

Preparing for the 2014 Proxy Season

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Say-On-Pay

- SEC Rule 14a-21(a) requires issuers to hold a separate non-binding shareholder say-on-pay vote to approve or disapprove compensation of named executive officers (say-on-pay)
 - There are now 3 years of mandatory say-on-pay proxy precedents
- SEC rule 14a-21(b) requires a non-binding shareholder vote on whether say-on pay votes should occur every 1, 2 or 3 years (say-when-on-pay)
- SEC rule 14a-21(c) requires a non-binding shareholder vote on compensation when an acquisition, merger, consolidation or asset sale is being voted on (say-on-golden parachutes)

Say-On-Pay Vote

- Vote relates to approval of compensation of “named executive officers” (i.e., named in proxy compensation tables) generally as disclosed in the proxy statement, but not individual elements of compensation or corporate practice
- Say-on-pay must happen at least every 3 years, but is now typically an annual vote
- Vote results must be disclosed on Form 8-K within 4 business days of shareholders meeting
- Vote is “advisory” so cannot compel companies to do anything (although effect of significant shareholder disapproval, as well as ISS negative recommendations, will get companies’ attention)
- Item 402(b) of Reg. S-K requires companies to disclose in their CD&A whether they considered the results of the most recent shareholder say-on-pay vote and, if so, how that consideration affected executive compensation decisions and policies

Communicating with Shareholders

- Say-on-pay has promoted companies' communication with shareholders to convey important elements of compensation policy to shareholders and get shareholder input
 - Since vote itself does not reveal particular compensation issues, companies need shareholder reach-out to determine specific concerns
- Say-on-pay has heightened importance of such communications in view of potential negative recommendations by proxy advisers
- Key—Regular communication with shareholders throughout the year

2013 Say-on-Pay Russell 3000 Voting Results

- As of September 2013, 94% of Russell 3000 companies have passed all 3 years mandatory say-on-pay years, while 5% have passed in 2 years and failed in 1 year
 - Only 2.45% of Russell 3000 companies failed say-on-pay in 2013
- Of 57 companies that failed in 2012, all but 8 have passed through the beginning of September 2013
- Companies that received 50-70% in 2012 received 16% more support on average

Source: Semler Brossy 2013 Say-on-Pay Results (September 4)

Impact of Proxy Advisors on Vote Results

- ISS “against” recommendation did not necessarily lead to a failed say-on-pay vote
- ISS has recommended that shareholders vote “against” say-on-pay at about 13% of Russell 3000 companies it evaluated
- On average, shareholder support was 29% lower when ISS recommended a say-on-pay vote “against”

Source: Semler Brossy 2013 Say-on-Pay Results (September 4)

ISS Methodology

- ISS will generally recommend a vote “against” a company’s say-on-pay proposal if any of the following is true:
 - Significant misalignment between CEO compensation and company performance (pay-for-performance)
 - Maintaining significant problematic pay practices
 - Board exhibits poor communication and responsiveness to shareholders
- ISS may recommend votes “against” or “withhold” for compensation committee members and potential full board if no say-on-pay on ballot or if ISS sees issues with problematic compensation practices

ISS Peer Group Evaluations

- ISS selects peer group containing 14 to 24 companies based on
 - Industry classification of the company and its disclosed benchmarking peers
 - Revenue (sometimes asset) size
 - Market value
- For Russell 3000, ISS analyzes:
 - Relative alignment of CEO pay and total shareholder return (TSR) to those of ISS-selected peer group, measured over a 1 and 3 year period
 - Relative CEO total pay to peer group median
 - Absolute alignment of CEO pay vs. TSR over a 5-year period
- If ISS believes there is significant long-term pay-for-performance misalignment, or for non-Russell 3000 companies if ISS thinks misaligned pay and performance are otherwise suggested, ISS will look to a number of other qualitative factors

Issuer Challenges to ISS Say-on-Pay Recommendations

- Companies receiving a proxy advisory negative recommendation sometimes file a response as additional definitive materials with the SEC
- No requirement to make such a response, but if one is to be used it must be filed with the SEC
- Response not likely to reverse ISS recommendation

Responses to Failed Say-on-Pay Disclosures: Common Review Measures

- Compensation committee review of the company's compensation policy
- Directly contacting shareholders holding a significant percentage of shares
- Obtaining feedback from outside compensation consultant
- Talking with proxy advisory firms
- Improving explanation of policy to shareholders

Responses to Failed Say-on-Pay Disclosures: Common Changes

- Compensation that is more performance-based
- Amendments to long-term incentive plans, employment agreements and/or change in control agreements
- Eliminated tax gross-ups
- Peer group adjustments
- Adoption of compensation guidelines
- Reduced or eliminated perquisites
- No excessive retirement benefits

Responses to Failed Say-on-Pay Disclosures: Common Corporate Governance Changes

- Clawback policy
- Anti-hedging and anti-pledging policies
- Stock ownership and holding requirements
- Increased disclosure of revenue or other targets

Examples of Formats: Chesapeake Energy

Here are the highlights of what we heard and how we responded:

What we heard ...

The program needs more objective metrics and a framework for discretion. Shareholders prefer awards based on measurable improvements in performance against objective metrics considered to be key drivers of sustainable value creation, such as return on assets, return on equity, efficiency ratio, earnings per share, reductions in the assets of Citi Holdings, or Basel III capital accumulation. Relative total shareholder return was identified as a preferred long-term metric. However, investors generally opposed a purely formulaic approach, recognizing that mechanical calculations can (1) have unintended results, (2) be especially troublesome in the financial services industry where significant movements in capital markets affecting performance are outside the control of management, and (3) cause concerns from a risk management perspective.

How we responded ...

We designed a new program effective for 2013, structured around a more objective performance evaluation process, which was implemented in important respects for 2012. Incentive awards will be based on a scorecard of specific financial metrics and nonfinancial objectives, including risk and control metrics, for both Citi and its major lines of business. The Committee followed the principles embedded in the 2013 program when making decisions about 2012 incentive pay, including a review of 2012 revenue, profitability, return on assets, operating efficiency, as well as, in order to recognize the importance of strong risk-adjusted capital levels, the strengthening of our Basel III Tier 1 Common ratio. In addition, 30% of the overall incentive award for 2012 was granted in performance share units, which will only be earned at the end of 2015 based on relative total shareholder return versus peers and return on assets over a three-year period.

Examples of formats: Chiquita Brands

Stockholder Concerns	Prior Approach	Changes for 2013 Programs
Peer Group - inclusion of companies three and four times our revenue	Size of peers ranged from .52 to 4.2 times the size of Chiquita in terms of revenue	Size of peers now range from .50 to 2.3 times the size of Chiquita
	Chiquita was positioned at the 32 nd percentile relative to peer revenue	Chiquita is now positioned at the 45 th percentile relative to peer revenue
	Median revenue of peer group was \$4.6 billion	Median revenue of new peer group is now \$3.6 billion
	Certain peers had revenues more than 2 times Chiquita's	Removed all companies more than two times Chiquita revenues, other than Dole Food Company Inc., which is our direct competitor
		Total direct compensation for CEO reduced by approximately 10% using new peer group

Examples of formats: KForce

Modifications to 2012 NEO Compensation Plan	Explanation of Modification	Impact to 2012 Earned CEO Compensation
<p>Reductions:</p> <ul style="list-style-type: none"> Elimination of 2012 performance-based LTI scheduled to be granted on January 2, 2013 for the CEO only. 	<ul style="list-style-type: none"> Kforce grants LTIs (whether made in equity or cash) to its NEOs to help ensure the long-term success of Kforce, and to align executive and shareholder interests. LTIs are granted based on the achievement of pre-established performance goals approved by the Committee relating to Kforce's common stock performance relative to our pre-established industry peer group. The Committee used its negative discretion to conform to our objective of market median compensation and eliminated the LTI for the CEO for the 2012 performance period. 	\$(2,581,972) (1)

Examples of Formats: Pitney Bowes

- Use of large colored headings with narrative discussion below
 - We aligned the CEO annual incentive target with market competitive data and enhanced the rigor of our annual incentive objectives
 - We changed the type and mix of our long-term incentives and increased the performance-based component
 - We cancelled Mr. Martin's \$2 million special KEIP award
 - We revised our peer group
 - We enhanced disclosure on our Performance Targets
 - We eliminated the excise tax gross-ups
 - We reaffirmed our strong corporate governance practices

Examples of Format: Simon Property Group

Stockholder/Governance Friendly Aspects of the Current Program

WHAT WE DO



Pay for Performance. Heavy emphasis on performance-based compensation. Annual bonuses for 2012 and 2013 are performance funded and allocated based on qualitative performance considerations. Our long-term incentive plan is also 100% performance-based and is tied to rigorous absolute and relative stock price performance goals

WHAT WE DON'T DO



No Grants of Time-vested restricted stock or options to our NEOs.



No Excess Perquisites and No Gross-Ups. No supplemental executive retirement plans, company cars, club memberships or other significant perquisites

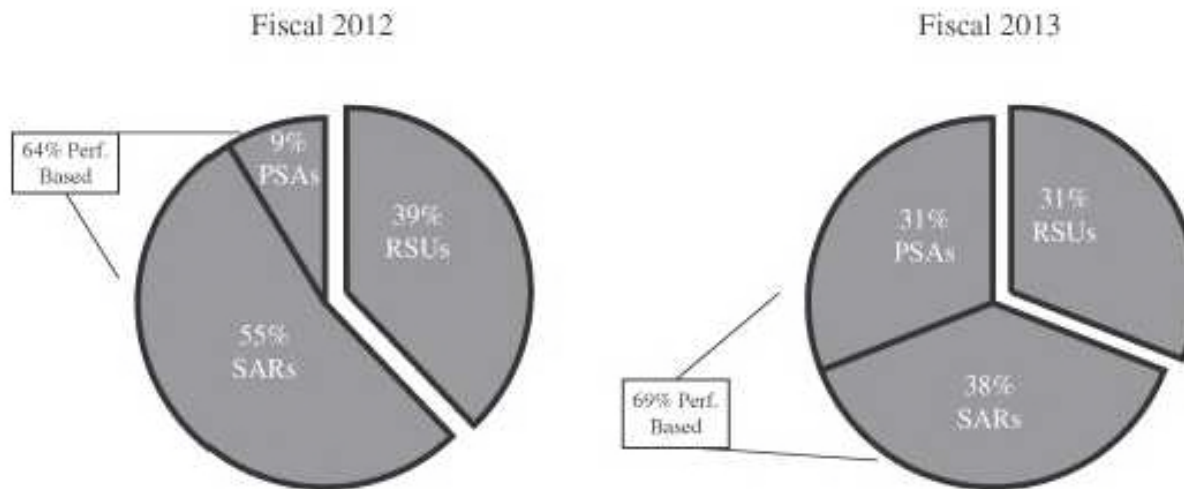


Limited Retirement and Health Benefits. The Company has never had a traditional or defined benefit plan.

Example of Format: Abercrombie & Fitch

- During Fiscal 2012, the Compensation Committee added PSAs to the mix of long-term incentives granted to the Executive Vice Presidents, with awards earned only if adjusted diluted EPS growth targets are achieved. For Fiscal 2013, the Compensation Committee increased the proportion of PSAs and SARs in the mix of long-term incentives to approximately 70% of the total value for the Executive Vice Presidents, and included PSAs in the mix of long-term incentives for officers below the Executive Vice President level.

**Grant Date Value of Long-Term Incentives
Granted to Executive Vice Presidents**



Compensation Discussion and Analysis

- Principles based
 - No boiler plate
- Clear discussions of performance targets
- Clear discussion of how compensation is calculated
- Peer group benchmarking discussion
 - Identify peer group
- Compensation risk
 - Not required to disclose absence of risk
 - Disclosure does not have to be in CD&A

Non-GAAP Disclosures in CD&A

- Target levels that are non-GAAP financial measures are not subject to Regulation G
 - Must disclose how the number is calculated from audited financial statements
- This approach is limited to CD&A disclosure of target levels and the disclosure of the actual results of the financial measure that is used as a target
- Other non-GAAP financial measures presented anywhere in the proxy statement are subject to the requirements of Regulation G
- For pay-related circumstances only, the required GAAP reconciliation and other information can be in a cross-referenced annex to the proxy statement
- If the non-GAAP financial measures are the same as those included in the Form 10-K, a prominent cross-reference to the Form 10-K pages containing the required GAAP reconciliation and other information is permitted

Effective Compensation Disclosure in Proxy Statement

- Use proxy summaries for better overview and comparisons of pay for performance relationship
- Use CD&A to “tell the story” about compensation decisions and rationale; avoid boilerplate descriptions
- Say-on-pay has increased the importance of using executive summaries in CD&A
- Use of “layered” narrative, highlighting critical aspects of compensation and pay for performance early in CD&A
- Companies are using graphs and charts to communicate the message more effectively
 - Disclosing TSR vs. CEO pay
 - Utilizing proxy performance graphs and variations thereof to address TSR
 - Utilizing graphs displaying pay and performance based on measures such as revenue and earnings per share growth

Say-on-Pay Litigation

- First wave – lawsuits were filed against a number of companies and their boards of directors where say-on-pay proposals failed to garner majority approval, alleging breaches of fiduciary duty
- Second wave – suits alleging insufficient compensation disclosures in the proxy statements, seeking to enjoin the shareholder vote unless the company provided additional compensation disclosures
- Third wave – lawsuits challenging specific compensation actions, for example, based on failure to comply with Section 162(m) of the Internal Revenue Code
- In addition to filed lawsuits, plaintiffs’ law firms have also announced “investigations” of executive compensation at a number of companies
- Publicity surrounding say-related lawsuits may have motivated more strenuous responses to negative ISS recommendations

Litigation Fact Pattern Allegations

- Pay not connected to performance despite pay for performance disclosures
- Negative vote on say-on-pay
- Company did not change compensation following vote
- Disclosure not adequate to permit vote
- Material omissions

Claims Raised by Litigation

- Directors breached duty of care and loyalty
- Misrepresentation/noncompliant disclosure in the proxy statement
- Failure to comply with Section 162(m)
- Corporate waste
- Consultants aided/abetted and/or breached contract
- Executives unjustly enriched

Level and Type of Litigation Risk

- Directors acting in good faith may be protected by the business judgment rule
- Dodd-Frank expressly provided that the say-on-pay vote
 - Was non-binding
 - Did not overrule decisions of the board of directors
 - Did not change fiduciary duties
 - Did not add fiduciary duties
- Reputational risk
- Costs of litigation and potential settlements, even if successfully defended
- Risk of annual meeting being enjoined could impact other corporate initiatives

Compensation Committee Member Independence

- Stock exchange listing standards were approved by the SEC in January 2013
- NYSE and Nasdaq adopted provisions that are very similar
- Provisions are also similar to the audit committee member independence requirements adopted pursuant to Sarbanes-Oxley
- One major difference is that Nasdaq now requires a listed company to have a compensation committee

Compensation Committee Adviser Requirements

- Compensation committees may select a consultant, counsel or other adviser only after taking into account:
 - The provision of other services to the company by the person that employs the adviser
 - The amount of fees received from the company to the employer of the adviser, as a percentage of total revenue
 - The policies and procedures of the employer of the adviser that are designed to prevent conflicts of interest
 - Any business or personal relationship of the adviser with a member of the compensation committee or any executive officer
 - Any stock of the company owned by the adviser

Compensation Committee Adviser Requirements (Cont'd.)

- A listed company is required to conduct an independence assessment with respect to any, direct or indirect, adviser, other than:
 - In-house counsel
 - Any adviser whose role is limited to
 - consulting on any broad-based plan that does not discriminate in scope, terms or operation in favor of executive officers or directors and that is generally available to all salaried employees
 - providing information that either is not customized for a particular company or that is customized based on parameters that are not developed by the adviser, and about which the adviser does not provide advice

Compensation Committee Adviser Requirements (Cont'd.)

- Provisions became effective on July 1, 2013
- Compliance with compensation committee member independence requirements not required until the earlier of
 - The first annual meeting after January 15, 2014
 - October 31, 2014

Open Dodd-Frank Disclosure and Related Provisions

- Pay-for-Performance
- Pay Ratio
- Hedging
- Clawbacks of Incentive-based Compensation
- Vote Reporting by Institutional Investment Managers

Pay Ratio Proposal

- Proposal would add paragraph (u) to Item 402 of Regulation S-K
- Companies would be required to disclose:
 - The median of the annual total compensation of all employees other than the CEO
 - The annual total compensation of the CEO
 - The ratio of the two amounts

Pay Ratio Proposal (Cont'd.)

- Comment period ends December 2, 2013
- First compliance not likely until 2016 proxy statement for calendar year end companies
- Disclosure would cover all employees of the company and its subsidiaries as of the last day of the prior fiscal year, no matter where employed, including part-time, temporary and seasonal employees
- Smaller reporting companies, emerging growth companies and foreign private issuers are exempt

Pay Ratio Proposal (Cont'd.)

- Companies have flexibility in selecting a method for determining the median of all employees other than the CEO
 - Annual total compensation for each employee
 - Payroll or tax records for determining the median employee
 - Statistical sampling
 - Other reasonable estimation
- But comparison used in disclosure must be based on annual total compensation

Pay Ratio Proposal (Cont'd.)

- Ratio can be expressed numerically or narratively
- Would need to include only a brief, non-technical overview of
 - the methodology used to identify the median
 - any material assumption, adjustments or estimates used
- Pay ratio disclosure would be considered filed

Iran Threat Reduction Act Disclosures

- Provision became effective in August of 2012
- Companies must disclose in their annual and quarterly reports whether it or any affiliate has knowingly engaged in certain sanctionable activities relating to Iran or certain citizens of Iran, whether or not those activities violated any provision of US law
- No materiality threshold
- Information considered filed

Iran Threat Reduction Act Disclosures (Cont'd.)

- The disclosure must include a description of each activity, specifying
 - The nature and extent of the activity
 - The gross revenues and net profits attributable to the activity, if any
 - Whether the issuer or affiliate intends to continue the activity

Conflict Minerals

- First Form SD due by May 15, 2014
- Recent SEC FAQs
 - Failure to timely file a Form SD will not impact Form S-3 eligibility
 - Packaging is not considered a part of the product
 - Purchasing generic components to include in a product requires a reasonable country of origin inquiry
 - Equipment used to provide a service does not trigger the disclosure obligations even if manufactured by the company
 - Resales of equipment used to manufacture a product do not trigger the disclosure obligations
- Update on Litigation

Shareholder Proposals in 2013

- Modest increase in shareholder proposal activity
- Governance-related proposals were the most commonly submitted, and were the most supported by shareholders
- On average, support for shareholder proposals declined
- Smaller number of shareholder proposals received majority support
- Vast majority of shareholder proposals directed to S&P 500 companies
- Shareholder and proxy advisor outreach

Receipt of Shareholder Proposal

- Rule 14a-8
- Initial assessment of proposal and proponent
- Check for technical deficiencies immediately
 - Verify ownership
 - 500 words or less
 - Is it late?
 - Other
- Respond to proponent within 14 days of receipt
- Opportunity to cure deficiency

Evaluation of Shareholder Proposal

- Evaluate whether any other grounds for exclusion exist:
 - Relates to ordinary business operations
 - Not relevant to the company's business
 - Substantially implemented
 - Company lacks power or authority to implement
 - Violates proxy rules
 - Improper under state law or violates the law
 - Involves personal claim or grievance
 - Other

Preparing the No-Action Request

- Deadline for submission – 80 days before definitive proxy
 - Otherwise, must obtain a waiver from SEC
- The No-Action request letter
 - Identify all plausible arguments for exclusion
 - Cite the most recent applicable authority
 - Submit to SEC and proponent (with other documentation)
- Proponent may submit rebuttal
- SEC may give proponent opportunity to cure deficiency

The Opposition Statement

- Must be sent to the proponent of the shareholder proposal not later than 30 days before the definitive proxy is filed
 - Prepare and send even if awaiting SEC no-action response
 - Shareholder proponent can object to false or misleading statements
- Research relevant proxy advisor voting policies and address in opposition statement
- Engage institutional shareholders and proxy advisors
- Consider whether additional soliciting materials should be prepared and filed

Likely Shareholder Proposal Topics – Political Spending / Lobbying

- *Citizens United* decision (U.S. Supreme Court – 2010)
- Remains the most popular shareholder proposal initiative
 - Represented approximately 20% of all shareholder proposals in 2013
 - Number of proposals roughly the same as 2012
- Lobbying proposals increased in 2013, while political contribution proposals decreased
- Political spending / lobbying proposals receive only modest support

Likely Shareholder Proposal Topics – Corporate Governance Issues

- Board declassification/annual director elections
- Majority voting
 - Those that failed were mostly at companies with plurality voting with a resignation policy
- Independent chairman
 - If strong alternative structure, shareholders not likely to approve
 - JPMorgan again successful in defeating proposal
- Action by written consent
 - Concerns about disenfranchisement of some shareholders

Likely Shareholder Proposal Topics - Corporate Governance Issues (Cont'd.)

- Special meetings
 - Seek to enhance shareholder ability to call special meetings
- Cumulative voting
 - Institutional shareholders generally not in favor
- Supermajority voting
 - Seeks to eliminate supermajority voting provisions

Likely Shareholder Proposal Topics – Environmental Issues

- Climate change
 - Typically a report on efforts to reduce greenhouse gas emissions
 - Also, financial risks arising from climate change, adoption of principles to stop global warming
- Sustainability
 - File reports on sustainability efforts
- Other environmental issues
 - Hydraulic fracturing, coal-related proposals, recycling, water scarcity, oil sands, toxic substances

Likely Shareholder Proposal Topics – Compensation Issues

- Limit acceleration of vesting of equity awards upon a change of control
 - 45 proposals submitted, only 27 voted on with an average of approximately 33% support
- Require executive officers to retain a percentage of stock awards through retirement
- Other proposals covered a variety of compensation issues

Proxy Access Proposals

- SEC Rule 14a-11
 - Would have required companies to include shareholder nominees for election to board in proxy statement
 - Vacated by the U.S. Court of Appeals for the District of Columbia
- Private Ordering
 - Rule 14a-8(i)(8) allows shareholders to propose proxy access procedures
 - Nabors, Verizon and CenturyLink (3% ownership over 3 years)
 - Fewer proxy access proposals in 2013

D&O Questionnaires

- Compensation Committee Independence
 - Any business or personal relationships with a compensation consultant retained, or proposed to be retained, by the company or the compensation committee?
 - Any consulting, advisory or other compensatory fee paid to the director by the company or any of its subsidiaries?
 - Is the director affiliated with the company, any of its subsidiaries, or an affiliate of any subsidiary?
- Iran Threat Reduction and Syria Human Rights Act of 2012
 - Inquire whether any director or officer has engaged in activities with respect to Iran or has knowledge of any company activities

E-Proxy

- Now five years old, and growing in popularity
- Is e-proxy right for your company? Consider:
 - Size of your shareholder base: Will e-proxy reduce costs?
 - Definitive proxy must be filed at least 40 days before meeting date
 - Factor in preliminary proxy filing, if applicable
 - Expect lower participation by your retail shareholders
 - Do you anticipate any “close” votes or quorum issues?
 - Shareholder proposals
 - Consider hybrid proxy delivery

Proxy Advisors

- Many institutional investors retain proxy advisor firms to make recommendations about how to vote
- Influence of proxy advisors varies:
 - Composition and voting profile of shareholder base
 - Divergence from proxy advisors on certain issues
- ISS and Glass Lewis publish voting policies with respect to compensation, governance, social responsibility and other matters

The Annual Meeting

- Meeting logistics – proper planning makes a big difference
 - Admission policy, registration and security
 - Manage media participation
 - Meeting script
- Rules of conduct are essential
- Dealing with floor proposals
- Dealing with disruptive members of the audience
 - Schedule Q&A at the very end of the meeting
- Shareholder proposal must be presented by proponent (or representative)

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Thank you

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