From the Public Company Advisory Group of Weil, Gotshal & Manges LLP

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Heads-Up for the 2021 Proxy Season: ISS Issues Policy Updates

New and Revised Policies Focus on Racial/Ethnic Board Diversity, ESG Risk Oversight, Board Refreshment and Exclusive Forum Provisions

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Institutional Shareholder Services (ISS) has issued its proxy voting policy updates for shareholder meetings to be held on or after February 1, 2021, available here. The key policy updates focus on board composition, including racial and ethnic diversity, board oversight responsibilities relating to ESG, and exclusive forum provisions. ISS also clarified that its COVID-19 guidance, previously discussed here and here, will continue to apply in 2021, updated as needed.

In this Alert, we summarize this year's ISS voting policy updates and provide practical tips on "What to do Now?" In Annex A, we provide our annual update of the range of circumstances in which ISS may issue a negative recommendation against individual directors, committee members, or the entire board.

Key ISS Policy Developments for 2021

- ISS will cite a lack of apparent of racial and ethnic board diversity in 2021; in 2022 directors will face negative voting recommendations where this is the case.
- ISS's policy on board gender diversity is fully effective for 2021.
- Directors may face negative voting recommendations for failure to effectively oversee certain ESG risks, including climate change.
- ISS will evaluate term limit proposals case-by-case (previously recommended against) and will support proposals to remove age limits.
- ISS will support adoption of a federal forum selection provision that specifies "the district courts of the United States" for claims arising under federal law, but recommend against a provision that restricts the federal forum to a particular federal district court.
- ISS will support adoption of a provision that specifies Delaware as the exclusive forum for corporate law matters for Delaware corporations, and will continue to take a case-by-case approach with an exclusive forum provision specifying a state other than Delaware.
- ISS may support shareholder proposals seeking reports on mandatory arbitration in employment claims and company actions relating to preventing workplace sexual harassment.

Policy Updates Affecting Board Diversity, Refreshment and Risk Oversight

Board Racial and Ethnic Diversity *(New)*. Citing overwhelming support by investors for ethnic and/or racial diversity on corporate boards, starting in 2022, ISS will recommend a vote against or withhold from the chair of the nominating committee (or other directors on a case-by-case basis) of Russell 3000 or S&P 1500 companies whose boards have no apparent racially or ethnically diverse members. ISS will make an exception if there was racial and/or ethnic diversity on the board at the preceding annual meeting and the board discloses its firm commitment to appoint at least one racially and/or ethnically diverse member within a year. For 2021, ISS's research reports will highlight boards that lack apparent racial and/or ethnic diversity, which ISS hopes will help foster dialogue between investors and companies.

Gender Diversity (*Revised*). ISS's current policy is generally to recommend a vote against or withhold from the chair of the nominating committee (or other directors on a case-by-case basis) of Russell 3000 or S&P 1500 companies where there are no women on the company's board. Starting in 2021, ISS will make an exception only if there was a woman on the board at the preceding annual meeting and the board discloses its firm commitment to return to a gender-diverse status within a year.

Spotlight on State Diversity Initiatives

There is a growing momentum for state legislative action on board diversity, California has led the way on board diversity with laws that, in combination, now require public companies with principal executive offices located in the state to have at least two or three women directors, depending on board size, by the end of 2021, at least one director from an "underrepresented community" (defined in terms of race, ethnicity or sexual orientation) by the end of 2021 and either two or three such directors, depending on board size, by the end of 2022. (*See* California Senate Bill 826 and Assembly Bill 979). Washington recently required companies incorporated in that state to meet certain gender diversity targets by January 1, 2022 or provide new diversity disclosure. A number of other states, such as New York, Maryland, Illinois, Hawaii, Massachusetts, Michigan, New Jersey, Colorado and Pennsylvania, have either enacted or are currently considering mandatory board diversity legislation.

Failure to Oversee ESG Risk (*New/Revised*). ISS's existing policy provides that "under extraordinary circumstances" it will recommend voting against or withhold from directors – either individually, committee members or the entire board – due to material failures of governance, stewardship, risk oversight, or fiduciary responsibilities at the company. ISS has elevated "demonstrably poor risk oversight of environmental and social issues, including climate change," to the litany of examples of material failures in risk oversight. Other examples are bribery, large or series of fines or sanctions from regulatory bodies, significant adverse legal judgments or settlements, or hedging of company stock.

Board Refreshment: Age and Term Limits *(New/Revised)*. ISS's new policy on board refreshment is grounded in the view that an ongoing program of individual director evaluations, conducted annually, is the best way to ensure the evolving needs of the board are met and to bring in fresh perspectives, skills, and diversity as needed. ISS notes that, with the growing emphasis on achieving board diversity, the issue of board refreshment mechanisms has received more attention. ISS's policy has been to recommend against all management proposals to implement director term or age limits. The policy to recommend against age limits will continue, and ISS also will support proposals to remove age limits. Additionally, ISS's policy will now take a case-by-case approach on term limits, looking for well-designed management proposals that provide appropriate balance, taking various factors into consideration. ISS states that age and/or term limits employed as a method of board refreshment can often be arbitrary, imply an impairment to ability solely due to age, can be misused to remove dissenting voices from the board, result in a quick turnover often aimed only at independent directors, and frequently include waivers.

Board Independence Classifications *(Revised).* ISS has revised its existing classification of directors (i.e., "executive directors," "non-independent non-executive directors," and "independent director"). The primary changes are as follows:

- The "Executive Director" classification now is limited to officers, not other employees, such as those on the board as employee representatives. ISS stated that this change is not intended to have any effect on voting recommendations, but rather to consolidate the classifications and to simplify the language where possible.
- The definition of an affiliate of a director now expressly includes the manager / advisor of an externally managed issuer, such as many REITs.
- ISS makes explicit its current practice to classify directors whose pay is on par with named executive officer pay for multiple years as non-independent under ISS's "*Other material relationships with the company.*"

Policy Updates Affecting Shareholder Rights & Defenses

Shareholder Litigation Rights *(Revised).* In light of a March 2020 Delaware Supreme Court ruling (*Salzberg v. Sciabacucchi*) that deemed charter and bylaw provisions designating federal district courts as the exclusive forum for cases arising under federal securities laws to be facially valid, ISS made the following changes to its policies:

- **Federal Forum Selection Provisions (*New*).** Generally, ISS will recommend in favor of charter or bylaw provisions that specify "the district courts of the United States" as the exclusive forum for federal securities law matters in the absence of serious concerns about corporate governance or board responsiveness to shareholders. ISS will recommend against provisions that restrict the forum to a particular federal district court.
- **Exclusive Forum Provisions for State Law Matters *(Revised).*** ISS clarified that it will recommend in favor of charter or bylaw provisions that specify courts located within the state of Delaware as the exclusive forum for corporate law matters for Delaware corporations in the absence of serious concerns about corporate governance or board responsiveness to shareholders. For states other than Delaware, ISS will review exclusive forum provisions taking into consideration a variety of enumerated factors. In addition, ISS will generally recommend against provisions that specify a state other than the state of incorporation as the exclusive forum for corporate law matters or that specify a particular local court within the state.

Generally, ISS will consider unilateral adoption (*i.e.*, without a shareholder vote) of federal or state exclusive forum provisions to be a one-time failure under its "Unilateral Bylaw/Charter Amendment policy," which may result in a recommendation against or withhold from directors, committee members or the entire board.

Virtual Shareholder Meetings *(New)*. In light of the COVID-19 pandemic and the substantial number of shareholder meetings held virtually, beginning in 2021, ISS will generally recommend a vote for management proposals allowing virtual shareholder meetings, so long as they do not preclude in-person meetings. ISS encourages companies to disclose the circumstances under which virtual-only meeting would be held, and to afford shareholders the rights and opportunities to participate electronically comparable to those they would have during an in-person meeting. For shareholder proposals, ISS will review case-by-case proposals concerning virtual-only meetings, considering the scope and rationale of the proposal, and any concerns with prior meeting practices. As a reminder, ISS's COVID-19 guidance clarified that ISS would not make adverse vote recommendations related to companies holding "virtual-only" meetings until such time that it is "safe" to hold in-person meetings again.

Poison Pills *(Revised).* Generally, for directors who adopt a short-term pill without a shareholder vote, ISS recommends a vote on a case-by-case basis. ISS has added a factor to its poison pill policy: whether a short-term or long-term rights plan has a deadhead or slowhand feature. With the market volatility experienced during the COVID-19 pandemic, ISS named several companies that implemented short-term (one year or shorter) poison pills that included deadhand or slowhand features, which restrict the board's ability to redeem the pill.[1] ISS stated that the inclusion of such a feature in a poison pill may be grounds for adverse director recommendations at the next annual meeting, even if the pill itself has expired by the time of the meeting.

Advance Notice Requirements for Shareholder Proposals/Nominations (other than pursuant to SEC Rule 14a-8 and Proxy Access provisions) *(Revised)*. ISS will now recommend a vote in favor of proposals for advance notice provisions that require notification 120 days prior to the date of the annual meeting, consistent with current market practice. Under the previous policy, notification could not be required earlier than 60 days prior to the meeting.

Policy Updates Relating to Social Issues

Sexual Harassment *(New)*. Citing a number of shareholder proposals filed regarding sexual harassment policies and increasing interest on this issue, ISS will evaluate case-by-case shareholder proposals seeking a report on company actions taken to strengthen policies and oversight to prevent workplace sexual harassment, or a report on risks posed by a company's failure to prevent workplace sexual harassment.

Gender, Race/Ethnicity Pay Gaps *(Revised)*. ISS updated its policy language to clarify two of the factors considered when reviewing shareholder proposals seeking reports relating to gender or race/ethnicity pay gaps: (i) the company's disclosure regarding gender, race, or ethnicity pay gap policies or initiatives compared to its peers and (ii) local laws regarding categorization of race and/or ethnicity and the definition of ethnic and/or racial minorities.

Mandatory Arbitration *(New)*. Noting the rise of shareholder proposals on mandatory arbitration in 2019 and 2020, with one having received majority support, ISS adopted a new policy that it will review on a case-by-case basis requests for a report on a company's use of mandatory arbitration on employment-related claims.

Spotlight on Key ISS and Glass Lewis Dates

- **November 16 – December 4, 2020:** ISS peer submission period is open for companies in the US, Canada and Europe. Companies with annual meetings slated to be held between February 1, 2021 and September 15, 2021 can inform ISS of changes to their self-selected peer groups.
- **Late November 2020**: Glass Lewis is expected to publish its US proxy voting guidelines and Shareholder Initiatives.
- **December 2020**: ISS typically issues U.S. Compensation Policies Frequently Asked Questions (FAQ) and U.S. Equity Compensation Plans FAQ. On October 15, 2020, ISS issued a U.S. Compensation Policies and the COVID-19 Pandemic FAQs, which we discuss here.
- **December 14, 2020**: Glass Lewis opens its peer submission window for proxy statement filings from February 1, 2021 to July 31, 2021.

[1] Under a deadhand provision, a poison pill can only be redeemed by a board of a majority of whose members consist of "continuing directors" (*i.e.*, directors not associated with the acquiring person, and who were directors on the board prior to the adoption of the pill or were nominated by a majority of such directors), so even if the board is replaced by shareholders in a proxy fight, the pill cannot be redeemed. A slowhand provision is one where this redemption restriction applies only for a period of time (generally 180 days).

What To Do Now?

- Take a fresh look at the board's policies and processes around board self-evaluation, refreshment and recruitment, and engage in candid conversations about board composition, including tenure, skills and qualifications, and diversity (not limited to gender). Ensure that the company's public disclosure on these matters is accurate and understandable. Boards with no apparent racial or ethnic diversity should expect the topic to be highlighted in ISS's research report in 2021 and to potentially receive a negative recommendation in 2022 for the chair of the nominating committee (or other directors on a case-by-case basis).
- Consider whether the board appropriately plans for succession in board and committee leadership positions and board membership as a whole. Boards considering adopting age or term limits should consider whether such limits are the most appropriate way for the board to address tenure and refreshment, or if there are other meaningful ways for the board to manage its own succession planning.
- Boards should identify ESG risks that are material to their company (*e.g.*, human capital or climate change risks) and assess whether the board's oversight mechanisms effectively capture such risks. If not, the board should expand its oversight processes to incorporate material ESG risks and ensure that there is appropriate proxy statement disclosure.
- In light of the ongoing pandemic, companies that are considering virtual-only shareholder meetings in 2021 should review the relevant ISS and Glass Lewis policies. Proxy statement disclosure should articulate the company's rationale and stockholders' ability to participate virtually.
- Companies that have or are considering adopting exclusive forum provisions in their charter and/or bylaws should review carefully their existing or proposed provisions in light of ISS's policy and applicable state law.
- <u>Annex A</u> presents a summary of the range of circumstances in which ISS may issue a recommendation against individual directors, committee members, or the entire board. Boards should consider the implications of negative voting recommendations, if applicable.

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Annex A: Policies Affecting Director Elections

Circumstance	ISS Policy	Targeted Directors
	Board Governance	

Problematic Structures for Newly Public Companies	• Trend data demonstrates that newly public companies or their boards often implement problematic governance or capital structures with features that are adverse to shareholder interests prior to or in connection with their public offering
	  ◦ Newly public companies generally include companies that emerge from bankruptcy, spin-offs, direct listings, and those who complete a traditional initial public offering
	• The problematic features will result in a case by case recommendation on director elections until they are reversed or removed
	Problematic Capital Structure
	• The board or the company implemented a multi-class capital structure in which the classes have unequal voting rights without subjecting the multi-class capital structure to a reasonable time-based sunset prior to or in connection with company's going public
	• Consideration given to company's lifespan, its post-IPO ownership structure and disclosed rationale for sunset period selected
	Problematic Governance Structure
	• The board or the company implemented the following charter or bylaw provisions that are considered to be materially adverse to shareholder rights prior to or in connection with company's going public:
	  ◦ Supermajority vote to amend bylaws or charter
	  ◦ Classified board structure
	  ◦ Other relevant egregious provisions
	• A reasonable sunset provision will be considered a mitigating factor
		Entire Board (except New Nominees, who would be considered case by case)

* Reflects new or revised policy.

Circumstance	ISS Policy	Targeted Directors
Responsiveness to Shareholder Proposals	• The board failed to act on a shareholder proposal that received approval by a majority of votes cast in the previous year or failed to act on a management proposal seeking to ratify an existing charter/bylaw provision that received opposition of a majority of the shares cast in the previous year. Factors that will be considered are: • Disclosed outreach efforts by the board to shareholders in the wake of the vote • The board's rationale, as provided in the proxy statement, for the level of implementation of the proposal • Subject matter of the proposal • Level of support for and opposition to the proposal at past meetings • Board actions in response to the majority vote and its shareholder engagement • Continuation of the underlying issue as a voting item on the ballot (as either shareholder or management proposals) • Other factors as appropriate	Entire Board, Committee Members, or Individual Director
>50% Negative Votes Against Director	• At the previous board election, any director received more than 50 percent withhold/against votes of the shares cast and the company failed to address the underlying issue(s) that caused the high withhold/against votes	Entire Board, Committee Members, or Individual Director
Takeover Offers	• The board failed to act on takeover offers where a majority of shareholders tendered their shares	Entire Board, Committee Members, or Individual Director
Say-on-Pay Frequency	• The board implemented an advisory vote on executive compensation on a less frequent basis than the frequency that received the majority of votes cast at the most recent shareholder meeting at which shareholders voted on the say-on-pay frequency	Compensation Committee or Entire Board (in egregious cases)

* Reflects new or revised policy.

Circumstance	ISS Policy	Targeted Directors
Attendance	• Attends less than 75 percent of board and committee meetings for the period of service (e.g., missed more than one meeting, if the director's total service was three or fewer meetings), unless the absence was due to medical issues/illness, family emergencies, and the reason for such absence is disclosed in the proxy statement or other SEC filing • Chronic poor attendance without reasonable justification would also result in recommendations against • If the proxy disclosure is unclear and insufficient to determine whether the director attended at least 75 percent of board and committee meetings during the period of service	Individual Director (except nominees who served only part of the fiscal year), or Committee Members or Entire Board in cases of chronic poor attendance without reasonable justification
Overboarding	• Sits on more than five public company boards, with boards of subsidiaries with publicly-traded stock counting as separate boards • CEO of a public company and sits on boards of more than three public companies in total, with boards of subsidiaries with publicly-traded stock counting as separate boards ◦ Although all of a CEO's subsidiary boards will be counted as separate boards, ISS will not recommend a withhold vote from the CEO of a parent company board or any of the controlled (> 50% ownership) subsidiaries of that parent, but may do so at subsidiaries that are less than 50% controlled and boards outside of the parent/subsidiary relationship	Individual Director
Board Gender Diversity*	• Companies where there are no women on the board • An exception will be made if there was a woman on the board at the preceding annual meeting and the board makes a firm commitment (i.e., public disclosure) to return to a gender-diverse status within a year	Nominating/Governance Committee chair (and other directors on a case-by-case basis)
Board Racial/Ethnic Diversity*	• Companies where there is no apparent racial and/or ethnic diversity on the company's board, effective for meetings on or after February 1, 2022 • An exception will be made if there was racial and/or ethnic diversity on the board at the preceding annual meeting and the board makes a firm commitment (i.e., public disclosure) to appoint at least one racially and/or ethnically diverse director within a year • ISS will cite a lack of apparent diversity in its 2021 reports	Nominating/Governance Committee chair (and other directors on a case-by-case basis)
Independent Key Committees	• An "inside director" or "affiliated outside director" (as separately defined by ISS) serves on the audit, compensation or nominating committee	Individual Director

* Reflects new or revised policy.

Circumstance	ISS Policy	Targeted Directors
Lacking Key Board Committees	• The company lacks an audit, compensation, or nominating committee so that the full board functions as that committee	All Inside Directors and Affiliated Outside Directors
Majority Independent Board	• The full board is less than majority independent	All Inside Directors and Affiliated Outside Directors
	Shareholder Rights	
Unilateral Bylaw/ Charter Amendments Diminishing Shareholder Rights	• Board amendment of the company's bylaws or charter without shareholder approval/ratification in a manner that materially diminishes shareholders' rights or that could adversely impact shareholders, considering the following factors, as applicable: • The board's rationale for adopting the bylaw/charter amendment without shareholder approval or ratification • Disclosure by the company of any significant engagement with shareholders regarding the amendment • Level of impairment of shareholders' rights caused by the board's unilateral amendment to the bylaws/charter • The board's track record with regard to unilateral board action on bylaw/charter amendments or other entrenchment provisions • The company's ownership structure and existing governance provisions • The timing of the board's amendment to the bylaws/charter in connection with a significant business development • Other factors, as deemed appropriate, that may be relevant to determine the impact of the amendment on shareholders	Entire Board, Committee Members, or Individual Director (in each case, other than New Nominees, who would be considered case by case)
Establishing Classified Board / Ongoing Classified Board	• Board amendment of the company's bylaws or charter without shareholder approval/ratification to establish a classified board • The board is classified and a continuing director responsible for a problematic governance issue at the board/committee level that would warrant a negative vote recommendation is not up for election (ISS may hold any or all appropriate nominees, except new nominees, accountable)	Entire Board, Committee Members, or Individual Director
Establishing Supermajority	• Board amendment of the company's bylaws or charter without shareholder approval/ratification to adopt a supermajority vote requirement to amend the charter or bylaws	Entire Board, Committee Members, or Individual Director
Eliminating Shareholder Right to Amend Bylaws	• Board amendment of the company's bylaws or charter without shareholder approval/ratification to eliminate shareholders' ability to amend bylaws	Entire Board, Committee Members, or Individual Director

* Reflects new or revised policy.

Circumstance	ISS Policy	Targeted Directors
Director Performance Evaluation	• The board lacks mechanisms to promote accountability and oversight, coupled with sustained poor performance relative to peers with sustained poor performance is measured by one-, three-, and five-year total shareholder returns in the bottom half of a company's four-digit GICS industry group (Russell 3000 companies only) taking into consideration the company's operational metrics and other factors as warranted. Problematic provisions include but are not limited to: • A classified board structure • A supermajority vote requirement • Either a plurality vote standard in uncontested director elections, or a majority vote standard in contested elections • The inability of shareholders to call special meetings • The inability of shareholders to act by written consent • A multi-class capital structure • A non-shareholder-approved poison pill	Individual Directors or Entire Board (other than New Nominees, who would be considered case by case)
Poison Pills*	• The board adopts a poison pill with a term of more than 12 months or renews any existing pill including a pill with a term of 12 months or less, without shareholder approval (a commitment or policy that puts a newly adopted pill to a binding shareholder vote may potentially offset a negative vote recommendation) • The company has a poison pill that was not approved by shareholders (ISS will review annually for companies with classified boards and at least once every three years for companies with declassified boards) • The board makes a material adverse modification to an existing pill, including but not limited to extension, renewal, or lowering the trigger, without shareholder approval • The pill, whether short-term*** or long-term, has a deadhand or slowhand feature *** If the short-term pill with a deadhand or slowhand feature is enacted but expires before the next shareholder vote, ISS will generally still recommend withhold/against nominees at the next shareholder meeting following its adoption	Entire Board (except new nominees considered case-by-case)

* Reflects new or revised policy.

<table>
<tr><th>Circumstance</th><th>ISS Policy</th><th>Targeted Directors</th></tr>
<tr><td colspan="3">Board Governance</td></tr>
<tr><td>Restricting Binding Shareholder Proposals</td><td>• The charter imposes undue restrictions on shareholders' ability to amend the bylaws. Restrictions include, but are not limited to:
• Outright prohibition on the submission of binding shareholder proposals
• Share ownership requirements or time holding requirements in excess of SEC Rule 14a-8
Management proposals to approve or ratify requirements in excess of SEC Rule 14a-8 for the submission of binding bylaw amendments will generally be insufficient to restore shareholders' rights
ISS will generally recommend a vote against or withhold on an ongoing basis until shareholders are provided with an unfettered ability to amend the bylaws or a proposal providing for such unfettered right is submitted for shareholder approval</td><td>Governance Committee Members</td></tr>
<tr><td colspan="3">Compensation</td></tr>
<tr><td>Excessive Non-Employee Director Pay</td><td>• Pattern (i.e. two or more years) of awarding excessive nonemployee director compensation without disclosing a compelling rationale or other mitigating factors</td><td>Committee responsible for setting nonemployee director pay</td></tr>
<tr><td>< 70% Shareholder Support of Say-on-Pay</td><td>• On a case-by-case basis: the company's previous say-on-pay proposal received the support of less than 70 percent of votes cast, taking into account:
• The company's response, including:
o Disclosure of engagement efforts with major institutional investors regarding the issues that contributed to the low level of support
o Specific actions taken to address the issues that contributed to the low level of support
o Other recent compensation actions taken by the company
• Whether the issues raised are recurring or isolated
• The company's ownership structure
• Whether the support level was less than 50 percent, which would warrant the highest degree of responsiveness</td><td>Compensation Committee Members and Potentially Entire Board</td></tr>
</table>

* Reflects new or revised policy.

Circumstance	ISS Policy	Targeted Directors
Say-on-Pay Frequency	• On a case-by-case basis: board implements an advisory vote on executive compensation on a less frequent basis than the frequency that received the plurality of votes cast	Compensation Committee Members and Potentially Entire Board
Absence of Say-on-Pay Vote or Egregious Situations	• In the absence of a Say-on-Pay vote, if: ◦ There is an unmitigated misalignment between CEO pay and company performance (pay for performance) ◦ The company maintains significant problematic pay practices ◦ The board exhibits a significant level of poor communication and responsiveness to shareholders • There is no SOP on the ballot, and an against vote on an SOP would otherwise be warranted due to pay-for-performance misalignment, problematic pay practices, or the lack of adequate responsiveness on compensation issues raised previously, or a combination thereof • The board fails to respond adequately to a previous SOP proposal that received less than 70 percent support of votes cast • The company has recently practiced or approved problematic pay practices, such as option repricing or option backdating • The situation is egregious • Failure to seek shareholder approval of option repricings, even if permitted by equity plan, or one-time option transfers	Compensation Committee Members and Potentially Entire Board
	Audit & Risk Oversight	
Problematic Audit-Related Practices	• On a case-by-case basis: poor accounting practices rising to a level of serious concern such as fraud, misapplication of GAAP, and material weaknesses identified in Section 404 disclosures are identified, taking into consideration the practices' severity, breadth, chronological sequence and, duration, and the company's efforts at remediation or corrective actions	Audit Committee Members and Potentially Entire Board
Excessive Audit Fees	• Non-audit fees paid to the auditor are excessive (e.g., non-audit fees are greater than audit fees plus audit-related fees plus tax compliance/preparation fees)	Audit Committee Members
Adverse Opinion	• The company receives an adverse opinion on its financial statements from its auditor	Audit Committee Members

* Reflects new or revised policy.

Circumstance	ISS Policy	Targeted Directors
Inappropriate Indemnifications	• There is persuasive evidence that the audit committee entered into an inappropriate indemnification agreement with its auditor that limits the ability of the company or its shareholders to pursue legitimate legal recourse against the audit firm	Audit Committee Members
Governance Failures*	• Material failure of governance, stewardship, risk oversight**, or fiduciary responsibilities at the company • Failure to replace management as appropriate • Egregious actions related to a director's service on other boards that raise substantial doubt about his or her ability to effectively oversee management and serve the best interests of shareholders at any company ** Examples of failure of risk oversight include but are not limited to: bribery; large or serial fines or sanctions from regulatory bodies; demonstrably poor risk oversight of environmental and social issues, including climate change; significant adverse legal judgments or settlement; or hedging of company stock	(Under extraordinary circumstances) Entire Board, Committee Members, or Individual Director

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* Reflects new or revised policy.

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