Trust through governance

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ISS 2016 Benchmark Policy Consultation

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Dear Sirs

2016 Benchmark Policy Consultation

We welcome the opportunity to respond to the 2016 ISS Benchmark Policy Consultation. The Institute of Chartered Secretaries and Administrators (ICSA) is the international professional body responsible for governance. Our Royal Charter requires us to lead 'effective governance and efficient administration of commerce, industry and public affairs' and we are the qualifying body for Chartered Secretaries. Our members are the usual point of contact for engagement between the issuer and providers of shareholder voting research and analysis. As such, our members are well placed to understand and comment upon your proposals.

Director Overboarding (UK & Ireland)

1. Do you agree that setting a recommended maximum limit on the number of board roles a director can hold is a useful enhancement to the ISS UK & Ireland policy?

2. Do you agree with the proposed limits, or are there alternative limits or factors which should be considered?

We agree with the sentiment expressed in your background and overview section. The time commitment of being a director is continually increasing, in line with the additional responsibilities being expected of them. It is right, therefore, for shareholders to expect that, in the words of the UK Corporate Governance Code, "all directors should be able to allocate sufficient time to the company to discharge their responsibilities."

We therefore agree, in principle, with the concept of the 'overboarding' policy developed by ISS and that it is appropriate for that policy to make explicit reference to a recommended maximum number of board positions, and indicate that ISS may recommend against directors considered 'overboarded'.

We believe that, given your assertion that "in assessing outside directorships and board positions, only publicly-listed companies will be counted," the limits that you have indicated

are a reasonable guideline, but we believe that they should be no more than that – a guideline. We are strongly of the view that companies should expect shareholders and their advisors to take due note of any explanation that is given for divergence from standard guidelines and so are pleased by your commitment to work on a case by case basis and "consider the nature and scope of the various appointments and the companies concerned, and if any exceptional circumstances exist". This is important. For example, there is potentially a significant difference between the time commitment created by a FTSE100 directorship and that created by the directorship of a small investment company. Similarly, trusteeships, school governorships and other similar commitments can take up varying degrees of time and shareholders should place their trust in the members of the nomination committee – who they have themselves elected – to ensure that potential board appointees will be able to devote sufficient time to meeting their board responsibilities.

There is one further observation that we would make, which is that we are very keen to broaden the pool of NEDs. There is some anecdotal evidence to the effect that shareholders are believed to prefer a 'safe pair of hands' and consequently companies are encouraged to revert to known contacts of search firms and hence to people already in roles rather than considering broader 'diversity' issues and bringing in new blood. We believe that company secretaries, as experienced governance professionals, would make excellent NEDs. We would suggest that an explicit statement in your guidelines that ISS will favourably consider the appointment, where the skills brought to the board are clearly explained, of directors from outside the traditional pool would encourage broader thought from nomination committees.

Auditors' Fees, smaller companies (UK & Ireland)
1. Does your organization agree that a non-audit fee cap of 100% of the audit fee is appropriate for smaller companies? If not, please explain.

2. Does your organization consider that exceptions to the policy should be made in cases where the total fees payable to the external auditor are small? If yes, what would you consider an appropriate de minimis threshold to apply?

We agree with the sentiment expressed in your background and overview section – the proportionality of non-audit fees to audit fees is a significant issue which can give the impression, if not necessarily the reality, that the independence of the audit may be compromised.

Your proposal to extend this policy to smaller companies as defined in your paper seems reasonable on the basis that you have indicated that this will only happen where the issue has existed for more than one year; there is no satisfactory justification; and the company appears to be unwilling to address the issue. Our only caveat is that credit should be given to an appropriate justification – for example "exceptional circumstances linked to a one-off transaction' - might require significant non-audit services across more than one year. We cannot suggest an appropriate *de minimis* threshold for small payments, as we believe that these will differ on a company by company basis.

General authorities to issue shares without pre-emptive rights (UK & Ireland)

1. Do you agree that changing the ISS UK and Ireland policy to reflect the new Pre-Emption Group guidelines is appropriate?

2. If a company is perceived to abuse the extra flexibility it has been granted through these extended authorities, what voting response do you consider is appropriate and should be adopted (for example, votes against directors) in addition to the potential for a vote against the relevant share issuance authority at the following AGM?

We agree that it is sensible and appropriate for the ISS UK and Ireland policy to be updated to reflect the change in acceptable practice, clarifying that a general authority to issue shares with a disapplication of pre-emption rights of up to ten per cent of the issued share capital is acceptable, provided that the extra five per cent above the first five per cent is to be used only for the purposes of an acquisition or a specified capital investment.

We further support your clarification that "a company which receives approval for an authority of this nature but subsequently abuses the authority during the year (for example, by issuing shares without preemptive rights up to 10 percent for purposes other than set out in the revised guidelines) may receive a negative recommendation on the authority at the following AGM." Whilst we accept that there might be very exceptional circumstances where a company may be justified in using the additional five per cent other than for the stated purpose, we believe that such behaviour is not to be encouraged and we would expect an exceptionally strong justification from the company to explain why this has been done. However, by the same token, circumstances do change and we would expect that investors and their advisers would take into consideration any explanation offered by the company before making their voting decision.

We hope our comments are useful. If you would like to discuss them, or would like further details on our comments, please contact me.

Yours faithfully

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