

MORROW SODALI

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CANADA PROXY UPDATES

FINAL ISS BENCHMARK POLICY CHANGES FOR 2023

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On December 1, 2022, Institutional Shareholder Services Inc. ("ISS") announced the final 2023 Benchmark Voting Guidelines for various markets including the Canadian market.

In the final Benchmark Voting Guidelines for 2023, ISS formalized the previously announced policy changes as it pertains to: (i) Climate Board Accountability for High Emitting Companies (effective February 1, 2023), and (ii) Board Racial and/or Ethnic Diversity (effective February 1, 2024). Interested readers can find the details of such changes in our previous client memorandum, [Proposed ISS Benchmark Policy Changes for 2023](#). Notably, in the final benchmark guidelines, we note that ISS has clarified, with regards to the Climate Board Accountability policy, that both detailed disclosures of climate risks (such as in accordance with the Task Force on Climate-related Financial Disclosures ("TCFD") framework and appropriate Green House Gas ("GHG") emission reduction targets will be required to comply with ISS' policy, whereas previously, it was unclear as to whether the policy was predicated on both triggers.

In addition to the two previously announced policy changes, ISS announced further changes to as it pertains to: (i) Board Gender Diversity, (ii) Director Overboarding for Venture Issuers, (iii) Director Compensation Plans, and (iv) Social and Environmental Shareholder Proposals.

- **Board Gender Diversity (TSX Issuers):** Previously, ISS would generally recommend that shareholders withhold votes from the Chair of the Nominating Committee (or Chair of the responsible committee/Chair of the Board) at S&P/TSX Composite Index issuers where women comprised of less than 30% of the board and the company had not provided a formal, publicly-disclosed written commitment to achieve at least 30% gender diversity at or prior to the next AGM. Effective February 1, 2023, ISS has tightened the secondary trigger to specifically identify two cases where exemptions are provided, (i) for companies who had joined the S&P/TSX Composite Index and had not previously been subject to the 30% gender diversity requirement in the past, or (ii) have fallen below 30% gender diversity due to extraordinary circumstances after achieving such level of representation at the previous AGM. Similarly for non-Composite TSX issuers, ISS has removed the secondary trigger of the company having a formal written gender diversity policy and the only exemption provided to such issuers who have zero women on the board would be if there were extraordinary circumstances that have led to the board having temporarily no gender diversity after having at least one woman on the board at the preceding AGM. For both Composite and non-Composite index issuers, exemptions will only be provided assuming that the issuer has adopted a publicly disclosed, written commitment to add the requisite gender diversity levels required by ISS at or prior to the subsequent AGM.
- **Director Overboarding (Venture Issuers):** As announced previously, ISS is formalizing its director overboarding policy for Venture issuers. Effective February 1, 2023, ISS will apply the same overboarding guideline it has for the TSX listed issuers for Venture issuers.
- **Director Compensation Plans (TSX and Venture Issuers):** ISS made minor modifications to its guidelines as it relates to Non-employee Director Deferred Share Unit ("DSU") plans. Specifically, ISS removed the requirement for all plans, inclusive of the director DSU plan, to be restricted to a potential dilution of 10% or less, for DSU plans that may only be granted in lieu of cash fees on a value-for-value basis.
- **Social and Environmental Shareholder Proposals (TSX and Venture Issuers):** ISS made minor clarifying changes to its global approach in evaluating social and environmental shareholder proposals related to the factors looking at whether the issuers are being addressed by regulation and legislation, and whether there are significant controversies, fines, penalties, and litigation related to the issues raised in the proposal.

Interested to know what influence ISS has on your shareholder base and what these proposed changes mean for you?

Contact our experts today to find out. Issuers and clients who wish to discuss the above-mentioned changes can also contact our expert team directly to explore ways in which we can help you prepare for your next AGM.