

## A Look Back to the 2013 Proxy Season: Problematic Director Elections

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“For board members, 2013 was a tale of two proxy seasons,” declares the ISS 2013 Proxy Season Review, taking a page out of the NYC mayoral race playbook.

The [report](#) (free registration required) provides a wealth of information, detailed lists and graphics on key events for meetings between January and June 2013, including describing companies affected by say-on-pay challenges, shareholder proposals and director elections. Rather than repeat the numerous statistics cited, most of which follow trends from prior years, or recall events we previously covered, this first part of a series of posts covers some of the more interesting highlights. A second post will cover executive compensation and finally, governance and social shareholder proposals.

*Director election results.* Company performance clearly impacts shareholders’ sentiment toward directors, as a stronger market led to only 44 directors receiving less than majority support in 2013. The number of directors in this category is down by almost half since the economic crisis years in 2009 and 2010, even though the issues resulting in poor director votes are fairly static and have little to do with stock price.

The key drivers of ISS negative recommendations against directors, the main reason directors receive low support, continue to be fairly predictable, including poor attendance, adopting a poison pill without shareholder approval, failing to meet ISS independence criteria, failing to respond to majority-supported shareholder proposals and failing to respond to poor say-on-pay votes. The report lists them all by name and company, with only 6 representing actual failed elections since the vast majority of these companies use the plurality standard. A handful of companies have faced losing majority support for director elections multiple times, in one case for five consecutive years, without making any changes.

*Significant pledging.* It was difficult to discern during the season how ISS evaluated disclosure of officer or executive pledging, but we now know that the advisory firm recommended against 152 directors at 25 companies, typically targeting the committee charged with risk oversight or even the entire board if it was a shared responsibility. At one company, “scant disclosure” regarding the actual amount of pledged shares motivated the negative recommendation. ISS indicates that average support for those directors was 83%.

*Unilaterally amending governance documents to change shareholder rights.* As a relatively new issue, some directors received low support because they amended their governing documents to remove shareholders’ ability to call special meetings or act by written consent, or otherwise increased the threshold number of shareholders given the ability to take those actions.

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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