UNITED STATES

Cross-Market Policies and Application

Frequently Asked Questions

Published March 31, 2023

This FAQ is intended to provide general guidance regarding the way in which ISS' Governance Research Department will analyze certain issues in the context of preparing proxy analyses and determining vote recommendations for U.S. companies. However, these responses should not be construed as a guarantee as to how ISS' Governance Research Department will apply its Benchmark Policy in any particular situation.

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1. What is the main purpose of this FAQ document and how should it be referenced?

This FAQ document is intended to provide information regarding ISS' application of cross-market policies and approach to analyzing cross-market companies. ISS endeavors to increase transparency around its policy application approaches for companies that are listed in the U.S. but incorporated and/or also listed in another country. Cross-market companies often present difficult policy questions, including if and how a U.S. policy should apply to proposals that are on the ballot due to a foreign market requirement. These questions create an additional layer of complexity and challenges for shareholders to determine the market perspective to be used in their voting decisions. Often, the answers to these questions are highly fact-specific and ISS makes determinations using best efforts to further shareholders' interests while balancing factors such as consistency in policy application and transparency to market participants. Given the variety and complexity of fact patterns, cross-market policies cannot be applied uniformly in all situations and therefore this FAQ document should not be relied on as a guarantee as to how ISS may approach any particular cross-market policy situation. ISS regularly reviews its cross-market policies and welcomes your feedback.

ISS' Country of Coverage

2. What is ISS' "country of coverage" and how is it determined?

When determining for a company the appropriate primary policy and Research coverage team, companies are assigned to an ISS "Market of Coverage" aka "Country of Coverage" (CoC). Typically, that coincides with the location of a company's home market, its incorporation, and its primary stock exchange listing. There has been a growing number of companies (including U.S. Domestic Issuers, Foreign Private Issuers, companies incorporated in governance/tax haven countries) that cross into multiple markets given that their operations and/or primary exchange listing differ from their jurisdiction of incorporation. The key criteria in assigning the Country of Coverage and the appropriate Research team responsible for analyzing and publishing reports for a cross-market company include language issues, proximity with respect to potential engagement, and – importantly -- the nature of the company's typical ballot items.

The following factors are also considered in determining the Research team assignment and primary policy coverage:

- Country of stock exchange listing;
- Country of incorporation;
- Country of operations (where most employees reside);
- Where the executives reside;
- Membership in a major stock index; and
- Where the majority of shareholders reside.

The Country of Coverage for companies incorporated in the tax/governance havens (e.g. Bermuda, Cayman Islands) is assigned on the basis of a variety of factors (as noted above), and they will be covered either under that market's regional policy or under ISS' Foreign Private Issuer (FPI) Policy, which imposes certain corporate governance standards in line with those of the U.S. market in determining recommendations for director elections and auditor approval/ratification and then uses the relevant market or regional policy for other ballot items.

3. Which companies are covered under ISS' U.S. Policy?

Companies incorporated and listed on U.S. exchanges are generally covered under ISS' U.S. Policy. If a U.S.-incorporated company trades only on non-U.S. exchanges, it will generally be covered under ISS' Policy Guidelines for the market on which it is traded.

The determination of whether U.S. coverage should apply to foreign-incorporated companies traded in the U.S. is generally based on the level and style of disclosure provided by the company, which is dictated by the United States Securities and Exchange Commission (SEC). In addition, ISS' clients have generally indicated a preference, when different policies could be applied, that the more stringent policy be applied, particularly for governance-related ballot items, such as board elections.

In terms of disclosure, for foreign-incorporated companies, the SEC requires testing to see whether a company is allowed to file with the SEC as a Foreign Private Issuer (FPI), or if it is considered sufficiently tied to the U.S. that it should be subject to the same disclosure requirements as U.S. Domestic Issuers. For most companies, if a company is required to file as a U.S. Domestic Issuer, then ISS will generally assign the U.S. to be the company's primary country of coverage. FPI filers are generally not assigned to have the U.S. as the primary country of coverage.

SEC Regulations: Foreign Private Issuer vs. Domestic Issuer

4. What is a Foreign Private Issuer?

Foreign companies are often very interested in accessing the U.S. capital markets, and the SEC has long encouraged them to do so by allowing those that qualify to list on U.S. exchanges without providing the extensive disclosures required of most U.S. companies. Instead, they are able to adhere to the rules of their "home market" – which generally means the country of incorporation rather than operational headquarters – and file limited U.S. disclosures under the status of Foreign Private Issuers. A very large number of foreign companies file in the U.S., and the vast majority of them will be covered by ISS' Policy applicable to their home market, not the U.S. Policy.

The rules governing Foreign Private Issuers are detailed in the SEC Financial Reporting Manual:

https://www.sec.gov/corpfin/cf-manual/topic-6

6110 Definitions

6110.1 *Foreign Issuer* [Regulation C, Rule 405 and Exchange Act Rule 3b-4]: An issuer which is a foreign government, a foreign national or a corporation or other organization that is incorporated or organized under the laws of any foreign country.

6110.2 *Foreign Private Issuer* [Regulation C, Rule 405 and Exchange Act Rule 3b-4]: The term foreign private issuer means any foreign issuer other than a foreign government except an issuer meeting the following conditions:

a. More than 50% of the outstanding voting securities of such issuer are directly or indirectly owned of record by residents of the United States; and

b. Any of the following:

1. The majority of the executive officers or directors are United States citizens or residents;
2. More than 50% of the assets of the issuer are located in the United States; or
3. The business of the issuer is administered principally in the United States. *(Last updated: 9/30/2011)*

If a company no longer qualifies as a Foreign Private Issuer per the above, it must start filing as a U.S. Domestic Issuer.

5. What forms are filed by FPIs vs. U.S. Domestic Issuers?

For the shareholder meeting materials, FPIs file Forms 6-Ks and a 20-F (annual report). U.S. Domestic Issuers file DEF14As and 10-Ks (along with 8-Ks, 10-Qs, etc.). It is thus usually very easy to see at a glance by looking at EDGAR whether the company is an FPI or a U.S. Domestic Issuer. However, sometimes a company will voluntarily file some Domestic Issuer filings (e.g. a 10-K filing) while retaining its FPI exemptions status, and are expected to provide an explanation in the 10-K if they are doing so.

6. What are the benefits to the company of filing as an FPI?

Benefits afforded to FPIs include:[1]

- No requirement for quarterly reporting
- Not subject to accelerated filing
- Exemption from U.S. proxy rules
- Exemption from insider trading reports
- Exemption from short-swing profit recovery rules
- Exemption from Regulation FD
- Exemptions from Regulation BTR and Regulation G
- Limited executive compensation disclosures
- Potential exemption from XBRL data tagging rules

7. How often does a company need to check to see if it still qualifies as a Foreign Private Issuer?

From the SEC Manual:

> **6110.3** Registrants may test for compliance with the foreign private issuer definition once per year. The test is required to be performed as of the last business day of the registrant's most recently completed second fiscal quarter. [Release No. 33-8959] Consequences of failing to meet the foreign private issuer definition are described in Section 6120.2. *(Last updated: 9/30/2011)*

8. Does ISS determine whether a company is a U.S. Domestic Issuer or a Foreign Private Issuer?

No. As outlined above, each foreign company that files with the SEC is required to determine if it still meets the criteria to be allowed to continue to file as an FPI.

9. Should a company inform ISS if its status has changed from a Foreign Private Issuer to a U.S. Domestic Issuer?

It is certainly helpful. ISS may not notice that a company's status has changed, and therefore, even if ISS would normally transfer the company to U.S. coverage, it might be too late to do so by the time ISS completes the company's next proxy analysis. As an example, our meeting services team sets up in our database the shareholder meetings when the proxy/circular is made available and puts the annual report in the same meeting file. For Canadian companies, the filings will be gathered from SEDAR. A Canadian company that becomes a U.S. Domestic Issuer will still continue to file on SEDAR. But the change in the filing types on EDGAR may not be noticed (as that is not the source from which the materials were collected), and data profiling will be done under the Canadian profiling rules. Once the assigned Research team is analyzing the proxy and reads of the change in U.S. filing status,

[1] Skadden Arps Corporate Finance Alert, **Are You a Foreign Private Issuer?**, January 2014.

it may be too close to the shareholder meeting date. Instead, that year's report would be done under the Canadian guidelines, and the transfer to the U.S. country of coverage will be done after that.

ISS' "Foreign Private Issuer Policy"

10. What is ISS' "FPI Policy"?

The term ISS' "FPI policy" can lead to confusion, since it is only applied to a small subset of companies that file and list in the U.S. as FPIs. An FPI, as outlined above, is a SEC filing status afforded to foreign companies that allows them to list on U.S. markets without the extensive filing requirements of U.S. companies. The idea behind this is that they are subject to the governance and disclosure requirements of their own home market. For the most part, this is true, and the U.S. FPI listing is a secondary listing. However, there are markets that are considered tax havens that are also "governance havens"[2], where there are very few corporate governance requirements. (The Cayman Islands, for example, do not even require companies to hold annual shareholder meetings). These tax haven markets covered may include: Anguilla, Antigua/Barbuda, Bahamas, Barbados, Bermuda, Cayman Islands, Curacao, Liberia, Maldives, Marshall Islands, Mauritius, Panama, the U.K. Virgin Islands, and the U.S. Virgin Islands.

ISS therefore has developed its "FPI Policy" to evaluate these companies and apply certain standards for board and committee independence and board diversity. This policy is in the Americas Regional Policy document, given the location of most of these tax/governance haven countries.

11. Does a foreign-incorporated company that adopts a secondary FPI listing in the U.S. get moved under ISS' FPI Policy or ISS' U.S. Policy?

No. A company adding a secondary listing in the U.S. does not change ISS' Country of Coverage rules pertaining to either ISS' FPI Policy or the U.S. Policy. The governance provisions of its home market will still apply.

ISS Policies applied to Specific Agenda Items

12. Which types of agenda items are generally analyzed under the U.S. Policy and which under the non-U.S. Policy?

Even if a company has the U.S. as its assigned primary "Country of Coverage", not all agenda items will necessarily be analyzed under ISS' U.S. Policy. The general approach is that ISS' U.S. Policy will be applied to director elections and certain compensation proposals (see section on Compensation for more details). Ballot items that are not normally seen on U.S. ballots, or where the particular form they take is due to the foreign incorporation or a foreign listing or regulatory requirement, will generally be analyzed under ISS' Policy Guidelines for that market. ISS Research teams coordinate with each other on the analyses of such companies to ensure that the market expertise is applied to each ballot item appropriately.

Specific examples of agenda items analyzed under the non-U.S. policies:

- Approval of Financial Statements
- Discharge
- Certain capital issuances and authorizations (see section on Capitalization Proposals)
- Advance Notice Provisions, poison pills for Canada

[2] Governance haven and tax haven countries overlap but are not synonymous. For example, Ireland is considered a tax haven, yet it has strong governance requirements.

- Compensation to non-executive directors or individuals other than named executive officers
- The election of the chair and/or members of a committee (these agenda items are in addition to the election of the individuals as directors, which is usually done under U.S. Policy)

13. What agenda items are evaluated under the FPI policy and which under the foreign market?

ISS' FPI Policy applies to director elections in the tax/governance havens, and where there are no local governance standards that apply. Other ballot items though will be done under the policy for the market that is responsible for, or most relevant to, the item on the ballot.

Capitalization Proposals

14. Under which policy are most capitalization proposals analyzed at cross-market companies?

Capital-related proposals are usually dictated by the country of incorporation of a company, and therefore, for foreign-incorporated U.S. Domestic Issuers, the policy applied to these agenda items is usually the non-U.S. one. However, ISS has adopted two policies for such companies if they are only listed in the U.S. and have no local listing - one for Share Issuance Mandates, and one for Share Repurchase Programs.

Share Issuance Mandates

15. What is a share issuance mandate?

Companies incorporated in certain markets, including the U.K., Ireland, and certain Continental European countries, are required by law to seek shareholder approval for common share issuances. In practice, such companies often seek approval every year (or every five years) for a "general share issuance mandate" covering any issuances during the coming year (or coming five years), within specified limits. Shareholders voting on such a mandate do not know the extent to which the company will use the authority or the specific purpose for any issuances under the mandate. However, companies are generally required to specify the magnitude of any issuance without preemptive rights. Often, this takes the form of a separate vote to exempt a certain portion of issuances from the obligation or expectation to offer preemptive rights.

16. Why is there a U.S. Policy on share issuance mandates, and to which companies does it apply?

Prior to the adoption of a U.S. Policy on share issuance mandates, ISS applied the policy of the market of incorporation (usually U.K./Ireland or Continental European Policy) to companies listed in the United States and treated as U.S. Domestic Issuers, but incorporated in a market where shareholder approval of share issuances is required. However, the policies for those markets are derived from local listing rules and best practice recommendations, which presume a local-market listing. Because share issuances with pre-emptive rights are the norm in many markets, policies for those markets are premised on companies offering preemptive rights in most cases, and the policies include relatively strict limits on share issuances without preemptive rights. However, cross-market companies listed solely in the United States would have difficulty in issuing shares with preemptive rights, due to the unfamiliarity of many U.S. investors with preemptive rights and the logistical hurdles to exercising such rights. Moreover, such companies could be put at a disadvantage vis-à-vis U.S.-incorporated peers if they are required to convene a meeting to seek approval to issue shares for an acquisition, even where such approval is not required by U.S. listing rules. Accordingly, the new policy will be applied to companies incorporated in a country whose laws require shareholder approval of all share issuances, but listed solely on a U.S. exchange.

Share Repurchase Programs

17. To what types of companies does the U.S. Policy on share repurchase programs apply?

At most U.S. companies, the board determines whether to repurchase shares, and the terms of any buyback (timing, price, magnitude etc.) without a shareholder vote. However, certain state-chartered banks are required by regulators to seek approval for buybacks; and many cross-market companies, although considered U.S. Domestic Issuers by the SEC, are required by the laws of the country of incorporation to seek shareholder approval for buybacks. This policy applies to both of these categories of companies, and to any other U.S. companies that seek shareholder approval for a share repurchase.

18. Does the policy vary based on the reason the company is required to seek shareholder approval for a repurchase?

No. Open-market share repurchases in which all shareholders may participate on equal terms will generally be supported, in the absence of company-specific concerns about greenmail, threats to the company's long-term viability, or a history of using share buybacks to manipulate incentive compensation metrics. For banks, one factor used to assess whether a buyback is likely to threaten long-term viability is (obviously) the capital ratio, particularly if it is declining over time.

Compensation Proposals

19. How does ISS approach U.S.-listed companies with multiple executive compensation proposals on ballot as a result of the company's incorporation in a foreign country?

For U.S.-listed proxy (DEF14A) filers that have multiple executive pay proposals on the ballot as a result of the company's foreign incorporation, ISS will generally align the vote recommendation of the foreign compensation proposal to the U.S. management say-on-pay (MSOP) recommendation (or pay-for-performance evaluation, in the event there is no MSOP on ballot) so long as the foreign proposal is considered reasonably analogous to the MSOP (i.e., its focus is on top executive pay). This applies only to U.S. proxy (DEF14A) filers, since they are subject to the same MSOP and compensation disclosure requirements as other U.S. companies (conversely, Foreign Private Issuers are exempt from the U.S. MSOP requirements).

This approach avoids conflicting vote recommendations for proposals essentially covering the same pay programs. If the focus of the foreign pay proposal is not reasonably analogous to the U.S. MSOP (such as proposals primarily focused on director, rather than executive, pay), then the policy of the country that requires it to be on ballot would continue to apply. In any case, ISS may highlight in the analysis of the foreign proposal aspects of the pay program that would raise concerns from the foreign market's policy perspective.

As an example, a company incorporated in the U.K. but listed in the U.S. may be required to hold up to three separate votes on executive compensation at the annual meeting, including two separate backward-looking advisory votes, as mandated by U.S. and by U.K. law, as well as a forward-looking binding vote to approve the company's remuneration policy as mandated by U.K. law. In this example, the foreign proposals are considered reasonably analogous to the U.S. MSOP, therefore the vote recommendations for both the backward- and forward-looking U.K. proposals would be aligned to the U.S. MSOP recommendation.

On occasion, ISS may continue to have the foreign compensation proposal analyzed and covered by foreign market, if doing so would provide more helpful and transparent information to shareholders.

20. How does ISS determine whether the focus of a foreign compensation proposal is "reasonably analogous" to the U.S. MSOP or pay-for-performance evaluation?

ISS considers a foreign pay proposal to be reasonably analogous to the MSOP if the proposal primarily seeks approval of "top executive pay." For this purpose, "top executive pay" generally encompasses compensation paid or to be paid to one or more individuals disclosed as named executive officers in the Summary Compensation Table of the proxy statement.

For example, the vote recommendation for a foreign proposal seeking shareholder approval of an equity award to the CEO will generally be aligned to the vote recommendation for the U.S. MSOP/pay-for-performance recommendation. However, the vote recommendation for a foreign proposal seeking shareholder approval of an equity award to an individual who is not a named executive officer will generally not be aligned to the U.S. MSOP/pay-for-performance recommendation. In the latter situation, the foreign proposal will be analyzed under the foreign market's applicable policy.

The above process applies to a foreign proposal regardless of whether the proposal is binding or advisory or whether it is forward- or backward-looking.

21. If the focus of a foreign proposal is on non-executive director pay, will ISS align the foreign proposal's vote recommendation to the MSOP recommendation/pay-for-performance evaluation?

If the scope of a foreign pay proposal is limited to compensation paid to non-executive directors, then ISS will generally not align the foreign proposal's vote recommendation to the U.S. MSOP/pay-for-performance recommendation. For instances in which the foreign proposal seeks approval of pay for both named executive officers and non-executive directors, ISS will generally align the foreign proposal's vote recommendation to the U.S. MSOP/pay-for-performance recommendation. For example, approval of a forward-looking U.K. remuneration policy, which covers both executive and non-executive director pay, will generally be aligned to the U.S. MSOP/pay-for-performance recommendation.

22. A company that is required under U.S. rules to conduct a say-on-pay vote is also required by a foreign-market to present a foreign compensation proposal. Should that company continue to include a U.S. say-on-pay proposal pursuant to U.S. rules?

Yes. If a company is required to present U.S. say-on-pay proposal but omits the proposal without a valid exemption, this will be considered problematic, even if a foreign pay proposal is included on the ballot.

23. What are the vote recommendation ramifications for directors if there is a foreign pay proposal on ballot but no U.S. MSOP on ballot?

Consistent with U.S. Policy, if there is no U.S. MSOP on ballot, the U.S. pay-for-performance analysis is conducted under the election of directors proposal(s), and any adverse recommendations that would normally apply to the compensation proposal will instead be applied to compensation committee members. If a foreign pay proposal is reasonably analogous to the U.S. pay-for-performance evaluation, ISS will generally align the foreign proposal's vote recommendation to the pay-for-performance evaluation and, accordingly, any adverse recommendations applied to directors based on the pay-for-performance evaluation will also typically result in an adverse recommendation for the foreign pay proposal. ISS will not avoid adverse recommendations for compensation committee members in the absence of a U.S. MSOP on ballot merely because there is a foreign pay proposal on ballot.

24. A Foreign Private Issuer incorporated in a "governance haven" market seeks approval of an equity compensation plan. How will ISS evaluate the equity plan?

When a company is incorporated outside the U.S., listed solely on a U.S. exchange, and qualifies as an FPI, ISS may evaluate an equity plan proposal under the U.S. "Equity Plan Scorecard" (EPSC) Policy, depending on the nature and style of disclosure. Specifically, when the design and disclosure of the equity compensation plan and proposal is comparable to those seen at U.S public companies, ISS will generally evaluate the proposal under the U.S. EPSC Policy. Comparable disclosure generally encompasses all SEC-required disclosures for U.S. Domestic Issuers, which is necessary information for the EPSC evaluation (including tabular equity compensation plan information and an English version of the equity plan document).

When the FPI's disclosure of the equity compensation plan and proposal is not comparable to those required of U.S. Domestic Issuers, the FPI's plan will generally be evaluated according to the Americas Regional Proxy Voting Guidelines.

25. If a FPI voluntarily files disclosures normally required of a U.S. Domestic Issuer, but retains its FPI status, will ISS evaluate the company's executive compensation under U.S. Policy?

No. An FPI that voluntarily files a proxy statement and/or other filing normally required of a U.S. Domestic Issuer, but which retains its FPI status, will generally be covered under ISS' Policy approach for FPIs. In such a circumstance, the company's executive compensation program will not be evaluated under the U.S. Benchmark pay-for-performance evaluation.

26. How does ISS select peers for foreign-incorporated U.S. Domestic Issuers and FPIs?

For the purposes of the U.S. pay-for-performance screen, a foreign-incorporated company that is a U.S. Domestic Issuer generally will be subject to ISS' U.S. peer selection methodology and therefore the ISS-selected peer group will consist solely of U.S. Domestic Issuers. FPIs are not subject to the U.S. peer selection methodology and will not have U.S. peers, nor will an FPI be selected as a peer for U.S. Domestic Issuers.

For additional information on the U.S. peer group selection methodology, see ISS' Peer Group Selection Methodology FAQ.

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