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## Proxy fights heat up as markets tank

Shareholder Ire

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Amid the worst bear market in decades, shareholders are taking their frustrations public and attempting to overthrow boards of directors in much larger numbers.

Over the past several years, the number of proxy fight actions in Canada has ticked steadily upwards. But it has skyrocketed since 2008 as the capital markets melted down and investors decided to take serious action, data from Kingsdale Shareholder Services Inc. shows.

"If you look over a number of years, every time there's a down market, proxy fights just start to escalate," said Wes Hall, Kingsdale's president.

"In a down market, it's a lot easier to point the finger at the top of the company and say 'this person is responsible for what's going on with my stock price.' "

About 30 proxy battles have been waged in the Canadian markets since the start of 2008, compared with less than 10 a year between 2003 and 2005. A few of the recent battles involved large-cap companies and played out in the media (HudBay Minerals Inc., Biovail Corp.). But most involved small-cap companies, largely in the resource sector, whose share prices got battered beyond recognition after credit markets seized up.

Investment banking sources added that many potential proxy battles are brewing in the pipeline right now and could emerge in the near-future. Small-cap companies with weak share prices and large cash positions are particularly vulnerable. Late last year, dozens of resource companies traded for less than their cash value, and many still do today.

"On the proxy side, I think you'll see close to a doubling of activity," said Vic Alboini, the head of Toronto-based Jaguar Financial Corp., which was involved with the Hud-Bay fight and many others. It was the even the target in a recent dispute.

Besides the meltdown of the capital markets, experts pointed to a number of other reasons for the uptick in aggressive shareholder action, including greater focus on corporate governance and a Canadian shareholder base that is not as conservative and polite as it used to be.

Changing technologies also made it easier for shareholders to launch a campaign and petition shareholders for

support. In the pre-Internet age, a company could suggest that a dissident shareholder sell their stock, and that would often be the end of it.

As proxy fights increase in number, their complexion is changing as well. There is a long history of these battles getting settled amicably. But in a number of recent cases (HudBay, First Calgary Petroleums Ltd., ATS Automation Tooling Systems Inc.), the dissidents won outright with little trouble. And in other instances, settlements were reached that were essentially wins for the dissidents (such as last year's deal at Noront Resources Ltd.).

Experts said the message is simple: Boards cannot afford to ignore the demands of shareholders, especially in a bear market where investors are much more likely to make their voices heard.

The most recent example just played out at Polar Star Mining Corp., a junior miner that angered some shareholders who claim the company ignored their concerns. The board ousted chief executive Doug Willock, and he then led a charge to replace them with a dissident slate (that includes himself).

From the start, Mr. Willock was saying he had enough support to win. But the company fought him all the way to yesterday, when the proxies were deposited and he emerged as the clear winner. But the fight itself was expensive and incredibly damaging to the company, and it amazes him that it dragged on so long.

"My legal counsel thought back in February that there would be an amicable settlement. And there's been a state of denial [from Polar Star] ever since," he said.

Mr. Willock says he can make better use of Polar Star's resources, while the board claims the dissidents are trying to take over the company without paying a premium. It is the central debate in virtually every single proxy dispute, regardless of any other accusations that emerge.

Fighting these battles is expensive -- experts said it can cost anywhere from half a million dollars to several million depending on the size of the target. But unless there is a miraculous turnaround in the markets, the nastiness is expected to continue for the foreseeable future.

"When shareholders are left with no other choice, this is where you end up," Mr. Willock said.

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