



Look who's talking

Until recently, boards and shareholders rarely met behind closed doors. But that trend is changing—and in the process, both groups are learning that direct dialogue can be a valuable step to better governance

By Robert Thompson

Three years ago, Stephen Griggs, executive director of the Canadian Coalition of Good Governance, began requesting meetings with directors who hold key roles on the boards of some of Canada's largest publicly traded businesses.

The action followed a process already established in Europe and the U.K., and just getting started in the U.S., in which boards and major shareholders meet formally—bridging a classic divide—to discuss key issues in corporate governance. “We want boards to recognize that shareholder engagement is a key board function,” says Griggs. “We believe it’s important that shareholders have the ability to have regular, constructive engagement meetings with the boards—not with management—to talk about governance issues.”

The CCGG started with the Big Five banks. “Logistically, that was easy,” he says. From there, it quickly expanded its effort to include boards from another handful of large companies.

One of them was Potash Corp. Mary Mogford, a veteran Canadian corporate director and governance committee chair on the Potash board, remembers it well. “There was a lot of talk in corporate Canada when these meetings were

set,” Mogford says. “People were asking ‘What does CCGG want? What are they looking for?’ I must say, our experience with CCGG—and I’ve also heard this from other company boards—was quite positive. The meeting started on say-on-pay but it was much broader than that.”

Fast-forward two years, and the CCGG—an organization representing 45 Canadian institutional shareholders who cumulatively manage over \$1.5 trillion in company holdings—has met with directors from about 50 companies. This year, it expects that number to double. For many directors, the arrival of that first formal meeting request still triggers the same questions Mogford mentions—including concerns about selective disclosure and the risk that it might lead to undue shareholder influence over business operations. But on the whole, the process is becoming more commonly recognized—if not totally accepted—as a part of the new governance landscape.

Even for companies not on the CCGG’s immediate radar, the process points to a growing expectation on the part of shareholders that they be able to communicate directly with boards. It’s a process that Mogford says, under certain circumstances (such as the loss of investors’ confidence in management),



Director Mary Mogford: dialogue appropriate at certain times

may be appropriate. However, Mogford stresses that she and Potash still believe that management should be the primary channel for shareholder contact and that the flow of shareholder feedback from management to the board is essential in that loop. “It’s important for a board to understand and keep abreast of their company’s shareholder base,” she says.

The CCGG’s meetings typically include a handful of key board members—in Potash’s case, for example, it was limited to the board chair, compensation committee chair and Mogford, with Griggs and two other CCGG board members on the other side. An agenda is laid out in advance and meetings often start out quite scripted, sometimes even frosty. But in most cases, before they’re done, board members grow comfortable discussing and fielding direct questions about their approach to executive compensation, corporate democracy and board governance.

“The parameters around what we talk about are very different than management meetings,” says Wayne Kozun, senior vice-president, public equities for the Ontario Teachers’ Pension Plan, a board member with the CCGG. “With management it is more about execution and how they are doing versus their business plan. When meeting with directors we have higher-level discussions than what we have with management.”

At this stage, it would be a stretch to say all directors are happy about this process. One senior corporate director and former compensation chair, who spoke on the condition he not be identified, says he sought legal advice after being approached by a shareholders group. Their message: listen, but stay quiet. “That’s what our lawyers told me,” he says. “But I wonder how far this is going to go. Are we going to talk about the concept of risk management tolerance, or do we end up talking about operations of the company?”

Both Griggs and Mogford insist that’s not the point. “As a general rule, the board should not be doing management’s job,” says Mogford. But those concerns persist. Another well-known director, Dee Parkinson-Marcoux, the former president of Gulf’s heavy oil division and a current director with SNC-Lavalin and Sherritt International, while in favor of more open discussions with shareholders, also wonders where meetings with organizations like the CCGG will lead. “We can push it too far,” she says. “Yes, you’re accountable to your shareholders, but having intermediaries creating checklists is moderately offensive. We need to make shareholder meetings more open and relaxed with greater dialogue without being negative.”

Directors seeking more information about the CCGG’s objectives and the criteria it uses to select the companies it approaches, can find a succinct summary of its philosophy and approach to shareholder engagement on its website.

Teachers’ Kozun, who has attended several meetings with shareholders in the last three years on behalf of the CCGG, notes that a lot of research is done ahead of time. “We often have analysts do detailed reviews of how a company’s compensation structure works and that way we can be clear on what we like and dislike going in,” he says. “Often times companies don’t give a clear link between compensation strategy and how they are paying people.

We want clarity on that.”

Kozun admits some directors have been reluctant to talk for fear of violating disclosure rules, but he reiterates the meetings are about corporate governance and not operational in nature. “Sometimes the directors don’t have to tell you that much—sometimes they just need to listen to how we feel,” he says.

As for the notion that selective disclosure is an issue for some directors, Griggs calls that “wimpy” legal advice. “From a pure legal perspective there’s no reason directors can’t talk to shareholders,” he says. “Directors should be sufficiently knowledgeable about the status of matters inside the company that they can speak for the board. There’s no reason they should be muzzled over concerns about selective disclosure.”

Another common director concern raised by Parkinson-Marcoux involves the worry that having meetings with only some shareholders creates a two-tiered system of ownership. The worry, she says, is that those groups with access will have greater influence on corporate policy, while other, typically smaller shareholders, will lack a voice in the debate. “The institutional directors see themselves as a separate set of shareholders and that division is very hard for a director to manage because under corporate law we can’t make that distinction,” she says. “So the demands to have chats are a concern because are they then getting information that is exclusive to them because they were bullish enough to ask?”

Griggs says this should not stand in the way of meetings. “If you are a large shareholder you can meet with the CEO of basically any company,” he says. “We have always encouraged boards to engage and speak out to all shareholders. But to say boards shouldn’t meet with their large shareholders is a fallacious argument.”

At the same time, Griggs says the CCGG realizes that directors can’t meet with all shareholders. To this end, he says the onus is on boards to “develop policies to be able to reach all of their shareholders in an appropriate way.”

The CCGG shares the information it gathers in a report to its members. The information may be used to shape CCGG recommendations to its members on how they should vote on say-on-pay on other governance issues at annual meetings. The companies also get a chance to see and comment on the report before it goes to CCGG members. The CCGG doesn’t make the results public, nor does it name the specific companies it meets with.

However, among the companies that *Listed* has learned the CCGG approached for a meeting in 2011, is Teck Resources. Long-time director Warren Seyffert, chair of the company’s corporate governance committee, says Teck’s board got an invitation in December. While he has no problem with a meeting, he shares the concern that has been raised by other directors—at what point do meetings with shareholders’ groups end in discussion not about governance, but about operations. “I don’t know where that line is, but I have a fuzzy idea,” he says. “My take is that discussions should be more about the process of something like risk management and not what risks a company is taking—that’s more on the operational side.”

Each time Griggs hears this concern from a board or a director, he repeats his message: the CCGG isn’t looking to push beyond governance issues. He says he expects these concerns to diminish in a few years time, once the CCGG has met with many more boards across Canada. “By their very nature there is a lot of heavy lifting going on in the initial meetings,” he says.

Kozun says one area where less progress has been made is with Quebec-based companies, something that the CCGG soon hopes to correct. One reason for the delay is the need to overcome strong ideological differences. Many Quebec companies have multiple-voting share structures, for example, something the CCGG is opposed to. The province has also railed against a national securities regulator, something the CCGG supports. Nevertheless, Kozun says he expects more inroads to be made in Quebec in the next year.

“There is a pendulum effect going on here,” says Griggs. “Shareholders are zeroing in on boards and wanting to build relationships.” And directors, for their part, are responding. ▼

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