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## ISS Follows Glass Lewis and Issues COVID-19 Public Company Executive Compensation Guidance

By Greg Gautam

As noted in my [S&W Benefits Update](#) from Tuesday, Glass Lewis (“GL”) recently provided guidance on its approach to balancing management and board executive compensation decisions in response to the COVID-19 pandemic. Yesterday Institutional Shareholder Services (“ISS”) followed GL and released its own guidance, emphasizing a case-by-case approach in analyzing company decisions in response to the pandemic. While I encourage you to read the entire [ISS memorandum](#), ISS addresses two topics related to executive compensation, the adjustment of performance goals and stock option repricings. Below we note a few key concepts from the ISS guidance:

- ISS’ general view is that decisions to modify and adjust 2020 performance goals and targets for 2020 annual bonus compensation will be analyzed and addressed by shareholders and proxy advisory firms at the 2021 annual meetings but that companies are encouraged by ISS to provide contemporaneous disclosures to shareholders that describe the rationale for changes.
- With respect to midcycle long-term incentive programs, ISS reiterates that it generally is not in favor of midcycle adjustments to goals and targets. For companies that make midcycle changes, ISS will evaluate those decisions on a case-by-case basis to determine if the Compensation Committee’s decision was appropriate and if the disclosure to shareholders was adequate.
- Structural changes to long-term incentive compensation programs will be evaluated using ISS’ existing FAQs and guidance.
- With respect to stock option repricings, ISS will continue to scrutinize repricings that are done without shareholder approval (or without shareholder ratification in a timely fashion).
- For companies that ask their shareholders to approve repricings at their 2020 annual meetings, ISS will apply its existing case-by-case analysis and, for example, generally recommend opposing a repricing proposal that occurs within 12 months of a significant drop in the company’s stock price. ISS will also take into account: (i) whether the repricing is value neutral to the shareholders; (ii) whether forfeited options are added back to the plan share pool; (iii) whether additional vesting conditions are added to the repriced awards; and (iv) whether executives and board members participate in the program.

Like the GL guidance, ISS’ perspective on compensation decisions during the COVID-19 pandemic is certainly welcome. From the ISS perspective it is clear it will continue to apply a case-by-case analysis

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and that companies undertaking compensation action in response to the pandemic ought to consider a robust and contemporaneous disclosure.



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