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Say-on-Pay 2011 – How Shareholders Are Voting

The Dodd-Frank Wall Street Reform and Consumer Protection Act requires public companies to provide shareholder advisory votes on the compensation of executives. Both the initial votes on say-on-pay and on the frequency of say-on-pay votes are required in proxy statements for annual shareholder meetings taking place on or after January 21, 2011. Buck's analysis of voting results in shareholder meetings conducted by nearly 60 companies that have occurred after that date indicates that a majority of shareholders voted AGAINST management's recommendation when it came to the frequency of say-on-pay voting (by choosing a more frequent vote than the majority of the companies' management teams had recommended), but primarily voted FOR the executive pay programs themselves.

Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) imposed a requirement for public companies subject to the federal proxy rules to provide non-binding shareholder advisory votes on executive compensation. Generally, beginning with the first annual or other shareholder meeting on or after January 21, 2011, public companies must hold separate shareholder advisory votes on:

- The compensation of named executive officers (NEOs) ("say-on-pay"); and
- Whether the say-on-pay vote should be held every one, two or three years, or whether they wish to abstain from voting ("say-on-frequency").

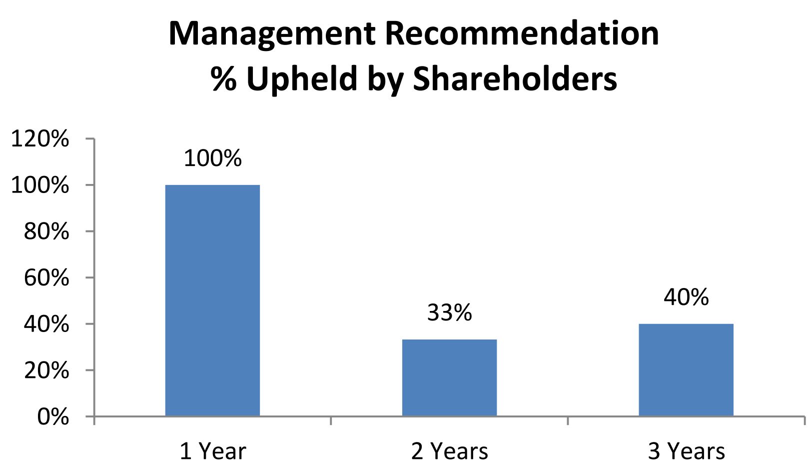
The say-on-pay vote must be held at least every three years, and the say-on-frequency vote at least every six years thereafter.

Overview

In our January 28, 2011 *For Your Information*, Buck analyzed proxy statements of nearly 60 companies that had proposed say-on-frequency resolutions for their 2011 annual shareholder meetings. That analysis focused on the companies' recommendations to shareholders on how frequently the non-binding say-on-pay votes required by the Dodd-Frank Act should be held and the reasons cited in their proxy statements to support their recommendations. A majority of the companies that included a say-on-frequency vote recommended a shareholder vote every three years. To date, 56 of these companies have conducted their annual shareholder meetings. In this *For Your Information*, we present the highlights of our findings on say-on-pay frequency, in addition to analyzing the results from the NEO compensation vote.

Shareholder Vote Compared to Management Recommendation on Say-on-Frequency

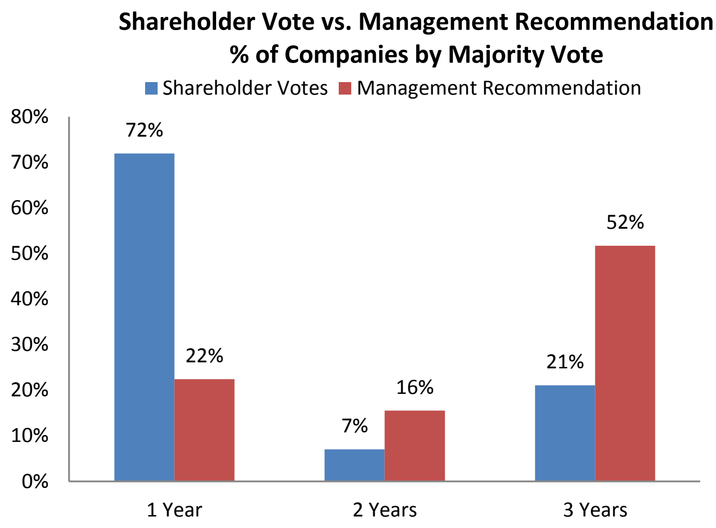
As noted in our earlier *For Your Information,* the most popular management recommendation among the companies in this study was a say-on-frequency vote every three years. The actual shareholder vote has yielded quite different results. In fact, shareholders upheld management's recommendations less than half the time (48%), regardless of recommendation. For those companies recommending a three-year frequency, that percentage fell to 40%, with the majority of shareholders voting in that case for the one-year frequency.



Actual Shareholder Vote for Say-on-Frequency

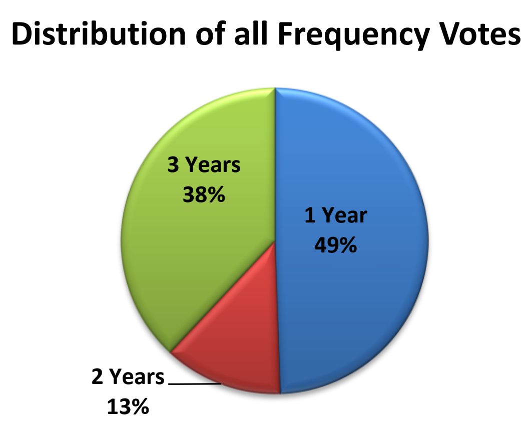
- 72% of companies' shareholders voted for a say-on-pay vote ***every year***.
- 21% of companies' shareholders voted for a say-on-pay vote ***every three years***.
- 7% of companies' shareholders voted for a say-on-pay vote ***every other year***.

The chart below represents how the actual voting results compare to management's recommendations. (**Note:** Management Recommendations do not add up to 100% as those companies abstaining from a recommendation are not included.)



Distribution of Shareholder Say-on-Frequency Votes

Of all votes cast by shareholders (6.3 billion) in the companies we reviewed, nearly 49% of the votes went to a frequency of every year, 38% went to every three years, and 13% to every two years.



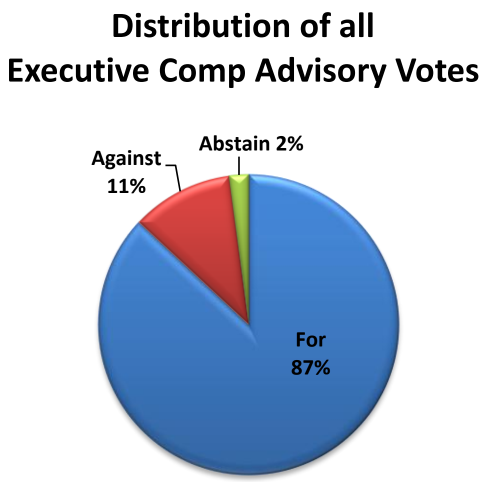
Company Responses to Shareholder Votes

Twenty-three of the companies made an affirmative statement in their 8-K filing of an intention to follow the majority shareholder advisory vote. Seven companies stated they will decide how to handle the advisory vote at a later date, typically in the next compensation committee meeting. The remaining twenty-seven companies made no statement regarding the voting results in their 8-K filing.

Shareholder Advisory Vote on NEO Compensation

An overwhelming majority of the fifty-five companies in this sample that disclosed their shareholder advisory vote on executive compensation received a majority FOR vote from their shareholders. For the companies receiving a majority affirmative vote, the percentage of FOR votes was nearly 91%. Only two companies failed to receive a majority affirmative vote, Beazer Homes (BZH) and Jacobs Engineering Group (JEC), both of which received a shareholder vote of 54% AGAINST their NEO pay program.

The chart below represents the distribution of all votes cast across the 55 companies analyzed.



Conclusion

Buck's consultants will continue to follow say-on-pay and say-on-frequency votes and recommendations throughout this proxy season and will provide updates as trends develop.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.