

ISS Publishes Draft 2017 Voting Policies for Comment

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Yesterday ISS published its draft 2017 voting policies for public comment. Any updated policies will apply to meetings held on or after February 1, 2017. Comments are due by 6:00 p.m. EST on November 10. The final release of the 2017 updates is expected the week of November 14.

Only a few of the topics that were addressed in the ISS survey, which we previously discussed [here](#), are covered by the draft policy. Most notably, while it is possible that the final version of the 2017 policy updates will go beyond those put forth for public comment, the draft does not include key issues that were the subject of the survey questions, including board refreshment and tenure, overboarding for executive chairs, say-on-pay frequency and financial metrics used in pay-for-performance assessments.

Instead, the draft policy covers only the four U.S. policies described below. We understand, however, that there is likely to be updates to the FAQs available on its website. ISS uses the FAQs to explain its policies in further detail. In particular, in December ISS may provide information on how it will assess company performance using financial metrics other than TSR when evaluating a company's compensation program.

We also remind companies that 2016 served as a transitional year for new ISS and Glass Lewis overboarding policy updates ([discussed here](#)), and those policies will become effective for 2017 meetings. ISS will begin recommending against a director who sits on more than five public company boards. Glass Lewis will begin recommending against a director (a) who is the executive officer of a public company and sits on more than two public company boards or (b) who serves on more than five public company boards.

Unilateral Board Actions – Multi Class Capital Structure at IPO. ISS proposes recommending voting against directors of companies that become public (IPO) with a multi-class capital structure with unequal voting rights, unless there is a “reasonable” sunset provision on the adverse capital structure. In contrast to current policy, ISS will no longer consider a company's commitment to put the provision to a shareholder vote when issuing vote recommendations.

Restrictions on Binding Shareholder Proposals. ISS proposes issuing adverse vote recommendations for governance committee members if the company's charter imposes undue restrictions on shareholder's ability to amend the bylaws. Examples of these restrictions include a prohibition on the submission of binding shareholder proposals or share ownership or time holding requirements that are in excess of Rule 14a-8 requirements. The adverse recommendations would continue until the restrictions were removed.

Share Issuance Mandates for U.S.-listed, Non-U.S. Incorporated Companies. ISS proposes recommending in favor of general share issuance authorizations, but only up to a maximum of 20% of currently issued capital, as long as the duration of the authority is clearly disclosed and reasonable.

Executive Pay Assessments for U.S.-listed, Non-U.S. Incorporated Companies. ISS proposes to implement, on a case-by-case basis, U.S. policy in the evaluation of all compensation proposals on the ballots of U.S.-listed, non-U.S. incorporated companies. For proposals where there is no applicable U.S. policy, the ISS policy from the country requiring the ballot item will be used.

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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