

ISS Proposes Limited Policy Updates for 2019 Related to Board Gender Diversity and Say-on-Pay Secondary Screens

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Two key, but limited, [policy changes](#) for U.S. companies have been proposed by ISS. The open comment period will run through 5:00 p.m. ET on November 1.

Board Gender Diversity. Beginning with meetings on or after February 1, 2020 (providing a year grace period), ISS may issue adverse voting recommendations against nominating committee chairs at boards with no gender diversity. In special circumstances, the policy would allow the absence of board gender diversity to be temporarily explained and excused.

The mitigating factors that may be considered include: (a) a firm commitment, as stated in the proxy statement and/or other SEC filings to appoint at least one female director to the board in the near term (before the next annual general meeting); (b) the presence of at least one female director on the board at the immediately preceding annual meeting; and/or (c) any other compelling factors considered relevant on a case-by-case basis. Approximately 10% of Russell 3000 companies may be impacted.

Use of EVA as Secondary Screen. ISS is contemplating replacing its GAPP-based Financial Performance Assessment (FPA) with Economic Value Add (EVA) measures. FPA has acted as a secondary screen to see if a company with “low” should be upgraded to “medium” and a company with “medium” concern should be downgraded to “low.” TSR remains the primary screen.

The FPA metrics were added in 2018 and included ROA, ROE and ROIC which would be replaced by EVA Spread and EVA Margin, measured over a three-year period. EVA Momentum would be used instead of EBITDA and cash flow growth.

EVA data would be available to all companies free of charge for their own company in advance of a company’s annual meeting.

ISS believes that EVA metrics provide a standardized view of economic performance, unlike accounting results, by applying rule-based adjustments to financial statement data and allow for improved comparability of companies across different industries.

Based on ISS analysis, the overall size of the impact of the EVA-based assessment should be the same as the current assessment using other FPA measures. Last season, fewer than 10% of companies were impacted.

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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