October 26, 2020

RE: Proposed ISS Benchmark Policy Changes for 2021
Sent to: policy@issgovernance.com

To whom it may concern:

I write on behalf of the New York State Common Retirement Fund (Fund), which holds and invests the assets of the New York State and Local Retirement System on behalf of its more than one million members, retirees, and beneficiaries. We appreciate the opportunity to provide comments on the proposed changes to Institutional Shareholder Services (ISS)' benchmark voting policy. Although the Fund votes all of its proxies independently, according to our own proxy voting guidelines, we recognize that many market participants view the ISS benchmark as setting a standard for best practices. It is in this vein that we offer these comments; we believe that an improved Benchmark Policy will help push market practices toward better corporate governance.

United States Policy – Director Elections: Racial/Ethnic Board Diversity

The Fund generally supports the ISS proposal regarding recommending votes against or withholding support from the chair of the nominating committee (or other directors on a case-by-case basis) of a board that has no apparent racial or ethnic diversity. This voting recommendation is mostly aligned with the Fund's current proxy voting guidelines and market best practices for encouraging diverse representation on boards of directors. Increasing diverse representation on boards is important to shareholder value—research has long demonstrated that companies with diverse leaders outperform companies that lack them. The Fund encourages ISS to consider expanding its recommendations to vote against or withhold support from the entire nominating committee when diversity is lacking. We believe these recommendations would encourage more progress on this important issue for shareholder value.

Additionally, while the Fund would prefer that these changes take effect as soon as possible, we understand the limitations on standardized disclosure relating to the self-identified race and ethnicity of board of director candidates. While this is a current concern, we believe there is renewed momentum surrounding companies disclosing the self-identified race and ethnicity of board of director candidates. From private ordering to initiatives spearheaded by corporate governance organizations like ISS, the disclosure of self-identified race and ethnicity of board of director candidates should greatly improve by the February 1, 2022 effective date.

With respect to the proposed policy application universe, the Fund agrees with the initial universe of Russell 3000 and S&P 1500 companies. We believe this universe is broad enough to cover the domestic public equity holdings of large institutional US investors like the Fund. Following the initial implementation of this policy, the Fund would request that ISS continue to pursue expanding the application universe to all US issuers covered by the ISS benchmark policy.

All Benchmark Policies – Director Elections: Material E&S Risk Oversight Failures
The Fund supports ISS an including board failure to oversee environmental and social issues to the list of "material failures" that may trigger adverse voting recommendations for directors. We believe that a failure to address material environmental and social issues can present legal, financial, regulatory and reputational risks that could negatively impact shareholder value.

Currently, the Fund's proxy guidelines state that companies should clearly define relevant oversight of material ESG related issues. Such oversight should include the assurance of appropriate comprehensive reporting to shareholders beyond what is required within current financial reporting with adherence to internationally recognized sustainability reporting protocols. A board's failure to appropriately manage and comprehensively report material ESG risks may lead the Fund to withhold support from directors who serve on relevant oversight Committees. Additionally, the Fund's proxy voting guidelines outline relevant environmental and social issues we consider when assessing a company's performance. These include climate change; product and food safety; pollution control; resource management; water risks; diversity, equality & inclusion; human capital management; labor & human right; corporate culture; cybersecurity, data security & internet privacy/censorship; and health & safety issues.

The Fund considers various factors when reviewing evidence where a board may have demonstrated poor risk oversight of environmental and social issues. This includes, but is not limited to:

- Legal judgments, ongoing litigation, and enforcement actions.
- Pattern of controversial events or allegations.
- A significantly negative and/or high-profile environmental or social event.
- Failure to address material environmental and social issues, including failure to comprehensively report on material issues.
- Failure to adhere to industry best practices or standards.

Additionally, when assessing a case of poor risk oversight of environmental and social issues, the Fund reviews:

- How material the issue is to the company, including using internationally recognized materiality standards like the Sustainability Accounting Standards Board.
- Reviews of relevant reporting or disclosures on the issue at question.
- Extent to which a company has developed strategies and practices, and demonstrated a strong track record of performance in managing the issue at question.
- Assessment of relevant controversies, including the nature and scale of impact, and whether the controversies is a single occurrence or ongoing trend.
- Responsiveness to shareholder concerns.

The Fund supports the establishment of criteria that would allow ISS benchmark policies to proactively identify boards that fail to prepare for foreseeable future risks. We believe boards should be held accountable for failing to address future or ongoing environmental and social risks. For example, the Fund routinely votes against or withholds support from directors at companies for failing to address climate change-related risks.

United States Policy — Exclusive Forum Proposals
The Fund does not support the proposed changes outlined in the exclusive forum proposal. The Fund's proxy voting guidelines clearly state that companies should not attempt to restrict the venue for shareowner claims by adopting charter or bylaw provisions that seek to establish an exclusive forum. Additionally, the Fund will withhold support from governance committee members when a company pursues this action.

Recent legal developments regarding exclusive forums at both the state and federal level have the potential to restrict shareholder litigation rights.[1] While some companies have begun incorporating such provisions into their governing documents, we do not believe designating an exclusive forum is in the best interests of shareholders and the overall integrity of financial markets. For example, state courts are often considered to be a more favorable forum for shareholders to seek redress when they have been defrauded or in the event of corporate misconduct. As a result, the Fund does not support and believe ISS should not adopt the proposed changes outlined in the exclusive forum proposal.

Thank you for your consideration of these comments.

Sincerely,

Liz Gordon
Executive Director of Corporate Governance

[1] Consumer Federation of America, Caution: Slippery Slope, How Delaware Supreme Court's Blue Apron Decision Could Harm Investors and Undermine Market Integrity, September 20, 2020. https://consumerfed.org/testimonial/caution-slippery-slope-how-delaware-supreme-courts-blue-apron-decision-could-harm-investors-and-undermine-market-integrity/