

ISS COVID-19 Compensation Policies FAQ

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Institutional Shareholder Services (ISS) recently released its [response to Frequently Asked Questions](#) (FAQ) on the impact of the COVID-19 pandemic and its U.S. Compensation Policies. The latest FAQ builds on [ISS' policy guidance](#) provided in April 2020, and provides forthcoming advice to issuers dealing with the economic ramifications of the pandemic and its effects on compensation plans. While the FAQ is intended to address companies covered under ISS' U.S. policy, we anticipate the approach for Canadian issuers will not be dramatically different.

Key Highlights

ISS reiterated its stance of closely scrutinizing the following actions taken in response to the impact of COVID-19 on compensation plans:

- Adjustments leading to above-target incentive payouts
- Adjustments to “in-progress” LTIP granted in 2018 and 2019
- One-time awards lacking long-term performance vesting conditions

Companies that make pandemic-related adjustments to the compensation program are encouraged to explain in their disclosure the following non-exhaustive list of items, as applicable:

- Specific challenges to the business resulting from COVID-19 and why the original plan design or performance targets were unsuitable
- Why the company took the adjustment approach over alternatives (e.g., mid-year changes vs. one-time discretionary awards)
- Specifics of any performance conditions for one-time awards
- What the unadjusted incentive payout would have been, and how the adjusted payout appropriately reflects both executive and company performance
- How the decision furthers investors' interests
- Details on 2021 incentive design, if adjustments are made

Investors and ISS are likely to find boilerplate language (e.g., “retention concerns”) and generic descriptions (e.g., “strong leadership during challenging times”) insufficient.

Nonetheless, ISS acknowledged the “extraordinary” impacts of the current pandemic and, subject to disclosure of compelling rationale, may take a softer stance towards the following actions:

- Positive adjustments to the STIP or payments of one-time discretionary bonus
- Setting or lowering performance targets to below prior year's
- Modest changes to 2020 LTIP design, such as the movement to relative or qualitative metrics when long-term financial forecasting is challenging

Conclusion

ISS' latest guidance suggests an openness to providing relief to issuers making certain adjustments to the compensation plan and reinforces an expectation of more fulsome disclosure of rationale. The onus remains on companies and boards to demonstrate the COVID-19 pandemic constitutes an "extraordinary" event and justify the actions taken. To this end, companies considering (or having already made) adjustments to their compensation plans will want to carefully consider the diligence of their year-end process, and the rationale and communication of the final pay decision to stakeholders at large.

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