

Client Alert

December 29, 2011

An ISS Holiday Gift Basket

Technical Guidance on Pay-for-Performance Test, Updated GRId and New Burn Rate Tables for 2012 Proxies

The end of December yielded a flurry of much-anticipated informational “gifts” from proxy advisory firm Institutional Shareholder Services (ISS), including:

- Pay-for-Performance Test Implementation Guidance
- Updated GRId Methodology
- Updated Burn Rates for 2012

In particular, technical details of the ISS pay-for-performance evaluation will be a key factor in its recommendations on Management Say on Pay proposals for companies with annual meetings on or after February 1, 2012. Companies should also be prepared to preview their new GRId scores in late February and evaluate anticipated new industry burn rate caps if they plan to seek shareholder approval for new equity plans in 2012.

Gift #1: Pay-for-Performance Test White Paper

One of the most important changes for 2012 is the modification of how ISS will analyze the alignment of company performance and CEO pay, or pay-for-performance¹. According to ISS, the revised quantitative methodology is designed to identify **outlier** companies that have demonstrated **significant misalignment** between CEO pay and company performance over time. The follow-up qualitative assessment, which is applied to companies with an apparent pay-performance disconnect, is designed to uncover mitigating factors (such as rigorous performance-based award opportunities that are designed to drive improvement) or underlying causes, such as problematic pay benchmarking practices.

A white paper released by ISS on December 20, 2011 provides additional guidance on how it will determine the degree of pay/performance alignment, as follows:

Peer Group Selection

The quantitative test compares companies to a peer group selected by ISS. The white paper further specifies that the peer group will be comprised of 14 to 24 companies, generally based on industry (similar GICS classification), revenue (or similar assets for financial companies), and

¹ For a complete overview of the Pay-for-Performance Test, see our Client Alert dated December 7, 2011 at <http://www.pearlmeier.com/Pearl/media/PearlMeyer/PDF/PMP-CA-ISSPolicyUpdate2012-12-7-2011.pdf>.

market value. Peer groups for all Russell 3000 companies analyzed under this methodology are constructed twice per year, based on the following data provided by an independent source, Research Insight Quarterly Data Download (QDD), as of December 1 and June 1:

- Revenue: Sum of most recent trailing 4 quarters' revenues for each QDD date
- Total Assets: Total assets for each QDD date in the most recent quarter
- Market Value: 200-day average price, multiplied by shares outstanding, for each QDD

ISS then selects peer companies as follows:

- Comparison Universe Determined: A comparison universe is developed using ISS's ExecComp Analytics² database in the same 2-digit GICS, between 0.45 times and 2.1 times the company's annual revenues (assets for financial companies), and with market capitalizations of between 0.2 times and 5 times the subject company.
- Universe Narrowed by GICS: The target universe is narrowed by focusing on the company's 6-digit GICS category, starting with companies closest in size. Where possible, ISS will alternate between larger and smaller comparators to keep the subject company at or near the peer group median. Once the peer group reaches the minimum 14 members it is considered complete, but up to 10 additional companies, for a total 24, can be selected from the 6-digit GICS category.

If 14 peer group members are not selected from the companies that share the subject company's 6-digit GICS category, the process is repeated with companies that share the company's 4-digit GICS category, maintaining the company at the median position where possible. If the minimum 14 companies still cannot be reached, the process is repeated using the 2-digit GICS category.

- Supplemental Methodology: If fewer than 14 peer companies are selected using the above methodology, ISS will employ a supplemental methodology in one of the following ways:
 - *"Super-mega" non-financial companies (over \$50B in revenue and at least \$30B market capitalization)*: A special peer group for the quantitative analysis will be created for the approximately 25 non-financial companies³ within the Russell 3000 index that are so big that they have very few (and in some cases no) industry peers close to their size. These super-mega companies will comprise their own special peer group for the quantitative analysis. However, industry-specific performance will also be considered in any resulting qualitative review.

PM&P Observation: By necessity, very large companies will not be compared to industry competitors but to other large companies, regardless of industry. As such, retailers could be compared to manufacturers or technology companies – industries in which there are likely significant differences in both pay programs and levels. There are likely to be serious and unintended consequences from this special grouping.

²The ISS ExecComp Analytics database incorporates the constituents of the Russell 3000 index, supplemented by the publicly traded peers disclosed by Russell 3000 companies in their proxies, for a total of more than 4,000 companies.

³ As of the date of this publication, ISS has not yet announced the super-mega group companies.

- *Other companies with fewer than 14 generated peers:* For companies with an insufficient peer group, ISS will relax the revenue parameter (but not market cap) in the peer group selection process, while retaining peers selected under the basic methodology. Additional peer companies that are both larger and smaller will be added to keep the subject company close to the median size.
- *Exceptional cases:* ISS will adjust the peer group if selected comparators appear to be inappropriate (e.g., in cases of bankruptcy).

Quantitative Assessment

General

The quantitative analysis reviews Relative Degree of Alignment (RDA), Multiple of Median (MOM), and Pay-TSR Alignment (PTA).

Relative Degree of Alignment

Under RDA, ISS will analyze the alignment between the company's TSR rank and the CEO's total pay rank within the peer group over 1- and 3-year periods. The 1- and 3-year pay amounts (annual and average, respectively) for each peer company are based on the most recently disclosed three years of pay data available in the ExecComp Analytics database. Annualized TSR performance is measured for the same 1- and 3-year periods, ending on the last day of the month closest to the fiscal-year end of the subject company.

Combined percentile ranks for pay and for performance are weighted 40% for the 1-year and 60% for the 3-year ranks. The RDA result is equal to the difference between the ranks: the combined performance rank minus the combined pay rank⁴. Values for RDA measure range between -100 and +100, with -100 representing high pay/low performance (*i.e.*, 100th percentile pay combined with zero percentile performance); zero representing a high degree of alignment (pay rank equal to performance rank); and positive values representing high performance/low pay.

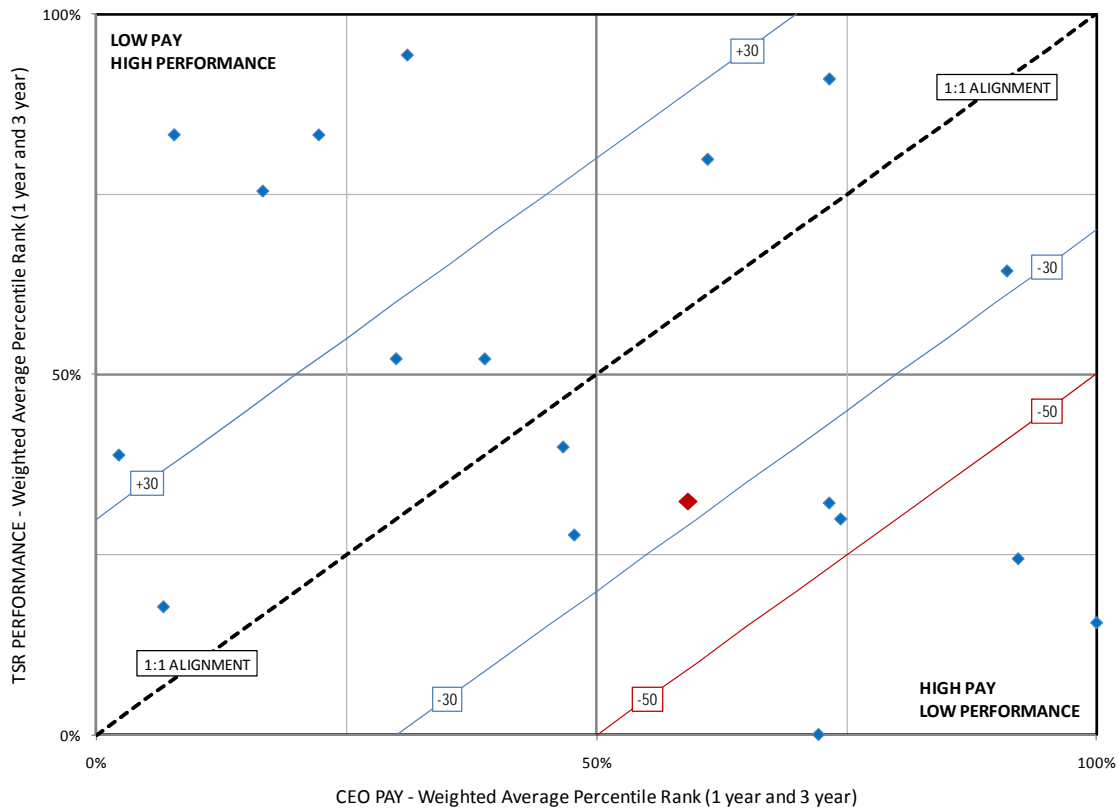
⁴ If three years of data are not available for the subject company, the combined measure will reflect only the 1-year rankings.

ISS provided the following example of how these factors will influence the final RDA measure:

<i>Time Period</i>	<i>TSR Performance (Percentile Rank)</i>	<i>CEO Pay (Percentile Rank)</i>	<i>Difference (Performance - Pay)</i>
1-Year (40% weight)	42	52	-10
3-Year Average (60% weight)	26	64	-38
Combined (weighted average)	$(42 \times 40\%) + (26 \times 60\%) =$ 32	$(52 \times 40\%) + (64 \times 60\%) =$ 59	-27

In this case, the RDA is -27, reflecting relatively low performance and relatively high pay (*i.e.*, 32 percentile performance and 59 percentile pay).

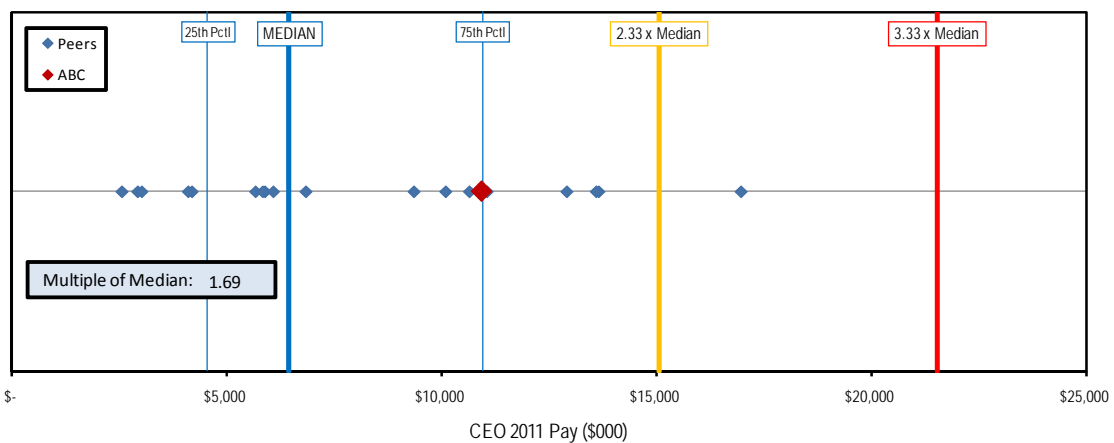
The illustration below displays this example graphically, including hypothetical peers. The subject company with a -27 RDA – indicated by the large red diamond on the chart – falls within the roughly ± 30 middle range. As discussed below in “Application of the Quantitative Test,” scores that fall below this range (*i.e.*, ≤ -30) may trigger “high concern.”



Multiple of Median

Under MOM, ISS will calculate the multiple of the CEO's total pay relative to the peer group median by dividing 1-year CEO pay by the median pay for the peer group. MOM values can range from zero (if the subject company paid its CEO nothing) to infinity.

The chart below provides a graphic illustration of the MOM test for a hypothetical company. In this example, the MOM for the subject company (indicated with the large red diamond) is 1.69x the peer median. As discussed below in "Application of the Quantitative Test," MOM scores of 2.33 (i.e., $\geq 2.33x$ peer group median) or above may trigger "high concern."

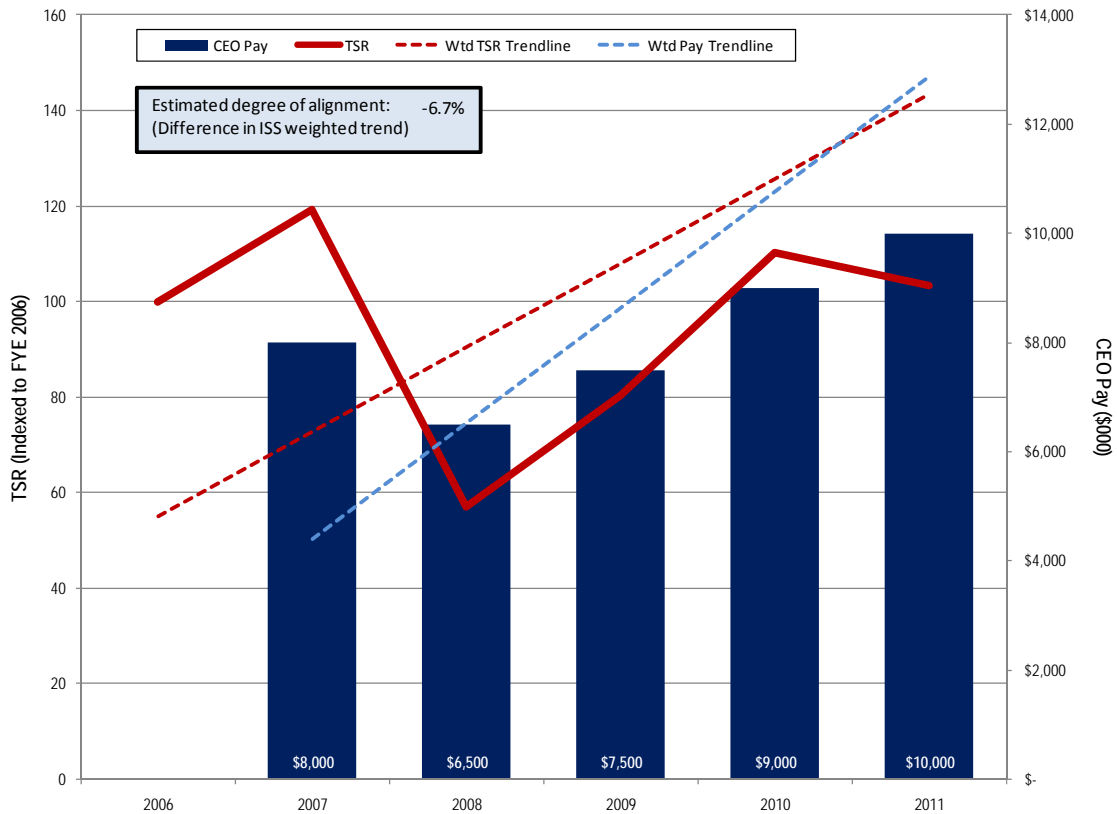


Pay-TSR Alignment

Under PTA, ISS will compare the trend in CEO pay to the company's TSR in each of the prior five fiscal years (i.e., the difference between the slope of annual pay changes and slope of annual TSR changes during the prior 5-year period). The final PTA measure is generally calculated as the difference between the slopes of weighted linear regressions for pay and for shareholder returns over a 5-year period⁵. This difference indicates the degree to which CEO pay has changed more or less rapidly than shareholder returns over the same period.

⁵ ISS provides details regarding how this statistical analysis will be performed in the Appendix to its White Paper at: <http://issgovernance.com/docs/EvaluatingPayForPerformance2012>

The trend lines calculated by these regressions are analogous to a 5-year “trend rate” for pay and performance, weighted to emphasize recent history. The chart below provides an illustration of how this test may look graphically. In this example, the difference in the weighted slopes (Performance – Pay) is -6.7%, indicating the weighted trend for pay has been increasing at a greater rate than the weighted trend for TSR over the past five years. As discussed below in “Application of the Quantitative Test,” a PTA score of -30% or less may trigger “high concern.”



Application of Quantitative Test

The RDA, MOM and PTA provide the raw material for ISS's quantitative evaluation. Using this information, ISS seeks to identify companies that are significant outliers in each measure, based on empirical observation of the distribution of the measures within the back-testing universe. Concerns raised for multiple measures can accumulate to provide evidence for a potential pay-for-performance disconnect. In back-testing these measures against pay and performance data for 2,500 companies from 2006-2010, ISS found the following:

- RDA: 25% had RDA measures of less than -28 (where lower values represent higher pay/lower performance), while 10% percent fell below -51. About half of companies ranged between -28 and +30.
- MOM: Values for the multiple of median measure ranged from 0 (for the handful of companies that paid virtually nothing) to 25 times. About 25% of companies paid more than 1.5 times the peer group median, and 10% paid more than 2.1 times median.
- PTA: Values ranged from -106% to 129%, with a median value of -3%, meaning that pay at the median company trended about 3 percentage points higher than the performance trend. About 25% of companies had PTA measures less than -16.2%, and 10% had values under -30.6%. Half of companies had PTA measures between -16.2% and 7.7%.

Based on this data, the following table shows what levels for each measure would indicate to ISS, based on initial testing analysis, that a company is considered an outlier (triggering Medium concern) or a significant outlier (which would trigger High concern). High concern for any individual factor will result in an overall High concern level for the quantitative component of the pay-for-performance evaluation, and multiple levels of Medium concern can produce an overall High concern.

<i>Measure</i>	<i>Level that may trigger high concern in conjunction with other measures</i>	<i>Level that triggers high concern by itself</i>
RDA	-30 (25 th percentile)	-50 (10 th percentile)
MOM	2.33x (92 nd percentile)	3.33x (97 th percentile)
PTA	-30% (10 th percentile)	-45% (5 th percentile)

PM&P Observation: An unintended consequence of relying on TSR outcomes may be to delay long-term incentive grants to as close to the end of the year as possible, when TSR outcomes are more certain. This could result in mandatory Compensation Committee meetings in the last ten days of a fiscal year to grant long-term incentives.

Qualitative Assessment

If the quantitative analysis demonstrates significant misalignment of long-term pay-for-performance, ISS will use the following qualitative factors to assess how various pay elements may have increased or undermined long-term value creation and alignment with shareholder interests:

Strength of Performance-Based Compensation

ISS will review the ratio of performance-based to time-based equity awards, as well as the overall ratio of performance-based compensation to total compensation, focusing particularly on the compensation committee's most recent decision-making in this regard. A company that exhibits significant misalignment of pay and performance over time would be expected to strongly emphasize performance-based compensation (though not by simply increasing the size of the pay package in order to make it more performance-based). ISS will evaluate the performance conditions of both recent cash awards paid and long-term incentive opportunities. Time-based awards (including time-based stock options) that are not granted due to the attainment of pre-set goals are not considered strongly performance-based in this context.

Robustness of Disclosure and Rigor of Performance Goals

Performance metrics and goals must be fully disclosed and reasonably challenging in the context of past performance and goals, as well as any guidance the company provided to analysts, etc. Use of a single metric or similar metrics in either or both short- and long-term incentive programs may be interpreted as an inappropriate focus on one aspect of business results. If non-GAAP metrics are used, adjustments – and a compelling rationale if the adjustments are nonstandard – should also be clearly disclosed.

Peer Group Benchmarking Practices

If ISS believes there is a long-term disconnect between pay and performance, it will examine whether the targeting of pay above the median is a factor. ISS also will consider whether a preponderance of self-selected peers that are significantly larger than the subject company drove up compensation levels.

Results of Financial/Operational Metrics

If a disconnect is driven by cash pay, ISS will consider the rigor of any performance goals that figured in the payouts. It will examine recent GAAP results based on absolute and relative metrics such as return measures, growth in revenue, profit, cash flow, etc. to determine if the quantitative analysis is anomalous (if other metrics suggest sustained superior performance). Details regarding metrics, goals, and adjustments to results must be clearly disclosed.

Special Circumstances

The qualitative analysis may also consider exceptional situations, such as a new CEO in the prior fiscal year or unusual equity grant practices such as biannual or triennial awards. However, ISS indicates that such circumstances do not automatically invalidate other aspects of the analysis, including the quantitative results, as it believes its methodology's long-term orientation will minimize the impact of timing anomalies.

Gift #2: Governance Risk Indicators – GRId 2.0

On December 19, 2011, ISS announced a significant overhaul to its Governance Risk Indicators (GRId 2.0), effective for U.S. markets in February, 2012⁶. ISS introduced its GRId analysis in 2010 to help institutional investors understand four categories of governance-related risk: Audit,

⁶ The technical document containing the new GRId 2.0 and related FAQs can be found at <http://issgovernance.com/grid-info>.

Board, Shareholder Rights, and Compensation. According to ISS, institutional investors have used its analysis to “flag risk in their portfolios, identify issues and companies for engagement, and analyze companies as part of the investment process.”

ISS has indicated that it will post updated GRId 2.0 data profiles, at no charge, on February 20, 2012. Companies should be prepared to immediately review their results and make ISS aware of any corrections that need to be made.

Content Updates

The number of Compensation questions has increased from 28 to 42, of which 27 are new or substantially modified (see Appendix 1 for the full list). Further, ISS reconfigured its compensation subcategories to more closely follow its analytical approach to compensation. The new subcategories are: Pay-for-Performance; Non-Performance-Based Pay; Use of Equity; Equity Risk Mitigation; Communication & Disclosure; and Termination/Severance.

Significantly, the new questions incorporate and emphasize the modified ISS pay-for-performance quantitative methodology – for which there are no mitigating factors. That means companies that are deemed *not* to have sufficient pay-for-performance alignment will now be “double penalized,” because the perceived misalignment will also hurt the company’s overall GRId score.

Methodology Updates

The primary change affects how questions are scored and how the various levels of concern are combined and calculated. In the past, answers to individual questions were expressed as numbers or percentages and generally graded on a scale of -5 to +5, with higher numbers representing greater alignment with best market practices. Each answer was then weighted in its subcategory, and each subcategory weighted in its category. Each of the four categories was reported in the GRId Report as either a low, medium, or high level of concern.

In the new GRId scoring methodology, ISS provides a point system based on **only two** negative data points: -25 points, representing medium concern, and -50 points, representing a high level of concern. **However, the range of positive points is not provided, nor are detailed specifics generally provided as to where ISS will assign a score within the broad range listed above. It is unclear at this point if additional parameters will be made generally available by ISS on this matter, or whether it will retain discretion to determine appropriate percentage points within this broad range.**

Each answer is assigned a number of points, based on the relative importance of the question and the nature of market practice. Negative scores represent practices that fall short of market practice; zero/neutral scores represent practices that meet market practice, local governance codes, and/or ISS voting policy on the topic; and positive scores indicate the company follows best practices that may mitigate other ISS concerns.

The number of points assigned to an answer is designed to communicate a level of concern. If an answer by itself should drive a medium level of concern in its category, it will receive -25 points. If it is significant enough to warrant high concern – then it will receive -50 points. Positive points imply that the answer incorporates best practices, and may also mitigate concerns elsewhere.

The scores within a subcategory are then combined, subject to an overall floor and ceiling for each subcategory. These boundaries represent the maximum concern that the questions within

the subsection can add to – or subtract from – the overall level of concern for the category. According to ISS, these floors and ceilings provide a flexible mechanism to convey concern over individual questions without unduly influencing overall scores.

ISS provides the following example: in the Termination subcategory, companies receive positive points for several questions if they have no employment agreements in place. These positive scores can mitigate any negative scores within the subcategory, although ISS caps the total number of positive points in the section at +15.

To calculate an overall category score, the subcategory scores are added, subject to a category-level floor and ceiling of -75 and +25, respectively. Finally, 75 points are added to create a scale of 0 to 100.

The thresholds for concern levels are therefore as follows for all categories:

- <= 50 points indicates **High** concern
- <= 75 points indicates **Medium** concern
- > 75 points indicates **Low** concern

PM&P Observation: GRId 2.0 does not detail exact scoring systems for answers to each of the 42 questions, leaving unknown the exact weighting and importance that will be assigned, and making it impossible for companies to calculate their numeric grading. In fact, there is actually *less* transparency now for companies attempting to forecast and take actions to positively influence their GRId score than in the past.

For example, shown below are the old and new GRId methodologies for scoring possible responses to the question, “*What is the length of the employment agreement with the CEO?*”

Old GRId Answer:

- No agreement = +5
- Not disclosed = 0
- Less than 3 years = +3
- 3 – 4 years (linear interpolation) = -3 to -1
- 4 – 10 years (linear interpolation) = -1 to -5
- More than 10 years/autorenewal = -5

GRId 2.0 Answer:

- 5+ years = Begin to raise concern
- 10+ years = Moderate level of concern
- Short-term agreements = slightly mitigate concerns elsewhere
- Absence of agreement = may mitigate concern to some degree elsewhere

Overall, GRId 2.0 appears to be much more opaque and less user-friendly than its predecessor.

Gift #3: Updated Burn Rates for 2012

ISS will vote against a new or amended equity plan if the company's 3-year average burn rate exceeds the greater of: (1) the mean plus one standard deviation of the company's GICS group segmented by Russell 3000 index and non-Russell 3000 index; or (2) 2% of the weighted common shares outstanding. The new 2012 policy guidelines continue to limit the annual changes in the threshold to plus or minus 2% of the previous year's thresholds.

Updated 2012 burn rate caps for Russell 3000 and Non-Russell 3000 GICS groups are shown below, alongside 2011 rates and the year-over-year changes:

Burn Rate Caps

GICS	Description	Russell 3000			Non-Russell 3000		
		2011	2012	Delta	2011	2012	Delta
1010	Energy	4.03%	4.02%	-0.01%	6.30%	7.46%	1.16%
1510	Materials	3.04%	3.08%	0.04%	6.54%	6.04%	-0.50%
2010	Capital Goods	3.34%	2.93%	-0.41%	6.69%	8.69%	2.00%
2020	Commercial Services and Supplies	4.89%	4.61%	-0.28%	5.53%	5.81%	0.28%
2030	Transportation	3.36%	2.83%	-0.53%	4.31%	2.88%	-1.43%
2510	Automobiles	3.25%	3.40%	0.15%	4.99%	6.99%	2.00%
2520	Consumer Durables & Apparel	3.26%	4.81%	1.55%	5.37%	6.27%	0.90%
2530	Consumer Services	4.80%	5.81%	1.01%	5.17%	6.99%	1.82%
2540	Media	4.10%	5.56%	1.46%	6.03%	5.65%	-0.38%
2550	Retailing	4.11%	4.02%	-0.09%	4.62%	6.62%	2.00%
3010, 3020, 3030	Consumer Staples	3.76%	3.03%	-0.73%	5.17%	7.17%	2.00%
3510	Health Care Equipment & Services	4.66%	4.69%	0.03%	9.92%	11.92%	2.00%
3520	Pharmaceuticals & Biotechnology	7.16%	7.49%	0.33%	10.58%	12.58%	2.00%
4010	Banks	2.78%	2.81%	0.03%	4.12%	3.49%	-0.63%
4020	Diversified Financials	7.15%	9.15%	2.00%	10.30%	11.31%	1.01%
4030	Insurance	3.04%	2.80%	-0.24%	4.31%	2.31%	-2.00%
4040	Real Estate	2.02%	2.34%	0.32%	3.18%	3.46%	0.28%
4510	Software & Services	7.26%	7.76%	0.50%	9.58%	11.58%	2.00%
4520	Technology Hardware & Equipment	5.84%	5.73%	-0.11%	9.08%	7.69%	-1.39%
4530	Semiconductors and Equipment	6.64%	5.83%	-0.81%	7.78%	9.78%	2.00%
5010	Telecommunications	4.50%	6.50%	2.00%	7.08%	9.08%	2.00%
5510	Utilities	2.00%	2.00%	0.00%	6.34%	5.64%	-0.70%

PM&P Observation: After big increases last year, overall burn rate limits for 2012 are relatively stable in most industry sectors. However, those limits are still much higher than two years ago. Once the high volatility years prior to 2011 “age out” of the historical model, we believe the ISS burn rate limits will generally drop. Therefore, companies making annual grants near the current limit may encounter issues in future years.

Companies seeking shareholder approval of new plans also should remember that Fidelity issues its own burn rate guidelines, which are generally more stringent than those applied by ISS⁷. Per its most recent update last year, Fidelity’s current 3-year average burn rate limits are:

- 1.5% for Russell 1000 companies
- 2.5% for other companies with market cap above \$300 million
- 3.5% for other companies with market cap below \$300 million

A company that exceeds ISS burn rate thresholds may still avoid a negative vote recommendation by committing, in a public filing, to maintain a burn rate over the next three fiscal years that is equal to or less than the industry burn rate as calculated by ISS at the time of the proposal. However, the 2012 policy notes that in the absence of demonstrating reasonable use of equity awards under the first burn rate commitment, companies making consecutive burn rate commitments may not garner support on their proposed equity plan proposals.

Conclusions

Between now and the start of the 2012 proxy season, companies must digest an overabundance of new information and highly technical details from ISS regarding its revised tests and what additional or revised disclosures may be helpful in garnering shareholder support. With little time left to do so, we suggest that companies act immediately to run the new tests and methodologies described in this Alert.

⁷ The full text of Fidelity’s Proxy Voting Guidelines can be found at:
<http://personal.fidelity.com/myfidelity/InsideFidelity/InvestExpertise/governance.shtml.tvsr>

Appendix 1

GRId 2.0 Compensation Questions for U.S. Markets (***Bolded and italicized questions are new for 2012***)

Pay-for-Performance (5)

- ***What is the degree of alignment between the company's cumulative 3-year pay percentile rank, relative to peers, and its 3-year cumulative TSR rank, relative to peers?***
- ***What is the degree of alignment between the company's cumulative 1-year pay percentile rank, relative to peers, and its 1-year cumulative TSR rank, relative to peers?***
- ***What is the size of the CEO's 1-year cumulative pay, as a multiple of the median pay for company peers?***
- ***What is the degree of alignment between the company's TSR and change in CEO pay over the past five years?***
- ***What is the ratio of the CEO's total compensation to the next highest paid executive?***

Non-Performance Based Pay (7)

- ***Did the company provide dividends on unvested performance shares in the last fiscal year?***
- ***Has the company reimbursed NEOs for losses on sale of a home?***
- Did the CEO receive tax gross-ups on perks other than relocation and other broad-based benefits?
- Are any of the NEOs eligible for multi-year guaranteed bonuses?
- ***Did the company pay tax gross-ups on a secular trust?***
- Are executives given credit toward pension for years not worked?
- ***What is the ratio of the CEO's non-performance-based compensation (All Other Compensation) to Base Salary?***

Use of Equity (9)

- Do the company's active equity plans prohibit share recycling for options/SARS?
- Do the company's active equity plans prohibit option/SAR repricing?
- ***Does the company's active equity plans prohibit option/SAR cash buyouts?***
- ***Do the company's active equity plans have an evergreen provision?***
- ***Do the company's active equity plans have a liberal CIC definition?***
- ***Do the company's active equity plans provide for automatic vesting of equity awards in the case of change-in-control?***
- Has the company repriced options or exchanged them for shares, options or cash without shareholder approval in the last three years?
- Does the company grant equity awards at an excessive rate, according to ISS policy?
- If a new or amended broad-based plan is proposed, then what is the expected duration of shares?

Equity Pay Risk Mitigation (10)

- Did the company disclose a claw back or malus provision?
- What are the minimum vesting periods mandated in the plan documents for executives' stock options or SARS in the equity plans adopted/amended in the last three years?
- What are the minimum vesting periods mandated in the plan documents adopted/amended in the last three years for executives' restricted stock?
- What is the holding period for stock options (for executives)?
- What is the holding period for restricted shares (for executives)?
- What proportion of the salary is subject to stock ownership requirements/guidelines for the CEO? Is the CEO subject to ownership guidelines?
- Are directors subject to stock ownership guidelines?
- Do all directors with more than one year of service own stock?
- **Did any executive or director pledge company shares?**
- **Does the company have a policy prohibiting hedging of company shares by employees?**

Communications and Disclosure (2)

- What is the level of disclosure on performance measures for the short-term incentive plan?
- What is the level of disclosure on performance measures for the latest active or proposed long-term incentive plan?

Termination (9)

- What's the trigger under the change-in-control agreements?
- **Do the CEO's outstanding equity awards vest upon a change-in-control?**
- What is the multiple of salary plus bonus in the severance agreement for the CEO (upon a change-in-control)?
- **What is the basis for the change-in-control or severance payment for the CEO?**
- What are the multiples of salary and bonus in severance agreements for executives other than the CEO (upon a change-in-control)?
- **What is the basis for the change-in-control or severance payment for executives excluding the CEO?**
- Does the company provide excise tax gross-ups for change-in-control payments?
- What is the length of employment agreements with the CEO?
- **What is the amount of the CEO's estimated non-change-in-control severance amount as of the end of the last fiscal year, as a multiple of the executives' average salary + bonus over the past three years?**

Compensation Questions Eliminated from Earlier GRId Analysis

- In the last fiscal year, did the company grant premium priced options of at least 125% of market price that need to be maintained for at least 30 consecutive days?
- Has the company voluntarily adopted a management "Say on Pay" advisory vote resolution for the most recent annual meeting or committed to a resolution going forward?

Important Notice: Pearl Meyer & Partners has provided this analysis based solely on its knowledge and experience as compensation consultants. In providing this guidance, Pearl Meyer & Partners is not acting as your lawyer and makes no representations or warranties respecting the legal, tax or accounting implications or effectiveness of this advice. You should consult with your legal counsel and tax advisor to determine the effectiveness and/or potential legal impact of this advice. In addition, this Client Alert is not intended or written to be used, and cannot be used by you or any other person, for the purpose of (1) avoiding any penalties that may be imposed by the Internal Revenue Code, or (2) promoting, marketing or recommending to another party any transaction or other matter addressed herein, and the taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

About Pearl Meyer & Partners

For more than 20 years, PM&P has served as a trusted independent advisor to Boards and their senior management in the areas of compensation governance, strategy and program design. The firm provides comprehensive solutions to complex compensation challenges through the development of programs that align rewards with business goals to create long-term value for all stakeholders: shareholders, executives and employees. The firm maintains offices in New York, Atlanta, Boston, Charlotte, Chicago, Houston, Los Angeles, San Francisco and San Jose.



www.pearlmeyer.com

NEW YORK

570 Lexington Avenue
New York, NY 10022
(212) 644-2300
newyork@pearlmeyer.com

ATLANTA

One Alliance Center
3500 Lenox Road, Suite 1708
Atlanta, GA 30326
(770) 261-4083
atlanta@pearlmeyer.com

BOSTON

132 Turnpike Road, Suite 300
Southborough, MA 01772
(508) 460-9600
boston@pearlmeyer.com

CHARLOTTE

3326 Siskey Parkway, Suite 330
Matthews, NC 28105
(704) 844-6626
charlotte@pearlmeyer.com

CHICAGO

123 N. Wacker Drive, Suite 860
Chicago, IL 60606
(312) 242-3050
chicago@pearlmeyer.com

HOUSTON

Three Riverway, Suite 1575
Houston, TX 77056
(713) 568-2200
houston@pearlmeyer.com

LOS ANGELES

550 S. Hope Street, Suite 1600
Los Angeles, CA 90071
(213) 438-6500
losangeles@pearlmeyer.com

SAN FRANCISCO

455 Market Street, Suite 2000
San Francisco, CA 94105
(415) 651-4560
sanfrancisco@pearlmeyer.com

SAN JOSE

2880 Zanker Road, Suite 203
San Jose, CA 95134
(408) 954-7399
sanjose@pearlmeyer.com

