CAPflash
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2011 Proxy Season Summary – Say on Pay

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Measured through September 2, 2011, 455 of the S&P 500 companies included Say on Pay resolutions in either a preliminary or definitive proxy statement, and vote results from annual meetings were available for 438 of these companies (96%). Therefore, with the first season of Say on Pay votes in the U.S. nearly complete, we found this an apt time to discuss certain themes that have emerged:

1. Going forward, a Say on Pay vote will be an annual event at most companies
2. A simple majority should not be considered a passing grade
3. Companies with stronger performance generally received higher levels of shareholder support
4. Say on Pay voting has already been a catalyst for change

As background, on January 25, 2011, the SEC issued final rules implementing Section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank"), which generally provides shareholders of US public companies with the right to cast three types of advisory votes related to executive compensation:

1. A vote to approve the compensation of the Named Executive Officers (NEOs), effective for shareholder meetings occurring on or after January 21, 2011;
2. A vote on the frequency with which shareholders should be entitled to cast Say on Pay votes (every one, two or three years), effective for shareholder meetings occurring on or after January 21, 2011; and
3. A vote on golden parachute arrangements for NEOs related to a sale, consolidation or merger, effective April 25, 2011.

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Say on Pay Frequency Vote Results (2011 Proxy Season)

An annual vote frequency has emerged as the clear shareholder preference. Among 93% of S&P 500 companies reporting vote results, a majority of shareholders supported annual Say on Pay vote frequency. This differs from vote recommendations, where only 68% of the companies had recommended an annual vote.

Company Recommendation (n=455)

Vote Frequency	# of Companies	% of Companies
Annual	310	68%
Bienniel	13	3%
Triennial	111	24%
No Recommendation	21	5%

Vote Results: Received Majority Shareholder Support (n=438)

Vote Frequency	# of Companies	% of Companies
Annual	409	93%
Bienniel	1	0%
Triennial	21	5%
None (only plurality)[1]	7	2%

The strong support for annual votes is not a surprise. 39 institutional investors, representing more than $830 billion in assets, issued a public call for companies and investors to support annual advisory votes on executive compensation in 2011 proxy statements. Similarly, a number of major mutual funds have also indicated support for annual Say on Pay votes, and ISS' policy recommends that shareholders support annual votes (Glass Lewis has indicated a similar preference).[2]

CAP Comment: *Following the frequency vote, the SEC rules mandate disclosure of how often the company will hold future Say on Pay votes, generally through an 8-K. Issuers must also provide proxy-based disclosure of the current frequency of Say on Pay votes and when the next scheduled Say on Pay vote will occur.*

CAP Comment: *When companies conduct their Say on Pay vote in line with the frequency preferred by a majority of shareholders, they may exclude shareholder frequency proposals from the proxy for six years.*

Say on Pay Vote Results (2011 Proxy Season)

Say on Pay resolutions received majority shareholder support at all but eight S&P 500 companies, with average support of 89% (most companies received greater than 80% support for their NEO pay program).[3]

% in Favor	# of Companies	% of Companies	Average 1-Yr TSR @12/31/10
90%-100%	274	62%	25.2%
80%-90%	73	17%	24.3%
70%-80%	43	10%	16.5%
50%-70%	40	9%	7.4%
0%-50%	8	2%	9.6%

A "threshold" for acceptable passage rates seems to have emerged; to-date, results indicate this threshold is around 80% shareholder support.

1 None of the three frequency options (annual, biennial, or triennial) received majority support (greater than 50%).

2 For additional detail, see 12/5/10 CAPFlash: "ISS 2011 Policy Updates – Here Comes Say on Pay."

3 Outside of the S&P 500, an additional 29 companies did not receive majority shareholder support for their NEO compensation program.

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As shown above, companies with stronger TSR on a 1-year basis generally received a higher level of support from shareholders on their executive pay programs.

CAP Comment: *While a company does not "fail" its Say on Pay vote unless a majority of shareholders vote against the compensation program, many companies have received 90+% shareholder support and an "acceptable" shareholder support threshold has emerged around 80%. Below this level of support, we have found that there often is a notable level of shareholder discontent that should be carefully reviewed.*

CAP Comment: *While these votes are non-binding, we expect that most companies will carefully evaluate their vote results, taking some action if there is low shareholder support (not just in the limited cases where a majority of shareholders did not support the company's executive compensation program).*

CAP Comment: *The final SEC rules require additional disclosure in the CD&A regarding whether, and if so how, companies have considered the results of the most recent Say on Pay vote.*

CAP Comment: *As a result of the Dodd-Frank legislation, the SEC will eventually adopt rules requiring proxy-based disclosure of the pay-for-performance relationship at each U.S. public company (rules currently schedule to be adopted during 2012).*

The eight companies where a majority of shareholders did not support the executive compensation program, and the Say on Pay vote results for these companies, are:

Company	1-Yr TSR	% Votes in Favor
Hewlett-Packard	-17.7%	48.2%
Freeport-McMoran Copper & Gold	52.6%	45.5%
Jacobs Engineering	21.9%	44.8%
Masco Corp.	-6.1%	44.6%
Nabors Industries	7.2%	42.5%
Janus Capital Group	-3.2%	40.1%
Constellation Energy Group	-10.3%	38.0%
Stanley Black and Decker	32.7%	38.0%

Impact of Proxy Advisor Recommendations

On average, shareholder support for Say on Pay votes was considerably lower when ISS recommended an "Against" vote to shareholders.[4,5]

ISSVote Recommendation	Average Shareholder Support
For(n=377)	92%
Against(n=61)	64%

Companies Receiving "Against" Vote Recommendation		
% in Favor	# of Companies	% of Companies
90% - 100%	2	3%
80% - 90%	4	7%
< 80%	55	90%

CAP Comment: *Where ISS recommended an "Against" vote for Say on Pay, 90% of companies received less than the 80% percent shareholder support threshold discussed above.*

As shown below, companies that received an "Against" vote recommendation from ISS generally had lower TSR.

4 ISS refers to Institutional Shareholder Services, an influential proxy advisory service. Source of vote recommendations was ISS Voting Analytics.

5 Sample = 434 companies that filed vote results to-date.

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ISS Vote Recommendation	# Companies that Passed	# Companies that Failed	Total	Average 1-Yr TSR @ 12/31/10
For	377	0	377	24.3%
Against	53	8	61	10.3%
Total	430	8	438	22.5%

CAP Comment: *Of the 438 companies reporting vote results, to-date, ISS recommended an "Against" vote for Say on Pay at 61 S&P 500 companies (14%). Only 8 of the 61 companies (13%) did not receive majority support for their Named Executive Officer compensation program.*

Responding to Proxy Advisor Recommendations

Some notable companies took additional steps related to executive compensation during this proxy season, filing supplementary soliciting materials and/or making last minute modifications to their CEO pay program. Select examples include: General Electric, Disney, ExxonMobil, Johnson & Johnson, Hewlett-Packard, Lockheed Martin, and Northern Trust. While these filings were generally in reaction to negative vote recommendations from shareholder advisory services such as ISS, ExxonMobil went a step further by filing supplementary materials (essentially an executive pay brochure) on the same day as the proxy. ExxonMobil still received a negative vote recommendation from ISS, and later filed additional soliciting material rebutting ISS' vote recommendation.

Conclusion

During the 2011 proxy season, a clear shareholder preference for annual Say on Pay votes emerged. In terms of the actual Say on Pay vote, an 80% threshold emerged as an "acceptable" level of shareholder support, a significantly higher hurdle than simple a pass / fail test.

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Say on Pay has already been a catalyst for change. Companies are more willing to address controversial pay practices than they were a year earlier. Disclosure of executive compensation in proxy statements has evolved, and the influence of proxy/shareholder advisory services (such as ISS) has increased.

Looking forward, companies will need to carefully evaluate their Say on Pay vote result from the 2011 proxy season, and determine how to best incorporate any findings into planning for 2012.

Please contact us at (212) 921-9350 if you have any questions about the issues discussed above or would like to discuss your own executive compensation issues. You can access our website at www.capartners.com for more information on executive compensation.