

Update

Corporate Securities Law

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Governance Initiatives Keep Coming - Open Letter from RiskMetrics on Individual Board Elections

RiskMetrics Group (“RMG”), a major institutional shareholder advisory group, has changed its policy concerning the election of directors to the boards of Canadian public issuers. In an open letter to all TSX-listed issuers, RMG urged the adoption of voting for directors on an individual basis (rather than on a slate basis) and indicated that starting next February it would recommend that its institutional clients withhold votes on all slates.

Canadian boards have historically been elected by slate, meaning that shareholders vote for the directors who are up for election together as a group, rather than for each director individually. Shareholders have two options: they can either vote for the entire slate or they can withhold their votes. Recently, however, an increasing number of issuers have adopted individual voting, where shareholders can vote for or withhold in respect of each director individually. According to RMG, as of December, 2008 36% of S&P/TSX Composite Index companies had slate ballots (although by June of 2009 the number had apparently declined to 25%).

This trend towards individual voting dovetails with the Canadian Coalition for Good Governance’s *Corporate Governance Guidelines for Building High Performance Boards*, which sets as one of its minimum standards that shareholders should be allowed to vote for individual directors. Further, a similar trend in favour of shareholder involvement in electing boards is visible in the United States, where the Securities and Exchange Commission has proposed new rules that would allow shareholders holding 1%, 3% or 5% of shares, depending on the size of the company, to nominate their own directors to be included in a company’s proxy materials.

RMG, like other supporters of voting for directors on an individual basis, argues that by insulating individual directors in a larger, indivisible group, slate ballots protect those directors from shareholder action (and thus from proper accountability) and prevent institutional shareholders from effectively implementing governance policies.

RMG’s open letter is further evidence of the enduring trend in favour of activist shareholder involvement and increasing governance-oriented reform. Issuers whose directors are elected on a slate basis should be aware of RMG’s new policy for the 2010 proxy season.