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ISS Opens 2021 Policy Surveys; Glass Lewis Seeks Informal Feedback

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ISS Policy Surveys

Each November, ISS updates its proxy vote recommendation policies for meetings held after February 1 of the following year. As part of that process, ISS collects information from institutional shareholders, corporate issuers, corporate directors and other market constituents in the form of an annual survey. The survey questions are interesting because they provide a first glance into certain policies that ISS is considering changing or adopting (though of course not all of the questions translate into policy updates, and there are typically policy updates that were not reflected in the survey).

This year, ISS is soliciting feedback via two separate policy surveys:

- Its annual Benchmark Policy Survey, which covers a broad range of governance and compensation issues
- Its new Climate Policy Survey, which covers a variety of climate-related issues

In announcing the launch of the Climate Policy Survey, ISS noted that the feedback it receives will be relevant to both its benchmark policy and its specialty climate voting policy, which itself launched in 2020. ISS noted that the creation of the Climate Policy Survey "reflects the fast-developing and sharp focus on climate-related issues that many investors globally are considering as a key component of their investor stewardship, including through voting." The specialty climate voting policy draws from widely recognized frameworks, and uses a scorecard approach to reflect varied climate-related risk factors and provide vote recommendations, including on the reelection of board members who are responsible for climate-related risk oversight or who insufficiently manage or guard against material climate change-related risks.

The response deadline for both ISS surveys is Friday, August 20, at 5:00 pm EDT. We recommend that issuers and other interested parties respond to the surveys, so their feedback will be incorporated into the policy development process. As of August 16, 2021, there were over 200 responses to the Climate Policy Survey and over 300 responses to the Benchmark Policy Survey.

Items in the surveys that we found especially interesting for US issuers are outlined below.

Compensation-related questions

- In response to the COVID-19 pandemic, ISS published special policy guidance in April 2020 addressing, among other things, adjustments to short-term and long-term compensation plans. In the survey, ISS reiterates that it generally views **mid-cycle changes to long-term incentive programs** as "a problematic response to the pandemic," as such awards are meant to cover multiyear periods, but also notes that a subset of industries continue to be severely negatively impacted and face long-term effects. ISS is seeking input on mid-cycle changes made by such companies, suggesting that ISS is considering updating its policy from a case-by-case analysis to perhaps provide reprieve for such companies.
- Noting an upward trend of companies incorporating **nonfinancial environmental, social and governance (ESG) related metrics into executive compensation programs**, ISS is seeking feedback on whether respondents view such ESG metrics as appropriate drivers of executive compensation, and which pay components are best tied to such metrics.
- In evaluating pay-for-performance, ISS completes a quantitative assessment and a qualitative review of a company's executive compensation program. ISS' quantitative screen includes a relative measure that evaluates **one year of CEO pay** as a multiple of the median CEO pay of the company's peers for the most recently available annual period, in order to assess alignment between executive pay and company performance. ISS is seeking input on whether a longer-term perspective of

CEO pay (such as a three-year evaluation) would be relevant and helpful for the quantitative evaluation.

Governance-related questions

- Pursuant to a policy adopted in 2015, ISS issues recurring adverse recommendations for directors of "newly public" companies that have certain governance provisions in place (namely, multiclass stock, classified board or supermajority vote requirements to amend governing documents). ISS applies this policy only to companies that became public after the policy was adopted, thus exempting companies that were already public prior to 2015. The survey asks if ISS should consider **changing its policy to issue negative vote recommendations for directors of companies that became public prior to 2015** where such governance provisions remain in place. This would be a major change for such companies, which have not had to face automatic negative recommendations in director elections.
- ISS is seeking input on whether ISS should continue to make **recurring negative vote recommendations for directors** of companies with supermajority vote requirements after the company seeks but fails to obtain shareholder approval to eliminate such a provision. The survey question offers a range of responses, including continuing to recommend withholding support from directors every year there is not a management proposal on the ballot to reduce the supermajority vote requirements and, alternatively, that a single attempt by the company to remove the supermajority requirements is considered sufficient and representative of shareholder views.
- Acknowledging the rapid and sustained shift to **virtual-only shareholder meetings**, ISS is seeking input on which practices associated with virtual-only meetings, if any, respondents find detrimental or problematic. Such practices include the inability to ask live questions, participants being muted, the inability of shareholders to vote or change their vote during the meeting, a requirement to register for the meeting in advance, the inability of a shareholder proponent to present and explain a shareholder proposal, and others. ISS is also seeking input on whether adverse director votes are warranted as a result of any such problematic practices. While Glass Lewis implemented a policy disfavoring virtual-only meetings in 2019 (absent sufficient shareholder protections and disclosure of those protections), ISS has not imposed any particular requirements on companies holding virtual-only meetings.
- ISS notes that in response to recent racial justice protests, shareholders have increased engagement with companies on issues of diversity and racial equity, including seeking better disclosure on representation in the workforce, information about corporate programs for employees of color, and information on steps companies are taking to "identify and mitigate racism in the workplace and society." As a result, ISS is seeking feedback on whether companies would benefit from **third-party racial equity audits**, suggesting that ISS is considering whether such audits would be useful to its evaluation of a company's progress and initiatives in this area. This is especially notable because, in 2021, ISS recommended voting against several shareholder proposals on the topic of racial equity audits, including a proposal filed with Goldman Sachs Group Inc., where ISS determined that the company had already taken meaningful actions to address racial and economic inequality.

SPAC-related questions

- The survey questions also suggest that ISS is considering moving away from its case-by-case approach of evaluating SPAC transactions to generally recommend voting in favor of such transactions, irrespective of the merits of the target company combination or any governance concerns. However, the survey does suggest that ISS is trying to determine "dealbreakers," as the questions ask respondents to provide examples as to areas of concern that may be reasons investors would vote against a SPAC transaction.

Climate-related questions

- In 2020, ISS updated its voting policy to specify that "demonstrably poor risk oversight of environmental and social issues, including climate change" could be viewed as **material failures of governance**, stewardship or risk oversight that lead to negative vote recommendations against directors. The survey questions suggest that ISS is considering refining its current practice to define what the minimum governance expectations should be for companies whose operations, products or services are considered to be strongly contributing to climate change and whether a similar minimum expectation standard should be used for companies that are not as strongly contributing to climate change. The range of answers suggest that ISS is trying to determine whether investors have yet coalesced on a specific climate-related course of action (e.g., TCFD

reporting, statement of ambition to align with the Paris Agreement, Paris Agreement-aligned GHG emissions targets, etc.).

- ISS notes that some companies have started or committed to putting their climate transition plans forward for regular shareholder advisory vote (referred to as **"Say-on-Climate"**). The survey questions suggest that ISS wants to understand whether there is consensus around the Say-on-Climate framework as the appropriate vehicle for investors to express their opinion of a company's efforts to combat climate change (in lieu of or in combination with adverse director votes), and that ISS may be seeking to establish minimum criteria for a climate transition plan in order to garner support for management-proposed plans.
- The survey also suggests that ISS is considering enhancing its specialty climate voting policy with a more stringent evaluation of emission reduction efforts of **"high-impact companies"** (as identified by Climate Action 100+) that are disproportionately responsible for contributing to climate change.
- Survey questions suggest that ISS is considering updating its specialty climate voting policy to assess a company's alignment with **"net zero by 2050" emissions pathway goals** and is considering what actions are most important as indications of a company's alignment with such goals.

Glass Lewis informal feedback

Glass Lewis' annual policy review process is also in progress, with its research teams studying regulatory developments and changing global best practices. As part of this process, Glass Lewis is soliciting feedback from market participants on its voting policies. The Glass Lewis process is a less formal invitation to submit feedback on its guidelines by emailing guidelinescomments@glasslewis.com. While Glass Lewis has not published a deadline for submitting feedback, it recommends submitting any feedback by **Tuesday, August 31,** to ensure that it is considered for this round of policy guideline updates.

Like ISS, we expect Glass Lewis to publish its updated policy voting guidelines before the end of the year. For 2021, Glass Lewis' updates were in the areas of board gender diversity, board refreshment, environmental and social risk oversight, and SPACs, among others. The 2021 policy updates also previewed certain policy changes to be effective January 1, 2022, such as Glass Lewis' policy to generally recommend voting against the nominating committee chair of a board with fewer than two female directors.

Questions?

If you have any questions about this alert or any ISS or Glass Lewis policy guidelines, please contact one of the Cooley attorneys listed below. We will continue to keep you apprised of developments related to the ISS and Glass Lewis policy update process.

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