

ISS Issues FAQs on Proxy Access Proposals

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In its long-awaited [FAQs](#), ISS indicates that it will generally recommend in favor of management and shareholder proposals for proxy access which allow for nominations to be made by shareholders owning not more than 3% of the voting power for 3 years, with “minimal” or no limits on the number of shareholders permitted to form a nominating group, and allowing nominations for up to 25% of the board. ISS will also review the reasonableness of any other restrictions and may recommend against proposals that are more restrictive than these guidelines.

ISS is tracking 96 shareholder proposals on proxy access. For companies that present both a board and a shareholder proxy access proposal in their proxy statement, ISS will review each proposal separately. Yesterday, we issued a memo on a decision framework for evaluating proxy access, including for those companies that do not have the proposal this season but are watching these governance developments, which is available [here](#).

In addition, ISS will recommend a vote against one or more directors (individual directors, certain committee members, or the entire board based on case-specific facts and circumstances), if a company excludes a shareholder proposal, unless it has obtained (a) voluntary withdrawal by the proponent; (b) no-action relief from the SEC or (c) a U.S. district court ruling. ISS may issue negative recommendations in these situations regardless of whether there is also a management proposal on the same topic. This is under ISS' governance failures policy and expand beyond proxy access, to other situations where companies had also attempted to exclude conflicting shareholder proposals through the SEC no-action letter process, such as proposals requesting the right to call a special meeting. If a company has taken unilateral steps to implement the proposal, the degree to which the proposal is implemented, including any material restrictions, will also factor into the assessment.

We previously discussed Glass Lewis' related policies [here](#).

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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