

October 26, 2015

ISS Announces Preliminary 2016 Voting Policy Updates and Opens Comment Period

Today, ISS announced it is considering changing its U.S. voting policies in three areas heading into the 2016 proxy season: (i) when a sitting CEO or a non-CEO director will be viewed as “[overboarded](#)” on account of service on multiple boards, (ii) [unilateral board actions](#) that reduce shareholder rights (with a focus on newly classified boards and supermajority voting provisions) and (iii) [compensation disclosure at externally managed issuers](#). Notably, the areas highlighted for change in the U.S. market do not address proxy access, “responsiveness” to majority-supported shareholder proposals or other current topics. ISS is also [proposing](#) changes to non-U.S. policies, including with respect to Brazil, Canada, France, Hong Kong & Singapore, India, Japan, the Middle East & Africa and the U.K. & Ireland.

Overboarding. ISS is proposing lowering the acceptable number of board positions as follows:

1. For CEOs with outside directorships, a limit of one outside public company directorship besides their own (with “Withhold” recommendations applying only to the CEOs’ outside boards); and
2. For directors who are not the CEO, reducing the acceptable number of total public boards from the current six (the board under consideration plus five others) to a total of either: (a) five (the board under consideration plus four others) or (b) four (the board under consideration plus three others).

In all cases, there would be a proposed one-year grace period until 2017, during which time ISS would include cautionary language in research reports but would not recommend negative votes for this reason.

Unilateral Board Actions. ISS is anticipating generally issuing adverse vote recommendations for director nominees whenever the board of a post-IPO company unilaterally amends its governing documents to newly classify the board or establish supermajority vote requirements; such recommendations would continue until the unilateral action is reversed or ratified by a shareholder vote. ISS is also considering whether or not to generally issue adverse recommendations if a pre-IPO board amends the company’s bylaws or charter prior to or in connection with the IPO to classify the board and establish supermajority vote requirements to amend the bylaws or charter. If this new policy were enacted, withhold recommendations would apply to director nominees at the annual meetings following completion of the IPO. ISS also asks whether other board actions beyond self-classification and adopting new supermajority requirements should lead to adverse recommendations.

Compensation at Externally Managed Issuers (EMIs). ISS is proposing to generally recommend “Against” the say-on-pay proposal at EMIs (or the EMI’s compensation committee members, the compensation committee chair, or the entire board, as deemed appropriate, in the absence of a say-on-pay proposal on the ballot) “where a comprehensive pay analysis is impossible because the EMI provides insufficient disclosure about compensation practices and payments made to executives on the part of the external manager.”

Comment Period, Timing and Other Potential Policy Changes. ISS will be seeking input on the updates outlined above using various channels, and formal written comments are due by November 9, 2015 (and may be submitted by e-mail to policy@issgovernance.com). ISS expects to release its final 2016 voting policies on November 18, and the final policies will apply to shareholder meetings taking place on or after February 1, 2016. Note that in addition to releasing draft and final policies, ISS traditionally publishes new FAQs that clarify its positions and policies on various topics, and the final 2016 policies may feature significant changes beyond those outlined in today’s policy consultations and for which formal comment is being sought.

As always, neither boards nor investors should substitute ISS policies or pronouncements for their own independent, case-by-case, fiduciary judgments.

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