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ISS and Glass Lewis Issue Final 2017 Policy Updates

Newly updated ISS and Glass Lewis policies address director compensation and independence, IPO governance structures, and bringing US-style pay-for-performance analyses in Europe.

Institutional Shareholder Services (ISS) and Glass Lewis have each released their 2017 policy updates. For ISS, the release of its policy updates marks the final major milestone in its 2017 policy formulation process, with additional FAQs to be published later this month. Complete ISS policy updates are available **here** and the full set of Glass Lewis updates are available **here**.

With respect to compensation issues, ISS made changes to its Equity Plan Scorecard, its director compensation policies in several countries, and confirmed plans to introduce US-style pay-for-performance screens as a new qualitative factor to consider in Europe. Meanwhile, Glass Lewis did not make any updates to its compensation policies.

Beyond these changes, it is important to note that ISS recently announced it would begin to incorporate additional revenue-based performance metrics into its qualitative CEO pay-for-performance assessments. This move is a step away from the dominant role TSR plays in the firm's (and many investors') analysis of the alignment pay has with performance. This step could evolve into more substantive changes in subsequent years (for more information on this particular development, please see our client alert: *ISS Adds Metrics to Qualitative Say-on-Pay Screening, But Not All Industries Will Benefit*.)

In a separate announcement, Glass Lewis said it will continue its limited program to allow companies it covers to verify the data that Glass Lewis uses to perform its analyses. This program is comparable to ISS' Data Verification program. Similar to prior years (see last year's announcement **here**), Glass Lewis is offering verification on a first-come, first-served basis, and issuers have 48 hours to review and provide comments and publicly available support. Enrollment ends no later than January 6, 2017, in the US, Canada, UK, EU, Norway and Switzerland. Companies must release all proxy materials no less than 30 days before the shareholder meeting date. Click **here** to request to participate in Glass Lewis' issuer data report service.

Key ISS and Glass Lewis 2017 policy updates are summarized below. If you have any questions about the following policy updates or other executive compensation and corporate governance matters, please write to **consulting@radford.com**.

ISS Compensation-Related Policies

Non-Executive Director Pay (US)

In connection with both director equity plan proposals and advisory proposals for shareholders to ratify director pay programs, ISS is broadening and harmonizing its framework for the qualitative portion of evaluating non-employee director pay. For director equity plans, ISS will first conduct a quantitative screen that includes estimated cost (as measured by Shareholder Value Transfer), three year burn rate relative to peers, and plan features. If the plan exceeds benchmarks for cost or burn rate, ISS will then holistically evaluate the plan in light of certain qualitative factors. Similarly, ISS will evaluate proposals for shareholders to ratify director pay programs (where the program itself wasn't already evaluated) using the same qualitative factors. New factors include relative pay magnitude and meaningful pay limits. Others include director stock ownership guidelines, minimum three year vesting, balanced cash/equity mix and detailed disclosure.

Cross-Border Executive Pay Assessments (US-Listed Companies Incorporated Elsewhere)

For companies listed in the US and incorporated in another country, ISS will use US say-on-pay policy to evaluate compensation proposals. This aligns the voting recommendations on a pay proposal that are required to be submitted in multiple countries and eliminates contradictory results.

Equity Plan Scorecard (US)

ISS is adding "dividends payable prior to vesting" as a new factor in one of the three pillars used in its Equity Plan Scorecard approach to evaluating equity-based compensation plans. The analysis will now also consider whether a recipient will receive dividends on unvested shares, and will give credit accordingly. In ISS' view, companies should pay dividends to recipients of equity under an equity plan only after the underlying shares are earned. However, ISS does not object to the accrual of dividends that are payable after the vesting of equity under such a plan. ISS will now require at least a one year minimum vesting period in order to get credit on that factor, except for up to a 5% carve out of shares issued under the plan. ISS will also, in connection with plan amendments, supplement the Equity Plan Scorecard with an analysis of the overall effect of all proposed amendments on the plan.

Non-Executive Director Initial Equity Grants (Canada— TSX-listed companies only)

ISS will recommend against members of the committee responsible for director compensation if there are excessive inducement (one-time initial) grants (relative to standard market practice), performance-based equity or other problematic pay practices. ISS believes these can compromise the director's judgment or independence and can appear problematic to shareholders.

Pay-for-Performance Quantitative Screens (Europe, UK and Ireland)

ISS will conduct US-style pay-for-performance quantitative screens (peer group and absolute alignment) as part of its Europe, UK and Ireland compensation evaluations. The results of the screen will be taken into account as a contributing, but not determinative, factor within a qualitative review of remuneration practices. ISS will recommend against a compensation proposal if it fails to comply with one or a combination of several principles, including its principle of good stewardship of investor's interests with respect to remuneration practices, as shown by the pay-for-performance screen.

Non-Executive Director Remuneration (Europe)

ISS will recommend against any grants of all forms of performance-based compensation, equity or cash, for non-executive directors. This update represents an expansion of the types of grants covered under ISS' existing policy. Many European investors and corporate issuers already have an unfavorable view of the grant of any form of performance-based compensation to non-executive directors, and in some cases their voting policies reflect this as ISS' now does.

Executive Remuneration (UK; Ireland)

With many UK and Ireland companies seeking shareholder approval of new remuneration policies in 2017, ISS has updated its policy to reflect an industry working group's recommendations that companies consider pay models that are different from typical structures found in the past. ISS has added a statement to its policy that a greater level of certainty in the receipt of the award should be matched by a lower award level. ISS will recommend against a remuneration committee chair when serious issues are identified and raised over a number of years. ISS will also consider the new European Pay-for-Performance analysis in its evaluation.

ISS Corporate Governance Related Policies

Director Elections at Companies That Restrict Shareholders' Ability to Amend Bylaws (US)

If a company's charter imposes undue restrictions on shareholders' ability to amend the bylaws, including prohibitions on the submission of binding shareholder proposals, share ownership or holding period requirements in excess of the SEC Rule 14a-8 (which requires ownership of $2,000 in stock for one year), ISS will recommend against the members of the governance committee of the company's board. In ISS' view, such restrictions amount to a material diminution in shareholders' rights.

Adverse Governance Features, Including Dual-Class Stock (US)

If a newly public company has adopted a charter or bylaw provision that is materially adverse to shareholder rights, or implemented a multi-class capital structure in which the classes do not have identical voting rights, ISS will recommend or vote against directors individually, committee members or the entire board (except new nominees, who will be considered case by case). The firm will take under consideration the ability of shareholders to change the governance structure, the ability to hold directors accountable through annual elections, or a reasonable sunset provision.

Director Overboarding (Europe)

ISS has clarified its position on directors who have multiple board appointments. ISS may recommend a vote against individuals falling under the following guidelines: 1) holding more than five non-chair, non-executive positions; 2) a non-executive chair of a company that holds more than three non-chair, non-executive director positions, or more than one other non-executive chair position and one non-chair, non-executive position, or any executive position; 3) an executive director who holds more than two non-chair, non-executive director positions, or any other executive position, or any non-executive chair position. ISS will not recommend against a director at a company where s/he serves as CEO.

Smaller Company Board and Committee Composition (UK)

Beginning in 2018, ISS will not recommend in favor of nominees up for election except where the audit and remuneration committees of the company are fully independent, with a minimum of two independent non-executives. ISS seeks to align its policy with the more rigorous standard of the relevant code for smaller listed companies in the UK.

Glass Lewis Director Related Policies

Director Overboarding (US)

Glass Lewis will generally recommend against a director who serves as an executive officer of a public company and also serves on more than two public company boards, or any director who serves on more than five public company boards. The firm will consider a range of factors, including whether a company on whose board the director serves provides a sufficient rationale for their continued board service.

Board Evaluation (US)

Glass Lewis has reiterated that it favors a robust board evaluation process focused on assessment of performance and alignment of skills with company strategy, over age or tenure limits.

Director Elections at Companies That Restrict Shareholders' Rights (US)

Glass Lewis will evaluate the governance documents of a newly public or newly spun-off company to determine whether shareholder rights are being severely restricted by anti-takeover devices, supermajority vote requirements, or the restriction of rights to remove directors or call special meetings. If Glass Lewis determines such restrictions exist, it will recommend against governance committee members or directors serving at the time such provisions were adopted.

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