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ISS Releases 2012-2013 Policy Survey Results

Recently, Institutional Shareholder Services Inc. (“ISS”) released the results from its 2012-2013 Policy Survey (the “Policy Survey”). The stated goal of the Policy Survey is to gather feedback from both institutional investors regarding the importance of various corporate governance topics and how ISS analyzes corporate data when it creates its Proxy Voting Reports. Some of the results are of particular import to publicly traded Maryland entities because they can provide insight into what issues are most important to their institutional investors. The following are some of the topics discussed in the Policy Survey that we believe are frequently areas of concern for publicly traded Maryland entities.

1. Presence of a Lead Director

If a company has a proposal in its proxy statement to separate the roles of Chairman of the Board (“Chairman”) and Chief Executive Officer (“CEO”), whether the company has already appointed a lead director is the single most important factor that institutional investors will consider when determining how to vote. We believe that Maryland entities without a split Chairman and CEO should consider preparing for this type of proposal, because in our experience, these types of proposals are becoming more common. In fact, the split Chairman / CEO role may be the next corporate governance topic to receive market-wide attention, once the current movement for majority voting in the election of the directors winds up.

In addition to considering appointing a lead director and disclosing this in their proxy statements, Maryland entities without a separate Chairman and CEO may wish to consider adopting a Lead Director Charter. A Lead Director Charter is a good corporate governance practice, and it is a useful policy to cite when a company is explaining why a separate Chairman and CEO are not necessary at the present time.

2. Pledging of Company Stock

The Policy Survey confirms that this emerging topic is growing in importance. After several high-profile incidents in recent years involving directors pledging shares, we believe this is a corporate governance topic that is here to stay. Approximately one-half of institutional investors reported that *any* pledging of shares by directors is “significantly problematic,” and over 80% of respondents stated that pledging a large amount of shares raises concerns. It may be prudent for Maryland entities to consider whether their directors have pledged stock when evaluating their overall corporate governance profile.

3. Peer Groups

Despite the issues that publicly traded companies have repeatedly raised over ISS-selected peer groups, very few respondents wanted to do away with ISS-selected peer groups

altogether. Instead, respondents preferred that ISS compare companies against both the ISS-selected peer group and the company-selected peer group in its Proxy Voting Report. Whether ISS will include a company-selected peer group set in its future Proxy Voting Reports remains to be seen. However, Maryland entities may wish to note which features of a peer group were most important to institutional investors. Respondents stated that peers should be in the same size range of the company by revenue, and be in the same Global Industry Classification Standard group as the company. Additionally, peer groups should be constructed such that the company is at or near the median of the peer group based on revenue. Maryland entities may wish to consider these factors when constructing their own peer groups.

4. Pay for Performance

Over 80% of institutional investors stated they were either “very likely” or “somewhat likely” to consider performance metrics other than total shareholder return (“TSR”) when evaluating a company’s management say-on-pay vote. Thus, it continues to be appropriate for a company to discuss a wide range of performance metrics in its proxy statement, and a slavish devotion solely to TSR remains unnecessary. Despite ISS’s focus on this one metric, stockholders will evaluate other measures of company success.

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As always, we and our colleagues are available at any time to discuss these or other matters.

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