

“ISS Policy Updates and Key Issues for 2025”

Wednesday, January 22, 2025

Course Materials

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

2024 was another record-breaking proxy season for submitted shareholder proposals. Companies faced a resurgence of traditional governance proposals and new proponents across the political spectrum, and some companies that historically flew "under the radar" for shareholder proposals found their governance practices in the crosshairs.

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 2024, ISS's policy updates for 2025 meetings, other trends and themes expected to impact the 2025 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.

Joining us are:

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

This program will cover:

- 2024 Proxy Season Review
- Changes to ISS Policies
- Anticipated 2025 (& Beyond) Trends and Themes

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Course Outline/Notes

1. 2024 Proxy Season Review

- Governance
 - Exchange Act Rule 14a-8 Shareholder Proposals on Governance

 - Director Elections

- Executive Compensation and E&S
 - Support for “Say-on-Pay” Proposals and “Say-on-Golden-Parachute” Proposals under Exchange Act Section 14A and Exchange Act Rule 14a-21

 - Exchange Act Rule 14a-8 Shareholder Proposals on E&S and Anti-E&S Matters

2. Changes to ISS Policies

- Poison Pills
- Special Purpose Acquisition Company (“SPAC”) Deadline Extensions
- Natural Capital
- Performance-Based Equity

3. Anticipated 2025 (& Beyond) Trends and Themes

- Executive Compensation
- Closed-End Mutual Funds
- E&S Activism
- A Second Trump Administration

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Table of Contents — Course Materials

2024 U.S. Proxy Season Trends	1
2025 ISS U.S. Policy Updates	3
Questions for 2025.....	4

2024 US Proxy Season Trends

Governance Topics

Officer Exculpation Continues to be Widely Adopted

As expected, proposals in 2024 outnumbered those in 2023. Most have been approved.

Governance Shareholder Proposals: Support Rebounds

Proposals seeking elimination of supermajority vote requirements are most prevalent, and most of them pass. New topics (mandatory director resignation, mandatory shareholder approval of director pay) fail to gain traction.

Opposition to Director Elections Continues to Decline

Fewer failed votes due to poor responsiveness. But problematic poison pills and dual-class capital structures drive opposition.

Nasdaq & NYSE Tighten Delisting Rules for Zombie SPACs and Companies that Fail to Meet Minimum Bid Price

Fewer opportunities to drag out process through repeated appeals.

M&A and Activism: Increase in contests but win rate declines

- Targets include Disney, Starbucks, Norfolk Southern, Southwest Airlines. Closed-end fund activism surges.
- Pfizer, Honeywell, Kenvue are potential targets in 2025.
- Mergers faced political headwinds in an election year (Kroger-Albertson's; Nippon Steel-US Steel; JetBlue-Spirit Air; Tapestry-Capri Holdings). Higher interest rates also bite.

2024 US Proxy Season Trends

Executive Compensation and E&S

Record Low Say-on-Pay Failure Rate Despite Surging Pay Levels

Likely driven by booming stock prices and companies learning what investors are looking for. But investors are increasingly disillusioned with performance-based equity.

Opposition to Equity Plans Also Fell

Reversion to historical norms after opposition surged in 2023.

But Opposition to Say-on-Golden-Parachute Proposals Hits New Record, with Failure Rate of 17%

Driven by 35% increase in median GP value.

Number of Comp-Related Shareholder Proposals Declines and None Receive Majority Support

Number of E&S Shareholder Proposals on Ballot Continued to Increase

Continued impact of Biden-era SEC guidance, coupled with decrease in withdrawal rate (perhaps because companies expect low support and see no need to negotiate with proponents).

Support Rate Continued to Decline

Median support was half that in 2021; only 3 proposals received majority support. Likely drivers include improved corporate disclosure, overly-prescriptive nature of proposals, and political pressure on asset managers.

Anti-ESG Proposals Surge in Number But Fail to Win Investor Support

2025 ISS US Policy Updates

Minor Updates to Policy on Short-Term Poison Pills

Most pills at US companies are now short-term (lasting 1 year or less) and are not put to a shareholder vote. The policy update clarifies the factors used to evaluate the actions of the board in adopting a short-term pill.

Clarification of Policy on SPAC Extensions

SPACs that are unable to complete a merger by the deadline often seek shareholder approval to extend the deadline. The policy update clarifies that extensions of more than one year past the original deadline will not be supported.

Clarify Approach to Proposals Related to “Natural Capital”

Proposals seeking information on the impact of company or supply chain operations on biodiversity or other aspects of natural capital will be evaluated case-by-case, taking into account the nature of the company’s operations related to the subject of the proposal, potential regulatory, litigation or reputational risks, and the company’s existing disclosures and their alignment with relevant reporting frameworks.

Potential Future Change to Policy Regarding Use of Performance-Conditioned Equity

Some prominent investors have become disillusioned with performance shares, but it’s premature to say that a new consensus has emerged. We will continue to engage with clients and other stakeholders.

Questions for 2025

Executive Compensation

Will investors reach consensus on a new approach to compensation – and if they do, will executives and comp committees go along?

Closed-End Mutual Funds

Activists like Saba Capital have disrupted what had been a cozy corner of the financial sector, and a lot of people are upset about it. Will the industry succeed in doing away with the requirement that CEFs hold annual meetings?

E&S Activism

Lack of federal climate regulation (even for disclosure) may drive more company-by-company action, but exclusion of shareholder proposals is likely to get easier. Will activists shift to Vote No campaigns or other tactics? Or make use of contested solicitations, as at Warrior Met Coal?

What Will Trump 2.0 Mean for Companies and Investors?

- We expect to see a revival of proposals to restrict use of ESG considerations in investing and proxy voting. Most regulatory changes won't take effect in time for 2025 proxy season, but a new SLB could impact No Action requests for 2025.
- "Greenhushing" could become the norm, especially when it comes to DEI and board diversity initiatives, as companies seek to avoid being targeted for such programs. Expect fewer companies to tie compensation explicitly to diversity targets.
- People expect a surge in deal activity, but if high tariffs and deficits drive up inflation and interest rates it will impact M&A as well.
- Blocking Nippon Steel's acquisition of US Steel was about the only thing that Biden, Harris and Trump all agreed on. Now that the election is over, is there a path to a deal?