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RISKMETRICS 2009 POLICY UPDATES

On November 25, RiskMetrics Group (formerly ISS) issued its policy updates for the 2009 proxy season. This letter describes executive compensation policy updates applicable to U.S. companies. Several of these updates were influenced by the limitations on executive compensation contained in the Capital Purchase Program under the Emergency Economic Stabilization Act of 2008. RiskMetrics also released policy updates applicable to Canadian and International companies, which may be found on the RiskMetrics Group Policy Gateway at www.riskmetrics.com/policy.

Pay for Performance Policy

Under its current policy, RiskMetrics may recommend against an equity plan and/or to withhold votes from compensation committee members if there is a disconnect between CEO pay and company performance, which is defined as: (1) negative total shareholder return ("TSR") over the most recent one- and three-year periods and underperformance of stock price performance vs. the company's six-digit GICS industry group[(1)], and (2) an increase in CEO total compensation. Under the new policy, poor performance is redefined to be one- and three-year TSR in the bottom half of the company's *four*-digit GICS industry group.

This change is meant to identify the worst performing companies within an industry at a time when broad market declines have affected all industries.

Poor Pay Practices

This is a discretionary policy under which RiskMetrics may recommend against or to withhold votes from compensation committee members, the CEO, or the whole board if a company has poor compensation practices, which include:

- Egregious employment contracts (e.g., with multi-year pay guarantees)
- Excessive perks
- Abnormally large bonus payouts without justifiable performance linkage or proper disclosure (e.g., changing, canceling or replacing performance metrics during a performance period)

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(1) GICS refers to the Global Industry Classification System developed by Morgan Stanley and Standard and Poor's.

— Egregious pension/SERP payouts (e.g., additional years of service credit)
— Overly generous new CEO hire package (e.g., excessive "make-whole" provisions)
— Excessive severance and/or change-in-control ("CIC") provisions (e.g., severance greater than 3X cash pay, severance for poor-performance termination, single-trigger CIC severance payouts, perks for former executives)
— Poor disclosure practices
— Internal pay disparity (i.e., between the CEO and other proxy-reported executives)
— Options backdating

The new policy clarifies and expands on the above items as follows:

— Excessive severance/CIC includes any new or amended arrangements that include excise tax gross-ups and/or modified single-triggers (i.e., "walk-away windows")
— Liberal CIC definition such that payments could result without an actual CIC occurring
— Tax gross-ups on any perquisites or other payments
— Paying dividends/dividend equivalents on unearned performance awards
— Guidelines for excessive perks will be personal use of company aircraft greater than $110,000 by an executive in a year or an auto allowance greater than $100,000 for an executive in a year

Examples of <u>good</u> compensation practices are:

— Employment contracts used under limited circumstances for a short period of time (e.g., no automatic renewals)
— Severance formulas not higher than 3X pay and use of historical or target bonus rather than maximum bonus. Also, failure to renew an employment contract, termination under questionable events or termination for poor performance should not be severance triggers
— CIC payments should be made only for a significant change in ownership structure and subsequent loss of job (i.e., "double-trigger"). There should be no excise tax gross-ups or single-trigger acceleration of equity
— Supplemental executive retirement plans ("SERPs") should not include "sweeteners" (e.g., extra service credit or incentive pay – both cash bonuses and equity awards) and pension formulas should be based on average compensation earned, not maximum compensation
— No above-market or guaranteed minimum returns on deferred compensation
— Good proxy disclosure (e.g,. plain English)
— Trading policies that prohibit executives from hedging company stock holdings or using stock as collateral for loans
— Long-term focus for incentives

Burn Rate Tables

RiskMetrics' tables for its burn rate policy[2] were updated as shown below compared to prior-year burn rates. Also, stock price volatility will be measured over 400 days rather than 200 days for converting full-value share awards to option equivalents and for its shareholder value transfer ("SVT") plan costing for the December 1, 2008 and March 1, June 1, and September 1, 2009, quarterly data downloads. As of December 1, 2009, RiskMetrics intends to return to a 200-day period for measuring stock price volatility.

In its policy updates for 2008, RiskMetrics expanded the volatility categories for converting full-value shares to options from three to six. Those categories, also shown below, are unchanged.

Seventy-seven percent of industry groups of Russell 3000 companies and 82% of industry groups of non-Russell 3000 companies showed year-over-year increases in their burn rates.

Annual Stock Price Volatility	Multiplier
54.6% and higher	1 full-value award will count as 1.5 option shares
36.1% or higher and less than 54.6%	1 full-value award will count as 2.0 option shares
24.9% or higher and less than 36.1%	1 full-value award will count as 2.5 option shares
16.5% or higher and less than 24.9%	1 full-value award will count as 3.0 option shares
7.9% or higher and less than 16.5%	1 full-value award will count as 3.5 option shares
Less than 7.9%	1 full-value award will count as 4.0 option shares

2009 Burn Rates-Russell 3000

GICS	Description	Mean & Standard Deviation 2009	2008	2007	2006	2005
1010	Energy	3.09%	3.09%	2.29%	2.50%	2.61%
1510	Materials	2.14%	1.93%	1.85%	2.11%	2.36%
2010	Capital Goods	3.52%	2.55%	2.57%	2.93%	3.05%
2020	Commercial Services & Supplies	4.01%	4.05%	3.81%	4.33%	4.40%
2030	Transportation	3.18%	2.80%	2.31%	3.47%	3.60%
2510	Automobiles & Components	3.05%	2.99%	2.90%	3.24%	3.48%
2520	Consumer Durables & Apparel	3.44%	3.33%	3.09%	3.26%	3.90%
2530	Consumer Services	3.32%	3.33%	3.41%	3.31%	3.48%
2540	Media	3.25%	3.27%	2.70%	3.38%	3.84%
2550	Retailing	3.12%	2.90%	3.05%	4.12%	4.84%
3010, 3020, 3030	Consumer Staples	3.12%	2.92%	2.91%	3.13%	3.48%
3510	Health Care Equipment & Services	4.39%	4.57%	4.19%	4.91%	5.20%
3520	Pharmaceuticals & Biotechnology	5.76%	4.96%	4.50%	5.57%	5.32%
4010	Banks	2.18%	2.15%	2.20%	2.46%	2.61%
4020	Diversified Financials	5.56%	4.52%	3.76%	5.28%	5.66%
4030	Insurance	2.22%	2.14%	2.22%	2.56%	2.32%
4040	Real Estate	2.05%	1.85%	2.23%	2.31%	1.90%
4510	Software & Services	6.76%	6.11%	5.82%	8.00%	8.49%
4520	Technology Hardware & Equipment	5.52%	4.80%	4.70%	6.11%	6.68%
4530	Semiconductors & Semiconductor Equip.	5.72%	5.59%	5.40%	7.67%	7.97%
5010	Telecommunication Services	3.74%	2.80%	2.70%	3.92%	4.95%
5510	Utilities	1.64%	1.22%	1.35%	1.56%	1.55%

(2) If a company's three-year average burn rate exceeds its industry group's mean by more than one standard deviation and is more than 2% of common shares outstanding, ISS will recommend against the company's stock plan proposal even if plan cost does not exceed the allowable cap. A company can avoid a negative vote recommendation by agreeing to a future three-year burn rate of no greater than the higher of 2% or the industry group's mean plus one standard deviation at the time of the commitment.

2009 Burn Rates-Non-Russell 3000						
		Mean & Standard Deviation				
GICS	**Description**	**2009**	**2008**	**2007**	**2006**	**2005**
1010	Energy	5.15%	4.43%	3.77%	4.56%	4.78%
1510	Materials	3.80%	4.49%	4.36%	4.16%	4.46%
2010	Capital Goods	5.15%	4.39%	4.32%	5.37%	6.17%
2020	Commercial Services & Supplies	4.69%	4.23%	4.18%	7.61%	8.07%
2030	Transportation	3.45%	4.10%	3.86%	4.30%	4.66%
2510	Automobiles & Components	3.05%	3.78%	4.69%	4.51%	5.18%
2520	Consumer Durables & Apparel	4.79%	4.04%	3.70%	5.35%	6.21%
2530	Consumer Services	5.14%	4.25%	4.17%	5.17%	6.17%
2540	Media	6.13%	5.93%	5.62%	5.77%	7.01%
2550	Retailing	4.62%	5.80%	5.14%	8.03%	7.75%
3010, 3020, 3030	Consumer Staples	4.45%	3.85%	3.90%	4.99%	6.68%
3510	Health Care Equipment & Services	6.64%	6.40%	5.81%	7.53%	7.79%
3520	Pharmaceuticals & Biotechnology	9.46%	8.69%	6.85%	10.15%	9.92%
4010	Banks	2.89%	2.19%	2.25%	2.79%	3.25%
4020	Diversified Financials	11.05%	9.71%	9.87%	8.47%	8.55%
4030	Insurance	4.71%	4.35%	3.56%	5.10%	4.24%
4040	Real Estate	2.85%	2.02%	2.23%	2.79%	3.01%
4510	Software & Services	10.12%	9.27%	8.46%	12.97%	14.10%
4520	Technology Hardware & Equipment	6.30%	5.83%	5.92%	8.75%	10.12%
4530	Semiconductors & Semiconductor Equip.	7.79%	6.81%	6.94%	8.07%	10.74%
5010	Telecommunication Services	5.92%	5.10%	5.92%	7.11%	8.56%
5510	Utilities	1.86%	1.25%	1.35%	6.24%	8.38%

Liberal Definition of CIC

RiskMetrics has quantitative and qualitative criteria for evaluating whether to recommend for or against an equity plan proposal. Under its current policy, RiskMetrics will recommend against a plan if:

— The total cost of the company's equity plans is unreasonable (i.e., SVT exceeds the allowable cap);

— Repricing is expressly permitted without shareholder approval;

— There is a disconnect between CEO pay and company performance and more than 50% of the increase in CEO pay is attributed to equity awards (see previous discussion of this policy);

— The company's three-year burn rate exceeds the greater of 2% and the mean plus one standard deviation of its industry group (see previous discussion of this policy); or

— The plan is a vehicle for poor pay practices (see previous discussion of this policy)

Under its update of this policy, RiskMetrics is adding a liberal definition of CIC such that the plan provides for the acceleration of vesting even though an actual CIC may not occur (e.g., upon shareholder approval of a transaction or the announcement of a tender offer without consummation).

Treatment of Operating Partnership ("OP") Units in
<u>Equity Plan Analysis of Real Estate Investment Trusts ("REITs")</u>

This is a rather obscure technical policy change affecting only REITs, which is to include shares issuable upon the conversion of outstanding OP units for purposes of determining:

(1) Market capitalization in the SVT analysis and

(2) Shares outstanding in the burn rate analysis

In the past, RiskMetrics used to include common shares issuable under convertible securities and warrants for all companies, but discontinued the practice in 2007.

<u>Incentive Bonus Plans and Tax Deductibility Proposals</u>

RiskMetrics' current policy is to recommend for proposals to amend shareholder-approved compensation plans for compliance with Internal Revenue Code Section 162(m) concerning the deductibility of performance-based compensation awarded to the CEO and the other three highest-paid executives reported in a company's proxy statement if there is no increase in cost. Such amendments include placing a cap on individual grants, adding performance goals (unless they are clearly inappropriate), or adding features of an administrative nature. RiskMetrics has added a new item to its current policy, which is to recommend against proposals if the compensation committee does not fully consist of independent outsiders, as defined in RiskMetrics' definition of director independence (i.e., no material connection to the company other than a board seat).

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Overall, we think RiskMetrics' policy updates for 2009 are reasonable; reflect emerging best practices to limit severance, CIC treatment and executive perks; and are responsive to the effects of the financial crisis on the stock market. In particular, the change to a relative TSR measure of poor performance from an absolute TSR measure addresses concerns that a substantial majority of companies would be subject to the policy this year due to the broad market declines rather than actual performance issues.

This letter is intended to alert compensation professionals about developments that may affect their companies and should not be relied on as providing specific company advice. General questions about this letter may be directed to Wendy Hilburn at 212-299-3707 or wjhilburn@fwcook.com. Copies of this letter and other published materials are available on our website at www.fwcook.com.