



Shareholders at the Top 50 Say “Yes” on Pay

By Julie Lewis and Greg Loehmann

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33 Railroad Avenue
Duxbury, MA 02332
Tel: +1 781 934 8400

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Aon Center
200 East Randolph Street, 10th Floor
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The Gate Village, Building 07
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Tel: +1 203 359 2878

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Akasaka Twin Tower Main Tower,
16th Floor
17-22, Akasaka 2-chome
Minato-ku, Tokyo 107-0052
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If investors are dissatisfied with executive pay, voting results during this proxy season are certainly not reflecting that sentiment. An overwhelming majority of shareholders at the top banks gave their approval on executive pay. However, shareholders have shown a desire to have ongoing input into the pay decision-making process by strongly supporting annual say on pay proxy votes.

The enactment of Dodd-Frank makes it mandatory for all firms—not just TARP-CPP participants—to put advisory approval of executive pay on their annual proxy ballots. The Act also requires that shareholders be given the choice of annual, biennial or triennial votes on executive pay, with the opportunity to change the frequency at least once every six years.

This Alert summarizes McLagan research relating to the voting results among the largest 50 U.S. banks by asset size.

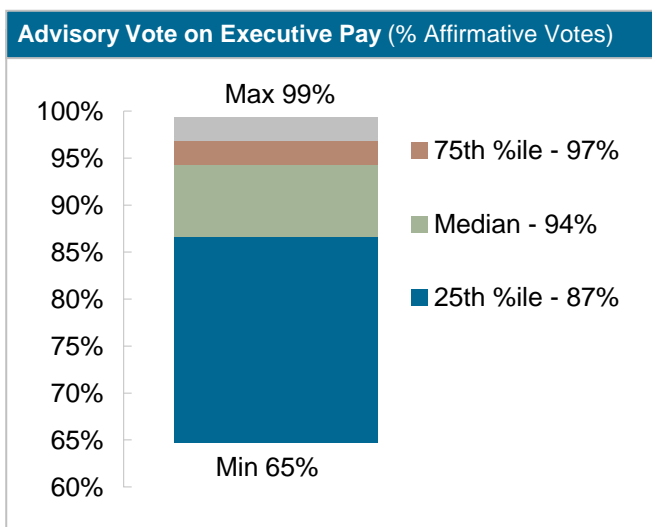
VOTING RESULTS

Our analysis focused on 50 of the largest U.S. banks by asset size, all of whom had reported voting results at the time of this publication. A list of firms in our study is included in the appendix.

Our analysis shows that, among the nation’s largest banks, **100% received approval from shareholders on executive compensation**. At the median, 94% of bank shareholders voted affirmatively on pay for senior executives.

In addition, there was little dispersion in the voting counts, with three-quarters of firms reporting over 87% approval rates.

The lowest affirmative vote was 65% and the highest 99%.





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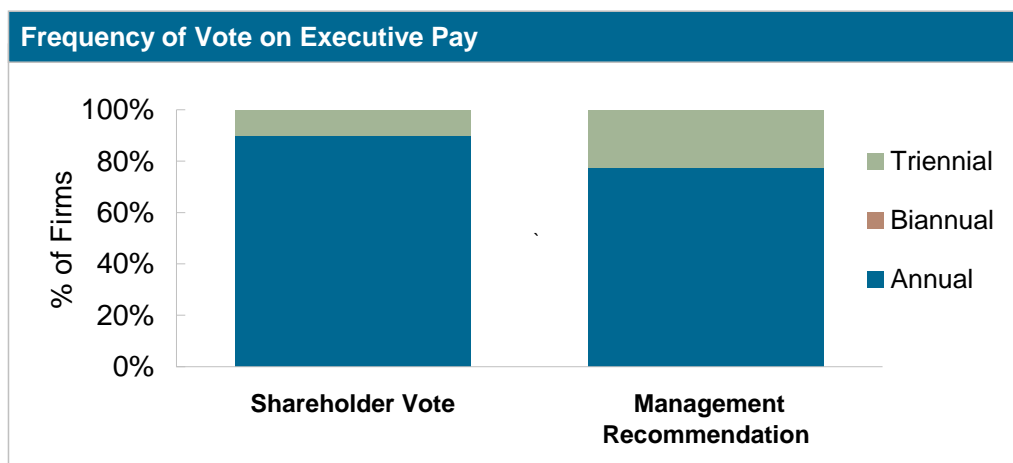
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When asked how frequently they want a say on pay, shareholders clearly supported annual votes. Ninety percent of firms tallied an annual frequency with the remainder receiving votes for a triennial say.

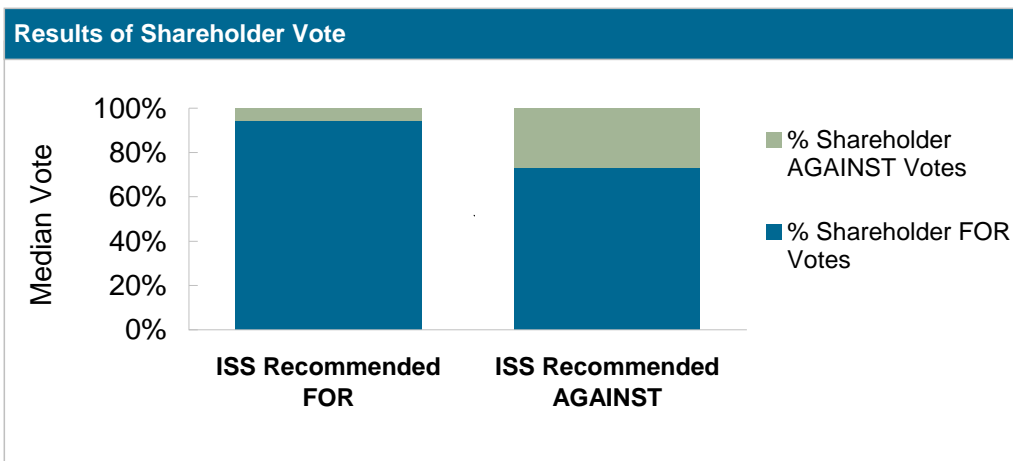
Management’s recommendation was not followed at a number of firms, as 23% of banks suggested a triennial vote. In these cases, management most often cited that effective measurement of pay and performance is better made over a period of three years.

Shareholders unanimously voted with management when the recommendation was annual, while only 44% of firms reported shareholder support when a triennial recommendation was made. Firms with less than \$25 billion in assets were twice as likely to recommend a triennial vote than larger firms.



DOES THE ISS RECOMMENDATION MATTER?

Of the top 50 banks, ISS recommended against nine management say on pay proposals this proxy season. In none of those cases did the ISS recommendation result in a negative vote; shareholders approved all proposals. It is important to note that while shareholders did not ultimately heed the recommendations of ISS, the impact on voting can be meaningful.





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At the median, the negative ISS recommendation resulted in a 21% loss of favorable votes, somewhat lower than the 25% - 30% seen this year across all industries.

When considering its vote recommendation, ISS assesses a firm’s executive pay practices in two primary areas: “pay-for-performance” and “problematic pay practices.” Most companies that received an unfavorable recommendation from ISS ran afoul of ISS’s Pay-for-Performance policy. ISS’s Pay-for-Performance policy applies only if a firm’s one- and three-year total shareholder return fall below median of an ISS designated group of peer firms.

To mitigate the impact of a negative vote recommendation from ISS and other proxy advisory firms, many companies (both financial and non-financial) are actively engaging with shareholders to explain or justify perceived “problematic” practices. In our experience, active engagement with shareholders has been the most effective approach for mitigating negative vote recommendations. Issuing additional proxy solicitation materials that proactively address shareholder concerns and focus on the positive aspects of company performance, governance, and compensation practices has been the most effective communication tool. Merely issuing a rebuttal or critique of ISS policies has not been as effective for most companies.

WHAT CAN WE CONCLUDE?

If shareholders at the nation’s top banks are dissatisfied with executive pay, they aren’t speaking up. Regardless, firms must continue to be mindful of the potential impact of the shareholder vote on pay. Although non-binding, lessons from broader industry tell us unsuccessful say on pay ballots do have repercussions. In addition to the unfavorable publicity a failed “say on pay” proposal can bring, more serious ramifications can include votes against directors and, in extreme cases, shareholder lawsuits alleging breach of fiduciary duty.

Although infrequent, lawsuits do have precedence. In 2011, for example, more than 53% of Beazer Home’s shareholders voted against the company’s “say on pay” resolution. Shortly after, a Beazer shareholder filed a derivative lawsuit against the company, as nominal defendant, the company’s board, its accountant and its compensation consultant. The lawsuit alleges that compensation increases for executives “violated the company’s pay-for-performance policy and favored Beazer’s CEO and top executives at the expense of the corporation.”

To avoid these outcomes and prepare for next proxy season, there are several ways firms can avoid potential pitfalls:

- Analyze the shareholder base to determine the level of ISS or other advisory firm influence.
- Monitor changes in each institutional investor’s proxy voting guidelines.
- Audit compensation and governance plans and programs for any potential exposure to guidelines of proxy advisor groups and institutional investors.
- Track 1-year, 3-year, and 5-year TSR relative to your ISS-established peer group.
- Use the proxy Compensation Discussion and Analysis to clearly tell the “story” of executive pay and explain pay and governance decisions.
- Be prepared to engage in meaningful dialog with shareholders.
- Determine whether any problematic pay and/or governance practices exist, and make adjustments as appropriate.



Of course, proxy advisory firms are constantly updating and changing voting guidelines. Future McLagan Alerts will monitor the ongoing impact of say-on-pay and changes in the way advisory firms determine their recommendations.

ABOUT THE AUTHORS

Julie Lewis is a Vice President in McLagan’s executive compensation practice. She can be reached at 212.479.3452 or julie.lewis@mclagan.com.

Greg Loehmann is a Vice President in McLagan’s executive compensation practice. He can be reached at 212.441.2163 or gloehmann@mclagan.com.

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APPENDIX: FIRMS INCLUDED

Firms	Industry	12/31/2010 Assets
Bank of America Corporation	Bank	2,264,909,000
JPMorgan Chase & Co.	Bank	2,117,605,000
Citigroup Inc.	Bank	1,913,902,000
Wells Fargo & Company	Bank	1,258,128,000
Goldman Sachs Group, Inc.	Broker/Dealer	911,332,000
Morgan Stanley	Broker/Dealer	807,698,000
U.S. Bancorp	Bank	307,786,000
PNC Financial Services Group, Inc.	Bank	264,284,000
Bank of New York Mellon Corporation	Bank	247,259,000
Capital One Financial Corporation	Bank	197,503,000
SunTrust Banks, Inc.	Bank	172,874,000
State Street Corporation	Bank	160,505,000
BB&T Corporation	Bank	157,081,000
Regions Financial Corporation	Bank	132,351,000
Fifth Third Bancorp	Bank	111,007,000
KeyCorp	Bank	91,843,000
Northern Trust Corporation	Bank	83,843,900
M&T Bank Corporation	Bank	68,021,263
Hudson City Bancorp, Inc.	Thrift	61,166,033
Huntington Bancshares Incorporated	Bank	53,819,642
Comerica Incorporated	Bank	53,667,000
Zions Bancorporation	Bank	51,034,886



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Firms (continued)	Industry	12/31/2010 Assets
New York Community Bancorp, Inc.	Thrift	41,190,689
Popular, Inc.	Bank	38,720,000
Synovus Financial Corp.	Bank	30,093,148
People's United Financial, Inc.	Thrift	25,037,100
First Horizon National Corporation	Bank	24,698,952
BOK Financial Corporation	Bank	23,941,603
Associated Banc-Corp	Bank	21,785,596
City National Corporation	Bank	21,353,118
First Niagara Financial Group, Inc.	Bank	21,083,853
First Citizens BancShares, Inc.	Bank	20,806,659
East West Bancorp, Inc.	Bank	20,700,537
Commerce Bancshares, Inc.	Bank	18,502,339
TCF Financial Corporation	Bank	18,465,025
Astoria Financial Corporation	Thrift	18,089,269
Webster Financial Corporation	Bank	18,038,068
Cullen/Frost Bankers, Inc.	Bank	17,617,092
SVB Financial Group	Bank	17,527,761
Fulton Financial Corporation	Bank	16,275,254
Valley National Bancorp	Bank	14,143,826
FirstMerit Corporation	Bank	14,136,908
Wintrust Financial Corporation	Bank	13,980,156
Susquehanna Bancshares, Inc.	Bank	13,954,085
Flagstar Bancorp, Inc.	Thrift	13,643,504
BancorpSouth, Inc.	Bank	13,615,010
Washington Federal, Inc.	Thrift	13,486,379
International Bancshares Corporation	Bank	11,943,469
TFS Financial Corporation (MHC)	Bank	11,076,027
Cathay General Bancorp	Bank	10,801,986