

FRONTLINE ADVISORS

Client Update

Final ISS Benchmark Policy Changes for 2021

November 12, 2020

Today, Institutional Shareholder Services Inc. (“ISS”) released its final [2021 Benchmark Policy Updates](#) covering the Canadian and U.S. markets. These policy changes will be effective for shareholder meetings taking place on or after February 1, 2021 unless otherwise stated.

For the Canadian markets, ISS formalized the proposed policy changes previously announced in the benchmark consultation period, as explained in our [previous client update note](#). The three changes that found its way to the final Canadian policy updates relate to: (i) a higher-bar 30% gender diversity policy effective for S&P/TSX Composite index constituents from the 2022 proxy season, (ii) environmental & social risk oversight as part of ISS’ material governance failure policy for director elections, and (iii) formal guidance on ISS’ exclusive forum provision policy. For the U.S. markets, as previously announced, ISS has: (i) adopted a formal racial and ethnic board diversity policy, (ii) instituted environmental & social risk oversight as part of ISS’ material governance failure policy for director elections, and (iii) made modifications to the existing exclusive forum provisions policy.

Interested parties can read the details related to these previously announced policy changes, now made formal, in our last [client update note](#).

In addition to the above, ISS also made a series of clean-up/minor policy changes in the following areas, affecting the U.S. markets:

- **Board Gender Diversity:** ISS clarified that effective for the 2021 proxy season, the only exception to adverse vote recommendations for Russell 3000/S&P 1500 index constituents with no women on their board would be a temporary loss in gender diversity and with a firm commitment to restore the gender-diverse status within one year.
- **Board Independence Classification:** ISS made minor clean-up changes in its board independence classification table. The changes are not intended to affect vote recommendations. However, ISS’ “Executive Director” classification now only applies to officers and not other employees. This will have an effect for institutional investors who rely on ISS classification of “Executive Directors” when applying their internal overboarding policies as it relates to “Executive Directors” versus non-executive directors.
- **Poison Pills:** ISS has re-introduced the adoption of slow-hand and dead-hand provisions (regardless of the term of the pill) as a reason to withhold from the entire board with the exception of new nominees who will be considered by a case-by-case approach as part of its poison pill policy.
- **Board Refreshment:** ISS will now take a case-by-case approach on both management and shareholder proposals related to director term limits. For management proposals, ISS will consider a range of factors including, but not limited to, adoption rationale, the robustness of the board’s evaluation process,

KEY CONTACTS

This update has been prepared by the expert advisors at FrontLine.

The FrontLine team is comprised of governance experts who have built their practice advising public company issuers and shareholders in all governance matters. Should you have any questions or wish to discuss our advisory capabilities, please contact us.

Victor Guo, CFA

President
E: vguo@frontlineadvisors.ca
T: +1.416.721.9070

Jackie Cheung

Senior Vice President, Governance
E: jcheung@frontlineadvisors.ca
T: +1.647.271.6111

For proxy solicitation needs, please contact the expert advisors at our sister company Gryphon Advisors.

Dexter John, LLB, ICD.D

President & CEO
E: djohn@gryphonadvisors.ca
T: +1.416.602.0050

Mike McLeod

Senior Vice President
E: mmcleod@gryphonadvisors.ca
T: +1.403.830.2070

the length of the term limit, and whether the limit would be disadvantageous or discriminatory for one group over others such as independent versus non-independent directors and for the board not to have the ability to waive it in a discriminatory manner. For shareholder proposals, where there have been problematic governance issues in the past and the lack of board refreshment was a contributing factor, ISS may support such proposals.

- **Advance Notice Requirements:** Previously, ISS' guidance on reasonable timeframes as it relates to advance notice submissions were not more than 60 days prior to the date of the meeting and a submittal window of at least 30 days prior to the deadline. Based on recent trends, ISS amended its policy to 120 days prior to the anniversary of the previous year's meeting, with a submittal window of no shorter than 30 days from the beginning of the notice period (also known as a 90-120 day window).
- **Virtual Meetings:** ISS formalized its stance on virtual meetings in its benchmark policies. ISS will generally recommend a vote for management proposals allowing for the convening of shareholder meetings by electronic means, so long as they do not preclude in-person meetings. For shareholder proposals related to virtual meetings, ISS will vote on a case-by-case basis, considering the scope and rationale of the proposal and concerns with prior meetings.
- **Control Share Acquisition Statutes for Closed End Funds ("CEFs"):** Specific to closed end management investment companies, ISS will withhold from nominating/governance committee members when such CEFs opt-in to a "Control Share Acquisition" statute, without providing a compelling rationale or submitting a by-law amendment to the shareholder vote. "Control Share Acquisition" statutes have protective measures which require an investor, who has acquired a large percentage of the fund/investment company's outstanding shares, to receive approval from the other shareholders of the fund in order to be able to vote the balance of the shares. ISS views these protections provided by "Control Share Acquisition" statutes as denying important voting rights and subject to management entrenchment.
- **Social and Environmental Issues:** ISS made further amendments and changes related to requests for reports related to gender race/ethnicity pay gaps, mandatory arbitration and sexual harassment. Interested parties can read the details of these changes in related to social and environmental issues in [ISS' Americas Policy Update document](#).

While there were no additional policy changes for the Canadian markets beyond what was announced in the benchmark policy consultation period, clients are advised that there may still be additional changes to ISS' policies when it releases its full policy document as well as ensuing FAQs which cover special topical items such as pay for performance or equity plan analyses. Our team will monitor the release of such documents and provide critical updates to our clients in a timely manner.

Interested to know what influence ISS has on your shareholder base and what these proposed changes mean for you?

Contact our experts today to find out. Issuers and clients who wish to discuss the above-mentioned changes can also contact our expert team directly to explore ways in which we can help you prepare for your next AGM.