

Conversation with ISS about Issuer Engagement with ISS

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While shareholder engagement has become a best practice, companies frequently wonder whether they should also reach out to the proxy advisory firms. We talked to Marc Goldstein, head of issuer engagement at ISS, to understand why issuers have become more interested in engaging with ISS, even for routine annual meeting matters, and how to start and develop a productive discussion. The ISS website also contains a helpful [FAQ](#) and contact information.

Davis Polk: Have requests for engagement with ISS increased in the last few years? Approximately what percentage of Russell 3000 issuers contact ISS for engagement in any given year?

Marc: Requests have definitely increased in the last few years, due in large part to “say-on-pay,” but we talk to issuers about many other topics as well. There are several ways we typically engage with companies: they may reach out to us, either to inquire about ISS policy on a particular issue, or to request a conversation with the analysts covering their meeting; or we may reach out to them, if we have a question about something in the proxy statement or another filing. We probably speak to a majority of S&P 500 companies every year, and a fair number of Russell 3000 companies below the S&P 500 – but that covers everything from a 10-minute phone call to a meeting with directors and senior management.

Davis Polk: What are the best times for issuers to talk to ISS? Are issuers more likely to seek engagement on specific issues or just as part of their proxy season engagement process, even when they are not anticipating any difficult ballot items? Does ISS have a view on whether issuers should be seeking engagement with ISS just to “check in”?

Marc: If issuers are contacting us for engagement, to better understand our policies or to talk about the changes they’ve made to the comp program after shareholder outreach for example, we prefer that they do it before or after proxy season. Most of the time issuers seek engagement to discuss specific issues. We’re happy to answer questions about ISS policies and procedures, and appreciate being able to clarify points which may not be fully clear in the proxy. But the point of our engagement is to help our clients make informed voting decisions. Engagement just to “check in” doesn’t help our clients, and so it’s not the best use of our time, or issuers’ time.

Davis Polk: Will companies be able to determine how ISS will make a recommendation for a given proposal, such as a shareholder proposal where the policy contains a list of factors?

Marc: We’re never under any circumstances able to tell a company “if you do X and Y, we’ll be able to recommend in favor of your proposal” (or “we’ll be able to recommend against a shareholder proposal”). That doesn’t stop companies from trying, but it’s an effort that’s doomed to failure. That’s because in order to make a recommendation, we not only need to see the exact language of the proposal, in the context of all the other information in the public filings; but we also need to see what other actions the board takes, or shareholders take, and what happens to the stock price, and what changes occur in the regulatory environment, etc. To take the example of independent chair proposals, it’s true that we have an enumerated list of duties that we believe a lead independent director should perform, in order for us to conclude that the lead director provides an effective counterweight to a combined Chair/CEO. But we also look closely at the company’s other governance provisions, as well as any governance-related actions by the board; at the executive compensation program; and at the company’s share price performance. That’s because all of those provide evidence as to whether shareholders are being well served by the existing governance structure. Even with an extremely robust lead director role, if a company is underperforming its peers, or the board is taking steps to entrench itself, it’s difficult to make the argument that combining the roles of chair and CEO is in shareholders’ interest.

Davis Polk: What type of issues most often trigger an engagement? Who is usually involved from the issuer side and from the ISS side?

Marc: Compensation is the most common topic, but we frequently have conversations about director independence and other board issues, about shareholder proposals, and about M&A and proxy fights. In fact, when there's any kind of contentious situation – a proxy contest, a “Vote No” campaign, a contested merger – we will ordinarily engage with both sides. The subject matter will determine who from ISS will take part in the engagement, as we have specialists in executive compensation, in M&A, in environmental and social issues, and on particular governance topics. From the issuer side, we speak to a wide range of people, including directors of HR or comp and benefits, general counsels and corporate secretaries, and C-suite executives. If we're talking about a company's strategy in connection with an acquisition or a proxy fight, it may be appropriate to hear about that from the CEO. But if we're talking about the CEO's compensation, we prefer to speak with a member of the compensation committee instead. It's never easy to have a candid conversation with an individual about his or her own compensation. Incidentally, we're engaging much more with board members than was the case a few years ago. We find that they add a valuable perspective to discussions about compensation, executive succession, M&A and a host of other topics.

Davis Polk: How do you advise that issuers best reach out to start a dialogue with ISS? What information should issuers provide when trying to set up a discussion?

Marc: Issuers should feel free to contact us by phone or e-mail – engagement contacts for each region of the world are available on our website. There's no need to go through an intermediary. The only things we ask for in advance are an agenda for the call, and an indication of whom from the issuer side plans to join. Getting a detailed agenda right from the start is absolutely critical, because it enables us to determine who from ISS needs to take part, and therefore whose schedules we need to check, and it also enables us to prepare so that the call will be productive for all participants. We don't require that an issuer send us a slide deck, but if a company plans to use one, we ask that it be sent to us far enough in advance that we have a chance to review it. I'd also like to say a few words about in-person versus telephonic engagement. There's a mistaken impression in some quarters that it's somehow better to meet with ISS in person, but we prefer to engage over the phone, because we've found over the years that calls are just as productive as in-person meetings, and tend to be a more efficient use of everyone's time. It's also much easier to coordinate schedules for a call.

Davis Polk: Will ISS keep the matters discussed confidential?

Marc: ISS reports are based only on public information, so anything that an issuer (or dissident, or shareholder proponent) would like us to consider as part of our analysis should be disclosed in a public filing. We actually prefer that issuers not bring up confidential or non-public matters, but if such information inadvertently comes out in a conversation with ISS, the company should let us know immediately so that we don't include it in our report.

Davis Polk: When is the best time period to reach out to ISS? Can an issuer still ask for engagement after it has filed its proxy statement? Can an issuer reach out to discuss an ISS recommendation after a report has been released?

Marc: The best time to reach out to us is before proxy season starts, or after it's over. Our reports are published several weeks before the actual meeting date, so we're already in “proxy season” mode by February, and stay busy until June. Once the proxy statement has been filed, we would ordinarily engage only if we have questions about the disclosures, or if there is a contentious situation such as a contested merger, proxy fight, or “Vote No” campaign. Any issuer is entitled to a copy of the ISS report on its meeting, free of charge, and if an issuer believes there is a material error in our report, it should contact ISS immediately. In some situations, additional disclosure or a change in practices may be sufficient to “cure” the issue that led to a negative vote recommendation, and in such cases if there's a public filing with the new information, we are able to issue an alert to our clients up to five business days before the meeting date.

Davis Polk: Does ISS always respond to requests for engagement or are there situations when ISS decides that engagement is either unnecessary or not appropriate?

Marc: ISS analysts engage with issuers and other parties to ensure that our research and recommendations are based on the most comprehensive and accurate information available, for the benefit of our institutional investor clients. But yes, there are some situations where engagement is not productive – for example, where we've already engaged with a company on the same topic and there are no new developments, or where a company just wants to “walk us through” the proxy. We read proxies pretty carefully, but if there's something a company is afraid we might miss, they should feel free to send us an email directing us to the relevant page numbers.

Davis Polk: Are contentious situations (not simply shareholder proposals but where a shareholder has indicated it will actively oppose the issuer) treated differently for ISS engagement?

Marc: In contentious situations ISS will ordinarily engage with both sides, and will frequently engage as well with shareholders who may have an interesting perspective on the controversy, whether or not they are in a dissident posture.

These situations often don't lend themselves to pre-season engagement, so we generally have the conversations after the company has filed its proxy, and after the dissident has gone public. But the only real difference is that in contentious situations, we don't provide draft copies of our reports for fact-checking purposes, even for S&P 500 companies which ordinarily would be eligible for a draft. That's because things have a way of changing right up to the time we publish (if not beyond), meaning we may be rewriting the report to take account of new information; and also because we wouldn't want our yet-unpublished report to become a weapon in the fight.

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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