

ISS Publishes Draft 2015 Voting Policies for Comment, Focuses on Independent Chair Shareholder Proposal and Equity Plans

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ISS has published its draft [2015 voting policies](#) for public comment, which are due on October 29. The final release is expected around November 7 and any new updates will apply for meetings taking place on or after February 1, 2015.

The biggest news may be what is not being covered for the U.S. market. After a fairly extensive policy survey, which we previously discussed [here](#), the draft does not address some of the key issues asked in the survey regarding unilateral board adoption of bylaws, failures of risk oversight (such as major cybersecurity breaches), pay for performance and CEO pay limits. Instead, the draft policy covers two narrow, though critical, matters as described below. We note, however, that ISS has in the past adopted policy updates without putting them out for comment, so this may not represent all the changes for the 2015 season.

Shareholder Proposals Seeking Independent Chairs. ISS' current policy is to generally recommend for independent chair shareholder proposals unless the company satisfies criteria that includes a lead director with clearly delineated and comprehensive duties and the company has sufficient TSR performance.

ISS proposes to update the policy by adding new governance, board leadership and performance factors to the analytical framework and to review all of the factors in a holistic manner. The new factors would include the absence/presence of an executive chair, recent board and executive leadership transitions at the company, director/CEO tenure, and a longer (five-year) TSR performance period.

ISS describes the reasons for its proposed draft as due to recent board leadership changes at companies where a board reverted to a combined CEO/chair role after years of having an independent chair, mentioning Bank of America and noting that in 2009 a shareholder proposal seeking a bylaw amendment to separate the roles received majority support. In addition, ISS cites a recent academic study that found retention of a former CEO in the role of chair may hamper new CEOs, and questions whether a lead independent director can effectively counterbalance both a CEO and an executive chair.

As of June 30, 62 of independent chair proposals have come to shareholder vote, up from 55 resolutions over the same time period in 2013. ISS recommended against 32 of the proposals, and the average support was 31%, with four proposals receiving the support of a majority of votes cast. In its own backtesting of this possible new methodology, ISS indicated that proposals in 2014 would have received much higher shareholder support. Although ISS is not specific, it appears that what this means is that the proxy adviser would have recommended that shareholder vote in favor of more of these proposals. A change of this nature could also impact the number of proposals received on the topic for 2015.

ISS asks for comments on several questions, including (a) factors considered most important when determining whether an independent chair shareholder proposal warrants support; (b) weight given to recent changes in board leadership structure such as a recombination of roles; and (c) the timeframe that ISS should use for assessing financial performance.

Equity Plan Scorecard. ISS proposes to use a scorecard model that considers a range of positive and negative factors, rather than the current series of "pass/fail" tests, to evaluate equity incentive plan proposals. The voting recommendations will largely be based on a combination of factors related to (1) cost, (2) plan features, and (3) grant

practices. In terms of cost, the examination will be made relative to peers and share value transfer. Plan features reviewed will include single-trigger change of control vesting, discretionary vesting authority, liberal share recycling and minimum vesting periods. Finally, with respect to grant practices, the factors include three-year burn rates relative to peers, vesting requirements in most recent CEO equity grants, duration of the plan, the existence of a clawback policy and whether the company has post-vesting holding requirements.

The changes would eliminate the option overhang carve-out policy, evaluate the liberal share recycling provisions as a feature instead of in the SVT calculations, calibrate burn rate benchmark for respective index groups and eliminate commitments on future burn rate caps.

ISS has traditionally recommended against 30% of plan proposals, although only a small number actually fail each year.

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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