



# PROPOSED ISS BENCHMARK POLICY CHANGES FOR 2021



Request for Comments

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Comment Period: Oct. 14 through Oct. 26, 2020

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## INTRODUCTION

Institutional Shareholder Services announces the launch of our benchmark voting policy comment period. The comment period will be open from October 14 through 5:00 p.m. ET on October 26, 2020 and ISS invites views from all interested market constituents on 17 proposed voting policy changes for 2021, across a number of different regional and market policies.

To ensure ISS benchmark voting policy changes take into consideration a broad range of perspectives, including the views of institutional investors globally and those of the broader corporate governance community, ISS gathers input each year from institutional investors, companies, and other market constituents through a variety of channels and mediums. Following the recent release of the results of our 2020 global policy survey, we now make available for public comment a number of proposed changes to ISS' benchmark voting policies for 2021.

Comments received will be considered as we finalize the updates to our benchmark voting policies. We expect to announce the final benchmark policy changes during the first half of November. The revised policies will be applied for shareholder meetings taking place on or after Feb 1, 2021 (except where otherwise noted for later implementation).

To submit comments, please send via email to [policy@issgovernance.com](mailto:policy@issgovernance.com). Please indicate your name and organization in your submission.

**All comments received may be published on our website, unless otherwise requested in the body of the email submission.**

## Key Proposed Policy Changes

**Board Diversity, Race and Ethnicity (U.S.):** Board diversity remains a critical issue for many investors, and concerns about racial inequality and injustice have put a spotlight on low levels of racial/ethnic diversity on boards and in C-Suites. For its U.S. Benchmark Policy, ISS proposes to adopt a new policy, to be effective from February 2022, at companies where the board has not identified any ethnically or racially diverse members. The proposed policy will be to generally recommend voting against the chair of the nominating committee (or other relevant directors on a case-by-case basis) where there are no identified ethnic or racially-diverse board members, beginning in 2022. Mitigating factors will be considered and the proposed coverage universe is all companies in the Russell 3000 and S&P 1500 indexes.

**Board Diversity, Gender (Canada, Latin America, UK, Ireland, Continental Europe):** Regarding board gender diversity, we are proposing to make a number of adjustments, both to raise the current minimum board gender diversity thresholds in some markets, and to newly introduce the expectation that boards should have at least one female director in others. Beginning February 2021, we are proposing to raise the minimum threshold for larger

(FTSE350) companies in the UK and Ireland to 33 percent and to expand the expectation of at least one woman on the board to smaller companies in the UK and Ireland. Beginning in 2022, we propose to raise the existing minimum board gender diversity policy thresholds for larger companies in Canada and Continental European markets to 30 percent of the board. For smaller companies and those not widely held in Continental Europe, we are proposing to extend the requirement to have both genders represented on a listed company's board next year. Existing mitigating factors will continue to be considered. For the Brazil and Americas Regional policies, ISS also proposes to introduce a new policy to require the presence of at least one female director by 2022. The various thresholds have local market-relevant justifications.

**Board Composition (Latin America, Japan):** In addition to the board diversity proposals, ISS proposes to make a number of other market-specific board composition policy changes. In Brazil and in other Latin American markets covered by the ISS Americas Regional Policy, we propose to increase minimum board independence thresholds. In Russia, we propose to use a broader range of information on a director's independence classification for candidates proposed by minority shareholders and to apply a case-by-case analysis in such situations. In Japan, we propose to harmonize the minimum expectation on outsider directors for companies with a statutory auditor structure with those of other Japanese board structures and propose to introduce a new policy applying to companies which have significant cross shareholdings. The specific language of all these changes, with the new proposed thresholds and any transition periods, is given below.

**Director Accountability (All Global Policies):** Under a proposed clarification related to the election of directors that will be made in the appropriate places in all ISS benchmark policies globally, we will explicitly note that significant risk oversight failures related to environmental and social concerns may, on a case-by-case basis, trigger vote recommendations against board members.

**Director Overboarding (Continental Europe):** ISS proposes to extend the current Continental European director overboarding policy to the full European markets instead of just to widely-held companies as at present.

**Shareholder Litigation Rights (U.S. and Canada):** Litigation rights are in the news due to some recent court cases. ISS proposes modifications in the U.S. policy and addition of language codifying the Canadian policy regarding management proposals to establish exclusive forums.

**Disclosure (Continental Europe, Middle-East and Africa):** In Continental Europe, ISS is proposing to establish minimum remuneration disclosure expectations in line with new regulatory requirements. As disclosure standards continue to rise around the world, ISS proposes some policy changes that establish new expectations for the disclosure of information that will help shareholders assess companies' operations. In the Middle East and North Africa, ISS proposes to make vote recommendations in line with the expectation that corporate governance and/or board reports are disclosed in a timely manner. In Sub-Saharan Africa, ISS proposes to recommend against auditor-related proposals in the absence of timely disclosure of audit-related fees.

**Capital Issuances for Investment Companies (U.K./Ireland):** Recognizing that many investors hold the view that the benefits of share issuances by investment companies may outweigh concerns about the dilution of voting rights as long as shares are issued at or above net asset value, ISS proposes a

policy change to recommend support for share issuance requests when trusts provide an explicit commitment that shares will only be issued above net asset value. This aligns the ISS policy to the position set out by the Pre-Emption Group for investment companies in the UK and Ireland.

Details for all these proposed changes are shown under the respective topics and policies below.

**ISS welcomes comments on the following questions for all proposed policy changes. Some proposed policy changes also have topic-specific additional questions noted below, which we also welcome feedback on.**

- ▶ **Question:** Do you support the proposed policy change?
- ▶ **Question:** Do you have any concerns with the proposed policy change?
- ▶ **Question:** If the proposed change contemplates ISS adverse vote recommendations, are they targeted appropriately?
- ▶ **Question:** If the proposed change contemplates ISS adverse vote recommendations, are the appropriate mitigating factors being considered?
- ▶ **Question:** If the proposed change includes a transition period for the implementation of a policy, is it about right, too short or too long?
- ▶ **Question:** If the proposed change applies to a particular set of companies, is the proposed coverage universe appropriate?
- ▶ **Question:** Are there any other factors that ISS should consider when contemplating the proposed policy change?

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## Director Elections: Board Diversity

### United States Policy – Director Elections: Racial/Ethnic Board Diversity

Current ISS Policy, incorporating changes:	New ISS Policy:
<p><b>General Recommendation:</b> [Currently none]</p> <p><b>Racial and/or Ethnic Diversity:</b> For companies in the Russell 3000, or S&amp;P 1500, highlight boards with no apparent racial and/or ethnic diversity<sup>1</sup>.</p> <p>For companies in the Russell 3000 or S&amp;P 1500 index, effective for meetings on or after Feb. 1, 2022, generally vote against or withhold from the chair of the nominating committee (or other directors on a case-by-case basis) where the board has no apparent racially or ethnically diverse members. Mitigating factors include the presence of a racial and/or ethnic minority on the board at the preceding annual meeting and a firm commitment to appoint at least one racial and/or ethnic diverse member.</p>	<p><b>General Recommendation:</b></p> <p><b>Racial and/or Ethnic Diversity:</b> For companies in the Russell 3000, or S&amp;P 1500 index, highlight boards with no apparent racial and/or ethnic diversity<sup>1</sup>.</p> <p>For companies in the Russell 3000 or S&amp;P 1500 index, effective for meetings on or after Feb. 1, 2022, generally vote against or withhold from the chair of the nominating committee (or other directors on a case-by-case basis) where the board has no apparent racially or ethnically diverse members. Mitigating factors include the presence of a racial and/or ethnic minority on the board at the preceding annual meeting and a firm commitment to appoint at least one racial and/or ethnic diverse member.</p>

#### Rationale for Proposed Change:

##### Background

Recent social unrest has put racial and ethnic injustices and inequalities at the forefront of many investors' minds and many boards' deliberations. Many investors have expressed interest in seeing ethnic or racial diversity on boards, citing reasons of equality and good corporate governance.

In responses to ISS' Global Policy Survey carried out in July/August 2020, when asked for their views about the importance of ethnic and racial diversity on corporate boards, 61 percent of investors indicated that boards should aim to reflect the company's customer base and the broader societies in which they operate by including directors drawn from racial and ethnic minority groups. When asked about actions considered appropriate to increase the racial and ethnic make-up of boards, 85 percent of investor respondents and 92 percent of non-investor respondents indicated that shareholder engagement with the company would be appropriate to encourage increased racial and ethnically diverse directors. Support of shareholder proposals on topics of workplace diversity disclosure and targets, and "Rooney rule" type shareholder proposals were the second and third most popular actions supported by both investors and non-investors responding. In addition to these options, 56 percent of investors responded that they would also consider voting against members of the nominating committee (or other directors) where board racial and ethnic diversity is lacking.

<sup>1</sup> Aggregate diversity statistics provided by the board will only be considered if specific to racial and/or ethnic diversity.

#### Intent and Impact

In 2021, ISS research reports on U.S. companies will highlight boards that lack racial and ethnic diversity (or lack disclosure of such) to help investors identify companies with which to engage and that may foster dialogue between investors and issuers on this topic. The US ISS Benchmark policy will not use any lack of racial and ethnic diversity as a factor in its vote recommendations on directors in 2021.

For 2022, at U.S. companies where the board has no apparent racial or ethnically diverse members, and no mitigating factors are identified, ISS may issue adverse vote recommendations, generally recommending to vote against or withhold from the chair of the nominating committee (or other directors on a case-by-case basis).

According to ISS data as of Sept. 21, 2020, 1,260 of the Russell 3000 companies, 492 of the S&P 1500 and 71 of the S&P 500 do not have minority ethnic and/or racial board representation. By the outset of the 2022 proxy season, those numbers are anticipated to decrease thanks to investor outreach.

#### **Specific questions for this proposed change (in addition the the general questions for all proposed changes (as set out in the introduction):**

- ▷ Please comment on the proposed policy application universe (Russell 3000 and S&P 1500 companies). Do you consider a different (smaller or larger) universe of U.S. companies to be better or more appropriate? If so, please explain.
- ▷ Are you in agreement with the proposed one-year transition period, with any adverse ISS voting recommendations coming into effect starting in 2022? If not, do you consider the transition period too short or too long?

**Canada Policy (TSX-Listed Companies) – Director Elections: Board Gender Diversity**

Current ISS Policy, incorporating changes:	New ISS Policy:
<p><b>General Recommendation:</b> For S&amp;P/TSX Composite Index companies, effective February 2022, generally vote withhold for the Chair of the Nominating Committee or Chair of the committee designated with the responsibility of a nominating committee, or Chair of the board of directors if no nominating committee has been identified or no chair of such committee has been identified, where women comprise less than 30% of the board of directors, and:</p> <ul style="list-style-type: none"> <li>▪ The company has not disclosed a formal written gender diversity policy<sup>2</sup>; or</li> <li>▪ The company's formal written gender diversity policy does not include a commitment to achieve at least 30% women on the board over a reasonable timeframe.</li> </ul> <p>The gender diversity policy should include an explicit percentage or numerical target for women's representation that is at least 30% of the board. Where such target has not been attained, a reasonable timeframe should be provided under which the company commits to achieving a representation of at least 30%.</p> <p>For widely-held companies<sup>3</sup> which are <b>not</b> also S&amp;P/TSX Composite Index constituents, generally vote withhold for the Chair of the Nominating Committee or Chair of the committee designated with the responsibility of a nominating committee, or Chair of the board of directors if no nominating committee has been identified or no chair of such committee has been identified, where:</p> <ul style="list-style-type: none"> <li>▪ The company has not disclosed a formal written gender diversity policy<sup>2</sup>, and</li> <li>▪ There are zero women on the board of directors.</li> </ul>	<p><b>General Recommendation:</b> For S&amp;P/TSX Composite Index companies, effective February 2022, generally vote withhold for the Chair of the Nominating Committee or Chair of the committee designated with the responsibility of a nominating committee, or Chair of the board of directors if no nominating committee has been identified or no chair of such committee has been identified, where women comprise less than 30% of the board of directors, and:</p> <ul style="list-style-type: none"> <li>▪ The company has not disclosed a formal written gender diversity policy<sup>2</sup>; or</li> <li>▪ The company's formal written gender diversity policy does not include a commitment to achieve at least 30% women on the board over a reasonable timeframe.</li> </ul> <p>The gender diversity policy should include an explicit percentage or numerical target for women's representation that is at least 30% of the board. Where such target has not been attained, a reasonable timeframe should be provided under which the company commits to achieving a representation of at least 30%.</p> <p>For widely-held companies<sup>3</sup> which are <b>not</b> also S&amp;P/TSX Composite Index constituents, generally vote withhold for the Chair of the Nominating Committee or Chair of the committee designated with the responsibility of a nominating committee, or Chair of the board of directors if no nominating committee has been identified or no chair of such committee has been identified, where:</p> <ul style="list-style-type: none"> <li>▪ The company has not disclosed a formal written gender diversity policy<sup>2</sup>; and</li> <li>▪ There are zero women on the board of directors.</li> </ul>

<sup>2</sup> Per NI 58-101 and Form 58-101F1, the issuer should disclose whether it has adopted a written policy relating to the identification and nomination of women directors. The policy, if adopted, should provide a short summary of its objectives and key provisions; describe the measures taken to ensure that the policy has been effectively implemented; disclose annual and cumulative progress by the issuer in achieving the objectives of the policy, and whether and, if so, how the board or its nominating committee measures the effectiveness of the policy.

<sup>3</sup> "Widely-held" refers to S&P/TSX Composite Index companies as well as other companies that ISS designates as such based on the number of ISS clients holding securities of the company.

The gender diversity policy should include a clear commitment to increase board gender diversity. Boilerplate or contradictory language may result in withhold recommendations for directors.

The gender diversity policy should include measurable goals and/or targets denoting a firm commitment to increasing board gender diversity within a reasonable period of time.

~~When determining a company's commitment to board gender diversity, consideration will also be given to the board's disclosed approach to considering gender diversity in executive officer positions and stated goals or targets or programs and processes for advancing women in executive officer roles, and how the success and processes is monitored.~~

**Non-S&P/TSX Composite Exemptions:**

This policy will not apply to:

- Newly-publicly-listed companies within the current or prior fiscal year;
- Companies that have transitioned from the TSXV within the current or prior fiscal year; or
- Companies with four or fewer directors.

**Rationale:** Gender diversity has remained a high-profile corporate governance issue in the Canadian market. Effective Dec. 31, 2014, as per National Instrument 58-101 Disclosure of Corporate Governance Practices, TSX-listed issuers are required to provide proxy disclosures regarding whether, and if so how, the board or nominating committee considers the level of representation of women on the board in identifying and nominating candidates for election or re-election to the board. Also required is disclosure of policies or targets, if any, regarding the representation of women on the board. The disclosure requirement has been a catalyst for the addition of women on the boards of many widely-held TSX-listed reporting issuers. Widely-held TSX-listed company boards lacking a policy commitment and having zero female directors ~~are now~~ **have been** deemed to be outliers lagging market expectations in this regard.

**Further to this objective, in September 2017, the Canadian 30% Club Investor Group committed to exercising ownership rights to encourage increased representation of women on S&P/TSX Composite Index company boards to a minimum 30% threshold. In 2020, the Capital Markets Modernization Task Force recommended an overhaul to the "comply or explain" regime and would instead**

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Further to this objective, in September 2017, the Canadian 30% Club Investor Group committed to exercising ownership rights to encourage increased representation of women on S&P/TSX Composite Index company boards to a minimum 30% threshold. In 2020, the Capital Markets Modernization Task Force recommended an overhaul to the "comply or explain" regime and would instead require TSX-listed companies to set diversity targets and provide data on the progress being made. As the sentiment supporting representation of women at boards has steadily grown in Canada, it has become clear that a higher standard of

require TSX-listed companies to set diversity targets and provide data on the progress being made. As the sentiment supporting representation of women at boards has steadily grown in Canada, it has become clear that a higher standard of representation by women is expected, with S&P/TSX Composite Index constituents playing a vital role in this process as market leaders.

representation by women is expected, with S&P/TSX Composite Index constituents playing a vital role in this process as market leaders.

**Rationale for Change:**

Background

ISS has received ongoing feedback and inquiry from institutional investor clients regarding its current Gender Diversity Policy for Canada, which provides that a widely-held company must have either one woman on the board, or a formal gender diversity policy including goals and defined targets to attain representation of women on the board to avoid adverse voting recommendations. A number of large Canadian institutions are signatories of the 30% Club Statement of Intent, calling for a minimum of 30 percent women on boards and at the executive management level of S&P/TSX Composite Index companies by 2022. Additionally, a number of Composite Index issuers are signatories of the 2022 Catalyst Accord, calling for similar objectives to that of the 30% Club.

Intent and Impact

Accordingly, the proposed policy will set a higher minimum threshold of women board representation, being a percentage or number constituting 30 percent of the board instead of single board member, at S&P/TSX Composite issuers from 2022 onward. In addition, it is being made explicit that where such minimum threshold has not been met, the company's commitment to gender diversity must include a reasonable timetable to comply with the policy to avoid an adverse voting recommendation. The proposed policy change will be effective February 1, 2022, providing companies a one-year transition period to meet or exceed the higher threshold. The proposed change is anticipated to align Canadian benchmark policy with prevailing client expectations and the direction in which market participants are heading.

From January 1, 2020 to July 1, 2020, just a dozen TSX-listed issuers failed to satisfy the current Gender Diversity Policy requirement, with none of them being members of the S&P/TSX Composite Index. In addition, only 29 of 207 reporting S&P/TSX Composite companies had below 20 percent women on the board during the trailing 12-month period of annual meetings, ended July 1, 2020. As at July 9, 2020, the percentage of S&P/TSX Composite boards where women occupy 30 percent or more total seats was 48.8 percent.

**Americas Regional Policy and Brazil Policy – Director Elections: Board Gender Diversity**

Current ISS Policy, incorporating changes:	New ISS Policy:
<p><b>Gender Diversity</b> For meetings on or after Feb. 1, 2022, generally vote against director elections at companies where the post-election board contains no female directors.</p> <ul style="list-style-type: none"> <li>▪ For bundled elections, vote against the entire slate.</li> <li>▪ For unbundled elections, vote against the chair of the Nominating Committee or chair of the committee designated with the responsibility of a nominating committee, or all such committee members if no committee chair has been identified. In case no nominating committee has been disclosed, vote against the chair of the board, or the entire board if no board chair has been identified.</li> </ul> <p>A one-year transitional period will apply in 2021 to allow companies to incorporate gender diversity into their board compositions. During this transitional period, vote recommendations will not be impacted by the gender diversity policy. The gender diversity policy will come into effect on Feb. 1, 2022.</p>	<p><b>Gender Diversity</b> For meetings on or after Feb. 1, 2022, generally vote against director elections at companies where the post-election board contains no female directors.</p> <ul style="list-style-type: none"> <li>▪ For bundled elections, vote against the entire slate.</li> <li>▪ For unbundled elections, vote against the chair of the Nominating Committee or chair of the committee designated with the responsibility of a nominating committee, or all such committee members if no committee chair has been identified. In case no nominating committee has been disclosed, vote against the chair of the board, or the entire board if no board chair has been identified.</li> </ul> <p>A one-year transitional period will apply in 2021 to allow companies to incorporate gender diversity into their board compositions. During this transitional period, vote recommendations will not be impacted by the gender diversity policy. The gender diversity policy will come into effect on Feb. 1, 2022.</p>

**Rationale for Change:**

Background

Boards of Latin American companies generally suffer from low gender diversity levels. Regional markets have few hard or soft laws on the subject, and many issuers have failed to adopt best practices regarding board gender diversity.

Many investors globally as well as civil organizations in the region and throughout the world have made strides to advance board diversity in general, often with a focus on increased female participation. Moreover, many large institutional investors have recently committed publicly to board diversity principals, reflecting the importance of diversity, including gender diversity, to improve companies' corporate governance and long-term results.

Intent and Impact

In this context, ISS proposes to update the Brazil and Americas Regional policies to require the presence of at least one female director on boards of public companies. The implementation of the proposed board gender diversity policy would bring the ISS Latin American market policies in line with other international ISS policies, which have already established guidelines on the subject. Moreover, the adoption of the proposed policy would provide an additional incentive for companies in the region to consider gender when assessing and evaluating their board composition. For the largest Latin American markets covered by ISS (Argentina, Brazil, Chile, Colombia, Mexico, and Peru), the number of companies lacking diversity on boards remain high; 38.2 percent of all Latin American companies covered by ISS with board elections in 2020 did not have a female director.

## UK and Ireland Policy – Director Elections: Board Gender Diversity

Current ISS Policy, incorporating changes:	New ISS Policy:
<p><b>Gender Diversity</b></p> <p>The 2018 UK Corporate Governance Code notes that both board appointments and succession plans should be based on merit and objective criteria and, within this context, should promote diversity of gender, social and ethnic backgrounds, cognitive and personal strengths.</p> <p>ISS will generally recommend against the chair of the nomination committee (or other directors on a case-by-case basis) <del>when there are no female directors on the board of widely-held companies. Mitigating factors include</del> in the following cases:</p> <ul style="list-style-type: none"> <li>▪ The company is a constituent of the FTSE 350 (excluding investment trusts) and the board does not comprise at least 33 percent representation of women, in line with the recommendation of the Hampton-Alexander Review.</li> <li>▪ The company (excluding investment trusts) is a constituent of any of the following, and there is not at least one woman on the board: <ul style="list-style-type: none"> <li>▪ FTSE SmallCap;</li> <li>▪ ISEQ 20;</li> <li>▪ Listed on the AIM with a market capitalisation of over GBP 500 million.</li> </ul> </li> </ul> <p>Mitigating factors include:</p> <ul style="list-style-type: none"> <li>▪ <del>The presence of a female director on the board at the preceding annual meeting</del> Compliance with the relevant board diversity standard at the preceding AGM and a firm commitment, publicly available, <del>to appoint at least one female director to the board</del> to comply with the relevant standard within a year. In 2021 only, for FTSE 350 constituents, a public commitment to bring the composition of the board in line with the recommendations of the Hampton-Alexander Review by the following AGM will not result in a</li> </ul>	<p><b>Gender Diversity</b></p> <p>The 2018 UK Corporate Governance Code notes that both appointments and succession plans should be based on merit and objective criteria and, within this context, should promote diversity of gender, social and ethnic backgrounds, cognitive and personal strengths.</p> <p>ISS will generally recommend against the chair of the nomination committee (or other directors on a case-by-case basis) in the following cases:</p> <ul style="list-style-type: none"> <li>▪ The company is a constituent of the FTSE 350 (excluding investment trusts) and the board does not comprise at least 33 percent representation of women, in line with the recommendation of the Hampton-Alexander Review.</li> <li>▪ The company (excluding investment trusts) is a constituent of any of the following, and there is not at least one woman on the board: <ul style="list-style-type: none"> <li>▪ FTSE SmallCap;</li> <li>▪ ISEQ 20;</li> <li>▪ Listed on the AIM with a market capitalisation of over GBP 500 million.</li> </ul> </li> </ul> <p>Mitigating factors include:</p> <ul style="list-style-type: none"> <li>▪ Compliance with the relevant board diversity standard at the preceding AGM and a firm commitment, publicly available, to comply with the relevant standard within a year. In 2021 only, for FTSE 350 constituents, a public commitment to bring the composition of the board in line with the recommendations of the Hampton-Alexander Review by the following AGM will not result in a negative recommendation, regardless of the previous composition of the board.</li> <li>▪ Other relevant factors as applicable.</li> </ul>

<p>negative recommendation, regardless of the previous composition of the board. <del>or</del></p> <ul style="list-style-type: none"> <li>Other relevant factors as applicable.</li> </ul>	
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**Rationale for Change:**

Background

The proposed changes are consistent with the increasing focus on board diversity at the global level and bring ISS U.K. and Ireland policy in line with the recommendations of the Hampton-Alexander Review, the relevant standard for constituents of the FTSE 350 index. The strengthening of the expected standards runs in parallel with similar changes to ISS policy across Continental Europe.

First published in 2016, the Hampton-Alexander Review called for 33 percent women representation on FTSE 350 boards by 2020. There has been significant progress towards the target but there are still many companies falling short, despite pressure from shareholders and investor bodies such as the Investment Association. Many institutional investors support the Hampton Alexander Review and have begun voting against chairs in recent years due to lack of progress. The proposed policy change encourages FTSE 350 companies to take the final steps toward meeting this target and will recognise firm public commitments that the company makes in this regard.

For smaller companies and those in other indices, which include those in the FTSE SmallCap, ISEQ 20 and on AIM (AIM companies with a market capitalisation of over GBP 500 million) and in each case, excluding investment companies, a minimum requirement of one female director on the board will be uniformly introduced. This acknowledges developments in market practice and expands minimum board diversity expectations to a significant proportion of the companies covered by ISS within the UK and Ireland. This approach was broadly supported by ISS’ institutional investor clients attending the London Benchmark Policy Roundtables in September 2020, most of whom already apply bespoke diversity voting standards to companies listed in the UK and Ireland.

Intent and Impact

In the FTSE 350 more than 100 companies currently fall short of the proposed 33 percent policy requirement, but many are expected to comply with the Hampton-Alexander target by the end of 2020. Most of these companies currently have between 25-33 percent of representation of women on the board. There is no impact on ISEQ 20 or FTSE SmallCap companies as they are already covered by the existing policy. Only six AIM companies will potentially be affected by the proposed policy change.

**European Policy – Director Elections: Board Gender Diversity**

Current ISS Policy, incorporating changes:	New ISS Policy:
<p><b>General Recommendation:</b> In terms of gender diversity, [supervisory] boards should adhere to domestic legal requirements or local best market practices or, in the absence thereof, be in line with European established practice.</p> <p>Generally vote against the chair of the nomination committee (or other directors on a case-by-case basis) <del>if when there are no female directors on the board of a widely held company. Mitigating factors may be:</del></p> <ul style="list-style-type: none"> <li>▪ The underrepresented gender accounts for less than 30 percent (or any higher domestic threshold) of board directors of a widely held company*.</li> <li>▪ Both genders are not represented on the board of a non widely-held company.</li> </ul> <p>Mitigating factors may include</p> <ul style="list-style-type: none"> <li>▪ <del>The presence of a female director on the board</del> Compliance with the relevant standard at the preceding annual meeting and a firm commitment, publicly available, to <del>appoint at least one female director to comply with the relevant standard</del> within a year; or</li> <li>▪ Other relevant factors as applicable.</li> </ul> <p>*A one-year transitional period will apply in 2021. During this transitional period, vote recommendations will not be impacted by the policy applicable to widely-held companies. The latter will come into effect on Feb. 1, 2022.</p>	<p><b>General Recommendation:</b> In terms of gender diversity, [supervisory] boards should adhere to domestic legal requirements or local best market practices or, in the absence thereof, be in line with European established practice.</p> <p>Generally vote against the chair of the nomination committee (or other directors on a case-by-case basis) if:</p> <ul style="list-style-type: none"> <li>▪ The underrepresented gender accounts for less than 30 percent (or any higher domestic threshold) of board directors of a widely held company*.</li> <li>▪ Both genders are not represented on the board of a non-widely-held company.</li> </ul> <p>Mitigating factors may include:</p> <ul style="list-style-type: none"> <li>▪ Compliance with the relevant standard at the preceding annual meeting and a firm commitment, publicly available, to comply with the relevant standard within a year; or</li> <li>▪ Other relevant factors as applicable.</li> </ul> <p>*A one-year transitional period will apply in 2021. During this transitional period, vote recommendations will not be impacted by the policy applicable to widely-held companies. The latter will come into effect on Feb. 1, 2022.</p>

**Rationale for Change:**

Background

The following table shows the existing quota requirements for representation of women directors on boards, type of requirements (hard/mandate or soft/recommendation), and the year(s) since those quotas were implemented in various Continental European countries.

## PROPOSED POLICY CHANGES FOR 2021

### REQUEST FOR COMMENTS



Country	Quota amount (% , #)	Type of Requirement (Law, Code, Guidance)	Notes
<b>Austria</b>	30%	Hard Law	From 2018
<b>Belgium</b>	33%	Hard Law	From 2017
<b>Netherlands</b>	30%	Hard Law	From 2013. Comply-or-Explain. Company Law forces companies to explain when not compliant with Quota amount. This guidance lapsed on Dec. 31, 2019 and since Jan. 1, 2020, no guidance is applicable.
<b>Greece</b>	25%	Hard Law	Law 4706/2020.
<b>Italy</b>	33%	Hard Law	20% by 2015, 33% by 2018.
<b>France</b>	40%	Hard Law	By the end of the 2014 GM for the threshold of 20%, and by the end of the 2017 GM for the threshold of 40%
<b>Germany</b>	30%	Law and Best Practice	From 2016
<b>Norway</b>	40%	Hard Law	The quota depends on the size of the board, but generally 40%.
<b>Portugal</b>	33%	Hard Law	20% effective Jan. 1, 2018, and 33% in 2020.
<b>Spain</b>	40%	Code of Best Practice	By 2022. Comply or explain, based on CoGo code released in June 2020.

#### Intent and Impact

The proposed policy change has two parts. First, it would extend the requirement to have both genders represented on listed companies' boards across all Continental European markets, regardless of the company's size, as gender diversity quotas typically (although not always) apply to all companies. Second, the updated policy sets a higher minimum gender representation threshold (30 percent) for widely-held companies, recognizing the thresholds applicable in many EU jurisdictions.

As shown in the table below, based on FY2019 data, the potential impact of the proposed policy change as it relates to potential negative recommendations on directors at core companies could be as low as 0.4 percent to as high as 57 percent of the total companies, depending on the market.

**Number and percentage of core (or widely-held) companies with less than 30% of women on board. Data as of FY2019.**

	AUT	BEL	CHE	CYP	CZE	DEU	DNK	ESP	FIN	FRA	GRC	HUN	ITA	LIE	LUX	NLD	NOR	POL	PRT	ROU	SWE
Tot core	33	53	129	8	7	181	44	77	43	170	23	4	103	2	42	75	54	35	13	12	139
Tot companies	50	110	221	31	7	436	114	129	136	510	67	14	284	2	55	125	166	231	29	45	440
Impacted	17	5	98	7	4	67	19	45	15	2	21	3	5	1	26	31	3	24	8	12	46
% core	52%	9%	76%	88%	57%	37%	43%	58%	35%	1%	91%	75%	5%	50%	62%	41%	6%	69%	62%	100%	33%
% total	34%	5%	44%	23%	57%	15%	17%	35%	11%	0.4%	31%	21%	2%	50%	47%	25%	2%	10%	28%	27%	10%

## Director Elections: Board Composition

### Brazil Policy – Director Elections: Board Independence

Current ISS Policy, incorporating changes:	New ISS Policy:
<p><b><u>Voting on Director Nominees under Uncontested Election</u></b></p> <p>In Brazil, the revised version of the code of best practice of corporate governance, from the Brazilian Institute of Corporate Governance (IBGC), as well as the country's newly-created Brazilian Code of Corporate Governance (2016) recommend that boards should have a "relevant number of independent directors" or be, at a minimum, one-third independent, respectively. These recommendations have become increasingly pertinent as the free float of Brazilian companies continues to grow. Majority independent boards remain rare in Brazil.</p> <p>The revised version of the Sao Paulo Stock Exchange's (B3) Novo Mercado listing segment regulations, effective as of Jan. 2, 2018, states that member companies are required to maintain a minimum of 20-percent board independence or two</p>	<p><b><u>Voting on Director Nominees under Uncontested Election</u></b></p> <p>In Brazil, the revised version of the code of best practice of corporate governance, from the Brazilian Institute of Corporate Governance (IBGC), as well as the country's newly-created Brazilian Code of Corporate Governance (2016) recommend that boards should have a "relevant number of independent directors" or be, at a minimum, one-third independent, respectively. These recommendations have become increasingly pertinent as the free float of Brazilian companies continues to grow. Majority independent boards remain rare in Brazil.</p> <p>The revised version of the Sao Paulo Stock Exchange's (B3) Novo Mercado listing segment regulations, effective as of Jan. 2, 2018, states that member companies are required to maintain a minimum of 20-percent board independence or two</p>

<p>independent members, whichever results in a higher independence level. The previous rule established only a minimum of 20-percent board independence, which could technically be met with one independent director depending on the size of the board. Companies listed under the Nivel 2 listing segment are required to maintain a minimum of 20-percent independent board, and B3 regulations continue to allow these companies (Nivel 2) to round down the required number of independent directors.</p> <p>Companies that are part of the Nivel 1 and the non-differentiated ("Traditional") listing segments are not subject to a minimum independence requirement. Institutional investors largely believe that the aforementioned board independence requirements are presently inadequate, in light of the current free float and average board independence of companies in the differentiated listing segments.</p> <p>ISS' benchmark board independence policy specifies that the boards of issuers belonging to the Novo Mercado and Nivel 2, the country's highest levels of corporate governance, must be at least 50-percent independent, while companies listed under Nivel 1 or the Traditional segment must have at least one-third of the board or two directors, whichever is higher, classified as independent. Such thresholds are consistent with proportional board representation best practices and the growing expectations of institutional investors.</p> <p><del>In addition, as of Feb. 1, 2018, ISS benchmark policy was updated to also recommend a minimum of at least one independent director for companies listed under the Nivel 1 differentiated corporate governance segment and the Traditional segment.</del></p> <p>The most common market practice in Brazil remains slate elections. Nonetheless, in recent years, the market has experienced an increase in the number of individual board elections.</p> <p>While directors nominated by a controlling shareholder must be disclosed at a minimum of 15 days prior to the meeting date, minority shareholders may present the names of their nominees up to the time of the meeting. These rules were designed to minimize restrictions on minority shareholders, but may negatively impact international investors, who must often submit voting instructions in the absence of complete nominee information.</p>	<p>independent members, whichever results in a higher independence level. The previous rule established only a minimum of 20-percent board independence, which could technically be met with one independent director depending on the size of the board. Companies listed under the Nivel 2 listing segment are required to maintain a minimum of 20-percent independent board, and B3 regulations continue to allow these companies (Nivel 2) to round down the required number of independent directors.</p> <p>Companies that are part of the Nivel 1 and the non-differentiated ("Traditional") listing segments are not subject to a minimum independence requirement. Institutional investors largely believe that the aforementioned board independence requirements are presently inadequate, in light of the current free float and average board independence of companies in the differentiated listing segments.</p> <p>ISS' benchmark board independence policy specifies that the boards of issuers belonging to the Novo Mercado and Nivel 2, the country's highest levels of corporate governance, must be at least 50-percent independent, while companies listed under Nivel 1 or the Traditional segment must have at least one-third of the board or two directors, whichever is higher, classified as independent. Such thresholds are consistent with proportional board representation best practices and the growing expectations of institutional investors.</p> <p>The most common market practice in Brazil remains slate elections. Nonetheless, in recent years, the market has experienced an increase in the number of individual board elections.</p> <p>While directors nominated by a controlling shareholder must be disclosed at a minimum of 15 days prior to the meeting date, minority shareholders may present the names of their nominees up to the time of the meeting. These rules were designed to minimize restrictions on minority shareholders, but may negatively impact international investors, who must often submit voting instructions in the absence of complete nominee information.</p> <p>Brazilian companies are required to provide its shareholders with a remote voting option, through the Remote Voting Card (RVC) as regulated by the Brazilian Securities Regulator (CVM) through its original Instruction 561/2015 and amended by Instruction 594/2017. For additional information regarding the Remote Voting</p>
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Brazilian companies are required to provide its shareholders with a remote voting option, through the Remote Voting Card (RVC) as regulated by the Brazilian Securities Regulator (CVM) through its original Instruction 561/2015 and amended by Instruction 594/2017. For additional information regarding the Remote Voting Card and its disclosure requirements, refer to the Brazil Remote Voting Card (FAQ), available on the ISS Policy Gateway website.

### Bundled Elections

**General Recommendation:** Vote for the bundled election of management nominees, unless:

- Adequate disclosure of management nominees has not been provided in a timely manner;
- There are clear concerns over questionable finances or restatements;
- There have been questionable transactions with conflicts of interest;
- There are any records of abuses against minority shareholder interests;
- The board fails to meet minimum corporate governance standards; or
- Minority shareholders have presented timely disclosure of minority board nominees to be elected under separate elections, as allowed under Brazilian law (see Election of Minority Nominees – Separate Election below).

### Minimum Independence Levels

Vote against the bundled election of directors if the post-election board at Novo Mercado and Nivel 2 companies would not be at least ~~30~~50-percent independent. **A two-year phase-in period will apply in 2021 and 2022 to allow companies to gradually increase their overall board independence and adapt to the recommended independence threshold. During the transitional period (2021-2022), vote against proposed boards with overall independence level below 40 percent.**

Vote against the bundled election of directors if the post-election board of Nivel 1 and Traditional companies would not have at least **one-third of the board or two independent member** directors, whichever is higher, classified as independent by ISS.

Card and its disclosure requirements, refer to the Brazil Remote Voting Card (FAQ), available on the ISS Policy Gateway website.

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- There are any records of abuses against minority shareholder interests;
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### Minimum Independence Levels

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A two-year phase-in period will apply in 2021 and 2022 to allow companies to gradually increase their overall board independence and adapt to the recommended independence threshold. During the transitional period (2021-2022), vote against proposed boards with overall independence level below 40 percent.

Vote against the bundled election of directors if the post-election board of Nivel 1 and Traditional companies would not have at least one-third of the board or two directors, whichever is higher, classified as independent by ISS.

**Rationale for Change:**

**Background**

According to ISS Data, average board independence of Brazilian companies covered by ISS that held board elections in 2020 is currently at 40.6 percent, including all listing segments (Novo Mercado, Nivel 2, Nivel 1, and Traditional). ISS policy guidelines for the Brazilian market have traditionally recommended independence levels above the minimum regulatory requirements of the differentiated corporate governance segments (Novo Mercado, Nivel 2, and Nivel 1). However, the previous time ISS updated its board independence policy for companies listed in the highest corporate governance segments of the Sao Paulo Stock Exchange (B3) was in 2012, when ISS policy started recommending a minimum of 30 percent board independence for companies listed in the Novo Mercado and Nivel 2 segments, while listing rules required a minimum board independence of 20 percent. In 2017, ISS Brazil Voting Guidelines introduced, for the first time, a minimum independence requirement (one independent director) for companies listed under the Nivel 1 corporate governance segment and the Traditional listing segment, both of which do not have a regulatory requirement of a minimum board independence.

**Intent and Impact**

Considering evolving market practices and the current average independence levels practices by Brazilian companies, the proposed update to the minimum independence requirements under the Brazil Proxy Voting Guidelines is warranted. Therefore, ISS proposes to update its policy guidelines to increase the minimum board independence threshold for all listing segments, maintaining a more stringent requirement for companies listed in the B3 segments with the highest corporate governance standards, as can be seen in the table below.

	<b>2019 average board independence*</b>	<b>2020 average board independence*</b>	<b>Listing Segment Requirement</b>	<b>Current ISS policy</b>	<b>Proposed ISS policy</b>
<b>Brazil overall</b>	40.4%	40.6%			
<b>Brazil - NM</b>	45.0%	43.1%	20% or two independent directors, whichever is higher	30% minimum independence level	Minimum 40% independence in 2021 and 2022; minimum 50% independence starting in 2023
<b>Brazil – N2</b>	37.0%	40.2%	20% minimum independence level	30% minimum independence level	Minimum 40% independence in 2021 and 2022; minimum 50% independence starting in 2023
<b>Brazil – N1</b>	37.9%	32.4%	No minimum independence requirement	At least one independent director	1/3 independence level or two independent directors, whichever is higher (applicable from 2021)
<b>Brazil - Traditional</b>	21.2%	27.0%	No minimum independence requirement	At least one independent director	1/3 independence level or two independent directors, whichever is higher (applicable from 2021)

\*Companies covered by ISS with board election in FY2019 and FY2020, respectively. The universe of companies included in the calculation of the average board independence is not the same in both years given that two-year board terms are common in the Brazilian market.

The proposed policy would align Brazil's policy guidelines with those more commonly found in other markets covered by ISS (i.e., one-third and 50 percent independent). For Novo Mercado and Nivel 2 listing segments, the 50 percent independence level will be implemented in 2023, with a 40 percent independence threshold required in fiscal years 2021 and 2022. For the Nivel 1 and Traditional segments, the threshold of one-third independence level or two independent directors, whichever is higher, will be implemented in 2021.

The application of a 50-percent independence threshold would result in an increase in ISS against vote recommendations compared to the current policy from 35 percent to 68 percent and 33 percent to 58 percent of companies in Novo Mercado and Nivel 2, respectively. For Nivel 1 and Traditional segments, the impact of applying a one-third board independence or two independent directors, whichever is higher, threshold would also result in an increase in against recommendations compared to current policy from 18 percent to 47 percent and 21 percent to 63 percent of companies, respectively.

**Specific questions for this proposed change (in addition the the general questions for all proposed changes (as set out in the introduction):**

➤ Does your organization agree with the proposed policy for Novo Mercado and Nivel 2 companies, with a 40-percent minimum board independence requirement in 2021 and 2022, reaching 50 percent in 2023? If not, please specify.  
board independence

Do you agree with the phase in of the policy over a two-year period? Should a longer or shorter transition period be used?

**Americas Regional Policy – Director Elections: Board Independence**

Current ISS Policy, incorporating changes:	New ISS Policy:
<p><b>Bundled Elections</b> <b>General Recommendation:</b> Vote for the bundled election of management nominees, unless:</p> <ul style="list-style-type: none"> <li>▪ Adequate disclosure has not been provided in a timely manner;</li> <li>▪ There are clear concerns over questionable finances or restatements;</li> <li>▪ There have been questionable transactions with conflicts of interest;</li> <li>▪ There are any records of abuses against minority shareholder interests;</li> <li>▪ The board fails to meet minimum corporate governance standards;</li> <li>▪ There are specific concerns about the individual, such as criminal wrongdoing or breach of fiduciary responsibilities; or</li> <li>▪ The company does not <del>comply with market legal requirements for minimum board independence, or does not</del> have <del>at least one-third of the</del></li> </ul>	<p><b>Bundled Elections</b> <b>General Recommendation:</b> Vote for the bundled election of management nominees, unless:</p> <ul style="list-style-type: none"> <li>▪ Adequate disclosure has not been provided in a timely manner;</li> <li>▪ There are clear concerns over questionable finances or restatements;</li> <li>▪ There have been questionable transactions with conflicts of interest;</li> <li>▪ There are any records of abuses against minority shareholder interests;</li> <li>▪ The board fails to meet minimum corporate governance standards;</li> <li>▪ There are specific concerns about the individual, such as criminal wrongdoing or breach of fiduciary responsibilities; or</li> <li>▪ The company does not have at least one-third of the board or two directors, whichever is higher, classified as independent by ISS.</li> </ul>

<p><del>independent</del> board <del>or two directors member</del>, whichever is higher, <del>classified as independent</del> by ISS.</p> <p>In a bundled election, vote against the election of directors at all companies if the name(s) of the nominee(s) is <u>(are)</u> not disclosed in a timely manner prior to the meeting, <del>and or</del> if the company <del>does not comply with market legal requirements for minimum board independence or</del> does not have at least <del>one independent board member</del> <u>one-third of the board or two directors, whichever is higher</u>, <del>classified as independent</del> by ISS.</p> <p><b>Unbundled Elections</b>  <b>General Recommendation:</b> In an unbundled election, support for all director nominees is recommended, unless:</p> <ul style="list-style-type: none"> <li>▪ The company has not provided adequate disclosure of the proposed nominees; or</li> <li>▪ The minimum independence level recommended under ISS policy is not met.</li> </ul> <p>However, if the proposed board falls below the minimum independence level recommended under ISS policy guidelines <del>and/or market regulations</del>,</p> <ul style="list-style-type: none"> <li>▪ Vote for the independent nominees presented individually; and</li> <li>▪ Vote against the non-independent candidates.</li> </ul> <p>In making the above vote recommendations, ISS generally will not recommend against the election of the board chair, due to the relevance of the board leadership position in the absence of other governance concerns.</p> <p>Under extraordinary circumstances, vote against individual directors, members of a committee, or the entire board, due to:</p> <ul style="list-style-type: none"> <li>▪ Material failures of governance, stewardship, risk oversight, or fiduciary responsibilities at the company;</li> <li>▪ Failure to replace management as appropriate; or</li> <li>▪ Egregious actions related to a director's service on other boards that raise substantial doubt about his or her ability to effectively oversee management and serve the best interests of shareholders at any company.</li> </ul>	<p>In a bundled election, vote against the election of directors at all companies if the name(s) of the nominee(s) is(are) not disclosed in a timely manner prior to the meeting, or if the company does not have at least one-third of the board or two directors, whichever is higher, classified as independent by ISS.</p> <p><b>Unbundled Elections</b>  <b>General Recommendation:</b> In an unbundled election, support for all director nominees is recommended, unless:</p> <ul style="list-style-type: none"> <li>▪ The company has not provided adequate disclosure of the proposed nominees; or</li> <li>▪ The minimum independence level recommended under ISS policy is not met.</li> </ul> <p>However, if the proposed board falls below the minimum independence level recommended under ISS policy guidelines,</p> <ul style="list-style-type: none"> <li>▪ Vote for the independent nominees presented individually; and</li> <li>▪ Vote against the non-independent candidates.</li> </ul> <p>In making the above vote recommendations, ISS generally will not recommend against the election of the board chair, due to the relevance of the board leadership position in the absence of other governance concerns.</p> <p>Under extraordinary circumstances, vote against individual directors, members of a committee, or the entire board, due to:</p> <ul style="list-style-type: none"> <li>▪ Material failures of governance, stewardship, risk oversight, or fiduciary responsibilities at the company;</li> <li>▪ Failure to replace management as appropriate; or</li> <li>▪ Egregious actions related to a director's service on other boards that raise substantial doubt about his or her ability to effectively oversee management and serve the best interests of shareholders at any company.</li> </ul> <p>Vote against individual directors, members of a committee, or the entire board due to a conflict of interest that raises significant potential risk, in the absence of mitigating measures and/or procedures.</p>
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Vote against individual directors, members of a committee, or the entire board due to a conflict of interest that raises significant potential risk, in the absence of mitigating measures and/or procedures.

**Rationale for Change:**

**Background**

The current ISS' benchmark Americas Regional Policy for board elections is focused mainly on the timely disclosure of the nominees' names and on the overall board independence. Based on ISS data, however, the market practice in the region has improved, and the average board independence is already above the minimum threshold included in the Americas Regional policy guidelines.

**Intent and Impact**

Considering evolving market practices and the average board independence levels of companies covered by ISS, the proposed update to the minimum independence requirements under the Americas Regional Proxy Voting Guidelines is warranted. Therefore, ISS proposes to update its policy guidelines to increase the minimum board independence threshold for all markets covered by such policy to one-third or two independent directors, whichever is higher. Furthermore, as shown in the table below, the proposed policy update has the benefit of harmonizing the minimum board independence requirement throughout the region:

	2019 average board independence*	2020 average board independence*	Current ISS policy**	Proposed ISS policy
<b>Argentina</b>	42%	39.2%	Two independent directors	One-third board independence or two independent directors, whichever is higher
<b>Chile</b>	22%	26.1%	One independent director	One-third board independence or two independent directors, whichever is higher
<b>Colombia</b>	41%	42.4%	25 percent board independence	One-third board independence or two independent directors, whichever is higher
<b>Mexico</b>	36%	34.2%	25 percent board independence	One-third board independence or two independent directors, whichever is higher
<b>Peru</b>	24%	31.5%	One independent director	One-third board independence or two independent directors, whichever is higher

\*Companies covered by ISS with board elections in FY2019 and FY2020, respectively. The universe of companies included in the calculation of the average board independence is not the same in both years given that two- and three-year board terms are common in the Latin American markets.

\*\*ISS Policy is currently based on local regulations for minimum board independence, which vary by market.

The proposed threshold of one-third minimum board independence or two independent directors, whichever is higher, is also in line with ISS policies for other markets. The proposed policy update will not have a significant impact in the number of ISS against vote recommendations in the region.

### Russia and Kazakhstan Policy – Director Independence Classification

Current ISS Classification, incorporating changes:	New ISS Classification:
<p><b>Executive Director</b></p> <ul style="list-style-type: none"> <li>▪ Employee or executive of the company;</li> <li>▪ Any director who is classified as a non-executive, but receives salary, fees, bonus, and/or other benefits that are in line with the highest-paid executives of the company.</li> </ul> <p><b>Non-Independent Non-Executive Director (NED)</b></p> <ul style="list-style-type: none"> <li>▪ Any director who is attested by <b>both the board and nominating shareholders</b> to be a non-independent NED. <b>In case the shareholders' classification is not disclosed, any director, who is attested by the board to be a non-independent NED;</b></li> <li>▪ Any director specifically designated as a representative of or who is considered related to a significant shareholder of the company;</li> <li>▪ Any director who is also an employee or executive of a significant shareholder<sup>[1]</sup> of the company;</li> <li>▪ Any director who is nominated by a significant shareholder, unless there is a clear lack of material<sup>[6]</sup> connection with the shareholder, either currently or historically;</li> <li>▪ Beneficial owner (direct or indirect) of at least 10 percent of the company's stock, either in economic terms or in voting rights (this may be aggregated if voting power is distributed among more than one member of a defined group, e.g., family members who beneficially own less than 10 percent individually, but collectively own more than 10 percent), unless market best practice dictates a lower ownership and/or disclosure threshold (and in other special market-specific circumstances);</li> <li>▪ Government representative;</li> </ul>	<p><b>Executive Director</b></p> <ul style="list-style-type: none"> <li>▪ Employee or executive of the company;</li> <li>▪ Any director who is classified as a non-executive, but receives salary, fees, bonus, and/or other benefits that are in line with the highest-paid executives of the company.</li> </ul> <p><b>Non-Independent Non-Executive Director (NED)</b></p> <ul style="list-style-type: none"> <li>▪ Any director who is attested by both the board and nominating shareholders to be a non-independent NED. In case the shareholders' classification is not disclosed, any director, who is attested by the board to be a non-independent NED;</li> <li>▪ Any director specifically designated as a representative of or who is considered related to a significant shareholder of the company;</li> <li>▪ Any director who is also an employee or executive of a significant shareholder<sup>[1]</sup> of the company;</li> <li>▪ Any director who is nominated by a significant shareholder, unless there is a clear lack of material<sup>[6]</sup> connection with the shareholder, either currently or historically;</li> <li>▪ Beneficial owner (direct or indirect) of at least 10 percent of the company's stock, either in economic terms or in voting rights (this may be aggregated if voting power is distributed among more than one member of a defined group, e.g., family members who beneficially own less than 10 percent individually, but collectively own more than 10 percent), unless market best practice dictates a lower ownership and/or disclosure threshold (and in other special market-specific circumstances);</li> <li>▪ Government representative;</li> </ul>

- Currently provides (or a relative<sup>[2]</sup> provides) professional services<sup>[3]</sup> to the company, to an affiliate of the company, or to an individual officer of the company or of one of its affiliates in excess of \$10,000 per year;
- Represents customer, supplier, creditor, banker, or other entity with which company maintains transactional/commercial relationship (unless company discloses information to apply a materiality test<sup>[4]</sup>);
- Any director who has conflicting or cross-directorships with executive directors or the chairman of the company;
- Relative<sup>[1]</sup> of a current or former executive of the company or its affiliates;
- A new appointee elected other than by a formal process through the General Meeting (such as a contractual appointment by a substantial shareholder);
- Founder/co-founder/member of founding family but not currently an employee;
- Former executive (five-year cooling off period);
- Excessive years of service from date of first appointment, as determined by local corporate governance codes<sup>[5]</sup>, or local best practice, is generally a determining factor in evaluating director independence.
- Any additional relationship or principle considered to compromise independence under local corporate governance best practice guidance.

**Independent NED**

- No material<sup>[6]</sup> connection, either directly or indirectly, to the company (other than the board seat) or to a significant shareholder;
- **In case of discrepancies between the classifications of a director provided by the board of directors of the company and by the shareholders, a case-by-case analysis of independence is made based on publicly available evidence.**

**Footnotes**

<sup>[1]</sup> In Russia, a significant shareholder is defined as a shareholder controlling directly or indirectly 5 percent or more of the voting rights.

<sup>[2]</sup> “Relative” follows the definition of “immediate family members” which covers spouses, parents, children, stepparents, step-children, siblings, in-laws, and any person (other than a tenant or employee) sharing the household of any director, nominee for director, executive officer, or significant shareholder of the company.

- Currently provides (or a relative<sup>[2]</sup> provides) professional services<sup>[3]</sup> to the company, to an affiliate of the company, or to an individual officer of the company or of one of its affiliates in excess of \$10,000 per year;
- Represents customer, supplier, creditor, banker, or other entity with which company maintains transactional/commercial relationship (unless company discloses information to apply a materiality test<sup>[4]</sup>);
- Any director who has conflicting or cross-directorships with executive directors or the chairman of the company;
- Relative<sup>[1]</sup> of a current or former executive of the company or its affiliates;
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- Any additional relationship or principle considered to compromise independence under local corporate governance best practice guidance.

**Independent NED**

- No material<sup>[6]</sup> connection, either directly or indirectly, to the company (other than the board seat) or to a significant shareholder.
- In case of discrepancies between the classifications of a director provided by the board of directors of the company and by the shareholders, a case-by-case analysis of independence is made based on publicly available evidence.

**Footnotes**

<sup>[1]</sup> In Russia, a significant shareholder is defined as a shareholder controlling directly or indirectly 5 percent or more of the voting rights.

<sup>[2]</sup> “Relative” follows the definition of “immediate family members” which covers spouses, parents, children, stepparents, step-children, siblings, in-laws, and any person (other than a tenant or employee) sharing the household of any director, nominee for director, executive officer, or significant shareholder of the company.

<p>[3] Professional services can be characterized as advisory in nature and generally include the following: investment banking/financial advisory services; commercial banking (beyond deposit services); investment services; insurance services; accounting/audit services; consulting services; marketing services; and legal services. The case of participation in a banking syndicate by a non-lead bank should be considered a transaction (and hence subject to the associated materiality test) rather than a professional relationship.</p> <p>[4] A business relationship may be material if the transaction value (of all outstanding transactions) entered into between the company and the company or organization with which the director is associated is equivalent to either 1 percent of the company's turnover or 1 percent of the turnover of the company or organization with which the director is associated. OR, A business relationship may be material if the transaction value (of all outstanding financing operations) entered into between the company and the company or organization with which the director is associated is more than 10 percent of the company's shareholder equity or the transaction value, (of all outstanding financing operations), compared to the company's total assets, is more than 5 percent. OR, A business relationship may be material if it is considered that it may be of significance the director.</p> <p>[5] For example, the definition of independence in the Russian Corporate Governance Code (2014) provides that in order to remain independent, a non-executive director shall have served on the board of directors [supervisory board] for no more than seven years.</p> <p>[6] For purposes of ISS' director independence classification, "material" will be defined as a standard of relationship financial, personal or otherwise that a reasonable person might conclude could potentially influence one's objectivity in the boardroom in a manner that would have a meaningful impact on an individual's ability to satisfy requisite fiduciary standards on behalf of shareholders.</p>	<p>[3] Professional services can be characterized as advisory in nature and generally include the following: investment banking/financial advisory services; commercial banking (beyond deposit services); investment services; insurance services; accounting/audit services; consulting services; marketing services; and legal services. The case of participation in a banking syndicate by a non-lead bank should be considered a transaction (and hence subject to the associated materiality test) rather than a professional relationship.</p> <p>[4] A business relationship may be material if the transaction value (of all outstanding transactions) entered into between the company and the company or organization with which the director is associated is equivalent to either 1 percent of the company's turnover or 1 percent of the turnover of the company or organization with which the director is associated. OR, A business relationship may be material if the transaction value (of all outstanding financing operations) entered into between the company and the company or organization with which the director is associated is more than 10 percent of the company's shareholder equity or the transaction value, (of all outstanding financing operations), compared to the company's total assets, is more than 5 percent. OR, A business relationship may be material if it is considered that it may be of significance the director.</p> <p>[5] For example, the definition of independence in the Russian Corporate Governance Code (2014) provides that in order to remain independent, a non-executive director shall have served on the board of directors [supervisory board] for no more than seven years.</p> <p>[6] For purposes of ISS' director independence classification, "material" will be defined as a standard of relationship financial, personal or otherwise that a reasonable person might conclude could potentially influence one's objectivity in the boardroom in a manner that would have a meaningful impact on an individual's ability to satisfy requisite fiduciary standards on behalf of shareholders.</p>
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**Rationale for Proposed Change:**

Background

In Russia, directors are elected through cumulative voting. In this system, each share confers a number of votes equal to the number of board seats up for election, which can be allocated in any combination to one or more of the nominees. In some cases, the number of candidates exceeds the number of available seats making

these elections contested. ISS has noted an increase in Russian companies classifying candidates as non-independent when they have been nominated by minority shareholders as independent nominees. These determinations of independence are often made by companies without further explanation or any compelling rationale.

Current ISS policy for Russia takes the company designation of a candidate as non-independent as the de-facto classification. The increase in the number of Russian companies classifying minority-nominated candidates as non-independent, however, indicates that a reappraisal of the policy is now warranted.

Intent and Impact

The policy update would broaden the scope of the information that is being considered in making independence classifications of directors to include publicly available information provided by the nominating shareholders and other publicly available information (e.g. API providing in-depth factual information on independence classification).

Although it is hard to predict what candidates will be on the slate in the future, we would not expect the number of cases requiring extended analysis of independence on the basis of discrepancies in the classification to exceed 10 per year.

**Japan Policy – Director Elections: Cross Shareholding and Board Composition**

Current ISS Policy, incorporating changes:	New ISS Policy:
<p><b>General Recommendation:</b> ISS has three policies for director elections in Japan: one for companies with a statutory auditor board structure, one for companies with a U.S.-type three committee structure, and one for companies with a board with audit committee structure<sup>4</sup>.</p> <p>1. <b>At companies with a statutory auditor structure:</b> vote for the election of directors, except:</p>	<p><b>General Recommendation:</b> ISS has three policies for director elections in Japan: one for companies with a statutory auditor board structure, one for companies with a U.S.-type three committee structure, and one for companies with a board with audit committee structure<sup>4</sup>.</p> <p>1. <b>At companies with a statutory auditor structure:</b> vote for the election of directors, except:</p> <ul style="list-style-type: none"> <li>▪ Top executive(s)<sup>5</sup> at a company that has underperformed in terms of capital efficiency (i.e., when the company has posted average return on equity (ROE) of less than five percent over the last five fiscal years)<sup>6</sup>, unless an improvement<sup>7</sup> is observed;</li> </ul>

<sup>4</sup> The director election policy for companies with a board with audit committee structure will be applied to the election of executive directors and supervisory directors at real estate investment trusts (REITs), to the extent that the information necessary to apply the policy is disclosed.

<ul style="list-style-type: none"> <li>▪ Top executive(s)<sup>5</sup> at a company that has underperformed in terms of capital efficiency (i.e., when the company has posted average return on equity (ROE) of less than five percent over the last five fiscal years)<sup>6</sup>, unless an improvement<sup>7</sup> is observed;</li> <li>▪ For meetings on or after <b>Feb 1, 2022</b>, top executive(s) at a company that allocates a significant portion (20 percent or more) of its net assets to cross-shareholdings<sup>8</sup>;</li> <li>▪ Top executive(s) if the board, after the shareholder meeting, will not include at least two outside directors; and, for meetings on or after <b>Feb. 1, 2022</b>, outside directors will comprise less than one-third of the board;</li> <li>▪ Top executive(s) at a company that has a controlling shareholder, where the board, after the shareholder meeting, will not include at least two independent directors or independent directors will comprise less than one-third of the board <del>at least one-third of the board members will not be independent directors</del> based on ISS independence criteria for Japan;</li> <li>▪ An outside director nominee who attended less than 75 percent of board meetings during the year under review<sup>9</sup>; or</li> <li>▪ Top executive(s) who are responsible for not implementing a shareholder proposal which has received a majority<sup>10</sup> of votes cast, or not putting a similar proposal on the ballot as a management proposal the following year</li> </ul>	<ul style="list-style-type: none"> <li>▪ For meetings on or after <b>Feb 1, 2022</b>, top executive(s) at a company that allocates a significant portion (20 percent or more) of its net assets to cross-shareholdings<sup>8</sup>;</li> <li>▪ Top executive(s) if the board, after the shareholder meeting, will not include at least two outside directors and for meetings on or after <b>Feb. 1, 2022</b>, outside directors will comprise less than one-third of the board;</li> <li>▪ Top executive(s) at a company that has a controlling shareholder, where the board, after the shareholder meeting, will not include at least two independent directors or independent directors will comprise less than one-third of the board based on ISS independence criteria for Japan;</li> <li>▪ An outside director nominee who attended less than 75 percent of board meetings during the year under review<sup>9</sup>; or</li> <li>▪ Top executive(s) who are responsible for not implementing a shareholder proposal which has received a majority<sup>10</sup> of votes cast, or not putting a similar proposal on the ballot as a management proposal the following year (with a management recommendation of for), when that proposal is deemed to be in the interest of independent shareholders.</li> </ul> <p>2. <b>At companies with a U.S.-type three committee structure:</b> (In addition to the guidelines for companies with a statutory auditor structure) vote for the election of directors, except:</p>
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<sup>5</sup> In most cases, the top executive will be the “shacho” (president). However, there are companies where the decision-making authority also rests with the “kaicho” (executive chairman) or “daihyo torishimariyaku” (representative director).

<sup>6</sup> Exceptions may be considered for cases such as where the top executive has newly joined the company in connection with a bailout or restructuring. This policy will not be applied to companies which have been public for less than five years.

<sup>7</sup> Improvement is defined as ROE of five percent or greater for the most recent fiscal year.

<sup>8</sup> Exceptions may be considered for cases such as where the top executive has newly joined the company in connection with a bailout or restructuring.

<sup>9</sup> The attendance of inside directors is not disclosed in Japan. For companies with a three committee structure and companies with an audit committee structure, ISS will require attendance of 75 percent or more of audit committee meetings as well as 75 percent or more of board meetings.

<sup>10</sup> Many Japanese shareholder proposals are submitted as article amendments, which require supermajority support in order to pass.

<p>(with a management recommendation of for), when that proposal is deemed to be in the interest of independent shareholders.</p> <p>2. <b>At companies with a U.S.-type three committee structure:</b> (In addition to the guidelines for companies with a statutory auditor structure) vote for the election of directors, except:</p> <ul style="list-style-type: none"> <li>▪ Where an outside director nominee is regarded as non-independent based on ISS independence criteria for Japan, and the board, after the shareholder meeting, is not majority independent;</li> <li>▪ Top executive(s) if at least one-third of the board members, after the shareholder meeting, will not be outside directors; or</li> <li>▪ Where the company has a controlling shareholder, a director nominee sits on the nomination committee and is an insider, or non-independent outsider, when the board, after the shareholder meeting, does not include at least two independent directors based on ISS independence criteria for Japan.</li> </ul> <p>3. <b>At companies with a board with audit committee structure:</b> (In addition to the guidelines for companies with a statutory auditor structure) vote for the election of directors, except:</p> <ul style="list-style-type: none"> <li>▪ Where an outside director nominee who is also nominated as an audit committee member<sup>11</sup> is regarded as non-independent based on ISS independence criteria for Japan; or</li> <li>▪ Top executive(s) if at least one-third of the board members, after the shareholder meeting, will not be outside directors.</li> </ul> <p>Regardless of governance structure, under extraordinary circumstances, vote against individual directors, members of a committee, or the entire board, due to:</p>	<ul style="list-style-type: none"> <li>▪ Where an outside director nominee is regarded as non-independent based on ISS independence criteria for Japan, and the board, after the shareholder meeting, is not majority independent;</li> <li>▪ Top executive(s) if at least one-third of the board members, after the shareholder meeting, will not be outside directors; or</li> <li>▪ Where the company has a controlling shareholder, a director nominee sits on the nomination committee and is an insider, or non-independent outsider, when the board, after the shareholder meeting, does not include at least two independent directors based on ISS independence criteria for Japan.</li> </ul> <p>3. <b>At companies with a board with audit committee structure:</b> (In addition to the guidelines for companies with a statutory auditor structure) vote for the election of directors, except:</p> <ul style="list-style-type: none"> <li>▪ Where an outside director nominee who is also nominated as an audit committee member<sup>11</sup> is regarded as non-independent based on ISS independence criteria for Japan; or</li> <li>▪ Top executive(s) if at least one-third of the board members, after the shareholder meeting, will not be outside directors.</li> </ul> <p>Regardless of governance structure, under extraordinary circumstances, vote against individual directors, members of a committee, or the entire board, due to:</p> <ul style="list-style-type: none"> <li>▪ Material failures of governance, stewardship, risk oversight, or fiduciary responsibilities at the company;</li> <li>▪ Failure to replace management as appropriate; or</li> </ul>
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<sup>11</sup> Outside director nominees who are not nominated as audit committee members are not subject to this policy.

<ul style="list-style-type: none"> <li>▪ Material failures of governance, stewardship, risk oversight, or fiduciary responsibilities at the company;</li> <li>▪ Failure to replace management as appropriate; or</li> <li>▪ Egregious actions related to a director's service on other boards that raise substantial doubt about his or her ability to effectively oversee management and serve the best interests of shareholders at any company.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Egregious actions related to a director's service on other boards that raise substantial doubt about his or her ability to effectively oversee management and serve the best interests of shareholders at any company.</li> </ul>
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**Rationale for Change:**

**Cross Holdings:**

Background

Capital misallocation and reduced market discipline resulting from cross-shareholdings have long been viewed as amongst the most serious corporate governance problems in Japan. It is common for Japanese companies to own long-held shares of other companies for reasons other than pure investment purposes, for instance, in order to strengthen relationships with customers, suppliers, or borrowers. Here, "cross- shareholdings" refer not only to mutual cross-shareholdings but also to unilateral holdings where these are designated by the company as shareholdings for non-investment purposes (the typical description for such shareholdings). Such cross-shareholdings may place the company's desire to strengthen its business relationships in conflict with its responsibility to create long-term value for shareholders, as funds used to buy such shares are not available for acquisitions, CapEx, dividends or share buybacks. Moreover, such practices reduce market discipline as management-friendly shareholders will almost always support board-backed resolutions and oppose shareholder proposals.

Intent and Impact

The proposed policy, which will apply for meetings on or after Feb 1, 2022, will be to recommend against the top executive(s) if the balance sheet amount of cross-shareholdings exceeds 20 percent of net assets. To collect data, we will use information in the Yuho annual securities filings which are usually disclosed after the shareholder meeting. Therefore, we will use information disclosed one year ago after the prior year's AGM. Based on 1500 Japanese companies randomly selected, at 7 percent of such companies, the balance sheet amount of cross- shareholdings exceeds 20 percent of net assets. Negative vote recommendations would be made at those companies under the proposed policy.

**Board Composition:**

Background

The proportion of outside directors on Japanese boards has increased in recent years, particularly in response to the introduction of the Corporate Governance Code in 2015 and its revision in 2018, which require the appointment of a minimum of two independent directors and encourage companies to have a one-third independent board. In consideration of the improving trend, in 2019, ISS implemented a new policy requesting companies with a board-with-audit-committee structure or with a U.S.-type three-committee structure to have a board where at least one third of the board members are outside directors.

However, for companies in Japan employing the traditional two-tiered board structure with a board of directors and a board of statutory auditors (or *kansayaku-kai*), ISS has required only two outside directors. That was based on a recognition that unlike companies with an audit committee structure or with a U.S.-type three-committee structure, companies with a statutory auditor system assume the board's function as operational rather than supervisory. In fact, until 2019, only 40 percent of Japanese companies with a statutory auditor system (in the ISS research universe) had boards with more than one-third outsider representation. However, as of June 2020, 53.7 percent of such companies now have boards with one-third outsiders or more, and this development may imply a changing notion of Japanese companies that having one-third outsiders on the board would make sense, even if they consider their boards to mainly have an operational function.

*Intent and Impact*

The proposed new policy, which will apply to meetings on or after Feb 1, 2022, is to add a one-third outsider representation requirement to the current requirement of two outside directors. Note that "independent outsiders" are not requested, although that would be the ideal by international standards. However, given the current status of Japanese board development and the difficulty of recruiting qualified independent candidates, requiring independence may be unhelpful as that may prompt companies to place too much emphasis on independence alone, rather than qualification of candidates.

Based on the ISS Japan research universe as of June 2020, 53.7 percent of companies with a statutory auditor system have a one-third outsider board, so if this policy were applied, 46.3 percent of them would not have met the new threshold. However, given the recent trend of adding more outside directors, it is expected that more companies will come to meet the proposed change by the time the policy is fully effective. For reference, if each company with a statutory auditor system in the ISS research universe as of June 2020 had appointed one more additional outside director, 77 percent would be calculated to have a one-third outsider board, and therefore, 23 percent would have triggered negative vote recommendations.

## Director Accountability and Overboarding

### All Benchmark Policies – Director Elections: Material E&S Risk Oversight Failures

The below is language from the U.S. benchmark policy. ISS is proposing to incorporate this language in the appropriate areas in all benchmark policies. The surrounding language may differ slightly by market.

Current ISS Policy, incorporating changes:	New ISS Policy:
<p><b>General Recommendation:</b> <b><i>Governance Failures</i></b> Under extraordinary circumstances, vote against or withhold from directors individually, committee members, or the entire board, due to:</p> <ul style="list-style-type: none"> <li>▪ Material failures of governance, stewardship, risk oversight*, or fiduciary responsibilities at the company;</li> <li>▪ Failure to replace management as appropriate; or</li> <li>▪ Egregious actions related to a director’s service on other boards that raise substantial doubt about his or her ability to effectively oversee management and serve the best interests of shareholders at any company.</li> </ul> <p>*Examples of failure of risk oversight include but are not limited to: bribery; large or serial fines or sanctions from regulatory bodies; demonstrably poor risk oversight of environmental and social issues, including climate change; significant adverse legal judgments or settlement; or hedging of company stock.</p>	<p><b>General Recommendation:</b> <b><i>Governance Failures</i></b> Under extraordinary circumstances, vote against or withhold from directors individually, committee members, or the entire board, due to:</p> <ul style="list-style-type: none"> <li>▪ Material failures of governance, stewardship, risk oversight*, or fiduciary responsibilities at the company;</li> <li>▪ Failure to replace management as appropriate; or</li> <li>▪ Egregious actions related to a director’s service on other boards that raise substantial doubt about his or her ability to effectively oversee management and serve the best interests of shareholders at any company.</li> </ul> <p>* Examples of failure of risk oversight include but are not limited to: bribery; large or serial fines or sanctions from regulatory bodies; demonstrably poor risk oversight of environmental and social issues, including climate change; significant adverse legal judgments or settlement; or hedging of company stock.</p>

### Rationale for Proposed Change:

#### Background

If a company is in a highly impactful sector and is not taking steps to reduce environmental and social risks that are likely to have a large negative impact on future company operations, ISS may recommend taking action against directors who fail to make their companies more resilient.

#### Intent and Impact

The proposed change makes it explicit that ISS has the flexibility to find that directors have failed in their risk oversight role if they have neglected to take meaningful steps to increase the resilience of companies to climate-related risks.

The clarification is expected to impact a small number of directors each year.

**Specific questions for this proposed change (in addition to the general questions for all proposed changes (as set out in the introduction):**

- What factors would your organization consider as evidence that the board has demonstrated poor risk oversight of environmental and social concerns?
- In the past, ISS has generally applied the material governance failures policy in a retrospective fashion. Would your organization support establishment of criteria that would allow ISS benchmark policies to proactively identify boards that fail to prepare for foreseeable future risks?

**Europe Policy – Director Elections: Extending Overboarding Policy to Full Market**

Current ISS Policy, incorporating changes:	New ISS Policy:
<p><b><u>Overboarded Directors</u></b></p> <p><b>General Recommendation:</b> In Austria, Belgium, Denmark, Finland, France, Germany, Italy, Luxembourg, the Netherlands, Norway, Poland, Spain, Sweden, and Switzerland, <del>at widely held companies</del>, ISS will generally recommend a vote against a candidate when s/he holds an excessive number of board appointments, as defined by the following guidelines:</p> <ul style="list-style-type: none"> <li>▪ Any person who holds more than five mandates at listed companies will be classified as overboarded. For the purposes of calculating this limit, a non-executive directorship counts as one mandate, a non-executive chairmanship counts as two mandates, and a position as executive director (or a comparable role) is counted as three mandates.</li> <li>▪ Also, any person who holds the position of executive director (or a comparable role) at one company and a non-executive chairman at a different company will be classified as overboarded.</li> </ul>	<p><b><u>Overboarded Directors</u></b></p> <p><b>General Recommendation:</b> In Austria, Belgium, Denmark, Finland, France, Germany, Italy, Luxembourg, the Netherlands, Norway, Poland, Spain, Sweden, and Switzerland, ISS will generally recommend a vote against a candidate when s/he holds an excessive number of board appointments, as defined by the following guidelines:</p> <ul style="list-style-type: none"> <li>▪ Any person who holds more than five mandates at listed companies will be classified as overboarded. For the purposes of calculating this limit, a non-executive directorship counts as one mandate, a non-executive chairmanship counts as two mandates, and a position as executive director (or a comparable role) is counted as three mandates.</li> <li>▪ Also, any person who holds the position of executive director (or a comparable role) at one company and a non-executive chairman at a different company will be classified as overboarded.</li> </ul>

**Rationale for Proposed Change:**

**Background**

The harmonization of overboarding standards across Continental European markets to all companies will be beneficial in terms of equal treatment between listed companies under ISS coverage. According to ISS' voting policy guidelines for Continental Europe, any director who holds more than five mandates is considered overboarded. For the purposes of calculating this limit, a non-executive directorship counts as one mandate, a non-executive chairmanship counts as two mandates, and a position as executive director (or a comparable role) is counted as three mandates.

**Intent and Impact**

Since the overboarding computation already takes into account board mandates at non-widely held companies, the proposed change would align ISS' treatment of director elections across all companies in Continental Europe.

The table below shows the percentage of overboarded directors per country (all companies covered by ISS, and based on 2020 data) under the current and the newly-proposed policy scenarios:

Country	Core companies		Non-Core companies	
	Current policy	New policy	Current policy	New policy
Austria	2%	3%	5%	8%
Belgium	3%	8%	1%	3%
Denmark	4%	10%	1%	2%
Finland	2%	6%	1%	3%
France	3%	8%	1%	2%
Germany	1%	4%	1%	1%
Italy	2%	4%	1%	1%
Luxembourg	2%	5%	0%	0%
Netherlands	2%	11%	0%	0%
Norway	5%	8%	3%	6%
Poland	1%	4%	2%	4%
Spain	2%	5%	0%	0%
Sweden	9%	17%	2%	5%
Switzerland	3%	10%	2%	3%
<b>Grand Total</b>	<b>3%</b>	<b>8%</b>	<b>2%</b>	<b>3%</b>

## Shareholder Litigation Rights

### United States Policy – Exclusive Forum Proposals

Current ISS Policy, incorporating changes:	New ISS Policy:
<p><b>Shareholder Litigation Rights</b> <del>(including Exclusive Venue and Fee-Shifting Bylaw Provisions)</del></p> <p><b><u>Federal Forum Selection Provisions</u></b></p> <p>Federal forum selection provisions require that U.S. federal courts be the sole forum for shareholders to litigate claims arising under federal securities law.</p> <p><b>General Recommendation:</b> Generally vote for federal forum selection provisions in the charter or bylaws that specify "the district courts of the United States" as the exclusive forum for federal securities law matters.</p> <p>Vote against provisions that restrict the forum to a particular federal district court. Unilateral adoption (without a shareholder vote) of such a provision will generally be considered a one-time failure under the <u>Unilateral Bylaw/Charter Amendments</u> policy.</p> <p><b>Exclusive Forum Provisions for State Law Matters</b></p> <p>Exclusive forum provisions in the charter or bylaws restrict shareholders' ability to bring derivative lawsuits against the company, for claims arising out of state corporate law, to the courts of a particular state (generally the state of incorporation).</p> <p><del>Bylaw provisions impacting shareholders' ability to bring suit against the company may include exclusive venue provisions, which provide that the state of incorporation shall be the sole venue for certain types of litigation, and fee-shifting provisions that require a shareholder who sues a company unsuccessfully to pay all litigation expenses of the defendant corporation.</del></p>	<p><b>Shareholder Litigation Rights</b></p> <p><b><u>Federal Forum Selection Provisions</u></b></p> <p>Federal forum selection provisions require that U.S. federal courts be the sole forum for shareholders to litigate claims arising under federal securities law.</p> <p><b>General Recommendation:</b> Generally vote for federal forum selection provisions in the charter or bylaws that specify "the district courts of the United States" as the exclusive forum for federal securities law matters.</p> <p>Vote against provisions that restrict the forum to a particular federal district court. Unilateral adoption (without a shareholder vote) of such a provision will generally be considered a one-time failure under the <u>Unilateral Bylaw/Charter Amendments</u> policy.</p> <p><b><u>Exclusive Forum Provisions for State Law Matters</u></b></p> <p>Exclusive forum provisions in the charter or bylaws restrict shareholders' ability to bring derivative lawsuits against the company, for claims arising out of state corporate law, to the courts of a particular state (generally the state of incorporation).</p>

**General Recommendation:** Generally vote for charter or bylaw provisions that specify Delaware, or the Delaware Court of Chancery, as the exclusive forum for corporate law matters for Delaware corporations, in the absence of serious concerns about corporate governance or board responsiveness to shareholders.

For states other than Delaware, vote case-by-case on ~~bylaws~~ exclusive forum provisions ~~which impact shareholders' litigation rights~~, taking into consideration ~~account factors such as:~~

- The company's stated rationale for adopting such a provision;
- Disclosure of past harm from ~~shareholder lawsuits in which plaintiffs were unsuccessful or~~ duplicative shareholder lawsuits in more than one forum ~~outside the jurisdiction of incorporation;~~
- The breadth of application of the ~~charter or~~ bylaw provision, including the types of lawsuits to which it would apply and the definition of key terms; and
- Governance features such as shareholders' ability to repeal the provision at a later date (including the vote standard applied when shareholders attempt to amend the ~~charter or~~ bylaws) and their ability to hold directors accountable through annual director elections and a majority vote standard in uncontested elections.

Generally vote against provisions that specify a state other than the state of incorporation as the exclusive forum for corporate law matters, or that specify a particular local court within the state. Unilateral adoption of such a provision will generally be considered a one-time failure under the Unilateral Bylaw/Charter Amendments policy.

**Fee shifting**

Fee-shifting provisions in the charter or bylaws require that a shareholder who sues a company unsuccessfully pay all litigation expenses of the defendant corporation and its directors and officers.

**General Recommendation:** Generally vote for charter or bylaw provisions that specify Delaware, or the Delaware Court of Chancery, as the exclusive forum for corporate law matters for Delaware corporations, in the absence of serious concerns about corporate governance or board responsiveness to shareholders.

For states other than Delaware, vote case-by-case on exclusive forum provisions, taking into consideration:

- The company's stated rationale for adopting such a provision;
- Disclosure of past harm from duplicative shareholder lawsuits in more than one forum;
- The breadth of application of the charter or bylaw provision, including the types of lawsuits to which it would apply and the definition of key terms; and
- Governance features such as shareholders' ability to repeal the provision at a later date (including the vote standard applied when shareholders attempt to amend the charter or bylaws) and their ability to hold directors accountable through annual director elections and a majority vote standard in uncontested elections.

Generally vote against provisions that specify a state other than the state of incorporation as the exclusive forum for corporate law matters, or that specify a particular local court within the state. Unilateral adoption of such a provision will generally be considered a one-time failure under the Unilateral Bylaw/Charter Amendments policy.

**Fee shifting**

Fee-shifting provisions in the charter or bylaws require that a shareholder who sues a company unsuccessfully pay all litigation expenses of the defendant corporation and its directors and officers.

**General Recommendation:** Generally vote against provisions that mandate fee-shifting whenever plaintiffs are not completely successful on the merits (i.e., including cases where the plaintiffs are partially successful).

<p><b>General Recommendation:</b> Generally vote against <del>bylaws provisions</del> that mandate fee-shifting whenever plaintiffs are not completely successful on the merits (i.e., including cases where the plaintiffs are partially successful).</p> <p>Unilateral adoption of a <del>fee-shifting-by-the-board-of-bylaw</del> provisions <del>which affect shareholders' litigation rights</del> will generally be considered an ongoing failure under the <del>will be evaluated under ISS' policy on</del> <u>Unilateral Bylaw/Charter Amendments</u> policy.</p>	<p>Unilateral adoption of a fee-shifting provision will generally be considered an ongoing failure under the <u>Unilateral Bylaw/Charter Amendments</u> policy.</p>
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**Rationale for Proposed Change:**

*Background*

When evaluating proposals to establish the state of incorporation as the exclusive forum for cases arising under state corporate law, shareholders must balance the advantages (potential cost savings from eliminating duplicative litigation in more than one forum; eliminating risks of unpredictable or incorrect outcomes from courts that are unfamiliar with the law of the state of incorporation, or even unfamiliar with corporate law generally) against the disadvantages (inconvenience to plaintiffs who must bring suit in another state and hire local counsel there). However, exclusive federal forum provisions seen to date generally require only that federal securities litigation be brought in the district courts of the United States, and generally do not specify a particular federal district. Plaintiffs are therefore free to file such suits in the district courts in their home states. Without the argument that an exclusive forum provision for federal law cases would seriously inconvenience plaintiffs, the benefits of eliminating duplicative litigation and ensuring that cases are heard by courts that are well-versed in the applicable law carry greater weight. However, it is acknowledged that separate exclusive forum provisions for state corporate law claims and federal securities law claims will likely prevent plaintiffs from bringing cases alleging both types of claims in the same court.

Because Delaware has a separate court system specializing in corporate law cases, with a large body of precedent stemming from Delaware's status as the most common state of incorporation in the US, the likelihood of a speedy and efficient resolution of Delaware corporate law cases, in particular, is considered to be greater if they are heard in Delaware courts. Therefore, in the absence of concerns about abuse of the provision or about poor governance more generally, ISS will generally recommend in favor of charter or bylaw provisions designating Delaware as the exclusive forum for state corporate law matters at companies incorporated in that state.

*Intent and Impact*

Charter and bylaw provisions designating US federal courts as the exclusive forum for cases arising under federal securities law (the Securities Act of 1933, as amended), which had previously been held to be impermissible by the Delaware Court of Chancery, were deemed to be facially valid under Delaware law in a March 2020 ruling by the Delaware Supreme Court. Some companies began incorporating such provisions into their governing documents almost immediately, either in the form of a bylaw amendment (which can be accomplished unilaterally by the board) or a charter amendment (which requires shareholder approval). This necessitates a new policy on these new voting items and provides an opportunity to re-examine the existing policy on exclusive forum provisions for state law matters and to reorganize the entire litigation rights section for clarity. The policy on fee-shifting remains unchanged.

The number of vote recommendations likely to be impacted by the proposed policy change is limited.

Specific question for this proposed change (in addition to the general questions for all proposed changes (as set out in the introduction):

▷ Is your organization comfortable with federal courts as the appropriate exclusive forum for federal securities law matters? If not, why not?

### Canada Policy (TSX-Listed Companies and Venture Companies) – Exclusive Forum Proposals

Current ISS Policy, incorporating changes:	New ISS Policy:
<p><b>General Recommendation:</b> Vote case-by-case on proposals to adopt an exclusive forum by-law or to amend by-laws to add an exclusive forum provision, taking the following into consideration:</p> <ul style="list-style-type: none"> <li>▪ Jurisdiction of incorporation;</li> <li>▪ Board rationale for adopting exclusive forum;</li> <li>▪ Legal actions subject to the exclusive forum provision;</li> <li>▪ Evidence of past harm as a result of shareholder legal action against the company originating outside of the jurisdiction of incorporation;</li> <li>▪ Company corporate governance provisions and shareholder rights;</li> <li>▪ Any other problematic provisions that raise concerns regarding shareholder rights.</li> </ul>	<p><b>General Recommendation:</b> Vote case-by-case on proposals to adopt an exclusive forum by-law or to amend by-laws to add an exclusive forum provision, taking the following into consideration:</p> <ul style="list-style-type: none"> <li>▪ Jurisdiction of incorporation;</li> <li>▪ Board rationale for adopting exclusive forum;</li> <li>▪ Legal actions subject to the exclusive forum provision;</li> <li>▪ Evidence of past harm as a result of shareholder legal action against the company originating outside of the jurisdiction of incorporation;</li> <li>▪ Company corporate governance provisions and shareholder rights;</li> <li>▪ Any other problematic provisions that raise concerns regarding shareholder rights.</li> </ul>

### Rationale for Change:

#### Background

Exclusive forum by-laws, which have been adopted widely in the US market, are still relatively new to the Canadian market, although an increasing number of companies continue to adopt these provisions as by-laws which require shareholder approval. There is merit to the notion that judges based in a corporation's jurisdiction of incorporation are best suited to apply that jurisdiction's law to those companies. As well, given a corporation's typically strong presence in that province or jurisdiction, an exclusive forum provision may help to reduce the likelihood of high legal costs accrued through litigation outside of the jurisdiction of incorporation.

It can be argued, however, that there is often more than one proper forum available to shareholder plaintiffs, and this proposal would curtail the right of shareholders to select any proper forum of their choosing. The proposed exclusive forum jurisdiction and the details of the extent and types of legal actions that would be subject to the exclusive forum by-law provide critical information to shareholders whose rights may be impacted. This information together with the board of directors' rationale in adopting an exclusive forum by-law will be key considerations in evaluating the acceptability of such a proposal. As well, the absence of a compelling company-specific history with regard to out-of-province/jurisdiction shareholder litigation is important in light of the limitation on shareholder litigation rights that this

provision represents. More generally, a company's track record vis-à-vis corporate governance and shareholder rights should be examined to identify any other concerns when considering the acceptability of an exclusive forum by-law.

*Intent and Impact*

This proposed policy codifies the policy approach currently applied as it is expected that more companies will adopt exclusive forum by-laws. The proposed policy will provide a transparent policy guideline and rationale.

With one exception, ISS has not supported exclusive forum proposals in the Canadian market. Exceptions are expected to be rare depending on the factors considered under the ISS policy.

## Disclosure

### Europe Policy – Remuneration Disclosure

Current ISS Policy, incorporating changes:	New ISS Policy:
<p><b>General Recommendation:</b> ISS will generally recommend a vote against a company's compensation-related proposal if such proposal fails to comply with one or a combination of several of the global principles and their corresponding rules:</p> <p>1. Provide shareholders with clear and comprehensive compensation disclosures:</p> <ul style="list-style-type: none"> <li>1.1. Information on compensation-related proposals shall be made available to shareholders in a timely manner;</li> <li>1.2.1 The level of disclosure of the proposed compensation policy and remuneration report shall be sufficient for shareholders to make an informed decision and shall be in line with what local market best practice standards dictate;</li> <li>1.2.2. Remuneration report disclosure is expected to include amongst others: amounts paid to executives, alignment between company performance and payout to executives, disclosure of variable incentive targets and according levels of achievement and performance awards made, after the relevant performance period (ex-post), and disclosure and explanation of use of any discretionary authority or derogation clause by the board or remuneration committee to adjust pay outcomes.</li> </ul>	<p><b>General Recommendation:</b> ISS will generally recommend a vote against a company's compensation-related proposal if such proposal fails to comply with one or a combination of several of the global principles and their corresponding rules:</p> <p>1. Provide shareholders with clear and comprehensive compensation disclosures:</p> <ul style="list-style-type: none"> <li>1.1. Information on compensation-related proposals shall be made available to shareholders in a timely manner;</li> <li>1.2.1 The level of disclosure of the proposed compensation policy and remuneration report shall be sufficient for shareholders to make an informed decision and shall be in line with what local market best practice standards dictate;</li> <li>1.2.2. Remuneration report disclosure is expected to include amongst others: amounts paid to executives, alignment between company performance and payout to executives, disclosure of variable incentive targets and according levels of achievement and performance awards made, after the relevant performance period (ex-post), and disclosure and explanation of use of any discretionary authority or derogation clause by the board or remuneration committee to adjust pay outcomes.</li> </ul>

<p>1.3. Companies shall adequately disclose all elements of the compensation, including:</p> <p>1.3.1. Any short- or long-term compensation component must include a maximum award limit.</p> <p>1.3.2. Long-term incentive plans must provide sufficient disclosure of (i) the exercise price/strike price (options); (ii) discount on grant; (iii) grant date/period; (iv) exercise/vesting period; and, if applicable, (v) performance criteria.</p> <p>1.3.3. Discretionary payments, if applicable.</p>	<p>1.3. Companies shall adequately disclose all elements of the compensation, including:</p> <p>1.3.1. Any short- or long-term compensation component must include a maximum award limit.</p> <p>1.3.2. Long-term incentive plans must provide sufficient disclosure of (i) the exercise price/strike price (options); (ii) discount on grant; (iii) grant date/period; (iv) exercise/vesting period; and, if applicable, (v) performance criteria.</p> <p>1.3.3. Discretionary payments, if applicable.</p>
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**Rationale for Change:**

*Background*

Given that SRD II is widely implemented across Europe, practically all companies will have an annual vote on the remuneration report. Currently Continental European Policy Guidelines do not refer specifically to minimum disclosure standards for the remuneration report.

*Intent and Impact*

The policy reflects minimum disclosure expectations, aligned with SRD II requirements, best practice recommendations under the European Commission's Guidelines for the Presentation of the Remuneration Report, and general expectations by the investment community.

It is not possible to gauge impact because the 2021 season will be first season that many markets will see their first remuneration report (“say on pay”) votes. As an example, the Netherlands required remuneration report votes in 2020, and some of the information was not widely available.

**Middle East & North Africa – Creation of Stand-Alone Policy and Policy on Disclosure of Corporate Governance and/or Board Reports**

In order to be responsive to local market norms and regulations, ISS proposes to create a stand-alone Middle East & North Africa voting policy, separating this out from the EMEA Regional Policy document where these markets have previously been included. As part of this, we propose one policy change this year on disclosure of corporate governance and/or board reports. ISS will generally vote for approval of the corporate governance and/or the board report, unless information about corporate governance practices to be included in those reports has not been publicly disclosed by the company in a timely manner.

Current ISS Policy, incorporating changes:	New ISS Policy:
<p><b>General Recommendation:</b></p> <p>Vote for approval of financial statements and director and auditor reports, unless:</p> <ul style="list-style-type: none"> <li>▪ There are concerns about the accounts presented or audit procedures used; or</li> <li>▪ The company is not responsive to shareholder questions about specific items that should be publicly disclosed.</li> </ul> <p>Generally, vote for approval of the corporate governance and/or the board report, unless information about corporate governance practices to be included in those reports has not been publicly disclosed by the company in a timely manner.</p>	<p><b>General Recommendation:</b></p> <p>Vote for approval of financial statements and director and auditor reports, unless:</p> <ul style="list-style-type: none"> <li>▪ There are concerns about the accounts presented or audit procedures used; or</li> <li>▪ The company is not responsive to shareholder questions about specific items that should be publicly disclosed.</li> </ul> <p>Generally, vote for approval of the corporate governance and/or the board report, unless information about corporate governance practices to be included in those reports has not been publicly disclosed by the company in a timely manner.</p>

**Rationale for Proposed Change Regarding Voting for the Corporate Governance and/or Board Reports:**

*Background*

In the Middle East and Northern Africa, publicly-listed companies are required to prepare an annual report on the company's activity and a corporate governance report/section reflecting the company's governance practices during the reported fiscal year such as board and committees' composition, attendance, significant shareholders, external auditors, and information about compliance with the local governance regulations. However, some companies, especially those listed on Bursa Kuwait and Qatar stock exchange, continuously fail to publicly disclose such reports sufficiently ahead of the AGM, which makes impossible the assessment of their governance practices during the year.

*Intent and Impact*

The overall impact of applying such policy will be more likely on a market level and will not affect all countries in the region especially countries with high level of corporate governance disclosure. The main impact of this policy update will be seen in markets with very low level of disclosure such as Kuwait and Qatar, where we started to flag the absence of the corporate governance reports for last previous two fiscal years, as the absence of this report made impossible the assessment of the board composition.

**Sub-Saharan Africa – Creation of Stand-Alone Policy and Policy on Disclosure of Auditor Fees**

In order to be responsive to local market norms and regulations, ISS proposes to create a stand-alone Sub-Saharan Africa voting policy, separating this out from the EMEA Regional Policy document where these markets have previously been included. As part of this, we propose one policy change this year on disclosure of auditor fees and will add a policy to codify existing practice.

The policy change proposed is to generally vote for the (re)election of auditors and/or proposals authorizing the board to fix auditor fees, unless the auditor(s)' fees for the fiscal year in review are not publicly disclosed by the company in a timely manner.

Current ISS Policy, incorporating changes:	New ISS Policy:
<p><b>General Recommendation:</b> Vote for the (re)election of auditors and/or proposals authorizing the board to fix auditor fees, unless:</p> <ul style="list-style-type: none"> <li>▪ There are serious concerns about the procedures used by the auditor;</li> <li>▪ There is reason to believe that the auditor has rendered an opinion which is neither accurate nor indicative of the company's financial position;</li> <li>▪ External auditors have previously served the company in an executive capacity or can otherwise be considered affiliated with the company;</li> <li>▪ The name(s) of the proposed auditors has not been published;</li> <li>▪ The auditors are being changed without explanation;</li> <li>▪ <b>The auditor(s)' fees for the fiscal year in review are not publicly disclosed by the company in a timely manner;</b></li> <li>▪ For widely-held companies, fees for non-audit services exceed either 100 percent of standard audit-related fees or any stricter limit set in local best practice recommendations or law.</li> </ul> <p>In circumstances where fees for non-audit services include fees related to significant one-time capital structure events (initial public offerings, bankruptcy emergencies, and spinoffs) and the company makes public disclosure of the amount and nature of those fees, which are an exception to the standard "non-audit fee" category, then such fees may be excluded from the non-audit fees considered in determining the ratio of non-audit to audit fees.</p> <p>For concerns related to the audit procedures, independence of auditors, and/or name of auditors, <b>audit fees disclosure</b>, ISS may recommend against the auditor (re)election. For concerns related to fees paid to the auditors, ISS may</p>	<p><b>General Recommendation:</b> Vote for the (re)election of auditors and/or proposals authorizing the board to fix auditor fees, unless:</p> <ul style="list-style-type: none"> <li>▪ There are serious concerns about the procedures used by the auditor;</li> <li>▪ There is reason to believe that the auditor has rendered an opinion which is neither accurate nor indicative of the company's financial position;</li> <li>▪ External auditors have previously served the company in an executive capacity or can otherwise be considered affiliated with the company;</li> <li>▪ The name(s) of the proposed auditors has not been published;</li> <li>▪ The auditors are being changed without explanation;</li> <li>▪ The auditor(s)' fees for the fiscal year in review are not publicly disclosed by the company in a timely manner;</li> <li>▪ For widely-held companies, fees for non-audit services exceed either 100 percent of standard audit-related fees or any stricter limit set in local best practice recommendations or law.</li> </ul> <p>In circumstances where fees for non-audit services include fees related to significant one-time capital structure events (initial public offerings, bankruptcy emergencies, and spinoffs) and the company makes public disclosure of the amount and nature of those fees, which are an exception to the standard "non-audit fee" category, then such fees may be excluded from the non-audit fees considered in determining the ratio of non-audit to audit fees.</p> <p>For concerns related to the audit procedures, independence of auditors, and/or name of auditors, audit fees disclosure, ISS may recommend against the auditor (re)election. For concerns related to fees paid to the auditors, ISS may</p>

recommend against remuneration of auditors if this is a separate voting item; otherwise, ISS may recommend against the auditor election.

recommend against remuneration of auditors if this is a separate voting item; otherwise, ISS may recommend against the auditor election.

### **Rationale for Proposed Change Regarding Disclosure of Auditor Fees:**

#### **Background**

Regulatory bodies in several developed markets worldwide require company disclosure of audit and non-audit fees of auditors. Auditor-related disclosure requirements differ widely by market, nonetheless, local laws in Sub-Saharan African markets establish that boards should ensure that information related to audit fees is disclosed. Currently, ISS policy in a more developed market such as South Africa is to vote against proposals regarding auditor remuneration or against the re-election of auditors if non-audit related fees are substantial or are routinely in excess of standard audit-related fees, or if audit fees are not disclosed.

#### **Intent and Impact**

Introducing such a policy enables ISS to assess auditor fees more coherently and reflects what is already recommended under the countries' laws/codes. The application of this new policy also allows alignment with the current voting policy of South Africa in this regard.

As local laws in Sub-Saharan African countries require information about audit fees to be publicly disclosed, it is reflected in companies' practices in those markets where information about audit related fees is always disclosed with rare cases of non-disclosure. Therefore, the impact of this new policy is not likely to be significant if implemented. As such, the application of this new policy will only affect 15 percent of all Sub-Saharan companies.

## Capital

### UK and Ireland Policy – Share Issuance Authority (Investment Companies)

Current ISS Policy, incorporating changes:	New ISS Policy:
<p><b>7. Investment Companies</b></p> <p>The voting guidelines previously issued by the NAPF (now the Pensions and Lifetime Savings Association) form the basis of our benchmark recommendations for investment trusts and venture capital trusts; these guidelines also refer to the key principles of the AIC Code.</p> <p>Investment companies differ significantly in terms of structure from the majority of companies covered by the UK and Ireland policy because they generally have: (i) a board comprising of non-executive directors (NEDs) who are responsible for safeguarding shareholder interests; and (ii) an investment manager (either a person or an organization) who is responsible for the company's portfolio. The majority of trusts are externally managed, but some investment trusts are internally-managed or self-managed. This means that they do not have third party investment managers, and instead have a managing director (normally a board member) who is responsible for investment decisions.</p> <p>...</p> <p><b>General Recommendation:</b> Generally vote for a resolution to authorise the issuance of equity <del>unless if there is a firm commitment from the board that shares would only be issued at a price at or above net asset value<sup>12</sup>. Otherwise, generally vote for a resolution to authorise the issuance of equity, unless:</del></p> <ul style="list-style-type: none"> <li>▪ The general issuance authority exceeds one-third (33 percent) of the issued share capital. Assuming it is no more than one-third, a further one-third of</li> </ul>	<p><b>7. Investment Companies</b></p> <p>The voting guidelines previously issued by the NAPF (now the Pensions and Lifetime Savings Association) form the basis of our benchmark recommendations for investment trusts and venture capital trusts; these guidelines also refer to the key principles of the AIC Code.</p> <p>Investment companies differ significantly in terms of structure from the majority of companies covered by the UK and Ireland policy because they generally have: (i) a board comprising of non-executive directors (NEDs) who are responsible for safeguarding shareholder interests; and (ii) an investment manager (either a person or an organization) who is responsible for the company's portfolio. The majority of trusts are externally managed, but some investment trusts are internally-managed or self-managed. This means that they do not have third party investment managers, and instead have a managing director (normally a board member) who is responsible for investment decisions.</p> <p>...</p> <p><b>General Recommendation:</b> Generally vote for a resolution to authorise the issuance of equity if there is a firm commitment from the board that shares would only be issued at a price at or above net asset value<sup>12</sup>. Otherwise, generally vote for a resolution to authorise the issuance of equity, unless:</p> <ul style="list-style-type: none"> <li>▪ The general issuance authority exceeds one-third (33 percent) of the issued share capital. Assuming it is no more than one-third, a further one-third of</li> </ul>

<sup>12</sup> LR 15.4.11 prohibits investment trusts with a premium listing from issuing shares below NAV without shareholder approval. For the avoidance of doubt, ISS will require an explicit confirmation from the company that shares would only be issued at or above the prevailing NAV per share.

<p>the issued share capital may also be applied to a fully pre-emptive rights issue taking the acceptable aggregate authority to two-thirds (66 percent); or</p> <ul style="list-style-type: none"> <li>▪ The routine authority to disapply pre-emption rights exceeds 5 percent of the issued share capital in any one year, <del>or 10 percent if there is a commitment that any issuance will be at or above net asset value.</del></li> </ul> <p>Share issuance proposals which involve the issue of C shares will be considered using the above guidance.</p>	<p>the issued share capital may also be applied to a fully pre-emptive rights issue taking the acceptable aggregate authority to two-thirds (66 percent); or</p> <ul style="list-style-type: none"> <li>▪ The routine authority to disapply pre-emption rights exceeds 5 percent of the issued share capital in any one year.</li> </ul> <p>Share issuance proposals which involve the issue of C shares will be considered using the above guidance.</p>
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**Rationale for Proposed Change:**

*Background*

ISS policy for the U.K. & Ireland features a section dedicated to investment companies, also known as investment trusts, which recognise the differences between these entities and publicly traded operating companies. The policy is based on legacy voting guidelines previously issued by the UK National Association of Pension Funds (now the Pensions and Lifetime Savings Association). These guidelines are however no longer maintained, having last been updated in 2012.

In line with the former NAPF guidelines, ISS' policy currently allows a maximum limit of 5 percent of the issued share capital for general issuance authorities without pre-emptive rights, or 10 percent when the shares are to be issued at a premium to net asset value (NAV). ISS notes, however, the guidance issued by the U.K.'s Pre-Emption Group, which states that "in the case of an investment trust or similar listed closed-ended fund company, if there would be no resulting value dilution, for example if an investment trust were to issue shares at a premium to the underlying net asset value per share, this would not normally raise any concerns".

Most investment trusts trade at a discount to their NAV, and the issuance of new shares above NAV may be used to manage this discount. Shares issued above NAV do not result in economic dilution to shareholders, and many investors hold the view that the benefits of increased liquidity, lowered costs per share and greater diversification outweigh any concern about the dilution of voting rights, so long as shares are issued at or above NAV.

*Intent and Impact*

This update aligns the ISS policy to the position set out by the UK Pre-Emption Group, the body that sets the market standards on share issuance authorities.

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