

ISS Seeks Feedback on Possible New Guidelines

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With a focus on longer-term policy changes that extend beyond 2014, ISS has opened a new consultation period on several [important topics](#), including key aspects of how they review director elections. Responses are due by February 2014.

Director tenure. Recognizing that while viewpoints are mixed, investors appear to be concerned with lengthy director tenure though are reluctant to impose strict limits. ISS currently has no policy with respect to director tenure in its evaluation of director elections, but is considering whether to:

- Weigh the mix of director tenures on the board as a key factor when determining a vote recommendation on members of the nominating committee (for example, if average tenure and/or any individual director's tenure exceeds a specified level);
- Classify directors with lengthy tenures as non-independent; or
- Keep its existing approach and not adopt any new policies on tenure.

Director independence. ISS is considering using more of a case-by-case analysis in determining director independence for 2015 or beyond on three types of relationships: former CEOs, familial relationships, and professional relationships. Additional flexibility in these policies would be welcomed by companies as their current application leads to overly restrictive results that do not take into account individual circumstances:

- ISS currently does not ever consider former CEOs to be independent, so the taint remains regardless of when and for how long that former executive served as CEO.
- ISS uses the SEC definition of immediate family member, such that mixed with ISS' professional services test, a director would not be considered independent if his or her child is employed by a firm that provides at least \$10,000 of professional services.
- ISS currently uses an extremely low threshold of \$10,000 for considering directors not independent if they or their family members provide "professional" services that are advisory in nature, such as investment banking/financial advisory services; commercial banking (beyond deposit services); investment services; insurance services; accounting/audit services; consulting services; marketing services; legal services; property management services; realtor services; lobbying services; executive search services; and IT consulting services.

Independent chair proposals. ISS currently recommends voting for independent chair shareholder proposals unless the company meets its standard for a robust lead director role along with other governance and TSR performance criteria. It is debating whether to:

- Keep its existing approach;
- Generally recommend for such proposals but also take into account company-specific circumstances such as company size, length of time as a public entity, and CEO transition; or
- Always vote for all independent chair shareholder proposals.

Auditor ratification. ISS is considering whether to include auditor tenure in its evaluation of the ratification of auditors.

Equity plans. ISS currently has a fairly complex process of evaluating equity plans, and is considering whether to adopt a “balanced scorecard” approach that allows the weighting of multiple factors in a holistic evaluation of the equity plan. For instance, historical equity grants might elevate a company’s burn rate and SVT, but these cost concerns may be counterbalanced by a relatively small new share request and a declining burn rate.

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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