

## PROXY ALERT – Upcoming Proxy Votes

### Calls for Director Election Reform and Pay Disclosure Enhancements

#### **Canadian Imperial Bank of Commerce**

Symbol: CM (TSX, NYSE)

Annual Meeting Date: February 25, 2010

#### **Royal Bank of Canada**

Symbol: RY (TSX, NYSE)

Annual Meeting Date: March 3, 2010

#### **Laurentian Bank of Canada**

Symbol: LB (TSX)

Annual Meeting Date: March 16, 2010

*The filer of the proposals in this Proxy Alert have advised SHARE that each proposal has also been filed with the following issuers that have not yet published proxy documents:*

*Bank of Montreal*

*Bank of Nova Scotia*

*BCE Inc.*

*Bombardier Inc.*

*Industrial Alliance*

*Manulife Financial*

*National Bank*

*Power Corporation*

*Quebecor Inc.*

*The Toronto-Dominion Bank*

#### **Proposal: More Director Nominees on the Ballot than Seats on the Board**

Proponent: Le Mouvement d'éducation et de défense des actionnaires (MEDAC)

This proposal asks that issuers nominate a greater number of director nominees than are required to fill the number of seats on their boards. The proponent argues that its proposal would give shareholders a choice of board nominees, and therefore the directors elected would be far more likely to be attentive to shareholder views.



The election of directors at a Canadian public company requires shareholders to decide whether or not they support the nominees that the company's management puts forward.<sup>1</sup> Under the provisions of federal and provincial corporate statutes, shareholders can either vote 'for' a director nominee or 'withhold' their votes from a nominee. A shareholder cannot vote against a nominee. In order to be elected, a nominee need only receive one vote 'for' which the nominee may cast himself if he is a shareholder. This is called plurality voting, and it makes election of all director nominees a foregone conclusion.

Some Canadian companies, including Royal Bank of Canada (RBC), Canadian Imperial Bank of Commerce (CIBC) and Laurentian Bank of Canada (LBC), have adopted a policy of majority voting for directors, which essentially treats withhold votes as votes against a nominee. Under such a policy, a director who receives more withhold votes than votes for must tender his resignation from the board. Unfortunately, the majority voting policies of Canadian companies, including RBC's, CIBC's and LBC's, typically allow the board to reject a director's resignation, and therefore do not provide shareholders with unilateral power to reject a director nominee.

In the past decade, shareholders have filed numerous proposals intended to make director selection a shareholder choice instead of a clerical exercise. As examples, proposals were filed asking that there be two more director nominees for each directorship, that director nominees be required to receive 75% support from shareholders in order to be elected and that majority voting policies be strengthened by removing the provision that allows boards to reject the resignations of directors who fail to receive majority support.

The last of these proposals received significant shareholder support in 2008 at nine senior Canadian issuers including the 'big five' banks, and we believe it is the most effective way to provide shareholders with a meaningful vote on director nominees.

However, we also support this proposal. It is a more cumbersome and therefore less desirable way to make director elections a shareholder decision than unqualified majority-voting, but it would also be effective. It would give shareholders the final say

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<sup>1</sup> This Alert, like the proposal under consideration, addresses only uncontested director elections. Contested elections or 'proxy contests' occur when shareholders must choose between management's nominees and nominees put forward by one or more dissident shareholders. Contested elections are very rare in Canada.



in the election of directors which they do not typically have under the majority-voting policies in place at some Canadian public companies.

### **RECOMMENDATION**

SHARE recommends voting FOR this proposal.

### **Proposal: Disclose Ratio of Top Executive Pay to Average Employee Pay**

Proponent: Le Mouvement d'éducation et de défense des actionnaires (MEDAC)

This proposal asks companies to disclose the ratio of executive compensation to average worker compensation. The requested disclosure would set out the relative pay of three categories of company personnel: (i) the CEO; (ii) the five executives (including the CEO) identified as the Named Executive Officers (NEOs) in the proxy circular and (iii) the average pay of non-executive employees.

In Canada, public companies must disclose NEO pay, which includes CEO pay. Disclosure of average employee pay is not required, and therefore shareholders cannot calculate company-specific ratio of CEO and other executive pay to average worker pay.

Such pay ratios are often calculated by shareholders, the media and others interested in tracking the magnitude of the 'pay gap' between executives and non-executive employees.

The gap between top executive pay and the average wage is significant in Canada. According to the Globe and Mail's review of 2008 CEO compensation, average pay at the top of the corporate ladder was \$5.1 million. That is approximately 121 times the \$42,142 that the average Canadian worker earned in 2008 according to Statistics Canada, or a pay ratio of 121:1.

Interest in the ratio is generally based on the view that the pay gap has implications for organizations, their employees and other stakeholders. There is academic evidence that significant gaps between pay at the top and average pay can have a variety of negative impacts on public companies. A recent study<sup>2</sup> found that when corporate

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<sup>2</sup> *Overpaid CEOs and Underpaid Managers: Fairness and Executive Compensation*, James B. Wade, Charles A. O'Reilly, III, Timothy G. Pollock, 2006



employees assess the fairness of their own wages, the pay of the company's CEO is a key point of comparison. The authors found that the less fair non-CEO employees believe their pay to be relative to that of the CEO, the more likely they are to leave the company.

A U.S. example of corporate awareness of the importance of executive pay relative to average employee pay is the salary cap at organics grocer Whole Foods Market Inc. The company has established a cap for executive salaries only (not total compensation) that is based on the average wage of company employees. The company's 2010 proxy circular indicates that their executives' salary cap for 2009 of US\$671,050 was established by multiplying the average annual wage of their employees, US\$35,318, by 19. The company's pay disclosure for 2009 indicates that executive salaries are all well under the cap and total compensation tops out not far above the salary cap at US\$802,000, a total compensation ratio of 22.7:1.

The pay ratio disclosure that this proposal asks for will assist investors when they evaluate the performance of board compensation committees and when they vote the 'say on pay' resolutions on the ballots of a growing number of Canadian companies.

### **RECOMMENDATION**

SHARE recommends voting FOR this proposal.

