

ISS Releases Executive Summary of 2017 Proxy Voting Policies

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ISS has published an executive summary of 2017 updates to its benchmark proxy voting policies for the Americas, EMEA, and Asia-Pacific regions. The updated policies will generally be applied to shareholder meetings on or after February 1, 2017.

U.S. policy changes are summarized below, and companies should keep them in mind as they consider policies on director compensation, dividend and vesting policies for stock awards, and shareholder rights to amend bylaws. For companies contemplating IPOs, governance structures that have a material adverse impact on shareholder rights, including multi-class shareholder structures, generally will lead to recommendations against director candidates. It's worth noting that in certain situations where ISS finds a practice problematic, it will result in ongoing (versus one-time) recommendations against directors (see the last two policies described below).

In December 2016, ISS will release a complete set of updated policies, and it will release updated Frequently Asked Questions ("FAQ") documents on certain U.S. policies, including the Equity Plan Scorecard.

Non-Employee Director Pay: While ISS does not evaluate stand-alone non-employee director ("NED") plans according to its Equity Plan Scorecard or the EPSC model, these plans do receive a standard cost evaluation for Shareholder Value Transfer (SVT). Under the updated policies, NED pay proposals will be evaluated across "a broader range of factors and more nuanced consideration of director pay." ISS will assess advisory proposals seeking shareholder approval of NED pay, and certain NED equity plan proposals that are determined to be relatively costly, considering the following, additional qualitative factors:

- The relative magnitude of director compensation as compared to companies of a similar profile;
- The presence of problematic pay practices relating to director compensation;
- Director stock ownership guidelines and holding requirements;

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- Equity award vesting schedules;
- The mix of cash and equity-based compensation;
- Meaningful limits on director compensation;
- The availability of retirement benefits or perquisites; and
- The quality of disclosure surrounding director compensation.

This policy update is consistent with recent judicial scrutiny of director compensation. In *Calma v. Templeton*, the Delaware Chancery Court denied Citrix's motion to dismiss the plaintiff's breach of fiduciary duty claim against the Citrix board of directors, and furthermore, held that director compensation decisions would be judged by the heightened entire fairness standard (versus the deferential business judgment rule), where the director compensation program did not include "meaningful limits."

Dividends and Minimum Vesting for Stock Awards: ISS added a factor on dividend payments on unvested awards. ISS will award full points if the equity plan expressly prohibits dividend payments for all award types before the vesting of the underlying award. Accrual of dividends payable upon vesting is acceptable. No points will be earned if this prohibition is absent or incomplete (i.e. not applicable to all award types). Notably, a company's general practice of not paying dividends until vesting, if it is not memorialized in the plan document, is insufficient to earn full points.

The minimum vesting factor was also updated so that an equity plan must specify a minimum vesting period of one year for all award types under the plan in order to receive full points for this factor. No points will be earned if the plan allows for individual award agreements that reduce or eliminate the one-year vesting requirement.

Restrictions on Shareholder Amendments to Bylaws: ISS will make ongoing recommendations against governance committee members if the company's charter imposes undue restrictions on shareholders' ability to amend the bylaws. These restrictions include but are not limited to a prohibition on the submission of binding shareholder proposals or ownership/holding requirements for such shareholder proposals that exceed those in the SEC's Rule 14a-8.

IPOs with Multi-Class Shareholder Structures: If prior to or in connection with a company's public offering, the company or its board adopted bylaw or charter provisions materially adverse to shareholder rights, or implemented a multi-class capital structure in which the classes have unequal voting rights, ISS will generally recommend withhold or against votes on directors individually, committee members, or the entire board (except new nominees, who should be considered case-by-case). Unless the adverse provision and/or problematic capital structure is reversed or removed, ISS will recommend a vote case-by-case on director nominees in subsequent years.