

JONES DAY

222 EAST 41ST STREET • NEW YORK, NEW YORK 10017.6702
TELEPHONE: +1.212.326.3939 • FACSIMILE: +1.212.755.7306

Direct Number: 212.326.3800
raprofusek@JonesDay.com

November 9, 2015

Via E-mail – policy@issgovernance.com

Institutional Shareholder Services
1177 Avenue of Americas
2nd Floor
New York, NY 10036

Re: Comments to ISS' 2016 Benchmark Voting Policies

Ladies and Gentlemen:

This letter responds to your October 26, 2015 request for comments to the proposed policies relating to “Unilateral Board Actions.” It is our view that these policies, if adopted, would pose many problems for many U.S. companies, without offsetting benefits for investors, because of their broad scope and inherent ambiguities, at least unless clarified as indicated below.

Most troublesome and ambiguous is the proposed policy that would provide that, when a board amends a company’s bylaws or charter prior to or in connection with its IPO to classify the board and establish supermajority vote requirements to amend the bylaws or charter, ISS will generally issue adverse vote recommendations for the company’s director nominees at subsequent annual meetings following completion of the IPO.

If adopted, this policy would raise many ambiguities, including:

- How will an “IPO” be defined? Among other things, we think that it is important that ISS clarify that spin-offs and de-mergers, transactions undertaken to increase shareholder value (sometimes at the urging of shareholders), be excluded. “SpinCos” often have classified boards and other “antitakeover” measures because a change in control transaction following the completion of a spin-off could threaten the tax-free nature of the spin-off. In addition, if a recently spun-off company receives an unsolicited offer, it may not be able to maximize shareholder value by conducting a full auction or even a market check because a transaction with a counter-party with which it engaged in substantive change-in-control discussions before the spin-off (which often occur as the parent entity weighs the benefit of a sale versus a spin-off) could trigger

NAI-1500615468v3

ALKHOBAR • ATLANTA • BEIJING • BOSTON • BRUSSELS • CHICAGO • CLEVELAND • COLUMBUS • DALLAS • DUBAI
DÜSSELDORF • FRANKFURT • HONG KONG • HOUSTON • IRVINE • JEDDAH • LONDON • LOS ANGELES • MADRID
MEXICO CITY • MILAN • MOSCOW • MUNICH • NEW YORK • PARIS • PITTSBURGH • RIYADH • SAN DIEGO
SAN FRANCISCO • SÃO PAULO • SHANGHAI • SILICON VALLEY • SINGAPORE • SYDNEY • TAIPEI • TOKYO • WASHINGTON

Institutional Shareholder Services
November 9, 2015
Page 2

unexpected tax, thus limiting the company's ability to maximize shareholder value. As such, we respectfully request that ISS clarify that the policy does not apply to companies that go public by spin-offs, split-offs, de-merger or similar transactions, all of which are common in the current environment and born of a desire to create greater shareholder value by disaggregation.

- The policy states that it would be applicable if the protective measures are adopted in any period after completion of a company's IPO. Does this mean that the policies will apply even if the company has been public for decades? If so, this policy could have negative implications for an enormous number of U.S. companies and withheld votes could be directed toward directors that were not even on the subject company's Board when the action was taken. While we understand the rationale for the policy if the company "changes the rules" within a short time after going public (such as one year), it is difficult to imagine that ISS means to create adverse consequences for long-standing public companies that have had classified boards or supermajority voting provisions for long periods.
- Finally, companies sometimes take actions designed to permit their boards sufficient time to respond to unilateral, unsolicited actions. We believe that the ISS policy with respect to so-called "tactical" shareholder rights plans (or "poison pills") should apply – a company should not be penalized for taking action so long as it commits to submit the matter to a shareholder vote or ratification if it remains in place for more than a year.

Thank you for the opportunity to submit these comments which are made personally, not on behalf of our firm or any of its clients. We would be delighted to discuss these matters with ISS representatives and to respond to any questions.

Very truly yours,

Lyle G. Ganske

Robert A. Profusek

Lizanne Thomas