

Analyst Alert

'Say on Pay' 2008

The data in this report is current as of June 30, 2008. It reflects companies covered by The Corporate Library and includes preliminary proxy voting data collected by the American Federation of State, County and Municipal Employees (AFSCME).

Since Aflac's landmark decision in 2007 to adopt the first shareholder advisory vote on executive compensation (better known as "Say on Pay") at a U.S. public company, there has been a flurry of activity concerning the issue. In a rare showing of bipartisan unity, both the presumptive Democratic and Republican presidential nominees have pledged support for 'Say on Pay.' John McCain recently pledged his support in a speech before the National Federation of Independent Business, while Barack Obama's support has been clearly established since his sponsorship of the Shareholder Vote on Executive Compensation Act¹ introduced in the Senate in April 2007. Mr. Obama seeks mandatory, legislated votes, having said recently, "We've seen what happens when CEOs are paid for doing a job no matter how bad a job they're doing. We can't afford to postpone reform any longer."²

Shareholder support has grown since the introduction of the first 'Say on Pay' shareholder proposal in 2006. These proposals typically request the implementation of recurring advisory votes on executive compensation, thereby giving shareholders a voice in determining executive salary levels. The following example was submitted to Apple Inc. in 2008³ by the AFL-CIO:

RESOLVED, that shareholders of Apple Inc. (the "Company") urge the Board of Directors to adopt a policy that Company shareholders be given the opportunity at each annual meeting of shareholders to vote on an advisory resolution, to be proposed by Company's management, to ratify the compensation of the named executive officers ("NEOs") set forth in the proxy statement's Summary Compensation Table (the "SCT") and the accompanying narrative disclosure of material factors provided to understand the SCT. The proposal submitted to shareholders should make clear that the vote is non-binding and would not affect any compensation paid or awarded to any NEO.

If implemented, 'Say on Pay' votes would become annual management proposals. There have been 76 'Say on Pay' proposals that came to a vote thus far in 2008, a large increase over the 53 that made it on to the proxy in 2007.

	# Shareholder Proposals
2008	76
2007	53
2006	5

The average support for 'Say on Pay' proposals from 2007 to 2008 experienced a modest uptick, from 40.8 percent to 41.7 percent.

		% Voting Yes
2008	Average	41.7%
	Median	42.1%
2007	Average	40.8%
	Median	41.0%

Nine companies' shareholders, thus far, have approved 'Say on Pay' proposals in 2008, while shareholders at eight companies approved them in the previous year. Three companies whose shareholders approved the policy adopted

¹ <http://thomas.loc.gov/cgi-bin/bdquery/z?d110:s.01181:>

² <http://www.guardian.co.uk/business/2008/may/09/executivesalaries.useconomy>

³ <http://www.sec.gov/Archives/edgar/data/320193/000119312508010038/ddef14a.htm>

it in 2007, while only two such companies have adopted it thus far in 2008. We will have to wait until closer to the 2009 proxy season to see exactly how many of these companies adopt 'Say on Pay.'

Won Majority Vote

Company	2008	Adopted?
Alaska Air Group, Inc.	55.0%	No
Apple Inc.	50.7%	Yes
Ingersoll-Rand Company Limited	54.0%	No
Lexmark International, Inc.	59.8%	No
Motorola, Inc.	54.0%	No
PG&E Corporation	52.7%	No
Rackable Systems	51.4%	No
South Financial Group, Inc. (The)	51.9%	No
Tech Data Corporation	61.8%	Yes
	2007	
Activision, Inc.	69.6%	No
Blockbuster Inc.	57.8%	Yes
Clear Channel Communications, Inc.	50.0%	No
Ingersoll-Rand Company Limited	56.7%	No
Motorola, Inc.	54.0%	No
Par Pharmaceutical Companies, Inc.	56.8%	Yes
Valero Energy Corporation	53.0%	No
Verizon Communications Inc.	50.2%	Yes

Special mention should be given to two companies at which shareholder support has topped 50 percent for two years running: Ingersoll-Rand Company and Motorola, Inc. Despite the votes, there has been no implementation of 'Say on Pay' votes at either company. Further, despite shareholders having approved proposals by a majority vote in 2007 at Activision, Valero Energy Corporation and Clear Channel Communications, the companies have not implemented 'Say on Pay.' Shareholders will vote on the proposals again this year at Valero and Clear Channel. Three companies with near-majority support in 2007 (Symantec, 48.6 percent; Sara Lee, 48.5 percent; and Cisco, 47.7 percent) are due for fall annual meetings and it will be interesting to see if 'Say on Pay' proposals are reintroduced and can finally achieve majority support.

Another trend is reflected in the number of companies garnering at least 40 percent of shareholder support; 70 percent of 'Say on Pay' proposals earned more than 40 percent approval in 2008, compared to 60 percent in 2007. In view of typical support for shareholder proposals, these are extremely successful percentages.

More than 40% Shareholder approval

	#	%
2008	46	70%
2007	32	60%

Despite the overall increases in shareholder support, the voting results are mixed at 27 companies with 'Say on Pay' proposals on their proxies in both 2007 and 2008: 17 show a decrease in support, eight show an increase in support, and there was no effective change at two companies.

Support at Companies Voting in 2007 & 2008

	#
Increased support	8
Decreased support	17
Same	2
Total	27

Eight of the 17 companies showing decreased support are in the financial sector (banking and brokerage firms); average support at these companies decreased 4.9 percent compared to a 0.9 percent decrease at all 27 companies with voting results in 2007 and 2008.

Company Name	2008 vote	2007 vote	Difference	Industry
Capital One Financial	34.7%	38.1%	-3.4%	State Commercial Banks
Citigroup	41.9%	46.2%	-4.3%	National Commercial Banks
JPMorgan Chase	39.2%	40.6%	-1.4%	National Commercial Banks
Merrill Lynch	37.5%	45.6%	-8.1%	Security Brokers, Dealers & Flotation Companies
Morgan Stanley	37.8%	39.2%	-1.4%	Security Brokers, Dealers & Flotation Companies
U.S. Bancorp	35.4%	42.9%	-7.5%	National Commercial Banks
Wachovia	31.0%	38.7%	-7.7%	National Commercial Banks
Wells Fargo	30.0%	35.1%	-5.1%	National Commercial Banks

Four of these companies (Citigroup, Merrill Lynch, Wachovia, and Wells Fargo) have undergone a change in leadership since June 2007, while the remaining four financial institutions have experienced notable swings in total compensation from 2007 to 2008. CEO pay is often cyclical depending on when CEOs decide to exercise options and when the vesting of restricted stock occurs. It is possible that these facts have played a role in the decreased shareholder support for ‘Say on Pay’ at these financial institutions.

In sum, investor support for ‘Say on Pay’ appears to be slowly increasing, at the same time as political support for it is rising in both parties. In the year ahead—particularly following the 2008 presidential election—we may see further movement on the issue from both a legislative and a shareholder perspective.

Damion Rallis, Research Associate
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877 479-7500 *toll free U.S.*

207 874-6921 *outside U.S.*

sales@thecorporatelibrary.com

www.thecorporatelibrary.com