GUNDERSON DETTMER

ISS and Goldman Sachs Retreat on Board Diversity

Posted in: Board Diversity, DEI, ISS, Proxy Advisors
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ISS 'Indefinitely Halts' Consideration of Diversity Factors in U.S. Director Election Assessments

On February 11, 2025, ISS announced that, in light of increased attention on diversity, equity and inclusion (DEI) practices in the U.S., it will "indefinitely halt consideration of certain diversity factors in making vote recommendations with respect to directors at U.S. companies under its proprietary Benchmark and Specialty policies. Specifically and for shareholder meeting reports published on or after February 25, **ISS will no longer consider the gender and racial and/or ethnic diversity of a company's board when making vote recommendations with respect to the election or re-election of directors at U.S. companies** under its Benchmark and Specialty policies. Assessments and vote recommendations on directors of U.S. companies will continue to be evaluated under the other considerations outlined in the Benchmark and Specialty voting guidelines (accessible here) including independence, accountability and responsiveness."

ISS's benchmark voting policy previously provided that, *with respect to gender diversity*, it would generally vote against or withhold from the chair of the nominating committee (or other directors on a case-by-case basis) at companies where there are no women on the company's board (subject to certain exceptions). *With respect to racial/ethnic diversity*, for companies in the Russell 3000 or S&P 1500 indices, ISS would generally vote against or withhold from the chair of the nominating committee (or other directors on a case-by-case basis) where the board has no apparent racially or ethnically diverse members (subject to certain exceptions).

The announcement notes that in the U.S., “there recently has been increased attention on diversity, equity and inclusion (DEI) practices, including the issuance last month of Presidential Executive Orders on DEI. **We anticipate that institutional investors and U.S. companies will have a range of perspectives on DEI, including whether and how companies can or should adapt their specific policies and practices to the evolving market and governmental activity**.”

There has been no similar announcement to date from Glass Lewis, the other leading proxy advisory firm.

In their 2025 U.S. proxy voting guidelines, both BlackRock and Vanguard adopted less prescriptive approaches to board diversity and disclosure, de-emphasizing demographic diversity characteristics such as gender, race and ethnicity relative to previous years.

Goldman Sachs Ends IPO Diversity Pledge Amid U.S. DEI Scrutiny

Also on February 11, **Goldman Sachs said it will no longer enforce a policy requiring companies to have at least two diverse board members, including one woman, before allowing them to go public in the U.S. or Western Europe**. This initiative was introduced in 2020, initially calling for just one diverse board member. At the time, the bank noted that more than 60 U.S. and European companies in the preceding two years had gone public without a woman or person of color on the board.

“As a result of legal developments related to board diversity requirements, we ended our formal board diversity policy,” Goldman spokesperson Tony Fratto said. “We continue to believe that successful boards benefit from diverse backgrounds and perspectives, and we will encourage them to take this approach.” The bank reportedly plans to continue its service of helping companies source diverse board candidates.

Diversity in Retreat

The announcements from ISS and Goldman Sachs follow the Fifth Circuit’s vacatur of the SEC’s approval of Nasdaq’s board diversity and disclosure listing rules last December, which had required most Nasdaq-listed companies to have (or explain why they do not have) at least two directors who meet Nasdaq’s definition of “diverse,” and to publish on an annual basis, in their proxy statement or on their website, aggregated board-level diversity statistics based on each director’s voluntary self-identified racial, ethnic, gender and LGBTQ+ characteristics using a standardized board diversity matrix template. Nasdaq subsequently announced it would not appeal the ruling, and the diversity listing rules have been removed from its rulebook.

The announcements also follow the issuance of DEI-related executive orders by the Trump administration last month (see *Ending Radical and Wasteful Government DEI Programs and Preferencing*, dated January 20, 2025; and *Ending Illegal Discrimination and Restoring Merit-Based Opportunity*, dated January 21, 2025) and a memorandum on DEI by the Department of Justice on February 5 (see *Ending Illegal DEI and DEIA Discrimination and Preferences*, dated February 5, 2025) which have private-sector application and potentially impact publicly traded companies.

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