

ISS Policy Change – S&P 500 Companies No Longer Receive Preliminary Drafts of Proxy Advisory Reports During 2021 Proxy Season

- JOHN ELLERMAN AND SZU HUI HO

Introduction

In July 2020, the Securities and Exchange Commission (SEC) adopted new rules regarding the solicitation and delivery of proxy voting advice by the proxy voting advice businesses.¹ These new rules, which are extensive and far reaching, will become effective during the 2022 proxy season. Effective December 1, 2021, proxy advisory firm Institutional Shareholder Services (ISS) and other proxy advisors will be required to grant free access to filing companies for review and feedback recommendations at the same time when the voting advice and accompanying materials are sent out to investors.

The proxy advisory firms will also be required to provide, in a timely manner, the registrant companies' written responses to their investor clients before they vote on proxies—assuming there is a timely response to the advice by registrant companies. The intent of the proposed new rules by the SEC is to increase the transparency of the proxy voting advice. For reference, please see our Viewpoint on the subject.²

ISS Policy Change – 2021 Proxy Season

Within the past two weeks, ISS has sent a direct communiqué to all companies in the Standard & Poor's 500 (S&P 500): ISS will no longer provide draft copies of their research reports to S&P 500 companies prior to issuing their final reports to their subscribers. This policy will apply to companies with annual meetings occurring after January 1, 2021; it is important to note that the new SEC rules referenced above will not become effective for most public companies until the 2022 proxy season.

ISS cites the following rationale in support of their decision to not provide S&P 500 companies with advance draft copies of their proxy advice reports:

- ISS believes that its recent investment in additional resources in data collection, checks and quality controls, and other research activities has eliminated the need for filing companies to provide feedback regarding the accuracy of ISS reports;
- ISS has found the preliminary review process has too frequently resulted in companies lobbying ISS to change its recommendations instead of identifying data inaccuracies;

PARTNERS

Aubrey Bout	Mike Kesner	Jaime Pludo
Chris Brindisi	Donald S. Kokoskie	Matt Quarles
John R. Ellerman	Brian Lane	Lane T. Ringlee
John D. England	Joe Mallin	Brian Scheiring
R. David Fitt	Jack Marsteller	John R. Sinkular
Patrick Haggerty	Richard Meischeid	Christine O. Skizas
Jeffrey W. Joyce	Sandra Pace	Bentham W. Stradley
Ira T. Kay	Steve Pakela	Jon Weinstein

- JOHN ELLERMAN AND SZU HUI HO

- Having filing companies review initial report drafts takes time that ISS believes would be better devoted to investor clients in their decision-making process about ISS voting recommendations;
- Many institutional investor clients have objected to ISS’s decision to offer draft previews to issuers, claiming that they do not want companies engaging in the research process, gaining early access to ISS research and recommendations, and lobbying about research and recommendations before final reports are released to ISS clients; and
- Eliminating the proxies of draft reports will result in earlier research delivery times, allowing ISS clients more time to consider ISS research in their decision-making and voting actions.

In conclusion, please note this change by ISS only applies to the 2021 proxy season and to S&P 500 companies, with the new SEC regulations taking effect with the 2022 proxy season requiring the very process ISS is eliminating for 2021.

General questions about this Viewpoint can be directed to John Ellerman at john.ellerman@paygovernance.com or Szu Hui Ho at szu.ho@paygovernance.com.

¹ “Amendments to Exemptions From the Proxy Rules for Proxy Voting Advice (RIN: 3235-AM50).” The U.S. Securities and Exchange Commission. June 2020. <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=202004&RIN=3235-AM50>.

² Lane Ringlee and John Ellerman. “Recent SEC Actions - Clawbacks and Proxy Advisory Firm Regulations.” Pay Governance. August 12, 2020. <https://www.paygovernance.com/viewpoints/recent-sec-actions-clawbacks-and-proxy-advisory-firm-regulations>.