

Board Remuneration Policy Review

Preamble

Remuneration payments made to executive and non-executive board members, company directors and chief executive officers (CEO) have increasingly been on the rise in Germany over recent decades. The average management board remuneration payments of the thirty largest publicly listed companies on the DAX more than doubled from €1,2 million in 2001 to €3,0 million in 2012.¹ Average CEO remunerations are even higher and have also increased rapidly, from €3,7 million in 2007, to €5,1 million in 2015.² This, along with other recent developments related to key executives continuing to attain exorbitant levels of remuneration during periods of poor company performance, has led to widespread debate on how best to deal with concerns over how remuneration at the top level is set, managed and regulated.³

Board remuneration regulation is essentially a two stage issue. Firstly, there should be transparency concerning the remuneration packages of executive and non-executive board member and directors. And secondly, shareholders should have a level of control over the process of board remuneration determination.

The Economics Minister of Rhineland-Pfalz, Volker Wissing (FDP) proposition is for the disclosure of a remuneration payment corridor, which is attached to each management or supervisory position. This allows for a transparent conversation and the ability for all stakeholders to comment and state their positions. Any remuneration payments which intend to deviate from the disclosed corridor would require a shareholders meeting resolution. This ensures that shareholders maintain a level of control over their assets.⁴ This is a market led process, which ensures that undue legislation does not hamper the strategic decisions of both company management and shareholders.

Other political figures have proposed setting an arbitrary ceiling on total remuneration packages for all companies or for an upper limit based on a multiple of the company's lowest

¹ Thomas, R.; Van der Elst, C. (2015). Say on Pay around the World. *Washington University Law Review* 92(3), 653-732. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2401761.

² see DSW (2014), *DSW December 2014 Newsletter*, Deutsche Schutzvereinigung für Wertpapierbesitz e.V. (DSW). <http://www.dsw-info.de/fileadmin/downloads/Newsletter15.pdf> (accessed February 2, 2017) also see Deutsche Welle (2016), *Board pay shrinks in Germany's biggest companies*, DW Online, July 7th, 2016.. <http://dw.com/p/1JLFK> (accessed February 2, 2017) also see Thomas and Van der Elst (2015), *supra* note 1.

³ see Fröndhoff, Bert-Friedrich; Fockenbrock, Dieter (2016), *The Boardroom Pay Bonanza*, Handelsblatt Global, March 30th, 2017. <https://global.handelsblatt.com/companies-markets/germanys-boardroom-pay-bonanza-481910> (accessed February 2, 2017).

⁴ see Neuerer, Dietmar (2017), *FDP schlägt Gehaltskorridor für Top-Manager vor*, Handelsblatt, January 5th, 2017. <http://www.handelsblatt.com/politik/deutschland/winterkorn-debatte-fdp-schlaegt-gehaltskorridor-fuer-top-manager-vor/19214400.html> (accessed January 13, 2017).

paid employee.⁵ Such regulations may hinder competitive decision making and certainly curtail the ability of management and shareholders to remain in control of their own strategies.

Looking outward towards global peers, it becomes clear that Germany is not alone in the public debate of these issues. As a whole, international standards are moving towards the disclosure of individual remuneration packages for board members and senior management, as well as the provision of shareholder 'say on pay' votes. Although this is currently considered 'best practice', only few countries have systems and legislation in place that are sufficient enough to ensure that this occurs regularly or in all instances, meaning that shareholder control is also still limited in many countries. Companies are, however, increasingly encouraged or required to not only disclose, but explain, remuneration packages, often in line with a formalised remuneration policy, which can only be amended via a shareholder meeting resolution in some jurisdictions.⁶

Shareholder Importance ('say on pay')

The influence and necessity of say on pay requirements is often contextual to the composition of specific national markets. In markets such as the US, UK or Australia, there is a high level of ownership dispersion in public companies, whereby individual shareholders do not generally have a majority stake in a company.⁷ This lack of a majority can dilute the influence of shareholders on management. Having a say on pay allows shareholders to monitor management and reduces agency costs that arise due to the separation of ownership and control. It is also an answer to the collective action problems associated with this principal-agent dilemma.

In markets with concentrated ownership structures, there are additional forms of influence on management, as an individual's shareholding is large enough to be considered without needing to cooperate with other shareholders. Traditionally Sweden, the Netherlands and Germany have a higher concentration of ownership, although this has changed significantly in the last two decades. The increasing dispersion is due, in part, to an influx of foreign institutional investment, along with increasing complexity within stock markets (over 50% of the DAX is foreign owned⁸). However, even in concentrated market structures, say on pay is still a valuable tool to address social pressures on income inequality and to ensure that clear and concise information is provided to shareholders.

The global financial crisis further highlighted the concern that executive compensation structures reward inappropriate risk taking and create a short term outlook on performance gains. Several governments recognised this concern and have moved to implement say on pay policies to increase shareholder participation and with it the legitimacy of corporate

⁵ see Berschens, Ruth (2017), SPD-Plan gegen Boni-Exzesse, Handelsblatt, January 9th, 2017. <http://www.handelsblatt.com/my/politik/deutschland/wahlkampf-munition-fuer-gabriel-spd-plan-gegen-boni-exzesse/19230188.html?ticket=ST-3356719-91s9KL5To2jjJMiGrsTm-ap4> (accessed January 13, 2017).

⁶ OECD (2011), *Board Practices: Incentives and Governing Risks*, Corporate Governance, OECD Publishing.

<http://dx.doi.org/10.1787/9789264113534-en> also see Thomas and Van der Elst (2015), *supra* note 1.

⁷ see Thomas and Van der Elst (2015), *supra* note 1.

⁸ see Thomas and Van der Elst (2015), *supra* note 1.

governance.⁹ Say on pay is a democratic voting system that is based on upholding the property rights of a company’s shareholders. It provides a means of influence that can work to ensure that compensation practices produce long term value for the company and do not incentivise excessive risk taking.

OECD Principles

The OECD Principles for Corporate Governance look at more than just the level and disclosure of executive and director remuneration. They also focus on ensuring that such remuneration is aligned with longer term company interests. The principles state that shareholders should be able to make their views known and that disclosure of remuneration and its structure should be timely and of high quality. These factors ensure informed shareholder engagement. Amongst OECD nations there is an increasing push towards the requirement of explanatory statements which explain, in plain English, exactly how remuneration payments relate to the short, medium and long term interests of the company. In some countries this is mandated via ‘hard law’, though in many there is only a ‘comply or explain’ requirement under ‘soft law’ set out in principles, codes or guidelines.¹⁰

Global Policy Review

Table One is an outline of current remuneration regulation amongst global peers. It highlights key elements of each country’s regulatory environment and should be read in conjunction with Appendix One and the relevant legislation to fully understand their implications.

Table One: Global Outlook on ‘Say on Pay’ Policy¹¹

Regulations	Remuneration Disclosure	Shareholder vote to determine board membership compensation *	Shareholder vote on compensation for directors executive duties	Shareholder vote to approve remuneration report	Shareholder vote to approve remuneration policy	Frequency of vote
Australia	Mandatory (individually)	N/A	N/A	Mandatory: Non-binding 'two strike' rule	N/A	Annual

⁹ see Delman, J. (2010). Structuring Say-On-Pay: Comparative Look at Global Variations in Shareholder Voting on Executive Compensation. *Columbia Business Law Review* 2010(2), 583-631. http://www.heinonline.org.dbgw.lis.curtin.edu.au/HOL/Page?handle=hein.journals/colb2010&div=17&start_page=583&collection=journals&set_as_cursor=0&men_tab=srchresults# also see Hill, J. G. (2010), The Rising Tension between Shareholder and Director Power in the Common Law World. *Corporate Governance: An International Review*, 18: 344–359. doi:10.1111/j.1467-8683.2010.00804.x also see Pagnattaro, M.; Greene, S. (2011). Say on Pay: The Movement to Reform Executive Compensation in the United States and European Union. *Northwestern Journal of International Law Business* 31(3), 593-636. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1933243.

¹⁰ see OECD (2011), *supra* note 6.

¹¹ main source Thomas and Van der Elst (2015), *supra* note 1. also see Appendix One for further referencing.

Belgium	Mandatory (individually)	Mandatory: Non-binding (total) Binding (severance pay exceeding 12 months)	N/A	Mandatory: Non-binding	N/A	Annual
Germany	Yes, unless shareholders vote to opt-out (individually)	N/A	N/A	Non-binding	N/A	At management's discretion (not expected to be frequent)
South Africa	Mandatory (individually)	N/A	N/A	N/A	N/A	N/A
Sweden	Mandatory (individually)	Mandatory: Binding (individually)	Mandatory: Binding (individually)	N/A	Mandatory: Binding	Annual
The Netherlands	Mandatory (individually)	Binding: individually (usually a fixed flat rate)	Binding: individually, unless delegated (expected to be delegated to supervisory board) Non-binding: (vote on share based pay)	N/A	Mandatory: Binding	When policy is amended
UK	Mandatory (individually)	N/A	N/A	Mandatory: Binding	Must be approved in report	At least every 3 years
US	Mandatory (individually)	N/A	Mandatory: Non-binding (total)	Mandatory: Non-binding	N/A	At least every 3 years

(*) = non-executive board members or supervisory board members; (individually) = vote or disclosure of each individual board member or directors compensation; (total) = vote or disclosure of the total compensation package of all board members or directors; 'two strike' rule is explained in Appendix One

European Commission

In light of consistent consternation on the issue of remuneration practices across Europe, the European Commission (EC) has made several recommendations on the types of policies that member states should implement. In terms of say on pay, these have, until now, remained non-binding, meaning that member states have the final say on policy implementation. The 2004 EC recommendation called for increased disclosure of compensation, stressing that disclosures should be individualised and that their derivation should be clearly outlined in a remuneration statement. The recommendation also proposed a shareholder vote be held on the remuneration policy, with member states being open to choose whether it be binding or non-binding. Following the global financial crisis, the EC released another recommendation in 2009. This focused on ensuring that remuneration was better aligned with the long term interest of the company, calling for more sensitivity to

company performance and increased clarity of the derivation explanations contained within the remuneration statement.¹²

The 'Two Strike Rule'

Australia's remuneration regulation requirements are among the most stringent globally. Under section 300A of the Corporations Act 2001, listed companies must present a remuneration report to the shareholders at every Annual General Meeting (AGM). This report should also outline the policies for remuneration determination of the company directors and executives.¹³ A 'two strike rule' was contained within an Act amendment in 2011. Under this amendment, shareholders vote on the remuneration report at every AGM. The 'first strike' comes when the report receives a 'no' vote of more than 25% at an AGM. The 'second strike' comes when the subsequent report receives a 'no' vote of 25% or more at the next AGM. The shareholders then vote for a 'spill' resolution at the same AGM and if it passes with 50% or more 'yes' votes, then a 'spill meeting' must take place within 90 days. At the spill meeting all directors, except the managing director, must stand for re-election. This puts pressure on the board to ensure that shareholders concerns are adhered to, especially after a 'first strike'.¹⁴

In this circumstance the actual say on pay vote is non-binding. However, the prospect of directors needing to stand for re-election if shareholder unrest persists ensures that there are real and enforceable consequences for management who are unable to adequately adjust their remuneration practices. Studies suggest that this regime has placed downward pressure on remuneration levels in Australia. Though, it has also been branded as highly controversial or overly onerous by the Australian Institute of Company Directors and some law firms.¹⁵

Binding vs Non-Binding

Australia's implementation of the 'two strike' rule was devised due to concern that a binding vote may absolve directors of their responsibility to set appropriate executive compensation and undermine its ability to make decisions. Other markets have also noted the possible negative effects that binding votes may have, by either increasing compliance costs or reducing global competitiveness, as companies may be unable to attract or retain key personnel.¹⁶

¹² see Vesper-Graske, M. (2013). Say on Pay in Germany: The Regulatory Framework and Empirical Evidence. *German Law Journal* 14(7), 749-795. <http://heinonline.org/HOL/LandingPage?handle=hein.journals/germlajo14&div=39&id=&page=> also see Commission of the European Communities (2009), *Commission Recommendation on remuneration policies in the financial services sector*. C(2009) 3159. http://ec.europa.eu/internal_market/company/docs/directors-remun/financialsector_290409_en.pdf also see European Commission, *Corporate Governance, Remuneration Policies*. http://ec.europa.eu/justice/civil/company-law/corporate-governance/index_en.htm (accessed January 30, 2017).

¹³ see the Australian Institute of Company Directors website, *Director Remuneration* <http://aicd.com.au/resources/all-sectors/director-remuneration> (accessed January 17, 2017).

¹⁴ also see the Australian Institute of Company Directors, *supra* note 13. also see Thomas and Van der Elst (2015), *supra* note 1.

¹⁵ see Thomas and Van der Elst (2015), *supra* note 1.

¹⁶ see Thomas and Van der Elst (2015), *supra* note 1.

Criticism of non-binding votes is also high. In the US, say on pay has had a noticeable influence on remuneration practices, by ensuring that they are better linked to performance. Yet, the non-binding nature of the vote still leads to criticism because there is little ability for shareholders to enforce a change in management's remuneration decisions following a majority 'no' vote. This has led to shareholders facing the difficult challenge of taking non-responsive management to law courts, often to no avail.¹⁷ The scenario of non-responsive management was also initially encountered in the UK, whereby management faced no legal repercussions if they chose to ignore a vote of dissent. This persisted until implementation of the Enterprise and Regulatory Reform Act, in 2013. The new reforms strengthened shareholder rights by stipulating that a binding vote needs to be held at least every three years on a remuneration report containing forward looking remuneration determination policies.¹⁸ Sweden's regime, with annual binding votes on the remuneration policy and individual director remunerations, has actually seen say on pay votes with higher levels of approval than its global peers. Empowered shareholders in Sweden are also swift to vote against abnormal remuneration practices. Similar trends have occurred with the Netherlands' binding vote on the remuneration policy, with management spearheading any expected opposition by engaging with shareholders extensively in the lead up to scheduled votes.¹⁹ By having a binding vote, clear repercussions are in place, ensuring that management are responsive to shareholder concerns.

Global Policy Outcomes

Say on pay legislation is increasingly being implemented and gradually providing more and more rights for shareholders.²⁰ The overall trend is that shareholders tend to approve remuneration policies and packages.²¹ This is the case whether say on pay provisions are binding or non-binding. What does occur is increased disclosure and communication between management and shareholders, leading to remuneration that is more responsive to company performance.²² The strongest influence of dissenting say on pay votes are in companies with poor performance and high levels of compensation, making the provision of a vote a useful way to ensure that management decisions are better in line with shareholders concerns.²³ Yet, there are few repercussions to management, unless this dissenting vote is in

¹⁷ see McCowan, A. (2013). Comment: U.K.'s Binding Say-on-Pay and Its Semi-Binding Nature on the U.S. *Wake Forest Journal of Business and Intellectual Property Law* 13(2), 205-228. <https://litigation-essentials.lexisnexis.com/webcd/app?action=DocumentDisplay&crawlid=1&doctype=cite&docid=13+Wake+Forest+J.+Bus.+%26+Intell.+Prop.+L.+205&srctype=smi&srcid=3B15&key=4a0122aff9434a8cdd949ba7071cff12>.

¹⁸ see McCowan (2013), *supra* note 17. also see Thomas and Van der Elst (2015), *supra* note 1.

¹⁹ see Thomas and Van der Elst (2015), *supra* note 1.

²⁰ see Delman (2010), *supra* note 9. also see OECD (2011), *supra* note 6. also see Thomas and Van der Elst (2015), *supra* note 1.

²¹ see Thomas and Van der Elst (2015), *supra* note 1. also see Vesper-Graske, M. (2013), *supra* note 12.

²² see Ferri Fabrizio and Maber, David A. (2012); Say on Pay Votes and CEO Compensation: Evidence from the UK. *Review of Finance*; 17 (2): 527-563. doi: 10.1093/rof/rfs003 also see Thomas and Van der Elst (2015), *supra* note 1.

²³ see Cotter, James F.; Palmiter, Alan R. and Thomas, Randall S. (2013) The First Year of 'Say on Pay' Under Dodd-Frank: An Empirical Analysis and Look Forward. *George Washington Law Review*, Vol. 81, No. 3, 2013. <http://dx.doi.org/10.2139/ssrn.2162957> also see Thomas and Van der Elst (2015), *supra* note 1.

some way binding.²⁴ Furthermore, some studies suggest that say on pay votes don't appear to have much long term influence on the average levels of board member remuneration.²⁵

German Perspective

In light of the remuneration regulation regimes evident amongst global peers, it becomes clear that there is still room for improved regulation that strengthens shareholders rights in Germany. Lessons can be learnt from policies that have led to increased dialogue between shareholders and management. Whether the dialogue is about the company's remuneration policy or the individual pay levels of each executive, what appears to be important is the regularity of discussion. Strengthening the rights of shareholders works to ensure that remuneration levels are more responsive to performance targets and that these targets are better aligned with shareholder interest. The necessity for communication to be on forward looking remuneration also ensures that shareholders have influence on the future path of the company.

The prospect of the European Commission pushing for strengthened and more uniform remuneration regulation across Europe may make more unique solutions, such as Australia's 'two strike' rule, less feasible in Germany. In addition to this, by selecting effective policies that have been implemented in high net worth markets such as the US and UK or close regional markets like Sweden or the Netherlands, Germany can reduce any potential loss of international competitiveness that companies may face following the implementation of new regulations.

Four key measures that could improve regulation in Germany and strengthen shareholder rights:

- 1) Set a mandatory frequency for shareholders voting on the remuneration report (i.e. annually or at least every three years).
- 2) Ensure that the remuneration report includes a forward looking remuneration policy, which:
 - a) specifies how remuneration components are set (e.g. fixed, variable, share-based);
 - b) includes a pay ceiling for individual positions (e.g. executive, non-executive, CEO).
- 3) The provision that amendments to the remuneration policy can only be made in the period between mandatory voting cycles, if they are supported by a super majority shareholder vote.
- 4) A mandatory annual non-binding vote on a remuneration report describing past performance (to allow shareholders to voice concerns, without impeding on management decisions).

²⁴ see McCowan (2013), *supra* note 17.

²⁵ see Hill (2010), *supra* note 9. also see Thomas and Van der Elst (2015), *supra* note 1.

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2017)

Appendix One

Global Policy Overview

The following is a brief overview of current remuneration regulation amongst global peers. It highlights key elements of each country's regulatory environment and should be read in conjunction with the relevant legislation to fully understand their implications.

Australia²⁶

- The Corporations Act 2001 requires a remuneration report to be disclosed and presented at every annual general meeting (AGM).
- The remuneration report should include:
 - explanation of performance related compensation;
 - remuneration policies and performance conditions;
 - actual levels of remuneration received.
- The 'two strike rule' was enacted in 2011, requiring a vote on the report at every AGM:
 - a no vote of more than 25% is the 'first strike';
 - a no vote of more than 25% of the subsequent report at the next AGM is the 'second strike';
 - shareholders then vote on a 'spill resolution' at the same AGM;
 - if there is a yes vote of more than 50%, a 'spill meeting' must be held within 90 days;
 - all directors, except the managing director, must stand for re-election at the 'spill meeting'.
- The 'two strike' rule has led to more refined remuneration packages, especially in poorly performing companies.

Belgium²⁷

- Since 2010, corporate governance legislation has required:
 - an annual non-binding say on pay vote;
 - disclosure of a detailed remuneration report;
 - company's to have a remuneration committee;
 - a set criteria for the variable parts of remuneration;
 - shareholder approval of severance pay that exceeds 12 months;
 - large golden parachutes to be approved by shareholders (for state owned companies).
- There was an average approval of 95,3% in 2012.
- Dissent votes have led to increased dialogue between management and shareholders or reduced remuneration levels.

²⁶ see AASB (2004) *Director and Executive Disclosures by Disclosing Entities*. Accounting Standard AASB 1047 <https://www.legislation.gov.au/Details/F2005B01348> (accessed January 17, 2017). also see Reuters Practical Law website, *Executive pay and the "two strikes rule": is board stability at risk in Australia?* <http://us.practicallaw.com/1-522-8733?q=&qp=> (accessed January 17, 2017). also see the Australian Institute of Company Directors, *supra* note 13. also see Thomas and Van der Elst (2015), *supra* note 1.

²⁷ see Thomas and Van der Elst (2015), *supra* note 1.

Germany²⁸

- The German Corporate Governance Code 2002 is a ‘comply or explain’ soft law requiring the disclosure of individualised board remuneration packages.
 - compliance was initially low, though gradually increased over time
- Slow adoption of the GCGC led to the Disclosure of Management Board Compensation Act (Gesetz über die Offenlegung von Vorstandsvergütungen – VorstagOG) 2005, requiring:
 - individualised disclosure of executive remuneration in the company financial statements or financial report.
 - this was designed to put pressure on supervisory boards to set appropriate remuneration levels for executives.
 - it was possible for shareholders to ‘opt-out’ of this disclosure requirement by a three quarter majority vote (max ‘opt-out’ period of five years).
- The Appropriateness of Management Board Compensation Act (Gesetz zur Angemessenheit der Vorstandsvergütung –VorstagAG) 2009, saw the first non-binding say on pay provision:
 - management had the option to add a say on pay vote to a general meeting agenda;
 - a shareholder of no less than 5% of the company could request its additions (unlikely given increasingly dispersed ownership structures);
 - the vote is on the total existing remuneration report (not necessarily forward looking);
 - vote is only advisory (non-binding)
 - no frequency of vote requirements.
- VorstagAG review:
 - when given the say on pay vote, shareholders generally approve remuneration;
 - all DAX 30 companies added the say on pay agenda item at least once within the first two years;
 - few repeatedly or regularly added the say on pay agenda item;
 - company’s receiving a vote of dissent, received a subsequent approval vote with limited adjustments.

South Africa²⁹

- The Companies Act 2008 requires the individual disclosure of each executive and non-executive board member’s compensation package.
- A shareholder resolution is required for the non-executive board member remuneration policy.

²⁸ see Thomas and Van der Elst (2015), *supra* note 1 also see Vesper-Graske (2013), *supra* note 12.

²⁹ see Deloitte (2015), *The Companies Act, 2008 Disclosure of directors and prescribed officers’ remuneration*, Deloitte & Touche. https://www2.deloitte.com/content/dam/Deloitte/za/Documents/audit/ZA_DirectorsRemunerationGuide_10062015.pdf and Deloitte (2014), *Disclosure of remuneration-a hot topic*, Deloitte & Touche. https://www2.deloitte.com/content/dam/Deloitte/za/Documents/governance-risk-compliance/ZA_DisclosureOfRemunerationAHotTopic_04042014.pdf.

- There is 'comply or explain' soft law, requiring that an Integrated Report should be disclosed, illustrating the link between compensation payments and the short, medium and long term performance of the company.

Sweden³⁰

- Since 2006 shareholders set the individual remuneration of each director individually via a general meeting.
- There is an annual binding say on pay vote for the forward looking remuneration policy for the managing director and all senior management.
- Share-based remuneration must be approved separately by a super majority (this leads to the use of phantom stock).
- Say on pay votes have a high approval rating.

The Netherlands³¹

- Since 2005 shareholder approval of a remuneration policy is required.
- Amendments must be reapproved by shareholders (though small adjustments may not necessarily be deemed an amendment).
- Individual board member remuneration approval is required unless otherwise stated in the articles of association (generally this power is given to the supervisory board).
- A non-binding shareholder vote on share based remuneration is required.
- There is a good dialogue on remuneration between management and shareholders, therefore, low dissent in votes.

UK

- The UK was the first to introduce mandatory non-binding say on pay votes in 2002.
- The legislation required an annual shareholder vote on the Directors Remuneration Report (DRR).
- Only 9 companies had a vote of dissent between 2003 and 2009.³²
- Studies generally show no decrease in remuneration growth rates on average, though compensation packages are shown to be more sensitive to performance.³³
- The Enterprise and Regulatory Reform Act 2013 now requires:³⁴
 - forward looking remuneration policy in the DRR;
 - a binding vote be held annually, if changes to the policy are proposed;
 - approval binding vote needed at least every three years, if no interim changes are proposed; and,
 - reverts to last approved DRR if voted down by shareholders.

US

- Director compensation disclosure is mandated under the Securities and Exchange Commission (SEC) rules.

³⁰ see Thomas and Van der Elst (2015), *supra* note 1.

³¹ see Thomas and Van der Elst (2015), *supra* note 1.

³² see Thomas and Van der Elst (2015), *supra* note 1.

³³ see Hill (2010) *supra* note 9. also see Ferri and Maber (2012), *supra* note 22.

³⁴ see Thomas and Van der Elst (2015), *supra* note 1.

- The 2010 Dodd-Frank Wall Street Reform requires a non-binding shareholder vote at least every three years, to approve the company's compensation, as disclosed under SEC rules.³⁵
- Research shows:³⁶
 - an average approval vote of 91,2% in the first year;
 - compensation was voted down 1,6% of the time, usually at companies with poor performance and abnormally high compensation levels;
 - the average increase in salary was reduced by 4%;
 - the legislation does more to ensure CEOs deliver on performance, as appose to bringing average compensation levels down;
 - led to increased and more comprehensive compensation disclosure.³⁷

³⁵ see Thomas, Randall S.; Palmiter, Alan R. and Cotter, James F. (2011) Dodd-Frank's Say on Pay: Will it Lead to a Greater Role for Shareholders in Corporate Governance? *Cornell Law Review*, Vol. 97, 2012. <http://dx.doi.org/10.2139/ssrn.1975866> also see Cotter et al. (2013), *supra* note 23.

³⁶ see Thomas and Van der Elst (2015), *supra* note 1.

³⁷ see Cotter et al. (2013), *supra* note 23.