

Client Alert

January 2022

ISS Releases Updated Voting Guidelines Promoting Board Accountability on Climate Change and Social Responsibility Issues

Institutional Shareholder Services (“ISS”), the leading proxy voting advisory firm, has released its 2022 proxy voting guidelines updates for the U.S. and other jurisdictions (effective for meetings on or after February 1, 2022) following its annual global benchmark policy survey and comment period that ran from July 28, 2021 to August 27, 2021. The updates are also based on a separate climate survey that ISS launched for the first time, soliciting feedback relevant to its benchmark and specialty climate policies. ISS addressed various topics in its updated guidelines, which include additions and revisions that place a heavy emphasis on climate change and social responsibility issues and are the focus of this client alert.

U.S. Guideline Relating to Racial Equity and/or Civil Rights Audit Shareholder Proposals *(See New Guideline in [Annex A](#))*

As we predicted in a recent article discussing the recent rise and growing relevance of racial equity audits at public companies, ISS adopted a new voting guideline regarding shareholder proposals that call for a company to conduct a racial equity and/or civil rights audit. Under this guideline, ISS will make recommendations on a case-by-case basis on these proposals, taking into account various factors, including, but not limited to: (i) the company’s existing process for addressing racial inequity and discrimination, (ii) whether the company has recently issued a public statement related to its racial justice efforts or has committed to an internal policy review, (iii) the company’s track record relating to racial justice initiatives and public outreach, and (iv) whether the company has recently been the subject of controversies, lawsuits or regulatory actions concerning racial inequity or discrimination. ISS codified its approach to racial equity and civil rights audit proposals based on the expectation that such proposals will be “on [the] ballot again in the coming years due to growing pressure for progress on DEI efforts.”

attorneys

Elizabeth R. Gonzalez-
Sussman
egonzalez@olshanlaw.com
212-451-2206

Ron S. Berenblat
rberenblat@olshanlaw.com
212-451-2296

practice

Shareholder Activism

U.S. Guideline Relating to Say on Climate (SoC) Management Proposals *(See New Guideline in [Annex B](#))*

ISS adopted a new voting policy regarding management proposals that ask shareholders to approve a company’s climate transition action plan, including

ambitions relating to climate transition or commitments to disclosure on the implementation of a climate plan. Under this guideline, ISS will make recommendations on a case-by-case basis on these proposals, taking into account the “completeness and rigor of the plan,” based on a non-exhaustive list of criteria set forth in the guideline, including, but not limited to: (i) the degree to which the company’s climate disclosures are in line with Task Force on Climate-related Financial Disclosures (“TCFD”) recommendations and meet other market standards, (ii) disclosure of the company’s operational and supply chain greenhouse gas (“GHG”) emissions, (iii) the “completeness and rigor” of the company’s targets for reducing operational and supply chain GHG emissions in line with the Paris Agreement, and (iv) whether the company has committed to be “net zero” for operational and supply chain emissions by 2050. This guideline codifies ISS’ framework developed over the last year for analyzing climate transition plans put forth by companies for shareholder approval after incorporating feedback received during its policy development process, including the climate survey.

U.S. Guideline Relating to Say on Climate (SoC) Shareholder Proposals (*See New Guideline in Annex C*)

ISS adopted a new voting policy regarding “say-on-climate” shareholder proposals that ask a company to disclose a report providing its GHG emissions levels and reduction targets and/or its upcoming/approved climate transition action plan and give shareholders the opportunity to express their approval or disapproval of the action plan. Under this guideline, ISS will make recommendations on a case-by-case basis on these proposals, taking into account a list of criteria set forth in the guideline, including, but not limited to: (i) the rigor of the company’s climate disclosure, (ii) the company’s actual GHG emissions performance, and (iii) whether the company has been the subject of violations, fines or litigation related to its emissions, in order to allow for “consistency of assessment across markets.”

U.S. Guideline Relating to Racial/Ethnic Diversity on Boards in Uncontested Elections (*See Redlined Guideline in Annex D*)

ISS’ existing guideline in this area provides that for Russell 3000 and S&P 1500 companies, ISS will “highlight” boards with “no apparent racial and/or ethnic diversity.” However, the policy also provides that after a one-year grace period, ISS will generally recommend voting against or withhold from the chair of the nominating committee (or other directors on a case-by-case basis) for Russell 3000 and S&P 1500 companies where the board has “no apparent racially or ethnically diverse members.” ISS will make an exception to this policy if, at the prior annual meeting, racial or ethnic diversity was present on the board and the board makes a firm commitment to appoint at least one racially and/or ethnically diverse director within one year.

Now that the one-year grace period has lapsed, ISS will not solely highlight boards lacking racial/ethnic diversity but will begin to issue voting

attorneys

Elizabeth R. Gonzalez-
Sussman
egonzalez@olshanlaw.com
212-451-2206

Ron S. Berenblat
rberenblat@olshanlaw.com
212-451-2296

practice

Shareholder Activism

recommendations on the basis of a lack of such racial/ethnic diversity effective for meetings held on or after February 1, 2022.

U.S. Guideline Relating to Gender Diversity on Boards in Uncontested Elections *(See Redlined Guideline in Annex E)*

ISS' existing guideline in this area provides that ISS will generally recommend voting against or withhold from the chair of the nominating committee (or other directors on a case-by-case basis) at Russell 3000 and S&P 1500 companies where there are no women on the board, except when there was a woman on the board at the prior annual meeting and the board makes a firm commitment to return to a "gender-diverse status" within one year.

ISS has updated this guideline to extend this policy to all companies (not just Russell 3000 and S&P 1500 companies) effective for meetings held on or after February 1, 2023. This change was made in response to feedback from investors expressing "interest in seeing increased levels of gender diversity on corporate boards, citing reasons of equality, improved company performance and good corporate governance."

U.S. Guideline Relating to Climate Accountability *(See New Guideline in Annex F)*

ISS adopted a new board accountability policy focusing on companies that are "significant GHG emitters" (i.e., companies on the Climate Action 100+ Focus Group list – currently 167 companies). Under this new guideline, ISS will generally recommend voting against or withhold from the chair of the responsible committee (or other directors on a case-by-case basis) where ISS believes that a 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." ISS lists two minimum steps required to be taken by companies in order for them to be in compliance with this policy: (i) making detailed disclosure of climate-related risks (that could be based on the framework adopted by the TCFD), and (ii) establishing appropriate GHG emissions reduction targets. ISS adopted this new policy citing climate change and climate-related risks as being "among the most critical topics for many investors" who are now looking to "better integrate climate risk considerations in their investment, engagement, and voting processes."

attorneys

Elizabeth R. Gonzalez-
Sussman
egonzalez@olshanlaw.com
212-451-2206

Ron S. Berenblat
rberenblat@olshanlaw.com
212-451-2296

practice

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Please contact the Olshan attorney with whom you regularly work or one of the attorneys listed below if you would like to discuss further or have questions.

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ANNEX A

Shareholder Proposals on Racial Equity and/or Civil Rights Audit Guidelines

Current ISS Policy, incorporating changes:	New ISS Policy:
<p>General Recommendation: Vote case-by-case on proposals asking a company to conduct an independent racial equity and/or civil rights audit, taking into account:</p> <ul style="list-style-type: none"> ▪ The company’s established process or framework for addressing racial inequity and discrimination internally; ▪ Whether the company has issued a public statement related to their racial justice efforts in recent years, or has committed to internal policy review; ▪ Whether the company has engaged with impacted communities, stakeholders, and civil rights experts, ▪ The company’s track record in recent years of racial justice measures and outreach externally; ▪ Whether the company has been the subject of recent controversy, litigation, or regulatory actions related to racial inequity or discrimination; and ▪ Whether the company’s actions are aligned with market norms on civil rights, and racial or ethnic diversity. 	<p>General Recommendation: Vote case-by-case on proposals asking a company to conduct an independent racial equity and/or civil rights audit, taking into account:</p> <ul style="list-style-type: none"> ▪ The company’s established process or framework for addressing racial inequity and discrimination internally; ▪ Whether the company has issued a public statement related to their racial justice efforts in recent years, or has committed to internal policy review; ▪ Whether the company has engaged with impacted communities, stakeholders, and civil rights experts, ▪ The company’s track record in recent years of racial justice measures and outreach externally; ▪ Whether the company has been the subject of recent controversy, litigation, or regulatory actions related to racial inequity or discrimination; and ▪ Whether the company’s actions are aligned with market norms on civil rights, and racial or ethnic diversity.

ANNEX B

Say on Climate (SoC) Management Proposals

Current ISS Policy, incorporating changes:	New ISS Policy:
<p>General Recommendation: Vote case-by-case on management proposals that request shareholders to approve the company’s climate transition action plan¹, taking into account the completeness and rigor of the plan. Information that will be considered where available includes the following:</p> <ul style="list-style-type: none"> ▪ The extent to which the company’s climate related disclosures are in line with TCFD recommendations and meet other market standards; ▪ Disclosure of its operational and supply chain GHG emissions (Scopes 1, 2, and 3); ▪ The completeness and rigor of company’s short-, medium-, and long-term targets for reducing operational and supply chain GHG emissions in line with Paris Agreement goals (Scopes 1, 2, and 3 if relevant); ▪ Whether the company has sought and received third-party approval that its targets are science-based; ▪ Whether the company has made a commitment to be “net zero” for operational and supply chain emissions (Scopes 1, 2, and 3) by 2050; ▪ Whether the company discloses a commitment to report on the implementation of its plan in subsequent years; ▪ Whether the company’s climate data has received third-party assurance; ▪ Disclosure of how the company’s lobbying activities and its capital expenditures align with company strategy; ▪ Whether there are specific industry decarbonization challenges; and ▪ The company’s related commitment, disclosure, and performance compared to its industry peers. 	<p>General Recommendation: Vote case-by-case on management proposals that request shareholders to approve the company’s climate transition action plan¹, taking into account the completeness and rigor of the plan. Information that will be considered where available includes the following:</p> <ul style="list-style-type: none"> ▪ The extent to which the company’s climate related disclosures are in line with TCFD recommendations and meet other market standards; ▪ Disclosure of its operational and supply chain GHG emissions (Scopes 1, 2, and 3); ▪ The completeness and rigor of company’s short-, medium-, and long-term targets for reducing operational and supply chain GHG emissions in line with Paris Agreement goals (Scopes 1, 2, and 3 if relevant); ▪ Whether the company has sought and received third-party approval that its targets are science-based; ▪ Whether the company has made a commitment to be “net zero” for operational and supply chain emissions (Scopes 1, 2, and 3) by 2050; ▪ Whether the company discloses a commitment to report on the implementation of its plan in subsequent years; ▪ Whether the company’s climate data has received third-party assurance; ▪ Disclosure of how the company’s lobbying activities and its capital expenditures align with company strategy; ▪ Whether there are specific industry decarbonization challenges; and ▪ The company’s related commitment, disclosure, and performance compared to its industry peers.

¹ Variations of this request also include climate transition related ambitions, or commitment to reporting on the implementation of a climate plan.

ANNEX C

Say on Climate (SoC) Shareholder Proposals

Current ISS Policy, incorporating changes:	New ISS Policy:
<p>General Recommendation: Vote case-by-case on shareholder proposals that request the company to disclose a report providing its GHG emissions levels and reduction targets and/or its upcoming/approved climate transition action plan and provide shareholders the opportunity to express approval or disapproval of its GHG emissions reduction plan, taking into account information such as the following:</p> <ul style="list-style-type: none"> ▪ The completeness and rigor of the company’s climate-related disclosure; ▪ The company’s actual GHG emissions performance; ▪ Whether the company has been the subject of recent, significant violations, fines, litigation, or controversy related to its GHG emissions; and ▪ Whether the proposal’s request is unduly burdensome (scope or timeframe) or overly prescriptive. 	<p>General Recommendation: Vote case-by-case on shareholder proposals that request the company to disclose a report providing its GHG emissions levels and reduction targets and/or its upcoming/approved climate transition action plan and provide shareholders the opportunity to express approval or disapproval of its GHG emissions reduction plan, taking into account information such as the following:</p> <ul style="list-style-type: none"> ▪ The completeness and rigor of the company’s climate-related disclosure; ▪ The company’s actual GHG emissions performance; ▪ Whether the company has been the subject of recent, significant violations, fines, litigation, or controversy related to its GHG emissions; and ▪ Whether the proposal’s request is unduly burdensome (scope or timeframe) or overly prescriptive.

ANNEX D

Board Composition – Racial/Ethnic Diversity

Current ISS Policy, incorporating changes:	New ISS Policy:
<p>Racial and/or Ethnic Diversity: For companies in the Russell 3000 or S&P 1500 indices, highlight boards with no apparent racial and/or ethnic diversity³.</p> <p>For companies in the Russell 3000 or S&P 1500 indices, effective for meetings on or after Feb. 1, 2022, generally vote against or withhold from the chair of the nominating committee (or other directors on a case-by-case basis) where the board has no apparent racially or ethnically diverse members³. 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 to appoint at least one racial and/or ethnic diverse member within a year.</p>	<p>Racial and/or Ethnic Diversity: For companies in the Russell 3000 or S&P 1500 indices, generally vote against or withhold from the chair of the nominating committee (or other directors on a case-by-case basis) where the board has no apparent racially or ethnically diverse members³. 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 to appoint at least one racial and/or ethnic diverse member within a year.</p>

³ Aggregate diversity statistics provided by the board will only be considered if specific to racial and/or ethnic diversity.

ANNEX E

Board Composition – Gender Diversity

Current ISS Policy, incorporating changes:	New ISS Policy:
<p>Gender Diversity: For companies in the Russell 3000 or S&P 1500 indices, generally vote against or withhold from the chair of the nominating committee (or other directors on a case-by-case basis) at companies where there are no women on the company's 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 to return to a gender-diverse status within a year.</p> <p>This policy will also apply for companies not in the Russell 3000 and S&P1500 indices, effective for meetings on or after Feb. 1, 2023.</p>	<p>Gender Diversity: For companies in the Russell 3000 or S&P 1500 indices, generally vote against or withhold from the chair of the nominating committee (or other directors on a case-by-case basis) at companies where there are no women on the company's 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 to return to a gender-diverse status within a year.</p> <p>This policy will also apply for companies not in the Russell 3000 and S&P1500 indices, effective for meetings on or after Feb. 1, 2023.</p>

ANNEX F

Board Accountability – Climate Accountability

Current ISS Policy, incorporating changes:	New ISS Policy:
<p>General Recommendation: For companies that are significant greenhouse gas (GHG) emitters, through their operations or value chain⁸, generally vote against or withhold from the incumbent chair of the responsible committee (or other directors on a case-by-case basis) in cases 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.</p> <p>For 2022, minimum steps to understand and mitigate those risks are considered to be the following. Both minimum criteria will be required to be in compliance:</p> <ul style="list-style-type: none"> ▪ Detailed disclosure of climate-related risks, such as according to the framework established by the Task Force on Climate-related Financial Disclosures (TCFD), including: <ul style="list-style-type: none"> ▪ Board governance measures; ▪ Corporate strategy; ▪ Risk management analyses; and ▪ Metrics and targets. ▪ Appropriate GHG emissions reduction targets. <p>For 2022, “appropriate GHG emissions reductions targets” will be any well-defined GHG reduction targets. Targets for Scope 3 emissions will not be required for 2022 but the targets should cover at least a significant portion of the company’s direct emissions. Expectations about what constitutes “minimum steps to mitigate risks related to climate change” will increase over time.</p>	<p>General Recommendation: For companies that are significant greenhouse gas (GHG) emitters, through their operations or value chain⁸, generally vote against or withhold from the incumbent chair of the responsible committee (or other directors on a case-by-case basis) in cases 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.</p> <p>For 2022, minimum steps to understand and mitigate those risks are considered to be the following. Both minimum criteria will be required to be in compliance:</p> <ul style="list-style-type: none"> ▪ Detailed disclosure of climate-related risks, such as according to the framework established by the Task Force on Climate-related Financial Disclosures (TCFD), including: <ul style="list-style-type: none"> ▪ Board governance measures; ▪ Corporate strategy; ▪ Risk management analyses; and ▪ Metrics and targets. ▪ Appropriate GHG emissions reduction targets. <p>For 2022, “appropriate GHG emissions reductions targets” will be any well-defined GHG reduction targets. Targets for Scope 3 emissions will not be required for 2022 but the targets should cover at least a significant portion of the company’s direct emissions. Expectations about what constitutes “minimum steps to mitigate risks related to climate change” will increase over time.</p>

⁸ For 2022, companies defined as “significant GHG emitters” will be those on the current Climate Action 100+ Focus Group list.