ISS

# UNITED STATES

## Compensation Policies

### Frequently Asked Questions

Updated February 2, 2024

New and materially updated questions are highlighted in yellow

*This FAQ is intended to provide general guidance regarding the way in which ISS' Governance Research Department will analyze certain issues in the context of preparing proxy analyses and determining vote recommendations for U.S. companies. However, these responses should not be construed as a guarantee as to how ISS' Governance Research Department will apply its benchmark policy in any particular situation.*

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# U.S. Executive Pay Overview

## 1. Which named executive officers' total compensation data are shown in the Executive Pay Overview section?

The Executive Pay Overview section will generally reflect the same number of named executive officers as disclosed in a company's proxy statement. However, if more than five named executive officers have been disclosed, only five individuals will be displayed: the CEO and the four highest paid current executives. However, ISS may include a former executive in this section if his or her pay is within the top five.

## 2. How is Total Compensation calculated?

Total Compensation = Base Salary* + Bonus + Non-Equity Incentive Plan Compensation + Stock Awards** + Option Awards** + Change in Pension Value and Nonqualified Deferred Compensation Earnings + All Other Compensation.

Most elements of total compensation in the ISS report will match what is disclosed in the Summary Compensation Table, including Bonus, Non-Equity Incentive Plan Compensation, Change in Pension Value and Nonqualified Deferred Compensation Earnings, and All Other Compensation. Three key elements may differ in ISS' calculation of total compensation, as described in more detail below.

*Base salaries will match what is disclosed in the Summary Compensation Table if the CEO received salary for the full year. For CEOs paid salary for less than a full year (for example, a mid-year external hire), the salary in the ISS report may be the annual salary disclosed in the employment contract, or else an annualized salary based on the salary in place at the end of the fiscal year.

**All full-value stock awards (both time- and performance-vesting) are calculated by multiplying the number of underlying shares (the target number for performance awards) by the closing stock price on the grant date. Option/SAR awards are calculated using ISS' Black-Scholes option pricing model.

## 3. What inputs are used in ISS' Black-Scholes methodology?

| Variable | Item | Source | Comments |
|---|---|---|---|
| **C** | Option Value | Calculated | |
| **S** | Stock Price | Proxy | |
| **E** | Exercise Price | Proxy | |
| **σ** | Volatility | XpressFeed | Historical three-year stock price volatility measured on a daily basis from the date of grant. If a company has not been publicly traded for at least three years, ISS measures volatility from the IPO date through grant date. |
| **Q** | Dividend Yield | XpressFeed | Average dividend yield over five years. If a company has not been publicly traded for at least five years, ISS averages dividend yield from the IPO date and the grant date of option. Dividend yield is based on each dividend divided by the closing stock price on the last business day before the dividend date. The calculation excludes the payouts of special dividends. |

| Variable | Item | Source | Comments |
|---|---|---|---|
| **R** | Risk Free Rate | Dept of Treasury website | U.S. Government Bond Yield on the date of grant corresponding to the term of the option. For example, if the option has a 10-year term, the risk-free rate is the 10-year U.S. Government Bond Yield on the date of grant. |
| **T** | Term/Expected Life | Proxy | Full term of the option. |
| **e** | Base of Natural Logarithm | N/A | N/A |
| **Ln** | Natural Logarithm | N/A | N/A |
| **N(x)** | Cumulative Normal Distribution Function | N/A | N/A |

## 4. Why does ISS use the full option term for valuation purposes?

While recognizing that companies use varying terms when valuing stock options and that the SEC dictates certain valuation constraints for company disclosure, ISS uses the full option term for valuation purposes for two reasons. First, top executives' stock options typically expire after seven to 10 years and they are susceptible to broader market forces over the very long term. Second, top executives most often wait to exercise their options near the end of the full term. ISS' review of option exercises by named executive officers indicated that the large majority of exercises occur shortly before the option expiration. Therefore, for top executive option awards, ISS believes that the full term best reflects the value of the option.

## 5. How are the accumulated pensions, non-qualified deferred compensation, and potential termination payment figures calculated in the CEO Tally Sheet table?

The pension figure represents the aggregate amounts disclosed as the present value of the benefits for all pension plans (including qualified and non-qualified), as disclosed in the Pension Benefits table in the proxy statement. The non-qualified deferred compensation figure represents the sum of all deferred compensation as disclosed in the Non-Qualified Deferred Compensation table in the proxy statement. The termination payment values for an involuntary termination without cause and a change in control related termination are as disclosed in the proxy statement.

## 6. How are peer medians calculated for the Components of Pay table?

The median is separately calculated for each component of pay and for the total annual compensation. For this reason, the median *total compensation* (TC) of the peer CEOs will <u>not</u> equal the sum of all the peer median pay components, because the values are calculated separately for each pay component; the median TC reflects the median of TC of the peer group constituents.

## Total Shareholder Return (TSR) and Financial/Operational Data

### 7. Where does ISS obtain a company's TSR and financial/operational data?

ISS obtains TSR and all financial data in the Compensation Profile from Standard & Poor's Compustat and Research Insight. Please refer to the Company Financials FAQ and data definitions.

### 8. How does Compustat calculate a company's TSR and financial/operational measures?

For information on how Compustat calculates TSR and financial/operational measures, such as revenue and net income, see the Company Financials data definitions.

### 9. Why does CEO pay as percent of revenue or net income show as "N/A"?

This will show as "N/A" when the company's revenue or net income is not greater than zero.

# Management Say-on-Pay (MSOP) and ISS' Executive Pay Evaluation

### 10. What is ISS' Executive Pay Evaluation policy?

The Executive Pay Evaluation policy consists of three primary areas: Pay for Performance, Problematic Pay Practices, and Compensation Committee Communication and Responsiveness. Recommendations issued under the Executive Pay Evaluation policy may apply to any or all of the following ballot items, depending on the pay issue (as detailed in the policy): Election of Directors (primarily compensation committee members), Advisory Votes on Executive Compensation (management say-on-pay -- MSOP), and/or Equity Plan proposals in certain circumstances.

### 11. When may ISS' compensation-related recommendations affect director election vote recommendations?

In general, if a company has an MSOP resolution on the ballot, the compensation-related recommendations will be applied to that proposal; however, if egregious practices are identified, or if there are recurring problematic issues or responsiveness concerns, ISS may also recommend withhold/against votes with respect to compensation committee members or, if appropriate, the full board. In addition, if there is no MSOP on the ballot, any adverse recommendations related to executive compensation will typically be applied to compensation committee members.

When adverse recommendations are warranted for committee members due to compensation-related concerns, ISS generally will issue adverse recommendations for incumbent directors that will be serving on the compensation committee following the annual meeting (i.e., the go-forward compensation committee members). Except in limited circumstances, adverse recommendations for directors are not based on which director was serving on the compensation committee at the time the compensation action was approved.

### 12. If one or more directors received a negative recommendation in the prior year due to ISS' concerns over compensation practices, will it have a bearing on the following year's recommendation?

The prior year recommendation is not a specific consideration in the following year's analysis, although the underlying concern may be. If one or more directors received less than 50 percent of shareholders' support (regardless whether it is a compensation issue), ISS may recommend that shareholders vote against all incumbent board nominees if the company fails to take adequate action to respond to or remediate the issues that led to the low support level. If one or more directors received notable opposition (less than 70% shareholder support), the company should discuss any action or consideration taken to address the concern. A high level of dissent indicates an overall dissatisfaction, and the board/committee should be responsive to shareholders' concerns. A lack of discussion or consideration may have a bearing on the following year's recommendation.

### 13. If a company receives low support for its say-on-pay proposal, how does ISS assess the board's actions taken in response?

When a say-on-pay proposal receives less than 70% support of votes cast (for and against), ISS will conduct a qualitative review of the compensation committee's responsiveness to shareholder opposition at the next annual meeting.

This review of a company's responsiveness will take into consideration the following:

- The disclosure of details on the breadth of engagement, including information on the frequency and timing of engagements, the number of institutional investors, and the company participants (including whether independent directors participated);
- The disclosure of specific feedback received from investors on concerns that led them to vote against the proposal;
- Specific and meaningful actions taken to address the issues that contributed to the low level of support;
- Other recent compensation actions taken by the company and/or the persistence of problematic issues;
- Whether the issues raised are recurring or isolated;
- The company's ownership structure; and
- Whether the proposal's support level was less than 50 percent, which would warrant the highest degree of responsiveness.

If the company has demonstrated poor responsiveness, ISS will generally recommend a vote against the say-on-pay proposal and incumbent compensation committee members. ISS may limit the adverse recommendation to the say-on-pay proposal if the board has demonstrated a limited degree of responsiveness, but which falls short of a robust response. In cases of multiple years of insufficient responsiveness indicating a systemic problem around board stewardship and oversight, ISS may recommend against the full board.

In the case of low support in connection with an unusual situation (such as a proxy contest or bankruptcy), ISS will still review disclosure of engagement efforts, how the board considered investor dissent, and took actions to meaningfully respond. Board turnover will also be a consideration in such circumstances.

A company that discloses it heard only positive feedback (or no negative feedback) and therefore did not make any meaningful changes generally will be viewed as insufficiently responsive to a low vote, as the vote result evidences investor concerns and it is considered the board's responsibility to discern those concerns through shareholder engagement efforts.

### 14. What impact might an identified pay-for-performance misalignment have on equity plan proposals?

If ISS identifies an unmitigated pay-for-performance misalignment that results in an adverse recommendation on the say-on-pay proposal or compensation committee members, ISS may also recommend a vote against an equity plan proposal on the same ballot. This determination is case-by-case and considerations include, but are not limited to:

- Severity of the pay-for-performance misalignment;
- Whether problematic equity grant practices are a significant factor in the misalignment; and/or
- Whether equity plan awards have been heavily concentrated to the CEO and/or the other NEOs (as opposed to the plan being considered broad-based).

Note that problems identified in any of the three above factors may have an adverse recommendation implication for the equity plan proposal, depending on the severity of the issues. For further information, see ISS' U.S. Equity Compensation Plans FAQ.

## Pay-for-Performance Evaluation

Please also see ISS' Pay-for-Performance Mechanics white paper for a detailed explanation of the quantitative and qualitative pay-for-performance evaluations.

### 15. How does ISS' quantitative pay-for-performance screen work?

The first step in ISS' evaluation of pay for performance is a quantitative assessment of how well a company's CEO pay has been aligned with shareholder returns and fundamental financial performance. The current screen (which applies to all S&P 500 and Russell 3000E Index companies, as well as selected additional companies that are widely held) identifies companies that demonstrate a significant level of misalignment between the CEO's pay and company performance, either on an absolute basis or relative to a group of peers similar in size and industry (for information on ISS' peer group methodology, see ISS' U.S. Peer Group Selection FAQ). Four independent measures assess alignment over multiple time horizons. If the result of the screen indicates a pay-for-performance misalignment, ISS performs an in-depth qualitative review of the company's pay programs and practices to ascertain likely causal factors, or mitigating factors, and a relevant vote recommendation. Note that ISS reviews all companies' Compensation Discussion and Analysis and highlights noteworthy issues to investors regardless of the quantitative concern level.

### 16. What are the four quantitative pay-for-performance screens?

ISS' quantitative pay-for-performance screen uses four measures of alignment between executive pay and company performance: three *relative* measures where a company's CEO pay magnitude and the degree of pay-for-performance alignment are evaluated in reference to a group of comparable companies, and one *absolute* measure, where alignment is evaluated independently of other companies' performance. The four measures are:

- **Relative Degree of Alignment (RDA)**. This relative measure compares the percentile ranks of a company's CEO pay and TSR performance, relative to an ISS-developed comparison group, over the prior two-year or three-year period.
- **Multiple of Median (MOM)**. This relative measure expresses the prior year's CEO pay as a multiple of the median CEO pay of its comparison group for the most recently available annual period.
- **Pay-TSR Alignment (PTA)**. This absolute measure compares the trends of the CEO's annual pay and the change in the value of an investment in the company over the prior five-year period.
- **Financial Performance Assessment (FPA)**. This relative measure compares the percentile ranks of a company's CEO pay and financial performance across four Economic Value Added (EVA) metrics, relative to an ISS-developed comparison group, over the prior two-year or three-year period.

For detailed information on how these measures operate, please see ISS' Pay-for-Performance Mechanics white paper.

### 17. Will any of the pay-for-performance quantitative screens change for 2024?

There are no changes to the three primary screens (RDA, MOM and PTA) for 2024. The secondary FPA screen's "Eligible for FPA Adjustment" thresholds are calculated on an annual basis, and slight changes have been made for 2024. For detailed information on the quantitative screens, see ISS' Pay-for-Performance Mechanics white paper.

### 18. Given the use of TSR in ISS' quantitative screen, does ISS prefer companies use TSR as an incentive program metric?

While recognizing that investors prefer emphasis on objective and transparent metrics, ISS does not endorse or prefer the use of TSR or any specific metric in executive incentive plans. ISS believes that the board and compensation committee are generally best qualified to determine the incentive plan metrics that will encourage executive decision-making that promotes long-term shareholder value creation.

### 19. How does the Financial Performance Assessment (FPA) measure operate and how can it affect the quantitative screen result?

The FPA operates as a secondary screen after the three primary screens (RDA, MOM, PTA) have been calculated. The FPA compares the company's financial and operational performance over the long term versus the ISS-derived peer group. The FPA generally utilizes four equally weighted EVA-based metrics: EVA Margin, EVA Spread, EVA Momentum vs. Sales, and EVA Momentum vs. Capital.

The FPA may modify an Overall Quantitative Concern level from a Low to Medium (or vice-versa), or from a Medium to High (or vice versa), depending on the results of the three primary screens and the company's FPA result. ISS back-testing indicates that approximately 9.5% of companies subject to the quantitative screen will have their Overall Quantitative Concern level modified by the FPA. For detailed information on the FPA measure and EVA-based metrics, see ISS' Pay-for-Performance Mechanics white paper.

### 20. If a company has co-CEOs, or if there was a CEO transition, which CEO's pay is shown in the report and used for the quantitative screen?

For each year covered by the quantitative pay-for-performance screen, the screen will generally use the compensation of the CEO in office on the last day of the applicable fiscal year. This means that the screen may use a former CEO's pay for certain years. For example, the PTA measure may utilize a former CEO's total pay for years 2017 and 2018 (when that executive was in office) prior to a CEO transition, and use the current CEO's pay for years 2019-2021.

For co-CEOs, the executive with the larger total compensation in each fiscal year will be used. Both CEOs' compensation may be evaluated in the qualitative review. On rare occasions, ISS may elect to use a former CEO for a particular year (rather than the CEO in office at year-end) if doing so would provide a more appropriate picture of pay (for example, if the CEO in office at year-end is a short-tenured interim CEO).

### 21. How does the initial quantitative pay-for-performance analysis affect the ultimate compensation-related vote recommendation?

The quantitative pay-for-performance analysis serves as an initial screen to identify cases that suggest there has been a significant misalignment of CEO pay and performance. A Medium or High concern from the quantitative screen always results in a more in-depth initial qualitative review of the company's pay programs and practices to identify the probable causes of the misalignment and/or mitigating factors. We note that any company can receive an in-depth qualitative review at ISS' discretion, and ISS reviews all companies' Compensation Discussion and Analysis and highlights noteworthy issues. Any company with a Low quantitative concern level may receive an in-depth qualitative review at ISS' discretion; a Low concern does not insulate a company from an adverse vote recommendation on the say-on-pay proposal. While the quantitative screen indicates potential pay-for-performance outliers, it is the result of ISS' in-depth qualitative evaluation that determines the vote recommendation.

## 22. Do the "GAAP Financial Performance" and "3-Year Multiple of Median" displays affect the quantitative screen?

ISS research reports include a (i) three-year Multiple of Median (MOM) view of CEO pay as a measure of long-term pay magnitude relative to the ISS-derived peer group, and (ii) three-year GAAP Financial Performance assessment that compares the subject company's financial and operational performance over the long term relative to the ISS-derived peer group. The GAAP Financial Performance and 3-Year Multiple of Median are not be part of the quantitative screen and are displayed for informational purposes only. The results may inform ISS' qualitative evaluation.

## 23. What are the factors that ISS considers in conducting the qualitative review of the pay-for-performance analysis?

Below are some of the key factors that ISS typically considers in conducting the qualitative review:

- The ratio of performance- to time-based incentive awards;
- The overall ratio of performance-based compensation to fixed or discretionary pay;
- The transparency and clarity of disclosure;
- The complexity of the pay program;
- Any risks associated with the pay program design;
- The emphasis of objective and transparent metrics;
- The rigor of performance goals;
- The application of compensation committee discretion;
- The magnitude of pay opportunities;
- The company's peer group benchmarking practices;
- Financial/operational results, both absolute and relative to peers, including clear disclosure in the proxy of any adjustments made for incentive plan purposes;
- Special circumstances such as CEO and executive turnovers or unusual grant practices (e.g., bi-annual awards, special one-time grants);
- Recent pay program changes and/or any forward-looking commitments;
- Realizable and realized pay compared to granted pay; and
- Any other factors deemed relevant.

In conducting the qualitative review of the pay-for-performance analysis, ISS primarily reviews the company's proxy statement. Investors should not be expected to comb through other separate filings to find key information around executive compensation decisions. Accordingly, information that is not fully disclosed in the proxy statement may not receive mitigating weight in ISS' pay-for-performance analysis.

For additional discussion on ISS' qualitative evaluation, see ISS' Pay-for-Performance Mechanics white paper.

## 24. If a company received Low concern in the quantitative pay-for-performance model, will ISS still evaluate the company's incentive programs?

Yes, ISS reviews all companies' Compensation Discussion and Analysis and highlights noteworthy issues to investors regardless of the quantitative concern level. This qualitative evaluation, as well as any in-depth qualitative evaluation subsequent to the quantitative screens, is the most important part of the analysis. Multi-year guaranteed payments, discretionary pay components, inappropriate perquisites and tax gross-ups, predominance of incentives that lack performance criteria, and other problematic issues that are identified in the qualitative analysis may result in an adverse vote recommendation despite a Low quantitative concern level.

## 25. How does ISS use realizable pay in its analysis?

A three-year realizable pay chart, which compares the CEO's three-year realizable pay to three-year granted pay, is displayed in research reports for S&P 1500 companies. Realizable pay may be considered in the qualitative review; if realizable pay is higher or lower than granted pay, ISS may explore the underlying reasons. For example, is realizable pay lower than granted pay due to the lack of goal achievement in performance-based awards, or due to a decline in stock price? Is realizable pay higher than granted pay due to above target payouts in performance-based equity awards (and, if so, are the underlying goals sufficiently rigorous), or is the difference due to increasing stock price?

For all companies, realized or realizable pay may inform ISS' qualitative evaluation. The fact that realizable pay is lower or higher than granted pay will not necessarily obviate other indications that a company's compensation programs are not sufficiently performance-based. However, in the absence of such indications, realized or realizable pay that demonstrates a pay-for-performance outcome will be a positive consideration.

## 26. How is realizable pay computed?

ISS' estimated calculation of "realizable pay" for the CEOs of S&P 1500 companies includes the cash and benefit values actually paid, and the value of any amounts "realized" (i.e., exercised or earned due to satisfaction of performance goals) from incentive grants made to any CEO during the last three fiscal years, based on their value as of the end of the measurement period. Equity grants made during the measurement period that remain on-going as of the end of the period (i.e., not yet earned or forfeited) will be revalued using the company's stock price at the end of the most recent fiscal year. If there were multiple CEOs over the measurement period, then granted and realizable pay calculations will include compensation received by all CEOs over the period. A departed CEO's pay (excluding any grants forfeited) will be valued as of his/her termination date. Realizable pay requires at least three years of disclosed CEO pay. If less than three years of CEO pay is available, the realizable pay chart will be excluded.

In short, realizable pay includes all non-incentive compensation paid, the value of equity or cash incentive awards earned or, if the award remains on-going, revalued at target level as of the end of the measurement period. The total realizable value for these grants and payments will thus be the sum of the following:

- Base salary reported for all years in the measurement period;
- Bonus reported for all years;
- Short-term (typically annual) awards reported as Non-Equity Incentive Plan Compensation for all years;
- For all prospective long-term cash awards made during the measurement period, the earned value of the award (if earned during the same measurement period) or its target value in the case of on-going award cycles;
- For all share-based awards made during the measurement period, the value (based on stock price as of the end of the measurement period) of awards made during the period (less any shares/units forfeited due to failure to meet performance criteria); or, if awards remain on-going, the target level of such awards;
- For stock options granted during the measurement period, the net value realized with respect to such granted options which were also exercised during the period; for options granted but not exercised during the measurement period, ISS will re-calculate the option value, using the Black-Scholes option pricing model, as of the end of the measurement period;
- Change in Pension Value and Nonqualified Deferred Compensation Earnings reported for all years; and
- All Other Compensation reported for all years.

ISS' estimated calculation of realizable pay is based on a consistent approach, using information from company proxy disclosures. SEC disclosure rules are designed to enumerate "grant-date" pay rather than realizable pay, and compensation disclosure approaches may vary from company to company. As such, ISS' realizable pay calculations represent best effort estimations. For example, if a company's disclosure does not clearly indicate whether an applicable award has been earned or forfeited during a measurement period, ISS will use the target award level granted.

## 27. How does ISS calculate the "granted pay" that is compared to "realizable pay"?

As with the "realizable pay" calculation, "granted pay" for the purposes of the realizable pay chart includes the compensation of any executive serving as CEO during the measurement period, on an additive basis. In this context, CEO "granted pay" is calculated as the sum of the following for the three-year measurement period:

- Base salary reported for all years in the measurement period;
- Bonus reported for all years;
- Target short-term (typically annual) awards reported as Non-Equity Incentive Plan Awards in the Grants of Plan-Based Awards table, for all years; if a target award is not determinable, none will be included;
- Target long-term cash awards made during the measurement period (as reported in the Grants of Plan-Based Awards table, or elsewhere in the CD&A);
- The grant-date value of all share-based awards made during the measurement period;
- For stock options granted during the measurement period, grant-date value is calculated by ISS using the Black-Scholes option pricing model, per ISS' standard stock option valuation methodology;
- Change in Pension Value and Nonqualified Deferred Compensation Earnings reported for all years; and
- All Other Compensation reported for all years.

## 28. Why doesn't ISS use the intrinsic value (exercise price minus current market price) of stock options when calculating realizable pay?

Top executives' stock options typically expire after seven to 10 years, meaning that even if an option is underwater in the first few years after its grant, there is a substantial likelihood it will ultimately deliver some value to the holder prior to expiration. In considering "realizable" pay as a pay-for-performance factor, it is important to include the economic value of underwater options (which will also reflect the impact of a lower stock price, if applicable).

## 29. A company would like to disclose ongoing and/or completed performance-based equity awards for awards made in the past three years. What type of disclosure format would ISS suggest?

Disclosure of ongoing or completed performance-based equity awards in a consistent manner would facilitate ISS' calculation of realizable pay (which is based on a best-efforts extraction of necessary information from proxy statements). If a company has awarded performance-based equity awards in the past three years, disclosure of the awards in the following table would be helpful:

| Grant Date | Threshold Payout (#) | Target Payout (#) | Maximum Payout (#) | Performance Period | Target/Actual Earned Date | Actual Payout (#) |
|---|---|---|---|---|---|---|
| 3/1/20XX | 100,000 | 150,000 | 200,000 | 2 years | 6/1/20XX | 180,000 |
| 3/1/20XX | 150,000 | 200,000 | 250,000 | 3 years | 6/1/20XX | Not yet determined |

A company’s estimation of the expected payout level for an in-progress award will not be incorporated into ISS’ realizable pay calculation; however, this information may inform ISS' qualitative evaluation.

### 30. How is TSR calculated for the quantitative screen and what time period will ISS use for TSR of the subject company and peers?

The Relative Degree of Alignment (RDA) measure uses annualized three-year TSR – i.e., the annualized rate of the three 12-month periods in the three-year measurement period (calculated as the geometric mean of the three TSRs). TSR reflects stock price appreciation plus the impact of reinvestment of dividends (and the compounding effect of dividends paid on reinvested dividends) for the period. In the Pay-TSR Alignment (PTA) measure, indexed TSR represents the value of a hypothetical $100 investment in the company, assuming reinvestment of dividends. The investment starts on the day five years prior to the month-end closest to the company's most recent fiscal year end and is measured on the subsequent five anniversaries of that date.

TSRs for the subject company and all its peers are measured for the same period; that is, the three-year period ending closest to the fiscal-year end of the subject company. ISS smooths the TSR calculation by averaging the closing prices across all trading days contained in the beginning and end months of the TSR measurement period. The TSR calculation factors in the impact of dividends and stock splits occurring during the averaging period.

For more detailed information on the quantitative screens, see ISS' Pay-for-Performance Mechanics white paper.

### 31. What compensation data for peers does ISS use?

ISS uses the latest compensation data available (disclosed and collected) for the peer companies as of the time that the research report is created for the subject company. As some peers may file their proxy statements at later dates than the subject company, some peer compensation data may be from the previous year.

### 32. What are the minimum time periods of data needed for the quantitative screen measures? Does lack of sufficient data affect whether a company would be used as a peer?

The absolute PTA measure generally requires five years of TSR and pay data, while the relative RDA and FPA measures generally require three years of TSR/financial and pay data. However, the PTA measure can still be run on a more-limited four years of data, and the RDA and FPA measures can be run on two years of data (assuming five or three years of complete data is unavailable). The relative MOM measure requires one year of pay data.

Generally, only companies with three full years of data will be peer companies. In limited circumstances, a company with less than three years of data may be used when the quantitative evaluation focuses on less than three years.

### 33. How does ISS take the year-over-year change in pension benefits value into account in assessing CEO pay?

ISS includes changes in pension value in its pay assessments because companies that do not offer supplemental defined benefit pensions (SERPs) to their top executives often provide for post-retirement compensation through larger grants of equity-based awards and thus could be disadvantaged in company-to-company pay comparisons if SERP-related compensation is omitted from the annual figures. Because ISS' quantitative analysis has a long-term orientation, pay anomalies caused by issues such as a single large increase in year-over-year pension accumulations (e.g., due to interest rate changes) should not have a significant impact on the results. However, such anomalies are considered in the qualitative evaluation.

### 34. When will ISS consider company actions taken in response to ISS' identification of pay-related concerns?

If a company has taken recent actions following the publication of ISS' research report to address pay-related concerns, any such actions must be disclosed in a public filing in order to be considered by ISS. Based on the additional public disclosure, ISS may issue a "proxy alert" to update the analysis and, if warranted, change a vote recommendation. ISS is generally unable to change vote recommendations if the additional public filing is made in close proximity to the meeting date (specifically, less than five business days before the meeting date).

ISS may change its vote recommendation in the proxy alert if the company's actions sufficiently remedy the concerns driving the adverse vote recommendation. The mitigating weight placed on such actions depends on the specificity of disclosure. For example, a broad commitment to increase the proportion of performance-based pay generally would carry little mitigating weight, whereas disclosure with specific information on changes in program design, award size, etc., would carry greater mitigating weight. Modifications to existing awards to strengthen their performance linkage would be an even stronger mitigator.

### 35. When will ISS consider equity awards to be performance-conditioned?

For purposes of calculating the CEO's equity pay mix, ISS determines the proportion of equity awards (by value) that are time-based vs. performance-conditioned. In order for equity awards to be considered performance-conditioned, the company should disclose the details of the preset performance metrics (e.g., return on equity), the associated goals (e.g., 15 percent), and the measurement period (e.g., three years) associated with the performance awards at the time they are made. Performance-conditioned equity awards do not include standard time-based stock options or performance-accelerated grants. Instead, performance-conditioned equity awards are performance-contingent in that the individual will not receive the grant if the performance goal is unmet within the specified period. ISS will generally not consider equity awards as performance-conditioned when performance assessments are determined by committee discretion or by references only to broad assessments of company or executive performance.

Time-based awards whose magnitude is determined based on prior performance are not considered performance-conditioned unless the proxy discloses the pre-set performance requirements necessary for the award to be made along with the defined measurement period. Premium-priced stock options must have a meaningful premium (typically at least 110 percent of the stock price on the date of grant, although a higher premium may be required for stock trading at a low price) in order to be classified by ISS as performance-conditioned. For equity awards that are contingent on stock price goals, the price condition should be both meaningful and required to be maintained for at least 20 consecutive trading days (or 30 calendar days) before vesting in order for the grant to be considered performance-conditioned. Market stock units that pay out at target without requiring an increase in stock price are not considered performance-conditioned. Note that ISS' classification of an equity award as performance-conditioned should not be taken as an indication that the award design is considered rigorous in the context of a pay-for-performance evaluation.

### 36. What level of disclosure is necessary to enable shareholders to assess the rigor of incentive programs?

In order for shareholders to assess the rigor of performance-based bonus and equity incentive programs, the company needs to disclose in the proxy statement the applicable performance metrics and goals and corresponding payout opportunities. To ensure complete and transparent disclosure, the company should disclose the following:

- The metrics used (and rationale for the selections or changes);
- The goals that were set for each metric and the target (and, if applicable, threshold and maximum) payout levels set for each NEO;

- The reason that each goal was determined to be appropriate for incentive pay purposes (including the expected difficulty of attaining each goal);
- The actual quantified results achieved with respect to each goal; and
- The resulting award (or award portion) paid (or payable) to the NEO with respect to each goal.

If a target performance goal was set at or below the prior year's analogous goal or achieved result against that goal, the company should explain the reasoning for this and how it was considered when determining the related payout opportunities. Any factors that reduce the meaningfulness of year-over-year goal/result comparisons should be explained in the proxy.

## 37. Will ISS consider the timing of equity grants (such as for grants made subsequent to the applicable performance year) when conducting its pay-for-performance evaluation?

Grant timing issues can be challenging for investors evaluating the relationship between performance and pay. The value of equity grants generally represents a significant proportion of top executives' pay; if the grants are made subsequent to the "performance year," disclosures in the Grants of Plan-Based Awards Table may distort the pay-for-performance link.

Some investors believe that equity awards can incentivize and retain executives for past and future performance and therefore adjustments for such timing issues may not be critical. ISS' pay-for-performance analysis has a long-term orientation, where these types of timing issues are less relevant than in an evaluation of one year's pay. Nevertheless, ISS may consider the timing of equity awards made early in a fiscal year in its qualitative assessment if complete disclosure and discussion is made in the proxy statement.

In order to ensure that pay-for-performance alignment is perceived, the company should discuss the specific pre-set performance measures and goals that resulted in equity awards made early in the next fiscal year. A general reference to last year's performance is not considered sufficient. If the company makes equity grants early in each year based on the prior year's specific performance achievement, shareholders should not be required to search for the information outside of the latest proxy statement in order to make year-over-year comparisons. Many companies that grant equity awards in the year following the performance year provide alternate compensation tables in their proxies that adjust for the timing issues, which is helpful for investors. In such cases, ISS may consider adjusted total compensation as part of the qualitative analysis only when the company provides transparent and complete disclosure in the proxy statement; ISS will not search for the company's Form 4 or other filings.

## 38. How does ISS evaluate "front-loaded" awards intended to cover future years?

Very large awards that are intended to cover future years of incentive pay limit the board's ability to meaningfully adjust future pay opportunities in the event of unforeseen events or changes in either performance or strategic focus. For this reason, ISS is unlikely to support grants that cover more than four years (i.e., the grant year plus three future years). Commitments not to grant additional awards over the covered period should be firm. Given that such awards typically provide for exceptionally large pay opportunities, usual pay-for-performance considerations are heightened, including completeness of disclosure, emphasis on transparent and rigorous performance criteria, and stringent vesting provisions that limit windfall risk.

## 39. How does ISS evaluate CEO transition pay, including inducement and/or make-whole awards?

When there is an executive transition, investors are generally comfortable with temporarily increased pay for the incoming executive, particularly when that executive has been externally hired from another organization. This temporary change to the compensation structure may include inducement awards that induce the executive to accept the role at the new company, as well as make-whole awards that replace forfeited compensation opportunities from the executive's prior employment. The presence of these awards may mitigate concerns regarding pay magnitude if a review of the award structure and disclosure reveals positive features. If pay levels are elevated for a new hire, those compensation levels will be expected to normalize in years following the transition year.

As with other incentive awards, inducement awards should be predominantly performance-based and structured with appropriate shareholder-friendly guardrails (for example, limitations on award vesting upon a termination). The company should disclose how it determined the size and structure of those awards to be in shareholders' best interests. For make-whole awards that are intended to replace forfeited compensation opportunities from a prior employment, the company should disclose whether the new grant is economically equivalent to what was forfeited, the termination terms and any other relevant information. ISS generally does not expect performance criteria to be attached to make-whole awards, but companies must clearly disclose the portion of awards that are attributable to inducement/sign-on awards vs. those that are strictly make-whole awards.

### 40. How does ISS evaluate modifier metrics in incentive pay programs?

As with primary metrics for incentive pay programs, companies should provide clear disclosure in the proxy statement around a modifier metric's mechanics, including its applicable goals, the achieved performance level, and impact on payouts. Companies should clearly disclose the limitations that a modifier metric has on payouts (i.e., "may increase or decrease the total bonus payout by up to 15%"). Modifier metrics that allow for a significant increase in a payout or do not disclose the percentage by which a payout can be increased may be viewed negatively, as will modifier metrics that contribute to an overemphasis of committee discretion within the pay program.

### 41. How does ISS evaluate disclosure of adjustments to metric results, including non-GAAP metrics in incentive pay programs?

Non-GAAP metrics are commonly utilized in incentive pay programs, and the performance results (and consequently the payouts) can be significantly changed by adjustments approved by the board. If such adjustments materially increase incentive payouts, companies should provide clear disclosure in the proxy explaining the nature of the adjustment, its impact (dollar or percentage) on payouts, and the board's rationale. Disclosure in the proxy of line-item reconciliation to GAAP results, when possible, is considered a best practice. The absence of these disclosures would be viewed negatively, as would adjustments that appear to insulate executives from performance failures – particularly for companies that exhibit a quantitative pay-for-performance misalignment.

### 42. How does ISS evaluate pay program complexity?

Pay program structures and/or disclosures that are overly complex may impede investors' ability to evaluate the linkage between pay and performance and may reduce transparency into what the program aims to incentivize. ISS may raise concerns when a pay program contains overly complex features, particularly when a quantitative pay-for-performance misalignment is identified. For example, a disproportionately large number of metrics, modifiers, and/or award vehicles, complicated vesting or award determination formulas, or convoluted pay program disclosure without clear and compelling rationale may be raised as a concern.

### 43. How does ISS capture transition period compensation?

Given that disclosure of transition period compensation varies across companies, ISS is unable to apply a standardized methodology in all cases. When transition periods represent an extension of a recently completed fiscal year (until the start of a new fiscal year period), ISS will generally include transition period pay as part of the most recently completed fiscal year pay. Cash pay components such as base salary and bonus will be annualized and equity pay components will be added, subject to a case-by-case review.

### 44. How does ISS evaluate pay-for-performance alignment at companies that are not subject to the quantitative screen?

For companies outside the Russell 3000E Index that are not subject to the quantitative screens, ISS reviews the CD&A, including the Summary Compensation Table and other compensation tables, to assess the level of NEOs' pay and to identify excessive pay levels. ISS also reviews disclosures for the presence of problematic pay practices. If that evaluation does not identify any significant concerns, the ISS research report indicates as much (and notes any issues that shareholders may nevertheless wish to consider). If significant concerns are identified, ISS evaluates whether the situation warrants an adverse recommendation.

### 45. How does ISS view stock ownership guidelines that allow for unearned performance awards or unexercised options to be counted towards the goals?

ISS research reports include the CEO's stock ownership guidelines, which are typically reflected as a multiple of base salary. As noted previously, beginning in early 2021, ISS updated its approach to stock ownership guidelines, to account for the fact that a minority of companies' guidelines allow some types of equity awards that are not actually owned shares to be counted towards the goals. If a company's stock ownership guidelines allow for the inclusion of unearned performance awards or unexercised options (or any portion thereof) towards meeting the guidelines, the company will no longer receive credit for having stock ownership guidelines. Unvested full value awards, which are not required to be exercised but simply vest over time, get credit; as such, unvested time-based restricted stock and RSUs get credit. Vested but unexercised options do not get credit. Companies should clearly disclose the types of equity awards (vested, unvested, unexercised, etc.) that may count towards the goals.

### 46. How does ISS determine peer companies for purposes of the quantitative screen?

For complete information on ISS' pay-for-performance peer group methodology, see ISS' U.S. Peer Group Selection FAQ.

## Problematic Pay Practices

### 47. What is ISS' Problematic Pay Practices evaluation?

Problematic pay elements are generally evaluated case-by-case considering the context of a company's overall pay program and demonstrated pay-for-performance philosophy. Based on input from client surveys and roundtables, ISS has identified certain practices that are contrary to a performance-based pay philosophy, which are highlighted in the list below. ISS evaluates these practices on a case-by-case basis, considering the facts and circumstances disclosed.

- Egregious employment contracts:
  - Contracts containing multi-year guarantees for salary increases, non-performance-based bonuses, or equity compensation;
- New CEO with overly generous new-hire package:
  - Sign-on awards that are excessively large or insufficiently performance-based;
  - Problematic termination-related equity vesting provisions;
- Abnormally large bonus or incentive plan payouts without justifiable performance linkage or proper disclosure:
  - Performance metrics that are changed, canceled, or replaced during the performance period without adequate explanation of the action and the link to performance;
  - Payouts made despite failure to achieve pre-established threshold performance criteria;

- Egregious pension/SERP (supplemental executive retirement plan) payouts:
  - Inclusion of additional years of service not worked that result in significant benefits provided in new arrangements;
  - Inclusion of performance-based equity or other long-term awards in the pension calculation;
- Excessive or extraordinary perquisites:
  - Perquisites for former and/or retired executives, such as lifetime benefits, car allowances, personal use of corporate aircraft, or other inappropriate arrangements;
  - Extraordinary relocation benefits (including any home loss buyouts);
  - Excessive amounts of perquisites compensation;
- Problematic severance and/or change in control (CIC) provisions:
  - Termination or CIC severance payments exceeding three times [base salary plus target/average/most recent bonus] (or that include equity gains or other pay elements into the calculation basis);
  - New or materially amended arrangements that provide for CIC severance payments without loss of job or substantial diminution of job duties (such as provided by a problematic Good Reason definition, or by single-triggered or modified single-triggered provisions, where an executive may voluntarily leave for any reason and receive CIC severance);
  - New or materially amended executive agreements that provide for an excise tax gross-up. Modified gross-ups would be treated in the same manner as full gross-ups;
  - Excessive payments upon an executive's termination in connection with performance failure or payments made in connection with an apparent voluntary resignation or retirement;
  - Liberal change in control definition in individual contracts or equity plans which could result in payments to executives without an actual change in control occurring;
  - A problematic Good Reason termination definition that presents windfall risks, such as definitions triggered by potential performance failures;
- Tax reimbursements: Excessive reimbursement of income taxes on executive perquisites or other payments (e.g., related to personal use of corporate aircraft, executive life insurance, bonus, restricted stock vesting, secular trusts, etc.; see also excise tax gross-ups above);
- Dividends or dividend equivalents paid on unvested performance shares or units;
- Internal pay disparity: Excessive differential between CEO total pay and that of next highest-paid named executive officer (NEO);
- Repricing or replacing of underwater stock options/stock appreciation rights without prior shareholder approval (including but not limited to cash buyouts, option exchanges, and certain voluntary surrender of underwater options where shares surrendered may subsequently be re-granted);
- Significant shifts away from performance-based compensation to discretionary or fixed pay elements; and
- Other pay practices that may be deemed problematic in a given circumstance but are not covered in the above categories.

### 48. Which problematic practices are most likely to result in an adverse recommendation?

The list below highlights the problematic practices that carry significant weight and may result in adverse vote recommendations:

- Repricing or replacing of underwater stock options/SARS held by NEOs or directors without prior shareholder approval (including cash buyouts and voluntary surrender of underwater options);
- Excessive or extraordinary perquisites or tax gross-ups;
- New or materially amended agreements that provide for:
  - Excessive termination or CIC severance payments (generally exceeding three times [base salary plus average/target/most recent bonus]);

- CIC severance payments without involuntary job loss or substantial diminution of duties ("single" or "modified single" triggers) or in connection with a problematic Good Reason definition;
- Problematic Good Reason termination definitions that present windfall risks, such as definitions triggered by potential performance failures;
- CIC excise tax gross-up entitlements (including "modified" gross-ups);
- Multi-year guaranteed awards or increases that are not at risk due to rigorous performance conditions;
- Liberal CIC definition combined with any single-trigger CIC benefits;

- Insufficient executive compensation disclosure by externally-managed issuers (EMIs) such that a reasonable assessment of pay programs and practices applicable to the EMI's executives is not possible;
- Severance payments made when the termination is not clearly disclosed as involuntary (for example, a termination without cause or resignation for good reason); or
- Any other provision or practice deemed to be egregious and present a significant risk to investors.

### 49. How does ISS evaluate Good Reason termination definitions?

Severance payments made in connection with a Good Reason termination should be limited to circumstances that are reasonably viewed as an adverse constructive termination; for example, employer actions that result in a material negative change to the executive's title/role, function or compensation. Such provisions should be tailored to preclude potential windfall risk. To that end, the occurrence of a CIC alone as a Good Reason trigger is considered problematic as are definitions that are triggered by circumstances reflecting potential performance failures, such as a company bankruptcy or delisting.

### 50. How does ISS evaluate disclosure around terminations and severance payments?

Severance is intended for involuntary or constructive job loss; it is not appropriate for executives who voluntarily resign or retire. Investors expect clear and forthright disclosure around the nature of an executive's termination and how the board determined to pay severance (for example, "the board determined the termination to be 'without cause' as defined in the executive's employment agreement and paid the severance amount provided under the agreement.") This enables shareholders to assess the appropriateness of such payments and determine whether there have been any discretionary payments. Disclosure indicating that an executive “stepped down” or that the executive and board "mutually agreed" on a departure does not clearly indicate an involuntary termination. In order to enable investors to fully evaluate severance payments, a company should disclose both the type of termination (e.g., termination without cause or resignation for good reason) as defined under the agreement, as well as the provision by which severance payments were made under the agreement.

### 51. How does ISS distinguish between problematic CIC severance and incentive awards that are payable upon a CIC transaction?

As noted above, a new or materially amended executive agreement that provides for CIC severance without requiring a qualifying termination (i.e., single or modified single trigger severance) is considered a problematic pay practice. However, this is distinguishable from a bona fide incentive award that becomes payable upon a CIC transaction. For example, if a company pursuing an asset sale provided for a bonus payable upon the sale, this would be considered an incentive award and not problematic single trigger severance. Such incentive awards are still evaluated qualitatively from a pay-for-performance perspective (or in a golden parachute evaluation when the awards become payable). Companies are encouraged to clearly differentiate in executive agreements a CIC severance entitlement vs. a transaction bonus opportunity.

### 52. What level of compensation disclosure by externally-managed issuers (EMIs) would be sufficient to enable a reasonable assessment of pay programs to make an informed say-on-pay vote and avoid an adverse say-on-pay recommendation?

Although EMIs are not categorically exempt from say-on-pay vote requirements, many EMIs do not provide sufficiently detailed disclosure of the compensation arrangements between their executive officers and the external manager. Based on ISS' review of EMI compensation disclosure, most EMIs provide only the aggregate management and incentive fees paid to the manager. Without more information, shareholders are unable to make a reasonable assessment of pay programs and practices applicable to the EMI's executives, and therefore are unable to cast an informed say-on-pay vote. In assessing whether an EMI has provided sufficient compensation disclosure to allow for an informed say-on-pay vote, ISS will look for all of the following disclosures:

- The portion of the EMI's management fee that is allocated to NEO compensation paid by the external manager (aggregated values for all NEOs is acceptable);
- Of this compensation, the breakdown of fixed vs. variable/incentive pay; and
- The metrics utilized to measure performance to determine NEOs' variable/incentive pay.

If the EMI is unable to determine the portion of the management fee that is allocated to NEO compensation with reasonable certainty, the company should provide a reasonable estimate of this amount with an explanation of the methodology.

While the above does not represent a complete picture of executive compensation, it represents the minimum disclosure necessary to enable shareholders to reasonably evaluate pay arrangements between the EMI's executives and the external manager. Absent this disclosure, ISS will generally recommend against the EMI's say-on-pay proposal.

### 53. How does ISS assess the reduced compensation disclosure requirements for a Smaller Reporting Company (SRC) as defined by the SEC?

While SRCs have scaled-back compensation disclosure requirements, they are still required to hold say-on-pay votes. Completeness of disclosure is an important pay-for-performance consideration for shareholders. Companies with scaled compensation disclosure requirements should continue to provide sufficient disclosure to enable shareholders to make an informed say-on-pay vote. ISS is unlikely to support a say-on-pay proposal if compensation disclosure is such that shareholders cannot meaningfully assess the SRC's compensation philosophy and practices.

### 54. How does ISS evaluate retention awards? Does that view change if additional awards are granted after performance goals are not achieved?

Investors recognize that retention of key talent may be critical to performance improvements and future shareholder value. When one-time awards are granted, companies should explain the specific issues driving the decision to grant the awards and how the awards further investors' interests. Awards should be reasonable in magnitude and be an isolated/non-routine occurrence. The awards should also be strongly performance-based and have limitations on termination-related vesting. Actions that reward executives when performance goals are not achieved, whether by lowering or waiving goals (a problematic pay practice) or granting other awards to compensate for the absent incentive payouts, will be considered problematic.

## 55. How will ISS evaluate problematic pay practices relating to agreements or decisions in the current fiscal year as opposed to those from the most recently completed fiscal year?

For problematic provisions (excise tax gross-ups, single-trigger severance, etc.) contained in a new/materially amended executive agreement, ISS will generally issue an adverse recommendation when such provisions are disclosed by the company, even if the problematic agreement was entered into or amended after the most recent fiscal year end. For example, if a company with a calendar fiscal year discloses a new problematic agreement entered into in February following the FY end, ISS will generally recommend against the current say-on-pay proposal.

However, in certain cases ISS may wait to further evaluate the problematic issue in the following year, when our analysis could be informed by additional information that would be disclosed in the following year's proxy statement. For example, ISS may wait until the following year in the case of a potentially problematic equity grant to a new CEO hired in February after the FY end, in order to evaluate the grant in the context of the new CEO's total pay as disclosed in the following year's proxy statement.

## 56. While guaranteed multi-year awards are problematic, is providing a guaranteed target pay opportunity for what ISS considers a performance-based vehicle acceptable?

While guaranteeing any executive pay elements (outside of salary and standard benefits) is not considered best practice, if the payout of such an award ultimately depends on the attainment of disclosed rigorous performance goals (i.e., no payout would occur if performance is below a specified standard), this would generally mitigate concerns about the guaranteed award opportunity.

## 57. How will ISS view existing/legacy problematic provisions in executive agreements?

While maintaining problematic provisions in legacy arrangements (i.e., agreements not entered into or amended in the most recently completed fiscal year) is a concern, such legacy arrangements generally will not on their own result in an adverse vote recommendation. However, legacy problematic provisions will be considered as part of the holistic analysis, and they should be removed whenever the agreement is materially amended or extended (see related questions below).

## 58. How will ISS view material amendments to existing contracts that contain a problematic provision?

Shareholders are concerned with the perpetuation of problematic practices; thus, new or recently amended agreements will receive the highest scrutiny and weight in ISS' analysis. New or recently amended agreements are considered an opportunity for the board to fix problematic issues. Note that if an individual becomes party to a pre-existing arrangement (for example, an umbrella severance plan) as a result of becoming a named executive officer at the company, that arrangement will be considered "new" for that individual and therefore will trigger the policy.

## 59. Would a legacy employment agreement that is automatically extended but is not otherwise materially amended warrant an adverse vote recommendation if it contains a problematic pay practice?

Automatically renewing/extending agreements (including agreements that do not specify any term) are not considered a best practice, and existence of a problematic practice in such a contract is a concern. However, if an auto-renewing employment agreement is not materially amended, its automatic extension will not on its own result in an adverse vote recommendation. An amendment is considered "material" if it involves *any* change that is not merely administrative or clarifying.

### 60. What if a problematic pay practice is contained under a separate plan or agreement that runs indefinitely, but an executive has a separate employment agreement that is extended or modified?

The policy relevant for "new or extended executive agreements" applies to any and all agreements or plans under which the executive whose contract is being entered into or modified is covered. In other words, ISS may view entering into a new executive agreement (or modifying an existing agreement) as also being a modification or extension of the executive's separate arrangement that contains a problematic provision. To avoid triggering the problematic pay practice policy, the new or modified agreement should include a removal of the executive's entitlement to the problematic pay practice under the separate agreement.

### 61. If a problematic pay practice provision is included in a new or modified agreement, what remedial action can a company take?

The company can remove that provision from the agreement and disclose this action in a public filing.

## Frequency of Advisory Vote on Executive Compensation

### 62. What is ISS' policy on say-on-pay frequency?

ISS and the large majority of shareholders support annual say-on-pay votes, which provide the highest level of accountability and clearest channel for shareholder communication. Holding a say-on-pay vote every year enables the vote to correspond to the majority of the information presented in the proxy statement and allows investors to comment upon issues around executive pay programs in a timely fashion.

### 63. What are the implications if a board adopts a frequency that is less frequent than the frequency supported by a majority or plurality of shareholders?

If the board adopts a longer frequency for say-on-pay votes than approved by a majority or plurality of shareholder votes, ISS will generally issue adverse recommendations for compensation committee members.

### 64. What are the implications if a board does not present shareholders with a say-on-pay (or frequency) vote where one would otherwise be expected?

If there is no say-on-pay or say-on-pay frequency vote on the ballot where one would otherwise be expected, and the company does not provide an explanation for the omission, ISS will generally recommend against the compensation committee chair (or full committee/board, as appropriate) until the company presents shareholders with the advisory vote. A company that is exempt from the say-on-pay vote requirements (such as an "emerging growth company" under the JOBS Act) should provide an explanation of this in the proxy statement. While the SEC rule requires inclusion of say-on-pay proposals at least once every three calendar years, if the company's annual meeting date changes, for example due to a change in fiscal year, the company should provide an explanation about the timing of the next say-on-pay resolution.

## Advisory Vote on Golden Parachutes (SOGP)

### 65. How does ISS evaluate the treatment of equity awards upon a change in control?

ISS considers windfall potentials when evaluating equity award treatment upon a change in control (CIC). Factors considered include, but are not limited to:

- **Vesting acceleration.** The automatic full vesting of equity awards upon a CIC (i.e., single trigger vesting acceleration) is viewed negatively. Pro rata vesting (i.e., based on actual performance and/or partial completion of the vesting period) is preferable to full vesting acceleration; however, double trigger vesting acceleration that requires both a CIC and a qualifying involuntary termination is considered the best practice.
- **Performance award level.** Deeming performance awards earned above the "target level" without disclosure of compelling rationale is problematic.
- **Maintaining vesting criteria.** Maintaining vesting criteria on converted awards (into acquirer securities or cash-based awards) retains their retention and incentive qualities, while waiving vesting criteria diminishes or eliminates those qualities.
- **Elapsed vesting period.** The full acceleration (or other problematic treatment) of awards granted shortly before a CIC, at which point only a small fraction of the original vesting period has elapsed, is viewed as a greater windfall.
- **Magnitude of accelerated awards.** Vesting acceleration concerns are exacerbated when the awards make up most of NEOs' golden parachutes. Also, if accelerated awards granted in the cycle before the CIC are larger in magnitude as compared to prior award cycles, the company should explain the reason for this.

### 66. How does ISS determine whether golden parachute payments are excessive?

ISS considers several factors in evaluating golden parachute quantum, including the absolute values of individual and aggregate NEO golden parachutes, as well as the payments relative to an executive's annual compensation or to the underlying transaction's equity value. ISS evaluates golden parachute quantum in conjunction with other factors in the qualitative review; therefore, there are no bright-line thresholds for purposes of this evaluation.

### 67. How will ISS consider legacy change in control severance features in its SOGP evaluation?

ISS considers both new and existing problematic features and practices. Recent amendments that incorporate problematic features or augment golden parachute payments will carry more weight in the overall analysis. However, the presence of multiple legacy problematic features will also be closely scrutinized.

### 68. Which practices are most likely to result in an adverse SOGP recommendation?

- Golden parachute excise tax gross-ups are estimated to be paid (based on amounts reported in the golden parachute tables of the merger proxy);
- Cash severance payments are triggered solely by the occurrence of a change in control (i.e., "single trigger"), without disclosure indicating the executive will incur a termination in connection with the transaction;
- Single-trigger acceleration of performance-based awards at an above-target level without compelling rationale disclosed; and
- Any other feature that is considered egregious or detrimental to shareholders' interests.

# Other Compensation Topics

## Non-Employee Director Pay

### 69. How does ISS evaluate management advisory proposals seeking shareholder approval of non-employee director pay?

In evaluating non-employee director pay programs, ISS looks for reasonable practices that adequately align the interests of directors with those of shareholders while preserving directors' independent oversight responsibilities. ISS considers director pay composition, magnitude, and other qualitative features. Also relevant to this analysis is whether the equity plan under which director grants are made warrants support (if it is on the ballot).

A director pay program should incorporate meaningful director stock ownership and/or holding requirements (i.e., at least 4X the annual cash retainer). When equity is a much larger component of the director pay mix, the ownership and holding requirements should be more robust. It is considered a problematic practice for non-employee directors to receive performance-conditioned incentive awards, retirement benefits, or other perquisites. The magnitude of director pay is also considered, and the presence of a meaningful limit on annual director pay is a positive feature. Finally, shareholders expect complete and transparent disclosure of director pay decisions, including detailed disclosure on each pay element.

## 70. How does ISS evaluate high non-employee director pay?

If a company exhibits a recurring pattern of excessive pay magnitude without disclosure of compelling rationale, ISS may issue adverse vote recommendations for the chair of the board committee (or the entire committee, depending on the severity of the concern) responsible for approving/setting non-employee director (NED) pay. Adverse recommendations may result when excessive NED pay, without compelling rationale disclosed, is identified at a company in two or more consecutive years.

Following a quantitative identification of an NED pay outlier, a qualitative evaluation of the company's disclosure will determine if concerns around high pay levels are adequately mitigated. The following disclosed rationale generally mitigates concern around high NED pay, assuming the pay magnitude is not considered to be excessive:

- Onboarding grants for new directors that are clearly identified to be one-time in nature;
- Payments related to corporate transactions or special circumstances (such as special committee service, requirements related to extraordinary need, or transition payments made to a former executive for a limited period); or
- Payments made in consideration of specialized scientific expertise (as may be necessary in certain industries such as biotech/pharma).

Payments in connection with separate consulting/service agreements will be assessed case-by-case with particular focus on the company’s rationale. For such arrangements to be considered reasonable explanations for outlier NED pay, companies should disclose: (i) the services provided under the agreement that go beyond typical director responsibilities, (ii) the additional benefits conveyed to shareholders by the agreement, and (iii) that the agreement has a set term which is not automatically extended.

The following circumstances will generally <u>not</u> mitigate concern around high NED pay:

- Payments made to reward general performance/service;
- Payments made under separate consulting/service agreements that have an indefinite or prolonged term or which provide payments for services that appear to be within the scope of typical director responsibilities; or
- Payments that are recognized as problematic for non-employee directors, such as performance-conditioned incentive pay, perquisites, or retirement benefits.

## 71. What is ISS' methodology to identify non-employee director pay outliers?

The non-employee director (NED) pay policy identifies pay outliers, generally representing individual NED pay figures above the top 2% of all comparable directors. ISS will compare individual NED pay totals within the same index and sector. Specifically, directors are compared to other directors within the same two-digit GICS group and within the same index grouping, which for the purpose of this policy are as follows: S&P500, combined S&P400 and S&P600, remainder of the Russell 3000 Index, and the Russell 3000-Extended. The methodology recognizes that board-level leadership positions, limited to non-executive chairs and lead independent directors, often are recognized with a material pay premium as compared to other directors. For non-executive directors who serve in these board leadership positions, the policy will identify outliers as compared to others within the same category of board leadership (still considering index and sector). The methodology also considers limited instances of narrow distributions of NED pay within a sector-index grouping. In groups where there is not a pronounced difference in pay magnitude between the highest paid directors and the median director, this may be considered as a mitigating factor.

## Miscellaneous Questions

### 72. How does ISS evaluate U.S.-listed companies with multiple executive compensation proposals on the ballot as a result of the company's incorporation in a foreign country?

A growing number of companies worldwide are incorporated in one country and listed in another. This can create an additional layer of complexity when evaluating compensation proposals, as these cross-market companies may be required to present multiple pay proposals on the ballot as a result of being subject to the requirements of both markets. For detailed information on how ISS evaluates compensation proposals at cross-market companies, see the U.S. Cross-Market Policies & Application FAQ.

### 73. How does ISS consider the mandated CEO pay ratio disclosures?

ISS research reports display the company's disclosed (i) median employee pay figure, and (ii) the CEO pay ratio from the current and prior year (as available). The CEO pay ratio is displayed for informational purposes only and does not affect say-on-pay or director vote recommendations.

### 74. How does ISS consider the mandated "pay versus performance" disclosures?

ISS research reports display certain elements from the company's disclosed pay versus performance table, including the Summary Compensation Table total pay figure for the CEO, the Compensation Actually Paid value, the company's TSR, the peer group's TSR, the company's most important financial metric, and the other disclosed important metrics for determining CEO pay. This information is displayed for all companies subject to ISS' quantitative pay-for-performance screen, although the information does not affect the screen. The pay versus performance disclosures may be considered during the qualitative evaluation, particularly for companies that exhibit a quantitative pay-for-performance misalignment.

### 75. How does ISS evaluate management proposals seeking separate shareholder approval of individual equity awards?

ISS generally evaluates proposals seeking approval of individual equity awards on a case-by-case basis, taking into account a variety of pay-for-performance considerations and other factors, which may include (without limitation):

- The transparency and clarity of disclosure;
- The magnitude of pay opportunities;
- The prevalence and rigor of performance vesting criteria;
- The existence of shareholder-friendly guardrails and termination/CIC provisions;
- The estimated cost of the award and/or its dilutive impact; and
- Any other factors deemed relevant.

Exceptionally large awards and "front-loaded" awards in this context are subject to heightened pay-for-performance considerations, as is the case with ISS' approach to analyzing such awards in the context of the qualitative pay-for-performance evaluation.

### 76. How does ISS assess COVID-related pay decisions?

As in pre-pandemic years, any mid-year changes to annual incentive metrics, performance targets and/or measurement periods, or programs that heavily emphasize discretionary or subjective criteria will generally be viewed negatively. Changes to in-progress long-term incentive cycles or shifts to predominantly time-vesting incentives or short-term measurement periods will generally be viewed negatively. The expectations regarding one-time awards and the compensation committee's responsiveness to a low say-on-pay vote result are consistent with pre-pandemic years. Any COVID-related pay changes or decisions should be accompanied by clear disclosure to assist investors' evaluation of the decisions.

### 77. How will ISS view awards or pay increases intended to offset forgone compensation due to CARES Act restrictions?

Certain companies receiving financial assistance from the U.S. government under the Coronavirus Aid, Relief and Economic Security Act (CARES Act) are subject to caps on executive compensation, which may have resulted, or continue to result, in reduced compensation to comply with CARES Act restrictions. One-time awards or other significant increases in executive pay opportunities intended to offset or replace forgone compensation due to prior CARES Act pay caps will generally be viewed negatively. This is particularly true for companies that demonstrate a quantitative pay-for-performance misalignment.

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