

ISS Issues Additional Explanations for Compensation Evaluations

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ISS issued several [helpful FAQs](#) to further explain how it will evaluate pay-for-performance, management responses to prior say-on-pay votes and equity compensation plans. A particularly interesting comment indicates that ISS may not be as quick to reverse negative recommendations based on company commitments to make prospective changes to pay packages, indicating that "...with annual management say on pay proposals, commitments on strengthening the company's pay for performance alignment *in the future* are not as relevant...Additional filing materials made after the publication of our report that indicate future changes planned for the pay program will have *minimum impact* on the vote recommendation." (emphasis added). This would not include actions taken by companies such as GE and Disney during the 2011 proxy season, as those companies made changes to existing compensation arrangements. However, it appears to cover, for example, commitments to no longer provide gross-ups to executives in the future.

ISS also addressed questions of company responses to say-on-pay, which appear to suggest that, even if a company engaged with its shareholders in formulating a response with which its shareholders are satisfied, ISS will continue to separately evaluate the underlying issues surrounding the prior say-on-pay vote and will make its own assessment as to whether the company's response is sufficient. Failure to adequately respond, from ISS' perspective, may lead to a negative recommendation on compensation committee members, even with a say-on-pay vote on the same ballot.

An adverse pay-for-performance recommendation may lead to a negative recommendation against an equity plan on the ballot. Considerations include ISS' views of the magnitude of pay misalignment, contribution of non-performance-based equity grants to the overall pay levels and the proportion of equity awards granted in the last three fiscal years concentrated at the named executive officer level (a ratio that exceeds 25% would warrant "additional scrutiny"). One item that ISS apparently believed needed clarification is that, for companies with early meetings in the 2012 season, the pay of their peer groups used by ISS may be from the prior year. This is already of concern to companies, but at the same time it is unclear whether any viable alternatives are available.

Other items discuss technical questions related to how total shareholder return is calculated, how ISS will construct the company's peer group, and the impact of having a new CEO or more than one CEO in the five-year period evaluated.

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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