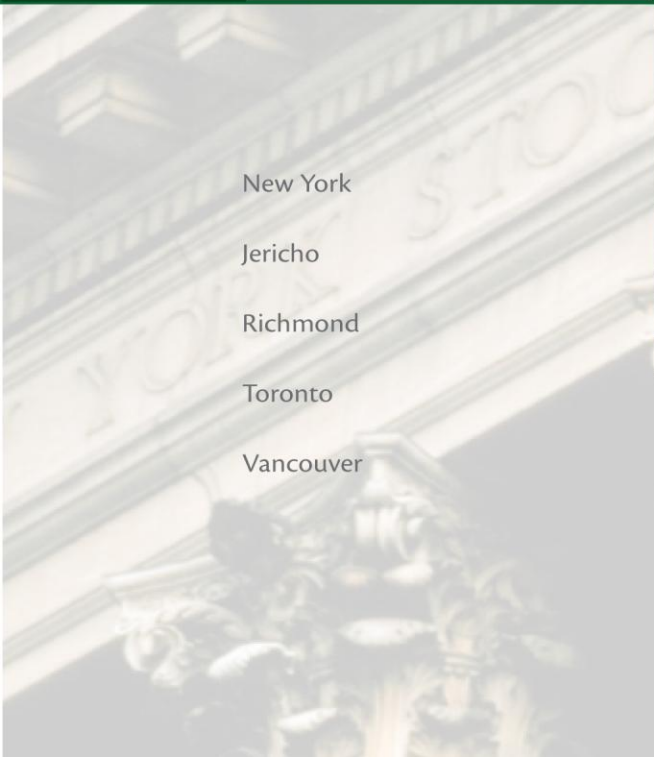


**What to Do When ISS Throws Your
Company a Curveball: An Action Plan
Dealing with Adverse Proxy Advisor
Recommendations**

Knowledge is Everything

The logo for Laurel Hill Advisory Group, LLC consists of the letters 'LH' in a large, bold, gold-colored serif font, set against a dark green rectangular background with thin gold horizontal lines above and below the letters.

LAUREL HILL
ADVISORY GROUP, LLC



New York

Jericho

Richmond

Toronto

Vancouver



What to do When ISS Throws Your Company A Curveball

An Action Plan for Dealing with Adverse Proxy Advisor Recommendations

Topics of Discussion:

- I. Introduction: The Power of Negative Vote Recommendations
- II. When The Negative Recommendation Comes (Say on Pay, Stock Incentive Plans, Governance Proposals or Social Issues)
- III. Best Practices/Action Steps – The Five Questions, Engagement & the Full Campaign
- IV. Prevention is Better Than Cure – Preparing for 2012 and 2013
- V. Update: 14a-8 Proxy Access Resolutions and More Stringent Say On Pay

What to do When ISS Throws Your Company A Curveball

An Action Plan for Dealing with Adverse Proxy Advisor Recommendations

I. Introduction: The Power of Negative Recommendations

- ISS, in their recommendations to clients, have made negative recommendations against over 300 (or 13% of) U.S. companies' executive compensation advisory vote requests. These companies encompassed a wide variety of industries and market capitalizations.
- As of July 1, the Say-On-Pay (SOP) proposals of 39 U.S. companies were rejected by their shareholders. Not coincidentally, all of these companies had negative recommendations from ISS on these proposals.
- Eleven of the 39 firms whose SOP proposal were rejected by shareholders have been sued by various union funds alleging that the compensation committees failed in their duty to protect shareholders' best interests. This is important to note and shows the impact of SOP, as it is rare that a company becomes embroiled in litigation with investors following a failed management proposal vote.

II. When The Negative Recommendation Comes

Many companies, regardless of size and resources spent, found themselves **surprised** and **unprepared** for potential negative vote recommendations from proxy advisory firms – whether the issue is Say On Pay, an equity plan or a shareholder proposal. These surprises are usually the result of not having answers to the following five questions:

- a. Do you understand how ISS, Glass Lewis (GL) and your investors perceive your governance?
- b. What is the composition of your shareholder base?.
- c. What percentage of your top investors are influenced by proxy advisory firms?
- d. Who are the key proxy voting decision-makers at your top investors?
- e. How quickly can you marshal your facts and engage your shareholders?

III. Best Practices: Step 1 - Answering the Key Questions

Your answers to these key questions will determine whether you are able to overcome a negative recommendation from ISS or Glass Lewis (GL)

- a. Do you understand how ISS, GL and your investors perceive your governance? **Answer: Review the ISS GRiD, previous GL reports and examine your governance**
 - b. What is the composition of your shareholder base? **Answer: knowing who your shareholders are is important**
 - c. What percentage of your top investors are influenced by proxy advisory firms? **Answer: Knowing if and how they use ISS or GL will make a big difference in your chances of turning around shareholder votes**
 - d. Who are the key proxy voting decision-makers at your top investors? **Answer: Knowing and reaching the right person is critical especially if you only have a short time to turn your vote around**
 - e. How quickly can you marshal your facts and engage your shareholders? **Answer: You need a coordinated (GC/Corp Sec/IR) turnaround effort**
-

III. Best Practices: Step 2 - Engagement

Step 2: Engaging ISS and your Shareholder Base – Once you have the answers to the key questions, we noted the following approach with ISS after the release of a negative vote recommendation:

- Direct discussions with the ISS (these may not be fruitful, but are necessary);
- Simultaneous to the ISS dialogue engage in communication with your shareholder base via an additional proxy filing (Form 8K or DEF14A) that offers the company's rationale for the board's action in approving the compensation package;
- Clearly point out inconsistencies in the ISS (and/or GL) recommendation
- If possible use a proxy solicitation firm to guide your communication efforts with institutional and retail shareholders.

Of course the success of these efforts depend on the nature of the issue. The filing of additional proxy materials may be more of greater benefit with compensation issues than with governance or social issues.

III. Best Practices: Step 2 – Engagement (continued)

Step 2: Opening a dialogue with the proxy advisory on their issues of concern while reaching out to your investors to determine what issues or concern they may consider problematic. Here is what to keep in mind:

- Are your board and CEO willing to make changes (if compensation-related - to existing agreements) to win an ISS reversal and/or shareholder support?
- Do you have a strong, solid rationale for your company's position (compensation plan)?
- Do you enough time to reach the proxy voting decision-makers at your key institutional holders?

Note for executive pay disputes: If an agreement with ISS is achieved, the changes agreed to must be outlined in an additional proxy filing (8K or DEF14A) for codification and dissemination to the market.

III. Best Practices: Step 3 – Full Campaign

Step 3: If/when negotiations with ISS fail it is time to press for shareholder support (“going to the mattresses”)

- Use an 8K or DEF 14A filing to notify shareholders of those changes to your compensation plan that your compensation committee and senior executive have been willing to undertake (or have promised to initiate post-annual meeting).
- Your goal is to create enough goodwill with shareholders to gain their support despite an ISS or Glass Lewis negative recommendation.
- Determine how far down your shareholder list you need to go in order to win approval – and whether solicitation of retail investors will be necessary

IV. Prevention Is Better Than Cure – Preparing for 2012 and 2013

This dramatic increase in engagement and dialogue represents a new phase in the relationship between issuers, proxy advisory firms and shareholders. Recommended Best Practices include:

- Tracking Your Investors - Institutional Investors with in-house guidelines review and revise these guidelines annually, therefore, what has applied one year may not be applicable the next;
 - “Off-season” Outreach - shareholders are often open to engagement during the fall, winter and very early spring – **BUT NOT DURING PROXY SEASON!**
 - Refined Shareholder Identification - Issuers will seek to better understand how their shareholders use the firms advising them (ISS and GL)
 - Full Corporate Governance Assessment – How well does your company look when viewed via the lens of governance best practice – do you have unidentified risks? Undertaking an outside evaluation of your governance structures and practices would be advisable.
-

V. Update: 14a-8 Proxy Access Resolutions and More Stringent Say On Pay for 2012 and 2013

Updates:

- The SEC will allow shareholders to file 14a-8 resolutions regarding proxy access at individual companies – those with perceived governance and executive compensation problems are likely targets for 2012 and 2013;
- Governance advocates (public pension and union funds) believe that the number of failed SOP votes does accurately reflect the number of companies with problematic pay practices. These investors view a passing vote of less than 75-80% as a serious lack of shareholder support for pay and are considering what types of action to undertake. *Example: CalSTRS failed over 26% of their portfolio companies' SOP requests.*

The need to identify, know and understand your shareholders – and how your governance is viewed will continue to grow in importance. Be Prepared!



LAUREL HILL
ADVISORY GROUP, LLC

Knowledge is Everything

laurelhill.com

Questions & Answers