



UNITED STATES

Procedures & Policies (Non-Compensation)

Frequently Asked Questions

Updated October 11, 2024

New and materially updated questions are highlighted in yellow

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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Questions on ISS Procedures

1. How can a company get a copy of the ISS proxy report or provide supplemental information for ISS' consideration?

See the general [FAQs regarding ISS Proxy Research](#) for information on ISS' global procedures. Below is additional information specific to the U.S. market.

2. When are ISS' proxy research reports issued?

U.S. proxy reports are generally issued to ISS clients 13-30 calendar days before the shareholder meeting. The timing will depend on: how close to the meeting the proxy materials were issued; complexity of the proxy and agenda items; contentiousness of the issues; any engagement required; and the volume of meetings requiring coverage (e.g., at the height of U.S. proxy season in April through June, delivery may be closer to 13-20 days). Proxy contest or contested merger reports are often issued closer to the meeting than these general guidelines. The final materials for SPAC transactions are often filed only one to two weeks before the meeting; these proxy reports are delivered as quickly as possible depending on complexity and clients' vote cutoffs but generally require a minimum of 5 business days to analyze.

3. How and when will ISS change a vote recommendation in a proxy alert?

ISS cannot and will not disclose or guarantee a vote recommendation, nor a change of vote recommendation, in advance. It is not the role of ISS to proactively contact companies to seek action on any problematic governance practices; the onus is on companies to act in the best interests of their business and shareholders. If a company chooses to make changes or provide additional information to shareholders after an ISS proxy report has been published, in order for ISS to be able to respond, the information must be publicly disclosed, preferably via the official channels through which issuers are required to publish their proxy materials, rather than the company website. (The latter does not apply to information that is not normally in a filed document and only resides on the company's website, e.g. Corporate Governance Guidelines). To allow ISS to respond as quickly as possible, issuers are requested to notify ISS through the [ISS Help Center](#) as soon as the new information is filed.

- For U.S. companies that are SEC filers, the filing should be on [EDGAR](#).
- For Canadian companies, a press release should be filed on [SEDAR](#).
- For U.S. companies that are not SEC filers:
 - FDIC-regulated financial institutions on the [Securities Exchange Act Filings System](#);
 - OTC companies on the [OTC Markets](#) site; or
 - if neither of these is applicable, the information should be made public in a press release or on the company website.

Timing: In the U.S. and Canada, vote cutoffs are usually either the day before or the day of the shareholder meeting. To ensure that our institutional investor clients are able to review any additional information or changes in our vote recommendations and act upon this information if they so choose, ISS generally will only be able to issue an alert to change vote recommendations if the new information is filed, **and** ISS is informed of its availability, at least **5** business days before the meeting. (For example, for a Thursday meeting, the filing would be required, and ISS informed of its presence, no closer to the meeting than 5 p.m. Eastern the Thursday before. National weekday holidays add a day to this requirement.) New information received closer than 5 business days may be discussed in an informational alert if it is deemed to be material to the analysis even if there is no change to ISS' voting recommendations. Only under extraordinary circumstances will ISS issue a proxy alert to change a vote recommendation for material received closer than 5 business days before the meeting.

Once the meeting date has passed, the research report for that meeting cannot be updated.

4. Does ISS review company materials filed after the ISS proxy report is published?

Yes. ISS reviews all proxy, 8-K (except for those with only items 2.02, 7.01, and 9.01), and exempt solicitation (PX14A6G) filings on EDGAR filed between the time of the publication of the ISS research report and the date of the shareholder meeting to which the research report relates. 10-Qs are not generally reviewed as part of this process; if a company intends to include information in a 10-Q that it believes may be relevant to an ISS research report (e.g. updated information on shares available/shares outstanding for an equity plan on the ballot), we recommend that the company informs ISS of its inclusion via notification to the [ISS Help Center](#).

ISS provides our institutional investor clients the ability to be informed of certain company filings made after the ISS research report is published but before the meeting has occurred: these are the filings that Research deems to be noteworthy and may be of interest to our clients, even if the filing does not result in ISS' issuing a proxy alert. Adjournments with no additional material information are not included in these postings, as these are already displayed in a different section of our institutional clients' proxy voting platform.

When we identify information that is material to our previously issued report or that might impact the voting decisions of the institutional investor clients to whom the research report was delivered, a Proxy "Alert," which serves to update a previously issued ISS research report, is issued.

The post-publication review of supplemental materials described above is performed only with respect to filings made via EDGAR, not for filings on other platforms (e.g. FDIC or OTC markets) and generally occurs the business day after the filing is made. This timing delay may impact ISS' ability to change a vote recommendation (see [Timing](#) in previous question). Therefore, issuers are urged to inform ISS directly via the [ISS Help Center](#) if they file new material that they want ISS to consider for a potential change to a voting recommendation.

5. How should a company inform ISS of an updated CSR or other environmental/social report?

Corporate Social Responsibility (CSR), Sustainability, or other environmental/social responsibility (E&S) reports are currently generally posted on the company's website, not filed on EDGAR. These documents are not part of the ISS proxy research team's review for our proxy voting report (unless there is a proposal on the ballot or a vote-no campaign relating to the topic). Our E&S Ratings teams review such documents annually, but not necessarily timed to coincide with annual shareholder meetings. If a company wants to maximize the probability that a newly released E&S-related report is incorporated into the E&S related ratings displayed in ISS' Proxy voting report, they will want to: 1) use their Governance Analytics account to submit data verification updates to their Environmental and Social QualityScore data; and/or 2) submit a link to the new E&S-related report to the [ISS Help Center](#). (Use the "Provide a link to Public Disclosure" tile, and under the Disclosure category on the next screen, please specify "E&S or CSR report" to speed delivery to the proper teams). The data updates and submission should be done at least a month prior to the proxy filing.

Engagement with ISS U.S. Proxy Research Team

6. How can a company request an engagement with the U.S. research analysts?

See the [FAQs regarding ISS Proxy Research](#) for information on ISS' procedures for engagements.

7. What topics are generally discussed during off-season issuer engagements?

During the off-season (August through February) the U.S. Research team schedules engagements requested by issuers regarding more general discussions of the company's situation and governance. Given the volume of engagement requests received, the U.S. research team will prioritize engagements with companies with substantive governance issues: for example, companies facing low shareholder support on their say-on-pay or

director elections, majority-supported shareholder proposals, ISS recommendations against management proposals at the prior election, or companies undergoing major transitions. These discussions occur prior to the filing of the proxy.

Generally, discussions with the Proxy Research team regarding Environmental & Social issues (E&S) are useful only in the context of shareholder proposals received on such issues or management proposals that the Proxy team will be evaluating. ISS has multiple teams that work on broader E&S issues (including data collection and company ratings), so engagements requests through the [ISS Help Center](#) for E&S should be made through the “Engagement-Other” tile, not the “Engagement-Proxy Research” tile.

8. Is there a blackout period for engagement with research?

No, the research team is never in “blackout” with respect to contact with companies or other parties. If analysts have questions regarding a proxy disclosure, or in a contested situation such as a proxy fight, ISS will reach out for clarification or discussions. As noted above, for the U.S. team, engagements are generally held August-February outside of proxy season; during proxy season, engagements are more limited due to time constraints but are still held for contentious issues, seeking answers for analysts’ questions on meeting materials, and responding as needed to inquiries on published reports.

There is a blackout period for ISS Corporate Solutions (ICS) during the period from the filing of the proxy through the date of the shareholder meeting (the period during which Research is analyzing and making voting recommendations) as part of our firewall - see the Code of Ethics and Due Diligence package in the [Compliance section](#) of our website. Also, [Governance QualityScore data verification is closed](#) from the filing of the proxy until shortly after the publication of the ISS proxy report.

Questions on Data in ISS Reports

9. Are companies able to verify the data included in the ISS research report prior to publication?

Yes. Starting in 2022, ISS has provided almost all the companies under ISS’ U.S. coverage with the ability to verify the data that will be included in the ISS research report before it is published. Please see [Data Verification](#) for more details and to register. The Data Verification (DV) site is closed when the company’s proxy is filed so that the ISS team can collect the data for the upcoming meeting. Once this is done, the company’s registered representatives receive email notification that the data is available for their review. The company has 48 hours to verify the data and send corrections. Once this is completed, the Research team will proceed with the preparation of the ISS Research report for the meeting. Once the meeting has passed, the DV site is reopened so the company can provide updates throughout the year as needed.

To ensure timely delivery of the research reports to our institutional investor clients, a DV window prior to report publication is provided only if the proxy is filed at least forty (40) days prior to the shareholder meeting.

Financial Highlights Section

10. Where can more information be found regarding the data included in the Financial Highlights section?

Please see the detailed [Company Financials FAQ](#) for more information on the data from Compustat. Disagreements with Compustat may be directed to S&P at <mailto:clientsupport@standardandpoors.com>. Disagreements with FactSet’s “Ownership- Common Stock” table on the last page of the ISS report may be directed to <https://www.factset.com/contact-us>.

11. How are the 3- and 5- year TSRs in the "Total Shareholder Returns" chart calculated?

The total shareholder returns (TSRs) shown in the report are annualized, not cumulative. Companies report cumulative returns, and therefore the 3- and 5-year returns will differ from disclosed. The returns include dividends reinvested and compounded. Please see the Compustat [data definitions](#).

The "Stock Price Performance chart" does not include dividends, only the share price growth, and thus the returns in that chart will differ from the TSR tables for dividend paying companies.

12. Why do the shares outstanding in the Company Snapshot differ from the proxy?

The "Company Snapshot" shows the data available in the Compustat database as of the date shown below the table; the shares outstanding will generally match the 10-K (or a later filing) but will not match the "record date shares outstanding" that are disclosed in the proxy, as the proxy is published after the record date. Only one class of stock is shown: If there is more than one class of common stock, the one that has the highest volume of trading is displayed, but all are collected. The market cap shown is calculated based on the shares outstanding collected for all classes and the closing share price as of that date.

The actual shares outstanding as of record date per the proxy is shown in the "Ownership & Control Overview", and in the "Detailed Ownership Profile" in the ISS report.

13. Is the annual dividend shown the actual or expected dividend?

The "annual dividend" is backwards looking; it is the sum of dividends paid over the last twelve months (LTM): the 12-month period prior to the record date. It is not the expected dividend, i.e. the last quarterly dividend annualized. Depending on the timing of dividend payments, it may on occasion capture 3 or 5 quarterly payments, not 4.

14. Does the Financial & Operational Performance reflect original or restated financials?

The 5 years of Compustat data shown are original, not restated. The data also is standardized according to Compustat's methodology as described in the [Company Financials FAQ](#) to allow better comparisons across industries.

15. Who are considered "Strategic Shareholders" in the Ownership & Control Overview and in the Detailed Ownership Profile?

ISS is looking to help our institutional investor clients with a general determination of the percentage of company shares that can be considered "free float". "Strategic shareholders" are the owners of shares that are considered to be non-free float. While our data vendor, FactSet, identifies many strategic shareholders* (they are capitalized in their database), ISS also looks beyond these and includes shares owned by:

- Insiders/executives;
- Founders;
- Employee funds;
- Employee retirement plans or employee compensation trusts;
- Company foundations;
- State-controlled entities/sovereign funds;
- Shareholders with designated directors/representatives on the board;
- Shareholders with the right to appoint board observers;
- SPAC sponsors;

- Controlling shareholders;
- Supervoting stock owners; or
- Trusts created for estate planning purposes or the benefit of the underlying shareholder or his/her family.

Note that many market participants have their own definitions for strategic shareholders and free-float; and the general categories described above may not be applicable in each specific company case. In general, shareholders other than pure portfolio investors may be considered "strategic shareholders".

*FactSet Ownership defines Insider/Stake owners as non-buy-side entities with ownership positions. Thus, any officer or director of a company, as well as any non-buy-side public or private entity that holds shares in a company, is considered an insider/stakeholder. For U.S.-traded securities, insider/stakeholders are typically identified through:

- SEC forms 13D and 13G, which identify 5% holders.
- Registration/prospectus filings (S-1, S-2, S-3, 424B, etc.).
- Forms [3](#), [4](#), and [5](#), which pertain to directors and officers of a company as well as 10% holders.
- Proxy and 10K (annual report) filings.

Information on Directors

16. Why might the age of the director be off by a year from the proxy disclosure?

In many markets, the directors' date of birth (DOB) is disclosed, thus our director database is constructed using the date of birth. The age shown in the report is the meeting date less the date of birth (rounded down).

For markets where only the age is disclosed, the first time the director is entered into our database, ISS calculates the year of birth from the age disclosed in the proxy, using January 1st as the default month and day of birth, to arrive at a DOB. The age is then calculated each subsequent year. While this works for directors who serve on a single board, if a director has served on prior boards, or currently serves on multiple boards with different meetings during the year, the age shown in the report may be off by a year. Providing ISS with the month and year of birth (we will assume the 1st of the month) will help ensure accuracy across all the director's boards. For U.S. companies this can be done through the ISS Data Verification tool on Governance Analytics.

If ISS does have accurate DOB information, the age shown may differ from the proxy because companies report age as of the date of the proxy filing, while ISS is looking at age as of the date of the shareholder meeting.

17. How is board tenure calculated?

Tenure is calculated based on the director's start date- the month and year the director joined the board. It is not rounded up; it increases at the anniversary of the start date. However, prior to the early 2000's, only the year the director joined the board was collected, so for them, a January start date is assumed. So, if the tenure is overstated for a long-serving director providing ISS with the correct starting date will ensure accuracy going forward.

To determine the start date, ISS generally follows the company's disclosure. If the information is not disclosed, or if multiple dates are given, ISS will generally follow this methodology:

- Initial public offerings: Service on the board prior to the IPO is included.
- Spin-offs: The start date resets to the date of the spin-off. Service on the parent's board prior to the spin-off is not included in the director's tenure post spin-off.

- Mergers: Directors from the target company now serving on the post-merger board have their start date reset to the effective date of the merger.
- Mergers of equals: The original tenure of directors from both entities is kept.
- Intermittent service on the board: For directors who served on the board, left temporarily, and then returned, the tenure will depend on the length of the time off the board. If the break is less than one year, the start date is not reset. If it was for one year or more, then the start date is reset to the date he/she returned.

18. How are "Audit Committee Financial Experts" identified?

For US companies, the Sarbanes-Oxley Act requires the disclosure of Audit Committee Financial Experts. The designation in our report is based upon this company disclosure, and if that director is serving on the audit committee.

Canada does not have such a disclosure requirement, however, as some Canadian companies are also listed in the U.S and subject to the U.S. requirements, the reports for such Canadian companies will include these designations when applicable.

19. Director and Executive Stock Ownership - what types of equity grants are included?

Not all shares disclosed in the proxy are included in ISS' equity ownership tables. Unexercised options are not included. Full value awards that vest within 60 days of the ownership disclosure date are included while full value awards that vest after 60 days of the disclosure date are not included. Deferred awards that are no longer forfeitable are included.

20. Which types of equity awards are considered appropriate to include in Stock Ownership Guidelines?

ISS research reports include the CEO's stock ownership guidelines, which are typically reflected as a multiple of base salary. ISS updated its approach to Stock Ownership Guidelines to account for the fact that a small number of companies' guidelines allow some types of equity awards that are not actually owned shares to be counted towards the goals. If the guidelines allow for the inclusion of unearned performance awards or unexercised options (or any portion thereof, such as the current "in the money" value) towards meeting the guidelines, the company will no longer receive credit for having stock ownership guidelines.

Unvested full value awards, which are not required to be exercised but simply vest, get credit. As such, unvested time-based restricted stock and RSUs get credit. Vested options do not get credit. Companies should clearly disclose the types of equity awards (vested, unvested, unexercised, etc.) that may count towards the goals.

Governance QualityScore

21. Does the ISS research report show the most up-to-date Governance QualityScore (GQS) score at the time of its publication?

Yes, and this score may differ from the one shown on the online [Governance Analytics](#) platform prior to report publication, due to the blackout period:

The GQS profile on Governance Analytics is frozen as of the date of the filing of the proxy/meeting materials, until after the ISS research report is published. During this blackout period, the company can see the frozen scores, but cannot see nor access their data in Governance Analytics' Data Verification's online GQS profile. Any monthly GQS emails showing the scores that are sent during the blackout period are also showing the old frozen scores. The proxy research report, when released, shows the new scores which incorporate the information from the company's filings and the determinations shown in the research report. The Governance QualityScore

profiles/scores on Governance Analytics are updated once daily, at approximately 5am ET (10 AM UTC). The blackout period ends, and access to the Governance Analytics GQS profile and data restarts, immediately after the first daily update following the research report publication.

Corporate Governance Profile

22. Which restrictions on the right for a shareholder to call a special meeting are considered "material"?

Material restrictions are currently considered the following:

- **Timing restrictions:** Most provisions include restrictions on when shareholders are allowed to submit requests for special meetings. Restrictions that result in a request submission window that is shorter than 6 months are considered material. Submission windows between 5-6 months are evaluated on a case-by-case basis. A common restriction is one that prohibits requests within 90 days after the most recent annual meeting and 90 days prior to the following annual meeting. Such a restriction is not considered to be material because it results in a submission window of approximately 6 months.
- **Topics:** Any restriction on agenda items for a special meeting (which also involves a "timing restriction" as defined in #1 above) is considered an unacceptable material restriction.
- **Ownership:** Restrictions on the number of shareholders who can group together to reach the ownership threshold are generally unacceptable material restrictions.
- **Unanimous requirement to call a special meeting:** Corporations that have provisions that the demand for a special meeting must be made by the holders of all (100%) of the votes entitled to be cast on an issue.

Questions on U.S. Proxy Voting

23. What items are considered "routine" on U.S. company ballots?

"Routine" has a very specific meaning for U.S. proxy voting. It applies to the ballot items that brokers can vote on behalf of their clients if they have received no voting instructions from these clients within 10 days of the AGM. This discretionary "broker vote" is often important in ensuring the company achieves the necessary quorum for a valid shareholder meeting. Over time, the [scope of routine items](#) has shrunk; it once included the election of company directors, approval of equity plans, bylaw and charter amendments. Nowadays, those items are no longer routine, with the ratification of auditors being one of the few remaining items.

A notable change in the 2020-2021 time period was the decision by two large brokerage firms to no longer provide broker votes. While there are likely many factors involved, this does seem to be a reason why an increase was seen in the number of companies (particularly those outside of the R3000 or S&P1500 indices) that had to adjourn their meetings, often repeatedly, as they were unable to achieve quorum. Many companies had to lower their quorum requirements to less than 50% of outstanding shares achieve quorum.

24. Why are many smaller companies adopting special supervoting shares?

Although a lower quorum requirement (see FAQ above) makes it easier to convene annual and special shareholder meetings, a number of companies that lack significant institutional ownership have faced challenges to receive the required shareholder turnout for matters such as reverse splits, changes in authorized share capital, or other charter amendments that require the approval of a majority of outstanding shares. Ordinarily, a company with such a proposal on ballot facing low voter turnout may be forced to adjourn a shareholder meeting to solicit additional votes. However, in starting in 2022, some companies have deployed a new tactic to overcome low voter turnout, usually to pass a reverse stock split to keep the stock from being delisted. This involves issuing a new

"supervoting class" of preferred shares, either to all shareholders or to a smaller, select group of shareholders. The sole purpose of the shares is to vote on the specific ballot item, and the shares are generally automatically redeemed after the shareholder meeting.

Although the examples seen so far have been relatively narrowly tailored to secure passage of certain critical agenda items, there is no guarantee that future uses of this technique will be limited in this way. ISS is carefully monitoring the adoption and use of such supervoting preferred shares. As of July 2023, ISS has tracked over 50 companies' adoptions of such shares.

Amendments to the Delaware General Corporation Law (DGCL), effective on Aug 1, 2023, are likely to slow the adoption of such shares, as the new rules lower the requirement of a majority of shares outstanding to a majority of votes cast to approve reverse stock splits and increases or decreases in the number of authorized shares.

25. How are directors at U.S. companies elected? Vote options, plurality vs. majority vote standards, and director resignation policies.

U.S. director elections will usually allow three valid vote options (VVOs): "For"; "Abstain"; and one contrary option: either "Withhold" or "Against". On occasion, there will be no contrary option, and "Abstain" has to fill this role. Generally, "Withhold" applies to elections under a plurality vote standard, and "Against" to elections under a majority vote standard (see below for definitions). However, this is not always the case, and the proxy card should be checked to verify. Broadridge will also occasionally override the options on the company's proxy card and impose its own VVOs. To ensure that our voting clients' votes are processed properly, ISS will use the voting options required by Broadridge.

The "vote standard" is the standard which determines whether the director is an "elected" director. It is contained in the company's charter (or bylaws), and usually disclosed in the proxy statement.

Plurality vote standard: Under a plurality vote standard, only the "For" votes matter: whoever gets the most "For" votes wins. In an uncontested election (only one nominee per seat) this means a director can be elected with only one "For" vote, as no one is running against him/her. However, in a contested election (where there are more nominees than seats, like a proxy contest), this is the preferred vote standard.

Majority vote standard: Under a majority vote standard, the "Against" votes also count: a director needs more "For" votes than "Against" to be elected. If this is not achieved, a nominee who had not yet served on the board would not be able to join the board; and an incumbent director's legal status would be as a "holdover" director, not an "elected" director, and is not generally entitled to the same protections as an elected director. A holdover director serves until his/her successor is appointed (though often a holdover director is allowed to be appointed his/her own successor). Most new nominees are technically incumbent directors, as companies will often appoint a director to serve on the board for a short period of time prior to his/her election. The majority vote standard is considered a more meaningful, consequential standard in an uncontested election. However, in a contested election (more nominees than seats), a majority vote standard is anathema to good governance and results in an unfair election because of the counting of the Against votes and the holdover rules. Dissident nominees are being held to a higher standard- they would need to get more "For" votes than "Against" votes to be seated (depending on the bylaws, they might even be required to get a majority of shares outstanding). Because of the holdover rules, incumbent management nominees need not achieve this standard. The result is that dissident nominees may receive more shareholder support than management nominees, but fail to be elected, while the management nominees would continue on the board.

Director Resignation Policies: Most large-capitalization companies have adopted a "director resignation policy" which is the post-election process to be followed if a director does not receive a majority of votes cast in an uncontested election. Some companies call these "a majority vote policy", which is easily confused with, but not equivalent to, a majority vote standard. The standard determines whether a director is elected, the policy is the

secondary step that outlines the procedures to follow for directors who did not receive majority support. A company's director resignation policy is usually in the governance guidelines, occasionally in the bylaws. They can be applied following an election under a majority vote standard or a plurality vote standard. In most director resignation policies, the director submits his/her resignation, the designated members of the board decide whether or not to accept the resignation, and then disclose this decision to shareholders within a specified timeframe.

Best practice is for the director election to use a majority vote standard for uncontested elections, a plurality vote standard for contested elections (aka "a plurality carve-out"), and for the company to have a director resignation policy.

What makes the majority vote standard with the resignation policy meaningful is that the decision to remain on the board is no longer in the hands of the director whose election failed, it is now in the hands of other board members. It is very rare for a U.S. director who fails to receive a majority of votes cast to be required to actually leave the board. (The exceptions are limited: e.g. California-incorporated companies with majority vote standards require the director to depart. And a very small number of companies' governing documents will contain such a clause.) Thus, U.S. director elections in uncontested elections can generally be considered to be advisory, not binding: voting withhold or against directors is generally about conveying dissatisfaction with the board's actions, policies, etc., and not about removing the director from the board.

For Canadian companies that are traded on the Toronto Stock Exchange (TSX), the situation is different. Although the vote standard for such companies is a plurality vote standard (with the contrary vote option as a withhold), the TSX requires its non-controlled companies to adopt a "majority vote policy" that does require the director to leave the board if he/she does not receive a majority of the votes cast. Canadian companies incorporated under the Canada Business Corporations Act (CBCA) are subject to true majority voting for uncontested director elections, with "against" as the valid contrary vote option.

26. What are the rules for a shareholder to get a proposal on the ballot?

The rules for allowing a shareholder proposal on the ballot have been changed dramatically, the new rules are in full effect for 2023. See this SEC document: [14a-8 rules](#), (or Section [240.14a-8](#) in the Electronic Code of Federal Regulations) for the full requirements. For example, instead of needing to have held \$2,000 of stock for one year, now, the shareholder must have continuously held:

- At least \$2,000 in market value for at least 3 years; or
- At least \$15,000 for at least 2 years; or
- At least \$25,000 for at least one year.

There are numerous other requirements as well, and failure to comply with the procedural and content rules can be grounds for omitting the proposal. Proponents need to carefully review the SEC document.

In general, the deadline to submit the proposal is provided in the previous year's proxy materials - not less than 120 calendar days before the date of the company's proxy statement released to shareholders in connection with the previous year's annual meeting. (The company can change the date, but it must disclose the change in some filing.)

When companies ask the SEC whether they can exclude a shareholder proposal from their ballot, the decision is made available on the on the SEC's [Shareholder Proposal No-Action Responses](#) site.

27. Are the names of the shareholders who submitted a shareholder proposal disclosed in the proxy?

Not necessarily. The company can decide whether to include the names of the shareholder proponents behind the proposals. If they do not include the names in the proxy, they have to include instructions in the proxy for shareholders to be able to request this information.

28. How are vote results disclosed in the U.S.?

U.S. issuers that file on [EDGAR](#) are required to disclose their vote results on a Form 8-K, Item 5.07 within 4 business days of the meeting. Please see the instructions for [Item 5.07](#) for more information.

The exception to the 4-business day rule is the determination of the say on pay frequency. While issuers do have to disclose the outcome of the shareholder vote within the 4 business days, they have 150 days to disclose what frequency the board decided to adopt.

Questions on ISS Policies

29. Whom should I contact with questions on ISS' U.S. voting policies?

If you need more clarification after reviewing the [relevant policy and FAQs](#), please submit your inquiry through the [ISS Help Center](#).

ISS is happy to try to clarify questions on our policies as far as possible. However, we cannot answer questions about hypothetical scenarios, and we cannot give definitive answers on how we will recommend on proxy items before we analyze all relevant facts and circumstances as presented in the proxy. If it is a question we cannot answer, we will let you know.

These FAQs generally follows the order presented in our [U.S. Proxy Voting Guidelines](#) available on our website in the [Policy Gateway](#).

Board of Directors- Voting on Nominees in Uncontested Elections

Board Independence

30. In the proxy report, where can one find why ISS classified a director as non-independent?

The Board Profile section of the ISS proxy report has two columns: the company's classification of the director, and ISS' classification. The reasons for non-independence determination are detailed in the "Director Notes" under the Board Profile, providing all the affiliations the director has with the company. The affiliations ISS considers material are shown in the [U.S. Proxy Voting Guidelines](#) in the [Classification of Directors](#) table.

31. How does ISS determine whether the board of a U.S. issuer considers a director to be non-independent?

In the U.S., issuers subject to the reporting requirements of Item 407 of Regulation S-K are not required to explicitly identify their non-independent directors as long as they maintain fully independent Audit, Compensation, and Nominating committees. If a board maintains fully independent committees, it is only required to identify its independent directors, including new nominees, in its proxy or annual report.

In situations where a board does not make an identification, ISS will generally conclude that if a board does not identify directors as independent, then it does not consider such director(s) to be independent. Where possible however, ISS will also examine relevant disclosures, including, but not limited to, director bios, related party transactions, committee disclosure, and potentially review the issuer's historical approach to director independence disclosure to determine whether an issuer may have omitted an independent director from its list of independent directors.

It is good practice for boards to be transparent to shareholders regarding its assessment of the independence status of each director. In the context of the US disclosure rules, the failure of a board to identify a director as independent will generally be construed to mean that the board does not consider such director to be independent.

32. When ISS looks at whether a board is majority independent, whose definition of independence are you using?

The determination is based on the ISS classifications of independence, which differ from the SEC and exchange rules primarily in the cooling-off period for former employees, and in the provision of professional services to the company (see [Classification of Directors](#)).

33. What public commitment can a company make concerning adding an independent director?

Sample language:

“We are conducting a director search in the exercise of due care for a candidate as soon as practicable following our Annual Meeting of Stockholders. Our new director will not only satisfy the independence requirements under the listing requirements, but will have no material connection to our Company (that is, no material financial, personal, business, or other relationship that a reasonable person could conclude could potentially influence boardroom objectivity) prior to being appointed to the Board. We commit to having this new director in place within no more than six months after the upcoming shareholder meeting.”

34. How does ISS look at directors identified as "founders" of the company?

A director identified by the company in the proxy, in a previous proxy, or in other company disclosures, as a founder of the company is considered non-independent. However, ISS will make an exception when the company provides disclosure clarifying that the founder never worked at the company (or at the predecessor company), including prior to the company's going public. The most common types of such "founders" that could be considered independent are those that made initial investments in the firm, or scientists/doctors whose research and discoveries contributed to the work of the company.

ISS will continue to consider a founder as non-independent, until such disclosure of no prior employment is made. Simply discontinuing the use of the word "founder" in the director's biography is insufficient.

35. How are non-voting, "ex-officio" members of board committees considered?

They are considered the same as any regular committee member, with the same expectation of independence. Similarly, all directors identified in the proxy as participating in the committee meetings, such as "advisors" to the committee, "ex-officio attendees", or other such language are considered members of the committee. The ex-officio member is generally the current or former CEO, or the executive chair, and he/she would be expected to have significant influence over the deliberations of the committee even without a formal vote.

36. What steps can a company take to change an ISS vote recommendation on a non-independent director serving on a committee?

For ISS to change its vote recommendation, either:

- The director needs to resign from the committee(s), or
- The material relationship causing the affiliation (e.g. professional relations with a firm associated with the director) would need to be terminated.

The resignation from the committee would have to be effective no later than the date of shareholder meeting and would need to be publicly disclosed. For example: “As of [date no later than the upcoming annual meeting date], [Director Name] will resign as a member of the [Committee].”

For terminating a professional relationship, it would need to be effective immediately, and remain in effect as long as the director serves on any of the three committees.

Professional vs. Transactional Relationships

37. How does the definition of affiliation differ in ISS’ standards for professional vs. transactional relationships?

Both are derived from the definition of affiliation in NASDAQ Rule 5605—but the affiliation under professional services is stricter: a director (or immediate family member) only has to be an employee of the organization providing the professional service, as opposed to an executive officer in the case of a transactional relationship, for him/her to be considered non-independent.

38. Which types of related-party services are considered professional under ISS’ classification?

Professional services are frequently advisory in nature, may involve access to sensitive company information, and may have a payment structure that could create a conflict of interest. Commissions or fees paid to a director (or to an immediate family member or an entity affiliated with either the director or the immediate family member) are an indication that the relationship is a professional service.

- Insurance Services: Generally professional, unless the company explains why such services are not advisory. Transactional where the company has an insurance policy with and pays premiums to an entity with which one of the company’s directors is affiliated will be considered a transactional relationship. However, the burden will be on the company to explain why the service is not advisory.
- Information Technology Services: Generally professional, except for tech support. Tech support is usually tied to a previous transactional relationship, typically a purchase of hardware or software, and does not involve strategic decision-making or a payment structure which could create a conflict of interest.
- Marketing Services: Generally professional, unless the company explains why such services are not advisory. Market research, market strategy, branding strategy, and advertising strategy are generally considered professional services. Sale of promotional materials or sponsorships, or the purchase of advertising, is considered transactional. However, the burden will be on the company to make the distinction.
- Educational services: Generally transactional.
- Lobbying services: Professional.
- Executive search services: Generally professional. Lower-level employment services may be considered transactional, depending on the disclosure.
- Property management and real estate services: Generally professional, unless the company explains why such services are not advisory. These services are advisory in nature and have a payment structure that could create a conflict of interest.

39. What happens when the company provides professional services to the director or an entity associated with the director?

In the case of a company providing a professional service to one of its directors or to an entity with which one of its directors is affiliated, the relationship is considered transactional rather than professional. Since neither the director nor the entity with which the director is affiliated is receiving fees for the service, there is no direct financial tie which could compromise that director's independence.

40. How does ISS assess the terms of voting agreements or "standstill" agreements that arise from issuers' settlements with dissenting shareholders?

In addition to the classification of any directors that the dissident shareholder may have placed on the board pursuant to our Director Independence policy and section 2.16 of our Categorization of Directors table, ISS will examine the terms of the standstill agreement and any other conflicting relationships or related-party transactions and, pursuant to our Board Accountability policy, may issue negative recommendations affecting the reelection of Nominating Committee members if we deem any terms of or circumstances surrounding the agreement to be egregious.

Board Composition

Attendance

41. What are the disclosure requirements on director attendance?

For exchange-listed companies, the SEC requires the following disclosure:

[Item 229.407\(b\)](#) Board meetings and committees; annual meeting attendance. (1) State the total number of meetings of the board of directors (including regularly scheduled and special meetings) which were held during the last full fiscal year. Name each incumbent director who during the last full fiscal year attended fewer than 75 percent of the aggregate of:

- i. The total number of meetings of the board of directors (held during the period for which he has been a director); and
- ii. The total number of meetings held by all committees of the board on which he served (during the periods that he served).

For non-listed companies, institutional investors generally expect the same attendance disclosure as that required for listed companies.

42. What if there is no attendance disclosure by the company?

Under the regulations, disclosure is only needed if a director attended less than 75 percent of the aggregate of his/her board and committee meetings for the period he/she served. Therefore, no disclosure would mean that all directors met the attendance threshold. However, many companies will include in their proxies an affirmative statement that all directors met the threshold - this affirmative disclosure is particularly helpful when a company provides additional details on attendance, but it is unclear if this disclosure is in addition to, or in lieu of, the required disclosure.

43. How is the exception regarding "missing only one meeting" applied?

If the total of all the director's board/committee meetings was three or fewer, missing just one would put the director's attendance below the 75% reporting threshold. That is why an exception is made - missing one meeting alone should not trigger the policy. This exception only applies when the aggregate of all the director's board and committee meetings is three or fewer. It does not apply when there were only three board meetings, or only three committee meetings, and the total of the director's board and committee meetings is four or more.

44. What exceptions to the attendance policy apply in the case of a director who joined the board during the fiscal year under review?

Companies typically schedule their board and committee meetings a year or more in advance. The expectation is that directors plan their schedules accordingly. However, directors appointed or elected during the fiscal year under consideration will not have had the benefit of this advance notification. Therefore, directors who have served for only part of the fiscal year are generally exempted if they attended fewer than 75% of the aggregate of the board and committee meetings for the period for which they served, or if the disclosure is unclear as to whether they attended 75% of their meetings.

45. How is the policy on chronic poor attendance applied?

ISS generally applies this policy as follows:

- After three years of poor attendance by a director, recommend withhold from the chair of the nominating or governance committee;
- After four years, recommend withhold from the full nominating or governance committee; and
- After five years, recommend withhold from all nominees.

When the director with chronic poor attendance is on the ballot, the recommendations at the chair or committee level will be directed towards the nominating committee for the continued nomination of the director, despite the poor attendance. When the director is not on the ballot, as in the case of a classified board, the recommendations will be directed towards the governance committee for maintaining a governance structure where the director is not directly accountable to shareholders on an annual basis.

46. What is ISS' policy on unclear attendance disclosure?

If the proxy disclosure is unclear and insufficient to determine whether a director attended at least 75 percent of the aggregate of his/her board and committee meetings during his/her period of service, ISS will recommend a vote against or withhold from the director(s) in question.

Investors expect directors to attend their board and committee meetings, and companies to clearly disclose attendance information; poor attendance is a primary reason why directors receive majority withhold or against votes.

Examples of deviations from the required disclosure include, but are not limited to:

- Not naming the director(s) who failed to meet the threshold attendance;
- Using a threshold of less than 75 percent;
- Using a threshold greater than 75 percent and reporting that a director did not achieve that threshold;
- Excluding special meetings from total meetings;
- Reporting attendance separately for regular vs. special meetings;
- Boosting the attendance records by including actions by written consents in total meetings;
- Reporting average attendance instead of threshold attainment;
- Reporting attendance per meeting or per committee rather than per director; or

- Reporting aggregate board and aggregate committee attendance separately instead of the one overall aggregate.

Oftentimes, the unclear disclosure results from a company's attempt to provide additional disclosure to its investors, not to obfuscate poor attendance, but it is not clear whether the disclosure provided is supposed to be in addition to, or in lieu of, the required disclosure. In that case, the addition of a positive sentence to the effect that "during the fiscal year, all directors attended at least 75% of their board and committee meetings for the period for which they served" clarifies that the additional details provided are supplemental.

Overboarding of Directors

47. What boards does ISS count when determining if a director is overboarded?

We include public companies (we use both FactSet and S&P Capital IQ company type for the determination of whether a company is public), and mutual fund families. We do not include non-profit organizations, universities, advisory boards, and private companies. Mutual funds are rolled up to mutual fund families, with one family counting as one board.

If service on another board is an integral part of the duties of an officer, while ISS will still count each board as a separate board, ISS will take that into consideration in determining the vote recommendation. Examples of such situations include joint marketing agreements requiring service on the other board, or service on the boards of an externally-managed issuer and its external manager.

48. When will ISS' list of boards for a director differ from the company's disclosure?

Under [229.401\(e\)\(2\)](#), U.S. companies are required to disclose the director's service only for boards "*in any company with a class of securities registered pursuant to section 12 of the Exchange Act or subject to the requirements of section 15(d) of such Act or any company registered as an investment company under the Investment Company Act of 1940, 15 U.S.C. 80a-1, et seq., as amended, naming such company.*" Thus, disclosure of service on non-SEC registrant boards is not required. However, as ISS covers non-SEC registered U.S. publicly-traded companies if they are in our clients' portfolios, as well as publicly-traded companies in about 115 countries, directors' service on non-SEC registrant boards, both foreign and domestic, will be included.

Also, the company's disclosure is based on information collected prior to issuance of the proxy. ISS's database linking directors to their companies will take into account if the director has joined a board or left a board after that time.

49. How are subsidiaries of a publicly-traded company treated for overboarding?

All subsidiaries with publicly-traded stock are counted as separate boards. Subsidiaries that only issue debt are not counted.

Special consideration is given where the CEO of a parent company also serves on the boards of the company's publicly traded subsidiaries. ISS will not recommend withhold/against votes for overboarding on the parent company's CEO at the parent company, nor at any subsidiary board with over 50 ownership by the parent. At outside boards and at subsidiaries owned 50 percent or less by the parent, ISS will consider whether withhold/against votes are warranted on a case-by-case basis, considering among other factors:

- Structure of the parent subsidiary relationship (for example, holding company structure);
- Similarity of business lines between the parent and subsidiary;
- Percentage of subsidiary held by the parent company; and

- The total number of boards on which he/she serves.

50. Which CEOs are subject to the policy on overboarded CEOs?

The policy is applied only to CEOs of publicly-traded companies, not to CEOs of private companies. Co-CEOs are considered the same as CEOs. It also is not applied to interim CEOs: there is no expectation that a director who steps in as interim CEO to fill the gap should drop his or her other boards for this short-term obligation.

51. How does the ISS overboarding policy apply if a CEO does not serve on his/her own board?

ISS policy allows for two outside boards for a CEO. If the CEO does not serve on his/her own board, that does not increase the number allowable under the policy to three outside boards.

52. How are SPACs counted for overboarding purposes?

CEOs of SPACs (special purpose acquisition companies) are subject to the CEO overboarding policy, with SPAC boards counting the same as other public boards. While SPACs are not operating companies, a SPAC's CEO has a time-consuming job: to find a suitable target and consummate a transaction within a limited time period.

In general, each SPAC will count as a separate board also for directors.

53. Will ISS take into consideration a director's transitioning on or off a board?

Yes. It is preferable for a director to step down from a board at the annual meeting to ensure orderly transitions, which may result in a director being temporarily overboarded (e.g. joining a new board in March but stepping off another board in June). ISS will generally not count a board when it is publicly-disclosed that the director will be stepping off that board at its next annual meeting if that meeting will occur in the near future. This disclosure may be included in the director's biography in the proxy for one of his/her other companies' shareholder meeting. Likewise, ISS will include the new boards that the director is joining even if the shareholder meeting with his or her election has not yet taken place.

The "Commitments at Public Companies Table will reflect changes in other boards that occur before or within 3 days after the company's meeting date. Changes that will occur after that are shown in footnotes to the table.

Gender and Racial/Ethnic Diversity

54. If a company makes a commitment to achieve board diversity, will that impact ISS' vote recommendations?

Both of ISS' Benchmark policies on board diversity (gender, racial/ethnic) consider a commitment to achieve board diversity as a mitigating factor only if the board had such diversity at the previous annual meeting and is committing to re-achieving it. If the board was not previously diverse, a commitment to achieve diversity would not change a negative ISS vote recommendation. However, it is a consideration for some institutional investors, so if a company makes such a commitment in a public filing, ISS will include it in our report, or issue a proxy alert to inform our institutional clients if the commitment is disclosed after the report is published.

55. Some of the Specialty Policies refer to "underrepresented gender identities". What does this mean?

For some Specialty Policies, the term "underrepresented gender identities" means directors identifying as either female or non-binary.

As defined by the [LGBT Foundation](#), non-binary is a term "used to describe people who feel their gender cannot be defined within the margins of gender binary. Instead, they understand their gender in a way that goes beyond simply identifying as either a man or woman." Beginning in 2021, NASDAQ has required its listed companies to disclose a board diversity matrix. These disclosure requirements mandate that companies provide their board diversity statistics in aggregate, making specific reference to three gender categories: male, female, and non-binary individuals. NASDAQ has provided companies with [specific examples](#) in order to standardize its board diversity disclosure requirements (dated August 3, 2022). ISS will collect such publicly available aggregate-level board statistics as disclosed in the United States.

56. How does ISS determine if a board has racial or ethnic diversity?

ISS primarily relies on company-disclosed classifications of racial or ethnic diversity where explicitly provided. In cases where companies do not explicitly disclose any board racial or ethnic diversity information, a classification determination is made on a best-efforts basis using a variety of publicly available information sources, including company investor relations websites, LinkedIn profiles, press releases, leading news sites, as well as through identifying affiliations between individuals and relevant associations and organizations focused on race and/or ethnicity, such as the Latino Corporate Directors Association. Additionally, ISS has conducted a [direct outreach](#) effort to U.S. companies in the past.

Beginning in 2021, [NASDAQ](#) has required its listed companies to disclose a board diversity matrix. These disclosure requirements mandate that companies provide its board diversity statistics in aggregate, making specific reference to seven racial or ethnic categories:

- African American or Black
- Alaskan Native or Native American
- Asian (other than South Asian)
- South Asian
- Hispanic or Latinx
- Native Hawaiian or Pacific Islander
- White

ISS will collect such publicly available aggregate-level board statistics as disclosed in the United States. If public information on a board's racial or ethnic diversity composition is lacking, then ISS will work under the assumption that the board lacks such diversity. With the improvements in disclosure due to the new NASDAQ disclosure requirements, ISS will no longer accept a non-public communication from a company relaying racial/ethnic board diversity.

57. What ethnic and racial categories are used in ISS' database?

ISS' categories follow generally along standards put forth by the U.S. Office of Management and Budget's [Directive 15](#):

Ethnicity Type	Definition
Asian (exclude Indian / South Asian)	A person with origins in any of the original peoples of Central Asia or the Far East, including Afghanistan, Cambodia, China, Japan, Korea, Malaysia, Myanmar, the Philippine Islands, Thailand, and Vietnam.
Black / African American	A person with origins in any of the Black racial groups of Africa.

<i>Caucasian/White</i>	A person that does not fit any of the other categories.
Hispanic / Latin American	A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.
Indian / South Asian	A person with origins in India or other South Asian country, including Bangladesh, Bhutan, the Maldives, Nepal, Pakistan, and Sri Lanka
Middle-Eastern / North African	A person with origins in any of the Persian or Arab countries in the Middle East or North Africa.
Native American / Alaskan Native	A person with origins in any of the original peoples of North, Central and South America.
Native Hawaiian/ Other Pacific Islander	A person with origins in any of the original peoples of Guam, Hawaii, Samoa, or other Pacific Islands

Italicized Ethnicities are considered non-diverse for ISS policy application.

58. How does ISS' policy on board diversity differ from NASDAQ disclosure requirements?

The NASDAQ disclosure provides sufficient details as to the categories' definitions; however, it does not include Middle Eastern as a "diverse" disclosure category. Therefore, ISS has more possible racial or ethnic categories considered "diverse" than the NASDAQ disclosure requirements.

However, the ISS policies on gender and racial/ethnic diversity do not include other groups, such as sexual orientation, within the LGBTQ+ community.

59. Does having just one ethnically or racially diverse woman on the board satisfy ISS' gender and ethnic/racial diversity policies?

Yes. Under the Benchmark policy, a single diverse member of the board can meet ISS' policies for both gender and racial/ethnic diversity.

60. Are diverse nominating committee chairs (or other directors on a case-by-case basis) exempted from ISS board diversity-related policies?

No. Increasingly, board diversity has become an area of focus for companies, investors, and regulators. ISS believes it is the nominating committee's responsibility to appoint candidate of diverse backgrounds in order to maintain a board with a mix of expertise and perspectives. If a company's board lacks diversity (gender, racial or ethnic), ISS may issue an adverse vote recommendation for the responsible nominating committee member, even in cases where that member contributes to the diverse make-up of the board. As discussed elsewhere ([here](#) and [here](#)) in these FAQs, vote recommendations against directors are to convey dissatisfaction with actions taken/not taken in that person's role on a committee or the board, and in the vast majority of cases not as a call for the person to step off the board.

Board Responsiveness

61. Definition of "majority of shares cast":

The ISS policies regarding board responsiveness generally use “shares cast” as the measurement. ISS uses: For/ (For + Against). Abstentions are not counted. If different to this, the base the issuer uses to determine if a proposal passed is not used, as doing so would result in an inconsistent basis for looking at voting outcomes across companies.

Majority-supported Shareholder Proposals

62. What does ISS look at when considering if a board has been "responsive" to a majority-supported shareholder proposal?

Acting on a shareholder proposal will generally mean either full implementation of the proposal or, if the matter requires a vote by shareholders, a management proposal on the next annual ballot to implement the proposal. Responses that involve less than full implementation will be considered on a case-by-case basis, based on the factors listed in the policy.

These factors are further described below:

Disclosed outreach efforts by the board to shareholders in the wake of the vote:

Key to any partial implementation of a majority supported shareholder proposal is outreach by the board to their significant shareholders who supported the proposal to understand why they supported it and what they are looking for the board to do in response. The “ask” of the proposal may not directly reflect shareholders’ concerns but instead may have been the vehicle most readily-available for them to express their concerns. For example, shareholders may be more interested in a stronger right to a special meeting than the written consent right proposed. Or they may want a more empowered lead independent director position in lieu of an independent chair.

While outreach to the proponent is important, it was the majority of voted shares that supported the proposal. Therefore, the company should reach out beyond the proponent to the shareholders who supported the proposal to understand their goals in the support of the proposal.

Rationale provided in the proxy for the level of implementation:

The vast majority of shareholder proposals are precatory, not binding, and the board exercises its discretion to respond in a manner that it believes is in the best interest of shareholders and the company. When a majority of shares, or a substantial minority, are cast in support of a proposal, the company should clearly disclose its response and explain the board’s rationale for the actions it has taken in the following year’s proxy statement.

The subject matter of the proposal:

Some matters are straightforward, almost binary decisions, and garner a strong consensus among institutional investors, such as:

- Declassification proposals— either a board is classified, or it is annually elected. While shareholders may defer to the board’s discretion as to timing or phasing-in of the declassification, there is generally no other action acceptable.
- Majority vote standard—either a board has a plurality or a majority vote standard in uncontested elections. There is a consensus that a true majority vote standard is the board response required, and not just the adoption of a director resignation policy while maintaining a plurality vote standard. See the [FAQ](#) on vote standards in the U.S. for more information.

Other items are more nuanced and allow for a broader range of implementation, such as the shareholders' right to call a special meeting, to act by written consent, or to nominate directors via proxy access, or proposals seeking an independent board chair. Please see the FAQs below on these items for more details.

63. What would constitute a clearly insufficient response to a majority-supported shareholder proposal?

Clear examples of non-responsiveness by the board would include: no acknowledgement in the proxy statement that shareholders supported the proposal; dismissal of the proposal with no reasons given; or actions taken to prevent future shareholder input on the matter altogether.

64. Does the board's recommendation on a management proposal in response to a majority-supported shareholder proposal matter?

In general, the proposal should have a board recommendation of "For". A recommendation other than a "For", (e.g. "None" or "Against") will generally not be considered as sufficient action taken. The level of support necessary to implement the proposal (e.g., if it requires a supermajority of shares outstanding) will also be a consideration in evaluating the role of the board's recommendation.

65. Proxy access proposals: How will ISS evaluate a board's implementation of proxy access in response to a majority-supported shareholder proposal?

ISS will evaluate a board's response to a majority-supported shareholder proposal for proxy access by examining whether the major points of the shareholder proposal are being implemented. Further, ISS will examine additional provisions that were not included in the shareholder proposal in order to assess whether such provisions unnecessarily restrict the use of a proxy access right.

ISS may issue an adverse recommendation if a proxy access policy implemented or proposed by management contains material restrictions more stringent than those included in a majority-supported proxy access shareholder proposal with respect to the following, at a minimum:

- **Ownership thresholds** above three percent;
- **Ownership duration** longer than three years;
- **Aggregation limits** below 20 shareholders;
- **Cap** on nominees below 20 percent of the board.

In instances where the cap or aggregation limit differs from what was specifically stated in the shareholder proposal, lack of disclosure by the company regarding shareholder outreach efforts and engagement may also warrant negative vote recommendations.

If an implemented proxy access policy or management proxy access proposal contains restrictions or conditions on proxy access nominees, ISS will review the implementation and restrictions on a case-by-case basis. Certain restrictions viewed as potentially problematic especially when used in combination include, but are not limited to:

- Prohibitions on resubmission of failed nominees in subsequent years;
- Restrictions on third-party compensation of proxy access nominees;
- Restrictions on the use of proxy access and proxy contest procedures for the same meeting;
- How long and under what terms an elected shareholder nominee will count towards the maximum number of proxy access nominees; and
- When the right will be fully implemented and accessible to qualifying shareholders.

Two types of restrictions will be considered especially problematic because they are so restrictive as to effectively nullify the proxy access right:

- Counting individual funds within a mutual fund family as separate shareholders for purposes of an aggregation limit; or
- The imposition of post-meeting shareholding requirements for nominating shareholders.

Providing the board with broad and binding authority to interpret the provision, while problematic, may not void the right on its own but would be considered in connection with other problematic provisions.

66. Declassify the board proposals: Phased-in vs. immediate declassification:

Although a proponent may request immediate declassification, our institutional investor clients have indicated that a phased-in declassification that allows for incumbent directors to fulfill their full elected terms is generally acceptable. However, delays to the start of the phase-in of declassification beyond the year after the management proposal has passed are generally not acceptable. The delay should be vetted with shareholders and the rationale for the long delay included in the proxy statement.

67. Independent Chair Proposals: is there any action short of appointing an independent chair that would be considered sufficient?

Full implementation would consist of separating the chair and CEO positions, with an independent director filling the role of chair. A policy that the company will adopt this structure upon the resignation of the current CEO would also be considered responsive.

Partial responses will be evaluated on a case-by-case basis, depending on the disclosure of shareholder input obtained through the company's outreach, the board's rationale, and the facts and circumstances of the case. There are many factors that can cause investors to support such proposals without necessarily demanding an independent chair immediately. For example, through their outreach, a company may learn that shareholders are concerned about the lack of a lead director, weaknesses in the lead director's responsibilities, or the choice of lead director. In such a case, creating or strengthening a robust lead director position may be considered a sufficient response, assuming no other factors are involved. If the company already has a robust lead director position, then the company's outreach to shareholders to discover the causes of the majority vote and subsequent actions to address the issue will be reviewed accordingly.

68. Shareholder proposals on majority vote standards: Is adoption of a "majority vote policy" considered sufficient?

In general, for U.S. companies, adoption of a director resignation policy (sometimes called a majority vote policy) in lieu of a true majority vote standard is not considered a sufficient response. See the discussion on [director election vote standards](#).

69. Right for shareholders to call special meetings: Implementation of an ownership threshold higher than the specified in the shareholder proposal:

According to our 2010 policy survey, 56 percent of institutional clients did not accept a higher threshold as a sufficient response. However, if the company's outreach to its shareholders finds a different threshold acceptable to them, and the company disclosed these results in its proxy statement, along with the board's rationale for the threshold chosen, this will be fully considered on a case-by-case basis. The ownership structure of the company will also be a factor in ISS' consideration.

70. Right for shareholders to call special meetings: What types of parameters set on the right are generally considered acceptable?

Reasonable limitations on the timing and number per year of special meetings are generally acceptable. See the FAQ regarding [Material Restrictions on Special Meetings](#) for unacceptable restrictions.

71. Right for shareholders to act by written consent: What limitations are generally acceptable?

Reasonable restrictions to ensure that the right to act by written consent could not potentially be abused are acceptable. In general, restrictions considered reasonable include:

- An ownership threshold of no greater than 10 percent;
- No restrictions on agenda items;
- A total review and solicitation period of no more than 90 days (to include the period of time for the company to set a record date after receiving a shareholder request to do so, and no more than 60 days from the record date for the solicitation process);
- Limits on when written consent may be used of no more than 30 days after a meeting already held or 90 days before a meeting already scheduled to occur; and
- A solicitation requirement that the solicitor must use best efforts to solicit consents from all shareholders.

Restrictions that go beyond these levels are examined in light of the disclosure by the company about its outreach to shareholders, the board's rationale, etc.

72. Reducing supermajority vote requirements on charter/bylaw amendments: selective implementation on some, but not all, charter and bylaw provisions:

In general, shareholders would look for supermajority provisions to be reduced to the majority of shares cast. However, exceptions may occur. An example is where the supermajority applies only to a provision that would be antithetical or limiting to shareholders' rights, such as the ability to reclassify the board. Disclosure on which provisions were not reduced, and why, is a key consideration.

73. Reducing supermajority vote requirements: reducing threshold to a majority of shares outstanding instead of the called-for majority of votes cast:

In general, reducing supermajority requirements to the majority of cast is preferred by institutional investors. However, state law may mandate a threshold no lower than the majority of shares outstanding. The board's rationale and the disclosed outcome of the company's outreach to shareholders are key considerations.

In general, a reduction from a supermajority to a slightly lower supermajority (e.g. 75 percent to 66.7 percent), would not be considered a sufficient response, according to 71 percent of our institutional clients surveyed. However, the company's outreach to shareholders and board's rationale are also considerations.

74. What if a shareholder proposal is antithetical to the rights of shareholders?

Arguing that a proposal that received a majority of shareholder votes is antithetical to shareholders' interests, particularly at a widely held company, is a difficult proposition – it implies that shareholders are not acting in their own best interests. However, there are cases where majority-supported proposals go against the interests of minority shareholders, e.g. at controlled company AMERCO year after year. ISS obviously does not expect that companies will “act” on proposals contrary to the interests of all shareholders, particularly minority shareholders.

Likewise, ISS does not expect a company to act on a proposal invalidated by court rulings or state law. For example, there were majority-supported shareholder proposals on certain bylaw changes at Airgas in 2010 during their proxy fight with Air Products. The Delaware Supreme Court invalidated the bylaw changes; ISS would expect the company to act in accordance with the court rulings.

Director(s) receiving less than 50 percent of Votes Cast

75. What happens if a director received less than a majority (50 percent or less) of votes cast in the previous year?

If a director receives less than majority support, ISS considers whether the company has addressed the underlying issues that led to the high level of opposition. Disclosed outreach to shareholders and disclosure of the steps taken in response to their findings, are key considerations. ISS may recommend withhold/against individual directors, a committee, or the entire board the following year if all the underlying issue(s) causing the high level of opposition are not addressed.

76. What is considered a sufficient response if a director receives less than majority support due to attendance issues?

If the director’s attendance the following year is above the reporting threshold (75% of the aggregate of his/her board and committee meetings), that is generally considered sufficiently responsive. Chronic or widespread attendance issues may cause further consideration.

Board Accountability

Poison Pills

77. What is a deadhand or slowhand provision, and which companies’ poison pills have them?

A deadhand provision is generally phrased as a “continuing director (or trustee)” or “disinterested director” clause and restricts the board's ability to redeem or terminate the pill. Continuing directors are directors not associated with the acquiring person, and who were directors on the board prior to the adoption of the pill or were nominated by a majority of such directors. The pill can only be redeemed if the board consists of a majority of continuing directors, so even if the board is replaced by shareholders in a proxy fight, the pill cannot be redeemed: the defunct board prevents that. A slowhand is where this redemption restriction applies only for a period of time (generally 180 days).

The adoption of a device like a deadhand poison pill or its variants (such as slowhand pills) is unjustifiable from a governance standpoint as it is explicitly intended to thwart the will of shareholders in situations where they vote to replace the board in order to enable an offer to proceed. In addition to the small number of companies that continuously renew 10-year deadhand/slowhand pills, a number of short-term pills adopted in 2020 contained such features and some of these have continued to be extended/renewed.

Below is the list of companies with such pills being tracked by ISS as of **March 2024**:

Company	Expiration	Company	Expiration
American Strategic Investment Co.	8/18/2025	Healthcare Trust, Inc.	5/18/2026
Bexil Corporation	11/21/2025	Pillarstone Capital REIT	12/27/2024
CEL-SCI Corporation	10/30/2025	Taylor Devices, Inc.	10/5/2028
First Real Estate Investment Trust of New Jersey, Inc.	7/31/2026	Tuxis Corporation	11/3/2025

Unequal Voting Rights

78. Does having classes of stock with different voting rights impact companies' inclusion in market indices?

For a period of time, it did. In July 2017, S&P stopped adding any new companies to the S&P Composite 1500 and its component indices (the S&P 500, 400, and 600) with multiple share class structures. Existing index constituents were grandfathered.

<https://press.spglobal.com/2017-07-31-S-P-Dow-Jones-Indices-Announces-Decision-on-Multi-Class-Shares-and-Voting-Rules>

[However, in 2023, S&P changed its rules, and began allowing companies with unequal voting rights back into the S&P1500.](#)

https://www.spglobal.com/spdji/en/documents/indexnews/announcements/20230417-1463543/1463543_prapril20231500shareclassconsultresults.pdf

79. How will ISS apply its policy regarding unequal voting rights?

For meetings on or after Feb. 1, 2023, ISS will recommend against the members of the governance committee, and, if applicable, against directors holding supervoting shares that provide voting control. This is a change not only for companies that had been previously grandfathered, but also for companies that previously received against recommendations for unequal voting rights under the "newly-public company" policy; previously, the inclusion of unequal voting rights would be a recommendation against all incumbent nominees.

Problematic Governance: Classified Board, Supermajority Vote Requirements, Unilateral Actions

80. When is the Classified Board structure policy applied?

This policy is generally not applied if the director in question has a governance issue related only to his or herself, (e.g., poor attendance, overboarded, or is a non-independent director serving on the audit, nominating, or compensation committee), unless the issue is considered egregious. It is typically applied when ISS would normally recommend withhold/against the chair of a committee, or all the members of a committee – e.g., the compensation committee for problematic pay practices or a pay-for-performance disconnect, or the audit committee for continued material weaknesses in internal controls – and no one on the committee is a nominee on the ballot. The rationale is that a classified board further entrenches management and prevents shareholders from holding the responsible individuals accountable.

81. Removal of Shareholder Discretion on Classified Boards- which companies are impacted?

ISS has been recommending against the boards of the Indiana-incorporated companies that have not opted out of the 2009 Indiana Business Corporation Law provision (section [23-1-33-6](#)) mandating a classified board structure. Shareholders had minimal ability to address these staggered board term structures, as shareholder proposals that contradict state laws can be challenged at the SEC and kept off the ballot - see for example the 2010 [no-action letter for Ball Corporation](#).

When the law was originally enacted it only provided boards with one month to opt out (by July 31, 2009). Many companies did opt-out retroactively. Recent legislation (effective July 1, 2021) has made it easier for companies looking to opt out of the 23-1-33-6(c) provision by the adoption of a bylaw expressly electing not be governed by this subsection. The few remaining companies covered by ISS that have yet to opt out are:

First Bancorp of Indiana, Inc.	FS Bancorp (LaGrange, Indiana)	Noble Roman's, Inc.
First Capital, Inc.	Logansport Financial Corp.	Third Century Bancorp
First Savings Financial Group, Inc.		

82. How is the Problematic Governance Structure policy applied?

The policies regarding companies that went public with poor governance (unequal voting rights, classified board, and or supermajority vote requirements) were adopted for shareholder meetings on or after Feb. 1, 2015, so newly public companies that held their first public shareholder AGM on or after this date are impacted by this policy. The unequal voting rights policy has now been extended to companies that had been grandfathered; but the policy concerning classified boards and supermajority still applies only to the companies whose first public shareholder meeting is Feb 1, 2015, or after.

In the past, ISS generally recommended against all nominees of newly public companies that have adopted a multi-class capital structure with unequal voting rights without a seven year or less sunset. For companies that have adopted either supermajority voting requirements to amend the bylaws/charter or a classified board structure without reasonable sunsets, ISS generally recommended against the governance committee members. If they have adopted both, ISS had recommended against all nominees.

In conjunction with the changes in application for unequal voting rights, for meetings on or after Feb 1, 2023, ISS will recommend against the chair of the governance committee if the company has either a classified board or supermajority voting requirements to amend the governing documents, and against the full governance committee if they have both. Note however, that the "classified board structure" policy may result in against recommendations on more nominees if the directors who normally would be subject to the policy are not on the ballot due to the classified board.

83. Does shareholder "approval" of poor governance provisions at the de-SPAC transaction impact ISS' future recommendations on the company?

No. A large number of the investors in SPACs will vote for the de-SPAC transaction and simultaneously redeem their shares, exiting the stock (but keeping their warrants should the company have future value). So the vote is not necessarily indicative of the public company shareholder base. Also, the votes for poor governance are often coerced votes, in that the merger is made conditional on the approval of the poor governance features.

84. Which types of unilateral bylaw/charter amendments are likely to be considered by ISS to materially diminish shareholders' rights?

If a unilaterally adopted amendment is deemed materially adverse to shareholder rights, ISS will recommend a vote against the appropriate committee members or the entire board.

Materially adverse unilateral amendments include, but are not limited to:

- Authorized capital increases that do not meet ISS' Capital Structure Framework;
- Board classification to establish staggered director elections;

- Director qualification bylaws that disqualify shareholders' nominees or directors who could receive third-party compensation;
- Adoption of mandatory shareholder arbitration provisions;
- Fee-shifting bylaws that require a suing shareholder to bear all costs of a legal action that is not 100 percent successful;
- Increasing the vote requirement for shareholders to amend charter/bylaws;
- Adopting a plurality vote standard in uncontested director elections, or a majority vote standard in contested director elections;
- Imposing advance notice periods greater than the 90-120 day window or imposing undue restrictions on the ability to nominate candidates;
- Removing or restricting the right of shareholders to call a special meeting (raising thresholds, restricting agenda items); and
- Removing or materially restricting the shareholder's right to act in lieu of a meeting via written consent.

85. Why does ISS oppose unilaterally-adopted bylaws that disqualify any director nominee who receives third-party compensation ("director qualification bylaw")?

The adoption of restrictive director qualification bylaws without shareholder approval may be considered a material failure of governance because the ability to elect directors is a fundamental shareholder right. Bylaws that preclude shareholders from voting on otherwise qualified candidates unnecessarily infringe on this core franchise right.

However, ISS has not recommended voting against directors and boards at companies which have adopted bylaws precluding from board service those director nominees who fail to disclose third-party compensatory payments. Such provisions may provide greater transparency for shareholders and allow for better-informed voting decisions.

Restricting Binding Shareholder Proposals

86. What is the rationale for the policy?

Shareholders' ability to amend the bylaws is a fundamental right. Under SEC Rule 14a-8, shareholders who have held the requisite shares for the appropriate time periods are permitted to submit shareholder proposals, both precatory and binding, to amend bylaws. However, some states allow for companies to restrict this right in their charters.

When ISS adopted this policy for the 2017 proxy season, ISS identified fewer than 300 U.S. companies that prohibit shareholders from submitting binding shareholder proposals. Many companies have since amended their governing documents to provide the right. As of February 2022, fewer than 70 companies in the R3000 and S&P500 have restrictions on shareholders ability to amend the bylaws (and this includes some foreign-incorporated companies.) Further, a majority of US companies also maintain a majority vote threshold for amendments to their charter or bylaws.

87. What companies are not impacted by this policy?

The policy does not apply to open- or closed-end funds, nor to companies incorporated outside of the United States, even if they are U.S. Domestic Issuers. Although closed-end funds are not currently impacted by the ISS policy, this exemption does not extend to business development companies.

88. Will substitution of supermajority vote requirements on binding shareholder bylaw amendments in lieu of a prohibition be viewed as sufficient?

Substituting a supermajority vote requirement in lieu of the prohibition will be viewed as an insufficient restoration of a fundamental right. Similarly, in lieu of the prohibition, any holding level or time requirements for shareholders submitting bylaw amendments that are in excess of SEC Rule 14a-8 will be viewed as an insufficient restoration of shareholders' rights.

Non-employee Director Compensation

89. How does ISS evaluate high non-employee director pay?

If a company exhibits a recurring pattern of excessive pay magnitude without disclosure of compelling rationale, ISS may issue adverse vote recommendations for the chair of the board committee (or the entire committee, depending on the severity of the concern) responsible for approving/setting non-employee director (NED) pay. Adverse recommendations may result when excessive NED pay, without compelling rationale disclosed, is identified at a company in two or more consecutive years.

Following a quantitative identification of an NED pay outlier, a qualitative evaluation of the company's disclosure will determine if concerns around high pay levels are adequately mitigated. The following disclosed rationale generally mitigates concern around high NED pay, assuming the pay magnitude is not considered to be excessive:

- Onboarding grants for new directors that are clearly identified to be one-time in nature;
- Payments related to corporate transactions or special circumstances (such as special committee service, requirements related to extraordinary need, or transition payments made to a former executive for a limited period); or
- Payments made in consideration of specialized scientific expertise (as may be necessary in certain industries such as biotech/pharma).

Payments in connection with separate consulting/service agreements will be assessed case-by-case with particular focus on the company's rationale. For such arrangements to be considered reasonable explanations for outlier NED pay, companies should disclose: (i) the services provided under the agreement that go beyond typical director responsibilities, (ii) the additional benefits conveyed to shareholders by the agreement, and (iii) that the agreement has a set term which is not automatically extended.

The following circumstances will generally not mitigate concern around high NED pay:

- Payments made to reward general performance/service;
- Payments made under separate consulting/service agreements that have an indefinite or prolonged term or which provide payments for services that appear to be within the scope of typical director responsibilities; or
- Payments that are recognized as problematic for non-employee directors, such as performance-conditioned incentive pay, perquisites, or retirement benefits.

90. What is ISS' methodology to identify non-employee director pay outliers?

The non-employee director (NED) pay policy identifies pay outliers, generally representing individual NED pay figures above the top 2% of all comparable directors. ISS will compare individual NED pay totals within the same index and sector. Specifically, directors are compared to other directors within the same two-digit GICS group and within the same index grouping, which for the purpose of this policy are as follows: S&P500, combined S&P400 and S&P600, remainder of the Russell 3000 Index, and the Russell 3000-Extended. The methodology recognizes that board-level leadership positions, limited to non-executive chairs and lead independent directors, often are recognized with a material pay premium as compared to other directors. For non-executive directors who serve in these board leadership positions, the policy will identify outliers as compared to others within the same category of board leadership (still considering index and sector). The methodology also considers limited instances of narrow distributions of NED pay within a sector-index grouping. In groups where there is not a pronounced

difference in pay magnitude between the highest paid directors and the median director, this may be considered as a mitigating factor.

Problematic Pledging of Company Stock

91. How does ISS define a significant level of pledging of company stock?

ISS' view is that any amount of pledged stock is not a responsible use of company equity. A sudden forced sale of significant company stock may negatively impact the company's stock price and may also violate insider trading policies. In addition, share pledging may be utilized as part of hedging or monetization strategies that would potentially immunize an executive against economic exposure to the company's stock, even while maintaining voting rights. A significant level of pledged company stock is determined on a case-by-case basis by measuring the aggregate pledged shares in terms of common shares outstanding or market value or trading volume.

92. Should an executive or director who has pledged a significant amount of company stock immediately dispose or unwind the position in order to potentially mitigate a negative vote recommendation?

An executive or director who has pledged a significant amount of company stock should act responsibly and not jeopardize shareholders' interests. The aggregate pledged shares should be reduced over time, and the company should adopt a policy that prohibits future pledging activity and disclose that in its proxy statement. Note that if the individual's aggregate pledged shares were to increase over time, a negative vote recommendation may be warranted despite the company's adoption of an anti-pledging policy.

93. What does ISS consider a "robust" anti-pledging policy?

A robust anti-pledging policy has all the following features:

- Applies to both executives and directors;
- Applies to all shares held (regardless of how the shares were obtained);
- Contains either a broad prohibition on pledging, or prohibits pledging in margin accounts and pledging stock for loans;
- The pledging prohibition cannot be waived via pre-clearance, and
- No executive or director has a current pledged position.

Any exceptions within the policy that would allow pledging to occur will cause the policy to be considered non-robust.

94. An executive has hedged company stock. How does ISS view such practice?

Hedging is a strategy to offset or reduce the risk of price fluctuations for an asset or equity. Stock-based compensation or open market purchases of company stock should serve to align executives' or directors' interests with shareholders. Therefore, hedging of company stock through covered call, collar or other derivative transactions, or exchange funds, sever the ultimate alignment with shareholders' interests. Any amount of hedging will generally be considered a problematic practice warranting a negative vote recommendation against appropriate board members.

Governance Failures

95. What is the purpose of the Governance Failures Policy?

The Governance Failures policy is designed to catch the one-off egregious actions that are not covered under other policies. If a type of action applies to a large number of companies, or persists year after year, ISS will generally break this out as its own, standalone policy.

Failure to Include Shareholder Proposals on the Ballot

In 2015, the SEC's decision to express no view on Rule 14a-8(i)(9) exclusions brought into sharper focus the possibility of companies' excluding shareholder proposals from their ballots without no-action relief.

96. What is ISS' expectation regarding whether a company includes a shareholder proposal on its ballot?

The ability of qualifying shareholders to include their properly presented proposals in a company's proxy materials is a fundamental right of share ownership, which is deeply rooted in state law and the federal securities statutes. Shareholder proposals promote engagement and debate in an efficient and cost-effective fashion.

Over the course of the past several decades, the SEC has played the role of referee in resolving disputes raised by corporate challenges to the inclusion of shareholder proposals in company proxy materials. While federal courts provide an additional level of review, the vast majority of shareholder proposal challenges have been resolved without the need to resort to costly and cumbersome litigation. While individual proponents and issuers often disagree with the SEC's determinations in these adversarial proceedings, the governance community recognizes the Commission's important role as an impartial arbiter of these disputes.

In early 2015, when the SEC suspended no-action relief for "conflicting" shareholder proposals, some companies were contemplating unilaterally excluding shareholder proposals. The SEC had announced that it was reviewing Rule 14a-8(i)(9), which allows companies to exclude a shareholder proposal that "directly conflicts" with a board-sponsored proposal. Additionally, SEC Chair Mary Jo White indicated that for proxy season 2015, the Commission's Division of Corporation Finance would express no view on the application of Rule 14a-8(i)(9). As a result, companies that intended to seek no-action relief on that basis were contemplating simply not including proposals. ISS provided the following guidance:

For companies that present both a board and shareholder proposal on the ballot on a similar topic, ISS will review each of them under the applicable policy.

ISS will view attempts to circumvent the normal avenues of dispute resolution and appeal with a high degree of skepticism¹. Omitting shareholder proposals without obtaining regulatory or judicial relief risks litigation against the company. Presenting only a management proposal on the ballot also limits governance discourse by preventing shareholders from considering an opposing viewpoint, and only allowing them to consider and opine on the view of management.

Thus, under our governance failures policy, ISS will generally recommend a vote against one or more directors (individual directors, certain committee members, or the entire board based on case-specific facts and circumstances), if a company omits from its ballot a properly submitted shareholder proposal when it has not obtained:

- voluntary withdrawal of the proposal by the proponent;
- no-action relief from the SEC; or

¹ As precedent, ISS recommended against the board of directors at Kinetic Concepts in 2011 for omitting a shareholder proposal when the SEC had denied the firm's request for no-action relief. ISS changed the vote recommendation when the board implemented the proposal.

- a U.S. District Court ruling that it can exclude the proposal from its ballot.

The recommendation against directors in this circumstance is regardless of whether there is a board-sponsored proposal on the same topic on the ballot. If the company has taken unilateral steps to implement the proposal, however, the degree to which the proposal is implemented, and any material restrictions added to it, will factor into the assessment.

Vote No Campaigns

97. How does ISS Research approach Vote-No campaigns?

Vote-no campaigns are often directed against the re-election of directors or against the advisory vote on executive compensation. The vote-no campaign would need to be disclosed accessibly to all investors via Edgar filings (e.g. an exempt filing), to warrant consideration; postings on the dissenting shareholders' website would be insufficient. ISS will generally include information in our reports alerting our clients to the dissent. Depending on the issues raised, ISS may choose to engage with the dissenting parties and/or the company to gain a deeper understanding of the situation.

Contested Elections: Proxy Contests and Proxy Access

98. Does the new universal proxy card (UPC) change ISS' approach to proxy fights?

In September of 2022, the new SEC Rules mandating the use of "universal proxy cards" for proxy fights went into effect. The rule requires that both the dissident and management proxy cards include all the director candidates, thus allowing shareholders to readily pick and choose among the candidates, rather than only have a say on one slate or the other.

ISS' current two-prong framework for proxy fights:

- Is there a case for change?
- If so, how much change/which nominees?

will remain generally the same, in that the case for a change would need to be established first. However, the second prong of the ISS framework will likely demand a greater degree of scrutiny under the UPC regime.

99. How will ISS evaluate proxy access nominees?

ISS has a policy for evaluating director nominees in contested elections, which currently applies to proxy contests as well as proxy access nominations. However, the circumstances and motivations of a proxy contest and a proxy access nomination may differ significantly. In some cases, the nominating shareholder's views on the current leadership or company strategy may be opposed to the existing board's views. Alternatively, a shareholder nominator may generally agree with the company's strategy or have no specific critiques of incumbent directors but wishes to propose an alternative candidate to address a specific concern, such as diversity, lack of refreshment or a perceived skills gap on the board. It is also possible that a proxy access election would occur when there are available seats on the board for all the nominees.

Given this range of possible nominating circumstances, ISS has created additional analytical latitude for evaluating candidates nominated through proxy access. The clarified approach is informed by related policies in international markets such as the UK & Ireland, Europe, Japan, and Australia, but is also tailored to unique aspects of proxy access in the US. When evaluating candidates nominated pursuant to proxy access, ISS will take into account any relevant factors including, but not limited to, the following:

- Nominee/Nominator specific factors:
 - Nominators' rationale;
 - Nominators' critique of management/incumbent directors; and
 - Nominee's qualifications, independence, and overall fitness for directorship.

- Company specific factors:
 - Company performance relative to its peers;
 - Background to the contested situation (if applicable);
 - Board's track record and responsiveness;
 - Independence of directors/nominees;
 - Governance profile of the company;
 - Evidence of board entrenchment;
 - Current board composition (skill sets, tenure, diversity, etc.); and
 - Ongoing controversies, if any.

- Election specific factors:
 - Whether the number of nominees exceeds the number of board seats; and
 - Vote standard for the election of directors.

100. [How would ISS evaluate director nominees with third-party compensatory arrangements in a proxy contest?](#)

Compensation arrangements with director nominees are among the factors ISS considers in our case-by-case analysis of proxy contests. Further discussion of ISS' analytic framework for contested elections is available in the U.S. Proxy Voting Guidelines.

Independent Chair Shareholder Proposals

101. [What is ISS' approach towards independent chair shareholder proposals?](#)

For shareholder proposals requiring the chairperson's position be filled by an independent director, ISS undertakes a holistic review of all of the factors related to the company's board leadership structure, governance practices, and performance.

Regarding the scope of the proposal, consideration will be given whether the proposal is precatory or binding and whether the proposal is seeking an immediate change in the chair role, or the policy can be implemented at the next CEO transition. If the proposal is seeking an immediate change in the chair position, greater emphasis will be weighted towards the proponent's rationale.

Under the review of the company's board leadership structure, the following scenarios would increase the likelihood of a "for" recommendation absent a compelling rationale: the presence of an executive or non-independent chair in addition to the CEO; a recent recombination of the role of CEO and chair; and/or departure from a structure with an independent chair. ISS will also likely support the proposal if the designation of a lead director role is not considered sufficiently robust to effectively counterbalance a combined chair/CEO role.

When considering the governance structure, ISS will consider the overall independence of the board, the independence of key committees, the establishment of governance guidelines, board refreshment activities, and any other factors that may be relevant. A majority non-independent board and/or the presence of non-independent directors on key board committees will weigh in favor of support for the proposal.

The review of the company's governance practices may include, but is not limited to, excessive or problematic compensation practices, material failures of governance, lack of responsiveness to shareholder concerns, governance practices that weaken or reduce board accountability to shareholders, related-party transactions or other issues putting director independence at risk, corporate or management scandals, and actions by management or the board with potential or realized negative impact on shareholders. Any such practices may suggest a need for more independent oversight at the company thus warranting support of the proposal.

ISS will also take into consideration evidence the board has failed to oversee and address material risks facing the company which may have damaged the company's reputation, resulted in material regulatory penalties or a significant loss in shareholder value, and/or had other adverse impacts on shareholders. Such instances may suggest the need for greater independent boardroom leadership or independent oversight in the form of an independent chair.

ISS' performance assessment will generally consider one-, three-, and five-year TSR compared to the company's peers and the market as a whole, with an emphasis on long-term performance.

102. How does ISS determine if the board has adequately responded to shareholder concerns under the Independent Chair policy?

Director accountability is a hallmark of effective corporate governance. Directors should respond to investor input such as that expressed through vote results on management and shareholder proposals and other shareholder communications. Accordingly, failure of a board to adequately respond to majority-supported shareholder proposals or directors who do not receive majority support, may suggest the need for more independent boardroom leadership; thus, warranting support of the independent chair proposal. Similarly, when ISS determines that the board or applicable board committees inadequately responded to shareholder concerns regarding a say-on-pay proposal and/or a management ratification proposal, as the case may be, ISS will likely support the independent chair proposal.

The board's track record of responsiveness to shareholders will also be taken into consideration.

For additional details on ISS' approach on board responsiveness, please see ISS' Responsiveness policy.

103. What does ISS consider a robust lead director role?

ISS will generally consider a lead director role to be robust if the lead independent director is elected by and from the independent members of the board (the role may alternatively reside with a presiding director or rotating lead director; however, the director must serve a minimum of one year to qualify as a lead director). The lead director should also have clearly delineated and comprehensive duties, which should include, but are not limited to, the following:

- serves as liaison between the chairman and the independent directors;
- approves information sent to the board;
- approves meeting agendas for the board;
- approves meeting schedules to assure that there is sufficient time for discussion of all agenda items;
- has the authority to call meetings of the independent directors;
- if requested by major shareholders, ensures that he or she is available for consultation and direct communication.

104. Will ISS consider a company's rationale for maintaining a non-independent chair?

Yes, ISS will consider the company's rationale as a factor that may be applicable in the holistic review. A "compelling" rationale will be subject to a case-by-case evaluation. For example, ISS will consider how the board's

current leadership structure benefits shareholders and/or specific factors that may preclude the company from appointing an independent chair, if such disclosure by the company is provided. Boilerplate rationales will be viewed less favorably.

Audit-Related

105. Why did ISS include the "Tax Fees" under "Other Fees"?

ISS recognizes that certain tax-related services, e.g. tax compliance and preparation, are most economically provided by the audit firm. Tax compliance and preparation include the preparation of original and amended tax returns, refund claims, and tax payment planning. However, other services in the tax category, e.g. tax advice, planning, or consulting fall more into a consulting category. Therefore, these fees are separated from the tax compliance/preparation category and are added to the Non-audit fees. If the breakout of tax compliance/preparation fees cannot be determined, all tax fees are added to "Other" fees. ISS' benchmark policy is to compare the sum of Audit, Audit-Related, and Tax/Compliance Fees to Other Fees, and if Other Fees is greater, ISS will recommend against the Ratification of Auditors and the election of Audit committee members.

If the company provides a footnote to the audit fees table showing a breakout of the tax fees: those related to tax compliance and preparation fees, (i.e. the preparation of original and amended tax returns, refund claims, and tax payment planning), vs. those related to all other services in the tax category, such as tax advice, planning, or consulting, then ISS will use this information in application of our policy. This information can also be filed within the appropriate time frame after our analysis is released for a potential vote recommendation change (See Question #3)

106. Will ISS recommend votes against directors if the audit fees are undisclosed?

Yes. Audit fee disclosure is not required for certain non-EDGAR filers, but ISS considers the information necessary for shareholders to make informed decisions.

Shareholder Rights & Defenses

107. Poison pills: What features of a qualifying offer clause are considered to strengthen its effectiveness and what features are considered to weaken its effectiveness?

Attributes of a qualifying offer clause that strengthen its effectiveness as a tool for shareholders include:

- Provision of a material adverse effect/condition ("MAE") clause;
- Reasonable requirements with respect to the length of time an offer is outstanding;
- Offeror is not required to keep the offer open longer than 60 business days in the absence of a MAE clause or 90 business days if there is an MAE clause, and
- No more than 15 business days following a price increase or an alternative bid or tender offer);
- Reasonable overall timing requirements with respect to the mechanics of calling a special meeting to vote on redemption of the pill (no longer than 150 business days from the time an offer is made until the time a special meeting is held).

Attributes of a qualifying offer clause that weaken its effectiveness and potentially discourage offers from being made include:

- A requirement that the offer be cash only;
- A provision allowing the company to declare an offer to not be a qualifying offer if the company procures an inadequacy opinion;

- A reverse due diligence requirement; and
- A requirement specifying the level of premium.

Social/Environmental Issues

General Questions

108. What is ISS' general approach on environmental and social-related shareholder proposals?

When evaluating shareholder proposals, ISS follows a series of steps to ensure that consistent analysis and appropriate voting recommendations are applied to all environmental and social (E&S) topics. Maximizing and protecting shareholder value in the long term is the ultimate goal of ISS' benchmark policy. Since some risks and values may be difficult to quantify, ISS analysts use a number of techniques to evaluate the potential benefit of a shareholder proposal. ISS clients in general are long-term shareholders.

Generally, ISS seeks to determine if the disclosure or action requested by a shareholder resolution relates to an area that is material to the company, is not already adequately addressed by existing disclosures and practices and could be a reasonable approach to the risk the shareholder proponent is concerned with. ISS evaluates factors unique to the industry, company, market, and the proposal itself. ISS will assess industry standards and science-based best practices to determine if the company falls outside of the accepted norms (thus increasing risk exposure), evaluate the pertinence of the issue to the company's core businesses, and evaluate the potential for impact on long-term share value related to the topic at hand.

In general, ISS will recommend support for proposals that ask for additional disclosure if it is deemed a positive contribution to the company's understanding of its risks and is not burdensome, and proposals that request a feasibility study given the issue is material and there is sound rationale it will benefit shareholders, and will support direct action requests if there are significant controversies and/or the company's policies and practices lag accepted norms.

109. What is financially material?

As E&S issues continue to attract attention, institutional investors generally want the focus to be on the E&S issues directly impacting long-term value. Whether an issue could be financially material may depend on the length of the term considered. Environmental and social metrics can be considered long-term operational metrics, including metrics around workforce management, and those around product choice, sales practices, and/or manufacturing in line with a thriving environment and society. ISS generally adopts a long-term approach when looking at financial materiality. There is a proliferation of potential E&S metrics and few standards that are widely accepted, although a consensus is emerging on the materiality of some E&S metrics in some sectors. ISS analyzes potential metrics by sector and seeks to focus on the E&S factors that could impact a company's business model and value drivers, such as revenue, capital, and risk. ISS uses ISS ratings such as the E&S Quality Score and the Climate Awareness Scorecard and external ratings such as the CPA Zicklin Index, the Corporate Human Rights Benchmark, and the CDP scorecard, which aim to identify and measure areas of financially material environmental and social risks through company disclosure. ISS also refers to the metrics identified as material by the Sustainability Accounting Standards Board, which are developed in collaboration with market participants.

Data shows that firms with better E&S practices incur lower costs, experience greater employee productivity and satisfaction, and are more aware of and able to manage risks.² In contrast, companies with E&S-related controversies are coming under increasing scrutiny as stakeholders become more aware of the risks and opportunities associated with E&S. Moreover, the regulatory environment and international investment community continue to push for improved disclosure, as most recently shown by the commitments made to the UN's Principles for Responsible Investment (PRI).

110. What constitutes a controversy?

As part of the shareholder proposal analysis, a "potential controversy" section may be included in the report if appropriate. ISS analysts use internal data generated by ISS ESG as well as external sources. ISS ESG captures companies' violations of international norms using a Norms-Based Research (NBR) approach. The norms-based framework recognizes and uses as guidelines the UN Global Compact and the Responsible Business Conduct (RBC) set out under the OECD guidelines for Multinational Enterprises, both of which are derived from international law. While these guidelines establish the basis for the framework, other internationally recognized principles and standards also guide the NBR. As international guidelines evolve so does the NBR approach.

The NBR approach looks at a company's alleged violation of internationally accepted norms in several categories: environment, human rights, labor rights, corruption, consumer protection, and ethics and governance. The NBR approach assesses the validity and severity of the allegations, while also considering the company's responsiveness to the allegations. When allegations are verified and considered severe, this constitutes a controversy that ISS may consider when evaluating a shareholder proposal related to the controversy.

In addition, ISS analysts also review current information related to the shareholder proposal subject and the company. If there is relevant information that has not been verified by the above approach, it will be presented on the research report as a "potential controversy."

111. How is the peer group selected?

When appropriate, ISS analysts will compare a company's E&S practices to peers to gauge whether its disclosures and actions are in line with market practices. ISS selects peers that are appropriate for the E&S topic at hand, which may or may not be the same companies used to analyze compensation practices. For example, if the topic of the shareholder proposal is related to workforce management, ISS will try to select companies that are likely to draw from the same labor pool. If the topic is related to a company's operations, analysts will seek to compare the company to its close competitors. If the company is a large, multinational company, it may be most appropriate to compare the company to multinational peers. Analysts will also consider the given company's industry, size, and market capitalization. The peer comparison informs our conclusions about whether the company is acting adequately to address a particular risk. It is just one aspect of the ISS analysis.

Climate-related shareholder and management proposals

112. What disclosures and publicly available information does ISS look at when evaluating climate-related shareholder proposal request?

When presented with a climate-related shareholder proposal request, ISS examines the company's disclosures and publicly available information to evaluate the company's approach to climate-related risks. To begin with, ISS looks for disclosure on the company's website, such as a sustainability report or an environmental policy that includes a

² Alexander Bassen, Timo Busch, and Gunnar Friede – *ESG and Financial Performance: Aggregated Evidence from More than 2000 Empirical Studies*, as cited by S&P Global Ratings - *Exploring Links to Corporate Financial Performance*.

description of the company's strategy development process, related tasks, and long-term goals. ISS ideally looks to see a committee with explicit responsibility for oversight of environmental risks and quantitative metrics on its carbon footprint that show a strong understanding of the company's resource use and risk exposure. Additionally, comparisons are done of the company to its peers on disclosure and action on climate-related topics, such as GHG emissions and long-term goals. Disclosure in the framework recommended by the Task Force on Climate-Related Financial Disclosure – corporate strategic planning, scenario analysis, and managing climate-related risks – is also valued.

When evaluating the merits of a shareholder proposal with requests related to greenhouse gas (GHG) emissions, ISS will look at disclosures and strategies related to direct emissions, emissions from electricity, and emissions related to the company's products and supply chain. ISS will evaluate whether the company has set emissions reductions targets that are aligned with Paris Agreement goals of limiting warming to well below 2 degrees C and whether the company has realistic strategies and incentives in place to achieve those targets. ISS will also consider if the company reports according to the TCFD framework and/or whether it answered the CDP climate-related survey, and the company's CDP rating. In the past, ISS has tended not to support requests for companies to align their strategies with Paris Agreement goals by taking a specific action such as by selling assets by a specific date, but it has tended to support requests for analysis and disclosure on whether a company's strategy is realistically aligned with Paris Agreement goals, including requests for disclosure of assumptions and scenario analyses.

Political Contributions Shareholder Proposals

113. What disclosures and information does ISS look at when evaluating a shareholder proposal request on political contributions?

When evaluating a shareholder proposal on political contributions, ISS looks at company disclosures and publicly available information, seeking information on expenditures, trade association participation, and oversight practices that would allow shareholders to assess how the company is managing related risks and benefits. To begin with, the analysts look to see the rationale behind the company's political contributions and policies governing political contributions and trade association memberships. The most transparent companies provide an itemized list of corporate political contributions, as well as a list of trade associations and membership organizations they support, and amounts spent for political purposes at these organizations. Sources like the CPA Zicklin Index, issued annually by the Center for Political Accountability and the Wharton School's Zicklin Center for Business Ethics Research, are used to help gauge a company's transparency related to its political spending. In its evaluation, ISS considers the company's overall score on the CPA Zicklin Index and to what extent there has been an improvement from the prior year. In the analysis, ISS is primarily concerned with a company's use of corporate funds for political purposes and not its Political Action Committee (PAC) contributions, which use employees' own funds, or contributions personally made by executives.

Political Lobbying shareholder proposals

114. What does ISS consider when analyzing requests for greater transparency of a company's lobbying expenditures and practices?

When analyzing lobbying disclosure shareholder proposals, ISS considers disclosure of: management policies and board oversight of direct and indirect lobbying spending; lobbying priorities; direct and indirect lobbying payments; memberships and level of support for political organizations; and any potential lobbying-related controversies involving the company. "Direct" lobbying spending is that made by the company. "Indirect" lobbying spending is lobbying spending made by organizations that the company supports financially, such as through membership dues.

115. What does ISS look for when reviewing disclosure of a company's board oversight of lobbying activity?

ISS reviews company materials to determine the extent to which the board exercises oversight of a company's lobbying activities. Analysts also look for details regarding the scope of the board's (or delegated committee's) oversight responsibilities for both direct and indirect lobbying activity; such as reviewing compliance with existing company policies or ensuring consistency with company values and public policy priorities. The frequency of lobbying activity review is also considered, that is, whether just a general reference of responsibility is made or if a specific frequency of review (such as annually, semiannually, or quarterly) is disclosed.

116. What does ISS look for when reviewing a company's lobbying expenditures?

Regarding reporting of lobbying expenses, federal law requires a company to report some basic information on direct lobbying expenditures, but that disclosure doesn't give a full picture of a company's expenditures and priorities. ISS prefers to see several years of aggregated direct lobbying spending on the company's web site as well as a comprehensive list of political organizations it supports financially and either the amount of money contributed to that organization or the amount of money that organization spent on lobbying purposes.

Gender/Racial/Ethnic Pay Gap shareholder proposals

117. What disclosures and publicly available information does ISS look at when evaluating a pay gap-related shareholder proposal request?

Shareholder proponents have filed proposals requesting reporting on the median gender/racial/ethnic pay gap at companies that are mainly in the IT and financial sectors, where the median pay gaps in these categories are believed to be the highest. Many U.S. companies have begun reporting statistically adjusted equal pay statistics but mostly have not reported median pay gaps. Equal pay statistics address whether people get paid equally for similar jobs. However, equal pay statistics do not reflect differences in opportunity or structural biases that may lead to situations where more men or racially/ethnically white people hold higher-paying jobs than women or people of color.

In its analysis of these proposals, ISS takes a case-by-case approach and considers the company's disclosure of policies and practices related to fair and equitable compensation, as well as its diversity and inclusion initiatives. Specifically, ISS looks to assess whether the company is actively trying to improve the representation of women and people of color and people from different ethnic backgrounds in senior leadership and technical positions and whether it is making progress in these efforts. Additionally, ISS considers the company's efforts in this area compared to its industry peers. ISS will also take note of information that may be reported by US companies in the UK in response to that country's requirement that companies that employ more than a certain number of people in the UK report the pay gap between the median male and female employees and the percentage of men and women in pay quartiles. ISS also takes into account whether there are any related significant controversies that could result in reputational risks.

Should ISS assess that the company is lagging in its efforts to improve the median pay gap, or there are significant controversies, it will generally recommend support for proposals requesting a median gender/racial/ethnicity pay gap report as it could provide shareholders with useful information about how effectively management is assessing and mitigating risks that may rise from inequitable employee treatment.

ISS will generally not recommend support for proposals that request a *global* median race or ethnicity pay gap report, due to the fact that types of racial/ethnic disparities, issues of discrimination, and the racial/ethnic composition of underrepresented groups can be entirely different depending on the countries in which a given company operates. A global racial/ethnicity pay gap statistic may not be possible to produce and would not produce usable information to track how well the company is doing at offering all employees equal opportunity.

Human Rights Due Diligence shareholder proposals

118. What disclosures and publicly available information does ISS look at when evaluating a human rights-related shareholder proposal request?

The UN Guiding Principles on Business and Human Rights define the practice of human rights due diligence as the proactive management of potential and actual adverse human rights impacts. Human rights due diligence requests often seek to understand how a company is assessing, identifying, integrating, preventing, and mitigating human rights risk in the company's operations and business relationships. These proposals tend to extend human rights responsibility beyond the company to suppliers and vendors.

When assessing a human rights due diligence shareholder proposal, ISS will look at whether the issuer has a human rights policy and has identified a committee responsible for human rights risk oversight with clearly delineated responsibilities such as identifying and assessing actual and potential human rights impact. Depending on the industry and location of the company's operations, other human rights related conventions or acts may be considered when evaluating the company's human rights due diligence process. ISS will also look at the company's vendor and supplier codes of conduct, the audit processes in place to oversee compliance with these codes, and whether the methodology and results of the audit are disclosed. In addition to audit practices, ISS will look at whether the company has conducted impact assessments and if those are publicly available. ISS will evaluate how the company is integrating the findings into its human right risks approach and how it tracks the effectiveness of these measures. In addition, because human rights due diligence extends responsibility beyond the company, ISS will look at how the company is communicating with all its stakeholders. Finally, when available, ISS will look at the company's ratings on third-party benchmarking reports, such as the Corporate Human Rights Benchmark (CHRB).

Mutual Funds

Closed-End Funds

119. What prompted the new policy in 2021 regarding closed-end funds opting into Control Share Acquisition statutes?

In May 2020, the SEC withdrew the "Boulder Letter," a no-action letter issued in November 2010 that commented on the use of control share acquisition provisions by closed-end funds. In the letter, the SEC articulated its belief that the tactic was inconsistent with provisions of the Investment Company Act of 1940 and that use of the tactic would "discriminate against certain shareholders by denying important voting rights and would contribute to the entrenchment of management." In connection with the withdrawal, the staff indicated that it would no longer recommend enforcement action for use of the tactic. Thus, there is no longer a functional deterrent for funds against opting into or adopting synthetic variants of this powerful anti-takeover provision, which impairs voting rights above certain specified ownership thresholds. This is important, not only because the tactic disenfranchises significant shareholders, but because there is mounting tension in the closed-end fund universe between funds and a small pool of activist investors, which frequently take positions large enough to be directly impacted by the tactic. Use of this defensive tactic to prevent an activist campaign can deny ordinary shareholders the opportunity to assess the merits of the activist's positions.

Generally, ISS' recommendation for unilaterally opting into a control share acquisition statute will be a one-year withhold/against recommendation against the governance committee, not multi-year against recommendations.

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