ISS 2024 Policy Updates (UK and Europe)

Introduction

On 19 December, ISS announced the updates to their guidelines for the 2024 AGM season, which apply to shareholder meetings taking place on or after 1 February 2024. ISS has published a high-level overview of all changes, as well as a comparison that covers the Benchmark Policy changes in 2024 compared to 2023. This memo summarizes the policy changes that will be applied across the UK, Ireland and Continental Europe.

The main changes relate to Board Diversity, Share Issuance Authorities, Significant Shareholder definition and Board Accountability Unequal Voting Rights

Updates across both UK & Ireland

Board Diversity

ISS has updated both the Board Gender and Ethnic Diversity policy to simplify "the policy language and remove transitory provisions, as the Financial Conduct Authority's (FCA) diversity rules now apply to all companies, irrespective of when their financial year falls". ISS believes that standard and premium listed companies should meet the reporting requirements of the FCA Listing Rules, ensuring that:

- "At least 40% of the board are women;
- At least one of the senior board positions (Chair, CEO, Senior Independent Director or CFO) is a woman; and,
- At least one member of the board is from a minority ethnic background"

If companies do not meet the reporting requirements of the FCA listing rules or the targets listed above, then "ISS may consider recommending against the chair of the nomination committee (or other directors on a case-by-case basis)."

For ISEQ 20 constituents and AIM-listed companies with a market capitalisation of over GBP 500 million, "ISS will generally recommend against the chair of the nomination committee (or other directors on a case-by-case basis) if there is not at least one woman on the board" and/or "if such companies have not appointed at least one individual from an ethnic minority background to the board by 2024.".

Mitigating factors for both board and ethnic diversity policy changes include:

- "Compliance with the relevant board diversity standard at the preceding AGM and a firm commitment, publicly available, to comply with the relevant standard within a year.
- Other relevant factors as applicable."

Here are the FCA diversity rules.

Share Issuance Authorities

The 2024 policy update "Reflects the Investment Association's (IA) updated share capital management guidelines (Recommendation 14), as updated in February 2023."

Here are the IA's February 2023 share capital management guidelines. Recommendation 14 of the UK Secondary Capital Raising Review (pg 16) states as follows:

> "14. Companies should continue to be able to seek annual allotment and pre-emption rights disapplication authorities from their shareholders of up to two thirds of their issued share capital, but with the authority extending not just to rights issues as is currently the case but to all forms of fully pre-emptive offers made on the basis of the updated pre-emption provisions set out in Recommendation 15 below, and any follow-on offer as described in Recommendation 6."

Therefore, the only change that ISS has made to the policy relative to 2023 is referring to The Investment Association Share Capital Management Guidelines (2023) rather than The Investment Association Share Capital Management Guidelines (2016) within the appendix, and that the policy wording has been changed from "pre-emptive rights issues" to "pre-emptive offers".

Board Independence Classification – Significant Shareholder Definition

ISS "adds a footnote including that, for the purposes of historical application of the UK policy, a 3 percent holding is deemed to be identified as a significant shareholder."

The 2023 ISS policy (pg 14), which is being amended, reads as follows:

> "[...] A non-executive director is likely to be considered as non-independent if one (or more) of the issues listed below apply: […] Represents a significant shareholder."

Therefore, it is now specified that a "significant" shareholder for this purpose is defined as a 3% shareholder.

Updates across Continental Europe

Board Accountability for Unequal Voting Rights

ISS clarify and define "such policy application, without adjusting the context or scope of the application. Specifically, the reference to the one-year grace period was removed as it is no longer applicable and the application of the policy regarding control enhancing share structures is clarified."

The 2023 ISS policy (pg 13), which is being amended, reads as follows:

> "For meetings held on or after Feb. 1, 2024, at widely-held companies, generally vote against directors or against the discharge of (non-executive) directors, if the company employs a stock structure with unequal voting rights" which is defined as "classes of common stock that have additional votes per share than other shares; classes of shares that are not entitled to vote on all the same ballot items or nominees; or stock with time-phased voting rights ("loyalty shares" or "double-voting" shares)".

The 2024 ISS policy, however, states that:

"At widely-held companies, generally vote against the (re)election of directors or against the discharge of (non-executive) directors, if the company employs a stock structure with unequal voting rights" which is defined as "control-enhancing mechanisms through classes of common stock that have additional votes per share than other shares; classes of shares that are not entitled to vote on all the same ballot items or nominees; or stock with time-phased voting rights ("loyalty shares" or "double-voting" shares).

Therefore, ISS has added to its definition of unequal voting rights to include the phrase "control-enhancing mechanisms."

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