Comp Talks Proxy Season Rundown – Scrutinizing 2016 to Improve 2017

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***Moderated by* Amy Wood, Cooley**

“Whatcha Talking Bout?”

1. Shareholder engagement
2. Say on pay
3. Frequency of say on pay
4. Equity plan proposals
5. 162(m) proposals
6. Director compensation limits
7. Dodd-Frank Act implementation
8. Shareholder proposals

Prediction 1: Shareholder Engagement

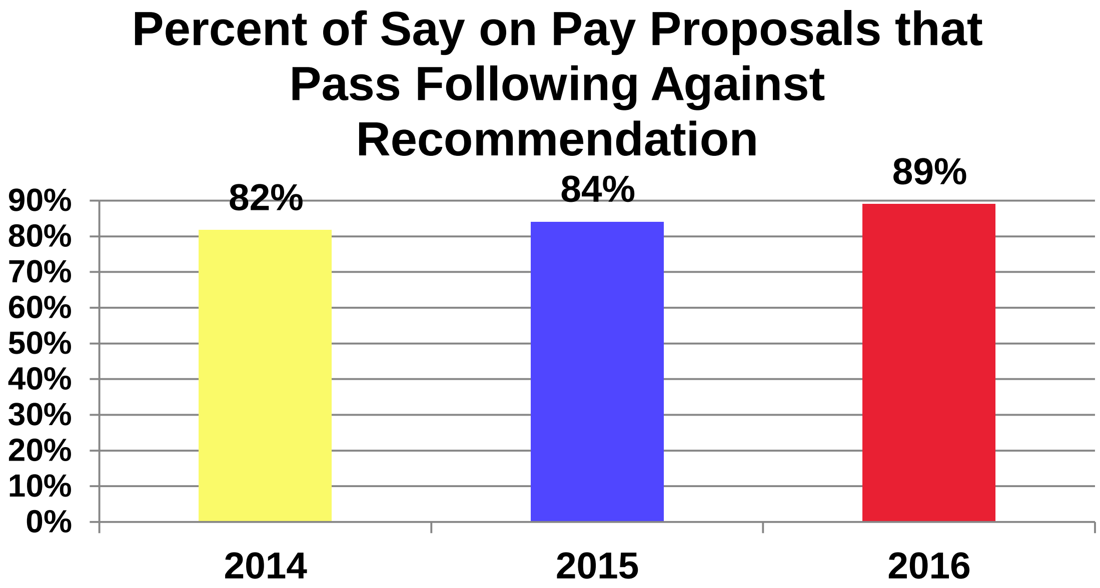
Governance engagement will continue to result in less congruency with negative ISS and Glass Lewis recommendations

What Did We See in 2016?

- Steady climb over the past six years of increase in shareholder engagement and proxy disclosure of that engagement (especially on compensation-related topics)
- No longer just a focus for S&P 500 companies; small-cap and recently public companies are engaging too
- Engagement continued to be more proactive than reactive and more entrenched in corporate culture
- BlackRock recently reported it engaged with about 700 U.S. companies in 2016, and executive compensation was a focus of 45% of those meetings

What Did We See in 2016?

- Continued trend in less congruency with ISS recommendations – a byproduct of increased engagement



Data based on results for meetings held during 2014, 2015 and 2016 proxy seasons; source: ISS Voting Analytics database

Shareholder Engagement – Advice for 2017

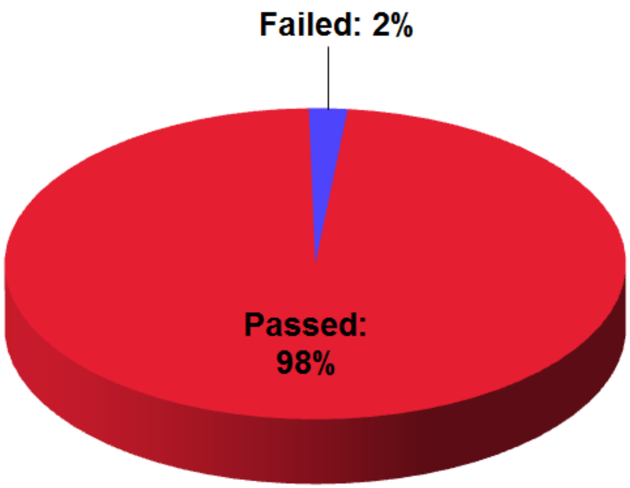
- Know *when* you need to engage
- Understand *why* you are reaching out to shareholders
- Have a targeted agenda
- Understand each investors’ hot governance topics
- Technical reminders: be mindful about topics discussed and ensure compliance with Reg FD and filing requirements

Prediction 2:
Say on Pay

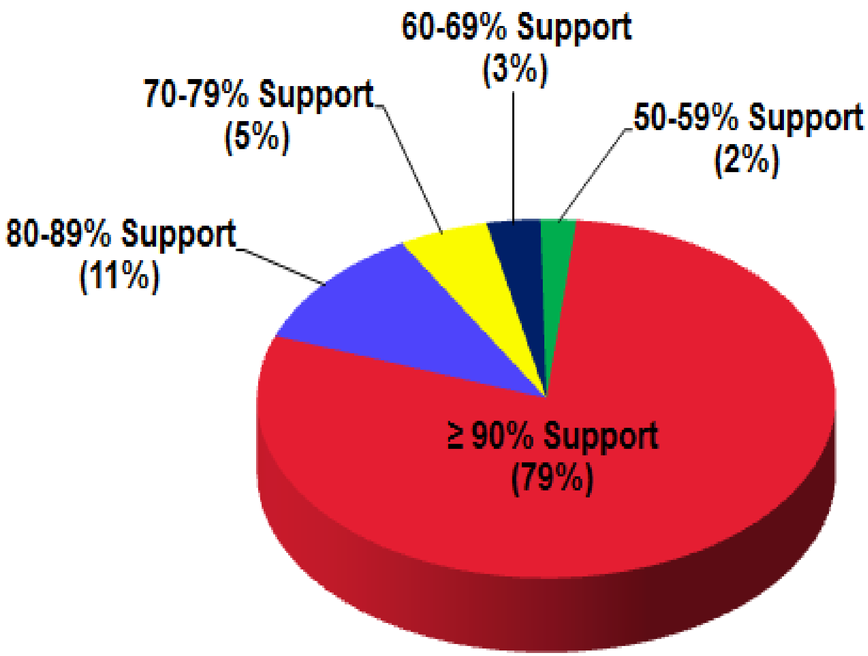
Roughly 2% of proposals will fail (<50%) and another 5% of proposals will "fail" (<70%) and most of those will have received strong support in 2016

What Did We See in 2016?

Results of All Proposals



Results of "Passed" Proposals



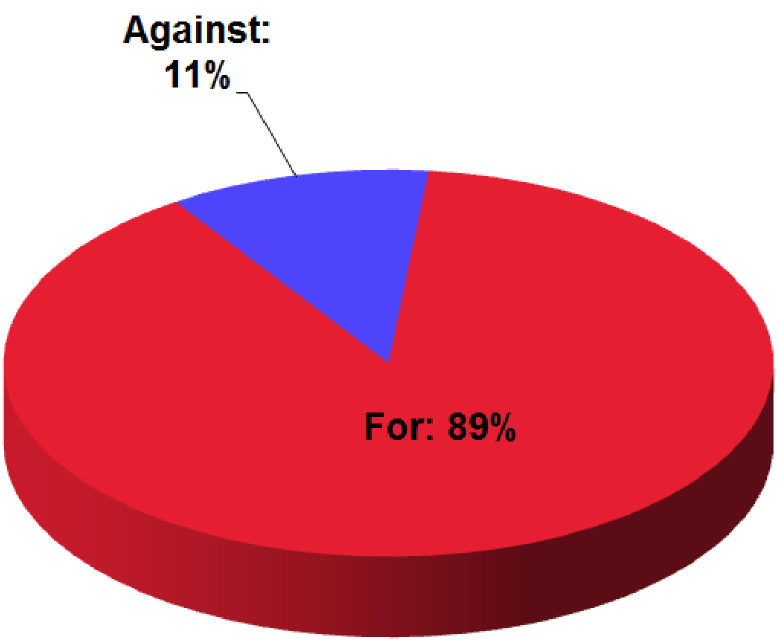
Data based on results from 1,972 meetings reported as of August 29, 2016; source: ISS Voting Analytics database

2016 ISS Voting Recommendations for Say-on-Pay Proposals

Most common reason ➔ ***pay for performance disconnect*** (dominant reason is relative alignment of CEO pay and TSR)

Other common reasons:

- Compensation committee responsiveness
- One or more "problematic pay practices" (e.g., severance/CIC practices, peer group benchmarking, lack of performance-based pay, "one off" awards)
- Growing increase in scrutiny on performance metrics

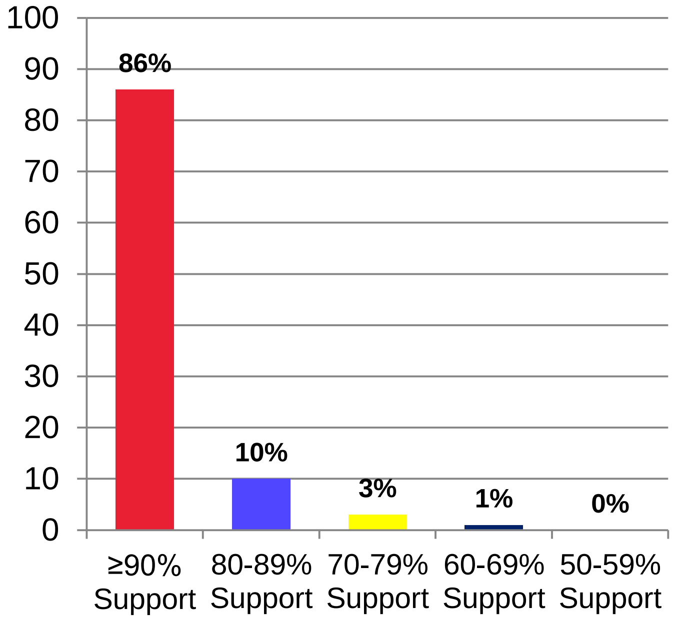


Data based on results from 1,972 meetings reported as of August 29, 2016; source: ISS Voting Analytics database

Results of 2016 Passed Say-on-Pay Proposals Following…

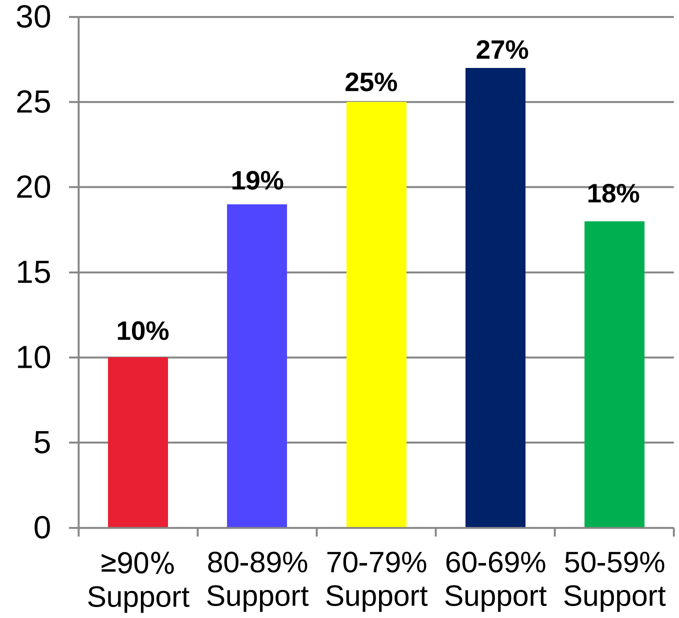
Positive ISS Recommendation

95% average support



Negative ISS Recommendation

72% average support



Data based on results from 1,972 meetings reported as of August 29, 2016; source: ISS Voting Analytics database

Say on Pay – Advice for 2017

- Understand the ISS and Glass Lewis pay-for-performance screens and annual risk of triggering heightened scrutiny
- Pay close attention to levels of shareholder support
- A successful vote does not guarantee success in the following year
- Consider certain disclosure enhancements and start early
- Engage!

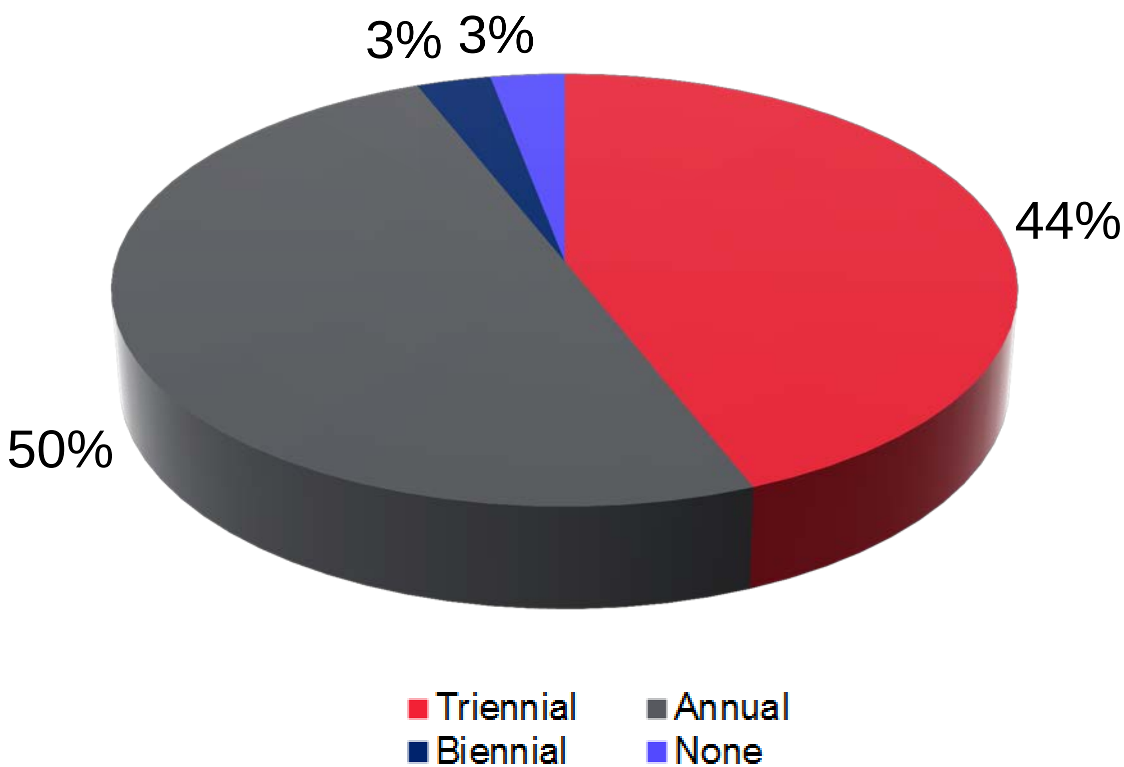
Prediction 3:
Frequency of Say on Pay

Annual votes will remain the norm

Frequency of Say on Pay

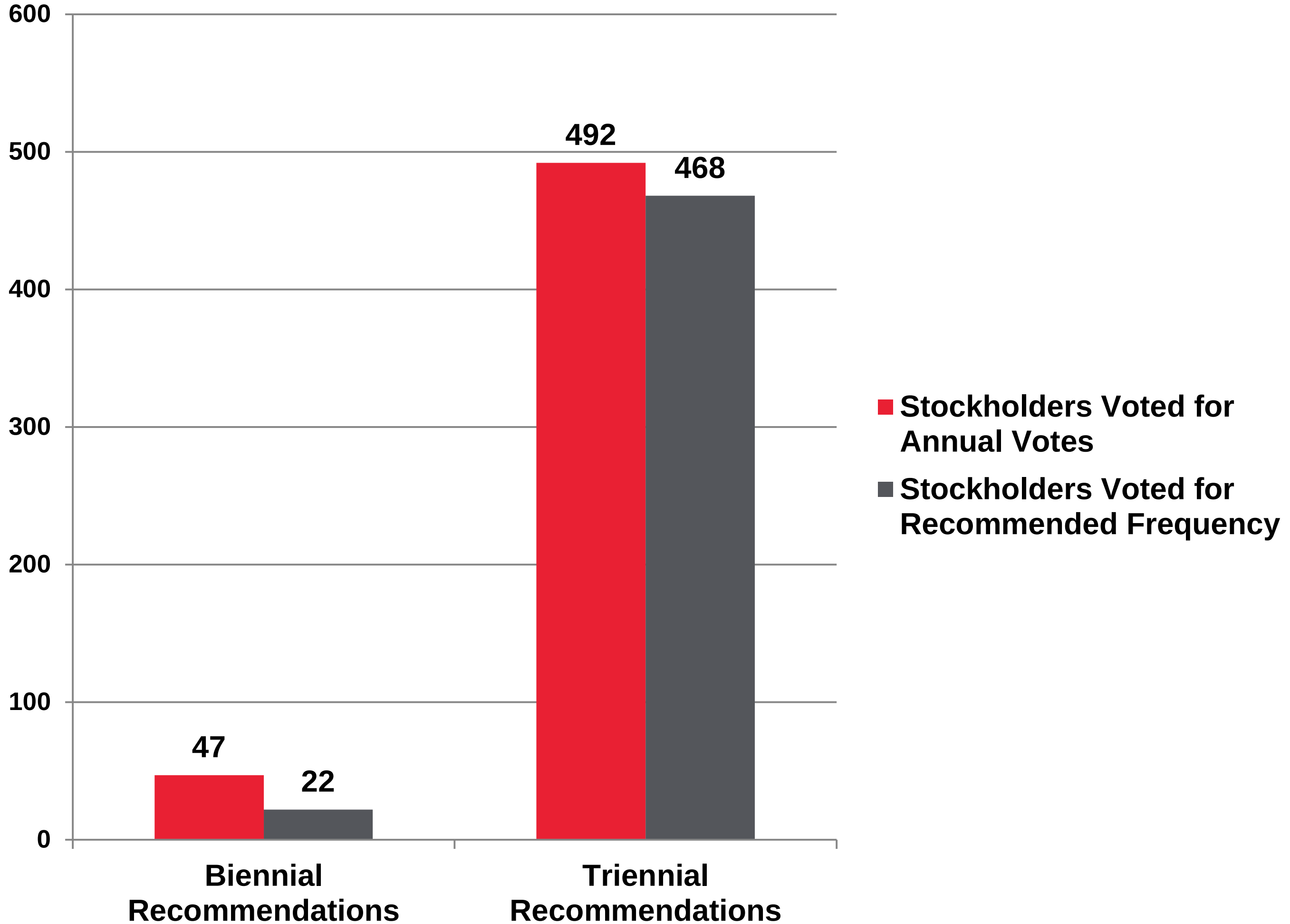
Remember this? Companies who held their first say on frequency vote in 2011 must submit a frequency proposal in 2017

What Did We See in 2011? Board Recommendations



Based on 2,685 filings as of June 2011; source: ISS Voting Analytics database

What Did We See in 2011?
Results



Frequency of Say on Pay – Advice for 2017

- Continue to recommend annual votes – use say on pay as a shield for director elections
- Companies emerging out of EGC status or who didn’t hold a say on pay vote in 2011 should pay close attention to frequency proposal timing requirements

Prediction 4:
Equity Plan Proposals

Nearly all proposals submitted will pass but the trend toward smaller increases and more frequent proposals will continue

What Did We See in 2016?

- ***Broad shareholder support (~90%)*** for equity plan proposals, with numbers similar to 2015 (slightly lower support than in 2015)
- More proposals received ISS negative recommendations than in 2015
- ISS recommendations impact voting results: Average support for proposals was 93% when ISS recommended “for” v. 79% when ISS recommended “against”
- Increasingly common to include in the proxy proposal burn rate and dilution information, as well as qualitative rationale for proposal

Equity Plan Proposals – Advice for 2017

- Most proposals are based on serious homework and designed to pass – *don't be fooled by statistics*!
- Invest the resources necessary to design a proposals that will pass
- Consider enhanced proxy disclosure

Prediction 5:
Section 162(m) Proposals

We'll see one fail (or come close to it)

What Did We See in 2016?

- We have tracked 202 Section 162(m) proposals filed in 2015-2016 – only 1 has failed
- BUT: not so easy...investors are putting more pressure on companies to eliminate “problematic” provisions (e.g., repricing, evergreens) despite conventional wisdom

Section 162(m) Proposals – Advice for 2017

- Consider whether it is necessary to keep “problematic” provisions” (e.g., might be ok to eliminate repricing provision)
- Evaluate the importance of 162(m), weigh against potential loss of important provisions/proposal failure
- Pay close attention to any changes being made to the plan that might trigger heightened scrutiny and if this is the first time the plan is submitted to public company shareholders

Prediction 6: Director Compensation

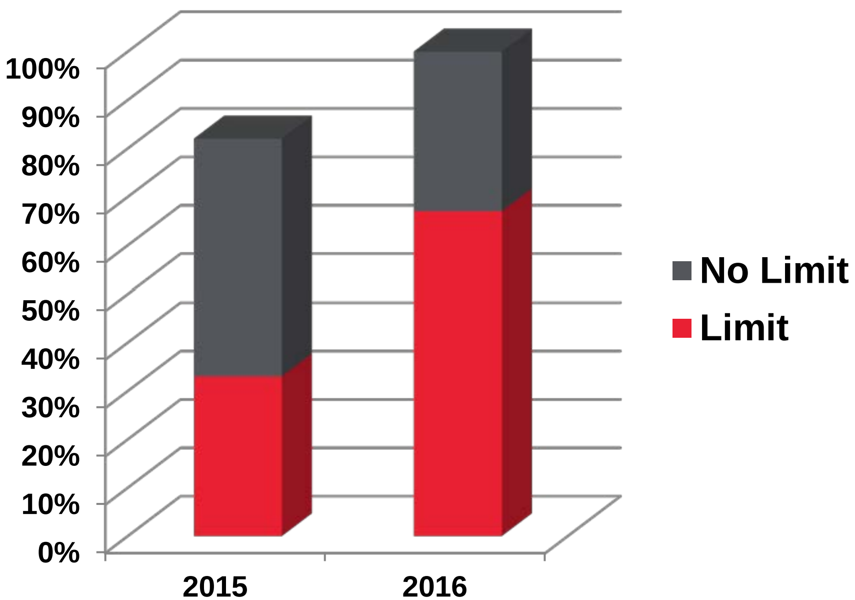
Most equity plan proposals will include limits on director compensation, and there will be increased attention on director compensation

What Did We See in 2016?

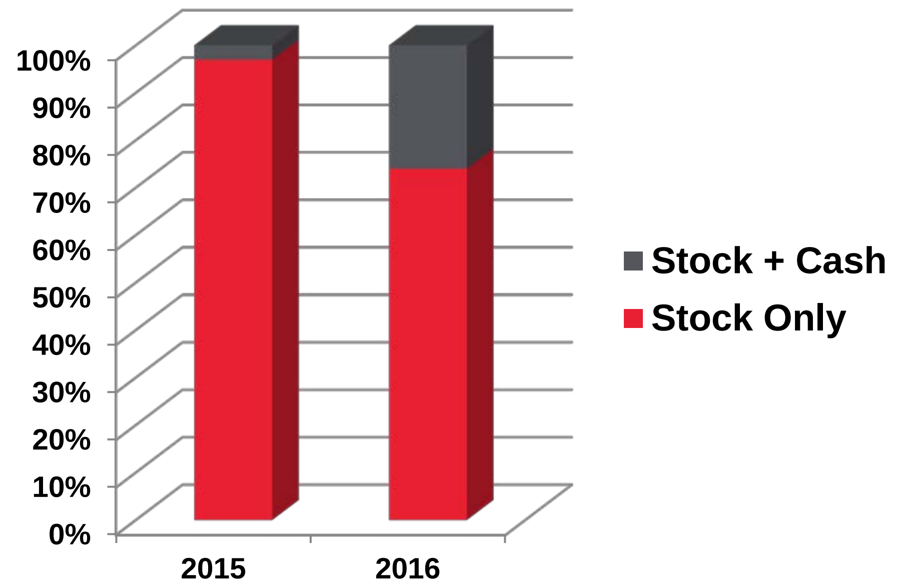
- Increased percentage of proposals filed included ***director compensation limits*** in plans
  - Limit is usually expressed as cap on the maximum compensation that can be granted in any one year to any one director
  - More limits on share *and cash* compensation
- **Litigation risk** sparked this trend and most boards of directors want the protection that shareholder ratification provides

What Did We See in 2016?

Prevalence of Limits in Plans



Type of Limit



Size of limits in 2016 ~ 2-5x highest director compensation in preceding year (trend downward)

Data from public proxy filings in 2015 and 2016 proxy season

Director Compensation – Advice for 2017

- Explain the recent director compensation litigation landscape to the board of directors
- If a limit is proposed, have it cover stock and cash and express it as a dollar value
- Carefully evaluate appropriate size of limit to make sure it is "reasonable"
- Pay attention to process for setting director compensation and disclosure

Prediction 7:
Dodd-Frank Act Implementation

No new rules for the 2017 proxy season (but probably a few more early – and voluntary – pay ratio disclosure examples)

What Did We See in 2016?

- SEC's rulemaking agenda is targeting April 2017 for final rules on pay versus performance and clawback policies.
- Many companies have already calculated or begun the process of calculating the pay ratio, few have disclosed it

Dodd-Frank Act Implementation – Advice for 2017

- Start planning for pay ratio disclosure (in 2018) now
- Stay informed – upcoming presidential election could usher in more regulatory shifts

Prediction 8:
Shareholder Proposals

We'll continue to see compensation-related proposals – especially proposals dealing with executive severance and change in control payments and proposals linked to social issues, such as pay disparity – but they'll continue to garner low support

What Did We See in 2016?

Overall, compensation-related proposals DOWN from 2015; *none have passed*

Compensation Proposal	# Submitted/# Voted On	Average Support	Comparison to 2015
Severance pay	4/3	40.6%	Decrease in number of proposals; Increase in level of support
Accelerated vesting of equity awards	16/13	31.5%	Decrease in number of proposals; Decrease in level of support
Revolving door payments	**6/5**	**23.7%**	**Increase in number of proposals; Increase in level of support**
Retention of Equity Awards	13/12	17.6%	Decrease in number of proposals; Decrease in level of support
Pay disparity and ratios	**26/7**	**12.8%**	**Increase in number of proposals; Increase in level of support**
Link pay to social issues	**14/9**	**8.4%**	**Increase in number of proposals; Increase in level of support**

Data from Alliance Advisors LLC, as of July 1, 2016

Shareholder Proposals – Advice for 2017

- 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

Questions????

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