

Director Overboarding (Canada)

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. Recent studies have shown that the time commitment for directors of Canadian companies is significantly higher than previously thought, indicating that this has grown. In a [2014 study](#), 120 board chairs, directors and CEOs across Canada were surveyed regarding their annual time commitment per board on which they served. The survey found that the average annual time commitment per board for a Canadian director was 304 hours. The number was higher for directors of companies with a market cap over \$5 billion (388 hours) and also higher for those with a market cap of between \$1 billion and \$5 billion (335 hours). There was also a correlation between the particular role of the director and their average annual time commitment. As expected, being a board chair is the most time consuming role; however, being a committee chair can be almost as time consuming.

While we are aware of no comparable studies for previous years in Canada, the National Association of Corporate Directors (NACD) has tracked this topic for several years in the US, and according to a 2014-2015 survey conducted by the NACD, directors of US public companies committed an annual average of 278 hours to board-related matters. This exceeded the previous year's total of 236 hours, and in 2005 the average annual director time commitment was just 190 hours.

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.

Key Changes Under Consideration

ISS' current Canadian policy defines an overboarded director as:

- a CEO of a public company who sits on more than 2 outside public company boards in addition to the company of which he/she is CEO, or
- a director (not a CEO) who sits on more than 6 public company boards in total.

Starting February 1, 2017, ISS proposes to lower its thresholds so that under its amended Director Overboarding Policy, an overboarded director would be defined as:

- a CEO of a public company who sits on more than 1 outside public company boards in addition to the company of which he/she is CEO, or
- a director (not a CEO) who sits on more than 4 public company boards in total.

It is noted that the ISS Canadian overboarding policy is double-triggered and linked to attendance. A WITHHOLD voting recommendation will only be triggered if the overboarded director also had a poor attendance record and attended less than 75 percent of his/her board and committee meetings without a valid reason during the last year. Withhold recommendations would only apply at a CEO's outside boards.

Intent and Impact

The proposed policy update is intended to align with feedback received from institutional investors during roundtable discussions and policy outreach meetings, as well as recent findings regarding the increased time demands for directors in performing their duties as board members.

For the period of September 23, 2014 to September 22, 2015, ISS data identified a total of 5,953 directors on TSX-listed boards. 4,884 of those were non-CEOs, 716 were CEOs on that board (inside CEOs), 409 were CEOs elsewhere (outside CEOs), and 56 were both inside and outside CEOs. Had the new policy been in place during the lookback period, 267 non-CEO directors (up from 40) would have been deemed overboarded by ISS, representing an increase of 568% over the current policy. For the same period, 174 CEOs (inside and outside) were deemed overboarded. Had the new policy been in place, 103 inside CEOs and 226 outside CEOs would have been deemed overboarded, representing a total increase of 89%.

In terms of expected voting recommendations due to overboarding, as the ISS Canadian overboarding policy is double-triggered and linked to attendance (see above), the impact of the proposed policy amendment is expected to be fairly moderate. Upon review of TSX-listed companies for the lookback period, ISS recommended a total of six WITHHOLD votes for outside CEOs connected to overboarding. Had the proposed policy been in place, a total of 14 outside CEOs would likely have received a WITHHOLD recommendation (subject to extenuating circumstances).

The data produced no instance in which a WITHHOLD recommendation for a non-CEO director was warranted due to overboarding as none of the overboarded directors had a poor attendance record during the lookback period. Had the new policy been in place, it would have triggered a maximum of six WITHHOLD recommendations, assuming that no other extenuating circumstances had been identified.

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 not, please explain.

3. Do you consider that the proposed policy approach should apply to all TSX reporting issuers, or should it only apply to Composite Index companies? Please explain.
4. Do you consider that the proposed implementation of the new policy approach as of 2017 proxy season is reasonable? If not, please explain.