Cassels

Outlook 2020: The Shifting Activism and Governance Landscape – Evolving Investor Demands in the New Normal

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We will all remember 2020 as being a perfect storm of societal unrest and extreme negative economic impacts triggering a sea change to our collective perspective and approach respecting the role of government in our lives, healthcare, diversity and the natural environment.

In the early part of 2020, the COVID-19 pandemic triggered global panic, a stock market meltdown, and restrictions on travel, business and our day to day lives. Governments reacted with immediate intervention of unprecedented magnitude, in the form of unique and temporal laws designed to stave off economic collapse during the frantic search for adequate emergency medical treatments pending the discovery of a vaccine for the novel virus.

With the proliferation of social media, the world also witnessed worldwide protests and a “cancel culture” designed to end systemic racism through effective boycotts. The “Me Too” movement demanding gender equality and the eradication of sexual harassment in the workplace also continued to gain steam. Added to all of this was increased and well-orchestrated activism for the benefit of traditionally oppressed persons, including BIPOC and members of the LBGTQIA2S+ community.

And what about the efforts of Greta Thunberg, our own David Suzuki, and a host of others who have drawn much-needed attention to climate change and other environmental issues through massive rallies and online media campaigns?

As capital and financial markets begin to recover, the full economic impact of the confluence of these societal and environmental events remains to be seen. However, if one thing is for certain, it’s that Canadian public companies must continue to adapt and respond to the resulting challenges and opportunities.

Conventional Approaches to Deterring Shareholder Activism are Insufficient

Traditionally, companies seeking to avoid, or at least minimize, shareholder activism have been advised to be proactive, primarily through routine and critical reviews of financial performance and executive compensation policies and programs (the historical battleground underlying shareholder activism). We suggest that such a myopic approach is unwise in these different times.

A company’s future and prospects can change overnight in the current era, based on social, political or other events and, most importantly, public perception of the company’s response to these events. Directors and officers must closely scrutinize the company’s proactiveness and leadership in addressing societal issues and ability to respond to new and evolving social issues efficiently and effectively, before any corporate blind-spots and vulnerabilities are exposed.

Institutional Investor Driven Activism on ESG Issues

Sophisticated players in the public markets are clearly seeing the benefits of assertively addressing social issues (and are attuned to the dangers of not addressing them). In fact, there has been a recent trend of aggressive activism in the public markets, some of which is specifically designed to exert pressure on companies to adopt new Environmental, Social and Governance (“ESG”) policies and conduct. Recent examples include:

- RBC Global Asset Management refers to itself as a leader in “responsible investment,” with a focus on companies with robust ESG policies;[1]
- Calvert Research and Management refers to itself as a leader in “responsible investment” and plans to raise racial equality issues as a priority for shareholder resolutions in 2021;[2]
- Glass Lewis and Institutional Shareholder Services are both influencing the voting decisions of Canada’s largest institutional investors with elaborate ESG screening;[3]
- BMO has stated that it is committed to using its capabilities as a shareholder to fight for change “from the inside,” pointing to its voting record as shareholder (BMO voted 24.5% of the time against management in North America),[4] and

- BlackRock CEO Laurence Fink warned company boards to substantially enhance their efforts to tackle climate change and said that BlackRock would be “increasingly disposed” to cast critical proxy votes tied to sustainability. Fink also indicated that BlackRock intends to sell off its positions in companies that derive more than 25% of their revenues from thermal coal production.[5]

Activism on Executive Compensation

As a result of weak company financial performance and depressed market values driven largely by the impact of COVID-19, investors and shareholders are also taking a renewed look at executive compensation. In particular, company approaches to balancing the pendulum between rewarding management performance outright and attempting to incentivize management to achieve same are in the crosshairs of activist investors:

- In April 2020, the Shareholder Association for Research and Education (“SHARE”), a leader in shareholder advocacy, research and education for institutional investors advised that they expect shareholders of publicly held corporations will be asked to vote on how the board has decided to compensate its C-Suite;[6]
- In May 2020, Teck came under pressure from an institutional investor to replace Teck’s CEO and to sell their oil business after a 58% downturn in share value over the last year;[7]
- In June 2020, Bombardier came under fire over compensation practices after terminating 2,500 employees as the pandemic took a hit on its business;[8] and
- Most recently, in September 2020, at a time when gold markets were surging (given its safe haven environment in times of upheaval), investors presented an open letter at the Denver Gold Forum calling for various changes to management compensation. The requested changes asked that performance criteria to hit certain pay levels be disclosed at the beginning of the year and that executive pay be tied more to long-term performance, rather than short time frames. The letter also called for more disclosure and accountability for boards, arguing that directors should have “more skin” in the game and in the absence of same, stricter term limits to serve on the board.[9]

We expect institutional investor driven activism on ESG issues and activism on executive compensation will trend into 2021. Companies which have critically reviewed policies and practices in dealing with the environment, racial and gender equality, and other societal issues, will be best insulated from shareholder activism. Companies that are unable to meet the evolving standards of “responsible investment” will be targeted by activist shareholders and may lose the ability to attract further investment.

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[1] RBC Global Asset Management, “2019 Corporate Governance and Responsible Investment Annual Report”, online: < https://www.rbcgam.com/documents/en/other/2019-cgri-annual-report.pdf>.

[2] “Corporate America faces heat on racial diversity; Investors want data already reported to government made public”, *National Post*, July 3, 2020.

[3] “Bombardier under fire over ex-CEO’s pay; $17.5M package”, *National Post*, June 6, 2020.

[4] “Some Big Names Out in New BMO ESG ETFs; Eight Funds”, *National Post*, January 21, 2020.

[5] “Blackrock Toughens Climate Change Stance; Fundamental Reshaping of the Future”, *National Post*, January 15, 2020.

[6] “Now is the right time to rethink executive compensation”, *The Globe and Mail*, April 9, 2020.

[7] “Can Teck Resources fend off attacks from activist funds?”, *The Globe and Mail*, May 10, 2020.

[8] “Bombardier under fire over ex-CEO’s pay; $17.5M package”, *National Post*, June 6, 2020.

[9] “To attract more investors, shareholders urge gold miners to change compensation packages”, *The Globe and Mail*, September 21, 2020.
