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Shareholder Engagement – ICD Provides Guidance for Canadian Companies

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On March 7, 2016, the Institute of Corporate Directors (ICD), a not-for-profit director association consisting of more than 10,000 members across Canada, published guidance to help boards of Canadian public companies develop a shareholder engagement approach to corporate governance.

Recent changes to Canada's corporate landscape, including an increased focus on enhanced corporate governance practices, higher degrees of active investment management by institutional investors, the rise of activist investing and the increased use of proxy advisory services, have led significant shareholders and public company boards to review their current approach to shareholder-director engagement.

The ICD viewed the lack of a standard framework as one of the greatest obstacles to increased dialogue between directors and significant shareholders of Canadian public companies. As a result, the ICD has developed the following "flexible and universal" guidance to help Canadian boards institute a direct shareholder engagement approach tailored to the specific needs of the company and its shareholders. This guidance, summarized below, is designed to reflect the distinct qualities of Canadian markets, while being consistent with the Shareholder-Director Exchange (SDX) Protocol's recommendations for U.S. companies.

1. ***Know Your Most Significant Investors.*** Establish a regular process whereby management provides the board with information regarding the company's most important shareholders, including: (i) their investment rationale and the size of their share position (including any material short positions); (ii) their general investment strategy, philosophy and track record; (iii) the structure and hierarchy of their decision-making process; (iv) how they vote their shares and whether they outsource voting to proxy advisory firms; and (v) any material policy restrictions.

2. ***Recognize the Key Benefits of Engagement.*** The board should recognize that shareholder engagement provides directors with an opportunity to gain valuable insight into how the company and its management are perceived and whether the company's strategy is understood, while also providing shareholders with better visibility into the company, its strategy and its decision-making process. Improved shareholder communication can enhance understanding on both sides and therefore reduce the risk of proxy battles, contentious say-on-pay votes and contested director elections.

3. ***Tailor a Process That Works for You.*** Each board should take a strategic context-based approach to shareholder engagement that establishes when it will engage with shareholders, the criteria for identifying shareholders with whom it will engage and the frequency of that engagement.

4. ***Set Topics of Discussion.*** The board should develop a clear agenda of governance-related topics prior to any meeting between directors and shareholder representatives. Appropriate topics for engagement by directors may include (i) board oversight of the company's strategy, risks and internal controls; (ii) the board's composition and decision-making process; (iii) succession planning; and (iv) executive compensation. Directors should avoid discussing operational and performance matters, but should listen to shareholders' views on those topics and provide assurance that they will be conveyed to the board.

5. ***Invite the Right Participants.*** Selected directors should be identified to participate in shareholder engagement meetings and be prepared to address the agenda items within the limits prescribed by applicable securities laws. The ICD recommends that consideration be given to having senior executives present in appropriate circumstances, on the understanding they may be excused to provide the shareholder representatives with an opportunity to discuss executive performance *in camera*.

6. ***Review and Consider What You Learned.*** Directors participating in shareholder engagement meetings should share the results of these meetings with the entire board. This will help the board assess the questions that need to be posed to management, based on input from the company's most important investors and the messages it may need to convey to the market. The ICD recommends that shareholder engagement be on the board's agenda at least once per year.

With Canadian shareholders becoming much more proactive, the need for a proper shareholder engagement strategy is critical. As companies develop their approach to shareholder engagement, the ICD guidance provides a useful road map of important elements that should be considered. If your organization is considering a shareholder engagement strategy or policy, our team of governance experts can assist.

A complete copy of the ICD guidance on director-shareholder engagement (which includes the SDX Protocol) can be found here.

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