Milbank

October 23, 2014

CONTACTS:

Joel I. Krasnow
Partner
+1-212-530-5681
jkrasnow@milbank.com

Manan (Mike) Shah
Partner
+1-212-530-5501
mdshah@milbank.com

Executive Compensation and Employee Benefits Group Client Alert:

ISS' 2015 Draft Policy re: Evaluating Equity Compensation Plans

ISS recently released their draft 2015 voting policies for public comment. In particular, ISS is seeking feedback from interested parties on the proposed changes to its policies regarding equity plan shareholder proposals. In our experience, ISS' final policies generally follow the policies outlined in the drafts. Accordingly, to the extent companies are in the process of designing their equity compensation practices for the coming year, they should pay close attention to the changes that ISS is proposing.

The proposed policy changes regarding equity plans would move towards a more nuanced consideration of equity plan proposals. Instead of applying a series of tests which, if failed, would result in an "Against" recommendation, ISS will apply a "scorecard" model which will consider a wide range of factors, both positive and negative, in making an assessment. Key features of the scorecard will fall into three categories.

PLAN COST

The total potential cost of the equity plan against equity plans of the company's peers, measured by so-called Shareholder Value Transfer (total cost of the plan measured by taking the total value of the equity grants divided by the market capitalization).

PLAN FEATURES

Single trigger change in control vesting provisions (ISS had previously expressed concern about these and now makes such provisions an explicit factor to be assessed); discretionary vesting authority; liberal share recycling on various award types; and minimum vesting period for grants made under the plan.

GRANT PRACTICES

Three year burn rate relative to peers; vesting requirements in most recent CEO grants; estimated duration of the plan; percentage of CEO grants subject to performance conditions; presence of a claw-back policy; and whether the company has established post exercise/vesting share-holding requirements.

The changes are intended to move the test from a series of pass/fail hurdles to a complete examination of the equity grant practices of a company. ISS still intends to issue a negative recommendation for certain highly egregious plan features (e.g., authority to re-price options without seeking shareholder approval), but otherwise ISS will begin to weigh the positive and negative factors as a whole in making its assessment.

The draft policies represent a step in the right direction for ISS. Rather than being constrained by ISS' previous one-size-fits-all analysis, the proposed policy will give companies more flexibility in designing their equity compensation practices. We will continue to monitor ISS' developments on this front and are hopeful that the final policies will reflect the more nuanced analysis discussed in the draft policies.

Comments on the draft policies are being accepted until close of business on October 29, 2014 and can be sent via email to policy@issgovernance.com. Further details for providing comments are found in the draft policies.

EXECUTIVE COMPENSATION AND EMPLOYEE BENEFITS GROUP

Please feel free to discuss any aspects of this Client Alert with your regular Milbank contacts or any of the members of our Executive Compensation and Employee Benefits Group.

If you would like copies of our other Client Alerts, please visit our website at www.milbank.com and choose "Client Alerts" under "News."

NEW YORK
One Chase Manhattan Plaza, New York, NY 10005

Joel I. Krasnow	jkrasnow@milbank.com	+1-212-530-5681
Manan (Mike) Shah	mdshah@milbank.com	+1-212-530-5501