ISS 2012 Draft Policies for Comment

Set forth below are Time Warner Inc.'s ("Time Warner" or the "Company") responses to ISS' request for comments on certain of ISS' 2012 Draft Policies.

1. Board Response to Management Say-on-Pay Vote (U.S.): 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.

Requested Comments:

- 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?

  ***Response**: No. Time Warner believes that a support level of less than 50 percent would warrant an explicit response from the company to address concerns based on feedback from stockholders who had voted against the named executive officers' compensation.*

  If ISS determines that some form of a response is appropriate even if an MSOP receives more than 50%, we would note the following. First, the required response should be limited to seeking to engage with stockholders to determine their concerns. As advocates of MSOP have long noted, the purpose of an MSOP is to foster stockholder engagement, not to lead to specific pay practices. Second, to require an explicit response beyond engagement if an MSOP receives 50% or more of support would ignore the fact that a majority of stockholders supported the MSOP and could lead to companies adjusting their pay practices to address the views of a minority of stockholders. Indeed, stockholders may have varying and, potentially, conflicting reasons for voting against an MSOP. Third, for the reasons stated below, it would be particularly inappropriate to require any kind of action beyond stockholder engagement based on a single year's MSOP vote.

- 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?

  Response*: Boards should not be expected to provide an explicit response by the year following a low-supported MSOP proposal unless the level of support is less than 50%.*

  A MSOP vote that is relatively low, but above a majority in favor, may reflect merely transitory circumstances. The composition of a company's stockholders may change significantly from year to year; investors may themselves change their policies and views regarding executive compensation and the standards for MSOP votes; investors sometimes have policies under which they will vote against a company's proposals for only a single year (and thus investors themselves may not wish to do more than register an objection to a policy or a single action taken); and the matter giving rise to a relatively low MSOP vote may reflect only temporary circumstances relating to a company's performance or pay practices. Thus, as major investors have expressed to us, it would be inappropriate for a company to react too strongly or swiftly to a single year's vote, even if it is relatively low.

  In addition, the appropriate actions for the company to take to address investors' concerns (which may vary widely) can include actions that would be implemented over a period longer than a year and that cannot be implemented before the proxy statement for the next annual meeting is filed.

  Thus, Time Warner believes that a board's responsiveness to a low-supported MSOP proposal (less than 50%) should initially be determined based on the company's proxy statement disclosure regarding (i) the company's efforts to identify the key stockholder concerns with respect to the most recent MSOP proposal and (ii) the company's consideration of plans to address them.

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

  Response*: Yes. Additional factors that investors should consider for the case-by-case analysis include, among others: (i) any disclosure regarding key stockholder concerns, (ii) whether the compensation committee is composed entirely of independent board members, (iii) whether the compensation committee is advised by an independent compensation consultant, and (iv) the company's disclosure regarding its compensation policies and practices as they relate to risk.*

2. Evaluation of Executive Pay (Management Say-on-Pay) (US): ISS currently identifies pay-for-performance disconnects by scrutinizing underperforming companies (i.e., those with 1- and 3-year total shareholder returns (TSRs) below the median of their 4-digit GICS industry group), and then applying a qualitative examination of other factors, including the year-over-year change in the CEO's total pay and a view of the five-year trends in company TSR and CEO pay, to determine whether pay and performance are misaligned. 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:[1]
    - 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.

2. **Absolute Alignment**– this factor measures long-term alignment between pay and company performance, as:
    - Alignment between the trend in the CEO's pay and the company's TSRs over the prior five fiscal years – i.e., the difference between the slope of annual pay changes and the slope of annualized TSR changes during the prior 5-year period.

The qualitative review considers the following:

- The ratio of performance- to time-based equity awards;
- The overall ratio of performance-based compensation;
- The robustness of disclosure and rigor of performance goals;
- 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;

[1] 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.

- Special circumstances related to, for example, a new CEO in the prior FY or equity grant practices (e.g., biannual awards); and
- Any other factors deemed relevant.

Requested Comments

- Do the factors utilized in ISS' proposed pay-for-performance evaluation approach align with those that your organization believes should be considered?

  ***Response**: No. As noted in the response to the fourth bullet point below, we believe that, among other things, metrics in addition to TSR would provide a more complete picture of company performance.*

- Does the proposed new approach give adequate consideration to long-term alignment?

  ***Response**: No. As explained in more detail in the response to the fourth bullet point below, there is a disconnect between the time periods relating to pay and performance under the proposed approach.*

- Will the proposed new approach be beneficial to your organization in identifying companies with strong pay-for-performance alignment?

  ***Response**: Not applicable.*

- What additional factors, if any, should ISS consider and display to improve investors' ability to evaluate companies' long-term pay-performance alignment?

  ***Response**: Time Warner strongly agrees that it is important for stockholders to evaluate the alignment between CEO compensation and company performance. But we believe that this is best done on a case-by-case basis, not by using a single formula applied to all companies. Any formula-based approach presents a number of problems, including: (1) no single performance metric (including TSR) is applicable to all companies at all points in their lifecycle; (2) relative performance metrics present a number of other issues, even among relatively close peers because even similar companies may have quite different revenue streams that can result in a formula unfairly penalizing (or rewarding) companies for their performance in any given year. Further, with relative performance measures, the size and quality of the peer group, the timing of gathering information, and other inputs play a significant role in determining the outcome and, if not addressed carefully on a case-by-case basis, can lead to inappropriate results.*

  Overall, therefore, we believe that companies and stockholders alike will be better served if ISS uses a principles-based approach to reviewing compensation practices, which takes into account the particular circumstances of companies and their industries. This will not only provide a more informed analysis of pay-for-performance, but also supply a framework that companies can use to modify compensation programs as appropriate.

Assuming that ISS decides to proceed with some version of its proposed approach, however, we want to highlight issues we perceive with the pay-for-performance tests as described:

- *Peer group: The methodology by which ISS will determine a company's peer group will not necessarily reflect the peers with which companies compete most directly or the peers with which companies compete for executive talent. Therefore, Time Warner believes that ISS should use the peer groups that have been selected by companies' compensation committees and disclosed in their proxy statements. If ISS determines that a company's peer group is not appropriate, then ISS should include disclosure in its report regarding its determination and why a peer group selected by ISS is more appropriate. In addition, Time Warner believes that ISS should take into account any major changes in a company's peer group over time (e.g., mergers, significant dispositions, bankruptcy) when making comparisons over the 1- and 3-year time periods.*

  We would note that, even using the company's peer group presents challenges in measuring relative performance. In the media industry, there are only a handful of diversified entertainment companies that have cable TV networks, movie studios, and publishing operations. And even our most-direct peers have different lines of business (such as radio, outdoor advertising, and theme parks) and are thus subject to different market conditions. For example, because of their relatively larger reliance on advertising revenue, News Corp. and CBS can have periods of much stronger or weaker performance than we do by virtue of small changes in the advertising markets. The problem of appropriate peer groups becomes even more acute if one considers performance against much smaller peers that may operate in only one of our sectors, companies in different industries (even if tangentially related), or companies at different stages of growth or market maturity. These can all skew the outcome of the Relative Alignment tests.

- *Definition of compensation: Time Warner also believes that ISS should use the value for equity awards that is disclosed in a company's proxy statement when evaluating executive pay because the methodology used by companies is required by the Securities and Exchange Commission regulations and the MSOP vote is based on the information disclosed in a company's proxy statement. For ISS to base its analysis on another methodology that is not readily available to investors is confusing and makes it more difficult for companies to communicate with their stockholders and for stockholders to evaluate a company's executive compensation disclosures.*

  Further, assuming that ISS will continue to use the grant-date value of long-term incentives to calculate CEO total pay, we see a clear disconnect between the time periods covered by TSR performance (historical) and compensation levels (prospective). Comparing TSR performance with actual realized or earned compensation over the same time period would better measure the link *between compensation design and stock price performance for both the Relative and Absolute Alignment tests.*

- *Performance metric: While TSR is clearly an important performance measure for stockholders, it is inadequate (and thus potentially misleading) to use a single metric in evaluating the appropriateness of a company's compensation program. First, there are shortcomings to TSR in measuring a company's performance in any given timeframe, even one as long as five years. For example, a company may have extremely strong earnings growth, but because of concerns (which may or may not come true) about future performance, its TSR may not reflect that strong earnings growth. Second, there are many factors that affect TSR (particularly on a relative basis) over a given timeframe. Thus, as a matter of sound compensation practice, our programs are designed to focus executives on metrics that they can more directly affect and that, over time, should lead to increased stockholder value. Therefore, we suggest that ISS not limit its review of performance to TSR but include other metrics (as appropriate by industry) to measure the Relative and Absolute appropriateness of compensation levels.*

- *Multiple of median peer CEO Pay: Pay distribution varies greatly by industry or peer group. It is possible that for some groups, CEO pay levels are clustered tightly together, while for others, there is significant spread between the high and low payers. This is particularly acute for peer groups composed of companies with a lot of size variance. If this analysis is based on some standard ratio (e.g., above 2.5x the peer median is acceptable), without differentiation for industry and peer group, the results may be misleading.*

3. Proxy Access Proposals (U.S)

Background and Overview

On Sept. 20, 2011, the Securities and Exchange Commission's amendment to Rule 14a-8 providing that companies may not exclude from their proxy materials shareholder proposals for proxy access procedures took effect. The commission lifted the stay on the amendment to Rule 14a-8 in conjunction with its decision not to appeal a decision by the D.C. Circuit Court striking down the commission's mandatory proxy access rule, Rule 14a-11.

In the wake of the commission's decision, several investors have indicated their intent to bring proxy access shareholder proposals in the coming months.

Key Changes Under Consideration

ISS' current policy on shareholder proposals asking for open or 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 proposed policy for 2012, ISS would continue to evaluate these proposals on a Case-by-Case basis in determining a vote recommendation taking into account additional factors. The proposed policy update is as follows:

Vote CASE-BY-CASE on shareholder proposals seeking proxy access, taking into account, among other factors:

- 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.
- Intent and Impact

The purpose of this proposed policy update is to include some of the additional factors that ISS will take into account when evaluating proxy access shareholder proposals. Although the enumerated factors are likely to be among the core features of shareholder proposals, the list is not intended to be exhaustive in ISS' evaluations.

Proxy access shareholder proposals were last seen in 2007, when Hewlett-Packard (42 percent support), UnitedHealth Group (45 percent support), and Cryo-Cell International (majority support) were the targets of such proposals. The impact of this proposed policy update is unknown. The number of proposals that will appear on company ballots in 2012 and the level of specificity those proposals will entail remain to be seen.

<u>Requested Comments</u>

- Does your organization intend to generally support or oppose proxy access shareholder proposals? Would your organization's view differ based on whether the proposal is a binding bylaw resolution versus a precatory (non-binding) one? If so, how?

Response*: Time Warner will evaluate proxy access shareholder proposals on a case-by-case basis.*

- If your organization is likely to take a Case-by-Case approach on proxy access shareholder proposals, are there any additional factors not enumerated in ISS' proposed policy that your organization believes are central to the evaluation of these proposals? If yes, please specify.

  Response*: Yes. Other factors should include: (i) information regarding the nominee and shareholder proponent provided for or required by the proposal; (ii) change of control intent or intent to acquire additional board seats; (iii) nominee independence requirements; and (iv) a company's broader governance provisions for Board accountability, including annual elections of all directors, a majority-vote standard, and overall governance profile.*

- Would your organization look for specific thresholds or limits when evaluating these shareholder proposals (e.g., a minimum or maximum ownership percentage or number of board seats)? If yes, what specific parameters does your organization favor?

  Response*. Yes. We would expect that the proposal should require at least a 3% continuous ownership percentage for three years. As you're aware, those are the requirements under the SEC's proposed Rule 14a-11. Even those levels were the result of a process that, as the U.S. Court of Appeals held, over-estimated the benefits of proxy access and underestimated its costs. Thus, ownership and holding periods below the 3%/three-year thresholds are even more likely to reflect an inadequate evaluation of costs and benefits.*

- Would your organization oppose the shareholder proposal if it allowed 13D filers seeking a change in control to place candidates on ballots? If no, please explain.

  Response*. Yes. If stockholders are seeking to a change in control, they should be required to comply with the applicable requirements for a proxy contest, which provide for much more disclosure to enable stockholders to make an informed judgment.*