

ISS Releases Draft Policies for Comment

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Unlike prior years, ISS has released only two U.S.-based draft policy [changes](#) for comment, due by November 4, 2013. Both clarify existing policies at the margins rather than suggest any sweeping new reforms, as well as appear to be helpful to companies being evaluated.

In 2013, ISS announced that starting with 2014, it will review the responsiveness of a board to a shareholder proposal that receives one year of a majority of votes cast in support. It has now clarified that it will assess on a case-by-case basis (a) the implementation of the proposal, with a list of factors to consider and (b) the determination of which directors to hold accountable in the event ISS views the level of responsiveness to be insufficient. ISS seeks comment on the appropriateness of its existing list of factors, which include disclosed outreach efforts by the board after the vote, the rationale provided in the proxy for the level of implementation, the level of support and opposition and board actions.

As a result, there may be some discretion by companies in applying the resolutions of majority-supported proposals that would be deemed appropriate without slavishly following the mandates, while still being able to avoid negative recommendations against directors. In any case, ISS may not take aim against the entire board. ISS noted that they expect to evaluate approximately 80 proposals in 2014 under this policy.

In addition, ISS proposes to simplify the methodology for calculating its Relative Degree of Alignment (RDA) pay-for-performance screen that it uses to evaluate say-on-pay votes. Currently this measure is calculated as the difference between the company's total shareholder return (TSR) rank and the CEO's total pay rank within a peer group, as measured over one-year and three-year periods. The proposed new methodology is to calculate simply the difference between the company's TSR rank and the CEO's total pay rank within a peer group, as measured over a three-year period (or as many full fiscal years that the company has been publicly traded and disclosed pay data).

ISS indicates that this change to a single three-year measure is being made in order to avoid periods of volatility and the outsized influence of, for example, lagging performance in the final year of the three-year period, in order to better reflect a company's long-term performance. It also diminishes effects from the timing of equity awards. ISS retains the other measures that examine one-year or five-year periods, but the RDA test tends to be fairly important.

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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