

ISS Announces Policy Survey for 2015 Proxy Season

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Yesterday, [ISS announced](#) the issuance of its 2015 proxy voting policy survey. Investors, issuers and their advisors are encouraged to respond to the survey by August 29. In prior years, feedback to the survey has often informed changes to the voting policy for the upcoming proxy season. Policy updates will be issued in November.

A summary of the questions is set forth below. Not surprisingly, the survey incorporates the latest governance hot topics, much of which has been discussed in this blog and other publications. If new policies on these matters are adopted by ISS, it could strongly impact or otherwise restrict the direction of these trends, including a board's right to adopt controversial bylaw amendments, gender diversity on boards, when to hold boards responsible for risk oversight failures, additional proxy disclosure about auditors and the general magnitude of CEO pay regardless of performance.

Governance

Unilateral bylaw amendments or adoption. Whether (a) boards should be free to adopt any bylaw or charter amendments, (b) boards should be free to adopt any bylaw amendments if shareholders have unfettered (no supermajority) rights to repeal the provision or (c) boards should never adopt amendments that negatively impact shareholder rights without their approval.

The survey includes three related questions about bylaws. First, a list of factors that may be considered when boards adopt bylaw amendments, including the level of board independence, the directors' "track record" of other unilateral actions, the provision being adopted and the vote standards for shareholders to adopt bylaw amendments. Second, the types of bylaw amendments that may be a concern for shareholders, including adopting exclusive forum, fee-shifting or director compensation provisions, increasing authorized capital, increasing advance notice requirements, lowering quorum, and diminishing shareholder rights to call special meetings or act by written consent and classifying a board. Finally, the survey questions whether directors should be held accountable if "shareholder-unfriendly" provisions were adopted prior to the company's IPO. It is unclear what constitutes sufficiently "unfriendly" provisions for this question, but it may include board classification.

Gender diversity. Whether gender diversity is considered at all, and if so (a) only in relation to overall board gender diversity, (b) overall board diversity or (c) for new nominees only.

Risk oversight and audit. As evidenced this season by its actions against certain Target and Walmart directors, ISS may recommend voting against directors if the firm perceives a material failure of risk oversight. The survey asks about the significance of numerous factors when evaluating the board's role in risk oversight in investors' voting decisions on directors, including the board's risk oversight policies and procedures, boardroom oversight actions before and after "the incident" and changes in senior management.

Auditor ratification and election of audit committee members. The survey asks about the significance of numerous additional disclosures about the audit committee's role and involvement regarding the auditor, prior to investors voting on both auditor ratification and election of audit committee members, including disclosure of audit committee oversight, involvement in the selection of the lead engagement partner, factors considered in appointing the auditor, degree of interaction with the auditor, considerations of audit firm tenure and rotations, and considerations regarding auditor compensation.

Compensation

Pay for performance. Whether (a) the compensation committee should have broad discretion to set performance goals and target awards, (b) goals should be set independently of target awards or (c) target awards should be modified if goals are reduced.

Magnitude of CEO pay. Whether (a) absolute limits on CEO pay should be evaluated, regardless of performance, (b) proportional limits should be set in relation to absolute company performance or relative to peers or (c) magnitude is not considered.

Responses to say-on-pay votes. Whether positive changes to the pay program that will be implemented in future years can mitigate existing pay-for-performance problems.

Equity plans. ISS plans to implement a “balanced scorecard” approach to evaluating plan proposals and asks in the survey what weight should be given to plan costs (economic or voting power dilution), features (vesting, acceleration, liberal share recycling) and company practices (historical burn rates or use of performance-based grants).

The survey also questions how ISS should evaluate companies that are incorporated in one market but listed in another (such as US companies incorporated in Bermuda) and shareholder proposals asking companies to adopt quantitative performance goals on environmental and social 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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