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ISS RELEASES 2016 DRAFT POLICY CHANGES FOR COMMENT

On October 26, Institutional Shareholder Services ("ISS") released drafts of 2016 policy changes for public comment, which will apply to annual meetings held on or after February 1, 2016.[1] The comment period will extend through 6 p.m. Eastern on November 9. The draft U.S. policy changes do not address updates to ISS' key compensation policies pertaining to pay-for-performance evaluations, including peer group formation, problematic pay practices or equity plan proposals, although an update to Canadian policies to adopt an equity plan scorecard is proposed. U.S. policy changes in these areas could be included in the final policy updates, which are expected to be released on November 18. In addition, other changes pertaining to the application of current policies (e.g., burn rate and pay-for-performance concern thresholds) could be included in updated FAQs typically issued in mid-December.

U.S. Policies Proposed Changes

Following its policy survey conducted during the summer, draft results of which were released in September, ISS is seeking additional market feedback regarding proposed changes to its U.S. policies in the areas of (1) unilateral board actions, (2) director overboarding, and (3) compensation at externally managed issuers (approximately 60 companies, typically REITs). This last change is directed at companies identified as disclosing insufficient information on the compensation arrangements and payments to executives employed at external managers. Without sufficient information, shareholders are not able to assess the pay programs and linkages to performance for the say-on-pay vote. There may also be conflicts of interest in the arrangements that shareholders are unaware of in the absence of full disclosure.

Under its proposed policy change, ISS would generally recommend "Against" the say-on-pay proposal (or compensation committee members, the compensation committee chair, or the entire board, as appropriate, if no say-on-pay proposal is on the ballot) of externally managed issuers where a comprehensive pay analysis is not possible because of insufficient disclosure. ISS is seeking public comment on whether the "Against" vote recommendation is appropriate in such a situation, the factors that should be considered to gauge potential conflicts of interest in the executive compensation arrangement, and the unintended consequences that could result from the policy update as proposed.

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[1] The draft policy changes can be found at http://www.issgovernance.com/policy-gateway/2016-benchmark-policy-consultation/

Canadian Policies Proposed Changes

The proposed changes to ISS' Canadian policies includes a similar change for externally managed issuers. However, say-on-pay proposals are not mandatory in Canada. Therefore, ISS' proposed policy change on externally managed issuers in Canada is to recommend on a case-by-case basis on say-on-pay resolutions, where provided, or individual directors, committee members, or the entire board, as appropriate, where there is no or minimal disclosure about pay arrangements and payments to senior management. ISS will consider a variety of factors to reach its vote recommendation, many of which are listed in the updated policy. ISS is seeking public comment on whether the case-by-case approach as defined in the draft policy change and factors listed for consideration are appropriate.

A second proposed compensation policy change in Canada is the implementation of an equity plan scorecard ("EPSC") in 2016, similar to the one implemented in 2015 for U.S. stock plan proposals, by Canadian TSX companies. The current Canadian policy for equity plans consists of pass/fail tests related to plan cost, non-employee director participation, plan amendment provisions, and repricing without shareholder approval. Under the EPSC approach, the pass/fail plan cost test would be replaced by a scoring system that evaluates a range of positive and negative features of the equity plan proposal.

The key features of the proposed Canadian EPSC are:

1. Plan Cost: the estimated cost of companies' equity plans relative to industry/market cap peers as measured by shareholder value transfer ("SVT") and considering both (a) SVT based on new shares requested plus remaining shares available and outstanding grants, and (b) SVT based only on new shares requested and shares remaining available.
2. Plan Features: (a) reasonable share dilution, (b) absence of problematic change-in-control provisions, (c) no financial assistance for the exercise or settlement of awards, and (d) public disclosure of the full plan document.
3. Grant Practices: (a) reasonable three-year burn rate relative to market best practices, (b) meaningful time-vesting requirements for the CEO's most recent equity grants (three-year look-back), (c) the issuance of performance-based equity to the CEO, (d) a clawback provision applicable to equity awards, and (e) post-exercise or post-settlement share-holding requirements (Composite Index only).

In addition to the above, plans will continue to be assessed using ISS' Canadian policies regarding non-employee director participation, plan amendment provisions, and repricing without shareholder approval. Factors and weightings will be keyed to company size and status using separate models for the S&P/TSX Composite Index and the non-Composite TSX, and there will be special versions of both models where historic grant data is unavailable (e.g., IPOs or emergences from bankruptcy). ISS is seeking public comment on the factors that should be most heavily weighted under the EPSC and the unintended consequences that could result from shifting to the EPSC approach.

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General questions about this letter may be addressed to Wendy Hilburn in our New York office 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.