

FRONTLINE ADVISORS

Client Update

Proposed ISS Benchmark Policy Changes for 2020

OCTOBER 7, 2019

Today, Institutional Shareholder Services Inc. (“ISS”) announced the launch of its [2020 Benchmark Voting Policy](#) comment period. ISS is soliciting input from market participants on proposed benchmark policy changes, effective for shareholder meetings taking place on or after February 1, 2020. The comment period will remain open until 5:00 PM ET, October 18, 2019, with an anticipated release of final benchmark policies in the first half of November.

For the North American markets, ISS proposed three changes for the U.S. but none for Canada. While not outlined in the proposed policies, ISS highlighted in their 2019 Global Policy Survey that they plan to incorporate [Economic Value Added](#) based metrics in their North American quantitative pay for performance model.

- **Newly Public Companies (U.S.):** ISS refined their policy for newly listed public companies to address problematic governance provisions and problematic capital structures separately. The proposed update specifically narrows problematic governance provisions to supermajority vote requirements to amend charters/bylaws and classified board structures, along with other egregious provisions. In terms of capital structure, a multiple class share structure with unequal voting rights implemented before the public offering would be considered problematic. Unless these adverse provisions or structures are reversed or removed, ISS may recommend that shareholders withhold votes from the entire board (in the worst case) at the first and subsequent meetings. A reasonable sunset provision is considered a mitigating factor and specifically for multiple class share structures, a sunset period in excess of seven years would not be considered reasonable.
- **Independent Board Chair Shareholder Proposals (U.S.):** ISS further codified their existing policies in assessing shareholder proposals requesting for independent board chairs. The proposed update highlights five factors that will increase the likelihood for ISS to support such shareholder proposals.
- **Share Repurchase Program Proposals (U.S.):** ISS updated its share repurchase policy to provide for safeguards against the inappropriate use of share buybacks in the case of greenmail, inappropriate manipulation of incentive compensation metrics, and buybacks that threaten long-term viability of companies, among other factors.

While changes related to the policies affecting independent board chair and share repurchases can be considered clean-up changes, the changes targeting newly listed public companies and specifically companies with multiple class share structures with unequal voting rights can be considered meaningful. While no similar policy exists in the Canadian ISS benchmark guidelines, our experience is that U.S. policies may eventually make their way to the Canadian marketplace. Canadian private companies considering initial public offerings should consider the potential impact for ISS to implement such policies related to capital structures in the future.

KEY CONTACTS

This update is compiled by the expert advisors at FrontLine.

The FrontLine team is comprised of governance experts who have built their practice advising public company issuers and shareholders in all governance matters. Should you have any questions or wish to discuss our advisory capabilities, please contact us.

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