Say on Pay Facts and Background

(compiled by the AFSCME Office of Corporate Governance and Investment Policy)

Shareholder Action

- In 2006, seven proposals averaged 40.1% support.

- In 2007, 51 shareholder proposals asking for an advisory vote on compensation proposal came to vote, averaging 42.2% support of for and against. Nine majority votes of shares cast for and against were recorded at
    - Activision – 69.6%
    - Blockbuster – 57.0%
    - Par Pharmaceuticals – 56.8%
    - Ingersoll-Rand – 56.7%
    - Motorola – 54.0%
    - Valero Energy – 53.0%[1]
    - Verizon – 50.2%
    - Clear Channel Communications – 50.02%

- In 2008, 79 shareholder proposals asking for an advisory vote on compensation proposal came to vote, averaging 41.4% support of for and against. There were 11 majority votes recorded:
    - Apple – 50.7%
    - Alaska Air – 53.0%
    - **Ingersoll-Rand – 54.0% (two years in a row)**
    - Lexmark International – 59.8%
    - **Motorola – 54.0% (two years in a row)**
    - PG&E – 52.7%
    - Rackable Systems – 51.4%[2]
    - South Financial Group – 51.9%
    - Sun Microsystems – 67.5%
    - Tech Data – 61.8%
    - **Valero Energy – 53.7% (two years in a row)[3]**

- For 2009, there have been more than 100 Say on Pay proposals filed. The initial results for over 70 proposals have averaged over 46% support. To date, 24 majority votes have been recorded at the following companies.
    1. **Apple – 51.6% (two years in a row)**
    2. Hain Celestial – 61.9%

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[1] Valero states that "abstains" count as "against" votes, and therefore the proposal did not pass. However, out of the votes cast "for" and "against" the proposal, it received a majority.
[2] Rackable states that "abstains" count as "against" votes, and therefore the proposal did not pass. However, out of the votes cast "for" and "against" the proposal, it received a majority.
[3] Valero states that "abstains" count as "against" votes, and therefore the proposal did not pass. However, out of the votes cast "for" and "against" the proposal, it received a majority.

3. KB Homes – 50.8%[4]
4. Edison International – 51.3%
5. **Lexmark International – 69.0% (two years in a row)**
6. Pfizer – 52.4%
7. Honeywell – 54.4%
8. Marathon Oil – 50.2%
9. **Valero Energy – 62.4% (three years in a row)**
10. CVS Caremark – 61.6%
11. Prudential – 60.5%
12. Tupperware – 69.9%
13. Dow Chemical – 50.9%
14. Pulte Homes – 53.8%
15. Jones Apparel – 63.4%
16. YUM! Brands – 51.8%
17. XTO Energy – 51.5%
18. Supervalu – 52.7%
19. ConocoPhillips – 50.2%[5]
20. Plum Creek Timber – 56.9%[6]
21. Tecumseh Products – 50.1% (no numbers given out yet)
22. General Mills – 51.2%
23. Applied Micro Circuits – 57.7%
24. Cisco – 51.4%

38 Companies Have Voluntarily Adopted Say on Pay

- Aflac was the first US company to agree to give shareholders a Say-on-Pay in 2008, and it was overwhelmingly supported by 93% of shareholders. RiskMetrics, H&R Block, Jackson Hewitt, Zale and Littlefield join Aflac as the first adopting companies to give shareholders an advisory vote in 2008. At RiskMetrics, 94% of shareholders supported RiskMetrics' approach. At H&R Block, 99% of shareholders supported the proposal. At Jackson Hewitt, 64.5% of shareholders supported the pay proposal. At Zale, 98.7% of shareholders supported the pay policies and procedures. At Littlefield, nearly 97% of shareholders supported the pay proposal.

- Additionally, Intel, Ingersoll-Rand, Motorola, Par Pharmaceuticals, Blockbuster, Tech Data, MBIA, Alaska Air, Verizon, Microsoft, Hain Celestial, Sysco and Forest Laboratories each gave shareholders Say-on-Pay in 2009. Apple, Goldman Sachs, Bank of New York Mellon, Occidental Petroleum, Ameriprise, Lexmark International, Charming Shoppes, Intuit, Pfizer, PG&E, Prudential, Valero

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[4] KB Homes states that "abstains" count as "against" votes, and therefore the proposal did not pass. However, out of the votes cast "for" and "against" the proposal, it received a majority.

[5] In its 10-Q, ConocoPhillips states proposals require the affirmative "FOR" vote of a majority of those shares present in person or represented by proxy at the meeting and entitled to vote, and therefore the proposal did not pass. However, out of the votes cast "for" and "against" the proposal, it received a majority.

[6] In its proxy, Plum Creek states that broker non-votes have the same effect as a vote against the proposal. However, out of the votes cast "for" and "against" the proposal, it received a majority.

Energy, Jones Apparel, Mobile Mini and Tecumseh Products will give shareholders a Say-on-Pay in 2010. Hewlett-Packard, Bed Bath & Beyond,[7] and YUM! Brands have each committed to give shareholders Say-on-Pay in 2011. Hill-Rom Holdings has committed adopt annual Say-on-Pay votes in 2011.[8]

1. Aflac
2. RiskMetrics
3. H&R Block
4. Jackson Hewitt
5. Zale
6. Littlefield
7. Intel
8. Ingersoll-Rand - 86.0%
9. **Motorola – 63.7%**
10. Par Pharmaceuticals
11. Blockbuster – 90.8%
12. Tech Data
13. **MBIA – 66.2%**
14. Verizon – 90.1%
15. Occidental Petroleum
16. Hewlett-Packard
17. Charming Shoppes
18. Ameriprise
19. Alaska Air
20. PG&E
21. Lexmark International
22. Apple
23. Valero
24. Tecumseh Products
25. Forest Laboratories
26. Microsoft
27. Hain Celestial
28. Prudential
29. Bed Bath & Beyond
30. Sysco
31. Pfizer
32. YUM! Brands
33. Intuit
34. Goldman Sachs

[7] From BBBY 4/9/09 8-K: "[E]ffective with the Company's 2011 Annual Meeting of Shareholders, the Company will implement a non-binding, advisory vote by the Company's shareholders on the Compensation Committee's compensation philosophy, policies and procedures for the Company's named executive officers."

[8] From Hill-Rom 10/6/09 8-K: "The Board approved the submission to a shareholder vote at the 2010 annual meeting a policy that, if approved by shareholders, would in future years provide shareholders an annual non-binding advisory vote on the Company's overall executive compensation philosophy, policies and procedures, and the compensation decisions made by the Board with regard to executive performance."

35. Jones Apparel Group[9]
36. Mobile Mini
37. Bank of New York Mellon
38. Hill-Rom Holdings

17 Adopters as result of majority vote.
17 companies receiving majority votes on shareholder proposals have adopted Say on Pay: Alaska Air; Apple; Blockbuster; Hain Celestial; Ingersoll-Rand ; Jones Apparel Group; Lexmark International; Motorola; Par Pharmaceuticals; Pfizer; PG&E; Prudential; Tech Data; Tecumseh Products[10]; Valero Energy; Verizon; and YUM! Brands.

2009 Voluntary Results:

Company	AGM Date	Result
Motorola (MOT)	5/4/09	63.7%
MBIA (MBI)	5/7/09	66.2%
Ingersoll-Rand (IR)	6/3/09	86.0%
Verizon (VZ)	5/7/09	90.1%
Blockbuster (BBI)	5/28/09	90.8%
Par Pharmaceuticals (PRX)	6/9/09	93.2%
Tech Data (TECD)	6/10/09	94.2%
Intel (INTC)	5/20/09	96.5%
Alaska Air (ALK)	5/19/09	97.0%
Aflac (AFL)	5/4/09	97.4%
RiskMetrics (RMG) - 1st	6/16/09	99.6%
RiskMetrics Vote 2	6/16/09	99.8%

Say on Pay at TARP Firms:

In 2009, advisory votes on pay were mandated for the first time this year at hundreds of companies that received funds from the government's Troubled Assets Relief Program.

On average, 88.6 percent of votes cast at 237 firms that have disclosed results were in favor of management.[11] No pay package was rejected.

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[9] Reports indicate that “the company has confirmed its intent to follow investor sentiment by holding an advisory vote on executive compensation next year.” (See Calvert Investments Newsletter – “Major Say-On-Pay Moves Boost Likelihood of Congressional Action on CEO Pay,” 10/12/2009)
[10] The company said it was adopting while facing a shareholder proposal, which was voted on and received a majority.

But things take time to gain traction with investors.

- This is a new tool that shareholders are learning to use.
- Additionally, the vote was mandated in late February, giving shareowners little time to prepare and adjust voting guidelines accordingly.
- It's always a slow, evolutionary process before big stockholders broadly embrace a new idea like say on pay. In the UK, the lone protest vote against a pay package had occurred at GlaxoSmithKline in 2003. But then in 2009, shareowners used Say on Pay to oppose four pay packages (at Bellway, Shell, Berkeley and Royal Bank of Scotland).
- In Australia, many companies have improved their pay practices since advisory votes were first held in 2005. At the same time, investors have become more willing to reject reports in cases of excessive pay practices. The first majority "against" vote at an S&P/ASX 200 firm didn't occur until 2007, while eight reports were rejected during Australia's most recent proxy season in late 2008.[12]

Lowest vote - 59 percent support at the **Bank of the Ozarks**
Citigroup (84.2 percent support) and **Bank of America** (71.3 percent), were targets of very successful Vote No Campaigns.

Broker votes – up to 12% distortion upon MSOP votes

- Bank of America, if all the broker vote were voted "For" the proposal and are removed, the support would have actually been 58.3%.
- Citigroup, if all the broker vote were voted "For" the proposal and are removed, the support would have actually been 71.5%

Additional Background and Facts

Say on Pay as Engagement Tool

- The shareholder vote would not override compensation decisions, but would allow shareholders to weigh in on whether they believe the executive compensation is warranted. Allowing an up or down vote on pay would encourage our company to explain and justify the executive pay policy to shareowners.

- Institutional investors filing Say on Pay proposals believe as a general principle that a company should communicate to its shareholders how executive pay is tied to performance.

- An advisory vote would be an opportunity for shareholders to express approval and confidence in a company's executive compensation, or conversely to let the board know that improvement in overall pay practices is needed.

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[11] According to an analysis by David G. Wilson, a securities lawyer at Waller Lansden Dortch & Davis. Tse, Tomoeh Murakami, "Shareholders Say Yes to Executive Pay Plans," Washington Post, 9/26/09.
[12] "Postseason Review," Risk & Governance Weekly, 9/18/09.

- In the UK, Say on Pay is widely viewed as a useful means of engaging with companies on the issue of executive pay. The mechanism of having an advisory vote sets up the basis for having a dialogue, and that is what is companies and investors find useful.

How it Works: In 2003 at the UK health products company GlaxoSmithKline, a majority of shareholders rejected the remuneration report. The protest vote proved to be humiliating for the GSK board - the historic vote, although only advisory, made GSK the first British blue-chip company to have its pay scheme rejected by shareholders. British shareholders were particularly angry about the "golden parachute" payment chief executive Jean-Pierre Garnier would have received if he lost his job, and registered their collective displeasure through their proxy ballot.

Compare this to Hank McKinnell at Pfizer. Under McKinnell's tenure, Pfizer stock declined nearly 44 percent. Despite this performance, McKinnell was awarded $28.5 million in salary and bonuses, and granted stock options worth more than $55 million, and now receives a $6.5 million annual pension.

Additionally, another UK protest vote took place at Bellway in 2009, when more than 59% of shareholders participating in the vote were opposed to the company's remuneration report. In addition to the Glaxo vote, this was only the second time UK shareowners have voted down a package.

Also in 2009, the third UK protest vote took place at Shell, when nearly 60% of shareholders participating in the vote were opposed to the company's remuneration report. Also losing investor votes in the UK for 2009 were Berkeley and Royal Bank of Scotland.

Australia Votes Against - Remuneration Reports Receive More Dissent in Australia
The 2009 Australian proxy season is off to a stormy start, with investors voting down the remuneration report at Downer EDI, and voting more than 40% of their shares against the pay reports at Qantas Airways and United Group. At Downers's October agm, 59% of shareholders voted against the remuneration report after the board reset performance hurdles in the face of poor results.[13]

Growing Governance Trend
Investor votes on pay reports are a growing governance trend in other markets. Britain, the Netherlands, Australia, Sweden, Norway, Spain and France have each adopted measures allowing shareholders to vote on executive pay (note: Netherlands and Norway each require a binding vote). In Britain, the growth rate of executive pay is declining, and communication between companies and shareholders over compensation has improved because of the rule.

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[13] Lawrence, Martin, "Remuneration Reports Receive More Dissent in Australia," Risk and Givernace Weekly, 10/23/09.

In Switzerland, Swiss companies are beginning to implement Say on pay in response to investor concerns. Credit Suisse, UBS and Nestlé have agreed to put their reports pro-actively to the advisory vote of the shareholders at their 2009 AGMs.

In Canada, banks are beginning to implement Say on pay in response to investor concerns. In 2009, shareholders at all of Canada's 'Big Five' banks won the right to vote on top bankers' compensation:

- Royal Bank - 54.4% support
- Bank of Montreal - 53.6% support
- Scotia Bank - 51.6% support
- CIBC - 51.9% support
- Toronto-Dominion Bank – adopted before vote

Fewer Rewards for Failure

A recent 2009 study of compensation-related vote-no campaigns and shareholder proposals found that votes on executive pay are not attempts by investors to micromanage pay but rather to have a say on compensation practices, and that these votes are effective in identifying firms with excess CEO pay.[14]

A 2007 Columbia and Harvard business school study on advisory votes in the UK found that Say on Pay produced markedly fewer rewards for failure.[15]

And in a 2008 study, findings suggest that future shareholder votes on executive compensation, mandated by Say on Pay legislation, will create value for firms with overpaid CEOs and firms more likely to respond to shareholder votes.[16]

Research looking specifically at the UK experience found that the introduction of "Say on Pay" has led to a "higher proportion of executive pay packages at companies being performance-related." Further, the research found Say on Pay has "encouraged greater investor engagement over pay and has led to increased and better quality dialogue with companies over their remuneration policies."[17]

US CEOS Are Paid Twice Their European counterparts

A 2005 Towers Perrin study of top executive pay in 26 major countries found that American executives make an average of twice as much as their French, German and British counterparts.[18]

Investors and Corporate Directors: the Current System Overpays

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[14] Ferri, Fabrizio, Yonca Ertimur and Volkan Muslu, "Shareholder Activism and CEO Pay," 2009 4th Annual Conference on Empirical Legal Studies Paper, 8/15/09.

[15] Balachandran, Sudhakar, Fabrizio Ferri and David Maber, "Solving the Executive Compensation Problem through Shareholder Votes? Evidence from the U.K." 10/7/07.

[16] Cai, Jie and Walkling, Ralph A.,Shareholders' Say on Pay: Does it Create Value?(December 08, 2008). Drexel College of Business Research Paper No. 2008-06. (available on www.ssrn.com).

[17] Willington, Lauren, "Say on Pay Votes Would 'Benefit' Investors," Financial News, 9/22/09.

[18] "Worldwide Total Remuneration Report 2005 – 2006," Towers Perrin.

- 75 percent of both directors and investors agree that the U.S. executive pay model has hurt corporate America's image.[19]

- 67 percent of directors believe that U.S. company boards are having trouble controlling the size of CEO compensation.[20]

- 90 percent of institutional investors[21] and 61 percent of corporate directors think the current executive compensation system has overpaid executives.[22]

- 76 percent of investment professionals support giving shareholders a Say on Pay.[23]

- 50% of directors say mandatory shareholder approval of compensation plans would have the greatest downward impact on executive compensation. 50% say to a "great or very great extent", while an additional 25% believed mandatory votes would decrease CEO pay "to some extent."[24]

Business & Political Leaders on Problems w/ Pay and Its Role in the Financial Crisis:

Jeffrey Immelt, GE Chairman and CEO: "We are at the end of a difficult generation of business leadership ... tough-mindedness, a good trait, was replaced by meanness and greed, both terrible traits. Rewards became perverted. The richest people made the most mistakes with the least accountability."[25]

Paul Volcker, former chairman of the US Federal Reserve, on the subject of banker pay: "Has there been one financial leader to say this is really excessive? Wake up, gentlemen. Your response, I can only say, has been inadequate."[26]

Fed Chairman Ben Bernanke: "Compensation practices at some banking organizations have led to misaligned incentives and excessive risk-taking, contributing to bank losses and financial instability."[27]

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[19] "Report on Directors' and Investors' Views on Executive Pay and Corporate Governance – 2008 Managing Executive Compensation in the Shareholders Interests," Watson Wyatt, 2008.
[20] "What Directors Think – 2007 Annual Board of Directors Survey," Corporate Board Member & PricewaterhouseCoopers.
[21] "Institutional Investors Dissatisfied with U.S. Executive Pay System, Watson Wyatt Study Finds," Watson Wyatt, 12/13/05. 55 institutions managing $800 billion in assets were surveyed.
[22] "Corporate Directors Give Executive Pay Model Mixed Reviews, Watson Wyatt Survey Finds," Watson Wyatt, 6/20/06. 50 directors who serve on corporate boards were surveyed.
[23] Whitehouse, Kaja, "Investment Professionals: Give Holders a Say on Pay," Wall Street Journal, 4/4/07.
[24] "10th Annual Corporate Board Effectiveness Study 2006-2007," Heidrick & Struggles, p. 31.
[25] Guerrera, Francesco, "GE chief attacks executive 'greed,'" Financial Times, December 9, 2009.
[26] Hosking, Patrick and Suzy Jagger, "'Wake up, gentlemen', world's top bankers warned by former Fed chairman Volcker," The Times, December 9, 2009.
[27] Torres, Craig, "Bank Compensation Curbs Thrust Fed, Treasury into Boardrooms," Bloomberg, 10/23/09.

Pearl Meyer October 2009 Survey on Say on Pay found:

73% of respondents predicted a mandatory shareholder vote on pay is “likely” or “very likely” in 2011, compared to 48% who expect such a requirement to be imposed in the upcoming proxy season.

PM&P Observation: The SEC must issue rules within six months of the Corporate and Financial Institution Compensation Fairness Act of 2009 becoming law. Shareholder votes would be required to be included in any proxies filed on or after six months following the promulgation of the rules.

While many expected the Senate to pass the Act in September, the last recorded action on the bill occurred in early August when the bill was referred to a Senate committee. Unless dates are amended as the bill is considered in the Senate, mandatory Say on Pay for most public companies may well be pushed into the 2011 proxy season.

Despite the possibility that Say on Pay will be mandated for all companies, only 7% of those surveyed said their company is “very concerned” about Say on Pay, with another 35% describing themselves as “somewhat concerned.”

PM&P Observation: Companies’ lack of concern about Say on Pay may reflect several factors: a sense that such a requirement will not take effect until 2011; a belief that their own executive compensation programs are appropriate and unlikely to evoke a negative shareholder vote; and an awareness that every Say on Pay vote held this year has passed.