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Say-on-Pay 2011 - What Companies Have to Say on the Frequency Vote

The Dodd-Frank Wall Street Reform and Consumer Protection Act requires public companies to provide non-binding shareholder advisory votes on the compensation of executives ("say-on-pay"). Both the initial shareholder votes on say-on-pay and on the frequency of say-on-pay votes must be included in proxy statements for shareholder meetings that take place on or after January 21, 2011. Buck's analysis of proxy statements recently filed by nearly 150 companies indicates that a majority of the companies that included a say-on-frequency vote recommended a say-on-pay vote every three years.

Background

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) imposed a requirement for public companies subject to the federal proxy rules to provide non-binding shareholder advisory votes on executive compensation. (See our July 16, 2010 *For Your Information*.) Generally, beginning with the first annual or other shareholder meeting on or after January 21, 2011, public companies must hold separate shareholder advisory votes along with their proxies on whether to –

- approve the compensation of named executive officers ("say-on-pay vote")
- hold the say-on-pay vote every one, two or three years, or to abstain from voting ("say-on-frequency vote").

> ***BUCK COMMENT.*** *Final rules adopted by the Securities and Exchange Commission (SEC) on January 25, 2011 provide a temporary two-year exemption from the say-on-pay and say-on-frequency votes for smaller reporting companies. Companies with indebtedness under the Troubled Asset Relief Program (TARP) are also exempt until the first annual shareholder meeting after they have repaid their TARP indebtedness.*

The say-on-pay vote must be held at least every three years, and the say-on-frequency vote at least every six years thereafter. (See our November 2, 2010 *For Your Information*.)

> ***BUCK COMMENT.*** *The SEC's final rules clarify that the three and six year timeframes are calendar years.*

Many publicly traded U.S. companies have taken their first steps in the new say-on-pay era, and recent proxy statement filings have begun to reflect the new Dodd-Frank Act requirements. While it is much too soon to report on shareholder voting results, we can begin to take the pulse of how companies are feeling about the optimal frequency of say-on-pay votes by looking at management's recommendations.

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Overview

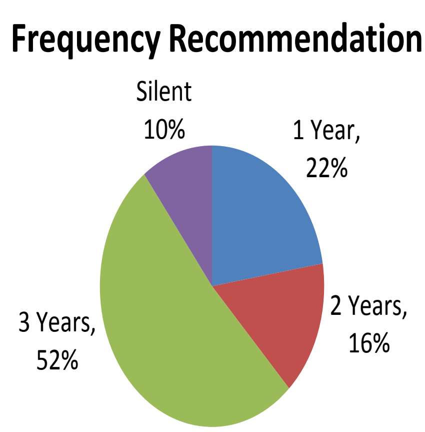
The SEC expected that companies would include along with their proxies recommendations on how shareholders should vote on the frequency of subsequent say-on-pay votes, and many already have. To see whether any consensus on say-on-frequency is beginning to build in the business community, Buck analyzed the annual shareholder meeting proxy statements of nearly 150 companies filed between December 1, 2010 and January 15, 2011. The proxy statements of nearly 60 of those companies were for annual shareholder meetings on or after January 21, 2011 and, as required under the Dodd-Frank Act, included a proposed resolution on the frequency of subsequent say-on-pay votes.

Buck's analysis of these proxy statements focused on the companies' recommendations to shareholders on how frequently non-binding say-on-pay votes should be held, and found that a majority of the companies that included a say-on-frequency vote recommended a vote every three years. Significantly, company revenue size appeared to have no material impact on these say-on-frequency recommendations. Highlights of our findings appear below.

Company Recommendations for Say-on-Frequency Vote

The say-on-frequency vote most commonly recommended by management was every three years.

- 52% of companies recommended a say-on-pay vote ***every three years***.
- 22% of companies recommended a say-on-pay vote ***every year***.
- 16% of companies recommended a say-on-pay vote **every two years**.
- 10% opted to provide no recommendation.



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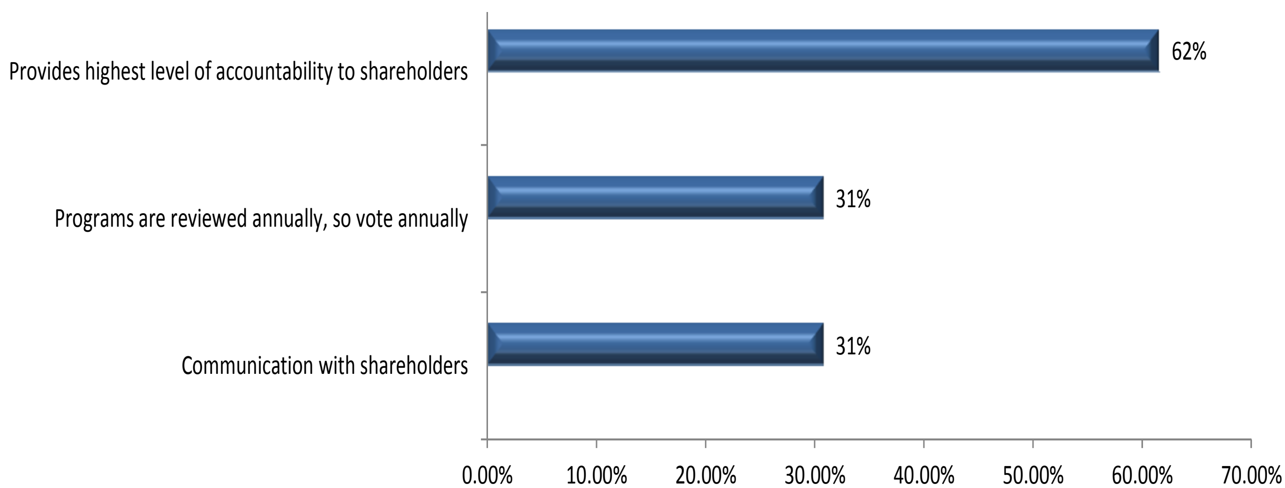
Reasons Cited for Say-on-Frequency Recommendations

Generally, companies provide in their proxy statements a rationale to support their recommendations to shareholders on how to vote. Consistent with that practice, all but one of the companies we looked at cited at least one supporting reason for their recommendation on say-on-frequency.

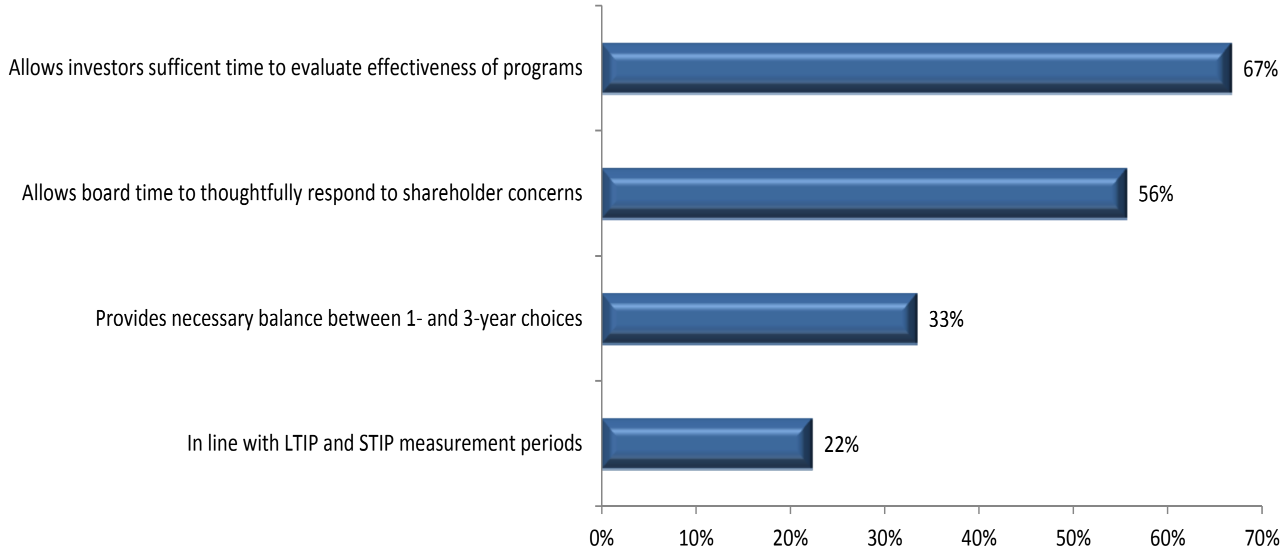
The reason most cited by proponents of a say-on-pay vote every year was that it provides the highest level of accountability to shareholders. Many of the companies that recommended say-on-pay votes every two or three years believe an annual vote undermines the ability to allow a program to run its course before making a judgment, especially given the long-term nature of many executive compensation packages. In fact, one of the most common reasons cited for a three-year recommendation was its alignment with long-term incentive plans.

Further detail from proxy statements we reviewed is summarized in chart form below, which highlights the many and varied reasons cited by companies in support of their annual, biennial or triennial say-on-pay vote recommendations.

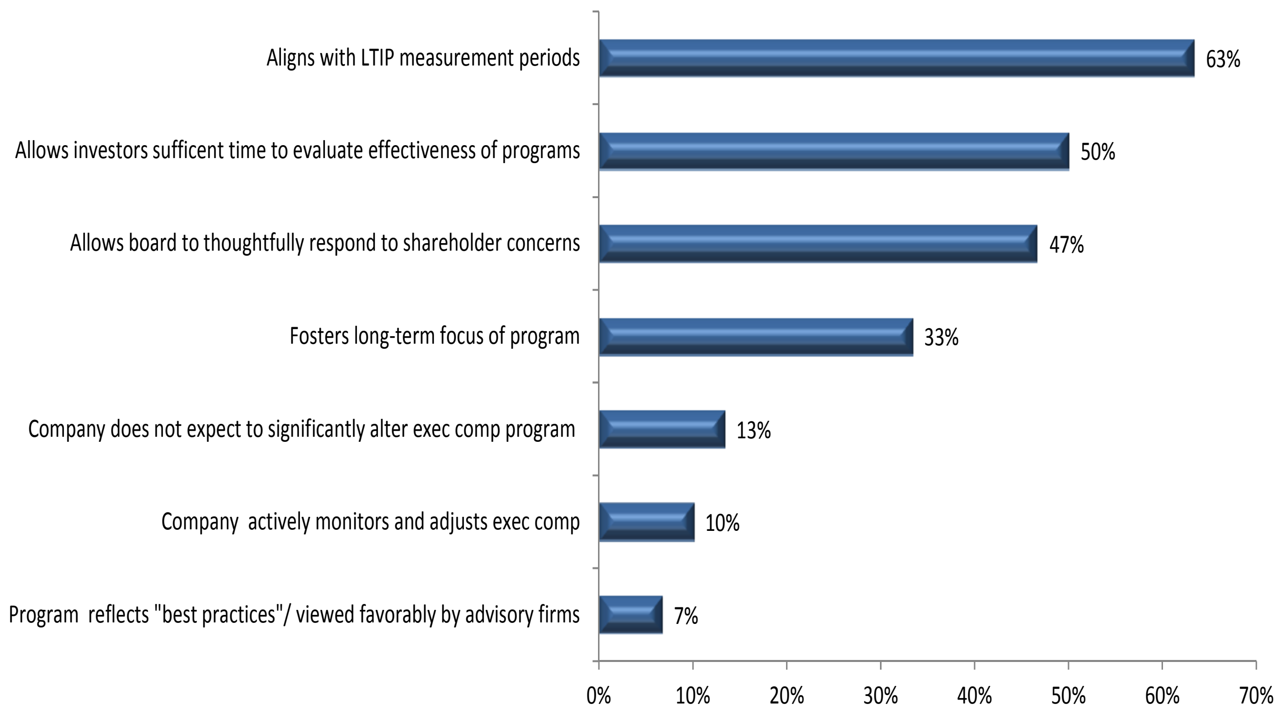
1-Year Recommendation



2-Year Recommendation



3-Year Recommendation



Conclusion

Many companies have not yet solicited their shareholders' views on say-on-pay or say-on-frequency, and have yet to recommend whether say-on-pay votes should occur on a one-, two- or three-year basis. At this very early stage of the 2011 proxy season, no clear trends have emerged.

Buck's consultants will be following say-on-pay and say-on-frequency votes and recommendations throughout the proxy season and will provide updates as trends develop.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.