

Client Alert

ISS Issues Policy Guidance on Impact of COVID-19

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As a follow up to our earlier Client Alerts dated [March 24, 2020](#) and [March 31, 2020](#), on April 8, 2020, the Institutional Shareholder Services group of companies (“ISS”) issued guidance with respect to the impact of COVID-19 on certain compensation and governance matters, including changes to board of directors or senior management, changes in performance metrics and targets, and option repricing. A high-level summary of those policies is below.

Changes in Performance Metrics/Shift in Goals or Targets

ISS understands that many companies will likely materially adjust applicable performance metrics used in their short-term compensation plans as a result of recent drops in the markets and a potential recession. ISS is encouraging boards of directors of companies making material changes to short-term compensation plans to contemporaneously disclose the rationale for such changes in order to provide shareholders greater visibility during this uncertain time. This means that ISS will expect a company to include disclosure regarding changes made to its short-term programs for 2020 in its proxy statement for the general annual meeting being held in 2020.

With respect to long-term compensation plans, ISS generally disfavors, and will continue to disfavor, changes to “in-cycle” long-term awards, because such awards cover multi-year grants. ISS will review such changes on a case-by-case basis to determine if the board of directors exercised appropriate discretion when it implemented such changes and provided adequate explanation to shareholders of the rationale for such changes.

Option Repricing

ISS’ existing policies strongly disfavor stock option repricing without prior approval by shareholders, and that will continue to be the case. If a board of a company seeks shareholder approval of a stock option

repricing at its 2020 meeting, ISS will apply its existing case-by-case policy approach, which for the US market would result in a general recommendation “against” any repricing that occurs within one year of a steep drop in the stock price of the company. Some factors that ISS considers with respect to option repricing are whether (1) the design is shareholder value neutral (e.g., a value-for-value exchange), (2) surrendered options are not added back to the plan reserve, (3) replacement awards do not vest immediately, and (4) executive officers and directors are excluded. ISS plans to continue to follow this policy during the COVID-19 pandemic until further notice.

Changes to the Board of Directors or Senior Management

In the event of a board member’s incapacity or disability as a result of the current COVID-19 pandemic, ISS will consider such appointment on a case-by-case basis giving careful attention to any explanation given by the company for any changes to the board of directors. Current ISS policy provides for the flexibility of directors to step into senior management roles if required as a result of a senior management team member’s incapacity or disability. The key takeaway for a company is that given this time of great uncertainty, ISS believes boards should have discretion to do what is in the best interests of the company and its shareholders.

Conclusion

A Company that is considering adjusting its compensation arrangements, including any of the adjustments discussed in our prior March 24, 2020 and March 31, 2020 Client Alerts, should take into account the above guidance as part of any adjustments.

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Executive Compensation and Employee Benefits Group

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