CLIENT MEMORANDUM

# ISS 2015 Policy Updates – Equity Plan Scorecard

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On November 6, 2014, Institutional Shareholder Services ("ISS") released its 2015 updates to its proxy voting policies, which will apply for annual shareholder meetings occurring on or after February 1, 2015. The only compensation-related update is a new "scorecard" approach for evaluating equity plan proposals, which ISS will use to determine whether to recommend a vote for or against an equity plan proposal.

The scorecard approach will consider a range of positive and negative factors related to the equity plan's features and the company's historical grant practices, rather than a series of standalone "pass" or "fail" tests focused on cost and certain ISS-perceived egregious practices. While some equity plan features or company practices that ISS considers highly egregious will continue to result in negative vote recommendations regardless of any mitigating factors (as explained in more detail below), the scorecard will be based on factors related to plan cost, plan features and grant practices. ISS will utilize index groups (the S&P 500, Russell 3000 (excluding the S&P 500), Non-Russell 3000 and companies that recently had an initial public offering or emerged from bankruptcy) to determine burn-rate benchmarks and scorecard factor weightings.

- **Plan Cost:** ISS will continue to use Shareholder Value Transfer ("SVT") to measure the total estimated cost of equity plans, but will measure SVT in relation to industry and market cap peers, considering: (1) SVT based on new shares requested, plus shares remaining for future grants, plus outstanding unvested and unexercised grants; and (2) SVT based on new shares requested plus shares remaining for future grants. The current option overhang carve-outs have been eliminated from the SVT cost calculation as has any consideration of liberal share recycling provisions.

- **Plan Features:** ISS will consider, among other features, whether the equity plan provides for: (1) automatic single-trigger award vesting upon a change of control; (2) discretionary vesting authority; (3) liberal share recycling on various award types; or (4) minimum vesting periods for grants made under the equity plan.
- **Grant Practices:** ISS will evaluate six grant practices: (1) the three-year burn rate relative to the industry and market cap peers; (2) vesting requirements in the CEO equity grants over the last three years; (3) the estimated duration of the equity plan (based on the sum of the shares remaining available and the new shares requested, divided by the average annual shares granted over the last three years); (4) the proportion of the CEO's most recent equity grants/awards subject to performance conditions; (5) whether the company maintains a claw-back policy; and (6) whether the company has established post-exercise/vesting shareholding requirements. Unlike ISS's current policy, which permits a company to mitigate a failed burn-rate test by making a prospective burn-rate commitment, the new scorecard approach will not allow for such mitigation.

Pursuant to the new guidelines, ISS will recommend a vote against an equity plan proposal if the scorecard factors indicate that the equity plan is not, overall, in the company's shareholders' interests, if the equity plan includes certain features that ISS considers to be highly egregious (*e.g.*, authority to reprice underwater stock options without shareholder approval, vesting of awards in connection with a liberal change of control definition, or other plan features that are determined to have a significant negative impact on shareholder interests), or if the equity plan is a vehicle for problematic pay practices or a pay-for-performance disconnect.

Additional information about the new scorecard approach will be included in ISS's Compensation FAQ to be published in December 2014.

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If you have any questions concerning the foregoing or would like additional information, please contact Mark A. Holdsworth (212-728-8286, mholdsworth@willkie.com), Michael A. Katz (212-728-8204, mkatz@willkie.com), Jordan A. Messinger (212-728-8799, jmessinger@willkie.com), Andrew E. Shapiro (212-728-8913, ashapiro@willkie.com) or the Willkie attorney with whom you regularly work.

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