

ISS Issues 2021 Benchmark Policy Updates

On November 12, 2020, Institutional Shareholder Services (“ISS”) announced the updates to its U.S. benchmark voting policy guidelines for the 2021 proxy season. As we noted last month when ISS first disclosed its proposed policy changes (see our Thoughtful Pay Alert, [ISS Previews 2021 Policy Updates: No Current Revisions to Compensation-Related Policies](#) (October 22, 2020)), ISS made a handful of updates in the corporate governance area, but no significant changes to its voting policy guidelines covering executive compensation matters. Descriptions of select ISS policy updates for 2021 are set forth below. A summary of ISS’ benchmark policy changes for 2021 is available [here](#).

ISS’ updated policies will be effective for annual meetings of shareholders held on or after February 1, 2021.

Board Racial/Ethnic Diversity

Consistent with its board gender diversity policy, ISS has adopted a similar policy for companies whose boards show an apparent lack of members who are racially or ethnically diverse. In 2021, ISS will begin highlighting companies in the Russell 3000 and the S&P 1500 with no apparent racial and/or ethnic diversity on the board of directors. This information will be included in ISS’ research reports to help investors identify companies with which to engage and that may foster dialogue between investors and companies on the issue. 2021 will serve as a transitional year where the absence of a racially or ethnically diverse member of the board will not affect ISS’ voting recommendations on directors.

However, effective for annual meetings of shareholders on or after February 1, 2022, ISS will generally recommend voting against or withholding the vote from the chair of the board nominating committee (or other directors on a case-by-case basis (for example, other members of the nominating committee)) where the board of directors has no apparent racially or ethnically diverse members. An exception will be made only if there was racial and/or ethnic diversity on the board at the preceding annual meeting and the board makes a firm commitment to appoint at least one racial and/or ethnic diverse member within a year.

For publicly-traded companies headquartered in California, this new policy comes on the heels of the enactment of SB 979 which requires such companies to meet an “underrepresented community” diversity quota on its board of directors over the next two years. For this purpose, a “director from an underrepresented community” means an individual who self-identifies as “Black, African American, Hispanic, Latino, Asian, Pacific Islander, Native American, Native Hawaiian, or Alaska Native, or who self-identifies as gay, lesbian, bisexual or transgender.” Unlike the California law, the ISS policy does not specify the kind of racial/ethnic diversity that will satisfy its policy, nor does it address sexual orientation.

Other Notable Policy Updates

Board Refreshment

ISS has revised its policy on management and shareholder proposals for director term limits. ISS will make voting recommendations on these proposals on a case-by-case basis considering various enumerated factors, which for a shareholder proposal include the scope of the proposal and evidence of problematic issues at the company combined with, or exacerbated by, a lack of board refreshment. ISS will continue to oppose management and shareholder proposals mandating age limits for directors.

Board Gender Diversity

ISS eliminated the 2020 transitional language for its board gender diversity policy so that a company that previously had not had a female director could make a commitment to add one by the following year. An exception to the general policy that there must be at least one woman on a company’s board of directors will be made only if there was a woman on the board at the preceding annual meeting and the board makes a firm commitment to return to a gender diverse status within a year.

What’s Next?

Each year, ISS publishes its U.S. benchmark voting policy guidelines (as updated for the items discussed herein), an updated Frequently-Asked Questions (“FAQ”) document (which will likely include the COVID-19 pandemic FAQs initially published

in October), and a Pay-for-Performance Mechanics whitepaper designed to help stakeholders understand upcoming changes to its compensation-related methodologies. These materials should be published in early- to mid-December 2020 and posted to the ISS website.

As in past years, we expect ISS to be publishing updated “burn rates” for each GICS industry/index group by mid-December.

ISS Ends Review of Draft Proxy Research Reports by S&P 500 Companies

ISS recently announced that for annual meetings of shareholders on or after January 1, 2021, it is ending its practice of providing a draft version of its proxy research reports for review to U.S. companies within the S&P 500 Index. Citing the time required to oversee the review process, ISS indicated that its improved systems for data collection, checks, and quality controls have led to a high degree of factual accuracy in the reports, eliminating the primary reason they were made available to these companies in the first place. It also noted that this process has devolved into a “lobbying” period for companies seeking to change one or more of ISS’ draft voting recommendations. Further, given the SEC’s July 2020 amendments to its proxy solicitation rules, by December 2021 proxy advisory firms will be required to provide a copy of their proxy voting advice to companies that are the subject of such advice no later than when they disseminate the reports to their clients.

Need Assistance?

Compensia has extensive experience in assisting companies in addressing ISS’ U.S. benchmark voting policy guidelines. 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. ■

ISS Issues 2021 Benchmark Policy Updates (continued)**About Compensia**

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