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Failed Say-on-Pay Votes: Revisiting the Road to Recovery

BY EDWARD A. HAUDER

Now that the third proxy season of mandatory, non-binding votes on the approval of executive compensation (say-on-pay or SOP), which included smaller reporting companies for the first time,[1] has come to an end, this is a good time to look back at companies that failed to secure majority support for their SOP proposals and assess what they did to turn things around the following year. We will look at those companies whose SOP votes failed during the 2012 proxy season so we can then see how their SOP votes fared in 2013, as well as follow up to see how the companies with failed SOP votes in 2011 continued to fare in 2013.[2] Finally, we'll take a look at the updated quantitative tests being used by ISS (Institutional Shareholder Services Inc.) to evaluate SOP proposals and the implications of such tests for companies trying to recover from a failed SOP vote and/or trying to avoid a SOP failure in 2014.

[1] Smaller reporting companies aren't subject to SOP requirements until the first annual or other meeting of shareholders at which directors will be elected and that requires Item 402 executive compensation disclosures occurring on or after Jan. 21, 2013; *Shareholder Approval of Executive Compensation and Golden Parachute Compensation*, SEC Release No. 33-9178, April 4, 2011, available at: http://www.sec.gov/rules/final/2011/33-9178.pdf; hereafter ''SEC Release No. 33-9178.''

[2] See Edward A. Hauder, Failed Say-on-Pay Votes: A Road Map to Recovery, discussing the 2011 and 2012 proxy season (194 PBD, 10/9/12).

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Suggestions for Recovering From a Failed SOP Vote

Before we look at how the companies with failed SOP votes in 2012 fared in 2013 as well as how companies with failed votes in 2011 fared in 2012 and 2013, let's first look at look at typical steps and practical suggestions for companies to take as they attempt to recover from a failed SOP vote (or avoid such failure altogether).

1. Assess Media Attention Over the Past Year and Likelihood of Being a "Good" Poster Child. The media attention accorded your company will influence shareholders and, more importantly, proxy advisory firms, particularly ISS. For many years, in applying its executive compensation policies, ISS has looked at the media attention afforded a company. If a company was featured in a negative article on the front page of a newspaper or other publication about executive compensation, it will have a tougher time ensuring that shareholders hear and understand its message regarding the alignment of pay and performance. At a minimum, it needs to carefully consider whether and how to address any negative comments directed at it in such media articles. Shareholders and proxy advisory firms will be aware of these articles and it typically causes them to focus on the subject of such articles much more intently in the context of SOP proposals.

One proxy advisory firm, ISS, also makes another assessment about companies that affects how it approaches its SOP analyses, i.e., determining whether a company would make a good ''poster child.'' Typically, companies that have a large market capitalization, have high visibility, or have garnered headlines (typically negative) will be found to be good candidates for ''poster children'' by ISS. If a company is a good ''poster child'' candidate and ISS finds the company uses a pay practice or design that it wants to discourage other companies from using, it is more likely that ISS will more closely assess the pay-for-performance (P4P) relationship at the company in determining its SOP vote recommendation.

This can lead ISS to issue negative SOP vote recommendations against a company for reasons that might not have led to a similar result at other companies (keep in mind that ISS's SOP policy indicates that its SOP vote recommendations are developed on a case-by-case basis taking into account the particular facts and circumstances of each company).[3] Sometimes companies that would otherwise be good poster children amend outstanding compensation arrangements in a manner that ISS finds will better align pay and performance and supports ISS's preferences for P4P design, which causes ISS to reverse it SOP vote recommendation.[4] Additionally, even potential poster children can sometimes have success in getting ISS to change its vote recommendation short of making changes to the existing compensation design. This is especially true if the ISS recommendation was premised on the lack of disclosure about future performance goals and the company goes ahead and provides supplemental disclosures to provide those details.[5] However, oftentimes even though a company files supplemental proxy information to address ISS concerns, it isn't enough to cause ISS to reverse its SOP vote recommendation. Even rarer are instances where such supplemental disclosures don't cause ISS to change its SOP vote recommendation and yet ISS still issues an update to its Proxy Reports.[6]

2. Understand ISS's Policies with Respect to SOP Proposals. For many companies, the most influential proxy advisory firm for their shareholders is ISS. ISS has a two-part process for assessing companies' SOP proposals:[7] (1) a quantitative P4P assessment—used to quickly discard companies not in danger of a ''P4P disconnect'' which allows ISS to focus on those that potentially could have such a disconnect, and (2) a qualitative P4P assessment—used to analyze the more qualitative aspects of companies' executive compensation programs.

ISS's Quantitative P4P Assessment

Under the quantitative P4P assessment, ISS uses three tests: relative degree of alignment (RDA), multiple of median (MOM) and Pay-TSR (total shareholder return) alignment (PTA). These quantitative tests (discussed in more detail below) generate scores for which ISS has assigned specific concern thresholds for *low*, *medium* and *high* concern regarding P4P alignment. Regardless of the concern level under the quantitative P4P tests, ISS also will run a qualitative P4P assessment to determine if any outlier practices are being used which would suggest a P4P disconnect exists even in the absence of quantitative scores suggesting a concern may exist. If a company triggers an overall *medium* or *high* concern under ISS's quantitative P4P assessment, then ISS conducts a more rigorous qualitative P4P assessment.

The concern thresholds for the three ISS quantitative P4P tests are shown below.

RDA is one of the relative quantitative P4P tests used by ISS to inform its SOP vote recommendations. RDA measures a company's three-year annualized (average) CEO pay percentile rank and annualized three-year TSR percentile rank against the company's ISS-selected peer group (a discussion of ISS peer group development is beyond the focus of this article, but more information about the ISS methodology can be found in ISS's publication on evaluating the relationship between pay and performance).[8] ISS changed the RDA test for shareholders meetings occurring on or after Feb. 1, 2014, to only look at three-year CEO pay and TSR rank. Prior to that date, the RDA policy used both one-year and three-year CEO pay and TSR (weighted 40 percent and 60 percent, respectively, causing the most recent fiscal year's results to have a disproportionate impact on the RDA score).

Initially after ISS announced this change for 2014, there was some concern that ISS might also change the RDA concern thresholds. However, my experience has been that the RDA scores appear to be distributed in a manner similar to the distribution under the old RDA scoring methodology, i.e., the same number of companies appears to be falling into each concern ''bucket'' under the 2014 RDA methodology. If ISS has had similar experience, I believe ISS won't revise the RDA concern thresholds for 2014.

That isn't to say that the change in RDA methodology won't have an impact on companies, however. I have modeled out the RDA scores under both the 2013 and 2014 methodologies for numerous companies. Some companies are helped by the de-emphasis on the most recent fiscal year (typically those with fairly ''good'' years for the first two years of the most recent three-year period). These companies typically see their RDA scores move from *medium* concern under the 2013 methodology to *low* concern under the 2014 methodology. Other companies have experienced the opposite—the change in methodology at a time when they have been rebounding from two previous ''bad'' years to a ''good'' most recent fiscal year—their RDA scores have

[3] See ISS's *2014 U.S. Proxy Voting Summary Guidelines* (Dec. 19, 2013), p. 38, available at: http://www.issgovernance.com/files/ISSUSSummaryGuidelines2014.pdf.

[4] During 2011 and 2012, ISS initially recommended *Against* the SOP proposals of several large companies, and then changed its SOP vote recommendations and re-issued its Proxy Reports for those companies after they modified outstanding awards to their chief executive officers, e.g., General Electric Co. (2011), Lockheed Martin Corp. (2011), Radian Group Inc. (2012).

[5] See ISS Proxy Report for Herbalife Ltd., April 16, 2012.

[6] See ISS Proxy Report Alert for Nabors Industries Ltd., June 15, 2012, and ISS Proxy Report Alert for Nuance Communications Inc., Jan. 18, 2013.

[7] See Pay-for-Performance Evaluation in ISS's *U.S. Corporate Governance Policy: 2014 Updates* (Nov. 21, 2013), pp. 7-9, available at: http://www.issgovernance.com/files/2014USPolicyUpdates.pdf.

[8] See *U.S. Corporate Governance Policy: 2014 Updates* (Nov. 21, 2013), available at: http://www.issgovernance.com/files/2014USPolicyUpdates.pdf.

Quantitative Test	Low Concern	Medium Concern	High Concern
RDA	Down to -30	-30 to -50	-50 and lower
MOM	Up to 2.33x	2.33 to 3.33x	3.33x and higher
PTA	Down to -30%	-30% to -45%	-45% and lower

changed from *low* concern under the 2013 methodology to *medium* concern under the 2014 methodology due to the lesser weight placed on the most recent fiscal year results under the 2014 methodology. Companies should therefore understand how the RDA test is applied and should evaluate the impact of the change in RDA methodology for 2014. Companies expecting *low* concerns under the RDA test as a result of a great 2013 in terms of relative TSR against their ISS peer groups should particularly evaluate the impact of the change in RDA methodology as it might flip them into the *medium* concern bucket, which would cause ISS to conduct a more rigorous qualitative assessment of their P4P alignment and practices.

MOM compares a company's CEO pay to the median of the CEO pay for the company's ISS peer group, expressed as a multiple of the median. ISS doesn't appear to adhere as rigorously to the concern thresholds for the MOM tests in its narrative discussion accompanying its SOP analyses. While low concern is defined as a MOM score below 2.33x, I have seen several ISS Proxy Reports citing the *high* CEO pay relative to the peer group median even when the MOM score is below the 2.33x threshold for a *medium* concern. MOM is the other relative test used by ISS.

PTA is the only company-focused, quantitative P4P assessment ISS performs, i.e., an absolute alignment test. PTA measures the change in CEO pay and TSR over a five-year period to arrive at the trend of the change in each. PTA then subtracts the CEO pay trend from the company's TSR trend to arrive at a PTA score. The problem with the PTA test is that it uses the Summary Compensation Table amounts for compensation other than for stock options, which ISS revalues and compares to the stock price achieved after compensation decisions for a year have been made, i.e., most compensation decisions including equity grants are made at the beginning of a company's fiscal year while ISS is using the grant date value and comparing it to the stock price achieved for that entire year. So there exists a disconnect in the alignment of ISS's pay and performance assessment, but ISS so far has ignored suggestions to address the potential disconnect in its P4P quantitative analysis methodology.

But, how have the quantitative P4P concern levels translated into actual ISS SOP vote recommendations? For the 24 percent of companies that received a ''medium'' concern under the ISS quantitative P4P analysis in 2013, ISS only recommended *Against* the SOP votes of 28 percent of the companies. However, for the 10 percent of companies receiving a ''high'' concern under the ISS quantitative P4P analysis in 2013, the number of companies for which ISS issued *Against* SOP vote recommendations jumped to 51 percent.[9]

ISS's Qualitative P4P Assessment

ISS's qualitative P4P assessment seeks to determine how the compensation program encourages or undermines long-term value creation and alignment with shareholder interests, i.e., TSR. To that end, ISS may look at any of the following factors:[10]

- the ratio of performance- to time-based equity awards;
- the overall ratio of performance-based compensation;
- the completeness of disclosure and rigor of performance goals;
- the company's peer group benchmarking practices;
- actual results of financial/operational metrics, such as growth in revenue, profit, cash flow, etc., both absolute and relative to peers;
- special circumstances related to, for example, a new CEO in the prior fiscal year or anomalous equity grant practices (e.g., bi-annual awards);
- realizable pay for S&P 1500 companies compared to grant pay; and
- any other factors deemed relevant.

3. Understand *Why* Shareholders Voted Against the Proposal. Reach out to top shareholders to discuss the failed SOP vote. Discuss the primary reason(s) for their failure to support the SOP proposal (assuming they are willing to tell you). In doing so, be sure you understand what issues the proxy advisory firms raised in making their SOP vote recommendations and be ready to discuss how shareholders viewed them. Make sure to explain how the company has looked at pay and performance and why it thought the two were aligned. Ensure this is a fact-finding discussion and the company wants to clearly understand what shareholders don't like so the company can consider how to best address the issue. Additionally, once the discussions have concluded, the company should make it known it will follow through with shareholders, as discussed below.

Some of the key drivers of failed SOP votes have been:

- poor stock-price performance and perceived high chief executive officer (and executive) pay,
- magnitude of the CEO's pay,
- structural issues with executive compensation program design,
- perceived poor corporate governance/pay practices,
- lack of attention to current best practices with respect to executive compensation,
- poor disclosure of rationale for pay decisions,
- use of an inappropriate peer group, and
- negative vote recommendations by one or more proxy advisory firms (ISS and/or Glass Lewis & Co.).

[9] See figure 1: Implication of ISS Concern Level on Quantitative P4P Assessment for Ultimate ISS SOP vote recommendation in 2013.

[10] See *U.S. Corporate Governance Policy: 2014 Updates* (Nov. 21, 2013), available at: http://www.issgovernance.com/files/2014USPolicyUpdates.pdf.

4. Determine a Course of Action. Determine what can be done to address the issues facing your company that caused the SOP vote to fail and decide when and what (if any) changes will be implemented:

■ **P4P disconnect.** Unless the CEO's pay was redesigned prior to the failed SOP vote to better align with stock-price performance, the company likely will need to revisit the design of the CEO's pay package, e.g., introduction of a TSR or relative TSR goal for one or more elements of compensation, and ensure the majority (if not all) of the CEO's equity grants are viewed by shareholders as performance-based and tied, in whole or in part, to stock- price performance. If the company's stock-price performance has been poor, the best way to increase the likelihood that shareholders will support next year's SOP vote is to ensure the revised design will *only* pay out if the shareholders benefit from an increased stock price. As a result, we are seeing more pay designs that incorporate TSR or relative TSR into the payout of incentive compensation either as a primary goal that must be satisfied or as a modifier of the payout otherwise controlled by performance achieved under another performance metric.

Some commentators have said the SOP vote is nothing more than a referendum on a company's stock-price performance. Based on my experience, this appears to be true in some situations and likely influences the receptivity of shareholders to arguments that pay and performance are aligned. When the stock price is soaring to new highs (or at least above the price the shareholder paid for its stake), it seems that shareholders are happy and generally not very concerned with executive pay unless it is deemed excessive (typically defined in terms of ''I know it when I see it.'').

A couple of years ago, a chairman whose company's SOP vote failed told me several shareholders called to say they supported management and the direction of the company, and were even buying more shares, but they would be voting against the company's SOP proposal. Why? They were dissatisfied with the current stock price and said if they voted against the company's SOP proposal, they knew the chairman would do everything in his power to increase the stock price by the next annual shareholders meeting and SOP vote. The company's stock price rose subsequent to the failed SOP vote and the shareholders did support the SOP vote at the next year's annual shareholder meeting.

In working with clients during the past few years, my experience has been that, once the current stock price dips below the point at which a shareholder bought into the company, the less receptive he or she is to arguments that pay and performance are aligned and, consequently, the shareholder is less likely to support the SOP proposal.

■ **Magnitude of CEO's pay.** Unless current-year CEO pay is on track to be *substantially less* (a decline of total compensation as disclosed in the Summary Compensation Table of about 30 percent),[11] figure out what elements of compensation need to be revised and/or reduced.

This won't be an easy undertaking. It could require modifying or canceling (much less common) compensation (usually equity compensation, because it is such a large component of most CEO's pay packages). Some companies whose SOP votes failed because of CEO pay magnitude went down the path of reducing CEO pay (or at least aggressively pursuing that goal) and found it sometimes difficult to balance the desires of shareholders for lower pay with the CEOs' expectations set when hired. This is especially true if the company had been performing at record levels. For example, Freeport-McMoRan Copper & Gold Inc. experienced this issue with perceived high pay, despite its stellar performance, and ended up capping and reducing executive pay.[12] Another company, Nutrisystem Inc., was renegotiating the employment agreement with its CEO, but apparently the company wasn't successful and ended up conducting a search for a new CEO instead.[13]

■ **Structural issues with executive compensation program design.** If structural issues were one of the reasons given for nonsupport of the SOP proposal, look at how this might be remedied. For example, if the issue was the company used the same performance goal for both the annual and long-term incentive plans, use different metrics for each; if the issue was the long-term incentives used a performance period of less than three years, figure out how you can use a three-year performance period, even if you have to do a series of one-year performance goals that also have a cumulative three-year component (note that proxy advisory firms aren't very fond of this design, but it is better than a single one-year performance period). This may require some creativity to come up with metrics that are sufficiently distinct but also support the company's short- and long-term strategic goals. In my experience, this can be done if everyone approaches the compensation design with a blank slate and asks what the company is trying to achieve and how compensation can be designed to support those goals over the short and long term.

■ **Perceived poor corporate governance/pay practices.** If the issues cited were lack of certain good corporate governance practices, such as lack of a clawback policy, lack of a hedging or pledging policy, lack of executive and/or director stock ownership guidelines or something similar, then decide how to implement those policies before the current year ends. Implementing a clawback policy without final regulations from the Securities and Exchange Commission on the Dodd-Frank Wall Street Reform and Consumer Protection Act re-

[11] Based on the author's research of companies with failed 2011 and 2012 SOP votes that subsequently passed in 2012 and 2013 SOP. See figure 3, Change in CEO Total Compensation 2010 to 2012, below. Additionally, unpublished Exequity research from June 2013 regarding actions taken by companies that garnered above 80 percent support in 2011 and then received SOP support between 50 percent to 80 percent support in 2012 found that reduction of compensation opportunities was one of several changes employed by companies that went on to enjoy SOP support of 80 percent or greater in 2013.

[12] *See* pp. 28-29 of Freeport-McMoRan Copper & Gold Inc.'s proxy statement filed April 27, 2012, available at: http://www.sec.gov/Archives/edgar/data/831259/000119312512191204/0001193125-12-191204-index.htm for an overview of changes made as a result of the vote on its 2011 SOP proposal.

[13] See p. 15 of Nutrisystem Inc.'s proxy statement filed July 27, 2012, available at: http://www.sec.gov/Archives/edgar/data/1096376/000119312512319801/d375853ddef14a.htm

quirements[14] will be a bit tricky, but investors and proxy advisory firms appear to have lost patience with the answer that a company is waiting for the SEC to propose and adopt final rules for clawbacks. These types of issues are generally the ''low hanging fruit'' that a company can implement before current year-end to help build the case that it heard what shareholders said and took action to address their concerns. This is particularly difficult in the context of compensation, because most of the significant compensation decisions for the year were made before shareholders even voted on the SOP proposal.

■ **Lack of attention to current best practices with respect to executive compensation.** The proxy advisory firms generally specify which best practices are lacking. A company with a failed SOP vote would be wise to take steps to implement as many of these best practices as possible before current year-end. The types of best practices that are often found lacking include the corporate governance practices detailed above, as well as having combined CEO and chairman roles (often difficult to separate absent a change in CEO), no holding requirement for equity awards received from the company, staggered director elections, and not utilizing an annual vote frequency for the SOP vote.

■ **Poor disclosure of rationale for pay decisions.** This issue encompasses lack of full and complete disclosure about how the company arrived at the compensation paid. The most common criticism by proxy advisory firms in their SOP analyses has been that, in making pay decisions, companies weren't telling shareholders *how* company performance was factored in and what specific items were considered. In some cases, shareholders are looking for disclosure that goes beyond what is required by the proxy disclosure rules. To address this, companies should review their entire Compensation Discussion and Analysis (CD&A) and ensure it adequately communicates the relationship between pay and performance, how the company made its pay decisions, and what it weighed in its final analysis of performance. Often this will necessitate revising proxy disclosures to go beyond compliance-focused disclosures and adopting a shareholder-understanding perspective. In 2013, we saw more companies attempt to address the rationale for disclosed pay decisions in their proxies.

To succeed with this task, it is helpful to increase the use of charts, graphs, and tables making it easier for readers to quickly review and grasp information. Companies also included summary recaps of their performance at the beginning of their CD&As, along with a discussion of how this performance influenced their pay decisions during the past year. Finally, the prevalence of executive compensation summaries toward the front of proxy statements grew in 2013. When such summaries are included, they typically address the relationship between executive pay during the past year and company performance. These can all be effective, but it takes some work to come up with a disclosure that shareholders will view as responsive and useful, while not giving away too much that might place the company at a competitive disadvantage.

[14] Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

The proxy disclosures should also ensure that all issues from the prior year's SOP failure are addressed in a summary fashion. The disclosures should be easy to read and understand and address what the company did in response to the issues raised, what it hasn't done, and what (if anything) it will do with regard to any remaining unaddressed issues[15]. In this context, I note the companies with failed SOP votes in *both* 2012 and 2013 seemed more likely to offer up they were still ''working on'' addressing issues identified by shareholders in association with their 2011 and 2012 SOP vote failures. Therefore, to the extent a company wishes to increase the likelihood that its subsequent SOP vote is supported, it may wish to actually implement such changes rather than indicate it plans on doing so (see examples above of the types of issues shareholders appear to want action completed for the next annual shareholders' meeting). Some companies have even touted the adoption of such changes in Form 8-Ks and/or Press Releases long before the required proxy disclosure (which helps facilitate follow-up discussions with shareholder and proxy advisory firms, as well as gives the media something positive to focus on for future stories).[16]

■ **Use of an inappropriate peer group.** In some cases, shareholders (and proxy advisory firms) may think the company used a peer group composed of inappropriate companies. Often they object because the included companies were substantially larger than the subject company.

As a rule of thumb, peer group companies should be within about 0.5 times to 2 times the subject company's revenues and about 0.2 times to 5 times of the subject company's market capitalization. Hopefully, the subject company is at or about at the median of the key metrics being used to select the peers, including revenue and market capitalization. If a company is either significantly above or below the medians for its peer group, thought should be given whether to explain the appropriateness in the proxy statement.

If there are outlier companies (companies outside the ranges for revenues and market capitalization detailed above), the rationale for their inclusion in the peer group should be re-examined. If still valid to include such companies in the peer group, the rationale for doing so should be clearly set forth in the proxy statement so shareholders can understand the decision to include these companies. If, after review, a company decides it no longer makes sense to include such an outsized company as a peer, then it should ensure the resulting peer group is well-balanced and appropriate. This process should then be discussed in next year's proxy statement so shareholders understand what was done in response to their concerns about the peer group.

[15] Two examples of proxies addressing points raised in a prior year's failed SOP vote are those of Pitney Bowes Inc. filed on March 25, 2013 (available at: http://www.sec.gov/Archives/edgar/data/78814/000093041313001828/c72335_def14a.htm) and the Ryland Group Inc. filed on March 15, 2013 (available at: http://www.sec.gov/Archives/edgar/data/85974/000130817913000086/lryland2013_def14a.htm).

[16] For example, see the Form 8-K filed Sept. 27, 2012, by the Ryland Group (Form 8-K available at: http://www.sec.gov/Archives/edgar/data/85974/000110465912067034/a12-22689_18k.htm)

■ **Negative vote recommendations by one or more proxy advisory firms.** If the only reason your shareholders can give you for their failure to support your SOP proposal is that ISS and/or Glass Lewis recommended *Against* your SOP proposal, you will need to evaluate your program in terms of the proxy advisory firm or firms that are) most influential to your shareholders. Your company should see how it fared under the ISS and Glass Lewis SOP analysis and what issues were flagged by these proxy advisory firms. In many cases, the proxy advisory firms' quantitative analyses are driven by reliance on TSR. If your company's TSR hasn't been good relative to your ISS-identified peer, then you likely won't get far with ISS unless your executive compensation plans have been designed to only pay out going forward if TSR improves, or you can otherwise demonstrate a significant link between future stock price performance and expected executive compensation levels.

It is also possible that your shareholder may have another reason for voting against your SOP proposal, but found the most convenient response was to cite a proxy advisory firm's SOP vote recommendation. Of course, I have seen some instances where a company can't get its shareholders to explain why they voted against the company's SOP proposal. Some companies have gone so far as to indicate this in their proxy, which ISS has treated quite skeptically in its Proxy Reports.

5. Reach Out to Top Shareholders. Follow up with top shareholders to discuss what the company learned from the preliminary discussions (see step 3, above), what the company decided to do, and, to the extent appropriate, ask for further input on any items the company hasn't yet finalized. Consider reaching out to the proxy advisory firms (ISS and Glass Lewis) to discuss the steps taken by the company to understand what drove shareholders to reject the SOP proposal, what the company heard in its discussions with top shareholders, and the changes it will make, if any, as a result both to current and future pay.

6. Revise Next Year's Proxy Disclosures. In next year's proxy, lay out what was done as a result of the previous year's failed SOP vote. In the CD&A, include a discussion detailing the failed SOP vote, the company's discussions with top shareholders, what the company learned as a result of these discussions, and what changes it made to its executive compensation program—the CEO's pay in particular—including actions taken for the last fiscal year (the year when the prior SOP vote failed). Additionally, at a minimum, companies should indicate in their proxy statements the number of shareholders contacted to discuss the SOP vote, the percent of common shares outstanding held by such shareholder, the number and percent of common shares outstanding of shareholders that ultimately discussed the matter with the company, and the issues the shareholders identified as driving their decision to not support the company's SOP vote. Consider whether a special letter to shareholders should be included in the proxy to emphasize the importance of the issues identified in discussions with top shareholders and the steps taken by the company to address them. Freeport-McMoRan Copper & Gold Inc. included a letter to shareholders at the beginning of its 2012 proxy addressing the changes it had made as a result of the failed 2011 SOP vote.[17]

Companies With Failed SOP Votes—The Statistics

In 2012, 56 companies among the Russell 3000 index companies had their SOP votes fail to receive a majority vote in favor (*see figure 2*). Of these 56 companies, 52 have their 2013 SOP voting results available. When sorted by the percentage of votes ''for'' their SOP proposals, we end up with three strata of companies: those that received more than 70 percent support, those that received between 50 percent and 70 percent support (cautionary SOP votes), and those that received less than 50 percent support, i.e., their SOP votes failed (*see figure 3*).

You might be wondering why I'm using 70 percent support as a cutoff? ISS has indicated that SOP support of less than 70 percent will trigger heightened scrutiny the following year for both the company's SOP vote and director elections. Glass Lewis, the other major proxy advisory firm, sets its threshold slightly higher at less than 75 percent support.

Keep in mind that a few commentators have suggested any SOP vote receiving less than 90 percent support indicates a company has issues needing to be addressed. Yet other commentators have indicated any SOP vote receiving less than 80 percent support[18] should be looked at as a failure and a company needs to do some serious work on its executive compensation programs in order to better align pay with company performance.

When we look at the change in CEO pay (defined as the total compensation amount disclosed in the Summary Compensation Table for the individual serving as CEO at fiscal year end) from that disclosed in the 2012 proxy to the 2013 proxy, we find the largest declines actually occurred for those companies that received above 50% but less than 70% support for their 2013 SOP votes (average CEO compensation change of -34.6% and a median of -48.0%) compared to any of the other support level groups for 2013 (*see figure 4*). Therefore, it appears reducing CEO compensation alone may not be enough to gain support of shareholders.

Looking at the TSRs for the Russell 3000 companies failing their 2012 SOP votes, it appears those that came back and received support over the 70% mark, delivered TSR improvements superior to all other support level groups (*see figure 5*). But, oddly, the companies that again had failed SOP votes in 2013 had higher average and median TSR improvements than those companies that had passing votes and received less than 70 percent support.

In 2013, 10 companies had their SOP votes fail to receive a majority vote in favor in both 2012 and 2013 (*see*

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[17] *See* Freeport-McMoRan Copper & Gold Inc.'s proxy statement filed April 27, 2012, available at: http://www.sec.gov/Archives/edgar/data/831259/000119312512191204/0001193125-12-191204-index.htm.

[18] During 2011 and 2012, more than 80 percent of large, accelerated filers received votes supporting their SOP proposals exceeding 80 percent. Thus, commentators have asked whether any additional explanation would be necessary for companies that didn't at least receive support in line with that of the vast majority of large companies.

figure 2). Also in 2013, three companies had their SOP votes fail to receive a majority vote in favor in all of the past three years, i.e., 2011-2013 (*see figure 2*). Finally, in 2013, five companies had their SOP votes fail to receive a majority vote in favor in both 2011 and 2013, i.e., their SOP proposal passed in 2012 (*see figure 2*). This indicates that even with positive stock price improvements, if there are systemic issues with a company's executive compensation programs or designs that shareholders object to, they will continue to vote against SOP proposals. For companies falling into this category, they should ask themselves whether continuing with the same compensation practices and design is worth continuing to face negative SOP votes and worth the expense of additional time and effort to deal with the impact of such votes, or whether it is better to try and reimagine their executive compensation practices and designs in a way that will be embraced by shareholders and proxy advisory firms.

More Lessons for the Road

What has been the experience of companies with failed SOP votes? Were they able to bounce back and secure shareholder approval of their SOP proposal the following year? Unfortunately, while that appears to be the case for the majority of companies with failed SOP votes, several still managed to have their SOP proposals fail a second or even a third time in 2013. Five companies had SOP votes fail in both 2012 and 2013, while three companies have had SOP votes fail in all of the past three years, i.e., 2011-2013. Of the 54 companies that had failed SOP votes in 2012 and for which 2013 SOP vote results are available, 12 (22.2 percent) so far have had their SOP votes fail in 2013 and another eight (14.8 percent) received votes of between 50 percent and 70 percent, and the rest (34 companies—62.9 percent) had their SOP votes pass with more than 70 percent support – a little worse than the track record companies with failed SOP votes in 2011 had in their 2012 SOP vote results.

So what lessons can we learn from these companies with failed SOP votes? Did companies with double or even triple SOP failures not do something the other companies did? Is there anything that easily explains what those that received cautionary SOP votes might have missed? As mentioned above, the companies with subsequent failed SOP votes were more likely to indicate they were still working on addressing issues raised by shareholders as part of their prior SOP failure.

Is the SOP vote nothing more than a referendum on the company's stock price and is there a correlation between stock-price performance on a one-, three-, and five-year basis on either an absolute or relative basis and the SOP vote results? While a correlation exists, some companies experiencing double SOP failures also had positive stock price performance during the past several years. So other factors do weigh in the balance when it comes to SOP vote outcomes.

We can also look at the change in CEO total compensation as reported in the Summary Compensation Table in the proxies (proxies typically cover the prior year's compensation) of these companies to see if that reveals anything helpful in crafting a response to a failed SOP vote. Figure 4 shows the one-year change in CEO total compensation for 2012 (most recent fiscal year for which CEO compensation available), grouped by the 2013 SOP vote results. It is interesting that, while both the median and average one-year changes in total compensation for 2011 were positive for all groups, that shifted dramatically for 2012. For 2012, while we see the "Passed," ">70 Percent Support," and "Failed Votes" groups all show median and average decreases in CEO total compensation, the largest decrease was actually seen in the ">70 Support" group (-34.6% and -48.0%, respectively), significantly more than the average and median change for the "Passed" group (-14.2% and -19.7%, respectively). This seems to suggest that while decreasing CEO compensation generally may improve the chances shareholders and proxy advisory firms will support the following year's SOP vote, companies should be sure to review their compensation practices and design to ensure there are no systemic issues which could cause shareholders or proxy advisory firms pause, regardless of the level of *decrease* in CEO compensation after a failed SOP vote.

Looking at the 2013 proxy statements of the companies with failed SOP votes in 2012, some general points in addressing the SOP failure emerge:

- Discuss the failed SOP vote and indicate what the company did as a result, i.e., learning about shareholder concerns and taking action to re-evaluate and redesign executive compensation plans and programs, especially for the CEO. [19]

- Include a summary of significant changes to compensation plans and programs in the CD&A.

- Cite changes made since the failed SOP vote in the company's next SOP proposal.

- Expand disclosures regarding the relationship between company performance and executive pay.

Conclusion

Recovering from a failed SOP vote isn't easy, and the change ISS made to its RDA methodology may make it even more challenging for companies rebounding from prior "bad" TSR years. The majority of companies with failed SOP votes have been able to come back the following year and receive shareholder support of their SOP proposals.[20] The real trick to being among the successful companies is to:

- ensure you understand ***why*** shareholders opposed your SOP proposal,

- implement appropriate changes to address those concerns,

- ***effectively communicate*** in the next proxy statement and in follow-up meetings with shareholders the

[19] This discussion is required by the proxy disclosure rules. *See* SEC Release No. 33-9178, amending Item 402 by adding new section (b)(1)(vii), "Whether and, if so, how the registrant has considered the results of the most recent shareholder advisory vote on executive compensation required by section 14A of the Exchange Act (15 U.S.C. 78n-1) or § 240.14a-20 . . . in determining compensation policies and decisions and if so, how that consideration has affected the registrant's executive compensation decisions and policies."

[20] This is also true looking back to 2010 when three companies (KeyCorp, Motorola Inc. and Occidental Petroleum Corp.) had nonmandatory SOP proposals fail, but their 2011 mandatory SOP votes all passed.

actions undertaken to address the issues leading to the SOP vote failure, and

- ensure that executive pay is tied to company performance.

Of course, there appears to be some indication that a significant reduction (30 percent or more) in the CEO's total compensation as disclosed in the Summary Compensation Table could also improve the chances that shareholders will support the SOP proposal in the year following the failed SOP vote, especially if CEO pay magnitude was a significant shareholder concern.

Finally, an upturn in a company's stock price also appears to help garner support for SOP proposals in years after an SOP failure. This is especially true if the company's TSR exceeds that of its GICS[21] industry group median.

Link to the following illustrations:

- Figure 1: Implications of ISS Concern Level on Quantitative P4P Assessment for Ultimate ISS SOP Vote Recommendations in 2013

- Figure 2: Failed 2011-2013 SOP Votes for Russell 3000 Companies

- Figure 3: 2013 SOP Voting for Russell 3000 Companies With Failed 2012 SOP Votes

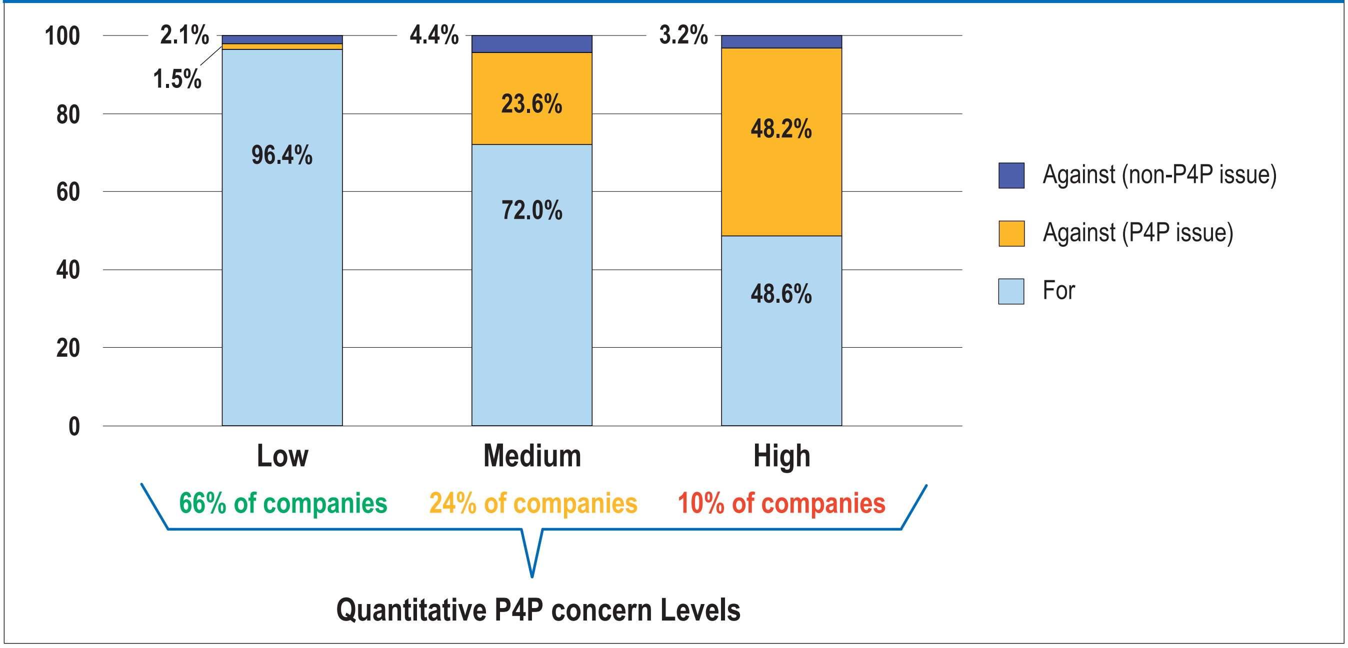
- Figure 4: CEO Pay Change in 2011 and 2012 for Russell 3000 Companies with Failed 2012 SOP Votes and Figure 4a: 2013 SOP Vote Group

- Figure 5: TSRs for Russell 3000 Companies With Failed 2012 SOP Votes for Most Recent Fiscal Year End Prior to 2012 and 2013 SOP Votes and Figure 5a: 2013 SOP Vote Group

- Figure 6: Change in CEO Pay For Most Recent Three Fiscal Years for Russell 3000 Companies With Failed 2011-2013 SOP Votes

[21] Standard & Poor's Global Industry Classification Standard.

Figure 1: Implications of ISS Concern Level on Quantitative P4P Assessment for ISS SOP Vote Recommendations in 2013



Source: ISS Corporate Services, *Say on Pay 3.0: Lessons From the 2013 Proxy Season* (June 20, 2013).

A BNA Graphic/pen404g1

Figure 2: Failed 2011-2013 SOP Votes for Russell 3000 Companies

	For Vote (%)		
	2011	2012	2013
Total number of companies with failed SOP votes	37	56	56
Company			
Abercrombie & Fitch Co.		24.5	19.6
Actuant Corporation		46.4	
Alexandria Real Estate Equities, Inc.			8.7
American Eagle Outfitters, Inc.		39.7	
Annaly Capital Management, Inc.			28.1
Apache Corporation			49.8
Applied Micro Circuits Corporation		42.0	
Argo Group International Holdings, Ltd.		45.5	
Atlas Air Worldwide Holdings, Inc.			38.1
AXIS Capital Holdings Limited			32.1
Beazer Homes USA, Inc.	45.9		
Best Buy Co., Inc.		38.2	
Big Lots, Inc.		31.2	31.3
Biglari Holdings Inc.			33.3
BioMed Realty Trust, Inc.	45.8		
Blackbaud, Inc.	44.7		
Boston Properties, Inc.			19.4
Capstone Turbine Corporation			48.4
Cedar Realty Trust, Inc.		38.3	
Cenveo, Inc.		40.4	
Charles River Laboratories International, Inc.		36.1	
Chemed Corporation		47.9	
Chesapeake Energy Corporation		19.9	
Chiquita Brands International, Inc.		19.8	
Cincinnati Bell Inc.	29.8		
Citigroup Inc.		45.1	
Cogent Communications Group, Inc.	39.3		39.3
Community Health Systems, Inc.		32.9	
Comstock Resources, Inc.		34.7	32.8
Consolidated Water Co. Ltd.			49.6
Corinthian Colleges, Inc.			48.0
CryoLife, Inc.		38.8	
Curtiss-Wright Corporation	41.2		
Cutera, Inc.	35.3		
Dendreon Corporation			31.0
Dex Media Inc.	48.0		
DFC Global Corp.		24.9	25.8
Digital Generation, Inc.			38.7
Digital River, Inc.		19.2	
Dynamic Materials Corp			33.3
East West Bancorp, Inc.			41.6
Epiq Systems, Inc.		30.2	
Equal Energy Ltd.			43.8
Everest Re Group, Ltd.			28.8

Source: Edward A. Hauder, Exequity LLP. Bolded company names indicate years in which the company's SOP vote failed. A BNA Graphic/pen404g2

Figure 2: Failed 2011-2013 SOP Votes for Russell 3000 Companies–Continued

Company	2011	2012	2013
		For Vote (%)	
Exar Corporation	49.1		
FirstMerit Corporation		46.0	
Freeport-McMoRan Copper & Gold Inc.	45.5		29.1
FTI Consulting, Inc.			41.0
Fusion-io, Inc.			35.7
Gentiva Health Services, Inc.		36.5	37.1
Geron Corporation			49.6
G-III Apparel Group, Ltd.		35.1	
Healthways, Inc.		32.2	30.1
Helen of Troy Limited			12.2
Helix Energy Solutions Group, Inc.	32.0		
Hercules Offshore, Inc.	41.0	48.0	
Hercules Technology Growth Capital, Inc.			48.8
Hewlett-Packard Company	48.2		
Iconix Brand Group, Inc.		29.8	
Infinera Corporation		41.5	
International Game Technology		44.4	
Intersil Corporation	44.2		
Jacobs Engineering Group Inc.	44.8		
Janus Capital Group Inc.	40.1		
Jos. A. Bank Clothiers, Inc.			48.5
KB Home		45.6	
Kforce Inc.		39.2	
Kilroy Realty Corporation	48.9	29.9	22.5
Knight Capital Group, Inc.		31.6	
LifePoint Hospitals, Inc.			43.2
M.D.C. Holdings, Inc.	33.5		
Masco Corporation	44.7		
Masimo Corporation		37.7	48.2
McKesson Corporation			21.8
Monolithic Power Systems, Inc.	36.2		
Morgans Hotel Group Co.			25.5
Mylan Inc.		47.9	
Nabors Industries Ltd.	42.5	25.2	36.2
Navigant Consulting, Inc.	44.8		
Navistar International Corporation			17.8
NRG Energy, Inc.		44.1	
Nuance Communications, Inc.			41.2
Nutrisystem, Inc.	41.1		
NuVasive, Inc.		32.6	
NVR, Inc.	44.5		
OM Group, Inc.		23.6	
OpenTable, Inc.			47.3
Oracle Corporation		40.9	43.1

Source: Edward A. Hauder, Exequity LLP. Bolded company names indicate years in which the company's SOP vote failed. A BNA Graphic/pen404g3

Figure 2: Failed 2011-2013 SOP Votes for Russell 3000 Companies–Continued

Company	For Vote (%) 2011	2012	2013
OraSure Technologies, Inc.			45.4
Penn Virginia Corporation	41.0		
PICO Holdings, Inc.	38.9		
Pitney Bowes Inc.		35.2	
PMFG, Inc.		31.4	
Premiere Global Services, Inc.	48.0		
RadioShack Corporation			46.2
RBC Bearings Incorporated		28.4	
Regis Corporation	28.9		
Rigel Pharmaceuticals, Inc.		44.6	
Safety Insurance Group, Inc.		42.2	
Sequenom, Inc.		48.2	
SHFL entertainment, Inc.	44.5		
Simon Property Group, Inc.		26.7	
Sonus Networks, Inc.			49.0
Spansion Inc.			49.0
Spectrum Pharmaceuticals, Inc.			31.4
Stanley Black & Decker, Inc.	39.1		
Sterling Bancorp		40.0	
Stewart Information Services Corporation	48.5		
Stillwater Mining Company			32.1
Strategic Hotels & Resorts, Inc.			49.6
Superior Energy Services, Inc.	39.2		
SWS Group, Inc.			48.4
Synaptics Incorporated	44.3		
The Active Network, Inc.			49.5
The Children's Place Retail Stores, Inc.			17.3
The Manitowoc Company, Inc.		48.4	
The Middleby Corporation			48.5
The Phoenix Companies, Inc.		45.8	
The Ryland Group, Inc.		40.9	
The Ultimate Software Group, Inc.			49.6
Tower Group International, Ltd.		29.6	
Tuesday Morning Corporation	36.4		
Tutor Perini Corporation	49.1	38.3	38.2
Umpqua Holdings Corporation	36.2		
United Online, Inc.		31.4	
VCA Antech, Inc.		40.9	
VeriFone Systems, Inc.			20.7
Viad Corp		21.1	
Vocus, Inc.			44.9
Volcano Corporation			38.5
Weatherford International Ltd.	44.0		
Yahoo! Inc.		49.9	

Source: Edward A. Hauder, Exequity LLP. Bolded company names indicate years in which the company's SOP vote failed. A BNA Graphic/pen404g4

Figure 3: 2013 SOP Voting for Russell 3000 Companies With 2012 Failed SOP Votes

(Sorted by 2013 SOP vote support level)

	Company	2012 For %	2013 For %	Difference %
Passed	The Ryland Group, Inc.	40.9	99.3	58.4
	Safety Insurance Group, Inc.	42.2	99.2	57.0
	OM Group, Inc.	23.6	98.6	75.0
	Charles River Laboratories International, Inc.	36.1	98.3	62.2
	Infinera Corporation	41.5	98.1	56.6
	Argo Group International Holdings, Ltd.	45.5	98.0	52.5
	Digital River, Inc.	19.2	98.0	78.8
	The Manitowoc Company, Inc.	48.4	98.0	49.6
	CryoLife, Inc.	38.8	97.6	58.8
	Hercules Offshore, Inc.	48.0	97.5	49.5
	KB Home	45.6	97.5	51.9
	American Eagle Outfitters, Inc.	39.7	97.4	57.7
	Kforce Inc.	39.2	97.2	58.0
	Cedar Realty Trust, Inc.	38.3	97.0	58.7
	International Game Technology	44.4	96.3	51.9
	Viad Corp	21.1	96.3	75.2
	Tower Group International, Ltd.	29.6	95.4	65.8
	Pitney Bowes Inc.	35.2	93.6	58.4
	Yahoo! Inc.	49.9	93.6	43.7
	Citigroup Inc.	45.1	91.7	46.6
	RBC Bearings Incorporated	28.4	90.9	62.5
	PMFG, Inc.	31.4	89.4	58.0
	NRG Energy, Inc.	44.1	87.5	43.4
	Chiquita Brands International, Inc.	19.8	86.5	66.7
	Applied Micro Circuits Corporation	42.0	85.9	43.9
	Chesapeake Energy Corporation	19.9	84.5	64.6
	Best Buy Co., Inc.	38.2	83.3	45.1
	Community Health Systems, Inc.	32.9	82.1	49.2
	United Online, Inc.	31.4	80.6	49.2
	G-III Apparel Group, Ltd.	35.1	79.5	44.4
	Sequenom, Inc.	48.2	79.3	31.1
	Sterling Bancorp	40.0	78.8	38.8
	Cenveo, Inc.	40.4	75.7	35.3
	NuVasive, Inc.	32.6	75.3	42.7
>70% Support	Mylan Inc.	47.9	69.7	21.8
	FirstMerit Corporation	46.0	69.0	23.0
	Epiq Systems, Inc.	30.2	65.8	35.6
	Chemed Corporation	47.9	65.0	17.1
	VCA Antech, Inc.	40.9	64.4	23.5
	Simon Property Group, Inc.	26.7	56.5	29.8
	Rigel Pharmaceuticals, Inc.	44.6	53.9	9.3
	Iconix Brand Group, Inc.	29.8	52.1	22.3
Failed Votes	Masimo Corporation	37.7	48.2	10.5
	The Phoenix Companies, Inc.	45.8	45.8	0.0
	Oracle Corporation	40.9	43.1	2.2
	Tutor Perini Corporation	38.3	38.2	-0.1
	Gentiva Health Services, Inc.	36.5	37.1	0.6
	Nabors Industries Ltd.	25.2	36.2	11.0
	Comstock Resources, Inc.	34.7	32.8	-1.9
	Big Lots, Inc.	31.2	31.3	0.1
	Healthways, Inc.	32.2	30.1	-2.1
	DFC Global Corp.	24.9	25.8	0.9
	Kilroy Realty Corporation	29.9	22.5	-7.4
	Abercrombie & Fitch Co.	24.5	19.6	-4.9

Source: Edward A. Hauder, Exequity LLP.

A BNA Graphic/pen404g5

Figure 4: CEO Pay Change in 2011 and 2012 for Russell 3000 Companies With Failed 2012 SOP Votes

	Company	2011	2012
Passed	The Ryland Group, Inc.	-24.6%	6.6%
	Safety Insurance Group, Inc.	-26.8%	53.0%
	OM Group, Inc.	8.7%	-25.8%
	Charles River Laboratories International, Inc.	15.4%	14.6%
	Infinera Corporation	98.3%	-20.9%
	Argo Group International Holdings, Ltd.	-46.0%	-10.3%
	Digital River, Inc.	-1.2%	-98.6%
	The Manitowoc Company, Inc.	77.0%	-15.9%
	CryoLife, Inc.	22.4%	-6.7%
	Hercules Offshore, Inc.	112.4%	-33.5%
	KB Home	-11.7%	-5.9%
	American Eagle Outfitters, Inc.	56.3%	-19.4%
	Kforce Inc.	42.9%	-48.3%
	Cedar Realty Trust, Inc.	17.7%	-38.6%
	International Game Technology	55.7%	-29.7%
	Viad Corp	36.1%	9.6%
	Tower Group International, Ltd.	52.2%	-46.2%
	Pitney Bowes Inc.	10.8%	-96.1%
	Yahoo! Inc.	0.3%	205.4%
	Citigroup Inc.	1485710200.0%	-16.7%
	RBC Bearings Incorporated	169.0%	-2.5%
	PMFG, Inc.	88.6%	-42.3%
	NRG Energy, Inc.	-13.8%	8.8%
	Chiquita Brands International, Inc.	6.4%	-91.1%
	Applied Micro Circuits Corporation	879.2%	-95.9%
	Chesapeake Energy Corporation	-15.1%	-29.8%
	Best Buy Co., Inc.	63.3%	138.0%
	Community Health Systems, Inc.	3.0%	-20.0%
	United Online, Inc.	-16.6%	-47.3%
	G-III Apparel Group, Ltd.	21.2%	-0.9%
	Sequenom, Inc.	199.7%	-24.9%
	Sterling Bancorp	-28.8%	23.4%
	Cenveo, Inc.	55.8%	-68.4%
	NuVasive, Inc.	-0.8%	-7.3%
>70% Support	Mylan Inc.	-7.0%	-53.3%
	FirstMerit Corporation	15.5%	16.3%
	Epiq Systems, Inc.	34.0%	-42.6%
	Chemed Corporation	9.0%	-17.3%
	VCA Antech, Inc.	133.2%	-60.6%
	Simon Property Group, Inc.	458.5%	-87.4%
	Rigel Pharmaceuticals, Inc.	-42.7%	59.4%
	Iconix Brand Group, Inc.	636.7%	-91.5%
Failed Votes	Masimo Corporation	49.8%	-83.0%
	The Phoenix Companies, Inc.	35.9%	-100.0%
	Oracle Corporation	24.0%	-18.4%
	Tutor Perini Corporation	16.3%	-44.3%
	Gentiva Health Services, Inc.	-26.7%	-43.4%
	Nabors Industries Ltd.	18.2%	23.4%
	Comstock Resources, Inc.	-16.0%	-4.9%
	Big Lots, Inc.	-11.0%	3.3%
	Healthways, Inc.	5.6%	-27.4%
	DFC Global Corp.	127.6%	-53.6%
	Kilroy Realty Corporation	0.0%	350.0%
	Abercrombie & Fitch Co.	106.8%	-83.0%

Source: Edward A. Hauder, Exequity LLP.

A BNA Graphic/pen404g6

Figure 4a: CEO Pay Change in 2011 and 2012 for Russell 3000 Companies With Failed 2012 SOP Votes

2013 SOP Vote Group	2011	2012
Passed[1]		
Average	57.8%	-14.2%
Median	17.7%	-20.0%
>70% Support		
Average	154.6%	-34.6%
Median	24.7%	-48.0%
Failed		
Average	27.5%	-6.8%
Median	17.2%	-35.4%
All 2012 Failed SOP Vote Companies		
Average	65.6%	-15.6%
Median	17.7%	-24.9%

Source: Edward A. Hauder, Exequity LLP. A BNA Graphic/pen404g7

[1] Figures exclude the impact of the change in CEO pay at Citigroup from 2010 to 2011 as a result of normalization of the CEO's pay from a prior $1 per year annual compensation arrangement.

Figure 5: TSRs for Russell 3000 Companies With Failed 2012 SOP Votes for Most Recent Fiscal Year End Prior to 2012 and 2013 SOP Votes

	Company	2011			2012			Difference 2011 to 2012		
		1 Yr	3 Yr	5 Yr	1 Yr	3 Yr	5 Yr	1 Yr	3 Yr	5 Yr
Passed	The Ryland Group, Inc.	-6.7%	-3.1%	-21.2%	132.8%	23.6%	6.7%	139.5%	26.7%	27.9%
	Safety Insurance Group, Inc.	-11.2%	6.9%	-0.2%	20.0%	13.6%	9.7%	31.1%	6.7%	9.9%
	OM Group, Inc.	-41.9%	2.0%	-13.1%	-0.8%	-10.9%	-17.3%	41.0%	-12.9%	-4.2%
	Charles River Laboratories International, Inc.	-23.1%	1.4%	-8.8%	37.1%	3.6%	-10.7%	60.2%	2.2%	-1.9%
	Infinera Corporation	-39.2%	-11.2%	NA	-7.5%	-13.2%	-17.1%	31.7%	-2.0%	NA
	Argo Group International Holdings, Ltd.	-21.5%	-4.1%	-10.2%	17.9%	6.5%	-3.5%	39.3%	10.7%	6.6%
	Digital River, Inc.	-56.4%	-15.4%	-23.1%	-4.3%	-18.9%	-15.3%	52.1%	-3.5%	7.7%
	The Manitowoc Company, Inc.	-29.4%	2.9%	-20.4%	71.5%	17.0%	-19.7%	100.9%	14.1%	0.7%
	CryoLife, Inc.	-11.4%	-20.9%	-8.9%	30.8%	-0.7%	-4.6%	42.2%	20.2%	4.3%
	Hercules Offshore, Inc.	27.6%	-2.2%	-31.2%	39.0%	8.9%	-23.6%	11.4%	11.1%	7.6%
	KB Home	-33.1%	-12.3%	-30.4%	98.0%	4.0%	-4.9%	131.1%	16.3%	25.5%
	American Eagle Outfitters, Inc.	0.6%	20.9%	-12.5%	57.9%	15.5%	2.4%	57.3%	-5.4%	14.9%
	Kforce Inc.	-23.8%	17.1%	0.3%	24.4%	7.1%	9.5%	48.2%	-10.0%	9.2%
	Cedar Realty Trust, Inc.	-25.6%	-10.5%	-17.8%	27.4%	-2.9%	-6.9%	53.0%	7.6%	10.9%
	International Game Technology	2.0%	-3.7%	-17.4%	-8.5%	-14.0%	-19.7%	-10.5%	-10.2%	-2.3%
	Viad Corp	-30.8%	-10.2%	-14.9%	57.4%	10.7%	-2.1%	88.2%	20.8%	12.8%
	Tower Group International, Ltd.	-18.8%	-8.8%	-7.0%	-8.4%	-6.1%	-10.0%	10.3%	2.7%	-3.0%
	Pitney Bowes Inc.	-18.0%	-3.8%	-12.0%	-36.1%	-15.8%	-16.8%	-18.1%	-12.0%	-4.8%
	Yahoo! Inc.	-3.0%	9.8%	-8.8%	23.4%	5.8%	-3.1%	26.4%	-3.9%	5.7%
	Citigroup Inc.	-44.3%	-26.7%	-44.5%	50.6%	6.2%	-32.3%	94.9%	32.9%	12.3%
	RBC Bearings Incorporated	20.7%	44.5%	6.7%	9.6%	16.6%	6.4%	-11.1%	-27.9%	-0.3%
	PMFG, In	-60.7%	-4.4%	-5.5%	-11.4%	-23.0%	-21.6%	49.3%	-18.5%	-16.2%
	NRG Energy, Inc.	-7.3%	-8.1%	-8.3%	28.0%	-0.6%	-11.8%	35.3%	7.5%	-3.4%
	Chiquita Brands International, Inc.	-40.5%	-17.4%	-12.2%	-1.1%	-23.0%	-14.8%	39.4%	-5.6%	-2.6%
	Applied Micro Circuits Corporation	-33.1%	12.6%	-13.8%	6.9%	-4.9%	0.7%	40.1%	-17.5%	14.5%
	Chesapeake Energy Corporation	-13.2%	12.6%	-4.2%	-24.1%	-12.6%	-14.7%	-10.9%	-25.2%	-10.5%
	Best Buy Co., Inc.	-21.6%	-3.3%	-10.5%	-29.4%	-21.7%	-18.0%	-7.8%	-18.4%	-7.5%
	Community Health Systems, Inc.	-53.3%	6.2%	-13.7%	77.6%	-4.5%	-3.4%	130.9%	-10.7%	10.3%
	United Online, Inc.	-11.6%	3.1%	-10.7%	11.5%	-1.1%	-7.6%	23.1%	-4.2%	3.1%
	G-III Apparel Group, Ltd.	-34.5%	60.8%	1.0%	57.0%	27.3%	21.8%	91.5%	-33.5%	20.8%
	Sequenom, Inc.	-44.6%	-39.2%	-1.0%	5.8%	4.4%	-13.2%	50.4%	43.6%	-12.2%
	Sterling Bancorp	-28.6%	-21.8%	-13.8%	66.7%	2.4%	-4.0%	95.3%	24.2%	9.8%
	Cenveo, Inc.	-36.3%	-8.6%	-30.7%	-20.6%	-32.4%	-31.2%	15.7%	-23.8%	-0.5%
	NuVasive, Inc.	-50.9%	-28.6%	-11.4%	22.8%	-21.5%	-17.1%	73.7%	7.1%	-5.7%
>70% Support	Mylan Inc.	1.6%	29.5%	1.6%	27.9%	14.2%	14.3%	26.4%	-15.3%	12.7%
	FirstMerit Corporation	-20.2%	-5.5%	-4.3%	-2.3%	-7.4%	-2.1%	18.0%	-1.9%	2.1%
	Epiq Systems, Inc.	-11.5%	-9.9%	1.6%	9.2%	-1.5%	-5.2%	20.7%	8.3%	-6.7%
	Chemed Corporation	-18.6%	9.8%	7.5%	35.4%	13.8%	5.1%	54.0%	4.0%	-2.4%
	VCA Antech, Inc.	-15.2%	-0.2%	-9.3%	6.6%	-5.5%	-13.8%	21.8%	-5.3%	-4.5%
	Simon Property Group, Inc.	33.5%	39.6%	9.1%	26.0%	29.3%	17.1%	-7.5%	-10.3%	8.0%
	Rigel Pharmaceuticals, Inc.	4.8%	-0.5%	-7.8%	-17.6%	-11.9%	-23.9%	-22.4%	-11.5%	-16.0%
	Iconix Brand Group, Inc.	-15.6%	18.5%	-3.4%	37.0%	20.8%	2.6%	52.7%	2.2%	6.0%
Failed Votes	Masimo Corporation	-35.7%	-11.6%	NA	17.9%	-7.2%	-9.2%	53.6%	4.4%	NA
	The Phoenix Companies, Inc.	-33.9%	-13.6%	-32.8%	-26.4%	-23.7%	-33.1%	7.5%	-10.1%	-0.3%
	Oracle Corporation	-22.0%	11.4%	7.0%	28.8%	15.3%	8.9%	50.8%	3.9%	1.9%
	Tutor Perini Corporation	-42.4%	-17.8%	-15.9%	11.0%	-7.3%	-19.0%	53.4%	10.5%	-3.2%
	Gentiva Health Services, Inc.	-74.6%	-38.7%	-18.7%	48.9%	-28.1%	-12.0%	123.5%	10.6%	6.8%
	Nabors Industries Ltd.	-26.1%	13.1%	-10.3%	-16.7%	-12.9%	-12.0%	9.4%	-26.1%	-1.8%
	Comstock Resources, Inc.	-37.7%	-31.3%	-13.2%	-1.2%	-28.0%	-15.0%	36.5%	3.3%	-1.8%
	Big Lots, Inc.	24.2%	43.2%	8.8%	-18.6%	4.2%	13.1%	-42.8%	-39.0%	4.3%
	Healthways, Inc.	-38.5%	-15.8%	-32.2%	56.0%	-16.4%	-28.8%	94.5%	-0.7%	3.4%
	DFC Global Corp.	-14.9%	26.1%	-0.6%	-25.1%	1.5%	6.5%	-10.2%	-24.6%	7.1%
	Kilroy Realty Corporation	8.4%	9.9%	-9.1%	28.2%	19.9%	1.8%	19.8%	10.0%	10.9%
	Abercrombie & Fitch Co.	-7.8%	39.5%	-9.0%	10.8%	18.5%	-7.3%	18.6%	-21.0%	1.7%

Source: Edward A. Hauder, Exequity LLP.

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Figure 5a: TSRs for Russell 3000 Companies With Failed 2012 SOP Votes for Most Recent Fiscal Year End Prior to 2012 and 2013 SOP Votes

2013 SOP Vote Group	2011			2012			Difference 2011 to 2012		
	1 Yr	3 Yr	5 Yr	1 Yr	3 Yr	5 Yr	1 Yr	3 Yr	5 Yr
Passed									
Average	-24.2%	-1.9%	-13.0%	24.2%	-1.6%	-9.1%	48.4%	0.3%	4.2%
Median	-24.7%	-3.8%	-12.0%	21.4%	-0.7%	-10.3%	41.6%	-2.8%	4.3%
>70% Support									
Average	-5.2%	10.2%	-0.6%	15.3%	6.5%	-0.7%	20.4%	-3.7%	-0.1%
Median	-13.3%	4.8%	-0.9%	17.6%	6.1%	0.2%	21.2%	-3.6%	-0.2%
Failed									
Average	-25.1%	1.2%	-11.4%	9.5%	-5.3%	-8.8%	34.5%	-6.6%	2.6%
Median	-30.0%	-0.8%	-10.3%	10.9%	-7.2%	-10.6%	28.1%	1.3%	1.9%
All 2012 Failed SOP Vote Companies									
Average	-21.6%	0.6%	-10.8%	19.6%	-1.2%	-7.8%	41.2%	-1.8%	3.2%
Median	-21.8%	-3.2%	-10.2%	17.9%	-0.9%	-8.4%	39.4%	-1.9%	2.6%

Source: Edward A. Hauder, Exequity LLP.

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Figure 6: Change in CEO Pay for Most Recent Three Fiscal Years for Russell 3000 Companies With Failed 2011-2013 SOP Votes

	CEO Pay Change Yr-to-Yr (%)		
Company	**2010**	**2011**	**2012**
Abercrombie & Fitch Co.	-36.0%	**106.8%**	**-83.0%**
Actuant Corporation	8.3%	**-3.5%**	-28.7%
Alexandria Real Estate Equities, Inc.	18.0%	-4.1%	**2.4%**
American Eagle Outfitters, Inc.	-48.7%	**56.3%**	-19.4%
Annaly Capital Management, Inc.	9.7%	48.1%	**-26.3%**
Apache Corporation	150.5%	-17.2%	**7.1%**
Applied Micro Circuits Corporation	-68.0%	**879.2%**	-95.9%
Argo Group International Holdings, Ltd.	64.7%	**-46.0%**	-10.3%
Atlas Air Worldwide Holdings, Inc.	31.0%	7.6%	**8.7%**
AXIS Capital Holdings Limited	37.6%	-17.5%	**186.4%**
Beazer Homes USA, Inc.	**-33.9%**	66.9%	-2.9%
Best Buy Co., Inc.	-50.8%	**63.3%**	138.0%
Big Lots, Inc.	36.9%	**-11.0%**	**3.3%**
Biglari Holdings Inc.	311.8%	131.9%	**121.8%**
BioMed Realty Trust, Inc.	**23.6%**	4.7%	16.5%
Blackbaud, Inc.	**128.8%**	-32.1%	-29.3%
Boston Properties, Inc.	0.3%	23.5%	**6.8%**
Capstone Turbine Corporation	2.1%	-16.1%	**46.8%**
Cedar Realty Trust, Inc.	-16.0%	**17.7%**	-38.6%
Cenveo, Inc.	47.0%	**55.8%**	-68.4%
Charles River Laboratories International, Inc.	-9.4%	**15.4%**	14.6%
Chemed Corporation	1.8%	**9.0%**	-17.3%
Chesapeake Energy Corporation	13.4%	**-15.1%**	-29.8%
Chiquita Brands International, Inc.	-26.9%	**6.4%**	-91.1%
Cincinnati Bell Inc.	**71.7%**	-29.2%	11.3%
Citigroup Inc.	-100.0%	**1485710200%**	-16.7%
Cogent Communications Group, Inc.	**1147.4%**	-57.5%	**416.5%**
Community Health Systems, Inc.	17.5%	**3.0%**	-20.0%
Comstock Resources, Inc.	-37.0%	**-16.0%**	**-4.9%**
Consolidated Water Co. Ltd.	-31.1%	76.7%	**-20.9%**
Corinthian Colleges, Inc.	12.6%	-6.5%	**-5.4%**
CryoLife, Inc.	1.2%	**22.4%**	-6.7%
Curtiss-Wright Corporation	**8.9%**	-12.7%	-1.2%
Cutera, Inc.	**25.0%**	-4.2%	35.0%
Dendreon Corporation	38.0%	-46.9%	**300.5%**
Dex Media Inc.	**-34.6%**	-66.2%	-7.6%
DFC Global Corp.	-7.4%	**127.6%**	**-53.6%**
Digital Generation, Inc.	152.7%	-18.3%	**-100.0%**
Digital River, Inc.	4.1%	**-1.2%**	-98.6%
Dynamic Materials Corp	70.1%	16.6%	**-0.8%**
East West Bancorp, Inc.	101.1%	110.4%	**-22.9%**
Epiq Systems, Inc.	27.5%	**34.0%**	-42.6%
Equal Energy Ltd.	N/A	212.0%	**-46.3%**
Everest Re Group, Ltd.	2.3%	54.4%	**66.8%**

Source: Edward A. Hauder, Exequity LLP.

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Bolded changes are ones that correspond to years in which the company's SOP Vote failed, i.e. 2012 change corresponds to 2013 SOP vote, 2011 change corresponds to 2012 SOP vote, and 2010 change corresponds to 2011 SOP vote.

Figure 6: Change in CEO Pay for Most Recent Three Fiscal Years for Russell 3000 Companies With Failed 2011-2013 SOP Votes–Continued

	CEO Pay Change Yr-to-Yr (%)		
Company	**2010**	**2011**	**2012**
Exar Corporation	**136.3%**	272.4%	-80.3%
FirstMerit Corporation	-6.7%	**15.5%**	16.3%
Freeport-McMoRan Copper & Gold Inc.	**43.1%**	-22.5%	**-54.2%**
FTI Consulting, Inc.	-6.7%	37.6%	**81.3%**
Fusion-io, Inc.	-38.0%	256.8%	**63.2%**
Gentiva Health Services, Inc.	35.4%	**-26.7%**	**-43.4%**
Geron Corporation	-55.2%	-5.1%	**1.9%**
G-III Apparel Group, Ltd.	79.7%	**21.2%**	-0.9%
Healthways, Inc.	0.3%	**5.6%**	**-27.4%**
Helen of Troy Limited	26.6%	15.5%	**219.9%**
Helix Energy Solutions Group, Inc.	**-15.0%**	27.6%	0.0%
Hercules Offshore, Inc.	**90.9%**	**112.4%**	-33.5%
Hercules Technology Growth Capital, Inc.	56.1%	-23.0%	**45.0%**
Hewlett-Packard Company	**-21.3%**	-30.8%	-7.0%
Iconix Brand Group, Inc.	-53.2%	**636.7%**	-91.5%
Infinera Corporation	-69.9%	**98.3%**	-20.9%
International Game Technology	79.8%	**55.7%**	-29.7%
Intersil Corporation	**40.6%**	-31.8%	-75.9%
Jacobs Engineering Group Inc.	**25.4%**	38.8%	18.8%
Janus Capital Group Inc.	**740.6%**	-69.8%	-19.0%
Jos. A. Bank Clothiers, Inc.	50.70%	0.3%	**-27.5%**
KB Home	-25.5%	**-11.7%**	-5.9%
Kforce Inc.	20.4%	**42.9%**	-48.3%
Kilroy Realty Corporation	**8.4%**	**0.0%**	**350.0%**
Knight Capital Group, Inc.	N/A	**3.3%**	-41.2%
LifePoint Hospitals, Inc.	2.7%	-5.2%	**16.0%**
M.D.C. Holdings, Inc.	**1.1%**	-49.2%	85.2%
Masco Corporation	**-11.3%**	-19.4%	-16.8%
Masimo Corporation	15.3%	**49.8%**	**-83.0%**
McKesson Corporation	-15.5%	-14.0%	**30.4%**
Monolithic Power Systems, Inc.	**462.6%**	-42.1%	22.2%
Morgans Hotel Group Co.	6.6%	158.5%	**-76.0%**
Mylan Inc.	39.2%	**-7.0%**	-53.3%
Nabors Industries Ltd.	**-41.8%**	**18.2%**	**23.4%**
Navigant Consulting, Inc.	**-7.7%**	7.9%	36.8%
Navistar International Corporation	26.9%	46.10%	**-62.0%**
NRG Energy, Inc.	3.4%	**-13.8%**	8.8%
Nuance Communications, Inc.	4.8%	79.0%	**-21.2%**
Nutrisystem, Inc.	**50.0%**	-48.5%	-27.4%
NuVasive, Inc.	-2.4%	**-0.8%**	-7.3%
NVR, Inc.	**2457.7%**	-97.4%	99.4%
OM Group, Inc.	132.0%	**8.7%**	-25.8%
OpenTable, Inc.	811.1%	-58.0%	**512.6%**
Oracle Corporation	10.6%	**24.0%**	**-18.4%**

Source: Edward A. Hauder, Exequity LLP. A BNA Graphic/pen404gb

Bolded changes are ones that correspond to years in which the company's SOP Vote failed, i.e. 2012 change corresponds to 2013 SOP vote, 2011 change corresponds to 2012 SOP vote, and 2010 change corresponds to 2011 SOP vote.

Figure 6: Change in CEO Pay for Most Recent Three Fiscal Years for Russell 3000 Companies With Failed 2011-2013 SOP Votes–Continued

	CEO Pay Change Yr-to-Yr (%)		
Company	**2010**	**2011**	**2012**
OraSure Technologies, Inc.	31.3%	46.6%	**7.7%**
Penn Virginia Corporation	**35.1%**	-53.6%	3.2%
PICO Holdings, Inc.	**487.7%**	-85.8%	3.4%
Pitney Bowes Inc.	9.0%	**10.8%**	-96.1%
PMFG, Inc.	-19.6%	**88.6%**	-42.3%
Premiere Global Services, Inc.	**298.3%**	-64.1%	2.7%
RadioShack Corporation	-39.1%	19.5%	**15.6%**
RBC Bearings Incorporated	1.4%	**169.0%**	-2.5%
Regis Corporation	**-40.8%**	109.0%	23.8%
Rigel Pharmaceuticals, Inc.	26.1%	**-42.7%**	59.4%
Safety Insurance Group, Inc.	12.7%	**-26.8%**	53.0%
Sequenom, Inc.	-48.8%	**199.7%**	-24.9%
SHFL entertainment, Inc.	**-19.5%**	-0.8%	105.2%
Simon Property Group, Inc.	430.0%	**458.5%**	-87.4%
Sonus Networks, Inc.	-33.5%	2.2%	**54.9%**
Spansion Inc.	1623.7%	-37.5%	**20.0%**
Spectrum Pharmaceuticals, Inc.	45.4%	357.3%	**-59.9%**
Stanley Black & Decker, Inc.	**240.9%**	-58.1%	-4.9%
Sterling Bancorp	-22.1%	**-28.8%**	23.4%
Stewart Information Services Corporation	**32.8%**	-53.6%	103.7%
Stillwater Mining Company	108.3%	12.7%	**-9.0%**
Strategic Hotels & Resorts, Inc.	72.5%	50.3%	**-38.7%**
Superior Energy Services, Inc.	**34.2%**	-30.0%	20.8%
SWS Group, Inc.	70.0%	157.8%	**-64.9%**
Synaptics Incorporated	**127.6%**	-29.9%	-48.3%
The Active Network, Inc.	N/A	N/A	**22.4%**
The Children's Place Retail Stores, Inc.	-58.3%	414.0%	**54.8%**
The Manitowoc Company, Inc.	141.3%	**77.0%**	-15.9%
The Middleby Corporation	-21.6%	163.9%	**-62.1%**
The Phoenix Companies, Inc.	2.0%	**35.9%**	-100.0%
The Ryland Group, Inc.	12.8%	**-24.6%**	6.6%
The Ultimate Software Group, Inc.	7.6%	70.2%	**161.5%**
Tower Group International, Ltd.	-18.1%	**52.2%**	-46.2%
Tuesday Morning Corporation	**46.8%**	-20.1%	-58.0%
Tutor Perini Corporation	**-24.3%**	**16.3%**	**-44.3%**
Umpqua Holdings Corporation	**61.1%**	-7.7%	-5.5%
United Online, Inc.	-13.0%	**-16.6%**	-47.3%
VCA Antech, Inc.	182.8%	**133.2%**	-60.6%
VeriFone Systems, Inc.	300.9%	96.1%	**-26.2%**
Viad Corp	9.8%	**36.1%**	9.6%
Vocus, Inc.	-22.7%	-5.8%	**-26.0%**
Volcano Corporation	46.5%	9.1%	**19.1%**
Weatherford International Ltd.	**-49.8%**	31.6%	-58.6%
Yahoo! Inc.	-74.7%	**0.3%**	205.4%

Source: Edward A. Hauder, Exequity LLP. A BNA Graphic/pen404gc

Bolded changes are ones that correspond to years in which the company's SOP Vote failed, i.e. 2012 change corresponds to 2013 SOP vote, 2011 change corresponds to 2012 SOP vote, and 2010 change corresponds to 2011 SOP vote.

