Director Overboarding (US)

Background and Overview

Directors need sufficient time and energy in order to be effective representatives of shareholders' interests. Directors' responsibilities are increasingly complex as board and key committee memberships demand greater time commitments. According to a 2014-2015 Public Company Governance Survey conducted by the National Association of Corporate Directors (NACD), directors of public companies committed an annual average of 278 hours to board-related matters in 2014. A review of NACD's annual surveys reveals the average director time commitment has grown by 46 percent, from 190 hours in 2005 to 278 hours in 2014. There is a need to balance the additional insight gained by directors' participation on different boards with the need to limit the number of commitments so as to allow directors sufficient time for the preparation, attendance and participation at board and committee meetings.

The concept of “overboarded” or "overboarding", which refers to a director who sits on an excessive number of boards, is long-standing. Directors are considered overboarded if they sit on a number of boards which could result in excessive time commitments and an inability to fulfill their duties. Increasingly, companies consider concerns about over-committed directors and some have adopted policies limiting the number of boards on which their directors may serve.

In our ISS 2015 policy survey, we queried investors, companies, and other interested market participants to ascertain their views on acceptable limits for the number of total boards held by US company directors. Many survey respondents (investors and companies) pointed to increasing demands on directors' time, as they play a larger role in company and risk oversight, shareholder engagement, and other activities, and favored stricter limits on board seats. A summary of the survey responses on this topic is shown in the appendix below, with approximately 34 percent of investors responding that for non-CEO directors, a limit of four total board seats is an appropriate limit , while 18 percent responded that a five-board limit is appropriate, and 20 percent responded that a six board limit is appropriate. For directors who are the CEO, 48 percent of investors responded that two total board seats (ie. the CEO role and no more than one other) is an appropriate limit, and 32 percent responded that a three total board limit is appropriate.

Key Changes Under Consideration

ISS' current US Policy on overboarded directors reads as follows:

Vote against or withhold from individual directors who:
3.3. Sit on more than six public company boards; or
3.4. Are CEOs of public companies who sit on the boards of more than two public companies besides their own– withhold only at their outside boards[5]

[5]Although all of a CEO's subsidiary boards will be counted as separate boards, ISS will not recommend a withhold vote from the CEO of a parent company board or any of the controlled (>50 percent ownership) subsidiaries of that parent, but may do so at subsidiaries that are less than 50 percent controlled and boards outside the parent/subsidiary relationship.

We propose to revise the ISS US policy on overboarded directors to lower the acceptable numbers of board positions as follows:

1. For CEOs with outside directorships, a limit of one outside public company directorship besides their own – still to withhold only at their outside boards.
2. For directors who are not the CEO, we are evaluating two options:

   To lower the acceptable number of total public boards from the current six (the board under consideration plus five others) to a total of either:

   a. Five (the board under consideration plus four others), or
   b. Four (the board under consideration plus three others).

   In all cases, there would be a proposed one-year grace period until 2017 during which time ISS would include cautionary language in our research reports but would not issue a negative vote recommendation solely because a director was considered overboarded under the revised policy.

Intent and Impact

Based on ISS data for US annual meetings that occurred between July 1, 2014 and June 30, 2015, approximately 79 CEOs and 21 non-CEO directors were considered overboarded under ISS' current policy. We anticipate that upon implementation of the proposed changes, 336 CEOs would be considered overboarded. If the policy limit for non-CEO directors is set at five boards (option a.), 61 non-CEO directors would be considered overboarded. If the policy limit is set at four boards (option b.), 231 non-CEO directors would be considered overboarded. We note however that in in all cases, the expected numbers of overboarded directors receiving negative recommendations would lower than those quoted above, due to other factors taken into account by ISS, such as exceptions for CEOs sitting on the boards of company subsidiaries.

Request for Comment

1. Do you consider that lowering the limit for CEOs to be considered overboarded as proposed is appropriate? If not, please explain.

2. Do you consider that lowering the limit for non-CEOs to be considered overboarded as proposed is appropriate? If so, would you favour a limit of either five total directorships (option a.) or four total directorships (option b.)? If not, please explain.

Appendix

Table 1: 2015 ISS Survey Results on US Director Overboarding limits

For directors generally and nonexecutive directors in particular:

	Investor	Non-Investor
Six total board seats is an appropriate limit	20%	25%
Five total board seats is an appropriate limit	18%	7%
Four total board seats is an appropriate limit	34%	19%
A general limit should not be applied, each board should consider what is appropriate and act accordingly	12%	41%
It depends/other	16%	8%

For directors who are active CEOs:

	Investor	Non-Investor
Three total board seats (including the home board) is an appropriate limit	32%	37%
Two total board seats (including the home board) is an appropriate limit	48%	20%
A general limit should not be applied, each board should consider what is appropriate and act accordingly	12%	35%
It depends/other	8%	8%