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## 2012 Japan Proxy Voting Summary Guidelines

December 19, 2011

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Institutional Shareholder Services Inc.

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## ISS' 2012 Japan Proxy Voting Summary Guidelines

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## 1. Approval of Financial Statements

Vote FOR approval of financial statements, unless:

- External auditor expressed no opinion, or raised concerns; or
- Statutory auditors/audit committee raised concerns; or
- There are concerns about the financial statements presented or audit procedures used.

### Summary

Most companies around the world submit these reports to shareholders for approval. However in Japan, this item usually will not be put to a shareholder vote, but will only be presented as a reporting item as allowed under disclosure regulations. Accordingly, shareholders should be cautious if this item is on agenda items because that would mean that special circumstances emerge thereby requiring companies to seek shareholder approval. For instance, the item could be proposed because the auditors were unable to finish auditing in time for the audit report to be included in the proxy circular, or raised questions about the financial statements. In those cases, a detailed case-by-case analysis will apply.

## 2. Income Allocation

Vote FOR approval of income allocation, unless:

- Payout ratio is consistently low without adequate justification; or
- Payout ratio is too high, potentially damaging financial health.

### Summary

In the past, the first voting resolution at nearly all Japanese AGMs was approval of the allocation of income and the final dividend for the year under review. However, companies that have amended their articles to authorize the board to determine income allocation are no longer required to seek shareholder approval of the income allocation. Likewise, companies that are not paying a dividend will also have no income allocation proposals.

As long as the dividend payout ratio is within a range of 15 percent to 100 percent, we generally support this resolution. If the payout ratio does not fall in this range, ISS will evaluate this resolution on a case-by-case basis. Particular attention will be paid to cases where a company proposes to pay a dividend exceeding its net profit, as such payments could damage the company's long-term financial health.

### 3. Election of Directors

ISS has two policies for director elections in Japan: one for companies with a statutory auditor board structure, and the other for companies with a U.S.-type three committee structure. Regardless of governance structure, Vote FOR the election of directors, except for:

- A top executive<sup>1</sup> if the board after the shareholder meeting does not include at least one outsider, regardless of independence (This new provision of the policy will be fully implemented at all Japanese companies beginning in 2013); or
- A top executive at a company that has a controlling shareholder, where the board after the shareholder meeting does not include at least two independent directors based on ISS independence criteria for Japan; or
- An outside director nominee who attended less than 75 percent of board meetings during the year under review<sup>2</sup>; or
- A top executive who is responsible for not implementing a shareholder proposal which has received a majority of votes cast, or not putting a similar proposal on the ballot as a management proposal the following year (with a management recommendation of FOR), when that proposal is deemed to be in the interest of independent shareholders.

In addition, at companies with a U.S.-type three committee structure, Vote FOR the election of directors, unless:

- The outside director nominee is regarded as non-independent based on ISS independence criteria for Japan, and the board after the shareholder meeting is not majority independent; or
- Where a company has a controlling shareholder, the director nominee who sits on the nomination committee and is an insider, or non-independent outsider, when the board after the shareholder meeting does not include at least two independent directors based on ISS independence criteria for Japan.

Regardless of governance structure, under extraordinary circumstances, vote AGAINST individual directors, members of a committee, or the entire board, due to:

- Material failures of governance, stewardship, risk oversight, or fiduciary responsibilities at the company; or
- Failure to replace management as appropriate; or
- Egregious actions related to a director's service on other boards that raise substantial doubt about his or her ability to effectively oversee management and serve the best interests of shareholders at any company.

#### Independence criteria for Japan

Those outside director candidates falling into any of the following categories should be regarded as non-independent.

- Individuals who work or worked at major shareholders of the company in question;
- Individuals who work or worked at main lenders/banks to the company in question;

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1. In most cases, the top executive will be the “shacho” (president). However, there are companies where the ultimate decision-making authority rests with the “kaicho” (executive chairman) or “daihyo torishimariyaku” (representative director).

2. The attendance of inside directors is not disclosed in Japan.

- Individuals who work or worked at the lead underwriter(s) of the company in question;
- Individuals who work or worked at business partners of the company in question and the transaction value is material from the recipient's perspective or is not disclosed;
- Individuals who worked at the company's audit firm;
- Individuals who offer or offered professional services such as legal advice, financial advice, tax advice or consulting services to the company in question; or
- Individuals who have a relative(s) working at the company in question.

### Summary

Unlike U.S. boards, most Japanese boards are essentially executive committees and play a minimal role in management oversight. At companies with a statutory auditor structure (which account for about 98 percent of public Japanese companies), there is no legal requirement that boards have outside directors. About half of Japanese companies still do not have any outsiders. However, companies with a U.S.-type three committee structure are required by law to have at least two outside directors.

Corporate Japan has long been criticized for lack of outside oversight, let alone independence. Global comparison of board independence shows that Japanese boards lag far behind foreign counterparts, and it was customary for Japanese boards to be composed entirely of insiders. Nevertheless, the situation has changed, albeit slowly, over the years, and it was during 2010 when more than half of Japanese companies (regardless of board structure) came to have at least one outsider for the first time (50.4 percent, based on ISS data). For companies covered by ISS in 2011, where director elections were proposed, the number slightly increased to 51.0 percent.

Given that a majority of Japanese boards already have at least one outsider, and in light of regulatory development reflecting changing public awareness toward the importance of board independence, having outsiders on boards is no longer considered an alien concept among the Japanese business community, corporations, and institutional shareholders. Furthermore, reflecting recent corporate scandals (Olympus and Daio Paper), the argument for increasing board supervision is now being called for more urgently than ever.

### Outsiders at companies with a statutory auditor system

The new policy provision (opposing a company's top executive if the board does not include at least one outside director) at companies with a statutory auditor system reflects that changing environment, but will not be implemented until 2013. This one-year moratorium is intended to give companies sufficient time to recruit qualified outside director candidates.

Unlike companies with a three committee structure, there are no requirements to set up nomination committees at companies with a statutory auditor system, which should be held formally responsible for the director nomination process. In the absence of such requirements, the top executive is usually the final decision maker regarding the director nominee selection process at companies with a statutory auditor system. Therefore, it is reasonable to oppose a top executive for concerns about board composition.

As of December 2011, Japan's Ministry of Justice is considering requiring Japanese listed companies to appoint at least one outside director on boards. However, because of strong opposition from issuers, there is no guarantee that such a requirement will be incorporated into practice. Even if it were to be required, it would still take a few years before enforcement. As regulatory changes are expected to be made, ISS will revisit this policy accordingly.

### Affiliated outsiders at companies with a statutory auditor system

Some shareholders may oppose outside director nominees, at companies with a statutory auditor system, whose independence is questionable in order to send a message to the board that companies should appoint independent outsiders. However, such votes could backfire, as companies may instead be discouraged from appointing outside directors altogether because there are no requirements to appoint outsiders. If this were the

case, boards could end up with all insiders, which will not be in the interests of shareholders. Accordingly, ISS does not oppose outside directors simply because of the lack of independence at companies with a statutory auditor system.

### Companies with a three committee structure

Where a company adopts the so-called U.S.-type three committee structure, the role of outside directors becomes critical, and an emphasis on the independence of those directors is appropriate. Such companies are required to appoint at least two outside directors. Therefore, ISS opposes outside director nominees who do not meet our criteria for independence, unless the board after the shareholder meeting is majority independent.

### Controlled companies

ISS opposes the reelection of the top executive at any company that has controlling shareholders, if the board after the shareholder meeting does not include at least two independent directors. This policy is intended to protect the interests of minority shareholders.

Furthermore, if a company with a three committee structure has controlling shareholders, ISS also recommends voting against the reappointment of nomination committee members who are insiders or affiliated outsiders, unless the board after the shareholder meeting includes at least two independent directors. Those committee members should be held responsible for the lack of independence.

### Attendance

We believe that effective management oversight can be realized by having independent board members who actively participate in board deliberations. As such, we pay attention to attendance rates. If an outside director attends fewer than 75 percent of board meetings, without a reasonable excuse, ISS will generally recommend a vote against that director's reelection.

### Poor performance and corporate scandal

ISS also considers recommending votes against nominees for clear mismanagement, as manifested in egregiously poor stock and financial performance or corporate scandals, including fraudulent or criminal activity, which led to shareholder value destruction. Factors we evaluate to that end include financial impact, administrative orders by regulators, stock market reaction, as well as reputational damage.

### Shareholder-unfriendly behavior

We factor in shareholder-unfriendly behavior in evaluating director election proposals. Such behavior may include the introduction of a poison pill without a shareholder vote, or a capital strategy leading to shareholder value destruction such as a dilutive third-party placement without a shareholder vote, as well as large-scale public offerings without convincing rationales.



## 4. Election of Statutory Auditors

Vote FOR election of statutory auditors, unless:

- The outside statutory auditor nominee is regarded as non-independent based on ISS independence criteria for Japan<sup>3</sup>; or
- The outside statutory nominee attended less than 75 percent of meetings of the board of directors or board of statutory auditors during the year under review; or
- The statutory auditor is judged to be responsible for clear mismanagement or shareholder-unfriendly behavior.

### Summary

ISS believes that management oversight by independent statutory auditors is crucial to ensure that companies have better governance. Japan's Corporate Law allows companies to choose between two governance structures: a statutory auditor system, and a U.S.-type three committee system. About 98 percent of Japanese public companies employ a statutory auditor system, and for those companies, there is no legal requirement that boards have outside directors. Based on Japanese meetings, covered by ISS during 2011, where director elections were proposed, 50.3 percent of companies with a statutory auditor system do not have any outsiders. At these companies, the board of directors essentially functions as an executive committee and plays a minimal role in management oversight, which is instead left to the board of statutory auditors.

Given the frequent lack of independent outside directors at Japanese companies, it is critically important to have independent outside statutory auditors. Therefore, ISS opposes any outside statutory auditor nominees who do not meet our criteria for independence. If outside nominees are voted down, companies need to appoint other outside candidates because the law requires that at least half of a company's statutory auditors be designated as outside statutory auditors. Because the law requires that the statutory auditor board be composed of at least three members, companies need to have at least two outside statutory auditors to meet the legal requirement.

As in the case of outside directors, we pay attention to attendance rates. If an outside statutory auditor attends fewer than 75 percent of meetings of the board of directors or board of statutory auditors, without a reasonable excuse, ISS will generally recommend a vote against that statutory auditor's reelection. In addition, ISS considers recommending votes against statutory auditor nominees in cases of corporate scandals, including fraudulent or criminal activity, which have led to shareholder value destruction.

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3. ISS uses the same independence criteria for directors and statutory auditors. See "Election of Directors."

## 5. Article Amendments

Amendments are nearly always bundled together as a single voting resolution, and ISS' general approach is to oppose article amendments as a whole when they include changes we oppose. The following are some of the most common or significant types of changes to articles.

### Expansion of business activities

Vote FOR this change, unless:

- A company has performed poorly for several years and seeks business expansion into a risky enterprise unrelated to its core business.

### Adoption of a U.S.-style three committee board structure

Vote FOR this change, unless:

- None of the outside director candidates meets ISS criteria on independence<sup>4</sup>.

### Increase in authorized capital

Vote CASE-BY-CASE on this request if the company explicitly provides reasons for the increase. Otherwise, Vote FOR this change, unless:

- The increase in authorized capital exceeds 100 percent of the currently authorized capital; or
- The increase leaves the company with less than 30 percent of the proposed authorized capital outstanding; or
- The increase is intended for a poison pill, which ISS opposes.

### Creation/modification of preferred shares/class shares

Vote CASE-BY-CASE on this request

### Repurchase of shares at board's discretion

Vote AGAINST this change.

### Allow company to make rules governing exercise of shareholders' rights

Vote AGAINST this change.

### Amendments related to takeover defenses

Vote FOR this change, unless:

- ISS opposes or has opposed the poison pill proposal by itself.

### Decrease in maximum board size

Vote FOR this change, unless:

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4. See "Election of Directors" for ISS criteria on independence.

- The decrease eliminates all vacant seats, leaving no flexibility to add shareholder nominees or other outsiders to the board without removing an incumbent director.

### Supermajority vote requirement to remove a director

Vote AGAINST this change.

### Reduce directors' term in office from two years to one year

Vote FOR this change.

### Limitations of liability for directors/statutory auditors

Vote FOR this change.

### Limitations of liability for external auditors

Vote AGAINST this change.

### Payment of dividends at the board's discretion

Vote AGAINST this change.

### MBO-related amendments

Vote CASE-BY-CASE on this request.

#### Summary

The governance profile of a Japanese company is largely stipulated in its articles of incorporation. Requests for amendments cover various issues ranging from capital increases and changes to capital structures, to changes to board size and composition. Takeover defense-related changes are often included in articles as well. Once the articles are amended to authorize a company to carry out a specific action, shareholders will usually have no opportunities to vote on such action in the future. Therefore, these resolutions require scrutiny. This is particularly true under the Corporate Law, enacted in 2006, which is largely designed to give more authority to boards than under the old Commercial Code, on condition that shareholders approve changes to articles of incorporation.

## 6. Annual Bonuses for Directors/Statutory Auditors

Vote FOR approval of annual bonuses, unless:

- Recipients include those who are judged to be responsible for clear mismanagement or shareholder-unfriendly behavior.

### Summary

Companies usually make annual bonus payments without shareholder approval as there are no legal requirements requiring companies to seek shareholder approval before making such payments. Accordingly, seeking shareholder approval itself should be viewed as a positive practice. In addition, the amounts are rarely excessive, and therefore, ISS usually supports the proposal. However, when companies suffer from poor financial and stock performance, or have experienced corporate scandals, ISS will consider recommending a vote against the proposals.

## 7. Retirement Bonuses/Special Payments in Connection with Abolition of Retirement Bonus System

### Retirement Bonuses

Vote FOR approval of retirement bonuses, unless:

- Recipients include outsiders<sup>5</sup>; or
- Neither the individual payments nor the aggregate amount of the payments is disclosed; or
- Recipients include those who are judged to be responsible for clear mismanagement or shareholder-unfriendly behavior.

### Special Payments in Connection with Abolition of Retirement Bonus System

Vote FOR approval of special payments in connection with abolition of retirement bonus system, unless:

- Recipients include outsiders<sup>6</sup>; or
- Neither the individual payments nor the aggregate amount of the payments is disclosed; or
- Recipients include those who are judged to be responsible for clear mismanagement or shareholder-unfriendly behavior.

#### Summary

The expectation of receiving a retirement bonus can serve as a disincentive for outside directors or statutory auditors to speak out against management. Accordingly, ISS opposes the payment of retirement bonuses to outsiders. In addition, if neither the individual payments nor the aggregate amount of the payments is disclosed, we oppose the payments. Furthermore, we do not believe it is appropriate to grant retirement benefits to those who can be held responsible for shareholder value destruction resulting from corporate scandals or poor financial performance.

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5. However, in rare occasions, ISS may support payment to outsiders on a case-by-case basis, if the individual amount is disclosed and the amount is not excessive.

6. Idem

## 8. Stock Option Plans/Deep-Discounted Stock Option Plans

### Stock Option Plans

Vote FOR approval of stock option plans, unless:

- Total dilution from proposed plan(s) and previous option plans exceeds 5 percent for mature companies, or 10 percent for growth companies; or;
- Recipients include individuals who are not in a position to affect the company's stock price, including employees of business partners or unspecified "collaborators;" or
- The maximum number of options that can be issued per year is not disclosed.

### Deep-Discounted Stock Option Plans

Vote FOR approval of deep-discounted stock option plans, unless:

- Total dilution from proposed plan(s) and previous option plans exceeds 5 percent for mature companies, or 10 percent for growth companies; or
- Recipients include individuals who are not in a position to affect the company's stock price, including employees of business partners or unspecified "collaborators;" or
- The maximum number of options that can be issued per year is not disclosed; or
- No specific performance hurdles are specified (However, if the vesting period before exercise lasts for at least three years, this policy may not apply).

#### Summary

As the number of agenda items at Japanese companies has declined in recent years, compensation-related proposals have increased in relative importance. This is particularly true of stock options, which can be beneficial or disadvantageous to independent shareholders, depending on the plan design. ISS will evaluate stock options mainly in terms of potential dilution, option recipients, exercise period, exercise price, and performance hurdles (if any).

While dilution is an important factor in evaluating options, Japanese companies' dilution, particularly at large companies, has been modest. As such, this is seldom an issue. On the other hand, in order to align the interests of option recipients with those of independent shareholders, we believe that some mechanism to that end will be called for. We will pay attention to whether performance hurdles are disclosed in the proposal details.

## 9. Director Compensation Ceiling

Vote FOR proposals seeking to increase director fees, if:

- The specific reason(s) for the increase are explained; or
- The company is introducing or increasing a ceiling for performance-based compensation.

Vote CASE-BY-CASE on proposals seeking to increase director fees, taking into account the company's stock price performance and capital efficiency if:

- The proposals are intended to increase fixed cash compensation or do not specify whether it is fixed or performance-based compensation which will be increased.

Generally vote AGAINST proposals seeking to increase director fees if there are serious concerns about corporate malfeasance.

### Summary

The problem with Japanese pay is not the amount, but the lack of it linking to shareholder wealth creation. Cash salaries and cash retirement bonuses, neither of which is directly linked to performance, constitute a significant portion of Japanese executives' compensation. On the other hand, performance-based pay occupies a relatively small portion of total pay. Furthermore, equity-based incentives, notably stock options, still are not popular among Japanese executives.

Japanese companies are now required to disclose individual director pay, where total compensation exceeds JPY 100 million (\$1.3 million), in their Yuho securities filings (equivalent of the 10K for U.S. companies). According to the Nikkei newspaper, there were 295 executives, of about 2,600 companies closing their books in March 2011, whose total pay exceeded JPY 100 million. The highest paid executive was Nissan Motor CEO and Chairman Carlos Ghosn whose total pay was JPY 982 million, followed by Sony CEO and Chairman Howard Stringer who received JPY 863 million in total. The data shows that of the aggregate pay for those 295 executives, three-fourths is fixed compensation (cash salaries and cash retirement bonuses) and the remaining one-fourth is performance-based pay (performance-based cash compensation and equity-based incentives).

ISS' policy (which was updated for 2012) is intended to promote the use of performance-based compensation. ISS generally will support proposals calling for an increase in the director compensation ceiling if the increase is intended to introduce/increase the performance-based pay component. However, if proposals are seeking an increase in non-performance based director pay or it is unclear whether director pay is performance-based, ISS will examine capital efficiency of the company in question, notably the return on equity (ROE) trend, and the total shareholder return to determine whether management has conducted business from shareholders' perspectives.

## 10. Statutory Auditor Compensation Ceiling

Vote FOR proposals seeking to increase statutory auditor compensation ceiling, unless:

- Statutory auditors are judged to be responsible for clear mismanagement or shareholder-unfriendly behavior.



## 11. Audit Firm Appointments

Vote FOR the appointment of audit firms, unless:

- There are serious concerns related to changing auditors.

### Summary

In Japan, appointment of external audit firms will be put to a shareholder vote only when companies seek to appoint new audit firms. Auditors' term is one year, and the same auditors can be reappointed without shareholder approval. In addition, audit firm rotations are not mandated by regulations. Accordingly, unlike in the U.S., this item is not among frequent voting items at Japanese companies.

## 12. Share Repurchase Plans

Vote FOR the share repurchase plans, unless:

- The proposed repurchase plan exceeds 10 percent of issued share capital without explanation; or
- There are serious concerns about a possible adverse impact on shareholder value.

## 13. Takeover Defense Plans (Poison Pills)

Vote FOR approval of takeover defense plans (poison pills), unless:

(Necessary conditions)

- The board does not include at least 20 percent (but no fewer than two) independent directors<sup>7</sup> after the shareholder meeting; or
- These independent directors fail to meet ISS guidelines on board meeting attendance<sup>8</sup>; or
- The directors are not subject to annual election; or
- One or more members of the bid evaluation committee cannot be regarded as independent based on ISS criteria for independence; or
- The trigger threshold is set less than 20 percent of shares outstanding; or
- The duration of the poison pill exceeds three years; or
- There are other protective or entrenchment tools that can serve as takeover defenses; including blocking stakes held by management-friendly shareholders, or setting the maximum board size to the actual board size to eliminate vacant seats, or tightening of procedures for removing a director from office; or
- The company fails to release its proxy circular at least three weeks prior to the meeting, to give shareholders sufficient time to study the details of the proposal and question management about them.

(Second stage of analysis)

- The company has not disclosed what specific steps it is taking to address the vulnerability to a takeover by enhancing shareholder value.

### Summary

ISS recognizes that there may be circumstances in which a well-designed poison pill may strengthen the board's negotiating position and allow it to obtain more favorable terms from an acquirer. However, this scenario only applies when the target company's board is more concerned with shareholder value than with protecting its own position. In order for ISS to be able to support a poison pill in Japan, the above-mentioned conditions will have to be met. Interestingly, most companies which have failed to release proxy circulars at least three weeks before the meeting also failed at least one other criterion as well, implying that how early companies release their proxy materials is an excellent way to measure overall shareholder-friendliness.

ISS evaluates all poison pill proposals on a case-by-case basis, but our guidelines specify a number of necessary conditions which must all be met before we can even consider supporting a takeover defense. In the relatively few cases in which each of these necessary conditions is met, ISS will proceed to the second stage of the analysis, which is to assess the company's plans to enhance value. The implementation of a poison pill is an admission that the board sees the company as vulnerable to a takeover, so shareholders will need to see a plan to increase the share price, not merely a plan to entrench an underperforming management team.

Notwithstanding management fears, some of the companies implementing pills are in fact not especially vulnerable, because founding families, business partners, or other insiders own more than a third of outstanding shares. This is enough to veto any special resolution, such as an article amendment or a merger – meaning that even if a hostile bidder is able to accumulate a sizable stake in such a company, that bidder will be unable to force

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7. See "Election of Directors" for ISS criteria on independence.

8. See "Election of Directors" for ISS criteria on board meeting attendance.

any major restructuring moves opposed by the insiders. It is difficult to see what shareholders of such a company stand to gain from a poison pill.

Importantly, the primary problem at Japanese companies is not the terms of the poison pills themselves – these are often superior to those of U.S. companies due to features such as relatively high trigger thresholds, clear sunset provisions and an absence of "dead hand" provisions. Rather, the main problem is with Japanese companies' insider-dominated boards and insufficient disclosure. We believe that the presence of a critical mass of independent directors is essential in order to ensure that a takeover defense is used not merely to entrench management, but to contribute to the enhancement of shareholder value.

Where a company has implemented a takeover defense without shareholder approval, and that defense allows the board to block the bid without input from shareholders, ISS will consider opposing the reelection of the representative director(s). This decision will depend on the terms of the defense plan itself, the company's overall governance profile (including board composition and information disclosure practices), and the company's performance under the current management team.

In evaluating poison pill renewals, we will apply the same necessary conditions we apply to new pills. At the same time, we will examine the company's share price performance, relative to its peers, since the pill was first put in place. Where the company has underperformed the market, it will be difficult to argue that shareholders have benefited from the pill, or that they should support its renewal.

## 14. Mergers & Acquisitions, Third-Party Share Issuances (Private Placements)

Vote CASE-BY-CASE on M&As and Third-Party Placements taking into account the following:

For every M&A and Third-Party Placement analysis, ISS reviews publicly available information as of the date of the report and evaluates the merits and drawbacks of the proposed transaction, balancing various and sometimes countervailing factors including:

- Valuation – Is the value to be received by the target shareholders (or paid by the acquirer) reasonable?
- Market reaction – How has the market responded to the proposed deal? A negative market reaction will cause ISS to scrutinize a deal more closely.
- Strategic rationale – Does the deal make sense strategically? From where is the value derived? Cost and revenue synergies should not be overly aggressive or optimistic, but reasonably achievable. Management should also have a favorable track record of successful integration of historical acquisitions.
- Conflicts of interest – Are insiders benefiting from the transaction disproportionately and inappropriately as compared to non-insider shareholders? ISS will consider whether any special interests may have influenced these directors and officers to support or recommend the merger.
- Governance – Will the combined company have a better or worse governance profile than the current governance profiles of the respective parties to the transaction? If the governance profile is to change for the worse, the burden is on the company to prove that other issues (such as valuation) outweigh any deterioration in governance.

## 15. Shareholder Proposals

Vote all shareholder proposals on a CASE-BY-CASE basis.

Vote FOR proposals that would improve the company's corporate governance or business profile at a reasonable cost.

Vote AGAINST proposals that limit the company's business activities or capabilities or result in significant costs being incurred with little or no benefit.



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