

ISS Policy Updates for 2018 Focus on Few Issues

November 17, 2017 | Client Update | 4-minute read

ISS has issued [its policy updates](#), effective for meetings held on or after February 1, 2018.

The updates are more limited in their scope compared to past seasons. ISS conducted a two-part survey process this year for the first time. We understand that many of the issues raised [in the first survey](#) were intended to be longer-term considerations, and did not result in updated voting guidelines for next year. These include the appropriateness of capital structures other than one-share, one-vote, board gender diversity, and virtual or hybrid meetings.

We also understand that pay ratio disclosure will be noted, but does not inform any voting recommendations for 2018. The existing policy regarding share issuances and buybacks at cross-market companies remains.

The policies that were updated include:

Gender Pay Disparity Proposals. ISS will make case-by-case recommendations on requests for reports on a company's pay data by gender, or a report on a company's policies and goals to reduce any gender pay gap, taking into account: (a) the company's current policies and disclosure related to both its diversity and inclusion policies and practices and its compensation philosophy and fair and equitable compensation practices; (b) whether the company has been the subject of recent controversy, litigation, or regulatory actions related to gender pay gap issues; and (c) whether the company's reporting regarding gender pay gap policies or initiatives is lagging its peers.

Non-Employee Director Pay. Beginning in 2019, ISS will make adverse vote recommendations for board/committee members who approve or set non-employee director compensation when there is a recurring pattern (two or more consecutive years) at excessive magnitude without a compelling rationale or other mitigating factors.

Poison Pills. ISS will recommend against all board nominees, every year, at a company that maintains a long-term poison pill that has not been approved by shareholders. Commitments to put a long-term pill to a vote the following year would no longer be considered a mitigating factor. Boards with 10-year pills currently grandfathered from 2009 would no longer be exempt. Short-term pill adoptions would continue to be assessed on a case-by-case basis, but the updated policy would focus more on the rationale for their adoption than on the company's governance and track record.

There were also additional changes to the way some policies are described, as well as clarifications or additional factors set forth in certain cases, including:

Categorization of Directors. Directors will be categorized as Executive Director, Non-Independent Non-Executive Director and Independent Director (replacing Inside Director, Affiliated Outside Director and Outside Director).

Say-on-Pay Votes with Low Approval. If a say-on-pay vote received less than 70%, the disclosure of engagement efforts should now also include the timing and frequency of engagements and whether independent directors participated, and disclosure of specific concerns raised by the shareholders that opposed say-on-pay, in addition to the existing factors.

Lack of Board Gender Diversity. ISS will highlight boards with no gender diversity although no adverse vote recommendations will be made as a consequence of the lack of gender diversity.

Pay for Performance. In terms of the pay for performance evaluation, ISS has added to the peer group alignment test the rankings of CEO total pay and company financial performance within a peer group, each measured over a three-year

period. The two other measures are the degree of alignment between the company's annualized TSR rank and the CEO's annualized total pay rank within a peer group, each measured over a three-year period, and the multiple of the CEO's total pay relative to the peer group median in the most recent fiscal year.

Executive or Director Pledging. Reflecting its existing policy in more detail, if a significant level of pledges of company stock by executives or directors raise concerns, ISS may recommend against all members of a committee that oversee pledging, or the full board, considering: (a) the presence of an anti-pledging policy, disclosed in the proxy statement, that prohibits future pledging activity; (b) the magnitude of aggregate pledged shares in terms of total common shares outstanding, market value, and trading volume; (c) disclosure of progress or lack thereof in reducing the magnitude of aggregate pledged shares over time; and (d) disclosure in the proxy statement that shares subject to stock ownership and holding requirements do not include pledged company stock.

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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