

ISS Releases Policy Survey for Next Proxy Season

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Yesterday ISS released its [policy survey](#) addressing matters that may cause the proxy advisory firm to change how it makes voting recommendations for the upcoming proxy season. The survey responses play an important role in developing new policies. While nothing in this year's survey suggests that ISS will take a particularly strict approach in a novel direction, companies should bear in mind that in the past new policies were adopted which were not part of the initial survey period.

The 2014 policy update will be effective for annual meetings held after February 1, 2014. The survey period has been lengthened to six weeks and closes on September 13. The ISS calendar includes regional market roundtables and outreach in August and September, with the survey results released at the end of September. An open comment period ensues in October with final policy updates to be issued in November. ISS intends to release its final updates a few weeks earlier than in prior years, which in the past was made public around Thanksgiving.

A summary of the survey questions is outlined below:

Board Responsiveness. Presumably to address the controversy surrounding last year's updated policy that it will recommend against boards for failure to implement a majority-supported shareholder proposal, ISS asks how it should evaluate board responsiveness, which also includes situations involving poor say-on-pay votes or high against votes for director elections. Respondents can check different boxes advocating for boards to exercise discretion and explain their actions or to require boards to implement specific actions to address the shareholder mandate. Alternatively, respondents can more fully explain how the policy should vary depending on the individual circumstances. A follow-up question asks about the appropriate timeframe for board action.

Differentiation of Policy by Size or Type of Company. ISS is considering whether it should differentiate by the size or type of company with respect to its existing policies related to chairman and CEO separation, minimum levels of director independence, existence of key board committees, limits of general share issuance authorizations, and equity compensation provisions such as dilution. A related question concerns whether companies should be differentiated by market-cap, index or recent IPOs, with smaller or IPO companies subject to their own guidelines.

Director Tenure and Rotation of Positions. We recently discussed the focus on director tenure [here](#). The survey questions whether a long director tenure is problematic because it diminishes independence and/or limits a board's opportunity to refresh its membership. The survey solicits comments as to the number of years of service that may suggest independence issues and situations which may be especially problematic, with an example given as long director tenure concurrent with the CEO's tenure. ISS also questions whether it should consider a policy that takes into account regular rotation of key positions such as the chair, lead director or chairs of key committees.

Director Assessment. ISS asks respondents whether, in evaluating director performance, they tend to focus on positive aspects such as a director's experience, or negative aspects such as concerns stemming from the director's other boards. In addition, ISS questions whether it should consider company performance when evaluating directors and what financial or other metrics should be used in the evaluation.

Equity-Based Compensation Plans. ISS asks for feedback regarding the significance of several factors in moving toward a more holistic approach to equity plan evaluation, including cost of plans, performance conditions for awards, plan features, burn rates and total shareholder return (TSR).

Share Issuances. ISS lists several possible factors for determining approval of proposals to authorize additional shares, including the size of the increase, the stated use, and the ratio of existing to new shares, as well as the governance structure.

Companies are encouraged to submit responses to the survey, in particular to those open-ended questions seeking comments, since they provide an opportunity for fuller explanations rather than merely checking boxes. The survey will influence the proposed policy updates issued in mid-September, at which point companies can also send in specific comments related to those proposals.

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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