



Meridian Compensation Partners

Client Update

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Mandatory Say on Pay Advisory Vote and Clawback Policy Disclosure Come to Canadian Companies

The newly introduced Bill to implement the federal government's budget measures includes proposals that will, if enacted, require publicly-traded companies incorporated under the Canadian Business Corporations Act (CBCA) to:

1. Hold an annual non-binding shareholder vote on the executive compensation approach (i.e., a "Say on Pay" vote).
2. Develop an approach to compensation of directors and employees who are members of "senior management", to be sent to shareholders prior to each annual meeting.¹
3. Provide disclosure about clawbacks of incentive compensation received by directors and senior management.
4. Provide information to shareholders respecting the well-being of employees, retirees and pensioners.

Meridian Comment: Canadian institutional investors and governance advocates have been pushing to require all issuers to hold a Say on Pay advisory vote. Regulators in other jurisdictions such as the United States, United Kingdom and Australia already require Say on Pay votes for publicly-traded companies.

We have seen a notable increase in voluntary Say on Pay adoption among the S&P/TSX Composite in recent years as Canadian companies voluntarily align with the practices in other jurisdictions. In fact, 68% of companies in the Composite held a voluntary vote in 2018, including substantially all of the S&P/TSX 60 companies.

The proposed Say on Pay vote will **not be binding**, but the corporation will have to disclose the results of the vote to shareholders, similar to the rules in the United States. Key differences between the proposed Canadian legislation and United States requirements are:

- The regulation will be based on the statute under which the company is incorporated, rather than being a securities or listing requirement; only the portion of the publicly-traded companies incorporated under CBCA will be subject to this requirement, which is an unusual result.
- Director compensation will also be included in the non-binding advisory vote. This is an unusual step and an expansion of the current voluntary Say on Pay votes, where we do not currently observe this practice.

Introducing regulation to require disclosure of clawback policies will also be a welcome change for governance advocates. As public company scandals that harm corporations' reputations increase in frequency, methods to recoup incentive compensation for misconduct are becoming an increasingly important tool to manage compensation risk and an important part of strong compensation governance. Most large Canadian companies have already implemented a clawback policy, and policies are coming under review by compensation committees far more frequently, often with a broadening of these provisions to protect the enterprise.

¹Senior management will be further defined in regulations.

Meridian Comment: The Bill is expected to pass before the upcoming Federal election in October. Further details of the requirements will be provided in regulations to be adopted following public consultation that could take 1 to 2 years. We expect that, as part of the consultation process, the definition of “senior management” will be refined—aligning the CBCA definition with current securities law definition would likely make the most sense (i.e., applying the disclosure and vote requirements to Named Executive Officers).

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