

November 9, 2015

Sent By E-mail

Institutional Shareholder Services Inc.
820 – 26 Wellington Street East
Toronto, Ontario M5E 1S2
E-mail: policy@issgovernance.com;

Attention: ISS Global Research Department

Dear Sirs:

ISS Proposed Policy Changes – Director Overboarding

This letter is submitted in response to the ISS draft policy changes relating specifically to director overboarding issued for comment on October 26, 2015. This letter reflects the views of a working group made up of issuers having a combined market capitalization of more than \$110 billion (the **Working Group**). We thank you for affording us the opportunity to comment on this important topic.

General

The Working Group agrees with ISS's view that corporate directors require sufficient time and energy in order to be effective representatives of shareholders' interests. The Working Group also acknowledges that directors' responsibilities are becoming increasingly complex as board and committee memberships demand greater time commitments.

However, the Working Group has raised concerns regarding ISS's draft policy changes relating to director overboarding. More specifically, the Working Group has communicated to us a number of comments regarding ISS's proposal to amend its definition of overboarded director such that directors who are not public company CEOs that sit on more than four public company boards in total and CEOs that sit on more than one outside public company board will be considered overboarded (the **Proposed Policy**). The Working Group's comments with respect to the Proposed Policy are summarized below.

Working Group's Comments

1. **The Current Policy Works:** ISS's current Canadian policy provides that an overboarded non-CEO director is any director who sits on more than six public company boards in total (the **Current Policy**). The Working Group is of the view that the Current Policy has proven to be an effective means to promote director participation, oversight and engagement.

As evidenced by the figures below generated from reports issued by Korn Ferry and Spencer Stuart, the average board meeting attendance rate among directors of publicly-traded Canadian companies, as well as the percentage of directors attending between 75%-100% of their respective board meetings, have increased from 2007 to 2013 and remain very high.¹

¹ Based on information obtained from Korn Ferry's *Corporate Board Governance and Director Compensation in Canada* (2005-2014) and *Canadian Spencer Stuart Board Index* (2013, 2014).

DOCSMTL: 6324557\7

Norton Rose Fulbright Canada LLP is a limited liability partnership established in Canada.

Norton Rose Fulbright Canada LLP, Norton Rose Fulbright LLP, Norton Rose Fulbright Australia, Norton Rose Fulbright South Africa (incorporated as Deneys Reitz Inc) and Fulbright & Jaworski LLP, each of which is a separate legal entity, are members of Norton Rose Fulbright Verein, a Swiss Verein. Details of each entity, with certain regulatory information, are at nortonrosefulbright.com. Norton Rose Fulbright Verein helps coordinate the activities of the members but does not itself provide legal services to clients.

Board Meeting Attendance Rate						
2007	2008	2009	2010	2011	2012	2013
95%	95%	96%	96%	97%	97%	97%

Percentage of Directors Attending between 75%-100% of Board Meetings						
2007	2008	2009	2010	2011	2012	2013
93%	94%	97%	98%	98%	98%	98%

Such increasing attendance rates suggest that the Current Policy, coupled with a heightened internal focus on robust corporate governance practices among Canadian publicly-traded companies, has adequately achieved its goal of improving director participation, oversight and engagement. This attendance data also suggests that boards of Canadian-publicly traded companies do not suffer from significant absenteeism, suggesting that the Proposed Policy may be attempting to address a problem that does not, in fact, exist.

The Working Group also questions whether the Proposed Policy would do anything to further improve board participation rates which, based on the above data, are already very high among Canadian publicly-traded companies. The Working Group is therefore of the view that board member absenteeism is unavoidable in certain circumstances, and can be caused by a number of factors which are not connected to a particular individual sitting on more than four boards.

2. Limited Practical Impact: As noted in ISS's draft policy changes, had the Proposed Policy been in place for the period from September 23, 2014 to September 22, 2015, it would have triggered a maximum of six withhold recommendations out of a total of 4,884 non-CEO directors sitting on TSX-listed boards, representing approximately 0.12% of all such directors. As correctly noted by ISS, the number of withhold votes may, in fact, have been even lower to the extent there were extenuating circumstances causing a particular director to attend less than 75% of his or her board or committee meetings. This data suggests that the Proposed Policy will do very little to further protect shareholders' interests and will otherwise be of limited practical impact.
3. Potential Unintended Consequences: However, the Proposed Policy may have negative unintended consequences. It may possibly cause companies to be reluctant to recommend prospective directors that sit on more than four public company boards to avoid a negative director election vote recommendation. In doing so, the Proposed Policy may cause companies to not otherwise consider the most qualified individuals, who could have a very positive impact on the company, which could actually have a negative impact on shareholder interests. Moreover, by lowering the threshold in the Proposed Policy from six public company boards to four public company boards, TSX-listed boards risk losing the value-added of the knowledge, ideas and experiences that may have otherwise been offered to their directors by those additional public company directorships.
4. Sitting on Multiple Boards Can Promote Efficiencies: The Working Group understands that ISS' reasoning for changing its voting recommendation guidelines with respect to director overboarding is to reflect the reality that directors' responsibilities are becoming increasingly complex as board and committee memberships demand greater time commitments. The Working Group acknowledges these increased demands imposed upon directors, but is of the view that directors who sit on other boards are able to overcome said demands by relying on their experiences and accumulated knowledge from other boards in order to make more efficient

decisions by recognizing patterns and problems encountered in the context of their other directorships.

5. Technology: The advent of improved technologies goes a long way in mitigating the concerns raised by ISS with respect to overboarding outlined in its draft policy changes. Board members can effectively participate in board and committee meetings by audio- and video-conference when impractical to participate in person. Moreover, board materials are being delivered through electronic means and are accessible on various mediums improving a director's ability to review such materials. These factors, among others, improve a board member's ability to efficiently manage multiple directorships.

Conclusion

In short, members of the Working Group respectfully disagree with the Proposed Policy. The Working Group is of the view that the Current Policy has proven to be an effective means to encourage appropriate director participation, oversight and engagement, rendering the Proposed Policy unnecessary.

Thank you for allowing us to comment on this subject.

Yours truly,

Norton Rose Fulbright Canada LLP