

December 7, 2010

Alert

SEC Disclosure and Corporate Governance

Required Reading: **ISS Issues Policy Updates for 2011 Proxy Season**

Addresses New Dodd-Frank Advisory Votes

On November 19, 2010, Institutional Shareholder Services Inc. (ISS) issued updates to its proxy voting policies applicable to shareholder meetings held on or after February 1, 2011. This Alert summarizes and discusses implications of those updates for US companies. The ISS proxy voting guidelines and the new updates are available at <http://www.issgovernance.com/policy>.

ISS is generally considered the most influential proxy advisor in the US. A recent study found that a negative ISS recommendation in uncontested director elections is correlated with a 20.3% drop in favorable votes by shareholders, a far higher percentage than that of any other proxy advisor.¹ Other studies have found that ISS is able to influence shareholder votes by 6% to 19%.² For 2011, ISS has identified over 50 circumstances that may cause it to make a negative vote recommendation in uncontested director elections. A summary of these circumstances is included in Appendix A.

While most of the ISS policy changes this year reflect a stiffening of policies related to compensation and governance matters, ISS did not adopt a proposed change to its policy on shareholder proposals seeking an independent chairman. The proposed change would have required companies to show “compelling company-specific circumstances that challenge the efficacy of appointing an independent chair” in order to avoid ISS’ support for an independent chair proposal. The proposal was not adopted in this year’s policy updates because of extensive comments against this change.

In preparing for 2011 annual meetings, corporate counsel, corporate secretaries, and directors (particularly those serving on compensation or nominating and governance committees) should review the ISS policy updates and consider how the changes may affect ISS’ evaluation of director re-elections, executive compensation matters, and other shareholder proposals.

Summary of Key Changes for the 2011 Proxy Season

1. New Policy on Say-on-Pay Frequency

Under a new policy, ISS will recommend that shareholders vote in favor of companies presenting a say-on-pay vote opportunity annually rather than every two or three years.

Discussion: New Section 14A of the Securities Exchange Act of 1934, added by Section 951 of the Dodd-Frank Act, requires companies to conduct a separate shareholder advisory vote on executive compensation, as disclosed pursuant to Item 402 of Regulation S-K. This is referred to as the “say-on-pay” vote. Section 14A also requires companies to conduct a separate shareholder advisory vote on how often (every one, two, or three years) to conduct the “say-on-pay” vote.

ISS’ new policy recommends voting for annual say-on-pay votes, instead of biennial or triennial say-on-pay votes. Some companies may have compelling reasons for a biennial or triennial say-on-pay vote. For example, a biennial or triennial vote may be more appropriate for companies with multi-year compensation programs.

Implications: Those companies that believe an annual say-on-pay vote is not appropriate for them should consider conducting outreach with their large institutional shareholders in addition to explaining in proxy materials why a biennial or triennial vote is best for their circumstances. Expect ISS to view in a negative light failure by a board to abide by a clear mandate from shareholders on the frequency of the say-on-pay advisory vote.

2. *New Policy on Golden Parachute Advisory Votes*

A new policy outlines the factors that ISS will consider in evaluating golden parachute compensation arrangements in merger and acquisition transactions.

Discussion: New Section 14A also requires companies soliciting approval of merger or acquisition transactions to disclose certain golden parachute arrangements and, in certain circumstances, to provide a separate shareholder advisory vote on the golden parachute arrangements.

The new policy will evaluate golden parachute arrangements on a case-by-case basis, consistent with ISS’ policies on problematic pay practices related to severance. ISS is particularly concerned about severance packages that it believes “provide inappropriate windfalls” especially through tax gross-ups. The features of a golden parachute arrangement that may lead ISS to make a negative vote recommendation include:

- excise tax gross-up provisions;
- “modified single” trigger payments;
- single trigger payments that happen immediately upon a change in control (including cash payments and acceleration of performance-based equity when the performance measures were not achieved);
- single trigger vesting of equity where the “change in control” definition only requires shareholder approval (rather than consummation);
- potentially excessive severance;
- arrangements that are so attractive as to influence change in control transactions that may not be in the best interests of shareholders; and
- the company’s assertion that a proposed transaction is conditioned on shareholder approval of the golden parachute arrangement through the advisory vote.

Implications: Golden parachute arrangements that have any of the features described above are more likely to receive a negative vote recommendation from ISS, although it remains to be seen

whether such a recommendation will affect voting on the transaction itself. Additionally, when the golden parachute arrangements are included in the company's disclosure for the say-on-pay advisory vote, ISS will apply the new guidelines when evaluating that say-on-pay proposal and may give more weight to the golden parachute component in making its overall say-on-pay vote recommendation. This may discourage companies from including enhanced golden parachute disclosures in proxy statements that are subject to an say-on-pay advisory vote.

3. Revised Policy on “Problematic Pay Practices:” Applies to Say-on-Pay Advisory Vote

Under its revised policy, ISS has shortened the list of what it considers the “most egregious” pay practices, but will no longer accept future commitments to remedy problematic pay practices to prevent or reverse a negative vote recommendation.

Discussion: ISS' policy regarding problematic pay practices can affect its vote recommendations on management say-on-pay proposals, re-election of compensation committee members (or the entire board in certain circumstances), and equity incentive plans. The pay practices deemed most egregious that thus may alone warrant negative vote recommendations are:

- repricing or replacing of underwater stock options/SARs without prior shareholder approval (including cash buyouts and voluntary surrender of underwater options);
- excessive perquisites or tax gross-ups, including any gross-up related to a secular trust or restricted stock vesting; and
- new or extended agreements that provide for:
 - change in control payments exceeding three times base salary plus bonus;
 - change in control severance payments without involuntary job loss or substantial diminution of duties (“single” or “modified single” triggers); and
 - change in control payments with excise tax gross-ups (including “modified” gross-ups).

ISS will no longer accept a promise by the company to remedy these and other problematic pay practices in the future in order to alter a negative vote recommendation. ISS may, however, still consider promises to remedy practices involving pay-for-performance, burn rates, and certain modifications to equity plans.

The problematic pay practices removed from the list of the most egregious practices will now be evaluated on a “more holistic basis” and must be justified in certain circumstances. These items include: multi-year guarantees for compensation increases, including additional years of unworked service that result in significant benefits, perquisites for retired executives, extraordinary relocation benefits for current executives, dividends on unvested performance shares, and executives holding hedged company stock (e.g., through forward sales, cashless collars). The items remain, however, in the compensation FAQ that details specific pay practices that ISS has identified as potentially problematic (the current version is available at http://www.issgovernance.com/policy/2010_compensation_FAQ).

Implications: ISS' policy on problematic pay practices, including the most egregious practices highlighted in this policy update, will be at the center of ISS' recommendations on say-on-pay votes

and also may also affect vote recommendations on the re-election of compensation committee members and equity plan proposals. Compensation committees and HR professionals should determine whether any compensation practices may be “problematic” under the revised ISS policy and consider the desirability of making adjustments to the practices, or engaging with ISS to explain the practices.

4. *Revised Policy on Directors with Attendance Below 75%*

ISS has revised its attendance policy by narrowing the reasons that will excuse director failures to achieve a 75% attendance record so as to avoid a negative vote recommendation. The revised policy also removes the private disclosure option for explaining absences.

Discussion: Until now it has been ISS’ policy to recommend that, in an uncontested election, shareholders vote against or withhold a vote for directors who attended fewer than 75% of board and committee meetings without a valid excuse. Valid excuses included items such as illness, service to the nation, work on behalf of the company, or funeral obligations. ISS would evaluate the reasons for attendance failures on a “case-by-case” basis if the company provided “meaningful public or private disclosure explaining the director’s absences.”

Under the revised policy, ISS will continue its negative vote recommendation for directors who attend fewer than 75% of the board and committee meetings, but will extend the policy to cover cases where disclosure is insufficient to determine whether a director attended at least 75% of the meetings. The revised policy also will generally limit the acceptable reasons for director attendance failures to situations involving medical issues/illness or family emergencies, or circumstances in which the director only missed one meeting, but that one meeting accounted for more than 25% of the total meetings for that director. Moreover, ISS will not excuse an absence unless the reason for the absence is publicly disclosed.

Implications: Directors and corporate secretaries should carefully track attendance and the reasons for any missed meetings, taking special notice of the 75% attendance threshold when special board or committee meetings are called on short notice due to acquisitions or similar fast-paced board activity. They should also be aware that only publicly disclosed reasons to excuse absences will be considered. The new policy may put directors in the position of having to decide whether to publicly reveal potentially sensitive personal information about medical issues or family emergencies that led to missed meetings, or risk a negative vote recommendation from ISS. The proxy statement should be drafted with care to ensure that it is clear whether the directors attended the requisite number of meetings.

5. *Revised Policy on Boards that Fail to Act on Majority-Supported Shareholder Proposals*

Under its revised policy, ISS will recommend that shareholders vote against or withhold votes for an entire board when the board fails to act on a shareholder proposal that received approval by a majority of votes cast twice within three years.

Discussion: Previously ISS would recommend a negative vote for an entire board if the board failed to act on a shareholder proposal that received approval of either (1) the majority of shares outstanding the previous year, or (2) the majority of shares cast for the previous two consecutive years. The second prong of this test allowed shareholder proposals that were not voted on in

consecutive years to escape evaluation under the “majority of shares cast” rule. ISS has now revised the second prong of the test to look back an additional year to capture proposals that received approval of the majority of shares cast for two out of the last three years. The revised policy focuses on consecutive voting opportunities rather than consecutive years.

Implications: Shareholder proposals that did not receive approval of the majority of shares outstanding in the previous year but did receive approval of the majority of shares cast in two of the previous three years will now be covered under this policy. Boards that do not act on these proposals may receive negative vote recommendations from ISS.

6. Revised Application of Benchmark Policies for “Redomesticated” Domestic Issuers

ISS will now apply its US benchmark policies to companies that are incorporated outside the US but file proxy statements, 10-K annual reports, and 10-Q quarterly reports, and thus are considered domestic issuers by the SEC.

Discussion: Companies that “redomesticated” outside the US, but maintained US exchange listings, US disclosure practices, and US corporate governance practices found themselves evaluated by ISS under non-US company benchmark policies. A large majority of investors and companies responding to an ISS survey on this issue favored applying ISS’ US benchmark policies to companies that are organized outside the US when the company is considered a domestic issuer by the SEC, is listed primarily on a US exchange (not via an ADR), and has a corporate governance structure consistent with US practice.

Implications: Approximately 74 non-US companies will now be evaluated under ISS’ US benchmarking policies. In the future, US companies that redomesticate outside the US but continue to be considered domestic issuers will likely continue to be evaluated under ISS’ US benchmark policies.

7. Revised Policy on Increasing Authorized Stock

ISS has revised its policy to clarify the circumstances in which proposals to increase the number of authorized shares will be supported or rejected, and has revised the factors that will be considered when proposals are evaluated on a case-by-case basis.

Discussion: Under the revised policy, ISS will recommend that shareholders vote for proposals to increase the number of authorized shares where the primary purpose of the increase is to issue shares in connection with a transaction on the same ballot that ISS also supports.

ISS will continue to recommend against proposals to increase the number of authorized shares that have superior voting rights and will now also do so when there is also a supported proposal for a reverse stock split on the same ballot.

The revised policy continues to recommend evaluating proposals to increase the authorized shares for other purposes on a case-by-case basis. However, “one and three year total shareholder return” and “board governance structure and practices” have been removed from the list of company specific factors, and the following items have been added: disclosure in the proxy statement of the specific purposes of the proposed increase, disclosure of the risks to shareholders of not approving the proposal, and whether, in the case of preferred shares, the shares requested are blank check preferred

shares that can be used for anti-takeover purposes. Additionally the factor that considered dilutive impact by using ISS' quantitative model that calculated a cap on the allowable increase, was replaced with a cap that generally considers the company's need for shares and total shareholder return and favors increases of 100% or less of existing authorized shares. ISS plans to issue additional details on the new methodology in an upcoming FAQ.

Implications: Companies proposing to increase their authorized shares should consider including disclosure on the uses of the new shares and the risks of non-approval (such as inability to meet capital ratio requirements or going concern issues).

8. Revised Policy on Reverse Stock Splits

ISS has revised its policy to clarify under what circumstances proposals to implement non-proportionate reverse stock splits may be supported.

Discussion: Under the revised policy, ISS will no longer support all management proposals to implement a reverse stock split to avoid delisting. ISS will support proportional reductions, but will recommend a vote against non-proportionate reverse stock splits, unless:

- a stock exchange has provided notice to the company of a potential delisting; or
- the increase in authorized shares consistent with ISS' policy regarding increases in authorized common stock (described above).

This change reflects ISS' position that shareholders should only vote for non-proportionate reverse stock splits in the most dire of situations, with potential delisting documented in the proxy statement.

Implications: ISS will now only support non-proportionate reverse stock splits when actual notice of potential delisting has been received from the exchange.

9. Revised Policy on Proposals Seeking Shareholder Ability to Act by Written Consent

ISS' policy to generally recommend in favor of proposals that provide shareholders with the ability to act by written consent has been revised to consider such proposals on a case-by-case basis if the company has certain recommended governance practices and takeover defenses in place.

Discussion: The new policy will evaluate shareholder proposals on a case-by-case basis if the company has the following governance and antitakeover provisions:

- an "unfettered" right for shareholders to call special meetings at a 10% threshold;
- a majority vote standard in uncontested director elections;
- no non-shareholder-approved pill; and
- an annually elected board.

The stated rationale for this change is that the potential risk of abuse associated with the right to act by written consent may outweigh its benefits to shareholders in certain, typically hostile, circumstances. Thus, ISS will undertake a more "holistic evaluation" of a company's governance practices and takeover defenses when evaluating proposals to provide the ability for shareholders to act by written consent. Although, to gain the benefit of this policy revision companies would have to implement an "unfettered" right for shareholders to call a special meeting at a 10% threshold, where

“unfettered” means “no restrictions on agenda items, no restrictions on the number of shareholders who can group together to reach the 10% threshold, and only reasonable limits on when a meeting can be called.”

Implications: Companies facing shareholder proposals requesting shareholders’ ability to act by written consent may consider implementing the suggested governance and antitakeover provisions.

10. Revised Policy on Voting against Certain Amendments and Poison Pills to Protect NOLs

The revised policy recommends against management proposals to adopt a protective charter or bylaw amendment or poison pill for the purpose of protecting NOLs if the effective term of the protective amendment or pill would exceed three years or the exhaustion of the NOL. ISS believes that given the low ownership thresholds typically involved, shareholders want to ensure that such an amendment or pill does not remain in effect permanently.

11. Revised Policy on Voting against Equity Compensation Plans when Company Exceeds Burn Rates

The policy to vote against equity plans that exceed certain burn rates was revised to minimize the year-to-year changes possible in burn rate caps in order to compensate for recent market volatility. The year-over-year burn rate cap changes will be limited to a maximum of +/-2% of the prior year’s burn rate cap. ISS will publish an updated burn rate calculation table in its 2011 Summary Guidelines, to be released in December 2010.

What You Should Do Now

ISS typically provides companies that are in the S&P 500 with prior warning if it intends to issue a negative vote recommendation. Companies then have a very narrow time window (48 hours) in which to engage with ISS on the issue. Companies that are not in the S&P 500 generally do not receive such prior warning. We encourage all companies to become familiar with the circumstances in which ISS may recommend a negative vote regarding director re-election (set forth in Appendix A), or on other proposals that may be included in their proxy statement. Companies may also wish to contact their analyst at ISS in anticipation of or shortly after proxy statement filing to talk through any issues that could cause ISS to issue a negative vote recommendation. In March 2010, ISS issued revised guidelines with respect to engaging with ISS on proxy voting matters, which are available at <http://www.issgovernance.com/policy/EngagingWithISS>.

* * *

If you have any questions on these matters, please do not hesitate to speak to your regular contact at Weil, Gotshal & Manges LLP or to any member of the Firm's Public Company Advisory Group:

Howard B. Dicker	howard.dicker@weil.com	212-310-8858
Catherine T. Dixon	cathy.dixon@weil.com	202-682-7147
Holly J. Gregory	holly.gregory@weil.com	212-310-8038
P.J. Himelfarb	pj.himelfarb@weil.com	202-682-7197
Robert L. Messineo	robert.messineo@weil.com	212-310-8835
Ellen J. Odoner	ellen.odoner@weil.com	212-310-8438

Matthew Elkin, an associate in Weil's Corporate Department, assisted in the preparation of this Alert.

ENDNOTES

¹ Stephen Choi, Jill Fisch & Marcel Kahan, The Power of Proxy Advisors: Myth or Reality?, 59 *Emory L.J.* 869, 886-887 (2010).

² Choi, Fisch & Kahan at 906 (concluding ISS influences shareholder votes by 6% to 13%), and Jie Cai, Jacqueline L. Garner & Ralph A. Walkling, Electing Directors, 64 *J. Fin.* 2389, 2404 (2009) (concluding ISS influences shareholder votes by 19%).

©2010 Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153, (212) 310-8000, <http://www.weil.com> ©2010. All rights reserved. Quotation with attribution is permitted. This publication provides general information and should not be used or taken as legal advice for specific situations, which depend on the evaluation of precise factual circumstances. The views expressed in this publication reflect those of the authors and not necessarily the views of Weil, Gotshal & Manges LLP. If you would like to add a colleague to our mailing list or if you need to change or remove your name from our mailing list, please log on to <http://www.weil.com/weil/subscribe.html> or email subscriptions@weil.com.

Appendix A

Circumstances in Which ISS Will Make a Negative Vote Recommendation in Uncontested Director Elections in 2011

Individual Directors

ISS will recommend a negative vote (“against” or “withhold”) for an individual director who:

- Attends less than 75% of board and committee meetings (or missed more than one meeting, if the director’s total service was three or fewer meetings) unless due to medical issues or family emergencies. The reason for such absence must be disclosed in the proxy statement or other SEC filing
- Sits on more than six public company boards
- Is CEO of a public company who sits on boards of more than two public companies besides his or her own (the negative vote recommendation will apply only to elections for the outside boards)
- Is responsible for a material failure of governance, stewardship, or fiduciary responsibilities at the company
- Has engaged in egregious actions related to service on other boards that raise substantial doubt about his or her ability to effectively oversee management and serve the best interests of shareholders at any company

ISS may recommend a negative vote for a director who is the company’s CEO if the company has problematic pay practices (see below).

Entire Board

ISS will recommend a negative vote for all directors (except for new nominees, who will be considered on a “case-by-case” basis) if:

- The company’s proxy statement indicates that one or more directors failed to attend 75% of board and committee meetings but the names of the directors involved are not disclosed
- The board failed to act on a shareholder proposal that received approval by a majority of shares outstanding the previous year (a management proposal related to the subject matter of the prior shareholder proposal with other than a “for” recommendation by management will be considered a failure to act)
- The board failed to act on a shareholder proposal that received approval by a majority of votes cast in the last year and one of the two previous years (a management proposal related to the subject matter of the prior shareholder proposal with other than a “for” recommendation by management will be considered a failure to act)
- The board failed to act on takeover offers where a majority of shareholders tendered their shares
- At the previous board election, any director received more than 50% negative votes of the votes cast and the company failed to address the underlying issue(s) that caused the high negative votes

- The board is classified and a continuing director responsible for a problematic governance issue at the board/committee level that would warrant a negative vote recommendation is not up for election (ISS may hold any or all appropriate nominees, except new nominees, accountable)
- The board lacks accountability and oversight, coupled with sustained poor performance relative to peers (measured by one-year and three-year total shareholder returns in the bottom half of a Russell 3000 company's four-digit Global Industry Classification Group). Problematic provisions include a classified board structure, a supermajority vote requirement, a majority vote standard for director elections with no carve-out for contested elections, inability of shareholders to call special meetings or act by written consent, a dual-class structure, and/or a non-shareholder approved poison pill. In addition, ISS will assess the CEO's pay relative to the company's total shareholder returns over a time horizon of at least five years
- The company has problematic pay practices (see below)
- There have been material failures of governance, stewardship, or fiduciary responsibilities at the company
- The board failed to replace management (as appropriate)
- A poison pill has a dead-hand or modified dead-hand feature. A negative vote recommendation will be made every year until the feature is removed
- The board adopts a poison pill with a term of more than 12 months or renews any existing pill (including a pill with a term of 12 months or less) without shareholder approval. A commitment or policy that puts a newly adopted pill to a binding shareholder vote may potentially offset a negative vote recommendation
- The company maintains a poison pill that was not approved by shareholders. ISS will review annually for companies with classified boards and at least once every three years for companies with declassified boards
- The board makes a "material adverse change" to an existing poison pill without shareholder approval

ISS will consider the full board on a "case-by-case" basis if the board adopts a poison pill with a term of 12 months or less without shareholder approval, taking into account the following factors:

- The date of the pill's adoption relative to the date of the next meeting of shareholders (whether the company had time to put the pill on the ballot for shareholder ratification given the circumstances)
- The company's rationale
- The company's governance structure and practices
- The company's track record of accountability to shareholders

ISS will consider the full board on a "case-by-case" basis if poor accounting practices rising to a level of serious concern (such as fraud, misapplication of GAAP, and material weaknesses identified in Section 404 disclosures) are identified. ISS has stated that it will examine the severity, breadth, chronological sequence, duration, and the company's efforts at remediation or corrective actions.

Inside Directors and Affiliated Outside Directors

ISS will recommend a negative vote for inside directors and affiliated outside directors when:

- An inside or affiliated outside director serves on the audit, compensation, or nominating committee
- The company lacks an audit, compensation, or nominating committee so that the full board functions as that committee
- The company lacks a formal nominating committee (even if the board attests that independent directors fulfill the functions of such a committee)
- The full board is less than majority independent

Audit Committee Members

ISS will recommend a negative vote for audit committee members if:

- Non-audit fees paid to the auditor are excessive (e.g., non-audit fees are greater than audit fees plus audit-related fees plus tax compliance/preparation fees)
- The company receives an adverse opinion on its financial statements from its auditor
- There is persuasive evidence that the audit committee entered into an inappropriate indemnification agreement with its auditor that limits the ability of the company or its shareholders to pursue legitimate legal recourse against the audit firm

ISS will consider the audit committee members on a “case-by-case” basis if poor accounting practices, which rise to a level of serious concern (such as fraud, misapplication of GAAP, and material weaknesses identified in Section 404 disclosures) are identified. ISS has stated that it will examine the severity, breadth, chronological sequence, duration, and the company’s efforts at remediation or corrective actions.

Compensation Committee Members

ISS will recommend negative votes for compensation committee members (and potentially the full board) if:

- There is a negative correlation between CEO pay and company performance -- particularly for companies that have underperformed their peers over a sustained period
- The company fails to submit one-time transfers of stock options to a shareholder vote
- The company fails to fulfill terms of a burn rate commitment made to shareholders
- The company has “problematic pay practices.” ISS’ policy regarding problematic pay practices relates to its vote recommendations on re-election of compensation committee members as well as its recommendations on management say-on-pay proposals and equity incentive plans. Pay practices deemed “most egregious” that by themselves may result in negative vote recommendations include:
 - Repricing or replacing of underwater stock options/SARS without prior shareholder approval (including cash buyouts and voluntary surrender of underwater options);
 - Excessive perquisites or tax gross-ups, including any gross-up related to a secular trust or restricted stock vesting; and

- New or extended agreements that provide for:
 - change in control payments exceeding three times base salary plus bonus;
 - change in control severance payments without involuntary job loss or substantial diminution of duties (“single” or “modified single” triggers); and
 - change in control payments with excise tax gross-ups (including “modified” gross-ups).
- Pay elements that are not directly based on performance are generally considered on a “case-by-case” basis considering the context of the company’s overall pay program and demonstrated pay-for-performance philosophy.
- Specific pay practices that ISS has identified as “potentially problematic” with potential for a negative vote recommendation include:
 - Egregious employment contracts (contracts containing multi-year guarantees for salary increases, non-performance based bonuses, and equity compensation)
 - New CEO with an overly generous new-hire package (excessive “make whole” provisions without sufficient rationale or any problematic pay practices)
 - Abnormally large bonus payouts without justifiable performance linkage or proper disclosure (includes performance metrics that are changed, canceled, or replaced during the performance period without adequate explanation of the action and the link to performance)
 - Egregious pension/supplemental executive retirement plan payouts (inclusion of additional years of service not worked that result in significant benefits provided in new arrangements or inclusion of performance-based equity awards in the pension calculation)
 - Dividends or dividend equivalents paid on unvested performance shares or units
 - Executives using company stock in hedging activities, such as “cashless” collars, forward sales, equity swaps, or other similar arrangements
 - Excessive severance and/or change in control provisions (payments upon an executive’s termination in connection with performance failure or a liberal “change in control” definition in individual contracts or equity plans which could result in payments to executives without an actual change in control occurring)
 - Reimbursement of income taxes on certain executive perquisites or other payments (e.g., personal use of corporate aircraft, executive life insurance, bonus, etc; see also excise tax gross-ups above)
 - Overly generous perquisites, including personal use of corporate aircraft, personal security systems maintenance and/or installation, car allowances, executive life insurance
 - Internal pay disparity (excessive differential between CEO total pay and that of next highest-paid named executive officer)
 - Voluntary surrender of underwater options by executive officers (may be viewed as an indirect option repricing/exchange program especially if those cancelled options are returned to the equity plan, as they can be regranted to executive officers at a lower exercise price, and/or the executives subsequently receive unscheduled grants in the future)
 - Other pay practices deemed problematic but not covered in any of the above categories

ISS will also assess company policies and practices related to compensation that could incentivize excessive risk-taking, for example:

- Guaranteed bonuses
- A single performance metric used for short- and long-term plans
- Lucrative severance packages
- High pay opportunities relative to industry peers
- Disproportionate supplemental pensions
- Mega annual equity grants that provide unlimited upside with no downside risk

Factors that potentially mitigate the impact of risky incentives include rigorous clawback provisions and robust stock ownership/holding guidelines.