

ISS Survey Results Provide Investor Sentiments on Hot Topics, Including Pay Ratio and One Share-One Vote, and May Influence Next Year's Voting Guidelines

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ISS received 602 responses from 572 organizations, including 121 institutional investors, on its [governance survey](#). Key findings on the governance principles survey are set forth below. ISS also asked more detailed questions in a supplemental survey, which is still open until October. These survey responses may inform ISS' voting policies, and updates are generally issued in November.

One-Share, One-Vote. Among investors, 43% indicated that they find unequal voting rights never appropriate for public companies in any circumstances. Another 43% said unequal voting rights structures may be acceptable for newly-public companies if they are subject to automatic sunset requirements, or at other public companies if the capital structure is put up for periodic reapproval by the holders of the low-vote shares.

Five percent of investors said that companies should be allowed to choose whatever capital structure they see fit, compared to 50% of non-investors who responded.

Pay Ratio. Even ISS seemed surprised that only 16% of investors said they won't use the pay ratio data. Nearly three-quarters indicated that they intend to either compare the ratios across companies or industry sectors, assess year-on-year changes at a company or use both of those methodologies. Some others plan to take a wait-and-see approach.

These results may concern companies that have long advocated that the pay ratio data provides meaningful information, and due to the significant flexibility afforded companies in formulating the pay ratio, makes it particularly useless in terms of comparability across companies. See our [memo](#) on the latest SEC guidance.

Virtual/Hybrid Meetings. About 19% of investors responded that they consider virtual-meetings to be acceptable without reservation, while 8% do not support either "hybrid" or "virtual-only" meetings. Thirty-six percent support "hybrids" (which provide for both in-person and online meetings at the same time), but not "virtual-only" meetings, while 32% indicated that "hybrids" and "virtual-only" meetings that provide the same shareholder rights as a physical meeting would be appropriate.

Cutting through the data, it appears that 42% of investors do not like "virtual-only" meetings in all cases, while 32% favor additional accessibility that allow such meetings to largely replicate in-person meetings, which could increase the costs of virtual-only meetings.

Board Gender Diversity. More than two-thirds (69%) of investors said it would be considered problematic if there are no female directors on a public company board, although 26% of those investors indicated that their concerns may be mitigated if there is a disclosed policy/approach that describes the considerations taken into account by the board or the nominating committee to increase gender diversity on the board. Engagement with the board and/or management was viewed as the most appropriate response for companies without board gender diversity, followed by supporting a shareholder proposal aimed at increasing diversity and finally supporting a shareholder-nominated candidate.

A little less than one-quarter of investors indicated that they would view this on a case-by-case basis, including the appropriateness of the existing directors based on their experience and skill sets; whether the board is composed of people who are capable of representing shareholders; company size; and turn-around situations. Only 8% of investors believe that directors are best suited to determine the board composition and that a lack of women directors is not necessarily problematic.

Share Issuances and Buybacks at Cross-Market Companies. This survey question applied to US-listed companies incorporated in markets such as the UK, Ireland and Netherlands. The laws of those countries may require shareholder approval for share issuances or share repurchases that would not be necessary for other US companies. Currently, ISS evaluates those management proposals by applying the policy of the country of incorporation, but as those policies are aligned with local listing rules or non-US codes of best practices, they often unnecessarily restrict US companies not listed in those markets.

As a general matter for all public companies, more than seven out of ten investors indicated their preferences for shareholder votes on share issuances, but more than half favored leaving share buybacks to the board's discretion. Investor responses were much more split when it comes to US-listed but non-US-incorporated companies, as 26% of investors said that companies should be free to follow customary US capital markets practices and the proposal should be treated as routine, so as not to disadvantage a cross market company compared to its US peers. However, 36% believed that the company should follow the customary practices of the markets of their incorporation, while one-quarter of investors supported a hybrid approach that is less restrictive than many European markets' best practices but protects investors against dilution.

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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