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2014 Proxy Season Preview

December 4, 2013

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Overview of the 2014 Proxy Season – Agenda

- Say-on-pay and other compensation issues
- Rule changes
- Shareholder proposals
- Q&A

Say-on-Pay – 2013 Results

- Summary of 2013 results to date
 - Overall rate of passage for say on pay votes remains high
 - In 2013 to date, 69 companies (less than 2%) have failed to obtain majority approval
 - 72% of companies have passed with over 90% approval

Say-on-Pay – 2013 Results

- Most common reasons for failed say on pay votes
 - Poor stock performance
 - Pay and performance “disconnect”
 - Insufficiently rigorous performance goals
 - Special awards, mega-grants or non-performance-based equity
 - “Problematic” pay practices

Say on Pay Forecast for 2014

- Highest number of companies will have say on pay votes in 2014
 - “Triennial” say on pay companies will have their second say on pay votes
 - Smaller reporting companies may have second votes, depending on frequency
- Say on pay disclosure considerations
 - Pay for performance disclosures
 - “Realizable” or “realized” pay

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Say on Pay Forecast for 2014

- Executive summaries and lists of best practices
- Sometimes-overlooked disclosure requirements
 - Discuss consideration of prior say on pay vote in CD&A
 - Disclose frequency and when next vote will occur in say on pay proposal

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Shareholder Litigation Based on Say on Pay

- Dozens of shareholder derivative lawsuits involving compensation-related claims were filed during the first several years of say on pay, typically following a failed say on pay vote or, in 2013, in advance of a shareholder meeting at which shareholder approval for an equity compensation plan was being sought
- Dodd-Frank expressly stated that it did not impose new or enhanced fiduciary duties in connection with the requirement to hold say on pay votes
- These lawsuits based on failed say on pay votes generally have not been successful, and appear to have receded for the moment

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ISS Proxy Voting Policies Update

- Only one compensation-related change for U.S. companies in 2014
- ISS bases its voting recommendations regarding “say on pay” proposals on, in part, a quantitative pay-for-performance screen that considers the “relative degree of alignment” (“RDA”) between the company’s TSR ranking and the CEO’s total pay ranking within a peer group
- In 2013, RDA was measured over one-year and three-year periods
- For 2014, the one-year period has been eliminated from the RDA test in favor of measuring the degree of alignment over only a three-year period

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Compensation Committee and Adviser Independence

- Dodd-Frank Act required SEC to issue rules concerning exchange listing standards that would require heightened independence requirements for compensation committee members
- Final rules and listing standards came into effect in 2013
- New requirements must be reflected in the compensation committee charter

Compensation Committee Independence

- NYSE listing standards:
 - In considering independence, must consider all factors specifically relevant to determining whether a director has a relationship to the listed company that is material to that director's ability to be independent from management in connection with the duties of a compensation committee member, including, but not limited to
 - The source of compensation paid to directors serving on the compensation committee; and
 - Whether a director is affiliated with the company, a subsidiary or an affiliate of a subsidiary

Compensation Committee Independence

- NASDAQ listing standards:
 - Now require compensation committee composed entirely of independent directors
 - NASDAQ's initial rule included a "bright line" requirement that a director would not qualify as independent for service on the compensation committee if he or she had received, directly or indirectly, consulting, advisory or other compensatory fees from the issuer or a subsidiary of the issuer
 - On November 26, 2013, NASDAQ proposed a revised rule that eliminates the "bright line" test and aligns its standards with those of the NYSE
 - Consider whether the director is affiliated with the company and determine whether such affiliation would impair the director's judgment as a member of the compensation committee

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Compensation Committee Responsibilities

- NYSE and NASDAQ listing standards mandate that compensation committees:
 - Have the authority, in their sole discretion, to retain or obtain the advice of a compensation consultant, independent legal counsel or other adviser;
 - Be directly responsible for the appointment, compensation, and oversight of the work of any compensation adviser they retain;

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Compensation Committee Responsibilities

- Receive appropriate funding as determined by the compensation committee from the company for payment of reasonable compensation to compensation advisers; and
- Reflect these elements in their charters
- NASDAQ companies must certify to NASDAQ within 30 days after the later of their annual meeting in 2014 or October 31, 2014 that they meet the new compensation committee requirements

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Committee Adviser Independence

- Rules on advisor independence provide that a compensation committee "may select" a compensation consultant, legal counsel or other adviser only after taking into account specified independence factors
- Both NYSE and NASDAQ specify the following six independence factors:
 - Provision of other services to the issuer by the firm that employs the compensation adviser;
 - Amount of fees received from the issuer by the firm that employs the compensation adviser, as a percentage of the total revenue of the firm that employs the compensation adviser;

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Committee Adviser Independence

- Six independence factors (cont'd)
 - Policies and procedures of the firm that employs the compensation adviser that are designed to prevent conflicts of interest;
 - Any business or personal relationship of the compensation adviser with a member of the compensation committee;
 - Any stock of the issuer owned by the compensation adviser or the adviser's immediate family members; and
 - Any business or personal relationship of the compensation adviser or the firm employing the adviser with an executive officer of the issuer.

Committee Adviser Independence

- NYSE listing standards also require consideration of all “factors relevant”
- Disclosure required in the proxy statement of any conflicts arising from the work of a compensation consultant – not the work of other compensation advisers – and how the conflicts were addressed
- Director and officer (D&O) questionnaire updates:
 - Verify compensation committee members meet the heightened independence requirements
 - Ask about any connections between directors, officers and compensation advisers

NYSE Quorum Requirement

- NYSE listing standards specify voting requirements for certain matters requiring shareholders approval, generally including:
 - Adoption of or material amendment to equity compensation plans
 - Stock issuances in excess of 20% of the outstanding voting power, to certain related parties and or that would result in a change in control

NYSE Quorum Requirement

- Prior to amendments in 2013, there were two requirements for approval:
 - A majority of votes cast must have approved the matter, and
 - The total votes cast must have represented over 50% in interest of all securities entitled to vote
- In 2013, the NYSE eliminated the second requirement - that the total votes cast must have represented over 50% in interest of all securities entitled to vote
- There remains a general quorum requirement that applies to all shareholder meetings: no specified percentage, but a statement that the quorum required for any meeting should be “sufficiently high to insure a representative vote”

Status Update on Other Dodd-Frank Rules

- CEO pay ratio disclosure
 - Rules proposed in 2013
 - May become effective in 2015 or 2016
- Other rules still to come
 - Policy on recovery of erroneously awarded compensation (“clawbacks”)
 - Disclosure of hedging by employees and directors
 - Disclosure of pay versus performance

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Shareholder Proposals

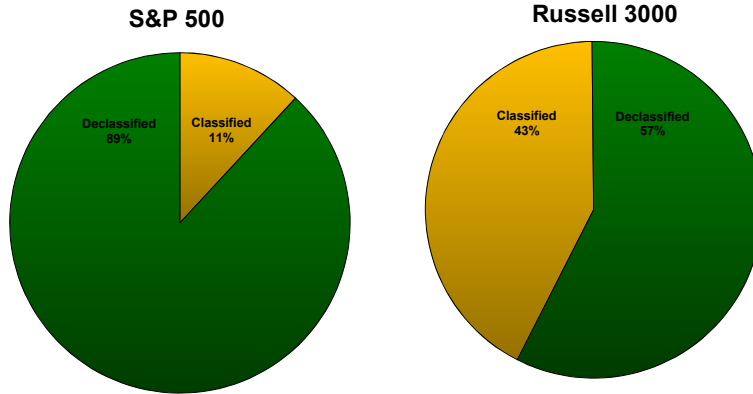
ISS Policy Update on Board Responsiveness

- For 2014, ISS made one clarification and one change to its policy on board responsiveness to majority-supported shareholder proposals:
 - Clarified that vote recommendations on director elections with respect to majority-supported shareholder proposals will be made on a fact-specific, case-by-case basis
 - Added as a factor in the case-by-case analysis the board's rationale, as disclosed in the proxy statement, for its response to the shareholder proposal

Declassify Board

- 90+ proposals submitted in 2013; only 31 went to a vote
- Approximately 89% of S&P 500 companies currently have annual director elections, compared to 82% at end of FY 2012
- Less prevalent at Russell 3000 companies

Declassify Board - Classified Board: S&P 500 vs. Russell 3000

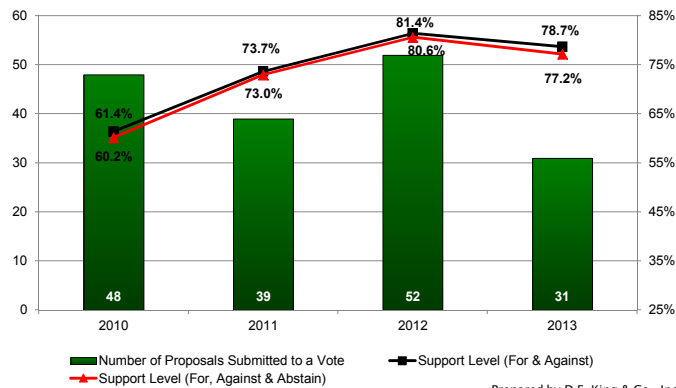


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Declassify Board

- Harvard Shareholder Rights Project was behind 76 of 90+ proposals submitted
- The Project was involved in 52 S&P 500 companies agreeing to bring management proposals to declassify their boards

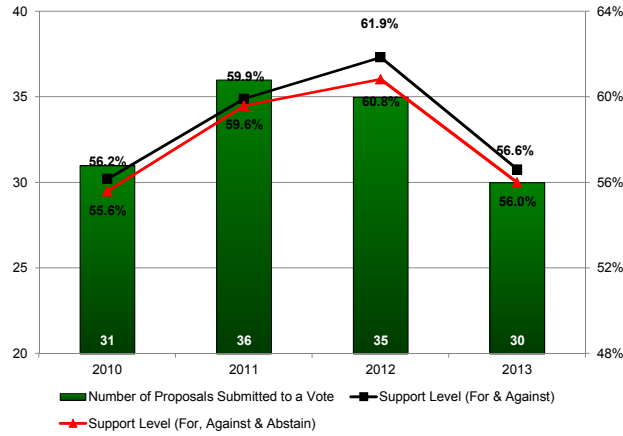


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Majority Voting

- Average support for majority voting proposals has dipped but remains comparatively high

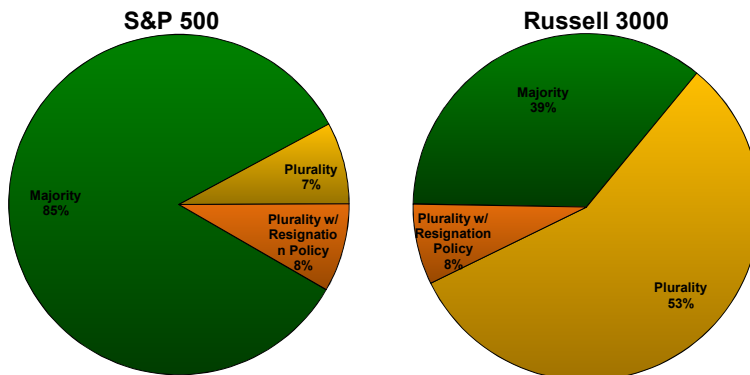


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Majority Voting S&P 500 vs. Russell 3000

- A vast majority of S&P 500 companies have adopted a majority voting standard for director elections: 85% (81% in 2012)
- In the Russell 3000, plurality voting remains a majority practice at 53% (60% in 2012)

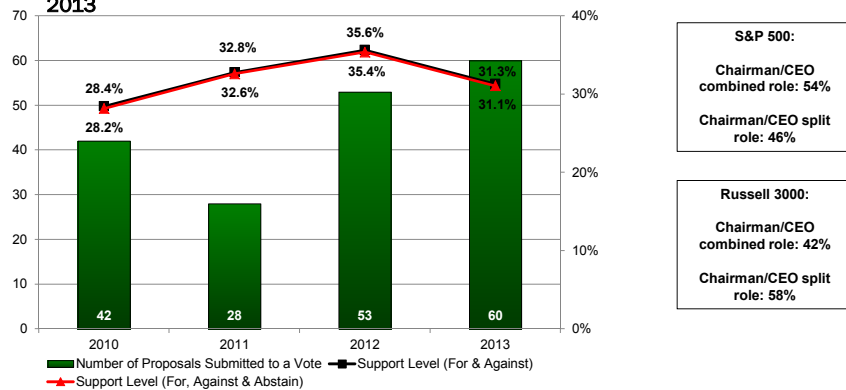


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Separate Chair and CEO

- The combined Chairman/CEO role continues to be at the center of investor attention
- High-profile defeat at JPMorgan Chase
- Despite lower average support, 5 proposals have received majority support so far in 2013



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Proxy Access

- A total of 15 proxy access proposals were submitted in 2013 (13 voted, 2 withdrawn)
- Average support overall: 32.1% (2012: 29.0%)

Company	ISS Rec.	Result	Meeting Date	Eligibility Standards
The Walt Disney Company	For	40.1%	3/6/2013	3% for 3 years, 20% cap on board seats
Verizon Communications Inc.	For	53.3%	5/2/2013	3% for 3 years, 20% cap on board seats
Bank of America Corporation	Against	8.8%	5/8/2013	1% for 2 years, or 50 investors with \$2K for 1 year
The Charles Schwab Corporation	For	31.7%	5/16/2013	1% for 1 year, 25% cap on board seats
CME Group Inc.	For	32.9%	5/22/2013	1% for 1 year, 25% cap on board seats
iRobot Corporation	Against	18.2%	5/22/2013	1% for 2 years, or 50 investors with \$2K for 1 year
CenturyLink, Inc.	For	71.5%	5/22/2013	3% for 3 years, 20% cap on board seats
The Goldman Sachs Group, Inc.	Against	5.3%	5/23/2013	1% for 2 years, or 50 investors with \$2K for 1 year
Staples, Inc.	For	36.9%	6/3/2013	1% for 1 year, 25% cap on board seats
Nabors Industries Ltd.	For	46.7%	6/4/2013	3% for 3 years, 25% cap on board seats
Netflix, Inc.	Against	4.4%	6/7/2013	1% for 2 years, or 50 investors with \$2K for 1 year
Darden Restaurants, Inc.	For	61.6%	9/18/2013	3% for 3 years, 25% cap on board seats
FedEx Corporation	Against	6.3%	9/23/2013	1% for 2 years, or 50 investors with \$2K for 1 year

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Proxy Access

- After Nabors Industries and Chesapeake Energy in 2012, proxy access proposals received majority support at three additional companies: Verizon, CenturyLink and Darden Restaurants
- SEC-style proposal (3% for 3 years, 20/25% cap on seats) continues to garner greatest support

Average support by Proposal Type:

Eligibility Standards	Proponent/Style	Average Support 2013	Average Support 2012
1% for 1 year, 25% cap on board seats	Norges Bank	33.8% (3)	33.8%
1% for 2 years, or 50 investors with \$2K for 1 year	U.S. Proxy Exchange (modified)	9.2% (5)	9.3%
3% for 3 years, 20% cap on board seats	SEC-Style (modified)	55.0% (3)	N/A
3% for 3 years, 25% cap on board seats	SEC-Style	54.2% (2)	58.1%

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Bylaw Amendments for Multi-Forum Litigation and Exclusive Forum Selection Provisions

- Exclusive forum bylaws provide that the courts of the state of incorporation will be the sole and exclusive forum for:
 - Any derivative action brought on behalf of the corporation
 - Any action asserting a breach of fiduciary duty, claim arising under the applicable corporation law or a claimed governed by the internal affairs doctrine
- Developed in response to significant increase in deals facing shareholder lawsuits often with multiple complaints in multiple jurisdictions

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Bylaw Amendments for Multi-Forum Litigation and Exclusive Forum Selection Provisions

- Delaware Court of Chancery rejected challenges to forum selection bylaws adopted by Boards of Chevron and FedEx in June 2013
 - If granted authority to adopt bylaws by the certificate of incorporation, a Board has the power to adopt a bylaw requiring litigation relating to the corporation's internal affairs to be conducted exclusively in Delaware courts
 - Such a bylaw may become part of the binding agreement between a corporation and its stockholders even if the stockholders did not vote to approve it

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Supermajority Voting, Action by Written Consent and Special Meetings

- Eliminating supermajority provisions
 - Proposal has received consistently strong support (70% on average in 2013)
- Action by written consent
 - Support continues to decline due to perception that other governance provisions, such as the right to call special meetings, sufficiently address concerns
- Ability to call special meeting
 - Average support slightly less than 50%
 - Management proposals often preempt
 - Shareholder ownership threshold usually 10%
 - Management ownership threshold usually 25%

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Environmental and Social (E&S) Proposals

- Comprised nearly 40% of proposals filed in 2013
- Top two proposals in this category were:
 - Report on political contributions and lobbying (111 submitted in 2013, 74 voted, average support about 25%)
 - Environmental sustainability (36 submitted in 2013, 14 voted, average support about 30%)
 - 2013 support for sustainability reporting proposals largely on par with results of last two years
 - So far in 2013, a sustainability proposal has garnered majority support at one company: CF Industries Holdings
 - High withdrawal rates for E&S proposals suggest that companies are communicating with and perhaps accommodating proponents

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Questions & Answers

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Mark Your Calendar

- **2014 NDI Checkpoint Sessions**
 - February 19, 2014
 - May 21, 2014
 - August 20, 2014
 - December 3, 2014
- **Save the Date! NDI Executive Exchange**
 - November 6, 2014 – Chicago, IL – Invitation-only

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