Say-on-Pay Update: Early Voting Results

In January, Cogent distributed an Alert to help companies understand how issuers were dealing with the first year of mandatory say-on-pay. This follow-up to that Alert highlights the recent adoption of final rules concerning say-on-pay, provides updated information on say-on-pay proposals and say-on-pay frequency proposals, and provides information on how shareholders are responding to say-on-pay and say-on-pay frequency proposals.

SEC Adopts Say-on-Pay Rules

On January 25, 2011, the Securities and Exchange Commission (SEC) adopted 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 (or say-on-pay votes), the frequency of shareholder say-on-pay votes, and golden parachute arrangements in the event of a applicable transaction.

Say-on-Pay Proposals

The adopted rules on say-on-pay require that proposals "include a separate resolution subject to shareholder advisory vote to approve the compensation of its named executive officers, as disclosed pursuant to Item 402 of Regulation S-K." While the SEC did not prescribe specific language for companies to include in the say-on-pay proposal, it did provide the following example that would satisfy the rule: "RESOLVED, that the compensation paid to the company's named executive officers, as disclosed pursuant to Item 402 of Regulation S-K, including the Compensation Discussion and Analysis, compensation tables and narrative discussion, is hereby APPROVED." Additionally, the SEC posted Compliance and Disclosure Interpretations covering the new rules, allowing issuers to use a plain English equivalent in lieu of the words, "pursuant to Item 402 of Regulation S-K."

In light of the SEC's guidance on say-on-pay proposals, Cogent continues to track the practices of companies filing say-on-pay proposals from December 1, 2010 to March 4, 2011. The following table highlights the number of companies structuring the say-on-pay proposal with a detailed description of the executive compensation

Copyright 2011 Cogent Compensation Partners. All rights reserved.

program, a brief description, or simply a reference to the compensation disclosures.

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

Detailed Description	Brief Overview	Reference to Compensation Disclosures
71 (24%)	188 (64%)	37 (12%)

Say-on-Pay Votes

As of March 11, 2011, 136 companies have reported the voting results from their annual meeting of shareholders. Of those companies, only two have failed to receive majority support (50% of votes cast) for their say-on-pay proposal: Jacobs Engineering Group and Beazer Homes USA. Along with those two, 9 companies have failed to receive more than 70% support for their proposals. The following table highlights the level of shareholder support for say-on-pay proposals so far.

Shareholder Support for Say-on-Pay Proposals

< 50%	>50%	>60%	>70%	>80%	>90%
2 (1%)	134 (99%)	131 (96%)	127 (93%)	120 (88%)	103 (76%)

Say-on-Pay Frequency Proposals

As expected, the final rules regarding say-on-pay frequency require companies to provide shareholders with four choices: whether the say-on-pay vote should occur every one, two, or three years, or to abstain from voting. Other than this requirement, the final rules did not prescribe wording for the say-on-pay frequency proposal nor did they provide sample language.

As with the structure of say-on-pay proposals, there continues to be a range of practices concerning company recommendations on say-on-pay frequency proposals. So far, the majority of companies are recommending a triennial say-on-pay vote despite the trends in voting results (see below). The following table highlights what say-on-pay frequency companies are recommending so far.

Company Recommendation on Frequency of Say-on-Pay Vote

Annual	Biennial	Triennial	None
93 (31%)	16 (5%)	165 (56%)	22 (8%)

Copyright 2011 Cogent Compensation Partners. All rights reserved.

Say-on-Pay Frequency Voting Results

Despite the majority of companies recommending shareholders support a say-on-pay vote every three years, shareholders have voted in support of an annual vote at the majority of companies. This trend, along with recommendations from proxy advisory firms and groups of institutional investors, indicates that annual say-on-pay votes are generally favored. The following highlights the voting results on say-on-pay frequency proposals so far.

Shareholder Preference on Frequency of Say-on-Pay Vote

Annual	Biennial	Triennial
84 (62%)	4 (3%)	48 (35%)

As the first season of mandatory say-on-pay continues, 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 continues to develop.

March 11, 2011

****

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.

Cogent Compensation Partners
Two Allen Center • 1200 Smith Street, Suite 610 • Houston, TX 77002
Tel 713.427.8300 • info@cogentcompensation.com

Copyright 2011 Cogent Compensation Partners. All rights reserved.