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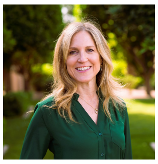
What ISS's Final 2026 Policies Mean for Your Upcoming Proxy Season



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Institutional Shareholder Services (ISS) has released final policy updates for the 2026 proxy season (substantively adopting proposed changes summarized in our previous Client Alert), and while some of the changes refine existing expectations, others represent shifts in how companies will be evaluated on compensation, governance, and shareholder responsiveness.

While business strategy should always come first in developing an appropriate executive compensation program, companies may wish to consider how their upcoming disclosure narratives around such programs may be impacted by evolving ISS policies and investor expectations.

A Longer View of Pay-for-Performance: The Move to Five Years

One of the most significant developments is ISS's modification to extend the quantitative pay-for-performance (PFP) window from three years to five years. While ISS has always considered long-term alignment, this expanded horizon has real implications. Some companies that would not have triggered high concern under ISS's traditional three-year evaluation may now face renewed scrutiny if earlier pay-for-performance issues—previously addressed and considered "in the past"—re-enter the analysis.

Given this shift, companies should review their five-year pay and performance trajectory to anticipate how ISS's expanded lens will view past and future decisions. If the five-year projection could result in adverse ISS recommendations, companies may want to discuss how providing some explanation in the CD&A provides a clear, confident, and coherent long-term story despite the five-year optics.

Time-Based Equity Gets a Second Look—If Vesting Is Long Enough

ISS is taking a more nuanced stance on time-based equity awards. While performance-based equity remains the gold standard, ISS suggests it may view time-based awards more favorably when they include extended vesting periods or clearly defined retention periods.

For those companies that rely on time-based equity awards, the CD&A should clearly articulate the strategic rationale for such awards, for example, being tied to leadership retention and continuity or market competitiveness. If such time-based awards are subject to an elongated vesting period, proxies should highlight how the long-horizon vesting continues to align pay with longer-term performance and shareholder outcomes.

Greater Scrutiny on Director Compensation—Even Over Non-Consecutive Years

ISS's 2026 policy reflects heightened sensitivity to non-employee director (NED) pay, particularly when levels appear excessive, include problematic perquisites, or use performance awards or retirement benefits inappropriately. (One notable substantive change from the proposed policy is the removal of stock options from the list of problematic non-employee director pay practices. This is welcome news for industries such as life sciences, where stock options may routinely be used for director pay.)

What's new is the broader definition of what constitutes a "pattern" of inappropriate pay. ISS may now act even if the concerning years are non-consecutive. This means companies should review director pay practices over multiple years and ensure the proxy clearly articulates:

- how director pay compares to peers,
- why the structure is appropriate, and
- why any unusual elements (e.g., retirement benefits or special equity awards) are justified.

Tighter Requirements Under the Equity Plan Scorecard (EPSC)

For equity plan proposals, ISS's updated EPSC approach includes two changes important for disclosure:

1. Companies must disclose cash-denominated limits applicable to non-employee director awards.
2. Even if a plan scores well overall, ISS may issue an "against" recommendation if the plan lacks sufficient "positive features" (e.g., minimum vesting periods, clear performance criteria).

Companies preparing an equity plan for a shareholder vote should ensure disclosures explicitly highlight the plan's structural strengths and address any areas where ISS might otherwise see insufficient safeguards.

A More Flexible Standard for Say-on-Pay Responsiveness

ISS's final rules take a more flexible view of what constitutes an appropriate response following a low say-on-pay vote (below 70% support). Importantly, even if a company does not receive direct investor feedback, meaningful engagement efforts may still be considered responsive, as long as the company clearly explains its outreach and the rationale behind any compensation changes or decision not to make any.

Changes in Schedule 13D and 13G filings can make it difficult for companies to identify and connect with the investors who actually drove the say-on-pay outcome. In some cases, the shareholders who cast influential votes may no longer hold meaningful positions by the time outreach begins or may not be open to engagement. Against this backdrop, investor silence should not be interpreted as a lack of effort by the company—sometimes it simply reflects an ownership base that is dynamic, dispersed, or difficult to access.

This update elevates the importance of thoroughly documenting engagement efforts and reflecting that narrative in the CD&A. Even outreach that results in limited or no investor feedback becomes relevant context. Companies should be prepared to disclose:

- who they attempted to engage,
- what topics were raised,
- what they heard (even if minimal), and
- how that feedback influenced subsequent decisions.

In practice, this gives companies more room to demonstrate good-faith responsiveness, while reinforcing the need for a transparent, well-documented engagement story in an increasingly complex ownership environment.

Preparing Now: Practical Steps for Companies

As companies are drafting their current proxies, consideration of ISS's new guidance can help reduce risk of adverse recommendations:

- Review five years of compensation and performance data to assess how the new PFP horizon will look through an ISS lens. If it appears that ISS would view the five-year PFP in a different light than using the historic three-year test, consider having a supplemental narrative about how the company performed over the longer time horizon.

- If time-based equity is a large part of the program, disclosures should emphasize rationale and if applicable, any longer-term vesting periods.

- Review director compensation over the past few years for any spikes or atypical practices; if they are detected, provide clear rationale for any out-of-the-ordinary years, not just the previous year.

- If an equity plan is up for shareholder approval, ensure that the related disclosure emphasizes positive features and provides for specific director award limits.

- Document shareholder engagement thoroughly—even "unsuccessful" outreach can help support a favorable responsiveness assessment.

ISS's final 2026 updates reflect a broader trend: increased emphasis on long-term alignment, transparent governance, and thoughtful shareholder engagement. Drafting disclosures that keep those changes in mind will better position companies for a successful proxy season.

About the Authors

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