

ISS Releases 2013 Policy Updates

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Today ISS issued policy [updates](#) applicable to the 2013 proxy season, for meetings held on or after February 1, 2012. We'll be distributing a client memo with details, and we understand that ISS plans to host a webcast on these updates on December 6th. Below are a summary of the key highlights:

Governance.

- ISS has decided to adopt its proposed policy of recommending against the board for failure to respond to a shareholder proposal that received a majority of votes cast in the prior year, but in response to comments, the policy will not be implemented until 2014 meetings based on the voting outcomes for shareholder proposals that appear on 2013 proxy statements. This policy also has the flexibility to recommend against only individual directors or committees, rather than the entire board, and “will include more guidance on a case-by-case examination of the sufficiency of a company’s action in response.” Responses less than full implementation of the proposal will be evaluated based on a consideration of factors that include the level of support for the proposal and shareholder outreach efforts. FAQs are planned for December that may provide more information.
- ISS has added that hedging of company stock and significant pledging of company stock by directors and/or executives may constitute failures of risk oversight sufficient to warrant recommending against director elections. This is a change from the proposed policy that had made this evaluation part of ISS’s say-on-pay recommendation. While an examination of pledging activity will include consideration of factors such as the magnitude of aggregate pledged shares in terms of total common shares outstanding or market value or trading volume, with respect to hedging, the policy states that “any amount of hedging will be considered a problematic practice warranting a negative voting recommendation.”

Say-on-Pay.

- New peer group methodology will incorporate information from companies’ self-selected peer groups in order to identify and prioritize GICS industry groups beyond the company’s own GICS classification as determined by S&P. Peers will be drawn from (a) the company’s GICS group and (b) the GICS group represented in the company’s self-selected peers, while maintaining approximate proportions of these industries in the final peer group. The method additionally focuses initially at an 8-digit GICS level rather than more specific levels, to be better aligned in terms of industry. ISS will prioritize peers that (a) maintain the company near the median of the peer group, (b) are in the company’s self-selected peer group and (c) that chose the company as a peer. ISS will also maintain its focus on identifying companies that are reasonably similar in terms of industry profile, size, and market capitalization. Other changes to the peer group methodology include using slightly relaxed size requirements, especially at very small and very large companies, and using revenue instead of assets for certain financial companies.
- Realizable pay is being added to the qualitative analysis for large-cap companies only. The qualitative aspect of the say-on-pay analysis, now including realizable pay, may mitigate or exacerbate pay for performance concerns. Realizable pay will consist of the sum of cash and equity-based grants and awards made during a specified performance period being measured, based on equity award values for actual earned awards, or target values for ongoing awards, calculated using the stock price at the end of the performance measurement period. Stock options and SARS will be valued using Black-Scholes.

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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