MORROW SODALI

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PROXY UPDATE

ISS - POLICY UPDATES FOR 2023

ISS recently released its policy guideline changes for the upcoming 2023 proxy season, effective starting February 1, 2023, unless noted otherwise. Below we highlight the changes in their latest Benchmark Policy update for the Americas. For a link to ISS' executive summary of its policy updates worldwide please click **here**; the complete updated policies can be found at **Americas**, **Europe, Middle East & Africa** (EMEA), and **Asia-Pacific**.

GLOBAL - CLIMATE BOARD ACCOUNTABILITY

ISS may recommend against directors at *significant greenhouse gas (GHG) emitters* where ISS determines that the company is not taking the minimum steps needed to understand, assess, and mitigate risks related to climate change to the company and the larger economy. *Significant emitters* are defined as those in the Climate 100+ Focus Group, which are about 160 companies worldwide with 45 based in the US (**list here**). ISS will do so for *significant emitters* who:

- do not provide adequate disclosure using a framework such as the one developed by the Task Force on Climate-related Financial Disclosures (TCFD), *or*

- do not have either medium-term GHG emission reductions targets or Net Zero-by-2050 GHG reduction targets for at least the company's operations (Scope 1) and electricity use (Scope 2)

ISS plans to use the same analysis framework for all Climate Action 100+ Focus Group companies globally but with differentiated implementation of any negative vote recommendations depending on relevant market and company factors (e.g., relevant voting items). Additional data and information will be included in the company information section of the ISS research reports for all Climate Action 100+ Focus Group companies.

UNITED STATES

GENDER DIVERSITY

ISS will recommend against the chair of the nominating committee for *all* US public companies and *foreign private issuers* that do not have at least one woman on the board. This follows the one-year grace period ISS gave smaller companies and expands its current policy that applied to Russell 3000 and S&P 1500 companies. An exception will be made if there was at least one woman on the board at the preceding annual meeting and the board makes a firm commitment to return to a gender-diverse status within a year.

EXCULPATION OF OFFICERS

Effective August 2022, Section 102(b)(7) of the Delaware General Corporation Law ("DGCL") was amended to authorize corporations to adopt a provision in their certificate of incorporation to eliminate or limit monetary liability of certain corporate officers for breach of their fiduciary duty of care. In response ISS will evaluate proposals to adopt officer exculpation provisions on a case-by-case basis taking into account; among other things, the extent to which the proposal would:

- Eliminate directors' and officers' liability for monetary damages for violating the duty of care.
- Eliminate directors' and officers' liability for monetary damages for violating the duty of loyalty.
- Expand coverage beyond just legal expenses to liability for acts that are more serious violations of fiduciary obligation than mere carelessness.
- Expand the scope of indemnification to provide for mandatory indemnification of company officials in connection with acts that previously the company was permitted to provide indemnification for, at the discretion of the company's board (*i.e.*, "permissive indemnification"), but that previously the company was not required to indemnify.

UNEQUAL VOTING RIGHTS

ISS had previously grandfathered in older companies with unequal voting right but starting in 2023, those companies will no longer be grandfathered and ISS will now generally recommend against directors at companies with multi-class capital structures with unequal voting rights. With this update they added a *de minimis* exception defined as no more than 5 percent of total voting power. For newly public companies, ISS policy allows a "reasonable sunset provision" but for no more than seven years.

EQUITY PLANS

ISS had announced last year that it would start utilizing Value-Adjusted Burn Rate (VABR) starting in 2023. ISS believes that this metric more accurately measures the value of option grants. VABR will also have industry specific benchmarks similar to ISS' existing methodology and those are to be published in upcoming FAQs.

QUORUM REQUIREMENTS

ISS has changed its policy relating to amending quorum requirements. Previously ISS would generally vote against proposals to reduce the quorum requirement without compelling reasons to support that proposal.
ISS has developed a new policy that will review these proposals on a case-by-case basis taking into account the following:

- The new quorum threshold;
- The rationale for the reduction in quorum;
- Market Cap of the company;
- Ownership structure;
- Previous voter turnout;
- Commitments to return quorum requirements to current levels should voter turnout improve

In addition, ISS has added a policy to vote case by case on the election of directors for companies that have unilaterally reduced the quorum requirement, taking into account the factors noted above.

PROBLEMATIC GOVERNANCE STRUCTURES

For newly public companies, prior ISS policy allowed for a "reasonable sunset provision" for classified boards and supermajority vote requirements. Having these provisions sunset within seven years will now be considered a mitigating factor.

SHARE ISSUANCE MANDATES

This new topic deals with how new share issuances should be authorized for foreign-incorporated companies listed only in the US which are not *foreign private issuers* under SEC rules, where approval of these proposals is required by the laws of the foreign jurisdiction. (These companies often include U.S.-based companies that have re-incorporated in jurisdictions such as Ireland.) ISS will recommend voting for resolutions to authorize the issuance of common shares up to 20 percent of currently issued common share capital, where not tied to a specific transaction or financing proposal (which will be covered on a case-by-case basis). Exceptions may be made for pre-revenue companies that are heavily reliant on periodic equity financing.

POLITICAL EXPENDITURES ALIGNMENT TRANSPARENCY SHAREHOLDER PROPOSALS

A new specific policy is being introduced for shareholder proposals requesting company transparency on the congruency of its political contributions and lobbying with its public commitments and policies, including climate matters, which codifies the case-by-case approach used by ISS in the 2022 proxy season.
The new policy will vote case-by-case considering the following items:

- The company's policies, management, board oversight, governance processes, and level of disclosure related to direct political contributions, lobbying activities, and payments to trade associations, political action committees, or other groups that may be used for political purposes;

- The company's disclosure regarding: the reasons for its support of candidates for public offices; the reasons for support of and participation in trade associations or other groups that may make political contributions; and other political activities;

- Any incongruencies identified between a company's direct and indirect political expenditures and its publicly stated values and priorities; and

- Recent significant controversies related to the company's direct and indirect lobbying, political contributions, or political activities.

We will continue to monitor revisions and updates to ISS' benchmark policies
and keep our clients posted of any additional noteworthy changes. If you have any questions
or would like to discuss further, please contact your Morrow Sodali representative.