

# Client Alert

October 2016

## Institutional Shareholder Services Releases Proposed Voting Policy Changes for 2017

On October 27, 2016, Institutional Shareholder Services (“ISS”) released for public comment its proposed voting policy changes that would take effect for shareholders meetings held on or after February 1, 2017. These proposals cover a variety of corporate governance and executive compensation related topics that could result in new or potential changes to 15 separate voting policies. This client alert focuses on ISS’s proposed changes to its policies relating to its recommendations on director elections where (i) a company’s charter imposes restrictions on the ability of shareholders to amend the bylaws and (ii) a company completes an IPO with a multi-class capital structure where the classes do not have identical voting rights.

### *Charter Imposes “Undue” Restrictions on Ability of Shareholders to Amend Bylaws*

ISS is considering updating its director election policy such that it would recommend a “vote against” or “withhold” on the election of directors who are members of the governance committee of the board when a company’s charter imposes “undue” restrictions on the ability of shareholders to amend the bylaws. Examples of such restrictions include, but are not limited to:

- the outright prohibition on a shareholder’s ability to submit a binding shareholder proposal to amend the bylaws; or
- a minimum share ownership or holding period requirement for a shareholder to submit a binding shareholder proposal to amend the bylaws in excess of the default requirements imposed under Rule 14a-8 of the Exchange Act (under Rule 14a-8, a shareholder who has held at least \$2,000 worth of the company’s stock continuously for at least one year may submit shareholder proposals for inclusion in the company’s proxy statement).

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Recognizing that the ability of shareholders to amend the bylaws is a “fundamental” right, ISS is proposing this update to its voting policy to address the “problematic practice” of companies imposing charter restrictions that have the effect of undermining this right.

*Company Completes IPO With a Multi-Class Capital Structure With Unequal Voting Rights*

ISS is considering clarifying its director election policy such that it would generally recommend a vote against the election of directors when a company completes an IPO with a multi-class capital structure where the classes do not have identical voting rights. In making its determination, ISS would consider the inclusion of a “reasonable” sunset provision with respect to the duration of the adverse voting structure.

Recognizing the recent increase in the number of companies completing IPOs with multi-class structures (17 companies through August 30, 2016 holding their first annual meetings in 2016), ISS is proposing this update to its voting policy to address the fact that current ISS policy “does not explicitly address director accountability” as it relates to a company’s capital structure at the time its IPO is completed.

The comment period closes on November 10, 2016 and the final 2017 policies will be released during the week of November 14, 2016. Please contact the Olshan attorney with whom you regularly work or one of the attorneys listed below if you have questions.

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