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Failed Say-on-Pay Votes: A Road Map to Recovery



BY EDWARD A. HAUDER

Now that the second proxy season of mandatory, nonbinding votes on the approval of executive compensation (say-on-pay or SOP) has come to an end and smaller reporting companies will be required to comply with the SOP requirements starting with the 2013 proxy season,¹ it is a good time to look back at companies that failed to secure majority support for their SOP proposals and see what they did to turn things around the following year. By definition, we're limited to looking at those companies whose SOP votes failed during the 2011 proxy season so we can then see how their SOP votes fared in 2012.

Suggestions for Recovery From a Failed SOP Vote

Before we look at how the companies with failed SOP votes in 2011 fared in 2012, let's first look at look at typical steps and practical suggestions for companies to

¹ Smaller reporting companies are not subject to SOP requirements until the first annual or other meeting of shareholders at which directors will be elected and that require Item 402 executive compensation disclosures occurring on or after Jan. 21, 2013; *Shareholder Approval of Executive Compensation and Golden Parachute Compensation*, SEC Release No. 33-9178, April 4, 2011, available at: <http://www.sec.gov/rules/final/2011/33-9178.pdf>; hereafter "SEC Release No. 33-9178."

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take and consider as they try to recover from a failed SOP vote.

1. Understand What Drove Shareholders to Vote Against the Proposal. Reach out to top shareholders to discuss the failed SOP vote. Discuss the primary reason for their failure to support the SOP proposal. In doing so, be sure you understand what issues the proxy advisory firms raised in making their SOP vote recommendations and be ready to discuss how shareholders viewed them. Make sure to explain how the company has looked at pay and performance and why it thought the two were aligned. Ensure that this is a fact-finding discussion and that the company wants to clearly understand what shareholders do not like so that the company can consider how to best address the issue. Additionally, once the discussions have concluded, the company should make it known that it will follow through with shareholders, as discussed below.

Some of the key drivers of failed SOP votes have been:

- poor stock-price performance and perceived high chief executive officer (and executive) pay,
- magnitude of the CEO's pay,
- structural issues with executive compensation program design,
- perceived poor corporate governance/pay practices,
- lack of attention to current best practices with respect to executive compensation,
- poor disclosure of rationale for pay decisions, and
- use of an inappropriate peer group.

2. Determine a Course of Action. Determine what can be done to address the following issues and decide when changes will be implemented:

■ **Poor stock price performance and high CEO pay—a pay-for-performance disconnect.** Unless the CEO's pay was redesigned prior to the failed SOP vote to better align with stock-price performance, the company likely will need to revisit the design of the CEO's pay package, e.g., introduction of a total shareholder return (TSR) or relative TSR goal for one or more elements of compensation, and ensure that the majority (if not all) of the CEO's equity grants are viewed by shareholders as performance-based and tied, in whole or in

part, to stock-price performance. If the company's stock-price performance has been poor, the best way to increase the likelihood that shareholders will support next year's SOP vote is to ensure the revised design will *only* pay out if the shareholders benefit from an increased stock price.

Some commentators have said that the SOP vote is nothing more than a referendum on a company's stock-price performance. Based on my experience, this appears to be true in some situations and likely influences the receptivity of shareholders to arguments that pay and performance are aligned. When the stock price is soaring to new highs (or at least above the price the shareholder paid for its stake), it seems that shareholders are happy and generally not too concerned with executive pay unless it is deemed excessive (typically defined in terms of "I know it when I see it").

A chairman whose company's SOP vote failed told me that several shareholders called to say they supported management and the direction of the company, and were even buying more shares, but they would be voting against the company's SOP proposal. Why? They were dissatisfied with the current stock price. They said that, if they voted against the company's SOP proposal, they knew the chairman would do everything in his power to increase the stock price by the next annual shareholders meeting and SOP vote.

In working with clients during the past few years, my experience has been that, once the current stock price dips below the point at which a shareholder bought into the company, the less receptive he or she is to arguments that pay and performance are aligned and, consequently, the shareholder is less likely to support the SOP proposal.

■ **Magnitude of CEO's pay.** Unless current-year CEO pay is on track to be *substantially less* (a decline of total compensation as disclosed in the Summary Compensation Table of about 30 percent),² figure out what elements of compensation need to be revised and/or reduced.

This will not be an easy undertaking. It could require modifying or canceling (much less common) compensation (usually equity compensation, because it is such a large component of most CEO's pay packages). Some companies whose SOP votes failed because of CEO pay magnitude went down the path of reducing CEO pay (or at least aggressively pursuing that goal) and found it sometimes was difficult to balance the desires of shareholders for lower pay with CEOs' expectations that were set when they were hired. This is especially true if the company had been performing at record levels. For example, Freeport-McMoRan Copper & Gold Inc. had this issue with perceived high pay, despite its stellar performance, and ended up capping and reducing executive pay.³ Another company, Nutrisystem, was renegotiating the employment agreement with its CEO, but

² Based on the author's research of companies with failed 2011 SOP votes that had their 2012 SOP votes pass. See Figure 2, *Change in CEO Total Compensation 2009 to 2010 and 2010 to 2011*, below.

³ See pages 28-29 of Freeport-McMoRan Copper & Gold Inc.'s proxy statement filed April 27, available at: <http://www.sec.gov/Archives/edgar/data/831259/000119312512191204/0001193125-12-191204-index.htm> for an

apparently the company was not successful and ended up conducting a search for a new CEO instead.⁴

■ **Structural issues with executive compensation program design.** If structural issues were one of the reasons given for nonsupport of the SOP proposal, look at how this might be remedied. For example, if the issue was that company used the same performance goal for both the annual and long-term incentive plans, use different metrics for each; if the issue was that the long-term incentives used a performance period of less than three years, figure out how you can use a three-year performance period, even if you have to do a series of one-year performance goals that also have a cumulative three-year component (note that proxy advisers aren't very fond of this design, but it is better than a single one-year performance period). This may require some creativity to come up with metrics that are sufficiently distinct but that also support the company's short- and long-term strategic goals. In my experience, this can be done if everyone approaches the compensation design with a blank slate and asks what the company is trying to achieve and how compensation can be designed to support those goals over the short and long term.

■ **Perceived poor corporate governance/pay practices.** If the issues cited were lack of certain good corporate governance practices, such as lack of a clawback policy, lack of a hedging or pledging policy, lack of executive and/or director stock ownership guidelines or something similar, then figure out how to implement those policies before the current year ends. Implementing a clawback policy without final regulations from the Securities and Exchange Commission on the Dodd-Frank Wall Street Reform and Consumer Protection Act requirements⁵ will be a bit tricky, but investors and proxy advisory firms appear to have lost patience with the answer that a company is waiting for SEC to propose and adopt final rules for clawbacks. These types of issues are generally the "low hanging fruit" that a company can implement before current year-end to help build the case that it heard what shareholders said and took action to address their concerns. This is particularly difficult in the context of compensation, because most of the significant compensation decisions for the year were made before shareholders even voted on the SOP proposal.

■ **Lack of attention to current best practices with respect to executive compensation.** The proxy advisory firms generally specify which best practices are lacking. A company with a failed SOP vote would be wise to take steps to implement as many of these best practices as possible before current year-end. The types of best practices that are often found lacking include the corporate governance practices detailed above, as well as having combined CEO and chairman roles (often difficult to separate absent a change in CEO), no holding requirement for equity awards received from the company, staggered director elections, and not utilizing an annual vote frequency for the SOP vote.

overview of changes made as a result of the vote on its 2011 SOP proposal.

⁴ See page 15 of Nutrisystem Inc.'s proxy statement filed July 27, available at: <http://www.sec.gov/Archives/edgar/data/1096376/000119312512319801/d375853ddef14a.htm>

⁵ Section 954 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

■ **Poor disclosure of rationale for pay decisions.** This issue encompasses lack of full and complete disclosure about how the company arrived at the compensation paid. The most common criticism by proxy advisers in their SOP analyses has been that, in making pay decisions, companies weren't telling shareholders *how* company performance was factored in and what specific items were considered. In some cases, shareholders are looking for disclosure that goes beyond what is required by the proxy disclosure rules. To address this, companies should review their entire compensation discussion and analysis (CD&A) and ensure it adequately communicates the relationship between pay and performance, how the company made its pay decisions, and what it weighed in its final analysis of performance. Often this will necessitate revising proxy disclosures to go beyond compliance-focused disclosures and adopting a shareholder-understanding perspective.

To succeed with this task, it is helpful to increase the use of charts, graphs, and tables that make it easier for readers to quickly review and grasp information. Companies also are starting to include summary recaps of their performance at the beginning of their CD&As, along with a discussion of how this performance influenced their pay decisions during the past year. Finally, some companies have introduced an executive compensation summary toward the front of their proxy statements that seeks to further summarize the relationship between executive pay during the past year and company performance. These can all be effective, but it takes some work to come up with a disclosure that shareholders will view as responsive and useful, while not giving away too much that might place the company at a competitive disadvantage.

The proxy disclosures should also ensure that all issues from the prior year's SOP failure are addressed in a summary fashion. The disclosures should be easy to read and understand and address what the company did in response to the issues raised, what it has not done, and what (if anything) it will do with regard to any remaining unaddressed issues. In this context, I note the companies with failed SOP votes in *both* 2011 and 2012 seemed more likely to offer up they were still "working on" addressing issues identified by shareholders in association with their 2011 SOP vote failures. Therefore, to the extent a company wishes to increase the likelihood that its subsequent SOP vote is supported, it may wish to actually implement such changes rather than indicate it plans on doing so (see examples above of the types of issues shareholders appear to want action completed for the next annual shareholders' meeting).

■ **Use of an inappropriate peer group.** In some cases, shareholders (and proxy advisory firms) may think the company used a peer group that included inappropriate companies. Often they object because the included company was substantially larger than the subject company.

As a rule of thumb, peer group companies should be within about 0.5 times to 2.0 times the subject company's revenues and about 0.2 times to 5.0 times of the subject company's market capitalization. Hopefully, the subject company is at or about at the median of the key metrics being used to select the peers, including revenue and market capitalization.

If there are outlier companies, the rationale for their inclusion in the peer group should be re-examined. If still valid to include such companies in the peer group, then the rationale for doing so should be clearly set forth in the proxy statement so shareholders can understand the decision to include these companies. If, after review, a company decides it no longer makes sense to include such an outsized company as a peer, then it should ensure the resulting peer group after removing the company is well-balanced and appropriate. This process should then be discussed in next year's proxy statement so shareholders understand what was done in response to their concerns about the peer group.

3. Reach Out to Top Shareholders. Follow up with top shareholders to discuss what the company learned from the preliminary discussions (see Step 1, above), what the company decided to do, and, to the extent appropriate, ask for further input on any items the company has not yet finalized. Consider reaching out to the proxy advisory firms (Institutional Shareholder Services and Glass Lewis) to discuss the steps taken by the company to understand what drove shareholders to reject the SOP proposal, what the company heard in its discussions with top shareholders, and the changes it will make, if any, as a result both to current and future pay.

4. Revise Next Year's Proxy Disclosures. In next year's proxy, lay out what was done as a result of the previous year's failed SOP vote. In the CD&A, include a discussion that details the failed SOP vote, the company's discussions with top shareholders, what the company learned as a result of these discussions, and what changes it made to its executive compensation program—the CEO's pay in particular—including actions taken for the last fiscal year (the year when the prior SOP vote failed). Consider whether a special letter to shareholders should be included in the proxy to emphasize the importance of the issues identified in discussions with top shareholders and the steps taken by the company to address them. Freeport-McMoRan Copper & Gold Inc. included a letter to shareholders at the beginning of its 2012 proxy addressing the changes it had made as a result of the failed 2011 SOP vote.⁶

Companies With Failed 2011 SOP Votes

In 2011, I tracked a total of 44 companies that had their SOP votes fail to receive a majority vote in favor (see Figure 1). Of these 44 companies, 34 have SOP voting results available for the 2012 proxy season. When sorted by the percentage of votes "for" their SOP proposals, we end up with three strata of companies: those that received more than 70 percent support, those that received between 50 percent and 70 percent support (cautionary SOP votes), and those that received less than 50 percent support, i.e., their SOP votes failed (see Figure 3).

You might be wondering why I'm using 70 percent support as a cutoff: What makes that so special? The only reason we care that a company received less than 70 percent support for its SOP vote is that ISS has indi-

⁶ See Freeport-McMoRan Copper & Gold Inc.'s proxy statement filed April 27, available at: <http://www.sec.gov/Archives/edgar/data/831259/000119312512191204/0001193125-12-191204-index.htm>.

cated that SOP support of less than 70 percent will trigger heightened scrutiny the following year for both the company's SOP vote and director elections.

Keep in mind that a few commentators have suggested any SOP vote receiving less than 90 percent support indicates a company has issues that need to be addressed. Yet other commentators have indicated any SOP vote receiving less than 80 percent support⁷ should be looked at as a failure and a company needs to do some serious work on its executive compensation programs in order to better align pay with company performance.

Lessons for the Road

What has been the experience of companies that have had failed SOP votes? Were they able to bounce back and secure shareholder approval of their SOP proposal the following year? Unfortunately, while that appears to be the case for the majority of companies with failed SOP votes, several still managed to have their SOP proposals fail a second time in 2012. Of the 34 companies that had failed SOP votes in 2011, five (14.7 percent) so far have had their SOP votes fail in 2012 and another six (17.7 percent) received votes of between 50 percent and 70 percent and the rest (23 companies—67.6 percent) had their SOP votes pass with more than 70 percent support.

So what lessons can we learn from these companies with failed 2011 SOP votes? Did companies with double SOP failures not do something the other companies did? Is there anything that easily explains what those that received cautionary SOP votes might have missed? As mentioned above, the companies with failed 2012 SOP votes were more likely to have indicated they are still working on addressing issues raised by shareholders as part of their 2011 SOP failure.

Is the SOP vote nothing more than a referendum on the company's stock price and is there a correlation between stock-price performance on a one-, three-, and five-year basis on either an absolute or relative basis and the SOP vote results? Unfortunately, there doesn't appear to be a direct correlation. Some companies that had double SOP failures also had positive stock price performance during the past several years.

Generally, it appears that, if a company's TSR percentile rank in two of the three time periods measured is below median (one-year, three-year, and five-year TSR vs. TSR for the same period of a company's GICS group), there is a greater likelihood the SOP vote will fail absent extenuating, positively viewed circumstances.⁸

We can also look at the change in CEO total compensation as reported in the Summary Compensation Table in the proxies (proxies typically cover the prior year's compensation) of these companies to see if that reveals

⁷ During 2011 and 2012, more than 80 percent of large, accelerated filers received votes supporting their SOP proposals that exceeded 80 percent. Thus, commentators have asked whether any additional explanation would be necessary for companies that did not at least receive support in line with that of the vast majority of large companies.

⁸ The GICS or Global Industrial Classification Standard classifies companies by into different categories from economic sector (broadest) to industry group (a more specific grouping typically used).

anything helpful in crafting a response to a failed SOP vote. Figure 2 shows the one year change in CEO total compensation for 2010 and 2011, grouped by the 2012 SOP vote results. It is interesting that, while both the median and average one-year changes in total compensation for 2010 were positive for all groups, that shifted dramatically for 2011. For 2011, we see the "Passed" and ">70 Percent Support" groups both show median and average change in CEO total compensation of about minus 30 percent, whereas the "Failed Votes" group still had median and average one-year change in CEO total compensation that showed an *increase* in CEO pay year-over-year. This seems to support the intuitive notion that, to improve the chances shareholders and proxy advisers will support the following year's SOP vote, companies should show a *decrease* in CEO compensation after a failed SOP vote.

Looking at the 2012 proxy statements of the companies that had failed SOP votes in 2011, some general ways to address the failure emerge:

- Discuss the failed SOP vote and indicate what the company did as a result, i.e., learning about shareholder concerns and taking action to re-evaluate and redesign executive compensation plans and programs, especially for the CEO.⁹
- Include a summary of significant changes to compensation plans and programs in the CD&A.
- Cite changes made since the 2011 SOP vote in the company's 2012 SOP proposal.
- Expand disclosures regarding the relationship between company performance and executive pay.

Conclusion

Trying to recover from a failed SOP vote is not easy. The majority of companies that had failed SOP votes have been able to come back the following year and receive shareholder support of their SOP proposals.¹⁰ The real trick to being among the successful companies is to:

- ensure that you understand *why* shareholders opposed your SOP proposal,
- *implement* appropriate changes to address those concerns,
- *explain* in the next proxy statement the actions undertaken, and
- *ensure* that executive pay is tied to company performance.

⁹ This discussion is required by the proxy disclosure rules. See SEC Release No. 33-9178, amending Item 402 by adding new section (b)(1)(vii), "Whether and, if so, how the registrant has considered the results of the most recent shareholder advisory vote on executive compensation required by section 14A of the Exchange Act (15 U.S.C. 78n-1) or § 240.14a-20 . . . in determining compensation policies and decisions and if so, how that consideration has affected the registrant's executive compensation decisions and policies."

¹⁰ This is also true looking back to 2010 when three companies (KeyCorp, Motorola Inc., and Occidental Petroleum Corporation) had nonmandatory SOP proposals fail, but their 2011 mandatory SOP votes all passed.

Of course, there appears to be some indication that a significant reduction (30 percent or more) in the CEO's total compensation as disclosed in the Summary Compensation Table could also improve the chances that shareholders will support the SOP proposal in the year following the failed SOP vote, especially if CEO pay magnitude was a significant shareholder concern.

See illustrations at <http://op.bna.com/pen.nsf/r?Open=dbrh-8yqn6b>:

- Figure 1: Failed 2011 SOP Votes

- Figure 2: Change in CEO Total Compensation 2009 to 2010 and 2010 to 2011

- Figure 3: 2012 SOP Voting for Companies With 2011 Failed SOP Votes

- Figure 4: One-, Three-, and Five-Year TSRs for Companies With 2011 Failed SOP Votes

- Figure 5: One-, Three-, and Five-Year TSR Percentile Rank Against GICS Group

Figure 1: Failed 2011 SOP Votes

(Sorted by level of support in favor of the SOP vote)

Company	For % (F + A + ABS)
IsoRay, Inc. ¹	76.61%
Cooper Industries plc ²	49.61%
Exar Corporation ³	49.15%
Tutor Perini Corporation	49.05%
Kilroy Realty Corporation	48.51%
Hewlett-Packard Company	48.25%
Dex One Corporation	47.98%
Stewart Information Services Corporation	47.83%
Premiere Global Services, Inc.	47.32%
The Talbots, Inc.	46.01%
Beazer Homes USA Inc.	45.90%
BioMed Realty Trust, Inc.	45.75%
Freeport-McMoRan Copper & Gold Inc.	45.46%
Jacobs Engineering Group Inc.	44.82%
Navigant Consulting, Inc.	44.80%
Blackbaud, Inc.	44.67%
Masco Corporation	44.61%
Shuffle Master, Inc.	44.49%
Intersil Corporation	44.18%
Hemispherx Biopharma, Inc. ⁴	44.13%
NVR, Inc.	43.86%
Weatherford International Ltd.	43.42%
Hemispherx Biopharma, Inc. ⁵	43.15%
Nabors Industries Ltd.	42.50%
Synaptics Incorporated	42.35%
Ameron International Corporation	41.28%
Nutri System Inc.	41.10%
Janus Capital Group Inc.	40.12%
Cogent Communications Group, Inc.	39.27%
Superior Energy Services Inc.	39.18%
Penn Virginia Corporation	38.93%
PICO Holdings, Inc.	38.85%
Hercules Offshore, Inc.	38.44%
Constellation Energy Group	38.04%
Stanley Black & Decker, Inc.	37.95%
Cadiz Inc.	37.52%
Curtiss-Wright Corporation	36.96%
Tuesday Morning Corporation	36.44%
Monolithic Power Systems, Inc.	36.24%
Cutera, Inc.	35.25%
Umpqua Holdings Corporation	35.03%
M.D.C. Holdings, Inc.	33.46%
Helix Energy Solutions Group Inc.	31.98%
Cincinnati Bell Inc.	29.78%
Regis Corporation	28.24%

1) According to IsoRay, the vote required to approve SOP is governed by Minnesota law and is the affirmative vote of the holders of a majority of the shares represented and entitled to vote at the Annual Meeting, provided a quorum is present, with abstentions being considered in determining whether a quorum is present and the number of votes required obtaining the necessary majority vote and therefore will have the same legal effect as voting against SOP. IsoRay disclosed it had 17,267,001 broker non-votes on its SOP proposal, which did not pass.

2) Cooper Industries did not count Abstentions as votes cast, so FOR as a % of votes cast was reported as 50.36%.

3) Exar Corporation indicated that abstentions would count against the SOP proposal.

4) Hemispherx Biopharma held a second SOP vote in 2011, and SOP still failed to get a majority of votes cast in favor of it; Hemispherx apparently counted For, Against & Abstentions in determining the vote outcome.

5) Hemispherx Biopharma would receive less than 50% support if Abstentions are counted as votes cast.

Source: Edward A. Hauder, Exequity LLP.

A BNA Graphic/pen236g1

Figure 2: Change in CEO Total Compensation 2009 to 2010 and 2010 to 2011

(Sorted by 2012 SOP vote support level)

One-Year CEO Total Compensation Change by 2012 SOP Vote Result Group	Median Change	Average Change
<i>2011 CEO Total Compensation Change (2010 to 2011) Disclosed in 2012 Proxies</i>		
Passed	-31%	-32%
>70% Support	-34%	-28%
Failed Votes	12%	37%
All companies with 2011 failed SOP votes and reported 2012 SOP vote results	-26%	-21%
<i>2010 CEO Total Compensation Change (2009 to 2010) Disclosed in 2011 Proxies</i>		
Passed	34%	200%
>70% Support	51%	224%
Failed Votes	8%	40%
All companies with 2011 failed SOP votes and reported 2012 SOP vote results	36%	181%

Note that in creating Figure 2, I looked at the total compensation reported in the Summary Compensation Table for each company's CEO in 2009, 2010, and 2011 and calculated the change in these reported amounts from year to year, expressed as a percentage of the prior year's total compensation. Therefore, positive numbers indicate an increase in total compensation from the prior year while negative numbers indicate a decline in total compensation from the prior year. Also note: Seven companies had a change in CEO during the period 2009-2011. In some cases, a company had multiple CEOs during this period, e.g., Hewlett-Packard Company.

Source: Edward A. Hauder, Exequity LLP.

A BNA Graphic/pen236g2

Figure 3: 2012 SOP Voting for Companies with 2011 Failed SOP Votes
(Sorted by 2012 SOP vote support level)

	Company	2011 For % (F+A+ABS)	2012 For % (F+A+ABS)	Difference in For %
Passed	Dex One Corporation	47.98%	98.88%	50.91%
	Blackbaud, Inc.	44.67%	98.23%	53.57%
	BioMed Realty Trust, Inc.	45.75%	97.84%	52.09%
	Intersil Corporation	44.18%	97.72%	53.54%
	Stewart Information Services Corporation	47.83%	96.81%	48.98%
	Helix Energy Solutions Group Inc.	31.98%	96.61%	64.63%
	Jacobs Engineering Group Inc.	44.82%	96.17%	51.34%
	Superior Energy Services Inc.	39.18%	96.15%	56.97%
	Curtiss-Wright Corporation	36.96%	95.58%	58.62%
	Beazer Homes USA Inc.	45.90%	95.37%	49.47%
	Umpqua Holdings Corporation	35.03%	95.35%	60.32%
	Masco Corporation	44.61%	94.77%	50.16%
	Navigant Consulting, Inc.	44.80%	94.00%	49.20%
	Monolithic Power Systems, Inc.	36.24%	93.58%	57.34%
	Stanley Black & Decker, Inc.	37.95%	93.04%	55.08%
	Cincinnati Bell Inc.	29.78%	88.74%	58.96%
	Penn Virginia Corporation	38.93%	87.41%	48.48%
	Shuffle Master, Inc.	44.49%	86.36%	41.87%
	NVR, Inc.	43.86%	82.02%	38.16%
	Premiere Global Services, Inc.	47.32%	80.79%	33.47%
Hewlett-Packard Company	48.25%	77.24%	28.99%	
PICO Holdings, Inc.	38.85%	72.79%	33.93%	
M.D.C. Holdings, Inc.	33.46%	72.02%	38.55%	
>70% Support	<i>Cogent Communications Group, Inc.</i>	39.27%	68.33%	29.06%
	<i>Freeport-McMoRan Copper & Gold Inc.</i>	45.46%	67.45%	21.99%
	<i>Nutri System Inc.</i>	41.10%	63.68%	22.59%
	<i>Janus Capital Group Inc.</i>	40.12%	61.26%	21.14%
	<i>Cutera, Inc.</i>	35.25%	55.35%	20.10%
	<i>Weatherford International Ltd.</i>	43.42%	54.25%	10.83%
Failed Votes	Hercules Offshore, Inc.	38.44%	47.82%	9.38%
	Tutor Perini Corporation	49.05%	38.24%	-10.80%
	Kilroy Realty Corporation	48.51%	29.91%	-18.60%
	Cooper Industries plc¹	49.61%	28.09%	-21.52%
	Nabors Industries Ltd.	42.50%	25.05%	-17.45%

Bolded numbers in the "2012 For %" column indicate a company received a vote of less than 70% "for" on its 2012 SOP proposal.

Bolded company name indicates the company's 2012 SOP vote "failed."

Italicized company name indicates the company's 2012 SOP vote received >50% support but <70% support.

1) Cooper Industries did not count Abstentions as votes cast, so For as a % of votes cast was reported as 50.36%.

Figure 4: One-, Three-, and Five-Year TSRs for Companies With 2011 Failed SOP Votes
(Sorted by 2012 SOP vote support level)

	Company	One-Year TSR	Three-Year TSR	Five-Year TSR
Passed	Dex One Corporation	-77.75%	64.93%	-51.64%
	Blackbaud, Inc.	8.85%	29.78%	3.28%
	BioMed Realty Trust, Inc.	1.28%	21.71%	-3.62%
	Intersil Corporation	-28.87%	8.48%	-12.55%
	Stewart Information Services Corporation	0.61%	-20.73%	-22.54%
	Helix Energy Solutions Group Inc.	30.15%	29.71%	-12.82%
	Jacobs Engineering Group Inc.	-16.56%	-15.91%	-2.88%
	Superior Energy Services Inc.	-18.72%	21.31%	-2.74%
	Curtiss-Wright Corporation	7.44%	2.94%	-0.09%
	Beazer Homes USA Inc.	-63.44%	-36.79%	-47.59%
	Umpqua Holdings Corporation	4.01%	-3.15%	-13.51%
	Masco Corporation	-15.03%	1.34%	-15.71%
	Navigant Consulting, Inc.	24.02%	-10.41%	-10.40%
	Monolithic Power Systems, Inc.	-8.78%	6.12%	6.29%
	Stanley Black & Decker, Inc.	3.52%	29.03%	8.95%
	Cincinnati Bell Inc.	8.21%	16.22%	-7.89%
	Penn Virginia Corporation	-67.77%	-40.18%	-30.64%
	Shuffle Master, Inc.	0.00%	18.22%	-20.81%
	NVR, Inc.	-0.73%	14.56%	1.24%
	Premiere Global Services, Inc.	24.56%	-0.54%	-2.15%
	Hewlett-Packard Company	-45.97%	-20.67%	-8.59%
PICO Holdings, Inc.	-35.28%	-8.17%	-9.96%	
M.D.C. Holdings, Inc.	-35.88%	-13.32%	-18.34%	
>70% Support	<i>Cogent Communications Group, Inc.</i>	19.45%	37.27%	0.81%
	<i>Freeport-McMoRan Copper & Gold Inc.</i>	-36.89%	46.80%	7.76%
	<i>Nutri System Inc.</i>	-35.18%	0.40%	-24.83%
	<i>Janus Capital Group Inc.</i>	-50.49%	-6.94%	-21.37%
	<i>Cutera, Inc.</i>	-10.13%	-5.65%	-22.70%
	<i>Weatherford International Ltd.</i>	-35.79%	10.60%	-6.87%
Failed Votes	Hercules Offshore, Inc.	27.59%	-2.22%	-31.25%
	Tutor Perini Corporation	-42.36%	-17.80%	-15.85%
	Kilroy Realty Corporation	8.44%	9.93%	-9.05%
	Cooper Industries plc¹	-5.19%	25.98%	6.19%
	Nabors Industries Ltd.	-26.09%	13.15%	-10.25%

1) Cooper Industries did not count Abstentions as votes cast, so For as a % of votes cast was reported as 50.36%.

Figure 5: One-, Three-, and Five-Year TSR Percentile Rank Against GICS Group

(Sorted by 2012 SOP vote support level)

	Company	TSR Percentile Rank vs. GICS Group		
		One-Year	Three-Year	Five-Year
Passed	Dex One Corporation	0.00%	88.70%	0.00%
	Blackbaud, Inc.	66.20%	60.40%	56.30%
	BioMed Realty Trust, Inc.	51.50%	54.60%	47.50%
	Intersil Corporation	32.60%	16.30%	27.50%
	Stewart Information Services Corporation	54.60%	1.00%	5.40%
	Helix Energy Solutions Group Inc.	86.90%	62.10%	21.50%
	Jacobs Engineering Group Inc.	27.40%	15.40%	40.00%
	Superior Energy Services Inc.	39.00%	50.20%	45.00%
	Curtiss-Wright Corporation	70.00%	23.90%	45.80%
	Beazer Homes USA Inc.	2.40%	2.40%	0.00%
	Umpqua Holdings Corporation	73.60%	49.70%	31.60%
	Masco Corporation	35.00%	20.50%	11.40%
	Navigant Consulting, Inc.	82.00%	10.10%	20.00%
	Monolithic Power Systems, Inc.	63.00%	15.20%	80.40%
	Stanley Black & Decker, Inc.	64.90%	76.00%	77.50%
	Cincinnati Bell Inc.	63.80%	52.70%	45.40%
	Penn Virginia Corporation	5.90%	1.70%	5.20%
	Shuffle Master, Inc.	56.20%	84.60%	13.00%
	NVR, Inc.	53.00%	32.00%	64.50%
	Premiere Global Services, Inc.	94.40%	25.00%	51.50%
Hewlett-Packard Company	5.60%	7.70%	37.50%	
PICO Holdings, Inc.	16.50%	12.60%	37.70%	
M.D.C. Holdings, Inc.	17.20%	7.40%	16.40%	
>70% Support	<i>Cogent Communications Group, Inc.</i>	88.80%	77.70%	57.50%
	<i>Freeport-McMoRan Copper & Gold Inc.</i>	15.50%	80.70%	66.60%
	<i>Nutri System Inc.</i>	15.40%	12.10%	11.10%
	<i>Janus Capital Group Inc.</i>	2.90%	15.50%	13.30%
	<i>Cutera, Inc.</i>	33.90%	182.00%	6.40%
	<i>Weatherford International Ltd.</i>	23.20%	29.80%	33.50%
Failed Votes	Hercules Offshore, Inc.	85.20%	12.40%	3.90%
	Tutor Perini Corporation	6.80%	5.10%	11.00%
	Kilroy Realty Corporation	67.60%	24.60%	31.40%
	Cooper Industries plc¹	48.70%	69.20%	68.80%
	Nabors Industries Ltd.	27.80%	31.90%	26.70%

1) Cooper Industries did not count Abstentions as votes cast, so For as a % of votes cast was reported as 50.36%.