

Director Elections in Focus

June 4, 2012 | Client Update | 2-minute read

It is an unusual annual meeting where Justin Timberlake acts as the Master of Ceremonies and Taylor Swift, Celine Dion, Lionel Richie and others perform for over 14,000, mostly employees, in attendance. But the focus at Wal-Mart's meeting was clouded by recent allegations of FCPA violations, as evidenced in the annual meeting results [announced today](#).

Since slightly more than half of the shares are held by insiders, the opposition by more than 15% to the re-election of former CEO H. Lee Scott is not insignificant. ISS also recommended against current CEO Michael Duke, chairman Robson Walton and audit committee chair Christopher Williams, with those three directors receiving about 13% negative votes. Perhaps as a testament to ISS influence, the remaining directors emerged unscathed with at least 93% in support, even though CalPERS campaigned against the re-election of nine directors, the City Comptroller of New York targeted five directors and Glass Lewis also recommended against additional directors.

In other director news today, Chesapeake Energy [announced](#) in advance of its annual meeting on Friday that it will change the composition of its board after reaching agreement with Southeastern Asset Management and Carl Icahn to add four new independent directors to replace four existing directors who plan to resign, and appoint a new independent chairman upon the retirement of a fifth existing director. It is unclear whether this development affects the hearing scheduled to take place in Oklahoma federal court on a preliminary injunction to delay the meeting until more information is made available about the related party transactions and perks involving the company's CEO. The plaintiffs argued that they needed more details to make informed voting decisions about director elections and the vote on executive compensation.

Even with director elections in the news, ISS reports that the average vote for directors were 95.5% as of late May. Only 7 out of 5,7000 directors have failed to win majority support, and for all the same reasons as in prior years ? attendance issues, adoption of poison pills without shareholder approval and failure to implement shareholder proposals that received majority of votes from shareholders. Most of those directors remain on their boards due to plurality voting structures.

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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