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November 8, 2012

Via E-mail to [policy@issgovernance.com](mailto:policy@issgovernance.com)

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

Re: 2013 Draft Policies—Board Responsiveness to Majority-Supported  
Shareholder Proposals

Dear Members of the Global Policy Board:

We appreciate the opportunity to comment on ISS's 2013 Draft Policies, including the proposed policy update regarding board responsiveness to majority-supported shareholder proposals (the "Proposed Responsiveness Policy"). We are aware that at least some public companies and industry groups are raising concerns with you regarding the governance impact of the Proposed Responsiveness Policy, and we share many of those concerns. This letter, however, is focused on one issue in particular – the timing of implementation of the Proposed Responsiveness Policy, if it is adopted.

Under the Proposed Responsiveness Policy, ISS would recommend a vote "against" or "withhold" from all incumbent directors if the board failed to implement a shareholder proposal that received the support of a majority of shares *cast* in the previous year. We understand that ISS contemplates applying the Proposed Responsiveness Policy for director recommendations at shareholder meetings held on or after February 1, 2013, taking into account voting results at 2012 annual meetings.

As ISS is aware, there are a significant number of companies for which the Proposed Responsiveness Policy would result in "against" or "withhold" votes in 2013, but for which the current policy would not. We believe that this would be procedurally unfair to these companies, and that the Proposed Responsiveness Policy, if adopted, should apply to director recommendations beginning in 2014.

It is our experience, as legal counsel to public companies, that boards of directors and management formulate their response to shareholder proposals in light of all relevant factors, which includes, among other things, the policies of proxy advisory firms and the likely implications of the proposal passing by a majority of votes cast. In particular, many companies may have determined to allow a shareholder proposal to come to a vote in 2012, even though there was a risk that it would pass by a majority of votes cast, because they knew that, under ISS's policies, the board would have time to take shareholder responses and market trends into consideration and decide how to proceed without facing an immediate requirement to implement the specific proposal. Counting the 2012 vote as the "one strike" necessary under a new policy would be unfair to companies that were acting, in good faith, within the framework ISS had created.

Some examples may be instructive. Suppose a company received a shareholder proposal for 2012 to allow 10% of shareholders to call a special meeting. As you are aware, the company could exclude such a proposal if the company is advancing its own conflicting proposal, such as a special meeting right at higher than 10%. A company that was relatively certain that the shareholder proposal would not receive the vote of a majority of the outstanding may have determined, in reliance on the ISS policy, to allow the shareholder proposal to come to a vote in order to ascertain how its shareholders would vote on a 10% proposal, knowing that the higher percentage proposal could be made, as appropriate, in 2013. If ISS retroactively applies the Proposed Responsiveness Policy, this would not be possible. While there may be some at ISS who would view this as a favorable outcome, the company relied upon ISS's existing framework, and in the end would only be taking actions that a majority of the shares found appropriate—otherwise, the higher percentage special meeting right would subsequently be defeated in a future 10% special meeting proposal, which has generally not occurred. A second example is where ISS's recommendation for the proposal depends on a fairly minor element (such as a minor, and previously acceptable, wording change in a duty of the lead director), which the company determined not to revise before the 2012 meeting, knowing that the change can be made to ISS's satisfaction within the following year. Changing the rules after the relevant vote seems manifestly unfair, and not in any way fundamental to advancing ISS's general policy goals.

We also note that shareholders, in voting for proposals in 2012, would have assumed that ISS's existing policies would apply, and would not have anticipated that the board would be faced with "against" or "withhold" recommendations in 2013 if the proposal passed by a majority of votes cast and the board did not implement the precise proposal. It is not clear, therefore, that these 2012 shareholder proposals would have received as high a level of support if shareholders had known about ISS's prospective policy change. Both boards and shareholders have an interest in understanding the implications of the actions they are taking, and we urge ISS not to change these implications materially with retroactive effect.

Finally, we are concerned that if the Proposed Responsiveness Policy is put into effect for director recommendations at 2013 shareholder meetings, affected companies will simply not have adequate time to take responsive action, if desired. In our experience, companies that are implementing significant governance changes generally do so only after a thoughtful and deliberative process that involves discussions with stakeholders, assessments of various alternatives, and analysis of market practices and trends. This thoughtful and deliberative approach is to be encouraged. Most companies are already well into their year-end governance review and board meeting processes. Giving immediate effect to the Proposed Responsiveness Policy would make it very difficult for companies and their boards to give proper attention to these matters in time to avoid negative director recommendations in 2013. Shareholders would not benefit from a system that encourages rapid, last minute adoption of important governance changes.

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Again, we appreciate the opportunity to comment on the 2013 Draft Policies. We would be happy to discuss these matters further if it would be helpful to you. Please contact Jim Morphy at 212-558-3988, Glen Schleyer at 212-558-7284 or Janet Geldzahler at 202-956-7515 to discuss. Thank you and best regards.

Sincerely,

Sullivan & Cromwell LLP