California Corporate & Securities Law

Has ISS Moved From Advice To Advocacy?

By Keith Paul Bishop on January 19, 2012

Last November, I joined Professor Stephen Bainbridge (UCLA Law School) and James Copland (Director, Center for Legal Policy at the Manhattan Institute) in submitting this comment letter opposing ISS' proposal to change its case-by-case approach to stockholder proposals with respect to disclosure of corporate political spending. Much like Captain Louis Renault, I was "shocked, shocked" when ISS ignored our advice and decided that it would generally recommend a "for" vote for these proposals.

Having decided on a one-size-fits all approach, ISS recently announced that it will be hosting a webinar next week on political spending proposals. In this case, I was truly surprised at the lineup that ISS chose for this topic:

- Bruce Freed, President, Center for Political Accountability;
- Timothy Smith, Senior Vice President, Walden Asset Management; and
- John Keenan, Corporate Governance Analyst, American Federation of State, County, and Municipal Employees.

This is hardly a balanced panel. A recent study by the Manhattan Institute found that 92% of all political spending resolutions submitted to the nation's largest companies between 2008 and 2011 were sponsored by funds affiliated with labor unions or social and religious institutions. The organizations to be represented at ISS' webinar, *and they are the only organizations to be represented,* fit this description precisely.

AFSCME is, of course, a labor organization. Walden Asset Management describes itself as "a leader in socially responsible investing". The CPA is an organization that works with advocates stockholder proposals with respect to these proposals.

The composition of ISS' panel raises the question of whether ISS has moved from providing advice to advocacy. It also raises very serious questions for those who pay ISS for proxy advisory services. Does ISS provide neutral and balanced advice? Is a one-size-fits-all approach consistent with the fiduciary duty of fund advisors and others who hire ISS? If ISS isn't performing a case-by-case analysis, what exactly is the advice that they are being paid to provide? Is one size-fits-all advice really appropriate for every issuer?

Last year, the Securities and Exchange Commission took note of concerns about one-size-fits all advice from proxy advisory firms, noting that "a policy that would benefit some issuers, but that is less suitable for other issuers, might not receive a positive recommendation, making it less likely to be approved by shareholders." See Concept Release on U.S. Proxy System. The SEC also noted that this isn't just a problem for U.S. proxy participants. In Corporate Governance and Financial Crisis, the Organization For Economic Co-Operation and Development, a group of 30 democratic countries, expressed concern that there is a danger of one-size-fits-all voting advice.

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