

ISS Issues Comment Period for Three Potential U.S. Voting Policies

October 26, 2015 | Client Update | 3-minute read

ISS has issued [its voting policies](#) for public comment, which are due by 6:00 p.m. EST on November 9. The comments will be published (unless otherwise requested). ISS will consider the comments in forming the final policies to be applied to meetings on or after February 1, 2016. Final policies are scheduled to be released on November 18.

Only a handful of policy matters that were addressed in the ISS public survey, which we previously discussed [here](#), are raised for comment. That does not mean these will be the only changes made in the 2016 policies. For example, no comments have been specifically requested on how ISS should assess whether boards were responsive to proxy access shareholder proposals that passed during 2015, but the final policies are likely to indicate the factors that ISS will examine.

For this review, ISS is seeking comment on only three U.S. policies:

Unilateral Board Actions. If a public company board amends a company's governing documents to either classify the board or establish a supermajority vote requirement, ISS will generally issue adverse vote recommendations for director nominees. This will continue until the board reverses the action or ratifies the amendment by a shareholder vote. ISS is also considering implementing the same policy for companies that amend the governing documents prior to or in connection with its initial public offering (IPO).

In 2015, ISS has issued adverse vote recommendations for director nominees at 21 pre-IPO companies and three already-existing public companies. The most significant change being considered is the possibility of ongoing adverse recommendations against director nominees, rather than only for the year after the action is taken by the board.

Overboarding. ISS is considering changing its current policy with respect to the number of public company boards that would constitute "overboarding" and lead to negative recommendations against directors.

For CEOs with outside directorships, the new policy may be a limit of one outside public company directorship besides their own (the current limit is three total public company boards). For directors who are not CEOs, ISS is evaluating whether to lower the current limit of six boards to either four or five. There would be a one-year grace period until 2017 before the policy takes effect.

Under the current policies, between July 1, 2014 and June 30, 2015, 79 CEOs and 21 other directors were considered overboarded. Under the new policies, 336 CEOs and either 231 directors or 61 directors, depending on whether the limit is set at four or five boards, respectively, would be considered overboarded, although not all would automatically receive negative recommendations due to other factors.

Externally Managed Issuers. For externally managed issuers (EMIs), which are typically REITs, ISS is considering recommending against say-on-pay or directors in cases where there is not enough disclosure to conduct a comprehensive pay analysis.

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.

Ning Chiu

+1 212 450 4908

ning.chiu@davispolk.com

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's privacy notice for further details.