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**CANADIAN PACIFIC RAILWAY (C): THE FINAL HOURS[[1]](#footnote-1)**

*Karin Koopmans wrote this case under the supervision of* *Murray Bryant solely to provide material for class discussion. The authors do not intend to illustrate either effective or ineffective handling of a managerial situation. The authors may have disguised certain names and other identifying information to protect confidentiality.*

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It had been six months since Bill Ackman, chief executive officer (CEO) of Canadian Pacific Railway’s (CP’s) largest shareholder, Pershing Square Capital Management (Pershing), had begun a quest to enact changes to CP’s board and management team. The past few months had consisted of heated public debate between CP and Pershing, culminating in Pershing launching a proxy contest to appoint its own slate of directors and appoint a new CEO. CP and Pershing had both issued proxy circulars defending their points of view and it was now up to shareholders to decide who was best suited to lead the iconic Canadian company.

RALLYING public support

After Pershing announced its intent to launch a proxy contest, CP had responded by reaching out to existing shareholders and clients to explain the company’s strategic direction and reinforce that Pershing’s recommendations would not enhance shareholder value. A shareholder letter issued by CP on March 7, 2012 included expressions of support from many of CP’s clients with respect to the company’s strong customer service record and capable management team (see Exhibit 1).

Nevertheless, media reports suggested that many shareholders were shifting their support to Pershing’s agenda. As a follow-up to its February 16 report, consulting firm Brendan Wood International polled shareholders, some of whom responded, specifically those holding approximately one-third of CP’s shares. The results released on March 16 indicated that as many as 91 per cent of CP shareholders wanted to see change at CP, and nearly three-quarters favoured Pershing’s proposals.[[2]](#footnote-2)

Since initiating the proxy contest, Pershing’s campaign for change at CP had been highly visible. In addition to hosting a public town hall meeting titled “CP Rising,” Ackman and his proposed CEO candidate, Hunter Harrison, had appeared on multiple television news programs including Business News Network and CNBC.

COMPETING Proxy Circulars

CP Rail

CP Rail issued its proxy circular to shareholders on March 22, and included 25 pages dedicated to explaining CP’s perspective of the proxy contest to date, as well as a detailed review of CP’s progress relative to its multi-year plan. The circular also highlighted that a report conducted by consulting firm Oliver Wyman (and commissioned by CP) concluded that CP’s strategic plan contained reasonable performance objectives and that Pershing’s operating ratio target of 65 per cent by 2015 was neither realistic nor achievable.

The board recommended that shareholders vote for all of CP’s director nominees, including Ackman, and not vote for any other Pershing nominees. The board utilized a universal proxy form for shareholders to vote on director nominees, eliminating the need for shareholders to use any proxy form issued by Pershing.[[3]](#footnote-3)

In response to CP’s proxy circular filing, Pershing issued the following statement:

Over recent weeks, CP’s management and directors have held several dozen meetings with our fellow shareholders. They have also met most of the investment research analysts covering the company, and had full access to the reports those analysts have published. Nevertheless, this filing makes clear that this board still does not understand the fundamental board and management changes that the overwhelming majority of CP’s shareholders require, and that the investment research community has called for. Fortunately, our opportunity to restructure this board and reset its culture is now only weeks away. Our upcoming proxy filing will maintain focus on the relevant issues, and keep us on that path. We look forward to May 17th.[[4]](#footnote-4)

Although he had remained relatively silent since the proxy contest was launched, CP CEO Fred Green joined members of the board at the company’s Investor Day on March 27 in Toronto to go on the offensive in terms of discrediting Pershing’s proposals and Harrison. Specifically, Green addressed Harrison’s reputation for poor customer service by stating, “The venom that exists in the shipper community towards the dismissive attitude that Mr. Harrison brought to the marketplace is what it is. . . . At CP, relationships matter.”[[5]](#footnote-5)

Pershing

Pershing issued its own proxy circular to CP shareholders on April 5, including a cover letter reaffirming the need for management change and board restructuring. Since announcing five director candidates in February, Pershing had added two additional director nominees, bringing the total slate to seven. Pershing recommended that shareholders vote for all seven Pershing nominees and nine others from CP’s slate. Pershing also chose to use a universal proxy form and encouraged shareholders to ignore forms issued by CP.

In response to Pershing’s proxy filing, John Cleghorn, chair of the board of CP, issued the following statement:

Pershing Square continues its pattern of making misleading and inaccurate statements about CP and fails to present any plan or even concrete suggestions to achieve its previously stated target of a 65 per cent operating ratio . . . a number of CP customers have expressed concerns about the risk and disruption that would occur should Hunter Harrison be installed as CEO of CP.[[6]](#footnote-6)

signs of performance improvement?

On April 10, CP issued a press release stating that it was expecting first-quarter earnings to reach CA$0.80–$0.83[[7]](#footnote-7) per share, far exceeding analyst expectations of $0.65 per share. CP asserted that this was proof that its strategic plan was driving improved financial results. Further, CP’s share price had increased by over 30 per cent in the last six months (see Exhibit 2). Within two weeks of the earnings announcement, Ackman appeared on Business News Network asserting that one positive quarter was not enough to offset a record of lagging performance, and suggested that CP might have intentionally manipulated its first-quarter earnings. These statements were met with anger from CP’s board, prompting Cleghorn to issue a public letter addressed to Ackman demanding a public retraction of the accusations and an apology to CP and its shareholders. Ackman stood by his statements and did not offer the apology Cleghorn demanded.

Proxy advisors and institutional investors speak out

Up to that point, proxy advisory firms[[8]](#footnote-8) and Canada’s large institutional shareholders had remained silent on their voting recommendations with respect to the proposals at CP. This silence was broken on May 3, when influential proxy advisor Institutional Shareholder Services (ISS) issued an independent 25-page report recommending that shareholders vote for all of Pershing’s nominees and withhold votes from six CP incumbent directors, including Cleghorn. In making its recommendation, ISS considered CP’s poor operational and market performance relative to other Class I railroads, which ISS attributed to “an enduring failure of board leadership, and a bewildering lack of accountability for results.”[[9]](#footnote-9) Similar recommendations of support for Pershing’s proposals followed from other proxy advisors, including Glass Lewis & Co. and Egan-Jones Ratings Services.

Within two weeks of the annual shareholders’ meeting, two of CP’s largest institutional investors, the Ontario Teachers’ Pension Plan and Canada Pension Plan Investment Board, publicly disclosed their intent to vote for Ackman’s slate of directors. Although both funds held less than 2 per cent of CP’s shares outstanding, they were considered to be the most influential institutional investors in Canada, and their voting intentions were highly respected. CP issued multiple statements urging the funds to reconsider.

A final poll issued by consulting firm Brendan Wood International on April 26 disclosed that 75 per cent of shareholders, representing approximately 45 per cent of CP shares outstanding, supported Ackman’s nominees.[[10]](#footnote-10)

THE FINAL HOURS

The past few months had surely taken a toll on Cleghorn and the rest of the CP board. Had the situation with Ackman been handled appropriately? The annual general meeting was less than 24 hours away; would Cleghorn and the other board members be out of a job? Were there any options left to salvage the situation, or was it time to let shareholders decide, once and for all?

Exhibit 1: sample Canadian Pacific railway client testimonials

Don Lindsay, president and chief executive officer, Teck:

“As CP’s largest customer, we’ve been pleased with their dedication to ensuring that we get the rail service we need and their deep understanding of our current and long-term needs. That is why we recently increased the volume of business we allocate to CP and, today, both companies are seeing growing economic returns. Fred Green understands that to grow the economy, especially in Western Canada, we need to work together to get the most out of the rail network. We are pleased with his leadership and support of the team in making our joint growth targets achievable.”

Jim Prokopanko, president and chief executive officer, The Mosaic Company:

“Mosaic and CP have a long and fruitful history together. CP, under the leadership of Fred Green and his team, has proven to be a key business partner by helping us strengthen our distribution network and our competitive position in conjunction with our multi-billion dollar potash expansion projects. As Mosaic continues to build its operational capacity, we have taken our commercial relationship to the next level and are leveraging CP’s considerable expertise to augment our future success.”

Andrew B. Paterson, president and chief executive officer, Paterson GlobalFoods:

“As a customer of Canadian Pacific for over 104 years, we at Paterson’s rely on our carriers to communicate and develop solutions for issues that arise in a complex supply chain. Canadian Pacific under Fred [Green]’s leadership is customer focused and bottom line oriented. Fred knows the Canadian Pacific Railway system inside and out, and without his strong leadership we would not have invested over $70 million on CP’s network over the past year. Fred is an exceptional asset to CP now and in the future.”

Russel Marcoux, chief executive officer, The Yanke Group of Companies:

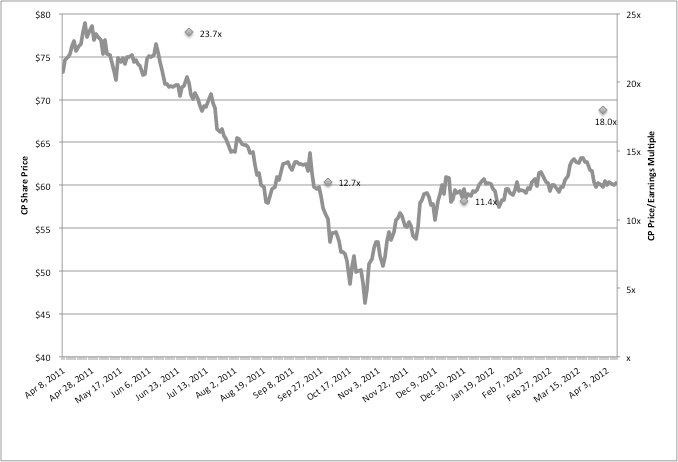
“As stated in our Mission Statement, Yanke is committed to delivering unequalled transportation solutions to our customers. Our ability to deliver on this goal has been a cornerstone of the much valued, and envied, partnership between Yanke and CP. This relationship is significantly influenced by Fred [Green] and is core to the strength of the partnership we have with CP. CP’s strong commitment to customer service, and the integrity of their leadership team, has been an integral part of Yanke being able to deliver on our Mission Statement. Through our partnership, we have captured new markets, created mutual benefits for both our organizations, and improved supply chain performance. It is an integral partnership that cannot be overemphasized in its value.”

Note: CP = Canadian Pacific Railway

Source: “Customers Have Spoken Out in Support of the CP Management Team for Our Record of Customer Service,” Canadian Pacific Letter to Shareholders, March 7, 2012 accessed March 12, 2017, www.prnewswire.com/news-releases/cps-strong-established-customer-relationships-support-growth-profitability-and-continued-success-of-multi-year-plan-141803223.html.

Exhibit 2: Canadian Pacific railway Share price performance,

april 2011–april 2012



Note: CP = Canadian Pacific Railway

Source: Share prices were gathered from Yahoo Finance. Price-to-earnings multiples were calculated based on quarterly earnings results disclosed in CP’s quarterly reports. Quarterly earnings were annualized on a straight-line basis to approximate the price to earnings ratio at each quarter-end, accessed March 12, 2017, https://ca.finance.yahoo.com/.

1. This case has been written on the basis of published sources only. Consequently, the interpretation and perspectives presented in this case are not necessarily those of Canadian Pacific Railway or any of its employees. [↑](#footnote-ref-1)
2. “Brendan Wood Reports Early Poll of Canadian Pacific Shareholders—91% Want Change, 73% Favor Pershing Square,” *TopGun Press*, March 16, 2012. [↑](#footnote-ref-2)
3. A universal proxy form included the names of all director nominees, including those of dissident shareholders. Pershing added a seventh director nominee after the release of CP’s proxy and thus CP’s universal proxy form did not contain all director nominees at the date of the annual general meeting of shareholders. [↑](#footnote-ref-3)
4. “Pershing Square Responds to Canadian Pacific Proxy Circular Filing,”Cision, March 22, 2012, accessed March 12, 2017, www.newswire.ca/news-releases/pershing-square-responds-to-canadian-pacific-proxy-circular-filing-509894221.html. [↑](#footnote-ref-4)
5. Scott Deveau, “CP CEO Defends Himself against Harrison Push,” *Financial Post*, March 28, 2012. [↑](#footnote-ref-5)
6. David Friend, “Battle for CP in Shareholders’ Hands as Pershing Files List of Board Nominees,” *The Canadian Press*, April 5, 2012. [↑](#footnote-ref-6)
7. All currency amounts in the case are in Canadian dollars unless specified otherwise; CA$1 = US$0.97798 on January 1, 2012. [↑](#footnote-ref-7)
8. Proxy advisory firms provided clients with analysis and voting recommendations with respect to shareholder votes. In some cases, proxy advisors cast votes on their client’s behalf. [↑](#footnote-ref-8)
9. Scott Deveau, “CP Blasted by Proxy Advisor ISS,” *Financial Post*, May 3, 2012. [↑](#footnote-ref-9)
10. “Pershing Square Tightens Grip on CP Vote,” *TopGun Press*, April 26, 2012. [↑](#footnote-ref-10)