

New Proxy Advisor Policy Affects IPO Company Director Elections

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[We recently published a survey of corporate governance practices adopted by companies in their IPOs](#) . Our survey concluded that IPO companies continue to adopt charter provisions such as a classified board or dual class stock that can be viewed as having an anti-takeover impact, without any noticeable impact on valuation or marketing.

While we continue to believe that such provisions are appropriate in many instances, companies preparing for an IPO should be aware of the consequences for director elections of a recent policy change implemented by Institutional Shareholder Services (ISS), the influential proxy advisory firm. For newly public companies, ISS now will generally recommend “vote against” or “withhold” for directors of a company that, prior to or in connection with its IPO, adopted bylaw or charter provisions that ISS considers adverse to shareholders’ rights. These include common anti-takeover protections, such as a classified board, supermajority thresholds to amend the charter or bylaws, limitations on shareholders’ right to amend the charter or bylaws and dual-class shares. The policy was announced in November 2015, so the recently completed 2016 annual meeting season was the first time that the policy was applied to newly public companies.

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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