

A Summary of Governance Resources

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Our memos on two governance events last week – the release of Staff Legal Bulletin 14G giving additional guidance on citing procedural deficiencies for shareholder proposals and a summary of the ISS draft policy survey – can be found [here](#). It seems that proxy season is clearly getting underway, so this may be the last chance to find time to catch up on a trove of recent studies and research:

Board practices. The Spencer Stuart 2012 US Board [Index](#) has a wealth of useful data for benchmarking against the practices of S&P 500 boards, reporting for example that the CEO is the only inside director at nearly 60% of those companies. With respect to board leadership, 43% have separated the chairman and CEO roles, though only 23% have independent chairmen. Given the increased demands on board service, more than half of sitting CEOs do not serve on any outside boards, resulting in the leaders of major business divisions and functions making up 22% of new directors. Nominees are needed to replace, among others, directors who reach the mandatory retirement ages that have been adopted at 73% of companies (85% using 72 or older as the age cut-off). Director composition is a key focus since 83% of the large-caps conduct annual elections.

Directors? concerns. Even at companies with combined CEO/chair positions, half of their boards are discussing splitting the roles at the next CEO succession, according to PwC's annual board [survey](#) of over 800 directors. Compensation committees have increased their workloads, with 64% of directors responding that their practices have changed due to the say-on-pay votes and 86% indicating that compensation consultants are "very influential." With increased concerns about executive pay, it is not surprising that 62% of directors reported that they have directly communicated with institutional investors (although 33% believe directors should not have such dialogues at all) and 53% have spoken to proxy advisory firms.

Director Elections. While more companies failed say-on-pay this year, support for directors remain fairly strong. Only 175 directors at Russell 3000 companies received a majority of negative support (either withholds or against votes) in the last 3 years, according to [research](#) conducted by the Investor Responsibility Research Center (IRRC) Institute and GMI Ratings. Their findings concluded that 80% of majority withholds occurred at smaller companies, which were more likely to have straight plurality voting for electing directors (the overwhelming type of standard at 91% of the companies reviewed). The combination of small companies that likely receive less public scrutiny coupled with plurality voting standards may largely explain why only 5% of all directors who received less than majority support left their boards as a result. Interestingly, while there are good arguments that the middle ground between majority and plurality voting standards, the "plurality plus resignation" approach, is substantially the same as majority voting, it turns out that half of the directors at companies that have adopted majority voting stepped down after receiving majority against votes, and only 8% of those directors at companies with only "plurality-plus" did the same.

Shareholder proposals. Finally, as we approach the shareholder proposal season, the 2012 Proxy Monitor [report](#) examined the shareholder proposal activities at Fortune 200 companies from 2012 meetings and found that a small group of shareholders continue to sponsor the majority of shareholder proposals (36% from labor and pension funds; 31% from three individual investors and their relatives and affiliates; and 22% from activists with socially responsible agendas), with a plurality of the proposals focused on corporate political contributions and lobbying. We will likely see a similar trend for 2013 meetings.

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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