

Large Accelerated Filer Announces Triennial Frequency in Face of Majority Support for Annual

June 21, 2011 | Client Update | 2-minute read

The Dodd-Frank frequency vote is of course “nonbinding”, but companies that have “lost” the vote for triennial frequency have almost without exception decided that the better part of valor is to follow the shareholders’ expressed will for an annual vote. With more than 60% of large accelerated filers having announced their decisions, only two companies have bucked the trend. Annaly Capital Management just filed an amended Form 8-K declaring that its board has determined that future say-on-pay votes will be submitted to shareholders every three years, even though annual say-on-pay received majority approval. Annaly Capital Management is the first large accelerated filer to follow the example previously set by American Reprographics Company, a small company, to conduct triennial votes. The vote wasn’t close in either case; each company had received 70% or more shareholder support for an annual vote.

While signifying that it won’t conduct another say-on-pay vote for three years, Annaly Capital Management indicated that the board will “continue to evaluate this decision annually.” The company’s annual meeting also resulted in one director receiving more “against” votes than “for” votes, it appears due to the director’s failure to attend more than 75% of board and committee meetings. The company stated, also in the amended Form 8-K, that after considering the director’s qualifications and past attendance history, the board determined that it would not be in the company’s best interest to request the director’s resignation. The company has a classified board, but interestingly, the Form 8-K declared that the director will serve until the company’s next annual meeting, at which time the board expects the director to be re-nominated.

The story doesn’t end there - will ISS recommend withhold votes for the board next year for not following the shareholders’ will?

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Ning Chiu

+1 212 450 4908

ning.chiu@davispolk.com

This communication, which we believe may be of interest to our clients and friends of the firm, is for general information only. It is not a full analysis of the matters presented and should not be relied upon as legal advice. This may be considered attorney advertising in some jurisdictions. Please refer to the firm's privacy notice for further details.