

## A Look Back to the 2013 Proxy Season: Say-on-Pay

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Say-on-pay is our focus in the second of our [series](#) on looking at the past season, through reviewing the ISS post-season report. The vote continues to be routine for most companies, as almost 80% of the Russell 3000 companies receive support above 90%.

To get these kinds of results, companies recognize that it's crucial to score favorably in ISS' evaluation. Contrary to what some may believe, a mark of "high concern" under the ISS quantitative test will not automatically translate into a negative recommendation. This was proven during the season with ISS recommending against say-on-pay for only 51% of those companies, as the qualitative analysis allowed ISS to recommend in favor of the remaining companies notwithstanding poor quantitative scores. However, 4% of companies that scored well, as "low concern" companies, still faced "against" recommendations due to problematic pay practices or lack of sufficient responsiveness to the prior year's low say-on-pay vote. This includes Apple, due to its compensation for officers other than the CEO. 27% of companies graded "medium concern" also fared unfavorably in terms of ISS recommendations.

Even companies that did well need to remain vigilant, given that one year's good results do not guarantee the next. The reverse is also true. Companies that faced challenges in 2012 were able to obtain better results this year, primarily through fairly substantial shareholder outreach as disclosed in the proxy statement. Engagement is not enough, however, as evidenced by Abercrombie & Fitch's efforts. After receiving less than 25% in favor in 2012, the company engaged with shareholders representing over 50% of the votes and made several changes, but not in the design of the CEO's option awards, which was criticized by ISS. This resulted in another failed vote with even less support at 20%.

Finally, of the 995 equity incentive plans voted on, ISS supported 73%, but ultimately only 8 plans did not pass.

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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