

New ISS diversity proxy guidelines call for a higher representation of women on boards

By Jessica Brown and Leslie-Anne Bowyer

Institutional Shareholder Services (ISS) recently published its 2021 benchmark proxy voting policies and updated its board gender diversity policy (the **Revised Gender Policy**). The Revised Gender Policy is in alignment with the statement of intent of the 30% Club Investor Group and the 2022 Catalyst Accord, which generally call for boards to be, at minimum, 30% female, with the same percentage expected at the executive management level. The Revised Gender Policy will be effective February 1, 2022.

Under the Revised Gender Policy, ISS will generally recommend that shareholders withhold votes for the chair of a nominating committee (or the chair of a committee with similar responsibilities) of an S&P/TSX Composite Index company (a **Composite Index Company**) where women comprise less than 30% of the board, and if both of the following are not complied with:

- i) the Composite Index Company has not disclosed a formal written gender diversity policy per National Instrument 58-101 – *Disclosure of Corporate Governance Practice (NI 58-101)*; and
- ii) the Composite Index Company's formal policy does not include a commitment to meeting the 30% threshold of female representation on boards over a reasonable timeframe. The ISS does not provide any specific guidance on what timeframe is considered reasonable.

ISS expects a Composite Index Company's gender diversity policy to include an explicit percentage or numerical target in respect of the company's goals for female representation on its board, with such target being a minimum of 30%. Further, where the minimum target has not yet been attained, the company must provide a reasonable timeframe within which the company commits to reaching the 30% target.

For a widely-held company, provided that such company is not also a Composite Index Company, ISS' gender diversity policy will not change—ISS will generally recommend a withhold vote for the chair of a nominating committee (or the chair of a committee with similar responsibilities) where:

- i) the company has not disclosed a formal written gender diversity policy per NI 58-101; and
- ii) no women are currently on the company's board of directors.

There are three exemptions where the Revised Gender Policy will not apply. It will not apply to companies that have:

- i) become publicly listed within the current or prior fiscal year;
- ii) transitioned from the TSX Venture Exchange within the current or prior fiscal year; or
- iii) four or fewer directors on their board.

The Revised Gender Policy is broader than the diversity requirements currently required under NI 58-101; however, given the general influence of ISS on the shareholder votes of companies with large institutional shareholders, Composite Index Companies should carefully consider the Revised Gender Policy by the 2022 proxy season.

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