

November 1, 2012

ISS Global Policy Board

Delivered via email:

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On behalf of eBay Inc., I am submitting the following comments on the ISS draft policy related to Management Say-On-Pay Proposals (U.S.), in particular, the proposal to include any and all pledges of company stock as a factor that could lead to a negative recommendation. We believe this approach is problematic for the reasons discussed below.

First, as ISS concedes in its draft policy, the pledging of company stock is not tied to compensation. Indeed, the proposed policy would apply to all stock pledges, regardless of whether the pledged stock was obtained through compensatory means. The two reasons cited for considering pledges as problematic are that they may be used as part of a hedging strategy or may result in a negative impact on stock price if the pledge is called. We believe that both of these concerns can be addressed more directly through a case by case approach and therefore do not believe that it is appropriate to consider pledging a “problematic pay practice” on par with compensation-centric practices such as (1) repricing underwater stock options without shareholder approval, (2) providing excess perquisites or tax gross-ups, or (3) providing excessive single-trigger change in control payments. This is particularly the case if the policy is extended beyond executive officers to non-management directors.

Second, pledging shares does not necessarily have a negative impact on a company’s shareholders. In fact, as discussed in David Larcker and Brian Tayan’s article “Pledge (and Hedge) Allegiance to the Company”,<sup>1</sup> pledging allows individuals to continue to hold shares of company stock instead of selling them, thus reducing selling pressure on a particular company’s stock. Moreover, given the benefits that pledging can have, including enabling portfolio diversification, the policy could have the effect of reducing individuals’ willingness to increase (or maintain) their ownership position in a company, resulting in a lost opportunity for greater alignment of interests between directors and executive officers, on the one hand, and public shareholders, on the other hand.

Third, we believe that the existing SEC disclosure requirements involving pledges provide sufficient transparency for shareholders who desire to understand the extent of any pledging activity by directors and executive officers. We also believe that companies have the means themselves, without a blanket ISS policy effectively prohibiting pledges, to limit pledges of stock through effective stock ownership guidelines and company-specific trading restrictions that would eliminate the hedging concern and restrict untimely stock sales resulting from such pledges.

Fourth, if ISS decides to include the pledge of company stock as a problematic pay practice, it needs to define a “significant” level of pledging that is proportional in nature. ISS has appeared to have

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<sup>1</sup> David Larcker and Brian Tayan, “Pledge (and Hedge) Allegiance to the Company,” CGRP-11, October 11, 2010.

conceded that stock pledges become potentially problematic only if they result in forced sales that are large enough in relationship to the number of shares outstanding to impact market pricing or if they are coupled with other transactions that eliminate the downside risk associated with stock ownership. Toward that end, we believe that any individual's pledging activity should be considered in light of (1) the individual's overall net worth, (2) the individual's stock ownership in the company, (3) the total number of company shares outstanding, and (4) the value of the pledged shares. We believe that in cases where (a) the value of the shares that have been pledged is small compared with the total stock ownership of the individual and (b) the number of shares pledged represents less than 2% of the company's outstanding shares, the pledging of company stock would not pose any of the risks that ISS appears to seek to address, and as a result, this activity should not result in any negative recommendation by ISS.

Fifth, if ISS decides to include the pledging of company stock as part of its evaluation of problematic pay practices, we also believe that it would be appropriate to include only executive officers in the analysis. Any forced sales from shares pledged by non-management directors are both unlikely to be of a magnitude to affect market pricing and are unlikely to result in extraordinary actions by the company, as has sometimes occurred with pledged shares held by executive officers.

We appreciate the seriousness of receiving a negative recommendation from ISS. Respectfully, we believe that ISS's current draft proposal with respect to the pledging of company stock, which attempts to impose a "one size fits all" policy in an area not amenable to such an approach, has the potential to indiscriminately penalize the investment decisions of directors and executive officers - decisions that are not tied to compensation and are unlikely to have an effect on shareholders. We therefore urge ISS not to adopt the proposal with respect to the pledging of company stock. If ISS continues to believe that such a proposal is necessary, we encourage ISS to adopt the limitations proposed in this letter.

Thank you for the opportunity to provide our comments.

Sincerely,

A handwritten signature in black ink, appearing to read "MJ", with a long horizontal flourish extending to the right.

Michael R. Jacobson  
Senior Vice President, Legal Affairs, General Counsel and Secretary