Concurrent Session: General Counsel Issues

Thursday, March 23rd
3:15pm – 4:30pm
La Quinta Resort & Club, La Quinta, California

Moderator:
Kay Tidwell, EVP & General Counsel, Hudson Pacific Properties, Inc.

Panelists:
Edmund DiSanto, EVP, CAO & General Counsel, American Tower Corporation
Thomas Leanse, Sr. EVP, Chief Legal Officer & Secretary, Macerich
Troy McHenry, EVP, General Counsel & Corporate Secretary, HCP, Inc.

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PRESS RELEASES (/PRESS-RELEASES)

POE LEADS BIPARTISAN LEGISLATION TO CURB ABUSIVE ADA LAWSUITS AND IMPROVE THE ADA (/press-releases?ID=12127D3F-FE87-48D9-8143-E79E30CAF3DA)

January 25, 2017

WASHINGTON, D.C.—Today, **Congressman Ted Poe (TX-02)** along with **Reps. Peters (D-CA)**, **Bera (D-CA)**, **Calvert (R-CA)**, **Speier (D-CA)** and **Conaway (R-TX)** introduced H.R. 620, The bipartisan *ADA Education and Reform Act of 2017*. This legislation will curb frivolous lawsuits filed by cash-hungry attorneys and plaintiffs that abuse the ADA (Americans with Disabilities Act).

“The ADA is a vital law that is meant to make American businesses more accessible to the disabled. But the integrity of this important law is being threatened. The vast majority of small businesses in America strive to serve their customers to the best of their ability – relying on the ADA as another tool to help ensure that customers with disabilities can enjoy the services that they provide,” **said Congressman Poe**. “Most of these business owners believe that they are in compliance with the ADA and have even passed local and state inspections. However, despite their best attempts, certain attorneys and their pool of serial plaintiffs troll for minor, easily correctable ADA infractions so they can file a lawsuit and make some cash. There is a now whole industry made up of people who prey on small business owners and file unnecessary abusive lawsuits that abuse both the ADA and the business owners. This bill will change that by requiring that the business owners have time to fix what is allegedly broken. If they fail to correct the infractions the plaintiff retains all of their rights to pursue legal action. This legislation restores the purpose of the ADA: to provide access and accommodation to disabled Americans, not to fatten the wallets of attorneys.”

"The goal of the Americans with Disabilities Act is to provide access for the disabled – it’s not to give unscrupulous trial lawyers the opportunity to abuse small businesses,” **said Rep. Calvert**. “California has become ground zero for abusive ADA lawsuits and I have heard from many of our job creators who have fallen victim to abusive ADA lawsuits that are not aimed at improving access for the disabled. Protecting small businesses from abusive lawsuits and ensuring disabled Americans have adequate access are not mutually exclusive goals.”

"The Americans with Disabilities Act created a necessary and commonsense framework to help remove barriers and ensure every American has access to public and private spaces," **said Rep. Peters**. "However, unlike other federal laws, when businesses are out of compliance with ADA rules, there is no grace period for them to fix problems with their properties. As a result, well-intentioned small business owners are targeted with predatory lawsuits that don't allow them to make changes to their stores or workspaces before they get buried with legal fees. This bipartisan bill gives businesses time to make necessary changes before they are subject to litigation. By reducing the burden on well-intentioned small business owners, we can focus on holding bad actors accountable and small business owners can spend money improving access instead of on legal fees."

“The Americans with Disabilities Act has made tremendous progress in increasing accessibility. Like so many good things, however, bad actors are taking advantage of ADA by filing frivolous lawsuits that have disastrous unintended consequences on local, small businesses,” **said Congressman Mike Conway.** “Predatory attorneys who often times don’t even live in the same state are using Google Earth to find minor ADA violations, and slapping devastating lawsuits on local small businesses who thought they were in compliance with the law without giving them an opportunity to fix the infraction. This practice helps no one but lawyers looking to make a quick buck, and I look forward to working with my colleagues to ensure that this legislation becomes law.”

Supporting Groups

American Hotel and Lodging Association, American Resort Development Association, Asian American Hotel Owners Association, Building Owners and Managers Association (BOMA) International, CCIM Institute, Institute of Real Estate Management, International Council of Shopping Centers, International Franchise Association, NAIOP, the Commercial Real Estate Development Association, National Apartment Association, National Association of REALTORS®, National Association of Theatre Owners, National Council of Chain Restaurants, National Federation of Independent Business, National Multifamily Housing Council, National Restaurant Association, NATSO, Representing America's Travel Plazas and Truck Stops, Retail Industry Leaders Association, U.S. Chamber of Commerce.

http://www.adalawsuitreform.com/

Permalink: http://poe.house.gov/2017/1/poe-leads-bipartisan-legislation-to-curb-abusive-ada-lawsuits-and-improve-the-ada (http://poe.house.gov/2017/1/poe-leads-bipartisan-legislation-to-curb-abusive-ada-lawsuits-and-improve-the-ada)

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115TH CONGRESS
1ST SESSION

H. R. 620

To amend the Americans with Disabilities Act of 1990 to promote compliance through education, to clarify the requirements for demand letters, to provide for a notice and cure period before the commencement of a private civil action, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 24, 2017

Mr. POE of Texas (for himself, Mr. PETERS, Mr. CALVERT, Mr. BERA, Ms. SPEIER, and Mr. CONAWAY) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend the Americans with Disabilities Act of 1990 to promote compliance through education, to clarify the requirements for demand letters, to provide for a notice and cure period before the commencement of a private civil action, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "ADA Education and Reform Act of 2017".

SEC. 2. COMPLIANCE THROUGH EDUCATION.

Based on existing funding, the Disability Rights Section of the Department of Justice shall, in consultation with property owners and representatives of the disability rights community, develop a program to educate State and local governments and property owners on effective and efficient strategies for promoting access to public accommodations for persons with a disability (as defined in section 3 of the Americans with Disabilities Act (42 U.S.C. 12102)). Such program may include training for professionals such as Certified Access Specialists to provide a guidance of remediation for potential violations of the Americans with Disabilities Act.

SEC. 3. NOTICE AND CURE PERIOD.

Paragraph (1) of section 308(a) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12188(a)(1)) is amended to read as follows:

"(1) AVAILABILITY OF REMEDIES AND PROCEDURES.—

"(A) IN GENERAL.—Subject to subparagraph (B), the remedies and procedures set forth in section 204(a) of the Civil Rights Act of 1964 (42 U.S.C. 2000a–3(a)) are the remedies and procedures this title provides to any person who is being subjected to discrimination on the basis of disability in violation of this title or who has reasonable grounds for believing that such person is about to be subjected to discrimination in violation of section 303. Nothing in this section shall require a person with a disability to engage in a futile gesture if such person has actual notice that a person or organization covered by this title does not intend to comply with its provisions.

"(B) BARRIERS TO ACCESS TO EXISTING PUBLIC ACCOMMODATIONS.—A civil action under section 302 or 303 based on the failure to remove an architectural barrier to access into an existing public accommodation may not be commenced by a person aggrieved by such failure unless—

"(i) that person has provided to the owner or operator of the accommodation a written notice specific enough to allow such owner or operator to identify the barrier; and

"(ii)(I) during the period beginning on the date the notice is received and ending 60 days after that date, the owner or operator fails to provide to that person a written description outlining improvements that will be made to remove the barrier; or

"(II) if the owner or operator provides the written description under subclause (I), the owner or operator fails to remove the barrier or to make substantial progress in removing the barrier during the period beginning on the date the description is provided and ending 120 days after that date.

"(C) SPECIFICATION OF DETAILS OF ALLEGED VIOLATION.—The written notice required under subparagraph (B) must also specify in detail the circumstances under which an individual was actually denied access to a public accommodation, including the address of property, the specific sections of the Americans with Disabilities Act alleged to have been violated, whether a request for assistance in removing an architectural barrier to access was made, and whether the barrier to access was a permanent or temporary barrier.".

SEC. 4. EFFECTIVE DATE.

This Act and the amendments made by this Act take effect 30 days after the date of the enactment of this Act.

SEC. 5. MEDIATION FOR ADA ACTIONS RELATED TO ARCHITECTURAL BARRIERS.

The Judicial Conference of the United States shall, under rule 16 of the Federal Rules of Civil Procedure or any other applicable law, in consultation with property owners and representatives of the disability rights community, develop a model program to promote the use of alternative dispute resolution mechanisms, including a stay of discovery during mediation, to resolve claims of architectural barriers to access for public accommodations. To the extent practical, the Federal Judicial Center should provide a public comment period on any such proposal. The goal of the model program shall be to promote access quickly and efficiently without the need for costly litigation. The model program should include an expedited method for determining the relevant facts related to such barriers to access and steps taken before the commencement of litigation to resolve any issues related to access.

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STATE STREET
Published on *State Street Newsroom* (http://newsroom.statestreet.com) on 03/07/17

State Street Global Advisors Calls on 3,500 Companies Representing More Than $30 Trillion in Market Capitalization to Increase Number of Women on Corporate Boards

Release Date:
Tuesday, March 7, 2017 7:25 am EST

Terms:
Corporate [1] State Street Global Advisors [2]

Dateline City:
BOSTON

On the Eve of International Women's Day, SSGA Issues Guidelines and Places Statue in New York City's Financial District as a Symbol of Need for Action

BOSTON--(BUSINESS WIRE [3])--On the eve of International Women's Day and the one-year anniversary of its SPDR® SSGA Gender Diversity Index ETF (ticker: SHE), State Street Global Advisors (SSGA), the asset management business of State Street Corporation (NYSE: STT) is calling on the more than 3,500 companies that SSGA invests on behalf of clients, representing more than $30 trillion in market capitalization[1] to take intentional steps to increase the number of women on their corporate boards.

To mark this effort and the power of women in leadership, SSGA has placed a statue of a young girl, representing the future, in the center of the world's financial capital – right near Wall Street in New York City.

"We believe good corporate governance is a function of strong, effective and independent board leadership," said Ron O'Hanley, president and chief executive officer of SSGA. "A key contributor to effective independent board leadership is diversity of thought, which requires directors with different skills, backgrounds and expertise. Today, we are calling on companies to take concrete steps to increase gender diversity on their boards and have issued clear guidance to help them begin to take action."

This morning O'Hanley will detail the guidance in his keynote speech at the Corporate Governance Symposium hosted by the University of Delaware's Weinberg Center for Corporate Governance. The focus of this year's symposium is "Governance Issues of Critical Importance to Boards and Investors in 2017."

According to an MSCI study, companies with strong female leadership generated a return on equity of 10.1 percent per year versus 7.4 percent for those without a critical mass of women at the top, which is a 36.4 percent increase of average return on equity. [2,3] And, according to a 2015 McKinsey Global Institute report, moving to a scenario where women participate in the economy identically to men would add up to $28 trillion, or an additional 26 percent, to annual global GDP by 2025 compared to a business as usual scenario.[4]

Despite this, although there has been some progress made on the inclusion of women on corporate boards, one out of every four Russell 3000 companies do not have even one woman on their board, and nearly 60 percent have fewer than 15 percent of their boards comprising women directors.

SSGA today issues guidelines to drive greater board gender diversity through active dialogue and engagement with company and board leadership. In the event that a company fails to take action to increase the number of women on its board, SSGA will use proxy voting power to influence change - voting against the chair of the board's nominating and/or governance committee if necessary.

"As part of our review of boards' gender diversity, we analyzed and compared the level of diversity in three markets: Australia, the UK and the US," said Rakhi Kumar, head of corporate governance at SSGA. "Most large cap company boards in these markets have at least one female director but have yet to fully embrace gender equality in their ranks. We believe boards have an important role to play in increasing gender diversity and believe our guidance can help directors take action now."

"I wholeheartedly support State Street's efforts," said Chris Ailman, Chief Investment Officer, CalSTRS. "Companies need to step up and better utilize the talents and leadership of women in their Corporate Boards, C-suite and throughout their ranks. This statue boldly signals to financial markets that the future depends on investing in the power of women. We all need to lean in and be bold for change now."

To help address the gender gap head-on, SHE incorporates an innovative charitable component that focuses on strengthening the next generation of women leaders - particularly in industries where women have low representation today such as STEM (Science, Technology, Engineering and Math). SSGA is directing a portion of their revenues and a match from SSGA to a Donor Advised Fund, which has awarded a $50,000 grant to Girls Who Invest, a nonprofit organization founded in

April 2015 dedicated to increasing the number of women in portfolio management and executive leadership in the asset management industry.

About State Street Global Advisors

For nearly four decades, State Street Global Advisors has been committed to helping financial professionals and those who rely on them achieve their investment objectives. We partner with institutions and financial professionals to help them reach their goals through a rigorous, research-driven process spanning both active and index disciplines. We take pride in working closely with our clients to develop precise investment strategies, including our pioneering family of SPDR ETFs. With trillions* in assets under management, our scale and global footprint provide access to markets and asset classes, and allow us to deliver expert insights and investment solutions.

State Street Global Advisors is the investment management arm of State Street Corporation.

*Assets under management were $2.47 trillion as of December 31, 2016. AUM reflects approx. $30.62 billion (as of December 31, 2016) with respect to which State Street Global Markets, LLC (SSGM) serves as marketing agent; SSGM and State Street Global Advisors are affiliated.

[1] As of 2/28/17

[2] The methodology used in MSCI's study is different than that of the index, and as such, the results of the study should not be viewed as indicative of future performance of the index or SHE. Return on equity is not representative of the performance of any investment or the potential return of any ETF.

[3] Source: Lee, Linda Eling, et al. Women on Boards: Global Trends in Gender Diversity on Corporate Boards, MSCI, November 2015. Accessed on February 17, 2016. MSCI defined strong female leadership as having a board of directors with at least three women, which research suggests comprises a critical mass for decision making influence, or a percentage of women that's higher than average in the company's country. MSCI defined companies without a critical mass of women at the top as companies with less than three women on their board of directors or a lower percentage of women than the average in the company's country.

[4] Woetzel, Johnathan. "The Power of Parity: How Advancing Women's Equality can Add $12 Trillion to Global Growth." McKinsey Global Institute, September 2015

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ETFs trade like stocks, are subject to investment risk, fluctuate in market value and may trade at prices above or below the ETFs net asset value. Brokerage commissions and ETF expenses will reduce returns

Gender diversity risk the returns on a portfolio of securities that excludes companies that are not gender diverse may trail the returns on a portfolio of securities that includes companies that are not gender diverse.

Concentrated investments in a particular sector or industry (technology sector and electronic media companies) tend to be more volatile than the overall market and increases risk that events negatively affecting such sectors or industries could reduce returns, potentially causing the value of the Fund's shares to decrease.

Equity securities may fluctuate in value in response to the activities of individual companies and general market and economic conditions.

Non-diversified funds that focus on a relatively small number of securities tend to be more volatile than diversified funds and the market as a whole.

Passively managed funds hold a range of securities that, in the aggregate, approximates the full Index in terms of key risk factors and other characteristics. This may cause the fund to experience tracking errors relative to performance of the index.

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Before investing, consider the funds' investment objectives, risks, charges and expenses. To obtain a prospectus or summary prospectus which contains this and other information, call 1-866-787-2257 or visit www.spdrs.com [4] . Read it carefully.

State Street Corporation, One Lincoln Street, Boston, MA 02111-2900

Expiration date: 03/31/2018

CORP-2717

SSGA's Guidance on Enhancing Gender Diversity on Boards

March 7, 2017

Key Takeaways

- State Street Global Advisors (SSGA) focuses on board quality as foundational to good governance and positive investment outcomes
- We are especially concerned with ensuring effective independent board leadership , which involves achieving the right skill sets as well as a diversity of views, including gender diversity on boards
- As part of our review of boards' gender diversity, SSGA analyzed and compared the level of diversity in three markets: Australia, the UK and the US[1]
- SSGA found that most large cap company boards in these markets have at least one female director but have yet to fully embrace gender equality within their ranks
- While companies cite a limited pool of suitable female director candidates as a primary obstacle in achieving greater diversity in the boardroom, SSGA has identified current practices for nominating directors and behavioral biases that continue to undervalue the contributions of women in the workplace as the leading obstacles
- We believe boards have an important role to play in increasing gender diversity and therefore we have provided guidance to help directors facilitate greater gender diversity within their organizations

Background

Research shows that companies with greater levels of gender diversity have stronger financial performance as well as fewer governance-related issues such as bribery, corruption, shareholder battles and fraud.[2,3,4] A January 2017 report by the Conference Board suggests that the reason for the outperformance is largely attributed to the outside perspectives brought into the boardroom by adding women to the board.[5]

At SSGA, we view gender diversity as one of many ways a board can introduce a varied set of skills and expertise among its directors to help improve financial performance. Gender diversity on boards has been a thematic engagement area for SSGA since 2015. During our conversations with companies, most boards have been supportive of enhancing gender diversity but cite a limited pool of suitable female director candidates as a primary obstacle to achieving greater diversity in the boardroom. However, based on our discussions, we have found that current practices for nominating directors as well as behavioral biases that continue to undervalue the contributions of women in the workplace are the leading obstacles. These include:

- Excessive reliance on existing director networks and connections that continue to be the primary source for identifying director candidates
- Requiring that all director nominees have CEO experience to be considered to serve on boards
- Lack of female representation in leadership positions on boards and in senior management to help guide the companies on their journey to diversify the organization[6]
- Limited appreciation for and understanding of the value and need for greater gender diversity within organizations
- Lack of efforts to address behavioral gender biases inherent in workplace culture and HR-related practices within organizations
- Limited organizational support in helping individuals achieve work-life balance, which can stymie the career progression of women, thereby adversely affecting the pipeline of women leaders

Figure 1: An Overview of Gender Diversity in Australia, UK, and US[7]

	Large Cap Companies			Broader Indices			All Listed Companies		
	Australian Securities Exchange 100 (%)	Financial Times Stock Exchange 100 (%)	Standard & Poors 500 (%)	Australian Securities Exchange 300 (%)	Financial Times Stock Exchange 350 (%)	Russell 3000 (%)	Australia (%)	UK (%)	US (%)
% of Companies with No Female Directors	4	0	2	17	5	24	45	36	35
% of Companies with < 15% of Female Directors	16	11	24	30	30	58	53	55	63

Source: As of date November 30, 2016. Institutional Shareholder Services.

STATE STREET GLOBAL ADVISORS

Market Practice

As part of our review of boards' gender diversity, SSGA analyzed the level of diversity in three key markets — Australia, the UK and the US. We found that in all three markets, boards of most large cap companies had made a concerted effort to include women on their boards (as seen in Figure 1). Nevertheless, 4% of Australian Securities Exchange 100 (ASX 100) and 2% of Standard & Poors 500 (S&P500) still do not have any women on their boards. Moreover, 16% of Australian Securities Exchange 100 (ASX 100), 11% of Financial Times Stock Exchange 100 (FTSE 100) and 24% of S&P 500 companies do not meet a threshold of at least 15% of women on boards. When expanded to all listed companies, the lack of female representation on boards is significant. Figure 1 highlights the percentage of companies that have no female directors and have less than 15% of women on their boards.

SSGA's Position on Gender Diversity

SSGA believes good governance is a function of sound board quality, which starts with strong, effective independent board leadership. By effective we mean having the right skills; by strong we mean the board's ability to exert its influence; and by independent we mean that the board is not captive by management. SSGA believes board diversity enhances board quality as it brings together directors with different skills, backgrounds and expertise. We recognize that there are many ways to achieve board diversity and we support all forms of diversity, but as a starting point, we believe boards should have at least some independent female directors. Further, boards should also set expectations for senior management to enhance gender diversity within their ranks and the broader organization.

Our preferred approach is to drive greater board diversity through an active dialogue and engagement with company and board leadership. In the event that companies fail to take action to increase the number of women on their boards, despite our best efforts to actively engage with them, we will use our proxy voting power to effect change — voting against the Chair of the board's nominating and/or governance committee if necessary.

SSGA's Guidance for Enhancing Gender Diversity on Boards

Given our expectations regarding gender diversity on boards, SSGA has developed a framework below (see Figure 2) to help boards enhance female representation on their boards.

Figure 2: Gender Diversity Framework

1. Assess the current level of gender diversity on the board and within management ranks
2. Establish goals aimed at enhancing the level of gender diversity on the board and senior management
3. Identify "diversity champions" on the board and within management who would support initiatives to meet established goals
4. Address behavioral gender bias in the director search and nomination process, including expanding the search for potential director candidates beyond existing director networks
5. Consider female directors for leadership positions and on key board committees
6. Enhance transparency and communication with investors on the board's position on gender diversity and report on progress against established goals

[1] Gender diversity profile of European country boards were not considered as many markets in the region have regulatory requirements pertaining to gender diversity levels on boards that drives company practices.

[2] "Why Diversity Matters" McKinsey, Feb 2015.

[3] "Women on Boards: Global Trends in Gender Diversity on Corporate Boards" MSCI, Nov 2015.

[4] "Is Gender Diversity Profitable?" Peterson Institute for International Economic, Feb 2016.

[5] "The Effect of Gender Diversity on Board Decision-making: Interviews with Board Members and Stakeholders" The Conference Board, Jan 2017.

[6] As of January 2017, only 5% of ASX100 and S&P500 and 4% of FTSE100 are led by female Chairs, while only 5% of ASX100 and S&P500 and 6% of FTSE100 have female CEOs.

[7] Board profiling universe includes 97 companies listed on the Australian Securities Exchange 100 (ASX 100); 94 companies listed on the Financial Times Stock Exchange 100 (FTSE 100); 472 companies listed on the Standard & Poors 500 (S&P 500); 284 companies listed on the Australian Securities Exchange 300 (ASX 300); 274 companies listed on the Financial Times Stock Exchange 350 (FTSE 350); 2,743 companies listed on the Russell 3000; 682 companies listed in Australia; 826 companies listed in the UK; and 4,546 companies listed in the US.

Contact Us

We hope board members of our portfolio companies find this guidance useful. Any questions or comments may be directed to:

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United States

Summary Proxy Voting Guidelines

2017 Benchmark Policy Recommendations

Effective for Meetings on or after February 1, 2017

Published December 22, 2016

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3. SHAREHOLDER RIGHTS & DEFENSES

Advance Notice Requirements for Shareholder Proposals/Nominations

General Recommendation: Vote case-by-case on advance notice proposals, giving support to those proposals which allow shareholders to submit proposals/nominations as close to the meeting date as reasonably possible and within the broadest window possible, recognizing the need to allow sufficient notice for company, regulatory, and shareholder review.

To be reasonable, the company's deadline for shareholder notice of a proposal/nominations must not be more than 60 days prior to the meeting, with a submittal window of at least 30 days prior to the deadline. The submittal window is the period under which a shareholder must file his proposal/nominations prior to the deadline.

In general, support additional efforts by companies to ensure full disclosure in regard to a proponent's economic and voting position in the company so long as the informational requirements are reasonable and aimed at providing shareholders with the necessary information to review such proposals.

Amend Bylaws without Shareholder Consent

General Recommendation: Vote against proposals giving the board exclusive authority to amend the bylaws.

Vote for proposals giving the board the ability to amend the bylaws in addition to shareholders.

Control Share Acquisition Provisions

Control share acquisition statutes function by denying shares their voting rights when they contribute to ownership in excess of certain thresholds. Voting rights for those shares exceeding ownership limits may only be restored by approval of either a majority or supermajority of disinterested shares. Thus, control share acquisition statutes effectively require a hostile bidder to put its offer to a shareholder vote or risk voting disenfranchisement if the bidder continues buying up a large block of shares.

General Recommendation: Vote for proposals to opt out of control share acquisition statutes unless doing so would enable the completion of a takeover that would be detrimental to shareholders.

Vote against proposals to amend the charter to include control share acquisition provisions.

Vote for proposals to restore voting rights to the control shares.

Control Share Cash-Out Provisions

Control share cash-out statutes give dissident shareholders the right to "cash-out" of their position in a company at the expense of the shareholder who has taken a control position. In other words, when an investor crosses a preset threshold level, remaining shareholders are given the right to sell their shares to the acquirer, who must buy them at the highest acquiring price.

General Recommendation: Vote for proposals to opt out of control share cash-out statutes.

Disgorgement Provisions

U.S. Proxy Voting Policies and Procedures (Excluding Compensation-Related)

Frequently Asked Questions

Updated: February 24, 2017

New/updated questions highlighted in yellow

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U.S. RESEARCH PROCEDURES QUESTIONS

1. When are proxy analyses issued?

U.S. proxy analyses are generally issued 13-25 calendar days before the shareholder meeting. The timing will depend on: the volume of meetings requiring coverage (e.g., at the height of U.S. proxy season in April through June, delivery is closer to 13 days); complexity of the proxy and agenda items; contentiousness of the issues; engagement required; and how close to the meeting the proxy materials were issued. Proxy contest or contested merger analyses are often issued closer to the meeting than these general guidelines.

2. How can a company get a copy of its proxy analysis?

All companies can access ISS' proxy analyses on their company *without charge* through Governance Analytics: https://login.isscorporatesolutions.com/galp/login. Governance Analytics is a web-based platform hosted by ISS Corporate Solutions (ICS)[1]. This is the best way to ensure timely receipt of the analysis, as an email notification is sent to the company's registered user(s) once a new proxy analysis on the company is published by ISS.

To obtain a login and password to Governance Analytics, please email a request to ICS Corporate Support team at contactus@isscorporatesolutions.com. Requests for logins or login assistance will typically be responded to within one business day. In addition to the free access to the company's proxy analysis (including historical reports), the login to Governance Analytics provides the company with access to view and verify the governance data collected for ISS' QualityScore governance rating on the company, and provides the company with the ability to verify the data ISS uses when analyzing an equity plan on the company's ballot prior to publication of the analysis- through the Equity Plan Data Verification feature.

These reports are provided to issuers as a courtesy, subject to the following conditions: (i) the reports are only for the company's internal use by employees of the company, and (ii) the company is expressly prohibited from sharing the reports, profiles or login credentials with any external parties (including but not limited to any external advisors retained by the company such as a law firm, proxy solicitor or compensation consultant). Please note that this restriction on sharing of published reports with outside advisors does not apply to draft reports being reviewed by the company; the restrictions on sharing of drafts are detailed in the letter accompanying the draft (see below for more information on the draft review process).

3. Can a company send the ISS proxy analysis to its shareholders or other parties?

No. The information contained in any ISS Proxy Analysis or Proxy Alert may not be republished, broadcast, or redistributed without the prior written consent of ISS.

[1] ICS is a wholly owned subsidiary of Institutional Shareholder Services Inc. (ISS). ICS provides advisory services, analytical tools and information to companies to enable them to improve shareholder value and reduce risk through the adoption of improved corporate governance and executive compensation practices. The ISS Global Research Department, which is separate from ICS, will not give preferential treatment to, and is under no obligation to support, any proxy proposal of a company (whether or not that company has purchased products or services from ICS). No statement from an employee of ICS should be construed as a guarantee that ISS will recommend that its clients vote in favor of any particular proxy proposal.

4. What happens if the proxy analysis contains a factual error?

ISS strives to be as accurate as possible in our research and publications. Please check our Policy Guidelines and the FAQs concerning the issue; it generally is a matter of policy application rather than an error. If you do believe a report contains an error, please notify us as soon as possible at the Research Helpdesk (globalresearch@issgovernance.com). If we agree that there is a material change required, we issue a "Proxy Alert" to our clients.

5. How and when will ISS change a vote recommendation in a proxy alert?

ISS cannot and will not disclose or guarantee a vote recommendation, or a change of vote recommendation, in advance.

ISS does not proactively contact issuers seeking remediation of problematic governance practices; the onus is on issuers to take action in the best interests of their shareholders. If the company chooses to make changes or provide additional information to shareholders, for ISS to be able to respond, the information must be publicly disclosed: either in a filing with the SEC, or, if the company is not an SEC filer, in a press release. Email the link to the new information to Globalresearch@issgovernance.com. ISS will determine if new or materially changed publicly available information warrants an update to our analysis consistent with our policy. If the information is determined to be material, ISS will issue a proxy alert.

To ensure that all our institutional clients are able to review a change in our vote recommendation and act upon this information if they so choose, we generally will not issue a change to a vote recommendation closer than **5** business days to the meeting. This means that if a company is filing additional information with the SEC (or issuing a press release for non-SEC filers), ISS must be informed of this filing at least **5** business days before the meeting. For example, for a Thursday meeting, we will need to know of the filing no closer to the meeting than 5 p.m. Eastern the Thursday before (assuming no national holiday during that week). Any new information received closer than 5 business days before the meeting will be discussed in an informational alert if it is deemed to be material to the analysis even if there is no change to ISS' voting recommendations. Only under highly extraordinary circumstances will ISS issue an alert to change a vote recommendation closer than 5 business days before the meeting.

Proxy alerts are used to communicate corrections, updates, adjournments, and vote recommendation changes to our clients. A proxy alert is structured as an overlay on the original analysis; the first few pages show the updated information and any related vote recommendation change, but the original analysis lies underneath, and will continue to reflect the original information. This allows our clients to see the original report and the changes in one document. Any subsequent alerts will be layered on top of the previous alert(s). Proxy alerts are distributed to our institutional investor clients the same way our regular proxy analyses are distributed – through our ProxyExchange platform. The clients who received the original analysis will automatically receive any subsequent proxy alerts issued for that company.

Engagement with U.S. Research

Please see the Engagement Section of our website for more details.

6. Can a company discuss its proxy, once filed, with the analyst?

For non-contentious situations, it is the analysts' discretion whether engagement with the company is necessary or appropriate, and they generally only do so to clarify points on which they have questions. Further, ISS analyses are based only on publicly disclosed information, so all the information needed for shareholders and analysts to make their decisions should be in the proxy.

Providing the Research Helpdesk with company contact information is very useful, so that, if the analysts have questions, they can quickly contact the company.

If there are particular points you want to be sure the analysts are aware of (for example, information relevant to an equity compensation plan that may be in a footnote, or corporate governance changes the company has undertaken), please send an email to the Research Helpdesk (GlobalResearch@issgovernance.com) with the points outlined and the proxy page or other source noted – it will be put in the appropriate meeting folder so the analysts can review it when they are ready to do so.

Any information presented as factual must be public, in the proxy statement or other filing, in order to be included in our research reports. To maintain the integrity of our firewall, the Research Helpdesk staff will remove all references to the purchase of ISS Corporate Solutions' (ICS) products and services before forwarding emails to the Research analysts. If the references cannot be removed, the information will not be given to the analysts.

Drafts of Proxy Analyses

7. Can a company review the ISS analysis prior to publication?

In the United States, only companies in the S&P 500 index who signed up will receive a draft report for fact-checking, as these are the companies most widely held by our institutional clients. Furthermore, within this group, ISS does not normally allow preliminary reviews of any analysis relating to any special meeting or any meeting where the agenda includes a merger or acquisition proposal, proxy fight, or any item that ISS considers to be of a controversial nature, such as a "vote no" campaign. Detailed information on the U.S. draft process and sign-up is at http://www.issgovernance.com/iss-draft-review-process-u-s-issuers/.

Similarly, Canadian companies in the S&P/TSX Composite who signed up can review a draft of the analysis; the site information and registration is http://www.issgovernance.com/iss-draft-review-process-canadian-issuers/.

All U.S. companies with an equity plan as an agenda item on their proxy can review the data used in the ISS analysis of the plan. Details on Equity Plan Data Verification (EPDV) are available on our website: http://www.issgovernance.com/equity-plan-data-verification. Companies can also verify and update QuickScore information at all times, except for the period of time between the filing of the proxy and the release of ISS' proxy analysis. http://www.issgovernance.com/governance-solutions/investment-tools-data/quickscore/.

ISS US PROXY VOTING GUIDELINES QUESTIONS

8. Whom should I contact with questions on U.S. policies?

Please contact the Research Helpdesk: Globalresearch@issgovernance.com, 301-556-0576, with your questions. Email is preferable, in case the questions need to be referred to ISS analysts.

9. What can ISS tell us and not tell us about policies?

ISS will try to clarify policy questions as much as possible. We cannot answer questions about hypothetical scenarios, and we cannot give definitive answers on how we will recommend on proxy items before we analyze all relevant facts and circumstances as presented in the proxy. If it is a question we cannot answer, we will let you know.

SPECIFIC ISS PROXY VOTING POLICY QUESTIONS

The order of these questions generally follows in the order presented in our U.S. Proxy Voting Summary Guidelines available on our website in the Policy Gateway.

Audit-Related

10. Why did ISS include the "Tax Fees" under "Other Fees"?

ISS recognizes that certain tax-related services, e.g. tax compliance and preparation, are most economically provided by the audit firm. Tax compliance and preparation include the preparation of original and amended tax returns, refund claims, and tax payment planning. However, other services in the tax category, e.g. tax advice, planning, or consulting fall more into a consulting category. Therefore, these fees are separated from the tax compliance/preparation category and are added to the Non-audit fees. If the breakout of tax compliance/preparation fees cannot be determined, all tax fees are added to "Other" fees. ISS' benchmark policy is to compare the sum of Audit, Audit-Related, and Tax/Compliance Fees to Other Fees, and if Other Fees is greater, ISS will recommend against the Ratification of Auditors and the election of Audit committee members.

If the company provides a footnote to the audit fees table showing a breakout of the tax fees: those related to tax compliance and preparation fees, (i.e. the preparation of original and amended tax returns, refund claims, and tax payment planning), vs. those related to all other services in the tax category, such as tax advice, planning, or consulting, then ISS will use this information in application of our policy. This information can also be filed within the appropriate time frame after our analysis is released for a potential vote recommendation change. (See Question #5)

Board of Directors

Voting on Director Nominees in Uncontested Elections

I. Accountability

11. Classified Board structure policy: When does ISS apply the classified board structure policy?

The classified board structure policy is: if a director responsible for a governance problem is not up for election due to a classified board, ISS will recommend withhold or against votes on all appropriate nominees. This policy is generally not applied if the director in question has a governance issue related only to his or herself, (e.g., poor attendance, overboarded, or is an Affiliated Outside Director serving on a key committee), unless the issue is considered egregious. It is typically applied when ISS would normally recommend withhold on all the members of a committee – e.g., the compensation committee for problematic pay practices or a pay for performance disconnect, or the audit committee for continued material weaknesses in internal controls – and no one on the committee is a nominee on the ballot. The rationale is that a classified board further entrenches management and prevents shareholders from holding the responsible individuals accountable.

12. Poison Pills: What modification must be made to a pill that has a dead hand or slow hand provision to address an ISS withhold recommendation against all nominees for this issue?

For a deadhand provision, the amendment would need to eliminate all requirements in the Rights Agreement that actions, approvals, and determinations taken or made by the company's board of directors be taken or made by a majority of the "Continuing Directors" (sometimes also referred to as the disinterested directors).

For a slowhand, the amendment would need to remove the time restrictions on redemption of the pill following a change in the majority of the board as a result of a proxy contest.

13. What if the pill with a dead hand or slow-hand was approved by the public shareholders?

Even if a pill has features that cause ISS to recommend against the adoption of the pill, if the pill is approved by shareholders (with a broad shareholder base, not a controlled company, not prior to IPO, etc.), then ISS will not recommend against the board. For example: Marina Biotech (MRNA) had adopted a poison pill in 2010 that has a slow-hand, but it was approved by their broad shareholder base. ISS is not recommending against the board, as the pill was approved by shareholders.

14. After what date does the policy regarding adoption or renewal of non-shareholder-approved pills apply?

ISS' current policy on pill adoptions applies to pills adopted/renewed after the date the policy was announced, which was Nov 19, 2009. The previous policy, for pills adopted after Dec 7, 2004, was to recommend against the board only once for not putting the poison pill to a shareholder vote.

15. Why does ISS review annually-elected boards and classified boards differently when they have adopted and continue to hold a poison pill without shareholder approval?

There are 3 principles at work in this policy: 1) All poison pills should be put to a shareholder vote; 2) the term of a poison pill should be no longer than 3 years, so shareholders should be voting on an existing pill at least every 3 years; and 3) all board members should be held accountable for the adoption of the pill and for not putting the pill to a shareholder vote. So, for an annually-elected board, where all members can be held accountable at once; over the life of the pill, ISS recommends withhold every 3 years based upon the frequency we would have expected the pill to be brought to a shareholder vote and it wasn't. For a classified board, it takes 3 years just to hold all board members accountable, and then the 3- year cycle at which the pill should have been put to a vote starts again, thus, the recommendations against all nominees each year.

16. What if a company adopts a poison pill before it is public?

In the case of an newly public company, ISS will recommend withhold on the entire board if the pill is not put to a vote at the first annual meeting of public shareholders or if the company does not commit to putting the pill to a shareholder vote within 12 months following the IPO. In the following years, as long as the pill exists and is not put to a shareholder vote, the withholds recommendations will continue as described in the FAQ above depending on whether the board is annually elected or classified.

17. What commitment language is ISS looking for concerning putting the poison pill to a binding shareholder vote?

Sample language:

"On [date] the Board of Directors determined that it will either (i) include in its proxy statement for the Company's [next year's] Annual Meeting of Stockholders a proposal (the "Rights Plan Proposal") soliciting stockholder approval of the Company's existing stockholder rights plan, or (ii) repeal the stockholder rights plan prior to the [next year's] Annual Meeting. In the event that the Company elects to include the Rights Plan Proposal in the proxy statement, and the Company does not receive the affirmative vote of the holders of [voting requirement], then the Company will promptly take action to repeal the stockholder rights plan."

18. Definition of "majority of shares cast" for Board Accountability and Responsiveness policies:

For policies that utilize "shares cast" as the measurement (e.g. management say-on-pay proposals, majority-supported shareholder proposals, and majority withholds on directors), ISS uses: For/ (For + Against). Abstentions are not counted. The base the issuer uses to determine if a proposal passed is not used, as doing so would result in an inconsistent basis for looking at voting outcomes across companies.

Restricting Binding Shareholder Proposals

19. What is the rationale for the policy at this time?

Shareholders' ability to amend the bylaws is a fundamental right. Under SEC Rule 14a-8, shareholders who have held shares valued at least $2,000 for one year are permitted to submit shareholder proposals, both precatory and binding, to amend bylaws. However, some states allow for companies to restrict this right in their charters.

ISS has identified fewer than 300 U.S. companies that prohibit shareholders from submitting a binding shareholder proposal. Further, a majority of US companies also maintain a majority vote standard for amendments to their charter or bylaws.

Over the last several years, shareholders have launched several campaigns at companies that do not provide this right and have specifically submitted precatory proposals on this issue. These campaigns have often been contentious and have generated interest in the wider investor community on prohibitions of binding shareholder proposals. Until recently, such prohibitions had gone largely unnoticed and the shareholder campaigns to remove the prohibition have shone a light on the issue.

20. What companies are not impacted by this policy?

The policy does not apply to open- or closed-end funds, nor to companies incorporated outside of the United States, even if they are U.S. Domestic Issuers.

21. Will substitution of supermajority vote requirements on binding shareholder bylaw amendments in lieu of a prohibition be viewed as sufficient?

Substituting a supermajority vote requirement in lieu of the prohibition will be viewed as an insufficient restoration of a fundamental right. Similarly, in lieu of the prohibition, any holding level or time requirements for shareholders submitting bylaw amendments that are in excess of SEC Rule 14a-8 will be viewed as an insufficient restoration of shareholders' rights.

22. How will ISS evaluate commitments to remove the prohibition within a given period of time?

ISS will generally not view commitments as sufficient to mitigate concerns. However, ISS will also evaluate each company on a case-by-case basis based on such factors as shareholder outreach, complete disclosure, board views, planned actions, etc.

Unilateral Bylaws/Charter Amendments

23. When did the unilateral bylaw/charter amendment policy start for newly-public companies?

The policy was adopted for shareholder meetings on or after Feb. 1, 2015. For newly public companies, those who held their <u>first public shareholder AGM</u> on or after this date are impacted by this policy.

24. Which types of unilateral bylaw/charter amendments are likely to be considered by ISS to materially diminish shareholders' rights?

If a unilaterally adopted amendment is deemed materially adverse to shareholder rights, ISS will recommend a vote against the board.

<u>Materially adverse unilateral amendments include, but are not limited to:</u>

- Authorized capital increases that do not meet ISS' Capital Structure Framework;
- Board classification to establish staggered director elections;
- Director qualification bylaws that disqualify shareholders' nominees or directors who could receive third-party compensation;

- Fee-shifting bylaws that require a suing shareholder to bear all costs of a legal action that is not 100 percent successful;
- Increasing the vote requirement for shareholders to amend charter/bylaws;
- Removing a majority vote standard and substituting plurality voting;
- Removing or restricting the right of shareholders to call a special meeting (raising thresholds, restricting agenda items); and
- Removing or materially restricting the shareholder's right to act in lieu of a meeting via written consent.

Unilaterally adopted bylaw amendments that are considered on a case-by-case basis, but generally are not considered materially adverse:

- Advance notice bylaws that set customary and reasonable deadlines;
- Director qualification bylaws that require disclosure of third-party compensation arrangements;
- Exclusive Venue/Forum (when the venue is the company's state of incorporation).

25. Why does ISS oppose unilaterally-adopted bylaws that disqualify any director nominee who receives third-party compensation ("director qualification bylaw")?

The adoption of restrictive director qualification bylaws without shareholder approval may be considered a material failure of governance because the ability to elect directors is a fundamental shareholder right. Bylaws that preclude shareholders from voting on otherwise qualified candidates unnecessarily infringe on this core franchise right.

However, ISS has not recommended voting against directors and boards at companies which have adopted bylaws precluding from board service those director nominees who fail to disclose third-party compensatory payments. Such provisions may provide greater transparency for shareholders, and allow for better-informed voting decisions.

Governance Failures

26. What is the purpose of the Governance Failures Policy?

The Governance Failures policy is designed to catch the one-off egregious actions that are not covered under other policies. If a type of action becomes commonplace, ISS will often break this out as its own, standalone policy.

The actions that most commonly fall under the Governance Failures policy were: unilateral bylaw amendments that diminish shareholders' rights; excessive pledging, and failure to opt out of state statutes requiring a classified board (Indiana and Iowa). A sharp increase in the incidence of unilateral bylaw amendments caused ISS to separate this out as a standalone policy for 2015. Also in 2015, the with the SEC's decision to express no view on Rule 14a-8(i)(9) exclusions brought into sharper focus the possibility of companies' excluding shareholder proposals from their ballots without no-action relief. These more common types of governance failures are discussed below.

27. What are ISS' expectations regarding whether a company includes a shareholder proposal on its ballot?

The ability of qualifying shareholders to include their properly presented proposals in a company's proxy materials is a fundamental right of share ownership, which is deeply rooted in state law and the federal securities statutes. Shareholder proposals promote engagement and debate in an efficient and cost-effective fashion.

Over the course of the past several decades, the SEC has played the role of referee in resolving disputes raised by corporate challenges to the inclusion of shareholder proposals in company proxy materials. While federal courts provide an additional level of review, the vast majority of shareholder proposal challenges have been resolved without the need to resort to costly and cumbersome litigation. While individual proponents and issuers often disagree with the SEC's determinations in these adversarial proceedings, the governance community recognizes the Commission's important role as an impartial arbiter of these disputes.

In early 2015, when the SEC suspended no-action relief for "conflicting" shareholder proposals, some companies were contemplating unilaterally excluding shareholder proposals. The SEC had announced that it was reviewing Rule 14a-8(i)(9), which allows companies to exclude a shareholder proposal that "directly conflicts" with a board-sponsored proposal. Additionally, SEC Chair Mary Jo White indicated that for proxy season 2015, the Commission's Division of Corporation Finance would express no view on the application of Rule 14a-8(i)(9). As a result, companies that intended to seek no-action relief on that basis were contemplating simply not including proposals. ISS provided the following guidance:

For companies that present both a board and shareholder proposal on the ballot on a similar topic, ISS will review each of them under the applicable policy.

ISS will view attempts to circumvent the normal avenues of dispute resolution and appeal with a high degree of skepticism[2]. Omitting shareholder proposals without obtaining regulatory or judicial relief risks litigation against the company. Presenting only a management proposal on the ballot also limits governance discourse by preventing shareholders from considering an opposing viewpoint, and only allowing them to consider and opine on the view of management.

Thus, under our governance failures policy, ISS will generally recommend a vote against one or more directors (individual directors, certain committee members, or the entire board based on case-specific facts and circumstances), if a company omits from its ballot a properly submitted shareholder proposal when it has not obtained:

1) voluntary withdrawal of the proposal by the proponent;
2) no-action relief from the SEC; or
3) a U.S. District Court ruling that it can exclude the proposal from its ballot.

The recommendation against directors in this circumstance is regardless of whether there is a board-sponsored proposal on the same topic on the ballot. If the company has taken unilateral steps to implement the proposal, however, the degree to which the proposal is implemented, and any material restrictions added to it, will factor into the assessment.

28. An executive has hedged company stock. How does ISS view such practice?

[2] As precedent, ISS recommended against the board of directors at Kinetic Concepts in 2011 for omitting a shareholder proposal when the SEC had denied the firm's request for no-action relief. ISS changed the vote recommendation when the board implemented the proposal.

Hedging is a strategy to offset or reduce the risk of price fluctuations for an asset or equity. Stock-based compensation or open market purchases of company stock should serve to align executives' or directors' interests with shareholders. Therefore, hedging of company stock through covered call, collar or other derivative transactions sever the ultimate alignment with shareholders' interests. Any amount of hedging will be considered a problematic practice warranting a negative vote recommendation against appropriate board members.

29. How does ISS define a significant level of pledging of company stock?

ISS' view is that any amount of pledged stock is not a responsible use of company equity. A sudden forced sale of significant company stock may negatively impact the company's stock price, and may also violate insider trading policies. In addition, share pledging may be utilized as part of hedging or monetization strategies that would potentially immunize an executive against economic exposure to the company's stock, even while maintaining voting rights. A significant level of pledged company stock is determined on a case-by-case basis by measuring the aggregate pledged shares in terms of common shares outstanding or market value or trading volume.

30. An executive has pledged a significant amount of company stock as collateral. What is the potential impact on election of directors?

In determining vote recommendations for the election of directors of companies who currently have executives or directors with pledged company stock, the following factors will be considered:

- Presence of anti-pledging policy that prohibits future pledging activity in the companies' proxy statement;
- Magnitude of aggregate pledged shares in terms of total common shares outstanding or market value or trading volume;
- Disclosure of progress or lack thereof in reducing the magnitude of aggregate pledged shares over time;
- Disclosure in the proxy statement that shares subject to stock ownership and holding requirements do not include pledged company stock; and
- Any other relevant factors.

If the company discloses a pledged amount, we will first consider the significance of the pledge. If we determine that it is at a level that raises significant risks for shareholders -- or, in some cases, if we determine that the incidence or significance of pledging at the company is increasing -- we may recommend against board members considered accountable for the company's policy on pledging (or lack thereof). But, if the company indicates that they have a policy that prohibits future new pledging and/or that they are encouraging executives/directors to unwind current transactions, these would be viewed as positive factors that could mitigate a negative recommendation at the current meeting.

31. Should an executive or director who has pledged a significant amount of company stock immediately dispose or unwind the position in order to potentially mitigate a negative vote recommendation?

An executive or director who has pledged a significant amount of company stock should act responsibly and not jeopardize shareholders' interests. The aggregate pledged shares should be reduced over time, and the company should adopt a policy that prohibits future pledging activity, and disclose that in its proxy statement. Note that if the individual's aggregate pledged shares were to increase over time, a negative vote recommendation may be warranted despite the company's adoption of an anti-pledging policy.

II. Responsiveness

Majority-supported Shareholder Proposals

32. What does ISS consider as "responsive" to a majority-supported shareholder proposal?

Acting on a shareholder proposal will generally mean either full implementation of the proposal or, if the matter requires a vote by shareholders, a management proposal on the next annual ballot to implement the proposal. Responses that involve less than full implementation will be considered on a case-by-case basis, taking into account:

- Disclosed outreach efforts by the board to shareholders in the wake of the vote;
- Rationale provided in the proxy statement for the level of implementation;
- The subject matter of the proposal;
- The level of support for and opposition to the resolution in past meetings;
- Actions taken by the board in response to the majority vote and its engagement with shareholders;
- The continuation of the underlying issue as a voting item on the ballot (as either shareholder or management proposals); and
- Other factors as appropriate.

These factors are further described below:

Disclosed outreach efforts by the board to shareholders in the wake of the vote:

Key to any partial implementation of a majority supported shareholder proposal is outreach by the board to their significant shareholders who supported the proposal to understand why they supported it and what they are looking for the board to do in response. The “ask” of the proposal may not directly reflect shareholders’ concerns but instead may have been the vehicle most-readily available for them to express their concerns. For example, shareholders may be more interested in a stronger right to a special meeting, rather than the written consent right proposed. Or, they may want a more empowered lead director position in lieu of an independent chair.

While outreach to the proponent is important, it was a majority of shares that voted for the proposal. Therefore, the company should reach out beyond the proponent to its large shareholders to understand their goals in the support of the proposal.

Rationale provided in the proxy for the level of implementation:

The vast majority of shareholder proposals are precatory; they are not binding, and the board exercises its discretion to respond in a manner that it believes is in the best interest of the company. When a majority of shares, or a substantial minority, are cast in support of a proposal, the company should clearly disclose its response and explain the board’s rationale for the actions it has taken in the following year’s proxy statement.

<u>The subject matter of the proposal:</u>

Some matters are straightforward, almost binary decisions, and garner a strong consensus among institutional investors, such as:

Declassification proposals— either a board is classified, or it is annually elected. While shareholders may defer to the board's discretion as to timing of the declassification, there is generally no other action acceptable.

Majority vote standard—either a board has a plurality or a majority vote standard in uncontested elections. There is a consensus that a true majority vote standard is the board response required, and not just the adoption of a director resignation policy while maintaining a plurality vote standard.

Other items are more nuanced and allow for a broader range of implementation, such as the right to call a special meeting, the right for shareholders to be able to act by written consent, or proposals seeking an independent board chair. Please see FAQs below on these items for more details.

33. What would constitute a clearly insufficient response to a majority-supported shareholder proposal?

Clear examples of non-responsiveness by the board would include: no acknowledgement at all in the proxy statement that shareholders supported the proposal; dismissal of the proposal with no reasons given; or actions taken to prevent future shareholder input on the matter altogether.

34. Does the board's recommendation on a management proposal in response to a majority-supported shareholder proposal matter?

In general, the proposal should have a board recommendation of FOR. A recommendation other than a FOR, (e.g." None" or "Against") will generally not be considered as sufficient action taken. The level of support necessary to implement the proposal (e.g., a supermajority of shares outstanding) will be a consideration in evaluating the role of the board's recommendation.

35. Proxy Access proposals: How will ISS evaluate a board's implementation of proxy access in response to a majority-supported shareholder proposal?

ISS will evaluate a board's response to a majority- supported shareholder proposal for proxy access by examining whether the major points of the shareholder proposal are being implemented. Further, ISS will examine additional provisions that were not included in the shareholder proposal in order to assess whether such provisions unnecessarily restrict the use of a proxy access right. Any vote recommendations driven by a board's implementation of proxy access may pertain to individual directors, nominating/governance committee members, or the entire board, as appropriate.

ISS may issue an adverse recommendation if a proxy access policy implemented or proposed by management contains material restrictions more stringent than those included in a majority-supported proxy access shareholder proposal with respect to the following, at a minimum:

- **Ownership thresholds** above three percent;
- **Ownership duration** longer than three years;

- **Aggregation limits** below 20 shareholders;
- **Cap** on nominees below 20 percent of the board.

In instances where the cap or aggregation limit differs from what was specifically stated in the shareholder proposal, lack of disclosure by the company regarding shareholder outreach efforts and engagement may also warrant negative vote recommendations.

If an implemented proxy access policy or management proxy access proposal contains restrictions or conditions on proxy access nominees, ISS will review the implementation and restrictions on a case-by-case basis. Certain restrictions viewed as potentially problematic especially when used in combination include, but are not limited to:

- Prohibitions on resubmission of failed nominees in subsequent years;
- Restrictions on third-party compensation of proxy access nominees;
- Restrictions on the use of proxy access and proxy contest procedures for the same meeting;
- How long and under what terms an elected shareholder nominee will count towards the maximum number of proxy access nominees; and
- When the right will be fully implemented and accessible to qualifying shareholders.

Two types of restrictions will be considered especially problematic because they are so restrictive as to effectively nullify the proxy access right:

- Counting individual funds within a mutual fund family as separate shareholders for purposes of an aggregation limit; and
- The imposition of post-meeting shareholding requirements for nominating shareholders.

36. Declassify the Board Proposals: If the majority supported shareholder proposal specifies declassification in one year, is a phased-in transition over the next three years sufficient implementation?

Although a proponent may request immediate declassification, our institutional investor clients have indicated that a phased-in declassification that allows for directors to fulfill their full elected terms is generally acceptable. However, delays to the start of the phase-in of declassification (such as Ryder Systems' 2013 delay of the phase-in to 2016-2018) should be vetted with shareholders and the rationale for the long delay included in the proxy statement.

37. Independent Chair Proposals: is there any action short of appointing an independent chair that would be considered sufficient?

Full implementation would consist of separating the chair and CEO positions, with an independent director filling the role of chair. A policy that the company will adopt this structure upon the resignation of the current CEO would also be considered responsive.

Partial responses will be evaluated on a case-by-case basis, depending on the disclosure of shareholder input obtained through the company's outreach, the board's rationale, and the facts and circumstances of the case. There are many factors that can cause investors to support such proposals, without necessarily demanding an independent chair immediately. For example, through their outreach, a company may learn that shareholders are concerned about the lack of a lead director, weaknesses in the lead director's responsibilities, or the choice of lead director. In such a case, creating or strengthening a robust lead director position may be considered a sufficient response, assuming no other factors are involved. If the company already has a robust lead director position, then the company's outreach to shareholders to discover the causes of the majority vote and subsequent actions to address the issue will be reviewed accordingly.

38. Shareholder proposals on Majority Vote Standards: Is adoption of a "majority vote policy" considered sufficient?

In general, adoption of a director resignation policy (sometimes called a majority vote policy) in lieu of a true majority vote standard is not considered a sufficient response. The "vote standard" is the standard which determines whether the director is an elected director: under a plurality vote standard, a director need only receive one vote to be "elected." A majority vote standard requires a director to receive support from a majority of the shares cast to be elected: if not achieved, and a new nominee would not be able to join the board; if the nominee is a continuing director, his or her legal status is a "holdover" director, not an elected director. The vote standard is usually embedded in the company's charter or bylaws, and is included in the proxy statement. A "majority vote policy" is a confusing term sometimes used to describe a director resignation policy, which is the post-election process to be followed if a director does not receive a majority of votes cast. Such resignation policies are usually found in a company's corporate governance guidelines, and can accompany either a majority or a plurality vote standard. Such a policy alone is not the same as a true majority vote standard.

39. Right for shareholders to call special meetings: If the shareholder proposal specifies an ownership threshold of 10 percent, but the company implements a higher threshold, or requires that one shareholder must hold that amount, is that sufficient?

According to our 2010 policy survey, 56 percent of institutional clients did not accept a higher threshold as a sufficient response. However, if the company's outreach to its shareholders finds a different threshold acceptable to them, and the company disclosed these results in its proxy statement, along with the board's rationale for the threshold chosen, this will be fully considered on a case-by-case basis. The ownership structure of the company will also be a factor in ISS' consideration.

40. Right for shareholders to call special meetings: What types of parameters set on the right are generally considered acceptable?

Restrictions on agenda items are generally seen as negating the right to call a special meeting; 71 percent of institutional investor respondents to our 2010 policy survey said this was not sufficient implementation. The more common type of agenda restriction seen is to exclude any agenda items that were on the previous annual meeting agenda, or will be on the upcoming annual meeting agenda. Such a prohibition would prevent shareholders from calling a special meeting to elect a dissident slate, as the annual meeting agendas would include election of directors on the ballot.

Reasonable limitations on the timing and number per year of special meetings are generally acceptable.

41. Right for shareholders to act by written consent: What limitations are generally acceptable?

Reasonable restrictions to ensure that the right to act by written consent could not potentially be abused are acceptable. In general, restrictions considered reasonable include:

- An ownership threshold of no greater than 10 percent;
- No restrictions on agenda items;
- A total review and solicitation period of no more than 90 days (to include the period of time for the company to set a record date after receiving a shareholder request to do so, and no more than 60 days from the record date for the solicitation process);
- Limits on when written consent may be used of no more than 30 days after a meeting already held or 90 days before a meeting already scheduled to occur; and
- A solicitation requirement that the solicitor must use best efforts to solicit consents from all shareholders.

Restrictions that go beyond these levels are examined in light of the disclosure by the company about its outreach to shareholders, the board's rationale, etc. An example was Amgen, which received majority support on a written consent proposal. It sought feedback from its shareholders, and in 2012 put on the ballot a management proposal discussing the shareholder feedback obtained and the procedural safeguards implemented in response to the feedback. Among these was a 15 percent ownership threshold, the same as their threshold to call special meetings.

42. Reducing super-majority vote requirements on charter/bylaw amendments: If the proposal calls for reducing the vote requirement on charter/bylaw amendments to a majority of shares cast, and the company reduces it for most provisions, but not all, is that considered sufficient?

In general, shareholders would look for all provisions to be reduced to the majority of shares cast. However, exceptions may occur. An example is where the supermajority applies only to a provision that would be antithetical to shareholders' rights, such as the ability to reclassify the board. Disclosure on which items were not reduced, and why, is a key consideration.

43. Reducing super-majority vote requirements: If a shareholder proposal calls for reducing requirement to a majority of shares cast, and the company reduces the level to majority of shares outstanding rather than shares cast, is that considered sufficient?

In general, reducing to the majority of cast is preferable among institutional investors. However, state law may mandate no less than a majority of outstanding shares threshold. The board's rationale and the disclosed outcome of the company's outreach to shareholders are key considerations.

In general, a reduction from a supermajority to a slightly lower supermajority (e.g. 75 percent to 66.7 percent), would not be considered a sufficient response, according to 71 percent of our institutional clients surveyed. However, the company's outreach to shareholders and board's rationale are also considerations.

44. What if a shareholder proposal is antithetical to the rights of shareholders?

Arguing that a proposal that received a majority of shareholder votes is antithetical to shareholders' interests, particularly at a widely held company, is a difficult proposition – it implies that shareholders are not acting in their own best interests. However, there are cases where majority-supported proposals go against the interests of minority shareholders, e.g. at controlled company AMERCO (2007, 2009-2012, subject to Nevada Court decisions on the matters). ISS obviously does not expect that companies will "act" on proposals contrary to the interest of all shareholders, particularly minority shareholders.

Likewise, ISS does not expect a company to act on a proposal invalidated by court rulings or state law. For example, there were majority-supported shareholder proposals on certain bylaw changes at Airgas in 2010 during their proxy fight with Air Products. The Delaware Supreme Court invalidated the bylaw changes; ISS would expect the company to act in accordance with the court rulings.

Director(s) receiving less than 50 percent of Shares Cast

45. What happens if a director received less than a majority (50 percent) of votes cast in the previous year?

If a director receives a majority of votes withhold/against him or her, ISS considers whether or not the company has addressed the underlying issues that led to the high level of opposition. Disclosed outreach to shareholders and disclosure of the steps taken in response to their findings, are key considerations. ISS may recommend withhold/against individual directors, a committee, or the entire board the following year if all the underlying issue(s) causing the high level of opposition are not addressed.

46. What is considered a sufficient response if a director receives less than majority support due to attendance issues?

If the director's attendance the following year is above the reporting threshold (75% of the aggregate of his/her board and committee meetings), that is generally considered sufficiently responsive. Chronic or widespread attendance issues may cause further consideration.

III. Composition

Attendance

47. What are the disclosure requirements on director attendance?

For exchange-listed companies, the SEC requires the following disclosure:

Item 407(b) *Board meetings and committees; annual meeting attendance*. (1) State the total number of meetings of the board of directors (including regularly scheduled and special meetings) which were held during the last full fiscal year. Name each incumbent director who during the last full fiscal year attended fewer than 75 percent of the aggregate of:

i. The total number of meetings of the board of directors (held during the period for which he has been a director); and

ii. The total number of meetings held by all committees of the board on which he served (during the periods that he served).

48. What if the company is not listed on an exchange – what attendance disclosure is needed?

Institutional investors expect similar attendance disclosure for non-listed companies as for listed companies.

49. What if there is no attendance disclosure?

Under the regulations, disclosure is only needed if a director attended less than 75 percent of the aggregate of his/her board and committee meetings for the period he/she served. Therefore, no disclosure would mean that all directors met the attendance threshold. However, many companies will include in their proxies an affirmative statement that all directors met the threshold, but it is not required. This affirmative disclosure is particularly helpful when a company provides additional details on attendance, but it is unclear if this disclosure is in addition to, or in lieu of, the required disclosure.

50. One of the acceptable reasons for director absence is missing one meeting when the total of all meeting was three or fewer. When does this apply?

If the total of all the director's meetings was three or fewer, and he/she missed just one, then, mathematically, the attendance would be below the 75% reporting threshold. That is why an exception is made - missing one meeting alone should not trigger the policy. This exception only applies when the aggregate of all the director's board and committee meetings is three or fewer. It does not apply when there were only three board meetings, or only three committee meetings, and the total of the director's board and committee meetings is four or more.

51. What exceptions to the attendance policy apply in the case of a newly-appointed director?

Companies generally schedule their board and committee meetings a year or more in advance. The expectation is that directors plan their schedules accordingly. However, newly appointed directors will not have this advance notification. Therefore, for newly appointed directors only, if it is disclosed that the director missed his/her meetings due to schedule conflicts, that is considered an acceptable reason.

In addition, the valid excuse of missing only one meeting if the total of all the meetings is three or fewer most often applies to new directors appointed late in the fiscal year when there are only a few meetings left to attend.

One not uncommon issue we find is unclear attendance disclosure associated with newly-appointed directors (see next FAQ). Director attendance for the previous fiscal year is supposed to be based on the period for which the director served. If that period were not for the full fiscal year, the disclosure should not be based on the full year. Unfortunately, some companies will report attendance for new directors based on the full fiscal year, or the disclosure may be unclear as to what period of time is being reported, for example: "All directors attended 75% of their board and committee meetings during the fiscal year, except for Director X, who joined the board in September".

52. What is ISS' policy on unclear attendance disclosure?

If the proxy disclosure is unclear and insufficient to determine whether a director attended at least 75 percent of the aggregate of his/her board and committee meetings during his/her period of service, ISS will recommend a vote against or withhold from the director(s) in question.

Investors expect directors to attend their board and committee meetings; poor attendance is a primary reason directors receive majority withhold or against votes. Although the SEC disclosure rules have not changed, the increasing incidence of unclear attendance disclosures caused ISS to adopt this policy before the 2013 proxy season.

Examples of deviations from the required disclosure include, but are not limited to:

- Not naming the director(s) who failed to meet the threshold attendance;
- Using a threshold of less than 75 percent;
- Using a threshold greater than 75 percent and reporting that a director did not achieve that threshold;
- Excluding special meetings from total meetings;
- Reporting attendance separately for regular vs. special meetings;
- Boosting the attendance records by including actions by written consents in total meetings;
- Reporting average attendance instead of threshold attainment;
- Reporting attendance per meeting or per committee rather than per director;
- Reporting aggregate board and aggregate committee attendance instead of the overall aggregate; and
- For directors who served for only part of a year, reporting attendance based on the full fiscal year rather than the period served, or ambiguity as to the period of reporting.

Oftentimes, the unclear disclosure results from a company's attempt to provide additional disclosure to its investors, not to obfuscate poor attendance. However, it is not clear whether the disclosure is supposed to be in addition to the standard disclosure, or in lieu of the required disclosure. In that case, the addition of a positive sentence to the effect that "during the fiscal year, all directors attended at least 75% of their board and committee for the period for which they served" clarifies that the required disclosure is met and the additional details provided are supplemental.

Overboarded Directors

53. What boards does ISS count when looking to see if a director is overboarded?

We include: public companies (we use S&P Capital IQ company type for the determination of whether a company is public), and mutual fund families. We do not include: non-profit organizations, universities, advisory boards, and private companies. Mutual funds are rolled up to mutual fund families, with one family counting as one board. Also, if service on another board is a required duty of the officer (e.g., as part of a joint marketing agreement), that board will not be counted.

54. How are subsidiaries of a publicly-traded company counted?

All subsidiaries with publicly- traded stock are counted as boards in their own right. Subsidiaries that only issue debt are not counted.

55. What vote recommendations will an overboarded CEO received from ISS?

ISS will not recommend withhold/against votes for overboarding at the company where he or she serves as CEO, but may do so at the outside boards.

Special consideration is given where the CEO of a parent company also serves on the boards of the company's publicly traded subsidiaries. ISS will not recommend withhold/against votes for overboarding on the parent company's CEO at the parent company, nor at any subsidiary board with over 50 ownership by the parent. At outside boards and at subsidiaries owned 50 percent or less by the parent, ISS will consider whether withhold/against votes are warranted on a case-by-case basis, considering among other factors:

- Structure of the parent subsidiary relationship (for example, holding company structure);
- Similarity of business lines between the parent and subsidiary;
- Percentage of subsidiary held by the parent company; and
- The total number of boards on which he/she serves.

56. Which CEOs are subject to the policy on overboarded CEOs?

The policy is applied only to CEOs of publicly-traded companies. It is not applied to CEOs of private companies. Nor does not apply to interim CEOs: there is no expectation that a director who steps in as interim CEO to fill the gap should drop his or her other boards for this short-term obligation.

57. Does ISS take into account if a director is transitioning off one board soon?

Yes. If the information is publicly disclosed that a director will be stepping off another board at the next annual meeting of that company to accommodate taking a place on a new board, ISS will not consider that board in determining if the director is overboarded.

IV. Independence

Determination of Independence

58. In the proxy analysis, where can one find why ISS classified a director as an "affiliated outsider"?

See the "Director Notes" under the Board Profile section of the proxy analysis. That provides all the affiliations the director has with the company. The material affiliations are shown in our Proxy Voting Guidelines under the Categorization of Directors table.

59. How does ISS determine whether the board of a U.S. issuer considers a director to be non-independent?

In the US, issuers subject to the reporting requirements of Item 407 of Regulation S-K are not required to explicitly identify their non-independent directors as long as they maintain fully independent Audit, Compensation, and Nominating committees. If a board maintains fully independent committees, it is only required to identify its independent directors, including new nominees, in its proxy or annual report.

In these situations, ISS will generally conclude that if a board does not identify one or more directors as independent, then it does not consider such director(s) to be independent. ISS will also examine all relevant disclosures, including, but not limited to, director bios, related party transactions, committee disclosure, and potentially review the issuer's historical approach to director independence disclosure to determine whether an issuer may have omitted an independent director from its list of independent directors.

It is corporate governance best practice for boards to be transparent to shareholders regarding the independence status of each director. In the context of the aforementioned US disclosure rules, the failure of a board to identify a director as independent will generally be construed to mean that the board does not consider such director to be independent.

Overall Board Independence

60. When ISS looks at whether a board is "majority independent," whose definition of independence are you using?

ISS is using our definition of "independent outside director" to determine if the board is majority independent.

61. What if the board is 50 percent independent outsiders and 50 percent insiders/affiliated outsiders?

50 percent is not a majority. ISS would not consider this board majority independent.

62. What public commitment can a company make concerning adding an independent director (and thus making the board majority independent)?

Sample language:

"We are conducting a director search in the exercise of due care for a candidate as soon as practicable following our Annual Meeting of Stockholders. Our new director will not only satisfy the independence requirements under the listing requirements, but will have no material connection to our Company (that is, no material financial, personal, business, or other relationship that a reasonable person could conclude could potentially influence boardroom objectivity) prior to being appointed to the Board. We commit to having this new director in place within no more than six months after the upcoming shareholder meeting."

Committee Independence

63. Are non-voting, "ex-officio" members of committees considered as regular members of committees?

Yes. They are considered the same as any other committee member, with the same expectation of independence.

64. What steps can a company take to change a vote recommendation on an affiliated outside director serving on a key committee?

For ISS to change its vote recommendation, either:

- The director needs to resign from the key committee(s), or
- The material relationship causing the affiliation (e.g. professional relations with a firm associated with the director) would need to be terminated.

The resignation from the committee would have to be effective no later than the date of shareholder meeting and would need to be publicly disclosed. For example: "As of [date no later than the upcoming annual meeting date], [Director Name] will resign as a member of the [Committee]."

For terminating a professional relationship, it would need to be effective immediately, and remain in effect as long as the director serves on any key committees.

Professional vs. Transactional Relationships

65. How does the definition of affiliation differ in ISS' standards for professional vs. transactional relationships?

Both are derived from the definition of affiliation in NASDAQ Rule 5605—but the affiliation under professional services is more strict: a director (or immediate family member) only has to be an employee of the organization providing the professional service, as opposed to an executive officer in the case of a transactional relationship for him to be considered affiliated.

66. What criteria determine a professional relationship, and which types of services are considered professional under ISS' classification?

"Professional" services are frequently advisory in nature, involve access to sensitive company information, and have a payment structure that could create a conflict of interest. Commissions or fees paid to a director (or to an immediate family member or an entity affiliated with either the director or the immediate family member) are an indication that the relationship is a professional service.

- **Insurance Services:** Generally professional, unless the company explains why such services are not advisory. Transactional where the company has an insurance policy with and pays premiums to an entity with which one of the company's directors is affiliated will be considered a transactional relationship. However, the burden will be on the company to explain why the service is not advisory.

- **Information Technology Services:** Generally professional, except for tech support. Tech support is usually tied to a previous transactional relationship, typically a purchase of hardware or software, and does not involve strategic decision-making or a payment structure which could create a conflict of interest.

- **Marketing Services:** Generally professional, unless the company explains why such services are not advisory. Market research, market strategy, branding strategy, and advertising strategy are generally considered professional services. Sale of promotional materials or sponsorships, or the purchase of advertising, is considered transactional. However, the burden will be on the company to make the distinction.

- **Educational services**: Generally transactional.

- **Lobbying services:** Professional.

- **Executive search services:** Generally professional. Lower level employment services may be considered transactional, depending on the disclosure.

- **Property management and real estate services**: Generally professional, unless the company explains why such services are not advisory. These services are advisory in nature and have a payment structure that could create a conflict of interest.

67. What happens when the company provides professional services to the director or an entity associated with the director?

In the case of a company providing a professional service to one of its directors or to an entity with which one of its directors is affiliated, the relationship is considered transactional rather than professional. Since neither the director nor the entity with which the director is affiliated is receiving fees for the service, there is no direct financial tie which could compromise that director's independence.

68. How does ISS assess the terms of voting agreements or "standstill" agreements that arise from issuers' settlements with dissenting shareholders?

In addition to the classification of any directors that the dissident shareholder may have placed on the board pursuant to our Director Independence policy and section 2.15 of our Categorization of Directors table, ISS will examine the terms of the standstill agreement and any other conflicting relationships or related-party transactions and, pursuant to our Board Accountability policy, may issue negative recommendations affecting the reelection of Nominating Committee members if we deem any terms of or circumstances surrounding the agreement to be egregious.

Contested Elections: Proxy Contests and Proxy Access

69. How will ISS evaluate proxy access nominees?

ISS has a policy for evaluating director nominees in contested elections, which currently applies to proxy contests as well as proxy access nominations. However, the circumstances and motivations of a proxy contest and a proxy access nomination may differ significantly. In some cases, the nominating shareholder's views on the current leadership or company strategy may be opposed to the existing board's views. Alternatively, a shareholder nominator may generally agree with the company's strategy or have no specific critiques of incumbent directors, but wishes to propose an alternative candidate to address a specific concern, such as diversity, lack of refreshment or a perceived skills gap on the board.

It is also possible that a proxy access election would occur when there are available seats on the board for all the nominees.

Given this range of possible nominating circumstances, ISS has created additional analytical latitude for evaluating candidates nominated through proxy access. The clarified approach is informed by related policies in international markets such as the UK & Ireland, Europe, Japan, and Australia, but is also tailored to unique aspects of proxy access in the US. When evaluating candidates nominated pursuant to proxy access, ISS will take into account any relevant factors including, but not limited to, the following:

- Nominee/Nominator specific factors:
  - Nominators' rationale;
  - Nominators' critique of management/incumbent directors; and
  - Nominee's qualifications, independence, and overall fitness for directorship.

- Company specific factors:
  - Company performance relative to its peers;
  - Background to the contested situation (if applicable);
  - Board's track record and responsiveness;
  - Independence of directors/nominees;
  - Governance profile of the company;
  - Evidence of board entrenchment;
  - Current board composition (skill sets, tenure, diversity, etc.); and
  - Ongoing controversies, if any.

- Election specific factors:
  - Whether the number of nominees exceeds the number of board seats; and
  - Vote standard for the election of directors.

70. How would ISS evaluate director nominees with third-party compensatory arrangements in a proxy contest?

Compensation arrangements with director nominees are among the factors ISS considers in our case-by-case analysis of proxy contests. Further discussion of ISS' analytic framework for contested elections is available in the U.S. and Canadian Summary Guidelines.

Independent Chair Shareholder Proposals

71. How does the new approach differ from the previous approach?

Under ISS' previous approach, the policy is to generally recommend for independent chair shareholder proposals unless the company satisfies all the criteria listed in the policy. Under the new approach, any single factor that may have previously resulted in a "For" or "Against" recommendation may be mitigated by other positive or negative aspects, respectively. Thus a holistic review of all of the factors related to company's board leadership structure, governance practices, and performance will be conducted under the new approach.

For example, under ISS' previous approach, if the lead director of the company did not meet each one of the duties listed under the policy, ISS would issue a For recommendation, regardless of the company's board independence, performance, or otherwise good governance practices.

Under the new approach, , in the example listed above, the company's performance and other governance factors could mitigate concerns about the less-than-robust lead director role. Conversely, a robust lead director role may not mitigate concerns raised by other factors.

72. What additional factors will ISS assess under the Independent Chair policy?

ISS will consider: the presence of an executive or non-independent chair in addition to the CEO; a recent recombination of the role of CEO and chair; and/or departure from a structure with an independent chair. ISS will also consider any recent transitions in board leadership and the effect such transitions may have on independent board leadership as well as the designation of a lead director role.

73. What does ISS consider a strong lead director role?

ISS will generally consider a lead director role to be robust if the lead independent director is elected by and from the independent members of the board (the role may alternatively reside with a presiding director, vice chairman, or rotating lead director; however, the director must serve a minimum of one year in order to qualify as a lead director). The lead director should also have clearly delineated and comprehensive duties, which should include, but are not limited to the following:

› serves as liaison between the chairman and the independent directors;
› approves information sent to the board;
› approves meeting agendas for the board;
› approves meeting schedules to assure that there is sufficient time for discussion of all agenda items;
› has the authority to call meetings of the independent directors;
› if requested by major shareholders, ensures that he or she is available for consultation and direct communication.

74. How will ISS consider board tenure?

Board tenure will not be a primary factor in determining a vote recommendation for independent chair shareholder proposals, but will be considered in aggregate with other factors. Concurrence of director/CEO tenure, lenghty directorships, or high average director tenure, may be considered. These concerns will be considered in the context of the overall leadership structure in determining whether the proposal presents the best leadership structure at the company.

75. How does ISS consider company performance?

ISS will consider one-, three-, and five-year TSR when evaluating company performance. Performance over the long-term will be weighed more heavily than short-term performance. Performance will be considered a significant factor in the holistic analysis of independent chair proposals.

76. How will the scope of a proposal have an effect on ISS' analysis?

ISS will consider the exact language of the resolved clause submitted in the proposal. Depending on company-specific circumstances, a resolved clause that seeks a policy to adopt an independent chairman so as not to violate any existing agreements or that seeks an independent chairman at the next leadership transition may be viewed more favorably than a proposal seeking an immediate change. For instance, if a company is performing well under its current board leadership structure, an immediate change may be unnecessarily disruptive.

77. What problematic governance practices will be considered negatively?

Governance practices that will be viewed negatively in the holistic review for independent chair proposals include, but are not limited to:

- Problematic compensation practices;
- Multiple related-party transactions or other issues putting director independence at risk;
- Failures of risk oversight;
- Adoption of shareholder-unfriendly bylaws without seeking shareholder approval;
- Failure of a board to adequately respond to majority-supported shareholder proposals or directors who do not receive majority support; and
- Flagrant actions by management or the board with potential or realized negative impacts on shareholders.

78. Will ISS consider a company's rationale for maintaining a non-independent chair?

Yes. ISS will consider the company's rationale as a factor that may be applicable in the holistic review. A "compelling" rationale will be subject to a case-by-case evaluation. For example, ISS will consider how the board's current leadership structure benefits shareholders and/or specific factors that may preclude the company from appointing an independent chair, if such disclosure by the company is provided.

Shareholder Rights & Defenses

79. Litigation Rights: How likely is ISS to support management proposals for fee-shifting bylaws?

As of early February 2014, approximately 50 bylaws allowing fee shifting have been adopted unilaterally, with none put to a shareholder vote. After examining the language of the ones adopted so far, it is unlikely that any, if put to a shareholder vote, would garner ISS' support. In fact, because they are so egregious, they merit votes against the board for their adoption.

80. Poison pills: What features of a qualifying offer clause are considered to strengthen its effectiveness and what features are considered to weaken its effectiveness?

Attributes of a qualifying offer clause that strengthen its effectiveness as a tool for shareholders include:

- Provision of a material adverse effect/condition ("MAE") clause;
- Reasonable requirements with respect to the length of time an offer is outstanding:

  - Offeror is not required to keep the offer open longer than 60 business days in the absence of an MAE clause or 90 business days if there is an MAE clause, and
  - No more than 15 business days following a price increase or an alternative bid or tender offer);
- Reasonable overall timing requirements with respect to the mechanics of calling a special meeting to vote on redemption of the pill (no longer than 150 business days from the time an offer is made until the time a special meeting is held).

Attributes of a qualifying offer clause that weaken its effectiveness and potentially discourage offers from being made include:

- A requirement that the offer be cash only;
- A provision allowing the company to declare an offer to not be a qualifying offer if the company procures an inadequacy opinion;
- A reverse due diligence requirement; and
- A requirement specifying the level of premium.

Capital/Restructuring

81. Are my company's one- and three-year TSRs in the bottom 10 percent of the U.S. market?

The reduced allowable increase applies to companies whose one- and three-year TSRs are both below the applicable threshold. The thresholds, updated quarterly, are available in our Policy Gateway under: TSR Information for U.S. Performance Related Policies.

The universe used for the "U.S. market" is the $C set in Standard & Poor's Research Insight product. To calculate these thresholds, we remove from the set any companies that do not have both one- and three-year TSRs.

82. When does ISS deem a risk of non-approval to be "specific and severe"?

Issuers should disclose any risks associated with shareholders' failure to approve a capitalization proposal in the proxy statement. The types of risks that may influence vote recommendations by virtue of being "specific and severe," if disclosed in the proxy statement, are as follows:

- In or subsequent to the company's most recent 10-K filing, the company's auditor raised substantial doubts about the company's ability to continue as a going concern;
- The company states that there is a risk of imminent bankruptcy or imminent liquidation if shareholders do not approve the increase in authorized capital; or
- A government body has in the past year required the company to increase its capital ratios.

83. When will an issuer's past use of shares drive vote recommendations?

If, within the past three years, the board adopted a poison pill without shareholder approval, repriced or exchanged underwater stock options without shareholder approval, or placed a substantial amount of stock with insiders at prices substantially below market value without shareholder approval, ISS will typically recommend that shareholders vote against the requested increase in authorized capital on the basis of imprudent past use of shares.

84. What disclosure is required to "declaw" preferred stock?

Sample Language:

"The board represents that it will not, without prior stockholder approval, issue or use the preferred stock for any defensive or anti-takeover purpose or for the purpose of implementing any stockholder rights plan."

Social/Environmental Issues

Lobbying Proposals

85. What does ISS look for when reviewing disclosure of a company's lobbying activity board oversight?

ISS reviews company materials to determine if the full board is primarily responsible for exercising oversight of a company's lobbying activities or if a committee of the board has been assigned responsibility for such oversight. The frequency of lobbying activity review is also considered, that is, whether just a general reference of responsibility is made or if a specific frequency of review (such as annually, biannually, or quarterly) is disclosed. ISS also looks for additional details regarding the scope of the board's (or delegated committee's) oversight responsibilities for both direct and indirect lobbying activity; such as reviewing compliance with existing company policies, or ensuring consistency with company values and public policy priorities.

86. What does ISS look for when reviewing a company's indirect lobbying expenditures?

When reviewing company disclosures of indirect lobbying expenditures, which are typically payments to trade associations and other groups, including membership dues used for lobbying purposes, a number of factors are considered. These factors include: (1) whether the company's reported lobbying expenditures are aggregated and provided as a single figure or if the company provides an itemized listing by recipient of its lobbying expenditures; and (2) whether the company comprehensively reports its lobbying expenditures or if information is only provided for the company's "significant" trade association relationships. With respect to the first factor, ISS also notes if the company provides information on the portion of trade association dues that were not tax deductible due to their use for lobbying purposes, and evaluates the level of disclosure on non-dues lobbying expenditures that were provided explicitly to support a trade association's lobbying activities.

87. What else does ISS consider when reviewing lobbying-related proposals?

In addition to the questions above, other factors are taken into consideration when preparing a lobbying-related proposal analysis and determining a vote recommendation. These include a company's disclosure and discussion of relevant lobbying policies and related management roles and oversight. ISS also considers whether the company has been associated with any recent lobbying-related controversies, fines, or litigation. Finally, ISS may also review and incorporate in our analysis and vote recommendation other relevant information per the ISS Global Approach.

Climate Change/Greenhouse Gas (GHG) Emissions

88. How does ISS evaluate a company's GHG emissions performance?

A company's GHG emissions performance indicates to shareholders whether the company's climate change policies and initiatives effectively manage its emissions and mitigate potential risks related to climate change. In recent years, a number of developments have indicated that government actions to cap and eventually reduce global GHG emissions are on the horizon, with some regulations already in place. Most prominent is the 2015 Paris Agreement, where 195 nations committed to limit global temperature rise to less than 2 degrees Celsius, with a more ambitious plan of limiting temperature rise to 1.5 degrees Celsius. As part of this agreement, the United States announced that it would reduce its emissions to 26-28 percent below 2005 levels by 2025. Resulting laws and regulations will have a greater impact on companies that are larger GHG emitters. As such, these companies may be exposed to a higher level of risk, particularly if they are lacking robust GHG emissions-reduction policies and initiatives.

As such, ISS takes into account the nature of the company's operations and its GHG emissions when reviewing emissions performance. Furthermore, ISS considers whether the company's emissions have increased or decreased over the period disclosed. When reviewing the emissions trend, ISS considers whether the emissions are disclosed in absolute terms (the company's overall emissions, typically measured in terms of total metric tonnes of carbon dioxide equivalent), or normalized terms (the company's absolute emissions divided by a normalizing factor, such as full-time employees or manufacturing output). If disclosed as absolute emissions, ISS looks to see if the company has made any recent acquisitions or sales of assets, or if there are other events that would impact the company's emissions.

As outlined in ISS' policy, GHG emissions performance is one factor that ISS considers when evaluating resolutions asking for the adoption of GHG emissions reduction goals. ISS also takes into account the disclosure of the company's GHG emissions-related management structure, including policies, board- and management-level oversight, and other climate change and emissions reduction initiatives.

The questions and answers in this FAQ document are intended to provide high-level guidance regarding the way in which ISS' Global Research Department will generally analyze certain issues in the context of preparing proxy analyses and vote recommendations for U.S. companies. However, these responses should not be construed as a guarantee as to how ISS' Global Research Department will apply its benchmark policy in any particular situation.

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Pay-for-Performance Mechanics

ISS' Quantitative and Qualitative Approach (U.S.)

(Updated with regard to shareholder meetings held on or after Feb. 1, 2017)

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Table of Contents

I. BACKGROUND

Following the implementation of mandated advisory shareholder votes on executive compensation under the Dodd-Frank Act of 2010, investors have regular opportunities to opine on executive pay programs. Investor feedback on the issue of pay-for-performance has indicated a preference for a focus on long-term alignment, board decision-making, and pay relative both to market peers and company performance. As a result, ISS' approach to evaluating pay-for-performance comprises an initial quantitative assessment and, as appropriate, an in-depth qualitative review to determine either the likely cause of a perceived long-term disconnect between pay and performance, or factors that mitigate the initial assessment.

The initial quantitative screens are designed to identify outlier companies that have demonstrated significant misalignment between CEO pay and company performance over time. The screens measure alignment on both a relative and absolute basis, and over multiple time horizons. The screening process applies to constituents of the Russell 3000E Index, a collection of the largest 3,500 (approximate) equity securities traded on U.S. stock exchanges.

ISS reviews the Compensation Discussion and Analysis (CD&A) section of all companies' proxy statements and highlights noteworthy issues to investors regardless of the quantitative concern level. This qualitative evaluation, as well as any in-depth qualitative evaluation subsequent to the quantitative screens, is the most important part of the analysis and subsequent vote recommendation. Responsiveness following a low say-on-pay vote or the identification of problematic incentive designs, such as multi-year guaranteed payments, discretionary pay components, inappropriate perquisites (including tax gross-ups), or lack of rigorous goals, are generally addressed in the qualitative analysis and may result in a negative recommendation despite a "low" quantitative concern. For more detail, see ISS' Executive Compensation FAQs.

Following an elevated concern level under the quantitative screens, a subsequent in-depth qualitative assessment is designed to uncover mitigating factors or potential contributors to the perceived misalignment. Beginning with meetings on or after Feb. 1, 2017, the qualitative assessment will also include a review of the company's performance against other financial metrics besides TSR, relative to the same peer group used in the quantitative screens.

II. QUANTITATIVE EVALUATION OF PAY-FOR-PERFORMANCE ALIGNMENT

Broadly speaking, ISS had three main goals in developing the pay-for-performance methodology:

- **Measure alignment over multiple time horizons**. Business cycles and compensation plans' performance cycles span multiple years. An assessment of alignment between shareholders and executives should accordingly see pay across timeframes that approach the length of performance and business cycles.
- **Use multiple measures to assess alignment**. The pay-for-performance evaluations are based on multiple measures, each of which assesses a company's pay-for-performance alignment from a distinct perspective.
- **Provide robust and standardized information about pay-for-performance concerns to investors and issuers.** The evaluation is designed to quantify the degree of alignment between pay and performance, and provide results that can be compared between companies and across multiple years.

ISS' quantitative pay-for-performance screen uses three measures of alignment between executive pay and company performance: two *relative* measures where a company's CEO pay magnitude and the degree of pay-for-performance alignment are evaluated in reference to a group of comparable companies, and one *absolute* measure, where alignment is evaluated independently of other companies' performance. The three measures, which are discussed in greater detail below, are:

- **Relative Degree of Alignment (RDA)**. This relative measure compares the percentile ranks of a company's CEO pay and TSR performance, relative to an ISS-developed comparison group, over the prior two-year or three-year period.
- **Multiple of Median (MOM)**. This relative measure expresses the prior year's CEO pay as a multiple of the median CEO pay of its comparison group for the most recently available annual period.
- **Pay-TSR Alignment (PTA)**. This absolute measure compares the trends of the CEO's annual pay and the change in the value of an investment in the company over the prior five-year period.

The following table summarizes the measurement periods, and inputs, for each measure:

Measure	Absolute or Relative	Scope	Inputs
RDA	Relative	3 years	CEO Pay & TSR
MOM	Relative	1 year	CEO Pay
PTA	Absolute	5 years	CEO Pay & TSR

What We Measure

Executive Pay. Per SEC disclosure requirements, each annual meeting proxy statement includes an array of pay data, with a three-year look-back, for the five highest-paid executives including the CEO and CFO. The centerpiece of these disclosures is the Summary Compensation Table, which enumerates the key elements found in typical top executive compensation packages, including cash, indirect pay, and equity grants:

- Salary
- Bonus
- Nonequity Incentive Plan Compensation
- Stock Awards (grant date value)
- Stock Option Awards (grant date value)
- Annual Change in Pension Value/Nonqualified Deferred Compensation Earnings (above market rate)
- All Other Compensation

Other tables provide, among other details, summaries of equity- and nonequity-based grants in the last fiscal year, unexercised/unvested equity-based awards, and the realized gains of vested and exercised grants. However, the Summary Compensation Table presents the most comprehensive picture of each named executive officer's total planned and earned compensation for the year – specifically, the pay and pay opportunities that the compensation committee and board determined they ought to receive. It is those decisions that investors generally wish to monitor and evaluate, since their aim is to ensure that executives will be paid fairly, but not overpaid, for the performance they ultimately deliver and sustain. ISS focuses on the CEO's pay because that package sets the "compensation pace" at most companies; also the compensation committee and board are most directly involved in and accountable for the decisions that generate the CEO's pay.

In evaluating pay and performance alignment, ISS' quantitative analysis focuses on CEO Total Compensation primarily as reflected in the Summary Compensation Table, although ISS utilizes a standard set of assumptions to value equity-based grants. All elements, including the Annual Change in Pension/Deferred Compensation Interest (not generally considered "direct" pay) are taken into account, since companies that do not provide components such as supplemental pensions and nonqualified deferral plans may compensate executives by making larger equity grants; thus, all elements are considered to help ensure equitable comparisons.

Company Performance. There are numerous ways to measure corporate performance, and key metrics may vary considerably from industry to industry and from company to company depending on the particular business strategy at any given time. Investors expect that incentive plan metrics will stem from that strategy and be designed to motivate the behavior and executive decisions that will lead to its successful execution. However, one key measure for investors in the context of a long-term pay-for-performance evaluation is total shareholder return (TSR).

ISS does not advocate that companies use TSR (or any particular metric) as the metric utilized in incentive pay programs. On the contrary, shareholders may prefer that incentive awards be tied to the company's short- and long-term business goals. If the business strategy is sound and well-executed, the expectation is that it will create value for shareowners over time, as reflected in long-term total shareholder returns. For this reason, TSR, which is objective and transparent, is the primary metric ISS utilizes in evaluating pay and performance alignment. TSR is the only metric currently used in ISS' quantitative pay-for-performance alignment screens, although various financial and operational metrics are considered in the qualitative review of company practices and compensation decisions.

Measures of Relative Alignment

Relative Degree of Alignment (RDA)

This relative measure seeks to determine if the pay opportunity delivered to the CEO is commensurate with the performance achieved by shareholders, relative to a comparable group of companies (for more information on ISS' process for selecting peers, see ISS' U.S. Peer Selection FAQ). RDA compares the percentile ranks of a company's CEO pay and TSR performance, relative to a comparison group of 12-24 companies selected by ISS on the basis of size, industry, market capitalization, and other factors, generally measured over a three-year period. An abbreviated two-year measurement period will be used in cases where three complete years of pay or TSR data is not available; in these instances a two-year measurement period will be used for both pay and performance. Beginning with meetings on or after Feb. 1, 2017, RDA will no longer be measured on a one-year basis, in an effort to increase the focus on long-term alignment. Prior to this change, RDA would use a single year of pay and TSR data in limited circumstances when more data was not available.

To determine this measure, the subject company's percentile ranks are calculated for three-year average pay and for annualized three-year TSR performance. The Relative Degree of Alignment is equal to the difference between the ranks: the performance rank minus the pay rank. The table below illustrates how the factors combine to determine the final measure – in this case, the relative degree of alignment is -27.

	Performance	Pay	Difference
3-year percentile rank	32	59	-27

Values for the Relative Degree of Alignment measure range between -100 and +100, with -100 representing high pay for low performance (i.e., 100th percentile pay combined with 0th percentile performance), zero representing a high degree of alignment (the pay rank is equal to the performance rank), and positive values representing high performance for low pay. Information on back testing is available in ISS' white paper titled Evaluating Pay for Performance Alignment. Three-year average pay for the subject company and each peer company is based on the most recently disclosed three years of pay data available in the ExecComp Analytics database for that company.

Because of the sensitivity of TSR to overall market performance, annualized TSR performance for all companies (subject company and comparison companies) will be measured for the same period: that is, the three-year period ending on the last day of the month closest to the fiscal-year end of the subject company. To illustrate: if a company's fiscal year ends on November 29, 2016, then all TSRs will be measured from December 1, 2013 through November 30, 2016.

Multiple of Median (MOM)

This relative measure identifies instances where CEO pay magnitude is significantly higher than amounts typical for its comparison group, independent of company performance.

Calculating is straightforward: the company's one-year CEO pay is divided by the median pay for the comparison group. (For more information on ISS' process for selecting peers, see ISS' U.S. Peer Selection FAQ.)

Values can therefore range from zero (if the subject company paid its CEO nothing) to any positive value, with no upper limit. A MOM value of 1.00 indicates that CEO pay in the last fiscal year is equivalent to the peer median.

Measure of Absolute Alignment

Pay-TSR Alignment (PTA)

This absolute measure is intended to identify whether shareholders' and executives' experiences, in terms of shareholder returns and granted pay, have followed the same long-term trend. PTA is not designed to measure the sensitivity of CEO pay to performance – whether pay and performance go up and down together on a year-over-year basis. Rather, it is a long-term measure of directional alignment.

At a high level, the measure is calculated as the difference between the slopes of weighted linear regressions for pay and for shareholder returns over a five-year period. This difference indicates the degree to which CEO pay has changed more or less rapidly than shareholder returns over that period.

The regressions that calculate Pay and TSR trends are weighted least-squares regressions of Pay and TSR against the independent (x) variable time. Because the timing of the measurements for pay and for TSR is different, however, the regressions are handled differently. The indexed TSR values represent "fence posts" -- fiscal year-end markers -- that connect the "fence rails" of pay delivered between those markers.

- For the pay regression, five values are measured, at times (years) 1, 2, 3, 4, and 5. The dependent (y) values for the pay regression are the total CEO compensation values for the five most recent fiscal years.
- For the TSR regression, six values are measured, at times (years) 0, 1, 2, 3, 4, and 5. The dependent (y) values for the TSR regression are determined by hypothetically "investing" $100 in the company on the day five years prior to the most recent fiscal year end, and measuring the value of that $100 investment on each of the subsequent five year fiscal year end dates, for a total of six indexed TSR values.

The following table traces a hypothetical company's Pay and Indexed TSR values for the five-year period in question. The TSR % change column indicates the percentage return over the one-year period in question, for reference.

Year (X)	Pay	Indexed TSR	TSR % change
2011 (0)	-	100	-
2012 (1)	1,231	109	9.0%
2013 (2)	2,553	118	8.3%
2014 (3)	1,821	91	-22.9%
2015 (4)	1,789	99	8.8%
2016 (5)	2,226	104	5.1%

The regressions are weighted to place slightly more emphasis on recent experience. Because there are a different number of data points for the two regressions, pay and TSR each have their own weights calculated. The weights are constructed such that the geometric mean of the weights is equal to 1, and that the weight for a pay period is equal to the geometric mean of the weights for the TSR periods that "fencepost" it (e.g., the weight for pay period 2 is equal to the geometric mean of the weight for TSR periods 1 and 2). Finally, the weight for any period is equal to the weight for the next period times a decay factor (set to .85 for the ISS model), yielding weights as follows:

	Period 0	Period 1	Period 2	Period 3	Period 4	Period 5
Indexed TSR weights	0.6661	0.7837	0.9220	1.0847	1.2761	1.5012
Pay weights	n/a	0.7225	0.8500	1.0000	1.1765	1.3841

The indexed TSR calculation depends on a continuous series of TSR data. If TSR data for only the first period is missing, PTA will be calculated on the basis of 4 years of data, otherwise PTA will not be calculated. If pay data are missing for any one period, then that period carries zero weight for both pay and TSR in the calculation.

The slope of the weighted least-squares regression is calculated as follows, if $\boldsymbol{P_i}$ represents the pay or performance value for period *i*, $\boldsymbol{W_i}$ represents the corresponding weight for period *i*, and $\boldsymbol{X_i}$ is simply *i*:

$$slope = \frac{\sum W_i \sum W_i X_i P_i - \sum W_i X_i \sum W_i P_i}{\sum W_i \sum W_i X_i X_i - \sum W_i X_i \sum W_i X_i}$$

In order that the two slopes are comparable to one another, each must be normalized by dividing by their respective weighted-average values:

$$norm.factor = \frac{\sum W_i P_i}{\sum W_i}$$

The normalized slopes are therefore analogous to a 5-year "trend rate" for pay and performance, weighted to reflect recent history. The final Pay-TSR Alignment measure is simply equal to the difference: performance slope minus the pay slope. Potential values for PTA are theoretically unbounded, but in practice they range from just over -100 percent to just over 100 percent.

Quantitative Screening Methodology and ISS Policy

These three measures provide raw material for ISS' initial quantitative evaluation of pay-for-performance alignment. ISS has developed a framework to determine whether the measures indicate the presence or absence of a pay-for-performance disconnect.

The philosophy of the framework is that if a pay-for-performance measure for a company lies within a range of typical values, then it has demonstrated some evidence of pay-for-performance alignment. If the company's measure is an outlier beyond that range, however, this indicates that a disconnect may exist.

The evaluative approach thus begins by identifying companies that are significant outliers in each measure. The approach is based on empirical observation of the distribution of the measures within the back-testing universe, and on the relative strength of the relationship of each measure to voting outcomes. Additionally, the methodology, where possible, avoids arbitrary threshold effects by using a continuous scoring approach. As a result, scores are additive – concerns raised for multiple measures can accumulate to provide evidence for a pay-for-performance disconnect.

The table below shows the levels for each measure that indicate where a company would be considered to have a misalignment between pay and performance triggering a Medium or High concern. A High concern for any individual factor will result in an overall High concern level for the quantitative component of the pay-for-performance evaluation, and multiple Medium concern levels would also result in an overall High quantitative concern. The current thresholds, effective as of Feb. 1, 2015 meetings, were established based on back testing conducted in 2014. The thresholds are regularly reviewed and periodically updated. Information on back testing is available in ISS' white paper titled Evaluating Pay for Performance Alignment.

Measure	Medium Concern Threshold	High Concern Threshold
Relative Degree of Alignment	-40	-50
Multiple of Median	2.33x	3.33x
Pay-TSR Alignment	-20%	-35%

III. QUALITATIVE REVIEW

An important step when pay and performance appear disconnected is to assess how various pay elements may be working to encourage, or to undermine, long-term value creation and alignment with shareholder interests. It is the outcome of this qualitative analysis that determines the vote recommendation for the say-on-pay proposal (or, in some cases, for the election of directors when there is no say-on-pay proposal on the ballot).

What We Assess

This second step in the pay-for-performance evaluation reviews the full picture of compensation decisions and practices at the company and may include consideration of some or all of the following factors (note: this is not a comprehensive list of all factors that may be reviewed in the qualitative analysis):

Strength of performance-based compensation and rigor of performance goals. This key consideration includes a review of the ratio of performance- to time-based equity awards as well as the overall ratio of performance-based compensation to fixed compensation, focusing particularly on the compensation committee's most recent decision-making (which reflects its current direction).

A company that exhibits significant misalignment of pay opportunities and performance over time would be expected to strongly emphasize performance-based compensation (though not by simply increasing the size of the pay package in order to make it more performance-based). ISS will review both recent cash awards paid and long-term award opportunities intended to drive future performance, to evaluate their design and performance criteria. Time-based awards (including standard stock options and time-vesting stock awards) that are not granted based on the attainment of pre-set goals are not considered strongly performance-based in this context. Shareholders would also expect such a company to fully disclose performance metrics and goals, which should be reasonably challenging in the context of its past performance and goals, guidance the company has provided to analysts, etc. If goals were set lower compared to the prior year's goals or actual performance levels, the company should explain the reason for this and how that was considered in setting corresponding pay opportunities. ISS may also review goals from prior award cycles and the level at which those awards were earned or forfeited. Use of a single metric, or very similar metrics, in either or both of the short- and long-term incentive programs may indicate duplicative awards or suggest inappropriate focus on one aspect of business results at the expense of others. If the company uses non-GAAP metrics, adjustments should be clearly disclosed (along with compelling rationale if such adjustments are nonstandard and/or reflect factors within the control of management).

Financial/operational performance. In addition to TSR, ISS considers a company's absolute and relative financial and operational metric results (on a GAAP basis). Beginning with annual meetings held on and after Feb. 1, 2017, ISS will also incorporate a relative financial performance assessment in research reports for all companies subject to the quantitative screens. This assessment examines the CEO's relative pay rank vs. the company's long-term relative financial/operational performance, which may be used to inform the qualitative review. For additional information on the new relative financial performance measure, see the subsection below titled Relative Pay and Financial Performance Assessment (and also see ISS' U.S. Executive Compensation Policies FAQs).

Realized and realizable pay. As noted above, the value of pay opportunities that depend on future stock prices and/or achievement of performance goals may not ultimately be delivered, and many investors believe that this should be a consideration in a pay-for-performance analysis. ISS has generally considered amounts of "realized" equity and performance grants, as appropriate, in the qualitative analysis. ISS also utilizes a defined calculation of "realizable pay" that may be considered in the qualitative review of S&P 1500 companies. The fact that realizable pay is lower than grant-date pay will not necessarily obviate other strong indications that a company's compensation programs are not sufficiently tied to performance objectives designed to enhance shareholder value over time. However, in the absence of such indications, realizable pay that demonstrates a pay-for-performance philosophy will be a positive consideration. For information on how ISS calculates realizable pay and how it is evaluated in a qualitative review, see the U.S. Executive Compensation Policies FAQs.

Peer group pay benchmarking practices. ISS closely examines a company's disclosed pay benchmarking approach to determine whether it is a contributing factor to a pay-for-performance misalignment. For example, a preponderance of self-selected peers that are larger than the subject company may drive up compensation without regard to performance. Above-median pay benchmarking may have the same effect.

Executive transitions. In cases of executive transitions, ISS will consider compensation arrangements for both outgoing and incoming executives. Severance and termination-related equity award treatment as well as sign-on awards will be closely evaluated. The nature of the employment termination (i.e. voluntary, involuntary, retirement, etc.) and any apparent windfalls (or pay-for-failure risk) will also be considered. Further, while shareholders may welcome a new CEO in light of lagging performance, they may nevertheless be concerned when a board has been forced to pay dearly for outside talent but has failed to appropriately link the new CEO's pay to expected performance improvement.

Special circumstances. ISS will also review unusual situations as a part of the qualitative analysis, such as a company's responsiveness to receiving low support for the say-on-pay proposal in prior years or when a company is determined to have a history of poor pay practices. The qualitative analysis will consider any other special circumstances, such as unusual equity grant practices (e.g., bi- or triennial awards), the effects of grant timing, special one-time grants, etc. Given the limitations in disclosure and in order to provide a consistent comparison across all companies, the quantitative screen relies on information disclosed in the proxy pay tables for the year in review. However, if an elevated concern is raised, ISS will consider any special grant practices in the qualitative review, if this information is clearly disclosed. We note, however, that such circumstances do not automatically invalidate other aspects of the analysis, including the quantitative results, since that methodology's long-term orientation is designed to smooth the impact of timing anomalies. Though the quantitative screen looks at CEO pay, any special or unusual grants made to other NEOs will also be reviewed. Companies should provide robust disclosure on the rationale and other relevant considerations for such circumstances.

Relative Pay and Financial Performance Assessment (New for 2017)

Though reviewing a company's performance against financial metrics other than TSR has always been a part of the qualitative assessment, starting in early 2017, a new standardized comparison of the subject company’s CEO pay and financial performance ranking relative to its ISS-defined peer group will be added to research reports for all companies in the Russell 3000E Index. This assessment is intended to inform the qualitative analysis where the initial quantitative screen indicates a misalignment between pay and performance. ISS is exploring integrating this assessment into the quantitative screen in future years.

The relative pay and financial performance evaluation compares the company’s reported financial and operational performance versus the ISS peer group across up to six financial metrics and TSR:

- Return on invested capital (ROIC)
- Return on assets (ROA)
- Return on equity (ROE)
- EBITDA growth
- Cash flow (from operations) growth
- Revenue growth
- Total shareholder return (TSR)

The relative ranking of these metrics varies by four-digit GICS industry group and not all industries will use all metrics. Performance is measured across a 3-year or a 2-year period (depending on trading history and data availability), and the subject company is ranked against its ISS-selected peers across each of the applicable metrics. Performance is measured using the 12 most recent trailing quarters (16 for growth metrics) as of ISS' quarterly data download from Compustat, so performance used in this evaluation may be different than annual performance metrics shown elsewhere in the report. The assessment uses reported, rather than adjusted, performance results, in order to provide for a reasonable comparison across all companies. The metric performance ranks are then combined into a weighted average performance rank. The weightings are also based on the subject company's industry and were developed using a back-tested analysis of historical financial results and shareholder support for say-on-pay proposals (more detail in Appendix A).

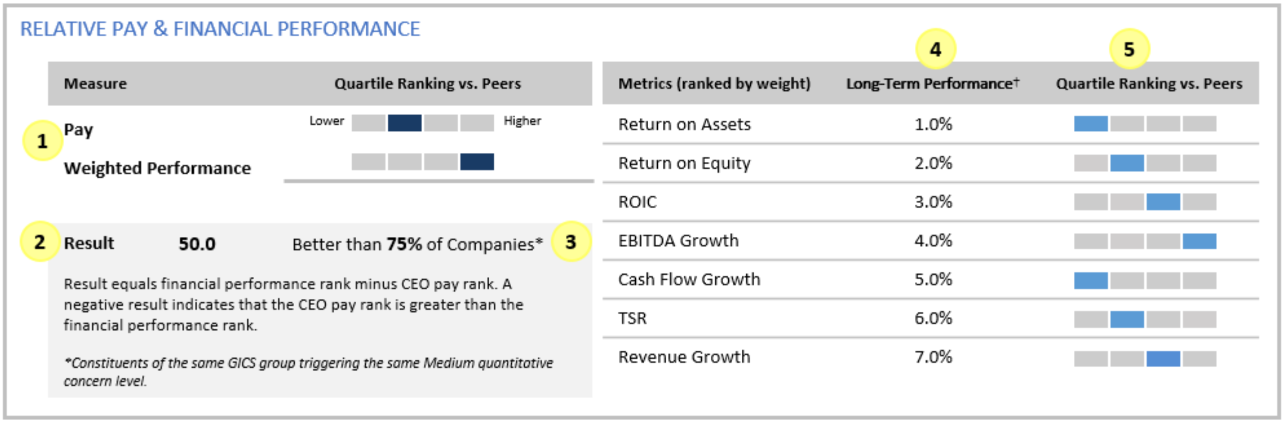
The weighted average performance rank is compared to the subject company's CEO pay rank, in a similar fashion to the existing Relative Degree of Alignment (RDA) test, creating a relative financial performance result. This may range from -100 to +100, with -100 representing the high pay for low performance (as in the RDA score). A negative result indicates that the CEO pay rank is greater than the weighted average financial performance rank, and a positive score means that the CEO pay rank is below the weighted average financial performance rank.

Finally, the relative financial performance result is compared to a historical universe of companies that are in the subject company's GICS industry group and that have received the same quantitative concern level in the existing quantitative pay-for-performance screen. The assessment also displays the percentage of companies the subject company performed "better than," based on a comparison to other companies within the industry.

Report Display

The relative pay and financial performance assessment appears below the ISS peer group analysis. A description and sample of the fields displayed are included below:

Sample of Relative Pay & Financial Performance Assessment



1. Visual representation of the subject company's CEO pay rank and weighted average performance rank
2. Relative Financial Performance Result, which equals the financial weighted average performance rank minus the CEO pay rank
3. Comparison of the result versus companies in the same industry with the same quantitative concern level
4. Performance value for each metric (3-year or 2-year scope), with the metrics sorted by order of importance (i.e., weighting) applicable to subject company's GICS industry group
5. Visual representation of the subject company's performance rank for each metric as compared to the ISS peer group

IV. LOOKING FORWARD

ISS' quantitative methodology combines two analytical perspectives – pay and performance relative to a comparison group of companies, and pay relative to absolute shareholder returns – to detect significant long-term disconnects. The comparison groups are based on a transparent methodology that reasonably accounts for company size, market cap, and general industry categorization -- not for the purpose of benchmarking pay (or picking stocks) but to evaluate whether pay is generally commensurate with market peers and performance. More information on ISS' peer group selection process can be found in ISS' FAQs on peer groups.

The qualitative overlay ultimately determines whether pay-and-performance disconnects are being addressed with appropriately performance-based pay opportunities. The introduction of the relative pay and financial performance evaluation using metrics in addition to TSR in 2017 will assist further in determining if appropriate linkages exist between NEO pay and company performance. While shareholders are not interested in micro-managing executive pay programs, they certainly have a stake in ensuring that compensation programs are effectively driving value creation.

ISS' robust, transparent, pay-for-performance methodology seeks to facilitate investor evaluations of this critical aspect of corporate governance and shareholder value. This methodology evolves with investor expectations, and feedback from all market participants is both welcome and appreciated. To provide feedback on the subject of ISS' pay-for-performance quantitative and/or qualitative review process, please email us at globalresearch@issgovernance.com.

V. APPENDIX

Appendix A: Development and Back Testing for the Relative Pay and Financial Performance Assessment

Various metrics were back tested by measuring the correlation of financial performance to say-on-pay voting results over multiple years. This approach was used to measure the importance that investors assign to the financial performance of each company when making say-on-pay voting decisions. The back-test results helped determine the seven metrics used in the relative financial test, and the significance and weight of each metric within industry groups.

Overall, each of the metrics used in the relative financial assessment, including TSR, is significantly related to say-on-pay vote results. Though TSR is also included in the quantitative screen, the relative financial performance assessment is meant to provide a broader financial performance assessment of the company, of which TSR is a component. The back testing results of each metric vary by industry, and thus the weightings applied vary by industry as well.

In addition to the back testing, the metric weightings were developed to align with shareholder-expressed preferences from the ISS Policy Survey and feedback received in engagements and roundtable discussions. Certain industries exclude metrics that were deemed not applicable for the particular business type and showed little to no correlation to say-on-pay vote results. Subjective adjustments were made to account for these situations; for example, given the primary revenue driver in financial services is often interest income, EBITDA growth was assigned a weighting of zero for all industry groups in the financial sector (GICS 40).

In the end, after taking into account correlations and industry-specific adjustments, capital productivity metrics (ROIC, ROA, and ROE) account for, on average across all industries, nearly 60% of the overall metric. And while TSR is a metric that is also included in the RDA test, the relative financial assessment is more heavily weighted towards financial measures so that TSR accounts for, on average, less than 15% of the overall metric.

Regression Results for MSOP Support and Performance Metrics – All Industries

Metric	t-stat
ROIC	13.04
ROA	12.94
ROE	12.97
Revenue Growth	4.22
EBITDA Growth	10.98
Cash Flow Growth	9.20
TSR	21.43

Relative Ranking of Performance Metrics – All Industries

As described earlier, not all metrics are used for all industries. The metrics used in this assessment and weights by industry will be regularly evaluated. Metrics that are not currently used for a particular industry are denoted by a "--" in the table below. Metrics with a tied ranking within a particular industry are denoted with "(T)".

GICS	TSR	ROE	ROA	ROIC	Cash Flow from Ops*	Revenue Growth*	EBITDA Growth*
1010 - Energy	1	4	3	2	6 (T)	6 (T)	5
1510 - Materials	5	2	1	7	3 (T)	6	3 (T)
2010 - Capital Goods	6	3	2	1	5	7	4
2020 - Commercial & Professional Services	6	2	3	1	4	7	5
2030 - Transportation	2 (T)	4	2 (T)	1	6	7	5
2510 - Automobiles & Components	3 (T)	5	2	1	3 (T)	7	6
2520 - Consumer Durables & Apparel	1	4	3	2	5 (T)	7	5 (T)
2530 - Consumer Services	2	5	4	3	6	7	1
2540 - Media	5	3	2	1	4	7	6
2550 - Retailing	5 (T)	1	3	2	5 (T)	7	4
3010 - Food & Staples Retailing	7	2 (T)	1	2 (T)	5	6	4
3020 - Food, Beverage & Tobacco	7	2 (T)	1	2 (T)	5	6	4
3030 - Household & Personal Products	7	2 (T)	1	2 (T)	5	6	4
3510 - Health Care Equipment & Services	7	4	3	2	5	6	1
3520 - Pharmaceuticals, Biotechnology & Life Sciences	6	4	3	1	5	7	2
4010 - Banks	1	3 (T)	2	3 (T)	--	--	--
4020 - Diversified Financials	1	3 (T)	3 (T)	2	--	--	--
4030 - Insurance	4	5	2	1	3	6	--
4040 - Former 4-digit code: see 6010 below							
4510 - Software & Services	6	3	2	1	5	7	4
4520 - Technology Hardware & Equipment	1	4 (T)	2 (T)	2 (T)	6	7	4 (T)
4530 - Semiconductors & Semiconductor Equipment	5	3	2	1	4	6	--
5010 - Telecommunication Services	5	2	1	3	6	7	4
5510 - Utilities	5 (T)	3	2	1	5 (T)	7	4
6010 - Real Estate (back tested using 4040 vote results)	4	3	2	1	5	6	--

*Note: in the case of material merger or spinoff activity during the financial assessment measurement period, the analysis will exclude revenue growth, EBITDA growth, and cash flow growth for the quarterly periods impacted by the corporate action. One or all of these metrics will still be used if sufficient data exists following the merger or spinoff activity so that ISS can calculate a minimum 2-year measurement period (through the calculation date), excluding the impacted quarters. However, if a metric is excluded from the assessment, the original weight that was assigned to the excluded metric will be redistributed proportionately to the remaining valid metrics. Capital productivity measures (ROIC, ROA, and ROE) and TSR will not be excluded in these situations, as these metrics are generally more consistent and should reflect the impact of the corporate action.

Metric Definitions

Metrics are generally calculated over a three-year period. When a company only has two years of data, the relative financial performance assessment will use two years of data (but in no event will the measurement be less than two years). ISS uses Compustat as the source for financial and TSR data. Metric definitions are below, along with the formula ISS uses for each calculation:

Return on Invested Capital (ROIC)
- Description: 3-Year Average Return on Invested Capital
- Calculation: (ROIC[0Y] + ROIC[-1Y] + ROIC[-2Y]) / 3

Return on Assets (ROA)
- Description: 3-Year Average Return on Assets
- Calculation: (ROA[0Y] + ROA[-1Y] + ROA[-2Y]) / 3

Return on Equity (ROE)
- Description: 3-Year Average Return on Equity
- Calculation: (ROE[0Y] + ROE[-1Y] + ROE[-2Y]) / 3

Revenue Growth
- Description: Annualized percentage growth in revenue over a 3-year period
- Calculation: (Revenue[0Y]/Revenue[-3Y])^(1/3) -1

EBITDA Growth
- Description: Percent change in EBITDA over a 3-year period
- Calculation: (EBITDA[0Y] – EBITDA[-3Y])/ABS(EBITDA[-3Y])

Cash Flow Growth
- Description: Percent change in operating cash flow (ONCF) over a 3-year period
- Calculation: (OANCF[0Y] – OANCF[-3Y])/ABS(OANCF[-3Y])

Total Shareholder Return (TSR)
- Same TSR as used in the Pay-for-Performance Quantitative Relative Degree of Alignment (RDA) test

Metric Measurement Periods

Financial metrics are generally measured over a three-year period (unless the subject company has only two years of data). For a three-year period, the metrics are calculated over the trailing 12 quarters (or 16 quarters for growth metrics) as of the applicable Quarterly Data Download (QDD) for each company, using quarterly financial data.

ISS downloads the financial model inputs for all companies four times per year. Downloads occur on the dates below, with the QDD used for a given analysis depending on the shareholder meeting date for the company as shown:

Shareholder Meeting Date Range		Data Download Date
From	To	
March 1	May 31	**December 1**
June 1	August 31	**March 1**
September 1	November 30	**June 1**
December 1	February 29	**September 1**

U.S. Executive Compensation Policies

Frequently Asked Questions

Updated December 16, 2016

New and materially updated questions are highlighted in yellow

Table of Contents

U.S. EXECUTIVE PAY OVERVIEW

1. Which named executive officers' total compensation data are shown in the Executive Pay Overview section?

The executive compensation section will generally reflect the same number of named executive officers as disclosed in a company's proxy statement. However, if more than five named executive officers' total compensation has been disclosed, only five will be represented in the section: the CEO and the four highest paid executives. Current executives will take precedence over terminated executives (except that a terminated CEO whose total pay is within the top five will be included, since s/he was an executive officer within the past fiscal year).

2. There was a CEO transition in the last fiscal year. Which CEO's pay is shown in the report and used for the quantitative screen?

The quantitative pay-for-performance screen will generally use the CEO in office on the last day of the fiscal year; however, the longer tenured CEO may be displayed in some cases where the transition occurs very late in the year. Both CEOs' compensation may be evaluated in the qualitative review.

3. How is Total Compensation calculated?

Total Compensation = Base Salary + Bonus + Non-equity Incentive Plan Compensation + Stock Awards*+ Option Awards** (based on full grant date values, as calculated by ISS) + Change in Pension Value and Nonqualified Deferred Compensation Earnings + All Other Compensation. The calculation will generally match the Summary Compensation Table with the exception of the stock option value and/or stock awards, described further below.

*As of December 2016, all stock-based awards (both time- and performance-vesting) are calculated by multiplying the number of underlying shares (the target number for performance awards) by the closing stock price on the grant date.

**Option awards are calculated using ISS' Black-Scholes option pricing model.

4. What inputs are used in ISS' Black-Scholes methodology?

Variable	Item	Source	Comments
C	Option Value	Calculated	
S	Stock Price	Proxy	
E	Exercise Price	Proxy	
σ	Volatility	XpressFeed	Historical three-year stock price volatility measured on a daily basis from the date of grant. If a company has not been publicly traded for at least three years, ISS measures volatility from the IPO date through grant date.

Q	Dividend Yield	XpressFeed	Average dividend yield over five years. If a company has not been publicly traded for at least five years, ISS averages dividend yield from the IPO date and the grant date of option. Dividend yield is based on each dividend divided by the closing stock price on the last business day before the dividend date. The calculation excludes the payouts of special dividends.
R	Risk Free Rate	Dept of Treasury website	U.S. Government Bond Yield on the date of grant corresponding to the term of the option. For example, if the option has a 10-year term, the risk free rate is the 10-year U.S. Government Bond Yield on the date of grant.
T	Term/Expected Life	Proxy	Full term of the option.
E	Base of Natural Logarithm	N/A	N/A
Ln	Natural Logarithm	N/A	N/A
N(x)	Cumulative Normal Distribution Function	N/A	N/A

5. How is the present value of all accumulated pensions calculated in the CEO Tally Sheet table?

This figure represents the aggregate amounts disclosed as the present value of the benefits for all pension plans (including qualified and non-qualified), as disclosed in the Pension Benefits table of the proxy statement.

6. How is the value of Non-Qualified Deferred Compensation calculated in the CEO Tally Sheet table?

This figure represents the sum of all deferred compensation values, as disclosed in the Non-Qualified Deferred Compensation table.

7. How are Potential Termination Payments calculated in the CEO Tally Sheet table?

The values for an involuntary termination without cause and a change in control related termination are provided as disclosed under the relevant termination scenario in the Change in Control Table and/or narrative of the proxy statement.

8. How are peer medians calculated for the Components of Pay table?

The median is separately calculated for each component of pay and for the total annual compensation. For this reason, the median *total compensation* (TC) of the peer CEOs will not equal the sum of all the peer median pay components, because the values are calculated separately for each pay component; the median TC reflects the median of TC of the peer group constituents.

Financial Data: Total Shareholder Return and Revenue

9. Where does ISS obtain a company's total shareholder returns (TSRs) and financial/operational data?

ISS obtains TSR and all financial data in the Compensation Profile from Standard & Poor's Compustat and Research Insight. Here is a link to their data dictionary.

10. How does Compustat calculate a company's TSRs and financial/operational measures?

For information on how Compustat calculates TSR and financial/operational measures, such as revenue and net income, see the data dictionary.

11. Why does CEO pay as percent of revenue or net income show as "N/A"?

This will show as "N/A" when the company's revenue or net income is not greater than zero.

MANAGEMENT SAY-ON-PAY (MSOP) AND ISS' EXECUTIVE PAY EVALUATION

12. What is ISS' Executive Pay Evaluation policy?

The Executive Pay Evaluation policy consists of three primary areas: Pay for Performance, Problematic Pay Practices, and Compensation Committee Communication and Responsiveness. Recommendations issued under the Executive Pay Evaluation policy may apply to any or all of the following ballot items, depending on the pay issue (as detailed in the policy): Election of Directors (primarily compensation committee members), Advisory Votes on Compensation (management say-on-pay -- MSOP), and/or Equity Plan proposals in certain circumstances.

13. When may ISS' compensation-related recommendations affect director election vote recommendations?

In general, if a company has an MSOP resolution on the ballot, the compensation-related recommendations will be applied to that proposal; however, if egregious practices are identified, or if there are recurring problematic issues or responsiveness concerns, ISS may also recommend withhold/against votes with respect to compensation committee members or, if appropriate, the full board. In addition, if there is no advisory pay vote on the ballot, any adverse recommendations related to executive compensation may apply to compensation committee members.

14. A company has not included a say-on-pay proposal on ballot without a valid exemption or has not presented the proposal in adherence with the company's previously adopted frequency. What action is warranted under ISS policy?

In the absence of clearly disclosed and compelling rationale, failure to adhere to the adopted say-on-pay frequency or failure to include the say-on-pay proposal on the ballot without a valid exemption may result in against or withhold recommendations against incumbent Compensation Committee members/chair or, in exceptional circumstances, the full board. While the SEC rule requires inclusion of say-on-pay proposals at least once every three calendar years, if the company's annual meeting date changes due to, for example, a change in fiscal year, or if the proposal is not presented at a meeting where shareholders may reasonably expect to see it for any other reason, companies should provide an explanation about the timing of the next say-on-pay resolution.

15. If one or more directors received a negative recommendation in the prior year due to ISS' concerns over compensation practices, will it have a bearing on the following year's recommendation?

The prior year recommendation is not a specific consideration in the following year's analysis, although the underlying concern may be. If one or more directors received less than 50 percent of shareholders' support (regardless whether it is a compensation issue), ISS may recommend that shareholders withhold from the entire board with the exception of new nominees if the company fails to take adequate action to respond to or remediate the issues raised in the previous report. If one or more directors received a high level of dissent (less than 70% shareholder support), the company should discuss any action or consideration taken to address the concern. A high level of dissent indicates an overall dissatisfaction and the board/committee should be responsive to shareholders' concerns. A lack of discussion or consideration, coupled with existing concerns may have a bearing on the following year's recommendation.

16. What impact might an identified pay-for-performance misalignment have on equity plan proposals?

If ISS identifies a significant pay-for-performance misalignment that results in an adverse recommendation on the say-on-pay proposal or compensation committee members, ISS may also recommend a vote against an equity plan proposal on the same ballot. Considerations in recommending against the equity plan include, but are not limited to:

- Severity of pay for performance misalignment;
- Whether problematic equity grant practices are driving the misalignment; and
- Whether equity plan awards have been heavily concentrated to the CEO and/or the other NEOs (as opposed to the plan being considered broad-based).

In determining whether the equity plan is broad-based, ISS examines the three-year average concentration ratio for equity awards made to the CEO and other NEOs. If the average concentration ratio exceeds 30% for the CEO (or 60% for all NEOs, including the CEO), this would indicate that the plan is not broad-based. Also see ISS' Equity Compensation Plans FAQ.

Pay for Performance Evaluation

Please also see ISS' Pay-for-Performance Mechanics white paper for a detailed explanation of the quantitative methodology used in the first phase of this analysis, and a discussion of the qualitative factors considered.

17. How does ISS' quantitative pay for performance screen work?

The first step in ISS' evaluation of pay for performance is a quantitative assessment of how well a company's CEO pay has been aligned with its shareholder returns. The current screen (which applies to all S&P 500 and Russell 3000E Index companies, as well as selected additional companies that are widely held) identifies companies that demonstrate a significant level of misalignment between the CEO's pay and company TSR, either on an absolute basis or relative to a group of peers similar in size and industry (see below for more information about ISS peer groups). Three independent measures assess alignment over multiple time horizons. If any or a combination of these measures indicates a pay for performance misalignment, ISS performs a more in-depth qualitative review of the company's pay programs and practices to ascertain likely causal factors, or mitigating factors, and a relevant vote recommendation. Note that all companies' pay programs and practices are evaluated.

18. What are the three quantitative screens?

The quantitative screens work as follows:

- **Relative Degree of Alignment.** This relative measure compares the percentile ranks of a company's CEO pay and TSR performance, relative to an industry-and-size derived comparison group, annualized for the prior three fiscal year periods. Specifically, CEO pay is averaged for the three-year period; annualized TSR is the geometric mean of the three fiscal year TSRs in the period.
- **Multiple of Median.** This relative measure expresses the prior year's CEO pay as a multiple of the median pay of its comparison group for the same period.
- **Pay-TSR Alignment.** This absolute measure compares the trends of the CEO's annual pay and the value of an investment in the company over the prior five-year period.

19. How does the initial quantitative pay for performance analysis affect the ultimate compensation-related vote recommendation?

The quantitative pay for performance analysis serves as an initial screen to identify cases that suggest there has been a significant misalignment of CEO pay and performance. An elevated concern from the quantitative screen results in a more in-depth initial qualitative review of the company's pay programs and practices to identify the probable causes of the misalignment and/or mitigating factors. We note that any company can receive an in-depth qualitative review, and all companies' pay programs and practices are evaluated.

However, a company with a Low quantitative concern level may still receive an in-depth qualitative review if deemed appropriate (for example, if the prior say-on-pay proposal received substantial shareholder opposition). While the quantitative screen indicates potential pay for performance outliers, the result of ISS' in-depth qualitative review is what ultimately determines the vote recommendation.

20. What are the factors that ISS considers in conducting the qualitative review of the pay for performance analysis?

Here are some of the key factors that ISS generally considers in conducting the qualitative review of the pay for performance analysis:

- The ratio of performance- to time-based equity awards;

- The overall ratio of performance-based compensation;
- The completeness of disclosure;
- The rigor of performance goals;
- The application of compensation committee discretion;
- The magnitude of pay opportunities;
- The company's peer group benchmarking practices;
- Actual results of financial/operational metrics, such as growth in revenue, profit, cash flow, etc., both absolute and relative to peers;
- Special circumstances related to, for example, CEO and executive turnovers or anomalous equity grant practices (e.g., bi-annual awards, special one-time grants);
- Realizable and realized pay compared to granted pay; and
- Any other factors deemed relevant.

21. If a company received a "low" concern in the quantitative pay for performance model, will ISS still evaluate the company's incentive programs?

Yes, ISS reviews all companies' Compensation Discussion and Analysis and highlights noteworthy issues to investors regardless of the quantitative concern level. This qualitative evaluation, as well as any in-depth qualitative evaluation subsequent to the quantitative screens, is the most important part of the analysis. Problematic incentive designs such as multi-year guaranteed payments, discretionary pay components, inappropriate perquisites (including tax gross-ups) or lack of rigorous goals are generally addressed in the qualitative analysis and may result in a negative recommendation despite a "low" quantitative concern.

22. What is the Relative Pay and Financial Performance Assessment included in research reports?

ISS will introduce the Relative Pay and Financial Performance Assessment for companies in the Russell 3000E, beginning with meetings on or after Feb. 1, 2017. This will be a standardized comparison of a long-term CEO pay and financial/operational performance rankings relative to the ISS-defined peer group. The financial/operational performance will be assessed across up to six financial metrics and TSR, depending on the subject company's GICS industry group. The potential metrics are:

- Cash flow (from operations) growth
- EBITDA growth
- Return on assets (ROA)
- Return on equity (ROE)
- Return on invested capital (ROIC)
- Revenue growth
- Total shareholder return (TSR)

The metrics and weightings will vary by GICS industry group and are based on extensive back testing. The data source is S&P Compustat and metrics are generally measured over the trailing 12 quarters (or 16 quarters for growth metrics) as of the applicable Quarterly Data Download for each company. For additional information on this process, please refer to ISS' Pay-for-Performance Mechanics white paper.

23. How will ISS use the Relative Pay & Financial Performance Assessment in its analysis?

For 2017, the Relative Pay & Financial Performance Assessment is not part of the quantitative screen methodology. Rather, it may be used as part of ISS' qualitative review. The assessment provides a broader view of the performance side of a pay-for-performance analysis. The company's relative financial performance may indicate that the initial quantitative screen result is anomalous – i.e., larger incentive awards may be explained by sustained superior financial and operational performance, despite lagging shareholder returns. It may also inform an evaluation of the rigor of incentive programs. For example, if incentives paid out above target levels against lowered performance goals, is this substantiated by superior relative performance in the applicable metric? Alternately, relatively high executive pay against a backdrop of both underperforming TSR and relative financial results would exacerbate pay-for-performance misalignment concerns.

24. How does ISS use realizable pay in its analysis?

ISS' standard research report will generally show three-year realizable pay compared to the three-year granted pay for S&P 1500 companies. See the next question for ISS' definition of realizable pay and how it will be calculated.

Realizable pay may be discussed in the qualitative review. For S&P 1500 companies, we may utilize the realizable pay chart to see if realizable pay is higher or lower than granted pay (see related questions below) and further explore the underlying reasons. For example, is realizable pay lower than granted pay due to the lack of goal achievement in performance based awards, or simply due to a decline in stock price? Is realizable pay higher than granted pay due to above target payouts in performance based equity awards (and, if so, are the underlying goals sufficiently rigorous), or is the difference due to increasing stock price?

For all companies, ISS' consideration of realized and/or realizable pay is to assist in determining whether the company demonstrates a strong commitment to a pay for performance philosophy. The fact that realizable pay is lower, or higher, than granted pay will not necessarily obviate other strong indications that a company's compensation programs are not sufficiently tied to performance goals designed to enhance shareholder value over time. However, in the absence of such indications, realizable pay that demonstrates a pay for performance commitment will be a positive consideration.

25. How is Realizable Pay computed?

ISS' goal is to calculate an estimated amount of "realizable pay" for the CEOs of S&P 1500 companies. It includes the cash and benefit values actually paid, and the value of any amounts "realized" (i.e., exercised or earned due to satisfaction of performance goals) from incentive grants made during a specified measurement period*, based on their value as of the end of the measurement period. Equity grants made during the measurement period that remain on-going as of the end of the period (i.e., not yet earned or forfeited) will be revalued using the company's stock price at the end of the period. For periods that include multiple CEOs, the departed CEO's pay (excluding any grants forfeited) will be valued as of his/her termination date.

In short, realizable pay includes all non-incentive compensation amounts delivered during the measurement period, plus the value of equity or long-term cash incentive awards made during the period and either earned or, if the award remains on-going, revalued at target level as of the end of the measurement period. The total realizable value for these grants and payments will thus be the sum of the following:

- Base salary reported for all years in the measurement period;
- Bonus reported for all years;
- Short-term (typically annual) awards reported as Non-equity Incentive Plan Compensation for all years;
- For all prospective long-term cash awards made during the measurement period, the earned value of the award (if earned during the same measurement period) or its target value in the case of on-going award cycles;
- For all share-based awards made during the measurement period, the value (based on stock price as of the end of the measurement period) of awards made during the period (less any shares/units forfeited due to failure to meet performance criteria); or, if awards remain on-going, the target level of such awards;
- For stock options granted during the measurement period, the net value realized with respect to such granted options which were also exercised during the period; for options granted but not exercised during the measurement period, ISS will re-calculate the option value, using the Black-Scholes option pricing model, as of the end of the measurement period;
- Change in Pension Value and Nonqualified Deferred Compensation Earnings reported for all years; and
- All Other Compensation reported for all years.

*Generally three fiscal years, based on the company's fiscal year. For realizable pay calculated as part of ISS' 2017 analyses, this will generally consist of fiscal years 2014 through 2016.

Note that ISS' realizable pay amount will be based on a consistent approach, using information from company proxy disclosures. Since current SEC disclosure rules are designed to enumerate "grant-date" pay rather than realizable pay, these estimates will be based on ISS' best efforts to determine necessary inputs to the calculation. In cases where, for example, it is not sufficiently clear whether an applicable award has been earned or forfeited during a measurement period, ISS will use the target award level granted.

26. How does ISS calculate the "Granted Pay" that is compared to a CEO's "Realizable Pay"?

The CEO's "Granted Pay" presented in the "3-Year Granted vs. Realizable CEO pay" chart in ISS' reports is calculated as the sum of the following for the 3-year measurement period:

- Base salary reported for all years in the measurement period;
- Bonus reported for all years;
- Target short-term (typically annual) awards reported as Non-equity Incentive Plan Awards in the Grants of Plan-Based Awards table, for all years; if a target award is not determinable, none will be included;
- Target long-term cash awards made during the measurement period (as reported in the Grants of Plan-Based Awards table, or elsewhere in the CD&A);

- The grant-date value of all share-based awards made during the measurement period;
- For stock options granted during the measurement period, grant-date value is calculated by ISS using the Black-Scholes option pricing model, per ISS' standard stock option valuation methodology.
- Change in Pension Value and Nonqualified Deferred Compensation Earnings reported for all years; and
- All Other Compensation reported for all years.

27. Why doesn't ISS use the intrinsic value (exercise price minus current market price) of stock options when calculating realizable pay?

Top executives' stock options typically expire after seven to 10 years, meaning that even if an option is underwater in the first few years after its grant, there is a substantial likelihood it will ultimately deliver some value to the holder prior to expiration. Shareholders recognize that, in considering "realizable" pay as a pay for performance factor, it is important to include the economic value of underwater options (which will also reflect the impact of a lower stock price, if applicable).

28. A company would like to disclose ongoing and/or completed performance-based equity awards for awards made in the past three years. What type of disclosure format would ISS suggest?

Disclosure of ongoing or completed performance-based equity awards in a consistent manner would facilitate ISS' calculation of realizable pay (which is based on a best efforts extraction of necessary information from proxy statements). If a company has awarded performance-based equity awards in the past three years, disclosure of the awards in the following table would be helpful:

Grant Date	Threshold Payout (#)	Target Payout	Maximum Payout	Performance Period*	Target/Actual Earned Date	Actual Payout
3/1/2009	100,000	150,000	200,000	1 year	6/1/2010	180,000
3/1/2010	150,000	200,000	250,000	3 years	6/1/2012	Not determined yet

*Performance period does not include time-vesting requirement.

29. With respect to pay for performance alignment and realizable pay calculations, how will ISS treat CEOs who have not been in the position for three years?

The quantitative methodology will analyze total CEO pay for each year in the analysis without regard to whether all years are the same or different CEOs. If that analysis indicates significant pay for performance misalignment, the ensuing qualitative analysis may take into account any relevant factors related to a change in CEO during the period. However, given an apparent disconnect between performance and CEO pay, shareholders would expect the new CEO's pay package to be substantially performance-based.

For years when a company has more than one CEO, only one CEO’s pay will be included to calculate granted pay (generally the CEO who was in the position at or near the end of the fiscal year) for purposes of the pay-for-performance quantitative screen. CEO base salary will be annualized.

With respect to realizable pay, ISS will include both pay packages and calculate the realizable amount, as of the end of the measurement period, of the Summary Compensation Table pay reported for the CEO in office on the last day of each fiscal year in the measurement period. Pay for a terminated CEO (including the value of unforfeited awards as if they were paid out on the last day of service or the end of the fiscal year, based on information in disclosures) will also be included in realizable pay.

30. How is three-year total shareholder return (TSR) calculated? How are "peaks and valleys" accounted for in the five-year analysis?

The Relative Degree of Alignment (RDA) measure uses annualized three-year TSR – i.e., the annualized rate of the three 12-month periods in the three-year measurement period (calculated as the geometric mean of the three TSRs). TSR reflects stock price appreciation plus the impact of reinvestment of dividends (and the compounding effect of dividends paid on reinvested dividends) for the period.

In the Pay-TSR Alignment (PTA) assessment, indexed TSR represents the value of a hypothetical $100 investment in the company, assuming reinvestment of dividends. The investment starts on the day five years prior to the month-end closest to the company's most recent fiscal year end, and is measured on the subsequent five anniversaries of that date. The Pay-TSR Alignment (PTA) measure (as outlined in ISS' Pay-for-Performance Mechanics white paper) is designed to account for the possibility of "bumps" in the overall trend.

31. What TSR time period will ISS use for the subject company and the peers in the Pay for Performance analysis? What about the compensation period?

TSRs for the subject company and all its peers are measured from the last day of the month closest to the subject company's fiscal year end. For example, if the subject company's fiscal year end is September 30, then the one-year and three-year TSRs for the subject company and its peers will be based on September 30. Compensation figures for all companies are as of the most recent available date.

32. For companies with meetings early in the year, whose latest year peer CEO pay has not yet been released, what pay data does ISS use?

ISS uses the latest compensation data available for the peer companies, some of which may be from the previous year. This circumstance is considered in any related qualitative review, as deemed relevant.

33. Do you include the subject company in the derivation of the peer group median? When you say 12 companies minimum for peers, does the 12 include the subject company?

No, neither the CEO pay nor the TSR of the subject company is included in the median calculation. The subject company is also not included in the minimum number of peer companies, which will generally be 12 (also see **Determining Peer Companies**, below).

34. If a company has not been publicly traded for at least three or five years, does the relevant quantitative pay for performance evaluation still apply? Does this affect whether a company would be used as a peer?

If the company has not been publicly traded for five fiscal years, the relative measures, specifically the three-year Relative Degree of Alignment (RDA) and the multiple of pay against the peer median, will still apply. If the company has been publicly traded for less than three years, the RDA measure will be based on two years of data. If less than two years of data is available, the RDA measure will not be run. The company's limited life as a publicly traded company will also be considered as part of any qualitative evaluation.

Generally, only companies with three full years of data will be peer companies. In limited circumstances, a company with less than three years of data may be used when the quantitative evaluation focuses on less than three years.

35. How does ISS take the year-over-year change in pension benefits value into account in assessing CEO pay?

ISS includes changes in pension value in our pay assessments because companies that do not offer supplemental defined benefit pensions (SERPs) to their top executives often provide for post-retirement compensation through larger grants of equity-based awards and thus could be disadvantaged in company-to-company pay comparisons if SERP-related compensation is omitted from the annual figures. Because ISS' quantitative analysis has a long-term orientation, pay anomalies caused by issues such as a single large increase in year-over-year pension accumulations (e.g., due to interest rate changes) should not have a significant impact on the results. However, such anomalies are considered in the qualitative evaluation.

36. What actions can the company take to address concerns when ISS has issued an adverse recommendation on the basis of a pay for performance disconnect?

The pay for performance evaluation is a case-by-case analysis, and actions intended to address concerns should be tailored according to the underlying issues identified in the pay for performance disconnect. Prospective commitments to increase the proportion of performance-based pay in the future may not adequately address concerns, and companies should provide sufficient information on award size, performance goals, and vesting design. Adjustment to recent awards to strengthen their performance linkage would be a more significant mitigator. As an example, if the primary source of a pay increase is due to time-vested equity awards, a remedy could be for the company to make a substantial portion (i.e. at least 50 percent) of such equity awards to named executive officers performance-based.

Any pay for performance action(s) should be disclosed in a public filing, such as a Form 8-K or DEFA 14A. Based on the additional disclosure, ISS may change its vote recommendation if the company's actions sufficiently remedy the pay for performance disconnect. However, ISS' recommendation will depend on the company providing compelling and sufficient evidence of action to strengthen the performance-linkage to its executives' compensation and comprehensive additional disclosure.

37. When will ISS consider equity awards to be performance-conditioned?

For purposes of calculating the CEO's equity pay mix, ISS determines the proportion of equity awards (by value) that are time-based vs. performance-conditioned. In order for equity awards to be considered performance-conditioned, the company should disclose the details of the performance metric(s) (e.g., return on equity) and the associated goals (e.g., 15 percent) associated with the performance awards at the time they are made. From this disclosure, shareholders will know the minimum level of performance required for any equity grants to be earned. Performance-conditioned equity awards do not include standard time-based stock options or performance-accelerated grants. Instead, performance-conditioned equity awards are performance-contingent in that the individual will not receive the grant if the performance goal is unmet.

Premium-priced options must have a meaningful premium (typically at least 110 percent of the stock price on the date of grant) in order to be classified by ISS as performance-conditioned. For equity awards that are contingent on stock price goals, the price condition should be both meaningful and required to be maintained for at least 20 consecutive trading days (or 30 calendar days) before vesting in order for the grant to be considered performance-conditioned. Market stock units that pay out at target without an increase in stock price will not be considered performance-conditioned.

38. What level of disclosure is necessary to enable shareholders to assess the rigor of incentive programs?

In order for shareholders to assess the rigor of performance-based bonus and equity incentive programs, the company needs to disclose the performance measures and goals. To ensure complete and transparent disclosure, the company should disclose the following:

1. the metric(s) used (and rationale for the selections);
2. the goal(s) that were set for each metric and the target (and, if relevant, threshold and maximum) payout level(s) set for each NEO;
3. the reason that each goal was determined to be appropriate for incentive pay purposes (including the expected difficulty of attaining each goal);
4. the actual results achieved with respect to each goal; and
5. the resulting award (or award portion) paid (or payable) to the NEO with respect to each goal.

If a target performance goal was set at or below the prior year's analogous goal or achieved result against that goal, the company should explain the reasoning for this and how it was considered when determining the related payout opportunities.

39. Will ISS take into account the timing of equity grants (such as for grants made subsequent to the applicable performance year) when conducting its pay for performance evaluation?

Grant timing issue can be problematic for investors evaluating the relationship between performance and pay. The value of equity grants generally represents a significant proportion of top executives' pay; if the grants are made subsequent to the "performance year," disclosures in the Grants of Plan-Based Awards Table may distort the pay for performance link.

Some investors believe that equity awards can incentivize and retain executives for past and future performance; therefore, adjustments for such timing issues may not be relevant. In addition, ISS' pay for performance analysis has a long-term orientation, where these types of timing issues are less relevant than in an evaluation of one year's pay. Nevertheless, ISS may consider the timing of equity awards made early in a fiscal year in its qualitative assessment if complete disclosure and discussion is made in the proxy statement.

In order to ensure that pay for performance alignment is perceived, the company should discuss the specific pre-established performance measures and goals that resulted in equity awards made early in the next fiscal year. A general reference to last year's performance is not considered sufficient and meaningful to shareholders. If the company makes equity grants early in each year, based on the prior year's specific performance achievement, shareholders should not be required to search for the information in Form 4s and compute the adjusted total compensation for the top executives in order to make a year-over-year comparison. Instead, companies should provide information about grants made in relation to the most recently completed fiscal year in the proxy statement for the shareholder meeting that follows that fiscal year (aligned with other compensation reported for that year). Many companies provide an alternate summary compensation table that takes into account the recent equity awards made in the current fiscal year. The number of options or stock awards with the relevant exercise price or grant price should be disclosed in the proxy statement. The term of the options should be provided as well. In order for ISS to compute the adjusted total compensation and include it for purposes of our narrative discussion and analysis, companies need to make transparent and complete disclosure in the proxy statement; ISS will not search for the companies' Form 4 filings to make such adjustments but will rely on the specific grant disclosures found in the proxy statement.

40. A company grants time-vesting equity awards that were contingent on meeting specific performance criteria. Does ISS consider such awards to be performance-conditioned?

ISS will generally consider such awards to be performance-conditioned if the performance measurement period, metrics, and goals were pre-established and are disclosed in the proxy statement.

41. How does ISS capture transition period compensation?

Disclosure of transition period compensation varies across companies; therefore, ISS does not apply a standardized methodology in all cases. When transition periods represent an extension of a recently completed fiscal year (until the start of a new fiscal year period), ISS will generally include transition period pay as part of the most recently completed fiscal year pay. Cash pay components such as base salary and bonus will be annualized and equity pay components will be added, subject to a company-specific case-by-case review.

42. Which companies are subject to ISS quantitative pay-for-performance screens?

At a minimum, all companies in the S&P500 and Russell 3000E indexes.

43. How does ISS evaluate pay-for-performance alignment at companies for which pay data is not analyzed in the quantitative screens?

For companies outside the Russell 3000E Index (which includes all companies in the Russell 3000 and Russell Microcap indexes), ISS reviews the CD&A, including the Summary Compensation Table and other compensation tables, to assess the level of NEOs' pay relative to internal standards developed to identify potential egregious pay levels and problematic compensation practices (similar to the Problematic Pay Practices component of the Executive Pay Evaluation Policy). If that evaluation does not identify any significant concerns, the ISS research report indicates that (and notes any items that shareholders may nevertheless wish to consider). If significant concerns are identified, the ISS analysis addresses them to determine whether or not the situation warrants an adverse recommendation.

Determining Peer Companies

Please note: several of the peer selection FAQs have been omitted or consolidated, as complete information on the methodology used for pay-for-performance peer groups and ISS' incorporation of company-selected peers is available in ISS' U.S. Peer Selection FAQ.

44. How does ISS select constituents for the peer groups used in its pay for performance analysis?

ISS' methodology for selecting peers maintains a focus on identifying companies that are reasonably similar to the subject company in terms of industry profile, size, and market capitalization, taking into account a company's self-selected peers to guide industry selections. This peer group is used with respect to two of the three quantitative pay-for-performance screens that may trigger and in-depth review and analysis of a company's pay program in connection with say-on-pay evaluations.

ISS' selected peer group generally contains a minimum of 14 (and always at least 12) and maximum of 24 companies, based on the following factors:

1) The GICS industry classification of the target company;
2) The GICS industry classifications of the company's disclosed CEO pay benchmarking peers; and
3) Size constraints for both revenue (or assets for certain financial companies) and market value.

Subject to the size constraints, and while choosing companies that push the subject company's size closer to the median of the peer group, peers are selected from a potential peer universe in the following order:

1. from the subject's own 8-digit GICS group
2. from the subject's peers' 8-digit GICS groups
3. from the subject's 6-digit GICS group
4. from the subject's peers' 6-digit GICS groups
5. from the subject's 4-digit GICS group

When choosing peers, priority is given to potential peers within the subject's "first-degree" peer group (the companies that are either in the subject's own peer group, or that have chosen the subject as a peer), and companies with numerous connections (by choosing as peer or being chosen as a peer) to these first-degree peers. All other considerations being equal, peers closer in size are preferred.

45. What are ISS' size parameters for qualifying a potential peer?

ISS applies two size constraints to qualify potential peers:

1. Revenue (or assets for certain financial companies as described below).
   In general, peers should fall in the range of 0.4 to 2.5 times the company's revenue (or assets). These ranges are expanded when the subject company's revenue is larger than $5 billion or smaller than $200 million in revenue (assets). Companies smaller than $100 million in revenue (assets) are treated as if they have $100 million in revenue (assets).

2. Market capitalization (in millions)

   Companies are classified into market capitalization buckets as follows:

Bucket	Low end	High end
Micro	0	200
Small	200	1,000
Mid	1,000	10,000
Large	10,000	No cap

   While ISS may choose peers that fall outside a subject company's market cap bucket if necessary to reach a minimum peer group size, none may have a market cap of less than 0.25 times the low end or more than 4 times the high end of the subject's market capitalization bucket.

ISS will use balance sheet assets (rather than revenue) to measure the size of companies in the following 8-digit GICS groups:

› 40101010 Commercial Banks
› 40101015 Regional Banks
› 40102010 Thrifts + mortgage
› 40202010 Consumer Finance
› 40201020 Other diversified

Additionally, ISS will use *only* market cap to qualify peers for companies within these GICS groups, using the same guidelines as are used for revenue or assets within other industries:

› 10102010 Integrated Oil & Gas
› 10102020 Oil & Gas Exploration & Production
› 10102030 Oil & Gas Refining & Marketing
› 10102040 Oil & Gas Storage & Transportation
› 10102050 Coal & Consumable Fuels

46. What are GICS codes? Who can I contact if I disagree with the GICS classification?

The Global Industry Classification Standard (GICS) was developed by Standard & Poor's and MSCI in response to the financial community's need for a reliable, complete (global) standard industry classification system. GICS codes correspond to various business or industrial activities, such as Oil & Gas Drilling or Wireless Telecommunication Services. GICS is based upon a classification of economic sectors, which is further subdivided into a hierarchy of industry groups, industries and sub-industries. The GICS methodology is widely accepted as the industry analysis framework for investment research, portfolio management, and asset allocation.

ISS does not classify companies into the GICS codes. Please contact Standard & Poor's at 1-800-523-4534 if you believe that a company has been misclassified.

47. Are the same peer companies that are used for the pay-for-performance analysis also used to calculate a company's Shareholder Value Transfer Benchmark related to an equity plan proposal?

No, the list of companies shown in the executive compensation section is not the same peer group used in calculating a company's SVT Benchmark. The peer group used for benchmarking executive pay is based on a combination of industry and size (revenue/assets and market cap); the peer group used for creating the SVT Benchmark for stock compensation plan proposals is based on 4-digit GICS industry groups, with adjustments for market cap size.

Problematic Pay Practices/Commitments on Problematic Pay Practices

48. What is ISS' Problematic Pay Practices evaluation?

Pay elements that are not directly based on performance are generally evaluated on a case-by-case basis considering the context of a company's overall pay program and demonstrated pay for performance philosophy. Based on input from client surveys and roundtables, ISS has identified certain practices that are contrary to a performance-based pay philosophy, which are highlighted in the list below. ISS evaluates these practices on a case-by-case basis, considering the facts and circumstances disclosed.

- Egregious employment contracts:
  - Contracts containing multi-year guarantees for salary increases, non-performance based bonuses, or equity compensation;
- New CEO with overly generous new-hire package:
  - Excessive “make whole” provisions without sufficient rationale;
  - Problematic termination-related equity vesting provisions;
  - Any of the problematic pay practices listed in this policy;
- Abnormally large bonus payouts without justifiable performance linkage or proper disclosure:
  - Performance metrics that are changed, canceled, or replaced during the performance period without adequate explanation of the action and the link to performance;
  - Payment of bonuses despite failure to achieve pre-established threshold performance criteria;
- Egregious pension/SERP (supplemental executive retirement plan) payouts:
  - Inclusion of additional years of service not worked that result in significant benefits provided in new arrangements;
  - Inclusion of performance-based equity or other long-term awards in the pension calculation;
- Excessive Perquisites:
  - Perquisites for former and/or retired executives, such as lifetime benefits, car allowances, personal use of corporate aircraft, or other inappropriate arrangements;
  - Extraordinary relocation benefits (including any home loss buyouts);

  - Excessive amounts of perquisites compensation;
- Excessive severance and/or change in control provisions:
  - Change in control cash payments exceeding 3 times base salary plus target/average/most recent bonus (or that include equity gains or other pay elements into the calculation basis);
  - New or materially amended arrangements that provide for change-in-control payments without loss of job or substantial diminution of job duties (single-triggered or modified single-triggered, where an executive may voluntarily leave for any reason and still receive the change-in-control severance package);
  - New or materially amended employment or severance agreements that provide for an excise tax gross-up. Modified gross-ups would be treated in the same manner as full gross-ups;
  - Excessive payments upon an executive's termination in connection with performance failure;
  - Liberal change in control definition in individual contracts or equity plans which could result in payments to executives without an actual change in control occurring;
- Tax Reimbursements: Excessive reimbursement of income taxes on executive perquisites or other payments (e.g., related to personal use of corporate aircraft, executive life insurance, bonus, restricted stock vesting, secular trusts, etc.; see also excise tax gross-ups above);
- Dividends or dividend equivalents paid on unvested performance shares or units;
- Internal pay disparity: Excessive differential between CEO total pay and that of next highest-paid named executive officer (NEO);
- Repricing or replacing of underwater stock options/stock appreciation rights without prior shareholder approval (including cash buyouts, option exchanges, and certain voluntary surrender of underwater options where shares surrendered may subsequently be re-granted);
- Other pay practices that may be deemed problematic in a given circumstance but are not covered in the above categories.

49. Which problematic practices are most likely to result in an adverse recommendation?

The list below highlights the problematic practices that carry significant weight and will likely result in adverse vote recommendations:

- Repricing or replacing of underwater stock options/SARs without prior shareholder approval (including cash buyouts and voluntary surrender of underwater options);
- Excessive perquisites or tax gross-ups, potentially including any gross-up related to a secular trust or restricted stock vesting, and home loss buyouts;
- New or extended executive agreements that provide for:
  - CIC payments exceeding 3 times base salary and average/target/most recent bonus;
  - CIC severance payments without involuntary job loss or substantial diminution of duties ("single" or "modified single" triggers);
  - CIC payments with excise tax gross-ups (including "modified" gross-ups).

50. How does ISS view hedging or significant pledging of company stock by an executive or director?

Hedging is a strategy to offset or reduce the risk of price fluctuations for an asset or equity. Stock-based compensation or open market purchases of company stock should serve to align executives' or directors' interests with shareholders. Therefore, hedging of company stock through covered call, collar or other derivative transactions sever the ultimate alignment with shareholders' interests. Any amount of hedging by a company insider will be considered a problematic practice warranting a negative vote recommendation against appropriate board members.

Significant levels of pledging of company stock – regardless of whether the shares were obtained through compensation programs or whether the pledged shares exclude the number of shares required to be held under a company's stock ownership guidelines – also may raise risks for the company's stock price or for violation of insider trading restrictions. Please see the FAQ on Policies & Procedures – Board Accountability for more insight on ISS policy in this regard.

51. Does the presence of single trigger vesting acceleration in an equity plan result in an adverse vote recommendation?

With regard to equity-based compensation, ISS policy encourages "double trigger" vesting of awards after a CIC (considered best practice), although recommendations are determined case-by-case, considering all aspects of company programs.

In the absence of double-triggered vesting, the current preferred practice is for the board to have flexibility to determine the best outcome for shareholders (e.g., to arrange for outstanding grants to be assumed, converted, or substituted), rather than the plan providing for *automatic* accelerated vesting upon a CIC.

Equity plans or arrangements that include a liberal CIC definition (such as a very low buyout threshold or a CIC occurring upon shareholder approval of a transaction, rather than its consummation), coupled with a provision for automatic full vesting upon a CIC, are likely to receive a negative recommendation. Also see the Equity Compensation Plans FAQ.

52. What level of compensation disclosure by externally-managed issuers (EMIs) would be sufficient to enable a reasonable assessment of pay programs to make an informed say-on-pay vote and avoid an adverse say-on-pay recommendation?

Although EMIs are required to present a say-on-pay vote, most EMIs provide little, if any, disclosure regarding the compensation arrangements between their executive officers and the external manager. Based on ISS' review of EMI compensation disclosure, most EMIs provide only the aggregate management and incentive fees paid to the manager. Without more information, shareholders are unable to make a reasonable assessment of pay programs and practices applicable to the EMI's executives, and therefore are unable to cast an informed say-on-pay vote. In assessing whether an EMI has provided sufficient compensation disclosure to allow for an informed say-on-pay vote, ISS will look for all of the following disclosures:

- The portion of the EMI's management fee that is allocated to NEO compensation paid by the external manager (aggregated values for all NEOs is acceptable);
- Of this compensation, the breakdown of fixed vs. variable/incentive pay; and
- The metrics utilized to measure performance to determine NEOs' variable/incentive pay.

If the EMI is unable to determine the portion of the management fee that is allocated to NEO compensation with reasonable certainty, the company should provide a reasonable estimate of this amount with an explanation of the methodology.

While the above does not represent a complete picture of executive compensation, it represents the minimum disclosure necessary to enable shareholders to reasonably evaluate pay arrangements between the EMI's executives and the external manager. Absent this disclosure, ISS will generally recommend against the EMI's say-on-pay proposal.

53. After incentive awards were earned below target, a company granted special retention awards to executives. How would ISS view such awards?

Investors do not expect boards to reward executives when performance goals are not achieved, whether by "moving the goalposts" (i.e., lowering goals) or granting other awards to compensate for the absent incentive payouts. They recognize, however, that retention of key talent may be critical to performance improvements and future shareholder value. Companies that grant special retention awards of cash or equity to executives when regular incentive plan goals are not met should provide clear and compelling rationale in their proxy disclosure. Awards should be conservative and reflect the fact that performance is lagging (i.e., should generally be significantly less than unearned target award levels). Optimally, "extra" awards designed to encourage retention should not be a regular occurrence and should also include performance conditions that will ensure strong alignment of pay and performance going forward and avoid "pay for failure" scenarios if the executive is not retained.

54. How will ISS evaluate problematic pay practices relating to agreements or decisions in the current fiscal year as opposed to those from the most recently completed fiscal year?

For problematic provisions (excise tax gross-ups, single-trigger severance, etc.) contained in a new/materially amended executive agreement, ISS will generally issue an adverse recommendation when such provisions are disclosed by the company, even if the problematic agreement was entered into or amended after the most recent fiscal year end. For example, if a company with a calendar fiscal year discloses a new problematic agreement entered into in February following the FYend, ISS will generally recommend against the current say-on-pay proposal.

However, in certain cases ISS may wait to further evaluate the problematic issue in the following year, when our analysis could be informed by additional information that would be disclosed in the following year's proxy statement. For example, ISS may wait until the following year in the case of a potentially problematic equity grant to a new CEO hired in February after the FYend, in order to evaluate the grant in the context of the new CEO's total pay as disclosed in the following year's proxy statement.

55. While guaranteed multi-year awards are problematic, is providing a guaranteed target pay opportunity for what ISS considers a performance-based vehicle acceptable?

While guaranteeing any executive pay elements (outside of salary and standard benefits) is not considered best practice, if the payout of such an award ultimately depends on the attainment of rigorous performance goals (i.e., no payout would occur if performance is below a specified standard), this would generally mitigate concerns about the guaranteed award opportunity.

56. How will ISS view existing/legacy problematic provisions in executive agreements?

While maintaining problematic provisions in legacy arrangements (i.e. agreements not entered into or amended in the most recently completed fiscal year) is not considered a best practice, such legacy arrangements generally will not on their own result in an adverse vote recommendation. However, legacy problematic provisions will be considered as part of the holistic analysis, and they should be removed whenever the agreement is amended or extended (see related questions below).

57. Are material amendments to existing contracts a trigger for analysis with respect to problematic existing contract provisions?

Shareholders are concerned with the perpetuation of problematic practices; thus, new or recently amended agreements will face the highest scrutiny and weight in ISS' analysis. Any material amendments to such agreements will be considered an opportunity for the board to fix problematic issues.

58. Would a legacy employment agreement that is automatically extended (e.g., has an evergreen feature) but is not otherwise amended warrant an adverse vote recommendation if it contains a problematic pay practice?

Automatically renewing/extending agreements (including agreements that do not specify any term) are not considered a best practice, and existence of a problematic practice in such a contract is a concern. However, if an "evergreen" employment agreement is not materially amended in manner contrary to shareholder interests, it will be evaluated on a holistic basis, considering a company's other compensation practices along with features in the existing agreement.

59. What if a problematic pay practice is contained under a separate plan or agreement that runs indefinitely, but an executive has a separate employment agreement that is extended or modified?

The policy relevant for "new or extended executive agreements" applies to any and all agreements or plans under which the executive whose contract is being modified is covered. In other words, ISS may view the modification to an employment agreement as also being a modification or extension of the executive's separate severance and/or CIC arrangement. Alternatively, the modification to the employment agreement should include a removal of the executive's entitlement to the problematic pay practice under the separate agreement.

60. If a company put a problematic pay practice provision in new or modified agreements in the last fiscal year, what action can they take to prevent an adverse recommendation from ISS?

The company can remove that provision from the new agreements and disclose this action in the proxy statement.

Frequency of Advisory Vote on Executive Compensation

61. What is ISS' policy on say-on-pay frequency?

Based on feedback from investors, ISS will generally recommend in favor of annual say-on-pay votes, which provide the highest level of accountability and clearest channel for shareholder communication. In the 2016 ISS Policy Survey, two-thirds of investor respondents indicated they preferred annual say-on-pay frequency. Holding a say-on-pay vote every year enables the vote to correspond to the majority of the information presented in the accompanying proxy statement, and allows investors to comment upon issues in annual incentive programs (which have come up more frequently in recent years) in a more timely fashion.

62. When there is no say-on-pay frequency supported by a majority of shareholders, and a company's board decides not to adopt the say-on-pay frequency supported by a plurality of the votes cast, what are the vote recommendation implications?

If the board adopts a longer frequency for say-on-pay votes than approved by a plurality of shareholder votes, ISS will make a case-by-case recommendation, considering the following:

- The board's rationale for choosing a frequency that is different from the frequency which received a plurality;
- The company's ownership structure;
- ISS' analysis of the company's executive compensation and whether there are compensation concerns or a history of problematic compensation practices; and
- The previous year's support level on the company's say-on-pay proposal.

63. In the event that a company does not present shareholders with a say-on-pay vote where one would otherwise be expected, what are the vote recommendation implications?

If there is no say-on-pay or say-on-pay frequency vote on the ballot where one would otherwise be expected, and the company does not provide an explanation for the omission, ISS will generally recommend against the compensation committee chair (or full committee, as appropriate) until the company presents shareholders with an advisory vote on executive compensation. A company that is exempt from the say-on-pay requirements (i.e. an "emerging growth company" under the JOBS Act) should provide an explanation of this in the proxy statement.

Advisory Vote on Golden Parachutes (SOGP)

64. How does ISS evaluate the treatment of equity awards upon a change-in-control?

The automatic full vesting of equity awrds upon a CIC (i.e. single trigger) is viewed as a poor practice. Vesting acceleration should require both a CIC and qualifying involuntary termination event (i.e. double-trigger). ISS considers windfall potentials when evaluating equity award treatment upon a CIC. Factors considered include, but are not limited to:

- Maintaining of vesting criteria. Maintaining vesting criteria on converted awards is a good practice, as it retains their retention and incentive qualities.
- Pro rata vesting. A best practice is pro rata vesting, based on actual goal achievement (in the case of performance awards) and/or the partial completion of the vesting period. Deeming performance awards earned above "target level" without clear rationale is problematic.
- The elapsed vesting period. The acceleration of awards granted shortly before a CIC, at which point only a fraction of the original vesting period has elapsed, is viewed as a greater windfall.
- Magnitude of accelerated awards. Auto-acceleration concerns are exacerbated when the awards make up the majority of NEOs' golden parachutes. Also, if accelerated awards granted in the cycle before the CIC are larger in magnitude as compared to prior award cycles, the company should explain the reason for this in the merger proxy.

65. How does ISS determine whether specified golden parachute payouts are excessive?

In evaluating disclosed payouts related to a change in control with respect to the SOGP proposal, ISS may consider a variety of factors, including the value of the payout on an absolute basis (e.g., relative to an executive's annual compensation) or one or total payouts relative to the transaction's equity value. There are no bright line thresholds for these considerations, since they are made in conjunction with other factors in ISS' review.

66. How will ISS consider existing problematic change-in-control severance features in its SOGP evaluation?

ISS considers both new and existing problematic features and practices. Recent amendments that incorporate problematic features will tend to carry more weight on the overall analysis. However, the presence of multiple legacy problematic features will also be closely scrutinized.

Other Questions

67. How does ISS evaluate management advisory proposals seeking shareholder approval of non-employee director pay?

In evaluating non-executive director pay programs, ISS looks for reasonable practices that adequately align the interests of directors with those of shareholders. ISS considers director pay composition, magnitude, and other qualitative features. Also relevant to this analysis is whether the equity plan under which director grants are made warrants support (if it is on the ballot).

A director pay program should incorporate meaningful director stock ownership and/or holding requirements (i.e. at least 4X the annual cash retainer). When equity is a much larger component of the director pay mix, the ownership and holding requirements should be more robust. It is considered a problematic practice for non-employee directors to receive performance-vesting equity awards, retirement benefits, or other perquisites. The magnitude of director pay is also considered, and the presence of a meaningful limit on annual director pay is positive feature. Finally, shareholders expect quality and transparent disclosure of director pay decisions, including detailed disclosure on each pay element.

68. How does ISS approach U.S.-listed companies with multiple executive compensation proposals on the ballot as a result of the company's incorporation in a foreign country?

A growing number of companies worldwide are incorporated in one country and listed in another. This can create an additional layer of complexity when evaluating compensation proposals, as these cross-market companies may be required to present multiple pay proposals on the ballot as a result of being subject to the requirements of both markets. This presents a challenge for shareholders to determine the market perspective to be used in their voting decisions for these proposals.

For U.S.-listed proxy (DEF 14A) filers that have multiple executive pay proposals on the ballot as a result of the company's foreign incorporation, ISS will generally align the vote recommendation of the foreign compensation proposal to the U.S. management say-on-pay (SOP) recommendation (or pay-for-performance evaluation, in the event there is no SOP on ballot) so long as the foreign proposal is reasonably analogous to the SOP (i.e. its focus is on top executive pay). This applies only to U.S. proxy (DEF 14A) filers, since they are subject to the same SOP and compensation disclosure requirements as other U.S. companies (conversely, Foreign Private Issuers are exempt from the U.S. SOP requirements).

This approach avoids conflicting vote recommendations for proposals essentially covering the same pay programs. If the focus of the foreign pay proposal is not reasonably analogous to the U.S. SOP, then the policy of the country that requires it to be on ballot would continue to apply. Nevertheless, ISS may highlight in the analysis of the foreign proposal aspects of the pay program that would raise concerns from the foreign market's policy perspective.

As an example, a company incorporated in the U.K. but listed in the U.S. may be required to hold up to three separate votes on executive compensation at the annual meeting, including two separate backward-looking advisory votes, as mandated by U.S. and by U.K. law, as well as a forward-looking binding vote to approve remuneration policy required under U.K. law. In this example, the foreign proposal is reasonably analogous to the SOP, therefore the vote recommendations for both the backward- and forward-looking U.K. proposals would be aligned to the U.S. SOP recommendation.

The questions and answers in this FAQ are intended to provide general guidance regarding the way in which ISS' Global Research Department will analyze certain issues in the context of preparing proxy analyses and determining vote recommendations for U.S. companies. However, these responses should not be construed as a guarantee as to how ISS' Global Research Department will apply its benchmark policy in any particular situation.

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February 15, 2017

Addressing Board Exclusive Control of the Bylaws:
Stop, Look and Wait

Unlike Delaware, Maryland corporation law permits Maryland corporations (and Title 8 REITs as well) to provide for the board to have exclusive power to amend or alter the bylaws. For decades, this has been viewed as an advantage for Maryland corporations and Title 8 REITs (hereinafter "companies"). The bylaws of an overwhelming majority of REITs formed under Maryland law in the past 20 years give the board of directors or trustees "the exclusive control of the bylaws."[*] Recently, Institutional Shareholder Services Inc. ("ISS") and a few others have attacked this provision and are urging boards of Maryland-chartered companies to abandon it and immediately give concurrent control over the bylaws to shareholders. ISS has said it will recommend against incumbent members of a board's nominating and governance committee if shareholders do not have a concurrent right to amend the entire bylaws. Glass, Lewis & Co. currently does not penalize companies where the board has the sole right to amend the bylaws, but we would not be surprised if it changed its policy to follow ISS.

We urge boards to weigh this issue carefully before taking action for the following reasons:

1. Exclusive board control of the bylaws has been in the bylaws of most Maryland public companies since their formation, which means that every shareholder of these companies has invested with this provision as part of the company's governance.

2. Giving the shareholders the concurrent power to make binding amendments to the bylaws is effectively a *one-way ratchet*. Once given, the power to amend the bylaws directly may be viewed by a court as a right that may not be taken away from shareholders without their consent. This alone suggests the wisdom of not rushing to judgment but waiting and seeing how this still-unfolding issue develops.

3. Most bylaws address matters such as quorums for board, committee and shareholders meetings; share certificates; inspectors of election; corporate seals; checks, drafts and deposits; written consents of directors and committees as well as advance notice of shareholder nominations and proposals, shareholder-requested special meeting procedures and indemnification and expense advance for directors and officers. These provisions have historically not been regarded as partisan or contentious; but someone or some group has to

[*] According to data we have gathered, 144 Maryland REITs have exclusive board control of the bylaws (19 with some provisions requiring shareholder participation in any change) and 35 Maryland REITs have concurrent power for both the board and shareholders.

address them. The board of directors (or trustees) is best suited to address these issues because under Maryland law each director (or trustee) has (a) enforceable legal duties to the company, (b) access to more information (including the views of other directors/trustees) than any single shareholder or group of shareholders and (c) the legitimacy of having been elected (every year, in the case of a non-classified board) by the shareholders.

4. Most importantly, Maryland law requires each director/trustee to act with a reasonable belief that his or her action is "in the best interests of the corporation" as a continuing entity rather than in the varying interests of the shareholders, who are a constantly changing group, none of whom has any duty to the company. Shareholders can and do act in what they perceive to be their *own* interests, which may be very different from what the board determines to be the best interests of the company. If shareholders disagree with the board, they have the power to replace the board, either annually (in the case of a non-classified board) or even in between annual meetings.

5. While boards are considering this issue, we believe that the burden should be on proponents of giving shareholders the concurrent right to amend the bylaws to explain how taking this effectively irreversible step is in the "best interests" of the company. We have not seen any data supporting a correlation – much less a causative link – between concurrent shareholder power to amend the bylaws and economic performance by the company.

6. We do not know yet how giving shareholders the concurrent power to amend the bylaws will develop. Shareholders of Delaware corporations have had this power for many years without significant disruption but in many cases Delaware corporations require a supermajority vote of two-thirds or more of the votes entitled to be cast on the matter for the shareholders to amend the bylaws; so, this requirement may have minimized the number of bylaw amendment proposals by shareholders. (Approximately 43% of the Russell 3000 and 29% of the S&P 500 have supermajority vote requirements for shareholder amendments to the bylaws.) Unfortunately, according to information available to us, ISS has already indicated that it will not accept a provision that requires a shareholder vote requirement of more than a majority of the votes entitled to be cast. It will be interesting to see whether ISS grandfathers the Delaware companies with two-thirds vote requirements, especially because ISS is apparently unwilling to grandfather the many Maryland companies that have had exclusive board control of the bylaws since their IPOs.

7. A majority-of-the-outstanding vote requirement to give shareholders, effectively forever, the power to amend the bylaws may make it attractive to more activists to file mischievous and potentially destabilizing bylaw amendment proposals that could, for example, limit the company's borrowing power; dictate compliance with environmental, social and governance (ESG) sustainability; reduce the indemnification and/or expense advance for directors and officers; eliminate the advance notice informational requirements for shareholder nominations for director/trustee; or limit the power of the board to adopt a shareholder rights plan. The list of disruptive proposals, especially in the hands of shareholders with interests not

shared by the board or other shareholders generally, is almost endless. Even if defeated, these proposals could inflict damage on the regular conduct of a company's business.

8. In addition to shareholder proposals of bylaws opposed by the board as not in the company's best interests, there is the very real possibility that the shareholders would adopt proposals that conflicted with existing provisions in the charter or elsewhere in the bylaws. For example, every charter gives the board the power to issue up to a fixed number of shares. Indeed, many Maryland charters give the board the power to increase the number of shares that the company may issue without a shareholder vote. What would be the effect of a shareholder amendment to the bylaws purporting to limit the board's exercise of its power to issue additional shares or create new authorized shares? ISS does not address this issue.

9. Another question is who would have the power to amend what bylaws. If shareholders may amend bylaws adopted by the board, may the board amend bylaws adopted by the shareholders? The possibility for conflict among groups with the right to exercise the same power is not remote or theoretical. ISS does not address this issue either, although it does say that it will not accept "ringfencing" certain bylaws from shareholder amendment.

10. Effective means already exist for the shareholders to achieve responsible desired ends, principally through SEC Proxy Rule 14a-8, which requires the board, subject to certain limited exceptions, to include in the company's proxy statement proposals by shareholders (even holders with as little as $2000 invested in the company) and a supporting statement by the proponents. If the proposal is approved by the shareholders and not implemented by the board in the following year, ISS will almost certainly recommend against all incumbent members of the board (regardless of the company's economic performance) at the next election. Whatever one may think of this ISS policy, it has proven effective in focusing directors' attention on carefully considering and reacting to shareholder proposals.

11. There are intermediate steps that a fully informed board carefully considering the matter may want to test. For example, as suggested above, a board may want to establish a voting requirement for a shareholder amendment of the bylaws of more than a bare majority of the votes entitled to be cast. Notwithstanding ISS's majority-only position, a two-thirds vote requirement, already in place for dozens of public companies (see 6 above), may be acceptable to major shareholders as a reasonable requirement for amending a fundamental governance document. As another example, a board may want to require some minimum ownership threshold for proponent/s of a shareholder amendment to the bylaws that is similar to the three percent/three years ownership requirement that has already become market standard for proxy access. ISS has said that it will accept the Rule 14a-8 ownership/holding minimum, which in our view is not sufficient to screen out gadflies and other proponents with little or no economic interest in the company.

12. Thus, at this still early stage in the development of this issue, we urge boards to defer an immediate decision to take action that would be effectively undoable and instead see how the

issue plays out this year. One of the key elements in this regard are the views of major shareholders and we further urge boards to communicate with these holders to get their sense of the issue, including the ramifications discussed above. Adopting, at least for now, a “wait and see” approach avoids the pitfalls discussed above and preserves the board’s flexibility in two key scenarios: Scenario One – the members of the nominating and governance committee do not receive the support of major shareholders and ISS. The board may change its mind at that point, even before the annual meeting and votes are cast and counted, and agree to adopt concurrent amendment of the bylaws, perhaps with some negotiated terms (see 11 above). Scenario Two – even if members of the nominating and governance committee do not receive the requisite vote in an uncontested election, they will, under most current bylaws, typically hold over, offer to resign and (if their offers are not accepted) remain on the board. This will give the board further time and opportunity to see how the matter develops over the next several months. If the board decides to follow this course, it may want to issue a statement that it has considered the matter carefully and that, as the issue and its ramifications are still developing, not all relevant information is known yet and, therefore, the board will continue to monitor and consider the issue over the coming several months, consult with major investors, take the advice of advisers and gather other information, including the decisions of boards and shareholder of other companies this year.

In summary, a decision not to give concurrent power to the shareholders to amend the bylaws may always – and easily – be changed; but a decision to give away this power may not. A prudent board may want to gather more information and assess developments later this year before making a decision that could be irreversibly binding on future boards.

My colleagues and I are glad to respond further.

Jim Hanks

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GETTING NOTHING FOR SOMETHING

James J. Hanks, Jr.*

A lot of controversy has recently been swirling around Subtitle 8 of Title 3 of the Maryland General Corporation Law ("Subtitle 8"), especially its provision that allows a board of directors to classify itself into three classes without a stockholder vote and despite any contrary provision in the charter or bylaws. In fact, Subtitle 8 has been the law in Maryland since 1999, when the Maryland legislature, by overwhelming margins, approved the Unsolicited Takeovers Bill, which was signed by the Governor and became effective on June 1, 1999.

Subtitle 8 (occasionally called the "Maryland Unsolicited Takeovers Act" or "MUTA") permits a Maryland corporation (or a Maryland real estate investment trust formed under Title 8) with a class of equity securities registered under the Securities Exchange Act of 1934 and at least three independent directors to elect, by provision in its charter or bylaws or by resolution of its board of directors and notwithstanding any contrary provision in the charter or bylaws, to be subject to any or all of five provisions, including:

- a classified board;
- a two-thirds vote of outstanding shares to remove a director;
- a requirement that the number of directors be fixed only by vote of the board of directors;
- a requirement that a vacancy on the board of directors be filled only by the affirmative vote of a majority of the remaining directors and for the remainder of the full term of the class of directors in which the vacancy occurred and until a successor is elected and qualifies; and
- a provision that a special meeting of stockholders must be called upon stockholder request only on the written request of stockholders entitled to cast a majority of the votes entitled to be cast at the meeting.

Subtitle 8 also permits the charter or a board resolution to prohibit the corporation or a Title 8 real estate investment trust from electing to be subject to any or all provisions of the Subtitle. (For convenience hereafter, we shall refer just to a REIT, whether formed under the Maryland General Corporation Law as a corporation or under Title 8 as a real estate investment trust.)

For many years, newly formed Maryland REITs have adopted classified boards and the substance of the other Subtitle 8 protections in their original charters or bylaws and have

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thus not needed to opt in to Subtitle 8. Some pre-1999 REITs and some post-1999 REITs without classified boards or other Subtitle 8 provisions have opted in to Subtitle 8 to adopt one or more of its provisions.

For the past several years, classified boards, like shareholder rights plans and plurality voting, have been under attack by proxy advisers, institutional shareholders and academics. These attacks have asserted the need for more "accountability" and a fear of "entrenchment." In more recent years, some of these same activists have gone even further and demanded that boards not only declassify, redeem their rights plans and give up plurality voting but also promise never (at least without a shareholder vote) to reclassify, adopt a new rights plan or revert to plurality voting. In Maryland, as Barry Vinocur has pointed out, at least 13 REIT boards have declassified (or promised to do so in the near future) and adopted a charter provision that the REIT will not reclassify under Subtitle 8 without a shareholder vote. A shareholder vote, of course, requires an annual or special meeting of shareholders, a process likely to take at least several months, typically not soon enough to provide any timely or effective benefit to a company under attack.

Nevertheless, the pressure for REIT boards to give up the right to classify (or reclassify) under Subtitle 8 continues. Boards are wise to resist this pressure for several reasons:

1. *There is no economic benefit to the REIT.* Declassifying (or promising not to classify or reclassify) will not lease more space, increase rents or lower interest rates. It may pick up some points on Green Street's scorecard but plenty of REITs have successfully sold equity with classified boards. Generally speaking, it is better for a company to have more choices than fewer. For example, I do not know of a single REIT charter that caps a board's power to borrow. So, why give up, for no economic benefit to the REIT, an option that may provide some protection against an effort by investors or activists with goals other than those typically held by long-term shareholders to seize control of the company on a short-term basis in what may be temporarily unfavorable market conditions? The decision to opt out of Subtitle 8 is not whether to classify the board, which would at least be discussable in terms of good or bad corporate governance (see next paragraph), but whether to effectively give up *even the choice* of classifying the board at some future time under unknown circumstances, thereby tying the hands of all future boards.

2. *There is no significant reliable data showing a correlation, much less causation, between non-classified boards and economic performance.* Economic performance of REITs is driven by management and assets, not by corporate governance. Just last year, using a comprehensive sample for the period from 1978 through 2011, Martijn Cremers, Lubomir P. Litov and Simone M. Sepe, in *Staggered Boards and Firm Value, Revisited*, showed that firms adopting a classified board increase in firm value and, conversely, that declassifying is associated with a decrease in firm value. Likewise, in 2010, Michael E. Murphy, in *Attacking the Classified Board of Directors: Shaky Foundations for Shareholder Zeal*, concluded that the value of companies with and without classified boards was nearly identical and that the effects on company value were insignificant if the company's shares are widely held, without a ten percent or greater shareholder.

Indeed, Murphy surveyed previous literature (including articles by Harvard Law Professor Lucian Bebchuk, a well-known vocal opponent of classified boards) to conclude that classified boards do not affect operational performance and noted that there is some evidence to support the conclusion that companies with classified boards have improved operational performance. In short, Murphy concluded that classified boards actually have a very wide range of impacts on companies, and thus a "case-by-case" approach is best. There are other studies reaching similar conclusions.

3. *The primary purpose of classified boards is to provide continuity and stability to the company and its management in developing and executing its strategies.* Classified boards have been around for nearly 100 years. They encourage the recruitment and retention of new directors by permitting them a reasonable period of time to become familiar with the company before coming up again for election. Developing, implementing and executing a long-term strategy can generally not be done in only one year. REIT boards and managements found this out during the financial crisis when they were forced to refinance their companies and reposition their assets, often resulting in major strategic changes, the benefits of which may not be realized in only one year. The courts for years have held that the power to set the time horizon over which the company will be operated rests squarely with the board. As a necessary corollary, the board is entitled to protect the company from changes to its strategies and policies. This is especially true where the board makes a choice explicitly conferred on it by the legislature.

4. *The board, as the elected representatives of the shareholders and with more information than any single shareholder, is in the best position to decide on appropriate protections for its strategies.* Not content with electing the board and letting it choose and evaluate the CEO and collaboratively develop the company's strategy, some shareholders and uninvested activists want to tell the board what to do. We see this encroachment especially in the recommendations of Institutional Shareholder Services Inc. ("ISS") to withhold or vote against directors for a single small infraction of ISS's policies, *regardless of the company's economic performance*. ISS also threatens to, and often does, recommend against directors who fail to implement within the following year even just one precatory proposal approved by shareholders, regardless of the company's economic performance – a position diametrically opposite to generations of settled corporate law in Maryland, Delaware and elsewhere. Even more vividly, we see this encroachment in the efforts to restrict the board's exercise of its rights under Subtitle 8 to protect its strategies and policies. These moves are often advanced as a supposed antidote to "entrenchment" or as promoting "accountability." Entrenchment, of course, is a loaded label and accountability sounds good but the result of depriving the board of the opportunity for limited protection of its business plan is exposure to attacks by holders with very different economic (or other) goals than shareholders generally. Take, for example, arbitrageurs, hedgers and "underweight" holders who openly pursue investment strategies very different from the value maximization sought by most shareholders. Indeed, one labor organization whose primary interest is organizing employees, not shareholder value, Unite Here, typically a small holder in its target companies, has

successfully proposed opting out of the Subtitle 8 classified board provision at several lodging REITs.

5. *A classified board will not prevent a takeover*. It is now common for a bidder in a hostile tender offer to reinforce its tender offer with an announcement of intention to file a competing slate of director nominees at the next annual meeting of shareholders. A classified board will give the incumbent directors additional time to consider the bidder's proposal, explore alternatives and, often, negotiate with the bidder. Because the board has the power to declassify (if it has classified itself under Subtitle 8) or to initiate declassification (if the board is already classified in the charter) and to remove other defensive measures, it has leverage in negotiating with an otherwise hostile bidder, who will almost always prefer paying more for a sure deal today than running proxy contests of uncertain outcome at two annual shareholders meetings.

In summary, it is difficult to see how a board maximizes value for the shareholders – the ultimate goal of any for-profit enterprise – by tying the hands of future boards by surrendering, effectively forever, a valid choice, like the power to classify, specifically conferred by statute, in return for no economic benefit for the REIT. Directors should be especially careful that they do not fall into the trap, of which they are so often unjustly accused, of appearing to act in their own self-interest by yielding to pressure, especially from unelected activists with little or no skin in the game, to opt out of Subtitle 8, in order to avoid a recommendation by ISS or Glass Lewis & Co. to withhold or vote against directors in a subsequent election.

SEC Provides Pay Ratio Disclosure Guidance

Under the rules of the US Securities and Exchange Commission (SEC), companies will be required to include pay ratio disclosure in their proxy statements with respect to compensation for their first full fiscal year that begins on or after January 1, 2017. Therefore, companies generally will first be required to include pay ratio disclosure in their 2018 proxy statements.[1] On October 18, 2016, the staff (Staff) of the Division of Corporation Finance of the SEC issued five new compliance and disclosure interpretations (C&DIs) providing guidance on the methodology for applying compensation measures and determining the employee population to identify the median employee.[2] These C&DIs are summarized below.

The pay ratio disclosure rule, which is contained in paragraph (u) of Item 402 of Regulation S-K, will require public companies to disclose:

- The median of the annual total compensation of all employees other than the chief executive officer for the most recently completed fiscal year;
- The annual total compensation of the chief executive officer for the most recently completed fiscal year; and
- The ratio of these amounts.

For more information on the details of the SEC's pay ratio disclosure rule, see our Legal Update, "Understanding the SEC's Pay Ratio Disclosure Rule and its Implications," dated August 20, 2015.[3]

Summary of the Pay Ratio Disclosure C&DIs

The C&DIs provide guidance on three areas of pay ratio disclosure:

- The use of consistently applied compensation measures;
- The treatment of furloughed workers; and
- The treatment of independent contractors and leased workers.

CONSISTENTLY APPLIED COMPENSATION MEASURES

The pay ratio disclosure rule permits a company to identify the median employee based either on annual total compensation calculated using Item 402(c)(2)(x) of Regulation S-K or on another consistently applied compensation measure (CACM), such as information derived from the company's tax and/or payroll records, that the company selects.[4] If a company decides to use a CACM, it must briefly disclose the compensation measure used.[5]

Selection of CACM. C&DI 128C.01 addresses how a company should select a CACM to identify the median employee. This C&DI observes that any measure that reasonably reflects the annual compensation of employees could serve as a CACM, with the appropriateness of the measure dependent on the company's particular facts and circumstances. For example, according to this C&DI, total cash compensation could be a CACM but not if the company also distributed annual equity awards widely among its employees. This

C&DI states that the amount of Social Security taxes withheld "would likely not be a CACM unless all employees earned less than the Social Security wage base." C&DI 128C.01 expressly recognizes that CACM would not necessarily identify the same median employee that would be identified based on annual total compensation calculated in accordance with Item 402(c)(2)(x) of Regulation S-K.

Rates of Pay as CACM. According to C&DI 128C.02, a company may not exclusively use hourly or annual rates of pay as its CACM. While the pay rate may be a component of overall compensation, this C&DI compares using an hourly rate without reflecting the number of hours actually worked to making a full-time equivalent adjustment for part-time employees, which the pay ratio disclosure rule does not permit. C&DI 128C.02 states that "using an annual ***rate*** only, without regard to whether the employees worked the entire year and were actually paid that amount during the year, would be similar to annualizing pay, which the rule only permits in limited circumstances."

Time Period of CACM. C&DI 128C.03 discusses time period issues involved in identifying the median employee through a CACM. This C&DI observes that a company must select a date that is within three months of the end of its fiscal year[6] to determine the employee population from which it will identify its median employee and then identify the median employee from that population using either annual total compensation or another CACM. C&DI 128C.03 provides that when a company uses a CACM to identify its median employee, it does not have to use a period that includes the employee population determination date or a full annual period. This C&DI also notes that a CACM may consist of annual total compensation from a prior fiscal year so long as there has not been a change in the company's employee population or compensation arrangements that "would result in a significant change of its pay distribution to its workforce."

FURLOUGHED WORKERS

C&DI 128C.04 addresses whether furloughed workers should be included as part of the employee population that a company uses to identify its median employee and, if so, how the furloughed employee's compensation should be calculated. This C&DI specifies that a company must first determine whether its furloughed workers should be treated as employees, which is a matter of facts and circumstances. To the extent that a company concludes that a furloughed worker is one of its employees on the date it selects to determine its employee population, the company should calculate such furloughed worker's compensation using the same method as for a non-furloughed employee. This means that the company would have to analyze whether the furloughed worker is a full-time, part-time, temporary or seasonal employee on the determination date for its employee population and then calculate that individual's compensation in accordance with Instruction 5 of Item 402(u). Instruction 5 allows a company to annualize the total compensation for all permanent employees, whether full-time or part-time, who it employed for less than the full fiscal year or who were on an unpaid leave of absence during the period. On the other hand, Instruction 5 specifies that a company may not annualize the total compensation for employees in temporary or seasonal positions. Companies are not permitted full-time equivalent adjustment for any employee.

INDEPENDENT CONTRACTORS AND LEASED WORKERS

The pay ratio disclosure rule excludes from its definition of "employee" any workers who are employed by, and whose compensation is determined by, an unaffiliated third party.[7] C&DI 128C.05 observes that companies frequently obtain the services of workers by contracting with an unaffiliated third party that employs the workers and addresses when a worker employed and compensated by a third party will be considered an independent contractor or a leased worker under the rule and when the company will be considered to be determining the compensation of such workers. The company must consider the composition of its workforce and its overall employment and compensation practices in determining whether the worker is an "employee" under the rule and should include all workers whose compensation it or one of its consolidated subsidiaries determines, whether or not they are considered "employees" for tax, employment law or other purposes. According to this C&DI, the Staff does not believe that a company determines compensation for the purposes of the pay ratio disclosure rule if, for example, the company only specifies a minimum level of compensation for workers who the company obtains by contracting with an unaffiliated third party that employs such workers. The Staff also states that an individual who is an independent contractor may be the "unaffiliated third party" who determines his or her own compensation.

Practical Considerations

The recent C&DIs on pay ratio disclosure provide guidance on important pay ratio topics that many companies will face when gathering the information needed to prepare the required disclosure. Therefore, companies should review the new C&DIs carefully. It is possible that the Staff may issue further pay ratio disclosure guidance in the future, so companies should monitor developments in this area.

The pay ratio disclosure rule is complex. Companies should consider conducting trial calculations to develop appropriate methodology and assumptions. They may also want to consider preparing supplemental narrative information, including additional ratios, which is permitted as long as clearly identified, not misleading and not presented with greater prominence than the required disclosure. To the extent a company identifies an ambiguity or a question in how this rule should be applied, it may be worthwhile reaching out to the Staff for an interpretation.

Although pay ratio disclosure is not required in 2017 proxy statements, some companies may voluntarily include this disclosure. Companies may find it useful to review any such precedent, but they should be aware that voluntary early disclosure provided by other companies may not be fully compliant with the SEC's rule.

The timing of the Staff's issuance of these new C&DIs should serve as a reminder that preparing for the upcoming requirement will take a great deal of time and effort. Companies need to determine the methodology they will use to comply with the rule and then fine-tune the details. Companies should be working on the mechanics of pay ratio disclosure and implementing corresponding disclosure controls and procedures now so that they will be ready to comply with the new requirement in time for the 2018 proxy season.

For more information about the topics raised in this Legal Update, please contact the author of this Legal Update, Laura D. Richman, at +1 312 701 7304, or any of the following lawyers.

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Endnotes

[1] The adopting release for the SEC's pay ratio disclosure rule is available at https://www.sec.gov/rules/final/2015/33-9877.pdf.

[2] See "Section 128C — Item 402(u) Pay Ratio Disclosure" of the Regulation S-K compliance and disclosure interpretations, available at https://www.sec.gov/divisions/corpfin/guidance/regs-kinterp.htm.

[3] Available at https://www.mayerbrown.com/files/Publication/a9183a67-efc1-4bcc-859a-f11c0a28e776/Presentation/PublicationAttachment/c3ae9779-28c6-4ee2-996a-efbd405d4952/150820-UPDATE-CS-EB.pdf.

[4] Paragraph 3 of Instruction 4 to Regulation S-K Item 402(u).

[5] *Id.*

[6] Regulation S-K Item 402(u)(3).

[7] *Id.*