



Institutional Shareholder Services Issues New Annual Meeting, Poison Pill, and Director Guidance in Response to COVID-19

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On April 8, 2020, Institutional Shareholder Services (ISS) released new policy guidance in four key areas: (1) annual meetings; (2) poison pills, shareholder rights, and boards of directors; (3) compensation issues; and (4) capital structure and payouts.

ANNUAL MEETINGS

Meeting Postponements

Companies and boards should use webcasts, conference calls, and other mediums of electronic communication to engage with shareholders and investors, even if meetings have been necessarily postponed in the interests of health and safety.

Virtual-Only Meetings

While ISS has supported hybrid meetings over virtual-only meetings, ISS is mindful of the risks created by COVID-19. ISS does not have a policy of recommending votes against U.S. companies that host virtual-only meetings, and there will be no change to that policy. However, ISS supports early disclosure of any move to virtual-only meetings and providing shareholders with a meaningful opportunity to participate. Boards are encouraged to return to a hybrid-meeting model as soon as practicable.

POISON PILLS, SHAREHOLDER RIGHTS, AND BOARDS OF DIRECTORS¹

ANNUAL MEETINGS

Poison Pills and Defensive Measures

For poison pills and shareholder rights plans with a duration of less than one year, ISS' policy is to consider the plans on a case-by-case basis, and ISS will consider whether directors appear to have sought to appropriately protect shareholders from abusive bidders without inappropriately entrenching the existing board and management team. A severe stock price decline as a result of COVID-19 is likely to be considered valid justification in most cases for adopting a poison pill with a duration of one year or less.

Director Attendance

Many directors may choose to not physically attend an annual meeting out of concern for health and safety, and ISS will look to company disclosure of telephonic/electronic attendance to provide explanation of alternative forms of attendance. While disclosures should be sensitive to the privacy of directors, they should provide shareholders with enough information to allow them to make informed judgments about attendance.

Changes to the Board or Senior Management

Existing ISS benchmark policies provide sufficient flexibility and discretion to analysts who apply guidelines related to director independence, potential overboarding, board diversity or other attributes. Appropriate case-by-case treatment will be given to boards who need to fill vacancies due to the illness or incapacity of a director or to add critical expertise.

COMPENSATION ISSUES²

Changes in Metrics/Shifts in Goals or Targets

Boards are encouraged to disclose to shareholders any adjustments to 2020 compensation plans to provide greater insights now and next year into the board's rationale and circumstances when the changes were made. ISS will assess any changes to long-term plans under existing benchmarks.

Option Repricing

If boards undertake repricing actions without asking shareholders to approve or ratify their actions, their actions will remain under scrutiny under U.S. benchmark policy board accountability provisions. If the board attempts repricing at the 2020 annual meeting, ISS will consider the proposal on a case-by-case basis and weigh several factors, including: shareholder value-neutral design, automatic vesting of replacement awards, and the exclusion of executive officers and directors.

CAPITAL STRUCTURE AND PAYOUTS

ANNUAL MEETINGS

Dividends

ISS supports broad discretion for boards that seek to set payout ratios that may fall below historic levels or customary market practice and will analyze whether boards disclose plans to use any preserved cash from dividend reductions to support and protect the business and workforce.

Share Repurchasing

ISS will, in the absence of barring regulation or serious concerns related to the company, generally continue to recommend in favor of repurchase authorities within customary limits for each market, but boards' actions related to repurchases over the course of 2020 will be reviewed in the run-up to the 2021 annual meeting.

Capital Raisings

Share Issuances: ISS will review on a case-by-case basis considering: disclosure in the proxy statement of the specific purposes of the issuance, the risks to shareholders not approving the request, and its size and potential dilutive effect.

Private Placements: ISS will review on a case-by-case basis considering: the rationale for the private placement, potential dilution for existing shareholders, any conflicts of interest, consideration of alternatives, and the market's reaction to the proposed private placement.

View all of Winston & Strawn's COVID-19 perspectives [here](#). Contact a member of our COVID-19 Legal Task Force [here](#).

[1] For more information, please see Winston's Capital Markets & Securities Law Watch Blog on [Shareholder Rights Plans and Poison Pills](#).

[2] For additional information, please see Winston's Executive Compensation Blog from April 9, 2020, on how the ISS recommendations on compensation issues could affect you or your company.

3 Min Read

Authors

[Michael J. Blankenship](#)

[J. Eric Johnson](#)

[John P. Niedzwiecki](#)

[Ben D. Smolij](#)

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Michael J. Blankenship



J. Eric Johnson



John P. Niedzwiecki



Ben D. Smolij

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