

November 17, 2017

ISS Announces Final 2018 Voting Policies

Proxy advisory firm Institutional Shareholder Services (ISS) has announced its final [U.S. voting policies](#) for the 2018 proxy season, which will apply to stockholder meetings held on or after February 1, 2018. ISS had previously [released draft proposals](#) on several (though not all) of the topics in October. Changes to non-U.S. voting policies were [also announced](#).

Shareholder Rights Plans. In order to “simplify” ISS’s approach to rights plans and “to strengthen the [ISS] principle that poison pills should be approved by shareholders in a timely fashion,” ISS will now recommend voting against all directors of companies with “long-term” (greater than one year) unilaterally adopted shareholder rights plans at every annual meeting, regardless of whether the board is annually elected. Short-term rights plans will continue to be assessed on a case-by-case basis, but ISS’s analysis will focus primarily on the company’s rationale for the unilateral adoption.

“Excessive” Non-Employee Director Compensation. ISS will recommend voting against or withholding votes from members of board committees responsible for setting non-employee director compensation when there is a “pattern” (over two or more consecutive years) of “excessive” non-employee director pay without a compelling rationale or other mitigating factors. Because “excessive” pay would need to be flagged for at least two years under the new policy, ISS will not make negative vote recommendations on this basis until 2019.

Disclosure of Shareholder Engagement. In considering whether to recommend against compensation committee members of companies whose Say-on-Pay proposals received less than 70% of votes cast, ISS considers the company’s disclosure regarding shareholder engagement efforts. ISS provided guidance regarding the level of detail included in such disclosures, including whether the company disclosed the timing and frequency of engagements with major institutional investors and whether independent directors participated; disclosure of the specific concerns voiced by dissenting shareholders that led to the Say-on-Pay opposition; and disclosure of specific and meaningful actions taken to address the shareholders’ concerns.

Gender Pay Gap Proposals and Board Diversity. ISS will vote case-by-case on requests for reports on a company’s pay data by gender, or a report on a company’s policies and goals to reduce any gender pay gap, taking into account the company’s current policies and disclosure related to its diversity and inclusion policies and practices, its compensation philosophy and its fair and equitable compensation practices. ISS will also take into account whether the company has been the subject of

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recent controversy or litigation related to gender pay gap issues and whether the company's reporting regarding gender pay gap policies or initiatives is lagging its peers. ISS also noted that it would highlight boards with no gender diversity, but would not make adverse vote recommendations due to a lack of gender diversity. In addition, ISS revised its "Fundamental Principles" to state that boards should be sufficiently diverse to ensure consideration of a wide range of perspectives.

In Canada where there are new disclosure requirements on companies' gender diversity policies, ISS is introducing a new policy on board gender diversity that will generally recommend withhold votes for the chair of the nominating committee if a company has not adopted a formal written gender diversity policy and no female directors serve on its board.

Pledging of Company Stock. ISS has codified its existing practice to recommend withhold votes against the members of the relevant board committee or the entire board where a significant level of pledged company stock by executives or directors raises concerns absent mitigating factors.

Pay-for-Performance Analysis. In connection with its pay-for-performance analysis, ISS will consider, in addition to other alignment tests, the rankings of CEO total pay and company financial performance within a peer group measured over a three-year period.

Other Changes. ISS has further revised its voting recommendations on climate change shareholder proposals in order to promote greater transparency on these matters.

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While we do not expect the ISS policy changes to significantly affect the 2018 proxy season, we believe that ongoing company engagement with its institutional investors will continue to be essential to counteract adverse ISS recommendations.

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