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ISS Releases 2017 Policy Survey, Comments Due by August 30

This time each year, issuers can weigh in on potential changes to ISS' global voting policies. On the table is say-on-pay voting frequency, pay-for-performance metrics, and director equity grants.

On August 3, 2016, ISS released its 2017 policy survey. This survey is the first step in its annual policy review process, which culminates in the release of revised corporate governance and compensation policies in late Fall each year. While the policy survey is intended to elicit issuer and institutional shareholder feedback to guide the direction of ISS' policy revisions, directional policy considerations can often be gleaned from the questions and permissible response alternatives.

It is important to note that many items raised in previous policy surveys have never made it into the final version of ISS' policy changes. Nonetheless, we encourage our clients to submit comments either individually or through industry associations or affiliations. The proxy advisory firm continues to be highly influential among a large percentage of the shareholder voting population as evidenced by say-on-pay voting results.

Responses are due by 5pm on August 30. Those wishing to respond to the survey can access the survey directly. In addition to, or in lieu of, taking the survey, further responses or commentary can be submitted via email to policy@issgovernance.com.

The current survey includes questions on the following topics that may be of particular interest to issuers:

Compensation-Related Questions:

- **Question 7 (US) – Say-On-Pay Frequency**: On the sixth anniversary of mandatory say-on-pay, many issuers will be required to seek shareholder approval of the frequency of say-on-pay votes (the Dodd-Frank Act requires that an advisory vote be held either annually, biannually, or triennially). Initially, ISS had adopted a blanket one-year recommendation. Question 7 suggests a more nuanced approach to frequency votes, taking into account company size, financial performance, presence/absence of problematic pay practices, and prior levels of shareholder support for the advisory vote. Note, certain investors actually prefer a less frequent say-on-pay vote, as they would prefer to vote against compensation committee member nominees when a compensation issue is flagged. A less frequent say-on-pay voting schedule could emphasize a longer-term outlook on compensation decisions—both by issuers and shareholders.

- **Question 8 (Cross-border listed companies) – Cross-border Executive Pay Assessments:** Companies domiciled abroad but listed in the US markets frequently are subject to corporate governance rules of both markets. For example, they may have to present multiple forms of say-on-pay votes to satisfy requirements of each applicable market. ISS practice has been to review each item according to its policy for the market requiring the vote, potentially leading to conflicting outcomes. Question 8 suggests a preference for aligning vote recommendations under a single market's voting policy to reduce conflicting outcomes.

- **Question 10 (US, Canada, Europe) – Pay-for-Performance Metrics**: ISS' CEO Pay-for-Performance quantitative screens are currently highly focused on Total Shareholder Return (TSR) for measuring pay and performance alignment. Question 10 suggests consideration of additional performance indicators (e.g., revenue, ROA, cash flow) against which to measure such alignment. This could be seen as an extension of the 'balanced scorecard' approach to equity plans adopted in recent years. The question does not provide any guidance as to how any resulting extension of Pay-for-Performance metrics would interact with the SEC's pending TSR-focused Pay-for-Performance disclosure rules. Glass Lewis already uses metrics in addition to TSR in its Pay-for-Performance test.

- **Question 11 (Europe) – Pay-for-Performance Quantitative Screens**: In 2016, ISS adopted its US-styled Pay-for-Performance quantitative screen into its European compensation policies. Question 11 elicits feedback on the level of reliance that should be placed on the Pay-for-Performance quantitative screens in European remuneration voting items.

- **Question 12 (Canada) – Non-Executive Director Initial Equity Grants**: ISS seeks views on a Canadian practice of companies making initial, one-time equity grants to new non-employee directors (similar to the common practice for newly hired executives). Question 12 suggests that ISS is considering limitations on the acceptable forms of one-time grants to non-employee directors (or whether the practice should be permitted at all).

Director Related Questions

- **Question 2 (US) – Overboarding of Executive Chairs:** Should executive chairs who are not also the CEO be subject to the overboarding policies that apply to CEOs (*i.e.*, no more than three total boards) or continue to be treated the same as other non-executive directors (*i.e.*, no more than five total boards). ISS added an overboarding policy last year for non-employee directors (see *ISS Seeks Lower Limits on Number of Boards on Which Directors and CEOs Can Serve*).

- **Question 4 (US) – Director Tenure:** ISS wants to know if "lengthy director tenure" is a genuine concern that implicates a board's nominating and refreshment processes and, if so, when should the topic be pressed at a company. Options provided by ISS range from: (1) the absence of any newly appointed independent directors in recent years (*e.g.*, five years); (2) lengthy average tenure on the board (*e.g.*, average director tenure greater than 10 years, or greater than 15 years); (3) a high proportion of directors with long tenure (*e.g.* three-fourths of the board having tenure of 10 years or more); or (4) some other approach.

IPO-Related Governance Practices

- **Question 3 (US) – Dual-Class Stock:** This question asks if ISS should recommend "withhold" votes against newly public companies whose capital structures feature multiple classes of stock with differential voting rights and the circumstances under which doing so would or would not be appropriate.

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