

Canada Policy – Director Elections – Board Gender Diversity (TSX-listed issuers)

Background and Overview

Lack of board gender diversity continues to be a high-profile corporate governance concern in the Canadian market and investor pressure on boards has grown in the wake of robust disclosure requirements that came into effect for the 2015 proxy season. These disclosure requirements appear to have moved many larger TSX-listed reporting issuers (in particular, Composite Index companies) to add more women to their boards. Among non-Composite Index TSX-listed issuers, however, approximately 43 percent of firms did not have any women directors on their boards as of June 30, 2018.

Canadian institutional investors have begun to voice their frustration with the slow pace of boosting boardroom gender diversity levels through their voting policies. During a Summer 2017 roundtable discussion on this topic, ISS' Canadian institutional clients overwhelmingly urged ISS to adopt a board gender diversity policy that would promote better disclosure by companies and encourage higher levels of gender diversity in boardrooms.

Client roundtable participants also expressed the view that the rigor of any company-disclosed diversity policies should also be considered. Specifically, these investors favored disclosure of targets or goals and opposed the use of boilerplate or contradictory language. Finally, roundtable participants did not support delaying implementation of the initial policy due to the length of time the disclosure regulation had already been in place and market regulators' expressions of disappointment with the slow market response.

Disclosure reviews conducted by regulators in each of the past four years have indicated that there is a strong correlation between a company's adoption of a gender diversity policy and a greater number of women on its board of directors. This finding highlights the importance of companies establishing robust boardroom gender diversity policies.

Current ISS Board Gender Diversity Policy

For the 2018 proxy season, ISS introduced its Canadian board gender diversity policy. Under this policy, which came into effect on Feb. 1, 2018, if: i) the company has not adopted a formal written gender diversity policy*; and ii) no female directors serve on the board; then ISS will generally recommend withhold votes for the Chair of the Nominating Committee or Chair of the committee designated with the responsibility of a nominating committee, or the chair of the board if no nominating committee has been identified or no chair of such committee has been identified.

Policy Exemptions: This policy does not apply to companies with four or fewer directors, to companies that have become publicly-listed within the current or prior fiscal year or companies that have graduated from the TSX Venture exchange within the current or prior fiscal year.

**As per the disclosure requirements by the Canadian Securities Regulators, the issuer should disclose whether it has adopted a written policy relating to the identification and nomination of women directors. The policy, if adopted, should describe a short summary of its objectives and key provisions; the measures taken to ensure that the policy has been effectively implemented; annual and cumulative progress by the issuer in achieving the objectives of the policy, and whether and, if so, how the board or its nominating committee measures the effectiveness of the policy.*

The ISS Canadian board gender diversity policy further states that a robust gender diversity policy should include a clear commitment to increasing board gender diversity. Disclosure of boilerplate or contradictory language may result in withhold vote recommendations for directors. The gender diversity policy should include measurable goals and/or targets denoting a firm commitment to increasing board gender diversity within a reasonable period of time. When determining a company's commitment to board gender diversity, consideration will also be given to the board's disclosed approach to considering gender diversity in executive officer positions and stated goals or targets or programs and processes for advancing women in executive officer roles, and how the success of such programs and processes is monitored.

Key Changes under Consideration

ISS proposes to expand the scope of its Canadian board gender diversity policy to cover a broader universe of "widely-held" companies listed on the Toronto Stock Exchange (TSX) commencing in 2019. The term "widely-held" refers to Composite Index companies as well as other companies that ISS designates as such based on the number of ISS clients that hold a company's securities. The expanded policy would come into effect for shareholder meetings held on or after Feb. 1, 2019.

Intent and Impact

The proposed policy application universe expansion aligns with ISS client expectations and recommended best market practices with respect to board gender diversity. For non-composite index TSX-listed companies covered by ISS, approximately 43 percent of these companies had zero female directors and could potentially result in withhold recommendations if no formal gender diversity policy is disclosed.

Request for Comment

While we will appreciate any comments on this topic, ISS specifically seeks feedback on the following:

- Does your organization support the proposed expansion of the policy beyond Composite Index issuers for the 2019 proxy season?
- Are there any additional policy exemptions that should be considered? If so, please detail.
- Should the disclosure (or lack of disclosure) of a timeframe for the implementation of stated goals/targets be considered when evaluating a company's formal gender diversity policy? If so, what would you consider as a reasonable timeframe for the implementation of such goals/targets?
- Are there any additional issues, other than those mentioned above, that should be considered when evaluating a company's formal gender diversity policy?