has generally become a best practice for TSX Composite Index constituents to hold an annual say-on-pay vote, and many large institutional investors actively encourage all index constituents to hold these votes.

Say-on-Pay Votes in Canada



Source: ISS Governance Research & Voting.

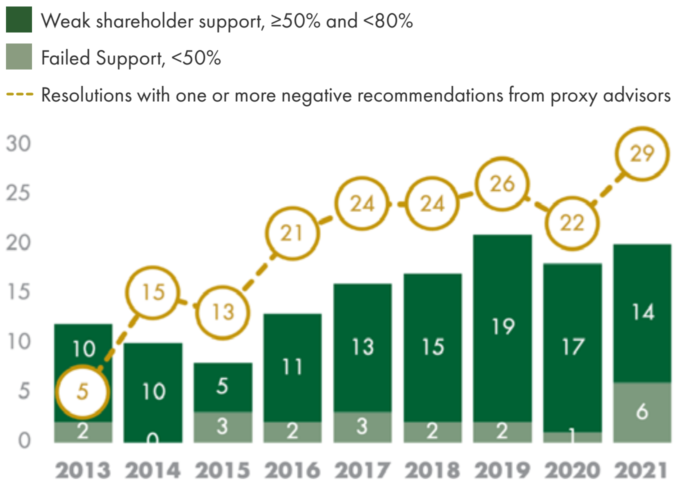
The Board Responsiveness Policy

Institutional Shareholder Services (ISS) and Glass Lewis each have a "board responsiveness policy" which indicates that companies that receive less than "overwhelming support"[81] for the say-on-pay resolution have an imperative to include additional disclosure in the next year's circular regarding:

- Whether there was any board-shareholder or management-shareholder outreach to determine the concerns of shareholders.
- A summary of which executive compensation practices caused shareholders to cast negative votes for the say-on-pay resolution.
- An assessment of the board and compensation committees of these factors.
- Whether any changes were made to address the shareholders' concerns.

[81] ISS looks for additional disclosure from the company when sharehovlder support is less than 70% of votes cast in favour of say-on-pay resolutions. For Glass Lewis, this threshold is anything less than 80%.

Say-on-Pay Resolutions Requiring a Board Response



Source: ISS Governance Research & Voting.

The number of resolutions receiving a negative recommendation from ISS, Glass Lewis, or both has been steadily increasing over time, in line with the growing number of resolutions generally. In 2021, we saw a record number of say-on-pay failures and, as discussed later, it could be concluded they are connected in some way to the pandemic. These companies will require enhanced disclosure next year regarding their response to the low support for the say-on-pay vote, or they will be subject to negative recommendations from the proxy advisors and continued low support from shareholders.

2021 Was a Unique Year in Executive Compensation

In 2020, capital markets crashed because of the uncertainty caused by the pandemic. In response, each proxy advisor issued guidance regarding their respective approaches to executive compensation based on the evolving situation (these details can be found on Laurel Hill's website), and the number of negative recommendations plummeted from previous years. It appeared as though the proxy advisors were taking a wait-and-see approach to the evaluation of executive compensation resolutions. And while many executives received significant bonuses in 2020 – which on the surface had poor optics given how stock prices had plummeted – in most cases the bonuses were paid based on the results of the 2019 fiscal year, before the onset of the pandemic.

This year was different from 2020 in several key ways:

- The uncertainty caused by COVID-19 significantly diminished. The economy adjusted in response to safety measures, and for most industries business returned to a more normal course. Hospitality and travel continued to suffer for most of 2021 but appeared to be turning around in Q3 as governments worldwide loosened restrictions.
- Markets continued to track higher throughout 2021 and exceeded the pre-pandemic levels set in February 2020.
- Many companies in industries that continued to languish because of the pandemic were offered government assistance in the form of employee wage support and other grants.
- In terms of executive compensation, many companies adjusted performance targets to incorporate some of the changes caused by COVID-19. In many cases this included:
  - the softening of annual targets;
  - changes to targets of in-flight long-term performance awards; and
  - the use of board discretion to increase payouts.

These particular adjustments to the approach to executive compensation are precisely what the proxy advisors had warned would contribute to a negative recommendation in 2021. Proxy advisors essentially took the view that if shareholders and non-executive employees suffered because of the pandemic, then so too should the executives. Adjustments to executive compensation targets to prop up bonuses in this context – even considering the exceptional efforts of executives to weather the storm – were seen as inappropriate by proxy advisors.

Below is a summary of the past three years of say-on-pay data.

	2019	2020	2021 YTD
ISS FOR	200	208	201
ISS AGAINST	6	0	13
ISS negative recommendation rate	2.9%	0.0%	6.1%
GL FOR	182	185	187
GL AGAINST	21	22	25
GL negative recommendation rate	10.3%	10.6%	11.8%
Total # of resolutions	206	208	214
Average support	90.8%	92.6%	91.6%

The number of say-on-pay resolutions in 2021 is marginally higher than last year, and so too is the average level of support. ISS and Glass Lewis both recommended that shareholders vote against more resolutions than last year. ISS recommended against zero say-on-pay resolutions last year, but recommended against 6.1% of all such resolutions this year. Glass Lewis's rejection rate was up 1.2% from 10.6% in 2020 to 11.8% in 2021. This increased level of opposition on the part of the proxy advisors is an indication of how certain companies behaved in response to the pandemic, which ran contrary to the guidance set out by each proxy advisor.

ISS and Glass Lewis Historical Negative Recommendation Rates

Since 2010, ISS has recommended voting "against" an average of 4% of all say-on-pay resolutions, whereas Glass Lewis has recommended voting "against" approximately 12% – about three times more often than ISS. While Glass Lewis has recommended that shareholders vote "against" more often than ISS, this has not translated into as much negative influence at the ballot box. The following table demonstrates the effect of a negative recommendation on voting. On average, a say-on-pay resolution with no negative recommendations will pass with an average support rate of about 94%. However, in 2021, in half of the four instances where ISS came out against the resolution and Glass Lewis was either a positive or made no recommendation, the resolution failed. Average support was about 56%. Glass Lewis had much less of an effect on voting: Of the 16 times that only Glass Lewis issued a negative recommendation, none of the say-on-pay resolutions failed, and the average support was still high at approximately 86%. In 2021, of the nine times that both proxy advisors issued negative recommendations, almost half failed, and support was well below the average, at 62%. This is about the same as when ISS issues the only negative recommendation.

In 2021, of the 211 say-on-pay resolutions ISS recommended against

2021	#	Avg. Support	# Failed	Failure Rate
No Negative Recommendations	185	94.3%	0	0%
ISS Only Against Recommendation	4	55.7%	2	50%
Glass Lewis Only Against Recommendation	16	86.2%	0	0%
Both ISS and Glass Lewis Against Recommendations	9	62.0%	4	44%

The major difference between the ISS and Glass Lewis executive compensation methodologies is that ISS focuses solely on the CEO's compensation to determine pay-for-performance alignment. As stated by ISS, this is because "that package sets the 'compensation pace' at most companies. In addition, the compensation committee and board are most directly involved in and accountable for the decisions that generate the CEO's pay."[82] In contrast, Glass Lewis focuses on pay for the top-five named executive officers at the company in determining pay-for-performance alignment.

In addition to their respective quantitative analyses to determine pay-for-performance alignment, both ISS and Glass Lewis evaluate the qualitative features of a company's pay program. Many of the qualitative features that ISS and Glass Lewis evaluate are the same (e.g., change-in-control payments, disclosure of targets and performance, nature and quantum of equity awards), although there are likely differences in how much each factor affects the final recommendation.

As a general rule, if either ISS or Glass Lewis identifies only one or two negative pay program features, and they are not particularly significant, then the qualitative review will be unlikely to result in a negative recommendation. If there are three or four negative features, then these features may contribute to a negative recommendation. In cases where there are five or more negative features, then these are often accompanied by a negative recommendation – either in connection with an identified pay-for-performance misalignment or, rarely, on the shortcomings of the pay program alone, despite adequate pay-for-performance alignment.

WHAT YOU NEED TO KNOW ABOUT PROXY ADVISOR RECOMMENDATIONS FOR SAY-ON-PAY RESOLUTIONS

In the absence of any opposition from proxy advisors, say-on-pay resolutions generally pass with high levels of support. ISS only opposes resolutions about 4% of the time, but when they do, the impact tends to be more influential. While Glass Lewis issues a negative recommendation about 12% of the time, it usually does not appear to have as much of a negative effect on voting, although there will be a noticeable drop in shareholder support. All of this is, of course, subject to each company's institutional shareholder composition and how much influence each proxy advisor has on each company's unique shareholder base.

[82] ISS Canada, Executive Compensation Frequently Asked Questions, Updated January 6, 2021, https://www.issgovernance.com/file/policy/active/americas/Canada-Executive-Compensation-FAQ.pdf.

2021 Negative Recommendations by ISS and Glass Lewis

Below is the list of companies that received one or more negative recommendations from the proxy advisors and the percentages of votes cast in favour of the say-on-pay resolutions by investors. Companies that have a dual-class share structure – that essentially makes it impossible for a say-on-pay resolution to fail because of the unequal voting power, usually concentrated in the hands of a founder or founding family – are marked with an asterisk.

Company Name	Meeting Date	ISS Rec	GL Rec	For %
Onex Corporation	2021-05-13	For	Against	94.7*
Shopify, Inc.	2021-05-26	For	Against	94.0*
Canaccord Genuity Group Inc.	2021-08-05	For	Against	93.7
ECN Capital Corp.	2021-04-01	For	Against	92.6
Western Forest Products Inc.	2021-05-06	For	Against	92.5
Taseko Mines Limited	2021-06-17	For	Against	91.1
Bombardier Inc.	2021-05-06	Against	Against	90.9*
GFL Environmental, Inc.	2021-05-19	Against	Against	90.2
Artis Real Estate Investment Trust	2021-05-21	For	Against	89.8
Martinrea International Inc.	2021-06-08	For	Against	89.6
Celestica Inc.	2021-04-29	Against	Against	87.0*
Ballard Power Systems Inc.	2021-06-02	For	Against	86.5
Aimia Inc.	2021-05-14	For	Against	86.1
Sienna Senior Living Inc.	2021-06-02	For	Against	85.5
Endeavour Mining Plc	2021-05-25	For	Against	82.3
Boyd Group Services, Inc.	2021-05-12	For	Against	81.7
Teck Resources Limited	2021-04-28	Against	For	80.2*
CAE Inc.	2021-08-11	For	Against	76.5
Cineplex Inc.	2021-05-19	Against	Against	72.5
Enghouse Systems Limited	2021-03-11	For	Against	72.3
Obsidian Energy Ltd.	2021-06-16	Against	Against	72.3
Chartwell Retirement Residences	2021-05-20	For	Against	69.5
The Bank of Nova Scotia	2021-04-13	Against	For	60.8
Precision Drilling Corporation	2021-05-13	Against	Against	42.4
Vermilion Energy Inc.	2021-04-28	Against	For	41.8
Gildan Activewear Inc.	2021-05-06	Against	Against	40.9
Chemtrade Logistics Income Fund	2021-05-26	Against	For	40.1
CI Financial Corp.	2021-06-16	Against	Against	38.1
RioCan Real Estate Investment Trust	2021-05-26	Against	Against	24.1

TSR/Executive Compensation Alignment

Many negative recommendations by the proxy advisors in 2021 cited poor stewardship by the board during the pandemic in reining in bonuses. However, another perennial factor was also cited: poor total shareholder return (TSR)/executive compensation alignment. TSR/executive compensation alignment continues to be one of the most common factors causing negative recommendations.

There are several ways that companies find themselves (either on purpose or by accident) setting target pay levels much higher than other similarly sized companies in the same industry:

- **TSR has been poor for many years, and the company has not adjusted the CEO pay package to reflect the current state of the company.** Proxy advisors generally compare the stock price performance at the company and the past few years of pay against a selected group of companies based, in part, on market capitalization. If the subject company's performance is poor over the three-year period, then the group of companies that the proxy advisors may deem to be suitable peers may be much smaller in size than the peers the subject company has set for itself. If the company continues to target the median of the peer group that was constructed before the underperformance, the proxy advisors will conclude that the executive pay is misaligned with a more current group of peers. Because of this, companies should annually review the suitability of their peer group, and from time to time redo the whole peer group based on the current size of the company. This will allow the company to understand what the median total compensation looks like for a peer group that better reflects the current state of the company, and then make decisions accordingly.
- **The company benchmarks itself against a set of companies that are much bigger in terms of market cap, revenue, and assets.** Even in the case where there has not been long-term stock price underperformance, some companies take an aspirational view of which companies they consider to be peers. While a junior tech company may produce software, it might be aspirational for it to compare itself to the likes of Microsoft or Adobe. While this is an exaggerated example, typically, potential peers of Canadian companies should have key size metrics such as market cap, revenue, and assets falling between one-quarter and four times the subject company.
- **The company benchmarks itself against primarily U.S. peers, which traditionally pay more, all other things being equal.** In Canada, ISS restricts itself to a comparison of the subject company using only Canadian peers. Glass Lewis is more flexible and often uses U.S. companies in its peer groups. Since executives in the U.S. traditionally have a higher grant date value of total compensation, any company that includes U.S. peers in its peer group will likely have a higher benchmark against which it compares itself than the benchmark set by ISS. This could lead to ISS finding a pay-for-performance misalignment despite the company's own peer group not yielding that result.

Ultimately, companies will have to decide what is best for them with respect to peer group benchmarking. Once the peer group methodology has been selected, it should be fully disclosed in the circular. This is the best opportunity for companies to explain the reasonableness of its decisions to both shareholders and proxy advisors.

WHAT YOU NEED TO KNOW:

In addition to fulsome disclosure in the circular regarding their peer group, companies should consider taking up the opportunity provided by proxy advisors to formally submit their peer group before finalizing the circular. Both ISS and Glass Lewis allow companies to send the peer group that will be included in the upcoming circular prior to the year-end. By submitting the peer group to ISS and Glass Lewis early, companies have the chance of reducing the differences between the proxy advisor's selected group of peers and their own set of peers, because the proxy advisor will take this new information into account prior to determining their peer groups.

Six Failed Say-on-Pay Votes in One Year, a New Record in Canada

The six failed say-on-pay votes in 2021 are double the previous record of three set in 2015. In 2020, there was only one failed say-on-pay vote in Canada, likely due to reluctance on the part of proxy advisors and institutional investors to make negative recommendations or cast negative votes as markets were thrown into turmoil as a result of the uncertainty due to the pandemic. However, as we gained a better understanding during 2021, resulting in less volatility in the markets, issuers were not given the same pass that they received a year earlier. Shareholders seemed ready to lean into proxy advisors' negative recommendations and make their views known at the ballot box. All six failures (Precision Drilling Corporation, Vermilion Energy Inc., Gildan Activewear Inc., Chemtrade Logistics Income Fund, CI Financial Corp., and RioCan Real Estate Investment Trust) have many factors in common. Each of the failures fell into one or more of the typical pitfalls that occur around executive compensation:

- Long-term stock price underperformance coupled with executive pay that was either flat or increasing over the period.
- Lack of disclosure regarding large, one-time payments (e.g., retirement or inducement payments).
- A peer group that was not adjusted over time to reflect the current, smaller size of the company compared to its size years ago when the group was constructed.
- Board discretion used to increase payouts despite executives not hitting pre-determined targets.

In each of these cases, the companies tended to have a lack of disclosure in their proxy circulars on the particular topic that impacted the recommendation. More specifically, the boards' rationale for each of the pitfalls laid out above was either non-existent or unconvincing. While there have been examples of similar issues at other issuers, the content of their disclosures and statements of the boards' rationale not only avoided negative recommendations from proxy advisors, but also a failed say-on-pay vote. With better disclosure, companies can provide proxy advisors and their shareholders with reasons to avoid casting a negative vote. Of course, these are not simple answers and we would recommend coupling superior disclosure with board-shareholder outreach to provide answers directly to the shareholders that might be inclined to cast a negative vote.

Beyond the Shareholder Vote

Needless to say, airline travel was, and continues to be, one of the hardest-hit industries since the start of the pandemic. Given the impact on the industry, it is not surprising one of the highest-profile say-on-pay votes in 2021 was at Air Canada. The resolution, supported by both ISS and Glass Lewis, was approved by 71% of the voting shareholders at the annual meeting. However, the optics of the executive bonuses in light of the pandemic and the government assistance that the company received resulted in the media – and consequently politicians – taking note.

Bloc Québécois MP Xavier Barsalou-Duval put forward a motion, "that this House condemn the decision of senior management of Air Canada to pay themselves $20 million in executive bonuses when they're received $6 billion in public assistance."[83] Prime Minister Trudeau called the bonuses "unacceptable."

Air Canada has found itself in the unique situation of mostly falling in line with pay practices as far as its shareholders' and proxy advisor voting policies are concerned, but the optics for the various stakeholders, including employees, taxpayers, and the Government of Canada, became problematic.

While this is a unique situation, it does illustrate the growing consideration around stakeholders and corporate purpose. We encourage directors to contemplate the optics of compensation in light of the corporate purpose and stakeholders when there are unique situations within their company.

[83] Global News, Canadian MPs unanimously condemn Air Canada for millions in executive bonuses, https://globalnews.ca/news/7918875/air-canada-executive-bonuses-covid-pandemic/.

Equity Compensation Plans

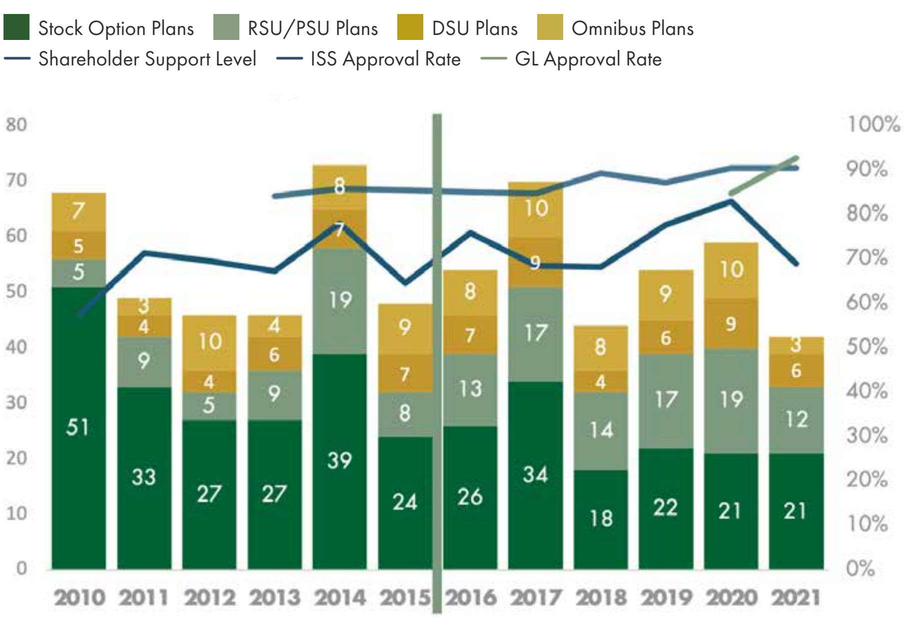
In 2021, shareholder support for equity plan resolutions at TSX Composite Index companies was significantly less than in previous years. Approximately 31% of plans in 2021 YTD received negative recommendations, which is much higher than in the past two years (2020: 17%, 2019: 22%). This appears to be a regression to the mean of ISS' historical 10-year average negative recommendation rate. From 2011 to 2020, the ISS negative recommendation rate was approximately 28%, so it may be that 2019 and 2020 were anomalies, and 2021 has simply been in line with historical recommendation rates.

Over time, TSX Composite Index constituents have been observed to be moving away from stock option plans and increasing the use of full-value awards – especially awards that vest upon the achievement of performance conditions. Full-value award plans such as RSUs, PSUs, and DSUs are generally less dilutive and less levered to increases in the underlying stock price than options. This results in payouts that are less variable than with options, and ultimately less dilution on average.

The chart below summarizes average shareholder support and ISS recommendations since 2010 and includes a vertical bar to indicate ISS' shift in analysis as of the 2016 proxy season from its older-style, rudimentary methodology to the far more complex and nuanced Equity Plan Score Card (EPSC). The EPSC assigns a score to each of a set of about 12 weighted factors, and scores over 50 out of 100 receive a passing grade (absent any overriding negative factors).

The chart also shows that average shareholder support is correlated with ISS' positive recommendation rate, which demonstrates ISS' significant impact on voting results.

TSX Composite Index Equity Compensation Plans



Sources: ISS Governance Research & Voting, Glass Lewis & Co.

Note: Only two years of data for Glass Lewis recommendations for equity plans are available to Laurel Hill.

Average Shareholder Support and ISS Positive Recommendation Rate

Source: ISS Governance Research & Voting.

Differences Between ISS and Glass Lewis Recommendation Rates

ISS and Glass Lewis have considerably different analysis methodologies for equity plans. ISS uses its EPSC, while Glass Lewis looks at a set of measures that compare the subject company to its peers. Generally, the methodologies favour the same things: lower dilution, lower shareholder value transfer, and lower burn rates – so it seems reasonable that the more conservative plans would get support from both proxy advisors and the more generous plans would be at risk of getting negative recommendations. Ultimately, the data shows that ISS and Glass Lewis recommendations for equity plans agree more than they disagree. The following table shows the vote recommendation alignment between ISS and Glass Lewis. The same recommendation indicates either two "vote for" recommendations or two "vote against" recommendations.

ISS–GL Alignment	Same Rec.	Different Rec.	Alignment	Same Rec.	Different Rec.	Alignment
	2020	2020	2020	2021	2021	2021
Stock Option Plans	18	3	86%	15	6	71%
RSU/PSU Plans	13	6	68%	7	5	58%
DSU Plans	9	0	100%	5	1	83%
Omnibus Plans	6	4	60%	2	1	67%
Total	46	13		29	13	

Unlike with the say-on-pay resolutions, ISS recommends against equity plans more frequently than does Glass Lewis.

	ISS For Recs.	GL For Recs.	Total Plans Reviewed	ISS For Recs.	GL For Recs.	Total Plans Reviewed
	2020	2020	2020	2021	2021	2021
Stock Option Plans	18	20	21	15	20	21
RSU/PSU Plans	16	14	19	7	10	12
DSU Plans	9	9	9	5	6	6
Omnibus Plans	6	7	10	2	3	3
Total	49	50	59	29	39	42

Since 2020, of the 12 negative recommendations issued by Glass Lewis for equity plan resolutions at TSX Composite Index companies, only three received a "for" recommendation from ISS. In the other nine cases, ISS also issued a negative recommendation. Based on this review, if issuers align their equity plans with the voting policies of ISS, then it is likely the plan will also be aligned with the voting policies of Glass Lewis.

ISS Global Policy Survey

In July, ISS launched its Annual Benchmark Policy Survey, which supports ISS' annual voting policy development process for 2022 and beyond. Institutional investors, public companies, corporate directors, and all other interested market constituents were invited to respond. The nature of the questions that ISS asked in the survey and the preliminary results point to possible areas in which the ISS Canada benchmark voting policy may be updated for the 2022 proxy season.

In addition to the global voting policy survey, for the first time ISS released a separate climate survey. Feedback is relevant to both ISS' benchmark and specialty climate policy evolvement and will be used to determine views on minimum criteria for boards in overseeing climate-related risks, plus market sentiment on shareholders having the right to regularly vote on a company's climate transition plans (such as an annual say-on-climate resolution).

It is expected that ISS' policy amendments will follow the same timetable as in previous years:

- October 2021 – a draft of the proposed voting policy is expected to be released for comment,
- November 2021 – the final voting policy amendments will likely be released, and
- February 1, 2022 – the new voting policy will take effect and be applied for all meetings held after this date.

This year's global voting policy survey asked respondents to provide their views on a variety of emerging and other topics related to:

- the use of non-financial ESG performance metrics in executive compensation,
- racial equity audits, and
- the continued use of virtual-only shareholder meetings.

Based on the preliminary feedback from investors, the following three changes are anticipated:

1. **Non-financial ESG Performance Metrics**
   There appeared to be significant support among capital market participants for including environmental, social, and governance (ESG) metrics in executive compensation programs as an appropriate way to incentivize executives. Respondents generally supported including ESG metrics as part of both the short-term cash incentive award annual scorecard and the long-term incentive equity award performance evaluation.

   It seems likely that ISS' quantitative analysis measures will remain unchanged by this development. In other words, the quantitative tests, namely Relative Degree of Alignment (RDA), Multiple of Median (MOM), Pay–TSR Alignment (PTA), and the Economic Value-Added Financial Performance Assessment (EVA/FPA) are likely going to continue unchanged. At this point there likely is not enough standardized numerical disclosure related to ESG to allow ISS to include an ESG factor as part of the quantitative review, although this may be an area of development in future years.

2. **Racial Equity Audits**
   A racial equity audit would provide better disclosure for companies regarding fair representation in the workforce and more information about corporate programs for employees of colour. This could also include better disclosure of diversity-related statistics and information on initiatives aimed at improving representation and opportunities for people of colour.

   Globally, the response to this survey item received a lukewarm response with a majority of respondents indicating that a racial equity audit is very company-specific or that most companies would not benefit from it.

   This matter is likely most directed to American market participants. While Canada often follows suit sooner or later with the U.S., there are major demographic and historical differences that will likely impede the rapid adoption of racial equity audits. With unenthusiastic global support for policy development in this area, it seems unlikely that ISS would amend its policy in Canada next year or in the near future to take into account this area of ESG.

3. **Virtual-Only Meetings**
During the pandemic, the Canadian market saw an unprecedented adoption of virtual-only meetings. The occurrence of virtual meetings in 2019 was low, and they generally took a hybrid format. However, once the pandemic struck, capital markets reversed course and almost the entire market held virtual-only meetings (or some other form of shareholder meeting with restricted in-person access) in 2020 and 2021. Presumably, the worst is behind us in Canada in terms of the pandemic affecting in-person gatherings, with over 80% of the adult population being vaccinated and an ample vaccine supply. Granted, the fourth wave and the Delta variant are two factors that continue to create uncertainty regarding the relaxing of in-person restrictions for the 2022 proxy season. Assuming we are permitted to hold in-person meetings in 2022, and with two full proxy seasons of experience regarding virtual meetings, ISS queried market participants about which practices would be considered detrimental or problematic.

If ISS decides to tighten up its virtual-only meeting voting policy, based on responses from market participants the following are considered the top-three most important items:

- The ability of meeting participants to ask live questions at the meeting and whether an option exists to submit questions in advance.
- Whether virtual-only meetings will allow for a Q&A session and whether questions submitted in advance will be answered during the session.
- The risk that management may be "curating" questions unreasonably to perhaps avoid tough questions.

Many smaller issuers have found that virtual-only meetings come with the extra costs of a digital meeting provider that must be employed to satisfy shareholders and proxy advisors that the virtual experience provides the same opportunity for two-way communication as an in-person meeting.

Ontario Taskforce Final Report

As noted previously, the Ontario Capital Markets Modernization Taskforce (Ontario Taskforce) published its final report in January.[84]

The final report makes 74 recommendations over six broad topics:

1. Improving regulatory structure;
2. Regulation of a competitive advantage;
3. Ensuring a level playing field;
4. Enhancing proxy systems, corporate governance, and mergers and acquisitions;
5. Fostering innovation; and
6. Modernizing enforcement and enhancing investor protection.

[84] Capital Markets Modernization Taskforce, Final Report, January 2021, https://files.ontario.ca/books/mof-capital-markets-modernization-taskforce-final-report-en-2021-01-22-v2.pdf.

Specifically, some of the recommendations that would affect governance and board composition at publicly listed companies are the following:

- **Board diversity**: Set an aggregated target of 50% for women and 30% for Black, Indigenous, and people of colour (BIPOC); persons with disabilities; and lesbian, gay, bisexual, transgender, queer, and others (LGBTQ+).
- **Director tenure:** Amend Ontario securities legislation to set a 12-year maximum tenure limit for directors, with some exceptions.
- **Mandatory say on pay:** Require all issuers to have an annual advisory vote on the board's approach to executive compensation.
- **Mandatory ESG disclosure:** Require enhanced disclosure of material environmental, social, and governance (ESG) information, including forward-looking information.
- **5% early-warning reports:** Decrease the ownership threshold for early-warning reporting disclosure from 10% to 5% for non-passive investors.
- **Mandatory universal proxies in fights:** Require the use of universal proxy ballots for all contested meetings and mandate voting disclosure to each side in a dispute when universal ballots are used.
- **Mandatory independent committees in conflicts of interest:** Amend securities law to provide additional requirements and guidance on the role of independent directors in conflict-of-interest transactions.
- **Eliminate the OBO veil:** Allow reporting issuers to obtain objecting beneficial ownership (OBO) data.
- **Mandatory majority voting:** Enshrine annual director elections and individual director voting requirements in securities law and implement majority voting in uncontested director elections.

Notable capital markets heavyweight, Ed Waitzer, former head of the Ontario Securities Commission, was not impressed by the recommendations. Waitzer described the report as "an impressive effort conspicuous for a lack of the kind of analysis you would normally find when policy recommendations are being put forward."[85] This assessment casts some doubt as to whether any of the recommendations could be implemented without further analysis by governments or commissions. In particular, any changes that would affect capital markets nationally would require a review by the Canadian Securities Administrators and each province's securities commission. The magnitude of cooperation required is a possible reason why Canada's capital markets have fallen behind by standing still.

Canadian capital-market participants have long suggested that to make Canada's capital markets more competitive on the world stage, regulatory burden should be reduced. The Investment Funds Institute of Canada said, "We strongly support the Taskforce's efforts to reduce the regulatory burden on capital markets participants ... Regulatory requirements that are no longer necessary or no longer serve their intended purposes impose costs on firms and the economy in the form of reduced resources to allocate to growth opportunities, reduced competition and reduced efficiency. All of these costs are ultimately borne by investors."[86] With so many recommendations made in the final report, however, most of which propose new rules, it is not clear how regulatory burden will be reduced to increase the competitiveness of Canadian capital markets.

So far, none of the recommendations have been acted upon and there is no clear timeline. Regardless, as noted above, these recommendations are a valuable contribution to policy through thought leadership and, hopefully, market regulators will move forward on some of them soon.

[85] Financial Post, "Terence Corcoran: This is not the market fix Canada needs," https://financialpost.com/opinion/terence-corcoran-this-is-not-the-market-fix-canada-needs.

[86] Capital Markets Modernization Taskforce, "Final Report, January 2021," https://files.ontario.ca/books/mof-capital-markets-modernization-taskforce-final-report-en-2021-01-22-v2.pdf.

Trends in Diversity in Canada

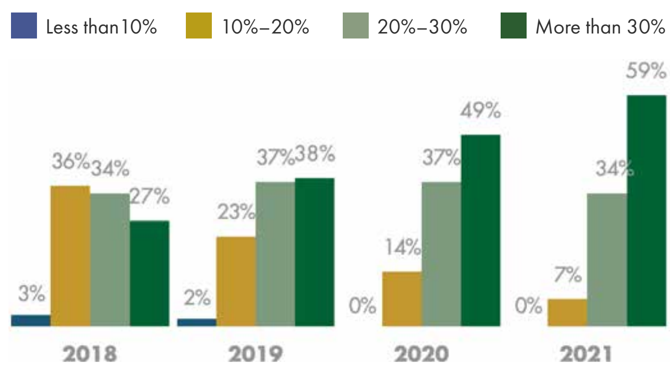
Representation of Women on Boards

When the Canadian Securities Administrators introduced the comply-or-explain regime relating to the representation of women on boards and in executive officer positions at publicly listed companies in 2013, it really got the ball rolling in terms of increasing the presence of women on boards. Since then, there has been a concerted push from various market participants to encourage public companies to improve gender diversity. Special-interest groups such as the 30% Club have been advocating for the representation of women on boards to be 30% or more for some time. Major institutional investors such as Teachers, AIMCo, BCI, BlackRock, and Vanguard have adopted voting policies relating to the representation of women. The goals were initially conservative, such as "at least one woman on the board," but have slowly ratcheted up over time with current goals ranging from "at least three women directors" to "30% or more." Proxy advisors only recently adopted diversity voting policies but now have policies that are looking for up to 30% of the board to be women for TSX Composite Index companies and as few as one woman on the boards of smaller issuers. The federal government has provided guidance for federally incorporated issuers to reach even higher targets.

The Ontario Capital Markets Modernization Taskforce has made a recommendation to increase female board representation to 50%, but that level seems to be well above the preferences of major investors, who target representation to be at least 30% of either sex.

With this level of advocacy from various sources, we have witnessed progress in the directorship rates for women in Canada. The following distribution shows that a majority of TSX Composite Index constituents now have 30% or more directors who are women, and at the moment, there are no all-male boards. Over time, it seems as though the entire index will be moving towards at least 30% female board representation.

Women on Boards (TSX Composite Index)



Source: ISS Governance Research & Voting.

CBCA and Diversity

In 2020, Corporations Canada released guidance regarding how federal distributing corporations, including venture issuers created under the *Canada Business Corporations Act* (CBCA), disclose information to shareholders on the diversity of their boards and senior management.

Corporations have to report on the representation of the four designated groups defined in the *Employment Equity Act* on their board of directors and senior management teams:

- women;
- Indigenous peoples (First Nations, Inuit, and Métis);
- persons with disabilities; and
- members of visible minorities.

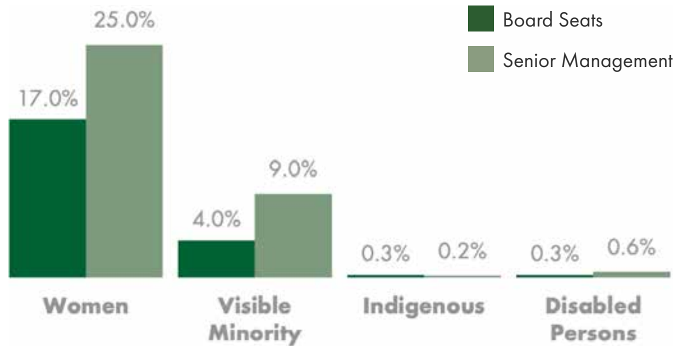
It also has to disclose information about:

- its policies and targets for the representation of the designated diversity groups, or explain why it does not have policies and targets;
- whether it has adopted term limits or other mechanisms of board renewal;
- whether it has a written policy relating to the identification and nomination of directors from the designated groups, and if so, provide a description of the policy;
- whether and, if so how, the board or nominating committee considers diversity on the board in identifying and nominating candidates for election or re-election to the board;
- whether and, if so how, the corporation considers diversity when making senior management appointments;
- whether the corporation has targets for representation on the board and among senior management for each of the designated groups and, if so, progress in achieving those targets; and
- the number and percentage of directors from each of the designated groups on the board and among senior management.

In a sample of 403 companies during the 2020 calendar year, the data shows that representation by groups other than women remains low.

While the obligation now exists for federally incorporated companies to disclose the representation of designated groups, so far it seems as though it has not moved the needle on the representation of any of those groups, aside from women as discussed above. In Corporations Canada's first report on the representation of designated groups in corporations governed by the CBCA, the report took a sample of 403 companies during the 2020 calendar year; the data shows that representation by groups other than women remains low.

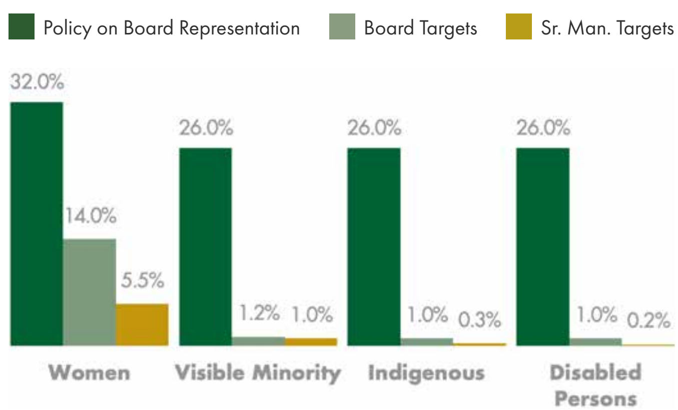
Representation of Women in Board and Senior Management Roles 2021



Source: Osler, Hoskin & Harcourt LLP.

In terms of establishing policies on diversity in representation, there seems to be significant uptake in the broader market for including the designated groups into the formal policy. However, to date, few companies have set any targets.

Policies and Targets for Board and Senior Management Representation



Source: Osler, Hoskin & Harcourt LLP.

The 50 – 30 Challenge

In December 2020, the Government of Canada launched the 50 – 30 Challenge, an initiative between the Government of Canada, business, and diversity organizations which asks that organizations aspire to two goals:

1. Gender parity (50%) on Canadian boards and in senior management; and
2. Significant representation (30%) on Canadian boards and in senior management of other under-represented groups: racialized persons including Black Canadians; persons living with disabilities (including invisible and episodic disabilities); Canadians who identify as LGBTQ2; and First Nations, Inuit, and Métis peoples, as founding peoples of Canada are under-represented in positions of economic influence and leadership.

Over 1,200 organizations across Canada have now joined the 50 – 30 Challenge. The list of companies includes some heavyweights such as Accenture, Deloitte Canada, and KPMG Canada. However, most of the signatories are special-interest groups that serve their own small demographic such as the Indigenous Chamber of Commerce, the Canadian Black Chamber of Commerce, and Canada's LGBT+ Chamber of Commerce.

The government points out there are benefits to businesses for increasing diversity, such as:

- increased likelihood of outperforming peers;
- twice as likely to meet or exceed financial targets; and
- eight times more likely to achieve better business outcomes.

In support of these indicators, the government has cited research papers such as a 2013 paper, entitled "How Diversity Can Drive Innovation," which pre-dates the large pushes in diversity (and the corresponding measurable results that would have resulted over the past decade).

It remains to be seen whether this initiative will garner any meaningful support from capital markets, as its targets already exceed the diversity targets of 30% held by the proxy advisors and large institutional investors.

In addition to regulator and government pushes for diversity, some large institutional shareholders have amended their voting policies and have been voting against chairs of nominating committees when the representation of women on the board does not meet their standard. Below is a summary of some large Canadian investors and the targets in their voting policies:

Investor	Target for Women	Targets for Designated Groups
AIMCo	25%	–
BCI	30%	–
BlackRock	No hard targets	–
Caisse de dépôt	30%	–
CPP Investments	30%	–
Fidelity	No hard targets	–
OMERS	30%	–
OTPP	30%	3.5% Black for executive officer and board
RBC GAM	30%	–

Many large investors currently have a target of 30% for the representation of women on Canadian boards. At the moment, this appears to be the limit of the appetite for target setting by Canadian investors.

Trends in

CORPORATE GOVERNANCE

2021

About Laurel Hill

Laurel Hill Advisory Group is North America's leading independent, cross-border shareholder communications and advisory firm. We provide industry-leading governance advisory, compensation advisory, strategic advisory, proxy solicitation, information agent, depositary, escrow, and asset recovery services. Our customized solutions, delivered by the industry's most experienced, multidisciplinary and collaborative team, help our clients develop and maintain market-leading governance, shareholder engagement, and activism preparedness. We are regularly engaged on the most high-profile, complex, and contentious governance, M&A, and activism situations. Our cross-border operations allow us to effectively reach shareholders regardless of their location – Canada, U.S. and globally. **We deliver results.**

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