



IMPACTS OF THE COVID-19 PANDEMIC

ISS POLICY GUIDANCE

Authors: ISS Global Policy Board

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Introduction

The COVID-19 pandemic is presenting unprecedented challenges not only to individual health, communities, jobs, businesses and economies, but also specifically to public companies and the shareholders that invest in them. The threat to human health, and governmental actions to deal with the pandemic, have resulted in many businesses around the world having to temporarily shut down or severely limit their business operations, for unpredictable time periods. And some entire sectors face serious and potentially long-term uncertainty. In many markets, filings of financial statements and other critical reports have been delayed in recognition of the severity of the difficulties and uncertainties facing companies and the economies in which they operate. Health and safety concerns have also led to many companies either postponing their 2020 annual meetings or altering their meeting formats to limit or entirely remove physical participation.

Considering the societal and economic uncertainties, many have asked questions about how we plan to apply ISS Benchmark and Specialty Proxy Voting policies (hereinafter, ISS benchmark policies or voting policies) during the coming months of the main 2020 AGM seasons, and whether there will be any changes. We at ISS understand and recognize the many challenges and uncertainties being faced by investors and companies, and that the current situation requires understanding and flexibility in many ways. At the macro level, the four pillars of our voting policies — the global principles of Accountability, Stewardship, Independence and Transparency — provide a strong foundation upon which investors can support and work with companies to help protect in the short-term and then restore in the longer-term the strength and vitality of public companies and global markets. Based on these four global principles, the various market-specific ISS benchmark policies already give our research teams the ability to exercise appropriate discretion and use case-by-case analysis in response to company-specific, sector-specific and market-specific facts and circumstances. Over the past three decades, ISS has regularly exercised such case-by-case discretion to deal with many company-specific situations, market disruptions, recessions and natural disasters in a thoughtful and considerate way.

Even with the back-drop of the discretion and broad flexibility already built into our policies and the manner in which we apply them in developing the voting advice we provide to institutional investors, we feel that it is appropriate in this time of uncertainty to provide our stakeholders with some specific guidance on a number of voting policy issues that are likely to be directly implicated over the coming months by the pandemic and the global response to it.

As additional issues and impacts are created by pandemic developments, new regulations, flagged by investors or identified by companies, we will update this guidance or provide new information as needed throughout the remainder of the 2020 main proxy seasons. As always, we welcome feedback and any questions or concerns. Our institutional investor clients can contact us through their normal ISS Client Service team contacts. For companies and other external parties, please go through our ISS Help Center (<https://issgovernance.service-now.com/csp>).

Looking forward beyond the current short-term crisis, in advance of the 2021 main proxy seasons and as part of our regular policy development process, we will reach out to investors and other constituencies via our annual surveys, roundtables and other engagements to address whether further near- or long-term adjustments to our policies will be appropriate for 2021.



This guidance note should be read in combination with the relevant market and region-specific ISS Benchmark and Specialty Voting Guidelines and any related FAQs, which can be found on our website, [www.issgovernance.com](https://www.issgovernance.com/policy-gateway/voting-policies/). Link: <https://www.issgovernance.com/policy-gateway/voting-policies/>

Georgina Marshall

Global Head of Research and Chair of the ISS Global Policy Board

On behalf of the ISS Global Policy Board

AGM Issues

- **Meeting Postponements:** There have already been widespread meeting postponements in some markets, particularly in Asia and Europe. While many companies have firm AGM deadlines set by national and local statutes and regulations, market listing standards or their own governing documents, other companies have no such legal deadlines by which to hold their meetings. While physical shareholder meetings normally offer valuable opportunities for investors to interact with corporate directors and executives, health and safety concerns must be paramount this year. In markets where meetings via online participation are not permitted, companies will need to follow their markets' regulatory guidance and only hold physical meetings when it is determined to be safe to do so. This is currently looking increasingly unlikely to be the case in many countries over the coming weeks and maybe months. In the meantime, shareholders are likely to both expect and be appreciative of companies using their standard disclosure documents (proxies, reports and accounts etc.), press releases and websites to keep all constituencies informed about material events and developments. In this time of uncertainty, it will be positively noted when companies and boards use webcasts, conference calls and other mediums of electronic communications to engage with their shareholders and investors, even if meetings have necessarily been postponed.
- **Virtual-Only Meetings:** In markets where online shareholder meetings are permitted under local laws, we have seen many companies announce plans to hold "virtual-only" meetings in lieu of in-person or "hybrid" (both in-person and "virtual") meetings. While in prior years many institutional investors and ISS policies have tended to favor a "hybrid" structure (physical meeting combined with online virtual participation) over "virtual-only" meetings, we and many others are extremely mindful of the risks created by the pandemic and the critical need for social distancing and other measures that prevent such gatherings. "Virtual-only" meetings may be both necessary and desirable in the current situation. Under most ISS benchmark policies globally, including those applied to U.S. companies, ISS does not have a policy to recommend votes against companies who hold "virtual-only" meetings. There will be no change to that approach. However, in the limited number of markets where the ISS benchmark policy discourages "virtual-only" meetings and where the use of such an approach is already allowed by law without requiring any amendment of bylaws, we will be altering the application of that policy so as not to be making adverse vote recommendations related to companies holding "virtual-only" meetings until such time that it is safe to hold in-person meetings again. If boards opt to hold "virtual-only" meetings, we would encourage them to disclose clearly the reason for their decision (i.e. that it is related to the COVID-19 pandemic) and to strive to provide shareholders with a meaningful opportunity (subject to local laws) to participate as fully as possible, including being able to ask questions of directors and senior management and to engage in dialogue if they wish. In such situations, boards are encouraged to commit to return to in-person or "hybrid" meetings (or to put that matter to shareholders to decide) as soon as practicable.

Poison Pills, Shareholder Rights and Boards/Directors

- **Poison Pills and other Defensive Measures:** Many lawyers and other outside advisers are advising boards, particularly in the U.S. but in other markets also, to consider adopting poison pills (often referred to as “rights plans” or “shareholder rights plans”) or other defensive measures to protect against any threat of opportunistic bidders in the wake of recent stock price shocks. ISS’ existing policy approach is already appropriately flexible to take account for the adoption of poison pills in the face of genuine, short-term potential threat situations such as during the current pandemic. For poison pills/rights plans with a duration of less than a year, our policy is to consider the situation on a case-by-case basis considering the disclosed rationale for adopting the plan and other relevant factors (such as a commitment to put any future renewal of the pill to a shareholder vote). We will therefore continue to take this case-by-case approach, which includes examining whether directors appear to have sought to appropriately protect shareholders from abusive bidders without inappropriately entrenching the existing board and management team. Under such reviews, we will generally consider both the board’s explanation for its adoption of a poison pill, including any imminent threats, and the specific provisions (triggers, terms, “qualified offer” provisions and waivers for “passive” investors) of the pill.

As noted above, current ISS benchmark policy encourages boards to put poison pills to a shareholder vote, but provides companies with latitude in adopting short-term rights plans with reasonable triggers in response to active threats. A severe stock price decline as a result of the COVID-19 pandemic is likely to be considered valid justification in most cases for adopting a pill of less than one year in duration; however, boards should provide detailed disclosure regarding their choice of duration, or on any decisions to delay or avoid putting plans to a shareholder vote beyond that period. The triggers for such plans will continue to be closely assessed within the context of the rationale provided and the length of the plan adopted, among other factors.

- **Director Attendance:** Many directors may decide to not attend in-person shareholder meetings or scheduled board meetings out of concerns for the health and safety of themselves and others. In some markets, such as the U.S., regulation-mandated attendance disclosure rules count telephonic/electronic participation as full participation in board and committee meetings. For markets that do not routinely or uniformly count such forms of meeting participation as being “present”, in examining directors’ attendance in accordance with our existing policies, we will look for, and be open to, company disclosures to provide adequate explanations of the alternative form of attendance. While disclosures related to directors’ attendance records should be sensitive to privacy concerns with respect to an individual director’s health, they should provide shareholders with adequate information to allow them to make informed judgments and considered voting decisions if relevant about directors’ attendances and any absences from board and committee meetings.
- **Changes to the Board of Directors or Senior Management:** Existing ISS benchmark policies provide our analysts with appropriate discretion and flexibility in applying guidelines related to directors’ independence, potential overboarding, board diversity and other attributes. If boards need to fill vacancies due to the disability or incapacity of a director or need to urgently add critical

expertise to their ranks to address concerns created by the pandemic, appropriate case-by-case consideration will be given, assessing any explanation provided by the company regarding the changes to the boardroom roster. Similarly, our policies already provide flexibility in cases where board members may need to fill senior executive roles on an interim basis such as due to the disability or incapacity of an existing member of the management team. Simply put, we believe that boards should have broad discretion during this crisis to ensure that they have the right team in place and we will adjust the application of our policies as appropriate for the exceptional circumstances of the current pandemic.

Compensation Issues

- **Change in Metrics/Shift in Goals or Targets:** Many boards are likely to announce plans to materially change the performance metrics, goals or targets used in their short-term compensation plans in response to the drop in the markets and the possible recession that many economists now predict in the wake of the pandemic. While decisions by directors to make such adjustments to 2020 compensation programs generally will be analyzed and addressed by shareholders at next year's AGMs (i.e. in 2021), boards are encouraged to provide contemporaneous disclosure to shareholders of their rationales for making such changes. Such disclosures will provide shareholders with greater insights now and next year into the board's rationale and circumstances when the changes are made.
- Regarding long-term compensation plans, our benchmark voting policies generally are not supportive of changes to midstream or in-flight awards since they cover multi-year periods. Accordingly, we will look at any such in-flight changes made to long-term awards on a case-by-case basis to determine if directors exercised appropriate discretion, and provided adequate explanation to shareholders of the rationale for changes.
- Going forward, it is also possible that some boards may consider altering the structures of their long-term plans to take the new economic environment into consideration. ISS will assess such structural changes under our existing benchmark policy frameworks.
- **Option Repricing:** While stock options are not as widely used as they once were, they are still used broadly by many U.S. companies and in some other markets, and it is possible that some companies may seek to reprice (or replace/exchange/cancel and re-grant) "out-of-the-money" awards. If boards undertake repricing actions without asking shareholders to approve or ratify their actions in a timely fashion, the directors' actions will remain subject to scrutiny under the U.S. benchmark policy board accountability provisions (and equivalents in other market policies where relevant). If boards seek shareholder approval/ratification of repricing actions at 2020 meetings, we will apply our existing case-by-case policy approach for the relevant market. Under this policy for the U.S. market, for example, ISS will generally recommend opposing any repricing that occurs within one year of a precipitous drop in the company's stock price. Among other factors, we will also examine whether (1) the design is shareholder value neutral (a value-for-value exchange), (2) surrendered options are not added back to the plan reserve, (3) replacement awards do not vest immediately, and (4) executive officers and directors are excluded. We consider this approach to continue to be appropriate during the circumstances of the COVID-19 pandemic.

Capital Structure and Payouts

- **Dividends:** The pandemic-related market downturn and the need to manage cash in an uncertain economic environment are causing some boards to question the appropriateness and prudence of continuing to pay dividends at previously anticipated levels. In addition, some government assistance programs are already prohibiting or considering prohibiting dividend payments for companies that elect to accept loans or other subsidies. In the wake of the recent market downturn, a number of companies in Europe have already pulled or decided to drop question dividend proposals from their 2020 AGM ballots and the European Central Bank recently issued restrictions on buybacks and dividends for banks. Where some of our ISS market-specific policies ordinarily look for dividend payout ratios to be within a certain range (based on earnings for the prior year), this year we will support broad discretion for boards that seek to set payout ratios that may fall below historic levels or customary market practice. In analyzing such proposals, we will look at whether boards disclose plans to use any preserved cash from dividend reductions to support and protect their business and workforce.
- **Share Repurchases:** Share buybacks have attracted high levels of recent public scrutiny in the wake of the pandemic-related market plunges. In more normal times, many boards and shareholders look at proposals related to setting share repurchase (or buyback) authorities as relatively routine voting items. Such proposals generally permit the board to repurchase shares up to a limit, although they do not require or instruct such buybacks to happen. The proposals tend to be limited in scope, both in terms of the percentage of the shares subject to repurchase and the duration of the period of authority that is given to the board.

In the current pandemic situation however, repurchases are anything but routine. Many companies have already decided to put buyback programs on hold to conserve cash. Given the economic uncertainty facing many companies and industries, boards may open themselves and their companies up to intense criticism and reputational damage by undertaking repurchases at the current time, especially (although not only) if the company's workforce has been reduced or has suffered other kind of cutbacks. Whilst we understand that repurchase authorities usually go out for 12 months or more, and therefore that boards may consider it prudent to maintain some flexibility for the future by seeking buyback authority at this time, directors will naturally need to consider the reputational, regulatory and business risks that exercising such authority might create before going ahead with any repurchases under the authority, even if approved by shareholders. Whilst 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, the board's actions related to repurchases over the course of 2020 will be reviewed in the run up to the time of the next AGM (generally 2021) to consider if the directors managed risks in a responsible fashion for any repurchases undertaken under the authority.

- **Capital Raisings:** Economic fallout from the pandemic will lead many companies to need additional sources of financing to help them through the crisis. The ISS benchmark voting policies generally already provide for case-by-case assessments of requests to increase authorized common

or preferred stock, share issuances, private placements and other related proposals, subject only to any market-specific rules or guidance.

o **Share issuances:** The ISS benchmark voting policies generally provide for case-by-case recommendations on proposals to increase the number of shares of common or preferred stock authorized for issuance. ISS' existing policy framework will be applied to general authorization and share issuance requests, but will also be adapted to take account of any appropriate local market regulatory relaxations or new guidance as a result of the crisis. Our current policies in most markets already consider company-specific factors that include: (1) disclosure in the proxy statement (or equivalent disclosure documents) of the specific purposes for the proposed increase; (2) the risks to shareholders of not approving the request; and (3) the size and potential dilutive impact of the request combined with any market-specific guidelines on limits and preemptive rights. And in the case of preferred shares requests or issuances, whether the shares requested are blank check preferred shares that can be used for antitakeover purposes. In exceptional circumstances and based on clear and compelling justification by the board of a company's underlying need in the current economic environment, ISS policies can and already do allow for case-by-case analysis and "For" recommendations for proposals that exceed any normal market-specific limits on size and potential dilution. The current pandemic clearly constitutes such exceptional circumstances.

o **Private placements:** Our voting policies also already provide for case-by-case analysis of private placement issuances considering: (1) the rationale for the private placement issuance; (2) the potential dilution to existing shareholders; (3) the discount/premium in issuance price to the unaffected share price before the announcement of the private placement; (4) any conflicts of interest; (5) consideration of alternatives; and (6) the market's reaction to the proposed private placement since announcement. We also consider whether there are such exceptional circumstances as the company being expected to go out of business or file for bankruptcy protection if the transaction is not approved or the company's auditor/management has indicated that the company has going concern issues.

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