



SOCIETY OF CORPORATE SECRETARIES
& GOVERNANCE PROFESSIONALS

November 7, 2011

Global Policy Board
Institutional Shareholder Services Inc.
2099 Gaither Road
Rockville, Maryland 20850

Re: 2012 Proxy Voting Policies

Dear Members of the Board:

The Society of Corporate Secretaries and Governance Professionals appreciates the opportunity to comment on your 2012 Draft Policies.

Founded in 1946, the Society is a professional membership association of more than 3,000 attorneys, accountants and other governance professionals who serve more than 2,000 companies of most every size and industry. Society members are responsible for supporting the work of corporate boards of directors and their committees and the executive management of their companies regarding corporate governance and disclosure. Our members are generally responsible for their companies' compliance with the securities laws and regulations, corporate law, and stock exchange listing requirements.

Introduction

The Society applauds your efforts to seek public comments on the 2012 Draft Policies. However, we encourage ISS to do more to engage with issuers, and to be transparent in its policy formulation, analysis, and recommendation processes.

Among other things, we seek more transparency about the number of ISS clients that actually support the changes proposed. The draft policies refer to "high" levels of support for change but never indicate the percentage of ISS's clients that actually commented on the policies versus the number of clients that were asked to comment. It appears that the level of response to this year's policy survey was substantially lower than last year's response. We urge ISS to be more transparent as to the number and types of institutional investors who responded.

Below are specific comments on certain proposed policy changes for 2012.

Proxy Access Proposals

ISS' current policy on shareholder proposals asking for proxy access is to recommend on a Case-by-Case basis taking into account the ownership threshold proposed in the resolution and the proponent's rationale for the proposal at the targeted company in terms of board and director conduct. Under the 2012 proposed policy, ISS would continue to evaluate these

proposals on a Case-by-Case basis in determining a vote recommendation taking into account additional factors.

The Society endorses ISS's proposed case-by-case approach to proxy access shareholder proposals. We also agree with ISS that the following additional factors should be taken into account.

- *The proponent's rationale for the proposal at the targeted company;*
- *The ownership thresholds proposed in the resolution (e.g., percentage and duration);*
- *The maximum number of directors that shareholders may nominate each year; and*
- *The method of determining which nominations should appear on the ballot if multiple shareholders submit nominations.*

The Society believes that ISS should apply standards to assure that access may be sought only by true long-term owners (vs. short-term hedge funds and the like) who have owned a significant stake for a reasonable period of time. In addition, the standards should assure that neither the purpose nor the effect of access would be to change or influence control or facilitate electing a group of directors that could be divisive or hold allegiances to anyone other than all shareholders.

To accomplish this, a proposal should make clear that access would only be allowed where the nominating shareholder held a net long beneficial ownership position for a substantial amount of time, e.g., the three-year period contemplated by SEC Rule 14a-11. Similarly, a proxy access proposal should require the nominating shareholder of an access candidate to certify (as would an owner filing on Schedule 13G) that election of the candidate would have neither the purpose nor the effect of changing or influencing control of the company. Thus, a proposal should provide that the access scheme would be limited to a very small number of nominees. Also, to effectuate the intent of access, any proposal should provide that nominees be independent of the nominating shareholder and of the company under existing SEC and listing exchange rules as well as a company's independence policies if public. Finally, no such candidates should be put forth in a year when a company is already subject to a proxy contest.

ISS also asks for comment about whether the fact that a proposal is binding or precatory should be a factor. We believe that it should be a factor to consider, given the substantially different legal impact involved. We would expect that for ISS to support a binding proposal, it must be capable of implementation as submitted. Because it is difficult to amend a by-law provision, a precatory approach is preferable, as it would allow the board to develop the appropriate mechanisms and permit it to draft the technical by-law amendment language. The details will matter. For example, a proposal that references the board's eligibility requirements, and/or its nominating and governance committee review processes, among other things, needs to be clear, well-formulated and executable. In addition, we believe that ISS should review binding proposals not simply on the basis of whether the proposed access scheme is better than no access at all, but also on the basis of whether the proposed access scheme truly represents "best practices" and is appropriate for the company in question. While issuers may have some

flexibility to include elements considered best practices in response to a successful precatory proposal, they may be limited in their ability to do so in response to a successful binding proposal, even if most shareholders would prefer such elements.

Political Contribution Proposals

The proposed changes would shift ISS' current policy on corporate political contribution disclosure shareholder proposals from a CASE-BY-CASE approach to a Generally Vote FOR recommendation. In addition, the text in the proposed policy is being updated and disclosure of oversight mechanisms is more explicitly noted as a point of consideration, and is as follows: Generally vote FOR proposals requesting greater disclosure of a company's political contributions and trade association spending policies and activities. However, the following will be considered:

- *The company's current disclosure of policies and oversight mechanisms related to its direct political contributions and payments to trade associations or other groups that may be used for political purposes; including information on the types of organizations supported and the business rationale for supporting these organizations; and*
- *Recent significant controversies, fines, or litigation related to the company's political contributions or political activities.*

ISS is specifically seeking feedback on the following:

- *Does your organization believe that the proposed ISS policy appropriately and reasonably addresses corporate political contributions disclosure as a proxy issue?*
- *Is additional information from companies regarding their political contributions policies and oversight mechanisms sufficient, or would your organization prefer disclosure on specific information about actual political contributions (aggregate or individual) reported in company materials such as on a Web site or in a company report?*

The Society does not endorse the shift from a case-by-case voting approach to a vote generally “for” political contribution disclosure shareholder proposals.

Policies on corporate political contributions are evolving rapidly in the wake of the *Citizens United* decision and other developments. We note that there have been a myriad of shareholder proposals relating to political contributions, and many are seeking not only disclosure, but also the adoption of policies and the taking of action thereunder by boards and/or, in some extreme cases, by shareholders themselves. For example, a number of companies received shareholder proposals last year that sought to (1) prohibit any political contributions in the absence of approval of 75% of the outstanding shares and/or (2) require extensive, costly and unnecessary publicity of any political contributions.

The Society further asks that ISS clarify that if a political contribution disclosure shareholder proposal contains both disclosure elements as well as any type of prohibition or limitation on

contributions or required actions as described above, then it will be considered on a case-by-case basis.

With respect to ISS's proposed general "For" recommendation on disclosure proposals, the Society believes this step is premature. Many companies are just now beginning to engage with their shareholders on both disclosure of political contributions as well as the policies surrounding such contributions. As a result, issuers may modify disclosures on their own in response to the engagement. Similarly, we believe that policies and practices in this area continue to develop. Thus, we believe a change in ISS's policy is not warranted at this time and that ISS should consider each shareholder proposal based upon each company's contribution policies and practices.

In addition, companies have a wide range of issues to consider when adopting political contribution disclosure policies. Recommending a "one-size-fits-all" approach may create unnecessary risks for certain issuers. In particular, many of these shareholder proposals conflate "political" contributions with "trade association" contributions. For some issuers, disclosing political contributions may be seen as perfectly appropriate, but disclosing trade association contributions may carry competitive risk and also may be misleading given not every position a trade association takes will be aligned with the position of every one of its members. Just as no issuer should be able to claim in the abstract that contribution disclosures are always inappropriate, we believe that ISS should acknowledge that trade association contribution disclosures in particular should be evaluated on a case-by-case basis. Investors have historically agreed with this approach, given that support levels for proposals requiring trade association disclosure have tended to be low when issuers have reasonable policies in place and are able to articulate a coherent basis for opposing the proposal.

Board Response to Say on Pay Vote

This policy update clarifies that ISS will recommend CASE-BY-CASE on Compensation Committee members (or in rare cases where the full board is deemed responsible, all directors) and the current MSOP proposal if the company's prior say-on-pay proposal received significant opposition from votes cast, taking into account:

- *The level of opposition;*
- *The company's ownership structure;*
- *Disclosure of engagement efforts with major institutional investors regarding the compensation issue(s);*
- *The company's response;*
- *Specific actions taken to address the issue(s) that appear to have caused the significant level of against votes;*
- *Other recent compensation actions taken by the company; and*
- *ISS' current analysis of the company's executive compensation and whether any prior issues of concern are recurring or one-time.*

The Society believes that a review is appropriate only where a company's vote has failed and where it has not changed its practices to address investor concerns in the following year. The factors above are appropriate for such a review.

Accordingly, we would change the term "received significant opposition from votes cast" to "failed" in the above stated policy.

ISS is specifically seeking feedback on the following:

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

We also believe that ISS should clarify what "significant opposition" means. For companies that received more than 50% of the vote but less than 100%, we urge ISS to adopt a case-by-case vote policy that is less prescriptive than what is proposed. In the case of these companies, it would be appropriate to look at the results of a second MSOP vote before recommending against.

Furthermore, if "significant opposition" does not mean 50%, companies will not know where they stand or what to disclose in their proxies to address the policy. Based on some recent statements from ISS representatives, we believe that ISS may have the view that 30% opposition at a widely-held company with no major inside holders is "significant." We believe a higher percentage opposition should be deemed "significant." We urge ISS to make its position on this clear.

Also, the final policy should clarify what is meant by "explicit response." The proposed draft Policy calls for "[d]isclosure of engagement efforts," including "disclosure of its outreach efforts to major institutional investors." Companies should be allowed to disclose the fact that they engaged with shareholders, rather than provide a detailed description of such efforts. Detailed disclosure would be burdensome, would perhaps alienate investors who do engage, and could chill further communication. Moreover, some investors choose not to engage with companies when approached and an issuer may wish to avoid potentially annoying investors by keeping this information private.

Evaluation of Executive Pay

Beginning in 2012, ISS proposes to use a new methodology to evaluate pay-for-performance alignment, which will identify companies that have demonstrated strong, satisfactory, or weak alignment between TSR and CEO pay over an extended period.

The new methodology incorporates a quantitative analysis, followed as applicable by further qualitative analysis. The quantitative pay-for-performance analysis utilizes three factors; together they provide a useful signal to pay-for-performance alignment over sustained periods (one, three, and five years), including both high and low performing companies that provide proportionate (or disproportionate) pay and pay opportunities to the CEO. The analysis measures three factors in two categories:

- 1. **Relative Alignment**– Two factors are analyzed to determine the pay-performance alignment within a group of companies similar to the company in market cap, revenue (or assets), and industry:*

(The peer group is generally comprised of 14-24 companies that are selected on the basis of market cap, revenue (or assets for financial firms), and GICS industry group, via a process designed to select peers that are closest to the subject company in terms of revenue/assets and industry and also within a market cap range that is reflective of the company's life cycle maturity phase)

- The degree of alignment between the company's TSR rank and the CEO's total pay rank within the peer group, as measured over one-year and three-year periods (weighted 40/60, to put more emphasis on the longer term);*
- The multiple of the CEO's total pay relative to the peer group median, which may identify cases where a high performing company may nevertheless be overpaying....*

Given the short comment period, the Society will not comment specifically on ISS' methodology for evaluating pay-for-performance. We recognize that the proposed framework acknowledges one- and three- year time frames relative to CEO pay, which is a change from the existing policy. This change appears to be positive in that it would put more emphasis on the long-term.

However, many of our members have concerns about how ISS determines peer groups. The Society disagrees with the ISS approach to peer groups, both currently and under the proposed policy. We believe that the use of 4-digit GICS "peers" often results in poor comparisons. In our view, it would be much more useful for all participants if ISS started with the company-identified performance peer group, and to critique that peer group if criticism is merited (e.g., because the size of comparator companies is not appropriate, or not clearly normalized). The company-developed peer groups used in the compensation process are disclosed in the proxy statement under SEC disclosure rules and are generally established with rigor, and in our view usually are more closely matched to real peers than simple 4-digit GICS methodology. Where company disclosure may be inadequate or ISS views the peers as inappropriate, it would be useful to explain why, and at that point to revert to a GICS methodology.

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If the final policy includes a methodology that uses peer groups that ISS constructs, we encourage ISS to make those peer groups public for all issuers. If ISS believes that its own peer groups are relevant to investors' evaluations of executive compensation programs, it should agree that Compensation Committees should have access to the same data. We also urge ISS to keep peer groups consistent from year to year, absent a good reason for change. Being measured against a moving target creates frustration and skepticism on the part of Compensation Committees.

Finally, we would appreciate it if ISS would clarify whether the revised methodology to determine alignment of TSR and CEO compensation will apply to other proposals that include reference to TSR, such as the proposal regarding separation of the Chair and CEO.

Thank you for the opportunity to comment. Please call me if you have questions or comments.

Very truly yours,



Kenneth A. Bertsch
President & CEO