

Corporate Securities Law

November 23, 2015

ISS 2016 Proxy Season Policy Updates

Proxy advisory firm Institutional Shareholder Services Inc. (ISS) has released its Canadian policy updates for the 2016 proxy season. The new guidelines address the definition of “overboarding” for directors, the assessment of equity plans and disclosure relating to externally managed issuers. Other than the change affecting overboarding, which will be implemented for the 2017 proxy season, the updated guidelines will be effective for shareholder meetings held on or after February 1, 2016.

Overboarded Directors

To address the increasing time and energy required of public company directors, ISS will introduce a refined definition of “overboarding” for the 2017 proxy season.

For the upcoming 2016 proxy season, ISS will generally issue a “withhold” recommendation for directors of companies listed on the Toronto Stock Exchange (TSX) who are “overboarded” and attended less than 75% of meetings held within the past year without valid reason (cautionary language will be included in ISS reports where directors are overboarded, regardless of attendance). “Overboarded” is defined as follows:

- For directors who are CEOs, if they sit on more than two outside public company boards.
- For non-CEO directors, if they sit on more than six total public company boards.

For shareholder meetings beginning in February of 2017, ISS will decrease the thresholds applicable to “overboarding” to one outside public company board for directors who are CEOs and to four total public company boards for non-CEO directors.

Equity Compensation Plans

Previously, ISS made recommendations on equity-based compensation plans for TSX-listed companies on a case-by-case basis, though would generally recommend against a plan that included pay practices or elements deemed problematic or not in shareholders’ interests.

Under the new policy, ISS will continue to recommend against a plan if it identifies certain elements it considers problematic, including insufficiently limited non-employee director participation, insufficient shareholder approval mechanisms, historical re-pricing of options or a lack of connection between pay and performance. In addition, however, ISS is adopting a “scorecard” model for equity plans of TSX-listed issuers similar to the model ISS introduced in the United States for the 2015 proxy season.

Under the scorecard approach, ISS will assess a range of factors and apply a total score to each plan, recommending against a plan if the total score indicates that the plan is not in shareholders’ interest. The factors ISS will consider fall within three categories:

- *Plan Cost:* the total estimated cost of the subject issuer’s plans relative to similar issuers based on industry and market capitalization.
- *Plan Features:* specific features of the plan, including problematic change-in-control provisions, financial assistance given to plan participants for the exercise of awards and reasonable dilution from equity plans, as well as whether the full text of the plan has been publicly disclosed.
- *Grant Practices:* the average burn rate, the vesting requirements for the CEO’s most recent grants, the issuance of performance-based equity to the CEO, clawback provisions, and post-exercise holding requirements.

Goodmans^{LLP} Update

Externally-Managed Issuers

Previously, ISS did not issue any general recommendations in relation to externally-managed issuers (EMIs). In an effort to increase board accountability and improve disclosure for EMIs, ISS will make recommendations on a case-by-case basis for say-on-pay resolutions and elections of directors and committee members of an EMI that has provided minimal or no disclosure about its management services agreement and how senior management is compensated. In making its recommendation, ISS will consider the size and scope of the management services agreement, compensation in comparison to issuer peers, board and committee independence and conflicts of interest.

Please contact any member of our Corporate Securities Group to discuss these latest developments or the upcoming proxy season in general.