

Unilateral Board Actions – Multi-Class Capital Structure at IPO

According to ISS, there has been a marked increase in the number of companies going public with [multi-class capital structures](#) in which the classes have unequal voting rights. Through Aug. 30 of this year, 17 companies held their first annual meeting with these types of share structures, says ISS. That being the case, ISS is seeking comment on “the inclusion of a reasonable sunset provision on the adverse capital structure or governance provision.”

Specifically, ISS would like feedback on the following:

- **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?**

We believe the addition of short (maximum 12 month) sunset provisions to multi-class capital structures with unequal voting rights adopted by newly public companies is a worthwhile goal.

However, we believe ISS should also flag those cases in which these capital structures or governance provisions themselves make it impractical or impossible to respond when a company fails to act on shareholders’ recommendations. If independent shareholders do not hold sufficient voting rights, for example, a majority vote against (or withheld from) a particular director will be futile. In such cases we believe ISS should issue a recommendation to investors not to acquire a company’s stock unless multi-class votes will be equalized when voting for directors or on governance provisions of the minority class within the 12 month sunset period.