

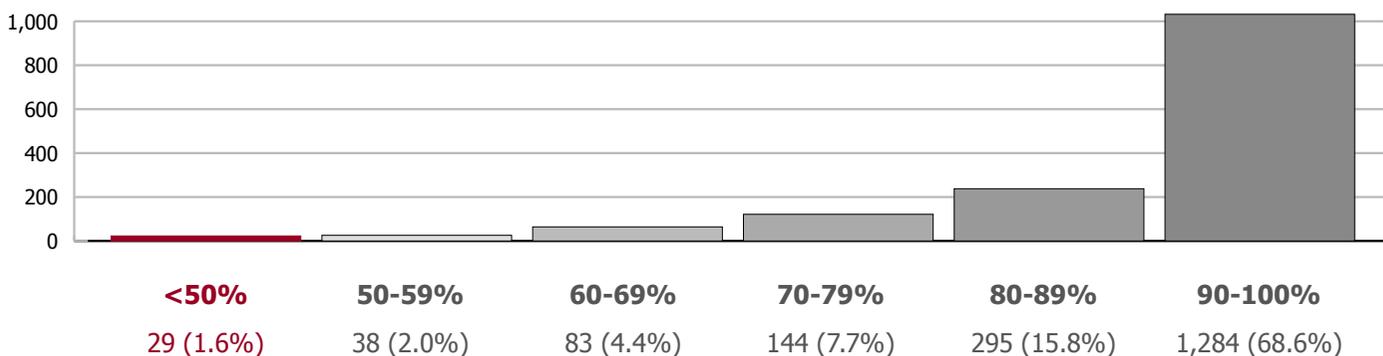
Say-on-Pay Update: Voting Results and Trends So Far

The first season of mandatory shareholder advisory votes on executive compensation ("say-on-pay") under the Dodd-Frank Wall Street Reform and Consumer Protection Act is in full-swing, and so far shareholders are generally supportive of the executive compensation practices at most companies. Cogent has reviewed the annual shareholder meeting voting results from 1,873 companies that are required to conduct a say-on-pay vote and that have filed the results of the votes through May 27, 2011. This alert highlights the voting outcomes for say-on-pay proposals and say-on-pay frequency proposals at these companies, and the impact of Institutional Shareholder Services ("ISS") voting recommendations on shareholder votes. This alert also discusses the shareholder derivative lawsuits that have been filed following failed say-on-pay votes.

Say-on-Pay Voting Results

Of the 1,873 companies that have reported the voting results from their annual shareholder meetings, all but a small percentage have received favorable shareholder support for the say-on-pay proposals. More than two-thirds of companies have received 90% support or more. In contrast, twenty-nine companies, or 1.6%, have 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 so far.

Table 1 – Shareholder Support for Say-on-Pay Proposals



Note: The companies that have failed to obtain majority support are highlighted in **Exhibit A**, along with possible explanations for the failed vote.

Companies conducting a say-on-pay vote are not required to disclose whether or how they have considered the outcome of the vote until the subsequent proxy statement. For this reason, there

has been little indication of how companies may respond to a failed vote. A handful of companies, including: Umpqua Holdings Corp, Stewart Information Systems, Curtiss-Wright Corp, Helix Energy Solutions Group, and Talbots Inc, have disclosed the intention to take this vote into consideration and take actions to address shareholders' concerns.

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

Table 2 – Shareholder Preference on Say-on-Pay Frequency

Annual	Biennial	Triennial
1,465 (78.2%)	22 (1.2%)	386 (20.6%)

While investors tend to favor annual say-on-pay votes, companies may still recommend biennial or triennial votes. The following table highlights the tendency of shareholders to follow, or not follow, a company's recommendation on the frequency of say-on-pay votes.

Table 3 – Shareholder Support of Company Frequency Recommendation

Supported	Not Supported
1,340 (73.8%)	476 (26.2%)

ISS Impact on Voting Results

As expected, the ISS voting recommendations on say-on-pay proposals have had a significant 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 27.9% lower level of shareholder support. Of the companies which received an ISS recommendation against say-on-pay, 16.7% 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 92.0% support for the proposal. The following table highlights the impact of ISS on shareholder voting for companies in the S&P 500.

Table 4 – Impact of ISS Vote Recommendations

Recommendation	Companies	Avg. Support
For	200	92.0%
Against	30	64.1%

Given the impact of ISS on shareholder votes, more than fifty companies that have received a vote recommendation against the say-on-pay proposal have taken action to persuade shareholders otherwise. In most cases, these companies have filed a supplemental communication to shareholders which defends their pay practices and refutes the ISS recommendation. For example, a company may contend that the ISS policy is too broad and does not consider unique circumstances, or it may attempt to demonstrate a linkage of pay to performance, despite the

results of the ISS pay-for-performance test. So far, fifty-one of these companies have reported the outcome of the shareholder vote, and of these, forty-five were ultimately successful in obtaining majority support for the say-on-pay proposal with an average support of 73.7%. **Exhibit B** highlights the companies that have filed additional materials in response to a recommendation from ISS to vote against the say-on-pay proposal, as well as the outcome of the shareholder vote, if available.

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 the first two companies to fail say-on-pay this season, Jacobs Engineering Group and Beazer Homes USA (shareholder lawsuits were filed in 2010 against KeyCorp and Occidental Petroleum). Shareholder allegations include increases 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. These lawsuits are generally considered to be strike suits and without merit.

The First Year, So Far

The first year of mandatory say-on-pay has so far shown that shareholders are generally supportive of executive compensation practices at most companies. The influence of proxy advisory firms, especially ISS, has continued to increase, but some companies have been successful in defending their pay practices against negative vote recommendations. Look for more information from Cogent as the first year of say-on-pay continues.

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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 and also helped pick new board members.
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. Each executive received a \$100,000 discretionary bonus.
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 equalization 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.

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 absentions 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.

Exhibit B - Companies Filing Additional Materials in Repsonse to ISS Recommendation

Company Name	Filing Date	Voting Result	Votes For
Jacobs Engineering Group Inc	1/21/11	Failed	44.8%
Headwaters Inc	2/22/11	Passed	53.2%
Tyco International Ltd	2/22/11	Passed	71.0%
Disney (Walt) Co	3/2/11	Passed	77.0%
Hewlett-Packard Co	3/11/11	Failed	48.2%
Goldman Sachs Group Inc	4/1/11	Passed	72.9%
Northern Trust Corp	4/1/11	Passed	66.0%
Verizon Communications Inc	4/4/11	Passed	90.7%
Textron Inc	4/6/11	Passed	81.6%
General Electric Co	4/7/11	Passed	78.2%
Allegheny Technologies Inc	4/12/11	Passed	55.4%
Equifax Inc	4/12/11	Passed	83.0%
Harsco Corp	4/12/11	Passed	69.2%
Unisys Corp	4/12/11	Passed	71.6%
Teleflex Inc	4/13/11	Passed	74.4%
Pfizer Inc	4/14/11	Passed	55.4%
Navigant Consulting Inc	4/15/11	Failed	44.8%
Zimmer Holdings Inc	4/15/11	Passed	62.8%
Cambrex Corp	4/18/11	Passed	74.5%

Allstate Corp	4/19/11	Passed	57.0%
ConocoPhillips	4/21/11	Passed	58.5%
Federal Realty Investment Trust	4/21/11	Passed	71.4%
Assured Guaranty Ltd	4/22/11	Passed	80.3%
Lockheed Martin Corp	4/22/11	Passed	65.5%
The Gap Inc	4/22/11	Passed	98.6%
Umpqua Holdings Corp	4/22/11	Failed	35.0%
Alcoa Inc	4/27/11	Passed	83.3%
Gilead Sciences Inc	4/28/11	Passed	75.4%
Sunrise Senior Living Inc	4/28/11	Passed	67.4%
Firstenergy Corp	4/29/11	Passed	94.4%
JC Penney	5/3/11	Passed	70.9%
AON	5/4/11	Passed	80.9%
Healthcare Realty Trust Inc	5/4/11	Passed	66.5%
Morgan Stanley	5/4/11	Passed	78.6%
Principal Financial Group Inc	5/4/11	Passed	97.1%
QEP Resources Inc	5/4/11	Passed	64.8%
Talbots Inc	5/5/11	Failed	46.0%
Dr Pepper Snapple Group Inc	5/6/11	Passed	65.4%
Amgen Inc	5/9/11	Passed	55.6%
Charles Schwab Corp	5/9/11	Passed	80.6%
Novellus Systems Inc	5/9/11	Passed	74.6%
Fuel Tech Inc	5/10/11	Passed	96.3%
NVIDIA Corp	5/10/11	Passed	68.1%
Safeway Inc	5/10/11	Passed	75.4%
CryoLife Inc	5/11/11	Passed	67.2%
JP Morgan Chase	5/11/11	Passed	72.6%
L3 Communications	5/11/11	Passed	83.5%
ENSCO	5/12/11	Passed	78.3%
Superior Energy Services	5/12/11	Failed	39.2%
Dean Foods Co	5/13/11	Passed	62.1%
Collective Brands	5/17/11	Passed	88.3%

Cogent Compensation Partners

Two Allen Center • 1200 Smith Street, Suite 610 • Houston, TX 77002

Tel 713.427.8300 • info@cogentcompensation.com