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ISS has requested comment on its policy regarding “Director Overboarding” and its proposal to lower the limits for both CEO’s and non-CEO’s who serve on public company boards.

Based on my experience as a public company CEO, independent director and investor, I believe the existing policy regarding “Director Overboarding” is inappropriate as it can deprive boards of the most qualified directors since it overemphasizes the wrong issue in the context of boards and shareholders making informed decisions regarding the best directors to serve their companies. The proposal to further limit the number of boards would worsen the policy significantly and undermine the objective of supporting good corporate governance.

The selection of the right directors to serve on public company boards is an extremely important responsibility, and companies that nominate their directors and shareholders that elect them should consider a wide range of factors in determining the best individuals to serve on their boards. Companies and shareholders should not be deprived of the best candidates based on arbitrary factors that may or may not be relevant in the consideration of the best candidates for a specific board.

There are numerous important factors that nominating committees, boards and shareholders should consider in determining the best directors to serve on a particular board. They include, but are not limited to the following:

1. Business competence and judgment that enable the director to contribute to robust discussions regarding the challenges and opportunities facing the business.
2. Experience in board service and awareness of corporate governance to ensure compliance with best corporate governance practices.
3. Experience with relevant board committees and competence in the work of such committees so that the director can be an effective contributor to the respective committee(s).
4. Proven capabilities to work effectively with other members of a board as well as management and shareholders, when applicable, to effect appropriate corporate governance and advance the best interests of the corporation.
5. Time available for the director to devote to the needs of the company’s board.
6. Absence of conflicts of interest that could interfere with the director’s objectivity, and alignment of interests that motivates directors to act in the best interests of the corporation and its shareholders.

While we recognize that many boards and shareholders could have different considerations than the ones listed above, and could prioritize them differently, it is safe to assume that all of the above considerations can and should be relevant. It is

important to note that each of the first 4 considerations are not negatively impacted by “Overboarding”, but to the contrary, current service on multiple boards can be helpful to a director and reassuring to nominating committees and shareholders alike that the candidate has the requisite experience to be effective. It is curious that ISS does not have policies specifically relevant to assessing a candidate’s credentials on these important criteria, but instead has created a policy that may, in fact, limit a candidate’s ability to gain the requisite and current skills to be effective as a director. Effective board service requires specialized skills that are obtained specifically by serving on corporate boards and these skills are different from the skills obtained from experience as a corporate executive, investor or any other profession; and therefore a policy arbitrarily limiting the number of boards an individual may serve on is contrary to the objective of good corporate governance.

The ostensible justification for an “Overboarding” policy is the fifth criteria above – time commitment, based on an argument that service on too many boards would interfere with the time required for a director to be effective. If so, it is odd that ISS would apply the policy in such a way that an individual that only serves on boards as the focus of his/her profession (see the first 4 criteria) would have the same limits as an individual that has a full time job with a commitment of over 50 hours per week, for instance, as a Chief Financial Officer, or for that matter, as a janitor. It is hard to see how the blind application of a limit of this nature is in the best interests of public companies and their shareholders. Further, based on ISS’s own data, the average director time commitment is 278 hours per year. Considering that an average executive works approximately 2000 hours per year, and some are willing to work much more – this implies capacity for a director to serve on at least 7 boards for the average professional, and possibly more than 10 for those that are willing to devote more time to their profession. But this ignores that time commitments vary based on the specific board and the issues facing the board such that in some circumstances the time commitment could be much less than the 278 hour average and in other circumstances it could be more than that with a wide variance depending on the size of the company and nature of the issues facing the board. So rather than ISS setting a blanket limit that may not be applicable to a specific circumstance, why wouldn’t ISS respect the collective evaluations of a nominating committee, shareholders and the director candidate, which have information specific to the circumstance at hand, and determine who they believe to be the best candidate after considering the time commitment for the specific board and the director’s specific external commitments? Further, if ISS is concerned about the time constraints specific to individuals that serve on multiple boards, unlike other occupations, directors have publicly available information regarding the number of meetings they attend – so rather than enforce a blanket policy that discriminates against directors that effectively serve on multiple boards, why not use attendance records as a guide to whether a director candidate has the time available and diligence necessary to commit to the requirements of the board under consideration?

The final criteria above relates to both the absence of a conflict of interest and evidence that the directors' interests are aligned with the company and its shareholders. Certainly, if there is a material conflict of interest identified that compromises a directors' ability to act objectively in the best interests of the corporation and its shareholders, a vote against the candidate is warranted. However, the assessment of whether a director's interests are aligned with the best interests of the company and its stockholders can sometimes be more subtle. For instance, if a director's only business activity is to serve on one corporate board and this is his/her only source of income and business identity, it is possible that this director will be more reluctant to address issues that may be contrary to the wishes of management. A director that serves on multiple corporate boards is less likely to have obtained that position as a result of a close personal relationship with the management of the subject company than the director that serves on only one corporate board. Consequently, if management is acting inappropriately or the board needs to take strong action with respect to management, it may be in the company's best interest to have directors that serve on multiple boards and who are not overly interested in the relationship with the management of one company or preserving the director's continued service on this specific board. Again, strong arguments could be made that service on multiple boards is consistent with good corporate governance, and a blanket policy that limits the number of boards a director may serve on, undermines the objective of good corporate governance.

In conclusion, we would encourage ISS to take a holistic approach in its evaluation of director candidates in order to provide helpful recommendations regarding the best candidates to serve on boards. The blind enforcement of a numerical limit on "Overboarding" can deprive companies and their shareholders of the most qualified and effective candidates by overemphasizing a criteria that may not be relevant in the specific circumstance. While we believe ISS should discontinue entirely its policy on "Overboarding" and focus on more relevant criteria for effective board candidates, to the extent ISS determines to perpetuate this policy, the limit should be set higher, and not lower than the current limit of 6, to reduce the negative consequences of depriving boards of the best candidates. The objective of good corporate governance is being undermined by these limits, and good corporate governance will be advanced when boards and shareholders evaluate all of the relevant criteria in the selection of directors and are not deprived of choices based on arbitrary, and sometimes irrelevant considerations. We hope ISS will consider this and adopt its policies to encourage the selection of the best candidates for corporate boards in the interest of advancing good corporate governance.