

October 26, 2017

ISS 2018 Benchmark Policy Consultation

On October 26, 2017, Institutional Shareholder Services Inc. (“ISS”) released its 2018 Benchmark Policy Consultation requesting feedback from interested market constituents on new or potential changes to their voting policies. Comments are **due by 5pm ET on November 9, 2017** and will be taken into consideration as ISS formulates updates to its voting policies **to be applied for shareholder meetings taking place on or after February 1, 2018**. ISS anticipates that the final benchmark voting guidelines will be released in the second half of November. It is our experience that there may be other significant policy changes that are adopted in ISS’ final benchmark guidelines without consultation. Kingsdale will continue to monitor the situation and provide any updates as necessary.

For the Canadian market, ISS is currently proposing **two changes** both related to director elections: (i) a change to overboarding policy by removing the secondary attendance trigger and (ii) the implementation of a new policy that promotes board gender diversity.

Director Overboarding

ISS’ current benchmark guidelines issue adverse voting recommendations for overboarded directors only when the director has attended less than 75% of his/her board and committee meetings within the past year without valid reasons for these absences. Recall that effective February 1, 2017, ISS tightened its overboarding thresholds (four boards for professional directors and one outside board for CEO directors). ISS is proposing that the secondary attendance trigger be removed and adverse recommendations be triggered so long as directors are considered overboarded. Consistent with past policies, adverse recommendations would not apply for overboarded CEO directors at the CEO’s home-company board. This policy update would apply after a one-year transitory period (effective for meetings on or after February 2019).

ISS currently solicits feedback on whether the one-year transitory period is appropriate and whether an overboarded CEO director of a parent company board or any of the controlled subsidiaries (greater than 50%) of that parent should be exempted from adverse recommendations (at their own parent company or controlled company board).

Kingsdale Insight: Unlike ISS, proxy advisor Glass Lewis has an overboarding policy considering a number of other relevant factors that may mitigate the adverse recommendation. Going forward for ISS, by removing the secondary attendance trigger, it will be up to the issuers to make their case to individual institutional investors should a director be considered overboarded as ISS will simply recommend a withhold vote without evaluating any other factors. We anticipate that this policy change would have significant impact on support levels for overboarded directors. By ISS’ own numbers, withhold recommendations for overboarded directors would be up from 14 nominees to a total of 315 (or 5.7% of all nominees) if this policy

was applied for the past year. The one-year transitory period, if kept in the final policy, gives issuers and directors time to come up with a strategy, which may include a gradual reduction of such directors' commitments or a dedicated shareholder engagement program in advance of the new ISS policy being effective. When you couple the negative recommendation with majority voting policies this may put several directors at real risk depending on the shareholder base.

Board Gender Diversity

ISS is also proposing a new double-triggered board gender diversity policy that would result in withhold votes for the Chair of the Nominating Committee if a company has not adopted a formal and robust written gender diversity policy **and** no female directors serve on the board. In cases where there is no Chair of the Nominating Committee, the Chair of the committee designated with the responsibility of a Nominating Committee, or the Chair of the board may be held accountable. ISS makes it clear that legal boilerplate or contradictory language used for board gender diversities may result in withhold votes for directors. A robust board gender diversity policy is one that includes a clear commitment to increasing board gender diversity, including measurable goals and/or targets that are achievable within a reasonable timeframe. Consideration is also given to a board's approach to executive officer gender diversity, stated goals/targets or programs and processes for advancing and monitoring women in executive officer roles. This policy does not apply to companies with four or fewer directors, new publicly listed issuers or companies that have graduated from the TSX Venture exchange within the current or prior fiscal year.

ISS is soliciting feedback on whether this new policy should apply to all TSX-listed companies, whether a one-year transitory period is appropriate for TSX non-Composite Index companies, and any additional issues that they should consider.

Kingsdale Insight: From the comments solicited by ISS, it appears the new board gender diversity policy is likely to be implemented for TSX Composite Index issuers with immediate effect. There may be a one-year grace period for TSX non-Composite Index companies. Further, it appears that ISS' version of a robust policy would require diversity targets with a reasonable timeframe of target achievement. With ISS' move, we anticipate that companies without a formal robust board gender diversity policy or any women on the board would be quick to act to remedy the situation in order to avoid adverse director recommendations. This effectively acts as a first step towards motivating the most inert companies to act as it pertains to board gender diversity. In the future, we anticipate that ISS may consider implementing even more stringent thresholds (say a minimum of two female directors instead of one) as it pertains its board gender diversity policy. We would also highlight that this policy change is in line with the guidelines many institutional shareholders, particularly the pension funds, have already stated they will act on.

If you have any questions about this update, please feel free to contact Kingsdale's experts listed below to discuss directly.

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