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Memorandum

ISS Issues Voting Policy Updates for the 2018 Proxy Season

November 21, 2017

On November 16, 2017, Institutional Shareholder Services Inc. ("ISS") issued updates to its proxy voting policy guidelines, which will be effective for meetings held on or after February 1, 2018.[1] ISS's notable additions and modifications to its U.S. proxy voting guidelines are described below.

I. Director Accountability and Responsiveness

A. Excessive Non-Employee Director Compensation

Noting that investors have shown increasing interest in the magnitude and structure of director pay packages as such pay has risen, ISS has introduced a new voting policy pursuant to which ISS will issue an adverse voting recommendation for those board/committee members responsible for setting/approving their non-employee directors' compensation where there is a "recurring pattern" (defined as two or more consecutive years) of excessive non-employee director pay relative to the company's peers and the broader market, absent a compelling rationale or other mitigating factors. This negative voting recommendation will be triggered only after a pattern of excessive non-employee director compensation is identified and, accordingly, will not impact voting recommendations issued in 2018.

B. Poison Pills Adopted Without Stockholder Approval

ISS has also substantively revised its existing policy regarding poison pills to provide that it will vote against the entire board annually where the company has a long-term poison pill (i.e., a poison pill with a term greater than one year), which was not adopted by the company's public stockholders. This change means that annually elected directors will receive an adverse recommendation each year rather than every three years and that adoption of a poison pill by a company's pre-IPO stockholders will not suffice. Additionally, under the revised policy, boards with grandfathered poison pills adopted prior to November 19, 2009 or that

[1] *See* Institutional Shareholder Services Inc., 2018 Americas Proxy Voting Guidelines Updates (Nov. 16, 2017), and Executive Summary: Global Proxy Voting Guidelines Updates and Process (Nov. 16, 2017).

propose to mitigate a long-term pill adopted without stockholder approval by seeking such approval the following year are no longer exempt from ISS's negative recommendation. With respect to short-term pills, however, ISS will vote against directors on a case-by-case basis, depending on the disclosed rationale for the adoption and other mitigating factors, such as the company's commitment to seek stockholder approval for any renewal.

C. Pledging

ISS has codified its existing position regarding pledging company stock and confirmed that it will issue a negative voting recommendation against the members of the committee that oversees risks related to the company's pledging policy, or the full board, where a significant level of company stock pledged by an executive or a director raises concerns. Factors that ISS will continue to consider include, among others: the presence of a disclosed anti-pledging policy prohibiting future pledging; the magnitude of stock pledged relative to the company's total common stock outstanding, market value and trading volume; disclosure regarding whether the company will endeavor to reduce the aggregate number of shares pledged over time; and disclosure as to whether pledged shares are excluded from the company's stock ownership and holding requirements.

D. Pay-for-Performance Analysis

In connection with its annual pay-for-performance analysis for companies included in the Russell 3000 Index, among other factors, ISS has historically reviewed peer group alignment, i.e., the degree of alignment between the company's annualized TSR rank and the CEO's annualized total pay rank within a peer group, each measured over a three-year period, along with the multiple of the CEO's total pay relative to the peer group median. ISS has now added to the peer group alignment test an analysis of "the rankings of CEO total pay and company financial performance within a peer group, each measured over a three-year period."

E. Board's Response to Pay-for-Performance Advisory Vote

ISS continues to focus on a company's response to its stockholders' say-on-pay vote and has added additional factors it will consider when evaluating a board's responsiveness where the company's previous say-on-pay proposal received less than 70% of the votes cast and, as a result, whether to issue a negative voting recommend against the compensation committee members (or, in exceptional cases, the full board). In addition to evaluating the company's engagement efforts with its major institutional investors regarding those issues that contributed to the low level of support, ISS will also consider the timing, frequency and participation of independent directors in such engagement efforts, as well as specific concerns voiced by dissenting stockholders and meaningful actions taken by the company to address such concerns.

F. Gender Diversity on the Board

ISS has indicated that it will begin to highlight boards with no gender diversity; however, it will not issue an adverse recommendation due to the lack thereof. Consequently, while companies may not see an immediate impact on its voting results, this revision suggests that ISS may continue to further scrutinize board composition in the future.

G. Director Attendance

ISS has revised its existing policy regarding director attendance at board and committee meetings to provide that, instead of evaluating on a case-by-case basis those director nominees who served for part of the fiscal year and who have not yet been elected by stockholders where such directors attended less than 75% of the aggregate of their board and committee meetings for the period for which they served, such director nominees will generally be exempt from the director attendance policy.

II. Stockholder Proposals Regarding Gender Pay Gaps

Over the past three years, stockholders have proposed resolutions requesting that companies report whether a gender pay gap exists and, if so, what measures are being taken to eliminate the gap. While such proposals were initially raised primarily in the technology industry, during the 2017 proxy season, gender pay gap proposals were submitted to companies in the financial services, insurance, healthcare and telecommunications sectors, and ISS expects this proposal trend to continue.

As a result, ISS has introduced a new policy providing that, where a stockholder proposal requests that a company report on its pay data by gender or on its policies and goals to reduce any existing gender pay gaps, ISS will evaluate the proposal on a case-by-case basis, taking into account:

- the company's current policies and disclosure related to both its diversity and inclusion policies and practices;
- the company's compensation philosophy and use of fair and equitable compensation practices;
- whether the company has been the subject of any recent controversy, litigation, or regulatory actions related to gender pay gap issues; and
- whether the company's reporting regarding gender pay gap policies or initiatives is lagging its peers.

If you have any questions or would like additional information, please do not hesitate to contact **Karen Hsu Kelley** at +1-212-455-2408 or kkelley@stblaw.com or **Ellen Smiley** at +1-212-455-2042 or esmiley@stblaw.com or any other member of the Firm's Public Company Advisory Practice.

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