US Policy - General Share Issuance Mandates for Cross- Market Companies (US-listed, non-US-incorporated companies)

Background and Overview

- Corporate laws in certain countries require shareholder approval for any share issuances. To avoid the need to call a special meeting every time new shares are issued, companies in these markets typically seek approval every year for a general mandate for share issuances in the coming year, up to a specified percentage of issued share capital. A number of formerly US-based companies, treated as US domestic issuers by the SEC, have reincorporated in recent years to jurisdictions where such shareholder approval is required, but there is not currently a U.S. policy on general share issuance mandates, as companies incorporated in the U.S. are not required to seek approval for share issuances except in certain specified circumstances. Where non-U.S.-incorporated, U.S.-listed companies seek approval for share issuance mandates, these are currently evaluated under the policy of the country of incorporation; most commonly UK/Irish policy or Continental European policy. However, those policies are often driven by local listing rules and best practices, which do not generally apply to companies without a listing in that market. Meanwhile, US-listed companies are subject to NYSE or NASDAQ rules on share issuances, which are not reflected in non-US policies.

Key Changes Under Consideration

ISS US Policy would recommend in favor of general share issuance authorities (ie. those without a specified purpose) up to a maximum of 20 percent of currently issued capital, as long as the duration of the authority is clearly disclosed and reasonable.

Intent and Impact

- The proposed policy is intended to better reflect U.S. listing rules and the expectations of investors in the U.S. market. This would apply to companies treated as U.S. domestic issuers by the SEC, with a sole listing in the U.S., but which are required by the laws of the country of incorporation to seek approval for all share issuances. Share issuance mandates at dual-listed companies which are required to comply with listing rules in the country of incorporation will continue to be evaluated under the policy for that market.

Request for Comment

- As proposed, the new policy would effectively extend the NYSE/NASDAQ requirement for shareholder approval of issuances above 20 percent to scenarios in which the listing rules do not currently apply, such as public share issuances for cash. Do you believe that 20 percent is an appropriate threshold for such cross-market companies, or would it be more appropriate to grant a mandate for issuances up to a lower or higher level?
- Should such companies seek annual approval for share issuance mandates, or would a longer mandate (e.g. 2 years or 3 years) be acceptable?
- Should the same policy also apply to companies treated by the U.S. SEC as Foreign Private Issuers?