Say-on-Pay: How Early Filers Are Responding

This week, the Securities and Exchange Commission ("SEC") plans to adopt rules to implement Section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"), which requires shareholder advisory votes to approve the compensation of executives (also known as say-on-pay votes), and shareholder advisory votes on the frequency of say-on-pay votes.

As say-on-pay is a relatively new experience for most companies, there are many questions related to the structure of say-on-pay proposals, such as: what to include in the say-on-pay proposal, what to recommend on the frequency of say-on-pay votes, and whether to recommend at all. In an effort to help companies answer these questions, Cogent has conducted a review of 147 proxy statements filed between December 1, 2010 and January 21, 2011 from companies filing proposals for a shareholder say-on-pay vote and a frequency of say-on-pay vote under the new regulations. The results of this analysis are provided to help companies understand what is currently happening in the market. When making decisions related to the say-on-pay proposals, companies should first consider the business case for the decisions, and secondly, the impact of external influencers such as ISS and large shareholders.

Say-on-Pay Proposals

To this point, there has been little guidance from the SEC on what the say-on-pay proposal should include or what it should look like. As companies tighten-up the Compensation Discussion and Analysis ("CD&A") section of the proxy statement in light of the likely increased external evaluation caused by mandatory say-on-pay, questions abound as to how much, or how little, of the information from the CD&A should be included in the say-on-pay proposal. There is no one answer for all companies. Drafters of the say-on-pay proposal should consider what they are trying to accomplish through the proposal and who will be reading the proposal.

Cogent's analysis reveals that there is currently a wide range of practices related to say-on-pay proposals. Of the 147 companies filing a say-on-pay proposal, 126 included a description of the executive compensation program on which shareholders would be voting. Of those including a description, the content ranged from one sentence giving a brief overview to multiple pages containing charts and graphs. The table below highlights Cogent's findings:

Description of Pay Practices Included on Say-on-Pay Proposal

Detailed Description	Brief Overview	Reference to Compensation Disclosures
50 (34%)	76 (52%)	21 (14%)

Frequency of Say-on-Pay Proposals

A more straightforward, yet no less difficult decision for companies is what to recommend to shareholders regarding the vote on the frequency of say-on-pay, or whether to recommend anything at all. Again, companies should consider what they are attempting to accomplish through this recommendation, and, perhaps even more importantly on this vote, the impact of external influencers. Shareholder activists and influential proxy advisory firms such as ISS have been clear that their preference on the frequency of say-on-pay votes is annual. An annual vote does provide companies certain advantages: more consistent feedback from shareholders, a vote that is more aligned with the frequency of compensation decisions, and an approach that is supported by the policies of ISS and others. However, a biennial or triennial vote may be more beneficial to companies in that it reduces the administrative time and effort associated with the say-on-pay vote, including soliciting of shareholder communication prior to the vote. Additionally, companies may feel that a triennial vote is more aligned with the long-term nature of their compensation programs.

As with the structure of say-on-pay proposals, there is currently a wide range of practices regarding the frequency of say-on-pay proposals. Of the 147 proposals reviewed, 131 companies included a recommendation from the company of the frequency of say-on-pay votes, with 16 companies making no recommendation. The table below highlights Cogent's findings:

Company Recommendation on Frequency of Say-on-Pay Vote

Annual	Biennial	Triennial	None
41 (28%)	13 (9%)	77 (52%)	16 (11%)

As companies prepare for the first season of mandatory say-on-pay, Cogent advises that companies should first consider the business case for all decisions related to say-on-pay and say-on-pay frequency proposals. As the review of current market practices indicates, there is no one best approach for all companies. Look for more information from Cogent as this issue develops.

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About Cogent Compensation Partners

Cogent Compensation Partners is a leading provider of objective and expert advice on the subject of executive compensation, corporate governance, and the linkage between company performance and executive pay.

Our executive compensation consultants assist in driving together the various interests involved in the executive pay debate: employees, shareholders, institutions, and other stakeholders. Our services include compensation committee advisory, incentive plan design, compensation strategy development, board of director compensation analysis, executive compensation related shareholder proposal assistance and stock ownership guidelines development.

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