Blogs
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ISS Finalizes Voting Policy Changes for 2023

About a month after proposing changes to its voting policies, ISS **announced** its updated 2023 voting policies last week (here is the **final policy updates** — and here is an **executive summary**). The updated policies will generally be applied for shareholder meetings taking place on or after February 1st.

The key new policy updates for U.S. companies are as follows:

1. **Climate Board Accountability for Climate Action 100+ Companies:** The climate board accountability policy applicable to U.S. companies in the Climate 100+ Focus Group has been updated and will be applied on a global basis this year. Similar to the policy announced last year, a company in the focus group must both (a) adequately disclosing its climate risks (such as in accordance with the TCFD framework) and (b) have either medium-term GHG emission reduction targets or Net Zero-by-2050 for at least Scope 1 and Scope 2 emissions. ISS intends to generally recommend voting against the appropriate committee chair (or other directors on a case-by-case basis) at applicable companies failing to meet *either* criteria.

   The policy calls for a company's emission reduction targets to cover the vast majority (95%) of its Scope 1 and 2 emissions. ISS intends to issue a set of FAQs on this policy update before it becomes effective.
2. **Officer Exculpation Charter Amendments Considered on Case-by-Case Basis:** Delaware amended its General Corporation Law this past August to permit companies to limit or eliminate the personal liability of officers for duty of care breach claims. Most companies that might want to take advantage of this Delaware law change would need to seek shareholder approval of a charter amendment to permit it. ISS' policy is to make recommendations on a case-by-case basis for proposals seeking to add exculpation provisions in a company's charter. ISS will consider the stated rationale for the proposed change as well as stated factor regarding the scope of the proposal.

   This is a change from what ISS had **proposed** last month, that it would generally recommend "for" this type of charter amendment. The updated discussion of this item highlights skepticism regarding how shareholders might benefit from officer exculpation. Companies considering charter amendments in 2023 will need to provide a clear explanation of the benefits of this provision to the company.
3. **Political Expenditures Alignment Transparency Shareholder Proposals Assessed on a Case-by-Case Basis:** For shareholder proposals requesting company transparency on the congruency of its political contributions and lobbying with its public commitments and policies (including climate lobbying congruency to its climate goals), ISS adopted a policy identifying the factors it considers in assessing such proposals.

   The rationales behind adopting this policy include the increasing number of such proposals, and in intent to provide more transparency to the market about how ISS assesses such shareholder proposals.
4. **Problematic Governance Structures for Newly-Public Companies:** ISS updated its voting policy of recommending votes against directors of companies that adopted corporate defensive structures prior to or in connection with going public (including classified boards and supermajority vote requirements). The update defines the "reasonable sunset period" to fully eliminate such provisions as no more than 7 years from the date of going public.
5. **Updated Criteria for Racial Equity and Civil Rights Audit Analysis:** ISS' policy has been to vote case-by-case on shareholder proposals calling on a company to conduct an independent racial equity and/or civil rights audit. For this season, ISS updated the criteria for considering such proposals, adding consideration of the company's disclosure of workforce diversity and inclusion metrics and goals.

6. **Share Issuance Analysis for Issuers Incorporated Outside the U.S. But Listed Solely on a U.S. Exchange**: For U.S. domestic issuers incorporated outside the U.S. and listed solely on a U.S. exchange, ISS announced a new policy to generally vote for resolutions to authorize the issuance of common shares up to 20% of currently issued common share capital. This policy was adopted for U.S.-listed but non-U.S. incorporated companies so as to better reflect the expectations and concerns of U.S. investors. Previously, such companies would have been subject to policies applicable to their market of incorporation.

   The policy applies to companies with a sole listing in the U.S., but which are required by the laws of the country of incorporation to seek approval for such share issuances. Dual-listed companies that are required to comply with listing rules in the country of incorporation will continue to be evaluated under the policy for that market.

In addition, policy updates announced in prior years but that are effective as of February 1, 2023 include:

1. **Board Gender Diversity Policy Now Widely Applicable:** As announced last year, the ISS policy to generally vote against nominating committee chairs (or other appropriate directors) at companies with no women on the board will apply to *all* U.S. companies. The policy will also apply to all foreign issuers. Last year, the gender diversity policy applied only to companies in the Russell 3000 or S&P 1500 indices.
2. **No More Grandfathering of Unequal Voting Rights**: As announced last year, ISS will no longer provide grandfathering for companies with unequal voting rights that went public prior to 2015. Exceptions to this policy include for companies where the super-voting shares represent less than 5% of total voting power, and where the company provides protections for minority shareholders, including regular binding votes on whether to maintain the capital structure.

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