

Executive Compensation and Benefits Alert

December 11, 2012

If you have any questions regarding the matters discussed in this memorandum, please contact any of the attorneys listed on page 2, or call your regular Skadden contact.

ISS Releases FAQs Regarding Peer Group Selection – Deadline Fast Approaching for Companies to Update Peer Group Information

New ISS Peer Group Methodology

One of the most controversial issues during the 2012 proxy season was the degree to which the peer groups chosen by Institutional Shareholder Services (ISS) varied from the peer groups chosen by companies. As we highlighted in our recent mailing on the subject ([Inside The ISS Policy Updates for 2013](#)), ISS has revised its methodology to, among other things, place a greater weight on a company's self-selected peer group in order to identify additional Global Industry Classification Standard (GICS) codes that may be relevant.

Prioritization of Potential Peers

ISS' new methodology will prioritize peers that are either in the subject company's own peer group or have chosen the subject as a peer, as well as companies with numerous connections to these "first-degree" peers, and has further noted that within those groups, peers closer in size will be preferred.

The Frequently Asked Questions on Peer Group Selection Methodology (the FAQs) just released by ISS provide more detail about the process, including that the peer group will be constructed by looking at companies from the following categories of the "potential peer universe," considered in this order:

- the subject company's own 8-digit GICS group
- the subject company's peers' 8-digit GICS groups
- the subject company's 6-digit GICS group
- the subject company's peers' 6-digit GICS groups
- the subject company's 4-digit GICS group

ISS has emphasized that not all of a company's self-selected peers will necessarily appear in the ISS peer group, since other considerations could prevail, including keeping the subject company at the median of the peer group and keeping a particular industry from being overrepresented. Where a company uses multiple peer groups for different purposes, it is the peer group used for CEO pay benchmarking purposes that ISS views as relevant for purposes of the pay for performance analysis.

Revenue and Asset Ranges

The FAQs note that while the revenue range for potential peers generally will be from 0.4 to 2.5 times the company's revenue, this range will be expanded for

companies with revenues greater than \$10 billion and less than \$200 million. Companies with less than \$100 million in revenues will be treated as having \$100 million in revenues. Where *both* the subject company and the potential peer with which it is being compared fall within a particular list of 8-digit GICS groups (all related to financial services), the analysis will be based on balance sheet assets rather than revenues.

Other Issues

Foreign-domiciled companies that file annual proxies, 10-Qs and 10-Ks may be included by ISS in the peer group, but privately held or other foreign-domiciled companies will not be eligible for inclusion.

ISS states that it will not apply the methodology mechanically, and where the methodology appears to have created a peer group that is either inappropriate or contains an insufficient number of peers, ISS will conduct an individualized analysis in order to construct an appropriate peer group.

Providing Updated Information to ISS

With the goal of improving its peer group determination process for 2013, ISS is giving companies until **December 21, 2012**, to submit any peer group changes which have occurred since the most recent disclosure of the peer group. *Anticipated* changes to the peer group also may be submitted, but ISS has indicated that in any event the information submitted to ISS as part of this process should match the peer group information that is disclosed in the 2013 proxy.

We encourage companies whose peer group will be changing for 2013 to consider submitting information to ISS as part of this new process, and we would be happy to answer any questions in that regard.

If you have any questions regarding the matters discussed in this memorandum, please contact any of the attorneys listed below or call your regular Skadden contact.

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