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ISS Publishes Updated Policies for Proxy Voting Recommendations

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On November 19, Institutional Shareholder Services (ISS) published updated policies for determining its proxy voting recommendations for meetings to be held on or after February 1, 2011. ISS's policy updates for 2011 include the following:

Executive Compensation

- ISS has adopted a new policy regarding the frequency of "say on pay" advisory votes. ISS will generally recommend that shareholders vote for annual advisory votes on compensation. In ISS's view, having say on pay votes every two or three years (as permitted under the recently adopted Dodd-Frank Wall Street Reform and Consumer Protection Act) would make it difficult to create meaningful and coherent communication between issuers and their shareholders with respect to executive compensation.
- ISS has revised its list of "egregious" pay practices that, by themselves, are generally sufficient to warrant a recommendation that shareholders vote against (or withhold votes for) say on pay proposals, equity incentive plan proposals and the election of compensation committee members. ISS will consider the following problematic pay practices to be "egregious": (1) re-pricing or replacing out-of-the-money stock options or stock appreciation rights; (2) excessive perquisites or tax gross-ups; and (3) new or extended agreements that provide for change in control payments exceeding three times base salary and the officer's average, target or most recent bonus, or change in control severance payments without involuntary job loss or substantial diminution of duties, or change in control payments with excise tax gross-ups. Whereas, in the past, ISS has accepted commitments from issuers to eliminate problematic pay practices going forward (precluding a vote recommendation from ISS), ISS will no longer accept such commitments, and encourages companies to adopt forward-looking policies to address problematic pay practices.
- ISS has adopted a new recommendation policy with respect to compensation packages triggered by a change in control. Although such recommendations will be evaluated on a case-by-case basis, the following practices may result in a recommendation to vote against so-called "golden parachute" provisions (under the Dodd-Frank Act, a separate advisory vote on "golden parachute" compensation is required in connection with a shareholder vote in an M&A transaction): (1) recently adopted or materially amended

agreements that include excise tax gross-up provisions or single triggers; (2) single-trigger payments that will happen immediately upon the occurrence of a change in control, despite an executive's failure to achieve performance goals; (3) single-trigger vesting of equity based on shareholder approval of a change in control (rather than the consummation of the transaction); (4) potentially excessive severance payments; (5) golden parachute packages that are so attractive as to influence transactions that may not be in the best interests of shareholders; (6) unusual or outsized payments or option grants prior to a merger; (7) the company's assertion that a proposed transaction is conditioned on shareholder approval of the golden parachute advisory vote.

Elections and Voting

- ISS generally recommends that shareholders vote against individual directors who attend less than 75% of board and committee meetings without a valid excuse. Although ISS previously accepted either public or private disclosure explaining excessive absences, ISS's updated policy removes the option of privately disclosing an excuse. Instead, ISS will recommend voting against (or withholding a vote for) any director who failed to attend at least 75% of meetings, unless the company discloses in its proxy statement or other public filings the reasons for the director's absences. Generally, acceptable reasons include medical issues, family emergencies and missing only one meeting if the director's total service was three meetings or fewer.
- ISS modified its policies to provide that it will recommend shareholders vote against (or withhold votes for) all incumbent directors if the board failed to act on (1) a shareholder proposal that was approved by a majority of the shares outstanding in the previous year and (2) a shareholder proposal that was approved by the majority of shares cast in the last year and one of the two previous years (rather than the previous two consecutive years, under ISS's former policy).
- In recognition of potential abuses of the right of shareholders to act by written consent, particularly in hostile situations, ISS will consider on a case-by-case basis shareholder proposals to provide shareholders with the ability to act by written consent if the issuer has the following governance and anti-takeover provisions: (1) an unfettered right for shareholders to call special meetings at a 10% threshold, (2) a majority vote standard in uncontested director elections; (3) no non-shareholder approved poison pill; and (4) an annually elected board. Previously, ISS's policy was to generally recommend that shareholders vote for shareholder proposals to enable shareholders to vote by written consent.

Authorized Capital Stock; Reverse Stock Splits

- ISS has revised its policies to emphasize the importance of adequate disclosure in proxy statements soliciting shareholder approval of an increase in the number of authorized shares of common or preferred stock. In formulating a recommendation to vote for or against such proposals, ISS will now take into account whether the issuer has disclosed, at a minimum, the specific and severe risks to shareholders of not approving the increase in authorized shares or reverse stock split.

- ISS has also indicated that it will recommend that shareholders vote against proposals to increase the number of authorized shares if a proposal to conduct a reverse stock split is included on the same ballot. Similarly, ISS will recommend that shareholders vote against proposals to conduct reverse stock splits without a proposal to proportionately reduce the number of shares that the issuer is authorized to issue, unless a stock exchange has provided notice to the issuer of a potential delisting or the effective increase in authorized shares resulting from the reverse stock split is less than the allowable increase calculated in accordance with ISS's increase in authorized shares policies.

Application of ISS's U.S. Governance Policies to Foreign Issuers

- Although ISS currently applies its benchmark policy based on an issuer's country of incorporation, ISS has revised its policy to apply its U.S. policy to issuers that are incorporated outside of the United States, but file reports with the U.S. Securities Exchange Commission on forms 10-K, 10-Q and Schedule 14A. Accordingly, ISS will consider issuers incorporated outside of the United States but listed on U.S. exchanges to be domestic issuers.

To view the complete text of ISS's U.S. Corporate Governance Policy 2011 Updates, click here.

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