



Preparing for the 2014 Proxy Season

Process and Expectations

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Annual Meeting Timeline

Stockholder Proposals

Generally 120 days before the date on which the previous year's proxy materials were mailed



Determine Proposal Inclusion/Exclusion

Procedural or Eligibility grounds (within 14 days of company's receipt of proposal)

Substance Exclusion: SEC no-action letter requests (at least 80 days before filing of definitive proxy statement).



Annual Meeting Timeline

1Q Board Meeting

Designating corporate director nominees

Authorizing the record date

Approving notice of meeting, proxy materials and annual report



Annual Report Due (10-K) – March 31

60 days in future for Large Accelerated Filers



Annual Meeting of the Stockholders

Annual Meeting of the Stockholders



Company Proposals



Class I Director Nominees



Confirmation of Auditor Engagement



Advisory Vote on Say on Pay



Advisory Vote on Say on Pay Frequency



Say On Pay

- Section 951 of the Dodd-Frank Act added new Section 14A to the Securities Exchange Act of 1934, as amended: Grants stockholders the right to cast a **non-binding advisory** vote on certain aspects of executive compensation:
 - **Say on Pay**. At least once every three years, companies must submit a resolution for stockholders to approve the compensation of executives as disclosed in the proxy statement under Item 402 of Regulation S-K.
 - **Say on Pay Frequency**. At least once every six years, companies must include a separate resolution for stockholders to vote on whether this say on pay vote should be held every one, two or three years (say on frequency).



Say On Pay Vote Results

2011

- 71% of companies passed Say on Pay with over 90 percent stockholder approval
- 93% of companies passed Say on Pay with over 70 percent stockholder approval

2012

- 73% of companies passed Say on Pay with over 90 percent stockholder approval
- 91% of companies passed Say on Pay with over 70 percent stockholder approval

2013

- 77% of companies passed Say on Pay thus far with over 90 percent stockholder approval
- 92% of companies passed Say on Pay thus far with over 70 percent stockholder approval
- 98% of companies passed Say on Pay thus far with over 50 percent stockholder approval

Next

- Proxy advisory firms such as ISS and Glass Lewis have indicated that they will more carefully scrutinize those companies whose say on pay proposals passed with less than 70% (75% for Glass Lewis) of the votes in favor



Say On Pay Votes – Tips for Comp Committees

- ✓ Identify the major stockholders that voted no.
- ✓ Open communications with the stockholders to identify their specific concerns about compensation.
- ✓ Open communications with ISS and other proxy advisory firms to discuss the company's compensation program and any concerns raised by the program.
- ✓ Re-examine the compensation program to determine whether any adjustment is necessary.
- ✓ If the company determines that:
 - changes necessary - communicate changes and the rationale for those changes to stockholders
 - changes not necessary - communicate rationale for not making changes to stockholders.

The say on pay rules require companies to discuss whether their compensation policies and decisions have taken into account the results of the most recent say on pay vote, and if so, how in their CD&A.



Say On Pay Votes – Frequency

Options

- Every Year
- Every Two Years
- Every Three Years
- No Recommendation

Outcomes for Companies Reporting SWOP Vote Results

as of September 27, 2011

Management Recommendation	Adopted by S&P 900						Recommended	
	Annual		Biennial		Triennial		#	%
Annual	440	64.9%	0	0.0%	0	0.0%	440	64.9%
Biennial	13	1.9%	1	0.1%	0	0.0%	14	2.1%
Triennial	161	23.7%	0	0.0%	42	6.2%	203	29.9%
No Recommendation	19	2.8%	0	0.0%	2	0.3%	21	3.1%
Total Companies	633	93.4%	1	0.1%	44	6.5%	678	100.0%

% of all S&P 900 Companies reporting SWOP results



Say On Pay Votes – Frequency

We've got the vote, now what...?

- **Vote is Non-Binding**
- **Proxy advisory firms, such as ISS, and large institutional investors are likely to take some kind of action**
 - Issuing a negative corporate governance rating.
 - Recommending a withhold vote or vote.
 - Launching no vote or withhold vote campaigns against members of the board of directors.
- **Rule 14a-8 - a company that adopts the frequency selected by a majority of the votes cast by its stockholders can exclude any stockholder proposals relating to say on pay or the frequency of say on pay**



Rule 14a-8 and Stockholder Proposals

Ownership

- Is the proponent a RECORD owner on the Company's books and records? (Rule 14a-8(b)(2))
- Do the records reflect continuous RECORD ownership of at least \$2,000 in market value for at least one year from the date of the submission? (Rule 14a-8(b)(1))
- Has the proponent provided written statement that he/she intends to continue to hold securities through the date of the meeting of stockholders? (Rule 14a-8(b)(2))



Rule 14a-8 and Stockholder Proposals

Multiple Proposals

- Does the submission contain more than one proposal? (Rule 14a-8(c))

500-Word Limit

- Is the proposal, including any supporting statement, 500 words or less? (Rule 14a-8(d))

Late Submission

- Has the submission deadline passed? (Rule 14a-8(e))

Failure to Present Prior Proposal

- Did proponent fail to present a proposal included in the proxy during the last two years? (Rule 14a-8(h)(3)).

Failure to Hold Required Number of Securities

- Did the proponent submit a proposal during the last two years but then fail in his/her promise to hold the required number of securities through the date of the annual meeting? (Where possible, check to make sure all proponents with proposals included in the Proxy Statement during the last two years held shares on the date of the Annual Meeting.) (Rule 14a-8(f)(2))



2013 Most Common Proposals: Governance

Potential Proposal

Adoption of Stock Retention Policy

Adoption (or improvement) of a compensation clawback policy

Pro-rata vesting of equity awards, rather than acceleration upon change in control

Board Leadership/Independent Board Chair

Director tenure



2013 Most Common Proposals: Stockholder Rights

Proposal

Board declassification

Elimination of Super-majority vote to amend bylaws

Majority voting in election of directors

Stockholders permitted to call special meetings

Permit Stockholder action by written consent

Deletion of exclusive forum bylaw provisions



2013 Most Common Proposals: Environmental, Social, Political

Potential Proposals (Examples)

Disclosure of political contributions and lobbying

Supply chain safety

Board diversity

- Typically most common, rarely get majority vote
- Can be difficult to have dialogue as ideology can make dialogue difficult
- Often outcome is more disclosure (sometimes through negotiated withdrawal)
- Withdrawal more common than Governance proposals



Potential Trend: Proposals to Remove Protective Bylaw Provisions

- **Protective Provision:** Disqualifies from service as a director any person who receives compensation or payment from a third party in connection with that person's candidacy or service as a director of the company.
 - Adopted by more than 30 public companies since beginning of 2013
 - Provident Financial Holdings is first company to hold an annual meeting since companies began adopting the new bylaw provision.
- **Similar Protective Provision:** Disqualifies board members from receipt of incentive awards as a result of being employed/compensated by a dissident stockholder
 - Example: proxy contests at Agrium Inc. and Hess Corp. earlier in 2013



Potential Trend: Proposals to Remove Protective Bylaw Provisions

ISS commentary (Provident's Provision):

- New bylaw provision could deter legitimate efforts to seek board representation via a proxy contest, particularly those efforts that include independent board candidates selected for their strong, relevant industry expertise, and who are generally recruited, but not directly employed, by the dissident stockholder.
- New bylaw provision could have the effect of excluding highly qualified individuals, whose election might be in the best interests of all stockholders, from being candidates for board service, thereby acting as an entrenchment device by restricting investors' rights to select the individuals they deem suitable for board service.
- ISS noted:
 - In the case of Provident, the board amended the bylaws after an investor group filed two Schedule 13Ds reporting the addition of affiliates to the group, which owns 7.5 percent of the company's common stock.
 - While the board was not required to submit the amendment to a stockholder vote, investors may find it particularly concerning that the board adopted the bylaw provision without giving them the opportunity to vote on the matter, given the provision's potential impact in deterring legitimate board candidates.
 - Given the provision's potential impact and its unilateral adoption by the board, investors may consider holding members of the board's Nominating and Governance Committee accountable.



Preparing for Next Year: Know Your Stockholders

- **Stockholder engagement**
 - In-person meetings and phone calls
- **Proxy advisory firms**
 - ISS/Glass Lewis Relationship
 - ISS seeing that proposals are playing a less significant role (“side show”); regular dialogue with shareholders is becoming more important
- **Proxy Solicitors (help understand investor base),
Compensation Consultants (provide more trend guidance)**
- **Director Involvement in Stockholder Communications
Increasing**



Questions and Discussion

