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ISS Provides Guidance on Governance Voting Policies

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On December 20th, ISS issued two extensive FAQs on their voting policies. A separate blog will cover the compensation items.

The non-compensation **FAQs** cover old ground in many respects, including ways to correct factual errors, engagement with ISS, policies related to poison pills and additional information on ISS? specific definitions of director independence.

A few items worth noting include:

- Steps issuers can take to reverse negative recommendations, and the necessary timing of such actions (page 5);
- The factors that determine whether ISS believes an executive or director has pledged a significant amount of stock, the potential impact on director elections and how to mitigate a negative vote, including adopting a forward-looking anti-pledge policy and reducing the amounts pledged over time (pages 10-11); and
- The types of responses to majority-supported shareholder proposals that ISS believes to be sufficient implementation with respect to popular governance proposals that sometimes pass, such as declassification, independent chair, majority voting, right to call special meetings, right to act by written consent and elimination of super-majority voting provisions. While the statements show a willingness to be flexible in some areas such as phased-in declassification and a lead director in lieu of an independent chair, they appear to be fairly restrictive with respect to, for example, majority voting (resignation policies are not sufficient) and special meeting and written consent provisions (certain restrictions are not acceptable) (pages 11-14). ISS positions in these areas, coupled with their new policy that beginning for 2014 elections they will recommend against directors for failure to implement a shareholder proposal that received a majority of votes cast, may increase the pressure on boards to take actions upon receipt of the proposals that are somewhat more favorable to the company, in order to avoid the possibility of having the proposals pass and then being forced to adopt narrower provisions.

The FAQs also provide a number of alternative means of communicating with ISS on various issues.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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