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ISS's 2017 Policy Survey Results

Institutional Shareholder Services (ISS) recently [published](#) the results of its annual survey of investors and companies, which it uses to inform possible changes to its proxy voting policies. As issuers proceed with off-season shareholder engagements and prepare for the 2017 proxy season, these results suggest areas of potentially increased focus. Unsurprisingly, ISS's investor and company respondents do not always see eye-to-eye.

- **Director Tenure:** The majority of investor respondents expressed serious concern at excessively lengthy director tenure, with 53% identifying the absence of any newly-appointed independent directors in recent years as problematic and 68% pointing to a high proportion of long tenured directors as the trigger for concern. On the other hand, 34% of non-investors believed that long board tenure, by itself, is not a concern and a number of corporate respondents noted that a long tenure can be beneficial as depth of experience gives directors greater confidence, independence from management, and historical context for evaluating corporate strategy and performance. We have previously [discussed](#) our view that the inordinate focus on director tenure is generally misplaced, and that investors and companies would be better served by addressing underlying issues and concerns directly rather than using board tenure as a proxy.
- **Overboarding of Executive Chairs:** Investor respondents strongly (64%) favored the policy of subjecting executive (non-CEO) chairs to the stricter overboarding policies that apply to CEO chairs (*i.e.*, no more than three total boards instead of five). Only 38% of non-investors support the stricter standard for executive chairs. Several respondents, both investor and non-investor, indicated a preference for case-by-case determinations as the role and responsibilities of an executive chair vary from company to company.
- **Non-TSR Financial Metrics When Assessing “Pay-For-Performance”:** Investors (79%) and non-investors (68%) alike supported including metrics beyond total shareholder return in ISS's quantitative “pay-for-performance” models. Respondents from both groups suggested including return on investment (*e.g.*, ROIC), earnings (*e.g.*, EPS, EBITDA), and revenue (*e.g.*, absolute revenue, revenue growth) metrics in the models. Several investors and non-investors viewed industry-tailored and company-specific performance metrics to be most appropriate.
- **Dual-Class Stock:** While a majority of investor respondents supported ISS recommending against directors at newly public companies with multiple classes of stock having differential voting rights, a significant portion of investors and a majority of non-investors supported a negative recommendation only if such provisions were put in place permanently (that is, with no sunset provision), and many non-investors (46%) wholly opposed negative ISS recommendations in the IPO context. Many company respondents encouraged a case-by-case approach or argued that investors who object to a capital structure should not invest in the company.

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- **Say-When-On-Pay:** Two-thirds of investor respondents supported annual advisory votes on compensation, but only 42% of non-investors supported an annual standard.
- **MUTA:** With respect to several protective Maryland takeover law provisions, the ISS survey asked if an adverse recommendation should be issued against Maryland-incorporated companies that do not pre-emptively “opt-out” of certain state law rights. ISS currently does not and instead takes into account company-specific circumstances to consider withhold recommendations only if a company affirmatively invokes Maryland law provisions to “unilaterally” amend the charter or bylaws to “diminish” shareholder rights in a “materially adverse” way or fails to respond adequately to a majority-supported shareholder proposal asking the company to “opt-out.” On this topic, ISS did not ask if continuing its current approach was acceptable nor use a more nuanced survey approach like that taken with dual-class stock. On the survey methodology used (with which we take issue), a significant majority of investor respondents supported an adverse ISS recommendation where a Maryland company has not opted out of the state takeover provisions. Conversely, 56% of corporate respondents indicated that a negative recommendation would not be warranted.

With these survey responses in mind, ISS will issue proposed voting policy updates later this fall in some or all of these policy areas; the draft policy updates will be subject to a comment period prior to being finalized in November or December of this year.

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