



Season's Greetings From ISS, 2012 Policy Updates Released

On November 17, 2011, Institutional Shareholder Services ("ISS") released its 2012 US Corporate Governance Policy updates governing how it will formulate voting recommendations on management and shareholder proposals for the upcoming proxy season. The 2012 ISS policy updates, which will apply to companies with shareholder meetings on or after February 1, 2012, cover a variety of compensation and governance-related issues, including, among others, the following:

- Updated methodology for evaluating pay-for-performance alignment in relation to the say-on-pay ("SOP") resolution;
- Board response to high levels of shareholder opposition to prior year SOP resolutions; and
- Evaluation of proxy access proposals.

Evaluation of Pay-for-Performance Alignment

During the 2011 proxy season, which represented the first year of mandated SOP resolutions for all corporate issuers under the Dodd-Frank Act, a key component of ISS' voting formulation process was its evaluation of pay-for-performance alignment, under which ISS examined a company's one- and three-year total return to shareholders ("TRS") levels relative to the median TRS of its four-digit GICS industry group. Generally, if both one- and three-year TRS levels were below the median of the GICS industry group, ISS performed a detailed analysis of the company's pay practices and the correlation of changes in CEO pay levels to annual TRS performance. If ISS identified a material pay-for-performance disconnect, there was a greater likelihood that it would issue an

"Against" recommendation on the SOP resolution.

For the 2012 proxy season, ISS has indicated that it will be modifying its methodology for evaluating pay-for-performance alignment as it relates to the SOP resolution. Specifically, in 2012, ISS' pay-for-performance alignment test will be comprised of the following:

- *Relative Test* — ISS will measure the degree of alignment between a company's TRS rank over the trailing one- and three-year periods (weighted 40%/60%) relative to a peer group comprised of 14-24 companies it selects based on criteria such as equity market capitalization, revenue/asset size and GICS industry group. Furthermore, ISS will additionally examine the multiple of the CEO's total compensation relative to the peer group median to evaluate how CEO pay levels compare to relative TRS performance.
- *Absolute Test* — ISS will evaluate the alignment between the trend in CEO pay and company TRS over the prior five years to analyze the correlation of annual pay changes vs. annualized TRS levels.

In cases where ISS identifies what it deems to be a weak pay-for-performance alignment, ISS will perform a qualitative assessment of such issuer's pay practices (including the ratio of performance-to-time based awards, ratio of performance-based compensation to total compensation, completeness of compensation disclosures, benchmarking practices, use of poor pay practices, etc.), and

Cont'd on page 3

Flash: Executive Succession Planning Back in Focus

With market volatility returning to historically high levels and economic and business conditions continuing to change at a rapid pace, corporate boardrooms are taking a proactive stance to better ensure stability in one area over which they do have more direct control, executive leadership. Specifically, over recent months companies across industries have demonstrated a marked increase in the adoption of formal succession plans in order to ensure smooth transitions in their executive ranks in the event of an anticipated and/or unforeseen executive departure.

Within the REIT industry, in September 2011 Corporate Office Properties Trust announced that long-time CEO Randall Griffin will be retiring as head of the Maryland-based office developer in March 2012 and will be succeeded by current President Roger Waesche, Jr. In connection with the transition, the company also announced that it has appointed Stephen Budorick, formerly head of asset management at Callahan Capital Partners, to serve as its new Chief Operating Officer as part of its efforts to replenish its executive bench. Mr. Griffin will remain a member of the company's board upon his retirement.

Outside of the REIT industry, the fourth quarter of 2011 further saw several Fortune 500 companies likewise announce the adoption of executive succession plans. At media giant Walt Disney Co., the employment agreement of current CEO Robert Iger was extended for five years through June 2016, during which Mr. Iger will continue to hold the position of CEO through March

Cont'd on page 3

SEC Chair Addresses Say-On-Pay, Proxy Plumbing at Recent Conference

On November 2, 2011, the Securities and Exchange Commission (SEC) Chairman Mary Shapiro addressed an executive compensation workshop held by The Corporate Counsel on matters ranging from the SEC's views on the effectiveness of the recently adopted say-on-pay ("SOP") rules to updates on the commission's process of reviewing the US proxy voting system. The conference marked one of Ms. Shapiro's first public comments on SOP since the conclusion of the initial proxy season in which public companies were required to hold non-binding shareholder votes on executive compensation.

First SOP Proxy Season Largely A Success, Shapiro Believes

Ms. Shapiro began her presentation by clarifying that the SEC's interest on executive compensation is "not rooted in any opinion regarding the level of compensation," but rather in ensuring that shareholders "receive the necessary information to make informed judgments on compensation and that they have a vehicle through which they can express that judgment to the board." Accordingly, Ms. Shapiro believes the SOP system introduced through the Dodd-Frank Act has succeeded in leading to such improved communications between companies and shareholders on compensation.

On a prospective basis, Ms. Shapiro further noted that it is her hope that companies who received an "Against" vote from shareholders on the SOP resolution or received a significant level of opposition would reevaluate some of their compensation practices and/or approach to compensation. Specifically, Ms. Shapiro believes companies that received low levels of shareholder support on the SOP resolution should address the following questions:

- 1) Should any compensation policies be altered in response to the vote?
- 2) Has the board's compensation philosophy been clearly articulated to shareholders?
- 3) How should the board engage with shareholders in response to the vote?
- 4) Who should the board consult with in connection with responding to the vote?
- 5) What should the board consider changing about its compensation plans?

Based on the initial series of public filings made to date by companies following SOP votes, Ms. Shapiro expressed satisfaction that it does in fact appear that companies are directly responding to shareholder concerns raised in prior SOP votes.

As to the several pending executive compensation provisions under the Dodd-Frank Act yet to be implemented, which include (i) internal pay equity ratios, (ii) pay-versus-performance disclosures, (iii) compensation clawback policies and (iv) employee and/or director hedging program disclosure requirements, Ms. Shapiro had indicated that she continues to anticipate having the proposed rules for the foregoing provisions released by the end of year or by early 2012. Ms. Shapiro recognized that certain of the forthcoming requirements may potentially be "costly and complicated" for companies to comply with, and the SEC is accordingly being deliberate in drafting the rules to best ensure the requirements are implemented in a practical manner.

"Proxy Plumbing" Review In Progress

On a related note, Ms. Shapiro discussed that the new mandatory SOP vote has heightened concerns amongst corporate issuers on the state of the US proxy voting system itself, which within the investment community is commonly referred to as "proxy plumbing." Previously, in 2010, the SEC had published a "proxy plumbing" concept release intended to generate ideas to address concerns relating to the accuracy, transparency and efficiency of the voting process, including the role of proxy advisory firms such as Institutional Shareholder Services and Glass Lewis and any potential conflicts of interest they may have, and Ms. Shapiro indicated that the SEC expects to provide further guidance as to how to improve the current proxy voting system over the coming months.

Season's Greetings From ISS, 2012 Policy Updates Released *(continued from page 1)*

there will be an increased likelihood that it will issue an "Against" voting recommendation on the SOP resolution.

As a key change in ISS' pay-for-performance alignment evaluation methodology for the 2012 proxy season is a transition from comparing an issuer's relative performance against its GICS industry group to a custom peer group of 14-24 companies, ISS has indicated that in December 2011 it will provide further detail regarding its peer group composition methodology and rationale in order to allow issuers and the investor community to better understand how it will construct comparative peer groups this upcoming proxy season.

Board Response to High Levels of Shareholder Opposition to SOP Resolutions

ISS has further adopted a formal policy on how it will formulate voting recommendations on Compensation Committee members up for election and the SOP resolution at companies that received high levels of opposition to the prior year's SOP vote. Specifically, ISS has indicated that it will determine voting recommendations for Compensation Committee members and the SOP resolution at companies that received less than a 70% support level on the prior year's SOP vote taking into account the following:

- The company's response to the SOP voting result, including:
 - Disclosure of discussions with institutional investors regarding the issues that led to the low level of support;
 - Specific actions taken by the company to address any issues that contributed to the low level of support; and
 - Any other recent compensation actions taken by the company.
- Whether the issues raised are recurring or isolated events;
- Ownership structure of the company; and
- Whether the support level was less than 50%, which would require the highest degree of responsiveness.

Moreover, ISS has stated that, if a company elects to implement a SOP voting frequency in contrast to how shareholders voted on the frequency resolution, it will generally issue an "Against" recommendation on all directors up for election.

Proxy Access Proposals

In September 2011, the US Court of Appeals overturned SEC proxy access rules that would have given minority shareholders increased power to nominate directors to corporate boards. Based on the results of ISS' policy outreach efforts through which several investor groups indicated their intention to submit company-specific proxy access proposals in 2012, ISS has implemented a policy that it will evaluate proxy access proposals on case-by-case basis taking into account a range of company-specific and proposal-specific factors, including (i) the ownership thresholds proposed in the resolution (both in terms of ownership percentage and duration), (ii) maximum proportion of directors that shareholders may nominate each year and (iii) the method of determining which nominations should appear on the ballot if multiple shareholders submit nominations, among others.

Flash: Executive Succession Planning Back in Focus *(continued from page 1)*

2015 and will then transition to serving as Executive Chairman for the remaining fifteen months of the contract term as the day-to-day leadership of the company is assumed by a new CEO. In similar news, retailer Costco Wholesaler Corp. announced that current CEO and company co-founder James Sinegal will be stepping down at the end of the year from the company he helped build into the country's largest warehouse membership chain. Current Chief Operating Officer Craig Jelinek will assume the CEO post effective January 1, 2012, while Mr. Sinegal will remain a member of the company's board.

Under more somber circumstances, technology icon Apple, Inc. recently announced it has taken several steps on its executive front as it transitions to operating without long-time leader and founder Steve Jobs. In the aftermaths of Mr. Jobs' passing, the company appointed then Chief Operating Officer Timothy Cook as its CEO, and shortly thereafter awarded several of its senior executives with stock option and restricted stock unit grants as part of its efforts to retain its senior executive bench. The company believes its recent actions will help Apple to continue to maintain its leadership standing within the technology industry and will better position the company to remain prepared to deal with any potential future unforeseen turnover in its executive ranks.

Compensation and Governance Ticker

Apotheker Out, Whitman In As New Hewlett-Packard Chief. Less than a year after taking the reins as Hewlett-Packard's CEO after the exit of former head Mark Hurd, Leo Apotheker was terminated as the CEO of the company on September 22, 2011. In connection with the termination, Mr. Apotheker received a severance package comprised of a \$7.2 million cash payment and accelerated vesting of approximately 156,000 time-based restricted shares. In place of Mr. Apotheker, the Board of Directors appointed former eBay, Inc. head Meg Whitman as the company's new CEO. Ms. Whitman's initial compensation package is largely performance-based, comprised of (i) a symbolic base salary of \$1 per annum, (ii) a maximum annual cash bonus opportunity of \$6 million and (iii) a sign-on equity grant of 1.9 million stock options, of which approximately 85% will only vest subject to the attainment of performance-based vesting criteria.

SEC Claws Back Compensation Of Former CSKA Auto CEO. On November 17, 2011, the Securities and Exchange Commission (SEC) announced that it would be enacting Sarbanes-Oxley for the second time this year to clawback executive compensation earned during a period of accounting fraud. The SEC announced that Maynard Jenkins, the former Chairman and CEO of CSKA Corporation, would be returning approximately \$3 million of compensation as a result of charges brought against the company for overinflating net income during the 2002-2004 period. Earlier in the year, the SEC had reached a similar agreement with the CFO of Beazer Homes USA Inc. to recoup approximately \$1.4 million related to bonus compensation and stock-sale profits earned amid an accounting fraud scandal that has nagged the homebuilder for the past several years.

Non-Competition Clause Delays Appointment Of Boston Scientific CEO. Medical device maker Boston Scientific Corp. recently announced that it had found a successor to its outgoing CEO Ray Elliot, though the company will have to delay the appointment until late 2012 due to an unusual non-competition agreement. Michael Mahoney, who had been heading competitor Johnson & Johnson's medical devices and diagnostics group, officially joined Boston Scientific in October 2011 as the company's president, though as a precondition to his separation from Johnson & Johnson, Boston Scientific agreed that Mr. Mahoney would not supervise any competing businesses or be appointed CEO until late 2012. In the interim, the head of Boston Scientific's defibrillator business will serve as temporary CEO until Mr. Mahoney is permitted to officially take over as head of the Massachusetts-based company.

GMI Launches Service To Help Fill Board Vacancies. GMI, a provider of corporate governance data and research, has announced the launch of its Diverse Director DataSource ("3D"), a database of potential candidates for Board of Director positions. GMI was commissioned by pension funds California Public Employees' Retirement System (CalPERS) and California State Teachers' Retirement System (CalSTRS) to develop the database, which allows users to search for candidates for openings on corporate and non-profit Boards based upon a series of criteria and skill set.

Department Of Labor Initiates Pay Probe of US Homebuilders. Already facing a continuing challenging residential real estate environment, the homebuilding industry was recently dealt another blow when the US Department of Labor announced that it was initiating an investigation of pay practices at several leading homebuilders. Specifically, the Labor Department revealed it was opening a probe under the Fair Labor Standards Acts, which governs matters such as overtime pay and limits on using teenage workers. Proponents of the pay probe include labor unions that have long complained of the homebuilders' use of non-unionized contractors and subcontractors for a material portion of their construction work, while opponents include industry trade organizations such as the National Association of Homebuilders, which released a statement deeming the recent actions of the Labor Department a demonstration of the "continuation of a pattern of regulatory intrusion by [the current] presidential administration." PulteGroup, Inc., D.R. Horton, Inc. and KB Home are amongst the companies targeted in the investigation.

MFA Global Employees Suffer Further Setback Due To 2010 Pay Plan Change. In addition to the widespread job losses faced by MF Global employees, the brokerage firm's workforce is now realizing it will suffer additional hardship as a result of a

Cont'd on page 5

Compensation and Governance Ticker (continued from page 4)

change in the company's pay program that was enacted in February 2010. Under the 2010 change, employees were required to receive a portion of their annual bonuses in the form of restricted stock subject to a three-year vesting period as part of the company's efforts to reduce cash compensation costs. With the stock price of MF Global falling from approximately \$7.25 per share prior to the company's recent bankruptcy filing to its current level of approximately \$0.10 per share, the estimated 15.9 million shares tied up in the pay program have lost approximately \$114 million in value as a result of the demise of the global brokerage firm.

Top Performers

Top 10 REITs Based on Year-to-Date Total Return to Shareholders ("TRS") ⁽¹⁾			
	Company	Ticker Symbol	Year-to-Date TRS
1	Capital Trust, Inc.	CT	47.74%
2	Extra Space Storage Inc.	EXR	41.31%
3	Public Storage	PSA	30.78%
4	American Campus Communities, Inc.	ACC	28.84%
5	Digital Realty Trust, Inc.	DLR	27.06%
6	Simon Property Group, Inc.	SPG	26.99%
7	Taubman Centers, Inc.	TCO	24.97%
8	Education Realty Trust, Inc.	EDR	23.96%
9	Mission West Properties, Inc.	MSW	21.29%
10	First Real Estate Investment Trust of New Jersey	FREVS	20.09%

(1) Represents TRS data as calculated by SNL Financial LC through December 2, 2011.

The views expressed in the articles are held by the author and are not necessarily representative of FTI Consulting, Inc. The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual, entity or transaction. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

CONTACT:

Larry Portal
973.618.5014
larry.portal@fticonsulting.com

Anthony Saitta
973.287.5443
anthony.saitta@fticonsulting.com



Critical thinking at the critical time™

About FTI Consulting

FTI Consulting, Inc. is a global business advisory firm dedicated to helping organizations protect and enhance enterprise value in an increasingly complex legal, regulatory and economic environment. With more than 3,800 employees located in 23 countries, FTI Consulting professionals work closely with clients to anticipate, illuminate and overcome complex business challenges in areas such as investigations, litigation, mergers and acquisitions, regulatory issues, reputation management, strategic communications and restructuring. The company generated \$1.4 billion in revenues during fiscal year 2010. More information can be found at www.fticonsulting.com.

© 2011 FTI Consulting, Inc. All rights reserved.