



SEC

OFFICE of INVESTOR
EDUCATION and ADVOCACY

Investor Bulletin: Say-on-Pay and Golden Parachute Votes

The Office of Investor Education and Advocacy is issuing this Investor Bulletin to help investors understand new rules about shareholder votes on Say-on-Pay and golden parachutes. The rules concern three separate non-binding shareholder votes on executive compensation:

- **Say-on-Pay Votes.** The new rule requires public companies subject to the [proxy](#) rules to provide their shareholders with an advisory vote on the compensation of the most highly compensated executives. Say-on-Pay votes must be held at least once every three years.
- **Frequency Votes.** These companies also are required to provide their shareholders with an advisory vote on how often they would like to be presented with the Say-on-Pay votes – every year, every second year, or every third year.
- **Golden Parachute Disclosures and Votes.** These companies are required to disclose compensation arrangements and understandings with those executive officers in connection with an acquisition or merger. In certain circumstances, these companies also are required to conduct a shareholder advisory vote to approve the golden parachute compensation arrangements.

The new rules, which the Securities and Exchange Commission adopted on Jan. 25, 2011, implement requirements in Section 951 of the [Dodd-Frank Wall Street Reform and Consumer Protection Act](#), which the President signed into law in July 2010. The Say-on-Pay and frequency votes appear as separate items on company ballots, or forms of proxy, for the annual meeting of shareholders.

The Say-on-Pay vote asks investors to vote on the compensation of the top executives of the company.

What are Say-on-Pay Votes?

The Say-on-Pay vote asks investors to vote on the compensation of the top executives of the company – the CEO, the Chief Financial Officer, and at least three other most highly compensated executives. (These are called the “named executive officers.”) Companies are not required to use any specific language in asking for shareholder approval. Instead, each company has the flexibility to craft the exact language of the non-binding resolution that its shareholders will vote on.

The resolution could simply ask shareholders to approve the compensation of its named executive officers. For example, a resolution might say:

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.

What are frequency votes?

Companies are also required to provide an advisory shareholder vote on the frequency of the Say-on-Pay vote. Shareholders will be able to cast a non-binding vote on how often the Say-on-Pay vote should occur: once a year, once every two years, or once every three years. Shareholders may also choose to abstain on the frequency vote. Thus, including abstentions, shareholders have four choices. Frequency votes must take place at least once every six years. For example, a company could choose to hold Say-on-Pay votes annually and hold frequency votes every six years. In that case, shareholders would vote in 2011 on both the company's executive compensation (the Say-on-Pay vote) and on the frequency of future votes. In 2012, shareholders in this example would vote again on Say-on-Pay, but would not vote on the frequency of Say-on-Pay votes until 2017.

When do the rules on Say-on-Pay and frequency votes take effect?

All public companies subject to the proxy rules, except smaller ones, must hold Say-on-Pay and frequency votes at shareholder meetings starting on Jan. 21, 2011. The rules are delayed by two years for companies with a public float of less than \$75 million. These smaller companies must hold Say-on-Pay and frequency votes at annual meetings starting on Jan. 21, 2013.

Haven't we seen Say-on-Pay votes before? So what's new?

Companies that received TARP¹ money are required

¹ In response to the financial crisis, Congress enacted legislation in 2008 that created the Troubled Asset Relief Program, or TARP.

to annually hold a Say-on-Pay vote at shareholder meetings until they pay back all the money they borrowed from the government. In addition, a number of non-TARP companies have voluntarily held Say-on-Pay votes in recent years.

What are the new rules on golden parachutes?

The term "golden parachute" generally refers to compensation arrangements with named executive officers concerning any type of compensation (whether present, deferred, or contingent) that is based on or relates to an acquisition, merger, or similar transaction.

The new rules require companies to disclose any agreements or understandings that the target company has with its own named executive officers or those of the company that is acquiring the target company (called the acquiring company), as well as any relationships between the acquiring company and its named executive officers and those of the target company. Such disclosures must include the total of all compensation that may be paid or become payable to, or on behalf of, the named executive officer, and the conditions upon which it may be paid or become payable. The disclosures must be made clearly and simply in the form of both narrative and tables.

When companies seek shareholder approval of a merger or acquisition, they will be required to conduct a separate shareholder advisory vote to approve, in the typical scenario, the disclosed golden parachute compensation arrangements between the target company and its own named executive officers or those of the acquiring company. There is one exception to this. The company is not required to conduct such a vote if the golden parachute disclosures were included in executive compensation disclosures subject to a prior Say-on-Pay vote.

Companies are required to comply with the golden parachute shareholder advisory vote and disclosure requirements in proxy statements to approve a merger or acquisition and similar forms initially filed on or after April 25, 2011.

Broker non-votes

In another change starting this year, brokers may no longer cast votes on behalf of clients who do not instruct their brokers how to vote on executive compensation matters.² This means that brokers will not be able to cast votes on the Say-on-Pay, frequency, or golden parachute proposals if clients do not provide voting instructions on these proposals.

What information is available to shareholders when they are deciding how to vote?

Companies are required to disclose named executive officers' compensation information in the proxy statement for an annual meeting at which directors are elected. In the Compensation Discussion and Analysis ("CD&A"), the company must explain all material elements of the compensation for named executive officers. The CD&A is meant to be a narrative overview that gives shareholders a context for the company's executive compensation policies and practices.

The proxy statement also includes a Summary Compensation Table that presents all elements of named executive officers' compensation and totals for the three most recent fiscal years, and additional tables providing more detailed disclosure of separate elements of their compensation for the last completed fiscal year: the Grants of Plan-Based Awards Table, Outstanding Equity Awards at Fiscal Year-End Table,

Companies are required to address in the CD&A whether and, if so, how their compensation policies and decisions have taken into account the results of the most recent Say-on-Pay vote.

² This follows a similar ban on uninstructed broker votes in the election of board directors. In a rule that took effect Jan. 1, 2010, brokers no longer have the discretion to vote their customers' shares held in companies without receiving voting instructions from those customers about how to vote in an election of directors. For more information see our publication, "[New Shareholder Voting Rules for the 2010 Proxy Season.](#)"

Option Exercises and Stock Vested Table, and Pension Benefits Table.

Smaller companies are exempt from providing CD&As, but are required to provide other compensation disclosures.

How will investors learn of the vote results?

Companies are required to disclose preliminary vote results within four business days of the completion of the shareholder meeting and final voting results within four business days after those results are known. Companies make these disclosures in a document called a Current Report on Form 8-K, which is filed with the SEC.

The new rules also require companies to make two more disclosures. First, companies are required to address in the CD&A whether and, if so, how their compensation policies and decisions have taken into account the results of the most recent Say-on-Pay vote.

Second, each company must disclose in a Form 8-K its decision about the frequency of future Say-on-Pay votes. This disclosure must be made within 150 calendar days after the shareholder meeting, but no later than 60 calendar days before the deadline for shareholders to submit proposals for the next annual meeting. This deadline allows companies additional time to consider carefully the results of the frequency vote, including through board and committee deliberations and discussions with shareholders, before the company is required to disclose its decision on the frequency of Say-on-Pay votes.

Are the compensation votes advisory or binding?

The Say-on-Pay, frequency, and golden parachute votes are advisory rather than binding. The Dodd-Frank Act specifies that the shareholder vote to approve executive compensation "shall not be binding on the issuer or the board of directors of an issuer." (An issuer in this context is a public company subject to the proxy rules.)

It is up to the company's board of directors to determine what it considers to be the best compensation policies and practices for the company. Unlike a binding vote, advisory votes do not require the company or its board of directors to take a specific action. The company's board of directors may consider advisory votes and may follow up with other communications or dialogue with shareholders as part of its deliberative process in making policy decisions.

Additional Resources

- [SEC Final Rule](#), Shareholder Approval of Executive Compensation and Golden Parachute Compensation

- [Dodd-Frank Wall Street Reform and Consumer Protection Act](#)

(See Sec. 951, Shareholder Vote on Executive Compensation Disclosures.)

Related Information

- For more information on proxy voting, see our [Spotlight on Proxy Matters](#).
- For more on the rule prohibiting uninstructed broker votes in an election of directors, see our publication, "[New Shareholder Voting Rules for the 2010 Proxy Season](#)."
- For additional educational information for investors, see the SEC Office of Investor Education and Advocacy's website for investors, [Investor.gov](#).

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