SULLIVAN & CROMWELL LLP

2019 Proxy Season Review: Part 3

Say-on-Pay Votes and Equity Compensation Plan Approval

August 7, 2019

Continued strength on say-on-pay:

- **Public companies continued to perform strongly on say-on-pay, with support levels averaging over 90% and less than 3% of companies receiving less-than-majority support.**
- **Fewer than half of the companies who received less-than-majority support last year achieved over 70% support this year, suggesting low say-on-pay votes have become stickier.**
- **ISS negative recommendations on say-on-pay highlight the continued importance of the pay-for-performance assessment category, with the most important factor continuing to be the alignment of CEO pay with Total Shareholder Return (or TSR) in relation to the ISS-determined peer group.**
- **The most important qualitative factor was performance standards that are not deemed sufficiently rigorous by ISS or clearly explained.**

Broad shareholder support for equity compensation plans, with only two Russell 3000 companies failing to obtain shareholder approval for an equity compensation plan and overall support levels continuing to average around 90%.

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INTRODUCTION

Our annual proxy season review memo summarizes significant developments relating to the 2019 U.S. annual meeting proxy season. This year our review comprises three parts: Rule 14a-8 shareholder proposals submitted and voted, ISS negative recommendations and compensation-related matters. This is Part 3. Part 1, which focuses on Rule 14a-8 shareholder proposals, was published on July 12, 2019, and is available at Proxy Season Review Part 1. Part 2, which focuses on ISS negative recommendations for directors, was published on July 25, 2019, and is available at Proxy Season Review Part 2. Details regarding our annual webinar to discuss 2019 proxy season developments will be disseminated later this summer.

The data on say-on-pay negative recommendations derives from information provided by ISS summarizing the rationales with respect to the negative recommendations issued by ISS at annual meetings of Russell 3000 and S&P 500 companies through June 30, 2019. For a discussion of U.S. proxy contests and other shareholder activist campaigns, see our publication, dated March 14, 2019, entitled "Review and Analysis of 2018 U.S. Shareholder Activism."

More generally, for a comprehensive discussion of U.S. public company governance, disclosure and compensation, see the *Public Company Deskbook: Complying with Federal Governance and Disclosure Requirements* (Practising Law Institute) by our colleagues Bob Buckholz and Marc Trevino, available at 1-800-260-4754 (1-212-824-5700 from outside the United States) or http://www.pli.edu.

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PART 3. ISS SAY-ON-PAY VOTES AND EQUITY COMPENSATION PLAN APPROVAL

A. COMPANIES MAINTAIN STRONG SAY-ON-PAY PERFORMANCE

The following table summarizes the 2018 and 2019 say-on-pay voting results for meetings at S&P 500 and Russell 3000 companies through June 30, 2019.

	Russell 3000		***S&P 500***	
	2019	***2018***	***2019***	***2018***
Percentage passed (majority support)	***97%***	*97%*	***99%***	*98%*
Percentage with >70% support	***91%***	*91%*	***93%***	*93%*
Percentage with ISS “Against” recommendations	***13%***	*13%*	***11%***	*9%*
Average support with ISS “For” recommendations	***95%***	*95%*	***93%***	*94%*
Average support with ISS “Against” recommendations	***65%***	*66%*	***65%***	*63%*

U.S. companies, broadly speaking, had similar results on say-on-pay votes in 2019 as compared to 2018 and other recent years, with the vast majority of companies achieving high levels of support. In addition, say-on-pay results between the S&P 500 companies and the broader Russell 3000 companies remain largely consistent.

The percentage of failed votes (*i.e.*, votes with less-than-majority support) in 2019 to date is in line with 2018 as once again, very few say-on-pay votes overall came close to failing. The generally low rate of negative results is a result of the efforts that companies have made to engage with shareholders and address concerns through changes in compensation practices and clearer compensation disclosure. Companies, shareholders and shareholder advisory firms all have become more adept at effective off-season communications through which the company can obtain feedback on the most recent voting results, as well as set expectations and hear concerns for the coming year.

Although there continues to be significant year-over-year turnover in failed votes, the number of companies that failed their say-on-pay vote this year after also failing last year was notably high and could be the beginning of a trend from last year. Of the 54 companies that failed their say-on-pay votes in 2018 and have had their 2019 vote, only 35 achieved majority support in 2019, and only 25 had support levels over 70%.[1] Similarly, of the 51 companies in the Russell 3000 that failed say-on-pay votes in 2019 so far, 10 had failed their 2018 vote and 21 had 2018 support levels below 70%. (Of the six S&P 500 companies that failed say-on-pay in 2019 so far, four had support levels below 70% in 2018, with two failing their vote.) Although companies with failed votes generally have been able to be successful in

[1] As noted in Proxy Season Review Part 2, if a company receives less than 70% shareholder support for any director’s say-on-pay vote, ISS will conduct a qualitative review of the compensation committee’s responsiveness to shareholder opposition at the next annual meeting, which could lead to negative recommendations against the members of the compensation committee.

engaging in, and disclosing, shareholder outreach efforts and, as appropriate, implementing program changes in a way that brings high support levels in future years, recent results may suggest that low say-on-pay votes have become stickier.

Increasingly, year-round shareholder outreach has become a regular feature of corporate governance and shareholder relations for many public companies, facilitating an open dialogue between issuers and investors on compensation and other key topics. Shareholder outreach takes various forms at different companies, including face-to-face meetings, one-on-one phone calls, group conference calls and web meetings, and, in some cases, includes board members. Companies conducting such outreach must be mindful that company representatives may not disclose material non-public information in these discussions due to selective disclosure concerns under Regulation FD.

Companies should ensure that the appropriate personnel at institutional clients are involved in the discussions and the decision process—often institutional investors have both governance experts and investment professionals, each of whom will have critical input into the voting process, but may have differing views. Companies should also ensure that the appropriate company representatives are part of discussions with institutional investors. Board representation in discussions with large investors, especially on topics such as succession planning or executive compensation, may be appropriate but should be evaluated on a case-by-case basis, taking into account the purpose of the meeting and the preferences of the investor with whom the company is engaging. Lastly, companies should understand the audience with whom they're meeting and prepare accordingly. Often times, institutions will send representatives with a high degree of expertise and specialization and generalized presentations will not suffice.

Companies have increasingly engaged with proxy advisory firms in the off-season as well. ISS[2] and Glass Lewis[3] post their engagement policies on their websites. The policies of both firms restrict their ability to engage with companies during the solicitation period for the annual meeting, which means broader discussions with these firms must occur in the off-season.

As discussed in Parts 1 and 2 of our proxy season review this year, recommendations from proxy advisory firms continued to influence voting results this year, and the role of proxy advisory firms and their impact on shareholder voting continue to attract debate and legislative reform efforts. The Corporate Governance Reform and Transparency Act, which was approved by the U.S. House of Representatives in December 2017 but ultimately failed to pass, would have required proxy advisory firms to register with the

2 ISS's engagement policies are available at http://www.issgovernance.com/policy/EngagingWithISS.

3 Glass Lewis's engagement policies are available at http://www.glasslewis.com/for-issuers/glass-lewis-corporate-engagement-policy/.

SEC and provide issuers with greater opportunity to preview, and more time to respond to, the firms' reports. ISS and the Council of Institutional Investors responded negatively to the potential legislation, urging American voters to not support it through a website (www.ProtectShareholders.org) that has since been terminated. Additionally, the Corporate Governance Fairness Act was introduced in the Senate in November 2018 to amend the Investment Advisers Act of 1940. The Act, if passed, would require proxy advisory firms to register as investment advisers under the Investment Advisers Act, thus subjecting them to heightened SEC regulation, including periodic reviews of their conflicts of interest policies and whether they knowingly made false statements to clients. Furthermore, the SEC would be required to report to the Senate Banking Committee and House Financial Services Committee with recommendations for additional investor protections as they relate to proxy advisory firms. In his written testimony before the Senate Banking Committee in December 2018, Chairman Clayton stated that a key SEC initiative for 2019 would be improving the proxy process, specifically focusing on getting clarity into the analytical processes of proxy advisory firms, addressing conflicts of interest at the firms, and ensuring effective investor access to issuer responses to proxy advisory reports.[4]

The SEC has also indicated an interest in revising its own approach to proxy advisory firms. In September of 2018, the SEC revoked two no-action letters that addressed investment advisers' responsibilities in relation to proxy advisory firms. The two no-action letters (*Egan-Jones Proxy Services* (May 27, 2004) and *Institutional Shareholder Services, Inc.* (Sept. 15, 2004)) purported to allow investment advisers to satisfy their fiduciary duties to vote their clients' proxies by relying on the recommendation of independent third parties (*i.e.*, proxy advisory firms). While this position has been somewhat weakened as a result of subsequent staff legal bulletins, the two no-action letters remained in effect until September 2018. The staff provided notice of the withdrawal of the letters in September in order to facilitate a discussion of the proxy process at an SEC Staff Roundtable held in November.

While the SEC Staff Roundtable did not directly address potential efforts to regulate proxy advisory firms, Commissioner Elad Roisman has recently been tasked with leading the SEC's efforts at improving the proxy process, including addressing the relationship between investors and proxy advisory firms. In statements in March, Commissioner Roisman noted that the Commission should consider whether guidance would be helpful to asset managers as they consider how to utilize the services of proxy advisory firms and whether revisions to the proxy solicitation exemption are warranted with respect to proxy advisory firms. While it remains unclear what specifically the SEC could recommend as regulation or guidance, Commissioner Roisman has indicated that the SEC might issue new guidance regarding proxy advisory firms after the 2019 proxy season.

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4 Jay Clayton, Testimony on "Oversight of the U.S. Securities and Exchange Commission," *available at* https://www.banking.senate.gov/imo/media/doc/Clayton%20Testimony%2012-11-18.pdf.

For a more detailed discussion on trends in shareholder engagement, institutional investor influence and shareholder activism, see our publication, dated March 14, 2019, entitled "Review and Analysis of 2018 U.S. Shareholder Activism."

B. OVERALL ISS APPROACH ON SAY-ON-PAY EVALUATION

ISS has a multipronged approach to assessing executive compensation for the purposes of recommending a vote for or against the management say-on-pay proposal.[5] However, an analysis of ISS's 2019 negative recommendations for S&P 500 companies suggests that the most important criterion continues to be the pay-for-performance assessment, and that the most important factor under this pay-for-performance assessment is the alignment of CEO pay with Total Shareholder Return (or TSR) in relation to the ISS-determined peer group.[6]

ISS's policies provide that it will recommend a vote against a company's say-on-pay proposals if any of the following is true:

- there is a significant misalignment between CEO pay and company performance (pay-for-performance);
- the company maintains significant problematic pay practices (for example, excessive change-in-control or severance packages, benchmarking compensation above peer medians, repricing or backdating of options, or excessive perquisites or tax gross-ups); or
- the board exhibits a significant level of poor communication and responsiveness to shareholders.

ISS applies these standards by assigning companies a "high," "medium" or "low" level of concern for each of the five evaluation criteria listed in the following table, which shows the number of "high concerns"

5 Glass Lewis's executive compensation assessment policy appears to be less formulaic than ISS's, though Glass Lewis publicly discloses fewer details on its policy than does ISS. Based on Glass Lewis's published information, it evaluates compensation based on five factors: overall compensation structure, implementation and effectiveness of compensation programs, disclosure of executive compensation policies and procedures, amounts paid to executives and the link between pay and performance. In evaluating pay for performance, Glass Lewis looks at the compensation of the top five executive officers, not just the CEO. In addition, Glass Lewis looks at performance measures other than total shareholder return—it measures performance based on a variety of financial measures and industry-specific performance indicators. *See* http://www.glasslewis.com/wp-content/uploads/2018/10/2019_GUIDELINES_UnitedStates.pdf for more information.

6 Of the 46 S&P 500 companies that received negative ISS recommendations in 2019, nearly all warranted "high concern" on their pay-for-performance assessment, indicating a misalignment between CEO pay and company performance.

under each criterion for S&P 500 companies that received a negative say-on-pay recommendation from ISS in 2019:[7]

S&P 500 Companies with Negative ISS Recommendations	***2019***	***2018***
Total with negative recommendations	46	46
Number that had "high concern" on:		
• Pay-for-Performance	41	43
• Compensation Committee Communication and Responsiveness	8	3
• Severance/Change-in-Control Arrangements	6	4
• Peer Group Benchmarking	0	1
• Non-Performance-Based Pay Elements	3	4

These results indicate that, although pay-for-performance is just one factor in the overall compensation assessment, it is the dominant determinant of ISS's outcome on the say-on-pay vote. A more detailed discussion of ISS's pay-for-performance policies and how they were applied in 2019 follows.

C. ISS PAY-FOR-PERFORMANCE ANALYSIS

Since the 2012 proxy season, ISS's methodology for evaluating the pay-for-performance prong of its assessment of executive compensation in the context of say-on-pay proposals begins with a quantitative analysis of both relative and absolute alignment of pay-for-performance.[8] If the quantitative assessment reflects an apparent pay-for-performance disconnect (*i.e.*, a "high" or "medium" concern), ISS applies a qualitative analysis (as further discussed in Section C.3), including an in-depth review of the company's Compensation Discussion & Analysis, to "identify the probable causes of the misalignment and/or mitigating factors."

1. Components of Quantitative Analysis

In 2019, there are four components of ISS's quantitative assessment:

- ***Relative Degree of Alignment, or RDA (relative alignment of CEO pay and total shareholder return over three years).*** The metric that is given the greatest weight in the quantitative assessment is the alignment of CEO pay and TSR,[9] relative to those of a peer group. The relative alignment metric looks at the difference between (a) the percentile rank within the ISS-selected peer group of a company's TSR and (b) the percentile rank within that peer group of a company's CEO pay.[10] The company's score is based on this difference calculated on a three-year basis. The threshold for receiving "high concern" is a difference of

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7 The numbers for the categories add up to more than the total because some companies received "high concerns" in more than one category.

8 Technical information and guidance on ISS's say-on-pay methodology is available on the ISS website.

9 TSR measures how much an investment in the stock would have changed over the relevant period, assuming the reinvestment of dividends.

10 See Section C.3.a for a discussion of how "CEO pay" is calculated and some potential comparative problems this may cause.

50 percentile points or more. *As discussed below, this metric continues to be the strongest predictor of ISS recommendations and of overall voting results.*

- ***Multiple of Median, or MOM (relative CEO pay to peer group median over one year).*** The second relative component of the pay-for-performance assessment is prior-year CEO pay as a multiple of the peer group median. This metric considers pay independent of company performance. ISS's scoring system may trigger a "high concern" if this multiple is 3.33x or higher.
- ***Pay-TSR Alignment, or PTA (absolute alignment of CEO pay and TSR over five years).*** The third component measures alignment between the long-term trend in the CEO's pay and the company's shareholder returns over a five-year period. This does not depend on year-by-year sensitivity of CEO pay to changes in TSR, but instead compares the straight-line slopes of five-year trend lines (based on a linear regression) for each of CEO pay and TSR. A "high concern" may be triggered if the CEO pay trend slope exceeds the TSR trend slope by 35 percentage points or more.
- ***Financial Performance Assessment, or FPA (relative alignment of CEO pay and financial performance over three years).*** First introduced as part of the pay-for-performance qualitative evaluation in 2017, this relative measure compares the percentile ranks of a company's CEO pay and financial performance across three or four financial metrics, relative to the ISS-selected peer group, over the prior three-year period. As of 2018, the FPA measure has been added to the quantitative assessment and is applied as a secondary measure after the traditional three components (RDA, MOM and PTA) have been calculated. The FPA uses three or four of the following financial measures, depending on the company's industry: return on invested capital, return on assets, return on equity, EBITDA growth and cash flow. Performance is measured using the 12 most recent trailing quarters. The weighted average performance rank is compared to the company's CEO pay rank, similarly to the RDA. Additionally, ISS considered modifying its pay-for-performance quantitative evaluation to replace GAAP-based metrics with Economic Value Added (EVA) metrics but ultimately chose not to issue a final policy update with this modification in the FPA screen for 2019. ISS stated that it will continue exploring the potential for future use of EVA measures and will phase in EVA measures in ISS research reports over the 2019 proxy season.[11]

The "medium concern" and "high concern" thresholds for non-S&P 500 companies are summarized as follows:

Primary Quantitative Measure	***Medium Concern Threshold***	***High Concern Threshold***
Relative Degree of Alignment	-40	-50
Multiple of Median	2.33x	3.33x
Pay-TSR Alignment	-20%	-35%

For S&P 500 companies, the only difference in concern thresholds compared to non-S&P 500 companies is the lower MOM medium concern threshold, which is 2.00x. Use of the lower threshold is likely the result of intensified investor scrutiny on the escalating CEO compensation among large-cap companies.

Primary Quantitative Measure	***Medium Concern Threshold***	***High Concern Threshold***

[11] ISS, U.S. Compensation Policies: Frequently Asked Questions, Dec. 20, 2018 (https://www.issgovernance.com/file/policy/latest/americas/US-Compensation-Policies-FAQ.pdf).

Relative Degree of Alignment	-40	-50
Multiple of Median	***2.00x***	3.33x
Pay-TSR Alignment	-20%	-35%

Based on the preceding, ISS will assign an initial quantitative score (ISS may deem multiple "medium concern" levels as the equivalent of an overall "high" quantitative concern). ISS then applies the FPA score as a potential modifier. The FPA will modify the initial score only if a company has either (a) a medium concern or (b) a low concern that borders on a medium concern threshold under one of the three primary measures.

2. 2019 Results of ISS Quantitative Analysis

The following table summarizes the outcome of these quantitative tests for S&P 500 companies that received a negative ISS recommendation on say-on-pay in 2019:

	2019			***2018***		
S&P 500 Companies with Concern Level	***High***	***Medium***	***Low***	***High***	***Medium***	***Low***
Overall pay-for-performance concern level (quantitative + qualitative)	*26*	*1*	*3*	*30*	*1*	*2*
Overall concern level on quantitative screen only	*27*	*11*	*8*	*30*	*12*	*4*
Number that had "high concern" on each quantitative test:						
• RDA – Relative Alignment of CEO Pay and TSR (3-year)	*20*	*6*	*20*	*25*	*9*	*12*
• MOM – Relative CEO Pay to Peer Group Median (1-year)	*8*	*5*	*33*	*7*	*10*	*29*
• PTA – Absolute Alignment of CEO Pay and TSR (5-year)	*2*	*5*	*39*	*3*	*3*	*40*

Impact of FPA on S&P 500 Company Concern Level	***2019***	***2018***
Remain High Concern	*27*	*30*
Remain Medium Concern	*0*	*0*
Remain Low Concern	*7*	*4*
Move from Low Concern to Medium Concern	*4*	*4*

As the first table indicates, 43% of the S&P 500 companies that received negative ISS recommendations had a "high concern" on the RDA test, the highest correlation of any individual quantitative factor. In contrast, most of these companies had "low concern" on the MOM and PTA tests.

Based on our review, FPA continues to not have a significant impact on ISS's analysis of the pay-for-performance concerns it identified. Thirty-four companies remained at the same level of concern as where they were following the RDA, MOM, and PTA tests. FPA only impacted ISS's concern level with respect to four companies, which had FPA scores ranging from -46.7 to -55.3 and were moved from low to medium concern. These results reflect the continued importance of the three-year relative TSR alignment test in driving ISS recommendations.

3. ISS Qualitative Analysis

If ISS's quantitative analysis reflects an apparent pay-for-performance disconnect, then ISS uses a further qualitative review to determine a final vote recommendation. Under ISS's policies, the qualitative review takes into account a range of factors, including:

- the ratio of performance-based equity awards to time-based equity awards;
- the overall ratio of performance-based compensation to total compensation;
- the completeness of disclosure and rigor of performance goals;
- peer group benchmarking practices;
- financial and operational performance (both absolute and relative to peers);
- realizable pay compared to grant pay; and
- any special circumstances, such as a new CEO or anomalous equity grant practices.

Based on our review of the narrative in the relevant ISS reports, the qualitative factor that most commonly contributed to the negative recommendation for S&P 500 companies in 2019 was the failure of incentive compensation to be sufficiently performance-based in one or more of the ways described below. This concern was discussed by ISS for 36 of the 46 S&P 500 companies that received negative ISS recommendations on say-on-pay. This is perhaps not surprising, because it would seem to be closely related to the pay-for-performance alignment that the quantitative tests are intended to address. ISS's identified concerns in this regard generally fall into the following categories (with most companies receiving more than one of these concerns):

- ***The use of performance conditions that are not sufficiently rigorous, or insufficient disclosure of performance goals*.** Even if a company does utilize performance-based awards, ISS will see the awards as problematic if ISS views the goals as too easy to meet, or if the goals are not disclosed in sufficient detail for ISS to make an assessment. Twenty-nine of the 46 S&P 500 companies receiving negative ISS recommendations were identified as either having performance standards that were not sufficiently rigorous or were limited, opaque or undisclosed.
- ***The use of above-target payouts*.** ISS referenced the existence of payouts that exceeded the company's target in 14 of the 46 cases. ISS viewed these above-target payouts as suggestive of weak performance standards, or, at least, the need for the company to closely examine its performance standards.
- ***The use of subjective criteria for determining compensation*.** ISS cited the use of subjective criteria for the determination of a bonus or the ability to use discretion to increase an executive's bonus as a negative factor for 17 of the 46 companies. ISS viewed companies using these discretionary measures as excusing poor performance. While ISS did cite these provisions with approval when companies elected to use this discretion to reduce the size of an award, these cases were rare and ISS largely viewed discretion as suspect.
- ***The use of time-based awards rather than performance-based awards*.** ISS identified this concern at 10 of the 46 S&P 500 companies that received negative recommendations. ISS's failure to consider time-vested option awards or other equity awards to be performance-based has been the subject of criticism because such awards can give the holders a stake in

the performance of the company and align the interests of executives with those of shareholders.

4. ISS Non-Performance-Related Factors

ISS's qualitative assessment takes into account various non-performance-related factors that can trigger a negative recommendation even where a company does not have a "high concern" on pay-for-performance. Fifteen of the 46 S&P companies that received negative recommendations had a "high concern" for one or more non-performance-related issues. The most common non-performance-related "high concern" in 2019, applicable to eight of these companies, was compensation committee communication and responsiveness, specifically poor responsiveness to shareholders on say-on-pay votes and what the ISS perceived as a lack of adequate disclosure. While as a general matter, companies have improved say-on-pay disclosures and are actively engaging with shareholders on executive pay matters, in light of this data, companies ought to conduct shareholder outreach throughout the year to better understand shareholders' concerns, particularly following mediocre say-on-pay voting results. The second most common non-performance-related "high concern," affecting six of the companies, was problematic severance benefits related to a change in control of the company or voluntary terminations of named executive officers that were not in shareholder interests. In addition, two of the companies received a negative recommendation because they had provided excessive perquisites, such as payment of large personal security expenses for the CEO and provision of large personal use of corporate aircraft to named executive officers.

D. EQUITY COMPENSATION PLAN APPROVALS

	ADOPTION OR AMENDMENT OF OMNIBUS STOCK PLANS			
	Russell 3000		***S&P 500***	
	2019 YTD	***2018***	***2019 YTD***	***2018***
Number of proposals voted on	***503***	552	***76***	78
Percentage with ISS "against" recommendations	***25%***	23%	***12%***	9%
Average level of support with ISS "for" recommendations	***93%***	92%	***93%***	93%
Average level of support with ISS "against" recommendations	***76%***	79%	***80%***	80%
Number of failed proposals (<50% support)	***2***	2	***0***	0

U.S. listed companies are required under stock exchange rules to obtain shareholder approval for the plans under which they award executive compensation to employees and directors.[12] Because shareholders generally support the use of equity compensation by public companies as a means to align the interests of employees with those of investors, in most cases these proposals are uncontroversial and pass by a wide margin. As indicated in the chart above, the average support levels for these proposals are typically around 90% and only two proposals failed to achieve majority support this year.

12 *See* Section 303A.08 of the NYSE Listed Company Manual; Nasdaq Stock Market Rule 5635.

Beginning in 2015, ISS introduced an "equity scorecard" approach to assessing equity plans. The scorecard method, in which the passing scores remain at 55 for the S&P 500 model and 53 for the Russell 3000 model in the 2019 policy, considers factors under three main categories:[13]

- ***Plan cost.*** Cost is calculated as the Shareholder Value Transfer relative to industry/market-cap peers; this measures the dilutive effect of the new shares requested as well as shares remaining for issuance under existing plans (often called "dilution" or "overhang"), and is calculated both with and without outstanding unvested awards.
- ***Plan features.*** Specifically, penalizing lack of minimum vesting periods, broad discretionary vesting authority, liberal share recycling, lack of specific disclosure regarding change-in-control provisions, and the ability to pay dividends prior to the vesting of the underlying award.
- ***Grant practices.*** Specifically, three-year "burn rate" relative to market and industry peers, among other factors.

ISS recommended against around 25% of equity plan proposals in the case of Russell 3000 companies, but recommended against only 12% in the case of S&P 500 companies; this difference is likely due to the impact of the larger public float on the plan cost and the movement away from problematic plan features. ISS recommendations have a fairly significant impact on voting results—in 2019, the average support level was 93% when ISS recommended "for" approval and 76% when ISS recommended "against."

ISS issued "against" recommendations for only nine equity plan proposals at S&P 500 companies so far in 2019. For most of these companies, ISS cited excessive plan cost and broad discretionary accelerated vesting authority among the reasons for its negative recommendation. Other common reasons included excessive burn rate, inadequate disclosure of change-in-control vesting provisions, and liberal share recycling.

Despite the negative recommendations, all of the proposals at S&P 500 companies (and almost all proposals at Russell 3000 companies) received majority support.

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13 ISS's current equity plan scorecard approach is described in its U.S. Equity Compensation Plans: Frequently Asked Questions. Certain egregious equity plan features may result in a negative ISS recommendation, regardless of the "equity scorecard." These egregious features include, for example, "a liberal change-of-control definition that could result in vesting of awards by any trigger other than a full double trigger."

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