

ISS Issues Policy Survey for 2017 Season

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ISS has issued its policy survey for the 2017 proxy season. The responses to the survey questions from interested parties inform the firm's changes to its policies in making voting recommendations at meetings. Not all questions in the survey become new policies. In addition, new policies are sometimes created without related questions first being asked in the survey, but that has not been the case in several years for major policy amendments.

Compared to prior years, the questions in this survey that portend possible changes to ISS voting policy generally suggest more muted updates and less dramatic overhauls. U.S. public companies should be aware of the following survey questions that may become future voting policies:

Board Refreshment and Tenure. Director tenure and whether it inhibits board refreshment is currently a governance flashpoint. Even investors critical of long tenure may disagree about what length of time defines "long" and are generally willing to view the tenure of an entire board rather than focus on individuals. ISS asks for input on whether there might be concerns about a board's nominating and refreshment process if certain tenure factors are present. Those factors may include any or all of the following: (a) the absence of new independent directors in a recent period, such as the last five years; (b) lengthy average tenure on the board, such as greater than 10 or 15 years; or (c) a high proportion of directors, such as three-fourths of the board, having long tenures of 10 or more years.

Overboarding for Executive Chairs. Approximately 11% of Russell 3000 companies have an executive chair who is not also the CEO. The current overboarding policy places an executive chair in the same position as a non-executive director, who is considered overboarded if he or she sits on more than five total boards. The policy survey asks if this is the right approach or whether the standard applied to CEOs instead is more applicable to executive chairs, which would mean a director is considered overboarded if he or she sits on more than three total boards.

IPO Companies with Dual-Class Structures. ISS already recommends against IPO companies that adopt various anti-takeover provisions. See our recent client memo on this topic [here](#). The survey asks whether the firm should also recommend voting against directors of companies that go public or emerge from bankruptcy, when they adopt structures with multiple classes of stock with different voting rights.

Metrics Used in Executive Compensation. Current ISS policy uses total shareholder return (TSR) over various time horizons in its pay for performance quantitative screen to identify potential misalignment between CEO pay and company performance. The survey asks whether other financial metrics should be incorporated as well and if so, provides a possible list that includes revenue, earnings, returns, cash flow and others.

Cross-border Executive Pay. ISS currently evaluates each compensation proposal under the policy of the country whose laws or listing rules require the proposal to be put to a vote. This could result in a company that is incorporated in the U.K. but listed in the U.S. having multiple votes on the same pay structure. The survey asks whether or not it is acceptable to have opposing vote recommendations based on different countries' policies.

Say-On-Pay Frequency Vote. Since U.S. companies need to hold another frequency vote in 2017, ISS asks for views on whether annual, biennial or triennial votes are favored, or whether it depends on the company based on its size, performance, level of prior support and presence of problematic practices.

Notably, there are no questions on ISS' fairly complex proxy access analysis, although the firm could make changes without including the issue as a survey question.

Interested persons can fill out the survey [here](#) by August 30. ISS will then conduct roundtables and other outreach efforts and propose possible policy changes for public comment before adopting changes that apply to 2017 meetings.

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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