

CENTER FOR CAPITAL MARKETS COMPETITIVENESS

OF THE

UNITED STATES CHAMBER OF COMMERCE

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November 7, 2011

Mr. Gary Retelny
Managing Director, MSCI Inc.
President, Institutional Shareholder Services
One Chase Manhattan Plaza
44th Floor
New York, NY 10005

Re: Comments on ISS's 2012 Draft Policies

Dear Mr. Retelny:

The U.S. Chamber of Commerce ("Chamber") is the world's largest business federation, representing more than 3 million businesses and organizations of every size, sector, and region. The Chamber created the Center for Capital Markets Competitiveness ("CCMC") to promote a modern and effective regulatory structure for capital markets to fully function in a 21st century economy. To achieve this objective it is an important priority of the CCMC to advance an effective and transparent corporate governance system.

The CCMC welcomes this opportunity to comment on Institutional Shareholder Services' ("ISS") 2012 benchmark proxy voting guidelines available for comment and appreciates the extended comment period granted by ISS last week. We discuss below our general comments on six of ISS's seven draft policies applicable to the US market, followed by more specific observations on each of the proposals. Because of the many complexities involved with ISS's draft policy related to ISS's draft policy on political contribution proposals, the Chamber addresses that policy in a separate letter.

General Comments

Overall, while we believe ISS's effort to adopt policies that incorporate multiple factors in their application, potentially allowing for more case-by-case discretion, this effort alone does not fully address the concerns that have been raised about ISS's

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approach. We and other organizations have consistently stated that such discretion must be coupled with an objective and transparent process for exercising that discretion, along with the tools necessary to develop all reasonably accessible and relevant factual information. While policies that consider multiple factors is an improvement over one-size-fits-all policies like the rigid one-year standard for say-when-on-pay, it is no replacement for actual due diligence of individual companies and industries. Nor does a multi-factor standard necessarily ensure that decisions are based on actual evidence, as opposed to untested assumptions or individual worldviews.

The same concern applies to ISS's policy-making process itself. Currently, there are no written standards upon which those decisions are made, or that require ISS personnel to take into account public input or to identify and develop statistical and other relevant evidence. While that process currently provides an opportunity for market participants to give input on various corporate governance and compensation related policies, there appears to be no requirement that public input be reflected in the resulting draft or final policies in a balanced and objective manner. Nor does there appear to be any requirement that policies be consistent with other relevant evidence that may be available.

The apparent absence of any concerted effort to gather and synthesize empirical evidence—or, in many cases, even anecdotal evidence—to support the claim that shareholder value is supported ISS's proxy voting policies is particularly concerning. As ISS is undoubtedly aware, under ERISA, fiduciaries of retirement plans are required to vote solely on the basis of furthering the plan's and its beneficiaries' economic interests.¹ Thus, logic dictates that proxy advisory firms that furnish proxy voting advice to pension funds can only provide proxy voting advice and voting recommendations that are based on an analysis of evidence demonstrating an actual, economic basis for such recommendations. However, ISS does not provide any basis to conclude that its voting policies are based on or supported by evidence

¹ Proxy-Voting May Not be Solely for the Economic Benefit of Retirement Plans. Report No. 09-11-001-12-121 (March 31, 2011). Available at: <http://www.oig.dol.gov/public/reports/oa/2011/09-11-001-12-121.pdf>

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showing that such policies advance shareholders' economic interests. As such, we respectfully request that ISS's finalized 2012 policies be amended to include a description of the evidence and analysis thereof showing that ISS's voting recommendations and the policies upon which they are based advance clients' economic interests, and that shareholders' economic interest is ISS's sole consideration.

Following is a discussion of ISS's 2012 draft policies.

Proxy Access Proposals

ISS's draft policy on proxy access proposals is identified as a case-by-case policy which considers four factors, among "additional factors", including the proponent's rationale for the proposal at the targeted company; the ownership thresholds proposed in the resolution (e.g., percentage and duration); the maximum number of directors that shareholders may nominate each year; and the method of determining which nominations should appear on the ballot if multiple shareholders submit nominations. These "core" factors are so vague that they provide no useful guidance as to how ISS would propose to interpret and apply them to individual companies. For instance, ISS's draft policy does not indicate what underlying investment goals will be considered in evaluating percentage ownership and ownership duration, leaving the public guessing, with little to no guidance, as to what percentage ownership and ownership duration might be considered by ISS to be permissible in any given situation. This issue could have huge implications for companies, as percentage ownership and duration thresholds that are too low could result in abuse by short-term or narrowly interested shareholders at the expense of the majority of long-term shareholders.

Nor is there any reference in the draft policy as to what is, or should be, the central concern of shareholders: appropriate processes to determine that the nominating group does not have a conflict of interest that prevents the nominee(s) from representing other constituencies or other interests that are not in the interests of shareholders at large.

With regard to the “additional factors” that ISS says may be considered, there is no guidance as to what they may be, or at least the general principles on which they might be based. Once any additional factors are formulated, will they be applied uniformly across all companies, or applied only to one or more individual companies? If the former, will they be disclosed once formulated? If the latter, will they be discussed in the report that accompanies the ISS voting recommendation? What person or committee will make these decisions? How do these additional factors affect shareholder value?

This sort of “on-the-fly” policymaking does not go through the “rigorous” policy formulation process to which ISS claims to adhere, nor can it be based on a thorough review of empirical evidence supporting the contention that it increases shareholder value. While we would support a “principles based” approach that makes case-by-case determinations, based on a diligent and transparent analysis of each company and its governance, we do not read the proposed policy to suggest that ISS intends to apply anything other than a “one-size-fits-all” guideline, reserving the right to recommend against its own guidelines based on a set of undisclosed criteria, as determined by undisclosed persons. We appreciate that the latter observation may not be accurate, but—if it is inaccurate—we strongly urge that ISS disclose and describe the process for making case-by-case determinations, including the diligence it plans to conduct of individual companies and industries.

As part of ISS’s own operations, ISS frequently takes the position that it cannot rely on any statement by the issuer unless the statement is included in the proxy materials. Our comment here is along the same lines—we urge that ISS disclose its processes in full both in its policy materials, but also as appropriate in its voting recommendation reports. If ISS includes such further detail in its draft proposals, we believe that it will also receive more relevant and useful comments from companies and investors alike.

Hydraulic Fracturing Proposals

ISS is considering a new policy that supports greater disclosure of a company’s hydraulic fracturing operations and practices. Given the wide availability of information on companies’ hydraulic fracturing policies, described below, voting

recommendations on these issues should continue to be considered on a case-by-case basis, and only upon a finding, based on a solid evidentiary foundation, that shareholder value would be enhanced by disclosure beyond what is already publicly available.

Given hydraulic fracturing's growing prominence over the past five years, the industry's disclosure practices have evolved considerably. The U.S. Chamber supports greater public understanding of this vital technology, and in cooperation with the state regulators, the industry has adopted standards that ensure the public, as well as regulators, are properly informed. Piling on additional reporting requirements would be duplicative and add new operating costs that would be an unnecessary waste of stockholder money.

Hydraulic fracturing has been used to safely complete more than 1.4 million wells in the United States over the past 60 years. Employment of hydraulic fracturing technology to produce natural gas and other hydrocarbons has transformed America's energy landscape by significantly increasing domestic production, thereby improving our energy security and generating billions of dollars of economic output and hundreds of thousands of jobs. Additionally, hydraulic fracturing has lessened the impact of oil and natural gas production by reducing the number of wells necessary to produce even greater quantities, thereby reducing the amount of waste volumes, emissions, and surface disturbance. Moreover, after years of analysis, the U.S. Environmental Protection Agency has not identified a single instance where hydraulic fracturing has affected groundwater.

Since its inception, the process of hydraulic fracturing has been highly regulated by the various states, which assess the specific geologic and environmental considerations in their respective jurisdictions. Well location, design, construction, drilling, completion, and operations are all regulated through well permitting programs by experienced state oil and gas agencies familiar with local conditions. In 2009, the Groundwater Protection Council surveyed the regulatory frameworks of 27 states, representing more than 99.9 percent of U.S. oil and natural gas production, and concluded that "state regulations are adequately designed to directly protect water resources."

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In April, 2011, FracFocus, a hydraulic fracturing public disclosure portal was launched as a joint project of the Ground Water Protection Council, representing state groundwater regulators, and the Interstate Oil and Gas Compact Commission, a multi-state government agency that works to ensure the nation's oil and natural gas resources are conserved and maximized while protecting health, safety and the environment. The goal of FracFocus is “to provide the public with objective information on hydraulic fracturing, the chemicals used, the purposes they serve and the means by which groundwater is protected.” The site allows the public to see what chemicals are being used in well sites near their property. Since its launch seven months ago, several of the largest producing states have mandated disclosure on FracFocus for all producers permitted in their respective states, and more are actively considering it.

Additionally, the American Petroleum Institute has produced guidance on well construction and integrity for wells that will be hydraulically fractured, and has developed guidance on industry best practices to further reduce environmental impacts associated with the use, management, treatment, and disposal of water and other fluids used in hydraulic fracturing.

Accordingly, we believe the amount and quality of information regarding companies' hydraulic fracturing operations and practices are robust, widely available, and highly regulated by the respective states, and industry-led efforts are continually making industry disclosure practices even more comprehensive. Therefore, we urge ISS to consider all available sources of public information in evaluating companies' hydraulic fracturing operations and practices, and not support measures that needlessly waste shareholder resources.

Evaluation of Executive Pay (Management Say-on-Pay)

We are concerned that the policy's new emphasis on “absolute alignment”, or alignment between CEO pay and Total Shareholder Return over the previous five-year period may be seriously misleading without significant actual diligence on each company involved. We appreciate that it may be relatively inexpensive and “easy” to look at a single trend graph and stop there, avoiding all of the underlying complexity that would have to be understood and analyzed if ISS conducted actual due diligence

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of individual companies and their industries in support of its voting policies and recommendations. However, we cannot see any justification for reliance on one or two individual trend graphs as both the beginning and end of any diligent or meaningful analysis.

These measurements should be recognized for what they are—mere analytical tools that if properly used can contribute to a more thorough research and analysis effort that takes into account the history of the company, its industry, and other developments over the relevant period that impact industries and individual companies. There are a countless events and conditions that can impact a company in five years.

More specifically with regard to ISS's initial quantitative test used to measure a company's "relative alignment" with a peer group selected on the basis of market cap, revenue (or assets for financial firms), and GICS industry peer group, we renew our concern that ISS's mechanical approach to creating peer groups often results in companies being evaluated against a peer group of companies that lacks meaningful resemblance to the company's business, and other characteristics that may be unique to individual companies. Because of the high importance of the ISS-generated peer group to the ultimate outcome of a company's say-on-pay vote, the Chamber requests that ISS provide all companies in its research universe, upon request, with an advance list of peers that ISS plans to use in its evaluation of executive pay. Further, companies should be afforded a reasonable opportunity to bring to your attention companies that should not be included, and the reasons for that view.

The draft policy also notes that "Peer Alignment and Absolute Alignment may be weighted 50/50 in this portion of the analysis. Companies that demonstrate strong or satisfactory alignment will generally receive a positive recommendation (*in the absence of other pay-related issues*)". The portion of the policy quoted above refers to a situation in which a company's pay has been determined to be aligned, and yet may still result in an adverse vote recommendation based on "other pay-related issues. It seems inconsistent that compensation, which has been determined to be "strongly or satisfactorily" aligned with both the company's long-term performance and the company's peer group, should still receive an adverse vote recommendation.

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We request that ISS remove the reference to “other pay-related issues” so that compensation which has been determined to be strongly or satisfactorily aligned with both the company’s long-term performance and the company’s peer group should receive a positive recommendation. At a minimum, if ISS does not remove the reference to “other pay-related issues” from its draft policy, it should describe the process it intends to apply in exercising its discretion in finding “other pay-related issues,” along the lines noted above under “Proxy Access Proposals.” In our view, the language merely underscores the chief complaint about ISS’s voting policies—that such vague policy description supports what often appears to outside observers to be unguided discretion on the part of unnamed ISS employees to make recommendations without objective, transparent criteria or evidentiary support.

Board Response to Management Say-On-Pay Vote

ISS’s draft policy on Board Response to Management Say-On-Pay is identified as a “CASE-BY-CASE” policy that will take into account seven factors. However, the draft policy fails to identify how those factors are weighted in arriving at a voting decision. The draft policy also does not indicate whether certain factors will, independently of any other factors, be determinative of the vote recommendation. Given a lack of transparency in their application, the ambiguity of these draft policies makes it difficult if not impossible for companies to determine whether they are in compliance with ISS’s policies.

Board Response to Management Say-On-Pay Frequency Vote

Given ISS’s business interest in more frequent say-on-pay votes, and ISS’s blanket policy of recommending annual say-on-pay, we find it surprising that ISS’s draft policy (and current policy on recommending annual say-on-pay) is not accompanied by any description of research or other evidence to demonstrate that more frequent say-on-pay votes is linked to increased shareholder value. Nor apparently is there any plan to obtain such evidence based on what is now a substantial record of such votes. In fact, given that many companies’ long-term compensation plans are designed on a three-year cycle, we believe that a triennial say-on-pay would be appropriate for many companies so that shareholders’ say-on-pay votes would be informed by a full compensation cycle.

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ISS's own preliminary postseason report seems to refute the oft-made but unsupported assertion that more frequent say-on-pay voting is in shareholders' interests: "As of June 30, investors had defied management recommendations for triennial votes at 564 of 978 companies, according to ISS data." Therefore, according to ISS data, shareholders approved triennial say-on-pay at 42% of companies that recommended triennial votes, despite ISS's blanket policy of recommending annual votes. It is likely that an even larger proportion of votes would have supported less frequent say-on-pay if ISS had shown some flexibility in its approach to say-on-pay frequency votes by attempting to reflect actual shareholder preferences as compared to a one-year "one size fits all" approach.

Equity Plans Related to Section 162(m)

ISS should not stray from its current practice of generally supporting equity plan proposals for the first time if the purpose of the vote is to qualify for favorable tax treatment under the provisions of Section 162(m). Deductibility of equity awards is a valuable and measurable benefit that should be fully realized by companies and their shareholders. Given the known and quantifiable value of the benefit to shareholders of approval of these proposals, recommendations against their approval are only appropriate in cases where it can be demonstrated that a quantifiable or evidentiary harm to shareholders of disapproving these proposals outweighs the known and quantifiable benefits of approval.

Thank you for the opportunity to comment on ISS's 2012 draft policies. I look forward to a continued dialog on these issues and other issues important to the issuer community.

Sincerely,

A handwritten signature in black ink that reads "David Hirschmann". The signature is written in a cursive, slightly slanted style.

David Hirschmann