

State Street's Director Tenure Policy Contains Specific Lengths of Service Screens and May Result in Votes against Directors

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State Street Global Advisors' (SSgA) 2014 [voting policy on director tenure](#) focuses on what it identifies as the need for "board refreshment." The policy outlines situations that could trigger the investor to vote against directors at its investee companies due to lengthy tenures. Unlike other major investors and even the proxy advisory firms, SSgA has provided specific guidance relating to the number of years of service it deems to be excessive, based on comparison with the average director term for the particular market.

According to ISS' analysis included in SSgA's policy, the average director tenure in the US market is 8.6 years. In making voting decisions, SSgA initially screens a company based on whether its average board tenure is above one standard deviation from the average market tenure. Companies that SSgA then considers to have longer than average board tenures are further screened for (a) whether one-third of non-executive directors have tenures in excess of two standard deviations from the average market tenure and (b) classified board structures. As a result of this review, SSgA may vote against any of (a) the chairperson of the nominating and governance committee for failing to adequately address board refreshment and director succession; (b) the long-tenured directors who serve on key committees or (c) both the members of the nominating and governance committee and long-tenured directors at companies with classified boards. Companies without annual elections are held to a "higher standard" since the classified structure may further limit the ability to refresh the board.

Nearly 40% of US companies have average tenures above 9 years, 20% with 12 years or more and more than 8% have average tenure over 15 years. These are the highest levels compared across a range of European countries. For example, the average tenure in the UK is 6.4 years, perhaps due to its comply-or-explain requirement that demands an explanation regarding the impact on director independence beyond nine years of service. The European Commission has recommended a 12-year director tenure.

SSgA is concerned that long-tenured boards represent a lack of refreshment of skills and perspectives on the board, limits a board's ability to bring on new directors without increasing its size and diminishes director independence. The investor believes that while these directors may have an appropriate role on boards, they should not serve on the audit, compensation and nominating and governance committees where independence is key.

At companies where action may be warranted, SSgA intends to proactively engage with the chairman of the nominating committee to outline its expectations and concerns related to director tenure. To that end, the policy provides in the appendix a list of questions for directors to review succession planning for boards, including whether directors have evaluation processes in place to periodically review their performance, whether the board assesses the expertise and skills among its directors that are needed for the company's risks and strategy and the board's ability to identify upcoming director turnover. The guidelines also note that boards should compare themselves against the ideal composition for purposes of director tenure, which would be a third each of new-tenured, mid-tenured and long-tenured directors.

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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