

# Summer Watch-List of Governance Developments

June 25, 2012 | Client Update | 3-minute read

While proxy season has ended for most companies, there are a number of governance matters worth keeping an eye on during the summer months:

***SEC Rulemaking.*** The SEC [website](#) noting upcoming Dodd-Frank activity still indicates a number of actions slated before the end of June, including proposing rules regarding disclosure of pay-for-performance, pay ratios, hedging by employees and directors and recovery of executive compensation. It was recently updated to reflect the adoption of final rules on compensation committees and advisers, which we discussed [here](#). As we are in the last week of June, it is likely that the Commission will again delay the actions into the next time period – July to December 2012. Watch for the SEC Sunshine Act meeting notices that usually come out on Wednesdays regarding Commission discussions of proposed or final rules, as summer is traditionally an active month for SEC rulemaking.

***NYSE and Nasdaq Listing Standards.*** The SEC final rules on compensation committees and compensation advisers gave the listing exchanges wide latitude in proposing standards of implementation, including the possibility of imposing additional prohibitions or other restrictions. The exchanges have 90 days from the time the rules are published in the Federal Register, and the proposed standards are subject to public comment.

***ISS Policy Survey.*** Last year, ISS released its policy survey to its client institutions and corporate issuers in early July. The survey forms the basis for possible changes to ISS policies with respect to voting recommendations on such matters as director elections, say-on-pay and shareholder proposals.

***Say-on-Pay.*** The current count is 49 companies with failed votes. June has been a particularly active month, with eventful annual meetings at Nabors and Chesapeake but also with Safety Insurance Group being the first company to fail its vote even after receiving support from ISS. ISS likely recommended in favor of the company because it scored “low concern” on the three quantitative pay-for-performance tests, but shareholders rejected that formulaic approach. Consulting firm Semler Brossy indicates that shareholders may have been concerned about the company’s performance and possibly the absence of changes or description of shareholder outreach that might have been expected as a result of the prior year’s 67% favorable vote. Interesting events continue to unfold, such as Abercrombie & Fitch announcing [changes](#) to CEO compensation immediately *after* its vote received only 25% in favor. The company indicated that the CEO will forego two semi-annual equity grants that he is entitled to under his employment agreement. As the season winds down, we will begin to see whether there are any lessons to be learned from this second year of experience.

***Shareholder Proposals.*** As the overall results of shareholder proposals are tallied, it may be useful to analyze not only the average votes, but also where companies received either much higher or lower support for the proposals that your company may have already received, or may be at risk of seeing for the 2013 meeting. Proposals often also reflect the current governance environment in terms of which practices are becoming more widely adopted by companies and expected by investors as a result of high support, such as board declassification.

***Shareholder and Proxy Advisory Firm Engagement.*** The summer months may be an ideal time to reach out to shareholders, and proxy advisory firms if needed, either on specific issues or as a way to make introductions or otherwise keep in contact with those no longer harried by the proxy season.

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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