Cooley

ISS 2025 US Benchmark Policy Guidelines: Key Policy Updates, New FAQs and Hint of Pay for Performance Changes to Come

December 24, 2024

On December 17, 2024, one of the two most influential proxy advisory firms, ISS, released its Proxy Voting Guidelines Benchmark Policy Changes for 2025: US, Canada, and Americas Regional, which provides updates to its voting policies for the 2025 proxy season. The full 2025 ISS Benchmark Voting Policy document is expected to be published in the coming weeks. This alert provides a high-level description of the US policy updates, which will apply for shareholder meetings held on or after February 1, 2025.

Similar to 2024, ISS has introduced significantly fewer policy changes than Glass Lewis, focusing only on poison pills, special purpose acquisition company (SPAC) extensions and a change from general environmental to natural capital-related terminology. Notably, ISS has not added any policies related to artificial intelligence (AI), unlike Glass Lewis, which included new policies regarding AI board oversight and shareholder proposals.

ISS also has provided a preview of possible future policy changes regarding the use of performance-based versus time-based equity awards in US executive compensation programs in its Executive Summary Global Proxy Voting Guidelines Updates for 2025 and Process of ISS Benchmark Policy Development. In addition, ISS issued updates to its FAQs on Executive Compensation Policies and Equity Compensation Plans.

In evaluating the impact of the ISS policy updates – as well as the policy updates from Glass Lewis in November 2024 and the proxy voting policy and stewardship guideline policies from key institutional investors such as BlackRock (and its Global Principles for Benchmark Policies, effective as of January 2025), and Vanguard and State Street (expected in early Q1 2025) – companies should consider the composition of their shareholder base, the extent to which those shareholders look to ISS or Glass Lewis in determining whether to support a proxy proposal, and the areas with which their shareholders appear to be most concerned.

Some institutional shareholders follow ISS or Glass Lewis recommendations without exception, some consider ISS or Glass Lewis recommendations as a factor, but not necessarily a determinative factor, in their voting decisions, and others are guided by their own policies, which may or may not overlap with ISS and Glass Lewis policies. Even if ISS does not have a consequential influence on a particular company's shareholders, they are often viewed as standard-setters for best practices in corporate governance, and changes in policies often reflect investors' changing expectations.

Poison pills: Problematic takeover defenses, capital structure and governance structure

ISS updated its policy to clarify the factors that it considers when evaluating poison pills. ISS generally votes against or withholds from all nominees if a company has a poison pill with a dead-hand or slow-hand feature; the board makes a material adverse modification to an existing pill; or the company has a long-term pill (with a term over a year) that was not approved by public shareholders. ISS votes on case-by case basis on nominees for initial short-term pills (with a term of one year or less), if adopted by the board without shareholder approval. The 2025 updated policy provides further detail on the factors that ISS will consider in its case-by-case evaluation of whether the board's actions in adopting a short-term poison pill were reasonable, or whether the adoption of the pill should be deemed a governance failure warranting a recommendation to vote against directors. The additional factors for consideration include:

- The trigger threshold and other terms of the pill.
- The disclosed rationale for the adoption.

- The context in which the pill was adopted (e.g., factors such as the company's size and stage of development and extraordinary industrywide or macroeconomic events).
- The company's overall track record on corporate governance and responsiveness to shareholders.

There is no change at this time to the policy applied when a board adopts a long-term pill without a shareholder vote, or when a pill is submitted to shareholders for approval or ratification.

SPACs: Proposals for extensions

ISS has revised its policy from voting case-by-case on SPAC extension proposals to generally supporting requests to extend the termination date by up to one year from the SPAC's original termination date, though this policy largely codifies ISS's existing policy application approach. ISS will consider other factors, including any added incentives, business combination status, other amendment terms and, if applicable, use of money in the trust fund to pay excise taxes on redeemed shares. The ISS SPAC extension policy is intended to address the proliferation of "zombie SPACs," which can be described as those that have experienced heavy shareholder redemptions that leave minimal funds in the trust account. Multiple extension requests may be looked at favorably so long as they do not collectively exceed one year in total. The "original termination date" start point is inclusive of any built-in extension options that were included in the original governing documents.

'General Environmental Proposals' and 'Community Impact Assessment'

ISS is updating the terminology in its policy on environmental and social shareholder proposals to replace the reference to "General Environmental Proposals" with the updated reference of "Natural Capital-Related and/or Community Impact Assessment Proposals." ISS continues to have a policy of case-by-case support for proposals calling for reports on company policies and impacts from company operations. This update is to align the ISS US policy with the recent focus seen in shareholder proposals on topics related to natural capital and/or community impact risks. In addition to the terminology change, the updated policy slightly changes the description of how ISS evaluates the adequacy of existing company environmental and social policies and disclosure, with the new language explicitly providing that ISS will look to the alignment of company practices with "broadly accepted reporting frameworks."

Additional information: Executive compensation and use of performance equity awards

The disclosure and design of incentive programs have historically been part of ISS qualitative analysis reviews, but in response to investor concerns about potential pitfalls surrounding metric-based performance equity programs, effective for meetings on or after February 1, 2025, ISS will introduce adaptations to the qualitative review of performance-vesting equity awards carried out under the current US benchmark policy. Existing qualitative considerations around performance equity programs going forward will be subject to greater scrutiny in the context of a quantitative pay-for-performance misalignment. Specifically, any design or disclosure concerns regarding performance equity will carry greater weight in the qualitative analysis, and significant concerns in these areas will be more likely to drive an adverse say-on-pay recommendation where a company exhibits a quantitative pay-for-performance misalignment.

On December 13, 2024, ISS published updates to its Executive Compensation Policies FAQ, which includes a new question addressing these changes to the evaluation of performance-vesting awards. In particular, the FAQ notes that relevant considerations for the evaluation of performance equity programs may include:

- Nondisclosure of forward-looking goals (with retrospective disclosure of goals at the end of a performance period carrying less mitigating weight).
- Poor disclosure of closing-cycle vesting results.
- Poor disclosure of the rational for metric changes, metric adjustments or program design.
- Unusually large pay opportunities, including maximum vesting opportunities.

- Non-rigorous goals that do not appear to strongly incentivize for outperformance.
- Overly complex performance equity structures.

The updated FAQ also includes a new question providing further insight into how ISS evaluates incentive plan metrics. The question explains that while ISS continues to believe that a company's board and compensation committee are generally best qualified to determine metrics, it recognizes that shareholders prefer emphasis on objective metrics that increase transparency into pay decisions. The FAQ includes the following examples of factors that ISS may consider in evaluating incentive plan metrics: whether the program emphasizes objective metrics linked to quantifiable goals; the rationale for selecting metrics (including the linkage to company strategy and shareholder value); the rationale for atypical metrics or significant changes from the prior year; and/or the clarity of disclosure around adjustments for non-GAAP (generally accepted accounting principles) metrics, including the impact on payouts.

Some investors have advocated for companies replacing performance-conditioned equity awards with time-based equity awards that have extended vesting periods. A potential ISS benchmark policy update remains under consideration for 2026 (or later) regarding the evaluation of the equity pay mix for regular-cycle equity awards whereby a preponderance of time-vesting equity awards generally would not in itself raise significant concerns in the qualitative review of pay programs. ISS will continue to gather feedback on this topic through 2025.

Non-US policy changes

ISS also has issued policy updates for Europe, Middle East, and Africa (EMEA) and Asia-Pacific, including changes to policies pertaining to remuneration, corporate governance and audit matters, which will be effective for meetings on or after February 1, 2025.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. When advising companies, our attorney-client relationship is with the company, not with any individual. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our AI Principles, may be considered Attorney Advertising and is subject to our legal notices.

Key Contacts

Michael Bergmann Washington, DC	mbergmann@cooley.com +1 202 728 7008
Brad Goldberg New York	bgoldberg@cooley.com +1 212 479 6780
Alessandra Murata Palo Alto	amurata@cooley.com + 1 650 843 5696

Beth Sasfai New York	bsasfai@cooley.com +1 212 479 6081
Luci Altman	laltman@cooley.com +1 212 479 6526
Michael Mencher San Francisco	mmencher@cooley.com +1 415 693 2266

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.