Rotman School of Management
UNIVERSITY OF TORONTO

CLARKSON
Centre for Board Effectiveness

Majority Voting in Canada 2006-2011

| By Sophie Langlois

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Continued Advances in Canadian Shareholder Democracy

The Clarkson Centre for Board Effectiveness (CCBE) has continued to track voting processes for director elections among firms listed on the S&P/TSX Composite Index (TSX Index) since 2005. The advocacy for majority voting by organizations such as the Canadian Coalition for Good Governance (CCGG) has remained strong and has realized continued success over time. Between 2006 and 2011, CCBE tracked a constant and substantial year-over-year increase in the number of firms adopting majority voting, a policy requiring the resignation of a director who does not receive majority support by shareholders, on the TSX Index (See Figure 1).[1]

The number of firms allowing only the election of the entire slate of directors (slate voting) on the other hand, has continued to decrease, with only 11% of boards maintaining the practice in 2011. Today, 89% of firms allow shareholders to vote for individual directors, a remarkable increase from the 52% of firms that allowed individual director voting in 2005. Shareholder democracy in Canada has thus been enriched with the diminution of slate voting and the prevalent adoption of majority voting.

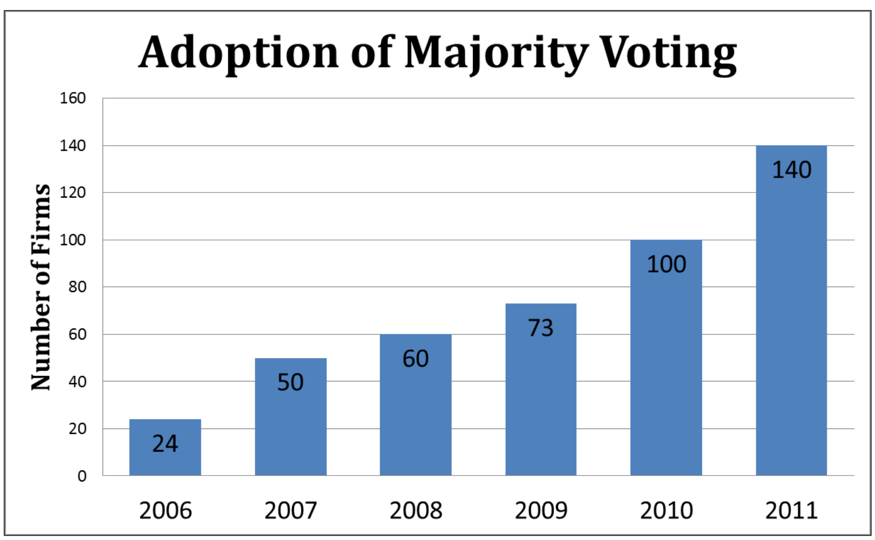

Figure 1. By 2011, a majority of the TSX Index (59%) had adopted majority voting.

[1] For the purpose of this report, CCBE tracked all TSX-listed firms, excluding trusts that were on the Index in 2011 for a total sample size of 238 firms.

Majority Voting and Director Independence

A common trend throughout the 2006-2011 observation period is the positive relationship between majority voting and overall board independence. According to the report, Majority Voting in Canada 2006-2010, it appears as though boards with majority voting prioritize director independence as a key ingredient in the nomination of directors. The data from 2011 further confirms that firms with majority voting have significantly higher proportions of independent directors than do firms without majority voting (See Figure 2 and 3 below).

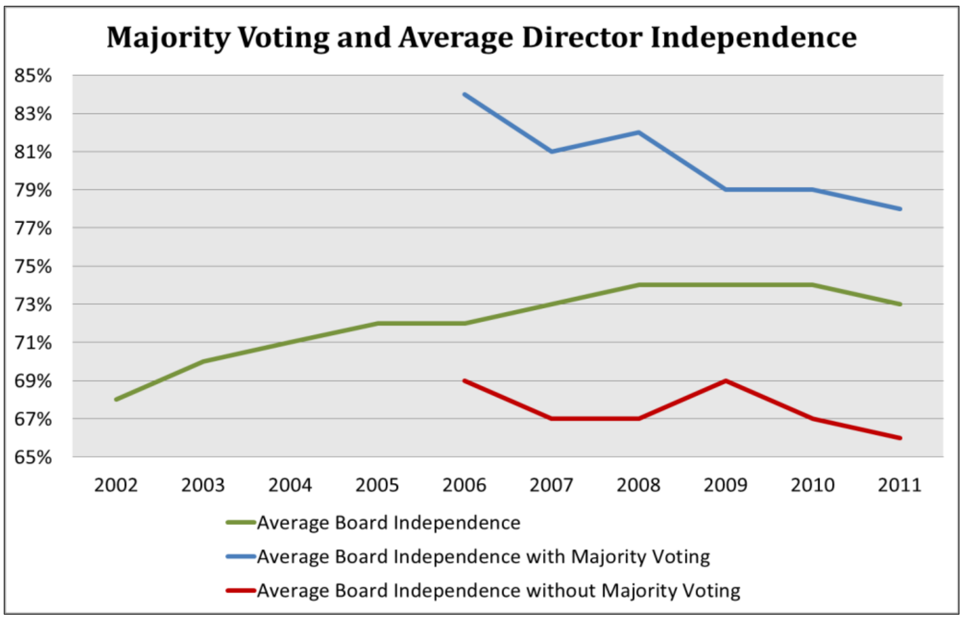

Figure 2. Firms with majority voting have significantly higher director independence than their counterparts.

The causal relationship between director independence and majority voting adoption is not clear. It may be the case that boards that are confident in their board independence are more inclined to adopt majority voting while those who have poor board independence are less prone to open up their election process to external scrutiny. It may also be the case that shareholders hold boards with majority voting more accountable to upholding high standards of board independence; a corporate governance best practice.

While majority voting has empowered shareholders with the ability to force a director to offer his/her resignation, no director has been voted off of a board of a large Canadian public firm since the introduction of majority voting. The highest opposition rate in recent years was 54% in 2010 toward a director on a board that did *not* have majority voting in place. Shareholder confidence in board recommendations can be one cause for the lack of votes against or withheld toward director elections, however, it may also be the case that board-shareholder engagement has been strengthened by the adoption of majority voting, effectively addressing the concerns of shareholders prior to the election of directors. Majority voting can be a tool that encourages board-shareholder engagement on matters specific to director effectiveness and board composition, and may add increased pressure on boards to deliver on these matters. It further brings more accountability to boards as it provides an outlet whereby their shareholders can voice their support or opposition on director elections.

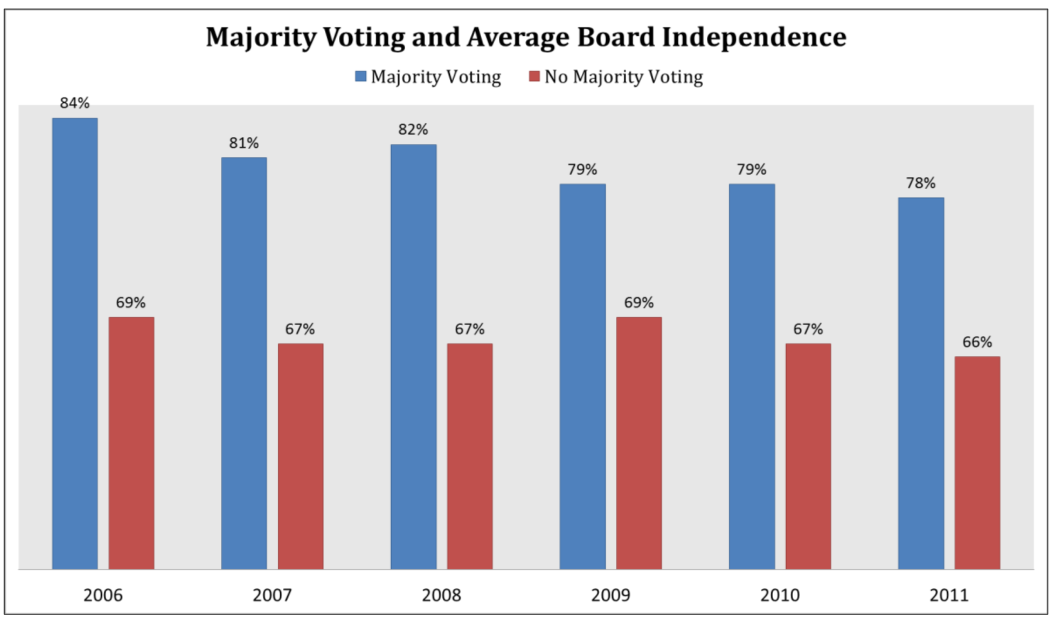

Figure 3. Firms with majority voting have significantly higher director independence than their counterparts.

In 2011, there were four instances where a director received over 40% of votes withheld by shareholders,[2] 3 of which targeted non-independent directors. Two of these votes were directed at directors on the same board; CI Financial Corp., which had adopted majority voting that year. While the board had an overall independence rate of 75%, shareholders leveraged their voting power against two non-independent directors; the non-independent Chair and the current CEO. According to the Bank of Nova Scotia (BNS), a major shareholder who owned 36.4% of CI at the time, they withheld votes from the two non-independent directors in order for BNS to voice their support for an independent board and corporate governance policies that are aligned with best practices.[3] BNS was, however, also concerned about the denial of their right to vote on CI's shareholder rights plan; a plan they could not vote on directly because of their status as a non-independent shareholder under the terms of the plan.[4] While there are conflicting stories behind the two BNS votes, the introduction of majority voting in this case may have changed the tone of shareholder voting, whereby a significant shareholder leveraged their voting power to express opposition toward non-independent directors.

Majority Voting and Director Turnover

We have also continued to examine the relationship between majority voting and director turnover. While CCBE initially anticipated that majority voting might lead to an increase in board turnover, this is not the outcome we found between 2006-2011. At the onset of majority voting in 2006 and 2007, the average rate of board turnover hovered around 17-19% but has suddenly declined to 12 % in 2010 and 2011. Not only has the average rate of board turnover decreased but so has the actual number of firms with board turnover.

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[2] A vote withheld means the vote is "held back" or to "withhold assent," compared to an outright vote against a director. In the context of majority voting, a vote withheld is treated like a vote against and not *for* the director. Majority voting requires 50% of votes *for* a director.

[3] *Scotiabank statement regarding CI Financial.* Canada Newswire. June 2 2011. http://www.newswire.ca/en/story/725621/scotiabank-statement-regarding-ci-financial

[4] Critchley, Barry. *Holland raps BNS action as 'beyond idiotic.'* Financial Post. June 1, 2011. http://business.financialpost.com/2011/06/01/holland-raps-bns-action-as-beyond-idiotic/

Figure 4 illustrates the continuous decline in the number of boards with turnover of any kind since 2008.

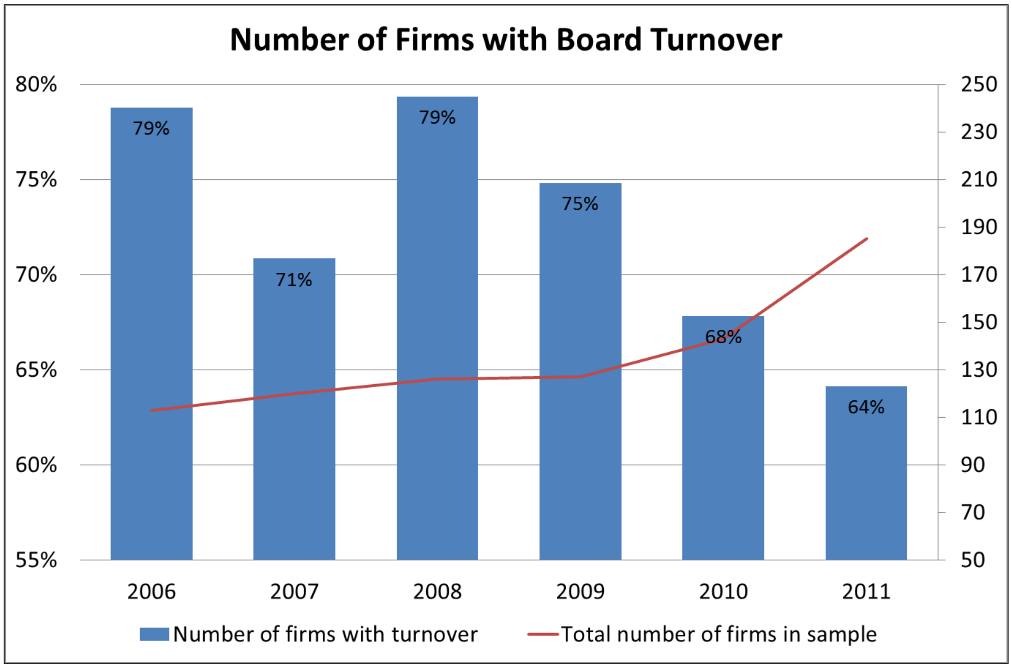

Figure 4. The number of firms with turnover continuously declined since 2008.

Interestingly, in 2007 and 2008, average turnover for *eventual* adopters of majority voting – boards who did not have majority voting currently in place but eventually adopted it by 2011 – was significantly higher than the average board turnover rates for adopters of majority voting (See Figure 5). In Majority Voting in Canada (2006-2010), we hypothesized that boards may make adjustments to their board composition prior to the adoption of majority voting to ensure shareholder satisfaction when majority voting was eventually in place. While this may be true for the early years of majority voting adoption, it does not stick in more recent years.

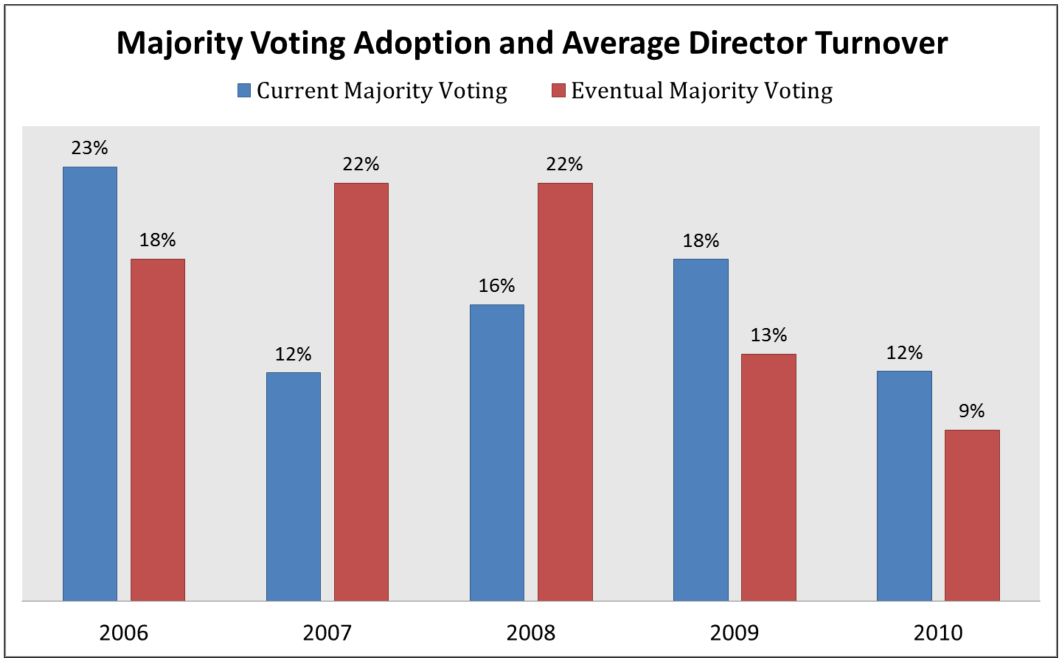

Figure 5. Following the initial appearance of majority voting on the TSX Index in 2006, many boards undertook significant director renewal in advance of their implementation of majority voting. This trend changes in 2009 and 2010, with an overall decrese in board turnover rates.

The trend shifts in 2009 and 2010, when the average board turnover rate for eventual adopters drops from 22% in 2008 to 13% in 2010, while turnover for adopters of majority voting also drops from 18% in 2009 to 12% in 2010. It is not clear what has caused the overall drop in average board turnover, particularly when the adoption of majority voting has continued to increase, comprising nearly 60% of TSX Index in 2011. Perhaps a majority of boards are now effectively dealing with shareholder concerns through 'behind the scenes' engagement.

A decrease in director turnover does not suggest, however, that majority voting is not functioning as anticipated. While director turnover does not appear to increase with the adoption of majority voting, this may in fact indicate strong success in board-shareholder engagement prior to director elections.

Conclusion

A majority of firms on the TSX Index (59%) now have a majority voting policy in place, bolstering shareholder democracy in Canada. At the onset of majority voting in 2006, board turnover for eventual adopters was higher than current adopters, suggesting renewal in advance of implementation for eventual adopters of majority voting. However, this trend has not continued in recent years, with overall board turnover reductions in 2010 and 2011. CCBE thinks this may be a result of improved board-shareholder engagement *prior* to elections, causing higher shareholder confidence in board composition. CCBE has also tracked a steady increase in average board independence, up from 68% in 2002 to 73% in 2011, whereby adopters of majority voting tend to have stronger averages of board independence when compared to non-adopters. While it is not clear that majority voting has directly led to increased board independence, or vice versa, both are key components of Canada's ongoing governance evolution.

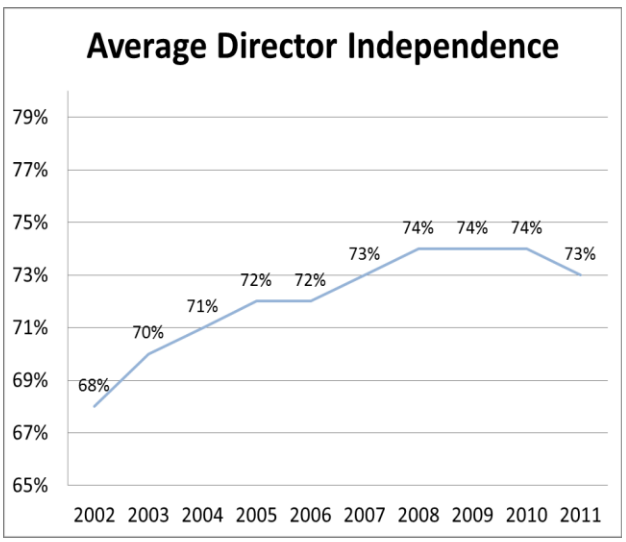

Figure 6. Director Independence has increased steadily since CCBE began monitoring in 2002.

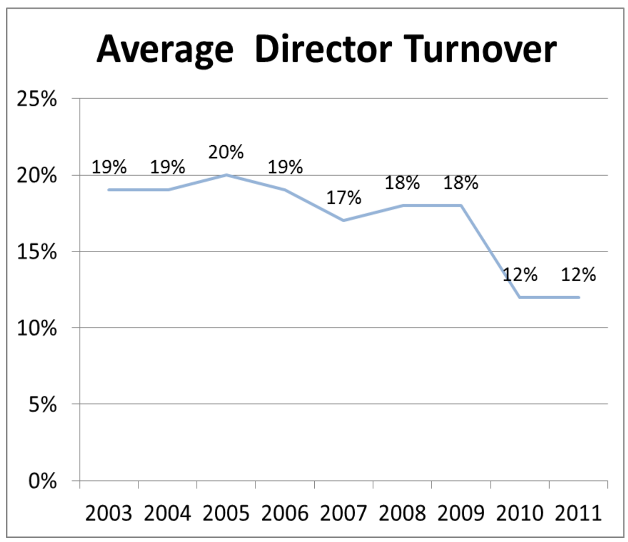

Figure 7. Director Turnover has seen sudden declines in 2010 and 2011.