CCGG INVESTOR PERSPECTIVE: SAY ON CLIMATE VOTING IN 2022

Introduction

Investor engagement on climate-related matters and disclosures has become a key focus for Canadian public companies in the global movement to arrive at net zero. Say on Climate voting, which permits shareholders to have an advisory vote on a company's climate transition plan and potentially other aspects of its climate change strategy, has emerged as a highly controversial tool during the past few proxy seasons. CCGG has been actively monitoring the Say on Climate space in Canada and this viewpoint will focus on providing some point in time insights into how Canadian institutional investors made Say on Climate voting decisions during the 2022 Canadian proxy season, including which factors were considered the most compelling by institutional investors when deciding how to vote.[1]

Background and Context

The Say on Climate initiative was created in the UK in 2020 with the goal of accelerating the global transition to net zero by requiring companies to provide investors with three things: "1) annual disclosure of emissions; 2) a plan to manage emissions; and 3) an approval or disapproval vote where shareholders deem it appropriate".[2] This third goal is being operationalized in Canada in two ways. The first is through a shareholder bringing a non-binding proposal to a vote at a company's annual general meeting, requesting the ability to vote on the company's climate transition plan or to weigh in on other components of a company's approach to climate, typically at a future meeting (a 'shareholder proposal').[3] The second is through management bringing its climate action plan

[1] Our approach was to seek input from CCGG's E&S Committee members on the most important factors their organizations would consider when making voting decisions. As a starting point for discussion, we referred to 1) the established voting guidance from proxy advisors and 2) specific examples of actual shareholder and management proposals which took place during Canada's Proxy 2022 season. All other information gathered for this viewpoint was attained from publicly available sources.
[2] Say on Climate Shareholder Voting on Climate Transition Action Plans
[3] For examples of the kinds of climate-related shareholder resolutions faced by Canadian banks in 2022 see: 2022 Climate Finance Resolutions Going to a Vote | ICCR (Interfaith Center on Corporate Responsibility). None of the resolutions put forward to the banks passed but this did not mean that shareholders were not focused on climate-related issues at annual general meetings, see Tim Kildaze, Big banks' shareholders reject 'say-on-climate' campaigns, Globe and Mail, April 15, 2022.

directly to shareholders for a vote, also on an advisory basis, either in response to a successful shareholder proposal which occurred in the prior year, or as a means to pre-empt such a proposal (a 'management proposal').[4]

On March 11th, 2022, CCGG held a Say on Climate roundtable. Results from the March roundtable discussion demonstrated that Say on Climate proposals are a prominent issue in Canada for both companies and institutional investors because they raise a number of thorny corporate governance as well as practical issues.[5]

- **Corporate governance concerns**

  During the March roundtable both companies and investors expressed concerns that Say on Climate votes could be interpreted as eroding the discreet roles and chain of accountability that exists between shareholders, directors and management in a way that inappropriately requires shareholders to opine on corporate strategy, which should properly be the purview of the board and management because it requires in depth knowledge of the corporation's business, industry and operations.[6] For this reason, some investors question, in principle, the utility of Say on Climate proposals; shareholders already have an important tool to hold boards accountable because they elect directors and some investors view this as a more appropriate mechanism to send a signal to boards and management who fail to meet shareholder expectations regarding the board's oversight of climate risk.

- **Practical issues**

  On the practical side, the concept of Say on Climate proposals is still quite new and to date there have only been a relatively small number of such resolutions, primarily advanced by

[4] See Canadian Pacific Railway Limited Driven to Deliver, 2022 Notice of Annual and Special Meeting and Management Proxy Circular, March 14, 2022, at pg. 18
[5] CCGG Hosts Roundtable Discussion on Say on Climate, March 11, 2022; For additional insights on investor and issuer perspectives also see: UN PRI's Say on Climate Analysis: Investor Briefing Guide, February 2022; and the related update to this report: UN PRI Climate Transition Plan Votes Investor Briefing, December 2022 which highlights at the global level many of the same investor issues, concerns and approaches that we found through our Member consultations in the Canadian context; also see Ravipal S. Bains & Andjela Sabet, "Say on Climate" — Key Considerations in Implementing Shareholder Votes on Climate, July, 16, 2022, McMillan LLP; MSCI Say on Climate: Investor Distraction or Climate Action?, February 15, 2022.
[6] See for example: CPPIB Proxy Voting Principles and Guidelines February 9, 2022 at pg. 7: "Generally, we support resolutions that empower boards of directors to act in the best interests of the company and reaffirm management accountability. We do not support resolutions that seek for shareholders to provide direct oversight of management."

shareholders with very few management proposals being brought forward in Canada.[7] Participants in CCGG's March roundtable acknowledged that at this point there has not been an avalanche of Say on Climate proposals brought by management,[8] however if such proposals were to become the norm for companies,[9] there are serious concerns among institutional investors with respect to the availability and accessibility of the full suite of information required to meaningfully assess the transition plans. There are also concerns with respect to the resource capacity within institutional investors to cope with the sheer volume and granularity of transition plans that may come up for vote during proxy season each year if Say on Climate becomes a best practice.[10] This problem is particularly acute for smaller institutional investors. Such constraints create the risk that Say on Climate proposals, if brought regularly by management, would be at risk of being seen to be either 'rubber stamped' by investors or,[11] alternately, critiqued by companies as being too subject to third party influence and advice from proxy advisors.

A common refrain that emerged during the roundtable was a shared view that while Say on Climate advisory votes on their own are unlikely to achieve sustained change, they may have the potential to be an effective catalyst for change by spurring engagement and critical dialogue among companies and investors that will facilitate mutual understanding of the parties' expectations and what they are hoping to achieve.

Against the backdrop of these concerns and on-going debate, Say on Climate votes are happening in Canada, and investors are therefore being asked by fellow shareholders or, less frequently, by management to cast their votes. Following the March roundtable, CCGG sought input and insights

[7] See Morrow Sodali's Canadian Proxy Season Preview 2022: Although the report does not include a reference to the specific number of Say on Climate focused shareholder proposals, it does observe that of the 113 ESG related shareholder proposals brought in Canada during the 2022 proxy season, 27 were environmentally focused and "[g]reen gas emission and net zero related proposals had also gained popularity, representing a major bulk of the climate change related proposals", at pg. 19.
[8] Jeffery Jones, Shareholders are pushing ESG issues despite troublesome economic environment, review shows, Globe and Mail, November 15, 2022.
[9] Ibid., for example the above-mentioned article predicts that Say on Climate votes will increase over the next three to five years.
[10] This is not to imply that an investor approach to holding boards accountable for climate-oversight through the mechanism of director elections does not involve significant dedication of investor resources because evaluation and assessment of a company's approach to climate and decarbonization is still required to make informed voting decisions. Addressing the corporate governance problems may not necessarily alleviate the practical issues.
[11] See sources referenced at supra note 5; also see Say on Climate Votes: Glass Lewis Overview - Glass Lewis; this analysis also flags potential legal concerns for investors arising from how they vote on Say on Climate resolutions.

from our Environmental & Social Committee, which represents a subset of our Members, with respect to how Canadian institutional investors approached voting decisions for Say on Climate proposals during the 2022 Canadian proxy season. It is clear that CCGG's Members hold a wide range of views with respect to how they approach Say on Climate proposals and that there is no "one size fits all" approach. While not an empirical analysis, as a result of the input received, we have anecdotally identified a number of considerations and common themes relevant to how Canadian institutional investors assess Say on Climate proposals and we provide here some suggestions to both boards and shareholders with respect to how they may wish to approach Say on Climate resolutions in 2023 and beyond.

Decision-making approach

Many but not all Canadian institutional investors are taking a case-by-case approach to Say on Climate votes.[12] As part of their decision making process, such institutional investors often use the services of proxy advisors such as Glass Lewis and ISS to assist with research and policy application. Both advisory firms have provided nuanced commentary on how they are approaching Say on Climate votes, and each identifies a number of factors they consider when evaluating Say on Climate resolutions.[13] Both proxy advisors also differentiate between management and shareholder proposals and consider different factors based on the type of resolution when forming case-by-case voting recommendations.[14]

While relying to varying degrees on proxy advisor guidance as a guiding framework, relevant factors are weighted and applied differently by different institutional investors depending on several considerations, including:

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[12] For example, see RBC Gam's February 2022 Voting Guidelines 5.3 Climate Change, pg. 25; also supra note 6 CPPIB Proxy Voting Principles and Guidelines February 9, 2022 where this is not the case.
[13] Glass Lewis 2022 Canada Policy Guidelines pg. 54 ; ISS Canada Proxy Voting Guidelines for TSX-Listed Companies Benchmark Policy Recommendations Effective for Meetings on or after February 1, 2022, December 13, 2021, pgs. 47-48.
[14]Of note, ISS takes a case-by-case approach to both shareholder and management Say on Climate proposals see ibid., ISS Canada Proxy Voting Guidelines for TSX-Listed Companies Benchmark Policy Recommendations, pg. 48 . The Glass Lewis 2022 Canada Policy Guidelines indicate a case-by-case approach to all shareholder proposals with reference to its ESG Initiatives Voting Guidelines, pg. 54. The Glass Lewis 2022 Policy Guidelines ESG Initiatives indicates Glass Lewis will typically take a case-by-case approach to management Say on Climate proposals related to transition plans and will generally recommend voting against Say on Climate for shareholder proposals but "will make note of and potentially consider" a number of identified factors, at pgs. 28-29.

- **The size, capacity and available resources of the investor**

  - The largest institutional investors with significant internal resources may, for example, reference the same factors as the proxy advisors (in some cases through their integration into customized voting policies), as well as conducting their own research and applying proprietary assessment tools focusing on the quality of the climate transition plans, the existence of emissions targets and progress made against such targets, and the current governance framework of a company.

  - Smaller investors with fewer internal resources may identify a higher-level, short list of factors that are considered most significant to their investment approach when determining how to vote. These could include whether a company has disclosed science based targets over the short, medium and long term, or whether there is a public commitment to address climate change and/or environmental sustainability.

- **The type of resolution: management vs. shareholder**

  Overall institutional investors indicated that they consider the same factors for management proposals and shareholder proposals but apply some different assumptions to the analysis.

  - **Management proposals**

    There is an expectation that management proposals have undergone a rigorous internal review within a company before they are brought forward for a vote. If a management proposal is considered weak but an investor is of the view that the company is genuine in its efforts to address climate transition risk, some investors may give the company the benefit of the doubt initially in order to support a company in the early days of developing its climate change strategy.[15] In such cases, however, the investor might inform the company through engagement that the proposal was insufficient. If progress is then not seen within a fairly short time frame, the company could expect to receive a vote against during future proxy seasons.

  - **Shareholder proposals**

    In contrast, shareholder proposals might receive a higher level of scrutiny from investors because they are not assumed to have undergone a similar vetting and assessment process. Investors might also consider management's perspective on a shareholder resolution when forming their own view as to whether the proposal is in alignment with

[15] The reverse may also potentially be true in certain situations for shareholder proposal support. Investors may vote in favour of an otherwise overly prescriptive shareholder proposal if a company is not considered to be genuine in its efforts to address climate risk.

the company's overall climate and sustainability objectives and importantly whether the proposal takes into account progress made through investor engagements or is overly prescriptive.

- **The frequency of the ask**

  While not a settled matter, some investors are of the view that an annual vote, whether proposed by shareholders or management, is not necessarily the best use of resources at this stage for most companies or shareholders. Since meaningful change thoughtfully tied to a business strategy takes time, annual votes may be viewed as too frequent. Progress can be measured through comprehensive annual disclosure and that is where company resources should be focused at this stage.[16] Similarly, annual votes may be too much of a burden on shareholders as well, given the resources required to assess proposals which may not be based on much new information over prior years.

Common Themes

Several common themes emerged with respect to how institutional investors conduct case-by-case assessments, including the prominence of certain factors, which are instructive to both management and shareholders, when considering whether and how to propose a successful Say on Climate resolution.

1. **The appropriateness of the proposal within the framework of governance accountability**

   The substance of a resolution, particularly whether it can be interpreted to interfere with the accountability relationship and appropriate roles of shareholders and boards in the governance structure, is very important to investors. Investors are not seeking to step into the shoes of boards or management with respect to their engagement on climate issues. They are seeking to ensure that boards are exercising proper oversight and discharging their fiduciary duties appropriately. Investors are less likely to support resolutions that attempt to direct corporate strategy or diminish the power and/or accountability of the board of directors or inappropriately re-balance the roles of boards and shareholders.

[16] This may be particularly true for climate change related data, for example, investors typically only receive updated information on Greenhouse Gas Emissions once per year.

2. **The reasonableness of the resolution**

The wording and language of a resolution are very important to institutional investors. Particularly in the context of shareholder proposals, investors are less likely to support a shareholder resolution that is:

- Overly burdensome (e.g. in scope or timeframe), overly vague or highly prescriptive; and/or
- Duplicating existing practices or failing to consider progress made at a company against existing plans and targets.

3. **The quality of climate-disclosure**

Investors are more inclined to support management under either a shareholder or management proposal scenario where there is robust, reasonable disclosure. Investors recognize that meaningful change on climate related metrics takes time, but a company must be transparent as to its challenges, progress and ambitions. To evaluate this investors look to:

- The quality of climate disclosure relevant to emerging regulatory standards.
- Does the disclosure follow emerging best practices, notably alignment with TCFD disclosure requirements?
- Does the company disclose its GHG emissions?

4. **The quality and thoroughness of the climate transition plan**

Investors are looking for the company to have a climate transition plan and a robust climate governance framework along with a track record of demonstrated progress or improvement both against the plan and in comparison to market peers and sector risk profile. Investors may consider:

- Are there emissions targets? Are they science based? Are they reasonable in the context of the company's operations and risk profile? Are they subject to third party assurance?
- Is there a transition plan? Does it have short-, medium- and long-term benchmarks aligned to a reasonable decarbonization pathway? How does the company's transition plan compare in ambition to its market cap peers and the sector risk profile? Is it competitive? Is it aligned with relevant national commitments made under the Paris Agreement and evolving legislative, regulatory and policy directions of government to implement such commitments.

- If the company or industry is being engaged by a collective engagement initiative such as Climate Action 100+ or Climate Engagement Canada,[17] is the plan responsive to the benchmarks for those initiatives?
- What is the company's existing involvement in sustainability initiatives?

5. **The importance of engagement**

Investors are more inclined to support management where a company is willing to meaningfully engage with shareholders on climate-related issues and share its perspective on the issues with investors.

6. **The existence of inconsistent lobbying**

If the company has been actively lobbying the government in a way that is contrary to their climate change statements, transition plans or engagements, investors may use their votes in response to a Say on Climate resolution to signal their displeasure to the board, either by not supporting management or supporting a shareholder proposal where there may not be full alignment.

Key takeaways:

The insight CCGG gained from investors with respect to how they approach and vote on Say on Climate resolutions demonstrates that while there is no uniform approach to voting decisions, Canadian institutional investors are thoughtful in distilling what is important to them based on their organizational investment strategies, portfolio methodologies and approach to stewardship. Notwithstanding that approaches are bespoke, there are lessons that can be drawn from the common themes as to how institutional investors are making their decisions that are helpful to both management and those considering shareholder proposals in 2023.

Key takeaways for boards in respect of management proposals:

- Ensure climate governance is robust and governance related disclosure is clear.
- Align climate-disclosures with the TCFD.

[17] Each initiative articulates a set of benchmarks which participants are assessed against, see Structure and Methodologies | Climate Action 100+; What CEC Investor Participants Expect of Focus List Companies The Business Case – Climate Engagement Canada

- Have a climate transition plan that is ambitious, operationally coherent and in step with peers indicated by size and the company's risk profile.
- Report on progress against the plan.
- Ensure that lobbying objectives are not at cross-purposes with the company's climate strategy.
- Be willing to engage.

Key takeaways for investors in respect of shareholders proposals:

- Ensure proposals are targeted at ensuring the board fulfills its fiduciary duty without eroding the accountability of boards to shareholders.
- Carefully consider whether the wording of a proposed resolution is too prescriptive or overly burdensome.[18]
- Be aware of what a company has already published with respect to its climate transition plan, targets, and progress to avoid duplicative resolutions that do not take into account efforts and/or progress made to date. If a shareholder proposal is worded differently, this can completely change the outcome of the evaluation to vote in favour.
- Be willing to engage.

Future Implications for Say on Climate Voting

The binary nature of a Say on Climate vote makes it a blunt instrument; it is clear that such votes do not offer a silver bullet for companies or investors. It is hard to say at this point whether such votes will become a proxy season fixture or if they are themselves part of the transition process to meaningfully integrate climate governance oversight into companies and to improve climate disclosures. What is clear is that Say on Climate votes are generating active and ongoing discussion, debate, and engagement both within and among companies and investors with respect to what constitutes an appropriate corporate response to climate risk and the role of investors. As observed by the participants in CCGG's March roundtable, perhaps what is really required is less a "Say on Climate" and more a "Conversation on Climate."

[18] For example, the prescriptiveness of the proposal in terms of articulating shareholder objectives should be framed in a way that is feasible for a company to achieve considering broader circumstances. As noted by one of our Members, in the context of a shareholder proposal made to a bank concerning fossil fuel financing, if the shareholder proposal was framed differently, it may have gained more investor support. Framing the proposal as a request for disclosure as to how the bank is considering the IEA net zero scenario or disclosing how it is addressing (and defining) new production for fossil fuel companies, may have been a better strategy to gain support.