More Shareholders Looking to Declassify Boards of Directors

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Could board declassification edge out say-on-pay as the hottest issue of this year's proxy season? According to a new report from The Conference Board titled "Proxy Voting Fact Sheet," proposals to declassify boards of directors—meaning all directors would be up for election on an annual basis—have generated overwhelming support from shareholders so far this year.

From January through the end of April, 17 proposals on declassification that went to a vote received an average level of support of 75.9 percent of the votes cast. The figure represents the highest average "for" votes on any corporate governance topic put to a vote before May.

Three companies which The Conference Board calls out as "notable examples" of board declassification winning sweeping approval are Johnson Controls, Inc., with 85.2 percent approval; F5 Networks, Inc., with 78.7 percent approval, and Emerson Electric Co., with 77.2 percent approval.

"Interest in this issue by pension funds and activist hedge funds had been observed for some time, and high levels of support were recorded in the 2011 season as well," according to a statement from Melissa Aguilar, who authored the report for The Conference Board. "But this year's numbers confirm that shareholders are determined to question the rationale for not having all corporate directors face a confidence vote on an annual basis."

Board declassification is viewed by many corporate governance experts as *sine qua non* good practice, because it holds all board members to account in a given year, not just a handful at a time. The Harvard Shareholder Rights Project, led by Harvard Law professor Lucian Bebchuk, has aided major pension funds in putting forth declassification proposals—and has thus far convinced 44 companies to agree to bring management proposals to declassify their boards.

But declassification has its critics, too, including senior partners at Wachtell Lipton Rosen & Katz, who argue that staggered—or classified—boards protect companies from takeovers. Earlier this year, the Wachtell partners derided the Shareholder Rights Project for its declassification advocacy.

The Conference Board's proxy fact sheet also examined say-on-pay vote results. Out of 494 companies in the Russell 3000 reporting their vote counts by April 30, 486 companies reported passing approval for executive compensation plans, while eight failed.

Those that didn't pass, according to the report: Actuant Corp. (46.4 percent approval), Citigroup Inc. (45.1 percent approval), Cooper Industries plc (28.9 percent approval), FirstMerit Corp. (46 percent approval), International Game Technology (44.1 percent approval), KB Home (45.6 percent approval), NRG Energy Inc. (44.1 percent approval), and The Ryland Group Inc. (40.6 percent approval).

Meanwhile, 42 companies received less than 70 percent shareholder support, “the level considered by some proxy advisory firms and governance experts as warranting further scrutiny,” the report states.

Altogether, executive compensation proposals averaged 89.5 percent approval as a percentage of votes cast. Seven companies, in addition to the 494 surveyed, also held say-on-pay votes, “but results were reported as either pending or not disclosed as of May 8, 2012,” according to the report.