

FRONTLINE ADVISORS

Client Update

ISS Benchmark Policy Changes for 2020

November 12, 2019

Today, Institutional Shareholder Services Inc. (“ISS”) released its final [2020 Benchmark Policy Updates](#) for the Canadian market. These changes are effective for shareholder meetings taking place beginning on or after February 1, 2020, unless otherwise stated.

Importantly, ISS will roll out the actual policy guideline documents mid-November and publish FAQ documents and a whitepaper related to the introduction of Economic Value Added (“EVA”) metrics within ISS’ Pay for Performance model in early to mid-December.

Changes and clarifying amendments affecting Canadian companies were made in the following areas:

- **Pay for Performance (TSX):** As anticipated, ISS will be incorporating the use of EVA metrics in its pay for performance tests. As is the case currently, ISS’ quantitative model will still primarily be driven by CEO pay and Total Shareholder Returns (“TSR”) in its standard tests using three quantitative metrics, Relative Degree Alignment, Multiple of Median, and Pay-TSR Alignment. However, the secondary screen, which affects companies bordering “low” or “medium” degrees of concern in ISS’ initial tests noted above, may be subject to an upgrade or a downgrade from their concern levels (from “low” to “medium” or vice versa) based on ISS’ assessment of relative weighted average EVA performance versus CEO pay measured against ISS peers. It is anticipated that ISS will continue to utilize the four following EVA metrics: [EVA Margin](#), [EVA Spread](#), [EVA Momentum \(Sales\)](#) and [EVA Momentum \(Capital\)](#). Importantly, as has been the case in the past, an upgrade from “low” to a “medium” concern in the secondary screen will not automatically trigger a negative recommendation, but will prompt heightened scrutiny. Given the ISS quantitative tests, inclusive of the assessment of EVA performance, are based on measurement against ISS peers, issuers should carefully consider which peers to include in their compensation peer group as ISS takes into account self-disclosed peers when generating their own peer group and how a company scores from an ISS perspective largely depends on who they are measured against.
- **Ratification of Auditors (TSX/Venture):** Clarifying amendments were made to exempt significant one-time fees that are considered non-audit fees by ISS (such as M&A transactions or dispositions).
- **Majority Owned Companies (TSX/Venture):** ISS’ existing policy has certain exemptions with regards to their standard governance and independence policies applied to majority owned companies provided that certain criteria are met. ISS is not changing its position, but rather, clarifying that [all such criteria](#) must be met and that exemptions to standard board and committee independence policies would only apply to non-management directors.

KEY CONTACTS

This update has been prepared 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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- **Director Attendance (TSX):** ISS is clarifying that new nominees who have served for the partial year or directors at newly listed public companies would be exempted from their director attendance policy. There is no change to the actual attendance guidelines; directors will receive a WITHHOLD recommendation if they had attended less than 75% of board and committee meetings combined, without reasonable explanations (with consideration given to attendance levels at past meetings).
- **Former CEO/CFO on Audit/Compensation Committee (TSX):** Currently, former CEOs of a TSX issuer (within the past five years) or former CFOs (within the last three-years) will receive a WITHHOLD recommendation should he or she sit on the audit or compensation committee of the subject company where he or she was the executive. ISS has expanded its policy to include a former CEO/CFO of the issuer's affiliate (subsidiary, sibling company, or parent company where there is a 50% control relationship) or a CEO/CFO of an acquired company to the application of this policy (five year cool off for CEOs and three years for CFOs).
- **Overboarding (TSX):** ISS is not making any policy changes to its overboarding policy, rather, it is clarifying that directors who are temporarily overboarded (e.g. joining a new board in March but stepping off another in June) may be exempted if appropriate public disclosure is included the company's proxy circular.
- **Equity Plans (Venture):** Due to the increase in CSE listings attributed to the growth of the cannabis sector, ISS noted that there were approximately 220 CSE companies within its coverage universe in 2019 leading up to September. Unlike companies on the TSX and TSXV, which require regular shareholder approval for evergreen equity plans, CSE companies do not have this requirement. As such, ISS will vote against evergreen plans at venture companies if the plans do not periodic shareholder approval (at least every three years). For 2021, ISS will hold the compensation committee responsible at a venture company where a company has an evergreen plan but has not sought shareholder approval in the past two years and is not seeking shareholder approval at its upcoming shareholder meeting.

Read our previous client advisory regarding updates to Glass Lewis' 2020 guidelines [here](#),

Interested to know what influence ISS has on your shareholder base and what these 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.

About FrontLine Advisors

FrontLine Advisors is a full-service corporate governance and special situations consultancy focusing on complex shareholder matters. We devise proprietary governance strategies and work alongside other advisors to secure favourable outcomes on contentious shareholder meetings and M&A transactions. FrontLine also advises companies before and after their initial public offerings on governance structure design, and provides investment monitoring and due diligence support to family offices and private equity investors.