November 7, 2011

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Ladies and Gentlemen:

Thank you for offering to Pearl Meyer & Partners ("PM&P") the opportunity to comment on the proposed policy changes that Institutional Shareholder Services Inc. ("ISS") is considering for 2012 (the "Proposed Policy"). As a leading independent executive compensation consulting firm, we share your strong interest in developing and promoting sound corporate governance principles as they relate to executive compensation.

Our comments are focused on three of ISS's proposed 2012 U.S. policy topics: (1) "Evaluation of Executive Pay (Management Say-on-Pay)"; (2) "Board Response to Management Say-on-Pay Vote;" and (3) "Equity Plans Related to Section 162(m)."

1. "Evaluation of Executive Pay (Management Say-on-Pay)"

The Proposed Policy for 2012 makes significant changes to the existing "Pay for Performance" test, which now includes a two-part relative assessment, an absolute assessment, and – if those assessments do not result in "strong or satisfactory" alignment – a further qualitative review. The peer group to be used for testing alignment is identified as the 14-24 companies that are selected by ISS 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 within a market cap range that is reflective of the company's life cycle maturity phase.

General Comments

The Impact of Frequently Vacillating Formulaic Assessments

We note that every year, ISS undertakes slight modifications to the Pay for Performance test that over time have resulted in an increasingly quantitative, rote and mathematical approach to selecting a peer group and reviewing compensation against that peer group. Assessing the *specific* needs and situations of a company in attracting, retaining and motivating talent is exactly what experienced Directors who sit on Compensation Committees are there to do. They have an intimate and intricate view of how the company is operated, who the true comparables in the industry are, and to which companies they may lose talent. While we continue to believe that Directors should make fully informed and logical pay decisions that are in the best interest of the company and shareholders, there is more and more pressure on Directors to make decisions that fit within the formulaic parameters used by ISS in order to obtain favorable recommendations.

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Although we understand the need for ISS to establish a normative approach to assessing compensation, we are opposed to ever-evolving algorithms and more specific combinations and mechanical standards of assessing what is often times more of an art than a science. In that regard, we believe the 2011 Policy should be maintained, which – while far from simple – was a well thought out test that had fewer components and could be easily explained and tested. At the very least, we would urge ISS to maintain any given Pay for Performance formula for longer than one year, so companies have time to digest the implications of the test and adjust their decisions accordingly.

We are also hopeful that ISS appreciates the complexity of companies trying to properly align themselves with ISS standards, given the timing of the updated policy release. By way of example, compensation targets and equity grants are typically set in the first quarter of the year for fiscal filers, but ISS does not typically issue the new policy guidelines until November. Further complicating the matter is the fact that companies do not know until the last day of the year the result of the TSR outcome for purposes of alignment testing. If companies were to understand the new alignment test earlier in the year that will be applied for the following year, Directors would be able to make informed decisions with the then-applicable ISS alignment test in mind. Alternatively, if policy changes cannot be made earlier in the year, we urge ISS to provide a cure period for a certain amount of time so that companies have time to react to the implications of the new alignment tests.

Using TSR as the Sole Measure of Company Performance

Although TSR is a critical metric, many investors also consider long-term financial performance metrics that may be industry-specific. ISS already provides some peer comparisons of financial ratios, but this section of the report could be enhanced. In addition, a point-to-point TSR comparison remains heavily influenced by the stock price on a single day, the end point. Given recent high stock market volatility, a company's 1-, 3- and 5-year TSRs could provide an incomplete or misleading picture when calculated using the same single end point for each TSR metric (e.g., closing price on 12/31/11). ISS already uses price averaging in its SVT calculations. While more complex, the use of price averaging at the start and end points in the TSR calculations would minimize the single day's impact.

We also note that relatively few annual incentive plans are linked directly with TSR performance due to the volatility of the measure on an annual basis and a desire to focus management on near-term financial and operating goals that are directly under their control. Thus, there is an increased chance that the annual incentive payout (and therefore total compensation) may not be aligned with TSR performance, while quite appropriately aligned with key near-term value drivers. Of course, there should not be a persistent directional difference between financial, operating and stock performance, but ISS's TSR measure is linked with one single end point in time.

Phase-In Period for New CEO

Currently, the Pay for Performance test is only applicable if the CEO has been with the company for at least two full fiscal years at the time of the meeting, since two years of compensation data are needed to test the delta. It is unclear from the text of the Proposed Policy whether there remains a minimum tenure requirement, and in fact the quantitative portion of the analysis suggests that there is no phase-in period. However, we strongly advise that this phase-in policy continue so that the assessment is not made until the

current CEO has been in the position for at least two years. Even with such a phase in, however, we would appreciate more guidance as to how to apply the new test if less than three or five years of data are available. It would be inappropriate to compare year-over-year compensation changes between different CEOs, as incumbents and newly recruited or promoted CEOs may have very different pay levels, depending on the organization's needs and circumstances in the succession process.

Comments on New Peer Group Methodology

General

The new peer group to be used for testing alignment in the Proposed Policy is identified as the 14-24 companies that are selected by ISS 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 "ISS Peer Group"). We commend ISS on including market capitalization as an additional parameter, which should serve as a useful filter to eliminate vastly different business models.

However, it would be helpful to have more guidance as to what the market cap screen may be (i.e., is it .5x – 2x, or some wider range?), and also what is meant by a market cap "reflective of the company's life cycle or maturity phase." We additionally suggest that ISS consider market cap in tandem with revenues/assets/enterprise value, as market cap can cause increased variability in year-over-year peer groups due to its volatile nature. If the range for market cap thresholds is too narrow, there may be insufficient peers in the GICS code to reach the goal of 14-24 companies. It is unclear from the Proposed Policy whether ISS intends to reference the 4-digit or the 6-digit GICS code when selecting peers and calculating TSR. Currently, the ISS TSR calculations reference the 4-digit GICS code, while peers are selected using the tighter 6-digit GICS code. We recommend that ISS focus on the 6-digit GICS code for both TSR and peer selection. It would also be helpful to understand how ISS will apply its proposed peer group selection methodology in "outlier" situations including:

- Issuers who are the largest (or smallest) company in their industry. For example, if the largest competitor in an industry were to be compared with 14-24 smaller companies, that issuer is likely to have appropriately higher pay levels due to their relative size of operations, which could negatively skew ISS's proposed relative alignment tests. Many of the largest U.S. companies (e.g., Dow Jones Industrials) benchmark other similarly large companies, not just those within the same GICS industry code.
- Instances where it is not possible to identify 14 companies of similar size within the GICS industry code (this may apply to, but is not limited to, issuers who are the smallest or largest in the industry). For example, if there are only 7 companies that match all of the market capitalization and revenue size parameters within the 6-digit GICS code, would ISS leave the peer group at 7 companies, or allow for mismatch on one or more of the selection parameters in order to reach the minimum 14 peers? Is there a priority for which parameters (market capitalization, revenues, or industry match) would be "relaxed" first? We recommend that ISS consider the degree of mismatch in this type of situation as the addition of 7 mismatched companies could severely diminish the relevance of the peer group and the related alignment tests.

Our experience with clients suggests that these types of "outlier" situations result in a greater likelihood of disconnect between the ISS Peer Group and the company's disclosed peer group. Nonetheless, we do believe that the addition of market capitalization as a selection parameter and inclusion of additional peer companies are improvements to the ISS Peer Group formulation.

Despite the improvements in the test, in our experience, the fact that there is very little transparency or discussion with issuers about selection of the ISS Peer Group is tremendously problematic for Directors trying to make informed compensation decisions. Compensation Committee members serve on Boards to effectuate informed and appropriate compensation decisions, and they do so by carefully selecting a peer group analyzed by the company in great detail. In selecting a peer group, Committees consider not only GICS codes and market caps of companies, but also more specific features, such as types of products created or services provided, complexity, geographical reach, operating leverage, capital structure, distribution channels, and customer base. However, Directors are essentially operating in the dark when trying to "guestimate" how this will compare to an unknown ISS selection of companies. This issue is only aggravated by the timing disconnect – company peer groups are typically selected early in the year, while the ISS Peer Group is selected almost a year later. In this regard, we would suggest that ISS provide more transparency about its selection of the ISS Peer Group (especially given the year over year volatility in market cap, as noted above) or, alternatively, that ISS give companies an opportunity to discuss any concerns with peer group composition in advance of issuing its report. This has become especially critical this year, given the increased emphasis being placed on relative comparisons.

Company Peer Group Should Appear in Report Alongside ISS Peer Group

More significantly, as we have suggested to ISS in prior comment letters, we continue to note the importance of providing CEO pay comparisons with reference to the company's disclosed peer group, in addition to the ISS formula-driven peer group. In fact, since the time that updated disclosure rules were issued in 2007, the SEC is clearly of the view that an issuer's selected peer group is highly material to understanding its compensation decisions, and thus requires its disclosure in proxy materials. We believe the peer group selected by members of the Compensation Committee in conjunction with its professional advisors, all of whom are intimately familiar with the specific company's business plans, competitive strategies and compensation philosophy, is a more tailored and appropriate reference point for comparing CEO compensation. Directors may have taken into account many companies that do not plainly fall into ISS screening parameters (e.g., private company data and/or data of competitors outside the U.S.). Investors should have the opportunity to compare, side-by-side, both ISS's CEO pay comparison vis-à-vis the ISS Peer Group and that of the company's disclosed peer group, thereby increasing investors' ability to make informed judgments with respect to each company's executive compensation decision-making. If ISS and the companies it reviews "agree to disagree" about a peer group, it would be more equitable to disclose the company's peer group side-by-side with the ISS Peer Group so that investors can understand the results of the Pay for Performance test using the comparable group methodically chosen by Directors of the company.

Comments on Relative Alignment

The Level of Statistical Dispersion Should be Considered in Rankings

Under the Proposed Policy, ISS will assess the relative CEO pay and TSR rank vs. peers. However, the dispersion of the data points is an important consideration when assessing relative rank. For example, being 8 out of 10 in terms of CEO pay is a greater concern if there's considerable dispersion in the data and a lesser concern if there's limited dispersion in the data. For example, there could be a $10,000 difference between the 5th and 8th ranked CEO or a $1,000,000 gap between the 5th and 8th ranked CEO. Accordingly, we believe ISS should consider the dispersion of the underlying data before drawing conclusions based on relative rank.

Weighting of Time Periods for Pay Rank

Under the Proposed Policy, ISS will analyze 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). It would be helpful to understand how the 40/60 weighting will be applied for the CEO's total pay rank and how the three-year pay rank will be determined. For example, will the three-year pay rank be based on three-year cumulative CEO total compensation for the issuer versus the peer companies? What will be the ISS methodology if there has been more than one CEO during the three-year period (or an Interim CEO) or the peer group has changed (e.g., due to significant change in company business mix or size through M&A activity)? Will the current year CEO pay rank be given 100% weight if the three-year pay rank is incalculable or invalid? PM&P recommends that ISS use the same time periods, weightings and set of peer companies for determining TSR rank and CEO total pay rank. In general, we view this as an improvement over the current methodology, which is focused on one-year change in CEO pay, but one- and three-year TSR performance for a different set of companies.

CEO Pay Multiple

More guidance should be provided regarding ISS's acceptable multiples and what level would trigger what ISS would consider overpayment for a high performing company. In determining what multiples are acceptable, we recommend that ISS consider the range of dispersion, rather than setting a fixed multiple that applies for all issuers. For example, 2x the peer group median could be the 70th percentile for one peer group and the 100th percentile for another. Furthermore, the incremental pay resulting from a "high" multiple of median could be miniscule in comparison with the incremental value created for shareholders. Compensation Committees of high-performing companies often take into consideration the percentage of above-median performance being shared with executives when making pay decisions.

Again, we note that if the ISS Peer Group substantially diverges from the company peer group, it would be appropriate to include comparisons of relative alignment (CEO pay multiple and the TSR / pay rankings) against both the ISS Peer Group as well as the company peer group so that investors can understand information upon which Directors relied to make certain decisions.

Comments on Absolute Alignment

More Weight in Outlier Situations

While we understand the need to evaluate pay and performance on a relative basis, we believe that weighting this element equally with absolute alignment may be inappropriate in certain outlier situations. For example, if a CEO created exponential value for a company for multiple years, with compensation increasing commensurate with market cap as well as TSR, we do not believe that a lack of alignment with peer group data should bear a 50% weight on the overall quantitative assessment. While in past years ISS focused on poor performers, the Proposed Policy may unjustifiably penalize compensation received by those who created exceptional shareholder value at high-performing companies.

Realized Equity Pay vs. Summary Compensation Table Equity Pay

ISS uses compensation as reported in the Summary Compensation Table ("SCT") in the proxy statement (modified in certain cases as ISS assumes full term, not expected life, for valuing options) in running its Pay for Performance test. However, as is acknowledged in the industry, in making key compensation decisions, Committee members often focus on realized pay (e.g., in the money value of options vs. Black Scholes values) in addition to, or in lieu of, numbers reported in the SCT.

Using the equity grant value from the SCT reflects the grant date value of the awards, with most issuers granting equity in the first quarter. However, the TSR calculation is based on the stock price at the end of the fourth quarter. Because equity grants are made in the first quarter, their grant value will never reflect subsequent positive or negative changes in the stock price by year-end. Accordingly, it is not logical to assume that there will be a high level of correlation between the grant date value of equity awards and TSR. This is certainly true over a 1-year period, and is often true over a longer period if the issuer has a value-based grant methodology. There may be a correlation between the first quarter grant date value of equity awards and prior-year TSR, but there is more likely to be a correlation between the realizable equity award value and TSR. The realizable value of an equity award at any point in time will reflect changes in the stock price beyond the grant date. While pulling values from the SCT is straightforward, information about realized pay is equally available in the proxy statement and would further explain how decisions were reached and perhaps better align with that year's performance.

For example, a stock option awarded in February when the stock price was $20 may have had a grant date fair value of $10 (using an option valuation model). In December, if the stock price is $15, the company may have negative TSR, but the equity grant value may actually have increased over the prior year. However, the realizable value of the stock option in December is zero, not $10. The same holds true for restricted stock awards, whose value in December would decline by $5 as the stock price fell to $15, even though the grant value remained at $20.

Given the potentially significant divergence between the grant date value of equity and its realizable value at the time TSR performance is being measured, we believe ISS should use the realizable value of equity awards at the time TSR performance is being measured.

Aggregating Short-Term and Long-Term Performance and the Impact of Stock Ownership

Most executive compensation programs are comprised of base salary, a short-term incentive opportunity and a long-term incentive opportunity. Within this construct, companies seek to align short-term incentive compensation with short-term performance, and long-term incentive compensation with long-term performance. Short-term performance is generally measured by operating and financial metrics such as growth, profitability, and capital returns. Long-term performance is typically based on stock price, TSR, earnings growth and long-term financial returns (e.g., return on invested capital). However, the current and proposed ISS methodology evaluates total compensation only in relation to TSR. Furthermore, many companies now have executive stock ownership requirements and holding periods that further align long-term executive rewards with shareholders. The current ISS methodology does not consider the change in executive stock ownership value in its assessment of whether executives are appropriately aligned with company performance.

Because companies use both short-term and long-term incentives to align pay and performance over the associated time periods, we recommend ISS modify its methodology to separately assess short-term and long-term alignment between pay and performance and to consider the change in CEO stock ownership value as a component of its long-term pay and performance alignment assessment. For example, short-term pay and performance alignment would consider base salary and short-term incentive compensation relative to financial and operating metrics, whereas long-term pay and performance alignment would consider long-term incentive compensation (measured as outlined above) and total compensation, with some thought given to the change in CEO stock ownership value, relative to TSR. In addition to reflecting the desire of issuers to align both short-term and long-term performance, it would provide more prescriptive feedback to issuers to any predominant issue regarding short-term or long-term alignment.

Moreover, in many instances, the numbers reflected in the SCT are multi-year grants that are intended to pay out over time, but which are reported in full in the year of grant. Consider the following example:

- A company adopts a non-overlapping, two-year long-term performance plan. Thus, awards are made every other year and award size is determined accordingly. In FY 2010, an award is granted with target value of $2 million. In FY 2011, there is no new award. In FY 2012, a new award is granted with target value of $2 million. If all other compensation elements remain the same for all three years, the ISS formula would show a decrease in pay in FY 2011 and an increase in pay in FY 2012, while the company has not changed its incentive plan targets. When Directors make decisions, they view these grants on an annualized basis, particularly long-term equity grants.

Counting a multiyear grant only in the year of grant is likely to undermine correlation with TSR in the corresponding year. If ISS were to annualize such grants in their analysis, we believe it would be a more accurate representation of long-term compensation and its alignment with performance.

What is “strong” and “satisfactory” alignment?

Given that the Pay for Performance test is changing, it would be helpful for companies to have more guidance as soon as possible regarding how ISS will red flag misalignment –

what does it look like and can it be quantified? An ISS tool or methodology, prior to issuing reports, would better prepare companies to assess and potentially implement any pay program changes.

Comments on Qualitative Test

Options Should Be Considered Performance-Based

We understand that ISS does not consider traditional stock options to be “performance-based.” However, stock options only deliver value to executives when shareholders have the ability to realize value. The ultimate goal of shareholders is absolute TSR – i.e., dividends and price appreciation, the latter of which is completely aligned with options and stock appreciation rights. As a result we, and most Directors with whom we work, consider stock options to be performance-based.

Aside from premium-priced and indexed stock options, or options that vest based on achievement of pre-established goals, which have not become widely prevalent (possibly due to some practical limitations), the more common performance-based alternatives to stock options are performance shares and restricted stock with performance-based vesting. These programs are often based on long-term performance metrics that have their own design challenges. For example, programs based on a relative TSR metric are common, but require that the company define an appropriate comparison group and are open to criticism if payouts are made for “best of the worst” TSR performance. Programs based on long-term operating measures require accurate, multi-year goal-setting, which is difficult in the current economic environment. ISS and shareholders then have the ability to assess the relative stretch in the performance goals after the payouts have been made (ex-post), while the Committee must set goals at the appropriate degree of stretch on an ex-ante basis in the face of uncertainty and volatility. These considerations could lead to a greater prevalence of performance share plans that provide *less* direct alignment between pay and performance than traditional stock options. Accordingly, we question whether ISS’s view of stock options as “not performance-based” is resulting in either stronger alignment with shareholder value or more shareholder transparency.

Finally, it is also significant to note that that the Internal Revenue Service recognizes options as performance-based in considering whether such awards qualify for the performance-based exception under Section 162(m) of the Code.

Additional Factors that Should be Considered

The qualitative test should include a review of the level of MSOP support. Overwhelming MSOP support for consecutive years (i.e., levels in excess of 90%) should be a basis for a positive ISS recommendation, even where ISS determines that the quantitative test fails to demonstrate appropriate alignment. We also believe that growth in enterprise value should be another factor considered among the company’s actual results, alongside revenue, profit, cash flow, market capitalization and/or TSR.

Disclosure

ISS intends to review the robustness of disclosure and rigor of performance goals in its qualitative assessment. It would be helpful to understand the parameters of this assessment as the SEC already has very specific rules regarding such disclosure. Does

ISS intend to require more disclosure or different types of disclosures of specific areas of shareholder concern?

2. "Board Response to Management Say-on-Pay Vote"

The Proposed Policy indicates that ISS will consider several factors in making its determination to recommend negative votes on Compensation Committee members (or, in rare cases where the full board is deemed responsible, all directors) and the current Management Say on Pay ("MSOP") proposal, if the company's prior say-on-pay proposal received significant opposition from votes cast. Factors will include:

- 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's current analysis of the company's executive compensation and whether any prior issues of concern are recurring or one-time.

A higher level of scrutiny will be placed on companies where the MSOP proposal received less than 50 percent support from all votes cast. Further, the recurrence of previously identified compensation issues or newly identified compensation concerns, depending on the severity, may result in an AGAINST vote on MSOP and the Compensation Committee members.

Interplay with Current Policy

Under current policy, if ISS does not approve of a compensation practice or policy of a company, its first reaction is to vote against the MSOP. Only if there are egregious practices would it vote in the same year against the Committee and/or the full Board. We note that the Proposed Policy does not focus on those companies that *did not receive significant opposition*. Therefore, we seek affirmation that the current policy structure – that of voting against the MSOP and bypassing negative recommendations for Directors until the following year if no corrective action is taken – remains intact as ISS's overall approach. While "significant opposition" is not defined in the Proposed Policy, we seek confirmation that it is intended to apply only to those companies that received fewer than 50% of all votes cast, as cited in the last paragraph of the Proposed Policy

Timing Issues

In making voting recommendations for companies that received low levels of support in 2011, we urge ISS to stay cognizant of the fact that there may not be a quick fix to the relative issues, or a fix that can be implemented by the time compensation decisions are made. For example, a company may have in place a long-term incentive plan or legal commitment to an executive that that pays out over three years. The prior year's payout may have triggered a Pay for Performance disconnect, but the company may be contractually obligated to continue the executive's participation in the plan for the subsequent two years – which may also result in a Pay for Performance problem in the

current year. While the problem may be fixed over time when the plan runs its course, it cannot be addressed in the immediately subsequent year. Moreover, when compensation plans, designs and programs were reviewed for 2011 – usually in the first quarter of the year for most calendar year filers – most companies did not yet have the voting results from the 2011 MSOP with respect to 2010 compensation. As such, we urge ISS to consider plans that have a "tail," as well as the feasibility of making different compensation decisions given the timing of the voting results.

As a result of this timing issue, and the desire of Directors to make carefully considered compensation actions, we do not believe that 70 percent or below approval warrants immediate action or reaction. While the issues involved should be clearly disclosed in the subsequent proxy in accordance with SEC rules, explicit immediate action should not be required unless the company receives a similar level of opposition in back-to-back years.

Other Factors

While the Proposed Policy does take into account "ownership structure," we propose that ISS dig deeper into the composition of the company's shareholder base and the political setting if there is low MSOP support. For example, if there are insurgent groups of shareholders for reasons completely unrelated to pay, including possible takeover activity, such facts should be considered in assessing the impact and rationale of low MSOP votes.

Impact of High Positive Votes

Just as ISS believes special scrutiny should be given to companies that received significant "against" votes, we believe special treatment should be given to those companies that received significant votes in favor of the MSOP. For example, if a company receives approval from 90% or more of its shareholders, the fact that the company maintains and discloses a pay practice that is considered "problematic" by ISS should not warrant an "against" recommendation. Clearly, its shareholders have indicated that they do not believe the practice negatively impacts the company, and therefore it would be logical for ISS to acknowledge the position of such shareholders in making its recommendations.

3. "Equity Plans Related to Section 162(m)"

The Proposed Policy codifies a clarification issued earlier in 2011 concerning recent IPO companies submitting equity plans for shareholder approval following the post-IPO grandfathering period under Internal Revenue Code Section 162(m). In the past, ISS has generally recommended that investors support equity plan proposals solely for Section 162(m) compliance purposes, due to the favorable tax deduction on performance-based compensation for named executive officers that companies may receive. The Proposed Policy provides that ISS approval for 162(m) plans submitted by companies that have recently gone public will no longer be routine. Instead, it will consider on a case-by-case basis, a full equity plan analysis that may include the following considerations:

- Total shareholder value transfer (SVT)
- Burn Rate Analysis (as applicable)
- Repricing or Evergreen Share Replenishments
- Liberal Change in Control
- Pay for Performance as related to Management Say on Pay
- Problematic Pay Practices as related to Management Say on Pay

We agree that as a matter of good governance, with limited exceptions in special circumstances, even newly public companies should avoid plan provisions that contain repricing, evergreens, and liberal change in control (as defined by ISS) provisions. However, we have several comments regarding the other elements, as follows.

Impact of Burn Rate Test

The most recent ISS burn rate policy indicates that it will vote against a new or amended equity plan if a company's 3-year average burn rate exceeds the greater of: (1) the mean plus one standard deviation of the company's GICS group segmented by Russell 3000 index and non-Russell 3000 index; or (2) 2% of the weighted common shares outstanding, with a limit on annual changes in the threshold to plus or minus 2% of the previous year's thresholds. However, we understand, and seek confirmation, that IPO companies are not subject to the 3-year average policy until the third year, and that the policy will only be applied to companies with at least three years of grant activity as a public entity. If this is not still the case, we would urge ISS to reconsider the normal thresholds and caps applied in the test, giving consideration to the fact that newly public companies typically have an initial need to issue shares at a faster pace than companies that have been granting on a regular basis.

Impact of SVT and Burn Rate Test

Under ISS's current SVT methodology, the total cost of the company's equity compensation program includes the new shares being requested, shares available under all existing employee stock plans, and shares subject to outstanding awards (overhang). That cost is then compared to a company-specific "allowable cap" in a comparable GICS code.

Calculating the SVT for a newly public company using ISS's historic methodology is plainly problematic because historical data is needed to calculate many of the inputs (i.e., dividend yield and stock volatility that would impact the cost of the shares), which recent IPO companies lack. We note that in both the current Pay for Performance test and the burn rate test, ISS has historically permitted a phase-in period for companies that have not had the same CEO for two years, and for companies that do not have three years of grant data, respectively. In accordance with this practice, we believe there should be a phase-in period for application of the SVT to newly public companies, i.e., a period of time that is adequate to substantiate viable cost estimates. We believe a three-year phase in period for SVT application would be appropriate in this regard.

If ISS intends to apply the SVT immediately, we urge consideration of a special test for newly public companies that takes into account the uniqueness of their situation and inability to apply the SVT calculation as currently prescribed. For example, companies would need guidance as to how volatility and dividend yield should be calculated for companies that don't have the required market history. Moreover, it would be inequitable to compare the SVT of a newly public company – which is usually smaller in size and has a more pressing need to focus on equity compensation to employees who do not yet own anything in the initial years – to that of established companies in a similar GICS code that have been regularly granting equity. In fact, in one ISS publication, IPO companies are listed on a separate line item from other GICS codes for purposes of these caps, implying that they would need to be considered on a separate basis.

Impact of Pay for Performance and Problematic Pay Practices

We also seek further clarification as to what “Pay for Performance and problematic pay practices related to Management Say on Pay” means and how it will affect voting on a 162(m) plan.

As discussed above, we believe all companies need clarification as to certain standards and thresholds that can trigger a Pay for Performance problem that may have an impact on MSOP recommendations. If public companies (and particularly newly public companies) do not have a clearer understanding of these limits, it would unfairly impede their ability to implement a Section 162(m) plan, and thereby take a deduction, if applicable.

In its 2011 policy, ISS clarified that some problematic pay practices could by themselves trigger adverse voting, while some would be considered on a holistic basis. We seek clarification as to which pay practices by themselves could adversely impact ISS approval of a Section 162(m) plan. In light of the fact that compliance with Section 162(m) is generally beneficial to corporations that are entitled to a deduction for compensation, we suggest that an against vote for a 162(m) plan be triggered only by ISS’s most highly-prioritized poor pay practices: repricing; excessive perquisites or tax gross-ups; and new/extended agreements providing for CIC benefits in excess of three times base salary and average/target/most recent bonus, "single" or "modified single" severance triggers, or CIC payments with excise tax gross-ups. A less egregious pay practice may have been part of the legacy of a company that had been in operation on a private basis for many years. Allowing it to automatically trigger a negative vote on an equity plan would appear to do more harm than good for its shareholders, particularly immediately subsequent to an IPO.

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Thank you very much for soliciting our comments on ISS’s proposed 2012 policies. Please feel free to contact me (david.swinford@pearlmeyer.com), Yvonne Chen (yvonne.chen@pearlmeyer.com), or Deb Lifshey (deborah.lifshey@pearlmeyer.com) if you have any questions or would like to review these comments.

Sincerely,
PEARL MEYER & PARTNERS

By:

David Swinford
President and CEO