



# Canada

## Proxy Voting Guideline Updates

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2015 Benchmark Policy Recommendations

**Effective for Meetings on or after Feb. 1, 2015**

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## BOARD OF DIRECTORS

### Voting on Director Nominees in Uncontested Elections

#### ISS Canadian Definition of Independence

##### Current Definition:

##### 1. Inside Director (I)

- 1.1 Employees of the company or its affiliates<sup>i</sup>;
- 1.2 Non-employee officer of the company if he/she is among the five most highly compensated;
- 1.3 Current interim CEO or any other current interim executives;
- 1.4 Beneficial owner of company shares with more than 50 percent of the outstanding voting rights (this may be aggregated if voting power is distributed among more than one member of a group)<sup>ii</sup>.

##### 2. Affiliated Outside Director (AO)

###### Former/Interim CEO

- 2.1 Former CEO of the company or its affiliates, (no cooling- off period) or of an acquired company within the past three years.
- 2.2 Former interim CEO if the service was longer than 18 months or if the service was between 12 and 18 months and the compensation was high relative to that of the other directors or in line with a CEO's compensation<sup>iii</sup> at that time.
- 2.3 CEO of a former parent or predecessor firm at the time the company was sold or split off from the parent/predecessor (no cooling- off period).

###### Non-CEO Executives

- 2.4 Former executive of the company, an affiliate, or a firm acquired within the past three years;
- 2.5 Former interim executive if the service was longer than 18 months or if the service was between 12 and 18 months, an assessment of the interim executive's terms of employment including compensation relative to other directors or in line with the top five NEOs at that time.
- 2.6 Executive of a former parent or predecessor firm at the time the company was sold or split off from parent/predecessor (subject to three year cooling off);
- 2.7 Executive, former executive within the last three years, general or limited partner of a joint venture or partnership with the company;

###### Relatives

- 2.8 Relative<sup>iv</sup> of current executive officer<sup>v</sup> of the company;
- 2.9 Relative of a person who has served as an executive officer of the company within the last three years;

###### Transactional, Professional, Financial, and Charitable Relationships

- 2.10 Currently provides (or a relative provides) professional services to the company or to its officers;
- 2.11 Is (or a relative is) a partner, controlling shareholder or an employee of, an organization that provides professional services to the company, to an affiliate of the company, or to an individual officer of the company or one of its affiliates.
- 2.12 Currently employed by (or a relative is employed by) a significant customer or supplier;
- 2.13 Is (or a relative is) a trustee, director or employee of a charitable or non-profit organization that receives material<sup>viii</sup> grants or endowments from the company;
- 2.14 Has (or a relative has) a transactional relationship with the company excluding investments in the company through a private placement;

###### Other Relationships

- 2.15 Has a contractual/guaranteed board seat and is party to a voting agreement to vote in line with management on proposals being brought to shareholders;
- 2.16 Founder<sup>viii</sup> of the company but not currently an employee;

###### Board Attestation

2.17 Board attestation that an outside director is not independent.

### 3. Independent Directors (IO)

3.1 No material ties to the corporation other than board seat.

#### Footnotes

<sup>i</sup> "Affiliate" includes a subsidiary, sibling company, or parent company. ISS uses 50 percent control ownership by the parent company as the standard for applying its affiliate designation.

<sup>ii</sup> Under this definition, officers of an entity and/or its affiliates holding more than 50% of the outstanding voting rights will be considered insiders.

<sup>iii</sup> ISS will look at the terms of the interim CEO's compensation or employment contract to determine if it contains severance pay, long-term health and pension benefits or other such standard provisions typically contained in contracts of permanent, non-temporary CEOs. ISS will also consider if a formal search process was underway for a full-time CEO.

<sup>iv</sup> Relative refers to immediate family members including spouse, parents, children, siblings, in-laws and anyone sharing the director's home.

<sup>v</sup> Executive Officer will include: the CEO or CFO of the entity; the president of the entity; a vice-president of the entity in charge of a principal business unit, division or function; an officer of the entity or any of its subsidiary entities who performs a policy making function in respect of the entity; any other individual who performs a policy-making function in respect of the entity; or any executive named in the Summary Compensation Table.

<sup>vi</sup> If the company makes or receives annual payments exceeding the greater of \$200,000 or 5 percent of recipient's gross revenues (the recipient is the party receiving proceeds from the transaction).

<sup>vii</sup> "Material" is defined as a standard of relationship (financial, personal or otherwise) that a reasonable person might conclude could potentially influence one's objectivity in the boardroom in a manner that would have a meaningful impact on an individual's ability to satisfy requisite fiduciary standards on behalf of shareholders.

<sup>viii</sup> The operating involvement of the Founder with the company will be considered. Little or no operating involvement may cause ISS to deem the Founder as an independent outsider.

#### Key Changes:

- › Add new sub-category 2.17 to Other Relationships for greater clarification of the application of the Definition of Independence.
- › Under ISS' Definition of Independence, on a case-by-case basis, a former CEO will be subject to a five year cooling-off period after which he/she will be deemed independent for purposes of serving on the board of directors or any key board committee unless there exists any other relationship with the issuer, or an executive officer of the issuer, which could be reasonably perceived to interfere with the exercise of his or her independent judgment as set out in the ISS definition of independence.
- › Codify the current approach that has been applied to former executives of Capital Pool Companies on a case-by-case basis.



#### New Definition of Independence:

See next page.

## 2015 ISS Canadian Definition of Independence

### 1. Inside Director (I)

- 1.1 Employees of the company or its affiliates<sup>i</sup>;
- 1.2 Non-employee officer of the company if he/she is among the five most highly compensated;
- 1.3 Current interim CEO or any other current interim executives;
- 1.4 Beneficial owner of company shares with more than 50 percent of the outstanding voting rights (this may be aggregated if voting power is distributed among more than one member of a group)<sup>ii</sup>.

### 2. Affiliated Outside Director (AO)

#### Former/Interim CEO<sup>iii</sup>

- 2.1 Former CEO of the company or its affiliates within the past five years<sup>iv</sup> or of an acquired company within the past five years.
- 2.2 Former interim CEO within the past five years<sup>iv</sup> if the service was longer than 18 months or if the service was between 12 and 18 months and the compensation was high relative to that of the other directors or in line with a CEO's compensation<sup>v</sup> at that time.
- 2.3 CEO of a former parent or predecessor firm at the time the company was sold or split off from the parent/predecessor within the past five years<sup>iv</sup>.

#### Non-CEO Executives<sup>iii</sup>

- 2.4 Former executive of the company, an affiliate, or a firm acquired within the past three years;
- 2.5 Former interim executive within the past three years if the service was longer than 18 months or if the service was between 12 and 18 months, an assessment of the interim executive's terms of employment including compensation relative to other directors or in line with the top five NEOs at that time.
- 2.6 Executive of a former parent or predecessor firm at the time the Company was sold or split off from parent/predecessor within the past three years;
- 2.7 Executive, former executive within the last three years, general or limited partner of a joint venture or partnership with the company;

#### Relatives

- 2.8 Relative<sup>vi</sup> of current executive officer<sup>vii</sup> of the company;
- 2.9 Relative of a person who has served as an executive officer of the company within the last three years;

#### Transactional, Professional, Financial, and Charitable Relationships

- 2.10 Currently provides (or a relative provides) professional services to the company or to its officers;
- 2.11 Is (or a relative is) a partner, controlling shareholder or an employee of, an organization that provides professional services to the company, to an affiliate of the company, or to an individual officer of the company or one of its affiliates.
- 2.12 Currently employed by (or a relative is employed by) a significant customer or supplier<sup>viii</sup>;
- 2.13 Is (or a relative is) a trustee, director or employee of a charitable or non-profit organization that receives material<sup>ix</sup> grants or endowments from the company;
- 2.14 Has (or a relative has) a transactional relationship with the company excluding investments in the company through a private placement;

#### Other Relationships

- 2.15 Has a contractual/guaranteed board seat and is party to a voting agreement to vote in line with management on proposals being brought to shareholders;
- 2.16 Founder<sup>x</sup> of the company but not currently an employee;
- 2.17 Has any material relationship with the corporation or with any one or more members of management of the corporation.

#### Board Attestation

- 2.18 Board attestation that an outside director is not independent.

### 3. Independent Directors (IO)

- 3.1 No material ties to the corporation other than board seat.

**Footnotes:**

- <sup>i</sup> "Affiliate" includes a subsidiary, sibling company, or parent company. ISS uses 50 percent control ownership by the parent company as the standard for applying its affiliate designation.
- <sup>ii</sup> Under this definition, officers of an entity and/or its affiliates holding more than 50 percent of the outstanding voting rights will be considered insiders.
- <sup>iii</sup> When there is a former CEO or other officer of a capital pool company (CPC) or special purpose acquisition company (SPAC) serving on the board of an acquired company, ISS will generally classify such directors as independent unless determined otherwise taking into account the following factors: the applicable listing standards determination of such director's independence; any operating ties to the firm; and the existence of any other conflicting relationships or related party transactions.
- <sup>iv</sup> The determination of a former CEO's classification following the five year cooling-off period will be considered on a case-by-case basis. Factors taken into consideration may include but are not limited to: management/board turnover, current or recent involvement in the company, whether the former CEO is or has been Executive Chairman of the board or a company founder, length of service with the company, any related party transactions, consulting arrangements, and any other factors that may reasonably be deemed to affect the independence of the former CEO.
- <sup>v</sup> ISS will look at the terms of the interim CEO's compensation or employment contract to determine if it contains severance pay, long-term health and pension benefits or other such standard provisions typically contained in contracts of permanent, non-temporary CEOs. ISS will also consider if a formal search process was underway for a full-time CEO.
- <sup>vi</sup> Relative refers to immediate family members including spouse, parents, children, siblings, in-laws and anyone sharing the director's home.
- <sup>vii</sup> Executive Officer will include: the CEO or CFO of the entity; the president of the entity; a vice-president of the entity in charge of a principal business unit, division or function; an officer of the entity or any of its subsidiary entities who performs a policy making function in respect of the entity; any other individual who performs a policy-making function in respect of the entity; or any executive named in the Summary Compensation Table.
- <sup>viii</sup> If the company makes or receives annual payments exceeding the greater of \$200,000 or 5 percent of recipient's gross revenues (the recipient is the party receiving proceeds from the transaction).
- <sup>ix</sup> "Material" is defined as a standard of relationship (financial, personal or otherwise) that a reasonable person might conclude could potentially influence one's objectivity in the boardroom in a manner that would have a meaningful impact on an individual's ability to satisfy requisite fiduciary standards on behalf of shareholders.
- <sup>x</sup> The operating involvement of the Founder with the company will be considered. Little or no operating involvement may cause ISS to deem the Founder as an independent outsider.

**Rationale for Update:**

**Cooling-Off Period for Former CEO:** The Canadian corporate legal and regulatory frameworks provide for substantial shareholder protections and rights, which include allowing shareholders (with a combined 5 percent ownership) to call special meetings to replace or remove directors and be able to remove directors by a simple majority vote. The separation of the roles of chair and CEO has been widely adopted by TSX-listed issuers in Canada. Additionally, the Toronto Stock Exchange has mandated majority voting for director elections, which further strengthens the impact of the shareholder vote. These substantial rights allow shareholders of Canadian issuers to specifically address concerns with particular directors in situations where these directors are thought not to be acting in shareholders' best interests.

Against this shareholder-friendly corporate governance landscape, Canadian institutional investors have indicated that a cooling-off period for a former CEO who serves on the board is deemed suitable in the Canadian market. Of the institutional investors that have established a cooling-off period for determining former executive independence (including former CEOs) within their policy guidelines, a majority have determined that a five-year period is appropriate.

A five-year cooling-off period for the CEO generally better reflects a reasonable time period for reducing a former CEO's potential influence on the board as such timeframe allows for potential significant changes within the company's management team. Following a review of equity vesting provisions upon executive officer retirement within equity based incentive compensation plans, in a majority of cases, all outstanding equity awards received by the former CEO as compensation for his or her former position would be exercised within a five year period, eliminating any lingering compensation ties to the company's operational performance which would have aligned the former CEO's interests

with management. In some circumstances, ISS may conclude that a cooling-off period is inappropriate for a former CEO due to ties to the company, that call into question that person's independence on the board.

**Former officer of a CPC or SPAC:** The treatment of a former CEO or other officer of a Capital Pool Company (CPC) or Special Purpose Acquisition Corp (SPAC) under the ISS definition of independence is generally not the same as that of a former officer of a continuing listed company that carries on business and has operations overseen by a management team. Notwithstanding that certain other criteria are also taken into consideration in the determination of independence for the purpose of applying director election related voting guidelines, in the case of a CPC or SPAC, an officer of the former capital pool entity who continues on the board of the newly listed corporate entity is generally deemed to be independent as long as no other relationship exists other than that of a director, due to the non-operational purpose and structure of a CPC or SPAC.

**Any material relationship:** The updated Definition of Independence will clarify for all users, that a director having any material relationship with the corporation including any material relationship with one or more members of management of the corporation is deemed to be a related Affiliated Outside director.


### Former CEO/CFO on Audit/Compensation Committee - TSX

**Current Recommendation:** Generally vote withhold from any director on the audit or compensation committee if:

- › The director has served as the CEO of the company at any time;
- › The director has served as the CFO of the company within the past three years.

#### Key Changes:

- › Updating policy based on change of independence definition for former CEOs.

 **New Recommendation:** Generally vote withhold from any director who has served as the CEO of the company within the past five years and is a member of the audit or compensation committee.

Evaluate on a case-by-case basis whether support is warranted for any former CEO on the audit or compensation committee following a five year period<sup>1</sup> after leaving this executive position.

Generally vote withhold from any director who has served as the CFO of the company within the past three years and is a member of the audit or compensation committee.

#### Rationale for Update:

Please see rationale under Definition of Independence update.


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<sup>1</sup> The determination of a former CEO's classification following the five year cooling-off period will be considered on a case-by-case basis. Factors taken into consideration may include but are not limited to: management/board turnover, current or recent involvement in the company, whether the former CEO is or has been Executive Chairman of the board or a company founder, length of service, any related party transactions, consulting arrangements, and any other factors that may reasonably be deemed to affect the independence of the former CEO.

## Unilateral Adoption of an Advance Notice Provision

**Current Recommendation:** None

**Key Changes:** Adopt a policy to enhance board accountability in cases where an advance notice policy has been adopted and is effective, but subsequent shareholder approval for the policy has not been requested or obtained.

 **New Recommendation:** Generally withhold from individual directors, committee members, or the entire board as appropriate in situations where an advance notice policy has been adopted by the board but has not been included on the voting agenda at the next shareholders' meeting.

Continued lack of shareholder approval of the advanced notice policy in subsequent years may result in further withhold recommendations.

**Rationale for Update:** Institutional shareholders' concerns related to advance notice requirements continue to increase in light of certain problematic provisions included within these bylaws/policies, which could potentially interfere with a shareholder's ability to nominate director candidates to the board of directors. The ability for shareholders to put forward potential nominees for election to the board is a fundamental right and should not be amended by management or the board without shareholders' approval, or, at a minimum, with the intention of receiving shareholder approval at the next annual or annual/special meeting of shareholders. As such, the board of directors, as elected representatives of shareholders' interests, and as the individuals primarily responsible for corporate governance matters, should be held accountable for allowing such policies to become effective without further shareholder approval. Furthermore, disclosures regarding these policies should be made available to shareholders (similar to shareholder proposal deadline disclosures or majority voting policy disclosures) because they are substantive changes that may impact shareholders' ability to nominate director candidates. Failure to provide such disclosure is not in shareholders' best interests.

## SHAREHOLDER RIGHTS & DEFENCES

### Advance Notice Requirement

**Current Recommendation:**

Vote case-by-case on proposals to adopt an Advance Notice Board Policy or to adopt or amend bylaws containing or adding an advance notice requirement, giving support to those proposals which provide a reasonable framework for shareholders to nominate directors by allowing shareholders to submit director nominations as close to the meeting date as reasonably possible and within the broadest window possible, recognizing the need to allow sufficient notice for company, regulatory, and shareholder review, and to allow the board to waive any provision of the advance notice requirement.

To be reasonable, the company's deadline for notice of shareholders' director nominations must not be more than 65 days and not fewer than 30 days prior to the meeting date. If notice of annual meeting is given fewer than 50 days prior to the meeting date, a provision to require shareholder notice by close of business on the 10th day following first public announcement of the annual meeting is supportable. In the case of a special meeting, a requirement that a nominating shareholder must provide notice by close of business on the 15th day following first public announcement of the special shareholders' meeting is also acceptable.



In general, support additional efforts by companies to ensure full disclosure of a dissident shareholder's economic and voting position in the company so long as the informational requirements are reasonable and aimed at providing shareholders with the necessary information to review any proposed director nominees within a timely manner.

Generally, vote against if:

- › The board may only waive a portion of the advance notice provisions under the policy or bylaw, in its sole discretion; or
- › The company requires any proposed nominee to deliver a written agreement wherein the proposed nominee acknowledges and agrees that he or she will comply with all policies and guidelines of the company that are applicable to directors.

### Key Changes:

Amend the current policy to incorporate additional concerns raised by Canadian institutional shareholders regarding these requirements in the Canadian market and to reflect recent court decisions that have highlighted certain problematic aspects of these provisions.



**New Recommendation:** Vote case-by-case on proposals to adopt or amend an advance notice board policy or to adopt or amend bylaws containing or adding an advance notice requirement. These provisions will be evaluated to ensure that all of the provisions included within the requirement solely support the stated purpose of the requirement. The purpose of advance notice requirements, as generally stated in the market, is to prevent stealth proxy contests; to provide a reasonable framework for shareholders to nominate directors by allowing shareholders to submit director nominations within a reasonable timeframe; and to provide all shareholders with sufficient information about potential nominees in order for them to make informed voting decisions on such nominees. Features that may be considered problematic under ISS' evaluation include but are not limited to:

- › For annual notice of meeting given not less than 50 days prior to the meeting date, the notification timeframe within the advance notice requirement should allow shareholders the ability to provide notice of director nominations at any time not less than 30 days prior to the shareholders' meeting. The notification timeframe should not be subject to any maximum notice period. If notice of annual meeting is given less than 50 days prior to the meeting date, a provision to require shareholder notice by close of business on the 10th day following first public announcement of the annual meeting is supportable. In the case of a special meeting, a requirement that a nominating shareholder must provide notice by close of business on the 15th day following first public announcement of the special shareholders' meeting is also acceptable;
- › The board's inability to waive all sections of the advance notice provision under the policy or bylaw, in its sole discretion;
- › A requirement that any proposed nominee deliver a written agreement wherein the proposed nominee acknowledges and agrees, in advance, to comply with all policies and guidelines of the company that are applicable to directors;
- › Any provision that restricts the notification period to that established for the originally scheduled meeting in the event that the meeting has been adjourned or postponed;
- › Any additional disclosure requests within the advance notice requirement or the company's ability to require additional disclosure that exceeds that required within a dissident proxy circular or that goes beyond that necessary to determine director nominee qualifications, relevant experience, shareholding or voting interest in the company, or independence in the same manner as would be required and disclosed for management nominees; and in any event where there is no indication from the company that such additional disclosure, if requested and received, will be made publicly available to shareholders;
- › Stipulations within the provision that the corporation will not be obligated to include any information provided by dissident director nominees or nominating shareholders in any shareholder communications, including the proxy statement;

- › Any other feature or provision determined to have a negative impact on shareholders' interests and deemed outside the purview of the stated purpose of the advance notice requirement.

### Rationale for Update:

As advance notice requirements continue to evolve and their use is tested by market participants, Canadian institutional investors are voicing concerns about the specific provisions contained therein. Investors have cautioned with respect to the potential for certain provisions included within these requirements to be used to impede the ability of shareholders to nominate director candidates to the board of directors, a fundamental shareholder right under Canada's legal and regulatory framework.

A minimum 30-day shareholder notice period supports notice and access provisions and is in keeping with the stated purpose of advance notice requirements which is to prevent last minute or stealth proxy contests. Any maximum threshold for shareholder notice is deemed unacceptable, and the removal of such is expected to facilitate timelier access to the proxy and afford shareholders more time to give complete and informed consideration to dissident concerns and director nominees.

Enhanced and discretionary requirements for additional information that is not then provided to shareholders, provisions that may prohibit nominations based on restricted notice periods for postponed or adjourned meetings and written confirmations from nominee directors in advance of joining the board are all examples of the types of provisions that have the potential to be misused and are outside the intended stated purpose of advance notice requirements.

Recent court cases have provided a clear indication that these provisions are intended to protect shareholders, as well as management, from ambush and that they are not intended to exclude nominations given on ample notice or to buy time to allow management to develop a strategy to defeat dissident shareholders. As well, that in the case of ambiguous provisions, the result should weigh in favour of shareholder voting rights.

Based on discussions with institutional investors, the policy is updated to incorporate the aforementioned provisions identified as potentially problematic and to reflect recent court decisions that have highlighted certain problematic aspects of advance notice requirements.

### Article/Bylaw Amendments

**Current Recommendation:** Generally vote for proposals to adopt or amend Articles/Bylaws unless the resulting document contains any of the following:

- › The quorum for a meeting of shareholders is set below two persons holding 25 percent of the eligible vote (this may be reduced to no less than 10 percent in the case of a small company that can demonstrate, based on publicly disclosed voting results, that it is unable to achieve a higher quorum and where there is no controlling shareholder);
- › The quorum for a meeting of directors is less than 50 percent of the number of directors;
- › The chair of the board has a casting vote in the event of a deadlock at a meeting of directors;
- › An alternate director provision that permits a director to appoint another person to serve as an alternate director to attend board or committee meetings in place of the duly elected director;
- › Other corporate governance concerns, such as granting blanket authority to the board with regard to future capital authorizations or alteration of capital structure without further shareholder approval.

**Key Changes:**

- › Update the existing bylaw policy to add certain problematic items, including lack of disclosure of the full bylaw text and advance notice requirements within a bylaw that do not comply with best practices and go beyond the stated purpose of such advance notice requirement.



**New Recommendation:** Generally vote for proposals to adopt or amend Articles/Bylaws unless the resulting document contains any of the following:

- › The quorum for a meeting of shareholders is set below two persons holding 25 percent of the eligible vote (this may be reduced to no less than 10 percent in the case of a small company that can demonstrate, based on publicly disclosed voting results, that it is unable to achieve a higher quorum and where there is no controlling shareholder);
- › The quorum for a meeting of directors is less than 50 percent of the number of directors;
- › The chair of the board has a casting vote in the event of a deadlock at a meeting of directors;
- › An alternate director provision that permits a director to appoint another person to serve as an alternate director to attend board or committee meetings in place of the duly elected director;
- › An advance notice requirement that includes one or more provisions which could have a negative impact on shareholders' interests and which are deemed outside the purview of the stated purpose of the requirement;
- › Authority is granted to the board with regard to altering future capital authorizations or alteration of the capital structure without further shareholder approval;
- › Any other provisions that may adversely impact shareholders' rights or diminish independent effective board oversight.

In any event, proposals to adopt or amend articles or bylaws will generally be opposed if the complete article or bylaw document is not included in the meeting materials for thorough review or referenced for ease of location on SEDAR, unless the proposed amendment is required by regulation or will simplify share registration.

**Rationale for Update:** A number of advance notice requirements have been included on ballots as amendments to company bylaws or articles. Any such requirements are deemed significant additions to the bylaw or articles and therefore are reviewed as to whether they negatively affect shareholders' ability to nominate directors to the board.

Also, in order to properly assess the impact of any existing or proposed provisions within the company's bylaw or articles on shareholders' rights, these constating documents should be made available, in their entirety, to shareholders prior to the meeting at which these amendments or new documents will be voted upon. This is especially important given that issuers are not required to bring forth these documents for shareholder vote on a routine basis but instead only when significant updates are being considered.

## CAPITAL/RESTRUCTURING

### Private Placement Issuances

**Current Recommendation:** Vote case-by-case on private placement issuances taking into account:

- › Whether other resolutions are bundled with the issuance;
- › The financial consequences for the company if the issuance is not approved.

Generally vote for private placement proposals if:

- › The issuance represents no more than 30 percent of the company's outstanding shares;
- › The use of the proceeds from the issuance is disclosed.

#### Key Changes:

- › To adopt a clearly defined case-by-case approach and indicate additional criteria that are considered when evaluating private placement issuances.



**New Recommendation:** Vote case-by-case on private placement issuances taking into account:

- › Whether other resolutions are bundled with the issuance;
- › Whether the rationale for the private placement issuance is disclosed;
- › Dilution to existing shareholders' position:
  - › issuance that represents no more than 30 percent of the company's outstanding shares on a non-diluted basis is considered generally acceptable;
- › Discount/premium in issuance price to the unaffected share price before the announcement of the private placement;
- › Market reaction: The market's response to the proposed private placement since announcement; and
- › Other applicable factors, including conflict of interest, change in control/management, evaluation of other alternatives.

Generally vote for the private placement issuance if it is expected that the company will file for bankruptcy if the transaction is not approved or the company's auditor/management has indicated that the company has going concern issues.

#### Rationale for Update:

The update clarifies ISS' case-by-case approach by including more detailed information regarding the current analytical criteria considered. Specifically, the updated policy is intended to provide clear guidance on examining two specific situations in which companies put forward private placement resolutions for shareholder approval. The first situation includes those companies which are undergoing serious financial issues and require immediate financing in order to continue as a going concern. In such cases, the rationale of the urgent need for financing to avoid bankruptcy will generally override other criteria under examination. The second situation includes companies which require private placement approval for other financing purposes, in which case all the criteria listed under the updated policy will be examined on a case-by-case basis.

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