



October 31, 2012

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

Re: 2013 Proxy Voting Policies

Dear Members of the Policy Board:

The Society of Corporate Secretaries and Governance Professionals appreciates the opportunity to participate in the ISS policy review process, including the opportunity to comment on the recently proposed revisions to the ISS voting policies.

While we believe that some of the proposed revisions are positive, we have two concerns related to the changes: on majority-supported shareholder proposals and on pledging of stock by executives.

### **Director Recommendations Where Shareholder Proposals Were Supported by Majority of Votes Cast**

First, we have substantial concerns about both the timing and the substance of the proposed change in the ISS policy on *“Board Response to Majority-Supported Shareholder Proposals.”* We believe that the proposed change will undermine the exercise of directors’ fiduciary duties on matters that under state law are firmly within the board’s purview.

At a minimum, given the significant change in the timeframe in which ISS expects a board to act, we believe that such a change in policy should not take effect until at least one year after it is announced. We also believe that given the significance of the change, the comment period should be extended beyond the current two weeks.

Present ISS policy provides for opposition to all incumbent directors if the board does not “act on” a shareholder proposal that was supported by: (1) a majority of outstanding shares the previous year, or (2) a majority of shares cast the previous year and at least once in the two years before that.

The revised policy would accelerate this process, with *against* or *withhold* recommendations on all but new directors if the board does not act on a shareholder proposal between the annual meeting and the publication of the proxy statement for the next annual meeting, whether the shareholder proposal received a majority of votes outstanding or a majority of votes cast. This shortened time frame for a board to take action in instances where a proposal is supported by a majority of the votes cast (rather than a majority of the outstanding shares) raises significant concerns about the coercive nature of the director vote and its impact on the ability of directors to perform their fiduciary obligations.

The Society believes that there has not been a sufficient opportunity for input on and consideration of this important change. In particular, the roughly two-week comment period is inadequate for consideration of such an important shift in policy. While the policy survey asked questions about this issue, this unanticipated change in policy was not raised in a manner that would generate meaningful comment. Moreover, we note that this year's ISS survey had a lower response rate from institutional investors than in prior years (97 institutions responded to the survey this year, down from 201 two years ago), which raises questions about the extent of support for this significant change.

Finally, we note that for companies with shareholder proposals approved by a majority of votes cast in 2012, the proposed change would be made half-way through their year. We believe that the boards of many of these companies already have been working through their responses, including considering how best to consult with shareholders, without knowledge that a changed ISS policy would potentially set an unexpected deadline for action. It would be unfair to make negative director vote recommendations in the next six to nine months in situations like this in mid-stream.

We therefore request, at a minimum, that the comment period be extended and that the policy remain unchanged until more consideration can be given to this fundamental change. While we believe an opportunity for broader input on this issue is essential, we have set forth below some of our initial concerns with the proposed change.

### **The Policy Coerces Directors to Abdicate Their Fiduciary Duties**

The revised policy will impose significant coercive pressure on directors related to matters that state law clearly reserves to boards in the exercise of their fiduciary duties. These duties do not disappear or become less significant when a majority of the votes cast at a meeting support a particular non-binding shareholder proposal. A fundamental principle of state corporate law is that directors are not mere agents of shareholders but must exercise their independent judgment to act in the best interest of the corporation. Thus, boards of directors cannot implement a proposal presented to shareholders that they do not believe would be in the best interests of a company. Rather, they must determine the most appropriate response to the proposal, which may be to consider other actions they believe address the shareholders' concerns in a manner consistent with the best interests of the corporation. We believe that in these circumstances the appropriate policy approach would be to consider disclosure of board

action with respect to alternatives considered, any action taken and the board's rationale for its decision. An automatic recommendation against all directors is inappropriate and inadvisable.

We also believe that the importance of the shareholder proposal in question, and the importance of other factors in election of directors, is not being given due consideration in the proposed policy change. So, for example, there is a risk that an entire board under a majority vote framework will be removed for failure to set special meeting rights at a 10% threshold rather than 15%. If the director vote matters, making it contingent entirely on one—possibly minor—difference does not serve the interests of the company or the shareholders.

In view of the number of companies that have adopted majority voting for directors and eliminated staggered board elections, an ISS negative vote recommendation could result in the failure to elect a board. A strict one-size-fits-all policy that leads to this result (without any consideration for the broader circumstances, including the positive value that a board brings on other matters and the level of importance of the particular subject matter of the proposal) cannot be in shareholder interests.

We also are concerned that the policy is based on a majority of shares voted, not on a majority of outstanding, and does not take into account whether the proposal was approved under the company's own rules. The expression of substantial opposition to the ISS view, by for example 49% of shares voted, apparently is seen as meriting no consideration by a board, where a compromise on an issue may make more sense. This is in stark contrast to the ISS policy on say on pay, in which "substantial opposition" by a minority of shares voted is said by ISS to require response from the board. A board should have some flexibility to take into consideration substantial minority views.

### **ISS Must Clarify What It Means to "Act On" a Proposal**

The policy is silent on the circumstances under which ISS would view a board as having "failed to act" on such a proposal. Consequently, it appears that under this policy change, ISS would be second-guessing board decisions to implement a proposal in an alternative manner – even where the alternative approach is submitted for shareholder approval. As discussed above, we believe this is fundamentally at odds with board's fiduciary duties under state corporate law.

For example, a board may respond to a proposal to permit shareholders to act by written consent by reducing the ownership threshold at which shareholders can call a special meeting. In this instance would ISS call for a vote against all directors? We understand that ISS previously has not recommended against directors in some cases like this, but the change would appear to yield a different result. Moreover, in a case such as the "special meeting rights" proposal mentioned above, the board might decide to set a threshold that differs marginally from that in the shareholder proposal. The Society believes that second guessing such "action" on or "implementation" of the proposal – albeit on slightly different terms – ill-serves shareholders and boards.

To reiterate: We ask that the Global Policy Board reject the proposed policy change. In the absence of that action, we urge you to (a) provide more time for comment and consideration about this policy and the change, and (2) not apply the proposed change to companies that would be caught by a single vote taken in 2012.

**ISS Should Not Treat Company Stock Pledges by Executives as a “Bad Practice” in All Cases**

Second, we are concerned about the proposed change on executive compensation to oppose executive and director pledging of stock, apparently in all cases regardless of specific company circumstances. This may affect many smaller, founder-led companies where company stock constitutes the majority of an executive’s (or other director’s) net worth and such pledging has been used judiciously for an appropriate reason such as purchasing a home. Any across-the-board policy is dangerous. While we know there have been recent prominent examples of alleged misuse, we think a more balanced, nuanced approach is warranted. We urge ISS to review these arrangements on a case-by-case basis, and to give guidance on circumstances when pledging will be considered a “bad practice.” Moreover, we believe that where there is concern with reference to executives, the concern relates to named executive officers, not the broader group of executives, and we think ISS should be explicit on that point.

Thank you for the opportunity to comment on the proposed policy changes. We would be glad to discuss our concerns further, and/or respond to any questions you may have.

Sincerely,



Kenneth A. Bertsch  
President and CEO