

# 2017

## Post Proxy Season Review

D.F. KING CANADA



**D.F. KING**  
An AST Company

# 2017

As we enter into the last quarter of 2017, D.F. King Canada (“D.F. King”) has compiled the ensuing data to give some colour with respect to the results that we observed over the first half of the 2017 proxy season.

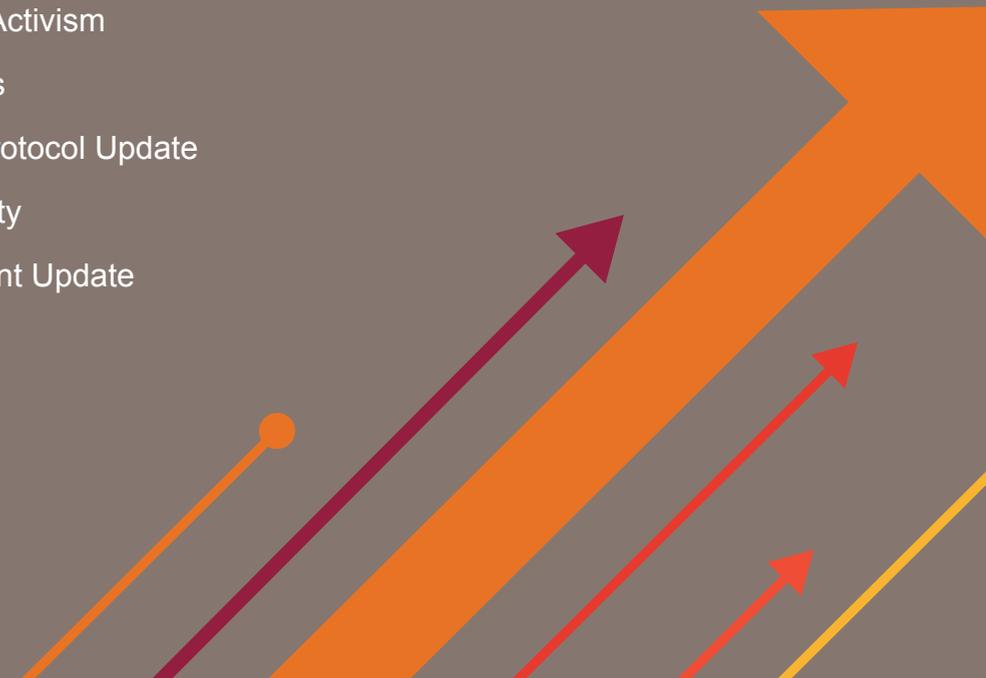
It is our intention to summarize the 2017 proxy season as it relates to this past years regulatory updates, governance initiatives and latest in hostile takeovers and proxy fights.



The data provided in this Season Review reflects statistics gathered from companies listed on the Toronto Stock Exchange. All data provided in this review reflects statistics gathered from July 31, 2016 through July 31, 2017.

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# Executive Compensation (Say-on-Pay)

To date, the overall voting results for non-binding advisory resolutions to approve executive pay, for 2017, are consistent with the results from 2016.

As reported by Huggesen Consulting<sup>1</sup>, in their paper discussing the 2017 proxy season for the TSX 60, Say-on-Pay support remains strong among the TSX 60 issuers at 91% average vote support. To date Glass Lewis has recommended against only three (3) TSX 60 companies versus ten (10) in 2016. ISS recommended against four (4) TSX 60 companies which is in line with their 2016 against recommendations.

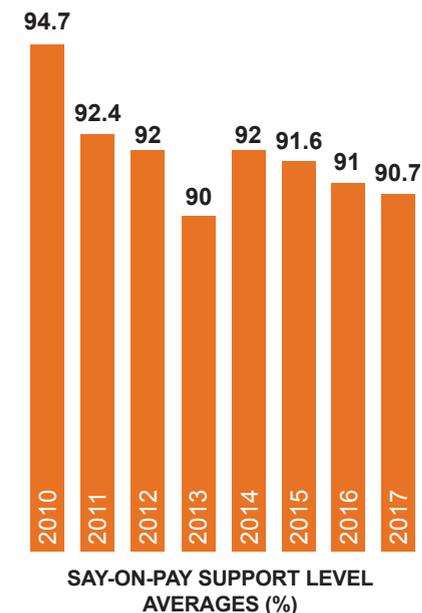
Two (2) Canadian issuers failed to receive approval in 2017, with an additional five (5) issuers failing to receive greater than 70% approval.

The seven issuers mentioned above are as follows:

- TransAlta Corporation (47.29%);
- Eldorado Gold Corporation (43.13%);
- Valeant Pharmaceuticals International, Inc. (67.48%);
- IAM Gold Corporation (67.85%);
- Encana Corporation (62.04%);
- Alacer Gold Corp.(60.00%); and
- Aralez Pharmaceuticals Inc. (59.72%)<sup>2</sup>.

**2016**  **2017**

**VOTING RESULTS CONSISTENT**



## Say-On-Pay Support Level Averages

**Contributing reasons for failed or low Say-on-Pay support are as follows:**

- Failure to address previous year(s) low support from shareholders related to executive compensation concerns (i.e. failure to engage with shareholders);
- A disconnect between CEO pay and TSR performance versus selected peer group. Additionally, in situations where CEO compensation appears to be highly discretionary and absent of a clear link to financial performance criteria;
- Perceived easy goals set for short and/or long term performance plans;
- High proportion of non-performance based compensation;
- Payouts of annual bonuses when threshold performance has not been met;
- Granting of LTI awards while issuer underperforms;
- Problematic pay practices, including large one time equity grants.
- Also, with the Canadian dollar performing so poorly the exchange rate could also have an impact of ISS and/or GL recommendation against the Say-on-Pay.

We suspect that current levels of support for Say-on-Pay will continue to decrease as more stringent criteria are put forward by institutional holders. With that, we also suspect issuers will participate in far more frequent shareholder engagement practices, particularly those who have witnessed declining support, in hopes of increasing their support in upcoming years.

<sup>1</sup> Huggesen Consulting, "2017 Proxy Season Review & Other Topics" / "Highlights From the 2017 Proxy Season – TSX 60"

<sup>2</sup> Huggesen Consulting, "2017 Proxy Season Review & Other Topics" / "Highlights From the 2017 Proxy Season – TSX 60"

# Virtual Meetings

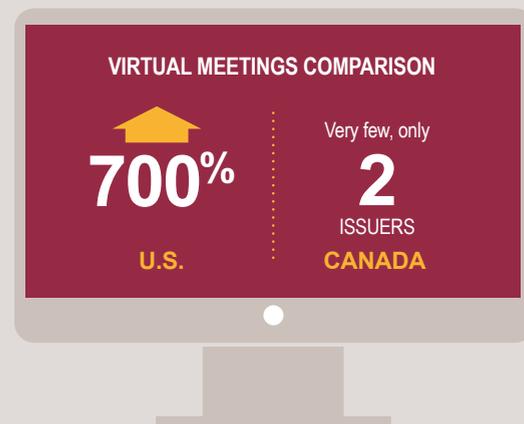
Although most Canadian corporate statutes and regulations have allowed for virtual meetings since 2001, very few Canadian issuers have held virtual-only meetings despite boards and management teams in Canada conveying the wish to move away from expensive meetings, which are generally poorly attended. This past year saw Concordia International Corp. hold its first virtual only annual meeting and our affiliate, AST Trust Company (Canada), assisted Goldcorp Inc. with their “hybrid” annual meeting (traditional meeting with a virtual option)<sup>3</sup>.

On the other hand, the U.S. experience has been quite different. The 2017 proxy season recorded a significant increase in the number of virtual and hybrid annual meetings that took place, attracting increased attention for the future of the annual meeting process. In the first half of the 2017 proxy season, ISS recorded over 175 virtual and/or hybrid annual meetings in the U.S. This represents a 700% increase since 2010.

A handful of investors in 2017 have submitted shareholder proposals seeking the reinstatement of physical annual meetings in protest of companies adopting a virtual and/or hybrid meeting, although all were omitted. Notably, New York City Pension Funds

have also expressed discontent by revising their voting guidelines this year to state the intention to vote against governance committee members at virtual-only meetings.

Despite the perceived backlash of virtual meetings, D.F. King believes that we will see an increase in the amount of virtual meetings in the upcoming proxy seasons.



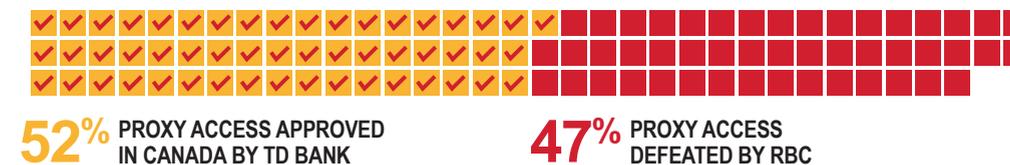
<sup>3</sup> Simard, Catherine, Publication, “Virtual AGMs for Canadian Issuers: It’s starting!”, August 2017

# Proxy Access

This past proxy season saw shareholder proposals requesting that the board of directors take steps to adopt “proxy access” – providing qualified shareholders the ability to have director nominees included in the issuer’s proxy circular and form of proxy. At the annual meetings of both The Toronto-Dominion Bank (“TD Bank”) and Royal Bank of Canada (“RBC”), the proposal was approved by 52.2% of the votes cast at the TD Bank meeting but was defeated at the RBC annual meeting receiving support from 46.83% of the votes cast<sup>4</sup>. The strong showing of support for the proposal at these meetings may spark a wave of similar proposals moving forward and should continue to be on the radar for the Canadian issuer community heading into 2018 proxy season. Just like Say-on-Pay, it just needs a couple of the large TSX 60

issuers to adopt it and it was a matter of time before the domino effect occurs. However, while likely that more shareholder proposals for proxy access will emerge in the 2018 proxy seasons - as it is a fairly easy and inexpensive process - and while many of those proposals are likely to pass, many believe this U.S. style proxy access will have nominal difference in how directors are elected in Canada.

Conversely, in the U.S. over 400 companies have adopted proxy access by-laws, representing approximately 60% of the S&P 500<sup>5</sup>. Most adopted by-laws follow the current U.S. market practice of allowing up to 20 shareholders owning at least 3% of shares for at least 3 years to nominate up to 20% of the board<sup>6</sup>.



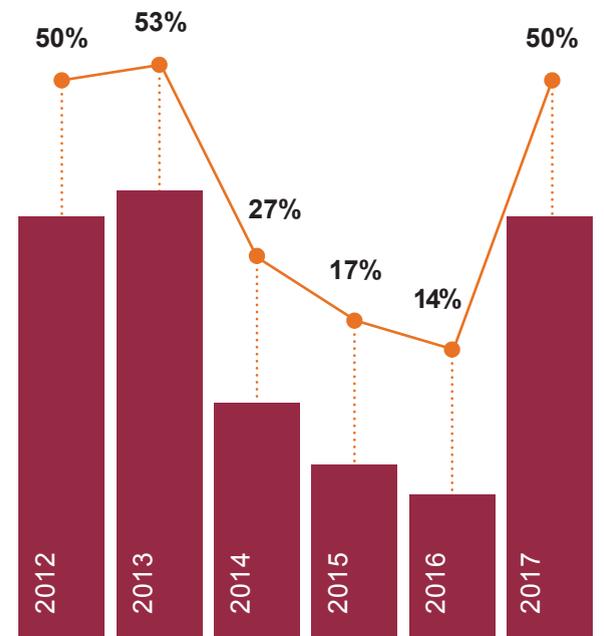
<sup>4</sup> MacDougall, Andrew, Valley, John M., “Shareholders divided on proxy access”, Apr 7, 2017  
<sup>5</sup> Ahmadi, Zally, “the debriefing”, September 2017  
<sup>6</sup> Ahmadi, Zally, “the debriefing”, September 2017

# Shareholder Activism<sup>7</sup>

To date, activist activity levels have slightly cooled in 2017.

As of July 31, 2017, ISS reported that:

- Canadian shareholder activism seems to have steadied compared to last year - substantially below levels seen between 2012 and 2015.
- Heightened awareness of target boards, issuer adoption of advance notice provisions and willingness by both parties to settle privately has likely played a role in the five-year downtrend.
- The dissident win rate of 50 percent during the first seven months of the year is in line with 2010 (44%), 2012 (50%), and 2013 (53%), but represents a substantial improvement from the dismal dissident win rates of the past three years: 2014 (27%), 2015 (17%), and 2016 (14%).



CANADIAN SHAREHOLDER ACTIVISM WIN RATES (DISSIDENT)

## 2017

### D.F. KING COMPANIES IN PROXY FIGHTS



Below are some interesting developments seen during a few notable proxy fights that D.F. King were directly involved in for 2017:

**AT GRANITE REIT** the dissidents challenged perceived inaction by the incumbent board of trustees to meet long term strategic objectives of balance sheet utilization, tenant diversification, and expense reduction. The dissidents, FrontFour Capital Group, LLC and Sandpiper Group, utilized a universal proxy ballot (which contained both incumbent and dissident nominees) in order to seek nomination of three dissident trustees. By employing corporate governance best practice, the dissidents succeeded in signaling their intentions to some of the REIT's unitholders.

**AT LIQUOR STORES N.A. LTD.**, the board offered brokers solicitation fees of \$0.05 for each share validly voted for each incumbent nominee. While the board justified its decision as a way to communicate with its large retail shareholder base, the fees raised substantial concerns, as they were payable only for favourable votes cast on the management ballot and were contingent upon the re-election of incumbent directors. Many investors saw these solicitation fees as a board entrenchment mechanism. In response, PointNorth Capital Inc., the dissident, filed an application with the Alberta Securities Commission (the "ASC") for an order halting the perceived

## Shareholder Activism continued

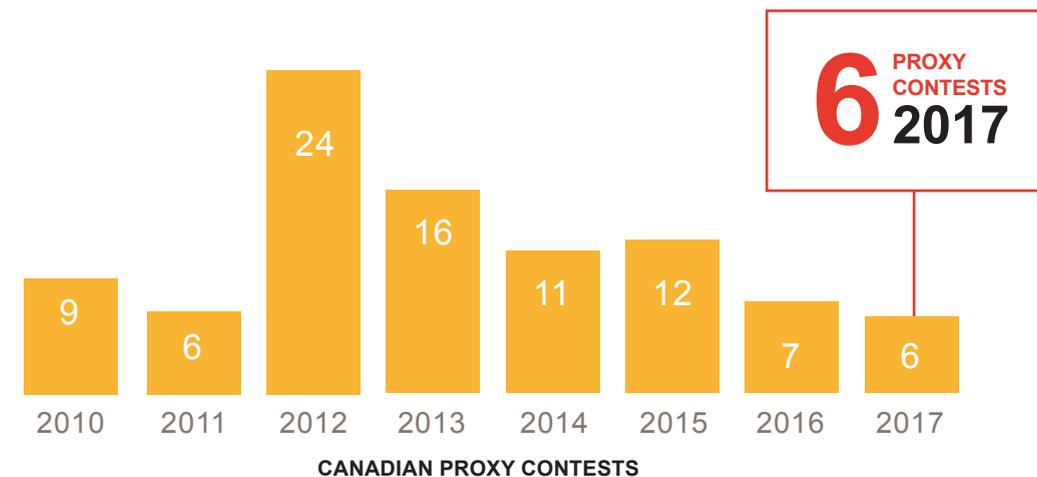
"vote-buying scheme". Ultimately, the ASC dismissed PointNorth's application, finding that the Solicitor Dealer Group plan and Liquor Stores actions in implementing it, were not abusive.

**ECO ORO MINERALS CORP.** ("Eco Oro"), were entangled in a proxy contest with dissident shareholders seeking to replace the incumbent board of directors at a requisitioned shareholders' meeting. In response, the board of Eco Oro approved a private placement of common shares to certain shareholders who collectively held approximately 41% of the then outstanding common shares and who had agreed to vote in support of the incumbent board. The issuance of the shares was affected by an early conversion, in part, of convertible notes of Eco Oro that had been issued to specific shareholders several months earlier and resulted in increasing those that participated in the private placement ownership to approximately 46% of the

outstanding common shares. Despite Eco Oro receiving TSX approval, the dissident shareholders applied to the OSC for a review of the TSX decision that approved the private placement, subsequently leading to the OSC issuing an order setting aside the TSX decision. In so doing, the OSC cease-traded the shares and ordered that shareholder approval be obtained for the issuance unless such issuance was reversed by Eco Oro and the "supporting shareholders". Additionally, the OSC ordered that until shareholder approval was obtained, Eco Oro was not to consider the "subject shares" to be outstanding for voting purposes and if shareholder approval was not obtained, Eco Oro was to take all necessary steps to reverse the issuance<sup>8</sup>. In the end, a settlement was reached between Eco Oro and thirteen shareholders representing approximately 66.3% of the issued and outstanding common shares. Under the terms of the agreement, a new five member board of the company was constituted and upon implementation resolved all outstanding issues<sup>9</sup>.

## 2017 Proxy Contests

The following table charts proxy contests for board seats over the last seven years, however, excludes contests related to thwarting transaction related meetings.



<sup>8</sup> Harris, Steven M. and Olasker, Patricia L., "The Eco Oro Decision: OSC Weighs in on Tactical Private Placements in the Context of Contested Shareholder Meetings", July 05, 2017  
<sup>9</sup> Eco Oro Minerals Corp., "Eco Oro Announces Settlement Agreement with Shareholders and Appointment of a New Board", August 2017

# 2017 Takeover Bids

The new takeover bid regime rules became effective in May 2016 to afford issuers appropriate time to secure an alternate, more superior offer in the face of a hostile takeover, as boards in the past had too little power to ward off unwanted offers, even when they undervalued the company and had very limited time to find better deals.

Early thoughts from industry prognosticators were that these more restrictive amendments would lead to a significant decline in hostile bids as the longer period would expose hostile offerors to market uncertainty and white knight interlopers, all of which would create unacceptable risk. However, there have been seven unsolicited bids since the new rules took effect and with the success of these bids - i.e. the successful Total Energy Services Inc. for Savanna Energy Services Corp., Nuri Telecom's takeover of Apivio Systems and Chemtrade's acquisition of Canexus – it would appear, though too early to tell definitively, if the right business opportunity arises bidders who weigh the opportunity deeply and strategically may still be willing to roll the dice.

**7 BIDS**  
UNDER NEW TAKEOVER

**3**  
SUCCESSFUL TAKEOVERS

1	TOTAL ENERGY SERVICE INC.	SAVANNA ENERGY SERVICES
2	NURI TELECOM	APIVIO SYSTEMS
3	CHEMTRADE	CANEXUS

# CSA Proxy Protocol Update<sup>10</sup>

In advance of the 2017 proxy season, the Canadian Securities Administrators (“CSA”) had published protocols and guidance directed at improving the proxy voting system to allow improved vote reconciliation for annual general meetings. These protocols follow a public discussion on draft proposals undertaken by the CSA in March, 2016. The protocols are aimed to address the issue that all votes of beneficial holders be properly tabulated.

The new protocols are contained in the CSA Staff Notice 54-305 Meeting Vote Reconciliation Protocols for enhancing the procedures involved in the tabulation of proxy votes for shares held through intermediaries. The proposed protocols are voluntary and outline the roles and responsibilities of the key entities involved in the process of tabulating proxy votes for shares held through intermediaries i.e. Canadian Depository for Securities, the Depository Trust Company, brokers and other intermediaries, Broadridge Investor Communication

Solutions Inc. (the primary proxy voting agent for brokers), and transfer agents of issuers acting as vote tabulators at shareholder meetings.

#### The processes addressed include:

- generating and sending accurate and complete vote entitlement information for each intermediary that will solicit voting instructions from beneficial owners and submit proxy votes;
- setting up vote entitlement accounts in a consistent manner;
- sending accurate and complete proxy vote information and tabulating and recording proxy votes in a consistent manner; and
- informing beneficial owners of rejected or pro-rated votes.

The CSA intend to monitor implementation over this past proxy season and the next (2018) to evaluate the need for any enhanced regulation.

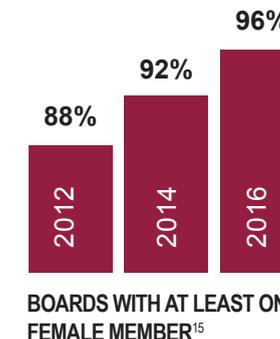
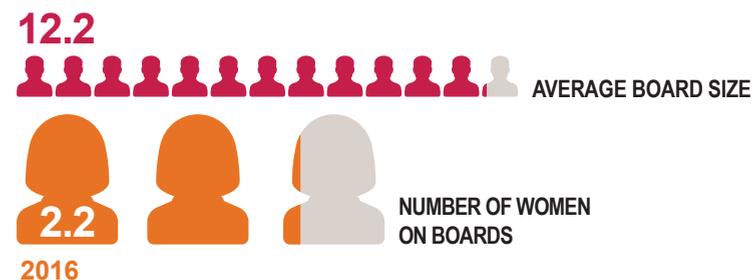
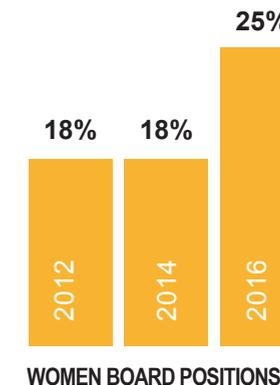
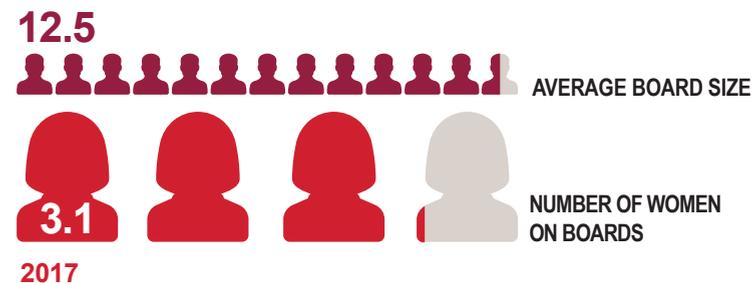
<sup>10</sup> Kernahan, Tracey, Publication, “Canadian proxy voting protocols finalized”, February 20179 Eco Oro Minerals Corp., “Eco Oro Announces Settlement Agreement with Shareholders and Appointment of a New Board”, August 2017

# Board Diversity Update

Board gender diversity was highlighted as a topic of focus during the 2017 proxy season, and this will likely continue into 2018.

Both State Street Global Advisors and BlackRock reinforced their positions this year by placing pressure on companies regarding this issue, directing votes against nominating committee members in the event of a continued lack of sufficient gender diversity representation<sup>11</sup>. In addition to updated institutional investor voting guidelines, this issue has been advanced this year through the filing of shareholder proposals and the increased level of disclosure in proxy materials.

Of the Canadian public companies, following the implementation of Canada's comply-or-explain regime in 2016, women represented 25% of all public company boards, while 94% of boards have at least one female member. Notably, banks are an outlier here, as Canada's largest banks have an average female board representation of about 35%<sup>12</sup>. Overall, the last two years has seen an increase in gender diversity metrics in Canada, the average board size has slightly fallen from 12.5 to 12.2, though the number of women per board has increased from 2.2 to 3.1. This is trending in the right direction but the progress is slow<sup>13</sup>.



<sup>11</sup> Ahmadi, Zally, "the debriefing", September 2017

<sup>12</sup> Anand, Anita and Kotecha, Krupa, *The Globe and Mail*, "Canada's approach to board diversity needs a rethink", March 22, 2017

<sup>13</sup> Corporate Secretary, Ben Ashwell, June 2017, "US Boards Lack Progress on Boosting Diversity"

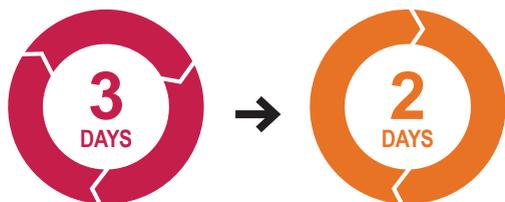
<sup>14</sup> Corporate Secretary, Ashwell, Ben, "US Boards Lack Progress on Boosting Diversity", June 2017

<sup>15</sup> Corporate Secretary, Ashwell, Ben, "US Boards Lack Progress on Boosting Diversity", June 2017

# T+2 Settlement Update

Effective September 5, 2017, trade settlement cycles in Canada and the U.S. will be shortened to 2 settlement days from the 3 days currently in force.

This change affects stocks/equities, corporate bonds, mutual funds, ETFs and federal, provincial and government bonds maturing in 3 or more years. The amendment is designed to enhance efficiency, reduce risk, and coordinate the transition by all market participants to a shortened standard settlement cycle.



**TRADE SETTLEMENT CYCLES SHORTENED**



## D.F. King Canada

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At a time when investor pressure and the ever-evolving corporate governance landscape have an increasing influence over board actions, it's imperative to have an experienced partner to depend on for comprehensive strategic advice and adept communications skills. That's why D.F. King, an AST Company, offers a full suite of proxy services that can help deliver favourable vote outcomes and keep your board apprised of latest trends to keep positive momentum intact.

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