

Early Examples of Companies Disputing ISS Say-on-Pay Recommendations

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So far, as we launch into the proxy season, only a handful of companies have filed additional soliciting materials to dispute proxy advisory firm recommendations. These materials were almost ubiquitous last season, and it is unclear whether the recent changes in the formulation of comparative peer groups by the advisory firms will curtail their numbers.

[Piedmont Natural Gas Company](#) provided in detail several points of contention with the ISS negative recommendation. In particular, the company argued that of the 12 peers that ISS used to compare their CEO compensation, 8 had not yet filed their most recent proxy statements. In addition, ISS' constraints around the revenue size and market capitalization in selecting the peer group, the company complains, resulted in ignoring several peers that the company believes to be more relevant to their business.

[National Fuel Gas Company](#) faced a similar issue with respect to ISS using essentially 2011 executive compensation as a basis for evaluating their say-on-pay vote, as nearly 75% of the peer group compiled by ISS had not yet filed proxy statements for 2013 meetings. According to their filing, ISS attempted to adjust for this issue by simply increasing the total compensation of those peers by nearly 7%, which the company argued was "a crude general assumption" and not an accurate basis for comparison.

In what may serve as a warning to pay careful attention to the disclosure areas that the proxy advisory firms are most likely to examine, [Hillenbrand](#) indicated in their filing that ISS had erroneously concluded that they do not benchmark at the 50th percentile because "the language of our proxy statement did not state this point clearly." All three companies received above 75% in support.

Hewlett Packard has yet to hold its meeting but has made several filings. In the midst of confronting efforts by CtW Investment Group targeted at their auditor ratification proposal and the election of several directors, the company announced recently that ISS has reversed its recommendation and is now supporting the company's say-on-pay vote. The first [release](#) provided no explanation but then a [filing](#) the next day highlighted recent changes which the company had disclosed in its Form 10-Q. The company had added total shareholder return as a metric to its 2013 awards and the compensation committee also committed to undertake a review of its compensation programs with a view towards including relative performance metrics in 2014 and future compensation plans.

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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