

ISS Survey Results Focus on Possibility of Adverse Recommendations for Non-Employee Director Pay and Use of Realizable Pay in Say-on-Pay Analysis

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In ISS' secondary [survey results announced](#) yesterday, the focus was primarily on compensation. We previously discussed the larger [survey results here](#). Final policy updates that apply to the 2018 season should be issued in November.

Non-employee Director Pay. The highest paid non-employee directors in 2017 received more than \$2 million in annual compensation, compared to \$260,000 for the median S&P 500 director. Investors who responded to the survey believe that non-employee director pay programs should be analyzed by comparing the pay received against (ranked by preference): the 4-digit GICS industry group, the relevant stock market index peers and all companies. Once an outlier has been identified, the practices that investors found to be most problematic include (again ranked): excessive perks, performance equity awards, stock option awards, retirement programs and non-retirement benefits.

While more investors indicated that they want ISS to identify a possible issue in the first year but without a negative vote recommendation, many also responded favorably to the possibility of immediately holding accountable the members of the committee who approved the non-employee director pay. A possible alternative consequence would be adverse vote recommendations against committee members for two or more years of problems involving director pay.

Outcomes-based Compensation Measure. As companies know, ISS has presented a standardized measure of realizable pay for CEOs of S&P 1500 companies and uses it in its *qualitative* analysis of the executive compensation program. For short-term programs, the measure considers the difference between target bonus/non-equity incentive and what is actually paid. For long-term programs, the measure takes into account actual payouts, forfeitures and the impact of stock price appreciation or depreciation.

ISS is considering potential changes to the *quantitative* pay-for-performance methodology to take into account outcomes of performance-based pay programs using the realizable pay measure, which 87% of investors supported. In terms of how this should be used, investors indicated preferences for seeing whether realizable pay could mitigate concerns regarding pay-TSR misalignment or excessive pay quantum, or increase sensitivities to excessive "leverage" to performance, meaning large payouts for modest performance.

Gender Pay Gap. In response to a survey question related to shareholder proposals on reporting gender pay gaps, 60% of investors would like companies to disclose any gender pay gaps. Others believe disclosure is appropriate only if it has become an industry norm and the company lags behind its peers, if it's required by government regulations or the company has been embroiled in controversies. Investors indicated that the absence of disclosure may be mitigated by diversity and inclusion policies and practices and equitable compensation practices.

Short-term Poison Pills. 83% of investors supported the current policy that short-term pill adoptions (a term of one year or less) that are not put to a shareholder vote are evaluated on a case-by-case basis, considering the disclosed rationale for adoption, and the company's governance practices and track record.

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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