

ISS Issues 2022 Draft Policy Updates; Board Diversity, Multi-Class Stock Structures and Climate in the Spotlight

Currently, Institutional Shareholder Services (“ISS”) is soliciting comment on more than a dozen possible updates to its benchmark voting policies for the 2022 proxy season. As it does each fall, ISS has published a preview of 16 proposed voting policy changes for 2022 across several regional and market policies. The preview highlights two proposed updates for U.S. companies in the corporate governance area, as well as three climate-related policies, each of which is of interest to the boards of directors of technology and life sciences companies.

Equally noteworthy is that for the third consecutive year, ISS is not currently seeking comment on any changes to its proxy voting guidelines covering U.S. executive compensation matters. We expect that ISS will issue its updated U.S. benchmark voting policies around the end of November (which will likely include additional policy updates not included in the current comment period). Further pertinent information for the 2022 proxy season will likely be issued in December (its U.S. compensation policies FAQs) and January (its environmental, social, and governance (“ESG”) FAQs).

ISS’ updated policies will be effective for annual meetings of shareholders held on or after February 1, 2022.

Board Diversity

In the past three years, ISS has adopted policies intended to further racial and ethnic diversity on board of directors. Starting in 2018, ISS began highlighting companies in the Russell 3000 and the S&P 1500 lacking gender diversity on their boards. This was followed in 2020 by a policy of recommending a vote against the chair of the nominating committee where there are no women on the board of directors. In 2021, ISS began highlighting companies in the Russell 3000 and the S&P 1500 with no apparent racial or

ethnic diversity on their boards and during the 2022 proxy season will generally recommend voting against the chair of the nominating committee at such companies.

ISS is now proposing to further expand its policy on board gender diversity in several markets, including the United States. Following a one-year grace period, the chair of the nominating committee of any U.S. company (not just Russell 3000 and S&P 1500 companies) without a female board member will be a target for an “against” recommendation. If adopted, this policy would go into effect for the 2023 proxy season.

Board Accountability – Unequal Voting Rights

In 2016, ISS adopted a policy to recommend a vote against the entire board of directors of a newly public company if, prior to or in connection with the IPO, the company or its board implemented a multi-class common stock structure in which the classes have unequal voting rights without subjecting the structure to a reasonable time-based sunset provision.

ISS is now proposing that, beginning in February 2023, it will recommend a vote against the entire board of directors of any U.S. company with a multi-class common stock structure with unequal voting rights where the provision doesn’t sunset within seven years of the company’s IPO. If adopted, the policy will automatically apply to companies such as Alphabet, Meta Platforms (the former Facebook), Ford Motor Company, Berkshire Hathaway, and The New York Times Company, among many others, which will lose their “grandfathered” status because they went public prior to 2016.

Exceptions to the policy will be limited and include newly-public companies with a sunset provision of no more than seven years from their IPO date, situations where the unequal

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voting rights are considered de minimis (for example, the special shares have zero vote), or situations where the company provides sufficient protections for minority shareholders (for example, the company allows minority shareholders a regular binding vote on whether the capital structure should be maintained).

Climate-Related Items

Acknowledging that climate change and climate-related risks are now among the most critical topics for many investors, ISS is considering adding three new policies in this environmental area.

Board Accountability

Starting in 2022, with respect to companies identified as significant greenhouse gas (“GHG”) emitters (initially this will include companies on the current Climate Action 100+ Focus list), ISS is proposing to generally vote against the responsible incumbent director, committee, or full board in cases where it determines that the company is not taking the minimum steps needed to understand, assess, and mitigate risks related to climate change to the company and the larger economy.

Initially, these “minimum steps” will include detailed disclosure of climate-related risks (such as board governance measures, corporate strategy, risk management analyses, and metrics and targets) and setting appropriate GHG emissions reduction targets.

Say-on-Climate Proposals

ISS will evaluate shareholder proposals seeking company Say-on-Climate votes on a case-by-case basis, taking into account several enumerated factors. Further, in the case of management-sponsored proposals requesting that shareholders approve the company’s climate transition action plan, ISS will evaluate the proposal on a case-by-case basis, using a variety of factors to evaluate the completeness and rigor of the plan.

Say-on-Pay Proposals in Canada – a Sign of Things to Come?

In Canada, ISS evaluates a board’s responsiveness to investor engagement on various compensation issues, including its failure to respond to a previous say-on-pay proposal that received support of less than 70% of the votes cast (taking into account the company’s ownership structure). ISS is proposing to raise the threshold that will trigger an evaluation to less than 80% support. In the U.S., currently ISS will evaluate the board’s responsiveness to a Say-on-Pay proposal that receives less than 70% support. Given that Glass Lewis & Co. uses an 80% threshold, it appears possible that we could see the same change in ISS’ U.S. board responsiveness policy in the near future.

What's Next?

ISS is accepting comments on its proposed policy updates until 5:00 p.m. (ET) on Tuesday, November 16, 2021. ISS has indicated that it intends to issue its final policy updates for the 2022 proxy season near the end of November. As in prior years, the policy updates will go into effect at the beginning of February of the following year; in this case, February 1, 2022.

To access the ISS portal to its proposed policy updates, click [here](#).

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, Mark A. Borges at 415.462.2995, or Peter Kimball at 202.321.1234.

ISS Issues 2022 Draft Policy Updates; Board Diversity, Multi-Class Stock Structures and Climate in the Spotlight (continued)

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