

ISS Releases Survey Boards That Will Inform 2017 Policy Changes

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ISS has just released the results of its survey on potential policy changes. We previously discussed the survey questions [here](#). The global survey attracted 439 responses, from 417 organizations. 120 of the respondents were institutional investors, representing 115 organizations, including 73 asset managers or investment managers, 16 mutual funds, 15 government or state-sponsored pension funds, three foundations/endowments, three insurance companies (investment side), two alternative asset managers, and two labor union pension funds. Six responses were received from investor coalitions or consultants or NGOs with an investor perspective. 270 corporate issuers also took part in the survey.

In late October, ISS will release draft policies that will be subject to a public comment period before they are finalized. The final policies will be issued in mid-November, applicable to meetings occurring on or after February 1 of 2017. The survey results divide the perspectives into investor vs. non-investor views, and the following are key highlights of investor responses to U.S. policies only:

Board Refreshment and Tenure. ISS asks for input in the survey on whether there might be concerns about a board's nominating and refreshment process if certain tenure factors are present. Those factors may include any or all of the following: (a) the absence of new independent directors in a recent period, such as the last five years; (b) lengthy average tenure on the board, such as greater than 10 or 15 years; or (c) a high proportion of directors, such as three-fourths of the board, having long tenures of 10 or more years.

53% of investors identified an absence of newly-appointed independent directors in recent years as indicative of a problem, while 51% flagged lengthy average tenure as problematic. 68% responded that a high proportion of directors with long tenure is cause for concern. Investors identified additional factors that they are concerned with, such as directors' ages, a high degree of overlap between the tenure of the CEO and the tenure of the non-executive directors, or lengthy average tenure coupled with underperformance.

Multi-Class Structures at IPO Companies. ISS is considering recommending against director elections at IPO companies, or companies emerging from bankruptcy, with a capital structure that includes multiple classes of stock with unequal voting rights. 57% of investors supported negative recommendations. 19% opposed negative recommendations, and 24% opposed negative recommendations as long as there is a sunset provision on the unequal voting rights.

Say-on-Pay Frequency. With the upcoming vote in 2017, 66% of investors favored annual say-on-pay votes. 11% and 7% favored biennial and triennial votes, respectively. The remaining investors believe that the frequency should depend on company-specific factors, including financial performance and recent problematic pay practices.

Metrics Used in Pay-for-Performance Assessments. ISS's quantitative pay-for-performance models use total shareholder returns over various time horizons, both absolute and relative to peers. Survey respondents were asked whether other metrics would be useful in the initial quantitative screens as well, and, if so, what metrics might be most appropriate.

79% of investors supported using additional metrics. 18% want revenue metrics (absolute revenue or revenue growth); 26% favored the use of earnings metrics (such as EPS or EBITDA); 35% supported return metrics (ROA or ROE); 47% supported return on investment metrics (such as ROIC); 25% supported cash flow metrics; and 22% favored economic profit metrics.

Overboarding of Executive Chairman. Survey respondents were asked whether the "overboarding" standard which should apply to an executive chairman who is not also the company's CEO should be the same standard as that applied

to a sitting CEO (no more than three total boards) or the standard applied to a non-executive director (no more than five total boards). 64% of investors favored the stricter overboarding standard applied to CEOs, while 36% favored the more lenient standard.

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

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