



Annual Meeting 2011
DENVER OCT 23-26
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SEC Update

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Agenda

Proxy Season Update

- Say-on-Pay/Say-on-Frequency
- Shareholder Proposals

Dodd-Frank Update

- Whistleblower rules
- Proxy Access
- Dodd-Frank Act rulemaking

Beyond Dodd-Frank: Other Securities Law Updates

- Proposed amendments to Reg D
- Rulemaking petitions
 - Political contributions and Citizens United
 - Section 13(d) Beneficial Ownership Reporting



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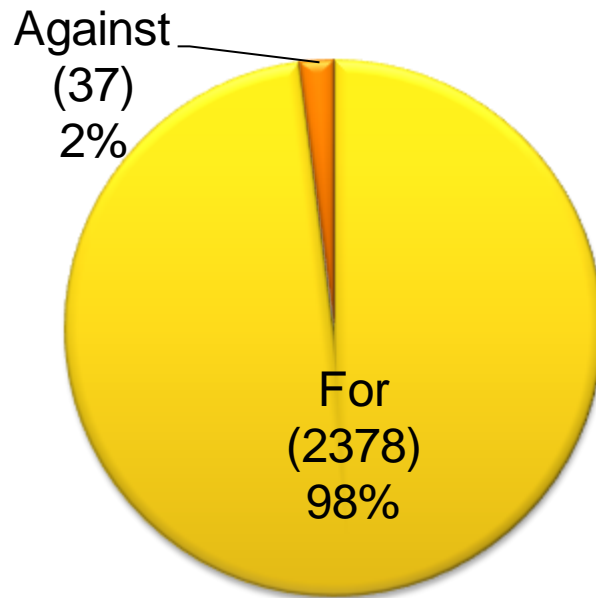
Proxy Season Update

- Say-on-Pay/Say-on-Frequency
- Shareholder Proposals

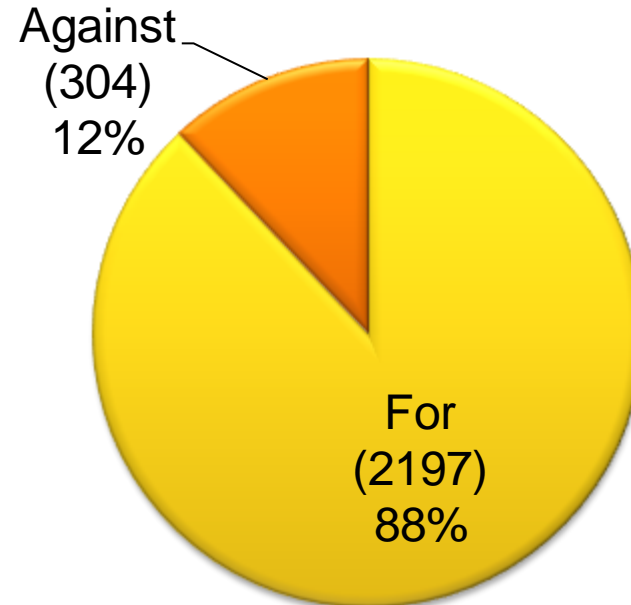


Say-on-Pay 2011 Voting Results

ISS Recommendations



2,415 Companies Total

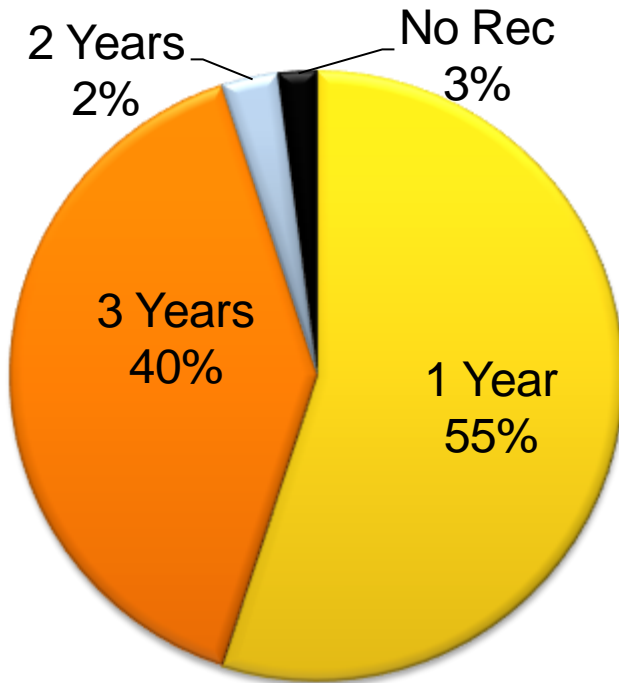


2,501 Companies Total



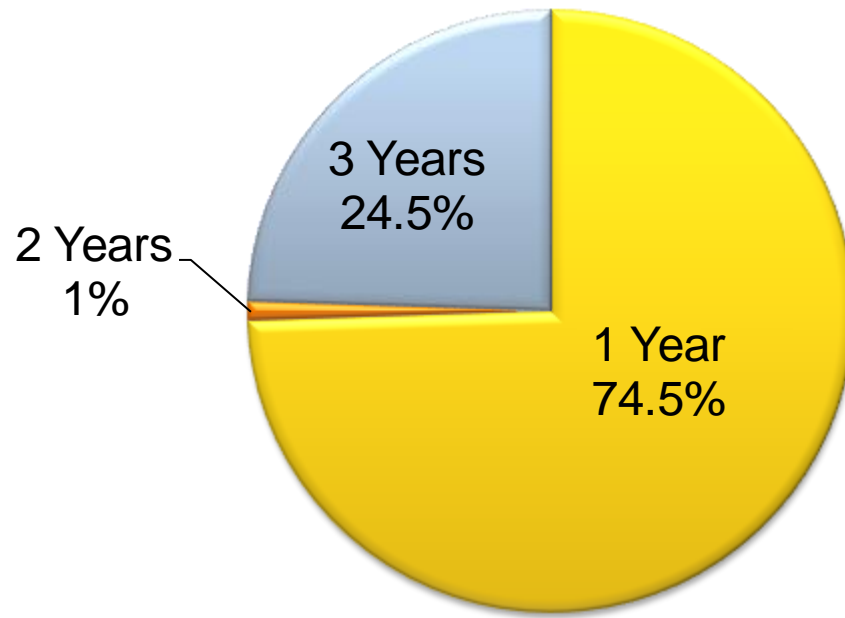
Say-on-Frequency 2011 Voting Results

Management Recommendations



2,481 Companies Total

Voting Results:
Percent of Passed Proposals



1,769 Companies Total



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Say-on-Pay and Say-on-Frequency Practice Points

- Adjust timeline for Annual Meeting Process
- Educate Board and Board Committees
- Review Executive Compensation Program
- Reach Out to Top Shareholders to Elicit Feedback
- Consider Say-on-Frequency
- Revisit CD&A Disclosure



Shareholder Proposals

- **Governance Issues**
 - Eliminate classified board
 - Shareholder right to call special meetings
 - Shareholder right to act by written consent
 - Director majority vote
 - Eliminate supermajority provisions
- **Corporate Social Responsibility Issues**
 - Political contributions and activities
 - Climate change
 - Others



Shareholder Proposals (cont'd)

- Floor proposals
 - U.S. Chamber of Commerce
 - Code of conduct
 - Dividends/buybacks
 - Political expenditures
- No-action Letters
 - Ordinary business
 - Conflicting proposal
 - Substantially implemented



Dodd-Frank Update

- Whistleblower rules
- Proxy Access
- Dodd-Frank Act rulemaking



Dodd-Frank “Whistleblower” Rules

- Dodd-Frank Act § 922/Securities Exchange Act § 21F
- Background of Rules
 - Whistleblower
 - Original Information
 - Eligibility
 - The Award including factors that increase/decrease award
 - Procedures
 - Anti-Retaliation
 - Confidentiality



Proxy Access

- Background
- The Final Rule
 - Rule 14a-11
 - Rule 14a-8
- Business Roundtable v. SEC
 - The court's holding
 - What has changed



Proxy Access (cont'd)

- The future of proxy access
 - Appeal
 - 14a-8 only
 - Retry on 14a-11
- The future of SEC rulemaking
 - Other Dodd-Frank rules in the crosshairs
 - The comment process



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Dodd-Frank Rulemaking

- Compensation Committee Independence
- Compensation Committee Advisor Independence
- Executive Compensation Disclosures
- Executive Compensation Clawback
- Hedging Disclosures
- Disclosures Regarding Chairman and CEO positions



Compensation Committee Independence (§ 952)

- Requires each member of Compensation Committee to be an independent board member
- Definition of Independence to be determined by the Exchanges and to include
 - the source of compensation to each member; and
 - whether the member is affiliated with the issuer
- Exemption authority granted to the Exchanges
- Effected through a prohibition on the Exchanges listing noncompliant companies
- *Rulemaking activity scheduled between August and December*



Compensation Committee Advisor Independence (§ 952)

- Requires compensation committee to take into consideration independence factors for any advisor (comp consultant, legal counsel, or other advisor)
- Factors must include
 - other services provided to the issuer
 - percentage of the advisors revenue generated from issuer fees
 - conflict of interest policies
 - any business or personal relationship
 - stock ownership
- Proxy disclosure must include
 - whether the compensation committee hired a consultant
 - whether there was a conflict of interest and if so, its nature and the approach to the conflict
- Exemption authority granted to the Exchanges
- Effected through a prohibition on the Exchanges listing noncompliant companies
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Executive Compensation Disclosures (§ 953)

- Requires disclosure in annual meeting proxy of:
 - relationship between executive compensation actually paid and company financial performance
 - ratio comparison between total annual compensation of the CEO and the median of all other employees
- Effected through an SEC rule
- *Rulemaking activity scheduled between August and December*



Executive Compensation Clawback (§ 954)

- Requires adoption of a policy that requires:
 - disclosure of the issuer's policy on incentive based compensation; and
 - clawback of incentive based compensation from current/former executive officers:
 - (1) when there is an issuer accounting restatement;
 - (2) based on material noncompliance;
 - (3) with clawed back compensation consisting of incentive compensation in excess of what would have been paid under the restatement; and
 - (4) relating to all such compensation for the three year period preceding the date on which the restatement is required
- Effected through a prohibition on the Exchanges listing noncompliant companies
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Employee/Director Hedging (§ 955)

- Requires disclosure in annual meeting proxy of whether any employee or director is permitted to purchase financial instruments that are designed to hedge or offset any decrease in the market value of issuer equity securities
- Effected through an SEC rule
- *Rulemaking activity scheduled between August and December*



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Disclosures Regarding Chairman & CEO Positions (§ 972)

- Requires the disclosure of the reasons why the same person has been chosen to serve as board chairman and CEO or why different individuals have been chosen to fill each position
- Effected through an SEC rule
- Current proxy rules already require similar disclosure



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Regulation D Proposed Amendments

- Dodd-Frank Act § 926/Reg D, Proposed Rule 506(c)
 - “Felons and bad actors” disqualifications
 - Covered persons include not only the company/issuer but also:
 - Directors, officers, GPs
 - 10% shareholders
 - Placement agents/solicitors
 - Promoters
 - Disqualifying Events
 - Look-Back Period
 - Five years, issuers
 - Ten years, other covered persons



Political Contributions

- Citizens United v. Federal Election Commission (U.S. S.Ct. 2010)
- Shareholder proposals
- Rulemaking petition:
 - <http://www.sec.gov/rules/petitions/2011/petn4-637.pdf>
 - Petition from ten law professors to require SEC to adopt rules requiring proxy disclosure of corporate political spending



Section 13(d) Beneficial Ownership Reporting

- <http://www.sec.gov/rules/petitions/2011/petn4-624.pdf>
- Petition from law firm to ask SEC to shorten minimum reporting period
- Currently at least ten days to report
- Shorten to as little as one day
- Petition has generated unusual controversy and has led to objections, e.g., <http://www.sec.gov/comments/4-624/4624-3.pdf>
- Apart from petition, SEC has stated it is “considering” shortening
 - Dodd-Frank clarified SEC authority