

Say on Pay: Where We Are and How Do We Make it Work?

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By Neil Stewart, Executive Editor, IR magazine. Originally posted on irmagazine.com.
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The New York Chapter of the National Association of Corporate Directors held its first event of the Fall 2009 program season on October 21st. The program, hosted jointly with TIAA-CREF, attracted dozens of corporate directors and institutional investors, including some of the biggest US pension funds, to TIAA-CREF's Third Avenue headquarters. Panelists included major players like Arthur Martinez, chairman of HSN and a director at AIG and PepsiCo, among other companies.

Say on pay on the way

There was general agreement that say on pay is coming. Jeffrey Gordon, a professor at Columbia Law School, expressed the hope that smaller firms will be exempted.

Ed Durkin, director of corporate affairs for the United Brotherhood of Carpenters, which has proposed a triennial vote only for the largest companies, implied it wasn't too late for Washington to change course on say on pay. He challenged companies and investors to 'let the decision-makers know that this could be a valuable tool if it's done right, but it could also result in a lot of wasted time and resources.'

Speakers were divided over the potential for meaningful discussion or indeed any change coming from say-on-pay votes.

'There has been improved communication and better disclosure but we're not there yet,' said Hye-Won Choi, TIAA-CREF's head of corporate governance. 'Boards think shareholders are micromanaging, and shareholders think boards aren't listening,' she added.

Ken Bertsch, executive director of corporate governance at Morgan Stanley Investment Management, pushed for better disclosure, and suggested looking down under to learn how: 'Australian companies do it better. Part of it is graphic. It's easier for shareholders to see what companies are doing.'

Donna Anderson, head of global corporate governance at T Rowe Price, pointed to JPMorgan's proxy as best practice. It may not measure up to a checklist assessment, but it is 'a real narrative.'

The UK was repeatedly held up as an example. 'We've had say on pay for six or seven years and the earth hasn't fallen apart,' declared audience member Daniel Summerfield, responsible investment adviser for the Universities Superannuation Scheme (USS), one of the UK's largest pension funds. 'What has resulted is a much better interaction between boards and shareholders.'

Concerns about violating Reg FD, which have stood in the way of private meetings of US directors and shareholders to talk about executive pay, have been overstated, he added.



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Walking softly the UK way

Summerfield later suggested that say on pay was essential to improving corporate transparency: 'If you don't have this stick to beat companies over the head with, then the communication channels won't open up.'

Mary Louise Weber, assistant general counsel at Verizon, which voluntarily adopted say on pay in 2007, agreed that it has increased dialogue.

'Along with the say-on-pay vote, there was a renewed commitment to engaging more with institutional holders on the part of the board,' Weber explained. For example, the compensation committee's independent compensation consultant began regular calls with institutional investors, soliciting feedback and reporting back to the committee. 'There's no question that it has generated more conversation,' she said.

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Panelists agreed that early dialogue is important and post-proxy conversations are needed to uncover the nuance behind the 'up-or-down' proxy vote. But aside from that oblique reference to Verizon's calls with investors, little was said about the form the vaunted say-on-pay dialogue could take.

Nina Henderson, lead director at Del Monte Foods and a director at Pactiv and AXA Financial, said she encourages investor days and likes board members to attend. 'I want to hear the questions investors ask,' she said.

Durkin, who has led wide-scale engagement initiatives over many years, allayed directors' fears about facing off with institutional shareholders. 'We don't need to talk to the comp committee. We want the corporate secretary or HR or whoever had their hands all over the CD&A,' he said.

The forum audience was comprised of company directors, corporate secretaries, institutional investors and consultants of all stripes. One PR veteran privately suggested the say-on-pay dialogue might lead to communications pros being recruited as board members. 'Boards don't need any more accountants. What they need is more awareness of image and crisis management,' he confided.



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Too much to do

Durkin's main argument against universal annual say on pay is that investors don't have enough resources for all the analysis that will be needed. The Carpenters funds, for example, have more than 3,600 companies, and Durkin says the research would have to be more than a checklist approach.

Anderson admitted T Rowe Price would be 'triaging' companies' pay plans, with 'no' votes reserved for the 20 percent or so that are 'real outliers' – the 'compensation cavemen.'

There was discussion about advisory firms like RiskMetrics, and whether they would be the ultimate deciders of pay questions. The large investors present disputed this notion. 'They have a role to play, but reports of their level of influence and power are overblown,' Choi said. 'We subscribe to all the major ones, but we have our own policies.' Anderson said she 'took issue with the idea that RiskMetrics is controlling the vote.'

Jim Melican, chairman of PROXY Governance, a proxy adviser, responded from the audience, arguing that few institutional investors have the capacity to analyze proxies and come to decisions themselves. 'There may be 50 institutions that really have devoted any kind of staff support to analyzing governance – out of the thousands in the US,' he said.

'Thoughtful institutional investors who actually care about the issue and want to do the right thing are not going to be the majority,' agreed Kenneth Kopelman, partner at Kramer Levin Naftalis & Frankel and president of NACD's New York chapter.

Choi told how TIAA-CREF's voting process is integrated with its investment management process. That may be the exception among institutions. 'There is a wide gulf between voting and portfolio managers,' Kopelman suggested.

Henderson recently completed her term as a director of Royal Dutch Shell. She underlined the conclusion about lessons from the UK: 'Say on pay created additional dialogue, and things were brought up that were much broader than pay. Also, it has brought portfolio management and governance together. Companies meet with both, sometimes in the same room.'

The exhortation to companies from Henderson: 'Have the discussion. Get out in front, talking and getting feedback.'

