

## Corporate & Financial Weekly Digest

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### ISS Publishes FAQs for Policies on Proxy Voting Recommendations

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On December 14 and January 4, Institutional Shareholder Services (ISS) published FAQs regarding its policies for determining proxy voting recommendations for meetings to be held on or after February 1. As described in the December 3, 2010, edition of [Corporate and Financial Weekly Digest](#), ISS previously published its updated recommendation policies for the 2011 proxy season. The FAQs addressed ISS policies related to, among other things, executive compensation, director elections and other corporate governance matters, including the following:

#### *Executive Compensation*

- While ISS reiterated its position that it will generally recommend that shareholders vote for annual advisory votes on compensation, ISS clarified that a recommendation by management that shareholders approve say-on-pay votes biennially or triennially would not trigger a negative recommendation for other proxy proposals.
- ISS provided a complete list of “egregious” pay practices that are likely to result in a recommendation by ISS that shareholders vote against (or withhold votes for) say-on-pay proposals.
- ISS addressed whether potentially problematic compensation practices, particularly in the context of accelerated vesting of equity compensation upon the occurrence of a change in control, would be “grandfathered” in ISS’s assessment of say-on-pay proposals. ISS noted that, while it will consider existing executive compensation agreements and commitments as part of its “holistic” approach to evaluating say-on-pay proposals, new agreements and amendments to, or extensions of, existing agreements that perpetuate problematic pay practices are the most problematic and will receive the greatest degree of scrutiny. However, automatically renewing or “evergreen” compensation agreements will not be subject to this greater scrutiny. ISS also indicated that equity plans with liberal definitions of “change in control,” which are coupled with a provision for full vesting (i.e., single-trigger) upon the occurrence of a change in control are most likely to receive a negative recommendation.
- ISS provided guidance regarding its analysis of “golden parachute” proposals in the context of its policies governing say-on-pay votes and stated it did not have a policy on

the inclusion of the golden parachute disclosure in annual meeting proxy statements, but where included, it would be weighed by ISS on the say-on-pay recommendation.

### *Board Policies*

- ISS clarified that where a board is classified and a particular director is not up for election, governance issues related to such director (e.g., poor attendance) would not result in a recommendation that shareholders vote against (or withhold votes for) all nominees up for election at the meeting. However, ISS noted that in egregious circumstances, such as where problematic pay practices exist and no member of the compensation committee is up for election or where a company experiences continued material weakness in its internal controls and no audit committee member is up for election, ISS will recommend that shareholders vote against (or withhold votes for) all nominees.
- ISS clarified its position that it will recommend that shareholders vote against (or withhold votes for) director nominees where a “poison pill” contains so-called “dead hand” or “slow hand” provisions, which limit the ability of new directors to terminate the poison pill, and only permits such termination by continuing directors. ISS also provided sample disclosure for companies to include in proxy statements to provide for a vote on a poison pill at a subsequent meeting, which, in certain circumstances, would avoid a negative recommendation from ISS.
- ISS answered questions regarding its evaluation of board responsiveness to shareholder proposals, explaining, among other things, that “responsiveness” means either implementing a shareholder proposal or submitting the matter to a shareholder vote on the next annual ballot (if shareholder approval is necessary). ISS also clarified that it will provide withhold recommendations if a company fails to respond to a majority-approved shareholder proposal, even if the proponent of the proposal is satisfied with any action (or inaction) taken by the company. The FAQs also covered issues related to proposals seeking to change voting thresholds or the requirements for shareholders to call a meeting.
- ISS clarified that it uses its definition of “independent outside director” for assessing whether a board is “majority independent” and that a board comprised of 50% independent outside directors would not be considered a majority independent board. ISS also provided sample disclosure for companies that intend to add an independent director as well as sample disclosure for use when an affiliated outside director is stepping down from a committee. ISS also provided guidance regarding its views of professional and transactional relationships between directors and the issuer as they relate to ISS’s assessment of board independence.
- ISS answered questions regarding the competence of directors, focusing on issues related to meeting attendance and the determination of whether a particular director is “overboarded.”

To view the complete text of ISS’s FAQs regarding its executive compensation policy, click [here](#).

To view the complete text of ISS’s FAQs regarding its audit/board policy, click [here](#).

In addition to the FAQs summarized above, ISS issued FAQs related to its capital/restructuring policy, which can be viewed [here](#).

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