



Compensation
Advisory Partners

Alert // July 08, 2021

ISS Publishes U.S. Procedures & Policies (Non-Compensation) FAQs

■ By Louisa Heywood and Shaun Bisman

Institutional Shareholder Services (ISS) updated its [U.S. Procedures & Policies \(Non-Compensation\) Frequently Asked Questions \(FAQs\)](#) that describe ISS' approach to providing guidance on certain issues in the context of preparing analysis and determining vote recommendations for U.S. public companies in the ISS research reports. Most significantly, ISS has revised guidance related to engaging with ISS and protocol following the publication of a research report, views on governance best practices, and its approach to environmental, social and governance shareholder proposals and disclosure. CAP has summarized key updates and material changes below.

NEW YORK
1133 Avenue of the Americas
New York, NY 10036
Phone: +1 (212) 921-9350
www.capartners.com

HOUSTON
840 Gessner
Suite 375
Houston, TX 77024
Phone: +1 (713) 559-2715

CHICAGO
200 S Wacker Drive
Suite 3100
Chicago, IL 60606
Phone: +1 (312) 462-4500

LOS ANGELES
400 Continental Blvd
6th Floor
El Segundo, CA 90245
Phone: +1 (310) 426-2340

Questions on ISS Procedures

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

ISS reviews all proxy, 8-K and exempt filings on EDGAR filed between publication of the ISS research report and the date of the shareholder meeting. Proxy “Alerts” are issued when ISS identifies information material to the issued report or that might impact the voting decisions of the institutional clients to whom the research report was delivered. 10-Qs are generally not reviewed so companies should inform ISS of material information contained in 10-Qs.

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.

FAQ 5. How does a company inform ISS that it has filed a response to an ISS report?

ISS reviews EDGAR filings made between the time of publication of the ISS research report and the date of the shareholders meeting. If a company has filed what it considers to be a direct “response” to a published ISS report, the company should provide the link to this proxy filing through the ISS Help Center and clearly state in the submission that it is a response to the ISS report.

FAQ 6. How should a company inform ISS of an updated Corporate Social Responsibility (CSR) or other environmental/social report?

CSR, Sustainability, or other environmental/social responsibility (E&S) reports are generally posted on the company’s website, not filed on EDGAR, and are not part of ISS’ review for the proxy voting report (unless there is a proposal on the ballot or a vote-no campaign relating to the topic). ISS’ E&S Ratings teams review such documents annually, but not necessarily on a basis tied to annual shareholder meetings. Companies that wish their E&S report to be incorporated in the E&S related ratings displayed in the proxy voting report should submit the document to ISS the earlier of the date of the filing of the proxy or 30 days prior to the meeting.

FAQ 8. What topics are generally discussed during off-season issuer engagements?

ISS engagements, which occur from August through February, are requested by issuers for general discussions of a company’s situation and governance. ISS prioritizes engagements with companies that have substantive governance issues, e.g., companies facing low shareholder support on say-on-pay or director elections, majority-supported shareholder proposals, ISS recommendations against management proposals at the prior election, or companies undergoing major transitions. Generally, discussions regarding Environmental and Social issues are useful only in the context of shareholder proposals received on such issues or management proposals that the proxy team will be evaluating.

Questions on Data in ISS Reports

FAQ 19. Has ISS changed its approach to Stock Ownership Guidelines?

Yes – If Stock Ownership Guidelines allow for the inclusion of unearned performance share 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.

Board Composition

FAQ 47. How are SPACs (Special Purpose Acquisition Companies) counted for overboarding purposes?

CEOs of SPACs are subject to the CEO overboarding policy, with SPAC boards counting the same as other public boards. In general, each SPAC will also count as a separate board for directors.

FAQ 50. How does ISS profile directors for racial and ethnic diversity?

Where available, racial and ethnic characteristics are identified and sourced directly from corporate filings, as well as from direct feedback in response to ISS' outreach. Where definitive information is not disclosed, ISS classifies directors – largely along standards put forth by the U.S. Office of Management and Budget's Directive 15 – by carefully assessing race and ethnicity through a variety of publicly available information sources, including investor relations websites, LinkedIn profiles, press releases, and leading news sites, as well as by identifying affiliations between individuals and relevant associations and organizations focused on race and/or ethnicity, such as the Latino Corporate Directors Association.

Starting in 2021, under the U.S. benchmark policy, ISS will identify U.S. companies that have no apparent racial or ethnic diversity among directors; adverse vote recommendations based on a lack of apparent racial/ethnic diversity will start for meetings on or after February 1, 2022 at Russell 3000 or S&P 1500 companies.

Board Accountability

FAQ 83. What does ISS mean when it says an anti-pledging policy is non-robust?

A robust anti-pledging policy has all of 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
- Pledging prohibition cannot be waived via pre-clearance
- No executive or director has a current pledged position

Contested Elections: Proxy Contests and Proxy Access

FAQ 91. Is there a fundamental change in ISS' approach towards independent chair shareholder proposals?

No – ISS will continue to take the holistic review it adopted in the 2017 update for determining its vote recommendation for independent director shareholder proposals. In the 2017 update, ISS changed its position from automatically issuing an “Against” recommendation to companies lacking at least one of the factors under ISS’ policy for a strong lead director role, to conducting a holistic review.

In the April 2021 update, ISS provided the following additional detail on its holistic review. The review of the company’s governance practices may include consideration of excessive or problematic compensation practices, poor governance, corporate or management scandals, and actions by the board or management that may negatively impact shareholders, any of which may suggest a need for more independent oversight at the company, thus warranting support of the proposal. ISS will also consider whether the proposal is seeking an immediate change in the chair position or is only a precatory proposal. Binding proposals will receive greater weight to the stated rationale for the proposal.

CAP reviewed shareholder proposals in the S&P 500 calling for an independent board chair. Of 27 proposals filed in 2021 to-date, ISS recommended “For” 54% of proposals and none ultimately passed. Average support among all proposals is 33%.

FAQ 94. Will ISS consider a company's rationale for maintaining a non-independent chair?

ISS does consider companies’ rationale as a factor in its holistic review though it now warns that “boilerplate rationales will be viewed less favorably.”

FAQ 103. What is ISS’ general approach on environmental and social-related shareholder proposals?

Analysis of E&S proposals can involve risks and values that are difficult to quantify, so ISS analysts use multiple techniques to evaluate the potential benefit of a shareholder proposal. 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.

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. ISS will generally support direct action requests if there are significant controversies and/or the company’s policies and practices lag accepted norms.

Social/Environmental Issues

FAQ 113. 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. 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 compared to its industry peers. ISS also considers 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/ethnic 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 racial or ethnic pay gap report because 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/ethnic pay gap statistic may not be possible to produce and would not produce useful information to track how well the company is doing at offering all employees equal opportunity.

CAP reviewed shareholder proposals in the S&P 500 calling for gender pay gap disclosure. Of 4 proposals filed in 2021 to-date, ISS recommended "For" 1 proposal. None have passed and average support is 24%.

This article highlights select changes to ISS' U.S. Procedures & Policies (Non-Compensation) FAQs and is not intended to be exhaustive. The last update to the FAQs was April 20, 2017.



Compensation
Advisory Partners

Please contact us at (212) 921-9350 if you have any questions about the issues discussed above or would like to discuss your own executive compensation issues. You can access our website at www.capartners.com for more information on executive compensation.