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## [A Rising Tide for Annual Say-on-Pay Votes](#)

As we recently reported in our [January 28, 2011 blog "Some Interesting New Developments as SEC Adopts Final Say-On-Pay Rules"](#) the Securities and Exchange Commission last week [approved final rules](#) which regulate how public company's shareholders can render advisory votes on their company's executive compensation ("Say-on-Pay"). These rules were promulgated under the [Dodd-Frank Wall Street Reform and Consumer Protection Act](#) (the "Reform Act").

One element of these final rules is that shareholders also get to vote on how frequently the Say-on-Pay vote will be conducted at their company ("Say-on-Frequency"). In particular, shareholders can provide an advisory vote that states their wishes as to whether the Say-on-Pay vote should occur every one, two or three years.

As we noted in our [January 28, 2011 blog](#), companies and their board of directors should consider what frequency, if any, to recommend shareholders to approve. We wanted to provide this update on Say-on-Frequency developments as the 2011 proxy season gets into gear and the initial round of Say-on-Pay/Say-on-Frequency votes are solicited.

### **The Early Returns Show a Clear Preference for Annual Say-on-Pay Votes**

While Say-on-Pay/Say-on-Frequency is still in its infancy in the USA, it does appear that certain groups are strongly advocating for holding annual Say-on-Pay votes. Institutional Shareholder Services Inc. (ISS), which provides shareholder advisory voting services, has publicly recommended annual Say-on-Pay votes in their [2011 U.S. Proxy Voting Guidelines Concise Summary, dated January 3, 2011](#) based on their view that annual votes will provide the "*most consistent and clear communication channel for shareholder concerns about companies' executive pay programs.*"

Last week, Monsanto Company, a well-known seasoned issuer, was one of the first companies to conduct Say-on-Pay/Say-on-Frequency votes under the Reform Act at its annual shareholder meeting that was held on January 25, 2011. By close to a 2-1 margin, Monsanto shareholders [approved the company's Say-on-Pay vote](#). With respect to the Say-on-Frequency vote, the Monsanto board of directors had [recommended](#) that the company "*shareowners select a frequency of three years, or a triennial vote.*" However, the same shareholders that had approved the company's Say-on-Pay proposal rejected the board's recommendation for triennial voting and instead by a clear majority [voted for annual Say-on-Pay voting](#). In response to the Say-on-Frequency voting results, the Monsanto board of directors stated that it had determined to [implement an annual advisory vote on executive compensation](#).

Similarly, at its annual meeting on January 27, 2011, the shareholders of Jacobs Engineering Group Inc. rejected the board's [recommendation for triennial Say-on-Pay](#) and strongly voted in [favor of holding an annual vote](#). Separately, we also note that the Jacobs Engineering Group shareholders rejected [the company's Say-on-Pay proposal](#) thereby providing tangible evidence that obtaining an affirmative Say-on-Pay vote may not just be a foregone conclusion.

Most recently, on January 31, 2011, thirty-nine institutional investors, representing more than \$830 billion in assets, jointly

issued a [statement](#) in which they advocated an annual Say-on-Pay vote and urged "*company Boards to support an annual vote as best practice and investors to rally behind holding an Advisory Vote each year.*" Their [statement](#) noted the Monsanto Say-on-Frequency vote results and provided their rationale for why companies should conduct Say-on-Pay votes on an annual basis.

## **Comment**

Given this initial and seemingly rising sentiment toward holding annual Say-on-Pay votes, companies may want to factor this in when determining what Say-on-Frequency recommendation (if any) to provide to its shareholders. A company's board of directors is of course free to recommend a frequency other than annual Say-on-Pay. However, companies that do recommend either biennial or triennial Say-on-Pay may want to include some clear and compelling reasons in their proxy statement explaining why holding Say-on-Pay votes less frequently than every year is preferred for their company and its shareholders.

If you have any questions regarding this information, please contact [Greg Schick](#) at (415) 774-2988.

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