



Securities Law ADVISORY ■

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ISS Offers COVID-19-Conscious Policy Guidance

On April 8, 2020, Institutional Shareholder Services Inc. (ISS), a well-known proxy advisory firm, issued updated [guidance](#) on its intended application of certain benchmark proxy voting policies as annual shareholder meeting season ramps up in many markets. The updated guidance comes as a response to significant disruptions to the annual meeting process and stock performance of late caused by the coronavirus (COVID-19) pandemic. The guidance includes softening ISS's historical tenor toward virtual or delayed annual meetings, shareholder rights plans or "poison pills," compensation issues, and capital structure decisions.

Specifically, ISS noted the following changes in its voting recommendation policies in light of the COVID-19 pandemic.

Virtual Meetings

Health and safety concerns must be addressed above all for this year's annual meetings, meaning companies are urged to follow applicable regulatory guidance and only hold physical meetings when it is determined safe to do so.

ISS will refrain from making adverse vote recommendations to shareholders of companies whose boards turn to webcasts, conference calls, and other virtual meeting platforms as means to continue to engage with shareholders.

However, ISS encouraged those that hold virtual meetings to provide shareholders with a meaningful opportunity to participate as fully as possible, including questions and dialogue with senior management.

Shareholder Rights Plans

While ISS will still take a case-by-case review approach to any proposed poison pill plan, it will give significant weight to such plans that are tailored to the economic conditions brought on during the COVID-19 pandemic (e.g., significant company stock price decline, easing the burden of potentially hostile investors' abilities to purchase large, influential stakes in companies), including the trigger of the plan, the duration of the plan (less than one year), and the board's stated justification for any such plan.

ISS also intends to take a more flexible approach in its director voting recommendation process by closely evaluating company disclosures around directors' alternative forms of attending meetings.

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ISS offered broad support for board or executive changes made on short notice for COVID-19-related reasons, stating “boards should have broad discretion during this crisis to ensure that they have the right team in place.”

Compensation Decisions

ISS recognizes that many companies are likely to announce plans to change performance goals and targets for annual incentives. While also recognizing that such decisions for 2020 compensation programs will generally be discussed in next year’s proxy statements, ISS encourages current disclosure in order to provide greater insights now into the rationale and circumstances for making such decisions.

While ISS policies generally do not support changes to multiyear awards, ISS noted that they will consider “in-flight” changes to long-term awards on a case-by-case basis.

In addition, ISS will take a case-by-case approach under its existing benchmark policy framework for any decision to reprice stock options, noting that it will generally oppose any repricings that occur within one year of a significant drop in the company’s stock price, while also considering certain other factors.

Capital Decisions

ISS acknowledges that the uncertain economic environment may cause some boards to reevaluate paying dividends at previously anticipated levels. While certain ISS market-specific policies look for dividend payout ratios to be within a certain range on prior-year earnings, ISS indicates that this year it will support broad discretion for boards to set payout ratios that fall below historic levels or customary market practice.

ISS indicates that, absent any regulatory prohibitions, it will continue to recommend in favor of share repurchase authority within customary limits for each market, but will review any board share repurchase actions in 2020 to consider whether the directors appropriately managed risks in light of the current economic uncertainty.

ISS notes that its policies for capital-raising-related activities, such as increasing the number of shares authorized for issuance and private placement issuances, can and already do allow for case-by-case analysis and that the current pandemic clearly constitutes exceptional circumstances that may support “For” recommendations for proposals that exceed any normal market-specific limits on size and potential dilution.

Consider the Following

Assess your company’s current status and identify what needs to be done to continue operating through this crisis

- If changes must be made, identify COVID-19’s impact requiring change and identify what changes will most effectively alleviate that impact.
- When making changes, take a longer-term view of delivering value to shareholders; challenges may not be fixed overnight, but should be addressed with a view to be overcome as time allows.
- Build out well-reasoned justifications for changes from “business as usual.”

Communicate frequently with shareholders

- ISS placed particular emphasis on its favorable view of companies and boards communicating frequently with their shareholders during these difficult times.
- Clearly and promptly communicating updates and changes to shareholders should promote transparency and build trust in a company's leadership while navigating this crisis. For example, while certain changes to compensation programs would not ordinarily necessitate an 8-K filing or press release, companies should nonetheless consider making such filings as a preview for shareholders of what to expect in the proxy statement.

Conclusion

In sum, ISS seems to be adjusting its near-term evaluation practices and policies to help empower companies to do what is necessary to survive the COVID-19 pandemic and the economic challenges it has brought and deliver shareholder value over the long term. Companies should be intentional and well-reasoned in the actions they take to address the difficulties faced during the COVID-19 pandemic. ISS seems to be offering updated guidance that supports a disciplined, thoughtful approach from companies in delivering shareholder value well into the future.

Alston & Bird has formed a multidisciplinary [task force](#) to advise clients on the business and legal implications of the coronavirus (COVID-19). You can [view all our work](#) on the coronavirus across industries and [subscribe](#) to our future webinars and advisories.

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