



KINGSDALE Advisors



THE NEW ABNORMAL:

HOW 2020 HAS CHANGED
THE FUTURE OF CORPORATE GOVERNANCE

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Unless otherwise stated, the source of data used in tables and charts in this report is Kingsdale Advisors, August 28, 2020.

Some percentage charts may not sum to 100% due to rounding.

All dollar figures are expressed in Canadian dollars unless otherwise specified.

Sector data displayed in tables and charts in this report are framed in reference to respective company's four-digit GLCS (Global Industry Classification Standard) code.

INTRODUCTION

The world has changed.

Dramatically.

And it's still changing.

Despite this, the one thing that remains a constant is good governance.

COVID-19 is ushering in a “new normal” with the pandemic significantly influencing the direction of corporate governance and activism. Additionally, the social movement behind #BlackLivesMatter, which led our Executive Chairman and Founder Wes Hall to establish the Canadian Council of Business Leaders Against Anti-Black Systemic Racism and the BlackNorth Initiative, has taken the fledgling focus upon diversity, inclusivity and equality, and pushed it to a new level.

We see 2020 as the year where the “S” in ESG – the social aspect – has been firmly placed at the forefront of governance. The social conscience of corporations is under unprecedented scrutiny with shareholders questioning:

1. How did the company address the needs of employees, clients and shareholders in response to the global pandemic?
2. How did the company help its community throughout these turbulent times?
3. How did the company take a social or political stance on critical issues?

When we break it down further, the events of 2020 have brought numerous challenges that have required directors to be nimble, including:

CRISIS MANAGEMENT

The companies managing the global pandemic best have been those with strong boards with crisis management planning in place prior to the pandemic and have made efforts during the crisis to refine their plans regularly.

HUMAN CAPITAL MANAGEMENT

Ensuring employee safety, maintaining employment levels, keeping employees engaged, and providing employees with the tools required to excel and adapt to this new normal have become critical aspects of human capital management.

DIVERSITY

Expanding diversity, beyond comply or explain when it comes to female representation, to include all forms of inclusiveness is in full force. This year you will see we have started using the term gender parity rather than gender diversity to make it clear that a goal of 30% representation of women in the boardroom should be considered just the start.

COMPENSATION

With market volatility and specific sectors looking beyond a quick fix, some are reflecting on the value of equity rewards received and ways to ensure talent retention.

CLIMATE CHANGE RISK

Minimizing an organization's environmental footprint and ensuring positive steps to combat climate change are closer to becoming institutionalized than ever before. With a plethora of disclosure frameworks available, now is the time to ensure that business practices have incorporated the appropriate actions to reduce negative environmental impact and provide shareholders with adequate reporting and measurable benchmarks.

MOVE TO VIRTUAL MEETINGS

Using technology to help adapt to unprecedented times was both logical and necessary, but will this trend continue?

SHAREHOLDER ENGAGEMENT

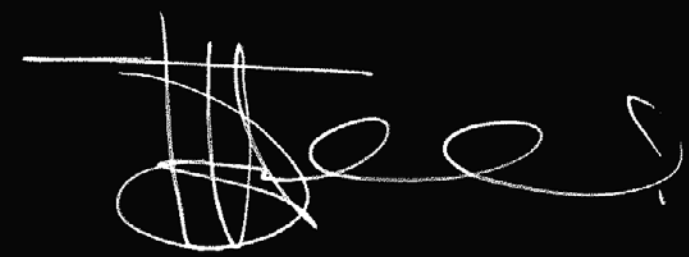
With no expectation of travel and an inability to meet in person, directors need to actively participate in virtual engagement to maintain critical communication.

Whereas in previous years a lot of focus was placed upon financial activism as the primary driver for governance changes, this year we believe a shift is occurring where a different kind of activism will influence the direction of corporate Canada: Social activism focused upon diversity, particularly as it relates to Blacks, Indigenous and People of Colour (BIPOC). In fact, we believe the pressure and focus we have seen on say-on-pay – or SOP – votes will soon be replaced by an SOD movement – say-on-diversity.

The goal of this publication is to ensure management and directors are prepared to meet these evolving challenges and optimally positioned for what comes next. Because we know so many of you are strapped for time, we have summarized the key themes in the first section of this publication. For those who are seeking more information, each of the chapters thereafter delves into more detail, including stats, examples, and Kingsdale's take.

We want to take a final moment to applaud our clients. Bravo. You have each done a tremendous job navigating these uncertain times. We will continue to be a resource as the evolution continues.

Be well.



Wes Hall
Executive Chairman
& Founder

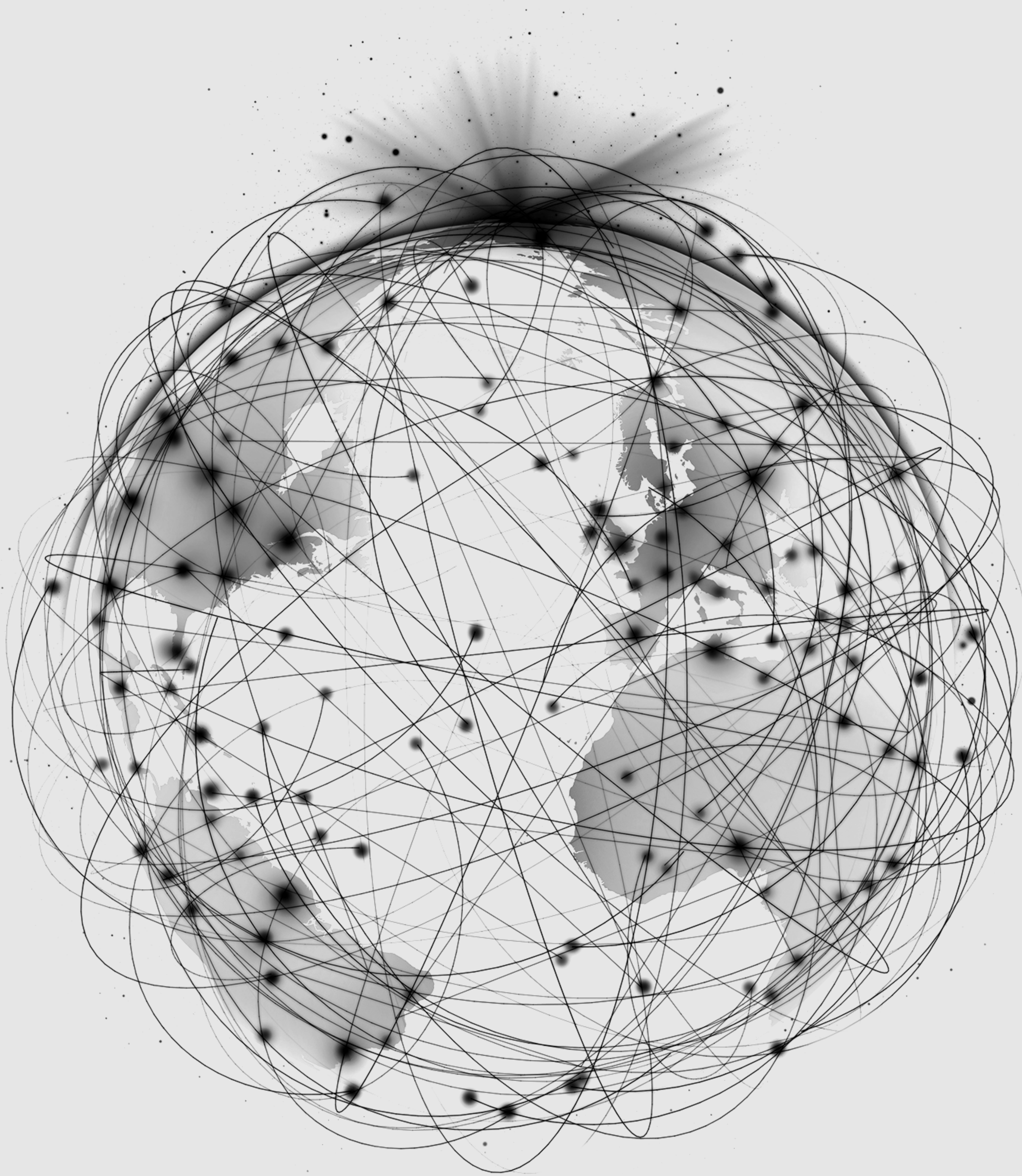


Amy Freedman
Chief Executive Officer



Ian Robertson
President, Canada

THE NEW ABNORMAL



2020's IMPACT ON THE STATE OF GOVERNANCE

HEIGHTENED FOCUS ON THE “S” IN ESG

The pandemic has shifted the ongoing Environmental, Social & Governance (ESG) conversations within the boardroom from a focus upon disclosure, reporting, and shareholder engagement to ESG integration. Kingsdale clients, even those that are mid-cap companies, have shown growing interest in ESG matters. The recent developments to combat anti-Black systemic racism have put the “S” within ESG at the forefront of these concerns, specifically spotlighting gender and racial diversity, representation, and inclusion in regard to employee health and safety and human capital management.

In a prominent example we think will be followed, in response to COVID-19, investors and the International Corporate Governance Network (ICGN), a leading authority on global standards of corporate governance led by investors responsible for AUM over US\$50 trillion, published an open letter in April urging companies to prioritize employee safety and welfare while meeting short-term liquidity requirements. Notably, New York City Comptroller Scott Stringer, the New York City pension plans, and Dutch pension asset manager APG sent a joint letter to Amazon.com, Inc.’s (NASDAQ: AMZN) board urging more transparency from the company regarding employee health and safety initiatives. The letter asks Amazon’s Leadership Development and Compensation Committee to provide more information on the objectives and process made on initiatives to deliver products to customers while keeping employees safe.

Human capital management covers all aspects of how employees are acquired, optimized, and managed at a company, ranging from pay equity and employee benefits, to workforce culture, diversity and inclusion. In recent years, the focus of human capital management in Canada has been on increasing gender diversity, and we have seen some progress, albeit mostly at the board level. Our latest analysis of TSX 60 companies shows the average percentage of women in the boardroom reached 30% this proxy season and 16.7% (10 companies) have exceeded that, while only 24 (8%) female NEOs were identified.

The global rise in protests opposing anti-Black systemic racism following the death of George Floyd has sparked an extraordinary level of response from Canadian corporate leaders. On July 20, 2020, the Canadian Council of Business Leaders Against Anti-Black Systemic Racism held the inaugural BlackNorth Initiative Summit that challenged Canadian companies to do their part to end anti-Black systemic racism by signing a CEO pledge. More than 300 organizations, representing over \$1 trillion in combined market cap, have signed the pledge committing their organizations to take specific actions and set targets designed to end anti-Black systemic racism with the goal of achieving, at a minimum, 3.5% Black representation in executives and board roles in Canada by 2025.

Companies, especially large issuers, that are slow to increase BIPOC representation, especially at the C-suite and board level, may be targeted by activists and shareholder proposals. In the U.S., we have already seen three large tech companies, namely Oracle Corporation (NYSE: ORCL), Facebook, Inc. (NASDAQ: FB) and Qualcomm, Inc. (NASDAQ: QCOM), hit with shareholder lawsuits alleging that boards failed to address diversity issues. We encourage boards to start planning now and take real, measurable actions.

COVID-19 HAS IMPACTED HOW BOARDS OPERATE

COVID-19 has changed the way boards operate during the pandemic and most likely on a go-forward basis. It has substantially increased the workload for most directors and we expect this will continue for the foreseeable future as companies recover and the economy reopens, all while a second wave could trigger another shutdown. We have seen, and expect to continue to see, shareholders maintaining a high expectation for director commitment to their boards with little sympathy for overboarding or lack of attendance at board meetings.

Additionally, the pandemic has served as a reminder of the importance of a robust crisis management plan. Taking lessons from the COVID-19 crisis, we believe boards should reassess their existing plan with a focus upon the following:

- Identify and analyze potential vulnerabilities that could affect the inherent risks of the company
- Establish roles and processes in overseeing management's handling of crisis, especially stakeholder communication
- Assign personnel with specific tasks and responsibilities, such as safeguarding reputation or mitigating legal liabilities, in case of a crisis

Lastly, we expect human capital management will become a key part of a board's responsibilities, especially for the human resources and compensation committees. A 2020 study by Ernst & Young (EY) titled, "Human Capital: Key Findings from a Survey of Public Company Directors", showed that 80% of directors see talent strategy discussion at board meetings more frequently now than five years ago and 85% would support the investment in human capital to create long-term value for the company. As human capital management is increasingly important, boards should designate the task to one of its committees to ensure proper oversight and escalation of potential issues to the board.

SAY-ON-PAY (SOP) TREND REVERSES

In a reverse of the declining support trend in recent years, 2020 has seen a record support level for SOP resolutions largely thanks to the more lenient approach taken by Institutional Shareholder Services (ISS), Glass Lewis (GL), and most institutional shareholders this proxy season due to the impact of COVID-19. The number of sub-80% SOP resolutions declined by about one-third, and no company failed its SOP vote this season, compared to three failures last year.

While it is still unclear how long the pandemic will last, shareholders should have a much better view on how well or poorly companies have managed the crisis at meetings in 2021. What we have seen this proxy season on SOP may just be the calm before the storm.

ISS AND GL ON SOP

ISS expects companies to demonstrate reasonable "responsiveness" in addressing shareholders' concerns if their SOP proposals receive less than 70% of shareholders' support, while GL's line is 80%.



EXECUTIVE COMPENSATION ADJUSTMENTS AND IMPLICATIONS

Since the pandemic began, we have observed many boards and executive teams implementing significant changes to their compensation plans amidst staff lay-offs, furloughs, and pay cuts. Among the 51 Canadian issuers that have made public disclosure of compensation adjustments:

- 45% are energy companies
- 63% announced pay reductions for both executives and board members
- 16% imposed a 100% CEO salary reduction with varying lengths of application
- Most companies (92.2%) that have a CEO salary reduction also applied salary reductions on other executives

We believe that board discretion and the application of informed judgment will play a larger role in the overall incentive program decision-making process going forward. The pandemic has highlighted that a strictly formulaic compensation program can lead to various issues down the road, such as pay-for-performance misalignment and retention of key employees, because calculated scores can sometimes fail to consider the impact of extraordinary circumstances beyond management's control.

COVID-19 and the recent movement to fight anti-Black systemic racism have put a long overdue spotlight on ESG issues, especially the social aspect, and more boards should start considering how to incorporate ESG metrics as an integral part of the incentive compensation framework, particularly employee health and safety, racial diversity, and broader social issues.

SHAREHOLDER PROPOSALS DECLINE (TEMPORARILY)

The number of shareholder proposals in Canada has declined significantly in the 2020 proxy season (from 88 in 2019 to 61 in 2020), largely driven by a less active year for the Mouvement d'éducation et de défense des actionnaires (MÉDAC), which only submitted 39 proposals – 16 fewer than last proxy season.

We do not believe the proposals from this proxy season reflect the impact of COVID-19 and the recent movement to fight anti-Black systemic racism, but we expect that to change soon with more proposals in 2021 highlighting the following issues:

- Climate change risk
- ESG and sustainability disclosure
- Human capital management
- Diversity and inclusion beyond gender
- Employee health and safety
- Cybersecurity and data privacy

DIRECTOR-SHAREHOLDER ENGAGEMENT: LOGISTICALLY DIFFICULT (OR IS IT?)

Lockdowns, border closures, travel bans and most directors being in a high-risk age group: these have all presented logistical challenges and significant risks for in-person shareholder meetings. Where we would normally recommend companies meet with key shareholders in person at least once a year, in-person meetings may not be viable for some time. Despite this, we continue to recommend that independent directors seek to engage and build close relationships with key stakeholders. There is good reason to utilize the video conferencing software that we've become acquainted with over the past six months to hold these engagements "face-to-face" and may in fact make it easier and more convenient to conduct what Kingsdale calls "virtual governance roadshows". For the same reason that in-person meetings hold value, fostering a human connection with the board increases levels of trust and allows for feedback and non-verbal cues that do not come across on an audio conference call. In addition, the lower formality of home office working has added a humanizing element to virtual engagement.

Long-term shareholders are looking to provide their point of view as owners of your company, especially in a time of crisis. They want to share their perspectives with directors and feel like something is being done to address their concerns. Other times, they are lacking confidence in the long-term strategic direction of the company or want to discuss company performance, key risks in the sector, or governance concerns. Therefore, it is necessary to provide access to independent directors; investors don't want to feel like their message is being lost or filtered through the IR department or management.

Additionally, meeting with shareholders allows you to showcase the expertise, skillsets, and diversity of your board in a way disclosure in your circular can't. It provides a firsthand opportunity to demonstrate how those characteristics relate to the needs and challenges of the company and how the board acts as a steward around perceived concerns.

Shareholders often want details regarding governance that won't necessarily be in an issuer's circular – like how compensation decisions were made and what level of discretion was exercised, scorecard metrics, evaluation process and consideration of non-financial key performance indicators (KPIs) like safety. They will also want to verify and ensure they are comfortable with a board's statements around matters like succession planning, tenure, and director education. This means directors from the compensation and governance committees should be made available whenever possible.

It is also important to recognize who you will be meeting with as it may be different than who management is accustomed to. While your IR team and CEO may speak regularly with the portfolio managers, it is the in-house governance teams who make the decisions on key proxy items. As such, a more holistic approach to engagement is needed. They will be concerned less with the company's quarterly numbers and more with governance issues and oversight.

As the world starts to chart its return to normal and the realities of living with COVID-19, companies would do well to begin making these adjustments and know that now may be as important a time as ever for a robust shareholder engagement program. Too many companies mistake a passive investment style for a passive approach to governance. 

THE NEW ABNORMAL

Chapter

1



**ESG IN
UNPRECEDENTED TIMES**

ENVIRONMENTAL, SOCIAL & GOVERNANCE (ESG) DISCLOSURE TRENDS

COVID-19 has served to accelerate the ongoing dialogue regarding ESG in the boardroom. Aside from calling for the integration of ESG criteria in senior executives' compensation, E&S-related shareholder proposals have asked companies to report on material E&S risk management. Most companies meet the challenge head-on and engage behind the scenes with shareholders regarding these issues. This requires directors to update their own ESG knowledge to meet the growing demand for – and level of specificity required by – large institutional investors. In recent years, investors have shown a growing focus upon ESG by launching E&S-related funds and incorporating E&S factors into their investment decisions.

Companies are taking note of these higher expectations. A recent study by Stakeholder Research Associates shows 71% of S&P/TSX Composite Index companies report sustainability information¹. However, it should also be noted that 40% of such companies failed their “effectiveness” test which applied two proof points: 1) Disclosure of performance against goal or targets; and 2) Use of, or reference to, global guidelines or standards, to separate effective reporting from merely interesting reporting. In other words, their disclosure was lacklustre. Effective E&S disclosure promotes comparability with industry peers by requiring companies to adopt sustainability reporting standards or frameworks, and proactively engaging with shareholders.

Currently, the U.K. and E.U. are leading the charge on promoting ESG disclosure initiatives “with teeth”. In June 2020, the U.K.’s regulatory Financial Conduct Authority (FCA) published their Climate Change Disclosure proposal requiring all commercial companies with a premium listing on the London Stock Exchange to make climate-related disclosures consistent with the approach set out by the multi-national Task Force on Climate-related Financial Disclosures (TCFD) or explain why they failed to do so. Similarly, the European Commission has published its taxonomy for sustainable finance, a classification instrument to help investors and companies determine which activities qualify as sustainable. Its primary objective is to help steer private capital to environmentally sustainable activities in the long term.

TOP INSTITUTIONAL SHAREHOLDERS PUSH FOR ESG STANDARDS

What’s become clear is if companies are unwilling or unable to get in front of rising ESG-related disclosure and risk mitigation expectations, their large investors will compel them to. Earlier this year BlackRock Inc., the world’s largest asset manager, sent letters to clients and CEOs stating they will be shifting their focus to climate risk and exiting investments that present high sustainability-related risks. BlackRock is also asking its portfolio companies to publish disclosures with industry-specific Sustainability Accounting Standards Board (SASB) guidelines by year-end and, disclose climate-related risks with TCFD recommendations. It will use these disclosures and its engagements to ascertain whether companies are properly managing and overseeing these risks within their businesses and adequately planning for a sustainable future.

In addition to BlackRock, a growing number of asset managers have committed to SASB and referenced SASB in their proxy voting guidelines, including: State Street Global Advisors, RBC Global Asset Management, CIBC Asset Management, British Columbia Investment Management Corporation, TD Bank Group, Goldman Sachs Asset Management, Neuberger Berman Group LLC, Morgan Stanley, and many more.

In a noteworthy domestic example, on July 24, 2020, Canada Pension Plan Investment Board (CPPIB) updated its policy on sustainable investing to incorporate the importance of ESG risks and opportunities on companies' competitive operating environment. CPPIB asks that, "companies report material ESG risks and opportunities relevant to their industries and business models, with a clear preference for this disclosure to focus on performance and targets." The policy embodies a clear preference that companies' reporting align with SASB and TCFD standards.

The bottom line is that while it was initially regulators who pushed for issuers to adopt higher ESG reporting standards, it is now institutional investors carrying that momentum forward.

EVOLVING REGULATORY LANDSCAPE

The North American regulatory landscape is developing more stringent ESG disclosures, mirroring European trends. In May 2020, a subcommittee of the SEC Investor Advisory Committee published five recommendations relating to ESG disclosure²:

- 1) Investors require reliable, material ESG information upon which to base investment and voting decisions
- 2) Issuers should directly provide material information to the market relating to ESG issues used by investors to make investment and voting decisions
- 3) Requiring material ESG disclosure will level the playing field between issuers
- 4) Ensuring the flow of capital to the U.S. markets and to U.S. issuers of all sizes
- 5) The U.S. should take the lead on disclosure of material ESG disclosure

In Canada, the Ontario Capital Markets Modernization Taskforce released its consultation report on July 9, 2020, seeking feedback on how to improve Ontario's capital markets with 47 policy proposals, including recommendations on ESG disclosure. The Taskforce proposed to mandate the disclosure of material ESG information which is compliant with either the TCFD or SASB recommendations for issuers through regulatory filing requirements of the Ontario Securities Commission (OSC). Where feasible, the proposed enhanced disclosure would align with the global reporting standards of both TCFD and SASB.

PROXY ADVISORS INTRODUCE NEW ESG PRODUCTS

Recognizing investors' demands for more comprehensive ESG information about their portfolio companies, ISS and GL have recently developed products designed to detail how companies rank against peers in an effort to measure and address ESG-related risk.

To complement its Governance QualityScore, ISS published its E&S QualityScore measuring the depth and extent of corporate disclosure on environmental and social issues, including sustainability, governance, and key disclosure omissions. They also launched the ISS ESG Corporate Rating to provide forward-looking ESG assessments in three respects: disclosure, performance, and controversy assessment.

In response to investors' growing requests, ISS launched a new Climate Awareness Scorecard section within its proxy voting reports. This scorecard is comprised of four segments:

- 1) "Carbon Risk Classification" at the company level based upon industry assignment and business activities
- 2) "Incident-Based Risk Exposure" related to the Paris Agreement and other universally accepted climate norms
- 3) "Current and Forward-looking Climate Performance" using indicators such as current direct and indirect greenhouse gas emissions, normalized by revenue, which reflects the climate efficiency of a company
- 4) "Climate Risk Disclosures" that are aligned with four pillars under the TCFD framework

This new addition to ISS's proxy voting reports has two underlying drivers: First, TCFD reports are required by many investors that are United Nations (UN) Principles for Responsible Investment (PRI) signatories. Beginning in March 2020, it became mandatory for these investors to report on the climate-related disclosure of their holding companies. Second, an increasing number of investors are independently seeking climate-related information for their direct and indirect engagement with issuers.

On May 5, 2020, ISS launched its new SDG Impact Rating which provides a holistic metric of impact using the UN's Sustainable Development Goals (SDGs) as a reference framework. The ISS SDG Impact Rating provides both an aggregate and thematic breakdown of products and services, operational impacts, and controversies for each of the seventeen SDGs for each issuer covered. The rating enables investors to align their portfolio with SDGs or develop investment solutions based upon specific themes, such as: biodiversity, climate, or gender equality. A new SDG Impact Index will be launched by ISS ESG in coming months.

Conversely, GL has partnered with SASB to provide sector-based ESG material factors after including Sustainalytics research and ratings. In 2020, Sustainalytics, which was acquired by Morningstar in July, updated its ESG analysis methodology through the introduction of its ESG Risk Rating. The ESG Risk Rating evaluates unmanaged ESG risk, including both the risks inherent to the company's industry as well as those that can be managed through a company's policies and programs. GL's proxy voting reports also includes how the issuer's ESG Risk Rating is positioned against its global, industry, and subindustry peers.

LANDSCAPE OF DISCLOSURE FRAMEWORKS

From an issuer's perspective, what is involved in the most popular disclosure frameworks?

SASB provides a clear set of standards for reporting sustainability information across a wide range of issues, from labour practices to data privacy to business ethics. The TCFD framework is valuable for evaluating and reporting climate-related risks, as well as related governance issues that are essential to managing them. Despite only a few industry leaders currently adopting both reporting frameworks, we have seen a steady rise in the adoption of at least one of these two prevalent frameworks.

Similar to SASB and TCFD, another framework for ESG oversight is the Global Reporting Initiative's (GRI) guidelines, which seeks to improve comparability of companies' sustainability disclosures. In comparison to the aforementioned initiatives, the audience for sustainability reporting under GRI guidelines includes all stakeholders, not just capital providers or investors. It is a more comprehensive and holistic framework that covers social, environmental, and economic factors.

TCFD FRAMEWORK

Recommendations & Supporting Recommended Disclosures

SOURCE: Final TCFD Recommendations Report, June 2017

GOVERNANCE

STRATEGY

RISK MANAGEMENT

METRICS & TARGETS

Disclose the organization’s governance around climate-related risks and opportunities.

Disclose the actual and potential impacts of climate-related risks and opportunities on the organization’s businesses, strategy, and financial planning where such information is material.

Disclose how the organization identifies, assesses and manages climate-related risks.

Disclose the metrics and targets used to assess and manage relevant climate-related risks and opportunities where such information is material.

RECOMMENDED DISCLOSURES

Describe the board’s oversight of climate-related risks and opportunities.

Describe the climate-related risks and opportunities the organization has identified over the short, medium, and long term.

Describe the organization’s processes for identifying and assessing climate-related risks.

Disclose the metrics and targets used to assess climate-related risks and opportunities in line with its strategy and risk management process.

Describe management’s role in assessing and managing climate-related risks and opportunities.

Describe the impact of climate-related risks and opportunities on the organization’s businesses, strategy and financial planning.

Describe the organization’s processes for managing climate-related risks.

Disclose Scope 1, Scope 2, and, if appropriate, Scope 3 greenhouse gas (GHG) emissions, and the related risks.*

Describe the resilience of the organization’s strategy, taking into consideration different climate-related scenarios, including a 2° or lower scenario.

Describe how processes for identifying, assessing, and managing climate-related risks are integrated into the organization’s overall risk management.

Describe the targets used by the organization to manage climate-related risks and opportunities and performance against targets.

*The GHG Protocol Corporate Standard classifies a company’s GHG emissions into three scopes. Scope 1 emissions are direct emissions from owned or controlled sources. Scope 2 emissions are indirect emissions from the generation of purchased energy. Scope 3 emissions are all indirect emissions (not included in scope 2) that occur in the value chain of the reporting company, including both upstream and downstream emissions (Source: Greenhouse Gas Protocol)

The following table provides a high-level overview of some of the leading disclosure frameworks.

LEADING DISCLOSURE FRAMEWORKS

Sustainability Reporting Framework	Primary Audience	Description
CDP (Carbon Disclosure Project)	Investors	• The gold standard for corporate environmental reporting • By annually completing CDP’s questionnaires (on climate change, forests, and water security), companies will identify ways to help manage their own environmental risks and opportunities, as well as provide vital information back to customers and investors • Companies and investors receive letter grade scores measuring environmental performance that can be benchmarked against industry peers • Companies can build shareholder trust through transparency reporting
GRI (Global Reporting Initiative) Standards	Stakeholders	• Most widely adopted global standards for sustainability reporting • Comprised of three universal standards (GRI 101, 102 and 103), followed by reporting standards on Economic (GRI 200), Environmental (GRI 300) and Social (GRI 400) impacts • Focused upon the materiality principle that assists companies in identifying their most material topics and reporting them using GRI’s topic-specific standards that are most relevant to stakeholders
FSB (Financial Stability Board) - TCFD (Task Force on Climate-related Financial Disclosures)	Investors	• Framework on disclosing climate-related risk and its financial implications that most aligns with investors’ needs • Adoptable by all organizations • Can be included in financial filings • Designed to solicit decision-useful, forward-looking information on financial impacts • Strong focus upon risks and opportunities related to transitioning to a lower-carbon economy • Four climate-related financial disclosure recommendations and seven principles for effective disclosures
SASB (Sustainability Accounting Standards Board)	Investors	• Market-informed and industry-specific standards that help companies to identify, manage, and report on sustainability topics that matter most to their investors • On average, SASB standards include six disclosure topics and 13 accounting metrics per industry • Each SASB standard provides companies with standardized quantitative—or, in some cases, qualitative—metrics intended to measure performance on each disclosure topic or an aspect of the topic. • Useful guide for companies to determine material risks based on industry • Companies can determine which disclosure topics represent financially material risks and opportunities for their business and which associated metrics to disclose, taking the company’s business model, business strategy, and relevant legal requirements into account
UN (United Nations) - SDGs Sustainable Development Goals)	Investors/ Stakeholders	• Endorsed by all 193 United Nations Member States in 2015, the 2030 Agenda and its SDGs focus global efforts and attention on 17 pressing issues • Three-step process to embed goals into existing reporting process: 1) Define priority targets 2) Measure and analyze 3) Report, integrate and implement change

KINGSDALE'S TAKE

As investor expectations continue to shift towards a more robust framework for evaluating investments, it is apparent that climate-related financial disclosures allow market participants to make more informed decisions and serve as a valuable risk assessment tool for lenders, insurers, and underwriters. To meet these rising and complex expectations, it is critical that issuers invest in improving capacity to report on ESG effectively. This means ensuring access to the correct industry data and governance teams having the necessary ESG-related education and support. By being proactive, issuers can continue to maintain strong relationships with their largest investors and a positive image within the broader investment community and potentially attract capital from those looking for strong ESG performers. Providing investors with the ESG information they need avoids the potential for negative proxy votes at AGMs, or the potential for large money managers to forgo investing in the first place due to a lack of disclosure.

It's also critical that issuers make honest and accurate disclosures. There is significant reputational risk involved in misleading or "inflated" ESG reporting. A *Financial Post* investigation in 2019³, found that several funds listed as free of fossil fuel investments on the Responsible Investment Association's (an industry group) website did in fact contain portfolio investments in fossil fuel companies. The story received widespread coverage and caused significant reputational damage for the funds named. Issuers also stand to suffer in the ISS E&S QualityScore rating, if they present incomplete or inaccurate ESG disclosure.

Kingsdale supports the TCFD initiative created by the Financial Stability Board ("FSB") as the gold standard for climate change disclosure. Currently their recommendations are supported by over 1,027 organizations representing a market cap over US\$12 trillion. Following the 2017 publication of TCFD's recommendations, many workshops have been held in Canada to address the challenges of implementation and possible solutions revolving around TCFD reporting, including: variation in climate-related data, standardizing data inputs and assumptions from a variety of sources, processes to determine materiality of climate issues, in addition to internal talent constraints.

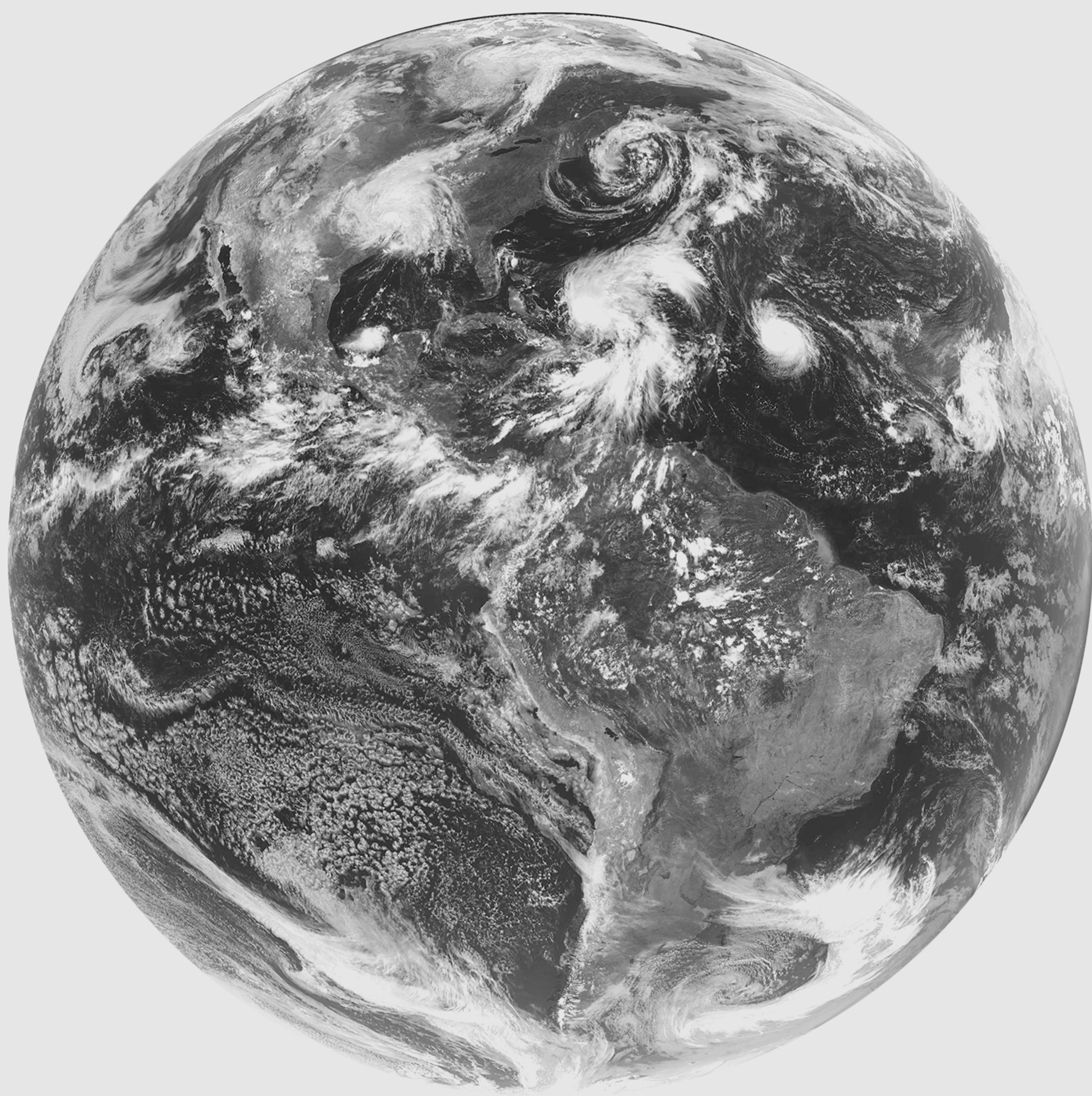
Additionally, we support the implementation of these recommendations using the framework provided by the SASB standards. These standards provide guidance on material sustainability issues that are reasonably likely to impact the financial condition or operating performance of the issuer. This would help address the concern some investors have about the practicality of universal disclosure. The widespread adoption of a standardized reporting structure will provide investors with the best possible ESG information and allow companies to accurately benchmark themselves against their peers.

When thinking of ESG, issuers should also be mindful that disclosure must be accompanied by targets and action. Similar to initiatives on gender parity, investors expect companies to use reporting as a tool to correct deficiencies or identified risks. Issuers who make little progress against ESG targets, set targets too low, or don't disclose progress at all can expect their investors to hold them accountable. 

THE NEW ABNORMAL

Chapter

2



DIVERSITY

FROM GENDER DIVERSITY TO GENDER PARITY

In 2020, 95% (57 of 60) of TSX 60 constituents have at least two women on the board, compared to 92% (55 of 60) last year. The average percentage of women on the board among TSX 60 constituents reached just over 30% this proxy season – an aspirational target set by the 30% Club, although 26 companies or roughly 43% have fallen short.

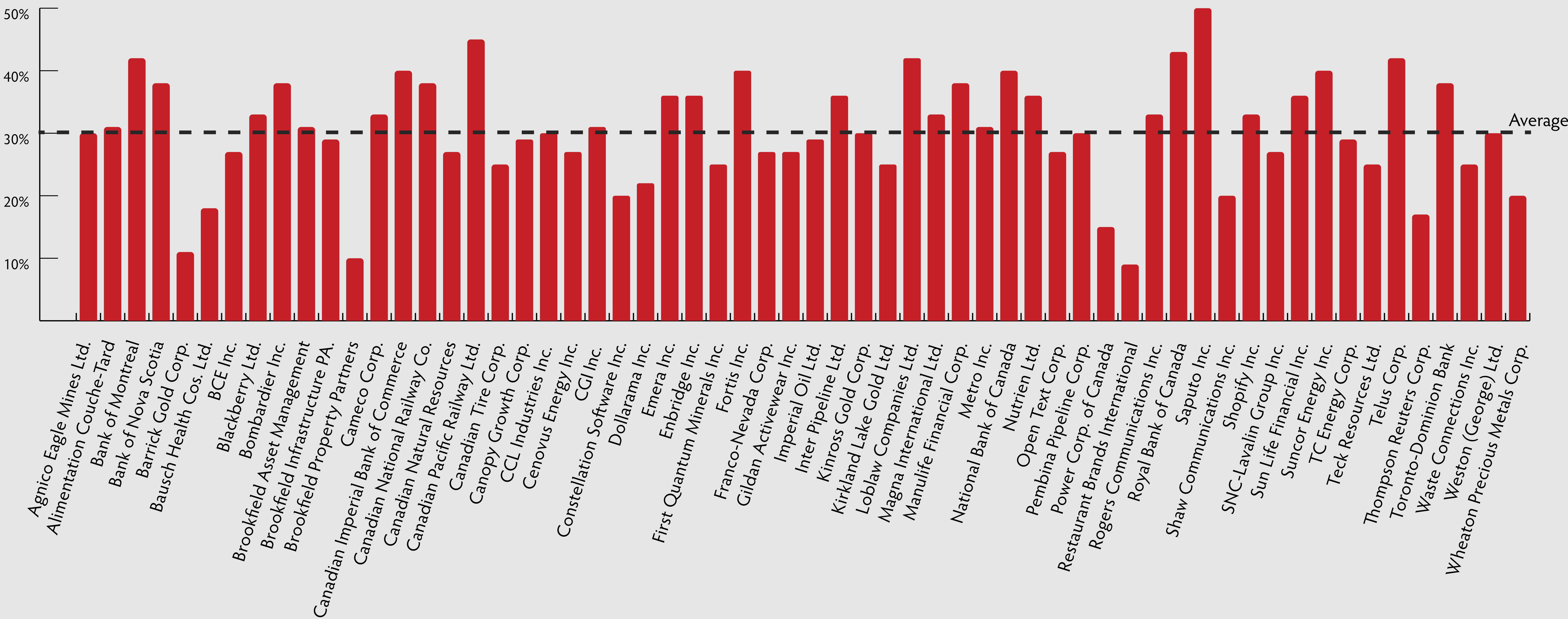
THE 30% CLUB



Established almost 10 years ago, the 30% Club aims to create gender balance on boards, recognizing that such balance drives better board performance and ultimately leads to better corporate performance for issuers and their stakeholders.

We also recognize that 10 issuers have surpassed that goal and reached at least 40%, namely: Bank of Montreal (TSX: BMO), Canadian Imperial Bank of Commerce (TSX: CM), Canadian Pacific Railway Ltd. (TSX: CP), Fortis Inc. (TSX: FTS), Loblaw Companies Ltd. (TSX: L), National Bank of Canada (TSX: NA), Royal Bank of Canada (TSX: RY), Saputo Inc. (TSX: SAP), Suncor Energy Inc. (TSX: SU), and TELUS Corp. (TSX: T).

PERCENTAGE OF FEMALE REPRESENTATION
ON BOARDS OF TSX 60 COMPANIES

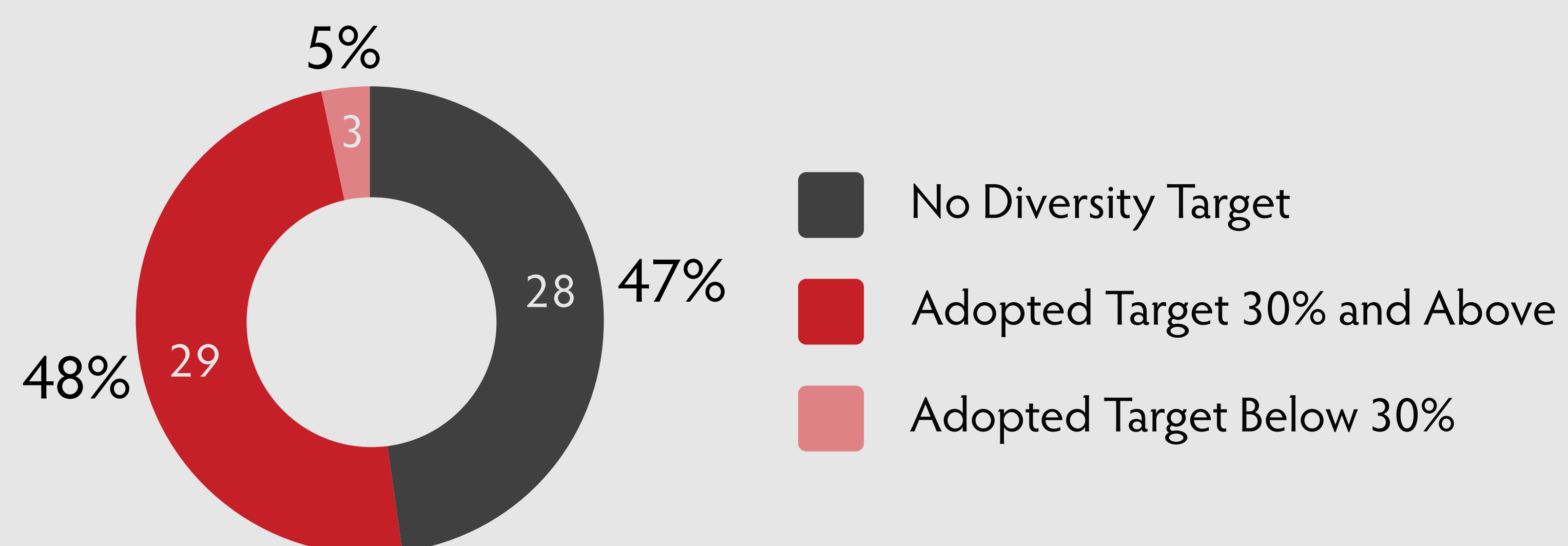


A CLOSE LOOK AT TSX 60 Gender Diversity and Parity Policies

More than half of TSX 60 companies (32 or 53%) adopted a gender diversity policy. The vast majority of these companies have adopted a target of at least 30% female representation, and only three companies have adopted a target below this level.

Nine companies (or 18%) set the board diversity target as a percentage of independent directors instead of the whole board.

**BOARD GENDER DIVERSITY AMONGST
TSX 60 COMPANIES**



*The statistics shown here reflect the target percentages adopted in the companies' policies regardless of whether such percentage is based off independent directors only or all directors.

C-Suite Representation of Women

Role	Number of NEOs
President/Head of Business Unit	4
Chief Financial Officer	5
Chief Human Resources Officer	4
General Counsel	2
Others	9

12 companies (20%) have gender diversity or parity targets for both the board and senior management where such targets range from 25% to 40%. However, only 8% (24 of 300) Named Executive Officer (NEO) positions at TSX 60 companies are held by women, of which only five are CFOs (Fortis Inc. (TSX: FTS), Kinross Gold Corp. (TSX: K), Open Text Corp. (TSX: OTEX), Shopify Inc. (TSX: SHOP), and Waste Connections Inc. (TSX: WCN)).

S&P/TSX Composite

Catalyst, a global nonprofit organization aiming to help companies to accelerate women into leadership, has recently published a study of Women in Leadership at S&P/TSX Companies in which they made the following key observations:

- Out of 234 companies that disclosed, all have at least one woman on their board and only 20% of companies have a women on board ratio below 20%
- In 2019, these companies' average women on board ratio was at 27.6% compared to 18.3% in 2015
- Comparison of S&P/TSX Composite and Non-Composite TSX companies shows that moves toward parity were driven by larger companies, while it is still progressing for other smaller cap companies

BEYOND GENDER DIVERSITY

On July 20, 2020, the Canadian Council of Business Leaders Against Anti-Black Systemic Racism held the inaugural BlackNorth Initiative Summit that challenged Canadian companies to do their part to end anti-Black systemic racism by signing a CEO pledge. With more than 30% of the companies on the TSX 60 representing almost one-third of the TSX's total market cap having now signed the pledge, this paradigm shift represents a great opportunity to examine the progress (or lack thereof) made on racial diversity in Canada and identify the challenges we are still facing and what we can do collectively to address those.

MARKET PRACTICE

What Have We Seen So Far?

Among TSX 60 companies, four companies have adopted diversity policies that go beyond gender.

Companies	Board Diversity Target	Board Diversity Disclosure*	CBCA
Cameco Corp. (TSX: CCO)	30% women directors and at least one director to have an Indigenous background and be from Saskatchewan	33% women on board - One director with an Indigenous background and from Saskatchewan 0% from visible minority group 0% from people with disabilities group	Yes
Canadian National Railway Co. (TSX: CNR)	33% women directors targeted and maintained, then move on to target 40% from "Designated groups"	38% women on board 0% from Indigenous group 0% from visible minority group 0% from people with disabilities group	Yes
Genovus Energy Inc. (TSX: CVE)	40% independent directors from "Designated groups" and three independent women directors by 2025	25% women on board 0% from Indigenous group 0% from visible minority group 0% from people with disabilities group	Yes
TELUS Corp. (TSX: T)	30% independent directors of both sexes and 30% independent directors classified as "diverse" members 30% independent directors of both sexes and 30% independent directors classified as "diverse" members ¹	42% women on board 50% from "diverse" group	No

1. TELUS will consider diversity criteria such as gender, age, ethnicity/aboriginal status and geographic background

*Source: Companies' 2020 management information circulars

In 2019, Ted Rogers School of Management's Diversity Institute published a study which determined that, among the companies analyzed, only 13 board members out of 1,639 possible seats were Black (0.79%) and only 91 board members represented other racial groups (5.55%). Similarly, *Corporate Knights* magazine conducted a study which identified that only six (0.075%) of the 799 senior executives and four (0.58%) of the 686 board members at TSX 60 companies were Black.

CBCA DIVERSITY DISCLOSURE

What Have We Seen So Far?

On January 1, 2020, the *Canadian Business Corporation Act's* (CBCA) diversity disclosure requirements (provisions of Bill C-25) came into effect, prompting CBCA companies to “comply or explain” the adoption, or lack thereof, of a diversity target. Additionally, these companies need to disclose the percentage of directors and senior management that represent each of the “Designated Groups” – female, persons with disabilities, indigenous, and visible minorities, per CBCA guidance.

CBCA REQUIREMENTS



In an effort to enhance diversity, shareholder democracy and transparency at Canadian companies, the federal government approved the provisions of Bill C-25 regarding diversity on boards of directors and among senior management.

CBCA requirements:

Effective January 1, 2020, corporations under CBCA have to either disclose information about its policies and targets for the representation of the designated diversity groups or explain why it does not have a policy and targets.

List of items to disclose:

- 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 your 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 your corporation considers diversity when making senior management appointments
- whether your 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

Senior management includes: chair and vice-chair of the board of directors; president of the corporation; chief executive officer and chief financial officer; vice-president in charge of a principal business unit, division or function (including sales, finance or production); anyone who performs a policy-making function within the corporation.

Diversity groups must include at least the one of the following: Women; Indigenous peoples (First Nations, Inuit and Métis); persons with disabilities; members of visible minorities.

Source: *Government of Canada*

Some companies go beyond these designated groups to include military veterans (e.g. Canadian Pacific Railway Ltd.) or geographic location (e.g. Cameco Corp.).

Among the TSX 60 companies, 25 (or 41.8%) are subject to CBCA disclosure, of which:

- Nine of 25 companies (36%) have at least one director from a “visible minority” group; one company (Teck Resources Ltd.) has more than 30% directors from this group
- Three of 25 companies (12%), including Cameco Corp., Nutrien Ltd., and Suncor Energy Inc., have at least one Indigenous director on the board
- Loblaw Companies Ltd. and Open Text Corp. are the only companies to have a director from the “persons with disability” group

We expect this will continue to grow as shareholders and other stakeholders push to eliminate systemic racism.

RISK AND OPPORTUNITY FOR CANADIAN ISSUERS

ISS has been sending letters to issuers seeking information on the self-identified race/ethnicity of each of the company’s directors and NEOs. In the letter, ISS acknowledged the current focus upon race and ethnicity, including by many institutional investors, and their intention to use such information to provide clients with “a more holistic picture of board and leadership diversity across their investment portfolios and, more broadly, to help ensure that all stakeholders have accurate and complete information as they consider the wider debate concerning the state of corporate diversity beyond gender.”

The topic of diversity (gender, racial, and more) will be one of the focal points in shareholder engagement this year and moving forward. Companies that are slow to take appropriate actions will attract scrutiny from shareholders and the general public, and be vulnerable to activist attacks. Notably, a shareholder of Oracle Corporation recently filed a lawsuit noting the company’s lack of African American directors and asserting that, “the directors have breached their duty of candor and have also violated the federal proxy laws.” The law firms that filed the Oracle lawsuit also filed against Facebook’s board due to their failure to address diversity and inclusion issues, including racially discriminatory practices in its workplace and lack of action towards hate speech in its platform. Qualcomm was also hit with a similar lawsuit alleging directors violated their duties by failing to include African American members either on the board or at the executive level.

Despite the recent progress on gender diversity, though still well short of gender parity, if the latest push for racial diversity follows a similar trajectory, it is difficult to imagine that we will achieve meaningful results any time soon. A better approach is needed to drive real and sustainable changes, and we should approach this problem the same way as we deal with other business issues – set measurable targets with clear timelines and hold ourselves accountable. More importantly, all initiatives and policies should have input from underrepresented groups, particularly those in the BIPOC community.

KINGSDALE'S TAKE

As a start, we believe boards should be reviewing their existing practices and taking proactive measures to foster a culture of inclusion and diversity. Outlined below are some practical tools for consideration:

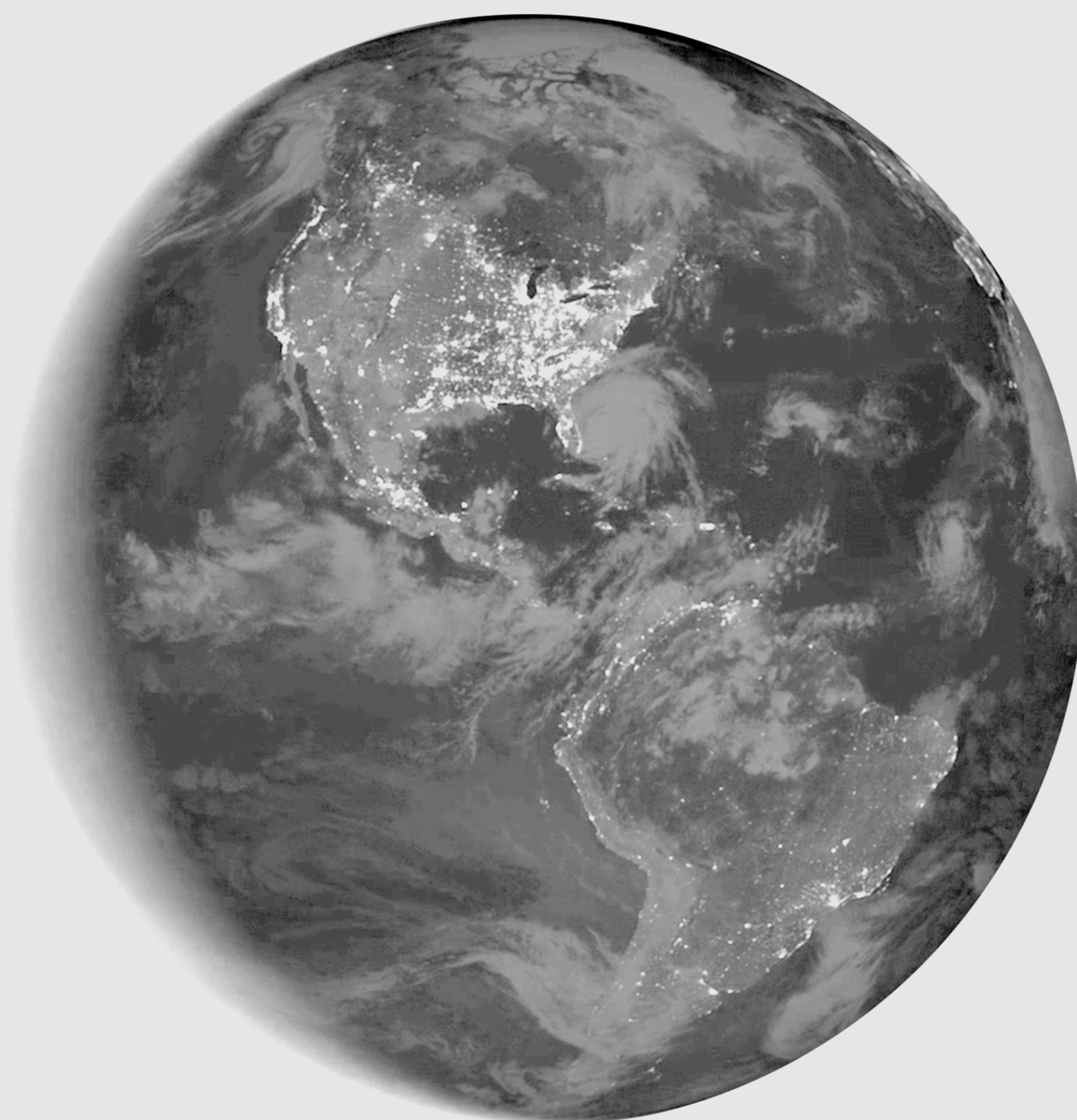
- Adopt a target for BIPOC representation at both the board and leadership level with a specific timeline and action plan. As an example, the BlackNorth Initiative set a goal of 3.5% executive and board roles to be held by Black leaders by 2025.
- Provide disclosure on the percentage of directors and senior management that represent BIPOC, and other related policies, practices, and actions to increase BIPOC representation throughout the organization.
- Critically review existing policies and practices at an enterprise level including mission statements, and regularly measure progress made.
- Establish a targeted recruitment program from the bottom up (e.g. minimum 5% Black students for internship and co-op programs) supported by an enterprise-wide succession planning strategy.
- Advertise open positions in ethno-specific publications and partner with ethno-cultural organizations to inform available positions.
- Perform a 360° internal and external assessment and communicate with all stakeholders regarding the organization's commitment and action plan in addressing diversity-related issues, with a particular focus on the BIPOC community. If the board has formed a diversity committee, such committee, and the chairman of the board, should drive such engagement efforts and ensure consistency in communications.
- Review the skills matrix of incumbent directors to identify gaps and opportunities, and ensure succession planning is up to date to support potential new board opportunities, including a pipeline of BIPOC candidates for consideration when a seat becomes available.
- Establish an Executive Diversity Council and ensure cross-sectional representation across all levels within the organization and develop a bottom-up plan to ensure BIPOC talent has equal opportunity to move up into leadership roles.
- Incorporate key metrics in executives' incentive compensation programs – for those who have already linked ESG metrics to compensation, ensure that there are specific and measurable goals tied to diversity, specifically Black representation.
- Provide regular education and training sessions to both directors and employees designed to raise general awareness and foster a safe-to-speak-up environment.

Recent developments and pledges to combat anti-Black systemic racism have driven Canadian companies to examine their existing diversity policies and practices. Companies, especially large issuers, that are slow to adapt risk being scrutinized by both Bay Street and society at large. Diversity is not a new concept, but lack thereof will no longer be tolerated. In fact, we predict that companies who are slow to increase BIPOC representation, especially at the C-suite and board level, will be targeted by activists and shareholder proposals. Specifically, like SOP a decade earlier, we expect SOD – say on diversity – votes to become commonplace in the market. We encourage boards to start planning now and take real, measurable actions. 

THE NEW ABNORMAL

Chapter

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**SHAREHOLDER
PROPOSALS**

SHAREHOLDER PROPOSAL SNAPSHOT

We have seen a decline in the number of shareholder proposals in Canada this proxy season, from 88 proposals targeted at 35 issuers in 2019 to 61 proposals targeted at 22 issuers, driven by a significant decrease in executive compensation and board-related governance proposals (from 34 and 17 in 2019 to 17 and seven in 2020, respectively). This is consistent with the numbers we have seen in the U.S. market, as ISS identified only 29 compensation-related proposals among Russell 3000 Index companies – a significant decline from 2019 (37) and the lowest number of such proposals since mandatory SOP began in 2011. The decline in Canada can be largely explained by a less active year for MÉDAC, who only submitted 39 proposals – 16 fewer than during the 2019 proxy season.

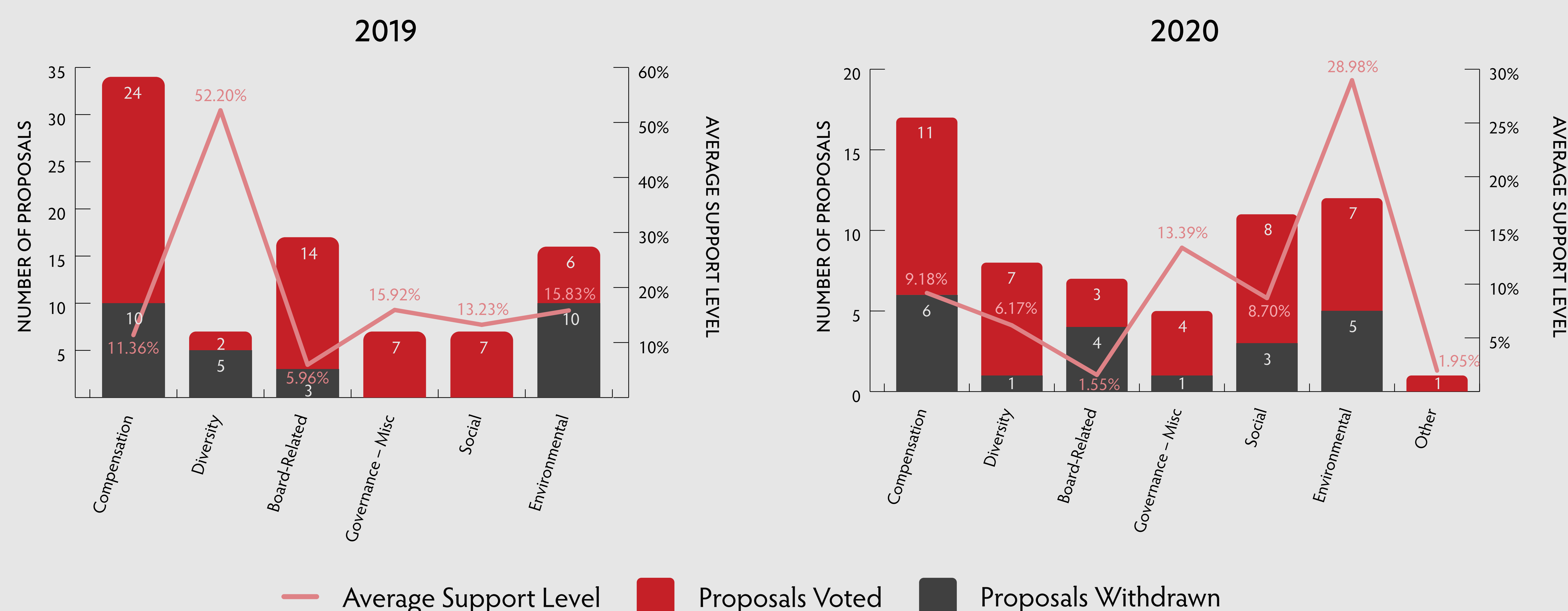
Of the 61 proposals, 33% were withdrawn, similar to the 32% withdrawal rate observed in 2019. Two proposals received support from the majority of shareholders, both being environmental proposals targeting iA Financial Corporation Inc. (TSX: IAG) and outlined within the table below:

IAG SHAREHOLDER PROPOSAL OVERVIEW

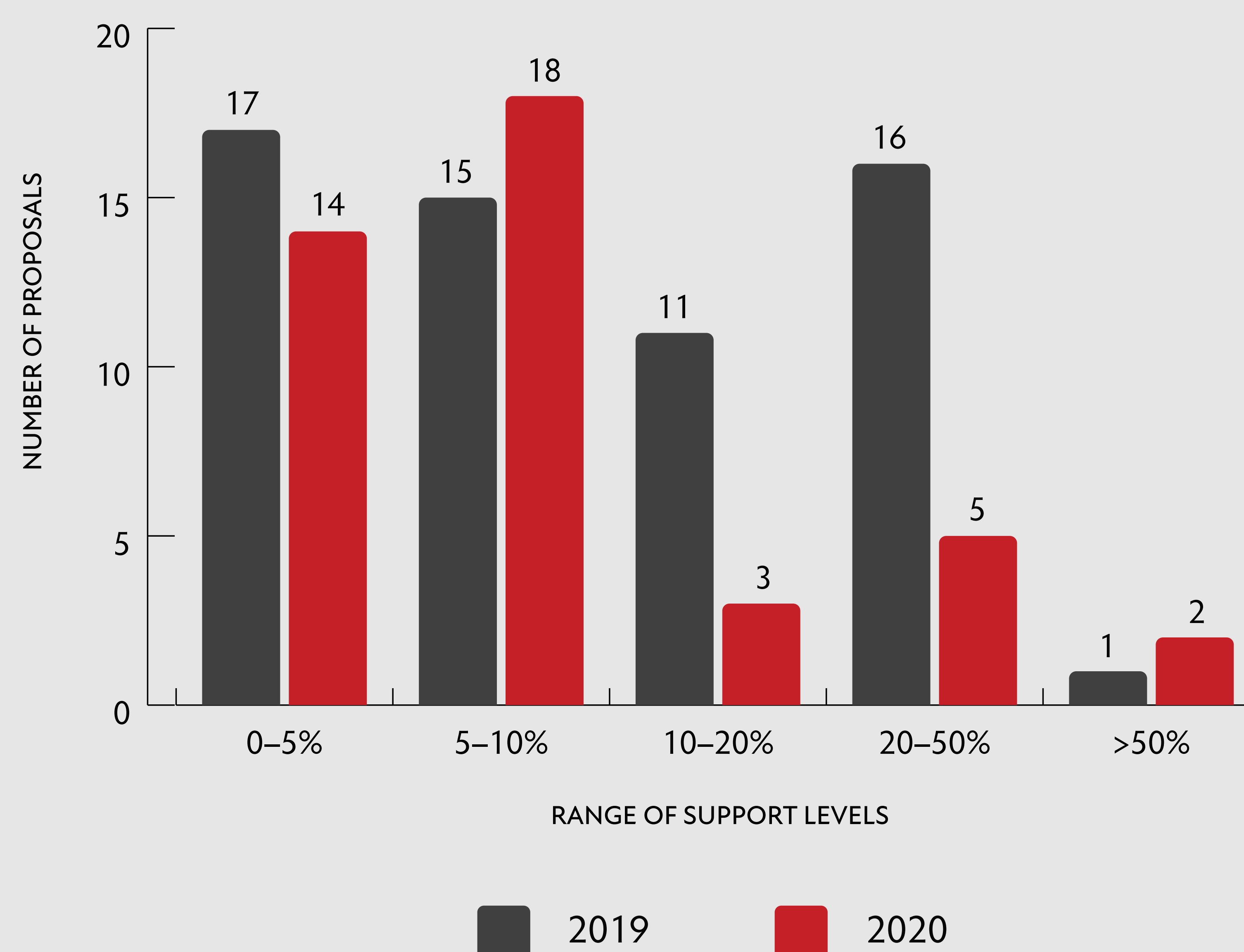
Shareholder Proposal	Support	Mgmt Recommendation	ISS Recommendation	GL Recommendation
Analyze Climate Risk and Report the Results of Its Analysis	73.6%	✗ AGAINST	✓ FOR	✓ FOR
Adopt Measured Environmental Impact Reduction Objectives With Clearly Identified Targets in Its Sustainable Development Policy	60.7%	✗ AGAINST	✓ FOR	✗ AGAINST

While the overall number of proposals declined from last year, we have seen a rise of environmental and social related proposals as a percentage of all proposals submitted this proxy season (from 26% to 38%).

SHAREHOLDER PROPOSALS BY CATEGORY



SHAREHOLDER PROPOSALS SUPPORT LEVEL



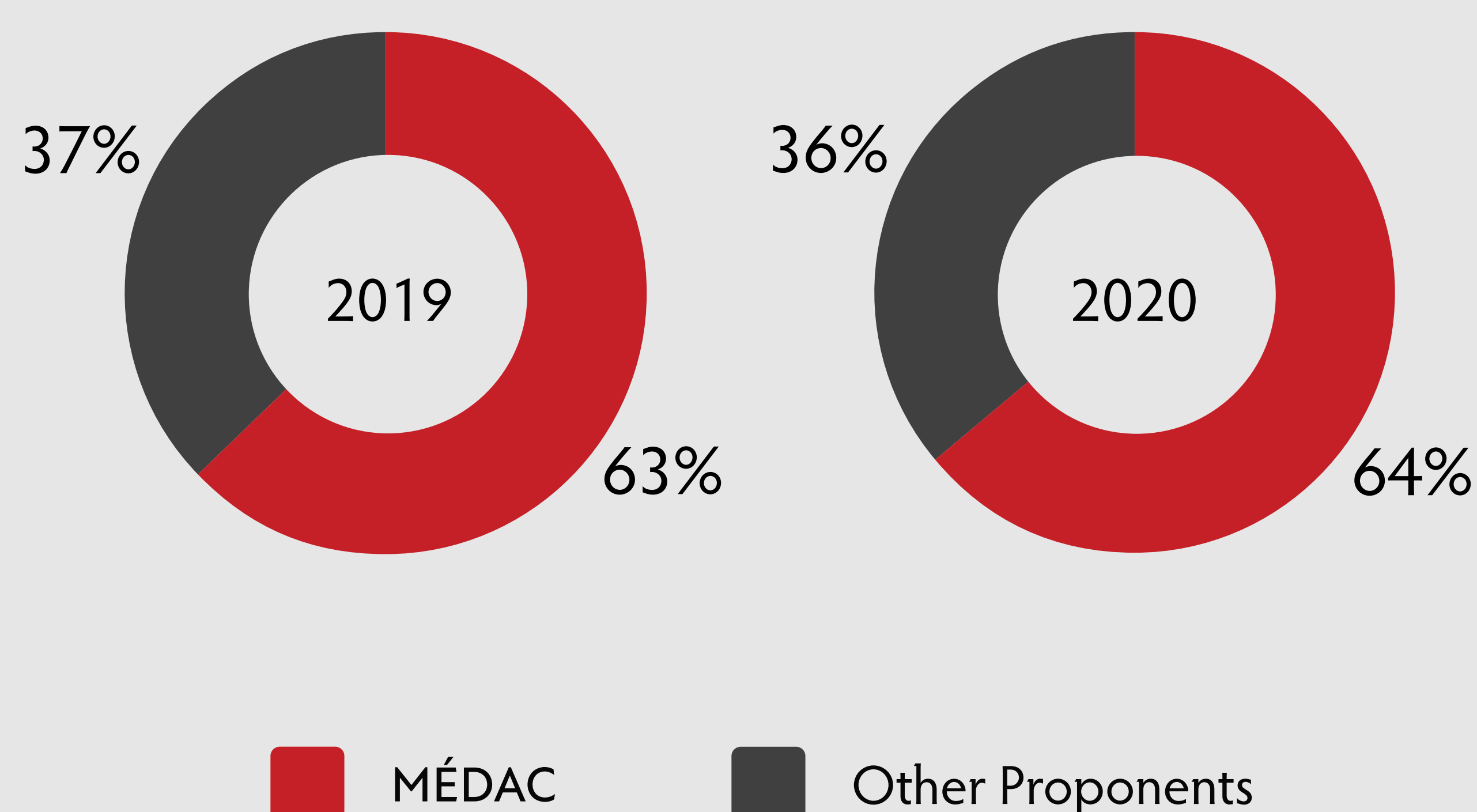
The number and percentage of proposals that received more than 10% shareholder support also declined compared to last season.

SHAREHOLDER PROPONENTS

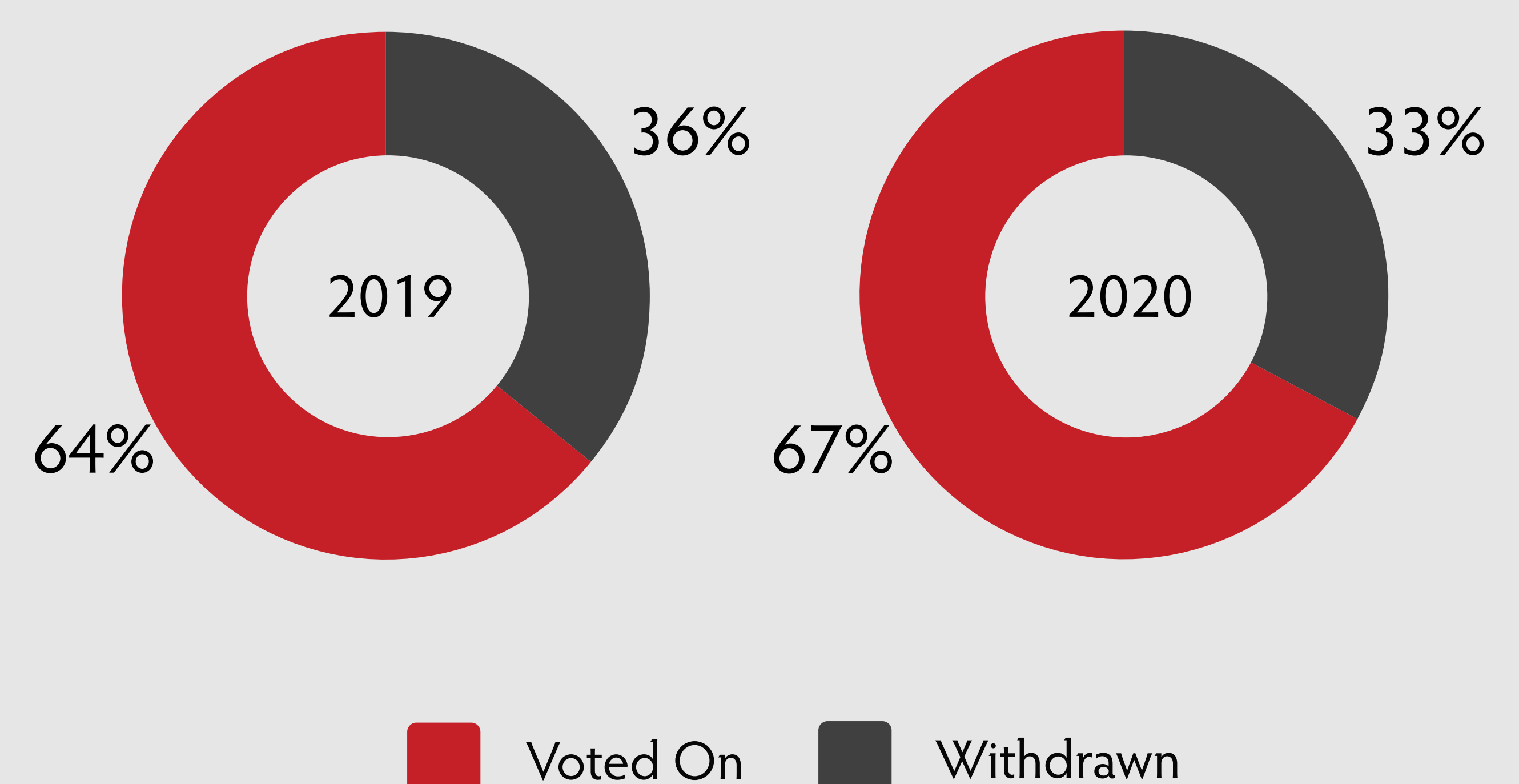
Zoom in on MÉDAC

As the biggest advocate for shareholders and accounting for more than half the proposals submitted, MÉDAC warrants further examination. Despite a lower number of submitted proposals on a year-over-year basis, MÉDAC continues to be the most active voice on a broad range of issues. In 2020, 64% of all shareholder proposals were submitted by MÉDAC, a similar rate compared to last season (63%). Apart from compensation-related proposals, the most common of MÉDAC's proposals (36%), we observe a sharp increase in the number of proposals with respect to gender diversity and cybersecurity, both types of proposals were submitted to eight companies in 2020. Similar to last year, 62% of these proposals were targeting leading financial institutions and the rate of withdrawals remained largely the same (around one-third) but the average support level for voted shareholder proposals declined from 11.3% in 2019 to 7.6% in 2020.

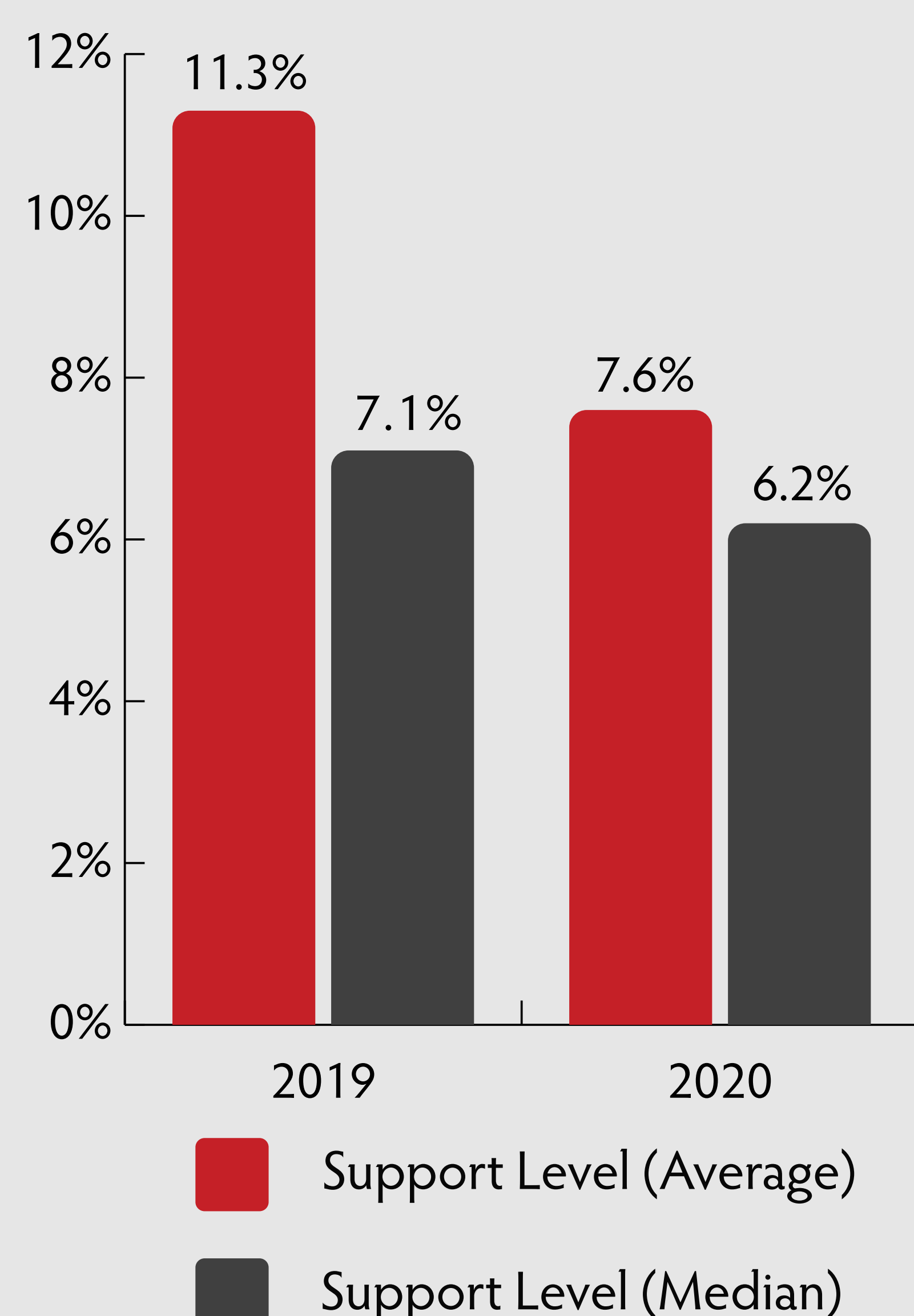
PROPONENTS OF SHAREHOLDER PROPOSALS



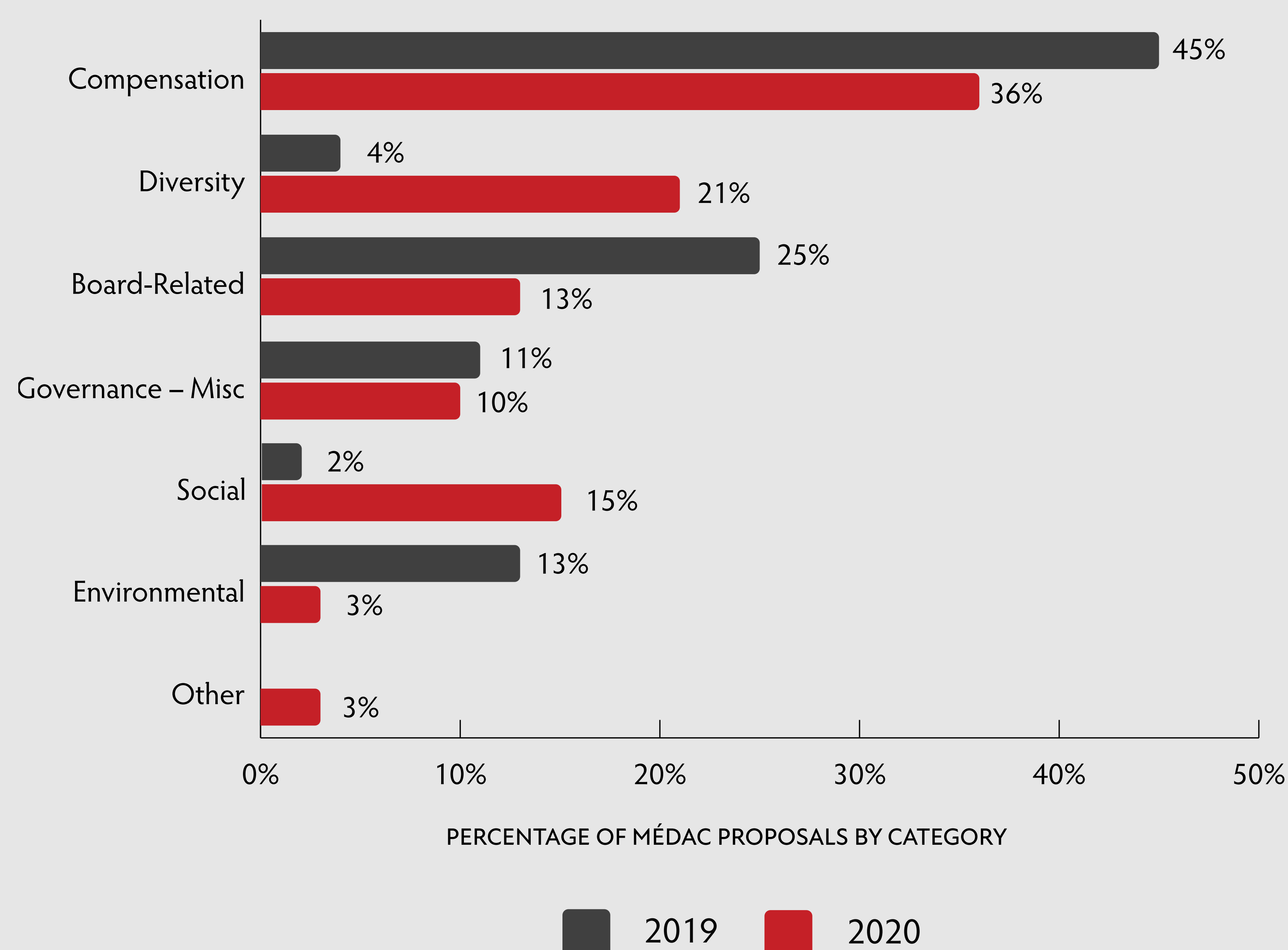
MÉDAC PROPOSALS OUTCOME



MÉDAC PROPOSALS SUPPORT LEVEL



PERCENTAGE OF MÉDAC PROPOSALS BY CATEGORY



NOTABLE SHAREHOLDER PROPOSALS

From Gender Diversity to Gender Parity

MÉDAC's proposals targeted at large Canadian banks ask to set a female representation target of more than 40% for their board of directors over the next five years. All the big five banks: Royal Bank of Canada (TSX: RY), The Toronto-Dominion Bank (TSX: TD), Bank of Nova Scotia (TSX: BNS), Bank of Montreal (TSX: BMO), and Canadian Imperial Bank of Commerce (TSX: CM), plus National Bank of Canada (TSX: NA) and Laurentian Bank of Canada (TSX: LB) which was withdrawn – received this proposal for their 2020 AGMs.

The proposed target of 40% is higher than the aspirational target set by the 30% Club⁴. Interestingly, the existing practice at all large Canadian banks already exceeds the 30% goal, which is ahead of the 2022 targeted timeline. However, this proposal has received limited support (average support was 6.4% at all Canadian

Large Canadian Banks	% of Female Representation Among Independent Directors	Target Adopted
Royal Bank of Canada	46%	At Least 30% – Women
Toronto-Dominion Bank	42%	At Least 30% – Both Sexes
Bank of Nova Scotia	42%	At Least 30% – Both Sexes
Bank of Montreal	45%	At Least 33% – Both Sexes
Canadian Imperial Bank of Commerce	43%	At Least 30% – Both Sexes
National Bank of Canada	43%	At Least 30% – Women
Laurentian Bank of Canada	50%	At Least 30% – Both Sexes

banks) and both ISS and GL recommended against this proposal due to the prescriptive nature of the proposal and the fact that the banks' existing practice already exceed such targets.

Cybersecurity

Cybersecurity has emerged as a necessary component of modern finance, especially in light of how the pandemic has forced remote working. Canada's spy agency (CSIS) has issued a warning indicating an observed increase in cyberattacks aimed at pharmaceutical companies and among university researchers, and focused upon their COVID-19-related activities. A recent study from the Bank of Canada showed similar findings and concluded that, "cyber incidents are more common in the financial sector." In fact, the Canada Revenue Agency (CRA) was affected by three separate cybersecurity incidents in August 2020 that appeared to target pandemic support payments, indicating this increase has already begun.

Against the backdrop of the rising cybersecurity concern, we have seen MÉDAC submit proposals targeted at six banks to update computer systems to improve competitiveness and protection of personal information, two of which were withdrawn. While the support from shareholders was limited, this marks the first year in which data security– and privacy–related proposals went to vote at Canadian issuers.

Say on Sustainability (SOS)

Earlier this year, a client of ours in the industrials sector received a first of its kind proposal in Canada. A shareholder proposal from its largest shareholder requested an advisory vote on the company's approach to climate matters. By promoting sustainability disclosure regarding; metrics, targets, capital expenditure, and progress reporting, institutional shareholders are looking to enhance their climate change stewardship of portfolio companies.

While the SOS proposal was not put to a vote, we expect it will reappear in the upcoming proxy season. These measures will likely become widely implemented and, in addition to the adoption of ESG reporting best practices, companies should prepare to actively engage with their shareholders on climate change initiatives and company-specific sustainability matters.

WHAT TO EXPECT IN 2021

Due to the timing of 2020 meetings and greater leniency from shareholders to allow companies to prioritize crisis management, we do not believe this proxy season's proposals reflected the impact of COVID-19 and fight against anti-Black systemic racism. However, proposals pertaining to these issues will likely begin hitting public issuers in 2021. Specifically, we expect to see a rise in the following:

- Climate change risk
- ESG and sustainability disclosure
- Human capital management
- Diversity and inclusion beyond gender
- Employee health and safety
- Cybersecurity and data privacy

Boards should start their review process now to identify areas of improvement on these policies and practices, and develop plans to engage with top holders, and/or proxy advisors ahead of the 2021 proxy season. 

THE NEW ABNORMAL

Chapter

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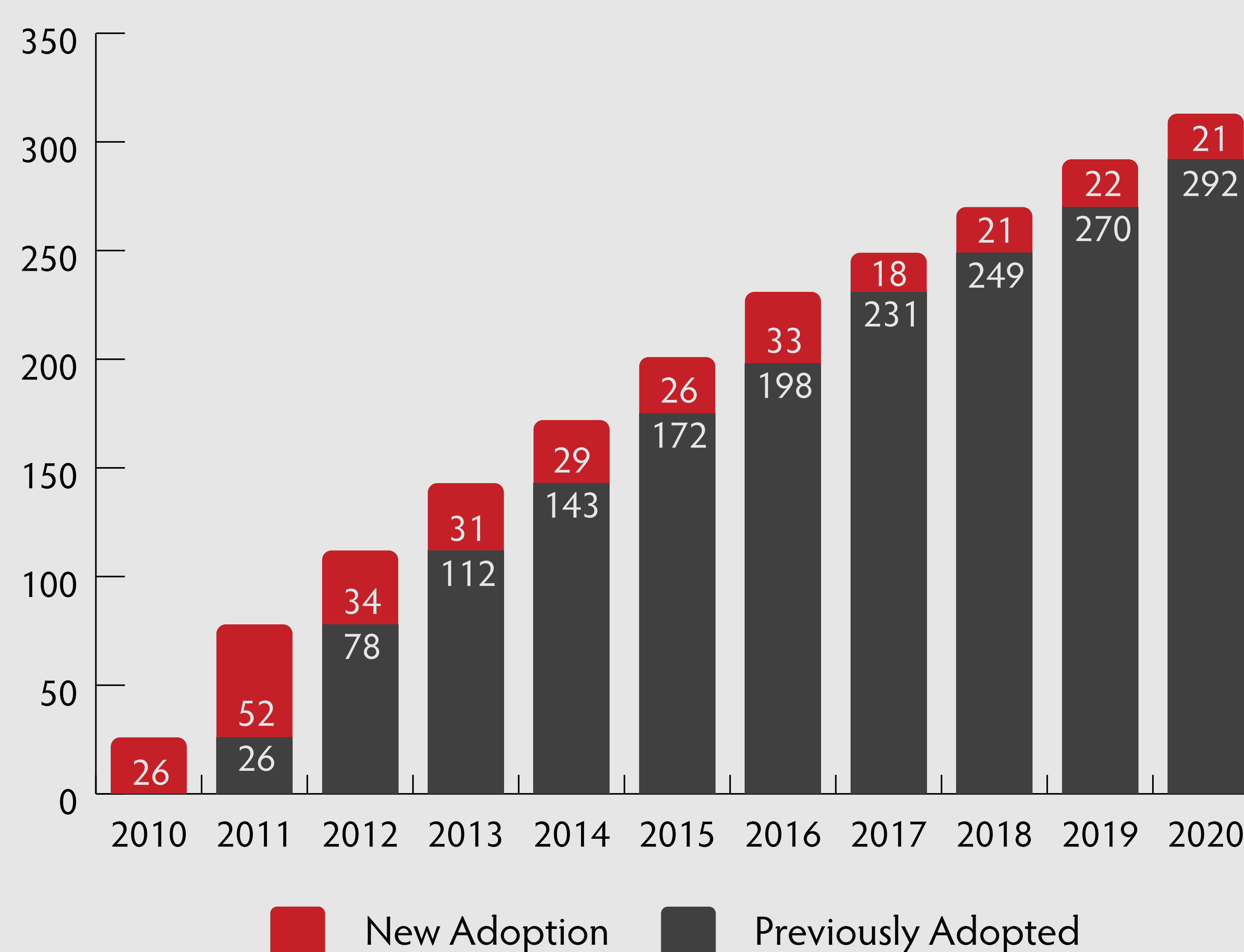
**CONCENTRATION
ON COMPENSATION**

SOP ADOPTION

In 2020, voluntary SOP adoption maintained a steady pace with 21 new adopters (all with an annual vote). Overall, 68% of TSX Composite Index companies and 13% of TSX issuers hold SOP votes. Bill C-97 amendments will require CBCA corporations to adopt annual non-binding SOP votes. On June 21, 2019, Bill C-97 received royal assent, but a date has not been set for when this requirement will come into force.

Established by the Ontario government in February 2020, the Capital Markets Modernization Taskforce published a consultation report on July 9 that proposed to require TSX-listed issuers to have an annual advisory SOP vote.

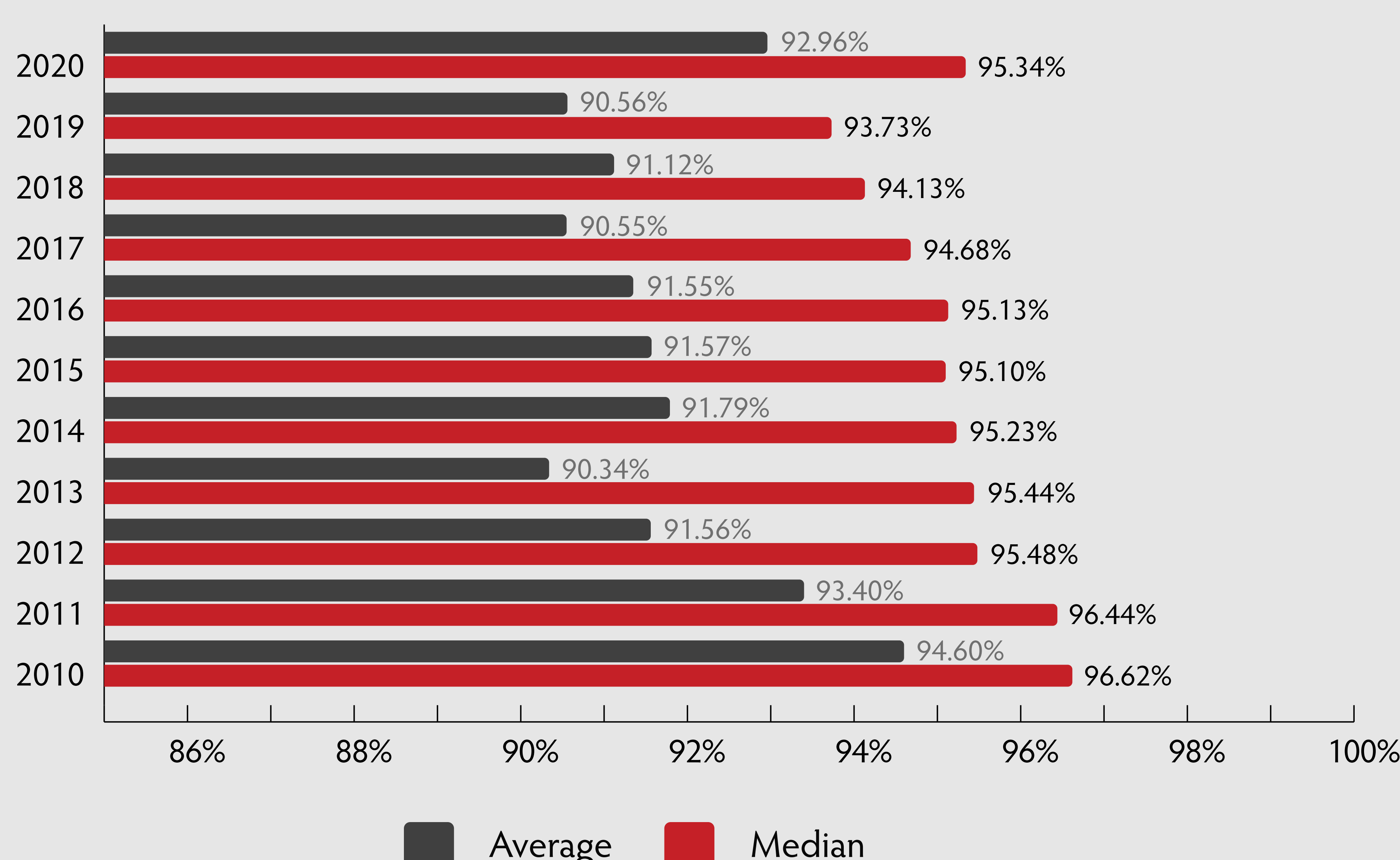
SAY-ON-PAY ADOPTION



SHAREHOLDER SUPPORT LEVELS

In 2020, Canadian companies have received a record high level of average shareholder support of 92.96%, the highest since 2011. Both average and median support rates saw a meaningful increase this year, indicating a reversal from recent years.

SAY-ON-PAY SUPPORT LEVEL



In our view, this is largely attributable to the more lenient approach ISS, GL, and most institutional shareholders have taken this proxy season on SOP resolutions due to the impact of COVID-19.

The story is mixed across the border, as the median support level in the U.S. fell to 95.3%⁵, the lowest level recorded since mandatory SOP began in 2011. On the other hand, failure rates dropped to 2.1% in 2020 compared to 2.5% the prior year with the percentage of sub-70% SOP votes also declining from 8.4% to 6.9% this year.

SAY-ON-PAY

Those Who Failed in 2019, Then Turned It Around

Three companies failed SOP in 2019, two of which turned it around in 2020.

Company	Market Cap as of 6/30/2020	2020	2019	2018
Cardinal Energy Ltd.	60 million	59.93%	49.84%	91.78%
IMAX Corp.	898 million	59.65%	39.30%	43.17%

After three consecutive years failing its SOP, IMAX's shareholder support for its executive compensation dramatically increased from 39.3% in 2019 to 59.5% in 2020, despite against recommendations from both ISS and GL. With the backdrop of its relatively decent performance in the previous fiscal year, the company introduced performance stock units (PSUs) in 2020, in lieu of granting stock options, and amended the CEO employment agreement substantially to address shareholder engagement feedback. Starting January 1, 2020, the CEO's short-term incentive is 80% quantitative and formula-driven with only 20% remaining based upon non-quantifiable measures. PSUs replaced stock options, representing 50% of the equity pay mix, with more stringent vesting criteria. RSUs, the other portion of equity awards, are no longer front-loaded, but awarded annually and vest at one-thirds per annum. Other material CEO employment agreement changes, such as increasing share ownership guidelines, and pro rata vesting of equity awards upon change in control, also provide assurance for shareholders on the company's 2020 executive compensation.

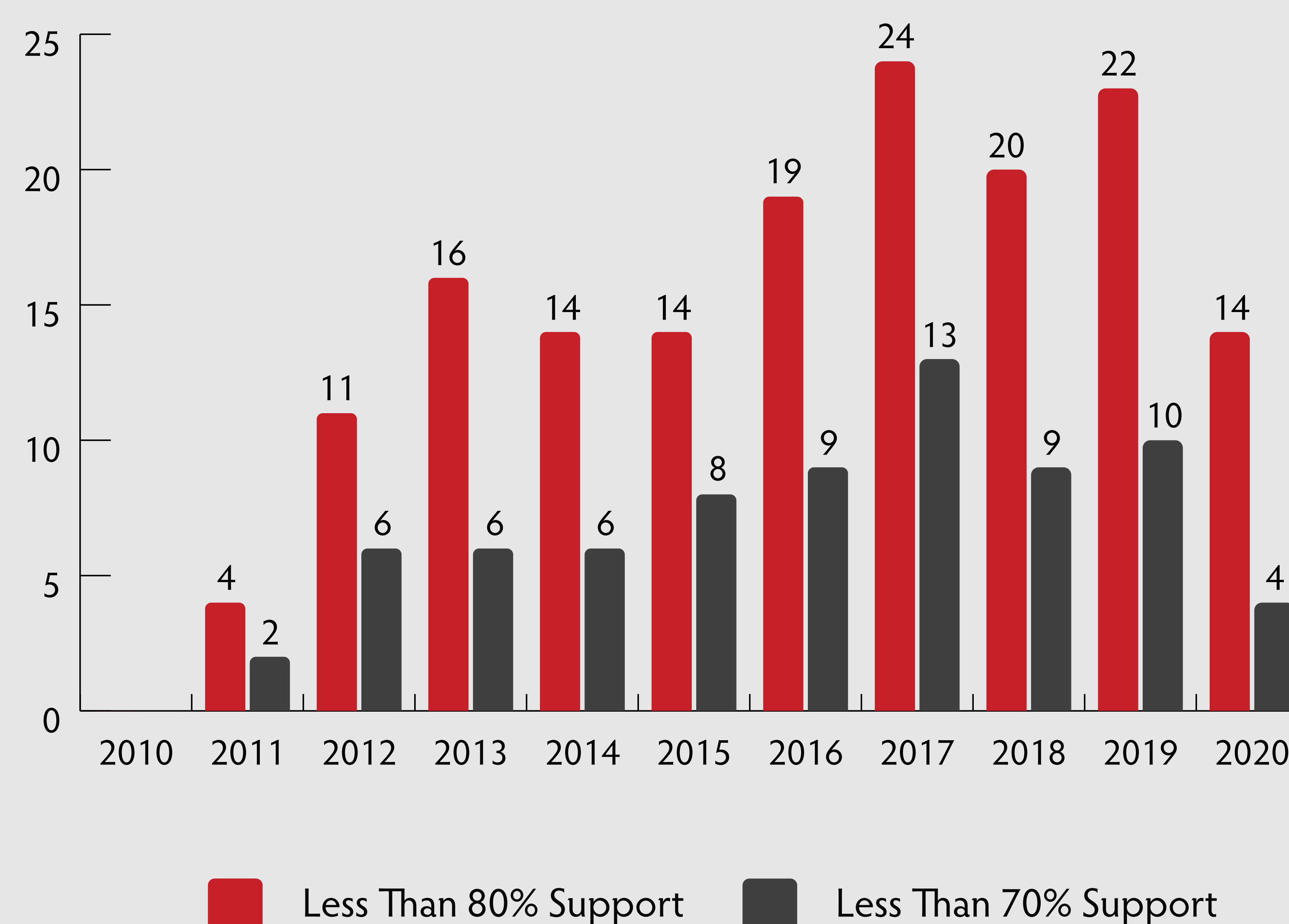
Cardinal Energy also passed its 2020 SOP vote, showing a noticeable increase in shareholder support from 49.84% to 59.93%. To address last year's shareholder concerns on the executive compensation program, the company: adopted a clawback policy, implemented a more formulaic performance structure for its annual bonus plan, and amended its long-term incentive plan to consist of 75% performance-based award for NEOs.

COMPANIES WITH LESS THAN 80%/70% SUPPORT

ISS expects companies to demonstrate reasonable responsiveness in addressing shareholders' concerns if an SOP proposal receives less than 70%, while GL's threshold is 80%. In 2020, we have seen a dramatic decrease in the number of both sub-80% companies and sub-70% companies, while no Canadian issuer has failed its SOP resolution this proxy season compared to three last year.

It is worth noting that, among the 14 sub-80% SOP votes, six of them received supportive recommendations from both ISS and GL, namely Cardinal Energy Ltd. (TSX: CJ), Inter Pipeline Ltd. (TSX: IPL), Methanex Corporation (TSX: MX), TransGlobe Energy Corp. (TSX: TGL), Precision Drilling Corp. (TSX: PD) and Crescent Point Energy Corp. (TSX: CPG), likely indicating dissension amongst specific shareholders.

COMPANIES WITH SOP VOTES RECEIVING LESS THAN 80% AND 70% SUPPORT



KINGSDALE'S TAKE

More Canadian companies will have SOP votes in 2021 and shareholders will continue to push for those hold-ups, regardless of the effective time of the CBCA requirements and what comes out of the Ontario Capital Markets Modernization Taskforce initiative.

Even though ISS and GL took a more lenient approach on SOP this proxy season, the leading “problematic” pay practices identified in both advisors, qualitative pay-for-performance analyses are still the usual suspects, namely: poor disclosure around incentive compensation programs, insufficiently rigorous performance targets, excessive change-in-control provisions, and lack of performance-based incentives. As the economy reopens and life goes back to normal, we expect companies that have made no improvements to these legacy issues, especially if their TSR performance lags their industry peers, to be subjected to greater scrutiny.

Additionally, for companies that made changes to their compensation programs, ISS will assess these changes on a case-by-case basis, focusing upon whether companies provided timely and adequate disclosure to shareholders regarding the rationale behind such decisions. Kingsdale expects companies that failed to provide compelling reasons for these changes or inadequate disclosure will be highly scrutinized by both proxy advisors and their shareholders.

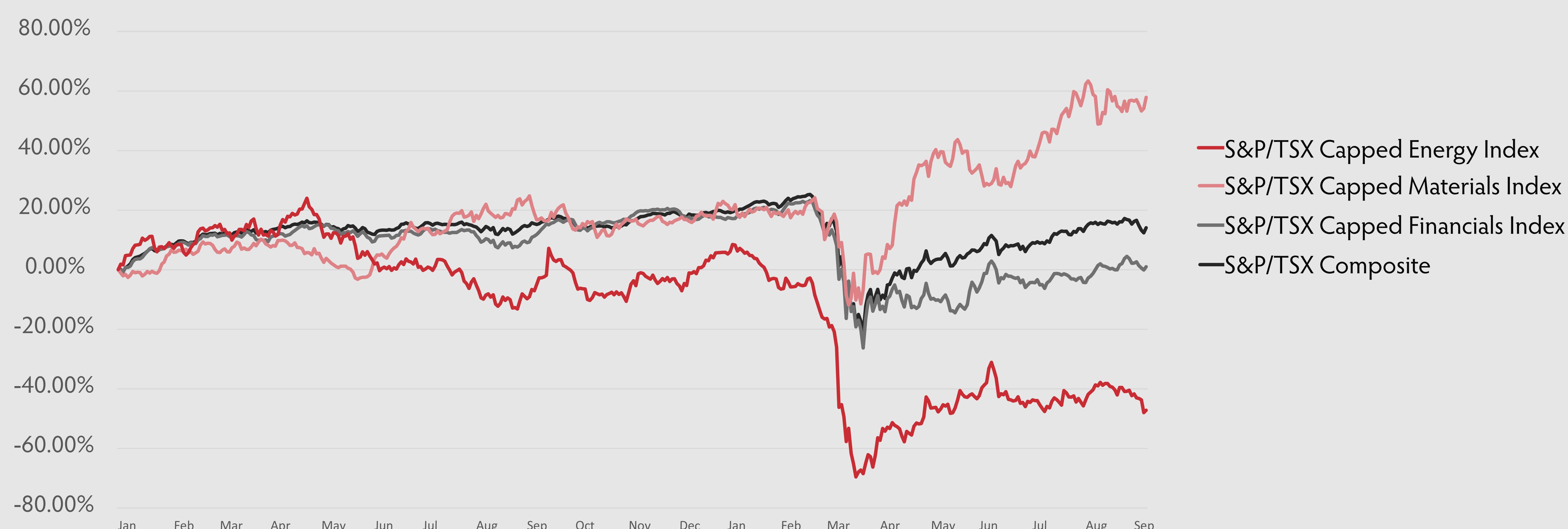
Ultimately, even in a crisis like COVID-19, there will still be winners and losers and the three-year (and to a lesser extent, one-year) TSR relative to peers, will continue to carry the day for most issuers. While it is still unclear at this point how long the pandemic will last, shareholders should have a much better view on how well or poorly companies have been managed through the crisis at 2021 meetings, and what we have seen this proxy season on SOP may be just the calm before the storm.

INCENTIVE COMPENSATION DECISIONS – 2020 AND BEYOND

The COVID-19 outbreak has caused an unprecedented level of uncertainty and demonstrated the challenges with many key elements of executive compensation, specifically how the share price movement is reflected in the compensation formula and the setting and evaluation of performance levels. As a result of such complications, we have seen many issuers taking a variety of measures, including executive salary and broader pay cuts, waiving off board-approved pay raises, and suspending or deferring cash compensation, among others.

Since mid-March, we have seen a substantial market recovery and, for many sectors, share prices have already returned close to pre-COVID levels. However, we have not seen the full economic impact of the pandemic and issuers are still facing compensation-related challenges. There is no one-size-fits-all solution and each business should perform a thorough evaluation of their compensation goals and mechanisms, ensuring that decisions follow a diligent review process and reflect the board's informed judgment. In making these decisions, issuers need to balance competing factors, including cash preservation, dilution management, retention of key employees, and motivating management to achieve appropriate performance objectives that reflect the new normal.

2019 AND 2020 YTD CANADIAN MARKET PERFORMANCE



Short-Term Incentives

Most companies chose not to adjust 2019 performance metrics or performance scores, as most of the performance was already “in” before the virus hit. Similarly, while many companies have reassessed the 2020 bonus targets and contemplated making adjustments, most companies decided to stay put and monitor the situation.

The pandemic put the role of board discretion back under the spotlight as companies who incorporated discretion in plan design have had a much easier time managing the situation. There will likely never be a “perfect” process, and 100% formula-based plans will put boards in a difficult position, balancing competing priorities during unanticipated crises.

Long-Term Incentives

Similar to bonus programs, most companies chose not to make structural changes to their long-term incentive plan (LTIP) programs, including performance share units (PSUs), because the relative TSR is still the most prevalent LTIP performance metric and is somewhat “immune” to a systematic risk like COVID-19.

When the pandemic first hit and the market lost 20–50% of its value, there was a lot of anxiety around how to manage option awards granted earlier in the year. Now deeply underwater, option repricing became a potential alternative to be considered. However, we advised clients that even if such a measure is warranted, companies should consider stock option exchanges rather than the conventional repricing program, as the latter will introduce the risk of management receiving a windfall once the market recovers.

As illustrated on the next page (Repricing vs. Exchange illustrations), the conventional repricing approach would yield recipients an economic value of double the original grant date fair value when share price returns to its pre-COVID level. While the option–RSU exchange nets the same recipient a much lower value at the same share price, shareholders would likely argue a better alignment with their interests. On the other hand, the conventional repricing approach would have no retention value if the share price further deteriorates after repricing, while the exchange program (if the form of incentive chosen is full value equity awards) still provides downside protection.

KINGSDALE’S TAKE

We anticipate that board discretion and the application of informed judgment will play a bigger role in the overall incentive program decision making process post-COVID-19 and recognize ISS, GL, and shareholders generally dislike discretionary incentive programs and require clear and robust disclosure.

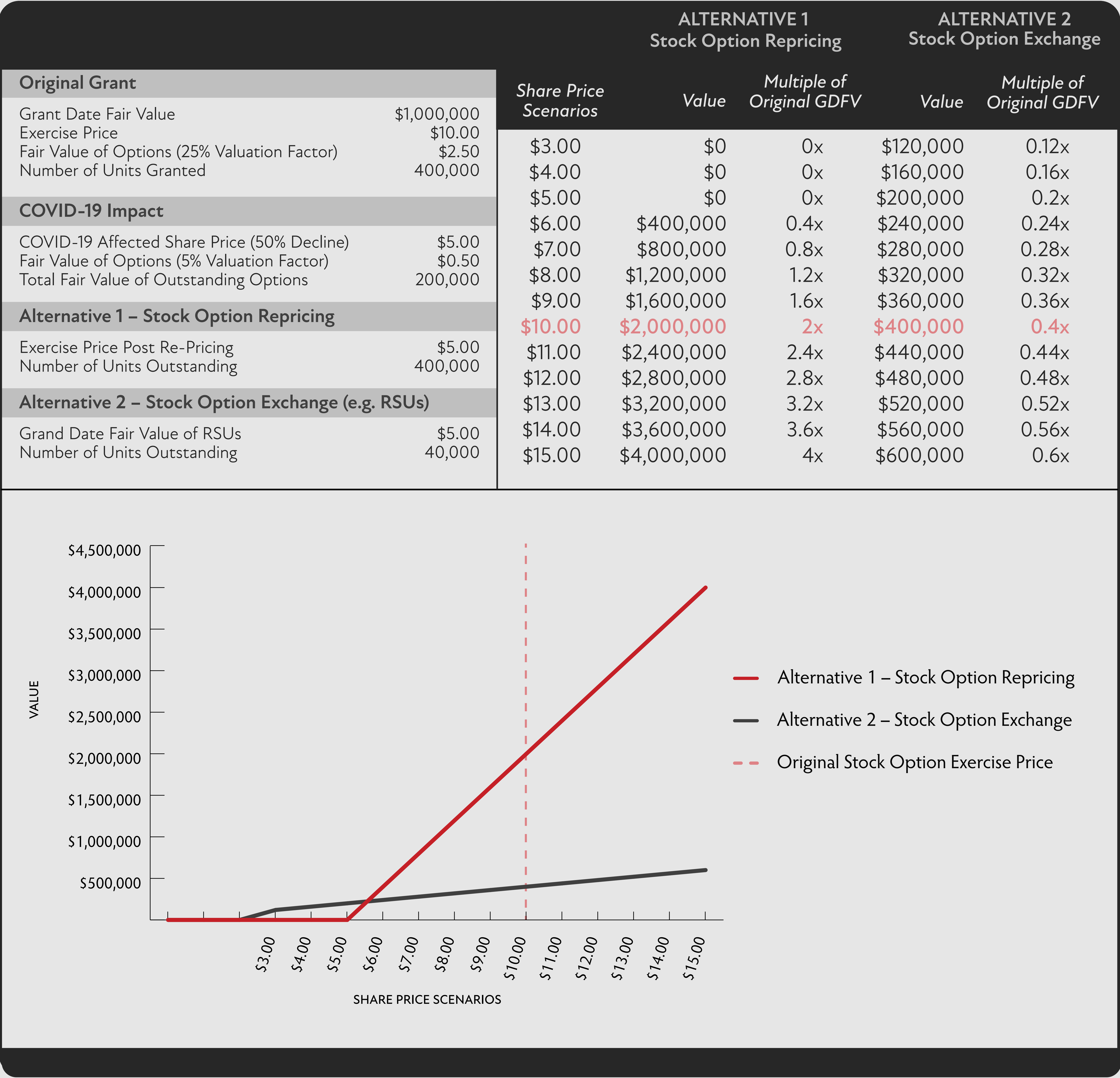
However, what we are advocating for is not a fully discretionary program, but rather incorporating board discretion as an element in the program. This would leave room for compensation committees and boards to apply informed judgment and adjust as needed. The COVID-19 pandemic has highlighted that a strict and formulaic program can lead to various issues down the road by not being flexible enough to accommodate extraordinary circumstances.

One of the long-time criticisms of such discretionary components is that boards tend to always make changes in favour of management (i.e. upward discretion), but rarely such discretion is applied downward. Hence, it is critical to develop in advance a set of key principles and considerations to guide the board's decision-making process and have the discipline to apply discretion consistent with the guiding principles. Risk management and stress testing should be part of the decision-making process when deciding on the size and design of incentive awards and can help ensure that compensation committees and boards have a clear understanding of the risk factors and economic implications of their decisions. This should include careful backward and forward-looking stress testing under a wide range of performance scenarios.

Boards need to start considering how to incorporate ESG metrics as an integral part of their incentive compensation framework, particularly in respect to employee health and safety, gender and racial diversity, and broader social issues. We have started to see some notable examples of such integration among large issuers – for instance, Cameco Corp. (TSX: CCO) included a social metric in its short-term incentive program to measuring sourced services from Northern Saskatchewan vendors, which accounts for 15% of the overall performance score. In the U.S., FirstEnergy Corp. (NYSE: FE)

started including a Diversity and Inclusion Index in 2018 in its short-term incentive programs that measures the company’s progress on diversity, defined as female, historically under-represented racial and ethnic demographic groups, LGBTQIA, and people with disabilities. At a minimum, all boards should have conversations around whether management is being held accountable in a measurable fashion and how integration into compensation programs can be improved.

REPRICING VS EXCHANGE



STOCK OPTION REPRICING

Exercise price of underwater stock options is reduced via amendment of option awards without any exchange of rights.

STOCK OPTION EXCHANGE

Original option awards are canceled and replaced with new incentive awards (options, RSUs, PSUs, cash, etc.) on a dollar-to-dollar basis – i.e. does not provide any incremental compensatory value on the date of grant.

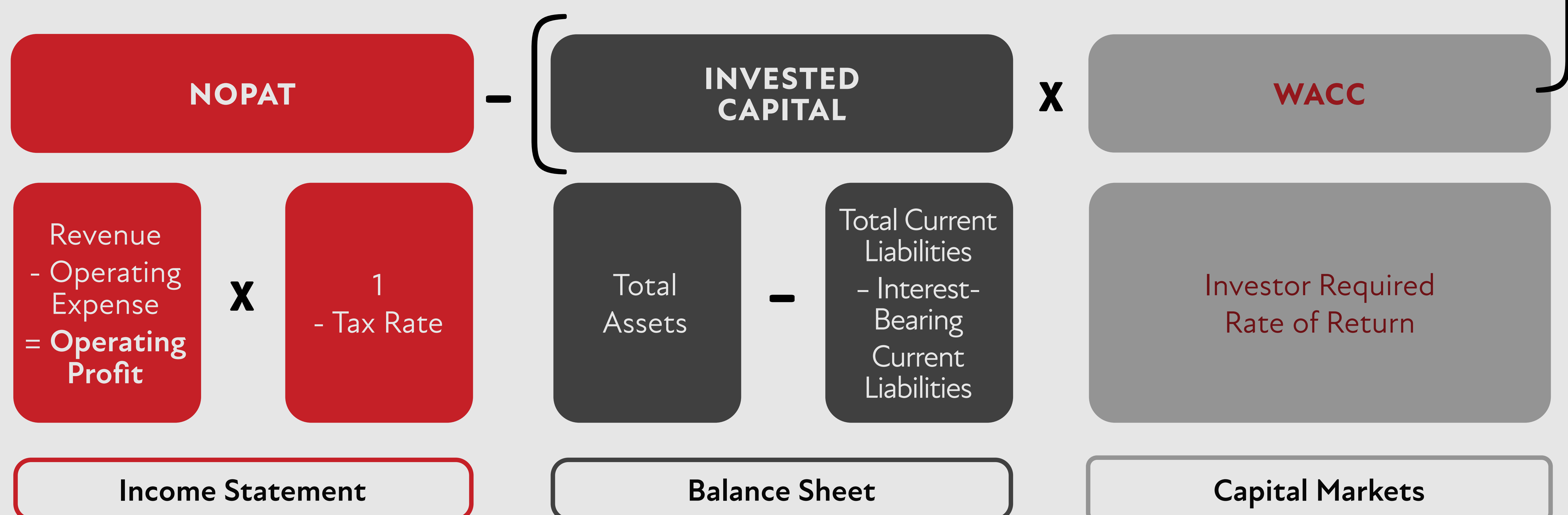


LESSONS LEARNED FROM EVA'S INAUGURAL YEAR

What Is EVA?

Economic Value Added (EVA) is used to estimate a firm's economic profit, measuring corporate earnings after deducting payments to all investors. In essence;

- $EVA = \text{Sales} - \text{Operating Costs} - \text{Capital Costs}$
- $EVA = \text{Net Operating Profit After Tax (NOPAT)} - \text{Weighted Average Cost of Capital (WACC)} * \text{Invested Capital}$



ISS implemented EVA-based metrics as its new Financial Performance Assessment (FPA) test in 2020's quantitative pay-for-performance model. The FPA test was complimentary to the three primary quantitative tests, namely Relative Degree of Alignment (RDA), Multiple of Median (MOM), and Absolute Pay-TSR Alignment (PTA). Previously, the FPA test used generally accepted accounting principles (GAAP) financial metrics such as EBITDA growth, return on equity (ROE), return on assets (ROA), and return on invested capital (ROIC), which depended upon a company's industry. The FPA is only applied if the overall concern levels from the three primary quantitative tests is bordering "Medium." If triggered, the FPA test can alter the concern level from "Low" to "Medium" or "Medium" to "Low."

ISS EVA METRICS

Four ISS EVA Metrics	Formulas and Definitions
EVA Margin	EVA/Sales The % of sales remaining after covering all operating and capital
EVA Spread	EVA/Capital Invested OR ROC-COC The EVA yield on capital, which also equals the spread between the firm’s return on capital (ROC) and its cost of capital (COC)
EVA Momentum (Trend vs. Sales)	ΔEVA/Trailing Sales The trend changes in EVA over the past four trailing four quarters (TFQs) as a % of the average sales in the first three TFQs. It measures the fundamental growth rate in EVA over the past three years, scaled to sales
EVA Momentum (Trend vs. Capital)	ΔEVA/Trailing Capital The trend changes in EVA over the past four TFQs as a % of the average capital in the first three TFQs. It measures the fundamental growth rate in EVA over the past three years, scaled to capital

KINGSDALE’S EXPERIENCE WITH EVA

Published in January 2020, ISS’s guidance regarding executive compensation suggested less than 5% of companies have their overall quantitative concern level affected by EVA results, which is consistent with our clients’ experience during this proxy season. When the new FPA test was triggered, the EVA metrics and the old GAAP metrics displayed a similar level of alignment between pay and performance. Moreover, as Kingsdale projected last year, TSR continues to be the primary driver of ISS’s quantitative, and, in some cases, qualitative pay-for-performance analysis. Companies should choose performance metrics that suit their business strategies and motivate performance.

ISS’s EVA methodology involves the heavy use of rules-based adjustments from traditional GAAP financial measures making it difficult for companies to replicate. Though ISS stated that their utilization of EVA or TSR should not be interpreted as their suggestion of the measures to be included in the compensation program, companies may monitor their quarterly EVA profile provided by ISS and find value in the insights which EVA-based metrics can provide. ◀

THE NEW ABNORMAL

Chapter

5



**DEVELOPMENTS IN
INSTITUTIONAL
INVESTOR PROXY
VOTING GUIDELINES**

While most issuers pay close attention to ISS and GL rules, we have seen a growing trend of large institutional investors adapting their internal proxy voting guidelines in a manner that is more restrictive. We reviewed more than 120 institutional investors' (with an Assets Under Management (AUM) >US\$50 billion) proxy voting guidelines for policies relating to director overboarding, gender parity, director term limits and auditor rotation, and highlighted below notable institutional investors' policies that are more stringent than those imposed by ISS and GL.

DIRECTOR OVERBOARDING

The ability for a public company director to dedicate enough time to their board to effectively perform their fiduciary duties has always been a concern for investors. According to a 2019 study published by ISS, "more investors continue to adopt stricter policy criteria on overboarding"⁶, and there has been "an uptick in significant opposition against the election of directors who serve on more than four boards."⁷ In 2020, State Street Corporation lowered the maximum number of boards a director could sit on from six to four, and from three to two public company boards for directors who are CEOs. Highlighted here are some of the overboarding policies among large institutional investors that contain elements more stringent than the two leading proxy advisors.

MAXIMUM NUMBER OF BOARD MEMBERSHIPS PERMITTED

	Non-Executive Directors	CEO (Including Own Board)
Proxy Advisory Firm		
ISS	5	3
GL	5	2
Institutional Investor		
Alliance Global Investors <i>AUM \$829.2 billion</i>	6 <i>(Including Private Company Boards)</i>	2 <i>(Including Private Company Boards)</i>
British Columbia Investment Management Corp. <i>AUM \$153.4 billion</i>	5	2
RBC Global Asset Management <i>AUM \$474.0 billion</i>	5	2
Alberta Investment Management Corp. <i>AUM \$119.0 billion</i>	4	4
State Street Global Advisors <i>AUM \$3,800 billion</i>	4	2
Legal & General North America <i>AUM \$2,049 billion</i>	4	2
California State Teachers Retirement System (CalSTRS) <i>AUM \$503.5 billion</i>	4	2
Florida State Board of Administration <i>AUM \$278.6 billion</i>	3	2

**Note: This does not represent an exhaustive list and only reflects a select sample of institutional investors' policies that are more stringent than those imposed by ISS and GL.*

Although proxy advisors are easing their stance regarding an acceptable number of commitments which corporate directors may undertake, investors are more attentive to how much time a director can give to their individual boards. More time commitments affect a director's meeting attendance, ability to review board materials and availability during a crisis.

GENDER PARITY

While ISS and GL have a hardline rule of at least one female director when it comes to board diversity, many institutional investors have taken the lead on advocating for more changes to encourage gender parity in boardrooms. Legal & General North America and BNP Paribas Asset Management are enforcing stricter gender diversity targets starting from 2020 to address gender parity concerns. Specifically:

- Legal & General North America will withhold votes from the boards of the largest 100 companies in the S&P 500 and the S&P/TSX where there is less than 25% women on the board
- BNP Paribas requires all issuers in Europe and North America to have 30% women on the board starting from 2020

While most of the institutions listed in the table state they support multiple dimensions of diversity, none of the funds have identified a specific target relating to minority representation.

BOARD DIVERSITY THRESHOLDS

Gender Diversity	
Proxy Advisory Firm	
ISS	1
GL	1
Institutional Investor	
Alberta Investment Management Corp. <i>AUM \$119.0 billion</i>	25%
Alliance Global Investors <i>AUM \$829.2 billion</i>	30%
BlackRock (Canada) <i>AUM \$10.03 trillion</i>	2
BNP Paribas Asset Management <i>AUM \$675.8 billion</i>	30%
British Columbia Investment Management Corp. <i>AUM \$153.4 billion</i>	3 or 25%
Legal & General North America <i>AUM \$2,049 billion</i>	25%
Ontario Teachers' Pension Plan <i>AUM \$207.4 billion</i>	3
RBC Global Asset Management <i>AUM \$474.0 billion</i>	2

**Note: This does not represent an exhaustive list and only reflects a select sample of institutional investors' policies that are more stringent than those imposed by ISS and GL.*

DIRECTOR TERM LIMITS

Generally, proxy advisors do not consider director tenure or age as a key factor in determining vote recommendations on director elections in uncontested situations. However, certain institutions expect boards to establish a maximum length of service for directors in order to preserve the board's level of independence and ensure adequate board refreshment. For some investors, director term limits serve as another avenue to address concerns over director independence. Within this investor community, long service on a board is viewed as creating too close of a relationship with management, thus compromising a director's level of independence.

Most institutional investors, especially pension funds, have high standards for director effectiveness and accountability, believing that a broad knowledge base, diverse experience and fresh perspectives contribute to a high-functioning board. Boards should strive for continuous refreshment in order to have a mix of seasoned and new directors, contributing to board vitality.

DIRECTOR TERM LIMITS

Term Limits	
Proxy Advisory Firm	
ISS/GL	Does not consider director tenure or age as a key factor in determining vote recommendations on director elections
Institutional Investor	
Amundi Asset Management AUM \$2,561.9 billion	11 years
BMO Global Asset Management AUM \$368.5 billion	12 years
British Columbia Investment Management Corp. AUM \$153.4 billion	10 years (Average Tenure)
Generali Investments AUM \$774.9 billion	4 years
Legal & General North America AUM \$2,049 billion	15 years

**Note: This does not represent an exhaustive list and only reflects a select sample of institutional investors’ policies that are more stringent than those imposed by ISS and GL.*

AUDITOR ROTATION

Mandatory audit firm rotation has been a much-debated topic recently, with certain institutional investors and corporate governance experts favouring audit firm rotation to ensure auditor independence and the integrity of the audit. While some experts believe that mandatory auditor rotation solves the independence issue, CPA Canada and CPAB (Canadian Public Accountability Board) have taken the view that, “the way to improve audit quality is not through MAFR (Mandatory Audit Firm Rotation) or tendering but through mandatory audit firm review at least every five years.”⁸

Neither ISS nor GL have adopted policies towards mandatory audit firm rotation. However, GL states it believes, “auditor rotation can ensure both the independence of the auditor and the integrity of the audit; we will typically recommend supporting proposals to require auditor rotation when the proposal uses a reasonable period of time (usually not less than five to seven years) particularly at companies with a history of accounting problems.”⁹

AUDIT FIRM ROTATION POLICIES

	Max Term
Proxy Advisory Firm	
ISS	No Threshold
GL	No Threshold
Institutional Investor	
BMO Global Asset Management AUM \$368.5 billion	10 years
British Columbia Investment Management Corp. AUM \$153.4 billion	20 years
DWS Investment GmbH AUM \$1,118.8 billion	5 years
Legal & General North America AUM \$2,049 billion	10 years

**Note: This does not represent an exhaustive list and only reflects a select sample of institutional investors' policies that are more stringent than those imposed by ISS and GL.*

KINGSDALE'S TAKE

Recently, large institutional investors have been placing a heightened focus on developing or enhancing their internal proxy voting guidelines and only leverage the voting recommendations from ISS and GL as a reference to inform their ultimate voting decisions.

As we have shown, many of the leading investors have adopted policies that are stricter than ISS and GL. Issuers whose practices comply with the two leading proxy advisors may still be at risk of losing shareholder support if they fail to meet those shareholders' respective standards. Understanding this is a critical step in winning shareholder support.

The latest SEC amendments to its rules governing proxy advisory firms will push more institutional investors in this direction. The changing landscape means issuers need to stay closer to their shareholder base leading up to annual meetings and identify the top holders who have stricter standards on issues where the company is potentially vulnerable. We believe racial diversity policies will be the next area in which investors will become more aggressive. There is a strong likelihood the 2021 AGM season will see an increase of shareholder proposals addressing BIPOC inclusion with a high likelihood of investor support given the current appetite for social reform.

Our experience during the 2020 proxy season suggests that there is an increased inclination by institutional investors to make informed voting decisions on a case-by-case basis. These decisions can diverge from the recommendations of ISS and GL, if issuers provide robust disclosure explaining the supporting business rationale behind their decisions, and/or proactively engaging with shareholders.

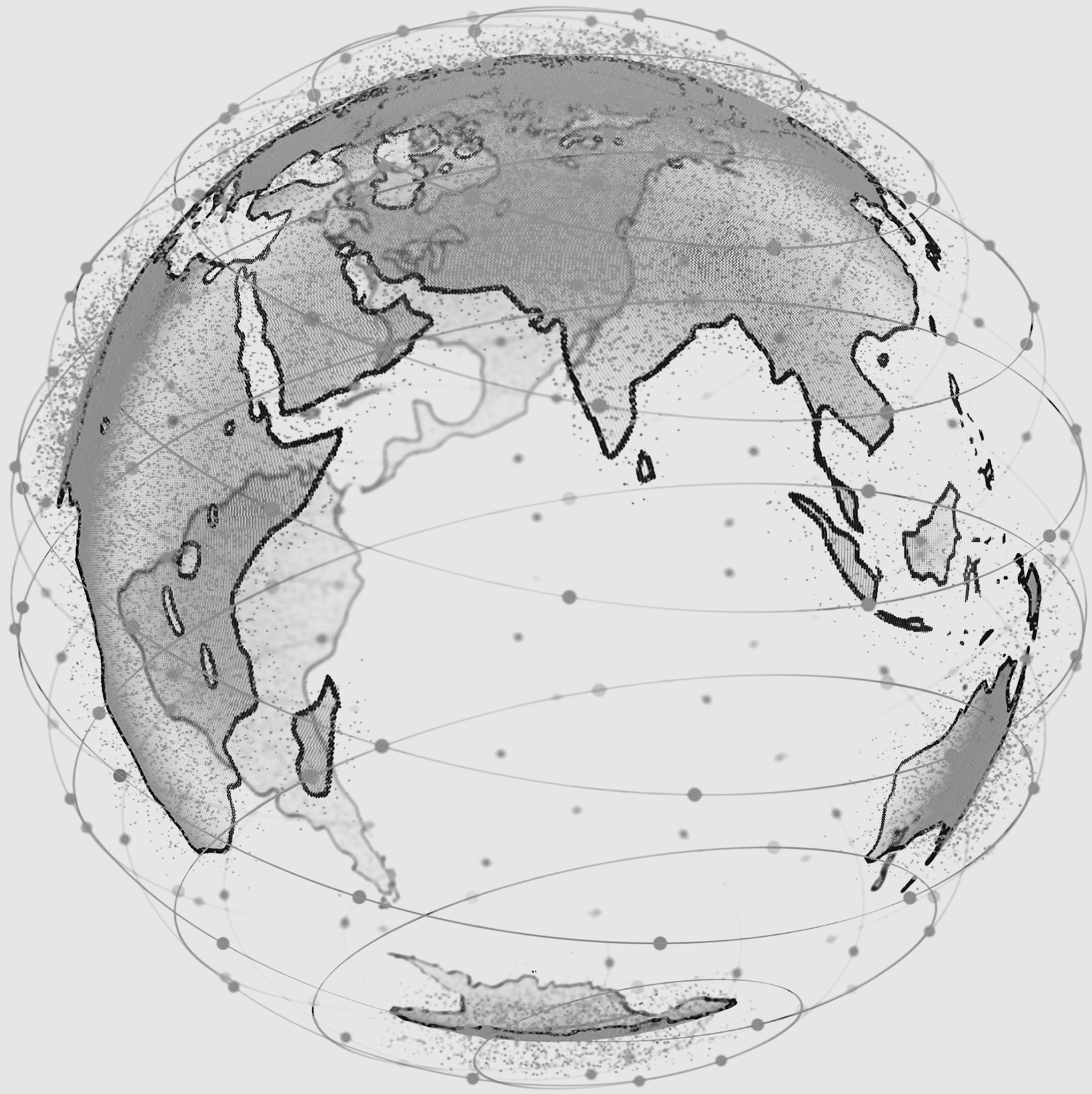
In our view, the combination of more rigid policies and greater openness to making informed independent decisions presents a unique opportunity for issuers to garner shareholder support on key voting items through enhanced disclosure and engagement, regardless of ISS and GL recommendations.



THE NEW ABNORMAL

Chapter

6



**INSTITUTIONAL
SHAREHOLDER SERVICES
/GLASS LEWIS
PROVIDE UPDATES
IN RESPONSE TO COVID-19**

In response to the COVID-19 pandemic, ISS and GL have issued updates and clarifications on their proxy voting guidelines, and those most relevant to Canadian issuers are summarized into five categories:

- 1) AGM issues
- 2) Poison pills, shareholder rights
- 3) Board-related issues
- 4) Compensation issues
- 5) Capital structure and payouts

Policy Update/ Clarification	ISS	GL
AGM Issues	• Will not penalize companies that elect to hold virtual-only meetings regardless of past preference for hybrid meetings • Encouraged to disclose the reason for implementing a virtual-only meeting and provide shareholders with the opportunity to participate as fully as possible • Will document when companies and boards use webcasts, conference calls, and other mediums of electronic communication to engage with shareholders, even if meetings have been postponed	• Will review an issuer’s decision to opt for a virtual-only meeting on a case-by-case basis for meetings held up to June 30, 2020 • For virtual-only meetings beyond June 30, standard policy will apply which specifies neutrality on virtual-only meetings, provided they enable meaningful shareholder participation • Will not make negative recommendations against members of the company’s Governance Committee, provided that their rationale is disclosed, including citing COVID-19
Poison Pills, Shareholder Rights	• Existing policy approach regarding companies adopting rights plans is flexible and takes short-term threats, such as the current pandemic, into account • For rights plans with a duration of less than a year, will consider the disclosed rationale and other relevant factors on a case-by-case basis • Encourage boards to put poison pills to a shareholder vote, but notes that a severe decline in share price as a result of the ongoing pandemic is considered a valid justification	• Supports the adoption of the poison pills when it meets some of these certain conditions: 1) Pills are justified for valid reasons such as; closing of an important merger, current hostile takeover threat, or stock price decline from a market downturn 2) Duration is less than a year and the company’s disclosure provide justification for adoption 3) All directors will receive withhold recommendations if such pills do not go to a shareholder vote when up for renewal
Board Related Issues	Changes to Boards/Senior Management Teams: • Considered on a case-by-case basis acknowledging that changes to the board or senior management may be necessary • Provide flexibility in cases where board members may need to fill senior executive roles on an interim basis	• No specific policy updates • Will exercise existing discretion and pragmatism to prioritize timing, certainty, disclosure, and voting on any affected proposals
Compensation Issues	Changes to Incentive Plans: • Encourage board to provide timely disclosure to shareholders regarding the rationale for changes to performance metrics, goals, or targets used in short-term compensation plans to adjust for material drops in share price • Changes to midstream awards will be examined on a case-by-case basis to determine appropriate discretion and require an adequate explanation. Structural changes to long-term plans addressing the new economic environment, will be assessed under existing framework	• Market-informed and industry-specific standards that help companies to; identify, manage, and report on sustainability topics that matter most to their investors • On average, SASB standards include six disclosure topics and 13 accounting metrics per industry • Each SASB standard provides companies with standardized quantitative – or, in some cases, qualitative – metrics intended to measure performance on each disclosure topic or an aspect of the topic

Policy Update/ Clarification	ISS	GL
	Repricing Options: • If boards undertake such actions without asking shareholders for approval in a timely fashion, the directors' actions will be scrutinized under the applicable benchmark policy regarding board accountability • If the board seeks shareholder approval for repricing options, the existing case-by-case policy will apply. Generally, will oppose any repricing within one year of a precipitous drop, examining: (i) If design is shareholder value neutral; (ii) If surrendered options are not added back to the plan reserve; (iii) If replacement awards do not vest immediately; and (iv) If executive officers and directors are excluded.	• Useful guide for companies to determine material risks based on industry • Companies can determine which disclosure topics represent financially material risks and opportunities for their business and which associated metrics to disclose, taking the company's business model, business strategy, and relevant legal requirements into account
Capital Structure and Payouts	Share Buyback Programs • Many companies have elected to suspend share buyback programs to conserve cash in this uncertain time • Pursuit could expose issuers to criticism and reputational damage • While these schemes usually have a long-term horizon and boards may wish to maintain flexibility by seeking buyback authority, directors must consider the various associated risks • Absent regulations barring such activities, will continue to recommend in favour of repurchase authorities with customary limits based upon market • Will review board-related actions in advance of the next AGM (2021 for most issuers), to consider if risk was managed in a responsible manner Capital Raises • Assess on a case-by-case basis any requests to increase authorized common or preferred stock, in addition to other related proposals, subject to market-specific rules and guidance • In exceptional circumstances, based upon clear and compelling justification by the board of a company's need in the current economic environment, policies may allow "For" recommendations on proposals that exceed any normal market-specific limits on size and potential dilution. The current pandemic clearly constitutes such a circumstance.	• Endorsed by all 193 United Nations Member States in 2015, the 2030 Agenda and its SDGs focus global efforts and attention on 17 pressing issues • Three-step process to embed goals into existing reporting process: 1) Define priority targets 2) Measure and analyze 3) Report, integrate and implement change

ISS's 2021 POLICY SURVEY

On September 25, ISS released the results of its annual policy survey which will underpin ISS's 2021 benchmark voting policy, and we expect ISS to publish its final proposed changes to the existing guidelines later this year.

The survey and its results provide us with a sneak peek at what the proxy advisor might be focusing on when developing voting policies for the 2021 proxy season. We note that most of the questions in this year's survey are centred around the impact of COVID-19. The key questions affecting Canadian issuers include:

Continuance of COVID-19 Policies

As a result of the COVID-19 pandemic, ISS published a policy guidance document on April 8, 2020, addressing matters relating to AGM format and timing, poison pills, shareholder rights, director attendance, changes to boards, changes to compensation practices, and capital structure. Given that a return to normal – or a new normal – is still undetermined, the survey seeks respondents view of continuing the ISS's policy guidance relating to the pandemic into 2021. ISS is specifically asking if the respondents think ISS should: (i) Keep the existing policy; (ii) Have a similar policy in place into 2021 with flexible approaches; or (iii) Keep the existing policy for 2021 only for specific markets that continue to be severely impacted by the pandemic.

Virtual Meetings

There is no question that virtual meetings were the most debated topic during this proxy season as regulatory frameworks around the world had to be changed to accommodate virtual and hybrid meetings. While the meeting formats appeared to be a success, ISS is inquiring what meeting format respondents prefer to use moving forward, absent of COVID-19 health and social restrictions.

Compensation Adjustments

Given that the impacts of COVID-19 are expected to affect executive pay decisions during the remainder of 2020 and throughout 2021, ISS is collecting views on executive compensation in the wake of the pandemic, specifically relating to short-term incentive or annual bonus changes. The survey question investigates company views on making mid-year changes to annual incentive plans, one-time awards, and making no changes to the original program.

ESG

With climate change-related risks still at the forefront of many issues corporations are facing, it has become increasingly important to many investors. Through its benchmarking policy survey, ISS is seeking to gather corporate views on how investors should engage with companies that do not effectively report or address climate change risk. Secondly, ISS is also gathering information on which sustainability reporting framework is most effective and relevant to the participant's organization.

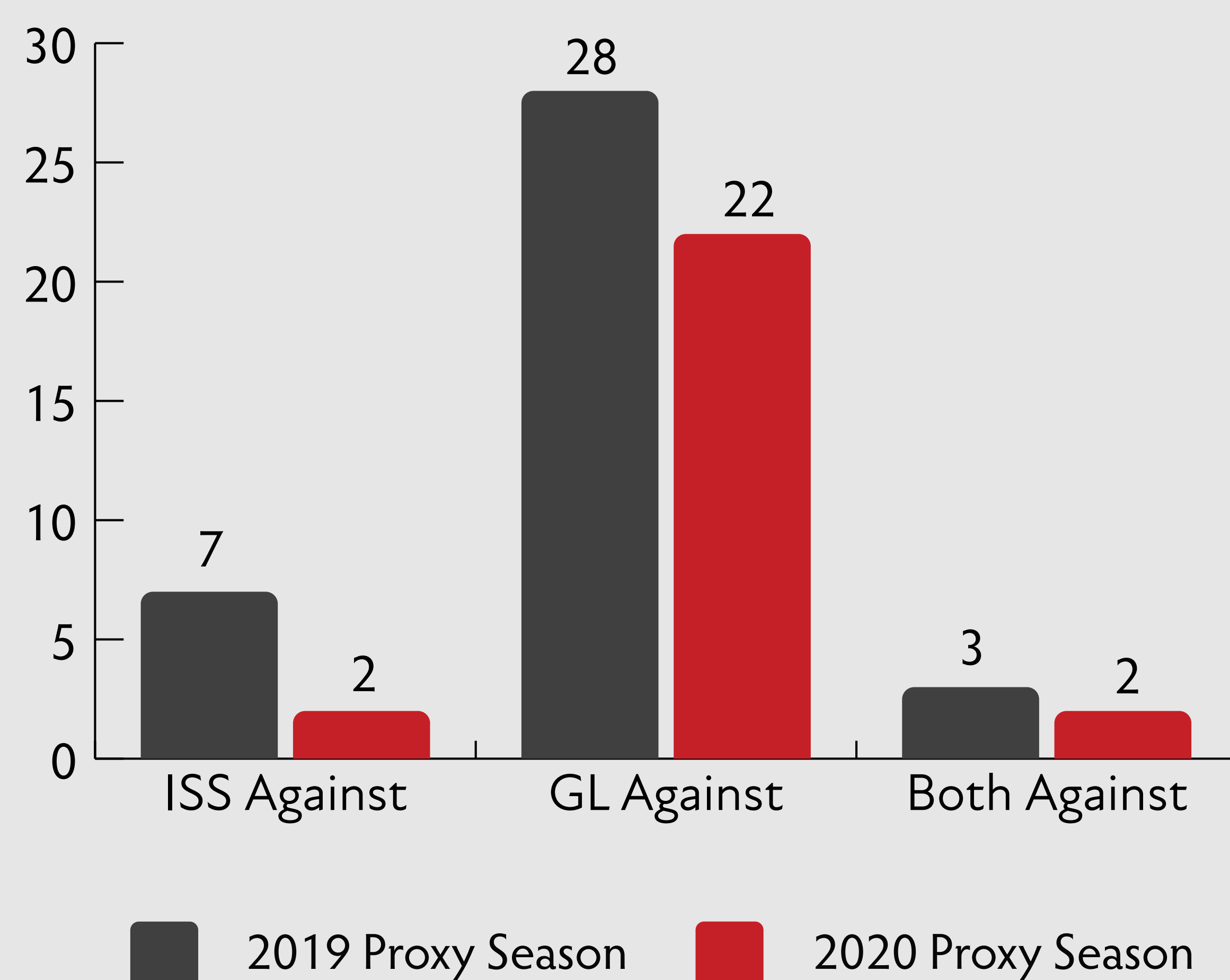
Racial and Ethnic Diversity

Recognizing the recent racial and ethnic tensions around the world and the low levels of company disclosure and representation, ISS is inquiring from its participants if: (i) All boards should disclose their demographics, including directors' self-identified race and ethnicity; (ii) Their views on the importance of racial and ethnic diversity on boards; and (iii) Their views on what investors should consider including in their portfolios to address racial and ethnic diversity issues.

ISS/GL'S ADAPTIVE APPROACH ON SOP

Compared to the last year, the number of against SOP recommendations declined for both ISS and GL in 2020. This illustrates a relatively lenient approach being taken by the two leading proxy advisors this season, which aligns with expectations amid the COVID-19 pandemic.

NUMBER OF AGAINST RECOMMENDATIONS ON SAY-ON-PAY RESOLUTIONS



In fact, ISS's Canadian team, to date, has not issued any against recommendations. It was ISS's U.S. team that issued the against recommendations at two U.S. domestic issuers (also against by GL). We have also seen a decline in ISS's against SOP recommendations in the U.S. market, albeit to a lesser extent. In the U.S. market, ISS recommended against 11.09% (or 245) SOP resolutions in calendar year 2020¹⁰ vs. 13.25% (or 314) in 2019.

<i>Company</i>	<i>Meeting Date</i>	<i>Support Level</i>
IMAX Corp. (U.S. Domestic Issuer)	June 3, 2020	59.65%
Lionsgate Entertainment Corp. (U.S. Domestic Issuer)	September 10, 2019	64.10%

*Note: IMAX has failed the three prior consecutive SOP votes.

ISS MOVED QUANTITATIVE TEST THRESHOLDS

Published in February 2020, ISS's U.S. proxy voting guidelines updated the thresholds for the three initial quantitative measures, showing more leniency on the trigger of concern levels. The chart on the following page shows their triggers for Relative RDA and Pay-to-TSR Alignment (PTA) are now lower, meaning a greater degree of pay-for-performance misalignment is allowed before a threshold is triggered.

2019 Thresholds				2020 Thresholds			
Non-S&P 500 Companies							
Measures	Eligible for FPA Adjustment	Medium	High	Measures	Eligible for FPA Adjustment	Medium	High
RDA	-28.40	-40.00	-50.00	RDA	-38.00 ↓	-50.00 ↓	-60.00 ↓
MOM	1.74	2.33	3.33	MOM	1.74	2.33	3.33
PTA	-13.00	-20.00	-35.00	PTA	-22.00 ↓	-30.00 ↓	-45.00 ↓
S&P 500 Companies							
RDA	-28.40	-40.00	-50.00	RDA	-38.00 ↓	-50.00 ↓	-60.00 ↓
MOM	1.64	2.00	3.33	MOM	1.64	2.00	3.33
PTA	-13.00	-20.00	-35.00	PTA	-22.00 ↓	-30.00 ↓	-45.00 ↓

Measures: RDA; MOM; PTA

↓ Denotes thresholds decreased compared to that of 2019 proxy season.

Even though such thresholds are not disclosed in ISS's Canadian policy, we recognize that ISS has made similar changes on all three primary quantitative tests.

DIVERGING APPROACHES FOR ISS AND GL

While a decline from prior years, GL issued substantially more negative recommendations on SOP resolutions compared to ISS (22 vs. two).

NUMBER OF AGAINST SOP RECOMMENDATIONS

	ISS	GL	Degree of Overlap
2018	11	24	20.8%
2019	7	28	10.7%
2020	2	22	9.1%

Some of the common compensation issues that GL took issue with included: a single-trigger change-in-control provision; similar metrics used under STIP and LTIP; discretionary short-term incentive awards; lack of clawback provision; insufficient disclosure of STIP performance goals; short performance period under LTIP; excessive reliance on STIP payout; and substantial severance payments.

Among the 14 companies that saw their SOP resolution receive less than 80% support from shareholders, 8 of them received against recommendations from one or both ISS and GL.

SOP RESOLUTIONS RECEIVING LESS THAN 80% SUPPORT

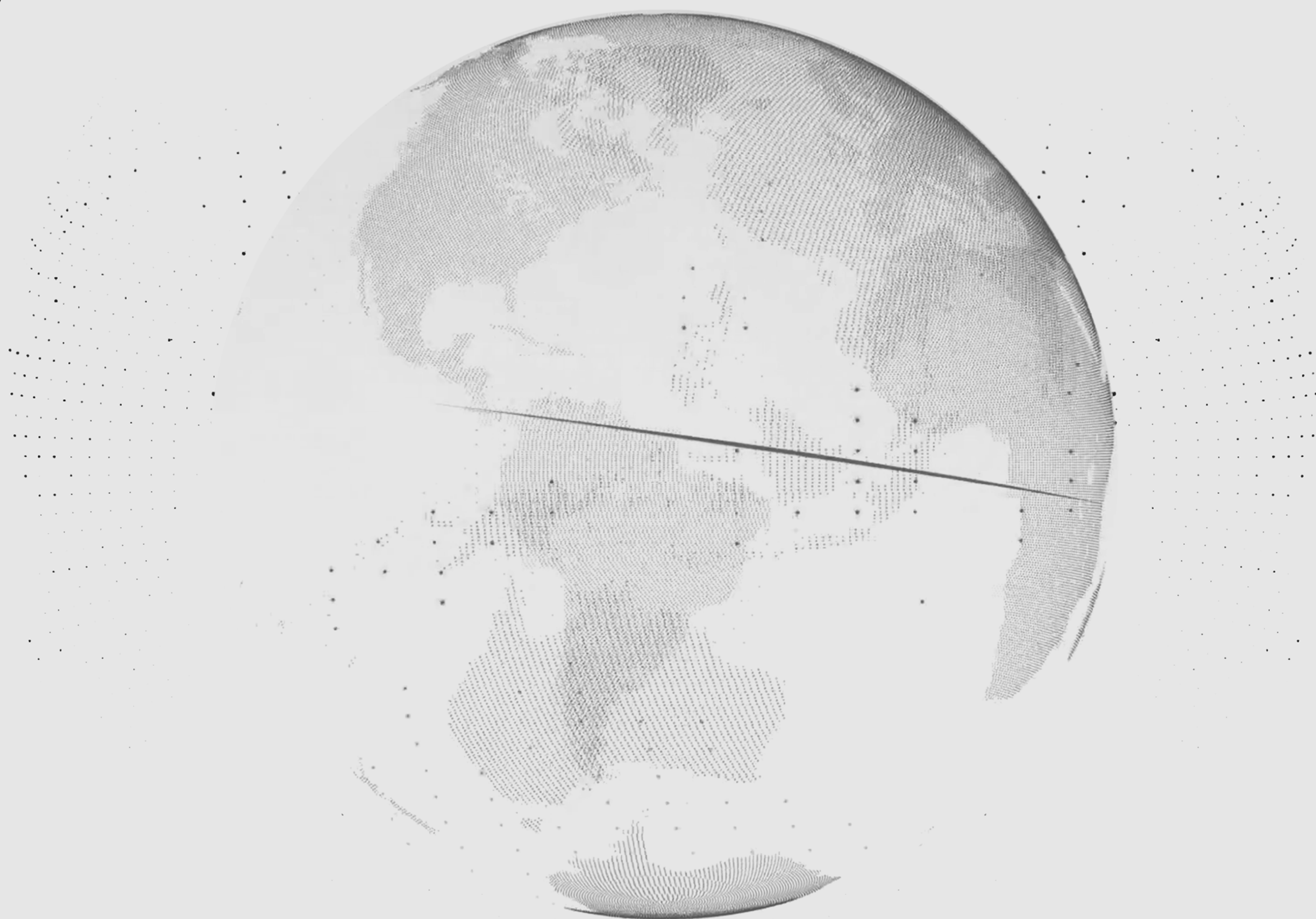
<i>Company</i>	<i>Recommendations</i>		<i>Support Level</i>
	<i>ISS</i>	<i>GL</i>	
IMAX Corp.	Against	Against	59.65%
Cardinal Energy Ltd.	For	For	59.93%
Lionsgate Entertainment Corp.	Against	Against	64.14%
Vermillion Energy Inc.	For	Against	64.95%
Inter Pipeline Ltd.	For	For	71.69%
CI Financial Corp.	For	Against	72.60%
Sierra Wireless Inc.	For	Against	73.90%
Methanex Corporation	For	For	74.92%
Enghouse Systems Limited	For	Against	75.50%
Wheaton Precious Metals Corp.	For	Against	75.74%
TransGlobe Energy Corporation	For	For	77.78%
Precision Drilling Corporation	For	For	77.99%
RioCan REIT	For	Against	78.50%
Crescent Point Energy Corp	For	For	79.52%



THE NEW ABNORMAL

Chapter

7



VIRTUAL AGMs

ARE THEY HERE TO STAY?

With government restrictions on large gatherings as a result of COVID-19, public companies needed to find a solution to hold annual shareholder meetings. As a result, the 2020 proxy season saw a dramatic increase in the use of virtual meetings and other means of electronic communication, which raises the question: Are virtual AGMs here to stay?

A large part of the answer will depend on the even more critical questions: Is COVID-19 here to stay? And, how long until large in-person meetings are safe?

These unknowns must be considered when determining the response to the first question as they help provide a long-term perspective when searching for an answer. However, in the short term, we can focus upon the pros and cons of virtual meetings, best practices, ISS and GL perspectives, and how each adjusted their respective meeting guidelines in the face of the COVID-19 lockdown.

WHAT IS A VIRTUAL MEETING?

A virtual meeting utilizes online technology to hold a company's shareholder meeting either through audio or video webcast of proceedings along with a real-time voting portal. It can be a "virtual-only meeting" exclusively held online without a corresponding in-person meeting or a "hybrid meeting" which is held in person at a physical location and open to online participation. In both platforms, shareholders are validated through a control number, able to cast their votes in real time, and ask questions. In a virtual meeting, the ability to ask questions is via a chat box or other electronic message delivery and the submission of questions is not visible to all meeting participants. The central theme of criticism of virtual meetings in the past was the potential for issuers to suppress legitimate shareholder questions.

When the COVID-19 pandemic hit at the start of the 2020 proxy season, it forced companies with annual meetings already scheduled to find alternatives to their in-person meetings and virtual meetings quickly became the natural solution. According to, *Proof of Concept: An Intelligize Report on Virtual Annual Shareholders Meetings* published May 19, 2020, by May 1st, 65% of S&P 500 companies had held or announced plans to hold virtual meetings, with almost 90% of those companies adopting it for the first time. In the first five months of 2020, there were 317 Canadian companies that held virtual meetings with expectations that it will further increase as the pandemic stretches into the remainder of the year. This is an enormous increase from 2019, when there were no virtual meetings held. In fact, only four virtual meetings have been held in Canada since the first was conducted in 2017.

Before tackling the COVID-19-related issues facing public companies, let us review the primary purposes of an AGM and then how ISS and GL both adjusted their respective policies to address virtual meetings in this pandemic era.

BACK TO BASICS

There are two primary purposes of an AGM: first and foremost, to approve the operational business of the company through the adoption of resolutions presented in the form of a vote by shareholders; and secondly, to enable shareholders to hold the board and management accountable for their actions. In the context of a virtual meeting, shareholder voting is relatively straightforward to accommodate as the majority of votes are typically submitted and tabulated well in advance of the meeting. Additionally, based upon this season's experience, little to no votes are cast virtually, mirroring

the experience of in-person meetings. Further, the virtual meeting guidelines designed by ISS and GL serve to maintain virtual shareholder democracy through accessible participation as the submission of shareholder questions before or during the virtual meeting allow for discussion and feedback. Annual meetings are primarily attended by retail investors as these meetings present the only occasion for them to interact with the company they have invested in, whereas institutional shareholders typically have better access. Virtual meetings for institutional shareholders are essentially formalities because they all vote well in advance by proxy, while these meetings remain a key annual touchpoint for retail investors. ISS and GL recognize the importance of annual meetings to retail shareholders and, though they never specify this shareholder base in their modified meeting guidelines, they nonetheless maintain the protection of shareholder.

SHOULD VIRTUAL AGMs STAY OR GO?

Social distancing requirements and future pandemic concerns have put a spotlight on virtual meetings and their necessity as part of an issuer's tool-kit. As a solution, public issuers have taken action to amend their by-laws and articles where needed to allow for virtual meetings and ensure they are prepared. As of July 28, 2020 only 583 AGMs have been held by companies listed on the Toronto Stock Exchange. This has resulted in almost a 22% decline from the same time last year, as some companies took advantage of pandemic-related deadline extensions offered by regulators.

Maintaining shareholder democracy through a company's ability to provide the same level of access to virtual meetings as in-person meetings has been successful, with no known significant technological disruptions in Canada. In fact, Kevin Thomas, CEO of the Shareholder Association for Research and Education (SHARE), noted that most of the response to the virtual meetings has been positive, mainly because shareholders recognize the unusual circumstances. However, he indicated, "The challenge is that participation at some of these (virtual) meetings has been limited... the ability to ask questions has been limited by the company to either written questions in advance or sometimes no questions." He further opined that, "In some cases, the ability to log in has been quite complicated and the virtual events lack some intangible benefits to attending a meeting in person, such as being able to have informal chats with directors, company executives and fellow shareholders. I think there are some bugs to work out. But the potential for online meetings, if they allow for full shareholder participation, is actually probably positive."

To ensure shareholder vote participation, most companies have emphasized, through proxy statements and press releases, the need to submit votes well in advance of the virtual meeting. However, key investor groups in the U.S. have not agreed with the use of virtual meetings as a result of the pandemic, namely Ceres, the Council of Institutional Investors, the Interfaith Center on Corporate Responsibility, the Shareholder Rights Group, and US SIF: The Forum for Sustainable and Responsible Investment, as revealed in their letter to the SEC welcoming its April 7 guidance on virtual meetings.

This coalition is looking for the SEC to provide more in-depth guidelines and oversight on virtual AGMs, before they become widely adopted. Specifically, they stress concerns surrounding security, participation, responsiveness and transparency, emphasizing that until these areas can be properly regulated, virtual meetings are inadequate. However, the groups expressed their support for webcasting AGMs to the public, believing it helps bring consistent information to the market. Furthermore, they recommend that the SEC require or encourage all companies to conduct real-time public webcasts of their shareholder meetings.

In its April 7 guidance, the SEC states that the robust disclosures that facilitate informed shareholder voting are just as important for a virtual meeting or hybrid meeting as they are for an in-person meeting, stating, "The staff expects the issuer to notify its shareholders, intermediaries in the proxy process and other market participants of such plans in a

timely manner and disclose clear directions as to the logistical details of the virtual or hybrid meeting, including how shareholders can remotely access, participate in, and vote at such a meeting.”

Conversely, a number of corporate secretaries and governance professionals who have helped host virtual AGMs for the first time this year reported that the process went smoothly, despite the challenges of preparing for an event for which they were not familiar with the technology involved. In some cases, they also report higher rates of shareholder attendance than at previous in-person meetings.

With the global pandemic forcing companies to seek alternatives to in-person annual meetings, it is critical to note the key benefits, concerns, considerations, and best practices of a virtual meeting. For many of these companies, 2020 was their first experience hosting a virtual meeting and so they were navigating in uncharted waters. Moreover, many of these companies were fighting to keep themselves afloat as COVID-19 forced unforeseen rules that affected their business operations and staff.

VIRTUAL AGM 2020 SNAPSHOT

- 54% of meetings were virtual-only, with the vast majority of votes collected in advance of the meeting
- 26% of meetings were traditional physical AGMs, where shareholders could vote ahead of time or attend in person to vote or ask a question
- 13% of meetings were “limited hybrid meetings”, where participants could remotely ask questions but could not vote directly at the meeting
- 2% were the “full hybrid” model, where participants could vote and ask questions at the meeting, whether in person or remotely



PRACTICAL CONSIDERATIONS FOR HOSTING A VIRTUAL AGM

- **Limited technology providers:** In Canada, Lumi and Broadridge are the dominant platform operators to facilitate virtual meetings. Therefore, companies have extremely limited options, especially in terms of price.
- **Transfer agents:** Effective coordination between companies’ transfer agents and technology providers is critical to the success of virtual meetings since the voting structure and controls need to work in the same manner as in-person meetings.
- **Technology options:** Lumi and Broadridge offer companies both audio-only and video webcast for virtual meetings. With audio-only webcast being less prone to technical issues and less expensive than the video option, a vast majority of companies have opted for audio-only with Broadridge claiming that 97% of virtual-only meetings held in 2019 were audio-only.

VIRTUAL MEETINGS PROS AND CONS SNAPSHOT

Benefits	Concerns
Better shareholder accessibility Shareholders can remotely access and participate in a virtual meeting from anywhere in the world. With COVID-19’s social distancing guidelines it has become a no-brainer for companies to adopt with its obvious benefits of public health and safety.	Effectiveness of communication Managing discussion and debate between management and shareholders is difficult in a virtual environment. As questions are submitted online only, the meeting’s chairperson can broadcast and answer those they choose. This can create a perception of “cherry picking”.
Increased shareholder participation With better access to virtual meetings, more shareholders can participate online especially during proxy season wherein most companies hold their meetings at the same time removing the need to travel to each one.	Decreasing quality of shareholder participation While the number of shareholders participating in a virtual meeting may increase, the quality of participation may decrease in contrast with an in-person meeting where the level of discussion can be more in-depth, and nuances may not translate.
Reduced costs and time Companies can reduce the time, effort and expense in setting up in-person meetings. Companies no longer need to rent a physical venue and hire staff, including security and travel of board members. Shareholders also save their travel costs.	Perception Companies may be viewed as impersonal and unapproachable if utilizing a digital only format, which can negatively impact shareholder relations and the ongoing dialogue between the company and its investors.
Reduced carbon footprint With less travel for the company and its board and shareholders, virtual meetings are ideal for reducing carbon footprint.	Shareholder opposition Significant shareholders, mainly institutions and pension funds like the comptroller of New York City, oppose virtual meetings.
Pioneers and good governance Companies using a virtual meeting format during the pandemic may be thought of as leading innovators and stewards of good governance based upon the above benefits.	Technological disruptions Companies that are using virtual only format for meetings typically opt for an audio webcast, which is less prone than a video webcast to be disrupted by technical issues, thereby delaying a virtual meeting.

CONTESTED VIRTUAL MEETING

After evaluating the benefits and concerns of a virtual-only annual meeting of shareholders, how is the technology applied in a contested meeting? In the U.S., TEGNA Inc. (NYSE: TGNA) became the first virtual contested annual meeting on April 30, 2020. Despite its largest shareholder, Standard General LP (12% ownership), seeking four board seats, the company’s 12 nominees were re-elected. With the higher stakes of a contested meeting, there are practical considerations, at least in the U.S., with contested virtual meetings that need to be addressed. Olshan Frome Wolosky LLP noted that, “there needed to be a discussion and a meeting of the minds between the dissident advisers and company advisers on the procedures and the logistics of the virtual meeting, because absent this, a virtual meeting setting is ripe for manipulation.”¹¹ Customization may be required for the virtual meeting platform, which may necessitate help from outside service providers. If that is the case, Kingsdale strongly recommends the following steps take place well in advance of the contested meeting:

- Conduct dry runs with cross-functional teams: Include IT, legal, outside counsel, proxy solicitors, public-relations advisors

- Coordinate with inspector of elections in advance: Alternative means of communication with both parties will be needed, determine process for submitting all proxies and ballots before polls close
- Ensure both parties understand rules and processes

Canada, by contrast, is not mechanically equipped to fully conduct a virtual contested meeting. As a result, contested meetings for Optiva Inc. (TSX: OPT) and Turquoise Hill Resources Ltd. (TSX: TRQ), among others, were moved to accommodate the inability to hold virtual-only contested meetings. With that said, there will be a growing necessity, especially during the ongoing global pandemic, that means virtual contested meetings are likely to land in Canada sooner than later.



TOP 10 TIPS TO ENSURE A GREAT VIRTUAL MEETING

1. **Explain the move to investors:** Make shareholders aware of the switch to a virtual meeting in light of COVID-19's social distancing guidelines.
2. **Be attentive to your audience:** Be aware that virtual meetings can be perceived as restricting shareholder participation, especially meetings with contentious shareholder proposals, so solicit questions multiple times prior and ensure mechanisms are in place for follow up.
3. **Choose the proper technology:** Whether using audio-only or video webcast, the technology chosen must facilitate an acceptable level of communication.
4. **Create formal rules of conduct:** Establish and circulate rules of conduct before the virtual meeting begins as companies typically do with in person meetings.
5. **Establish Q&A good governance:** Post reasonable questions during the virtual meeting in sequence of submission.
6. **Facilitate shareholder questions:** Provide shareholders a forum and opportunity to submit questions before and during the virtual meeting, creating a conducive environment of communication between the company and its shareholders.
7. **Post questions post-meeting:** Companies should consider posting the Q&A from the virtual meeting on its investor relations webpage.
8. **Establish voting governance:** Corporate secretaries and transfer agents should work closely with the technology provider to ensure the voting structure of the virtual meeting is efficient, trustworthy, and in compliance with the final tabulation of all votes received.
9. **Technical support:** As nothing is guaranteed to be without flaws, companies should have technical support in place before and during the virtual meeting.
10. **Dress rehearsals:** Have at least one, if not two dry runs with the technological provider and the transfer agent before the actual virtual meeting date to ensure all participants and the chairperson are aware of how the technology functions and work out any bugs. This also provides all parties an opportunity to review the meeting script and adjust fit within the context of a virtual meeting.

KINGSDALE'S TAKE

It's time for the in-person AGM to end. This is an argument we have made well in advance of COVID-19, having concluded that the only people who tend to attend are insiders, advisors and those looking for free sandwiches. As we referenced in our 2019 Proxy Season Review, more than 95% of shares are voted well in advance of the meeting and only registered shareholders and duly appointed proxyholders, making up a small percentage of total share count, are able to vote at the meeting. Furthermore, shareholders' ability to introduce proposals or nominate directors is limited in that they must be submitted by a certain deadline in advance of the meeting. As we noted last year, AGMs are critical to upholding shareholder democracy and rights, which can be fulfilled by virtual-only or hybrid meetings without the cost and now the risk of an in-person meeting. Proxy Insight's recent report of 87 market participants found that 64% believe companies will adopt a hybrid model going forward while 26% predict virtual meetings will become more popular.

In our experience this season, despite low levels of virtual attendance, there were very few questions and no reported complaints from shareholders who felt they could not participate. All our virtual AGMs went smoothly, due in part to companies rehearsing with platform providers. For now, today's global pandemic will continue to dictate companies' options, meaning virtual-only meetings are here to stay for the unforeseeable future. As we continue to use technology to facilitate AGMs, we anticipate the further development of technology, security and usage to the point where virtual may become the preference for its ease of use, inclusivity and adaptability. 

THE NEW ABNORMAL

Chapter

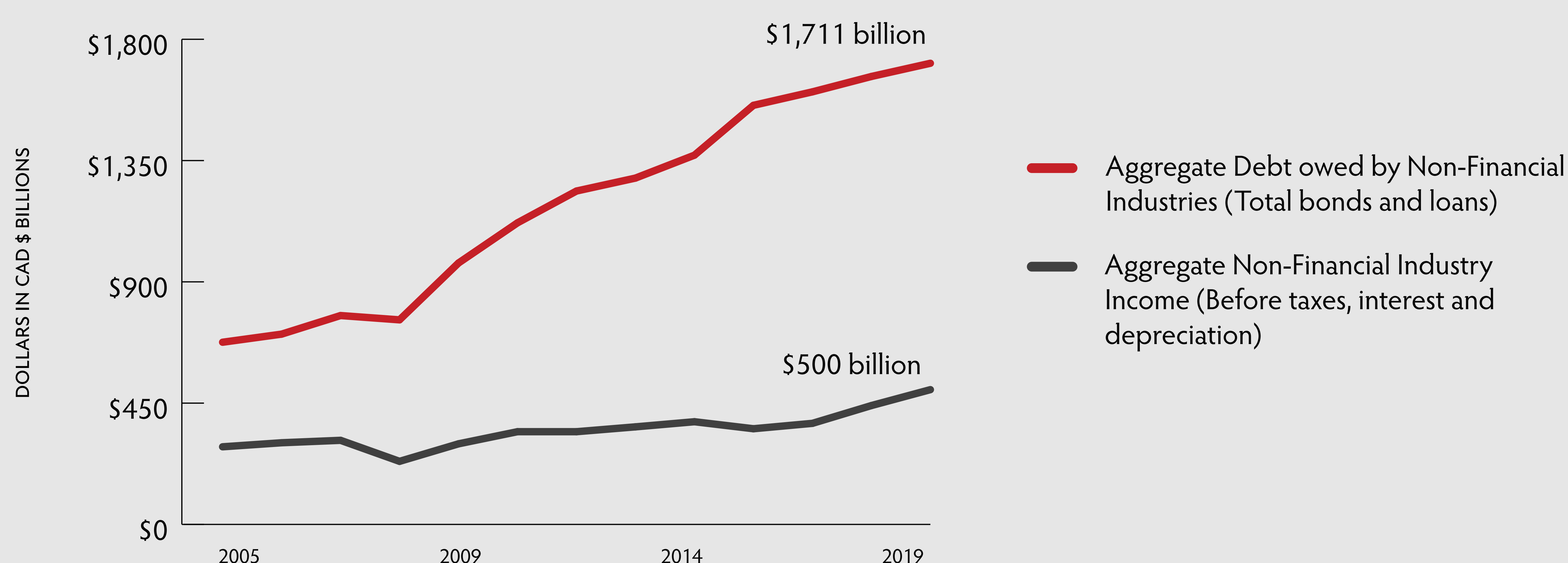
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BALANCE SHEET RESTRUCTURING IN A POST-COVID WORLD

Before COVID-19, the Canadian economy was quite fragile, with the rise of both corporate and household debt well documented in previous years. As noted by the Bank of Canada, in 2019 non-financial debt was already three times higher than income (see figure below), with commodity-related sectors singled out as high-risk due to limited available cash relative to their current liabilities. More broadly, just three weeks into the pandemic, the *Financial Times* reported that more than 130 companies in Europe and the Americas had withdrawn at least US\$124.1 billion from their credit lines alone.¹² Unfortunately, most sectors went into the pandemic with unprecedented levels of financial leverage and low cash balances – limiting an issuer’s ability to borrow more without restructuring their balance sheet. As corporate leaders respond to the challenges ahead, contingency-based plans and financial tactics to increase available capital will play a critical role in steering companies from response to recovery.

**CANADA’S NON-FINANCIAL INDUSTRY
(Debt and Income Before COVID-19)**



INNOVATIVE SOLUTIONS TO BALANCE SHEET RESTRUCTURING

Recapitalizations are usually designed by legal and financial advisors with input from key creditors and their advisors. The focus of recapitalization typically centres around balancing the issuer’s need to de-leverage the balance sheet and significantly lower interest expense on one side and the creditors’ needs for credit risk enhancement or incentives to compensate them for loss of principal repayment. The implementation of the recapitalization in the real world of disparate market participants can be overlooked. It is a truism that the mechanics of global voting and securities settlement can drive the solution design – either opening additional possibilities or constraining them depending on the facts. In the current market environment, the previously simple solutions of raising equity and issuing debt have become difficult. Accordingly, initiating early conversations around strategic alternatives and how to implement them is not only crucial for combating today’s economic conditions but necessary to help preserve value for all stakeholders. Corporate leaders need to understand what the different restructuring mechanisms are and how they can be implemented.

MECHANISMS FOR RESTRUCTURING

	BILATERAL NEGOTIATION	CONSENT SOLICITATION	PLAN OF ARRANGEMENT, CBCA	CCAA
Description in plain English	Aims to improve cashflow by renegotiating credit terms with each creditor.	Aims to amend terms of outstanding debt. A consent payment often is offered by the issuer to bondholders as an incentive.	Alternative to formal insolvency protection proceedings, with less court supervision and a shorter timeframe, offering flexibility and covering a wide range of objectives.	Available to larger corporations with amounts owing to creditors over \$5 million.
Cost	Low cost. Negotiated within agreement.	Moderate. Financial and legal cost may apply.	Moderate. Financial and legal advisors.	High. Fees by insolvency professionals, lawyers, accountants, and advisors.
Impact on Control	Low. Issuer retains control.	Low to moderate	Low to moderate. Issuer enjoys full control of the planning and execution.	High. Monitor appointed to oversee the plan.
Complexity	Low	Low	Moderate to high.	High. Requires requisite approval by number of holders and value.

To employ the correct solution, companies must not only understand the structure of their current obligations, but also how and where those obligations exist from the investor's perspective, which impacts the ease or complexity of the event. When dealing with loans and revolving credit facilities, renegotiation strategies are effective because, in most cases, there is a long-standing relationship with lenders. The strategies here include payment reductions, payment holidays, term extensions, covenant changes or forbearance agreements. While forbearance agreements do not address structural liquidity problems, they are currently popular because they provide some breathing room and the comfort that creditors will not invoke technical default rights. The key to these types of renegotiation strategies is recognizing creditor needs.

When we move into bond markets, we recognize that more creative options are available. We have seen the rise of maturity extensions, combining series, coupon changes and exchange of debt for any combination of cash, new debt, equity or, in extreme cases, an outright reduction of debt principal. However, executing bond restructuring strategies is not without its challenges, as most corporate bonds are transferable and trade in the secondary markets and may be held globally, regardless of where they are listed. Frequently, companies do not know who their bondholders are, making it difficult to negotiate new terms. The largest financial markets operate on an omnibus securities clearing model where only the custodian knows who the bondholders are, and they do not disclose the underlying beneficial holders unless compelled to. However, retaining the right advisors can help companies overcome this hurdle through a combination of industry relationships and implementation design choices.

KINGSDALE'S TAKE

Post-COVID Strategies Gaining Traction

With an imaginative outlook and a little support, companies are using traditional restructuring techniques in innovative ways to preserve liquidity. The traditional approach to raising cash through a subscription or rights offering to existing shareholders with or without a back-stopper is now seen being offered to investors across all asset classes on the balance sheet. The traditional back-stoppers, the investment banking syndicates, are increasingly replaced by the specialist credit funds.

Another trend is for distressed companies, that separately cannot find reasonable solutions to their balance sheet challenges, to seek at-market arrangements with others as a survival strategy to combine assets (and pivotally cash), generate opportunities for non-core asset sales and to consolidate debt from an enlarged platform.

Structurally, we continue to see Plans of Arrangement (POAs) employed for their flexibility to handle a wide range of corporate actions. Designing the “class” for voting purposes continues to be a key factor in planning for the required approvals. Increasingly we are seeing contingency disclosure that contemplates a vote not passing – for example, disclosing the intention to seek relief from the courts to set aside lower ranking creditor approvals for higher or the intention to move from a POA to bankruptcy protection proceedings.

In POA scenarios, one often overlooked aspect is the influence from institutional investors or credit arbitrage traders. More specialized funds may have unique strategies and may have fund restrictions. For example, some debt funds may not be able to hold equity positions and, if a debt-for-equity exchange is being contemplated, may either need to sell or reallocate the position within another group fund. It's important to have these conversations with your advisors in the early stages.

Be aware that announcing a restructuring will likely create volatility and arbitrage opportunities. Arbitrage opportunities are not simply the yield-related ones, but also credit risk arbitrage or the ability to acquire an equity position via an attractive debt-to-equity conversion ratio. For a sophisticated arbitrageur, if you like the underlying business/assets or the company's prospects post restructuring, why buy in the market and drive the stock price up or contemplate an equity offer at a premium to shareholders when you can acquire debt at a (likely) significant discount and convert to equity?

Syndicates have long been a feature of the credit capital markets, traditionally in the context of new debt issuance. In the context of balance sheet restructuring where principal write-downs or debt conversion is on the table, we are seeing formal and informal ad-hoc groups of creditors combining resources to negotiate terms. We are even seeing so-called friendly/negotiated deals including attributes of change-of-control deals such as creditor representation on the board, historically the domain of more hostile credit events.

We have seen and expect to continue seeing a significant increase in balance sheet restructuring activity, and with it the creativity of companies and their advisors. We are in uncharted territory, with global uncertainty related to the pandemic and so many companies yet to crystallize the impact of lost sales, lost production and tightening credit markets. What worked in the past may not work going forward. Planning early and retaining the right advisors is key to success. Choose advisors that not only bring the financial and legal acumen required to design your restructuring, but also can implement it in the real world through all the machinations of market mechanics and with the right contacts. 

ENDNOTES



KINGSDALE Advisors

Being the best in our field means reliably delivering the results our clients want – no matter the challenge. Our track record of success is backed by our unparalleled expertise and culture of **24/7** client service. Regardless of what your needs are – from governance advisory to compensation advisory to strategic communications to shareholder identification to depositary to full proxy solicitation for any type of voting matter – Kingsdale has the complete solution for you.

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