TheCorporateCounsel.net

"ISS Policy Updates and Key Issues for 2026"

Thursday, January 8, 2026

Course Materials

<u>“ISS Policy Updates and Key Issues for 2026”</u>

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2 to 3 p.m. Eastern [archive and transcript to follow]

In one of our favorite annual programs, ISS's Marc Goldstein is joining us again to share insights with the corporate community. Marc will discuss what transpired in the 2025 proxy season, ISS's policy updates for 2026 meetings, other trends and themes expected to impact the 2026 proxy season and emerging issues for the coming year and beyond. Davis Polk's Ning Chiu and Jasper Street Partners' Rob Main will join Marc to provide color commentary.

- **Marc Goldstein,** Managing Director & Head of U.S. Research, ISS
- **Ning Chiu,** Partner, Davis Polk & Wardwell LLP
- **Rob Main,** Managing Partner, Jasper Street Partners

Among other topics, this program will cover:

1. 2025 Proxy Season Review
2. Changes to ISS Policies
3. Anticipated 2026 (& Beyond) Trends and Themes

<u>"ISS Policy Updates and Key Issues for 2026"</u>

Course Outline

1. 2025 Proxy Season Review

   - Director Support

   - Governance Shareholder Proposals

   - DExit

   - Activism Trends

- Say-On-Pay Votes

- Equity Plan Votes

- Say-On-Golden Parachute Votes

- High 2025 CEO Turnover & 2026 Considerations

- Environmental & Social Proposals

2. Changes to ISS Policies

- Problematic Capital Structures

- Non-Executive Director Pay

- Board Responsiveness to Low Say-On-Pay

- Environmental & Social Proposals

- Long-Term Alignment in Pay-for-Performance Evaluation

3. Anticipated 2026 (& Beyond) Trends and Themes

- Rule 14a-8 Process & Shareholder Proposal Developments

- Mandatory Arbitration

- Quarterly to Semi-Annual Reporting

- Influence of Asset Managers

2025 Proxy Season Trends - Governance

- **Opposition to Directors Continues to Decline** – No failed elections this year due to share pledging or adoption of a poison pill. Dual-class capital structures continue to drive opposition at companies where the two classes vote on separate slates of directors. Overboarding and poor attendance are almost universally viewed as problematic by institutional investors, even if overboarding thresholds differ from investor to investor.

- **Support for Governance Shareholder Proposals Rises –** In contrast to environmental and social proposals, support for governance shareholder proposals increased, as did the number of such proposals on ballot. The greatest number of proposals related to special meeting rights, but proposals to eliminate a one-year holding period did not gain traction with investors. Strongest support came for proposals to eliminate supermajority vote requirements and declassify the board.

- **DExit Trend Continues; Nevada is the Winner So Far** – Number of companies leaving Delaware doubled in 2025. Nevada is overwhelmingly the most popular destination. Whereas in the past most companies leaving Delaware were seeking to eliminate franchise tax payments, this year many are controlled companies seeking to avoid Delaware's "entire fairness" standard for transactions with a controlling shareholder. Texas made a big push this year to attract incorporations, notably allowing TX companies to impose ownership thresholds for filing derivative suits and submitting shareholder proposals. We're likely to learn in 2026 how appealing these rules are.

- **Activist Campaigns Surged in Mid-Season After a Slow Start; Activist Win Rate Rebounds –** Median market cap of targets increased this year (notwithstanding several S&P500 targets last year). (Lack of) succession planning was a key issue in several contests. CDI on active/passive investors likely left targeted companies flying blind on intentions of largest shareholders.

UNITED STATES

2025 Proxy Season Trends – Compensation and E&S

- **Median support rate for SoP ticked down slightly to 94.5%; failure rate near an all-time low despite record levels of median CEO pay** – Failure rate was only 1.2%, while only 5.5% of proposals received less than 70% support.

- **Median support for equity plans was lowest since 2014 –** However, it still reached 92.3%. The failure rate was only 1% (9 proposals). Prevalence of evergreen provisions fell to 12.9% after several years of increases – perhaps because of fewer "de-SPAC" mergers.

- **Failure rate for golden parachute votes plummets from 17% to 5%; lowest level in the past decade** – Vote outcomes for SoGP closely track median golden parachute values, and median value for a CEO golden parachute fell 31%.

- **High Levels of CEO turnover in 2025 will put transition payments (severance and sign-on/make-whole awards) in the spotlight for 2026.**

- **E&S proposals on ballot plummet due to fewer submissions, more no-actions.** Median support rate continues to fall. However, number of proposals winning majority support increased – and all of them dealt with political spending.

UNITED STATES

2026 ISS Policy Updates

- **Problematic Capital Structure Policy is Expanded to Cover Preferred Shares with Superior Voting Rights.** The policy previously only covered companies with multiple classes of common shares with differential voting rights. However, some companies have issued perpetual, non-convertible preferred shares with superior voting rights in order to confer control on a founder or other insider, using "blank check" issuance authority. ISS is closing the loophole that exempted such shares because they were labeled "preferred".

- **Policy on High Pay for Non-Executive Directors Amended to No Longer Apply Only When There is High Pay in 2 Consecutive Years** – Under the amended policy, extremely high levels of NED pay in a single year, or in two out of three years, may trigger adverse recommendations in the absence of a compelling rationale.

- **Policy on Board Responsiveness to Low Support for Say-on-Pay is Amended to Give Companies More Flexibility in Demonstrating Responsiveness** – As a result of SEC guidance, companies may have difficulty getting candid feedback from shareholders on their reasons for voting against a say-on-pay proposal. Companies will not be penalized if they are unable to get specific feedback from shareholders, as long as they attempt to engage and to make positive changes to the pay program.

- **Approach to Certain E&S Shareholder Proposals Shifts from "Generally FOR" to Fully Case-by-Case.** Proposals now vary widely in scope, relevance and potential impact, and expressing the policies as case-by-case is considered more appropriate than expressing a presumption of support unless specific conditions warrant otherwise.

2026 Preview

- **SEC Chair Atkins endorses emerging theory that Delaware law provides no legal basis for non-binding shareholder proposals.** Atkins has invited Delaware companies to seek a court ruling on the validity of non-binding proposals and has essentially committed the SEC to follow a ruling in the company's favor. He seems to be confident that the DE Supreme Court will side with companies on this. Could this be Delaware's silver bullet to stop DExit? Will shareholder proponents submit binding proposals instead, or simply switch from shareholder proposals to Vote No campaigns? Separately, the SEC has said it will no longer issue "no action" rulings but will let companies decide for themselves whether proposals can be excluded under SEC Rule 14a-8.

- **Mandatory arbitration** – SEC also decides to no longer block IPOs of companies that provide for mandatory arbitration of federal securities law claims. Class actions are not possible in arbitration, so widespread adoption of mandatory arbitration could largely end federal securities class actions – and most cases are only viable as class actions because damages to individual investors are rarely large enough to justify a case. However, Delaware does not permit companies to impose such mandatory arbitration. Could this spur companies to choose other states? Or will Delaware be forced to change its approach?

- **Shift from quarterly to semi-annual reporting** – SEC is making it a priority to eliminate the quarterly reporting requirement. Concern is that the companies most likely to take advantage of the flexibility are the ones with something to hide.

- **Will the administration pursue antitrust cases (or issue an executive order) against asset managers?** The goal would be to reduce their influence by restricting their ability to vote their shares, thereby reducing votes against management.