

# Meridian Client Update

## *ISS and Glass Lewis Provide Issuers the Opportunity to Update Self-Selected Peer Groups*

Both Institutional Shareholder Services (ISS) and Glass Lewis (through its partnership with Equilar) permit (but do not require) companies to submit updated self-selected peer groups in advance of the 2015 proxy season. ISS and Glass Lewis develop their own peer groups for purposes of evaluating the alignment of CEO pay and company performance. However, in the development of these peer groups, ISS and Glass Lewis will take into account a company's self-selected peer group.

The processes for submitting an updated peer group to ISS and Glass Lewis are described below.

### **Submission of Self-Selected Peer Groups to ISS**

Russell 3000 companies may submit changes to their self-selected peer groups to ISS **by 8 p.m. EST on Thursday, December 11, 2014**. ISS clarified that **a company should submit the peer group used for benchmarking CEO pay for the fiscal year ending prior to the company's 2015 annual meeting**. For companies that do not submit changes, proxy-disclosed peers from the most recent proxy filing will automatically be factored into the ISS peer group construction process. If a company's annual meeting is after September 15, 2015, no action is required as ISS will conduct a separate peer group submission process for these companies in mid-2015.

If a company submits an updated self-selected peer group, ISS expects that this updated peer group will appear in the company's 2015 proxy. Significant differences between submitted peers and peers in the 2015 proxy may cause ISS to re-determine the peer group and may result in the company not being able to pre-submit updated peer group information in future years.

The process for submitting an update to a company's self-selected peer group to ISS involves the following two steps.

- Provide the company's **complete** self-selected peer group using ISS's web form available at <http://www.issgovernance.com/u-s-company-peer-group-feedback>.
- Following submission of the online form, a company must confirm its submission by sending ISS an electronic copy (scanned PDF or equivalent) of the submitted list of peer companies on the company's letterhead along with the company name, the company contact name and their email address to [peerfeedback@issgovernance.com](mailto:peerfeedback@issgovernance.com). The confirmation email must be from the email domain of the company contact.

As a general rule, ISS is limiting its consideration of a company's updated peer group to situations in which that peer group was used for benchmarking CEO pay for the fiscal year ending prior to the company's 2015 annual meeting. This circumstance applies to any company that updated its peer group for 2014 pay

decisions but did not disclose that peer group in its 2014 proxy (e.g., because it was not used as a basis for 2013 pay decisions).

ISS's FAQs provide a limited exception pursuant to which a company may submit changes to its peer group even though that peer group was not used to benchmark CEO pay set for 2014. Specifically, ISS will consider changes to a company's peer group that are due to business events that have made companies in the company's peer group no longer relevant (e.g., significant business changes, mergers, spinoffs or bankruptcies). Notably, however, this exception does not apply to a subject company that undergoes a similar transaction or significant business change.

### **Submission of Self-Selected Peer Groups to Glass Lewis/Equilar**

Glass Lewis, through its partnership with Equilar, is also accepting submissions of updates to a company's self-selected peer group. U.S. companies in the Russell 3000 Index and Canadian companies in the S&P/TSX Composite Index that will update their self-selected peer groups in their 2015 proxies may **submit their updated peer groups to Equilar**. The updated peer group will be used by Equilar to develop a market-based peer group that Glass Lewis will use in its quantitative pay-for-performance evaluation in 2015.

Companies holding meetings during the first half of 2015 have until **December 31, 2014** to submit updated peer groups directly to Equilar. Similar to ISS, for companies that do not submit updated peer groups by December 31, Equilar will develop the Glass Lewis market-based peer groups for 2015 using the self-selected peer group disclosed in a company's 2014 proxy.

Equilar's market-based peers are calculated twice yearly, in January and July. Consequently, companies that file proxies for meetings to be held during the second half of 2015 do not need to submit updated peer group information by December 31. Such companies may submit changes to their peer groups after December 31. Equilar will incorporate those updated peer groups in developing its market-based peer groups in July 2015.

*In contrast to ISS, Equilar and Glass Lewis are soliciting updates to a company's peer group regardless of whether the peer group was used to benchmark pay in 2014.*

Companies should submit updated peer groups using Equilar's web portal available at: <http://insight.equilar.com/app/peerupdate>. Shortly thereafter, Equilar will send an email to the submitter and a company's corporate secretary for the corporate secretary to verify the updated peer group submitted via its web portal.

**Meridian Comment.** Companies will need to carefully consider whether it is beneficial and appropriate to provide ISS and/or Glass Lewis otherwise non-public information on its custom peer group used for benchmarking executive compensation.

As noted above, ISS and Glass Lewis will consider updated peer group information when developing their own peer groups for each Russell 3000 company. Presumably, this will increase the similarity between an ISS/Glass Lewis developed peer group and a company's 2015 proxy-disclosed peer group, thereby enhancing the appropriateness of peer group-based comparative analyses of pay-for-performance alignment. However, it is important to note this will not necessarily yield a better outcome for a company.

ISS has provided assurances that updated peer group information will remain confidential until after a company has issued its 2015 proxy. However, we have not seen a similar assurance from Equilar or Glass Lewis. In that regard, we are not aware of any instance in which either ISS or Glass Lewis has published a company's updated self-selected peer group prior to the issuance of the company's proxy. Nonetheless, a

company's senior management and/or Compensation Committee should weigh whether the benefits associated with submitting updated peer group information outweighs any issues or concerns associated with the disclosure of non-public information to these two private proxy advisory firms and/or Equilar.

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