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Director Qualification/Compensation Bylaw FAQs

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How would ISS view a board's adoption of a bylaw that disqualifies any director nominee who receives third-party compensation ("director qualification bylaw"), without putting such a bylaw to a shareholder vote?

The adoption of restrictive director qualification bylaws without shareholder approval may be considered a material failure of governance because the ability to elect directors is a fundamental shareholder right. Bylaws that preclude shareholders from voting on otherwise qualified candidates unnecessarily infringe on this core franchise right. Consistent with ISS' "Governance Failures" policy, we may, in such circumstances, recommend a vote against or withhold from director nominees for material failures of governance, stewardship, risk oversight, or fiduciary responsibilities.

However, ISS has not recommended voting against directors and boards at companies which have adopted bylaws precluding from board service those director nominees who fail to disclose third-party compensatory payments. Such provisions may provide greater transparency for shareholders, and allow for better-informed voting decisions.

If a board puts such a director qualification bylaw to a shareholder vote, will ISS recommend in favor of the proposed bylaw?

ISS will apply a case-by-case analytical framework, taking into consideration among other factors the board's rationale for proposing the bylaw, whether the proposed bylaw materially impairs, and/or delivers any off-setting improvements in shareholder rights, and any market-specific practices or views on the underlying issue.

How would ISS evaluate director nominees with third-party compensatory arrangements in a proxy contest?

Compensation arrangements with director nominees are among the factors ISS considers in our case-by-case analysis of proxy contests. Further discussion of ISS' analytic framework for contested elections is available in the [U.S.](#) and [Canadian](#) Summary Guidelines.