

## in focus

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**SEC Adopts Final Rules on Shareholder Say-on-Pay***Final rules address shareholder votes on executive compensation*

The Securities and Exchange Commission has released the final rules on shareholder approval of executive compensation and golden parachute compensation arrangements, as well as on the frequency of such votes. The final rules largely adopt the rules proposed in October of last year, with some changes. A few highlights:

- Shareholder advisory votes on executive compensation, frequency of say-on-pay votes, and golden parachute compensation arrangements are not binding on the issuer or board of directors.
- Issuers must address in the CD&A whether, and if so, how their compensation policies take into account the results of the most recent say-on-pay vote.
- Issuers are not prohibited from seeking more specific shareholder opinions through separate votes on various aspects of compensation.
- Companies that qualify as “smaller reporting companies” need not conduct a shareholder vote on say-on-pay and frequency of say-on-pay until annual meetings occurring on or after January 21, 2013.
- Issuers must disclose in the proxy the general effect of the frequency of the say-on-pay vote, such as whether the vote is non-binding.
- Issuers must disclose the current frequency of its say-on-pay votes and when the next scheduled say-on-pay vote will occur.
- Issuers may vote uninstructed proxy cards in accordance with management recommendations if certain requirements are met.
- Issuers can exclude shareholder proposals on frequency of say-on-pay votes if the adopted frequency received a majority of the votes cast.
- Issuers must disclose the results of the shareholder vote on frequency of say on pay no later than 150 calendar days after the date of the meeting in which the vote occurred and no later than 60 days prior to the deadline for submitting shareholder proposals.

- Proxies that include solicitations of shareholder advisory votes on executive compensation, including the frequency of such compensation, need not be filed in preliminary form.
- Proxies to approve an acquisition, merger, asset sale or other transaction must include a tabular and narrative disclosure of all compensation that an executive would receive that relates to the transaction.
- TARP companies are exempt from providing a vote on the frequency of say-on-pay votes.

The final rules are generally effective March 26, 2011. However, statements filed for meetings occurring on or after January 21, 2011 must include separate resolutions for shareholders to approve executive compensation and frequency of say-on-pay votes, and rules relating to the advisory votes on golden parachute compensation is effective for initial filings on or after April 25, 2011.

For more information about executive compensation disclosure requirements, please contact:

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