Institutional Shareholder Services (ISS) Publishes Results of 2015–2016 Annual Global Policy Survey

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On September 28, Institutional Shareholder Services (ISS), a leading proxy advisory firm, published the results of its 2015–2016 global voting policy survey. The survey, which received 421 responses from a combination of institutional investors, corporate issuers and advisors and other corporate governance stakeholders, is an important component in ISS' voting policy formulation process. Some findings from the 2015-2016 survey include:

Compensation Related Survey Results

- **Adjusted Metrics in Incentive Programs**: A significant majority of investor and issuer respondents indicated that non-GAAP (generally accepted accounting principles) or other adjusted performance metrics (Adjusted Metrics) in the incentive compensation context are sometimes acceptable, depending on the nature and extent of the adjustments. Of those respondents that believe that Adjusted Metrics are acceptable, two-thirds responded that Adjusted Metrics are acceptable so long as (1) performance goals and results are clearly disclosed, (2) they are reconciled with comparable GAAP metrics in the proxy statement, and (3) the reasons for the Adjusted Metrics are adequately explained.

- **Director Compensation**: The survey results suggest that most investor and issuer respondents believe that it is acceptable for non-executive directors (NEDs) to receive stock in lieu of cash for retainers or meeting fees. Additionally, a majority of all respondents indicated that the granting of time-vesting stock to NEDs is appropriate. There is less support, however, for the granting of stock options, stock appreciation rights and performance-vesting restricted stock to NEDs. Of the investor respondents, 70 percent responded that the granting of stock options and stock appreciation rights to NEDs is not appropriate, and 63 percent responded that the granting of performance-investing restricted stock is not appropriate. Among non-investor respondents, 50 percent indicated the granting of stock options to NEDs is appropriate, while 69 percent responded that the granting of performance-vesting shares to NEDs is not appropriate.

Governance Related Survey Results

- **Proxy Access**: Survey respondents were asked, in the event that (1) a non-binding shareholder proposal to provide proxy access receives majority support and (2) the board adopts proxy access rights with material restrictions that are not in the majority shareholder proposal, which types of restrictions would potentially warrant negative votes on directors. Of the investor respondents, 72 percent responded that ISS should issue negative director recommendations if an ownership threshold in excess of 3 percent or an ownership duration in excess of three years is adopted (rising to 90 percent when respondents were asked about an ownership duration in excess of three years or an ownership threshold in excess of 5 percent). Issuer respondents were less likely to indicate that ISS should issue negative director recommendations if the board imposes proxy access restrictions similar to the above. If the board sets an ownership threshold of greater than 5 percent, a slight majority of issuers responded that ISS should issue negative director votes, and 40 percent responded that ISS should issue negative recommendations if the ownership duration requirement is in excess of three years.

- **Unilateral Bylaw Amendments**: The survey results suggest that there are several unilateral bylaw amendments that a high percentage of investors find objectionable, including the following: classifying boards (92 percent), establishing supermajority voting requirements for charter/bylaw amendments (89 percent), limiting shareholders' ability to call special meetings or act by written consent (85 percent), adopting fee shifting (78 percent), implementing dissident director nominee compensation restrictions (77 percent), and increasing advance notice requirements (64 percent).

- **Overboarding**: With respect to directors who are not CEOs, 34 percent of investor respondents indicated that a limit of four total board seats is appropriate, 18 percent indicated a limit of five board seats is appropriate and 20 percent indicated a six board limit is appropriate. With respect to directors who are active CEOs, 48 percent of investor respondents indicated that a limit of two total board seats is appropriate and 32 percent indicated a three board limit is appropriate.

- **Director Independence – "Cooling Off Periods"**: ISS policy currently deems a former executive (other than the CEO) serving on his/her former company's board of directors to be independent five years after that individual last held an executive position at the company. Of the investor respondents, 46 percent indicated the five-year period should begin only if the executive leaves his/her executive post and is not a member of the board of directors, and 26 percent of investor respondents indicated ISS's current policy is sufficient. Among non-investor respondents, 68 percent indicated that the five-year period should begin as soon as the executive leaves his/her executive position, and only 18 percent of non-investor respondents indicated support for the position that the five-year period should begin after the executive leaves both his/her executive position and the board of directors.

ISS expects to release its 2016 draft policy updates (and solicit comments on the policy updates) on October 26. ISS then plans to publish its final benchmark voting policies on February 1, 2016.

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