# Proxy Advisory Firms Issue Policy Statements Amid COVID-19 Pandemic

In recent days, Institutional Shareholder Services ("ISS") and Glass Lewis & Co. ("Glass Lewis") have issued statements on how they plan to apply their benchmark proxy voting policies over the coming months in response to the unprecedented market conditions created by the ongoing COVID-19 pandemic. These statements cover a wide range of governance topics, such as the use of virtual annual meetings, and, of course, executive compensation.

We summarize below the guidance as it involves compensation-related matters.

## Institutional Shareholder Services

At the outset, ISS notes that it is not changing any of its voting policies in light of the pandemic. Instead, it points out that, based on the global principles that underly its voting policies, its research arm already has the ability to exercise appropriate discretion and use a case-by-case analysis in evaluating the various facts and circumstances that are likely to be presented by company proposals and issues. Among the various topics covered in its statement, ISS addresses two important executive compensation topics: changes to incentive compensation plans and stock option repricings.

### *Changing Metrics/Shifting Goals or Targets*

Short-term incentive compensation plans - Where boards make material changes to the performance metrics, goals, or targets in their 2020 short-term incentive compensation plans, ISS is encouraging companies to provide contemporaneous disclosure to shareholders of the rationale for these changes. In ISS' view, providing such disclosure now will provide shareholders with greater insights into the circumstances warranting and basis for such changes when they are being made. (Typically, companies would first disclose any changes to their 2020 short-term incentive compensation plans in the Compensation Discussion and Analysis included in their 2021 proxy statement.)

Long-term incentive compensation plans – As reflected in its voting policies, generally ISS is not supportive of midstream changes to long-term incentive compensation awards since they are, in most cases, intended to cover multi-year periods. Accordingly, ISS will evaluate such changes on a case-by-case basis to determine if directors exercised appropriate discretion and whether the explanations given for such changes are adequate. Further, where boards restructure their long-term incentive plans to take account of the changed economic environment, ISS will assess the changes under its existing benchmark policy framework. Interestingly, where the long-term plan has a one-year performance period, it's possible that ISS could apply its policy position for short-term incentive compensation plans to the program rather than its policy for plans with multi-year performance periods.

### *Stock Option Repricings*

Where a stock option repricing or exchange program is pursued without shareholder approval, it will continue to be considered a "problematic" pay practice and the directors' decision will be subject to scrutiny under the applicable benchmark policy board accountability provisions (which could result in an adverse voting recommendation). Where a board seeks shareholder approval of a repricing or exchange program at a 2020 Annual Meeting, ISS will apply its existing case-by-case policy approach. As before, ISS will oppose any repricing that occurs within one year of a sharp drop in a company's stock price. In evaluating the action, however, ISS will also examine:

- whether the design is shareholder value neutral (a value-for-value exchange);
- the impact if surrendered options are added back to the plan share reserve;
- whether replacement awards do not vest immediately; and
- if executive officers and directors are excluded from the repricing or exchange.

## Glass Lewis & Co.

Similarly, Glass Lewis has indicated that it is not planning to change its voting guidelines, noting that its contextual approach to reviewing issues and proposals is already built for extenuating and unusual circumstances such as the pandemic.

While it expects the pandemic to eventually impact all governance issues, it identifies executive compensation as one of the key governance areas that will likely garner attention in the near term. When it comes to executive pay, Glass Lewis expects shareholders to focus on matters such as repricing, dilution, equity burn rates, incentive plan goal and target adjustments, changes to vesting periods, and the quality of disclosure, especially where it involves the exercise of board discretion.

In terms of how it intends to apply its voting guidelines, Glass Lewis says that it will continue to prioritize timing, certainty, disclosure and voting when evaluating issues and formulating recommendations on proposals. In describing how it intends to operate going forward, it is apparent that disclosure will be of paramount importance to Glass Lewis. Both the quality of the disclosure, as well as the rationale for specific decisions, will be evaluated when assessing the factors that led to any changes made because of the pandemic. In addition, when determining whether such changes are reasonable, Glass Lewis will consider them in view of their consistency and proportionality when compared to the crisis' effect on shareholder interests and employees. Especially when it comes to executive pay, Glass Lewis expects boards to proactively pursue changes that are consistent with employee and shareholder experiences, including, potentially, executive pay cuts. Notably, Glass Lewis states that if, prior to the pandemic, a company had a good "track record" on governance, performance, and the use of board discretion, such company will likely be given more latitude in its analysis than one that does not.

## For More Information

The ISS guidance can be found here: Impacts of the COVID-19 Pandemic - ISS Policy Guidance

The Glass Lewis statement can be found here: Everything in Governance is Affected by the Coronavirus Pandemic. This is Glass Lewis' Approach

## Need Assistance?

Compensia has extensive experience in assisting companies in analyzing the benchmark voting policy guidelines of the major proxy advisory firms. If you would like assistance in analyzing the potential impact of the ISS policies on your executive compensation program, or if you have any questions on the subjects addressed in this Thoughtful Pay Alert, please feel free to contact Jason Borrevik at 408.876.4035 or Mark A. Borges at 415.462.2995.■

## Proxy Advisory Firms Issue Policy Statements Amid COVID-19 Pandemic (continued)

### About Compensia

Compensia, Inc. is a management consulting firm that provides executive compensation advisory services to Compensation Committees and senior management.


#### Silicon Valley

125 S. Market Street
Suite 1000
San Jose, California 95113
408.876.4025

Thomas G. Brown, Chairman & Managing Principal
tbrown@compensia.com
408.876.4023

Susan Gellen
sgellen@compensia.com
408.907.4302

Aaron Johansen
ajohansen@compensia.com
408.907.4310

Tom LaWer, Managing Principal
tlawer@compensia.com
408.907.4309

Timothy Sparks
tsparks@compensia.com
408.876.4024

Greg Loehmann
gloehmann@compensia.com
408.907.4319

#### San Francisco

One Embarcadero Center
Suite 2830
San Francisco, California 94111
415.462.2990

Mark A. Borges
mborges@compensia.com
415.462.2995

Erik Beucler
ebeucler@compensia.com
408.907.4314

Amanda Feyerabend
afeyerabend@compensia.com
415.462.2988

#### Southern California

Ralph Barry
rbarry@compensia.com
858.603.2288

#### Pacific Northwest

Jason Borrevik
jborrevik@compensia.com
408.876.4035