

Canada Policy - Director Elections – Board Gender Diversity (TSX-listed issuers)

Background and Overview

Gender diversity has become a high-profile corporate governance concern in the Canadian market since updated disclosure requirements came into effect for the 2015 proxy season. These disclosure requirements have been a catalyst for the addition of women on the boards at many larger TSX-listed reporting issuers, including Composite Index companies. Among non-Composite Index TSX-listed issuers, however, approximately 50 percent do not have any women directors on their boards.

Canadian institutional investors have begun to voice their frustration with the slow movement on boardroom gender diversity through their voting policies. During a Summer 2017 roundtable discussion on this topic, ISS' Canadian institutional clients overwhelmingly urged ISS to adopt a board gender diversity policy, (applicable to all TSX-listed companies) that would promote better disclosure by companies and higher levels of gender diversity in boardrooms.

Client roundtable participants also expressed the view that the rigor of any disclosed company diversity policies should also be considered, including the disclosure (or the lack thereof) of targets or goals, the use of boilerplate or contradictory language. Finally, roundtable participants did not support delaying implementation of this policy due to the length of time the disclosure regulation has already been in place and over which time the regulators have reviewed results and expressed disappointment over the slow market response to increasing gender diversity on boards.

Disclosure reviews conducted by regulators in each of the past three years have indicated that there is a correlation between a company's adoption of a gender diversity policy and a greater number of women on the board of directors. This finding highlights the importance of companies establishing robust gender diversity policies for boards of directors.

Key Changes under Consideration

Under the proposed new policy, if: i) the company has not adopted a formal written gender diversity policy*; and ii) no female directors serve on the board; then ISS will generally recommend withhold votes for the Chair of the Nominating Committee or Chair of the committee designated with the responsibility of a nominating committee, or the chair of the board if no nominating committee has been identified or no chair of such committee has been identified. This policy will not apply to companies with four or fewer directors, to companies that have become publicly-listed within the current or last fiscal year or companies that have graduated from the TSX Venture exchange within the current or prior fiscal year.

**As per the disclosure requirements by the Canadian Securities Regulators, the issuer should disclose whether it has adopted a written policy relating to the identification and nomination of women directors. The policy, if adopted, should describe a short summary of its objectives and key provisions; the measures taken to ensure that the policy has been effectively implemented; annual and cumulative progress by the issuer in achieving the objectives of the policy, and whether and, if so, how the board or its nominating committee measures the effectiveness of the policy.*

Under the proposed policy, a robust gender diversity policy should include a clear commitment to increase board gender diversity. Legal boilerplate or contradictory language may result in withhold votes for directors. The gender diversity policy should include measurable goals and/or targets denoting a firm

commitment to increasing board gender diversity within a reasonable period of time. When determining a company's commitment to board gender diversity, consideration will also be given to the board's disclosed approach to considering gender diversity in executive officer positions and stated goals or targets or programs and processes for advancing women in executive officer roles, and how the success of such programs and processes is monitored.

Intent and Impact

The proposed policy aligns with ISS client expectations and recommended best market practices with respect to board gender diversity. According to data reviewed for S&P/TSX Composite index companies covered by ISS through mid-August, approximately 5 percent of these companies did not adopt a formal gender diversity policy and also did not include a woman on the board. For non-composite index TSX-listed companies covered by ISS, approximately half of these companies had zero female directors and could potentially result in withhold recommendations if no formal gender diversity policy is disclosed.

Request for Comment

While we appreciate any comments on this topic, ISS is specifically seeking feedback on the following:

- Should the proposed policy apply to all TSX-listed companies at this time?
- Is a one-year transition period, i.e., with implementation of the proposed policy from February 2019, appropriate for TSX non-Composite Index companies?
- Are there any additional issues that should be considered when evaluating a company's formal gender diversity policy?

Canada Policy - Director Elections - Overboarded Directors (TSX-Listed Issuers)

Background and Overview

ISS' Canadian overboarding policy for TSX-listed companies was implemented in 2014 after ISS had discussed the topic with institutional investors periodically over several years, and the consensus indicated an overboarding policy should be considered for Canada.

Effective February 1, 2017, ISS' policy thresholds for overboarded directors were updated, and under the current policy, directors who are not CEOs of public companies are considered overboarded if they serve on more than four boards (previously six directorships), while directors who are also CEOs of public companies are considered overboarded if they serve on more than one (previously two) outside boards in addition to the board of the company on which they serve as CEO.

Once an overboarded director has been identified, an adverse voting recommendation is then only issued when the director has attended less than 75 percent of his/her respective board and committee meetings held within the past year without a valid reason for these absences.

However, feedback from Canadian institutional investors during roundtable discussions and one-on-one policy outreach meetings in 2016 and 2017 indicates that there is widespread support in the investor community to consider overboarding by itself in determining vote recommendations for directors and to remove attendance as an additional factor in the analysis. Such sentiment is supported by recent studies that were conducted for Canada and for other markets which indicate that director time commitment has increased significantly over the last few years and should therefore be a key consideration on its own.

Key Changes under Consideration

Under the proposed policy change, after a proposed one-year transition period to February 2019, ISS would generally recommend voting withhold for non-CEO director nominees who sit on more than four public company boards, and recommend voting withhold for CEO director nominees at their outside boards, where they sit on the board of more than one public company besides the company for which they serve as CEO.

The proposed policy amendment would not change current overboarding thresholds but would eliminate director attendance as a factor in determining a vote recommendation on directors due to overboarding. Additionally, adverse vote recommendations would not apply for overboarded CEO directors at a CEO's home-company board.

Intent and Impact

The proposed policy change will further align Canadian ISS policy with recent feedback received from Canadian institutional investors, and is intended to align with the policy approach of global institutional investors. Given the potential impact on boards, a one-year transition period has been proposed to allow TSX reporting issuers adequate time to address overboarding issues if they choose to do so. ISS' director data for all TSX-listed issuers covered by ISS for the one-year period of August 1, 2016 to July 31, 2017 indicates that had the proposed policy change been in place during the period, up to 167 outside CEO directors and up to 148 non-CEO directors would have warranted a withhold

recommendation for a total of 315 nominees or 5.7 percent of total director election votes over the period, which is up from a mere 14 nominees in accordance with the current policy.

Request for Comment

While we appreciate any comments on this topic, ISS is specifically seeking feedback on the following:

- Under current Canadian policy, all publicly-listed boards, regardless of whether they have a parent/subsidiary relationship, are counted when determining a director's status as an overboarded director. In situations where an overboarded director is CEO of a parent company board or any of the controlled subsidiaries (defined as >50 percent ownership) of that parent, should ISS consider exempting CEO directors from adverse vote recommendations at their own parent company or controlled subsidiary board?
- Is the proposed one-year transition period, i.e., with implementation of the proposed policy from February 2019 appropriate? If not, please explain why it is not appropriate?