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PUBLIC COMPANIES

'Say on Pay' sends message

Since Jan. 21, many public companies have started feeling yet another impact from last year's enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Annual public company shareholder meetings must now include nonbinding shareholder votes on "Say on Pay" and "Say on Frequency."

"Say on Pay" allows the shareholders of public companies a vote on whether to approve or disapprove a company's compensation of its management. "Say on Frequency" allows the shareholders of public companies a vote on how frequently they would like to revisit the issue — every three years, every two years or every year.

Public companies and their leaders are taking these votes very seriously.

Although the votes are technically nonbinding, a disapproving shareholder vote might prove to be more than just an embarrassment for the company. Shareholder advisory firms, such as ISS Proxy Advisory Services (formerly RiskMetrics), are watching these votes closely.

A disapproving vote could lead these influential firms to recommend that shareholders vote against directors sitting on compensation committees at the next opportunity – if the perceived problem has not yet been remedied.

LEGAL WATCH

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Even worse, shareholders from a few of the first companies to have received disapproving votes have already filed derivative lawsuits against those companies' directors and officers, alleging waste of corporate assets and other similar claims.

It is unclear how these lawsuits will fare, given that the new rule expressly states that the outcome of the vote should not affect the responsibilities of the directors and officers of a company.

Nevertheless, the exposure and negative publicity alone may be enough to inspire action. For all these reasons, public companies and their leaders are taking these votes very seriously.

It has only been a few months since the first votes, but already a picture of the results is emerging. The vast majority of companies that have already conducted a "Say on Pay" vote have received strong support from their shareholders for their management compensation.

A handful, however, have not been so fortunate. At the end of April, nine companies had tried and failed to garner a majority approving their management compensation. These companies are not unknown or insignificant; they span all industries and geographical locations; and they include such household names as Hewlett-Packard, Janus Capital Group, and Stanley Black & Decker.

While most of the "Say on Pay" approval ratings have been good so far, shareholders are sending the message with their vote that they would like more regular input on the process.

Most companies recommended to their shareholders that the "Say on Pay" vote occur every three years. The early results of the "Say on Frequency" votes, however, show a majority of companies' shareholders demanding a right to a "Say on Pay" vote every year, rather than every two or three years.

These results are not surprising, given the volatile economic period of the last few years and the negative atmosphere that helped fuel enactment of Dodd-Frank in the first place.

Over the remainder of the year, advisory firms, journalists and academics will continue to track the results of these mandatory but nonbinding "Say on Pay" and "Say on Frequency" votes at shareholder meetings all over the country.

Given the potential consequences, no one will be paying closer attention than the directors and officers of public companies, who will be trying to determine the full impact of this new mechanism in public company corporate governance.

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