Kingsdale Governance Advisory Update

December 2, 2022

ISS 2023 Benchmark Policy Updates

On December 1, 2022, Institutional Shareholder Services Inc. ("ISS") released updates to its 2023 benchmark proxy voting policies. The updated policies will apply to shareholder meetings taking place on or after February 1, 2023, except for those that are being announced now with a one-year transition period and which will become effective in 2024.

The most impactful changes affecting companies in the Canadian market include an updated voting policy on racial/ethnic diversity, its codified approach to evaluating social and environmental proposals, and extending its policy on climate board accountability.

With ISS' recommendations being key considerations for many of the world's largest investment managers, Kingsdale recommends companies to stay current on the latest policy changes to anticipate and mitigate any areas of concern.

Below is a summary of the 2023 Benchmark Policy Changes for the Canadian market:

Board of Directors

Board Gender Diversity

While ISS' general recommendation on board gender diversity remains unchanged, it has updated its guideline on exemptions.

For S&P/TSX Composite Index companies, exemptions will be made for companies that have provided a publicly disclosed written commitment to achieve 30% representation of women on the board at or prior to the subsequent AGM if they:

- Joined the S&P/TSX Composite Index and have not previously been subject to a 30% representation of women on the board requirement as an S&P/TSX Composite Index constituent in the past; or
- Have fallen below 30% representation of women on the board due to an extraordinary circumstance after achieving such level of representation at the preceding AGM.

For Canadian companies that are not members of the S&P/TSX Composite Index, an exception will be made for companies which temporarily have no women on the board due to an extraordinary circumstance after having at least one woman on the board at the preceding AGM only if the company has provided publicly disclosed written commitment to add at least one woman to the board at or prior to the subsequent AGM.

Board Racial and/or Ethnic Diversity

ISS has extended its voting policy on board diversity for publicly traded Canadian corporations beyond gender to cover racial and/or ethnic diversity.

According to ISS, racial and/or ethnic diversity is defined as Aboriginal peoples (means persons who are Indigenous, Inuit or Métis) and members of visible minorities (means persons, other than Aboriginal peoples, who are non-Caucasian in race or non-white in colour).

Beginning February 1, 2024, for S&P/TSX Composite Index companies, ISS will generally vote AGAINST or WIHTHOLD from 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 of directors if no nominating committee has been identified or no chair of such committee has been identified, where the board has no apparent racially or ethnically diverse members. For policy application, ISS will consider aggregate diversity statistics only if they are specific to racial and/or ethnic diversity.

An exception will be made if there was racial and/or ethnic diversity on the board at the preceding annual meeting and the board makes a firm public commitment to appoint at least one racial and/or ethnic diverse member at or prior to the next AGM.

If changes are not made in two years, ISS will weigh on a case-by-case basis whether to oppose the election of additional director nominees.

Overboarded Directors (TSX Venture Policy)

As previously announced, ISS' overboarding voting policy for TSX-listed companies will be aligned with that for Venture exchanged listed issuers starting February 1, 2023.

ISS will generally vote WITHHOLD for individual director nominees who are non-CEO directors and serve on more than five public company boards; or are CEOs of public companies who serve on the boards of more than two public companies besides their own.

Kingsdale Commentary: *For transitioning purposes, if a company publicly discloses in its proxy circular that the director will be stepping off that board at its next annual meeting, ISS will generally not count a board for policy application purposes. On the other hand, ISS will include the new boards a director is joining even if the respective shareholder meeting is scheduled in the future.*

Board Accountability & Compensation

Climate Accountability (TSX Policy)

ISS is extending its policy on climate board accountability globally in 2023.

For companies that are on the current Climate Action 100+ Focus Group list, ISS will generally vote AGAINST or WITHHOLD from the incumbent chair of the responsible committee (or other directors on a case-by-case basis) in cases where it determines that the company is not taking the minimum steps needed to understand, assess, and mitigate risks related to climate change to the company and the larger economy.

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These minimum steps are defined to be:

- Detailed disclosure of climate-related risks, such as according to the framework established by the Task Force on Climate-related Financial Disclosures (TCFD), including board governance measures, corporate strategy, risk management analyses and metrics and targets.
- Appropriate GHG emissions reduction targets, which can be medium-term GHG reduction targets or Net Zero-by-2050 GHG reduction targets for a company's operations (Scope 1) and electricity use (Scope 2). The targets should account for majority of the company's direct emissions.

Director Compensation

ISS has updated its voting policy on non-employee director ("NED") deferred share unit ("DSU") plans to align with shareholder expectations for the Canadian market.

ISS will issue positive recommendation for a NED deferred compensation plan if DSUs may ONLY be granted in lieu of cash fees on a value for value basis (no discretionary or other grants are permitted), as opposed to last year where the potential dilution together with all other equity-based compensation plans was also restricted to 10 percent.

There is no change to the existing policy of evaluating NED DSU plans that permit discretionary grants (not ONLY in lieu of cash fees).

Shareholder Proposals

Social and Environmental Issues (Global Approach)

ISS has codified its current approach globally to evaluating social and environmental proposals.

While ISS generally votes on a case-by-case basis, the overall principle guiding all vote recommendations focuses on how the proposal may enhance or protect shareholder value in either the short or long term. ISS will consider the following factors:

- If the issues presented in the proposal are being appropriately or effectively dealt with through legislation or government regulation;
- If the company has already responded in an appropriate and sufficient manner to the issue(s) raised in the proposal;
- Whether the proposal's request is unduly burdensome (scope or timeframe) or overly prescriptive;
- The company's approach compared with any industry standard practices for addressing the issue(s) raised by the proposal;
- Whether there are significant controversies, fines, penalties, or litigation associated with the company's practices related to the issue(s) raised in the proposal;
- If the proposal requests increased disclosure or greater transparency, whether reasonable and sufficient information is currently available to shareholders from the company or from other publicly available sources; and

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- If the proposal requests increased disclosure or greater transparency, whether implementation would reveal proprietary or confidential information that could place the company at a competitive disadvantage.

Kingsdale Commentary: *ISS takes into account whether or not regulation or legislation is likely to occur and if there is a presence of controversies related to the issue raised by the proposal.*

If you have any questions about the ISS Benchmark Policy Updates and how they will impact your company in 2023, please contact Kingsdale's experts listed below to discuss directly.

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