

The Roxborough Initiative

A new model for corporate stewardship

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The role and accountability of the Boards of Directors of publicly held corporations have been a perennial concern of investors and other stakeholders in those corporations. How well are the interests of the risk-takers, as opposed to those of the executive management reflected in the organizational design? The Roxborough Initiative proposes a board/management relationship which is more arms-length, minimizes coziness among outside/inside board members/management and, most importantly, strengthens the influence of major shareholders on corporate management.

The Sponsor

The sponsor of The Roxborough Initiative is an 'ad hoc' group of individuals, all of whom invest in the stock and bond markets, do their own research and are generally interested in economics, politics and, more specifically, the application of public policy as it affects the investing public.

The group is known as The Investors' Symposium and is devoted to the development of initiatives for the ultimate benefit of investors (public, corporate and private) in public companies traded on various stock exchanges and other markets. These companies will include not only 'limited liability corporations' but also other financial entities whose structure is not necessarily corporate but who have a fiduciary duty to their investors or participants.

Concentration will be focused on the provision of clarity, transparency and governance as dictated by existing legislation, and regulations regarding the operation of the corporations and other entities, as determined by self-regulating bodies and public security regulators.

The Evolution of the Concept

During the financial and economic melt-down of 2008-09, many U.S. and European banks and other financial entities (insurance companies, hedge funds, mortgage lenders etc) failed or suffered irreparable harm that was the subject of “bail-outs” by governments. The cost of the “remedial” action taken was passed on to the taxpayers by way of printing money, lowering interest rates and creating other forms of artificial stimulus.

The obvious exception when considering failed institutions requiring state support were the privately held banks of Switzerland where very few, if any, required any form of government “help” or propping up. One of the primary reasons for the outstanding performance of the Swiss banks is that the bulk of them are privately owned.

The owners and/or partners of the private Swiss banks share in the profits and risk of loss. Primarily because the partners are the management, the assessment of risk becomes a very personal task for the partner/owner. It follows that the closer the owners of a corporation are to its management,

the more judiciously and prudently the enterprise will be managed for the “not too distant” beneficial owners of the equity

The directors of a corporation are responsible for the appointment of management whose job it is to ensure that the business runs in accordance with the business plan as put forward and approved by the directors. The execution of directors’ decisions is the job of the management with the intent of providing corporate growth, the provision of dividends and capital appreciation for the shareholders.

Ergo, the closer that the equity owners are to management the more management will attempt to satisfy their employers.

It follows that the election of shareholders or shareholders’ direct representatives (in the case of corporate owners) to the Board of Directors will bring the ownership into the management process and provide a more careful scrutiny of management by those who stand to gain or lose as a result of management’s activities.

At the present time “outside” directors who do not own a substantial number of a company’s shares do not have the same incentive as the equity owners and, as a result, may come under the influence of management.

These outside directors are nominated by management in conjunction with the incumbent directors. Management is the recipient of the proxy form and is in a position to ensure that their nominees, usually including the incumbent directors, are elected and re-elected even though their equity interest in the corporation may be minimal. The possible exception to this would be the share options, which they have granted to management and themselves. These options are vital to the corporation in terms of both the dilution of equity and the number of options granted relative to corporate profitability, allegedly attributable to the recipients of the options. A slate of directors put together by management and the incumbent directors becomes a self-perpetuating oligarchy of self-interested “non-owners”.

Generally directors are often paid excessive amounts to serve as directors on the basis of their legal accountability and responsibility although all corporations provide and pay for directors’ insurance which covers all matters where directors may be liable with the exception of criminal fraud and gross negligence. The same reasons apply to large share options granted to directors - another example of self-interest amongst the “corporately entrenched”.

At the present time both Credit Unions and Mutualized Life Insurance companies provide a structure where those that stand to benefit and/or lose are directly involved in management.

The thesis that evolves is that the closer that the “true” owners of an entity are to management the more prudently the organization will be run.

In truth, share ownership in a corporation is an extension of a partnership operating under a structure that makes the proliferation of ownership manageable. Unfortunately the singular influence of a shareholder/partner is diluted in the process.

The Proposal

Directors of a publicly traded corporation or financial entity are elected on an annual basis, from a slate of nominees put forward by those who have the most to gain or lose as a result of the entity’s activities.

1. On the last day of a company’s or entity’s fiscal year there is a determination of the fifteen largest shareholders of the enterprise.
2. Each of the fifteen largest shareholders is entitled to nominate an individual, who, if elected will serve as a director for the following year.
3. Ten of the nominees are elected to the board.
4. Each share will entitle its holder to ten electoral votes. These electoral votes can be allocated amongst any of the fifteen nominees. Multiple votes for any nominee are permitted.
5. In order for any proxy to be valid there must be an allocation of at least one electoral vote for one of the nominees.

6. The Chairman of the Board will vote any other proxy matters on behalf of shareholders from whom open-ended proxies are received.

In the case of corporations, mutual funds, insurance companies etc., it is expected that the nominee would be an employee of the shareholder, would be familiar with the company on whose board he may sit and the industry in which it operates.

If a shareholder who is entitled to nominate a director chooses not to, the entitlement then passes to the sixteenth largest shareholder and so on...

In the case of a private shareholder or at the discretion of a corporate shareholder a "proxy director" can be nominated and paid by the shareholder to represent that shareholder's interest, should that nominee be elected.

To avoid conflicts of interest, the nominees, if elected, are paid by the shareholders they represent They will be reimbursed for their expenses related to their attendance at board and/or committee meetings.

Directors will not receive salaries from the companies on whose boards they sit, nor will they receive stock options or any form of compensation other than what they are paid by the shareholders to represent them.

The term of the directorship commences on the first day of the month following the annual meeting, allowing a transitional period during which the new directors are informed of on-going internal projects and “work in progress”.

There will also be two directors who are part of the management team but like the other directors will not receive stock options of any sort.

If the board (excluding the management representatives) feel that management has performed in a manner that merits additional compensation, they will award fully paid common shares to management. These shares are to be held in escrow for two years following the award.

The Chairman of the Board will be elected annually by the non-management members of the board.

If a shareholder who has had its nominee elected as a director sells or divests itself of their position in the company, its representative must resign from the board and is not replaced until the next fiscal year, leaving the board in control of the company (minus the selling shareholder’s director) until the end of the fiscal year. This allows time for the re-allocation of the shares sold to determine the altered shareholder profile.

Benefits Accruing to the Stakeholders

Those with the most to gain or lose are in direct control of management and oversee the enterprise at board and committee meetings.

If a shareholder whose nominee sits on the board, loses faith in the company and divests itself of its position, the shareholder loses its representation on the board.

A new substantial shareholder can gain board representation the year following its investment in the enterprise.

The corporate shareholders (companies, mutual funds, pension and hedge funds etc) represent **their** stakeholders at the board level and are expected by them to engage management and to maximize returns.

Management and the existing board will no longer put up a slate of directors for re-election thereby perpetuating the “inner circle” of directors and allowing the management/board axis to control the entity possibly to the exclusion of the shareholders at large.

If a person does not own or directly represent a significant portion of the equity of a corporation, he/she cannot sit on the board and be in a position to influence management or be influenced by management.

Stock options are eliminated thereby preventing significant dilution of equity on the exercise of the options. The bonus system of giving fully paid common shares ties the recipient to the company for a period of time during which his interests are perfectly in line with the interests of the other shareholders; they all have “money on the line.”

At present, options are usually exercised and the shares sold simultaneously with no benefit to anyone other than the holders of the options. They have no exposure to the on-going business of the enterprise in which they were given the options, ostensibly for growing the enterprise for the long term.

Management continues to run the enterprise and make day-to-day decisions.

The board and directors representing both big and small shareholdings develop policy and long term plans for growth and development.

All of the shareholders are directly involved in the major decisions including;

- mergers and acquisitions
- outright sale of the enterprise
- restructuring of the enterprise

All of these actions generally require 66% of the shareholders vote in addition to the directors approval.

At present the directors do not truly represent the shareholders. They don't know them and they have no mandate from them other than being elected, in most cases by proxy in favor of management.

Under the Initiative, the directors represent the shareholder directly. In an indirect way they also represent the ultimate beneficiaries of other financial entities such as pension funds. The fiduciary duties are extended from the board level down to the bottom of the stakeholder chain.

Each director will have a fiduciary duty to the company on whose board he/she sits. Any case of "insider information" malfeasance as reflected in stock trading patterns attributable to a director's position of trust will be prosecuted.

With every director looking out for the best interests of the company on whose board he/she sits and being accountable to their fellow board members and the shareholders, the incidence of influence peddling and the influence exerted by suppliers or customers at the board level would be minimized.

The malfeasance of a director will reflect badly not only on his/her employer but more directly on the individual who will have to suffer the consequences of their actions.

The Proponents

The members of the Investors' Symposium who are the prime proponents of The Roxborough Initiative are:

The Hon. Douglas D. Peters, PhD. PC.

Former Chief Economist and Senior Vice President, Toronto Dominion Bank- former Secretary of State (Finance) in the Liberal Government 1993-1997

The Hon Jerry S. Grafstein QC.

Counsel, MInden Gross LLP - co-founder, Citytv - co-founder communication, cable and tv companies in the Western Hemisphere and the UK. - former Senator and member of the Senate Banking Committee 1984-2009

Henry S. Brenzel

Managing Director, Brendan Wood International

Sr. Account Director, Echo Advertising + Marketing Inc.

President, The Atlas Group

Fred Hirshfeld

Managing Director

Tricycle Asset Management Corp.

Ronald J. Kurtz

President, R.J. Kurtz Investments Ltd.

Precious metals and securities manager

Jacoline Loewen B.A. [industrial relations], M.B.A
Director, Exempt Market Dealers Assn., DCL International, Strategic
Leadership Forum-author, Money Magnet: How to Attract Investors to Your
Business - panelist, BNN - part time instructor at
Rotman School of Management - Principal, Loewen & Partners Inc. providers of
financing for corporate growth

David W. Peters, B.Comm., Ph.D.
Business Administration Professor, University of Guelph-Humber
Principal, Peters Financial Consulting

David L. Robertson, B.Comm
Senior Vice President and General Manager, Royal Bank Financial Group (USA) - Chief
Executive Officer, Royal Bank Venture Capital Corp.- President and CEO, Murray
Axmith Associates - Chief Executive Officer, inBusiness Solutions Inc. - Principal,
Mathersfield Group Inc.

Robert G. Thomson, QC, JD
Toronto Chartered Financial Analysts Society (associate) - Corporate Law, Fraser Milner
- Corporate Director, TMX listed companies, Sceptre Investment Counsel Inc. and
Liquidation World Inc., - Director and counsel to private and not-for-profit organizations -
Principal, Rovalex Investments

William C. Tostevin
Chemical engineer, oil industry management
Great Canadian Oil Sands, Petro-Canada

Edwin Weiss, B. Comm, C.A. (life member)
CFO Triarch Corporation - Deputy Managing Director, Ontario Housing Corporation -
Managing Director, Walwyn Properties Inc. - Principal, Millgate Financial Corporation
Shareholder activist - Millgate v. BF Realty, BCE Inc., Brookfield Development Corp

Rick Wolfe
Executive, McCann Erikson (Tokyo) - Instructor, Schulich School of Business - Investor
in multi-residential Real Estate - Principal, PostStone Corporation - consultant to
Canadian banks, insurers and international business

Can shareholders fix broken boards of directors?

janet mcfarland

Globe and Mail Update

Posted on Monday, September 19, 2011 3:07PM EDT

They meet, they chat, they draft paradigm-shifting proposals to change Canada's securities laws.

A group of senior and retired businessmen in Toronto, who call themselves The Investor's Symposium because of their mutual interest in investing, has drafted a radical new proposal to change the way corporate directors are elected to public company boards. The bottom line is that big shareholders such as mutual funds and pension funds would have to get a lot more active in overseeing companies when they buy their shares.

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Dubbed the "Roxborough Initiative" by the business group, the proposal would require a wholesale change in the way corporate directors are elected in Canada to ensure these are truly the chosen representatives of shareholders and can represent their interests directly.

The drafters -- who include Doug Peters, former secretary of state for finance; Jerry Grafstein, former senator and co-founder of Citytv; David Robertson, former CEO of Royal Bank Venture Capital Corp.; and long-time businessman Ed Weiss, former CFO of Triarch Corp. -- say directors are too far removed from the companies they run and the shareholders they represent, and don't personally have much interest in the success or failure of a corporation.

With only a small ownership stake in the companies, the proposal says directors risk falling under the influence of management, and a board becomes "a self-perpetuating oligarchy of self-interested 'non-owners.'"

The group's solution would see the 15 largest shareholders of a public company each nominate one person for a company's board. Of the 15 nominees, only 10 would be elected by shareholders. Investors would receive 10 votes for each share they hold, and could divide those 10 votes in any proportion among the 15 nominees. The 10 people with the most votes would form the board.

Those pitching the plan say corporate owners, including mutual funds or pension funds, would ideally name one of their own employees as their nominee, ensuring their director would directly represent the shareholder's interests. Shareholders could, however, nominate a "proxy director"

to represent them if they don't feel they have someone in-house to fit the job. They could also pass entirely on the chore -- which would then pass to the 16th largest investor and so on down the line -- if they don't wish to participate.

As a final twist, directors would be paid by the shareholders who nominate them, not by the corporations, ensuring they would avoid any conflict of interest. Two members of management would also join the board, but, like all other directors, would not receive any stock options.

Mr. Weiss says his concerns rose after the financial crisis in 2008 and 2009 when he became convinced that many of the strongest institutions were those that were privately run by partners who had a direct ownership stake and who shared the financial risks personally, leading them to manage far more prudently. That convinced him shareholders needed far closer representation at the companies they own.

"The closer you get to the people who stand to make or lose in the entity's activities, the better managed it will be," he said in an interview.

Regulators at the Ontario Securities Commission and the Toronto Stock Exchange are weighing proposals to make modest changes to the proxy voting system in Canada. The TSX, for example, has published a rule -- currently open for public comment -- that would require all listed companies to allow shareholders to vote for each of their directors individually instead of the whole board as a slate.

Mr. Weiss says both organizations are merely tinkering, and their proposals won't fix critical weaknesses in the current system. The Investor's Symposium has sent its ground-shifting pitch to both the OSC and TSX, outlining its alternative proposals.

"What this really does is eliminate a lot of the problems the TSX and OSC are tinkering with now and are trying to put a bandage on," Mr. Weiss says.