

# FRONTLINE ADVISORS

## Client Update

### Proposed ISS Benchmark Policy Changes for 2022

November 4, 2021

Today, Institutional Shareholder Services Inc. (“ISS”) announced the launch of its 2022 Benchmark Voting Policy comment period. ISS is soliciting input from market participants on [proposed benchmark policy changes](#), effective for shareholder meetings taking place on or after February 1, 2022. The comment period will remain open until 5:00 PM ET November 16, 2021, and ISS anticipates releasing its final benchmark policies at the end of November.

For the North American markets, ISS proposes the changes below covering: (i) board diversity, (ii) unequal voting rights, (iii) board accountability on climate, (iv) management endorsed Say-on-Climate proposals, (v) Say-on-Climate shareholder proposals, and (vi) shareholder responsiveness for Say-on-Pay proposals.

- **Board Gender Diversity (U.S., Canada):** In the U.S., ISS is expanding its board gender diversity policy recommending withhold votes from nominating committee chairs at Russell 3000 or S&P 1500 constituents where there are no women on the board; effective February 1, 2023, the policy will also apply to companies beyond the indices listed above. In Canada, as announced in the previous year, for S&P/TSX Composite index constituents, ISS will recommend withhold from nominating committee chairs in cases where women comprise of less than 30% of the board and the company has not made a formal and disclosed commitment to achieve 30% women on board prior to the next annual meeting. ISS’ new policy effectively provides an additional one-year grace period (until the 2023 AGM) for companies failing to meet this standard. ISS is also expanding its policy requiring at least one woman on board of widely-held TSX companies to all TSX companies. In cases of repeat offenders (two or more years), ISS may hold other directors accountable in addition to nominating committee chairs.
- **Unequal Voting Rights (U.S.):** ISS originally implemented its unequal voting rights policy in 2015 which addressed concerns for newly public companies which had unequal voting rights without appropriate sunset clauses. As such, companies which had their first shareholder meeting prior to the policy adoption were grandfathered. ISS is now proposing to expand this policy to remove their grandfathering exemptions, and beginning in 2023, ISS will generally withhold from directors individually, committee members, or the entire board if a company employs a common stock structure with unequal voting rights. Unequal voting rights can come in various forms, and ISS’ definition covers companies that have classes of common stock that have additional votes per share, classes of shares that are not entitled to vote on all the same ballot items or nominees, or stock with time-phased voting rights. Short of newly public companies with a seven-year sunset period from the go-public date, limited and operating

#### 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.

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partnership structures in REITS, companies where the unequal rights are de minimis, or companies that provide other sufficient minority shareholder protections, ISS' policy will likely have major rippling effects in the U.S. market resulting in the withhold of directors at many prolific U.S. companies with unequal voting structures.

- **Board Accountability on Climate (U.S.):** In the U.S., ISS is introducing a new policy to hold directors accountable at companies listed in the Climate Action 100+ Focus Group (53 North American Companies of which are five are Canadian with the rest being U.S. based). This policy will apply to instances where ISS determines that a company: (i) has not provided detailed disclosure of climate-related risks (such as in accordance with the TCFD framework, covering the recommended disclosures in the governance, corporate strategy, risk management analyses, and metrics and targets thematic areas but stopping short at the use of scenario analysis); or (ii) established appropriate GHG emission reduction targets (not covering targets for Scope 3 emissions but should cover a significant portion of direct emissions). ISS notes that over time, the bar will be raised as it pertains to the minimum steps to mitigate risks related to climate change, and as such, issuers should anticipate more requirements in upcoming proxy seasons.
- **Say-on-Climate Management Proposals (Global including U.S. and Canada):** ISS is introducing a new policy framework evaluating the burgeoning Say-on-Climate proposals put forth by management. On a case-by-case basis, ISS will look at the following factors: (i) the extent to which climate related disclosures are in line with TCFD recommendations and other market standards, (ii) disclosure of operational/supply chain GHG emissions (Scope 1, 2 and 3), (iii) completeness and rigour of short-, medium- and long-term targets for reducing operational/supply chain GHG emissions in line with Paris Agreement goals, (iii) the use of (or sought approval for the use of) third-party approved science-based targets, (iv) commitment to net-zero by 2050, (v) the disclosure of commitment to report on the implementation of the plan in subsequent years, (vi) third-party assurance of climate data, (vii) the disclosure of how lobbying activities and CAPEX align with company strategy, (vii) industry specific decarbonization challenges, and (viii) peer performance. ISS noted that in 2021, there were 25 management Say-on-Climate proposals held globally (two in the U.S., one in Canada), all on an advisory basis. As the investor focus for climate-related issues intensify, we anticipate that more Say-on-Climate votes will be held at Canadian and U.S issuers the near future.
- **Say-on-Climate Shareholder Proposals (Global including U.S. and Canada):** ISS is codifying its approach to evaluating shareholder proposals seeking Say-on-Climate votes or other climate-related actions. On a case-by-case basis, the new ISS analytical framework will take into account the details of the shareholder proposal request considering whether or not the proposal is overly prescriptive and unduly burdensome, the company's current climate-related disclosures and performance, and finally, significant violations, fines, litigation, and controversies related to GHG emissions specific to the company.

- **Shareholder Responsiveness for Say-on-Pay Proposals (Canada):** In Canada, ISS is increasing its board responsiveness threshold for Say-on-Pay proposals. Where a company receives less than 80% support for its Say-on-Pay vote, ISS' board responsiveness policy will be triggered. Previously, ISS' threshold for triggering the board responsiveness policy was 70%. In 2021, there were 20 companies in Canada receiving less than 80% support for Say-on-Pay as opposed to 9 who received less than 70% support. We anticipate that this increase in threshold will further raise the bar for companies in terms board responsiveness and will align ISS' board responsiveness policy to Glass Lewis' standard which has long been at the 80% threshold.

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### **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.

#### **About FrontLine Advisors**

FrontLine Advisors is a full-service corporate governance and special situations consultancy focusing on complex shareholder matters. We devise proprietary governance strategies and work alongside other advisors to secure favourable outcomes on contentious shareholder meetings and M&A transactions. FrontLine also advises companies before and after their initial public offerings on governance structure design, and provides investment monitoring and due diligence support to family offices and private equity investors.

#### **About Gryphon Advisors**

Gryphon Advisors is a full-service proxy solicitation, M&A advisory and contested situations consulting firm. As the preferred advisor to boards and shareholders, we offer a broad range of services including corporate governance, investor voting behavior analytics, and executive compensation consulting. Our team is comprised of the most experienced experts in the proxy solicitation and strategic shareholder advisory marketplace. With an unparalleled track record in dealing with complex shareholder matters, our dedication to providing best in class services ensures that our clients have 24/7 coverage for any shareholder engagement matters.