

Client Alert

April 2020

ISS Issues COVID-19 Guidance on Benchmark and Voting Policies

On April 8, Institutional Shareholder Services (ISS) published policy guidance reflecting certain adjustments due to the impacts of the COVID-19 pandemic. The guidance addresses how ISS's benchmark and voting policies may be applied in this new era of uncertainty. In many cases, the guidance merely reiterates that ISS will respond to corporate actions on a case-by-case basis, but there are a few specific areas where ISS has changed or relaxed its existing policies. Below is a high-level summary of that guidance.

- **Effects on Annual Meetings.** ISS recognizes that in the current environment it may be unsafe to hold in-person shareholder meetings. Therefore, ISS (i) will positively note when companies and boards who have postponed meetings use electronic communications such as webcasts or conference calls to engage with shareholders and investors, and (ii) will not make an adverse vote recommendation regarding a company's desire to hold virtual-only meetings until in-person meetings may be held safely. Where companies hold virtual-only meetings, ISS believes they should explain the rationale for doing so, give shareholders a meaningful opportunity to participate, and commit to return to holding meetings with an in-person option as soon as it is safe to do so.
- **Poison Pills.** ISS believes that its existing policy regarding short-term poison pills addressing active threats—to consider them on a case-by-case basis—remains appropriate. However, ISS says that “[a] severe stock price decline as a result of the COVID-19 pandemic is likely to be considered valid justification in most cases for adopting a pill of less than one year in duration.”
- **Director Attendance.** ISS recognizes that in these times director in-person participation may flag due to health and safety concerns. Where electronic participation is not uniformly counted as being “present” (which is not the case in the United States), ISS will take into account company disclosures regarding the reasons behind directors' electronic attendance.
- **Changes to Boards, Senior Management.** ISS says that companies should have broad discretion during the crisis to change directors and senior management to respond to the crisis, and ISS will adjust the application of its policies as appropriate. This includes situations in which a director assumes an executive position on an interim basis due to the disability or incapacity of an existing officer.
- **Compensation and Stock Options.** ISS understands that companies are likely to seek changes to short-term compensation plans due to the pandemic, and ISS encourages companies to provide contemporaneous disclosure to shareholders regarding such changes even though stockholders typically would not express their opinions on compensation (e.g., say-on-pay vote) until 2021. ISS suggests that its existing policies regarding long-term compensation plans and stock option plans will not be adjusted for the pandemic. ISS further stated that it is generally “not supportive of changes to mid-stream or in-flight long-term awards since they cover multi-year periods” and,

therefore, any changes to performance metrics will be reviewed on a case-by-case basis. Finally, ISS cautions against repricing any underwater stock options without shareholder approval.

- **Dividends.** ISS says that while in ordinary circumstances dividend payment ratios would be expected to fall within a certain range based on earnings, this year ISS will allow for broader discretion in issuing dividends (but will also scrutinize companies' plans for using any cash preserved from reductions in dividends). ISS notes that it "will look at whether boards disclose plans to use any preserved cash from dividend reductions to support and protect their business and workforce."
- **Share Repurchases.** ISS notes that share repurchases are being scrutinized and may cause reputational damage. ISS will continue to recommend in favor of repurchase authorities within customary limits and if they do not raise serious concerns, but ISS will review a company's actions related to repurchases in 2020 in preparation for 2021 annual meetings to gauge whether they represent responsible risk management.
- **Capital Raisings.** ISS will continue to apply its existing benchmark and voting policies to assess a company's financing activities such as share issuances and private placements. Those policies generally call for case-by-case determinations. ISS will adapt any of its policies to take any regulatory changes into account. Furthermore, ISS acknowledges that the pandemic and the resulting economic crisis constitute "exceptional circumstances" that would allow ISS to issue "for" recommendations even where the proposed financing goes beyond ISS's customary limits.

The full guidance can be found here (<https://www.issgovernance.com/file/policy/active/americas/ISS-Policy-Guidance-for-Impacts-of-the-Coronavirus-Pandemic.pdf>).

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