

Say on Pay and Say on Frequency (“Say When on Pay”) Results at the End of the Proxy Season

Annual Meeting high season in the US has come to a close; however, the debate on Say on Pay is still in very early stages. In the universe of all companies reviewed by ISS, 2,754 proxies were filed with Say on Pay proposals on the ballot, and as of the end of June, 2,185 have reported results. There were also 2,602 proxies filed with Frequency proposals on the ballot, of which 2,136 have reported results (the difference between the number of proposals on the two issues reflects companies still operating under TARP rules). It is clear that the choice for most investors is for annual votes on Say on Pay and that most companies won overwhelming support for their Say on Pay proposals, though there are several notable exceptions. However, the averages do not convey the time and effort put in by issuers in making contact with their major shareholders to gauge their likely votes on Say on Pay, and to discuss issues that may not have been adequately conveyed by the advisory firm reports.

Say on Pay

Average Reported Results to date on Say on Pay

	For	Against
All Companies	91.3%	8.7%
Russell 3000	91.3%	8.7%
S&P 500	88.3%	11.7%

The average support for Say on Pay has remained fairly steady since our previous update, continuing a trend of strong support for Say on Pay proposals. However, to date 36 companies have experienced Say on Pay failures. In addition, 255 companies received majority support, but had in excess of 20% of shares voting opposing the proposal. From informal discussions with some large institutional holders, 20% opposition to Say on Pay appears to be the level at which greater scrutiny will be applied to future compensation votes, and to the response of the board and managements to the vote.

ISS Recommendations on Say on Pay and Voting Results

	ISS Against
All Companies	301
Russell 3000	281
S&P 500	62

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ISS recommended a vote against Say on Pay proposals at 301 companies in their total universe, out of 2,754 ballots reviewed – a ratio of 89.1% in favor, and 10.9% against. The favorable recommendations at S&P 500 companies were slightly lower – 87% of S&P companies reviewed by ISS received favorable recommendations.

While an ISS against recommendation was not a clear indicator that the proposal will fail, it is worth noting that the 36 companies that had Say on Pay failures all got a negative recommendation from ISS.

Consequences and Action Items

Companies that did not receive majority support in 2011 for the Say on Pay votes will need to discover the reasons for the against votes, and determine what changes need to be made to garner investor support in the future. It is fair to say that without any action on the part of those issuers, there may be consequences beyond future failed Say on Pay votes, including recommendations against directors for failure to heed shareholders' views.

There are also potential consequences for companies whose Say on Pay proposal passed but received significant against votes. As noted above, it appears that the consensus is that 20% of the shares voting against would be considered significant to the institutional community. In those situations, issuers will again need to determine the cause for the high level of dissatisfaction for the compensation practices among their investors.

One other consequence of failed Say on Pay votes may be derivative shareholder lawsuits, filed against, among other parties, the board of directors, senior executives, compensation consultants and the company itself. To date six such suits have been filed against companies that have failed to achieve majority support on the issue, including Beazer Homes and Umpqua Holdings.

Say on Frequency

Breakdown of Issuer Recommendations on Frequency proposal

	Annual	Biennial	Triennial	No Rec
All Companies	1,346	72	1,111	73
Russell 3000	1,226	57	943	62
S&P 500	291	14	109	17

Shareholder Choice on Frequency Proposal

	Annual	Biennial	Triennial
All Companies	1,728	16	392
Russell 3000	1,728	16	392
S&P 500	386	1	23

Average Reported Percentage Results to date on Frequency proposal

	Annual	Biennial	Triennial
All Companies	70.0%	2.2%	26.2%
Russell 3000	70.0%	2.2%	26.2%
S&P 500	78.5%	1.8%	19.6%

As we mentioned previously, although the early trend showed more than a majority of companies supporting a triennial frequency for Say on Pay votes, the trend continued to shift and ultimately over a majority of companies recommended an annual frequency vote on Say on Pay. We believe that this change reflects votes for companies with early meetings, and ISS' and Glass Lewis' recommendations for an annual vote. It is also worth noting that for companies in the Russell 3000 and S&P 500, the uniform ISS recommendation was for annual votes on Say on Pay.

We will continue to monitor Say on Pay and Say on Frequency votes and trends and provide you with periodic updates. We are also available to discuss the results of your Say on Pay and Say on Frequency votes, and potential actions in response those votes.