

## US Policy - Unilateral Board Actions – Multi Class Capital Structure at IPO

### Background and Overview

ISS US policy was amended in 2014 to establish an independent policy relating to unilateral bylaw and charter amendments under the board accountability policy framework. Unilateral bylaw and charter amendments had previously been evaluated under the material governance failures policy. ISS policy was again amended in 2015 to separate the methodology for evaluating board adoptions of bylaw or charter provisions made prior to or in connection with a company's initial public offering from the methodology for evaluating unilateral board amendments to the bylaws or charter made following completion of a company's initial public offering, and to explicitly state that ISS will consider such actions in determining vote recommendations for director nominees until such time as the actions are reversed or submitted to a vote of public shareholders.

ISS policy, however, does not currently address director accountability with respect to a company's capital structure in place at the time of its initial public offering. The proposed policy update is intended to clarify ISS policy and align ISS' approach to evaluating companies with multi-class share structures with feedback received from institutional investors.

The update does not affect the manner in which ISS evaluates and determines initial vote recommendations with respect to problematic unilateral bylaw and charter amendments, and the principle underlying the policy continues to be that shareholders should have the right to opine on changes that materially affect their rights, particularly when such changes would diminish their rights or increase the risk of board and management entrenchment.

### Key Changes under Consideration

The proposed policy update generally allows for adverse director recommendations to be warranted when a company completes its public offering with a multi-class capital structure in which the classes do not have identical voting rights. In addition, current policy references to putting adverse provisions to a shareholder vote as an evaluation factor for director recommendations have been removed. Instead, ISS will consider the inclusion of a reasonable sunset provision on the adverse capital structure or governance provisions.

### Intent and Impact

Current US policy does not explicitly address director accountability with respect to a company's capital structure in place at the time of its initial public offering. However, there has been an increase in the number of companies completing initial public offerings with multi-class structures, with 17 companies through August 30 holding their first annual meeting in 2016 identified as having a multi-class share structure.

### Request for Comment

ISS is seeking specific feedback on the following issues:

- What factors do you consider as an appropriate sunset provision? Should a sunset provision always be based on duration, or is another factor such as ownership makeup considered appropriate?
- What length of time do you consider appropriate for a sunset provision?
- Should the terms of a sunset provision differ based on the feature being sunset (e.g., classified board vs. supermajority vote requirements vs. multi-class capital structure)? If so, how?