

ISS Policy Survey Covers Possibility of Tracking Directors and Additional Audit Committee Evaluations – Part I

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The ISS annual global policy survey for 2018 includes only a few issues compared to prior years, but with more focus on the election of directors. The responses to the survey will inform the new policies that govern the 2019 meetings.

The survey is again being undertaken in two parts, one covering fundamental and high-profile topics which we address in this post, and another focused on details which we will describe in Part II.

The first set closes on August 24, and the second ends on September 21. You can access and respond to [the survey here](#).

Auditors and Audit Committee. Following questions during this proxy season as to whether long-tenured auditors are sufficiently examining a company's financial reporting, ISS has asked whether additional indicators of audit quality and independence would be useful:

1. In addition to considering non-audit services and fees when assessing auditor independence, should other factors also be weighed, such as: the tenure of the firm; the audit partner's tenure; significant audit controversies; regulatory fines or other penalties on the company related to financial disclosure not disclosed in the audit report or on the auditor for weaknesses in the audit partner; and the identity of the audit partners and any links to the company or its management.
2. Whether the information shareholders may consider in evaluating the audit committee should include: their skills and experience such as the number of financial experts; the quality of the company's financial reporting and whether there have been restatements; significant financial reporting or audit controversies; the disclosure of what the audit committee examined in evaluating the external auditor; and the frequency of audit committee meetings and refreshment.

Director Accountability and Track Records. ISS notes that some investors are interested in tracking individual directors' past experiences on other boards, and asks:

1. If ISS assesses that an individual director has failed in his or her oversight responsibilities and that resulted in a negative recommendation, should ISS note that recommendation in the proxy research report of other companies where the director serve?
2. Whether the types of oversight shortfalls that may be relevant could include: risk oversight failures related to fraud or business operations (like cybersecurity); oversight failures regarding shareholder rights or oversight of poor compensation practices.
3. The look-back period for these oversight shortfalls may range from no time limit to one, three or five years.

One-Share, One-Vote. In terms of companies that have multi-class structures, ISS has asked whether it should show "adjusted" vote results, meaning counting each share as if it only has one vote. ISS noted, for example, that a shareholder proposal Facebook received on providing a risk report on content controversies was supported by 10% of shareholders, but under the "adjusted" results it would show support of 31%.

Further, ISS questioned whether board responsiveness the next year should be measured by these adjusted results. ISS also inquired about the appropriate timeframe for investors who support sunset provisions that would end multi-class structures.

Gender Diversity. ISS is asking the same questions as last year with respect to gender diversity, including:

1. Whether the absence of female directors always indicates problems in the board recruitment process or whether it is case-by-case, and in addition if concerns can be mitigated by disclosure that explains how the board or nominating committee intends to increase gender diversity.
2. What actions would be appropriate for shareholders who are concerned about the lack of diversity, including engagement; supporting shareholder proposals on diversity; supporting shareholder-nominated candidates; or voting against some or all members of the board.

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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