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ISS Policy Survey Results

On September 29, Institutional Shareholder Services ("ISS") released the results of the policy survey it conducted during the summer. Findings from the survey, which included institutional investor and corporate issuer respondents, will be considered by ISS as it develops new or updated policies to apply in 2015.

ISS' policy formulation process, which concludes in mid-to-late November with the release of policy updates to be effective for annual meetings on or after February 1, 2015, begins with a survey of institutional investors and members of the corporate issuer community (e.g., corporations, consultants and advisors to corporations, and other organizations representing corporations) to gather feedback on emerging corporate governance issues. The survey was conducted this past summer and included compensation-related questions pertaining to pay for performance and equity plan evaluation. Key findings applicable to U.S. policies are summarized below.

Pay for Performance

- A majority of investors (i.e., 60%) expressed concern about the magnitude of CEO pay and how it is determined, even when company performance is strong (e.g., outperforms peer group). Investors who support CEO compensation limits favor, in descending preference, comparisons of CEO pay to median CEO pay at peer companies, the pay of other named executive officers in the proxy statement, or as a percent of corporate earnings or revenue

    — Unsurprisingly, only a minority of corporate issuers (i.e., 28%) support limits on CEO pay. This minority favored the same three tools to limit CEO pay as investor respondents, with comparisons to median CEO pay at peer companies receiving the highest support

- A majority of investors (i.e., 63%) indicate that prospective disclosure of positive changes to the compensation program can "somewhat" mitigate pay-for-performance concerns for the year under review, while another 14% indicate that prospective disclosure can "substantially" mitigate such concerns. Investors supporting prospective disclosure expect specific details of the positive changes to be disclosed (e.g., metrics, performance goals, award values, effective dates)

- A substantial minority of investors (i.e., 43%) indicate that target incentive levels should be modified (i.e., decreased) if performance goals are significantly reduced from one performance period to the next

    — In contrast, a majority of corporate issuers (i.e., 67%) indicate that the compensation committee should have broad discretion to set both goals and target award levels

    — Also, a minority of both corporate issuers and investors (i.e., 25% and 19%, respectively) indicate that performance goals should be set independent of target award levels, which must be maintained at competitive levels for attraction and retention purposes

Equity Plans

- In 2013, ISS announced its intent to implement an equity scorecard for evaluating stock plan proposals in 2015 and had an extended survey response period for equity plan questions in that year's policy survey. In this year's survey, investors indicated support for a scorecard that weights plan features and grant practices as much or more than plan cost alone. In descending preference, investors would generally weight plan cost heaviest (30%-50%), then plan features (25%-35%), and finally company grant practices (20%-35%)

    — Weightings suggested by corporate issuers were more dispersed, but weighted more heavily toward plan cost

    — While not included in the survey report, examples of plan features and company grant practices that would have a positive impact on the allowable share authorization are minimum vesting periods in the plan and double-trigger change-in-control vesting acceleration. Examples of plan terms or company grant practices that would have a negative impact are "liberal" share pool add-backs for stock options and stock appreciation rights (i.e., shares withheld to exercise stock options or settle withholding taxes owed at exercise of stock options or stock appreciation rights are added back to the share pool) and single-trigger change-in-control vesting acceleration

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The information presented in this Alert Letter should not be interpreted to indicate the specific changes to ISS policies that will be forthcoming. Cook & Co. will publish a summary of ISS' 2015 policy updates when they are released in November.

General questions about this letter can be addressed to Wendy Hilburn at 212-299-3707 or wjhilburn@fwcook.com. Copies of this letter and other related materials are available on our website at www.fwcook.com.