



November 9, 2012

Global Policy Board  
Institutional Shareholder Services, Inc.  
702 King Farm Blvd.  
Suite 400  
Rockville MD 20850

**Re: Board Response to Majority-Supported Shareholder Proposals**

Dear Members of the Policy Board:

The National Association of Corporate Directors (NACD) is the only national membership organization created for and by directors. Our nearly 13,000 members closely watch the policy shifts proposed by Institutional Shareholder Services (ISS) because they could be affected by any changes. As such, we are commenting on your recent policy proposal: *Board Response to Majority-Supported Shareholder Proposals*. We thank you for this opportunity to describe our unique director perspective on this issue.

We have three concerns with the policy proposal. In short, we observe that this policy change may (1) interfere with a director's fiduciary duties, (2) not accurately reflect shareholder opinion, and (3) not clearly define the phrase "act on." We request that the Policy Board review their proposed policy with the following issues in mind.

**The automatic voting recommendations interfere with the board's fiduciary duties.**

Under the current proposal, ISS would recommend a vote "against or withhold" from the entire board if they fail to act on a shareholder proposal that receives a majority of shares cast in the previous year. This proposed rule may have a coercive effect on a board's oversight responsibilities due to its potential interference with a director's duty to diligently and independently consider any issues raised by shareholders. The duty to act in the best interest of the corporation is fundamental to board service. Directors are not solely agents of shareholders; they must exercise their independent judgment. A director should not, for example, implement a shareholder proposal he or she believes is detrimental to the company or its governance.

**The majority of votes cast may not reflect overall shareholder opinion.**

The proposed changes represent a significant shift from previous ISS policy. The previous policy prompts ISS action if a board did not act on a shareholder proposal that was supported by a majority of outstanding shares the previous year or a majority of shares cast the last year and in one of the two previous years. The new policy only considers a majority of shares cast in the previous year. Under this new policy, minority opinions could gain approval without actual majority shareholder support. We are concerned that this shift lowers the threshold to trigger a negative ISS recommendation. We believe a policy capable of upsetting an entire board's composition should at least require support by the majority of outstanding shares and after sufficient time for the board to consider the matter.



**The definition of “act on” is unclear.**

As stated in the proposal, ISS will recommend negative votes against a board if it fails to “act on” a shareholder proposal. We believe ISS needs to clarify the definition for “act on” to address partial implementation and alternative approaches.

The proposed policy does not make clear if partially implemented proposals or alternative approaches will satisfy this new ISS policy. In other words, must boards be completely compliant with the shareholder proposal, or may boards show acceptable action or progress on an issue? Boards often have very legitimate reasons to alter a shareholder proposal but the proposed ISS policy fails to consider this possibility. Here again, this issue encroaches upon directors’ fiduciary duties by substituting the views of certain investors for decisions which belong to the board.

Thank you for the opportunity to comment on this important issue. We hope our comments are used to craft a proposal that meets your clients’ needs but addresses the concerns of the director community.

Sincerely,

A handwritten signature in black ink that reads "Barbara Hackman Franklin". The signature is fluid and cursive, with a long horizontal line extending from the end.

The Honorable Barbara Hackman Franklin  
Chairman  
NACD

A handwritten signature in black ink that reads "Kenneth Daly". The signature is cursive and somewhat stylized, with a large loop at the end.

Kenneth Daly  
President and CEO  
NACD