



Energy Insights



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What to do if You Receive an Against Vote Recommendation from ISS

Posted by Tom McNeill on April 4, 2013

The proxy season is shifting into high gear as most companies file their 2013 proxy statements. Companies will anxiously await shareholder advisor recommendations hoping for support on various compensation matters (e.g., Say on Pay, equity plans).



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Energy companies should have a heightened sensitivity to these vote recommendations. In 2012, energy companies received ISS recommendations against their Say on Pay proposals at a rate 50% higher than the broader Russell 3000 group of companies (20% vs. 14%); some industry segments (E&P, integrated oils) were even higher. These results were generally consistent with 2011, and are the result of certain common industry pay practices: prominent use of discretion in bonuses and a high proportion of time-vested equity.

While most of these proposals passed, the unfavorable vote recommendations reduced shareholder support by an average of 28%.

Following are some tips on what to do in the event you receive an AGAINST vote recommendation from ISS:

- **Anticipate the issues** – The vote recommendation shouldn't come as a big surprise. Preview your company's posture relative to ISS policies and address potential issues in the CD&A.
- **Don't spend much time trying to change the recommendation** – ISS is unlikely to change a recommendation unless their analysis includes factual or significant interpretive errors, or unless you are willing to change the offending provision (and publicly disclose that fact). Instead, focus on understanding the issues that led to the unfavorable vote recommendation.
- **Engage shareholders directly** – Shareholders appreciate the outreach. Specifically:
 - Document the business case to support your pay programs and decisions. As appropriate, include Human Resources, Legal, Investor Relations, your compensation consultant and the Compensation Committee Chair in the process.
 - Identify the top shareholders (typically the top 10-25 shareholders); educate yourself on their compensation, governance and voting policies.
 - Engage your proxy solicitor to help develop and execute a shareholder communication strategy.
- **Consider a supplemental filing** – Focus on the merits of the company's business case, and perhaps the points that most directly refute ISS assertions (e.g., that a bonus plan is too discretionary). But don't use a supplemental filing to complain about ISS's role or existence.

A company's thorough and planned response to an AGAINST vote recommendation from ISS can greatly minimize adverse voting, and maintain shareholder support at levels of 70% or higher.