

Proxy Access Proposal Fails at Disney and Shares the Spotlight with Other Issues

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At its meeting last week, Disney's proxy access proposal received 40% in support. As we previously discussed [here](#), the SEC Staff did not permit the company to exclude the proposal from its proxy statement.

While it is probably too early to think that proxy access shareholder proposals have exhausted their 15 minutes, they have largely been in the background this season, as ISS reports that only a few were submitted. In this case, the company's proxy access proposal was overshadowed by continuing agitation over Disney's decision in 2011 to appoint the CEO as the chairman of the board, after having an independent chair since 2004. The week before the meeting, CALSTRS and PGGM filed a [notice](#) of exempt solicitation urging shareholders to support both the proxy access and independent chair shareholder proposals and also vote against Disney's say-on-pay resolution due to the "guaranteed minimum target values and a guaranteed five year term for the CEO."

The company responded with a terse two-sentence statement emphasizing its exceptional results in 2012 with 76.3% total shareholder return, and 139% over the CEO's tenure. This defense was followed by another [notice](#) of exempt solicitation, this time from Connecticut Treasurer Denise L. Nappier, the proponent of the independent chair proposal. The Treasurer's letter accused Disney of deliberately avoiding shareholder input on recombining the CEO and Chairman roles by timing the announcement of the change in 2011 after the deadline for accepting shareholder proposals had passed, and argues that the two roles should only be combined in "extraordinary circumstances," a stricter standard than making decisions in light of the "best interest" of the company. The proposal ultimately received 35% in favor.

Say-on-pay was also a focus of the Treasurer's letter, which attacked the CEO's "guaranteed target pay opportunities" and "guaranteed long-term incentive award target." The letter indicated that ISS estimated \$100 million as the value of the CEO's severance payments.

58% of shareholders voted for Disney's say-on-pay resolution, similar to 2012 when 57% supported it. [TheCorporateCounsel.net](#) reports only three failed votes so far at smaller companies, but Disney, and previously at Apple where say-on-pay received 61% in support, shows that say-on-pay continues to be challenging even at companies with stellar financial performances.

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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