

Weil Briefing:

SEC Disclosure and Corporate Governance

November 23, 2009

RiskMetrics/ISS Issues Policy Updates for 2010 Proxy Season

—Expect More Negative Vote Recommendations in Uncontested Director Elections

On November 19, 2009, RiskMetrics Group issued updates to its proxy voting policy that will be applicable to shareholder meetings held on or after February 1, 2010. The policy updates that are applicable to US companies are available at <http://www.riskmetrics.com/sites/default/files/RMG2010USPolicyUpdates.pdf>. This briefing summarizes those policy updates that affect US companies and discusses implications for voting recommendations and results in uncontested elections of directors.¹ Notably, RiskMetrics' updated policy expands the circumstances that will lead it to recommend that its clients vote against or withhold votes for directors who are up for re-election in 2010. As outlined in Appendix A, there will now be more than 40 categories of practices that could lead to a negative vote recommendation.

RiskMetrics voting recommendations are influential: The voting results at Russell 3000 companies for the 2009 proxy season indicate that the vast majority of directors who received a majority "against" or "withhold" vote also received an adverse RiskMetrics vote recommendation. The impact of negative vote recommendations is likely to be even greater for the 2010 proxy season because of the increase in companies adopting majority voting for the election of directors and/or director resignation policies, coupled with the elimination of brokers' ability to vote in director elections in the absence of customer instructions.

In preparing for their companies' 2010 annual meetings, corporate counsel, corporate secretaries and directors (particularly those serving on compensation or nominating and governance committees) should review the updated policy and consider areas of potential vulnerability.

Summary of Key Changes for the 2010 Proxy Season

1. Executive Compensation Evaluation and Equity Plan Proposals

RiskMetrics has updated its policy on evaluation of executive compensation so that management proposals to approve executive compensation that have been included on the ballot at companies that have implemented a "say-on-pay" will become the primary communications vehicle for shareholders to initially address problematic pay practices. In determining its recommendation with respect to a management proposal to approve executive compensation, RiskMetrics will:

- Consider whether the company has "problematic pay practices," including policies and practices that could incentivize excessive risk-taking and
- Assess pay-for-performance, which will now include an assessment of CEO pay relative to a company's total shareholder return over five years in addition to its current tests.

RiskMetrics will generally recommend a negative vote on the re-election of compensation committee members (or, in rare cases where it deems the full board to be responsible, all directors) if, in its view:

- There is a misalignment between CEO pay and performance with regard to shareholder value, in accordance with the broader tests discussed above or
- The company maintains problematic pay practices (including policies and practices that could incentivize excessive risk taking) and one of the following three factors is present:
 - RiskMetrics considers the situation to be “egregious”
 - No management proposal to approve executive compensation is on the ballot or
 - The board has failed to respond to concerns raised in prior management proposals to approve executive compensation.

In emphasizing its new focus on potential incentives for inappropriate risk-taking, RiskMetrics spotlighted guaranteed bonuses, the use of a single performance metric for short- and long-term plans, “lucrative” severance packages, “high pay opportunities” relative to industry peers, “disproportionate” supplemental pensions and “mega” annual equity grants that provide “unlimited upside with no downside risk.”

RiskMetrics will also assess pay-for-performance when determining its recommendation with respect to proposals to approve equity-based incentive plans and will recommend a negative vote if in its view, excessive non-performance-based equity awards are the major contributor to a pay-for-performance misalignment. RiskMetrics has also updated its volatility and stock price assumptions and burn rate tables for 2010, which it uses to determine recommendations with respect to equity compensation plans that are up for shareholder approval.

Note that on November 19, 2009, RiskMetrics released a set of frequently asked questions in relation to its evaluation of compensation practices for US companies, which is available at <http://www.riskmetrics.com/sites/default/files/RMG2010CompensationFAQ.pdf>.

2. Adoption or Renewal of Non-Shareholder Approved Poison Pills

RiskMetrics has amended its policy with respect to voting on directors at companies where a shareholder rights plan (poison pill) has been instituted by the board but not approved by shareholders. RiskMetrics will now recommend on a “case-by-case” basis where a board has adopted a pill with a term of 12 months or less without shareholder approval. However, RiskMetrics will recommend a negative vote with respect to all continuing directors where a board has, without shareholder approval:

- Adopted a pill with a term of more than 12 months
 - Renewed any pill
 - Made any “material, adverse change” to an existing pill or
 - Maintained an existing pill that has not been previously approved by shareholders.
- RiskMetrics will review companies that have a pill in place every year if the company has a classified board or at least once every three years if the company does not have a classified board.

Note that RiskMetrics has a separate updated policy regarding pills adopted to protect a company's net operating losses.

3. Shareholder Ability to Call a Special Meeting and Action by Written Consent

RiskMetrics has amended its policies relating to recommendations on proposals that either restrict or permit shareholders to call special meetings or act by written consent. RiskMetrics will now consider the following factors:

- Whether shareholders currently have the right to call special meetings or act by written consent
- The ownership threshold necessary to call special meetings (10% is preferred) or the threshold at which shareholders can act by written consent, as applicable
- The inclusion of exclusionary or prohibitive language
- The ownership structure of investors and
- The level of shareholder support of and management's response to previous shareholder proposals.

4. Egregious Actions

For 2010, RiskMetrics will define more broadly the "egregious actions" for which it will recommend negative votes for individual directors, for a specific committee or for the entire board. In addition to its existing criteria, which relate to failure to replace management as appropriate, RiskMetrics will consider:

- "Material failures of governance, stewardship or fiduciary responsibilities at the company" and
- Actions related to the directors' service on *other* boards that "raise substantial doubt about his or her ability to effectively oversee management and serve the best interests of shareholders" at *any* company.

5. Director Independence Classification

RiskMetrics has amended its classification of directors to, among other things, broaden the transactional relationships and professional services that may impair independence under its bright-line rules. In relation to transactional relationships, RiskMetrics will employ a NYSE-based test for companies listed on the NYSE or Amex and a Nasdaq-based test for all other companies. While RiskMetrics removed related party transactional relationships from the bright-line impediments to a finding of independence, such relationships will continue to be examined under the general tests of "material relationship."

For a detailed comparison of the classification for 2010 against the 2009 classification, see Appendix B.

6. Other Amendments

Appendix C summarizes the other changes and clarifications made by RiskMetrics that are applicable to the 2010 proxy season, including amendment of the policy relating to greenhouse gas emissions.

Expected Impact of these Changes in 2010

Looking back at uncontested elections during the first nine months of 2009, RiskMetrics recommended a negative vote with respect to 2,147 directors in the Russell 3000. Notably, the vast majority of directors who received a majority “against” or “withhold” vote received an adverse vote recommendation from RiskMetrics – out of 93 directors at 50 companies who received such a vote, RiskMetrics recommended adversely with respect to 89 of those directors, at 48 companies.² According to RiskMetrics, the following key factors led to high negative votes during the 2009 proxy season:

- Tax gross-up payments and other pay concerns
- Failure to implement a majority-supported shareholder resolution
- Failure to seek shareholder approval for a poison pill
- Service of management-affiliated directors on key board committees and
- Poor attendance at board and committee meetings.³

Notwithstanding the record numbers of “against” and “withhold” votes in 2009, few directors failed to be seated. Most companies at which a director received a majority negative vote had a plurality standard in place for director elections and no director resignation policy.⁴

It is likely that RiskMetrics’ policy updates will result in an increased number of recommendations in 2010 to vote “against” or “withhold” votes from director nominees in uncontested elections. It is also likely that these negative vote recommendations will have a greater impact than in the past because of other significant changes in the director election process – the increase in companies adopting majority voting for the election of directors (which is also the subject of several pending Congressional bills)⁵ and/or director resignation policies, coupled with the elimination of brokers’ ability to vote in director elections in the absence of customer instructions.

What You Should Do Now

RiskMetrics typically provides companies that are in the S&P 500 with prior warning if it intends to issue a recommendation to vote “against” or “withhold” from a director and companies are given a very narrow time window (48 hours) in which they can respond and engage with RiskMetrics on the issue. Companies that are not in the S&P 500 generally do not receive such prior warning. We encourage all companies to become familiar with the circumstances in which RiskMetrics may recommend a vote “against” or “withhold” from directors (set forth in Appendix A) so that companies are better prepared to engage with RiskMetrics within a tight time frame. Companies may also wish to proactively contact their analyst at RiskMetrics in anticipation of or shortly after proxy statement filing to talk through

any issues that could cause RiskMetrics to recommend a vote “against” or “withhold” from a director.⁶

* * *

If you have any questions on these matters, please do not hesitate to speak to your regular contact at Weil, Gotshal & Manges LLP or to any member of the Firm’s Public Company Advisory Group:

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¹ On November 19, 2009, RiskMetrics also issued updates to its proxy voting policies that are applicable to European, Canadian and other international companies, which are available at http://www.riskmetrics.com/policy/2010/policy_information.

² Data relates to director elections where the voting results were available as of October 5, 2009 and was derived from the Governance Analytics section of the RiskMetrics website (www.riskmetrics.com) (log-in required). See also RiskMetrics Group, *Postseason Review: Withhold Votes*, RISK & GOVERNANCE WEEKLY (October 2, 2009).

³ RiskMetrics Group, *Postseason Report* (October 15, 2009) at 10.

⁴ *Id.*; SharkRepellent, *Withheld: The Director’s Cut* (October 1, 2009).

⁵ See, e.g., the Restoring American Financial Stability Act of 2009, 111th Cong. (2009), the Shareholder Bill of Rights Act of 2009, S. 1074, 111th Cong. (2009) and the Shareholder Empowerment Act of 2009, H.R. 2861, 111th Cong. (2009).

⁶ RiskMetrics recently issued guidelines with respect to engaging with RiskMetrics on proxy voting matters, which is available at <http://www.riskmetrics.com/sites/default/files/ProcessForEngagingOnProxyVoting20090130.pdf>.

Circumstances in Which RiskMetrics Will Make a Negative Vote Recommendation in Uncontested Director Elections in 2010

Individual Directors

RiskMetrics has stated that it will recommend a vote “against” or “withhold” from individual directors who:

- Attend less than 75% of board and committee meetings without a valid excuse (e.g., illness, service to the nation, work on behalf of the company, funeral obligations). RiskMetrics will evaluate on a “case-by-case” basis if the company provides “meaningful public or private disclosure explaining the director’s absences” and will take into account the degree to which absences were due to an unavoidable conflict, pattern of absenteeism and other extraordinary circumstances
- Sit on more than 6 public company boards
- Are CEOs of public companies who sit on boards of more than 2 public companies besides their own (recommend a vote “against” or “withhold” only at outside boards)
- Are responsible for material failures of governance, stewardship or fiduciary responsibilities at the company
- Have engaged in egregious actions related to service on other boards that raise substantial doubt about his or her ability to effectively oversee management and serve the best interests of shareholders at any company

RiskMetrics has stated that it may recommend a “withhold” or “against” vote for the CEO if the company has problematic pay practices (see below).

Entire Board

RiskMetrics has stated that it will recommend a vote “against” or “withhold” from all directors (except for new nominees, who will be considered on a “case-by-case” basis) if:

- The company’s proxy statement indicates that not all directors attended 75% of board and committee meetings but does not disclose the names of the directors involved
- A poison pill has a dead-hand or modified dead-hand feature. A recommendation to vote against/withhold will be made every year until the feature is removed
- The board adopts a poison pill with a term of more than 12 months or renews any existing pill (including a pill with a term of 12 months or less) without shareholder approval. A commitment or policy that puts a newly-adopted pill to a binding shareholder vote may potentially offset an adverse vote recommendation
- The company maintains a non-shareholder approved pill. RiskMetrics will review annually for companies with classified boards and at least once every three years for companies with declassified boards

- The board makes a “material, adverse change” to an existing poison pill without shareholder approval
- The board failed to act on a shareholder proposal that received approval by a majority of shares outstanding the previous year (a management proposal with other than a “for” recommendation by management will not be considered as sufficient action taken)
- The board failed to act on a shareholder proposal that received approval by a majority of votes cast for the previous 2 consecutive years (a management proposal with other than a “for” recommendation by management will not be considered as sufficient action taken)
- The board failed to act on takeover offers where a majority of shareholders tendered their shares
- At the previous board election, any director received more than 50% withhold/against votes of the votes cast and the company has failed to address the underlying issue(s) that caused the high withhold/against vote
- The board is classified and continuing directors are responsible for a problematic governance issue at the board/committee level that would warrant a withhold/against vote recommendation are not up for election (RiskMetrics may hold any or all appropriate nominees (except new nominees) accountable)
- The board lacks accountability and oversight, coupled with sustained poor performance relative to peers (measured by 1-year and 3-year total shareholder returns in the bottom half of a Russell 3000 company’s 4-digit Global Industry Classification Group). Problematic provisions include a classified board structure, a supermajority vote requirement, a majority vote standard for director elections with no carve-out for contested elections, inability for shareholders to call special meetings or act by written consent, a dual-class structure and/or a non-shareholder approved poison pill. In addition, RiskMetrics will assess the CEO’s pay relative to the company’s total shareholder returns over a time horizon of at least 5 years
- The company has problematic pay practices (as appropriate) (see below)
- There have been material failures of governance, stewardship or fiduciary responsibilities at the company
- The board failed to replace management as appropriate
- There have been egregious actions related to the director’s service on other boards that raise substantial doubt about his or her ability to effectively oversee management and serve the best interests of shareholders at any company

RiskMetrics has stated that it will recommend “case-by-case” on the full board if the board adopts a poison pill with a term of 12 months or less without shareholder approval, taking into account the following factors:

- The date of the pill’s adoption relative to the date of the next meeting of shareholders (whether the company had time to put the pill on the ballot for shareholder ratification given the circumstances)
- The company’s rationale
- The company’s governance structure and practices

- The company's track record of accountability to shareholders

RiskMetrics has stated that it will recommend "case-by-case" on the full board if poor accounting practices, which rise to a level of serious concern (such as fraud, misapplication of GAAP and material weaknesses identified in Section 404 disclosures) are identified.

RiskMetrics has stated that it will examine the severity, breadth, chronological sequence, duration and the company's efforts at remediation or corrective actions.

Inside Directors and Affiliated Outside Directors

RiskMetrics has stated that it will recommend a vote "against" or "withhold" from inside directors and affiliated outside directors when:

- An inside or affiliated outside director serves on the audit, compensation or nominating committee
- The company lacks an audit, compensation or nominating committee so that the full board functions as that committee
- The company lacks a formal nominating committee (even if the board attests that independent directors fulfill the functions of such a committee)
- The full board is less than majority independent

Audit Committee Members

RiskMetrics has stated that it will recommend a vote "against" or "withhold" from audit committee members if:

- Non-audit fees paid to the auditor are excessive (e.g., non-audit fees are greater than audit fees plus audit-related fees plus tax compliance/preparation fees)
- The company receives an adverse opinion on its financial statements from its auditor
- There is persuasive evidence that the audit committee entered into an inappropriate indemnification agreement with its auditor that limits the ability of the company or its shareholders to pursue legitimate legal recourse against the audit firm

RiskMetrics has stated that it will vote "case-by-case" on audit committee members if poor accounting practices, which rise to a level of serious concern (such as fraud, misapplication of GAAP and material weaknesses identified in Section 404 disclosures) are identified.

RiskMetrics has stated that it will examine the severity, breadth, chronological sequence, duration and the company's efforts at remediation or corrective actions.

Compensation Committee Members

RiskMetrics has stated that it will recommend a vote "against" or "withhold" from compensation committee members if:

- There is a negative correlation between CEO pay and company performance
 - There is a pay for performance disconnect between CEO pay and the company's stock performance (defined to mean an increase in CEO total compensation and the company's 1-

year and 3-year total shareholder returns are in the bottom half of its Global Industry Classification Group). RiskMetrics has stated that it will also assess CEO pay relative to total shareholder returns over 5 years

- The main source of the pay increase (over half) is equity-based
- The CEO is a participant of the equity proposal
- *UNLESS* compensation committee members can present strong and compelling evidence of improved committee performance, such as reviewing all components of CEO compensation, providing tally sheets under various termination scenarios, disclosing quantitative and qualitative performance criteria and hurdle rates, committing to grant at least 50% of equity awards where the grant or vesting is tied to pre-established performance conditions, and committing that the compensation committee has sole authority to retain and terminate compensation consultants
- The company fails to submit one-time transfers of stock options to a shareholder vote
- The company fails to fulfill terms of a burn rate commitment made to shareholders
- The company has backdated options (where the compensation committee members oversaw the questionable options grant practices or failed to respond proactively to the issue)
- The company has “problematic pay practices,” such as:
 - Egregious employment contracts (contracts containing multi-year guarantees for salary increases, non-performance based bonuses, and equity compensation)
 - New CEO with an overly generous new-hire package (excessive “make whole” provisions without sufficient rationale or any problematic pay practices)
 - Abnormally large bonus payouts without justifiable performance linkage or proper disclosure (includes performance metrics that are changed, canceled or replaced during the performance period without adequate explanation of the action and the link to performance)
 - Egregious pension/ supplemental executive retirement plan payouts (inclusion of additional years of service not worked that result in significant benefits provided in new arrangements or inclusion of performance-based equity awards in the pension calculation)
 - Excessive perquisites (for former and/or retired executives, such as lifetime benefits, car allowances, personal use of corporate aircraft or other inappropriate arrangements, extraordinary relocation benefits including home buyouts)
 - Excessive severance and/or change in control provisions:
 - Change in control payments exceeding 3 times base salary and bonus
 - Change-in-control payments without loss of job or substantial diminution of job duties (single-triggered)
 - New or materially amended employment or severance agreements that provide for modified single triggers, under which an executive may voluntarily leave for any reason and still receive the change-in-control severance package
 - New or materially amended employment or severance agreements that provide for an excise tax gross-up (modified gross-ups treated in the same manner as full gross-ups)

- Reimbursement of income taxes on certain executive perquisites or other payments (e.g., personal use of corporate aircraft, executive life insurance, bonus, etc; see also excise tax gross-ups above)
- Dividends or dividend equivalents paid on unvested performance shares or units
- Executives using company stock in hedging activities, such as “cashless” collars, forward sales, equity swaps or other similar arrangements or
- Repricing or replacing of underwater stock options/stock appreciation rights without prior shareholder approval (including cash buyouts)

RiskMetrics has stated that it will recommend “case-by-case” on compensation committee members with respect to the following additional poor pay practices:

- Excessive severance and/or change in control provisions (payments upon an executive's termination in connection with performance failure or a liberal change in control definition in individual contracts or equity plans which could result in payments to executives without an actual change in control occurring)
- Overly generous perquisites, including:
 - Personal use of corporate aircraft
 - Personal security systems maintenance and/or installation
 - Car allowances
 - Executive life insurance
- Internal pay disparity (excessive differential between CEO total pay and that of next highest-paid named executive officer)
- Voluntary surrender of underwater options by executive officers (may be viewed as an indirect option repricing/exchange program especially if those cancelled options are returned to the equity plan, as they can be regranted to executive officers at a lower exercise price, and/or the executives subsequently receive unscheduled grants in the future) or
- Other pay practices deemed problematic but not covered in any of the above categories

RiskMetrics has stated that it will also assess company policies and practices related to compensation that could incentivize excessive risk-taking, for example:

- Guaranteed bonuses
- A single performance metric used for short- and long-term plans
- Lucrative severance packages
- High pay opportunities relative to industry peers
- Disproportionate supplemental pensions
- Mega annual equity grants that provide unlimited upside with no downside risk

Factors that potentially mitigate the impact of risky incentives include rigorous claw-back provisions and robust stock ownership/holding guidelines.

RiskMetrics Classification of Directors 2010—Comparison Against 2009

2009	2010	Details of Change
“Inside Director”		
Employee of the company or one of its affiliates ¹	Employee of the company or one of its affiliates ¹	No change
Non-employee officer of the company if among the five most highly paid individuals (excluding interim CEO)	Among the five most highly paid individuals (excluding interim CEO)	A director who is among the five most highly paid individuals at the firm (excluding interim CEO) will now be classified as an “inside director,” whether or not the director is an officer
Listed as a Section 16 officer ²	Listed as an officer as defined under Section 16 of the Securities and Exchange Act of 1934 (“Section 16 officer”) ²	No change
Current interim CEO	Current interim CEO	No change
Beneficial owner of more than 50% of the company's voting power (this may be aggregated if voting power is distributed among more than one member of a defined group)	Beneficial owner of more than 50% of the company's voting power (this may be aggregated if voting power is distributed among more than one member of a defined group)	No change
“Affiliated Outside Director”		
Board attestation that an outside director is not independent	Board attestation that an outside director is not independent	No change
Former CEO of the company ^{3,4}	Former CEO of the company ^{3,4}	No change
Former CEO of an acquired company within the past five years ⁴	Former CEO of an acquired company within the past five years ⁴	No change
Former interim CEO if the service was longer than 18 months. If the service was between twelve and eighteen months an assessment of the interim CEO's employment agreement will be made ⁵	Former interim CEO if the service was longer than 18 months. If the service was between twelve and eighteen months an assessment of the interim CEO's employment agreement will be made ⁵	No change
Former executive ² of the company, an affiliate or an acquired firm within the past five years	Former Section 16 officer ² of the company, an affiliate ¹ or an acquired firm within the past five years	“Executive” has been replaced with “Section 16 officer” – definitions are the same but for one minor change (see footnote 2)
Executive ² of a former parent or predecessor firm at the time the company was sold or split off from the parent/predecessor within the past five years	Section 16 officer ² of a former parent or predecessor firm at the time the company was sold or split off from the parent/predecessor within the past five years	“Executive” has been replaced with “Section 16 officer” (see above)
Executive, ² former executive, general or limited partner of a joint venture or partnership with the company	Section 16 officer, ² former Section 16 officer, or general or limited partner of a joint venture or partnership with the company	“Executive” has been replaced with “Section 16 officer” (see above)

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2009	2010	Details of Change
<p>Relative⁶ of a current Section 16 officer of company or its affiliates</p> <p>Relative⁶ of former Section 16 officer, of company or its affiliate within the last five years</p>	<p>Immediate family member⁶ of a current or former Section 16 officer² of the company or its affiliates¹ within the last five years</p>	<p>“Relative” has been replaced with “immediate family member” – definitions are identical</p>
<p>Relative⁶ of a current employee of company or its affiliates where additional factors raise concern (which may include, but are not limited to, the following: a director related to numerous employees; the company or its affiliates employ relatives of numerous board members; or a non-Section 16 officer in a key strategic role)</p>	<p>Immediate family member⁶ of a current employee of company or its affiliates¹ where additional factors raise concern (which may include, but are not limited to, the following: a director related to numerous employees; the company or its affiliates employ relatives of numerous board members; or a non-Section 16 officer in a key strategic role)</p>	<p>“Relative” has been replaced with “immediate family member”(see above)</p>
<p>Currently provides (or a relative⁶ provides) professional services⁷ to the company, to an affiliate of the company or an individual officer of the company or one of its affiliates in excess of \$10,000 per year</p>	<p>Currently provides (or an immediate family member⁶ provides) professional services⁷ to the company, to an affiliate¹ of the company or an individual officer of the company or one of its affiliates in excess of \$10,000 per year</p>	<p>“Relative” has been replaced with “immediate family member”(see above)</p>
	<p>Is (or an immediate family member⁶ is) a partner in, or a controlling shareholder or an employee of, an organization which provides professional services⁷ to the company, to an affiliate¹ of the company, or an individual officer of the company or one of its affiliates in excess of \$10,000 per year</p>	<p>New bright-line test extending to indirect provision of professional services</p>
<p>Has (or a relative⁶ has) any transactional relationship with the company or its affiliates excluding investments in the company through a private placement⁸</p>	<p>Has (or an immediate family member⁶ has) any material transactional relationship⁸ with the company or its affiliates¹ (excluding investments in the company through a private placement)</p>	<p>“Material” has been added but no substantive change because footnote 8 already imported a de minimus threshold</p> <p>“Relative” has been replaced with “immediate family member”(see above)</p>
<p>Employed by (or a relative⁶ is employed by) a significant customer or supplier⁸</p>	<p>Is (or an immediate family member⁶ is) a partner in, or a controlling shareholder or an executive officer of, an organization which has any material transactional relationship⁸ with the company or its affiliates¹ (excluding investments in the company through a private placement)</p>	<p>The test has been modified to now apply where a director (or immediate family member) is a partner in, a controlling shareholder or an executive officer of an organization that has the transactional relationship with the company or an affiliate, but not where a director (or immediate family member) is an employee of the entity with the transactional relationship</p> <p>“Relative” has been replaced with “immediate family member”(see above)</p>

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2009	2010	Details of Change
Party to a voting agreement ⁹ to vote in line with management on proposals being brought to shareholder vote	Party to a voting agreement ⁹ to vote in line with management on proposals being brought to shareholder vote	No change
Has (or a relative ⁶ has) an interlocking relationship as defined by the SEC involving members of the board of directors or its Compensation and Stock Option Committee ¹⁰	Has (or an immediate family member ⁶ has) an interlocking relationship as defined by the SEC involving members of the board of directors or its Compensation Committee ¹⁰	“Relative” has been replaced with “immediate family member”(see above)
Founder ¹¹ of the company but not currently an employee	Founder ¹¹ of the company but not currently an employee	No change
Is (or a relative ⁶ is) a trustee, director or employee of a charitable or non-profit organization that receives grants or endowments ⁸ from the company or its affiliates ¹	Is (or an immediate family member ⁶ is) a trustee, director, or employee of a charitable or non-profit organization that receives material grants or endowments ⁸ from the company or its affiliates	“Material” has been added but no substantive change (see above) “Relative” has been replaced with “immediate family member”(see above)
Any material financial tie or other related party transactional relationship to the company	Any material ¹² relationship with the company	“Related party transactional relationship to the company” has been removed from the list of bright-line tests of independence. However, such relationships will likely still be examined under the general tests of “material relationship,” particularly as RiskMetrics did not specifically identify this policy change in its summary discussion “Material financial tie” has become “material relationship”
“Independent Outside Director”		
No material ¹² connection to the company other than a board seat	No material ¹² connection to the company other than a board seat	No change
Footnotes		
¹ “Affiliate” includes a subsidiary, sibling company, or parent company. RMG uses 50 percent control ownership by the parent company as the standard for applying its affiliate designation.	¹ “Affiliate” includes a subsidiary, sibling company, or parent company. RMG uses 50 percent control ownership by the parent company as the standard for applying its affiliate designation.	No change
² “Executives” (officers subject to Section 16 of the Securities and Exchange Act of 1934) include the chief executive, operating, financial, legal, technology, and accounting officers of a company (including the president, treasurer, secretary, controller, or any vice president in charge of a principal business unit, division or policy function). A non-employee director serving as an officer due to statutory requirements (e.g. corporate secretary) will be classified	² “Section 16 officer” (officers subject to Section 16 of the Securities and Exchange Act of 1934) includes the chief executive, operating, financial, legal, technology, and accounting officers of a company (including the president, treasurer, secretary, controller, or any vice president in charge of a principal business unit, division, or policy function). A non-employee director serving as an officer due to statutory requirements (e.g. corporate secretary) will be classified as an Affiliated Outsider. If the company provides explicit	A non-employee director who serves as a Section 16 officer due to statutory requirements will be classified as an “affiliated outsider” if the director is paid additional compensation in excess of \$10,000 per year (if below this threshold, the director will be classified as an “independent outside director”) “Executives” has been replaced with “Section 16 officer” (see above)

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2009	2010	Details of Change
as an Affiliated Outsider. If the company provides additional disclosure that the director is not receiving additional compensation for serving in that capacity, then the director will be classified as an Independent Outsider.	disclosure that the director is not receiving additional compensation in excess of \$10,000 per year for serving in that capacity, then the director will be classified as an Independent Outsider.	
³ Includes any former CEO of the company prior to the company’s initial public offering (IPO).	³ Includes any former CEO of the company prior to the company’s initial public offering (IPO).	No change
⁴ When there is a former CEO of a special purpose acquisition company (SPAC) serving on the board of an acquired company, RMG will generally classify such directors as independent unless determined otherwise taking into account the following factors: the applicable listing standards determination of such director’s independence; any operating ties to the firm; and if there are any other conflicting relationships or related party transactions.	⁴ When there is a former CEO of a special purpose acquisition company (SPAC) serving on the board of an acquired company, RMG will generally classify such directors as independent unless determined otherwise taking into account the following factors: the applicable listing standards determination of such director’s independence; any operating ties to the firm; and the existence of any other conflicting relationships or related party transactions.	No change
⁵ RMG will look at the terms of the interim CEO’s employment contract to determine if it contains severance pay, long-term health and pension benefits or other such standard provisions typically contained in contracts of permanent, non-temporary CEOs. RMG will also consider if a formal search process was underway for a full-time CEO at the time.	⁵ RMG will look at the terms of the interim CEO’s employment contract to determine if it contains severance pay, long-term health and pension benefits, or other such standard provisions typically contained in contracts of permanent, non-temporary CEOs. RMG will also consider if a formal search process was underway for a full-time CEO at the time.	No change
⁶ “Relative” follows the SEC’s new definition of “immediate family members” which covers spouses, parents, children, step-parents, step-children, siblings, in-laws, and any person (other than a tenant or employee) sharing the household of any director, nominee for director, executive officer, or significant shareholder of the company.	⁶ “Immediate family member” follows the SEC’s definition of such and covers spouses, parents, children, step-parents, step-children, siblings, in-laws, and any person (other than a tenant or employee) sharing the household of any director, nominee for director, executive officer, or significant shareholder of the company.	“Relative” has been replaced with “immediate family member”(see above)
⁷ Professional services can be characterized as advisory in nature and generally include the following: investment banking / financial advisory services; commercial banking (beyond deposit services); investment services; insurance services; accounting/audit services; consulting services; marketing services; and legal services. The case of participation in a banking syndicate by a non-lead bank should be considered a transaction (and hence subject to the associated	⁷ Professional services can be characterized as advisory in nature, generally involve access to sensitive company information or to strategic decision-making, and typically have a commission- or fee-based payment structure. Professional services generally include, but are not limited to the following: investment banking/financial advisory services; commercial banking (beyond deposit services); investment services; insurance services; accounting/audit services; consulting services; marketing services; legal	“Professional services” are characterized as advisory in nature, which has been clarified to mean generally involving access to sensitive company information or to strategic decision-making, and typically having a commission- or fee-based payment structure Insurance services and marketing services will be considered professional services unless the company explains why such

2009	2010	Details of Change
<p>materiality test) rather than a professional relationship.</p>	<p>services; property management services; realtor services; lobbying services; executive search services; and IT consulting services. The following would generally be considered transactional relationships and not professional services: deposit services; IT tech support services; educational services; and construction services. The case of participation in a banking syndicate by a non-lead bank should be considered a transactional (and hence subject to the associated materiality test) rather than a professional relationship. “Of Counsel” relationships are only considered immaterial if the individual does not receive any form of compensation (in excess of \$10,000 per year) from, or is a retired partner of, the firm providing the professional service. The case of a company providing a professional service to one of its directors, or to an entity with which one of its directors is affiliated, will be considered a transactional rather than a professional relationship. Insurance services and marketing services are assumed to be professional services unless the company explains why such services are not advisory.</p>	<p>services are not advisory Lobbying, executive search, property management, realtor and non-tech support IT services will be considered professional services Education services will no longer generally be considered professional services “Of counsel” relationships will only be considered immaterial if the individual does not receive any form of compensation in excess of \$10,000 per year from, or is a retired partner of, the firm providing the professional services The case of a company providing a professional service to one of its directors or to an entity with which one of its directors is affiliated, will be considered a transactional rather than a professional relationship</p>
<p>⁸ If the company makes or receives annual payments exceeding the greater of \$200,000 or 5 percent of the recipient’s gross revenues. (The recipient is the party receiving the financial proceeds from the transaction).</p>	<p>⁸ A material transactional relationship, including grants to non-profit organizations, exists if the company makes annual payments to, or receives annual payments from, another entity exceeding the greater of \$200,000 or 5 percent of the recipient’s gross revenues, in the case of a company which follows NASDAQ listing standards; or the greater of \$1,000,000 or 2 percent of the recipient’s gross revenues, in the case of a company which follows NYSE/Amex listing standards. In the case of a company which follows neither of the preceding standards, RMG will apply the NASDAQ-based materiality test. (The recipient is the party receiving the financial proceeds from the transaction).</p>	<p>The materiality test has been bifurcated so that companies which follow the NYSE/Amex listing standards will be subject to a NYSE-based test of the greater of \$1 million or 2% of the recipient’s gross annual revenues, while all other companies will be subject to the current Nasdaq-based test of the greater of \$200,000 or 5% of the recipient’s gross annual revenues</p>
<p>⁹ Dissident directors who are parties to a voting agreement pursuant to a settlement arrangement will generally be classified as independent unless determined otherwise, taking into account the following factors: the terms of the agreement; the duration of the standstill provision in the agreement; the limitations and requirements of actions that are agreed upon; if the dissident director nominee(s) is subject to the standstill; and if there any conflicting relationships or related party transactions.</p>	<p>⁹ Dissident directors who are parties to a voting agreement pursuant to a settlement arrangement, will generally be classified as independent unless determined otherwise taking into account the following factors: the terms of the agreement; the duration of the standstill provision in the agreement; the limitations and requirements of actions that are agreed upon; if the dissident director nominee(s) is subject to the standstill; and if there any conflicting relationships or related party transactions.</p>	<p>No change</p>

2009	2010	<i>Details of Change</i>
<p>¹⁰ Interlocks include: (a) executive officers serving as directors on each other’s compensation or similar committees (or, in the absence of such a committee, on the board); or (b) executive officers sitting on each other’s boards and at least one serves on the other’s compensation or similar committees (or, in the absence of such a committee, on the board).</p>	<p>¹⁰ Interlocks include: executive officers serving as directors on each other’s compensation or similar committees (or, in the absence of such a committee, on the board); or executive officers sitting on each other’s boards and at least one serves on the other’s compensation or similar committees (or, in the absence of such a committee, on the board).</p>	<p>No change</p>
<p>¹¹ The operating involvement of the Founder with the company will be considered. Little to no operating involvement may cause RMG to deem the Founder as an independent outsider.</p>	<p>¹¹ The operating involvement of the founder with the company will be considered. Little to no operating involvement may cause RMG to deem the founder as an independent outsider.</p>	<p>No change</p>
<p>¹² For purposes of RMG’s director independence classification, “material” will be defined as a standard of relationship (financial, personal or otherwise) that a reasonable person might conclude could potentially influence one’s objectivity in the boardroom in a manner that would have a meaningful impact on an individual’s ability to satisfy requisite fiduciary standards on behalf of shareholders.</p>	<p>¹² For purposes of RMG’s director independence classification, “material” will be defined as a standard of relationship (financial, personal or otherwise) that a reasonable person might conclude could potentially influence one’s objectivity in the boardroom in a manner that would have a meaningful impact on an individual’s ability to satisfy requisite fiduciary standards on behalf of shareholders.</p>	<p>No change</p>

Other RiskMetrics Policy Updates for 2010

- **Publicly traded limited liability partnerships and publicly traded limited liability companies:** RiskMetrics will begin analyzing and issuing voting recommendations with respect to publicly traded limited liability partnerships and publicly traded limited liability companies
- **Common or preferred stock authorization:** Amendment of policy to emphasize disclosure of specific reasons for proposed authorized share capital increases, discussion of historical use of existing shares and recent total shareholder return, and any anti-takeover effect (for blank-check preferred stock)
- **Supermajority vote requirements:** Amendment of policy relating to proposals to reduce supermajority vote requirements to recommend “case-by-case” (instead of “against”) where a company has a significant shareholder, taking into account ownership structure and quorum and supermajority vote requirements (so as to protect minority interests)
- **Net operating loss charter amendments:** New policy to recommend “case-by-case” on management proposals to adopt an amendment for the stated purpose of protecting a company’s net operating losses, considering certain factors enumerated in the policy (e.g., sunset provisions, ownership threshold and governance)
- **Net operating loss poison pills:** Clarification of policy relating to net operating loss poison pills to include the company’s governance structure as a factor to be considered
- **Greenhouse gas emissions:** Amendment of policy to recommend “case-by-case” (rather than “for” unless certain factors are present) on proposals calling for the adoption of greenhouse gas reduction goals from products and operations, taking into account feasibility, prescriptiveness of the request and other factors
- **Linking compensation to environmental, social and governance:** Amendment of policy to recommend “against” (rather than “case-by-case”) on proposals to link executive compensation with non-financial criteria such as environmental, social and governance goals and related proposals
- **Bankruptcy reorganizations:** New policy to recommend “case-by-case” on bankruptcy reorganization proposals, considering certain factors enumerated in the policy (e.g., estimated prospects of the reorganized company, governance and treatment of shareholders)
- **“New nominee”:** New definition of “new nominee” for purposes of voting on director nominees in uncontested elections to focus on directors who were not on the board at the time of a problematic action
- **“Diversity”:** New definition of “diversity” for purposes of proposals to diversify the board or requesting reports on diversity efforts to mean “gender or racial minority diversity”
- **Candidates with particular expertise:** New policy to recommend “case-by-case” on shareholder resolutions seeking a director nominee candidate who possesses a particular subject matter expertise, considering certain factors enumerated in the policy (e.g., existing structure and oversight mechanisms with respect to the particular issue)
- **Establishment of board committees:** Clarification of policy relating to shareholder proposals to establish *any* board committee (not just standing board committees)