

Corporate Securities Law

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ISS Releases Final 2018 Voting Policy Updates for Canada

Institutional Shareholder Services Inc. (ISS) has released its *2018 Americas Proxy Voting Guidelines Updates* effective for meetings held on or after February 1, 2018. Most significantly, ISS is moving forward with its new gender diversity policy as well as the previously announced changes to its director over-boarding policy, with one important tweak.

New Gender Diversity Policy

ISS is implementing its previously announced gender diversity policy (see our October 31 Update, *ISS Proposes to Up the Ante on Gender Diversity and Overboarded Directors*). Under the new policy, ISS will generally recommend voting “withhold” for the Chair of the nominating committee (or the Chair of the board if no such committee has been established), if the following apply:

1. the company has not adopted a sufficiently robust written gender diversity policy, and
2. there are more than four directors on the board, none of whom are female.

This policy is effective for the 2018 proxy season for all S&P/TSX Composite companies. The policy will not apply to non-index companies until the 2019 proxy season. Going forward, newly listed or graduated companies will be afforded a one-year transition period before becoming subject to the policy.

Revised Overboarded Director Policy

ISS is also moving forward with the previously announced change to its director overboarding policy (see our October 31 Update, *ISS Proposes to Up the Ante on Gender Diversity and Overboarded Directors*). Under the amended policy, ISS will no longer consider a director’s meeting attendance record and will determine overboarded status solely based on the number of public company boards a director serves on. At the

same time, ISS has increased the number of public company boards a director can serve on before he or she is considered overboarded (to align it with its U.S. policy on overboarding).

Under the new policy, a director will be considered overboarded if:

- for a director who is a CEO of a public company, that director serves on more than two other public company boards, or
- for any other director, the director serves on more than five public company boards.

Serving as a director of a parent or subsidiary public company will count in determining whether a CEO is overboarded. However, ISS will not recommend voting withhold at the CEO’s home company or any parent or subsidiary public company, even if the CEO is overboarded.

ISS is providing a one-year transition period – until February 2019 – to allow companies to address any overboarding situations, if they wish to do so.

Other Policy Changes

ISS is adding the Relative Financial Performance Assessment (RFPA) test to its quantitative pay for performance evaluation (which ISS uses to determine voting recommendation for compensation issues, including equity incentive plans). The new RFPA test – which is now one of four quantitative tests ISS will apply – compares the company to a peer group with respect to:

1. CEO pay, and
2. financial performance (based on industry-specific metrics) over a three-year period.

ISS has announced it will publish a white paper providing additional details about this new test.

Finally, ISS has made a number of minor changes to some of its other voting policies (including its definition of director independence as well as its exemption for majority-owned companies) that do not impact ISS’ voting recommendations.

Please contact any member of our Corporate Securities Group to discuss these developments and ensure your board is prepared for these changes.