



RADFORD REVIEW

Mobilizing the Right Team to Respond to a Negative Say-on-Pay Recommendation

The News is Not Good, Now What?

Every company dreads the delivery of a negative Say-on-Pay recommendation from leading proxy advisory firms such as Institutional Shareholder Services (ISS) or Glass Lewis. The news always seems to hit suddenly and with little time to spare before shareholders make their final voting decisions. As a result, when negative recommendations do arrive, many companies go into full-blown panic mode. They attempt to parse through mountains of data, seek advice from every direction, and hastily patch together a supplemental proxy filing with fractured input across multiple departments. It's a whirlwind process, and quite frankly, the final outputs frequently lack sharp focus.

In reality, a negative recommendation from ISS or Glass Lewis is not a death sentence for most Say-on-Pay proposals, nor is it a time for panic. While there are no shortcuts for avoiding several days of hard work when proxy advisors send bad news your way, responding to their criticism through additional SEC disclosures and direct shareholder engagement can be a focused process if companies mobilize the right forces at the right time in the right manner.

Mobilizing the Right Team

To successfully prepare a forceful reply to a negative Say-on-Pay recommendation, particularly via a supplemental proxy statement, companies need to lean on a large number of internal and external resources. As such, getting these resources to work together with clearly defined roles over a compressed time frame is of paramount importance. In our experience, establishing transparent roles for each of the key participants described below is the first critical step companies can take to achieve positive outcomes at annual shareholder meetings.

Outside Counsel

Looking back at the companies we've supported this year, our most successful clients kicked-off their Say-on-Pay defenses by placing outside counsel firmly in command of the supplemental proxy document. This does not mean outside counsel should formulate the grand strategy of the response in isolation or even bear the brunt of such efforts. Rather, they should serve as the final repository for all incoming analyses and act as the ultimate manager for producing a final filing. Specifically, outside counsel should be on the hook for providing templates, maintaining version control, tracking information flow, and keeping disparate teams focused on

deadlines. Beyond these fundamentals, outside counsel can certainly lend plenty of strategic thinking, share document drafting duties with your compensation consultant, and ensure an overall consistent writing style. In some cases, inside counsel can manage these tasks as well; however, leveraging the experience of outside counsel is a plus when time is short given their wider exposure to other companies facing similar issues.

Compensation Consultants

With a manager in place to oversee the document, the next critical piece of the puzzle becomes your compensation consultant. That may sound self-serving, but responding to a negative Say-on-Pay recommendation is truly one of the best opportunities to test the analytical and strategic capabilities of your consultant. Compensation consultants should be counted on to plan the primary thrust of your response (both from a qualitative and quantitative perspective) and they need to provide enough analytical firepower to move the needle in the minds of shareholders. Most importantly, consultants must be able to translate their analytical work into a coherent and well-communicated argument. The requirement to transform your side of the story from compelling data into compelling words cannot be overstated. Shareholders don't want to see spreadsheets; they want to read well-crafted, fact-based responses and speak to company leaders directly. For these reasons, compensation consultants should be looked to write significant sections of the supplemental proxy filing.

Proxy Solicitors

Although outside counsel and compensation consultants carry a majority of the workload at the front-end of the response process, proxy solicitors are the individuals who help companies take their side of the story directly to shareholders. Once document preparation is underway, proxy solicitors can get ahead of the game by pinpointing investors most likely to be swayed by your arguments and by arranging one-on-one shareholder meetings. Proxy solicitors should also be expected to provide guidance on the arguments most likely to move shareholder positions. If they know certain tactics won't work with some investor groups, this must be communicated to the full team as soon as possible. Teeing up proxy solicitors to review draft disclosures is also a worthwhile exercise. In terms of word count, proxy solicitors usually add little, but the insights they bring to the table can carry serious weight.

Internal Teams and Key Company Stakeholders

Every company is structured differently, so there are no clear-cut rules on dividing the workload between inside counsel, human resources and finance, but in aggregate, internal teams have a big role to play. First and foremost, internal teams need to keep key company stakeholders involved and informed throughout the supplemental filing process. These stakeholders may include the CEO, the CFO and the Chairman of the Board, but should always include the Compensation Committee Chair. Beyond vetting final documents, these corporate leaders may be called on to make quick decisions involving the design of pay programs or the implementation of new corporate governance policies. Although rare, the sooner internal leaders are brought up to speed on all possible scenarios, the more informed their final decisions will be when making any last-minute program changes. Additionally, there may be times when the CEO, the CFO or the Compensation Committee Chair serve as the voice of the company when speaking to the shareholders. So again, keeping key stakeholders informed is critical. Beyond managing stakeholder involvement, internal teams also add valuable insights into the thinking behind compensation decisions by providing critical data points and current assessments of corporate performance.

Putting the Final Roster Together

In aggregate, Say-on-Pay response teams often include 10 or more individuals working together across five to six distinct organizations and company departments. This makes clearly communicating the roles of each participant described above incredibly important. Companies that make an effort to transparently define responsibilities at the start of the response process will save time, avoid duplicated work and ultimately end-up with a more robust and coherent argument. Furthermore, by mobilizing an organized, high-quality response to Say-on-Pay criticism, companies will gain increased respect from shareholder groups that could pay dividends

down the road. Below, Figure 1 provides a high-level summary of the roles and responsibilities for key response team members.

Figure 1 – Building an Effective Response Team for Negative Say-on-Pay Recommendations

| Key Participants | Primary Role | Core Responsibilities |
|---|---|--|
| Outside Counsel | Document Control Center | <ul style="list-style-type: none"> > Overall document/version control > Information repository > Drafting support |
| Compensation Consultant | Analytic Firepower and Argument Development | <ul style="list-style-type: none"> > Analytic review (e.g. modeling various ISS testing outcomes) > Developing core arguments > Drafting support |
| Proxy Solicitor | Shareholder Engagement | <ul style="list-style-type: none"> > Identifying undecided and/or key shareholder groups > Knowledge of effective tactics > Arranging shareholder meetings |
| Internal Teams | Stakeholder Communication/ Data Gathering | <ul style="list-style-type: none"> > Securing key stakeholder input (e.g. Compensation Committee Chair) > Providing background data and insights on key pay decisions |
| Company Stakeholders (CEO, CC Chair, etc.) | Program Adjustments/ Shareholder Communication (secondary) | <ul style="list-style-type: none"> > Final document review > Approval of any new compensation programs or corporate governance practices |

Next Steps

Developing a sound Say-on-Pay response team has added benefits beyond organization. It allows companies to get over the initial shock of bad news by helping internal staff focus their efforts in a positive direction from the start. Once clients have a solid support team in place, company leaders can feel reassured that appropriate measures will be taken quickly. From there, teams can next focus on the specific details on their Say-on-Pay defense, a topic which we discuss in detail in additional Radford Reviews. To learn more about the latest developments in corporate governance and Say-on-Pay trends, we encourage clients to visit Radford’s Executive Compensation Governance Center at <http://www.ExecCompGov.com/>.

About the Authors

To contact the authors of this article, please write to David Knopping at dknopping@radford.com or Alex Cwirko-Godycki at acwirko@radford.com. David is an Associate Partner in Radford’s San Francisco office and Alex is a Senior Manager of Content Strategy and Research in Radford’s San Francisco office.

Contact Us

For more information, please contact:

Boston Office

Ed Speidel, Partner

+1 (508) 628-1552

espeidel@radford.com

Ted Buyniski, Partner

+1 (508) 628-1553

tbyniski@radford.com

Rob Surdel, Associate Partner

+1 (508) 628-1551

rsurdel@radford.com

New York Office

Ram Kumar, Director

+1 (212) 441-2007

rkumar@radford.com

San Diego Office

Ken Wechsler, Director

+1 (858) 755-8675

ken.wechsler@radford.com

San Francisco Office

Linda Amuso, President

+1 (415) 486-7255

lamuso@radford.com

David Knopping, Associate Partner

+1 (415) 486-7122

dknopping@radford.com

San Jose Office

Brett Harsen, Associate Partner

+1 (408) 321-2547

bharsen@radford.com

Press Contact

Alex Cwirko-Godycki

+1 (415) 486-6973

acwirko@radford.com

Locations

Bangalore, Beijing, Boston, Brussels, Chicago, Frankfurt, Hong Kong, London, New York, Philadelphia, San Francisco, Shanghai and Singapore

About Radford

Radford is the industry leader, providing advice and benchmarking to technology and life sciences companies to address their toughest HR and rewards challenges: attracting, engaging and retaining talent. Our advisors provide industry-specific expertise, applying an analytical approach that integrates market data, trends and our experience in working with more than 2,000 companies – from Global 1000 firms to start-ups – to balance the needs of executives, employees and shareholders. Our advice is customized to a client's unique situation to ensure your rewards programs are not just competitive - but can be a competitive advantage.

Radford's uniquely data-driven perspective is why more technology and life sciences companies, and their Board of Directors and Compensation Committee, trust Radford for compensation data and advice than any other firm. Radford clients rely upon our global survey databases of nearly five million incumbents for real-time insight on total compensation levels, practices and emerging trends to inform their HR and reward strategies.

Headquartered in San Jose, CA, we have professionals in Bangalore, Beijing, Boston, Brussels, Chicago, Frankfurt, Hong Kong, London, New York, Philadelphia, San Francisco, Shanghai and Singapore. Radford is an Aon Hewitt company. Visit www.radford.com, or for more information, contact info.rad@radford.com.

About Aon Hewitt

[Aon Hewitt](http://www.aonhewitt.com) is the global leader in human resource solutions. The company partners with organizations to solve their most complex benefits, talent and related financial challenges, and improve business performance. [Aon Hewitt](http://www.aonhewitt.com) designs, implements, communicates and administers a wide range of human capital, retirement, investment management, health care, compensation and talent management strategies. With more than 29,000 professionals in 90 countries, [Aon Hewitt](http://www.aonhewitt.com) makes the world a better place to work for clients and their employees. For more information on [Aon Hewitt](http://www.aonhewitt.com), please visit www.aonhewitt.com.

About Aon

[Aon](http://www.aon.com) plc (NYSE: AON) is the leading global provider of [risk management](#), [insurance](#) and [reinsurance](#) brokerage, and [human resources](#) solutions and [outsourcing](#) services. Through its more than 61,000 colleagues worldwide, Aon unites to empower results for clients in over 120 countries via innovative and effective risk and people solutions and through industry-leading global resources and technical expertise. Aon has been named repeatedly as the world's best broker, best insurance intermediary, reinsurance intermediary, captives manager and best employee benefits consulting firm by multiple industry sources. Visit www.aon.com for more information on Aon and www.aon.com/manchesterunited to learn about Aon's global partnership and shirt sponsorship with [Manchester United](http://www.manchesterunited.com).