CLIENT ALERT

2017 Proxy Season: Say-on-Pay Frequency Post-Mortem

JULY 28, 2017

This past proxy season, most public companies that held their first shareholder votes on the frequency of the advisory “say-on-pay” vote in 2011 were required to, once again, put say-on-pay frequency up for a non-binding shareholder vote. Section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act requires issuers to hold advisory shareholder votes on the frequency (which may occur every one, two, or three years) of the approval or disapproval of their executive compensation programs, as reported in their proxy statements, no less often than once every six years. The results so far from the most recent proxy season continue the trend that resulted from the first round of the say-on-pay frequency vote that occurred in 2011. The overwhelming majority of companies that have already held their 2017 annual meetings have seen management recommendations supporting, and approval by shareholders of, an annual frequency for the say-on-pay vote.

In 2011, according to data provided by Institutional Shareholder Services (ISS), among Russell 3000 companies that presented a say-on-pay frequency proposal to shareholders in that year, approximately 56% recommended that shareholders support an annual say-on-pay advisory vote, with approximately 39% recommending that a say-on-pay vote occur every three years. However, despite the mixed management recommendations, an annual say-on-pay frequency was favored by a large margin, with shareholders at more than 80% of companies in the Russell 3000 casting a vote in favor of an annual frequency. By contrast, shareholders at only 18% of such companies expressed a desire to vote on the say-on-pay proposal on a triennial basis. Subsequently, most issuers adopted the say-on-pay frequency that was supported by shareholders.

Based on the 2017 annual meeting results that we have seen so far, investors continue to strongly favor the occurrence of say-on-pay votes on an annual basis, and a significantly higher number of companies (as compared to 2011) have recommended that shareholders support an annual advisory vote. Out of the Russell 3000 companies that have held their meetings this year, through June 30, approximately 88% recommended that shareholders support an annual say-on-pay frequency, with only 11% recommending a triennial vote. As anticipated, shareholders broadly favored the annual advisory vote, with investors at more than 90% of Russell 3000 companies so far this year selecting that option.

In its proxy voting guidelines, ISS generally recommends—and did recommend, for all Russell 3000 companies that have held annual meetings so far in 2017—that investors vote for an annual advisory vote on executive compensation. In its view, an annual vote provides shareholders with a consistent and direct channel for timely communication with issuers regarding any concerns they may have with executive pay programs.

As a friendly reminder, the say-on-pay frequency actually adopted by an issuer's board of directors following the annual meeting must be disclosed pursuant to Item 5.07(d) of Form 8-K. Issuers have up to 150 days after the date of the meeting (but no later than 60 days prior to the deadline for the submission of shareholder proposals for the next annual meeting) to file an amendment to the Form 8-K that reported the voting results, which must explain the say-on-pay frequency option selected in light of the shareholder advisory vote. Many issuers inadvertently failed to comply with this requirement in 2011, and in light of the newly effective rule, the Securities and Exchange Commission (SEC) was sympathetic and granted waivers in certain cases. However, issuers should not rely on the SEC being so forgiving this time around. In order to not lose track of this Form 8-K requirement, issuers should consider either including a board action in their proxy resolutions that will automatically adopt the frequency favored by shareholders at the annual meeting or taking action promptly following the annual meeting to adopt a frequency and, in either case, reporting the result in the Form 8-K required to be filed within four days following the annual meeting.

3 Min Read

Related Locations

Charlotte | Chicago | Dallas | Houston | Los Angeles | New York | San Francisco | Silicon Valley | Washington, DC

Related Topics

Shareholder Say on Pay

Related Capabilities

Labor & Employment | Executive Compensation Plans & Agreements

Related Regions

North America

Related Professionals

Scott Landau

Joseph S. Adams

Amy Gordon

Erin Haldorson Weber

Joanna Kerpen

[Susan Nash]

[David Rogers]

[Maria Kenny]

[Marissa Sims]

Jennifer Stadler