Council of Institutional Investors®
The voice of corporate governance

Via Email

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Re: ISS 2018 Benchmark Voting Policy Consultation

The Council of Institutional Investors (CII) is pleased to respond to the ISS 2018 Benchmark Policy Consultation. We are a nonpartisan, nonprofit association of employee benefit plans, foundations, and endowments with combined assets under management exceeding $3 trillion. Our general member funds include major long-term shareowners with a duty to protect the retirement savings of millions of workers and their families. Our associate (non-voting) members include a range of asset managers with more than $20 trillion in assets under management.[1]

At the core of CII's polices is the principle that no action should be taken whose purpose is to reduce accountability to shareowners.[2] In keeping with that theme, we address proposed changes to ISS recommendation policies involving director elections, director compensation, poison pills, virtual shareholder meetings, gender pay gap shareholder proposals and Chinese government committees.

Director elections

For certain markets ISS proposes to raise the expected proportion of independent or "outside" directors on a company's board. For Japanese companies, ISS proposes to recommend against top executives if outside directors do not constitute at least one-third of the board. For non-widely held European companies, ISS proposes to recommend against nominees if board independence is less than one-third. In both cases, our understanding is that these thresholds generally would raise the bar without raising it beyond reach. While CII policy calls for two-thirds independence, all CII policies are aspirational and we look favorably upon incremental improvement toward their fulfillment.[3]

ISS proposes to revise over-boarding policies for certain markets, first by eliminating director attendance as a factor when evaluating whether Canadian directors are over-boarded, and second by aligning the ISS definition of over-boarding for Nordic company directors with the ISS definition for European company directors. We believe directors are more likely to be effective when they are not overextended, and CII policy states that "absent unusual, specified circumstances", a CEO should serve on no more than two corporate boards including the company for which she is CEO; non-CEOs with full-time jobs should serve on no more than three corporate boards; and individuals who are not

[1] For more information about the Council of Institutional Investor (Council or CII) and our members, please visit the Council's website at http://www.cii.org/members.
[2] See Policies on Corporate Governance, section 1.4: http://www.cii.org/corp_gov_policies.
[3] Policies, section 2.3.

working full-time should serve on no more than five corporate boards.[4] Attendance is just one rudimentary measure of director effectiveness, and does not answer the question of whether a director's attention is too widely dispersed. We support removing the "attendance loophole."

ISS proposes to withhold support from the chair of the nominating committee of TSX-listed companies if the company has no gender diversity policy and no female directors serve on the board. CII policy supports a diverse board as well as a written commitment that boards should be diverse, including such considerations as background, experience, age, race, gender ethnicity and culture.[5]

Director Compensation

For US companies, ISS is considering a new policy that would recommend against board committee members responsible for approving director pay when there is a pattern of excessive magnitude without a compelling rationale or mitigating factors. We believe director compensation magnitude is relevant to investor interests irrespective of its impact on the financial statements. Recent research indicates that overcompensation of directors reduces the sensitivity of CEO turnover to company performance.[6] In addition to affecting CEO turnover, overcompensation may entice less affluent directors to prolong their service, including those who know their effective years are behind them. Overcompensation may also cloud independent judgment. Considering all of these concerns in the context of agents compensating themselves, the case for investor relevance is clear.

CII policy on non-employee director compensation emphasizes full disclosure and affords companies flexibility to design compensation plans that suit their unique circumstances.[7] This latitude accommodates, for example, reasonable increases in pay for increased commitments of time and energy. It does not accommodate egregious compensation. Directorships are part-time jobs that come with valuable non-financial benefits including prestige and professional development. Moreover, recent changes in misguided biases mean the pipeline for new directors has never been wider.[8]

We believe the proposed policy to oppose directors responsible for approving multiple years of excessive and insufficiently reasoned director pay could strengthen directors' commitment to

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[4] Policies, section 2.11.
[5] Policies, section 2.8b.
[6] See summary of Dah, Frye study, June 26, 2017, at https://corpgov.law.harvard.edu/2017/06/26/is-board-compensation-excessive/.
[7] Policies, section 6.1. See also CII Letter to the SEC on proxy distributors, universal proxy cards, and director compensation, May 22, 2014, http://www.cii.org/files/issues_and_advocacy/correspondence/2014/05_22_14_letter_to_SEC.pdf.
[8] See https://www.wsj.com/articles/women-minorities-were-half-of-the-s-p-500-directors-added-in-2017-1509615003.

structuring their pay within reasonable parameters.[9] We agree that anomalous single-year totals, which may be driven by one-time onboard grants or dramatic volatility in stock price, should be considered in relation to compensation practices in other years.

Poison Pills

ISS is considering simplifying its policies with respect to poison pills in Japan and the US, generally to emphasize its preference for short-term duration, legitimate reasons for adoption, and shareholder approval. We are supportive. CII policy opposes poison pills unless approved by a majority of outstanding shares.[10] Denying shareholders a vote may saddle the company with a device that its owners believe erodes shareowner value. We recognize that in some circumstances an unsolicited bid may justify the quick adoption of a short-term pill without a prior shareholder vote. We support policies recommending against directors every year for as long as a non-shareholder approved pill remains in place, with an exception made for directors approving short-term pills accompanied by a good rationale and a public commitment to put the pill to a vote within one year.

Virtual Meetings

ISS is considering amending its UK policy to recommend in favor of proposals that allow the convening of a hybrid shareholder meeting and against proposals that would allow for a virtual-only shareholder meeting. We are supportive. As new technologies enable broader participation in shareowner meetings, CII policy encourages companies to "hold shareowner meetings by remote communication only as a supplement to traditional in-person shareowner meetings, not as a substitute."[11] A hybrid meeting rests the choice of how to attend with the shareholders, a reasonable outcome considering it is their meeting. CII recently published a guide to "Build a Better Meeting" that offers suggestions for companies to use the hybrid meeting to minimize costs while maximizing engagement.[12]

Gender pay gap shareholder proposals

ISS proposes to make three considerations when evaluating U.S. shareholder resolutions requesting a report on whether a gender pay gap exists, and if so, measures to be taken to address the gap. Currently, no specific considerations are identified. Under the revised approach, ISS would consider the company's policies, disclosure and compensation practices; whether the company has been the subject of recent controversy or litigation related to gender pay gap issues; and whether the

[9] Policies, section 6.2c: "While peer analysis can be valuable, peer-relative justification should not dominate the rationale for (higher) pay levels. Rather, compensation programs should be appropriate for the circumstances of the company."
[10] Policies, section 3.6.
[11] Policies, section 4.7.
[12] "Build a Better Meeting," CII Special Reports, October 2017, http://www.cii.org/files/publications/10-17-17%20Build%20A%20Better%20Meeting(1).pdf.

company's reporting or initiatives is lagging its peers. CII policy looks to boards to identify, understand and oversee companies' risk exposure.[13] In addition to the factors identified, we would suggest considering whether the board has committed to reviewing and, if necessary, addressing related deficiencies in company practices.

Chinese government committees

With respect to Chinese state-owned enterprises (SOEs), ISS is considering recommending against article and/or bylaw amendments to add a reference to the involvement of a Chinese Communist Party Committee (committee) if the proposed amendment lacks transparency or is not considered to adequately provide for accountability and transparency to shareholders. SOEs in recent years have added to their governing documents general references to these committees to comply with a 2015 directive requiring a reference. We believe that an articulation in the governing documents of the committee's specific powers would provide a clearer picture of risk to investors, and we encourage vote recommendations that support such clarification.

[13] Policies, section 2.7.