



September 21, 2023

Global Policy Board
Institutional Shareholder Services
702 King Farm Boulevard, Suite 400
Rockville, MD 20850

Re: ISS 2023 Policy Survey

Dear Members of the Policy Board:

The Society for Corporate Governance (the “Society”) appreciates the opportunity to comment on Institutional Shareholder Services Inc.’s (“ISS”) 2023 Policy Survey (the “Survey”) to inform its policy development for the 2024 proxy season.

Founded in 1946, the Society is a professional membership association of approximately 3,700 corporate and assistant secretaries, in-house counsel, outside counsel, and other governance professionals who serve approximately 1,600 entities, including 1,000 public companies of almost every size and industry. The Society seeks to be a positive force for responsible corporate governance through education, collaboration, and advocacy. Our organization has more than 75 years of experience empowering professionals to shape and advance corporate governance within their organizations, on topics such as corporate governance, regulatory and legal developments, investor engagement, and environmental, social, and governance (“ESG”)/sustainability issues, and disclosure requirements. In this context, we are well-positioned to weigh in on the topics covered in the Survey and the potential implications of corresponding proposed policies.

Below are our comments on select issues encompassed in the Survey and related to ISS voting policies. Our comments are organized in four sections: I. Global Comments; II. Comments on Global Environmental and Social (“E&S”) Questions; III. Comments on Other Select Questions; and IV. Comments on the Misnamed “Global Board-Aligned Policy.”

I. Global Comments

The Society appreciates ISS’s continued effort to gather perspectives from market participants on various emerging topics through its annual survey. However, as detailed in this letter, we do not believe the approach reflected in the Survey questions and response options or the apparent policy changes underlying them will help investors make informed voting decisions – or voting decisions in the best economic interest of the beneficial holders of corporate securities. Therefore, we highlight here several overarching considerations that we believe should inform ISS’s evaluation of the survey responses, as well as its policy decisions and voting recommendations: (1) survey bias; (2) the widely divergent views on the relationship of discrete ESG topics to industry-specific financial performance; (3) continued and intensifying legal scrutiny, regulatory focus, and emerging compliance requirements on Survey topics (particularly relating to E&S topics) that differ across jurisdictions; and (4)

investors’¹ emphasis on issues (including E&S issues) that have a material impact on companies and their investors.

As further discussed below, we encourage ISS to carefully consider the implications of survey bias and to approach its policy formulation and voting recommendations for the upcoming proxy season in a manner aligned with a holistic analysis of these issues (including E&S topics) material to a subject company, rather than imposing a prescriptive, standardized, and “one-size-fits-all” approach.

Survey Bias Impacts Data Quality; Limits Ability to Draw Conclusions

The Society would like to note some of the places in which our members observed “survey bias” in the Survey questions. These questions will impact the quality of data gathered from respondents, undermining the integrity of any policies or recommendations that purport to rely on this data. Additionally, biased questions may discourage some recipients with valuable input from responding to a specific question or even the entire survey.

We offer the following illustrative examples where ISS’s own policy preferences appear to be expressed within the question’s wording or answer choices; the question or answer choices use leading language; or the question and/or responses include inherent presumptions:

- *Market-Specific Question 1 regarding U.S. Compensation - Non-GAAP Incentive Pay Program Metrics:* “A growing number of investors believe that disclosure of line-item reconciliation is needed to make an informed assessment of executives’ incentive pay.” This question illustrates a bias toward disclosure of line-item reconciliation and pressures investors to consider jumping on the “growing number of investors” bandwagon.
- *Global Environmental & Social Question 3:* “How does your organization consider such ‘double materiality’ in assessing E&S topics?” This question exhibits a bias toward double materiality by asking “how” rather than “whether” an organization uses a double materiality approach. In addition, this question includes as a response: “Materiality assessments should be limited to factors that can be expected to have a direct financial impact on the company in question and its shareholders, and in general, I don’t expect that environmental and social factors will have an impact on financial performance.” This response choice is compound. An investor may reasonably agree that materiality assessments should be limited to factors that can be expected to have a direct financial impact on the company in question but may not agree with the second part of that response if, in fact, they believe (as, in our experience, many investors do) that the materiality of E&S factors is a company-specific determination rather than a determination that can be made without regard to a company’s particular circumstances.
- *Global Environmental & Social Question 4:* “If there is evidence that an environmental or social risk may be material to a company -- such as presence of one or more significant controversies...” This question incorporates ISS’s own determination of what may constitute “significant controversies” as an indicator of evidence that an E&S risk may be material to the company.

¹ In this letter, the Society’s references to “investors” are generally references to the broader shareholder base, rather than investors who may have specialized information needs and focus areas.

- *Global Environmental & Social Question 6*: “Which guidelines, standards, and frameworks does your organization consider relevant to use when drafting (for issuers) /assessing (for investors) a company’s climate transition strategy or plan?” This question presumes all companies (regardless of their industry, business strategy, or other circumstances) develop or should be developing climate transition strategies or plans and that they do so with reference to third-party guidelines, standards, and frameworks such as those enumerated in the answer choices.

Going forward, more thoughtful drafting of survey questions is recommended to encourage constructive participation in the survey process and to increase the chances of generating meaningful results. As this year’s questions are already in the public domain, we urge ISS to review the responses to the survey cognizant that these biases and assumptions will necessarily impact the nature of the responses received and may not warrant reliance by ISS for purposes of updating its proxy voting guidelines.

The Survey Questions & Potential Underlying Policy Positions Disregard the Widely Divergent Views Among Investors & Other Stakeholders on ESG

As implied by Question 16 regarding the increased politicization of ESG, there is a lack of consensus among the general public and investors regarding ESG generally, as well as on discrete topics, which has given rise to Congressional inquiries, shareholder proposals from right-leaning organizations, outflows from ESG funds, and general societal contention over ESG. Fundamentally, there is widespread disagreement about the association between discrete ESG topics and corporate financial performance. Given these divergent viewpoints, ISS should not assume the role of a quasi-regulator in determining whether companies should disclose information about particular E&S topics and in determining which disclosure standards are satisfactory, particularly without regard to materiality as to any specific company.

Intensifying Regulatory Focus on E&S Topics and Emerging Requirements That Differ Across Jurisdictions

Regulators around the world are beginning to adopt, or are in the process of adopting, disclosure and reporting requirements, as well as standards for ESG oversight and controls. Where disclosure regimes have been formally adopted, regulators are continuing to develop compliance guidelines to assist companies in addressing and implementing these new requirements. Even where disclosure requirements have not been adopted, regulators have issued guidance and focused their enforcement efforts on many of the E&S topics covered in the Survey.

Moreover, in many instances, recently adopted or soon-to-be finalized regulations meaningfully diverge with respect to the approach, scope, and granularity.²

² For example, the United Kingdom and Australia have announced plans to release mandatory disclosure requirements that align with the final sustainability (IFRS S1) and climate-related (IFRS S2) disclosure standards issued by the International Sustainability Standards Board (“ISSB”). As is the case with governing laws in the United States, the ISSB standards use a “single materiality” approach, focused on providing information that is useful to “primary users of general purpose financial reports” (defined as existing and potential investors, lenders and other creditors). In contrast, under the European Commission’s first European Sustainability Reporting Standards (“ESRS”) for disclosure under the Corporate

Within the United States, legislative and regulatory developments related to ESG have become increasingly polarized at the state level. A number of U.S. states have enacted or proposed laws and regulations with divergent — and in some cases, conflicting — ESG-related goals. For example, recent state-level lawmaking has sought to prohibit or restrict the consideration of ESG factors by certain entities, such as state entities investing in public funds (*e.g.*, Arkansas and Kentucky) and financial institutions and other private sector companies that provide services to state entities (*e.g.*, the so-called “anti-boycott” laws enacted in Kentucky, Texas and West Virginia) or in the state (*e.g.*, Florida). In contrast, some state legislatures (*e.g.*, New York, California, and Connecticut) have proposed laws or policies that encourage or require the consideration and/or disclosure of ESG factors by private sector companies.

For these reasons, the Society agrees with ISS’s observation that regulations, standards, and practices vary across markets with respect to E&S and sustainability issues, but we urge ISS not to adopt policies that attempt to impose standardized “best practices” on companies, particularly with respect to E&S issues. First, as reflected in part by the divergent state statutes referenced above, there is no consensus over “best practices” on such issues at this time, nor is consensus expected in the near future, as regulatory expectations continue to rapidly evolve and influence market expectations and practices. Second, the Society believes that, especially in this shifting regulatory environment, it is critical for companies to have the flexibility to make disclosure and operational decisions that are appropriate in light of company-specific circumstances, including how to comply with regulatory requirements in their relevant jurisdictions.

Therefore, particularly with respect to E&S topics (as further discussed in Section II), the Society urges ISS to avoid adopting benchmark policies that are prescriptive or standardized. Instead, we believe that investors are best served if ISS provides guidance that permits and incentivizes companies to respond to E&S topics in a deliberative and holistic manner, taking into account the regulatory expectations in the company’s jurisdiction and industry, along with other relevant considerations and company-specific circumstances.

Investor Focus on Company-Specific Assessment of Material Issues

The Society believes that the Survey questions and responses should align with investors’ focus on issues that have a material impact on their investments. For example, BlackRock,³ Vanguard,⁴ and State Street⁵ have all articulated in their latest stewardship policy updates that they will engage in a

Sustainability Reporting Directive (“CSRD”), companies must apply a “double materiality” assessment. Unlike the “single materiality” analysis, companies reporting under the ESRS will be required to report both how E&S issues impact the company and how the company impacts people (not just investors, lenders and other creditors) and the environment.

³ See BlackRock, [BlackRock Investment Stewardship, Global Principles](#) (Jan. 2023) (“Shareholders should be able to vote on key board decisions that are material to the protection of their investment.”).

⁴ See Vanguard, [Proxy voting policy for U.S. portfolio companies](#) (Feb. 2023) (“A fund will vote case by case on disclosure-related management and shareholder proposals based on the materiality of environmental and social risks to a company.”).

⁵ See State Street Global Advisors, [Proxy Voting and Engagement Guidelines](#) (March 2023) (“To effectively assess the risk of our clients’ portfolios and the broader market, we expect our portfolio companies to manage risks and opportunities that are material and industry-specific and that have a demonstrated link to long-term value creation, and to provide high-quality disclosure of this process to shareholders...”).

case-by-case analysis of disclosure and/or other E&S proposals based on the company-specific materiality of the underlying risks. These investors have also indicated that management’s ability to identify and prioritize issues that are material to their specific company is a key reason that such investors have chosen to support management on E&S proposals, particularly proposals that are overly prescriptive or that address matters that are not material to the company.⁶

The focus on company-specific materiality is also reflected in ISSB’s final standards, which have been endorsed by regulators in many jurisdictions globally.⁷ While acknowledging that “[i]ndividual primary users may have different, and sometimes even conflicting, information needs and desires” and that their needs may evolve over time, ISSB clarified that the standards do “not aim to address speciali[z]ed information needs — information needs that are unique to particular users.” Instead, ISSB believes that sustainability disclosures should “meet the common information needs” of reasonably knowledgeable and diligent investors, lenders, and other creditors.⁸

For good reason, companies generally provide better risk oversight and higher quality disclosures on ESG issues that are material to their company. In contrast to an approach grounded in a company-specific materiality analysis, granular policies that encourage ESG disclosure to be made in an “one-size-fits-all” manner will likely produce “disclosure overload.”⁹ Disclosure of a significant volume of non-material information — much of which is not relevant to a company’s business or operations — reduces the quality and usefulness of the disclosure for investors. Additionally, corporate resources are limited and, particularly in light of corporations’ role as stewards of shareholder capital, corporations must be afforded the flexibility to determine whether disclosures (or other actions) regarding certain non-material topics warrant the expense involved.

For these reasons, the Society believes that ISS should recognize the importance of company-specific materiality analyses that consider geography, industry, investor base, customer base, operational risks, regulatory expectations, and legal requirements. We appreciate that an approach of making company-specific assessments could require the investment of additional resources by ISS; however, because the analysis of whether an E&S issue is material depends so much on company-

⁶ For example, BlackRock explained that its support for E&S shareholder proposals in 2022 declined from 45% in 2021, when requests “addressed material business risks or sought reports that would be useful to investors in assessing a company’s ability to create long-term value,” to 20% as a result of proposals becoming more prescriptive with little regard to company financial performance. See BlackRock, [Investment Stewardship Annual Report](#) at 90-91 (Dec. 2022).

⁷ On July 25, 2023, the International Organization of Securities Commissions called on its 130 member jurisdictions (including Australia, China, Japan, the UK and the U.S. and members of the EU) to consider the incorporation of the ISSB standards into sustainability reporting frameworks.

⁸ IFRS S1, paragraph B14 and Accompanying Guidance, IG3.

⁹ In response to the SEC’s request for comments on its proposed rule, “The Enhancement and Standardization of Climate-Related Disclosures for Investors” (see [Release Nos. 33-11042; 34-94478](#)), many commenters expressed concern that the lack of a materiality threshold would overload investors with immaterial, non-comparable, or unreliable data. See, e.g., [BlackRock](#) (“Investors on behalf of clients are not just looking for more data on climate risk, they need high-quality climate-related information...”); [T. Rowe Price](#) (“To require disclosure of immaterial information will be detrimental to investors, making it difficult for them to determine exactly what information, of the wealth of data presented, is in fact useful, relevant, and comparable across registrants. From an issuer perspective, preparing immaterial information will increase costs and divert attention and time from data that is material.”).

specific factors, ISS’s benchmark policy, in particular, should provide investors¹⁰ with the benefit of case-by-case analysis and should not take a prescriptive approach.

If ISS intends to adopt benchmark policies on these issues notwithstanding the significant concerns outlined above, it should at least solicit the feedback of investors and issuers on which specific issues are likely to be material to which industries and under what circumstances. **The Society is concerned that many of the Survey questions, including those specifically discussed below, fail to appropriately incorporate the critical consideration of materiality in addressing certain corporate disclosure and actions, and are likely to result in policies, or their application, which do not advance investor interests in exercising their franchise on ESG topics.** Therefore, in Sections II and III, we have included comments on specific questions.

II. Comments on Global E&S Questions

In addition to the overarching considerations in Section I above, the Society has the following specific feedback to the questions and response options in Section 4 of the Survey, “Global E&S Questions.”

Survey Question 1

In your organization’s view, on globally applicable environmental and social topics, particularly climate change, biodiversity, and human rights, should ISS benchmark policy and policy application aim for global consistency (to the extent possible), or should it take a market-specific approach where relevant due to differing country and/or region-specific standards, regulations or practices? Please respond with respect to each issue.

	Globally Consistent on Principles and Policy Application	Globally Consistent on Principles and Market Specific on Policy Application	Market Specific on Principles and Policy Application
Climate	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Biodiversity	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Human Rights	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

¹⁰ ISS’s role in providing such an analysis is even more crucial in light of proxy voting choice developments, whereby many more retail voters — who often do not have the resources to undertake such an analysis for themselves — may opt through a fund manager’s platform to follow one of ISS’s off-the-shelf voting policies.

Response

As discussed in Section I, companies face different compliance considerations across jurisdictions due to varied legal requirements¹¹ and sociopolitical considerations,¹² reflecting significant differences in markets, cultures, and values. Recognizing this basic tenet, ISS employs a market-specific benchmarking policy on many other topics. In some places, however, ISS's current voting policies on E&S issues suggest the existence of "market standards." For example, in its considerations of say-on-climate management proposals, ISS considers the extent to which the company's climate-related disclosures align with TCFD recommendations and "meet other market standards."¹³ However, "market standards" on ESG issues do not currently exist. **The Society believes that ISS should consider market-specific issues, both in developing and applying its policies on these enumerated E&S topics.**

In addition to market-specificity, ISS should consider industry specificity as it relates to policy application. Industries are differently situated in terms of the E&S issues most relevant to them, and they may be subject to industry-specific regulations that impact their consideration of these issues. In recognition of the inherent differences among industries, ISSB and other widely followed standard setters employ an industry-specific approach. These standards apply sector-specific guidance on a broad range of ESG topics. For example, the potential human rights concerns for the healthcare industry, which include privacy and healthcare accessibility,¹⁴ differ from the potential concerns in the agriculture sector, such as child labor.¹⁵

Therefore, the Society believes that a company-specific analysis is crucial when ISS makes its recommendations, and we support ISS's consideration of both market- and industry-specific factors in its principles and policy application. Moreover, ISS's principles and policy application should not attempt, *ultra vires*, to set global standards when regulators, investors, and other stakeholders have yet to align – and may not align, in light of different perspectives across jurisdictions.

¹¹ In addition to climate, governments have had for many years different laws relating to human rights. For example, the UK and Australia have enacted laws to prevent modern slavery that require certain disclosure and action on covered entities that do not apply to entities in other jurisdictions. UK's Modern Slavery Act 2015 requires commercial organizations to develop a slavery and human trafficking statement each year, which is expected to set out what steps companies have taken to ensure modern slavery is not taking place in their business or supply chains. Similarly, Australia's Modern Slavery Act 2018 requires entities to publicly report annually on the actions taken to prevent the risk of modern slavery occurring. See [Modern Slavery Act 2015](#) (UK Public General Acts, 2015 c. 30); [Modern Slavery Act 2018](#) (Federal Register of Legislation, No. 153, 2018).

¹² For example, foreign private issues can meet the diversity objective under Nasdaq's Board Diversity Rule with two female directors, or with one female director and one director who is an underrepresented individual (based on national, racial, ethnic, indigenous, cultural, religious, or linguistic identity in the country of the company's principal executive offices), or LGBTQ+. This differs from the requirement of two diverse directors for U.S. listed companies, in which one diverse director must self-identify as female, and the other director must self-identify as either a racial or ethnic minority or a member of the LGBTQ+ community.

¹³ ISS, [Proxy Voting Guidelines \(United States\)](#) at 66 (2023).

¹⁴ See, e.g., BSR, [10 Human Rights Priorities for the Healthcare Sector](#).

¹⁵ See, e.g., BSR, [10 Human Rights Priorities for the Food, Beverage, and Agriculture Sector](#).

Survey Question 3

A “double” or “dynamic” materiality approach that is focused both on effects on the company from external sources and on company’s externalities or impacts on the environment and society has been embedded in some regulatory regimes and corporate governance guidelines, such as the EU’s Corporate Sustainability Reporting Directive, the Global Reporting Initiative, and the OECD Corporate Governance Principles (2023 version). How does your organization consider such “double materiality” in assessing E&S topics?

- ☐ **Materiality assessments should be limited to factors that can be expected to have a direct financial impact on the company in question and its shareholders, and in general, I don’t expect that environmental and social factors will have an impact on financial performance.**
- ☐ **Materiality assessments should include the company’s expected impact on the environment and society, as externalities can be expected to impact the company’s financial performance in the medium- to long-term.**
- ☐ **Materiality assessments should include expected company impacts on the society and environment even if they are not expected to financially impact the company.**
- ☐ **Other (please specify)**

Response

The framing of this question seems to indicate that every company should consider “double materiality.” However, this approach is inconsistent with the regulatory regimes in many jurisdictions like the United States that currently use a single-materiality approach¹⁶ and jurisdictions that have endorsed or adopted the ISSB’s single-materiality standard.¹⁷ With its response choices, ISS overlooks the well-established U.S. Supreme Court definition of materiality that is foundational to U.S. securities laws – namely, that materiality relates to a substantial likelihood that a reasonable investor would find that information important in making an investing or voting decision with respect to a particular company, and not how the company may impact the investor.

Survey Question 4

If there is evidence that an environmental or social risk may be material to a company – such as presence of one or more significant controversies, identification of the risk as material by the company, or a clear link to that risk by the company’s business activities, what kinds of actions/disclosures do you consider it appropriate for investors to expect from the company to address the risk? (Choose all that apply)

- ☐ **Disclosure about company oversight of the risk.**
- ☐ **A recent company materiality assessment of the risk.**
- ☐ **Targets or actions to reduce material impacts of the risk.**

¹⁶ See, e.g., SEC, [Commission Guidance Regarding Disclosure Related to Climate Change](#) at 11 (Release Nos. 33-9106; 34-61469, Feb. 2010).

¹⁷ The International Organization of Securities Commissions (IOSCO), whose membership regulates more than 95% of the world’s securities markets, has endorsed the ISSB standards. Regulators across a number of jurisdictions have indicated their support for the ISSB, such as in Canada, where the Canadian Sustainability Standards Board (CSSB) was established to work with the ISSB to support the uptake of the ISSB standards. See Royal Bank of Canada, [ESG Reporting Standards Have Arrived: Here’s What You Need to Know](#) (June 2023).

- ☐ At least one board member with relevant experience related to the risk.
- ☐ Dedicated related board committee.
- ☐ Third-party audit or approval of materiality assessment of the risk.
- ☐ If relevant, scenario analyses, for example comparing company strategy to scenarios that scientists view as sustainable.
- ☐ Other (please specify)

Response

As a threshold matter, this question is vague and may result in answers that distort ISS policymaking. For example, the premise of the question – that there is “evidence” that “may be material” – relies on a speculative standard over an unclear horizon. Evidence that *may be* material is not the same as information that *is* material, which we believe should be the focus of ISS’s policymaking, particularly for U.S. companies.

Further, the examples of potentially material evidence used in the question ignore the analytical differences between “significant controversies” and “material risks.” Analysis of significant controversies is more dependent on the specific nature of the controversy and the risk of disclosure, whereas material risk and the analysis used are likely already required to be disclosed under many regulatory frameworks (*e.g.*, risk factors). Therefore, we suggest narrowing the question to only “risks that a company has identified as material.”

Moreover, this area is already the subject of intense regulatory focus. The SEC’s proposed climate-based disclosure rule would require issuers to disclose material climate-related risks and risk oversight processes, as well as Scopes 1 and 2 greenhouse gas emissions, and Scope 3 emissions (if material or if a related reduction target has been set). In addition, if a company uses climate scenario analysis, the SEC’s proposed rule would also require disclosure of such analysis.¹⁸ Financial regulators are also developing guidance around climate scenario analyses.¹⁹ If the SEC’s final rule does not include any of the foregoing mandates, that regulatory determination should be respected and should govern for purposes of ISS’s market-specific policy recommendations. **Therefore, we suggest adding the following response option: “Disclosures and/or actions required under applicable regulation, including potentially one or more of the above.”**

In addition, the broad framing of this question does not allow respondents to differentiate based on the nature of the risk or the horizon of implementing a response. For example, what is considered an appropriate response to an endogenous risk differs from exogenous risk response, and target-setting may be more appropriate where a company has control, but not with respect to a material risk where

¹⁸ See SEC, [The Enhancement and Standardization of Climate-Related Disclosures for Investor](#) (Release Nos. 33-11042; 34-94478, March 2022).

¹⁹ The Federal Reserve is conducting a pilot climate scenario exercise for six large bank holding companies, and the Climate-related Financial Risk Committee (“CFRC”) of the U.S. Financial Stability Oversight Council (“FSOC”) directed a work group to explore the use of scenario analysis by regulators and regulated firms. See FSOC, [Climate-related Financial Risk: 2023 Staff Progress Report](#) (July 2023). The International Swaps and Derivatives Association (“ISDA”) launched “A Conceptual Framework for Climate Scenario Analysis in the Trading Book” following a survey of ISDA’s members in 2022. The framework outlines 13 key considerations in developing an end-to-end approach to climate scenario analysis in the trading book. See ISDA, [A Conceptual Framework for Climate Scenario Analysis in the Trading Book](#) (July 2023).

company has little or no control.²⁰ Further, a company may not be in a position to implement some of these options now (as, among other things, established methodologies do not exist),²¹ but may be willing to adopt such a measure if and as methodologies mature and market consensus emerges and/or as their particular investor base desires. **Therefore, we suggest adding the following response option: “Disclosure and/or actions required under applicable regulation and other measures that are standard in our market.”**

Finally, as a governance matter, we do not agree that ISS should adopt any policy that encourages issue-expert directors or board committees dedicated to a single risk. Such a policy could put pressure on companies to place directors on their boards who possess narrow technical skills, rather than a broader perspective on risk oversight, with negative effects on board governance. Current disclosure requirements regarding risk oversight implicitly recognize the integrated nature of risk management oversight and would necessitate the disclosure of governance and oversight of climate and other E&S risks, if material.

Survey Question 5

In 2023, for boards of companies considered to be high emitters of greenhouse gases (GHGs), ISS benchmark policy considers a board to be materially failing in its risk oversight responsibilities if the company did not have an overall ISS assessment of at least “Meets Standards” on climate-related disclosure. A possible policy change that is being considered for the future would be to consider that each ISS “climate disclosure pillar” assessment – specifically “Governance,” “Strategy,” “Risk Management,” and “Metrics and Targets” – should individually be at the level of “Meets Standard,” as well as the overall assessment. Do you consider boards of such companies to be materially failing if not assessed to be at least “Meets Standards” on each ISS climate disclosure pillar – specifically “Governance,” “Strategy,” “Risk Management,” and “Metrics and Targets”?

- ☐ **Yes**
- ☐ **No**
- ☐ **Other (please specify)**

Response

Our understanding and knowledge of climate change risk and alternative energy sources are rapidly evolving, and there are wide variations in approaches to climate action across industries and individual companies. **Therefore, the Society continues to believe it is inappropriate for ISS to seek to indirectly regulate climate change issues by recommending votes against directors based on a series of subjective “check-the-box” practices.** It is not appropriate for such recommendations to depend on ISS’s subjective determinations about what constitutes proper corporate behavior in response to a complex and rapidly evolving topic like climate change. This is especially the case

²⁰ For example, under the GHG Protocol, a company accounts for 100% of the GHG emissions from operations over which it has control. A company can choose to define control either in financial or operational terms. See [GHG Protocol, Corporate Accounting and Reporting Standard](#), Chapter 3.

²¹ The SEC acknowledges in its proposed climate-based disclosure rule the “evolving nature of GHG emissions calculations” and the “evolving nature of the science and methodologies measuring [climate change’s] economic impacts.” See SEC, [The Enhancement and Standardization of Climate-Related Disclosures for Investor](#) at 226, 330 (Release Nos. 33-11042; 34-94478, March 2022).

because a check-the-box approach fails to take into account company-specific facts and circumstances (including company size and maturity), applicable laws and regulations across different states/jurisdictions, and market practices.

Adding a “Meets Standards” designation for each ISS climate disclosure pillar would represent an unwarranted further expansion of ISS’s climate benchmarking policy. Such an expansion not only assumes — incorrectly — that there are sufficiently standardized, comparable, and measurable practices across companies, but that such practices are standardized, comparable, and measurable on each individual pillar. **Therefore, we urge ISS not to take another step in an unproductive direction by expanding its current climate benchmarking policy.**

Survey Question 6

Which guidelines, standards, and frameworks does your organization consider relevant to use when drafting (for issuers) /assessing (for investors) a company’s climate transition strategy or plan? (Choose all that apply)

- ☐ **Investor Climate Action Plans (ICAPs) Expectations Ladder**
- ☐ **IIGCC guidelines**
- ☐ **SBTi guidelines**
- ☐ **TCFD recommendations**
- ☐ **CA100+ Benchmark**
- ☐ **CDP (formerly the Carbon Disclosure Project)**
- ☐ **Glasgow Financial Alliance for Net-Zero**
- ☐ **ISO Net Zero guidelines**

Response

While the Society supports global frameworks that help issuers and investors alike make informed decisions, this question presumes that all companies are or should be drafting climate transition strategies or plans and must do so with reference to third-party standards or frameworks (presumably selected from among those listed in the response). Without regard to climate transition strategies or plans specifically, many companies consider a range of frameworks and guidance to inform their ESG-related disclosures, risk oversight, and strategic decisions. According to Deloitte’s Sustainability Action Report, a majority of respondents (executives at publicly owned companies with a minimum annual revenue requirement of \$500 million or more) acknowledged leveraging multiple standards or frameworks for ESG disclosures, including TCFD (56%), SASB (55%), GHG Protocol (50%), IIRC (48%) and GRI (47%).²² However, if they draft one, companies must ultimately design their climate strategy or plan based on a holistic assessment of their overall business strategy, including in compliance with emerging and evolving regulatory requirements. Notably, ISS’s question does not acknowledge the antitrust concerns raised in the United States with respect to some of the guidelines or alliances enumerated in the question, or the legal, regulatory, and/or litigation risks that could be associated with making certain climate-related commitments.

²² See Deloitte, [Sustainability Action Report: Survey findings on ESG disclosure and preparedness](#) at 9 (Dec. 2022). See also FERF/PwC, [Bringing the ESG Ecosystem to Life](#) at 8 (Sept. 2021), which found that many of the largest U.S. companies utilized multiple frameworks for their ESG reporting including SASB (73%), TCFD (58%), GRI (62%), CDP (46%), IIRC (85), UN SDGs (33%), CDSB (6%), and other (21%).

With this question, the Society believes that ISS risks adopting policy positions that assume climate change is generally material without regard to company-specific circumstances and then oversimplifies or seeks to standardize the process of climate transition planning. The question further omits any reference to current legal concerns and forthcoming regulatory requirements.

Survey Question 16

How tolerant would you be of a company’s reduction in transparency that resulted from risks from increased politicization of “ESG”?

- ☐ **Risks from political threats are a bigger risk – I would be tolerant with lack of transparency on sensitive topics.**
- ☐ **Risks from lack of transparency are greater – I would not be tolerant of reductions in transparency.**

Response

The Society believes that this question and its response options, as drafted, are likely to produce poor Survey responses, which may in turn distort ISS’s policy decisions. The question refers to a reduction in “transparency,” without clarification. Some respondents may interpret “reduction in transparency” as equivalent to a reduction in the volume of disclosure. A company may choose to make more streamlined disclosure as part of an intentional effort to reduce information overload and increase focus on materiality. As discussed in Section I, avoiding the disclosure of non-material information is likely to increase the quality and usefulness of such disclosures for investors. On the other hand, some respondents may interpret the question as a reduction in clarity on a company’s approach to issues that are material to the company, in which case their answers might be different.

In addition, the references to “political threats” and “increased polarization” are vague and open to multiple interpretations. Some may interpret these phrases to mean political viewpoint-based engagements or criticisms from certain politicians and/or other stakeholders. A respondent with such an interpretation would likely answer the question differently from one who interpreted these phrases to mean inability to comply with existing law and consideration of liability arising from meritorious lawsuits.

III. Comments on Other Select Questions

Market Specific Question 1

Should companies disclose a line-item reconciliation of non-GAAP adjustments to incentive pay metrics in the proxy statement?

- ☐ **Yes, line-item reconciliation should always be disclosed whenever non-GAAP metrics are used. Sometimes, the disclosure is needed only when the adjustments significantly impact payouts and/or where non-GAAP results significantly differ from GAAP.**
- ☐ **No, such disclosure should not be routinely expected.**
- ☐ **It depends on other factors (please explain).**

Response

The Society is concerned that ISS intends to adopt a standardized policy on this topic, which requires a company-specific analysis. First and foremost, investors already have the protection of the

SEC, which has been actively focused on regulation, guidance, and enforcement surrounding non-GAAP metrics over the past decade. In December 2022, the SEC updated its 2016 Non-GAAP Financial Measures C&DIs in 2016, and in 2020, the SEC issued Release No. 33-10751, which also provided guidance on non-GAAP measures.²³ The appropriateness of non-GAAP disclosures has also been a focus area of SEC's enforcement actions. The Society believes it is inappropriate for ISS to step in as a quasi-regulator in this space.

Additionally, investors already provide feedback to companies on incentive pay metrics through off-season engagement and their votes on say-on-pay resolutions. Data from the 2023 proxy season suggests that companies are addressing any shareholder concerns about these metrics, as average say-on-pay support remained high.²⁴ **For these reasons, the Society urges ISS to refrain from developing a policy on this topic.**

Global Governance Question 1

Assuming full disclosure of relevant information by the company, which of the following best describes your organization's view of professional service relationships involving directors or members of their families? Please select all that apply.

- ☐ **The current policy is appropriate: if a director or director's family member is employed by a firm which provides professional services to the company in excess of the current de minimis amount, the director should be deemed non-independent. The director may (for example) be involved in future board deliberations over whether to expand the services provided by the firm in question.**
- ☐ **The current policy is basically appropriate, but the thresholds for the de minimis amount should be increased.**
- ☐ **It would be appropriate to treat employment of a director's family member who does not share a household with the director, differently from employment of the director or director's spouse or other close family members who share a household with the director.**
- ☐ **A director or director's family member's employment by a professional services firm does not raise concerns as long as the director or family member is not involved in the provision of services to the company and does not supervise employees who are involved.**
- ☐ **A director or director's family member's employment by a professional services firm does not raise concerns as long as the director or family member is employed in a practice area that provides no services to the company.**
- ☐ **A director or family member's employment by a professional services firm does not raise concerns if the director or family member does not provide services to the company or supervise employees who are involved, and the director or family member is a salaried employee of the firm rather than a revenue-sharing partner.**
- ☐ **Other (please explain)**

²³ See [Non-GAAP Financial Measures](#) (Dec. 2022) and [Release No. 33-10751](#) (Feb. 2020).

²⁴ Specifically, overall support levels for say-on-pay voting averaged 88% among the S&P 500 and 90% among the Russell 3000; after a significant increase in failed votes in prior years, failed votes decrease by approximately one third. See Sullivan & Cromwell LLP, [2023 Proxy Season Review: Part 2](#) (Sept. 2023).

Response

The Society believes that the current policy is appropriate, but the thresholds for the *de minimis* amount should be increased. In addition, consistent with existing policies,²⁵ it is appropriate to treat the employment of a director's family member who does not share a household with the director, differently from the employment of the director or director's spouse or other close family members who do share a household with the director.

IV. Comments on the Misnamed "Global Board-Aligned Policy"

While the Survey does not include questions about the naming of ISS's specialty policies, the Society would like to reiterate our serious concerns over ISS's new "Global Board-Aligned Policy," which ISS announced in March 2022 after a group of Republican state attorneys general raised questions about how proxy advisory firms were advising state pension funds.

The name of this ISS policy misleadingly implies that its voting recommendations will align with corporate board recommendations on issues covered by the policy. In fact, subject to one exception, the recommendations of ISS's "Board-Aligned Policy" on Corporate Governance, Compensation, Capital/Restructuring issues (which make up the bulk of the policy recommendations) mirror those of the standard Benchmark Policy. This is the case, for example, with ISS's recommendations on board gender and racial/ethnic diversity, independent board chair proposals, and other corporate governance issues; equity plans, employee benefit and stock plans, and director and executive compensation issues; and dual-class share structures, M&A, and other capital and restructuring issues. The sole substantive exception relates to board climate accountability, which is not included in the new policy. We and others²⁶ who have analyzed the policy contents – in lieu of simply trusting the ISS name of the policy to be descriptive of its contents – believe that this "Global Board-Aligned Policy" is misnamed and should be changed prior to the 2024 proxy season to avoid further confusing investors in the exercise of their proxy voting franchise.

We also believe that this "board-aligned" name is not consistent with the intent of SEC Rule 14a-9, which prohibits any solicitation from ". . . containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact or which omits to state any material fact necessary in order to make the statements therein not false or misleading . . ." We also believe that this policy name is inconsistent with the intent of the SEC's Names and Marketing rules for investment companies and investment advisors.

As ISS is aware, the Society shared our concerns about this policy in an April 2022 letter.²⁷ While ISS so far has not acknowledged receipt of our letter, the Society would be happy to engage with ISS and offer feedback on alternative names for this policy.

²⁵ See, e.g., Nasdaq, [Rule 5605\(a\)\(2\)](#) (defining "Family Member" as "a person's spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such person's home."); NYSE, [Section 303A.02](#) (defining "immediate family member" as "a person's spouse, parents, children, siblings, mothers and fathers-in-law, sons and daughters-in-law, brothers and sisters-in-law, and anyone (other than domestic employees) who shares such person's home.").

²⁶ See Perkins Coie, [ISS Announces New "Board-Aligned" Voting Policies](#) (March 28, 2023).

²⁷ See [Society Letter re ISS Global Board-Aligned Policy](#) (April 7, 2022).

As always, we appreciate the opportunity to provide comments on ISS voting policies. We would be pleased to make ourselves available for further engagement or feedback on these proposed policies to help identify reasonable ways to address the issues we have identified.

Sincerely,

A handwritten signature in blue ink, consisting of a stylized 'R' followed by a horizontal line.

Randi Morrison
Senior Vice President & General Counsel
Society for Corporate Governance

A handwritten signature in black ink, consisting of a stylized 'C' followed by a horizontal line.

C. Edward Allen
Vice President, Policy & Advocacy
Society for Corporate Governance