

Canada Policy - Director Elections - Overboarded Directors (TSX-Listed Issuers)

Background and Overview

ISS' Canadian overboarding policy for TSX-listed companies was implemented in 2014 after ISS had discussed the topic with institutional investors periodically over several years, and the consensus indicated an overboarding policy should be considered for Canada.

Effective February 1, 2017, ISS' policy thresholds for overboarded directors were updated, and under the current policy, directors who are not CEOs of public companies are considered overboarded if they serve on more than four boards (previously six directorships), while directors who are also CEOs of public companies are considered overboarded if they serve on more than one (previously two) outside boards in addition to the board of the company on which they serve as CEO.

Once an overboarded director has been identified, an adverse voting recommendation is then only issued when the director has attended less than 75 percent of his/her respective board and committee meetings held within the past year without a valid reason for these absences.

However, feedback from Canadian institutional investors during roundtable discussions and one-on-one policy outreach meetings in 2016 and 2017 indicates that there is widespread support in the investor community to consider overboarding by itself in determining vote recommendations for directors and to remove attendance as an additional factor in the analysis. Such sentiment is supported by recent studies that were conducted for Canada and for other markets which indicate that director time commitment has increased significantly over the last few years and should therefore be a key consideration on its own.

Key Changes under Consideration

Under the proposed policy change, after a proposed one-year transition period to February 2019, ISS would generally recommend voting withhold for non-CEO director nominees who sit on more than four public company boards, and recommend voting withhold for CEO director nominees at their outside boards, where they sit on the board of more than one public company besides the company for which they serve as CEO.

The proposed policy amendment would not change current overboarding thresholds but would eliminate director attendance as a factor in determining a vote recommendation on directors due to overboarding. Additionally, adverse vote recommendations would not apply for overboarded CEO directors at a CEO's home-company board.

Intent and Impact

The proposed policy change will further align Canadian ISS policy with recent feedback received from Canadian institutional investors, and is intended to align with the policy approach of global institutional investors. Given the potential impact on boards, a one-year transition period has been proposed to allow TSX reporting issuers adequate time to address overboarding issues if they choose to do so. ISS' director data for all TSX-listed issuers covered by ISS for the one-year period of August 1, 2016 to July 31, 2017 indicates that had the proposed policy change been in place during the period, up to 167 outside CEO directors and up to 148 non-CEO directors would have warranted a withhold

recommendation for a total of 315 nominees or 5.7 percent of total director election votes over the period, which is up from a mere 14 nominees in accordance with the current policy.

Request for Comment

While we appreciate any comments on this topic, ISS is specifically seeking feedback on the following:

- Under current Canadian policy, all publicly-listed boards, regardless of whether they have a parent/subsidiary relationship, are counted when determining a director's status as an overboarded director. In situations where an overboarded director is CEO of a parent company board or any of the controlled subsidiaries (defined as >50 percent ownership) of that parent, should ISS consider exempting CEO directors from adverse vote recommendations at their own parent company or controlled subsidiary board?
- Is the proposed one-year transition period, i.e., with implementation of the proposed policy from February 2019 appropriate? If not, please explain why it is not appropriate?