

How Equity Plan Proposals Fared in the 2014 Proxy Season and ISS Equity Plan Data Verification

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Shareholders were asked to vote on almost 1,200 equity plan proposals in the first half of 2014, according to the ISS U.S. Proxy Season Review Report, with an average approval rate of 89%. Slightly more than half of the proposals amended existing plans, while 150 proposals were made solely to comply with Section 162(m) tax deductibility and did not ask for any increased shares.

While it appears that ISS did not support at least a quarter of the proposals, only eight failed to pass, including two that ISS recommended that shareholder vote in favor. Two failures were at S&P 500 companies.

High shareholder value transfer was the primary concern for ISS, cited in 237 out of 301 “against” recommendations, although usually more than one issue was cited, including option repricing permissiveness and excessive burn rates. The ability to reprice options without shareholder approval is increasingly rare, present in only 7% of the plans ISS reviewed.

Other, less common, causes of negative recommendations include liberal change-in-control vesting provisions and pay for performance or poor pay practice related to equity-based compensation. A pay-for-performance disconnect was listed as the reason ISS recommended against the equity plan at Chipotle Mexican Grill, where both the say-on-pay vote and the plan proposal did not pass.

We again remind companies with equity plan proposals up for vote at the next annual meeting about ISS’ new data verification site, which we previously discussed [here](#). Given that ISS cannot input the information into its database until after proxy statements are filed, but also faces the challenge of needing to release voting reports a few weeks before the meeting, there is only the briefest window of time for companies to verify the information in that database. The binding nature of the vote makes it crucial that plans pass and companies have the opportunity to help ISS ensure that its analysis is based on accurate materials.

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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