

November 14, 2019

ISS Announces Benchmark Policy Updates

ISS Updates Its 2020 Benchmark Proxy Voting Policies for the Americas, EMEA, and Asia-Pacific Regions, to Take Effect for Shareholder Meetings Held on or After February 1, 2020

SUMMARY

Tuesday, Institutional Shareholder Services Inc. (“ISS”) announced updates to its 2020 benchmark proxy voting policies for the Americas, Europe, Middle East and Africa (“EMEA”), and Asia-Pacific regions. Within the United States, the updates include changes related to governance and capital structures in newly public companies, independent director proposals, and share repurchase program proposals. ISS’ gender diversity policy, a 2019 update to ISS benchmark policies, also will become effective, and it will be the first season that ISS will issue negative recommendations under its director compensation policy.

As previously discussed in our [memo](#) dated October 8, 2019, before Tuesday’s release, ISS had solicited comments on these policies from asset owners, asset managers, companies, and other market players. Additional information regarding these policies may be included when ISS issues Proxy Voting Research Procedures & Policies Frequently Asked Questions, which are expected to be released in December 2019.

2020 ISS BENCHMARK POLICY – NOTABLE UPDATES

Based on a policy survey, policy roundtables and feedback, and a public comment period, ISS has released the notable updates described below.¹ ISS also released policy updates that were not included in the public comment period, usually to codify current practices, add criteria, conform policy with other markets, make previously announced policies effective, and add or subtract markets due to local changes.

A. PROBLEMATIC GOVERNANCE AND CAPITAL STRUCTURES OF NEWLY PUBLIC COMPANIES

In response to increased scrutiny of multi-class capital structures within companies, ISS distinguished between policies on problematic governance structures and multi-class capital structures with unequal

voting rights in newly public companies. Under its new multi-class capital structures policy, ISS will generally recommend against an entire board if the company or board established a problematic multi-class capital structure before or during the company's initial public offering, unless a reasonable time-based sunset provision exists. ISS will consider multiple factors in its analysis, including the board's disclosed rationale for the duration of the sunset, but will not consider sunset provisions over seven years long to be reasonable.

B. INDEPENDENT BOARD CHAIR SHAREHOLDER PROPOSALS

ISS explicitly listed factors that will increase the likelihood of a "for" recommendation with respect to independent board chair shareholder proposals. The factors are generally consistent with those initially proposed: (1) a majority non-independent board and/or the presence of non-independent directors on key board committees; (2) a weak or poorly-defined independent director role that fails to serve as a counterbalance to a CEO/chair role; (3) the presence of an executive or non-independent chair in addition to the CEO, a recombination of CEO and chair, and/or departure from a structure with an independent chair; (4) evidence that the board has failed to oversee and address material risks to the company; (5) a material governance failure; or (6) evidence that the board failed to intervene when management had contrary interests to shareholders.

C. SHARE REPURCHASE PROGRAM PROPOSALS

Since shareholders tend to support company share repurchases for particular purposes, ISS will generally support proposals that create open-market share repurchase plans which all shareholders may participate in or provide the board with an ability to conduct open-market repurchases, subject to any specific concerns about greenmail, the use of buybacks to manipulate incentive compensation metrics, threats to the company's long-term viability, or other company-specific factors. This policy covers both U.S.-incorporated companies and foreign-incorporated U.S. Domestic Issuers traded solely on U.S. exchanges.

D. GENDER DIVERSITY POLICY IN EFFECT

In its 2019 benchmark policy update, ISS announced a gender diversity policy with a one-year grace period. Beginning February 1, 2020, ISS will generally issue a negative recommendation on the nominating committee chair at companies where there are no women on the board absent a firm commitment to appoint at least one woman to the board before February 1, 2021.

E. SECOND YEAR OF DIRECTOR COMPENSATION POLICY

Last year, ISS announced a policy to issue adverse vote recommendations for board members responsible for approving/setting non-employee director pay when there is a recurring pattern of excessive pay magnitude without a compelling rationale. Adverse recommendations may result when a pattern of excessive non-employee director pay, without compelling rationale, is identified in two or more consecutive years. Because of the two-year requirement, 2020 is the first season in which ISS may issue adverse

recommendations under this policy (i.e., for companies where ISS has identified excessive non-employee director pay without a compelling rationale in both 2019 and 2020).

F. NON-U.S. VOTING POLICY UPDATES

ISS also has updated its policies with respect to: (1) indemnification of directors and officers in Americas Regional and Brazil; (2) director terms, remuneration, committee responsiveness, use of discretion by remuneration committees, and board gender diversity in Continental Europe²; (3) board gender diversity and use of discretion by remuneration committees in the United Kingdom and Ireland; (4) board independence in the Middle East, Turkey, and Africa; (5) director disclosure in cumulative voting elections in United Arab Emirates, Saudi Arabia, Egypt, Jordan, and Qatar; (6) board independence in controlled companies in Japan³; (7) board gender diversity in India; (8) director accountability related to governance failures in South Korea; (9) share repurchase pricing limits in Singapore; and (10) article amendment proposals granting board discretion on cash dividend distribution plans in Taiwan.

G. OTHER POLICY UPDATES

ISS also issued policy updates that were not subject to the public comment period, including updates in the United States specifically related to the treatment of new nominees, board attendance, restrictions on shareholders' rights, equity-based and other incentive plans, and labor-force pay gap reporting.⁴

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ENDNOTES

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- ¹ The Americas policy updates, are available at <https://www.issgovernance.com/file/policy/latest/updates/Americas-Policy-Updates.pdf>
 - ² Details of the policy updates for Europe, the Middle East, and Africa are available at <https://www.issgovernance.com/file/policy/latest/updates/EMEA-Policy-Updates.pdf>
 - ³ The policy updates for Japan, as well as for the Asia-Pacific region, are available at <https://www.issgovernance.com/file/policy/latest/updates/Asia-Pacific-Policy-Updates.pdf>
 - ⁴ The full 2020 ISS policy updates are available at <https://www.issgovernance.com/policy-gateway/upcoming-policies/>

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