

November 15, 2011

Update: Say on Golden Parachute Votes in 2011

Widespread Shareholder Support Continues for Transactional Pay Arrangements

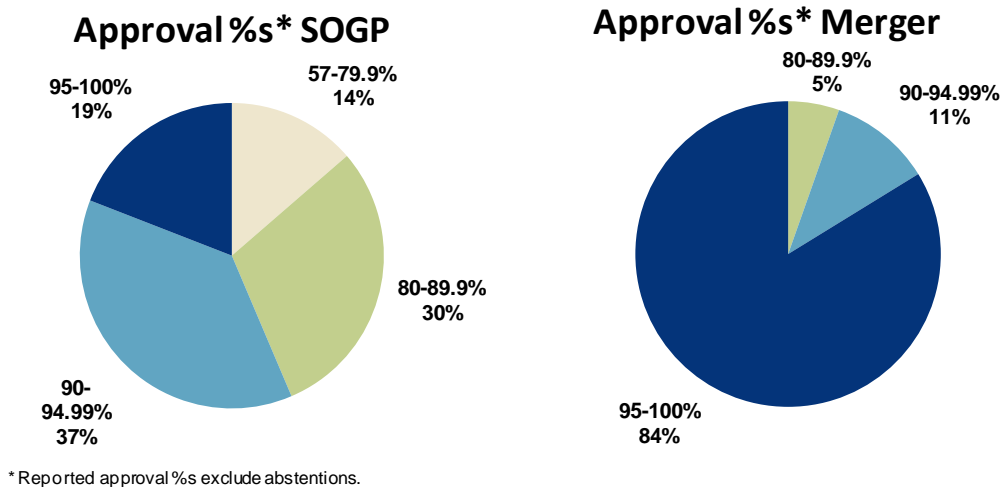
Includes New Filings through October 31st
By Margaret Black and Dan Wetzel

The 2011 proxy season introduced three shareholder advisory votes mandated by the Dodd-Frank Wall Street Reform and Consumer Protection Act: Say on Pay (SOP), Say on Frequency (SOF) and Say on Golden Parachutes (SOGP). The SEC implemented SOP and SOF at the beginning of the proxy season, with SOGP effective for transactions occurring on or after April 25, 2011.

Despite extensive analysis of SOP and SOF voting results, there has been relatively little available data to assess the impact of the new rules affecting SOGP. This white paper discusses some important initial observations among 57 companies that have disclosed their SOGP pay arrangements in their merger-related proxies, of which 37 have reported final SOGP voting results as of October 31, 2011.

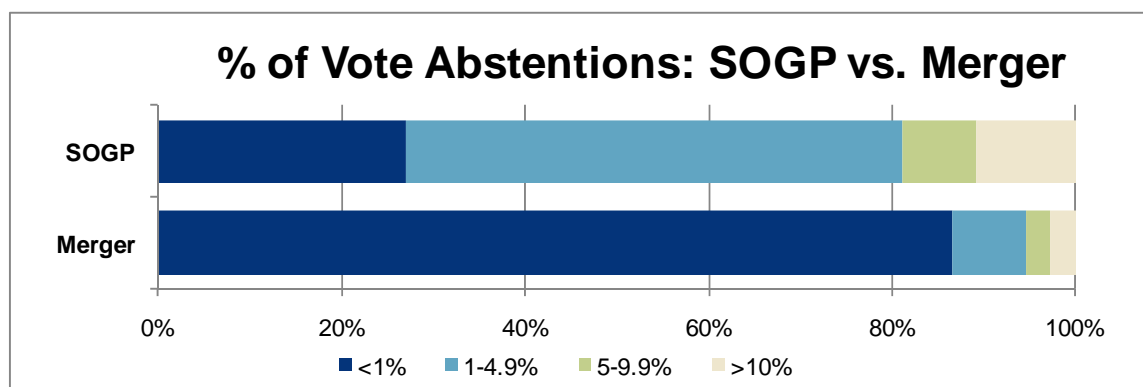
Overall Support for SOGP

The most important aspect of the SOGP vote results has been the overwhelming support expressed by shareholders for golden parachute provisions. As of this writing, every company that has held a SOGP vote and reported results received majority support, with 86% of the companies garnering upwards of 80% approval (excluding abstentions). The lowest level of support was a 57% positive vote among shareholders in regard to pay arrangements for the Citadel Broadcasting Corporation/Cumulus Media transaction.



Support of SOGP vs. Support for Merger

Interestingly, shareholders' support for the pay arrangements related to corporate mergers has consistently lagged their enthusiasm for the transactions themselves. Median support for merger transactions was 99%, contrasted with 91% median support of SOGP. Also, whereas only 2 of the 37 companies that had tabulated voting results received less than 90% overall shareholder support for the transaction itself, 16 of the 37 companies received less than 90% support for the SOGP measures. In addition, while relatively few shareholders abstained on the merger votes, there were considerable abstentions for many of the SOGP votes. For example, while 44% of shareholders in the Nobel Learning/Academic Acquisition transaction abstained from voting on the SOGP measure, none abstained from the vote on the merger.



ISS Voting Results

A potentially significant factor in a company's SOGP vote results are the recommendations provided by shareholder advisory firms such as ISS Corporate Services (ISS). As of October 31, ISS had issued reports on 45 of the 57 transactions we tracked. ISS reported in favor of the SOGP measures in all but 4 of those transactions: Warner Music Group/Airplanes Music LCC ; SAVVIS/CenturyLink; Citadel/Cumulus; and APAC Customer Services/JP Morgan. The reasons given by ISS for issuing negative recommendations will come as no surprise to shareholders – all four companies were cited for engaging in the kind of “poor pay practices” that ISS has been criticizing for the past several years.

For example, in the Warner Music Group/Airplanes Music LCC transaction, Warner had entered into a modified single-trigger severance arrangement with a named executive officer shortly before entering into the proposed transaction. The same officer was also paid a success bonus before the transaction had been either consummated or approved by the shareholders. The ISS reports for SAVVIS/CenturyLink, Citadel/Cumulus, and APAC Customer Services/JP Morgan transactions cited each of these companies for providing their executives with excise tax gross-ups within one year of the transaction. Citadel was cited by ISS for providing modified single trigger protections that would allow executives to receive severance after resigning following the merger, and/or if the current CEO was no longer serving in that capacity.

Impact of negative ISS recommendations

All of the four companies noted above have filed results and each of them have received majority shareholder support on their SOGP vote despite the lack of support from ISS (results for the APAC Customer Services/JP Morgan merger are not yet available). However, it appears that ISS may have dampened the level of support for two of the mergers – SAVVIS garnered only 70% SOGP approval, while Citadel garnered the lowest level of tracked approval at 57%.

Conclusions

While it would be premature to predict future voting results, several initial conclusions can be drawn from the data so far. First, in the initial stages of SOGP voting, it does not appear that shareholders are withholding support as a way to protest perceived excessive executive compensation. Second, while shareholders have been less enthusiastic about SOGP arrangements than for the related mergers, they are generally likely to support the SOGP vote when they believe the overall transaction makes sense. Finally, while the recommendations of shareholder advisory firms such as ISS appear to have some influence on voting outcomes, so far a negative ISS recommendation has not prevented companies from obtaining at least majority support for their SOGP when the overall transaction is supported by shareholders.

PM&P will continue to track SOGP results as they are available and provide periodic updates on emerging summary statistics and trends.

About the Authors

Margaret Black is a Managing Director in the firm's Los Angeles office and has consulted for over 20 years in the field of tax and over 14 years on all aspects of compensation and benefits. She has particular expertise in benefits issues related to corporate acquisitions, divestitures and restructurings, as well as extensive experience with IRC Sections 280G, 409A and 162(m) compliance.

Dan Wetzel is a Managing Director and head of the firm's Los Angeles office and has 20 years consulting experience in the field of compensation and benefits, specializing in the area of executive compensation. He advises clients in the areas of executive and board compensation, the development of effective annual and long-term incentive compensation programs, reasonableness of compensation related to IRS and DCAA assessments, and compensation plan design during acquisitions and IPOs.

About Pearl Meyer & Partners

For more than 20 years, PM&P has served as a trusted independent advisor to Boards and their senior management in the areas of compensation governance, strategy and program design. The firm provides comprehensive solutions to complex compensation challenges through the development of programs that align rewards with business goals to create long-term value for all stakeholders: shareholders, executives and employees. The firm maintains offices in New York, Atlanta, Boston, Charlotte, Chicago, Houston, Los Angeles, San Francisco and San Jose.



www.pearlmeyer.com

NEW YORK

570 Lexington Avenue
New York, NY 10022
(212) 644-2300
newyork@pearlmeyer.com

ATLANTA

One Alliance Center
3500 Lenox Road, Suite 1708
Atlanta, GA 30326
(770) 261-4080
atlanta@pearlmeyer.com

BOSTON

132 Turnpike Road, Suite 300
Southborough, MA 01772
(508) 460-9600
boston@pearlmeyer.com

CHARLOTTE

3326 Siskey Parkway, Suite 330
Matthews, NC 28105
(704) 844-6626
charlotte@pearlmeyer.com

CHICAGO

123 N. Wacker Drive, Suite 860
Chicago, IL 60606
(312) 242-3050
chicago@pearlmeyer.com

HOUSTON

Three Riverway, Suite 1575
Houston, TX 77056
(713) 568-2200
houston@pearlmeyer.com

LOS ANGELES

550 S. Hope Street, Suite 1600
Los Angeles, CA 90071
(213) 438-6500
losangeles@pearlmeyer.com

SAN FRANCISCO

455 Market Street, Suite 2000
San Francisco, CA 94105
(415) 651-4560
sanfrancisco@pearlmeyer.com

SAN JOSE

2880 Zanker Road, Suite 203
San Jose, CA 95134
(408) 954-7399
sanjose@pearlmeyer.com

