



**Kelly Crean**  
Governance, Shareowner  
and Equity Team Leader

3560 Lenox Road, Suite 2400  
Atlanta, GA 30326  
+1 404 442 3504  
kelly.crean@mercer.com  
www.mercer.com

ISS Policy Committee  
(via email)

November 5, 2011

**Subject:** Mercer Commentary on ISS Policy: Board Response to Management Say-on-Pay Vote – U.S.

Mercer has reviewed the proposed ISS policy change regarding how the results of a company's management say on pay vote (MSOP) should impact the ISS recommendation against committee members (and in some cases, the entire board of directors). This letter presents our comments on the new policy. In a separate letter, we have commented on ISS's proposed pay-for-performance policy changes

### **ISS Commentary Request**

ISS has asked for commentary on a new policy on how to assess a company's response to the results of an MSOP vote. Specifically, ISS is proposing to evaluate, on a case-by-case basis, whether a) the company has provided adequate disclosure and/or taken appropriate action in response to the company's MSOP vote; and b) how to use this evaluation to determine its recommendations for the election of compensation committee members (and in some cases, the entire board of directors).

We have the following responses to ISS's request for comments on this topic.

- 1. Does a support level of less than 70 percent warrant an explicit response from a company to address concerns – i.e., including actions or an action plan? If not, what opposition level warrants an explicit response?*

We believe that a support level of less than 50 percent for an MSOP proposal is the appropriate trigger for expecting a detailed response from management. This is standard policy for ISS on many other matters and we do not see a compelling reason to depart from this standard for one type of proposal.

We disagree with the potential premise that ISS could recommend "against" compensation committee members and/or the full board where a proxy proposal garners the support of a majority of shareholders. This premise would suggest that ISS believes its policies and evaluation take precedence over the opinion of a majority of the company's shareholders.

2. *Should boards be expected to provide an explicit response to a low supported MSOP proposal by the year following that vote; or should accountability be based on the results of more than one low MSOP vote?*

We believe greater accountability should be based on the results of more than one low MSOP vote, especially if ISS applies a 70 percent threshold standard. For the first year, we believe compensation committees should be expected to provide an updated assessment of their dialogue with shareholders and a review of their compensation practices in the context of the MSOP results, but not necessarily an explicit action plan.

Fully understanding the concerns and expectations among varied investor groups may take longer than the seven-to eight month period prior to the filing of the next proxy statement, especially for companies with a large institutional investor base. Also, changes to programs may require obtaining approval of plan amendments from shareholders, consents from affected employees and a thorough review of the potential tax, accounting, financial, legal, and governmental regulations issues (including the impact on international employees). Finally, potential changes in the investor ownership positions could add complexities to polling investor concerns about pay practices.

3. *Are there additional factors that investors should consider for the case-by-case analysis besides those mentioned above?*

We believe that ISS should include the historical voting results for past compensation proposals in the case-by-case analysis. The data should include the vote support on past equity plans, committee member elections, and other compensation proposals. The composition of the compensation committee and the qualifications of committee members should also factor into the review process.

We also urge ISS to adopt a more holistic approach to the MSOP case-by-case review and analysis. Last year, some negative ISS recommendations were based solely on legacy compensation practices or historical compensation arrangements, which reflected historical trends and competitive practices. We also saw many examples where 95% of the company's plans, practices, and programs reflected strong governance principles, but ISS provided an "against" recommendation due to one adverse factor. In cases where ISS identifies these "exception" concerns, the case-by-case review (and the supporting discussion) often becomes an issue-based dialogue rather than a balanced review of company policies, practices, procedures, and philosophy.

If ISS intends to continue using the GRId score on compensation, it should also be a factor in the MSOP response analysis.

### **Additional Mercer Commentary**

2011 was the first year many companies submitted an MSOP proposal to investors. Based on our experience, many investors developed policies and guidelines in the latter part of 2010 – well after compensation decisions were made for both FY 2010 and FY 2011. And we understand that some investors will be modifying their guidelines for the 2012 proxy season within the next couple of months. Because of the limited experience for both companies and investors to actively dialogue on MSOP concerns, we encourage ISS to delay the broad use of negative recommendations against compensation committee and/or board members during the 2012 proxy season. We believe that companies and investors would benefit from an additional year of compensation planning, dialoguing with investors and reviewing investor and/or proxy advisory voting guidelines.

Thank you for allowing Mercer the opportunity to review and respond to your proposed proxy voting guidelines. Mercer is a leading global provider of consulting, outsourcing and investment services, with more than 25,000 clients worldwide and approximately 10,000 in the United States. Mercer consultants help clients maximize the effectiveness of their compensation and benefit programs and optimize workforce performance by providing human resources and related financial advice, products, and services, including compensation consulting services, to corporations, boards of directors, and board compensation committees concerning the compensation of executives and directors. Mercer provides executive compensation consulting services to companies around the globe, including U.S. publicly-traded companies.

Should you have additional questions for us, please contact Kelly Crean, Leader of Mercer's Governance, Shareowner, and Equity Team at 404 442 3504.

Respectfully,

Kelly Crean  
GSE Leader