

ISS Policy Survey Released with Insights into 2013 Policies - July 2012

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ISS has issued its policy [survey](#) for 2013. The survey seeks input from institutional investors, issuers and other corporate governance participants, with 31 questions of relevance to the US market. After the survey closes on August 17th, ISS will publish its draft policies and seek public comments. Final policy changes will be released in November and apply beginning in February 2013. The survey is detailed, and the following summary includes some of the key areas that may be of concern for issuers.

Directors. The survey includes 3 questions which, if changed unfavorably, could cause substantially more negative recommendations for boards and directors. ISS has asked whether it should also include other significant directorships (private, non-profit, subsidiaries) as part of its overboarding policy and whether investors expect boards to implement a shareholder proposal that received a majority of votes cast in the previous year (currently, ISS will recommend against the entire board for failure to implement such a proposal that received a majority of votes cast in 2 out of 3 years). The survey also asks about combining the “insider” and “affiliated outsiders” into one category, which would equate an executive director with a director who has certain types of transactions with the company, possibly making it difficult for investors to apply judgment to individual situations.

Executive Compensation. The 10 questions that relate to executive compensation were more open-ended and there were no obvious indications of how the policies may change, as follows:

- Peer groups. ISS has stated it will change its peer group formulation. The survey asks whether ISS should use a company’s peer group without exception, modify the group for size, create its own, or create its own but provide company’s peers as an alternative. In addition, ISS asks a series of questions about what informs investors regarding a company’s peers (for example, whether peers that the target company selected or ones that selected the target company should be illustrative).
- Performance metrics. Whether metrics other than total shareholder return should be used, and whether non-financial performance metrics should be evaluated, is being considered.
- Analyzing pay. The value of examining “granted,” “realized” or “realizable” pay is questioned.
- “Problematic” pay. The survey asks about features of termination packages and change in control provisions that may be deemed “problematic,” as well as pledging of company stock by directors and officers.

Shareholder Proposals. Only 3 questions pertain to policies on proposals: the importance of corporate lobbying, the features of proxy access proposals and the factors in evaluating recommendations for independent chair proposals. One possible favorable outcome is that the survey asks about the relevance of the TSR test as one of the factors for examining independent chair proposals. This has long been a sore point for many corporate issuers that otherwise meet all the criteria for receiving a favorable recommendation.

Since most everyone has a view on ISS policies, we encourage all interested persons to participate in the survey.

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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