

Cooley

**Comp Talks
Proxy Season Rundown –
Scrutinizing 2019 to
Improve 2020**

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attorney advertisement

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What Are We Talking About?



Larry Fink Opened the 2019 Proxy Season with Continued Emphasis on “Purpose and Profit”

“Profits are in no way inconsistent with purpose – in fact, profits and purpose are inextricably linked.”

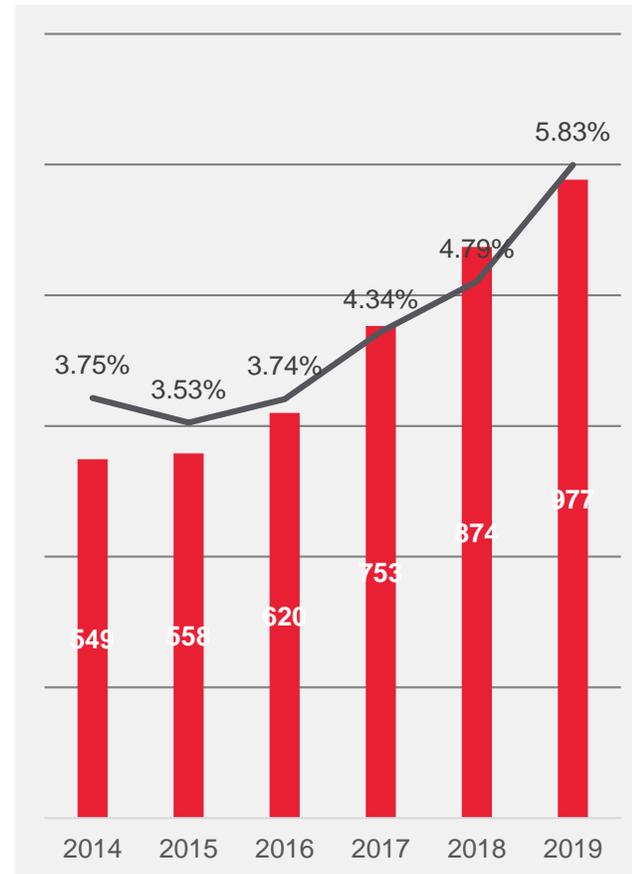
“As wealth shifts and investing preferences change, environmental, social, and governance issues will be increasingly material to corporate valuations.”



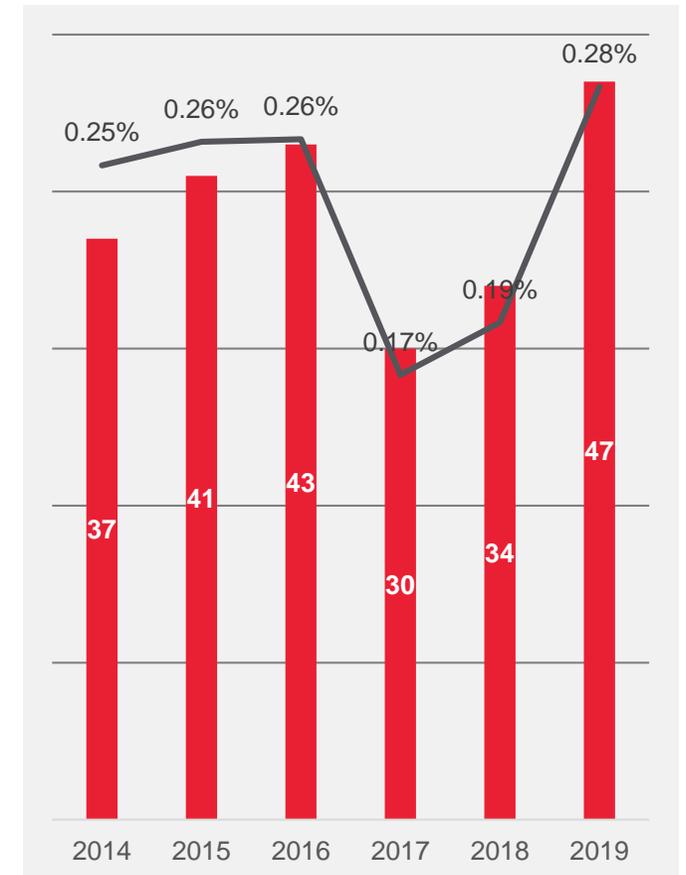
Director Election Results

- 95% average shareholder support for directors; less than 1% failed to receive majority support
- Shareholders expressed more concern against directors → increased levels of “significant” opposition
- ISS issued negative recommendations for ~13% of elections (slightly less than in 2018)

Directors Receiving < 80% Support



Directors Receiving < 50% Support



Why Does It Matter when a Director Receives Lower Support?

- Could trigger director resignation policy
- Reputational harm
- Discourage qualified directors from continuing/new candidates
- Raise company profile as a target for stockholder activists and governance-related stockholder proposals (e.g., majority voting)
- Increased scrutiny next year

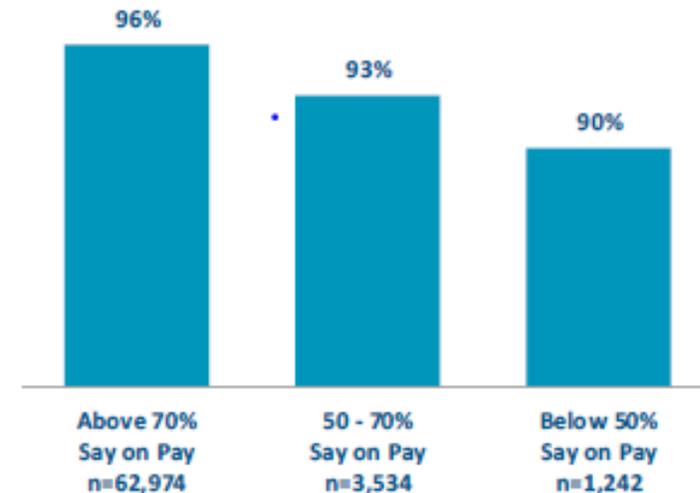
Director Elections

Most common reasons for ISS negative recommendations against directors:

- Excessive non-audit fees
- **Lack of responsiveness to shareholder concerns**
- Independence issues
- Newly public companies with adverse governance provisions
- Overboarding
- Absence of formal nominating committees
- Shareholders not permitted to amend bylaws (N/A for DE corps)
- Poor attendance
- **Compensation issues**
- Poison pill issues
- Unilateral action that reduces shareholder rights

Lack of responsiveness (including to low say-on-pay vote) is correlated with some of the *lowest levels of support* for directors

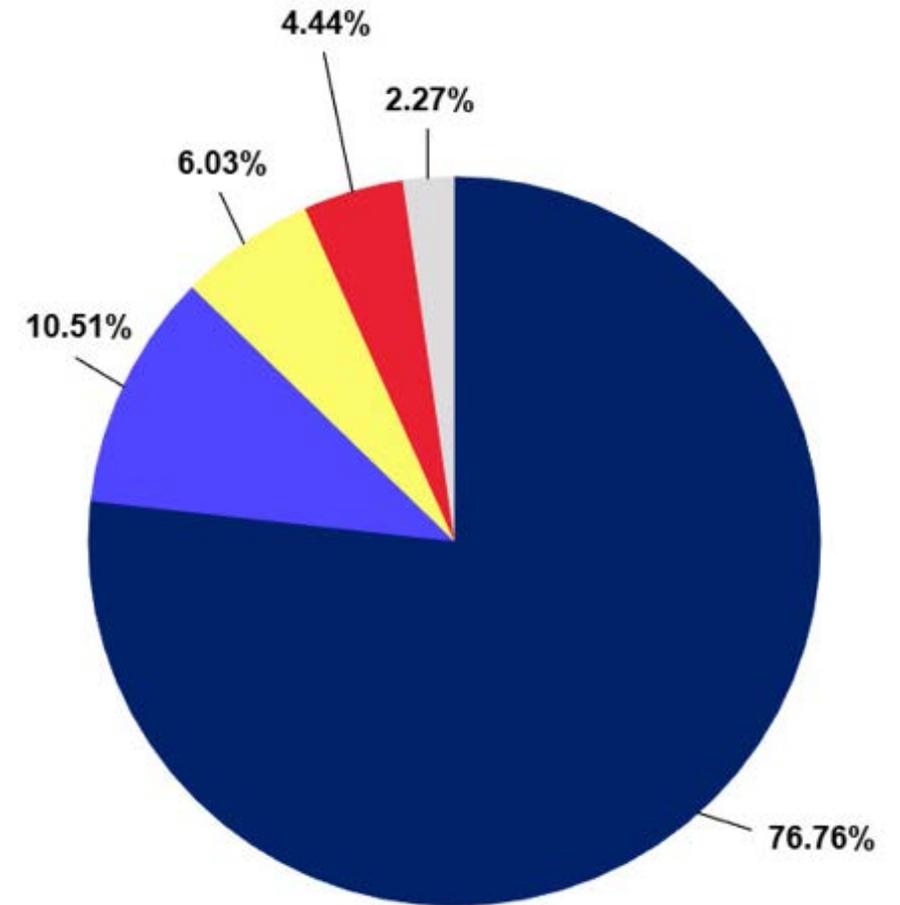
AVERAGE DIRECTOR ELECTION RESULTS IN YEAR FOLLOWING SAY ON PAY (2015-2019)



Say-on-Pay: Overall Support Levels

- 98% of all proposals passed (compared to 82% following negative ISS recommendation)
- Average support at 90% (slightly down from 2018)
- Proposals receiving lower levels of support trigger heightened scrutiny in following year
- ***Remember: a successful vote does not guarantee success in the following year***

Support Levels for 2019 Passed Proposals



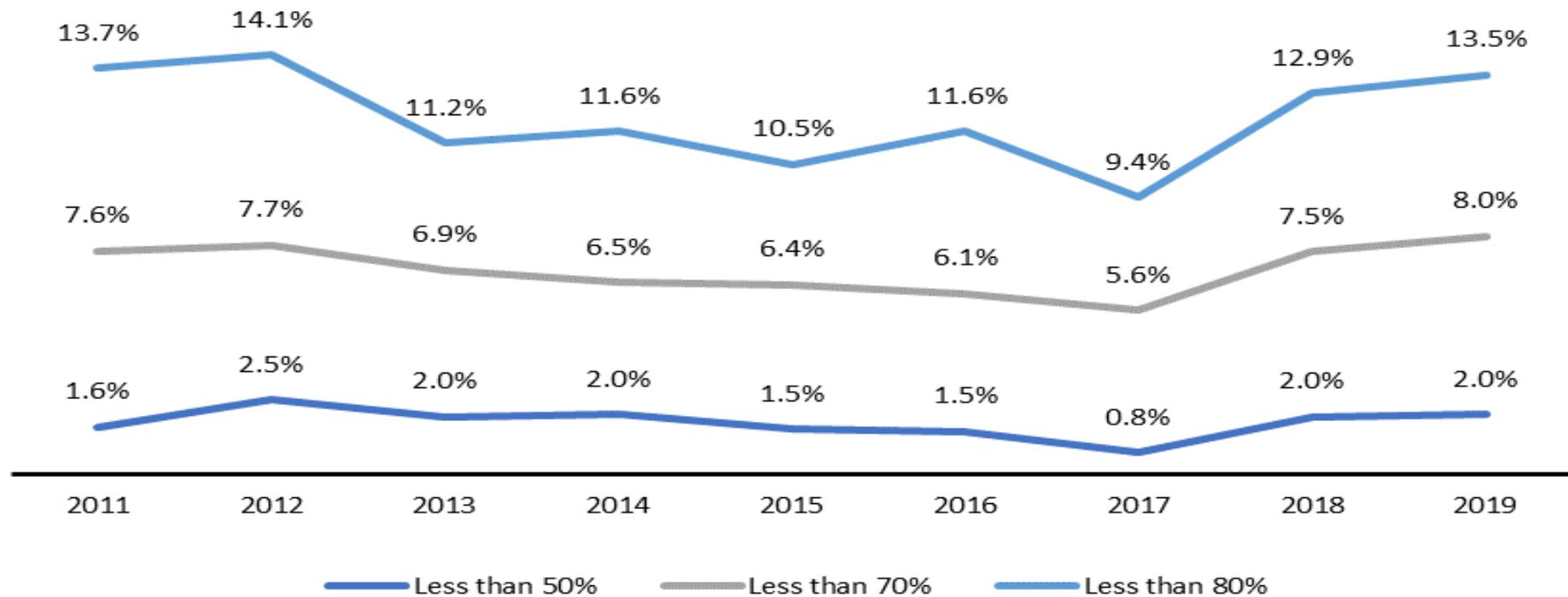
> 90% Support ■
80-89% Support ■
70-79% Support ■
60-69% Support ■
50-59% Support ■

Trends in Opposition to Say on Pay Proposals

Opposition to Say-on-Pay Proposals Approaches Historical Records

percentage of say-on-pay proposals with support rates below designated thresholds of votes cast as "for" and "against"

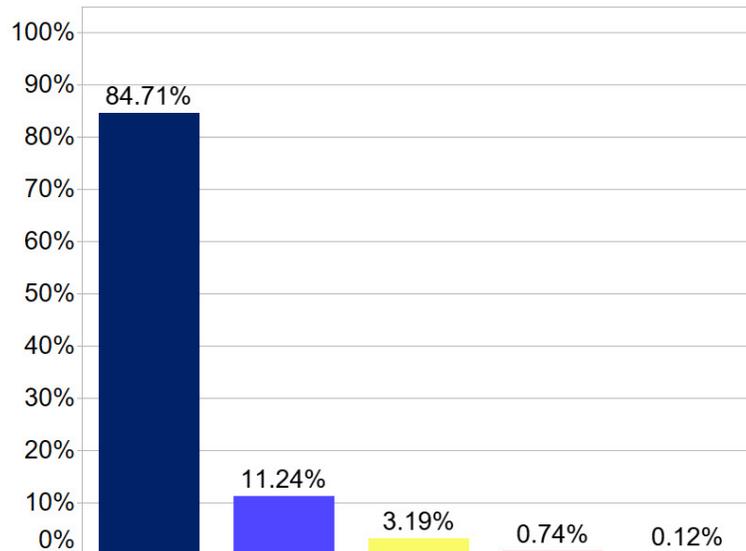
Russell 3000 - January to May Meetings



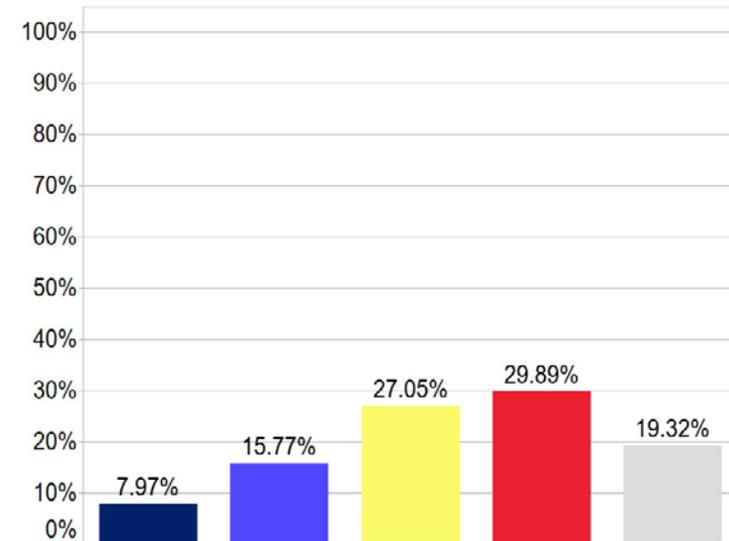
Source: ISS Analytics

Results of 2019 Passed Say-on-Pay Proposals Following...

Positive ISS Recommendation 94% Average Support



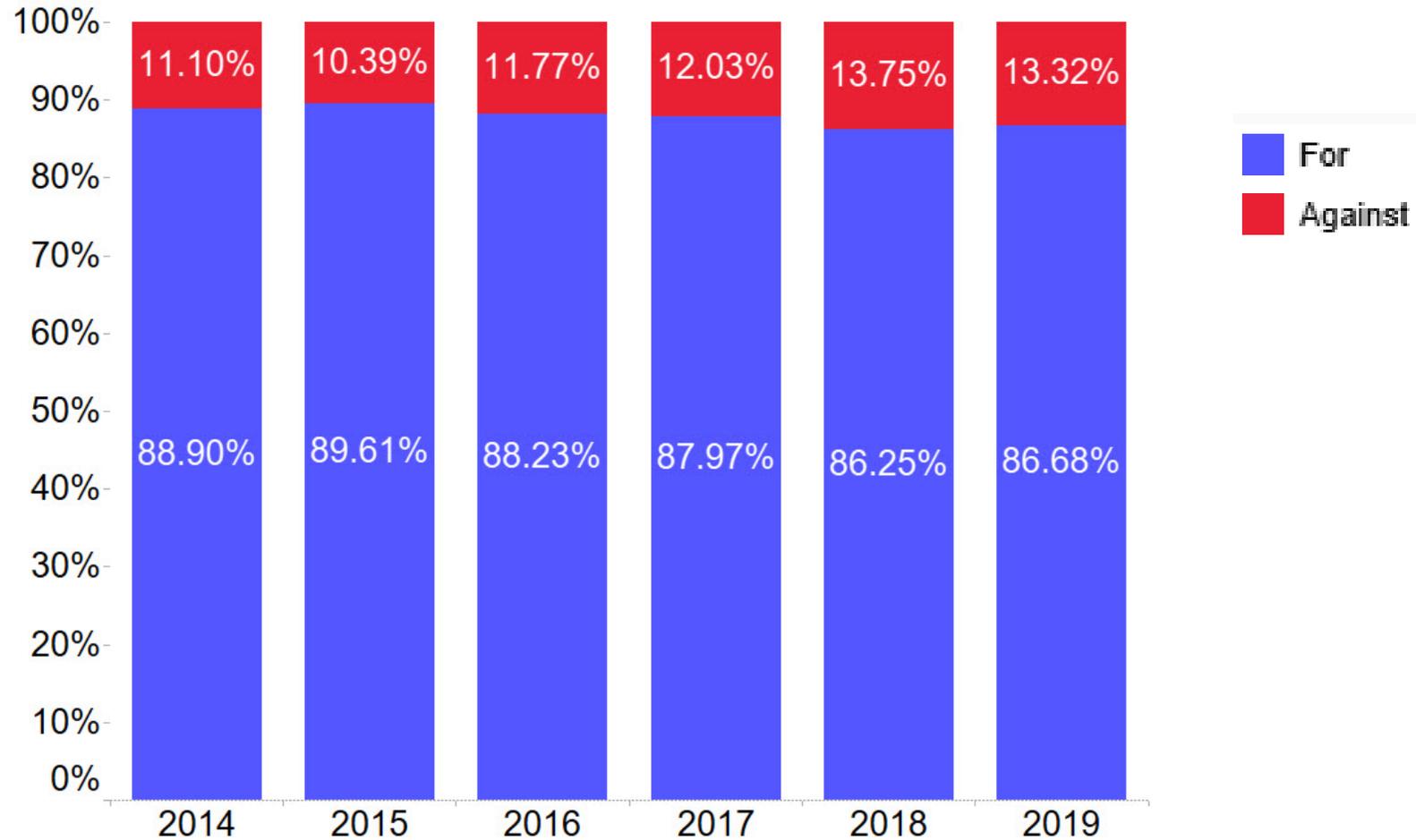
Negative ISS Recommendation 71% Average Support



> 90% Support
80-89% Support
70-79% Support
60-69% Support
50-59% Support



Trends in ISS Recommendations



Reasons for Low Say-on-Pay Support & Trends

- **Most common reasons for lower levels of support:**
 - Pay for performance disconnect (dominant reason is relative alignment of CEO pay and TSR)
 - Problematic pay practices (e.g., mega-grants and one-off awards)
 - Lack of sufficient performance-vesting equity
 - Compensation committee responsiveness
 - Rigor of performance goals
- **Trends:**
 - More stockholder scrutiny on performance metrics, pay alignment with strategy and long-term returns
 - Increased stockholder and proxy advisory firm engagement
 - Increased proxy disclosure

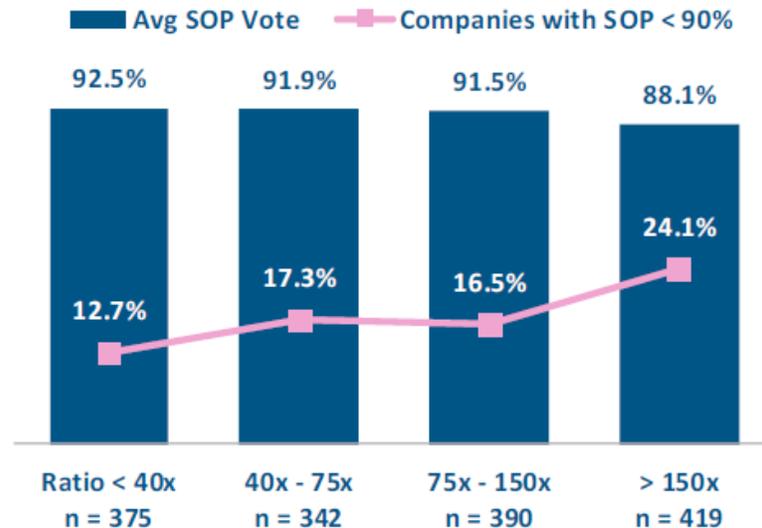
Say on Pay – Advice for 2020

- Pay close attention to levels of shareholder support
- Formulate a plan if shareholder support levels are “low” (<70% ISS, <80% Glass Lewis)
- Understand/monitor the ISS and Glass Lewis pay-for-performance screens
- Monitor your shareholder base and shareholder preferences
- A successful vote does not guarantee success in the following year
- Consider certain disclosure enhancements and start early
- Engage!

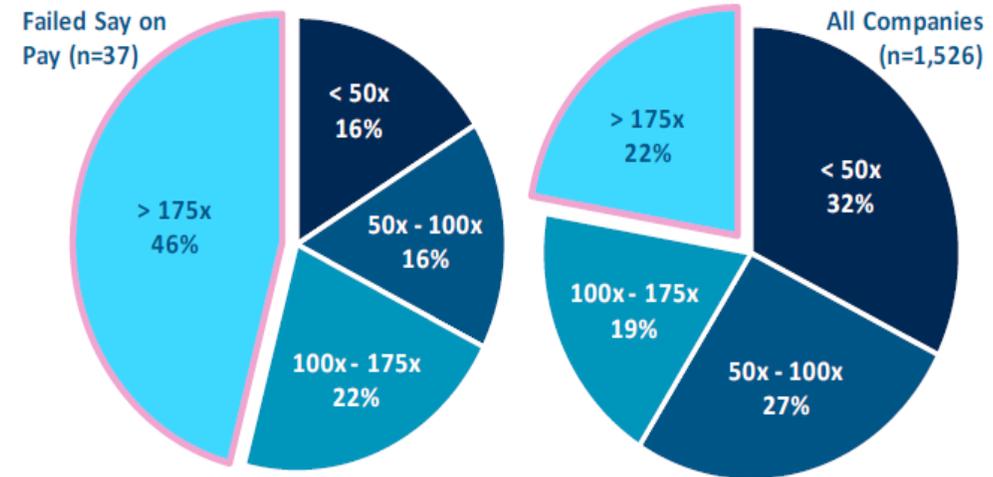
Pay Ratio

- Ratios were not a primary driver of say on pay results
- ~ 10% of companies disclosed an alternative ratio (e.g., exclude one-time CEO award, report US employees only or use only full-time employees)

RUSSELL 3000 SAY ON PAY RESULTS BY CEO PAY RATIO



CEO PAY RATIOS OF RUSSELL 3000 CONSTITUENTS THAT FAILED SAY ON PAY

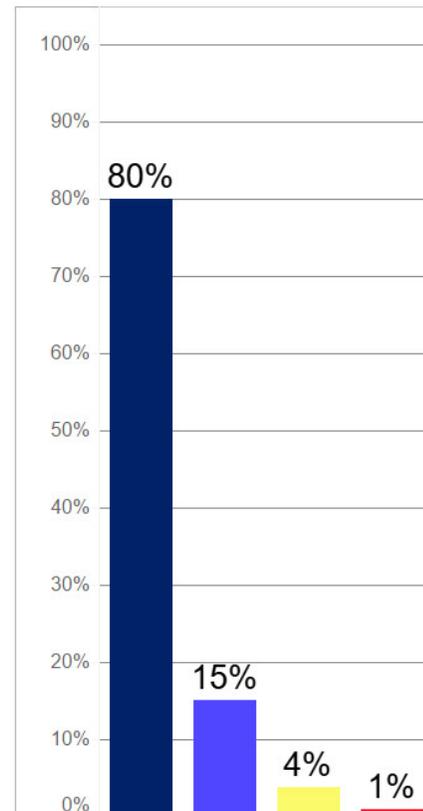


Equity Plan Proposals

- 99% proposals pass
- Average 89% support
- ISS recommends for 76% of proposals

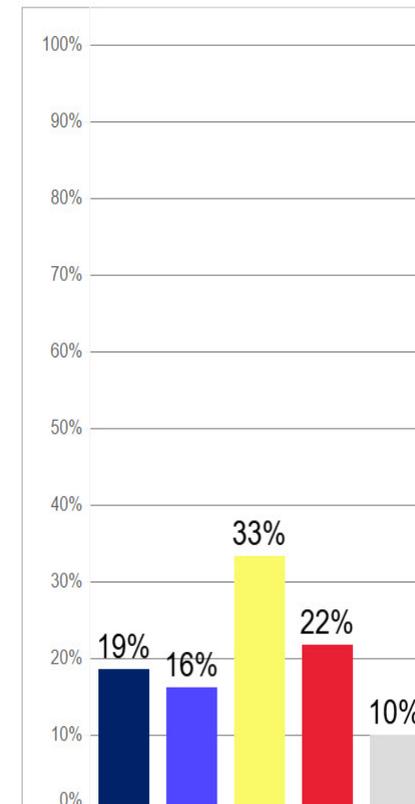
BUT 99% of all statistics only tell 49% of the story!

Positive ISS Recommendation
93% Average Support



> 90% Support
80-89% Support
70-79% Support
60-69% Support
50-59% Support

Negative ISS Recommendation
76% Average Support



Equity Plan Proposals – Advice for 2020

- Most proposals are based on serious homework and designed to pass – *don't be fooled by statistics!*
- Invest the resources necessary to design a proposal that will pass
- Consider enhanced proxy disclosure
- Ensure proposal contains correct proxy tables
- Consider director compensation limits and 162(m) implications

Director Compensation: Litigation Developments & Impact

- Shareholder lawsuits continue, claiming breach of fiduciary duty against public company boards for engaging in self-dealing and corporate waste by approving their own pay at excessive levels
- Companies include a “meaningful limit” on director compensation in shareholder-approved equity plans as a strategy for deterring and defending claims
- *Investors Bancorp* decision raised questions about the effectiveness of limits
- What did we see in 2019?
 - Increased discussion at the board level
 - Equity plan proposals continued to include director compensation limits (more dollar-denominated limits, more limits on stock and cash)
 - Few companies set up formula plans with fixed grants
 - Companies carefully assess director compensation, with the use of a compensation consultant
 - Some companies have enhanced proxy disclosure

Investor/Proxy Advisory Firm Focus

- **ISS policy clarification:** under new policy, ISS may recommend against directors who are responsible for setting or approving “excessive” non-employee director compensation in **two or more consecutive years** without compelling disclosure or other mitigating factors
 - “**Excessive**” means an extreme outlier and to determine outlier cases, ISS will compare individual non-employee director pay totals to the median of all non-employee directors at companies in the same index and industry
 - The purpose is to identify a pattern of extreme outliers: top 2%-3% of all comparable directors
- ISS noted excessive pay in proxies during 2019; negative recommendations will begin in 2020

Director Compensation – Advice for 2020

- Educate and discuss at board level
- Ensure there is a **rigorous process** for setting director compensation:
 - Use of a compensation consultant
 - Annual review
 - Comparison against peers to confirm grants are in an appropriate range
 - Rigorous process around determination of peer companies
- Consider **enhanced proxy disclosure** describing the thoughtful process and any market-based analysis used to determine compensation

SRC Compensation Disclosure

- In 2018, Smaller Reporting Company (SRC) definition revised and many companies became SRCs for the first time
- SRCs have scaled proxy compensation disclosures (e.g., not required to do a CD&A) although they are **still required to solicit say-on-pay votes**
- Both ISS and GL revised their policies for 2019 and stated they would consider the impact of materially decreased CD&A disclosure and potentially recommend against compensation committee members/say-on-pay proposals
- **“New” SRCs faced decision of whether to shift to scaled compensation disclosure:**
 - Some decided to maintain full CD&A and compensation disclosure as a good practice
 - Some dropped to only what was required for SRCs
 - Some chose a “hybrid” approach

Engagement: What Do Institutional Investors Expect and Why?

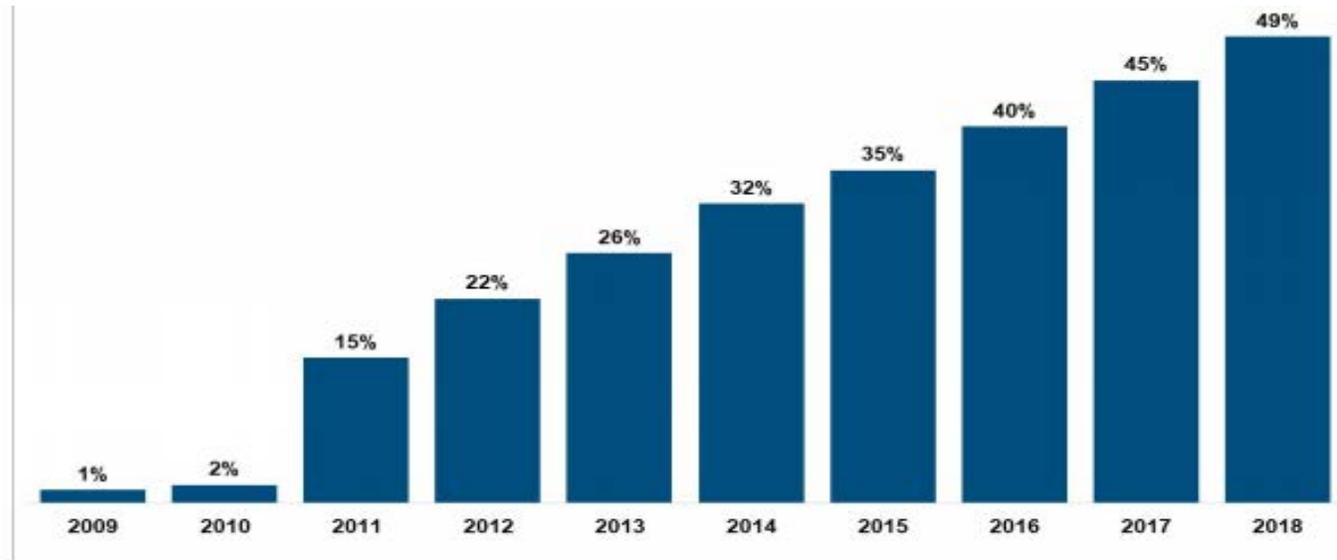


What Did We See in 2019?

- Steady climb of increase in shareholder engagement and proxy disclosure of that engagement (especially on compensation-related topics) continued
- Engagement continued to be more *proactive* than reactive and more *entrenched in corporate culture*
- Compensation continues to be a key topic
- Dialogues influence changes in disclosure and practices, particularly compensation changes
- Increased focus on responsiveness

A Decade of Evolution

**% of Russell 3000
Companies with at
Least One Say-on-
Pay Vote Result of
<85% Support**



**Apple
iPhone
Evolution**



Institutional Investors – In Their Own Words

BlackRock - *Larry Fink's 2019 annual letter to CEOs*

“In [our] engagements, we do not focus on your day-to-day operations, but instead seek to understand your strategy for achieving long-term growth. And as I said last year, for engagements to be productive, they cannot occur only during proxy season when the discussion is about an up-or-down vote on proxy proposals. The best outcomes come from a robust, year-round dialogue.”

“Over the past year, our Investment Stewardship team has begun to speak to companies about corporate purpose and how it aligns with culture and corporate strategy, and we have been encouraged by the commitment of companies to engaging with us on this issue. We have no intention of telling companies what their purpose should be – that is the role of your management team and your board of directors. Rather, we seek to understand how a company’s purpose informs its strategy and culture to underpin sustainable financial performance.”

Vanguard – *2019 Semiannual Engagement Update*

“One of the hallmarks of good governance is engagement with shareholders. Each year, on behalf of Vanguard funds, our Investment Stewardship team meets with hundreds of portfolio companies. In these interactions, we have open, constructive dialogues about corporate governance.”

“As practically permanent owners of company stock, Vanguard wants to understand how companies plan to stay relevant over the long term. Boards oversee the governance of strategies that have become more complex as companies compete for customers around the world. Every strategy presents a unique set of opportunities and exposes a company to myriad material governance risks, including those related to environmental and social issues.”

Dissatisfaction May Lead to Votes Against Directors

- **Passive investors** cannot sell assets in index funds for underperformance
- Instead, they generally **push for aspects of corporate governance that they believe are most clearly connected to long-term performance**
- Use **engagement and voting power to exert influence** with management in order to improve company (and therefore fund) performance
- *Compensation or other perceived issues may trigger negative votes even when company performance is strong*



“If you’re an active manager and you don’t like what a company is doing, you sell it. If you’re an index manager, you try to fix it.”

- **Active investors** typically don’t complain about corporate governance unless and until there is a corporate performance problem
- At that point, active investors are **quick to analyze board governance practices**
- Dissatisfaction with governance practices leads to **votes against directors and other proxy proposals**
- *Compensation or other perceived issues may trigger negative votes regardless of the reason for the corporate performance issue*

Shareholder Engagement – Advice for 2020

- Know *when* you need to engage
- Understand *why* you are reaching out to shareholders
- Determine *who* should be involved
- Have a targeted agenda, but be prepared to address other topics
- Understand each investors' hot governance topics
- Technical reminders: be mindful about topics discussed and ensure compliance with Reg FD and filing requirements

A green rectangular sign with rounded corners and a white border, tilted at an angle. The word "Disclosure" is written in white, bold, sans-serif capital letters across the sign. The sign is supported by two vertical metal poles. The background is a bright blue sky with scattered white clouds and a sun flare in the top right corner.

Disclosure

What Matters Most to Investors re Compensation Disclosure?

- Explanation of how pay is tied to long-term company strategy and performance
- Disclosure of performance goals, rigor of performance goals and company results justifying payout
- Peer group and benchmarking
- One-time special equity awards
- Response to last year's say-on-pay vote
- Egregious compensation practices

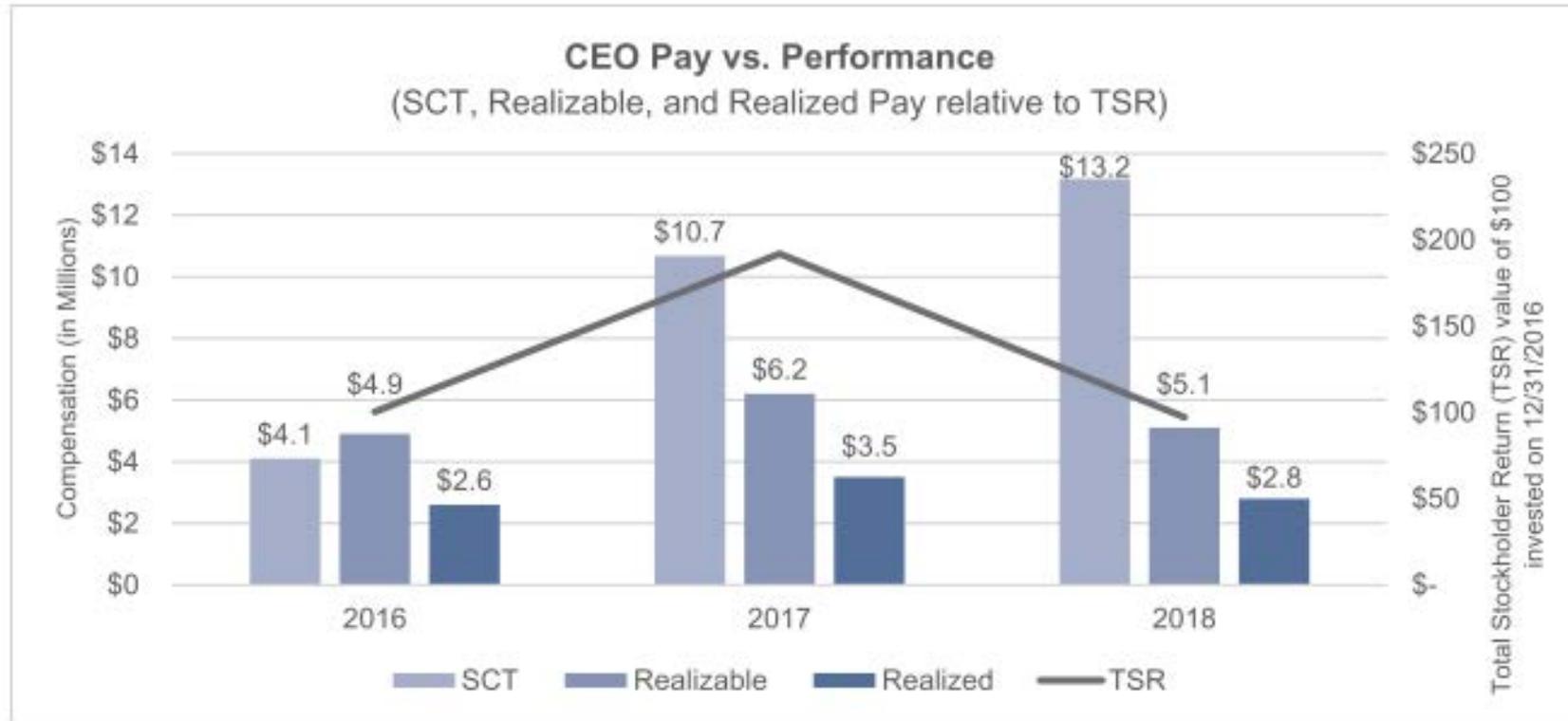
Example: Compensation Program Overview

Chevron Corporation

Pay element	Metrics/Purpose	Governance/Timing
Base Salary	Fixed level of competitive base pay to attract and retain executive talent	4th quarter of preceding year MCC, supported by independent compensation consultant, reviews competitive data; approves salary ranges, CIP and LTIP targets for executive officers except CEO
Annual Incentive Plan ("Chevron Incentive Plan", or "CIP")	Recognize annual performance achievements in the following categories: <ul style="list-style-type: none"> Financials Capital Management Operating Performance Health, Environmental, and Safety ("HES") 	January each year MCC and Board determine CIP and LTIP targets for CEO; approve salary and LTIP awards for all executive officers; approve CIP performance goals
Long-Term Incentive Plan ("LTIP")	Reward creation of long-term stockholder value using a balanced approach, with annual grants composed of three equity vehicles, each objectively measured and designed to focus recipients on different aspects of different stockholder value creation: <ul style="list-style-type: none"> Performance shares: incentivize performance relative to peers; modifier varies from 0 to 200% based on relative TSR vs. large-cap energy peers and S&P 500; three-year performance cycle Stock options: incentivize absolute performance and long-term value creation; three-year vesting; 10-year term Restricted stock units: incentivize absolute performance and retention through long holding periods; five-year cliff vesting; 	At the end of each year MCC and Board approve CIP awards after performance results are evaluated against predetermined measures
		At the end of 3 years MCC approves performance share payout based on relative TSR performance over 3-year performance period
		At the end of 5 years Restricted stock units pay out based on absolute stock performance
		Over 10 years Stock options may be exercised at any time after vesting. Value is based on absolute stock performance from grant date to exercise date
Benefits	Competitive retirement and savings plan benefits to encourage retention and support long-term employment	MCC and Board provide oversight of retirement/savings plan design and administration

Example: Pay vs. Performance

Alcoa Corporation



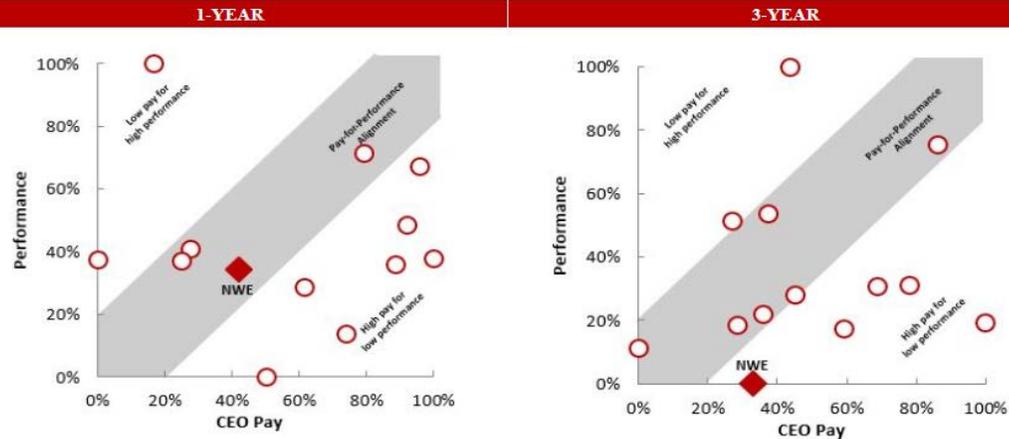
As illustrated in the chart below, Mr. Harvey's Realized Pay and Realizable Pay increased from 2016 to 2017 and decreased from 2017 to 2018, which trends with the movement of our stock price during this period and reflects the alignment of Mr. Harvey's pay with our share price. Furthermore, the table below demonstrates that (i) our CEO's Realized Pay and Realizable Pay, since the Separation, are lower than TSR over the same period, and (ii) the SCT representation of his compensation is not aligned with pay actually realized or realizable by him for that period.

Example: Pay vs. Performance

Northwestern Corporation



CEO PAY FOR PERFORMANCE VS. 2018 PEERS



Example: Response to Say on Pay/Shareholder Engagement

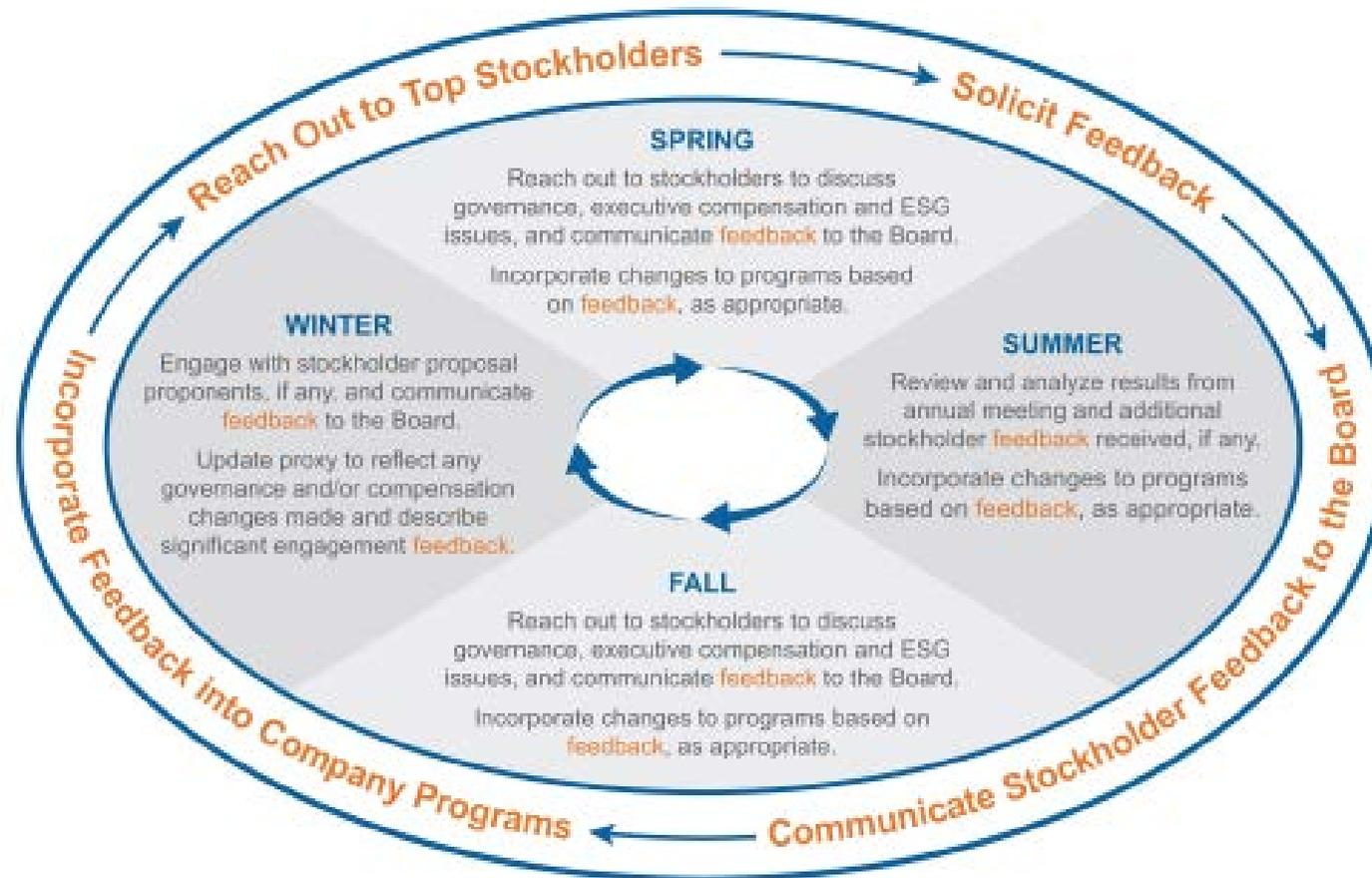
The Hain Celestial Group, Inc.

WHAT WE HEARD	WHAT WE HAVE DONE IN RESPONSE	INTENDED OUTCOME	WHEN EFFECTIVE
The Company should consider adopting a performance measure that is relative so that stockholders can better evaluate the Company's performance against its peers.	Adopted Relative TSR as one of the measures for the long-term incentive plan	Provides stockholders with the ability to evaluate the Company's performance against a predetermined peer group	2016-2018 Long-Term Incentive Plan
The Company should consider increasing the performance period under the long-term incentive plan from two years to three years	Increased the performance period under the long-term incentive plan to three years	Incentivizes long-term thinking and aligns management incentives with stockholders.	2016-2018 Long-Term Incentive Plan
The Company should further align pay and performance	Eliminated the time-based vesting portion of the long-term incentive award (25% of award)	All awards under the long-term incentive plan are 100% performance-based thereby increasing stockholder alignment	2016-2018 Long-Term Incentive Plan
The Company should consider eliminating the use of a CEO Founder Peer Group	Eliminated the CEO Founder peer group. We are now using a single compensation peer group for all executive compensation decisions	Provides for clearer, more objective and more concise information	2016
The Board of Directors should consider appointing a lead independent director	The Board of Directors appointed a lead independent director	The lead independent director provides objective leadership to the independent directors in the Boardroom, presides over Board meetings, sets Board priorities in conjunction with the Chairman and advises the Board on matters where there may be an actual or perceived conflict of interest	May 2017

Example: Shareholder Engagement

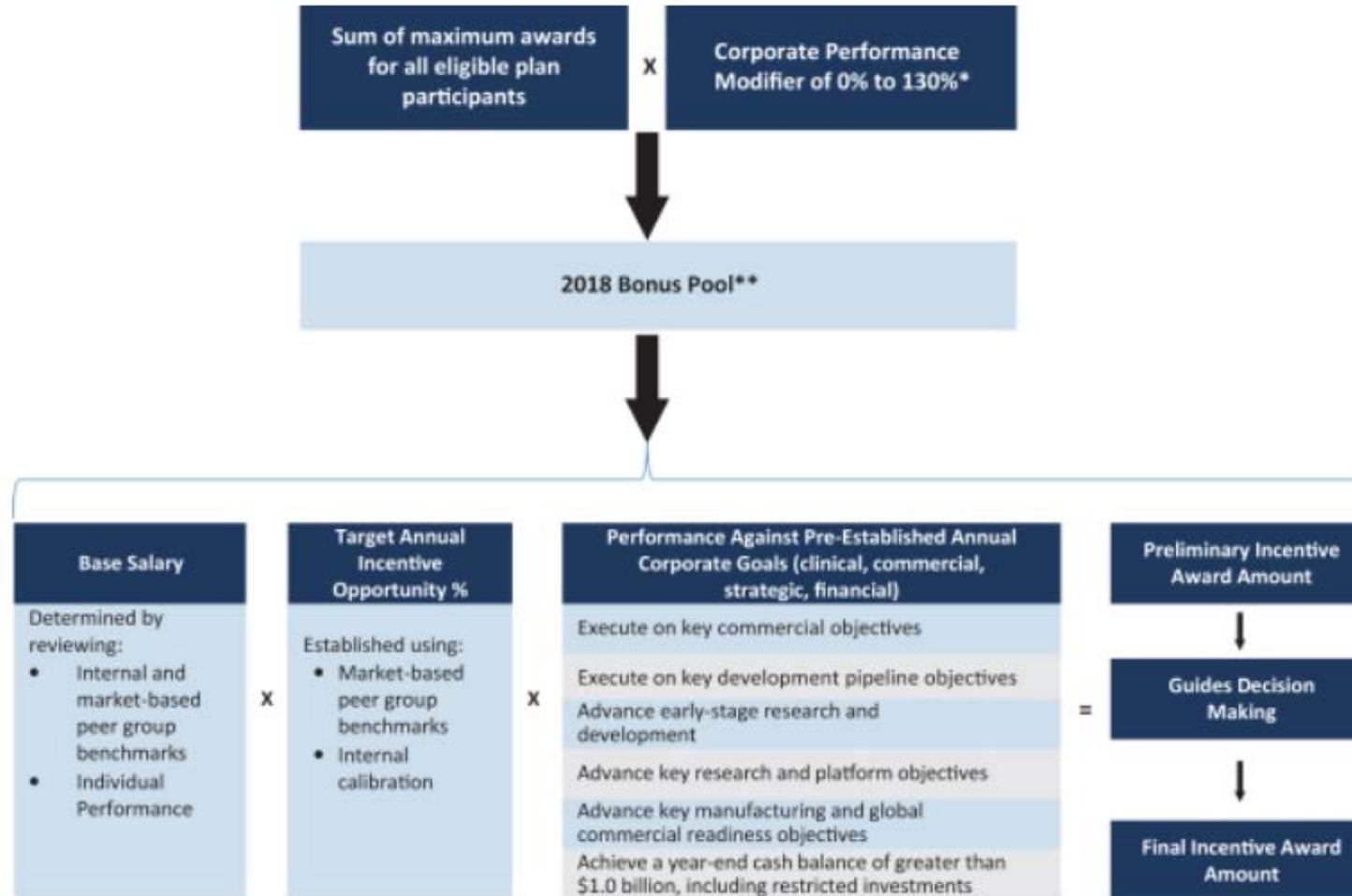
Anadarko Petroleum Corporation

ANNUAL STOCKHOLDER ENGAGEMENT CYCLE



Example: Overview of Annual Incentive Plan

Anylam Pharmaceuticals



Example: Disclosure of Performance Objectives

Hologic Inc.

2018 PERFORMANCE OBJECTIVES AND RESULTS

The Committee believed the financial performance components of the 2018 STIP were achievable, but appropriately challenging, based on market climate and internal budgeting and forecasting. The following table outlines the threshold, target and maximum financial performance objectives for the 2018 STIP, as well as the results achieved:

Performance Measures	Weighting	Threshold	Target (100%)	Maximum
Adjusted Revenue	60%	\$3.101B	\$3.302B	\$3.503B
Adjusted EPS	40%	\$2.03	\$2.15	\$2.27

WHY ADJUSTED REVENUE AND EPS?

ADJUSTED REVENUE. The Committee believes that organic growth, that is, revenue growth excluding the impact of changes in foreign exchange rates and acquisitions and other transactions, is an important measure of management's achievements in operating the Company's core businesses during the year. Accordingly, the Committee utilizes adjusted revenue as a performance measure in the STIP.

Adjusted revenue, which is intended to reflect organic growth, is calculated on a constant currency basis using our fiscal 2018 budget foreign currency exchange rates and, pursuant to the terms of our STIP, is also adjusted (i) to remove the effect of acquisitions or dispositions (including the discontinuance of a product or product line other than in the ordinary course of business) that are completed during the reporting period that materially affect the Company's consolidated revenue; and (ii) to exclude any acquisition-related accounting or other effects that are excluded in the calculation of adjusted EPS. Revenue that is adjusted to exclude the impact of these events is a non-GAAP measure.

For fiscal 2018, adjusted revenue was calculated on a constant currency basis, using the fiscal 2018 budgeted foreign currency exchange rates, and excludes the impact of the Emsor and Faxitron acquisitions. A reconciliation of our non-GAAP adjusted revenue to our GAAP revenue is provided in [Annex A](#) to this proxy statement.

ADJUSTED EPS. This metric is used by management to evaluate our historical operating results and as a comparison to competitors' operating results. The Committee agrees with this approach and uses this non-GAAP measure as a performance measure in the STIP.

Adjusted EPS is calculated as set forth in [Annex A](#). This financial measure adjusts for specified items that can be highly variable or difficult to predict, as well as certain effects of acquisitions, dispositions and financings that may not necessarily be indicative of operational performance. A reconciliation of our non-GAAP adjusted EPS to our GAAP EPS is provided in [Annex A](#) to this proxy statement.

HOW WE ESTABLISH ADJUSTED REVENUE AND ADJUSTED EPS GOALS

In setting the adjusted revenue and adjusted EPS goals for our 2018 STIP, the Committee considered the Company's historical performance as well as planned growth. For the 2018 STIP, adjusted revenue at target represents approximately 6.5% growth over the prior year actual pro-forma revenue (proforma revenue excludes revenue related to the divested blood screening business and includes pro-forma revenue from the Cynosure business acquired in fiscal 2017), while adjusted revenue at maximum represents approximately 13% growth over prior year actual revenue. Adjusted EPS at target represents approximately 5.9% growth over prior year EPS, while adjusted EPS at maximum represents approximately 11.8% growth over prior year EPS. Threshold adjusted revenue and adjusted EPS are generally set at prior year actual results - if there is no growth in adjusted revenue or adjusted EPS as compared to the prior year actual results, there is no payout under the applicable target.

Example: Supplemental Proxy Filing

Harley-Davidson



EXECUTIVE COMPENSATION OVERVIEW



We are seeking continued support from our shareholders for our “Say on Pay” advisory vote.

- The oversight and structure of our executive compensation program **create and reinforce pay for performance while reducing risks and aligning the interests** of management with the interests of shareholders.
- Our executive compensation program is **directly tied to our business strategy and long-term objectives.**
- We are committed to **strong executive compensation practices** and the structure of our **program conforms to market practices.**
- In setting total target compensation opportunities, we use the **size-adjusted regressed 50th percentile of our disclosed compensation benchmark companies (peer groups)** plus or minus 20%.
- Also, we require the executive team to **hold HOG common stock** to reinforce the link between the long-term interests of management and shareholders.

Advice for 2020

- Start early
- Address concerns raised by shareholders and influential proxy advisory firms
- Tell your pay-for-performance story
- Highlight positive facts (e.g., if you engaged, disclose it)
- Assess whether supplemental disclosure is right for your company
- Understand litigation risks
- Use plain English
- Don't forget the SEC rules

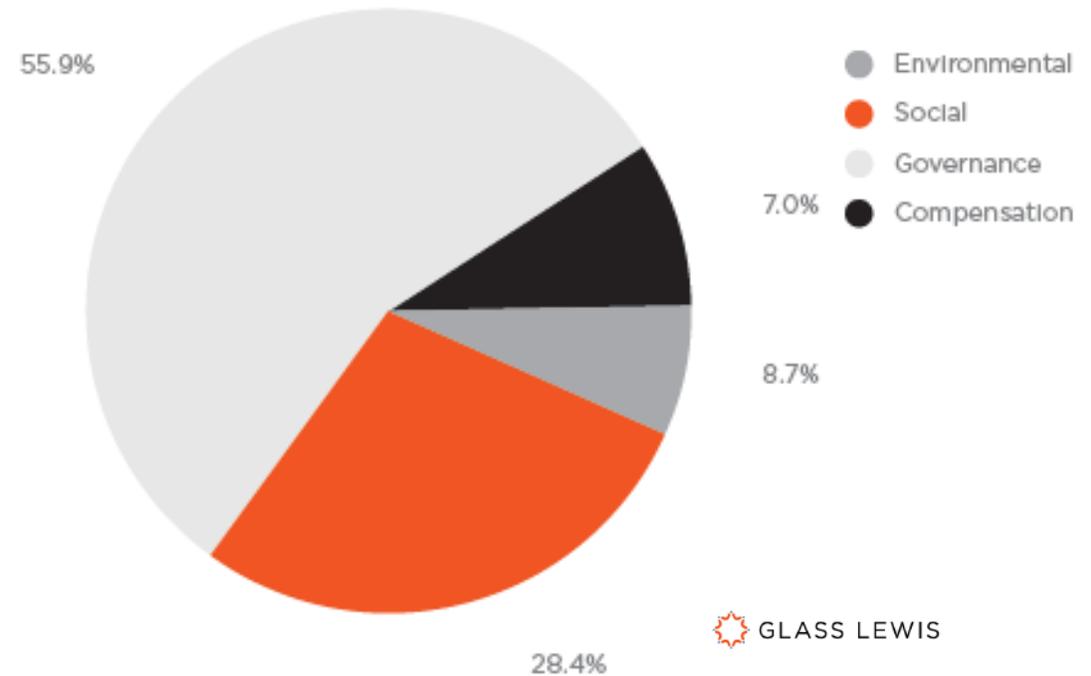
Shareholder Proposals



2019 Shareholder Proposals

- Number of proposals down overall
- Governance-related proposals are dropping, but most likely to pass
- E&S proposals are the most common, with increasing levels of support, but few pass

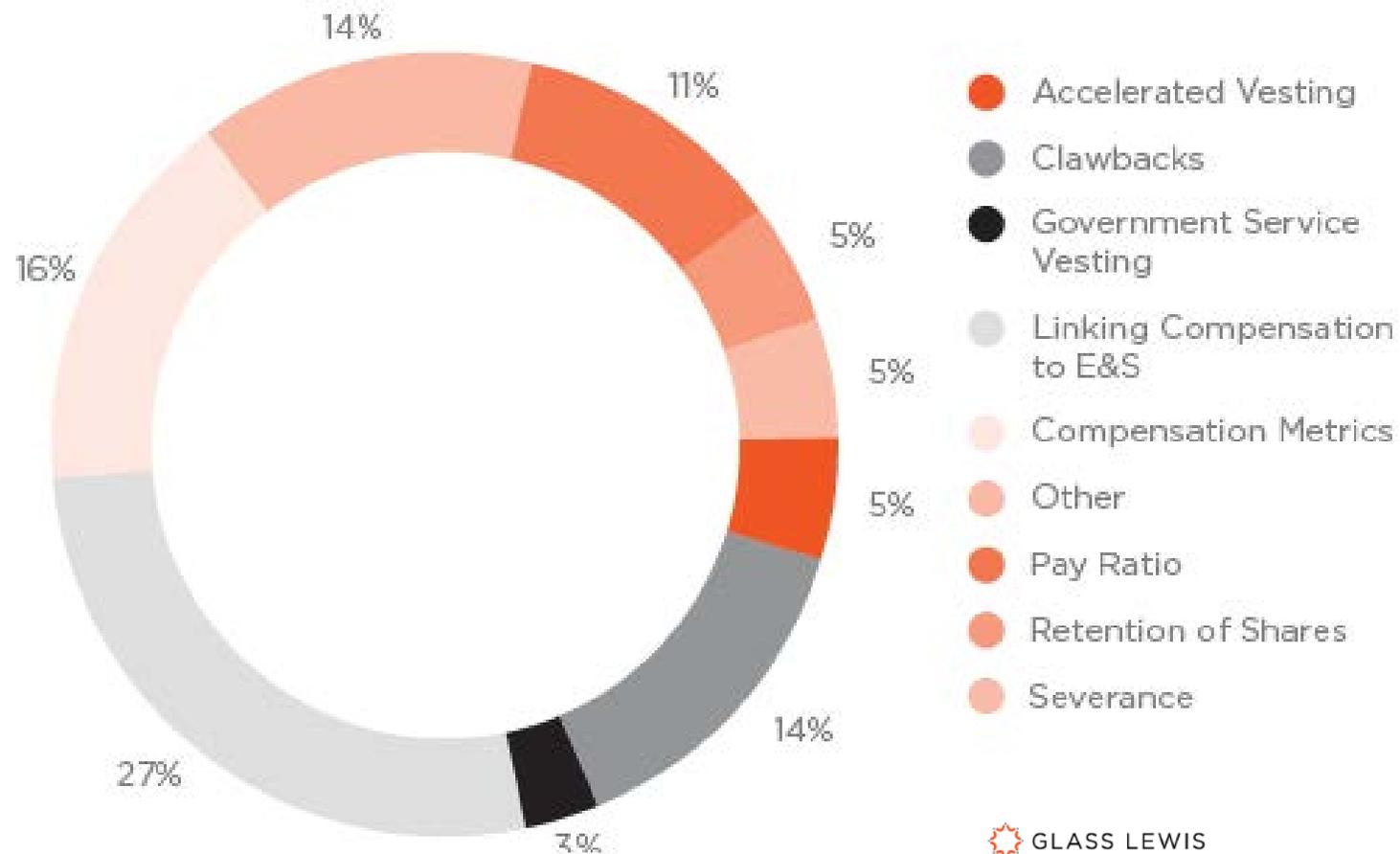
SHAREHOLDER PROPOSALS BY CATEGORY



- Compensation proposals are much less common than E&S or governance proposals and generally do not pass
- ***Two compensation-related proposals passed in 2019*** (compared to zero in 2018)

Compensation-Related Shareholders Proposals

COMPENSATION SHAREHOLDER PROPOSALS



Compensation Proposals By the Numbers

Overall, compensation-related shareholder proposals DOWN from 2018 and 2017; but two proposals passed

Compensation Proposal	# Submitted/# Voted On	Average Support	Comparison to 2018
Gender/Racial Pay Equity	28/13	24.5%	Increase in proposals; increase in support
Link pay to social issues	19/10	21.5%	Slight decrease in proposals; increase in support
Clawbacks	16/4	45.5%	Same number of proposals; increase in support (2 passed)
Performance metrics	12/6	11.3%	Increase in proposals; increase in support
Miscellaneous	10/4	16%	Decrease in proposals; decrease in support

Shareholder Proposals – Advice for 2020

- Take shareholder letters seriously, review with counsel and the compensation committee
- Know the rules/deadlines and SEC guidance
- Reach out to the proponent early in the process
- Continue to engage after the meeting

Looking Forward: Possible 2020 ISS Policy Changes (U.S.)

The ISS 2019 policy survey is now open, providing a first glance into policies ISS is considering changing or adopting for the 2020 proxy season:

- **Board Gender Diversity:** continuing to consider the importance of board gender diversity and what mitigating factors should be considered before a negative vote recommendation is made against the nominating committee chair/members at a company that does not have at least one woman on its board
- **Director Overboarding:** revisiting the appropriate maximum limit on board seats a director can hold before receiving a negative vote recommendation, with respect to both non-executive directors and directors who serve as CEOs
- **Combined CEO/Chair:** considering what factors or circumstances would strongly suggest support for shareholder proposals seeking an independent board chair
- **Sunsets on Multi-Class Capital Structure:** considering the appropriate timeframe for time-based sunset provisions for multi-class capital structures with unequal voting rights (e.g., a maximum seven-year limit)

Looking Forward: Possible 2020 ISS Policy Changes (cont'd)

- **Quantitative Pay-for-Performance – EVA in FPA Secondary Screen:** considering whether to continue to display in ISS proxy reports the GAAP-based metrics as a point of comparison against the new “economic value added” (EVA) metrics, which are used as a secondary pay-for-performance screen to assess companies where the primary pay-for-performance screens indicate a borderline result between Low and Medium concern levels
- **Director Accountability for Failure to Assess and Mitigate Climate Change Risk:** considering whether climate change should be a high priority component of a company’s risk assessment and what actions would be appropriate for shareholders to take at a company that is not effectively reporting on or addressing its climate change risk

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