

**Disclosing Company Responses to Negative Say-on-Pay Votes****March 5, 2013**

As companies prepare their 2013 proxy statement disclosure for their advisory say-on-pay (“SOP”) votes, they should consider emphasizing actions taken following their 2012 SOP votes. This is especially true for companies that received negative results or did not meet or exceed a 70% favorable vote. As to the latter, Institutional Shareholder Services Inc. (“ISS”) has stated that, when a company receives less than 70% support on an SOP vote, it will take into account the company’s response to the vote when making its recommendation for the next year’s SOP proposal.

Attached please find a chart showing some of the responsive actions taken by the 29 companies that lost their SOP votes in 2011 and then won their SOP votes in 2012. Of course, there were many other factors that likely influenced the SOP results in 2012, including company performance, CEO compensation and ISS’s recommendation. It is likely, however, that the companies’ responsive actions after the 2011 votes and disclosure of these actions had some beneficial influence on ISS’s recommendation on the 2012 SOP vote and on the voting decisions of institutional shareholders.

As indicated on the chart, many companies are stepping up their engagement with shareholders on compensation issues. In addition, as reported in the *Wall Street Journal* this morning, many companies are also digging deeper into their retail shareholder base for support on SOP.

We recommend that companies consider the benefits of implementing some of the actions on the attached chart; to the extent a company has already implemented changes to its compensation policies that would be viewed favorably by ISS, institutional shareholders or other governance actors, we recommend that the company provide complete and clear disclosure about these changes.

We hope that this memo and the attached chart may be useful this year in further addressing executive compensation issues and also in drafting the Compensation Discussion and Analysis section in proxy statements. We are glad to discuss any of the foregoing with you.

Jim Hanks  
Mike Sheehan  
Daniel Mendelsohn

*This memorandum and the attached chart are provided for information purposes only and are not intended to provide legal advice. Such advice may be provided only after analysis of specific facts and circumstances and consideration of issues that may not be addressed in this document.*

RESPONSIVE ACTIONS OF COMPANIES  
FAILING SAY-ON-PAY VOTE IN 2011\*

Company (2011 % For, 2012 % For)	Stockholder outreach	Set any element of target compensation at or below peer group median	Hire new comp consultant	Freeze base salary, even though not contractually obligated to raise it	Eliminate any guaranteed cash bonus	Create more formulaic award system
1) Dex One (48, 98.9)	X			X		X
2) Blackbaud (44.7, 98.2)						
3) BioMed Realty (45.8, 97.8)	X		X	X	X	X
4) Intersil (44.2, 97.7)	X					X
5) Stewart Information (47.8, 96.8)	X		X		X	
6) Helix Energy (32, 96.6)	X		X	X		X
7) Jacobs Engineering (44.8, 96.2)	X					X
8) Superior Energy (39.2, 96.2)	X					
9) Curtiss-Wright (37, 95.6)				X		X
10) Beazer Homes USA (45.9, 95.4)	X	X	X			X
11) Umpqua Holdings (35, 95.4)	X		X			
12) Masco Corporation (44.6, 94.8)	x			X		X
13) Navigant Consulting (44.8, 94)	X					X
14) Monolithic Power (36.2, 93.6)	X		X			X
15) Stanley Black & Decker (38, 93)	X					
16) Cincinnati Bell (29.8, 88.7)						
17) Penn Virginia Corp (38.9, 87.4)	X	X				X
18) Shuffle Master, Inc. (44.5, 86.4)						
19) NVR, Inc. (43.9, 82)	X					
20) Premiere Global (47.3, 80.8)	X		X			
21) Hewlett-Packard (48.3, 77.2)	X	X		X	X	X
22) PICO Holdings (38.85, 72.79)	X					
23) M.D.C. Holdings (33.5, 72)	X	X	X	X		X

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24) Cogent Comm'ns (39.3, 68.3)	X					
25) Freeport-McMoRan Copper & Gold (45.5, 67.5)	X					
26) Nutri System (41.1, 63.7)	X	X	X		X	
27) Janus Capital Group (40.1, 61.3)	X	X	X			X
28) Cutera, Inc. (35.3, 55.4)	X		X	X		X
29) Weatherford Int'l (43.4, 54.3)	X		X	X	X	X

\*All company-specific information was taken from 2012 proxy statements, except voting percentage totals, which were taken from *Failed Say-on-Pay Votes: A Road Map to Recovery*, by Edward A. Hauder.

RESPONSIVE ACTIONS OF COMPANIES  
 FAILING SAY-ON-PAY VOTE IN 2011\*

Company (2011 % For, 2012 % For)	State pre-determined maximum for bonus	Increase % of awards based on set goals or TSR	Increase % of at-risk stock options	Use less time-based stock	Eliminate dividends on pre-vested performance stock units	Eliminate tax gross-ups	Adjust peer group closer to median
1) Dex One (48, 98.9)	X	X		X			
2) Blackbaud (44.7, 98.2)	X	X				X	
3) BioMed Realty (45.8, 97.8)		X	X	X	X	X	
4) Intersil (44.2, 97.7)		X	X	X		X	X
5) Stewart Information (47.8, 96.8)		X					
6) Helix Energy (32, 96.6)	X	X	X				
7) Jacobs Engineering (44.8, 96.2)		X	X			X	
8) Superior Energy (39.2, 96.2)							
9) Curtiss-Wright (37, 95.6)	X	X					
10) Beazer Homes USA (45.9, 95.4)		X	X			X	
11) Umpqua Holdings (35, 95.4)		X	X				
12) Masco Corporation (44.6, 94.8)	X					X	
13) Navigant Consulting (44.8, 94)	X	X	X			X	X
14) Monolithic Power (36.2, 93.6)	X	X		X			X
15) Stanley Black & Decker (38, 93)							
16) Cincinnati Bell (29.8, 88.7)							
17) Penn Virginia Corp (38.9, 87.4)	X	X		X			
18) Shuffle Master, Inc. (44.5, 86.4)							
19) NVR, Inc. (43.9, 82)							
20) Premiere Global (47.3, 80.8)		X				X	
21) Hewlett-Packard (48.3, 77.2)	X	X	X	X		X	
22) PICO Holdings (38.85, 72.79)		X					
23) M.D.C. Holdings (33.5, 72)		X					

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26) Nutri System (41.1, 63.7)	X	X				X	
27) Janus Capital Group (40.1, 61.3)	X	X					
28) Cutera, Inc. (35.3, 55.4)		X					
29) Weatherford Int'l (43.4, 54.3)		X				X	

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RESPONSIVE ACTIONS OF COMPANIES  
FAILING SAY-ON-PAY VOTE IN 2011\*

Company (2011 % For, 2012 % For)	Eliminate emp agreements	Reduce emp agreement change-in-control severance payments	Eliminate single-trigger emp agreement change-in-control provisions	Eliminate auto-renewal agreements	Implement or enhance stock ownership requirements	Adopt or enhance stock holding periods	Adopt clawback policy	Adopt anti-hedging policy
1) Dex One (48, 98.9)					X		X	
2) Blackbaud (44.7, 98.2)				X			X	
3) BioMed Realty (45.8, 97.8)	X						X	X
4) Intersil (44.2, 97.7)				X			X	
5) Stewart Information (47.8, 96.8)					X			
6) Helix Energy (32, 96.6)					X			X
7) Jacobs Engineering (44.8, 96.2)	X		X				X	
8) Superior Energy (39.2, 96.2)								
9) Curtiss-Wright (37, 95.6)			X					
10) Beazer Homes USA (45.9, 95.4)		X	X	X		X	X	
11) Umpqua Holdings (35, 95.4)					X	X		
12) Masco Corporation (44.6, 94.8)	X		X		X			
13) Navigant Consulting (44.8, 94)			X		X	X	X	
14) Monolithic Power (36.2, 93.6)					X		X	X
15) Stanley Black & Decker (38, 93)								
16) Cincinnati Bell (29.8, 88.7)								
17) Penn Virginia Corp (38.9, 87.4)								
18) Shuffle Master, Inc. (44.5, 86.4)			X					
19) NVR, Inc. (43.9, 82)								
20) Premiere Global (47.3, 80.8)					X		X	
21) Hewlett-Packard (48.3, 77.2)							X	
22) PICO Holdings (38.85, 72.79)			X		X		X	
23) M.D.C. Holdings (33.5, 72)			X		X			

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26) Nutri System (41.1, 63.7)			X		X		X	X
27) Janus Capital Group (40.1, 61.3)								
28) Cutera, Inc. (35.3, 55.4)					X			
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