

RiskMetrics Group Releases 2009 Proxy Voting Policies

RiskMetrics Group, formerly Institutional Shareholder Services, recently released updates to its proxy voting policies, many of which seek to limit the discretion of boards of directors in important areas of corporate governance.¹ Many institutional investors adhere to the RiskMetrics voting recommendations. Accordingly, public companies should be familiar with the recent policy updates in order to anticipate how their institutional shareholders are likely to vote in the upcoming proxy season. Significant highlights of the policy updates are summarized below.

- **Poor accounting practices.** RiskMetrics will recommend case-by-case voting on specific members of the audit committee or the full board, if serious poor accounting practices such as fraud, misapplication of GAAP, or material weaknesses or deficiencies in Section 404 disclosures exist. Before deciding if a negative vote is justified, RiskMetrics will pay attention to several factors like “the severity, breadth, chronological sequence and duration, as well as the company’s efforts at remediation or corrective actions.”
- **Poor pay practices.** In the current economic crisis, compensation practices have been and will continue to be the subject of media, investor, and governmental scrutiny. RiskMetrics will recommend a withhold or against vote for compensation committee members, the chief executive officer (CEO), or the entire board of directors, in certain cases, if poor pay practices are found to exist. Poor pay practices include, among others, excessive executive perquisites, excise tax gross-ups, or modified single trigger provisions (in the event of a change in control) in equity compensation plans. RiskMetrics also may recommend a vote for shareholder proposals on clawbacks of incentive pay if the company’s policy on the issue does not meet best practices standards. RiskMetrics will similarly endorse proposals seeking holding period requirements for executives receiving equity-based incentives, if there are circumstances, (like the presence of risk-incentivizing factors) that warrant the adoption of such proposals. RiskMetrics has indicated that it will not look upon the stock market’s deterioration as sufficient reason for repricing of stock options or resetting performance plans by companies. RiskMetrics also has revised its methodology for constructing peer groups for CEO compensation purposes and will pay attention to factors such as the company’s size and revenue, among others, and will reduce the minimum peer group from 12 companies to eight.
- **Directors’ attendance.** RiskMetrics will recommend withhold or against votes on the re-election of directors who, without a valid excuse, attended less than 75 percent of the board and committee meetings during the most recent fiscal year. RiskMetrics will evaluate on a case-by-case basis any meaningful information provided by the company regarding a director’s absence due to unavoidable and extraordinary circumstances such as conflicts.
- **Performance/governance evaluation for directors.** RiskMetrics will recommend withhold or against votes on all director nominees if the company’s board lacks appropriate accountability or oversight, and the board has “sustained poor performance relative to peers.” “Sustained poor performance” will mean one- and three-year total shareholder returns in the bottom half of a company’s peer group. Previously, the measure was the bottom five percent; the new measure — bottom 50 percent — is a considerably higher standard.
- **Independent chairman.** RiskMetrics will, as in the past, recommend voting for shareholder proposals that require an independent director to be the chairman of the board, unless there are compelling reasons to the contrary such as if the company in question maintains a “counterbalance governance structure.” Current factors whose presence would sway RiskMetrics away from recommending that the chairman be an independent director are:
 - The presence of a designated lead independent director
 - Two-thirds of the company’s board consist of independent directors
 - All key committees of the company’s board of directors consist entirely of independent board members
 - The company has established governance guidelines
 - The company has not experienced sustained poor performance as described in the preceding paragraph (unless there has been a change in the chair/CEO position during the last three years)
 - The absence of any problematic governance or management issues at the company
- **Proposals for new board committees.** In general, RiskMetrics will recommend a vote against any shareholder proposals for the creation of a new board committee. The rationale behind this policy is that such proposals attempt to create a supervision structure that compromises the company’s flexibility in determining the right oversight mechanism for itself. However, exceptions may be made depending upon factors such as the company’s existing mechanisms regarding the oversight of the issue for which the board committee is being proposed or the level of disclosure of such issue.
- **Advance notice requirements for shareholder proposals/nominations.** RiskMetrics will recommend votes on advance notice

proposals on a case-by-case basis. RiskMetrics' position is to support shareholder proposals that allow shareholders to submit proposals or director nominations as close to the meeting as reasonably possible, generally between 30 and 60 days prior to the meeting. RiskMetrics also generally supports informational requirements by companies regarding economic and voting positions of proponents of proposals.

- **Poison pills.** RiskMetrics will recommend a vote for shareholder proposals asking that the company submit its poison pill to the shareholders for ratification, or that any poison pills to be adopted by the company in the future should first be submitted for a shareholder vote. Any proposal by management to ratify a poison pill will be determined on a case-by-case basis. Before recommending a vote for a specific shareholders' rights plan, RiskMetrics will look for the presence of certain attributes in the rights plan such as a 20 percent or higher triggering threshold, a two-to-three year sunset provision, or the absence of dead-hand and similar provisions in the plan. RiskMetrics also will consider the company's existing governance structure and any "problematic governance" issues. RiskMetrics is continuing its policy of recommending withhold votes against an entire board if the board:
 - Adopts or renews a rights plan without shareholder approval
 - Does not commit to putting it to a shareholder vote within 12 months of adoption (or, in the case of a newly public company, does not commit to putting it to a shareholder vote within 12 months following the IPO)
 - Reneges on a commitment to put the rights plan to a vote and has not yet received a withhold recommendation for this issue
- **Share capital increase.** RiskMetrics will determine its recommendation regarding votes on proposals to increase the number of authorized shares of the company's common or preferred stock on a case-by-case basis. In making its recommendations, RiskMetrics will consider company-specific factors such as reasons or rationale for the proposed increase in share capital, the dilutive impact of the proposed increase, and the governance structure and practices of the company's board. Also, for a company that has more than one class of capital stock, RiskMetrics will recommend a vote against any proposal to increase the number of authorized shares of the class that has superior voting rights.
- **Corporate responsibility.** RiskMetrics also has indicated its stance regarding voting recommendations related to a host of corporate social responsibility issues such as modified ingredients, pharmaceutical pricing, product re-importation, access to medicines, equal opportunity employment, gender equality, green policies, linking executive compensation to social responsibility, labor and human rights standards, and doing business in foreign countries such as Northern Ireland. RiskMetrics will recommend voting for shareholder proposals asking a company to disclose its energy efficiency policies and also will generally recommend voting for shareholder proposals requesting a report on the company or its suppliers' labor or human rights standards and policies unless such policies are already in public domain.

While shifting the balance of power away from the board of directors and towards the shareholders, RiskMetrics' policies reflect the continuing focus of investors and regulators on accountability and oversight, compensation practices, and accurate financial reporting.

¹ The update can be reviewed on the RiskMetrics Web site at <http://www.riskmetrics.com/policy>.

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