VOTE OF THE WEEK: BIGLARI HOLDINGS

Biglari Holdings failed Say on Pay in 2013 with 33% vote support, after receiving 87% in 2012 and 85% in 2011. The CEO (Mr. Biglari) owns 15.5% of the stock, so the 'external' vote was closer to ~28% vote support for 2013.

Among issues cited by proxy advisors:

– High absolute and relative pay levels for the CEO, with pay more than doubling year over year (from $4.9m last year to $10.9m this year – as disclosed in the Summary Compensation Table) and more than 5x what it was two years ago ($2.1m)

– Incentives for the CEO largely driven by unrealized investment gains

– Hedge-fund type package with limited ties to TSR, evident by recent misalignment between book value and stock price

	2013[1]	2012[1]	2011[1]
OUTCOME	33%	87%	85%
1-YR TSR	23%	-10%	40%
3-YR TSR	16%	20%	3%
CEO PAY[2]	$10.9m	$4.9m	$2.1m
REVENUE	$740m	$709m	$674m
MARKET VALUE	$448m	$364m	$405m

COMPANY INFORMATION & PERFORMANCE

– Engages in the investment management and the franchising/operating of restaurants in the US

– Positive total shareholder return over a one-, three-, and five-year basis (23%, 16%, and 4%, respectively)

– Revenue increased by roughly 4% year over year; Net Income of $21.6m for the year (decreased 38% year over year)

PAY PROGRAM

– Compensation program consists only of a salary and a cash bonus

– Annual bonus for the CEO based upon growth of the Company's adjusted book value in each fiscal year; more specifically, if the Company exceeds a 6% annual adjusted book value growth hurdle, the CEO receives a bonus equal to 25% of the Company's growth in adjusted book value in excess of that measuring point

– Annual incentives for the CEO are capped at $10m; the CEO received maximum payout for fiscal 2012, based upon an increase in adjusted book value of $77.2m (~25% increase year over year)

  - The majority of the increase in adjusted book value was due to investment gains of $52.0m (composed of $2.6m in realized gains and $49.4m in unrealized appreciation)
  - The CEO's annual bonus would have been ~$1.6m had investment gains not contributed to the increase in book value for fiscal 2012

– Compensation program consists only of a salary and a cash bonus, but the CEO is required to use at least 30% of pre-tax incentive compensation to purchase shares of the Company's stock and must hold such shares for a minimum of three years; this effectively creates a ~45%/ 55% mix of cash/long-term incentives, respectively, on an after-tax basis

COMPENSATION ARRANGEMENTS AND PRACTICES

– No excise tax gross-ups or gross-ups on perquisites

– No clawback policy disclosed

ISS PROPOSAL SUMMARY EXCERPTS

– "A pay and performance disconnect is evident at the company. Biglari's total pay this year is high on an absolute basis and also relative to ISS' derived peer group, has increased by over 500 percent since FY2010, and significantly outpaces the company's TSR performance. […] While the company believes that adjusted book value will correlate with stock price performance in the long-term, this has not been the evident trend since the Bonus Agreement's adoption in late 2010. In light of these factors, a vote AGAINST this proposal is warranted."

Source: Semler Brossy data and analysis; Fund Votes LLC; ISS Voting Analytics; S&P Research Insight; Biglari DEF14A.

[1] Financials as of the three most recently disclosed fiscal year ends (i.e., FYE2012, FYE2011, and FYE2010

[2] As disclosed in the Summary Compensation Table.