

ISS Reports on Preliminary Postseason Results

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According to the ISS US preliminary postseason update, the win rate for dissidents, measured by whether they won at least one board seat through negotiations or a vote, was 59% at 22 contested elections in the first half of 2014, compared to 24 contests with a 68% success rate by June 2013. The size of the target continues to increase, as seven of the companies had market capitalizations greater than \$1 billion. Notable for 2014 were what ISS dubbed “hydra-headed activist challenges,” where multiple dissidents targeted the same company but with competing visions, including at Darden and Sotheby’s.

Boards were also the focus through 13 “vote no” campaigns. CtW urged investors to vote against nine companies, including several fast food restaurants and retail chains, by invoking the ongoing debate over minimum wage and income inequality, leading to a failed say-on-pay vote at Chipotle. New York City funds and CalPERS blamed board members on Duke Energy’s regulatory policy committee for a coal ash spill earlier in the year.

Board elections remained staid affairs generally, however, as directors received 96% average support. Only 34 nominees at 21 companies in the Russell 3000 did not obtain more votes in favor than withheld or against, primarily for failing to respond to majority-supported shareholder proposals or majority opposition to a director in prior years. ISS notes that only one of these director has since stepped down, after poor attendance triggered a resignation due to the company’s majority voting policy. Not attending at least 75% of meetings led to eight directors not receiving majority votes, while six directors were criticized for adopting a poison pill without shareholder approval. As say-on-pay continues to take the pressure off compensation committee members, only one such director did not receive majority support after facing several years of compensation issues.

Environmental and social shareholder proponents dominated the filed resolutions for inclusion in proxy statements, with a 15% increase this year for a total of 460 proposals, surpassing governance topics for the first time since the 1980s. 30% were withdrawn through settlements and the SEC no-action letter process excluded about 13%. Corporate political activity resolutions, usually seeking more disclosure, dominated.

Requests for independent chairs comprised the bulk of governance proposals, but passed at only 4 companies. The lack of support obscures the fact that the practice is gaining increased acceptance, as 26% of S&P 500 companies are now led by independent chairs, compared to 20% two years ago. Predictions for widespread proxy access proposals continued to prove false for 2014, as only 13 were voted on. Six of the nine proposals that allowed shareholders owning 3% or more to submit nominations passed.

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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