

Securities Regulation and Compliance Alert

October 22, 2013

If you have any questions regarding the matters discussed in this alert, please contact the following attorneys or your regular Skadden contact.

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ISS Opens Comment Period for 2014 Proxy Voting Policy Changes

On October 21, 2013, Institutional Shareholder Services (ISS) issued draft policy changes for 2014 that, if adopted, would become effective for shareholder meetings taking place on or after February 1, 2014. ISS is soliciting comments from interested parties, which may be submitted through November 4, 2013. The two proposed changes to ISS's U.S. voting policy relate to its pay-for-performance quantitative screen and board responsiveness to majority-supported shareholder proposals.

Pay-for-performance quantitative screen. ISS uses several pay-for-performance metrics to gauge the alignment between executive compensation and performance. ISS's Relative Degree of Alignment (RDA) measure compares a company's total shareholder return (TSR) rank with its CEO total pay rank within the company's peer group over a one-year period (weighted 40 percent) and a three-year period (weighted 60 percent). ISS is proposing to eliminate the one-year timeframe and to compare compensation and TSR over three years for purposes of its pay-for-performance quantitative screen.

In addition to general comments, ISS has solicited responses to the following questions:

- Are there circumstances under which performance or pay from the most recent year should weigh more heavily in a pay-for-performance analysis?
- Are there any unintended consequences from using a simple, unweighted three-year pay and performance measure as the basis for the RDA screen?

The full proposal and request for comment can be found [here](#).

Board responsiveness to majority-supported shareholder proposals.

As previously communicated by ISS, in 2014 the company will recommend that shareholders vote against or withhold votes from individual directors, committee members or the entire board of directors, as appropriate, if the board failed to act on a shareholder proposal that received the support of a majority of the shares cast in the previous year. Responses that involve less than full implementation will be considered on a case-by-case basis, taking into account:

- the subject matter of the proposal;
- the level of support and opposition provided to the resolution in past meetings;

- disclosed outreach efforts by the board to shareholders in the wake of the vote;
- actions taken by the board in response to its engagement with shareholders;
- the continuation of the underlying issue as a voting item on the ballot; and
- other factors that ISS deems appropriate.

The proposed policy change would clarify that, with respect to evaluating board responsiveness to majority-supported shareholder proposals that are not fully implemented, ISS's voting recommendations with respect to whether to withhold votes from individual directors, committee members or the entire board will be decided on a case-by-case basis. In addition, ISS would add the board's rationale for less than full implementation, as disclosed in the proxy statement, as a factor to be considered in its case-by-case analysis.

ISS has solicited responses to the following questions:

- In addition to the factors listed by ISS to be considered if a board does not fully implement a majority-supported shareholder proposal, what factors does your organization consider in evaluating board responsiveness to majority supported shareholder proposals?
- If a company does not fully implement a majority-supported shareholder proposal, what points should a board's rationale include in explaining its responsiveness to shareholders?

The full proposal and request for comment can be found [here](#).

Submission of comments. Comments may be submitted via email to policy@issgovernance.com. If you wish to have your comment published, you must submit your name and organization for attribution.