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By email to policy@issgovernance.com

Global Policy Board
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Ladies and Gentlemen:

Re: 2016 Proposed Voting Policies on Overboarding

Business Roundtable, an association of chief executive officers of leading U.S. companies working to promote sound public policy and a thriving U.S. economy, is writing to comment on the Institutional Shareholder Services (ISS) proposed changes to its proxy voting policies.

Business Roundtable CEO members lead companies with \$7 trillion in annual revenues and nearly 16 million employees. Our member companies have a combined stock market capitalization of \$7.9 trillion and invest \$129 billion annually in research and development. They pay more than \$222 billion in dividends to shareholders and generate more than \$495 billion in sales for small and medium-sized businesses annually.

Business Roundtable is specifically commenting on the policy changes that ISS is considering regarding the tests for determining if a director serves on an excessive number of public company boards (overboarding). Business Roundtable does not believe that changes to ISS's current overboarding policies are warranted. The changes would impose a one-size-fits-all approach on all public companies and their directors, placing many of them in the untenable position of either losing valuable experience or facing negative voting recommendations from ISS.

Business Roundtable does not endorse a specific limit on the number of directorships an individual may hold. As stated in our *Principles of Corporate Governance*, a best practices guide for corporate managers and directors, Business Roundtable believes that decisions about outside board service are most appropriately made by boards of directors and their nominating/governance committees.

Consistent with sound governance practices endorsed in our *Principles*, companies already have procedures to address this issue, including processes for directors to notify or obtain approval from the nominating/governance committee in advance of accepting an additional board position at a public company. This provides an opportunity to assess the impact of joining another board, based on various factors relevant to the specific situation, including the nature and extent of a director's other professional obligations and the time commitment attendant to the new position.

In addition, nominating/governance committees assess directors' past performance and ability to contribute to the board, including the ability to devote sufficient time to the board, as well as past meeting attendance, in determining whether to recommend them for election. It is the primary responsibility of the nominating/governance committee, and ultimately the board, to determine whether a director is able to commit the time required to serve as an effective board member, consistent with each director's fiduciary duties to the company and its shareholders.

ISS should maintain its existing policies on outside board positions for directors who are CEOs of publicly traded companies and for non-CEO directors. Although these policies impose specific limits on the number of board seats ISS views as acceptable, the limits provide a measure of flexibility for boards to consider individual circumstances. Lowering the limits arbitrarily in the manner ISS proposes and in the absence of compelling evidence that shareholders would benefit could cause boards to lose valuable directors, deprive shareholders of these directors' contributions and limit the pool of effective director candidates. Both companies and directors would lose the insights that come from serving on different boards, insights that ISS acknowledges in its draft policies. Directors who have the unique perspective of sitting on other boards are better able to exercise their fiduciary duties and effectively oversee company management.

The effects of the policy changes will be especially pronounced given how ISS treats outside boards for CEOs of publicly traded companies. In this regard, ISS's policies would continue to provide that service on the boards of publicly traded subsidiaries will sometimes cause CEOs of publicly traded companies to be overboarded. Lowering the limit on outside boards to one will make it more likely that CEOs who serve on subsidiary boards will be unable to serve on any unaffiliated boards.

In addition, changing the current policies with only a one-year transition period will force directors to resign and companies to quickly recruit qualified candidates to fill these vacancies. Finally, changing the current policies is unnecessary given that other ISS policies – including where director attendance falls below 75 percent of board and committee meetings – address concerns about overcommitted directors who are unable to fulfill their duties.

Nevertheless, if ISS moves forward with the proposals, Business Roundtable recommends the following changes:

- **Board Limit.** ISS should view five boards (rather than four) as the acceptable limit for non-CEO directors. This would give companies continued flexibility to make case-by-case decisions about the number of outside board seats that are appropriate for individual directors.
- **Treatment of Publicly Traded Subsidiary Boards.** If ISS adopts a limit of one outside public company board for active CEOs, this should be accompanied by a corresponding change in how ISS treats boards of publicly traded subsidiaries. Counting the boards of parent and subsidiary companies as one board would better reflect the likely lesser time commitment associated with serving on a subsidiary board than with board service at an unaffiliated company. If this policy does not change, CEOs who serve on a subsidiary board would likely not be able to serve on any unaffiliated board. This would deny CEOs any opportunity of gaining valuable outside experience and perspective.
- **Negative Voting Recommendations.** If ISS reduces the limit for either non-CEO directors or CEO directors, we urge ISS to continue applying its existing policies to all current directors who exceed the new limits. We recommend this grandfather approach given that it would be arbitrary, unfair and unreasonable for ISS to suddenly deem these directors overboarded without any change in facts or circumstances. Alternatively, ISS should not issue negative voting recommendations for two years (until 2018). A two-year transition period is appropriate given reliance on ISS's longstanding current policies. A suitable transition period will give companies adequate time to recruit new board members in an effort to replace the individual skills and qualities that are lost due to directors resigning. This is particularly critical given the limited pool of candidates with qualifications comparable to those of a sitting CEO. Moreover, given the case-by-case analysis that ISS undertakes in determining whether a subsidiary board constitutes an outside board for these purposes, ISS should include this analysis in each company's proxy voting recommendations issued starting in 2016 and then provide appropriate time for boards to assess the impact under any revised ISS overboarding policies. Further, ISS should not include cautionary language in its proxy recommendations in advance of any new policies taking effect. This would be unfair to companies and too prejudicial in light of the tight timing from the change in current policies.

Thank you for considering our comments as part of the 2016 policy formulation process. If we can provide further information, please do not hesitate to contact Maria Ghazal at (202) 496-3268 or mghazal@brt.org.

Sincerely,

Business Roundtable