

# 2012 Proxy Season: Early Filers Disclose the Impact of 2011 Say On Pay Voting Results

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Proxy season 2012 has begun and we're beginning to see disclosure on the impact of last year's say on pay voting results. As of December 16, 2011, 14 large accelerated filer companies have filed proxy statements for the 2012 season.

These proxy statements disclose whether, and to what extent, the companies considered the results of their 2011 management say on pay proposal and how that affected their compensation decisions and practices. Unsurprisingly, the ten companies with high shareholder approval ratings (83% and higher) have provided simple and unremarkable disclosure. These companies generally acknowledge their high ratings and cite them as support for continuing their compensation practices.

In contrast, disclosure varied among the four companies with lower shareholder approval ratings. Mueller Water Products, Inc., who received approximately 78% approval from its shareholders in 2011, kept its disclosure short, indicating that the results were taken into account in determining the amounts of annual cash incentive awards for 2011 and in setting bonus targets for executive officers for 2012. Johnson Controls, Inc., Jacobs Engineering Group, Inc., and Monsanto, Co., who had 60%, 45%, and 65% approval ratings respectively, all provided lengthy disclosure regarding how say on pay results were considered, and two companies disclosed changes in their compensation practices.

Johnson Controls and Jacob Engineering both stated that feedback from investors was a factor in their decisions to modify their practices, with Johnson Controls changing annual and long-term incentive performance plan targets and Jacobs Engineering changing the form of awards and adding a performance condition to its long-term equity based incentive program. In contrast, Monsanto did not alter its compensation practices in light of its results from say on pay. Monsanto said that discussions with shareholders suggested no common reason for the negative votes and hypothesized that the results stemmed from poor fiscal performance in 2010. Monsanto said it believes its compensation practices are sound and, based on improved performance in 2011, it thinks it will have improved say on pay results in 2012.

It appears that companies with solid support for their compensation practices are not providing extensive disclosure on the impact of say on pay results, while those who did not fare so well are taking steps to demonstrate they take say on pay seriously—even if they aren't changing their compensation practices. This bifurcated approach aligns with what we are hearing in discussions with other companies regarding disclosure for the 2012 proxy season.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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