

ISS Releases Policy Survey Responses for 2015 Proxy Season

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ISS released the [results](#) of its policy survey. The responses, from 105 individual institutional investors and 255 members of the corporate issuer community (including advisers), may inform new policies or change existing policies. Investor and issuer views diverged in some cases. Draft policies are expected to be released in October for public comment.

Unilateral Adoption of Bylaws

72% of investors indicated that a board should never adopt bylaw amendments that “negatively impact” investors’ rights without shareholder approval. Other investors responded instead that “it depends,” and selected from a list of eight possible unilateral board actions that they would be concerned about. The top three related to “diminishing rights” to shareholders’ ability to call special meetings and act by written consent, classifying boards and increasing authorized capital. The action that received the lowest level of concern from investors was board adoption of exclusive forum provisions without shareholder votes.

Interestingly, only 44% of issuers indicated that boards should be free to unilaterally adopt amendments in all cases, while 34% indicated that “it depends.”

Pre-IPO Governance Provisions

63% of investors responded that directors should be held accountable if “shareholder unfriendly” provisions are adopted before a company’s IPO.

Boardroom Diversity

More issuers than investors, 75% compared to 60%, consider diversity when evaluating boards.

Risk Oversight

When companies face publicized “failures” of boardroom risk oversight (for example, ISS criticism of the Target board members this past proxy season), investors viewed boardroom action after an incident as the most important factor in their voting decisions on directors.

Pay for Performance

Future positive changes. More than half of investors agreed that future positive changes to pay programs can *somewhat* mitigate pay-for-performance concerns, while half of the issuers believed such changes can *substantially* mitigate those concerns. At times, ISS has modified its views on a company’s say-on-pay if that company agrees to implement modifications in the following year. 90% of investors expect disclosures of specific changes to be made.

CEO pay limits. 60% of investors indicated that there is a threshold at which the overall size of the CEO’s pay concerns them, even when the company has good performance, although only 19% favored absolute limits. “Excessive” pay may be evaluated based on peer company pay, a comparison of CEO pay to NEO pay or the proportion of the CEO compensation to earnings or revenues. 28% of issuers shared similar views.

Other survey responses related to auditor ratification, equity plans and the use of ESG metrics in setting compensation.

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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