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Updated Say-on-Pay Scorecard: Reprise

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With the vast majority of this year's annual shareholder meetings for U.S. public companies behind us (at least for those with calendar-year fiscal years), we wanted to update the findings that we shared in our last post on the subject. As of the end of last week, 1,193 large accelerated filers had reported the voting results from their shareholder meetings.

Regarding approval of "say-on-pay":

Large Accelerated Filers by Say-on-Pay Vote (as of July 1, 2011)	
90-100% Approval	791
80-89% Approval	195
70-79% Approval	97
60-69% Approval	55
50-59% Approval	29
40-49% Approval	16
30-39% Approval	9
20-29% Approval	1
0-19% Approval	0
Total	1,193

Generally, approval for say-on-pay votes has remained high as the season has progressed, and the average say-on-pay result for all large accelerated filers is 89%. Similar to what we reported at the height of the proxy season, less than 18% of large accelerated filers reported say-on-pay results below the 80% approval level, and less than 10% reported results below the 70% approval level.

A total of 25 large accelerated filers have lost their say-on-pay votes, and all of them received "against" recommendations from ISS. To date, large accelerated filers with "against" recommendations have averaged 64% approval, while those with "for" recommendations have averaged 92% approval. – interestingly, these approval levels have been remarkably stable and are, in fact, identical to those we reported in our last post. We believe the total number of public companies, including large accelerated filers, that have lost their say-on-pay votes is 37.

On the "say-when-on-pay" front, shareholders at 1,076 large accelerated filers voted in favor of an annual frequency (*i.e.*, over 90% of all large accelerated filers). Although votes for triennial have occurred with slightly greater frequency as the annual meeting season has progressed, only around 27% of all large accelerated filers that recommended a triennial frequency have had their recommendation endorsed by shareholders, and, in the great bulk of these cases, the triennial vote was supported by a controlling or at least very substantial insider shareholder. The companies that managed to get a triennial vote, without insider support, included Bancorpsouth, Crocs, Linn Energy, Inc., Markel Corporation, SCANA Corporation and United Parcel Service.

Over 63% of the companies that have reported the results of their annual meetings have already adopted a say-on-pay frequency, and in 749 of 752 instances, the board of directors went with the recommendation of shareholders. Curiously, in two of the three other instances (namely, Crocs and Green Mountain Coffee Roasters), a shareholder vote in favor of a triennial frequency has nonetheless resulted in the company adopting an annual frequency. In the third, shareholders who voted in favor of an annual frequency saw the company (Annaly Capital Management) adopt a triennial frequency, which is what the board had originally recommended to its shareholders. It remains to be seen what pressure, if any, companies that buck the stated preference of shareholders come under.

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.

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