

Updated: Say-on-Golden Parachute Votes

Including Vote Results for Meetings as of 6/30/2016

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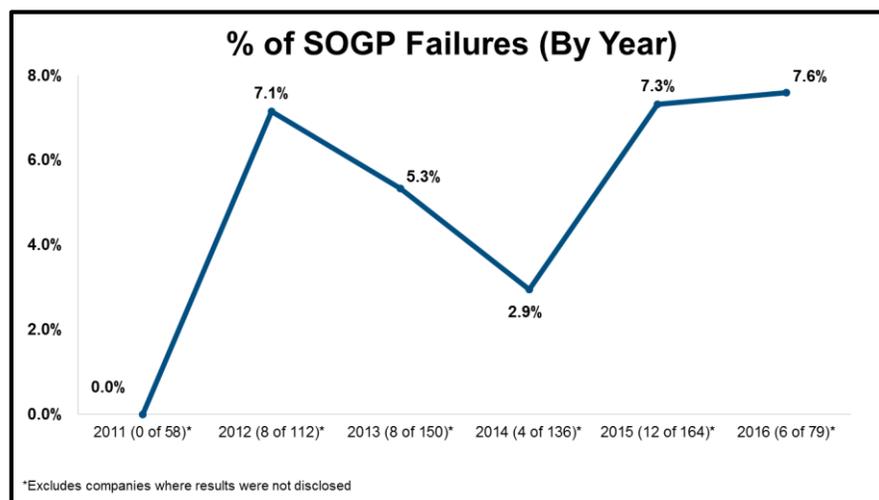


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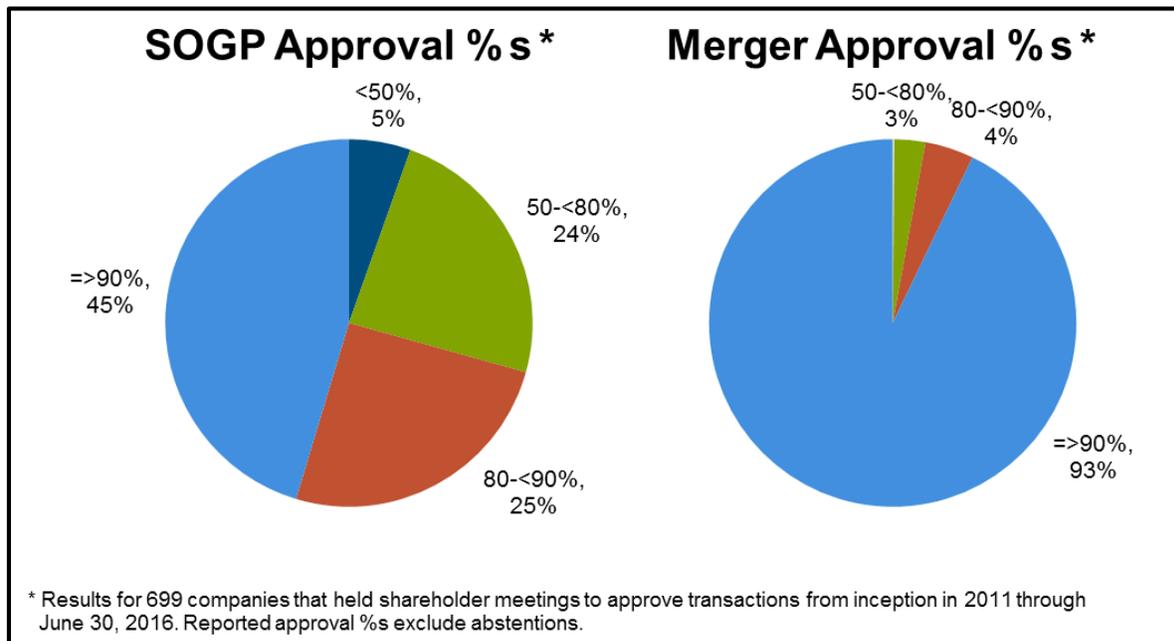
This white paper discusses our observations among 731 companies that have disclosed say-on-golden parachute (SOGP) pay in their merger-related proxies since the rules took effect in 2011. It includes final voting results reported by 699 companies that had held shareholder meetings as of June 30, 2016, as well as our observations about shareholder advisory services' voting trends in 2016 and their influence on vote outcomes.

2016 Failure Rate Parallels 2015 Failures but Overall Support for SOGP Continues

In the first half of 2016, six out of 79 companies (7.6%) have received less than majority support for transaction pay. This is rate is similar to what occurred last year and in calendar year 2012.



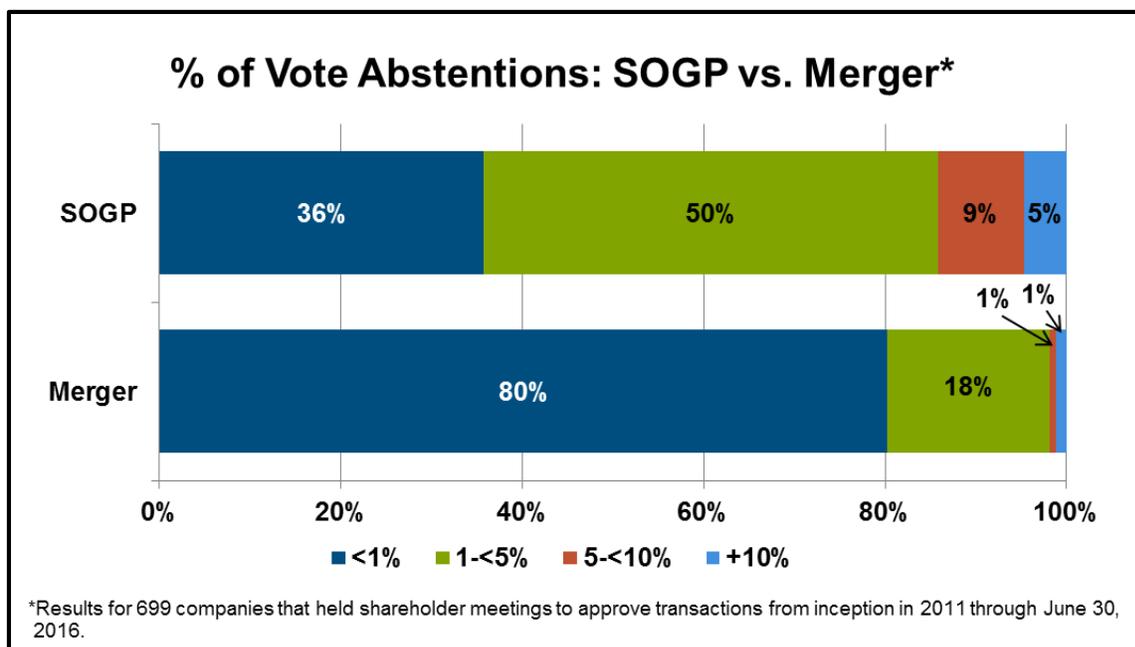
As of the end of June 2016, overall shareholder support for golden parachute proposals is holding ground. Since inception of the rules, about 70% of companies reporting results have received upwards of 80% approval (excluding abstentions) for SOGP proposals, and only 5% have received less than majority support.



Support of SOGP vs. Support for Merger and Abstentions

Support for transaction pay continues to lag behind shareholder support for transactions. Median support for merger transactions has been approximately 99% since inception, compared to about 89% median support for SOGP proposals. Moreover, although only 50 of the 699 companies with tabulated voting results received less than 90% overall shareholder support for their transaction, 382 received less than 90% support for the related SOGP measures.

And there has consistently been less interest by shareholders in SOGP vote outcomes. While there are typically few abstentions on merger votes, more than 5% of shareholders have abstained from the SOGP vote at about 14% of the companies.



Shareholder Advisory Voting Recommendations

Recommendations provided by shareholder advisory firms such as ISS Corporate Services (ISS) and Glass Lewis & Co. (Glass Lewis) can influence voting results.

ISS SOGP General Voting Guidelines

ISS's U.S. Proxy Voting Summary Guidelines in 2013 through 2016 have referred to the following "problematic" features that may contribute to a negative voting recommendation on golden parachute proposals:

- Single- or modified single-trigger cash severance
- Single-trigger acceleration of unvested equity awards
- Excessive cash severance (>3x base salary and bonus)
- Excise tax gross-ups triggered and payable (as opposed to a provision to provide excise tax gross-ups)
- Excessive golden parachute payments (on an absolute basis or as a percentage of transaction equity value)
- Recent amendments that incorporate any problematic features or recent actions (such as extraordinary equity grants) that may make packages so attractive as to influence merger agreements that may not be in the best interests of shareholders
- The company's assertion that a proposed transaction is conditioned on shareholder approval of the SOGP vote

The guidelines indicate that recent amendments that incorporate problematic features will tend to carry more weight in the overall analysis. However, the presence of multiple legacy problematic features will also be closely examined.

Glass Lewis SOGP General Voting Guidelines

While the ISS SOGP voting guidelines have been fairly transparent, Glass Lewis provides fewer specifics about their process. The Glass Lewis U.S. voting guidelines for the 2016 proxy season indicate that each golden parachute arrangement is evaluated on a *case-by-case basis*, taking into account the following relevant facts:

- The nature of the change-in-control (CIC) transaction
- The ultimate value of the CIC payments particularly compared to the value of the transaction
- Any excise tax gross-up obligations
- The tenure and position of the executives in question before and after the transaction
- Any new or amended employment agreements entered into in connection with the transaction
- The type of triggers involved (single vs. double)

In informal conversations (held in 2015) Glass Lewis representatives indicated that there are no factors that will result in automatic “Against” recommendations; evaluations are case-by-case and they have been making SOGP “Against” recommendations on roughly 15% to 19% of the transactions evaluated.

When evaluating SOGP proposals, Glass Lewis indicated they consider the following factors:

- The size of named executive officer (NEO) CIC payouts reported on an absolute basis, as a percentage of the transaction equity value, and/or as a percentage of any deal premium
- An NEO’s role post-closing
 - Clear disclosure in merger proxies indicating that an executive is not likely to receive double-trigger CIC payments is helpful
- New or amended agreements providing enhanced CIC payouts
 - New or enhanced CIC payouts entered into shortly prior to a deal announcement are viewed with skepticism, unless a clear business reason for enhancements is provided
- Triggering of excise tax gross-up provisions
 - Recently amended contracts providing for new excise tax gross-up rights are more heavily weighted
- The breakdown between single- and double-trigger CIC payouts
 - Double-trigger payouts are generally preferred by Glass Lewis
- Historical compensation-related concerns
 - Prior recommendations and reports prepared for prior annual say-on-pay voting are often reviewed



ISS Voting Results

ISS is more likely to make a negative vote recommendation on a SOGP proposal than for a say-on-pay measure. Since February 2013, ISS has recommended an “Against” vote recommendation approximately 23% of the time for SOGP proposals. This is significantly higher than the rate of negative voting recommendations for say-on-pay measures, which has been approximately 11%.

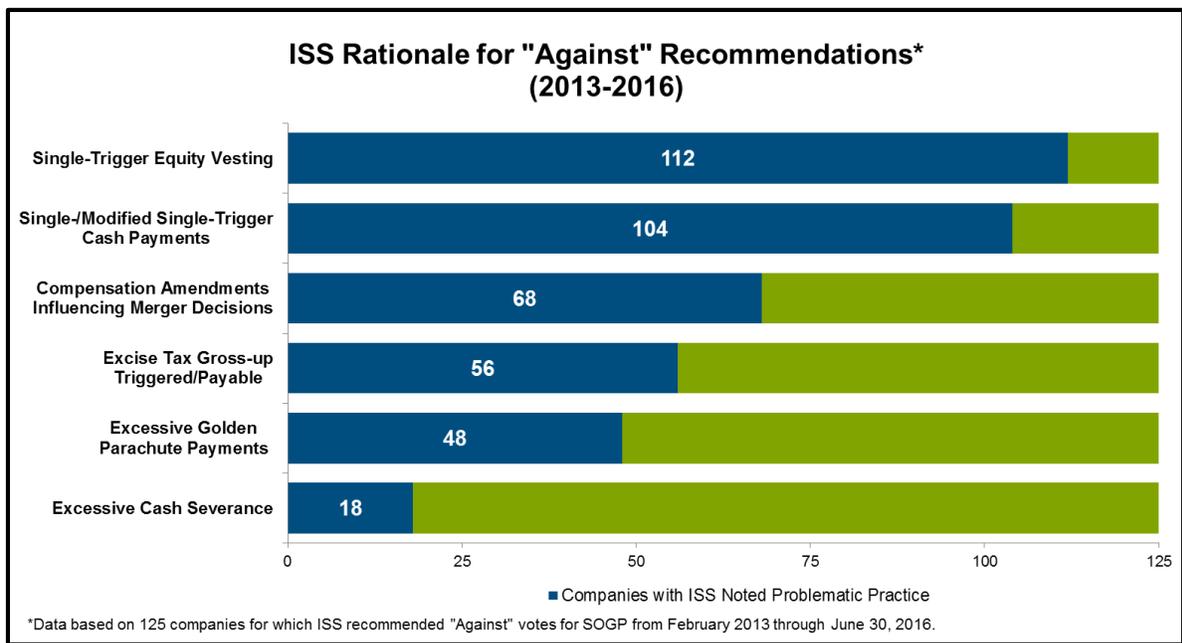
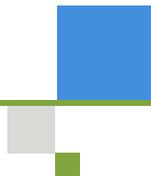
Most of the companies that received negative vote recommendations for SOGP proposals since February of 2013 had multiple problematic features.

| Prevalence of Problematic Pay Practices* | |
|---|---|
| Minimum | 1 |
| Average | 3 |
| Maximum | 6 |

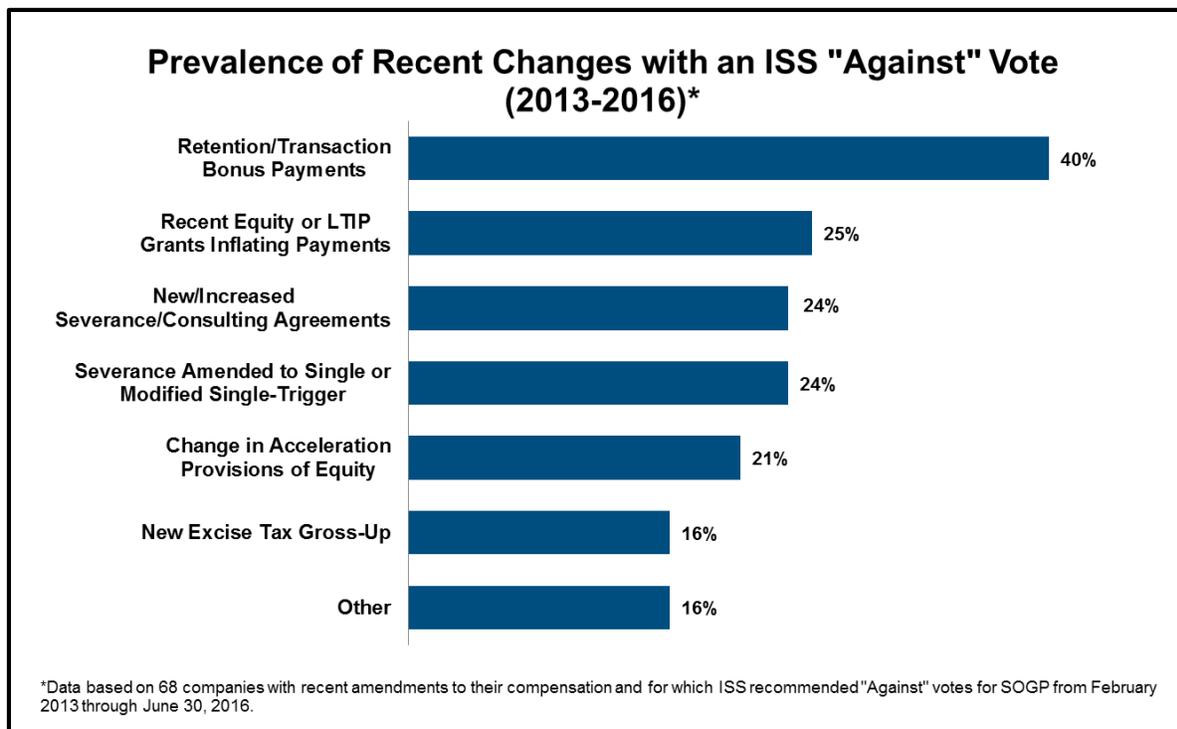
*Data based on 125 companies for which ISS recommended “Against” votes for SOGP from February 2013 through June 30, 2016.

Single-trigger equity acceleration has been the most frequently cited problematic pay feature from 2013 through June 2016, followed closely by the existence of single- or modified single-trigger cash payments. ISS continues to view single- or modified single-trigger payments as “windfalls” to NEOs that are not in the best interests of shareholders.

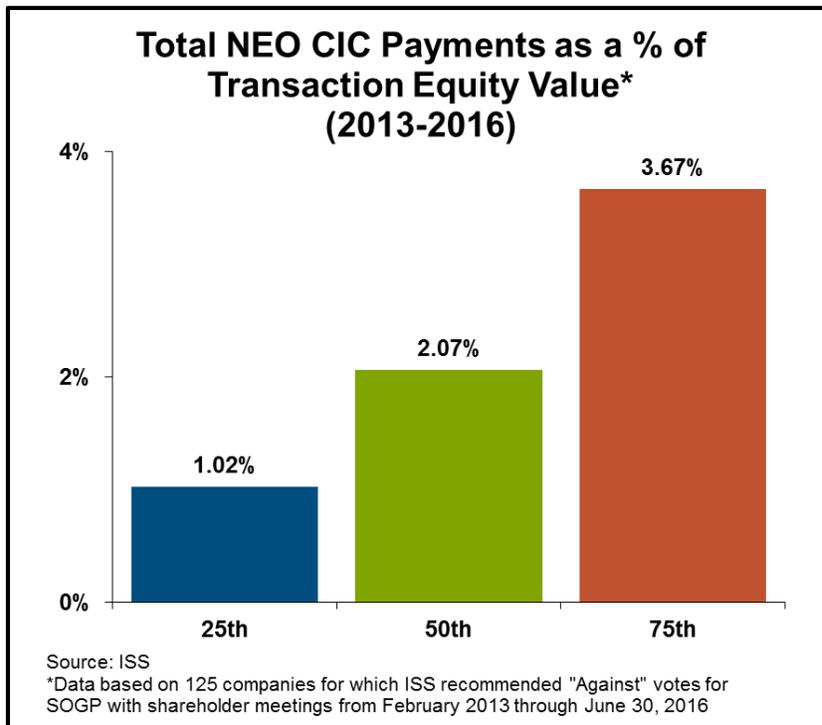
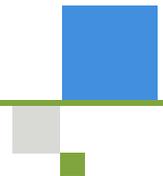
Single-trigger equity acceleration for most of these companies has been part of a pay package with multiple other problematic features.



ISS continues to be skeptical of recent amendments that incorporate problematic features, or recent actions that inflate SOGP pay. From inception of the rules in 2013 through June 2016, 68 of the 125 companies (54%) receiving "Against" vote recommendations reported recent changes. Out of these 68, 27 companies disclosed new, restructured, or amended agreements providing for new retention or transaction payments (in many cases in lieu of double-trigger CIC severance). In 17 cases, ISS cited concerns that recent equity or long-term incentive program (LTIP) grants had significantly increased the potential CIC pay, especially when disclosures for the grants were vague or missing. Out of these 68 companies, 11 had newly adopted or renewed agreements with excise tax gross-up provisions shortly before transaction announcements.



About 38% of the time that ISS makes an “Against” recommendation, ISS indicates that the golden parachute payments are excessive. When making their determinations, ISS looks at a variety of factors including the percentage of the transaction equity value provided for the total reported NEO payments, as well as the absolute value of one or more of the those payouts (relative to an executive’s annual compensation). However, it does not have “bright line” thresholds. As shown in the following exhibit, for the 125 companies that received negative vote recommendations from 2013 through the first half of 2016, payouts were 2.07% of the transaction equity value at the median.



About 46% of the companies with “Against” recommendations in 2013 through June 2016 had employment contracts with legacy excise tax gross-up provisions. Also, single-trigger vesting with an expectation of continued NEO employment post-transaction was cited as a contributing factor in about 38% of these “Against” recommendations.

Impact of Negative ISS Recommendations

The negative SOGP voting recommendations issued by ISS for companies with meetings in 2013 through the first half of 2016 does appear to have dampened the level of shareholder support received in those votes. While 21 companies received support from more than 80% of shareholders, 26 others failed to get majority shareholder support, and the remaining 78 companies received between 50% and 80% approval.

Conclusion

Thus far in 2016 (through June 30th), six companies (7.6%) have received less than majority support for their SOGP measures. This rate of failure is similar to what occurred in 2015, which, at the time, reflected the highest number of companies failing SOGP in any calendar year since inception of the disclosures. For the most part, however, shareholders continue to support SOGP proposals. About 70% of companies reporting results, since inception of the rules, have received upwards of 80% approval (excluding abstentions), and only 5% have received less than majority support.

Approval, in many instances, occurs despite institutional advisory recommendations for “Against” votes, which are occurring at a significantly higher rate than occurs for annual say-on-pay advisory voting. “Against” recommendations for SOGP measures appear to be triggered primarily due to plan features viewed by the shareholder advisory services as being unfriendly to shareholders, the magnitude of the potential costs of the arrangements, and recent enhancements to compensation arrangements.

Boards should be mindful of the issues shareholder advisory groups find concerning and consider revisiting their CIC agreements well in advance of an impending transaction. They should also be prepared for a possible “Against” vote recommendation regardless of whether any program changes are implemented prior the CIC.

Pearl Meyer will continue to provide updates that cover emerging trends and summary statistics for SOGP results.

About the Authors

Margaret Black is a managing director in the firm's Los Angeles office and has consulted for over 25 years in the field of tax and over 20 years on all aspects of compensation and benefits. She has particular expertise in compensation and benefits matters related to corporate acquisitions, divestitures and restructurings, as well as extensive experience with IRC Sections 280G, 409A, and 162(m) compliance.

Dan Wetzel, managing director and head of the firm's Los Angeles office, has more than 25 years consulting experience in the field of compensation and benefits, specializing in the area of executive compensation. He advises compensation committees and management 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 assessments and litigation, and compensation plan design during acquisitions and IPOs.

About Pearl Meyer

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