

ISS Provides Guidance on Compensation-Related Voting Policies

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On December 20th, ISS issued two extensive FAQs on their voting policies. This post covers the compensation items (a [previous post](#) covered the non-compensation items).

Although the compensation [FAQs](#) contain a number of items previously posted by ISS, there are a few new items worth noting, including:

- For the CEO Tally Sheet table, how the present value of all accumulated pension benefits (qualified and non-qualified) is calculated (page 7).
- The FAQs explain the methodology used in evaluating a company's pay for performance, including how an initial quantitative analysis affects the ultimate vote recommendation for say-on-pay proposals and the factors that ISS considers when it conducts a qualitative review (such as the ratio of performance- to time-based equity awards, benchmarking processes and realizable pay vs. grant pay) and how ISS will treat CEOs who have not been in the position for three years (pages 9-11).
- The FAQs indicate that realizable pay, which is only relevant for S&P 500 companies where the company's initial quantitative screen shows a high or medium concern, will include all amounts actually paid or realized during the specified measurement period. ISS does not use the intrinsic value of stock options for its realizable pay calculation, because it views as important the economic value of underwater options (pages 9-10).
- In exceptional cases, an ISS peer group can contain 12 companies (page 17).
- For companies with fiscal year-ends subsequent to December 31, 2012, ISS will provide the opportunity to communicate changes made to its peer group (page 18).
- The FAQs discuss the issues surrounding problematic pay practices, including how ISS views the grant of retention awards to executives who did not receive a payout after a performance cycle ended due to failure to achieve goals (pages 19-21).
- The FAQs elaborate on ISS' say-on-golden-parachutes policy, such as how ISS would treat: (i) a company that technically triggered a change in control but did not experience a bona fide change in control, (ii) performance measures that would not have been achieved in the absence of a decision to accelerate performance-based awards, (iii) the determination of whether specific payouts are "excessive" and (iv) existing problematic change-in-control severance features (pages 22-23). ISS indicates that the best practice for paying out performance-based awards is pro rata vesting of the award based on current achievement. In determining whether a golden parachute payout is excessive, ISS considers factors such as the value of the payout on an absolute basis, or one or total payouts relative to the transaction's equity value.
- The FAQs address how ISS would determine the cost of an equity compensation plan for newly public companies and companies with limited partnership units (pages 24-25).

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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