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

Dear Members of the Policy Board,

We appreciate the opportunity to provide comments and an issuer's perspective to Institutional Shareholders Services Inc. on the proposed policy changes for 2020. We commend ISS for providing an open comment period for all interested market constituents. Our comments focus on the proposed changes to ISS's policy on independent board chair proposals. We have included a copy of the proposal text changes under my signature line for ease of reference.

Request for Additional Detail on the New Factors

Change to Analyze "Rationale" for Proposal

We note the change to consider the "rationale" of the proposal. We request that the final published policies provide examples of what sort of rationales would enhance or decrease the likelihood of support for the proposal by ISS. We note that empirical research on whether this structure enhances shareholder value is mixed. Accordingly, is the inclusion of rationale meant to consider whether the proposal in fact represents a protest vote against management? If so, what sort of protests does ISS consider worthy of support and which does it not? More specific guidance on this point will be helpful for issuers, clients and proponents.

Change to Analyze "Evidence of Failure to Address Material Risks"

We agree this prong goes to the heart of one of the board's duties: enterprise risk oversight. Similarly to our request above, issuers, clients and proponents would benefit from more specific examples/discussions of what ISS would view as a failure to address material risks. We believe clarification is important as businesses cannot completely eliminate risk. Is ISS looking to ensure that the board is exercising appropriate oversight through clear disclosure, or is it looking to see if the board has adopted specific policies or practices that ISS may support regardless of the clear or potential impact on shareholder value?

Change to Analyze “Failure to Adequately Respond to Shareholder Concerns”

Finally, we note an unusual argument made by some shareholder proponents that the use of the SEC no-action letter process constitutes a failure to adequately respond to shareholder concerns. ISS should specifically clarify in its policy whether this is what it means in this text. Is this meant to provide a protest vote against management for exercising company rights under SEC rules? If not, what are the triggers that would constitute a failure justifying support of the proposal? Additional information would significantly assist issuers and investor clients in interpreting any ISS recommendation to ensure the ISS analysis is properly understood.

Additional Factors ISS Should Consider

Repetition of Proposal and Rejection by Investors

ISS has specifically requested comments on what other factors it should consider. A critical element in the analysis of any shareholder proposal, which needs to be called out specifically in the list of factors considered by ISS in developing its recommendation, should be the history and clearly expressed views for the number of times the majority of shareholders have made their “will” known, by voting against the particular proposal. This is especially true with the Independent Board Chair shareholder proposal. While many proposals may change from year to year, the proposals for independent chair are comparable. As such, the responses to past proposals provide an important data point that can be evaluated in considering a new proposal. We note that ISS already does this for say-on-pay proposals by evaluating how much support the prior year’s proposal received and increasing or decreasing scrutiny based on past results.

For example, ExxonMobil has received an Independent Chair shareholder proposal consistently for 18 years. During the 14 years it was included in the proxy statement, the majority of ExxonMobil’s shareholders have repeatedly and consistently voted against the proposal. Very clearly, the majority of ExxonMobil’s shareholders have indicated that they do not want and are not supportive of a Board structure with a non-employee chair at ExxonMobil, which should refute the idea that the proposal continues to be submitted because of a corporate governance failure such as not appropriately addressing risks or responding to shareholder concerns. ISS should explicitly consider this, and similar, express directives from shareholders that the proposal is not in the particular company’s best interest.

National Norms for Governance Structure

Further, the list of factors considered in developing a voting recommendation should also explicitly consider applicable national norms for governance structure. For example, the 2018 Spencer Stuart Board Index noted that less than one-third of S&P 500 boards have a truly independent chairman that meets the NYSE rules for independence. Consistency of leadership structure with national large cap companies should be a required consideration by ISS in evaluating any Independent Board Chair shareholder proposal.

Conclusion

Following the publication of your revised policy, we would welcome the chance to engage with the ISS governance team to understand more detail surrounding these proposed revisions. If ISS determines not to add the repetition of the proposal to the policy, we would also welcome further opportunities to discuss why we believe considering the proposal’s history would enhance the analysis for clients.

As stated in the request for comments, we understand that these comments will be published as received and consent to their publication in an unaltered and complete form. To the extent that ISS determines that this request for comment, the prior client survey, or the publication of these policy revisions qualifies as a solicitation under the U.S. proxy rules, based with the clarified standards provided in the SEC Commission guidance published in Release 34-86721, we consent to the inclusion of these comments in any filing under the U.S. proxy rules.

Sincerely,

A handwritten signature in blue ink, appearing to read "Sheng Glade". The signature is written in a cursive, flowing style with a large initial "S".

Current ISS Policy Incorporating Proposed Changes

General Recommendation: Generally vote for shareholder proposals requiring that the board chair ~~man's~~ position be filled by an independent director, taking into consideration the following:

- The scope and rationale of the proposal;
- The company's current board leadership structure;
- The company's governance structure and practices;
- Company performance; and
- Any other relevant factors that may be applicable.

The following factors will increase the likelihood of a FOR recommendation:

- A weak or poorly defined lead independent director role that fails to serve as an appropriate counterbalance to a combined CEO/chair role;
- The presence of an executive or non-independent chair in addition to the CEO;
- a recent recombination of the role of CEO and chair; and/or departure from a structure with an independent chair;
- Evidence that the board has failed to oversee and address material risks facing the company;
- A material governance failure, particularly if the board has failed to adequately respond to shareholder concerns or if the board has materially diminished shareholder rights; or
- Evidence that the board has failed to intervene when management's interests are contrary to shareholders' interests.

~~Regarding the scope of the proposal, consider whether the proposal is precatory or binding and whether the proposal is seeking an immediate change in the chairman role or the policy can be implemented at the next CEO transition.~~

~~Under the review of the company's board leadership structure, ISS may support the proposal under the following scenarios absent a compelling rationale: the presence of an executive or non-independent chair in addition to the CEO; a recent recombination of the role of CEO and chair; and/or departure from a structure with an independent chair. ISS will also consider any recent transitions in board leadership and the effect such transitions may have on independent board leadership as well as the designation of a lead director role.~~

~~When considering the governance structure, ISS will consider the overall independence of the board, the independence of key committees, the establishment of governance guidelines, board tenure and its relationship to CEO tenure, and any other factors that may be relevant. Any concerns about a company's governance structure will weigh in favor of support for the proposal.~~

~~The review of the company's governance practices may include, but is not limited to, poor compensation practices, material failures of governance and risk oversight, related party transactions or other issues putting director independence at risk, corporate or management scandals, and actions by management or the board with potential or realized negative impact on shareholders. Any such practices may suggest a need for more independent oversight at the company thus warranting support of the proposal.~~

~~ISS' performance assessment will generally consider one-, three-, and five-year TSR compared to the company's peers and the market as a whole. While poor performance will weigh in favor of the adoption of an independent chair policy, strong performance over the long term will be considered a mitigating factor when determining whether the proposed leadership change warrants support.~~

