

EXECUTIVE LAW & REGULATORY GROUP | GRIST

SAY-ON-PAY RESULTS CONSISTENT WITH PRIOR YEARS

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As of mid-July, shareholder support for executive pay programs remains strong and consistent with most prior years. Votes continue to average about 90% in favor of companies' executive pay programs, with 75% of all-size companies and 78% of S&P 500 companies reporting say-on-pay support of 90% or higher. The rate of companies that failed to receive majority support in 2019 continues to hover around just 2%, which is also consistent with prior years.

Since say-on-pay voting became mandatory in 2011, 407 companies have failed to receive majority support at least once. But the vast majority of those companies — 336 or 83% — failed only once. Most companies see a say-on-pay failure as an indication that shareholders find fault with some aspect of the pay program. In response, companies typically engage with shareholders to address concerns, making pay program changes and documenting them in the proxy statement for the next year.

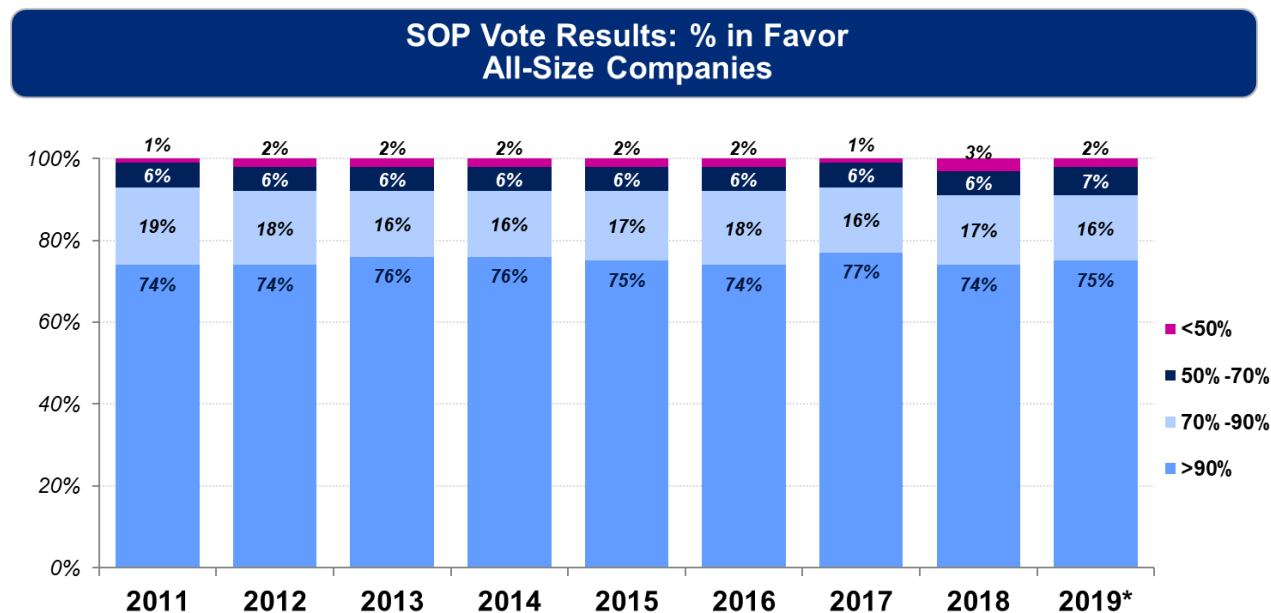
So far this year, proxy adviser Institutional Shareholder Services (ISS) has recommended voting "against" 13% of companies' pay programs as of mid-July, slightly lower than the percentage at this point last year but higher than the level in earlier years. Negative recommendations continue to be more prevalent for smaller companies (14%) than for the S&P 500 (11%).

EXHIBITS

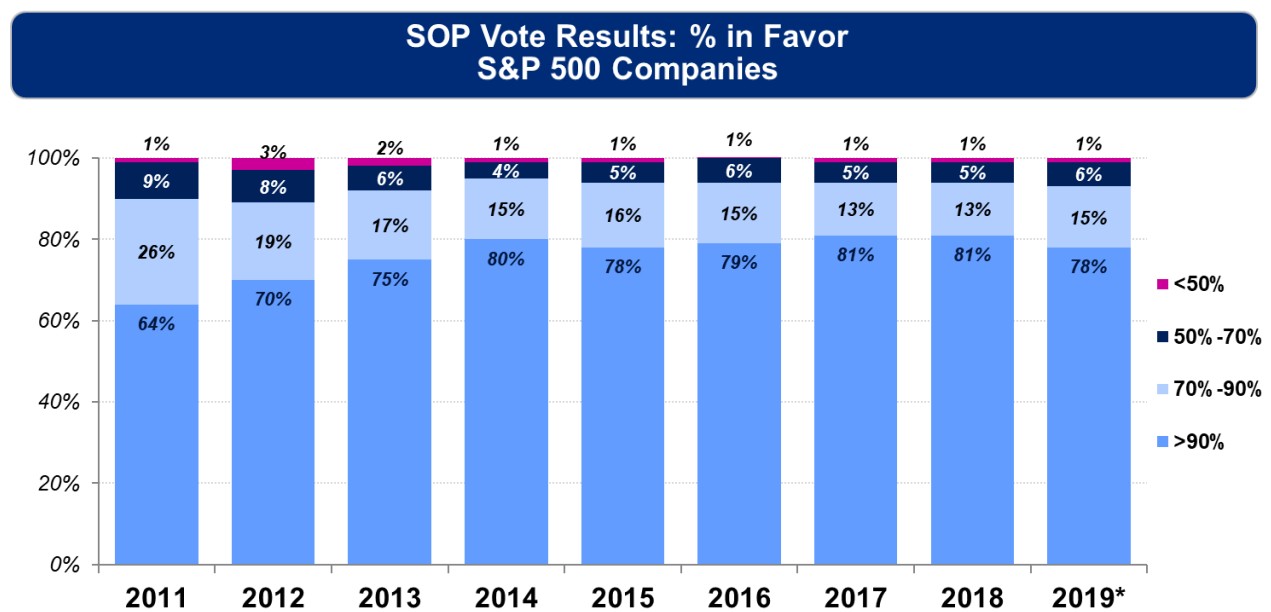
1. [Say-on-Pay Summary Results, 2011–2019](#)
2. [Companies With 2019 Say-on-Pay Failures and Prior-Year Results](#)
3. [2019 ISS Say-on-Pay Recommendations and Vote Results](#)
4. [Summary of Companies That Failed Say on Pay at Least Once Since 2011](#)

Note: Mercer is not engaged in the practice of law or accounting, and this article does not constitute and is not a substitute for legal, tax or accounting advice. Mercer recommends securing the advice of legal or tax counsel or accounting firms regarding any such matters related to this article.

EXHIBIT 1: SAY-ON-PAY SUMMARY RESULTS, 2011-2019



All-Size Companies” are all companies followed by ISS that have reported SOP vote results in US proxies. The companies total approximately 2,500 as of July 12, 2019; 2,800 in 2018; 3,100 in 2017; 2,900 in 2016 and 2015; 3,300 in 2014; 3,200 in 2013; and 2,000 in 2012 and 2011.



* As of July 12, 2019

EXHIBIT 2: COMPANIES WITH 2019 SAY-ON-PAY FAILURES AND PRIOR-YEAR RESULTS AS OF JULY 12, 2019

Votes "for" the following companies' say-on-pay (SOP) proposals came to less than 50% (as indicated by shading) of total votes cast in 2019. Percentages shown are based on how companies compute and report their vote results, which may count abstentions and/or broker non-votes as "against."

2019 say-on-pay failures and prior-year vote results

Companies	% in favor		Companies	% in favor	
	2019	2018		2019	2018
2U, Inc.	38.3%	95.2%	Netflix, Inc. *	49.8%	61.1%
Advaxis, Inc.	49.0%	N/A	New Media Investment Group, Inc.	23.7%	52.0%
AGCO Corp.	33.1%	94.2%	Nexstar Media Group, Inc.	48.9%	39.5%
Align Technology, Inc. *	42.5%	95.3%	Nuance Communications, Inc.	47.0%	9.5%
Alkermes Plc	35.2%	98.0%	PeerStream, Inc.	19.2% ¹	N/A
Ameriprise Financial, Inc. *	33.9%	25.3%	Proofpoint, Inc.	18.2%	N/A
Applied Optoelectronics, Inc.	47.5%	89.8%	PTC, Inc.	41.7%	92.8%
ASGN, Inc.	35.7%	90.7%	Puma Biotechnology, Inc.	27.4%	79.2%
At Home Group, Inc.	49.6%	N/A	QEP Resources, Inc.	47.2%	84.9%
Avaya Holdings Corp.	49.9%	N/A	Rayonier Advanced Materials, Inc.	39.6%	80.8%
Boston Beer Co., Inc.	44.2%	82.0%	Real Goods Solar, Inc.	41.1% ¹	N/A
CenturyLink, Inc. *	40.6%	79.3%	SandRidge Energy, Inc.	19.1%	12.3%
Citizens, Inc. (Austin, Texas)	44.4%	99.3%	ServiceSource International, Inc.	35.3%	52.0%
Diebold Nixdorf, Inc.	46.4%	90.4%	Signature Bank (New York, New York)	38.3%	65.2%
Digimarc Corp.	47.5%	42.0%	South Jersey Industries, Inc.	44.7%	97.6%
FleetCor Technologies, Inc. *	25.7%	14.3%	SPAR Group, Inc.	4.6% ¹	99.8%
Frontier Communications Corp.	43.7%	83.1%	SS&C Technologies Holdings, Inc.	42.0%	66.4%
FuelCell Energy, Inc.	48.4%	65.6%	The Middleby Corp.	46.2%	66.4%
HC2 Holdings, Inc.	48.8%	81.8%	Tribune Media Co.	49.4%	55.7%
Hercules Capital, Inc.	47.5%	93.4%	Tutor Perini Corp.	36.6%	38.0%
IMAX Corp.	39.3%	43.2%	Tyler Technologies, Inc.	47.4%	76.5%
ImmunoGen, Inc.	9.6%	91.1%	United Therapeutics Corp.	26.9%	74.5%
iStar, Inc.	43.2%	39.8%	Varonis Systems, Inc.	33.4%	93.5%
Kilroy Realty Corp.	15.4%	59.1%	Vector Group Ltd.	49.1%	51.5%
LendingClub Corp.	45.8%	95.1%	Westwater Resources, Inc.	46.7%	47.2%
Mallinckrodt Plc	36.6%	58.9%	Willdan Group, Inc.	45.5%	86.8%
MEDNAX, Inc.	12.6%	73.8%	Williams-Sonoma, Inc.	39.6%	82.8%
Nabors Industries Ltd.	47.3%	40.7%	Xerox Corp. *	40.2%	64.3%
NCR Corp.	36.2%	96.6%	Xperi Corp.	38.0%	74.1%
Total failures: 58					

* Company is included in S&P 500 Index.

⁽¹⁾ Company failed despite ISS "for" recommendation

EXHIBIT 3: 2019 ISS SAY-ON-PAY RECOMMENDATIONS AND VOTE RESULTS AS OF JULY 12, 2019

All companies (2019)

ISS recommendation	Vote results		
	Pass	Fail	Total
For	2,189	3	2,192
Against	281	55	336
Total	2,470	58	2,528

Source: Institutional Shareholder Services Inc.
Includes all companies reporting say-on-pay vote results in US proxies.

S&P 500 companies (2019)

ISS recommendation	Vote results		
	Pass	Fail	Total
For	376	0	376
Against	40	6	46
Total	416	6	422

Source: Institutional Shareholder Services Inc.
Includes all S&P 500 companies reporting say-on-pay vote results in US proxies.

All companies except the S&P 500 (2019)

ISS recommendation	Vote results		
	Pass	Fail	Total
For	1,813	3	1,816
Against	241	49	290
Total	2,054	52	2,106

Source: Institutional Shareholder Services Inc.
Includes all companies except the S&P 500 reporting say-on-pay vote results in US proxies.

ISS say-on-pay recommendations and failure rates (2019)

	All	S&P 500	All except S&P 500
% of total cos. ISS recommended "against"	13.3%	10.9%	13.8%
% of "against" say-on-pay proposals that failed	16.4%	13.0%	16.9%
% of total cos. with say-on-pay failures	2.3%	1.4%	2.5%

EXHIBIT 4: SUMMARY OF COMPANIES THAT FAILED SAY ON PAY AT LEAST ONCE SINCE 2011 AS OF JULY 12, 2019

Companies that failed say-on-pay in at least one year				
Number of years failed	Number of companies (all)	Number of S&P 500 companies	Number of companies other than S&P 500	
1	336	33	303	
2	49	6	43	
3	11	1	10	
4	4	1	3	
5	2	0	2	
6	3	1	2	
7	1	0	1	
8	0	0	0	
9	1	0	1	
Total	407	42	365	

Note: A blue bracket groups the 'Number of companies (all)' for years 2 through 9, with a box containing the number 71.