Simpson Thacher

Memorandum

ISS Issues Draft Voting Policy Changes, Requesting Comment

November 3, 2015

On October 26, 2015, Institutional Shareholder Services Inc. ("ISS") issued key proposed changes to its policies, inviting all interested parties to provide comment.[1] ISS will accept comments through November 9, 2015 at 6 p.m. Eastern Time. If adopted, ISS's proposed policy changes will take effect for meetings occurring on or after February 1, 2016.

ISS proposes three significant changes that will affect issuers subject to ISS's U.S. proxy voting guidelines:

1. Director Overboarding

ISS's policy on director overboarding affects directors who sit on what ISS considers to be an "excessive number of boards." Under its current policy, ISS recommends a vote against or withhold from individual directors who:

- sit on more than six public company boards; or
- are CEOs of public companies and sit on the boards of more than two public companies besides their own.

In the latter case, ISS issues its withhold vote recommendations only with respect to the CEOs' outside directorships.

ISS proposes to reduce the acceptable number of board positions under its policy. For directors who are not CEOs, ISS is evaluating whether to lower the acceptable number of total public company boards on which they serve to a total of **either five or four boards** and is seeking comment regarding which is most appropriate. ISS also proposes a limit of **one outside public company directorship** for any director who is also the CEO (in addition to any directorship on the board of the CEO's own company). ISS's negative vote recommendation would still apply solely with regard to the CEO's outside directorships.

[1] Institutional Shareholder Services Inc., 2016 Benchmark Policy Consultation.

In all cases, ISS proposes to give issuers a one-year grace period until 2017, during which time ISS would include cautionary language in its research reports but would not issue a negative vote recommendation simply by virtue of the fact that a director is considered overboarded under the revised policy.

2. Unilateral Board Actions

Under ISS's current policy, adopted last year, ISS generally recommends a vote against or withhold from individual directors, committee members, or the entire board if the board unilaterally amends the company's bylaws or charter "in a manner that materially diminishes shareholders' rights or that could adversely impact shareholders," taking several factors into account. ISS proposes to update its policy to add that when a board unilaterally amends the company's governing documents "to either classify the board or establish supermajority vote requirements in any period after completion of a company's initial public offering (IPO)," ISS will generally issue adverse vote recommendations with regard to the director nominees **until the unilateral action is either reversed or is ratified by a shareholder vote.** In addition, ISS proposes that when a board amends the company's bylaws or charter **prior to or in connection with the company's IPO**, "ISS will generally issue adverse vote recommendations for director nominees at subsequent annual meetings following completion of the initial public offering."

3. Compensation of Externally-Managed Issuers

ISS explains that like most U.S. companies, externally-managed issuers ("EMIs") are required to hold periodic say-on-pay votes, but that unlike most issuers, EMIs typically do not compensate their executives directly. Executives of EMIs are generally compensated by the exernal manager, which is then reimbursed by the issuer through a management fee. ISS notes that because EMIs "typically do not disclose with sufficient detail the compensation arrangements and payments made to executives on behalf of the external manager," it becomes "impossible for shareholders to assess pay programs and their linkage to company performance." Additionally, according to ISS, payment of executives by an external manager "raises questions about potential conflicts of interest underpinning such compensation arrangements," and without adequate disclosure, shareholders cannot ascertain whether the compensation arrangements create incentives that are in the best interest of shareholders.

Accordingly, ISS proposes to update its pay-for-performance analysis policy with respect to **EMIs whose compensation disclosure is insufficient** to allow shareholders to make a comprehensive pay-for-performance evaluation and assess potential conflicts of interest. Under the proposed revised policy, "ISS would generally recommend 'Against' the say-on-pay proposal (or compensation committee members, the compensation committee chair, or the entire board, as appropriate, in the absense of a say-on-pay proposal on the ballot) in cases where a comprehensive pay analysis is impossible because the EMI provides insufficient disclosure about compensation practices and payments made to executives on the part of the external manager."

If you have any questions or would like additional information, please do not hesitate to contact **Yafit Cohn** at (212) 455-3815 or yafit.cohn@stblaw.com, or any other member of the Firm's Public Company Advisory Practice.

UNITED STATES

New York
425 Lexington Avenue
New York, NY 10017
+1-212-455-2000

Houston
600 Travis Street, Suite 5400
Houston, TX 77002
+1-713-821-5650

Los Angeles
1999 Avenue of the Stars
Los Angeles, CA 90067
+1-310-407-7500

Palo Alto
2475 Hanover Street
Palo Alto, CA 94304
+1-650-251-5000

Washington, D.C.
900 G Street, NW
Washington, D.C. 20001
+1-202-636-5500

EUROPE

London
CityPoint
One Ropemaker Street
London EC2Y 9HU
England
+44-(0)20-7275-6500

ASIA

Beijing
3901 China World Tower
1 Jian Guo Men Wai Avenue
Beijing 100004
China
+86-10-5965-2999

Hong Kong
ICBC Tower
3 Garden Road, Central
Hong Kong
+852-2514-7600

Seoul
25th Floor, West Tower
Mirae Asset Center 1
26 Eulji-ro 5-Gil, Jung-Gu
Seoul 100-210
Korea
+82-2-6030-3800

Tokyo
Ark Hills Sengokuyama Mori Tower
9-10, Roppongi 1-Chome
Minato-Ku, Tokyo 106-0032
Japan
+81-3-5562-6200

SOUTH AMERICA

São Paulo
Av. Presidente Juscelino
Kubitschek, 1455
São Paulo, SP 04543-011
Brazil
+55-11-3546-1000