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[Trends Developing after First Month of Say-on-Pay Votes](#)

It has now been one month since shareholders were able to render advisory votes on the executive compensation provided at their publicly-held companies in accordance with [rules adopted](#) by the Securities and Exchange Commission ("SEC") in January 2011 ("Say-On-Pay"). These rules were promulgated under the [Dodd-Frank Wall Street Reform and Consumer Protection Act](#) (the "Reform Act"). Our [January 28, 2011 blog "Some Interesting New Developments as SEC Adopts Final Say-On-Pay Rules"](#) provides an overview of the applicable rules and requirements. Of the seventy-six Say-On-Pay votes which have been reported on to-date, the shareholders at two companies have voted against approving the executive compensation.

One element of the Say-On-Pay rules is that shareholders also get to vote on how frequently the Say-on-Pay vote will be conducted at their company ("Say-On-Frequency"). In particular, shareholders can provide an advisory vote that states their wishes as to whether the Say-on-Pay vote should occur every one, two or three years. In soliciting the Say-On-Frequency vote, a company's board of directors can provide its recommendation (or it can provide no recommendation) as to which frequency it believes shareholders should support.

As we recently reported in our [February 1, 2011 blog "A Rising Tide for Annual Vote Say-On-Pay Votes"](#), there was an initial trend developing which indicated that shareholders preferred annual Say-On-Frequency. While it continues to be early in the Say-On-Pay process since the SEC's final rules have only been in effect for one month and there have been only just over seventy-five votes to-date, these initial voting results do indeed continue to demonstrate a shareholder preference for annual Say-On-Pay votes (as opposed to biennial or triennial voting). The annual frequency has received the most shareholder votes at 65% of the companies that have reported on their Say-On-Frequency votes. This preference for annual voting is particularly evident with respect to those companies which are ["Large Accelerated Filers"](#), as such term is defined under SEC rules (i.e., public companies with a market value of at least \$700 million), with the shareholders at over 84% of such companies supporting annual voting.

As illustrated in the below voting results tables, whenever a board of directors has recommended an annual Say-On-Pay vote, the company's shareholders have so far always voted in support of such recommendation. Moreover, as shown in the tables below, even when a board of directors has recommended triennial voting, the company's shareholders have frequently ignored such recommendation and still voted for an annual Say-On-Pay vote (i.e., at nineteen large accelerated filer companies, the board of directors recommended triennial voting and such recommendation was supported by shareholders on only three occasions).

["Smaller Reporting Companies"](#) (i.e., those public companies with less than \$75 million of public float) have had more success garnering support for triennial voting but we expect that going forward more/most smaller reporting companies will take advantage of the two year exemption from Say-On-Pay that was provided by the SEC in its final rules (i.e., smaller reporting companies therefore will not conduct a Say-On-Pay vote until required in 2013). This two year delay for smaller reporting companies represented a change from the SEC's [proposed rules](#) which did not provide any such transitional relief for smaller reporting companies. Those smaller reporting companies that have conducted Say-On-Pay votes in early 2011 presumably had

already filed their proxy statements (in accordance with the Reform Act and the SEC's proposed rules) for their annual meeting of shareholders prior to the release of the SEC's final rules which relaxed the Say-On-Pay requirements for smaller reporting companies. We have included their results even though technically they do not have to comply with Say-On-Pay until 2013.

Below is a summary of Say-On-Pay results through February 21, 2011 based on public filings provided by the respective companies. The data is sorted by the company's filing status as determined under [SEC Rule 12b-2](#) (i.e., Large Accelerated Filer, Accelerated Filer, Non-Accelerated Filer, and Smaller Reporting Company). The tables show the overall voting results, board recommendations on Say-On-Frequency and whether shareholders are voting in support of such board recommendations. A more detailed chart, showing company names, shareholder meeting dates, voting percentages, etc., is available [here](#). The data in the below tables and in the detailed chart does not include companies conducting Say-On-Pay votes that are mandated by virtue of the company's participation in the Troubled Asset Relief Program and also does not include companies that voluntarily held Say-On-Pay votes (e.g., companies which held their annual shareholder meeting shortly before the January 21, 2011 effective date for Say-On-Pay but which nevertheless opted to voluntarily hold a Say-On-Pay vote).

There have been 76 Say-On-Pay votes and 77 Say-On-Frequency votes to-date. One company did not conduct a Say-On-Pay vote but did hold a Say-On-Frequency vote. The board of directors at six companies opted to make no recommendation on Say-On-Frequency.

SAY-ON-PAY AND SAY-ON-FREQUENCY VOTING RESULTS THROUGH 2-21-2011

Filer Status	S-O-P		MOST VOTES-FREQUENCY		
	Yes	No	3 Years	2 Years	1 Year
LARGE ACCELERATED FILER	31	1	3	2	27
ACCELERATED FILER	17	1	4	0	14
NON-ACCELERATED FILER	5	0	3	0	2
SMALLER REPORTING COMPANY	21	0	13	2	7
TOTALS	74	2	23	4	50
PERCENTAGES	97%	3%	30%	5%	65%

SAY-ON-FREQUENCY RECOMMENDATIONS BY BOARD

Filer Status	BOARD RECOMMENDS		
	3 Years	2 Years	1 Year
LARGE ACCELERATED FILER	19	3	8
ACCELERATED FILER	8	3	5
NON-ACCELERATED FILER	4	0	1
SMALLER REPORTING COMPANY	13	2	5
TOTALS	44	8	19
PERCENTAGES	57%	10%	33%

DID BOARD'S SAY-ON-FREQUENCY RECOMMENDATION RECEIVE THE MOST SHAREHOLDER VOTES?

	SHAREHOLDERS FOLLOW BOARD?					
	3 Years		2 Years		1 Years	
Filer Status	Yes	No	Yes	No	Yes	No
LARGE ACCELERATED FILER	3	16	2	1	8	0
ACCELERATED FILER	4	4	0	3	5	0
NON-ACCELERATED FILER	3	1	0	0	1	0
SMALLER REPORTING COMPANY	12	1	1	1	5	0
TOTALS	22	22	3	5	19	0
PERCENTAGES	50%	50%	38%	62%	100%	0%

Comment

We will be providing periodic blog updates on the results and trends of Say-On-Pay votes as public companies go through the Say-On-Pay process for the first time in 2011. Companies should stay abreast of any trends and practical developments as well as any future regulatory guidance provided by the SEC during this evolutionary phase of Say-On-Pay.

If you have any questions regarding this information, please contact [Greg Schick](#) at (415) 774-2988.

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