European Policy[1] – General Share Issuance Request Proposals

Background and Overview

General share issuance requests (i.e. those for which the company has not disclosed a specific purpose, but under which, if approved, companies may issue shares without further shareholder approval) are common under both authorized and conditional capital systems in Europe. The requests can be for share issuances either with or without pre-emptive rights for existing shareholders. Approval of such authorization requests gives companies flexibility to carry out ordinary business activities without having to bear the expense of calling shareholder meetings for every issuance. However, when companies make issuances without preemptive rights, shareholders experience dilution of their economic interest and voting rights. Therefore, to protect shareholders from potentially excessive dilution, widely-accepted best practice for authorizations is that they should be limited to a fixed number of shares or a percentage of capital at the time of issuance.

Under current ISS European Voting Guidelines, ISS generally recommends in favor of issuance requests without pre-emptive rights for up to 20 percent of a company's issued share capital for Continental European companies (dropping to 10 percent in France). For issuance requests with pre-emptive rights, ISS' current approach is to generally recommend in favor of issuance requests of no more than 100 percent (dropping to 50 percent in France) of a company's issued share capital.

Key Changes under Consideration

The proposed policy update would, after a proposed one-year transition period to February 2019, tighten the potential dilution limits for general share issuance requests in Continental Europe to 10 percent without preemptive rights and 50 percent with preemptive rights, respectively.

ISS' European policy on specific share issuance requests (i.e. those requests with a specific disclosed purpose) would otherwise remain unchanged and all such specific requests, whether with or without pre-emptive rights, would continue to be assessed on a case-by-case basis.

Intent and Impact

Many institutional investors have tightened their own internal voting guidelines and a growing number of them only support general share issuances if the maximum dilution is 10 percent without preemptive rights or 50 percent with preemptive rights. Notably, investors in larger European markets like the UK, France, or Germany already follow this stricter approach, and many other European investors are seen to reflect this trend with stricter limits as well.

Request for Comment

While we appreciate any comments on this topic, ISS is specifically seeking feedback on the following:

- For general share issuances without preemptive rights, do you consider a maximum limit of 10 percent of issued share capital appropriate? If not, what limit would you support and why (please specify)?

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[1] ISS' European Policy applies to companies incorporated in the following territories: Austria, Belgium, Bulgaria, Croatia, the Czech Republic, Cyprus, Denmark, Estonia, the Faroe Islands, Finland, France, Germany, Greece, Greenland, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, the Netherlands, Norway, Poland, Portugal, Romania, Spain, Slovakia, Slovenia, Sweden, and Switzerland.

- For general share issuances with preemptive rights, do you consider a maximum limit of 50 percent of issued share capital appropriate? If not, what limit would you support and why (please specify)?
- Should there be exceptions for certain sectors or industries? If yes, which sectors or industries do you consider would be appropriate and why (please specify)?