

Results of 2011 Say-on-Pay Voting

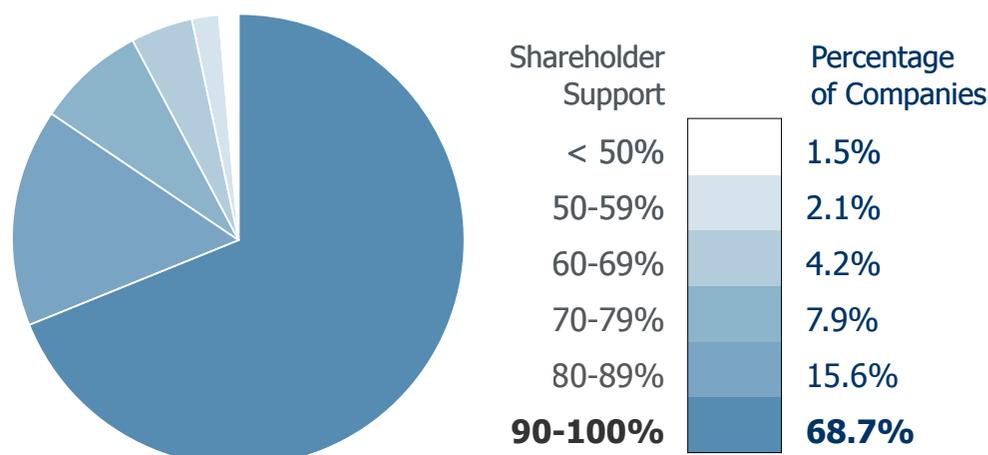
The first season of mandatory say-on-pay is coming to a close, and shareholders have shown extraordinary support for executive compensation programs. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, most public companies were, for the first time, required to provide shareholders an advisory vote on executive compensation in 2011. Cogent has reviewed the outcome of these votes at companies that have filed the results of their annual shareholder meeting prior to July 30, 2011. The results of our research are detailed below and cover the following:

- Voting outcomes for say-on-pay proposals and say-on-pay frequency proposals at all companies required to provide shareholders with those votes
- The impact of ISS on say-on-pay votes within the S&P 500 and how companies responded to a negative vote recommendation from ISS
- The aftermath of failed say-on-pay votes, including shareholder derivative lawsuits against companies that failed say-on-pay

Over Two-Thirds of Companies Received 90% or More Support for the Say-on-Pay Proposal

Of the 2,686 companies that reported the voting results from their annual shareholder meetings, all but a small percentage received favorable shareholder support for the say-on-pay proposals. More than two-thirds of companies received 90% support or more. In contrast, forty companies, or 1.5% failed to receive at least 50% support for their executive compensation practices. The following table highlights the level of shareholder support for say-on-pay proposals.

Shareholder Support for Say-on-Pay Proposals



Note: Please see Exhibit A for more information on companies that failed to obtain majority support.

Shareholders Favor an Annual Say-on-Pay Vote by Three to One

When voting on the frequency of say-on-pay, shareholders generally favor an annual vote. The following table highlights the voting results for say-on-pay frequency.

Shareholder Preference on Say-on-Pay Frequency

Annual	Biennial	Triennial
2,048	30	608
76.25%	1.12%	22.64%

Shareholders Generally Agreed with the Company's Vote Frequency Recommendation

While investors tend to favor annual votes, companies have the option to recommend biennial or triennial votes as well as annual votes, or to make no recommendation. The following table highlights the percentage of companies at which shareholders followed a company's recommendation on the frequency of say-on-pay votes.

Shareholder Support of Company Frequency Recommendation

Followed	Did Not Follow
1,968	644
75.34%	24.66%

Similar to the say on pay vote, the say-on-pay frequency vote is non-binding, and companies are not required to implement the frequency which received the highest level of shareholder support. So far, two companies have reported the adoption of a say-on-pay frequency that was not supported by shareholders. Annaly Capital Management and American Reprographics both adopted triennial frequency despite shareholders showing majority support for an annual frequency.

Shareholder Support for the Say-on-Pay Proposal was Significantly Higher when ISS Recommended "For"

As expected, the ISS voting recommendations on say-on-pay proposals appeared to have an impact on the voting outcomes. Cogent evaluated this impact at S&P 500 companies by reviewing the shareholder support for say-on-pay proposals at companies which ISS recommended voting "Against" versus "For." On average, when ISS recommended voting against the say-on-pay proposal, the result was a 28.4% lower level of shareholder support. Of the 60 companies that received an ISS recommendation against say-on-pay, eight failed to obtain majority support. Of the companies that received an ISS recommendation for say-on-pay, all obtained majority support, with an average of 91.6% support for the proposal. The following table highlights the impact of ISS on shareholder voting for companies in the S&P 500.

Impact of ISS Vote Recommendations

Recommendation	Companies	Ave. Support
For	356	91.6%
Against	60	63.2%

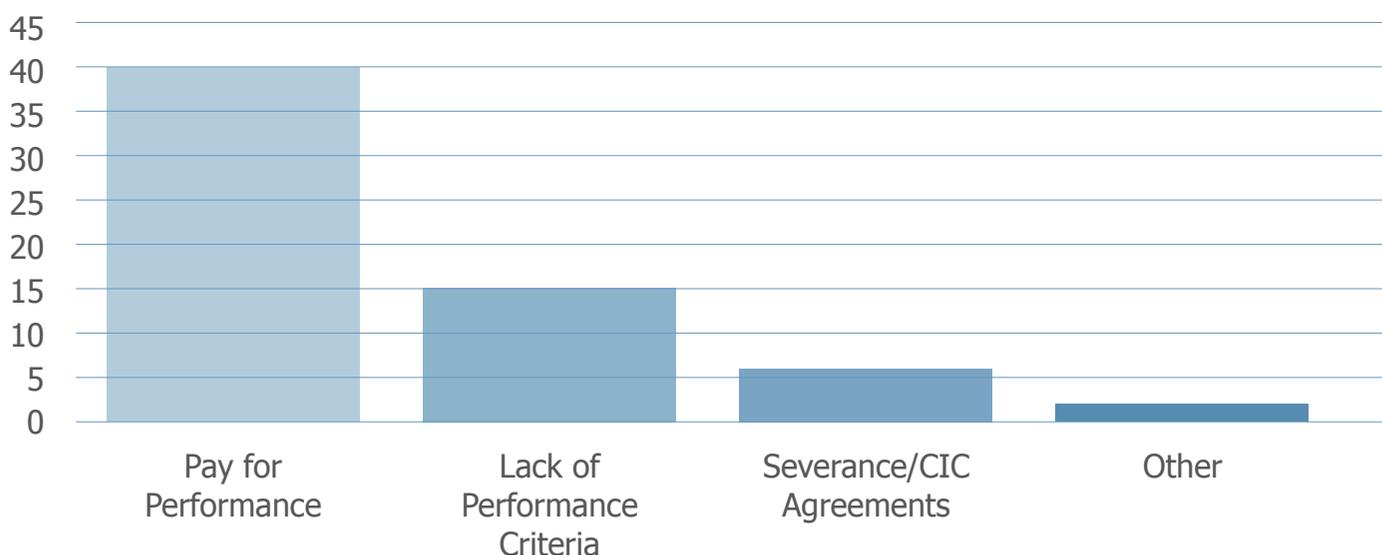
Given the impact of ISS on shareholder votes, many companies receiving a vote recommendation against their say-on-pay proposal took action to persuade shareholders to vote in favor of this proposal. In most cases, these companies filed a supplemental communication to shareholders defending their pay practices and refuting the ISS recommendation. So far, 28 of these companies in the S&P 500 have reported the outcome of their shareholder vote, and of these, 20 were ultimately successful in obtaining majority support for their say-on-pay proposal with an average support of 62.43%.

In some cases following an against recommendation from ISS, companies made or agreed to make changes to their executive compensation programs.

Most often, ISS recommended against say-on-pay at companies where ISS deemed there was a disconnect between pay and performance. However, companies also received recommendations against say-on-pay for certain pay practices considered problematic by ISS. The following table highlights the reasons cited by ISS for the recommendation against say-on-pay.

Factors Noted by ISS

(Number of observations within the S&P 500)



Responses to Failed Say-on-Pay Votes

Companies are not required to disclose whether or how they have considered the outcome of the say-on-pay vote until the subsequent proxy season. For this reason, there has been little indication of how companies may respond to a failed vote. However, three companies have indicated their intention to take the say-on-pay vote outcome into consideration and take actions to address shareholders' concerns. Three other companies made changes to their compensation practices as a result of the failed say on pay: Shuffle Master, Umpqua Holdings, and Helix Energy Solutions.

Shareholder Derivative Lawsuits

An interesting development in the first season of mandatory say-on-pay is the filing of shareholder derivative lawsuits against board members, compensation committee members, senior executives, and compensation consultants at companies that have failed to obtain majority support for say-on-pay. So far, these lawsuits have been limited to five companies that have failed say-on-pay this season: Jacobs Engineering Group, Beazer Homes USA, Umpqua Holdings, Hercules Offshore, and Cincinnati Bell (shareholder lawsuits were filed in 2010 against KeyCorp and Occidental Petroleum). Shareholder allegations include an increase in compensation despite company performance below shareholder expectations, and a breach of fiduciary duty concerning the violation of the stated objective to align pay and performance.

The First Year of Say-on-Pay

The first season of mandatory say-on-pay provided shareholders with an opportunity to voice support for executive compensation programs. The outcome of the first season shows that shareholders generally support executive compensation programs at most public companies. The influence of proxy advisory firms especially ISS, has continued to increase, but has not been overwhelming. Cogent will continue to monitor the response to failed say-on-pay votes as companies begin to disclose actions.

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About Cogent Compensation Partners

Cogent Compensation Partners is a leading provider of objective and expert advice on the subject of executive compensation, corporate governance, and the linkage between company performance and executive pay.

Our executive compensation consultants assist in aligning the various interests involved in the executive pay debate: employees, shareholders, institutions, and other stakeholders. Our services include compensation committee advisory, incentive plan design, compensation strategy development, board of director compensation analysis, executive compensation related shareholder proposal assistance and compensation risk assessments.

Exhibit A - Companies Failing to Obtain Majority Support for Say-on-Pay

Company Name	For	Against	Abstain	Commentary
Jacobs Engineering Group Inc	44.8%	53.7%	1.4%	Pay for performance disconnect and lack of performance criteria.
Beazer Homes USA Inc	45.9%	53.8%	0.3%	Pay for performance disconnect.
Shuffle Master Inc	44.5%	55.4%	0.1%	New employment agreements with single trigger provisions.
Hewlett-Packard Co	48.2%	50.8%	1.0%	New CEO received a generous sign-on package.
Ameron International Corp	41.3%	57.7%	1.0%	Pay for performance disconnect.
Hemispherx Biopharma Inc 1	43.1%	41.0%	15.8%	Pay for performance disconnect.
Stanley Black & Decker Inc	38.0%	59.2%	2.9%	Pay for performance disconnect and lack of performance criteria.
Umpqua Holdings Corp	35.0%	61.8%	3.1%	Pay for performance disconnect.
Navigant Consulting Inc	44.8%	55.1%	0.1%	Pay for performance disconnect and lack of performance criteria.
Cogent Communications Grp	39.3%	60.6%	0.2%	Lack of performance criteria.
Janus Capital Group Inc	40.1%	55.4%	4.5%	CEO received a generous sign on package.
MDC Holdings Inc	33.4%	65.1%	1.4%	Pay for performance disconnect.
Stewart Information Services	47.8%	50.9%	1.3%	Pay for performance disconnect.
Cincinnati Bell Inc	29.8%	58.5%	11.7%	CEO received a retention bonus that was not previously discussed. Pay for performance disconnect.
Hercules Offshore Inc	38.4%	55.4%	6.2%	Pay for performance disconnect
Curtiss-Wright Corp	37.0%	52.7%	10.4%	Pay for performance disconnect
Intersil Corp	44.2%	55.8%	0.1%	Pay for performance disconnect
Helix Energy Solutions Group	32.0%	67.9%	0.1%	Lack of performance criteria.
NVR Inc	43.9%	54.7%	1.4%	Pay for performance disconnect
Penn Virginia Corp	38.9%	56.0%	5.1%	Pay for performance disconnect
Dex One	48.0%	52.0%	0.0%	Pay for performance disconnect
Nutrisystem Inc	41.1%	58.0%	0.9%	Pay for performance disconnect.
Masco Corp	44.6%	55.2%	0.2%	Pay for performance disconnect.
PICO Holdings Inc	38.9%	61.0%	0.2%	Pay for performance disconnect.
Weatherford International Ltd	43.4%	55.4%	1.2%	Lack of performance criteria. CFO received a large expatriate tax equilization payment.
Talbots Inc	46.0%	51.0%	3.0%	Pay for performance disconnect.

Superior Energy Services Inc	39.2%	60.7%	0.1%	Pay for performance disconnect.
Kilroy Realty Group	48.5%	50.7%	0.8%	Pay for performance disconnect. Executives each have an evergreen policy with an excise tax gross-up.
Constellation Energy Group Inc	38.0%	60.6%	1.4%	Pay for performance disconnect.
BioMed Realty Trust	45.7%	54.2%	0.0%	Pay for performance disconnect.
CADIZ Inc	37.5%	61.6%	0.8%	Pay for performance disconnect. Board did not address the more than 30% withheld votes received by two compensation committee members in 2010.
Tutor Perini Corp	49.0%	50.8%	0.1%	Pay for performance disconnect.
Nabors Industries Ltd	42.5%	57.3%	0.2%	Pay for performance disconnect and lack of performance criteria.
Cutera Inc	35.3%	51.9%	12.8%	Pay for performance disconnect and lack of performance criteria.
Monolithic Power Systems Inc	36.2%	63.7%	0.0%	Pay for performance disconnect.
Freeport-Mcmoran Cop&Gold	45.5%	53.9%	0.6%	Pay for performance disconnect.
Premiere Global Services Inc	47.3%	51.3%	1.3%	Pay for performance disconnect.
Blackbaud Inc	44.7%	52.0%	3.4%	Pay for performance disconnect.
Doral Financial Corp	49.2%	29.1%	21.7%	Pay for performance disconnect.

1. Hemispherx Biopharma - Reported that a majority of shareholders supported the say-on-pay proposal. However, according to company's formula, abstentions should be counted as against votes. As a result, the company failed to obtain majority support.

2. Cooper Industries - Reported that a majority of shareholders (50.6%) supported the say-on-pay proposal. While the company indicated that abstentions are not to be considered, there were over two million abstentions which if counted, would have resulted in 49.6% support.

3. IsoRay - Over 75% of the voted shares approved the say-on-pay proposal. However, according to Minnesota law, all shares entitled to vote, including broker non-votes, are to be counted. The company did not receive a majority of all shares and, as a result, the company indicated that it failed to obtain majority support.

4. Toreador Resources Corp - Reported that their executive compensation was approved. However, according to the company's formula, abstentions and broker non-votes should be counted as against votes. As a result, the company failed to obtain majority support.

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