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ISS UPDATES ITS U.S. COMPENSATION AND EQUITY COMPENSATION PLAN POLICIES FOR 2019

Jan 07, 2019

In December 2018, Institutional Shareholder Services ("ISS") published updates to its FAQs for its U.S. Compensation Policies and its policies related to U.S. Equity Compensation Plans with respect to annual meetings occurring on or after February 1, 2019. While ISS did not make major changes for 2019, reporting companies should be aware of the following key updates.

- The passing scores for all U.S. Equity Plan Scorecard ("EPSC") models remain the same as in effect for the 2018 proxy season. However, ISS made the following notable changes and clarifications to EPSC's scoring model:
  - Full points will be awarded for the change in control (CIC) vesting factor if the plan discloses with specificity the CIC vesting treatment for both time- and performance-based awards. If a plan is silent on CIC vesting treatment or provides for discretionary vesting, then no points will be awarded for this factor.
  - Weighting on the plan duration factor has been increased to encourage plan resubmissions more often than listing exchanges require (and following the repeal of Section 162(m), which required periodic stockholder reapproval). To receive full points for plan duration, the proposed share reserve should last five to six years or less (based on the issuer's 3-year annual average burn rate).
  - Equity plan amendments that involve removal of general references to Section 162(m) qualification (including references to approved metrics for use in performance plan-based awards) will be viewed as administrative and neutral. However, the removal of individual award limits in an equity plan will be viewed as a negative change, as ISS considers such limits to be consistent with good governance practices.

- Regardless of an equity compensation plan's EPSC score, ISS will recommend a vote against an equity plan proposal if the proposal is "excessively dilutive". A proposal is deemed to be "excessively dilutive" if it is estimated to dilute stockholder holdings by more than 20% (for S&P 500 companies) or 25% (for Russell 3000 companies). This new policy does not apply to companies that are not in the Russell 3000 or special cases models (including recently public companies and companies emerging from bankruptcy). Dilution is calculated as (A + B + C) ÷ CSO, where A = the number of new shares requested, B = the number of shares that remain available for issuance, C = the number of unexercised/unvested outstanding awards, and CSO = the number of common shares outstanding.

- ISS confirmed that it will not begin issuing adverse vote recommendations for directors responsible for approving or setting excessive non-employee director pay practices until meetings occurring on or after February 1, 2020. ISS further confirmed that it will identify excessive non-employee director pay practices by (1) quantitatively determining non-employee director pay outliers and then (2) qualitatively evaluating the disclosures supporting its pay practices for such outliers to determine if its concerns are adequately mitigated.
    - Non-employee director pay outliers will generally be individual non-employee directors with pay figures above the top 2-3% of all comparable directors in the same index grouping (S&P 500, combined S&P 400 and S&P 600, Russell 3000 and Russell 3000-extended) and sector (within the same two digit GICS group). Board-level leadership positions (limited to non-executive chairs and lead independent directors) will be compared against other such leadership positions. In addition, in any index or sector grouping, the absence of a pronounced difference in pay magnitude between the top 2-3% of directors and the median director may be considered a mitigating factor.

RELATED PRACTICE AREAS

- Employee Benefits & Executive Compensation

MEET THE TEAM

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