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roxy season 2010: The effect and implications of Say on Pay

A Europe versus United States perspective

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# Executive summary

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key issue in today’s corporate governance is executive remuneration. Excessive bonuses with poor or no performance criteria have resulted in strong debates between governments and the financial sector. This paper will discuss and review the director remuneration issues as proposed at companies’ agenda for the Annual General Meeting, in proxy season 2010. This paper will try to give an answer on the question whether or not shareholders actually have a Say on Pay, and what the effect of their voice will have on the remuneration practices.

The information that is used for this paper is based on existing literature and facts derived from the internal database of the RiskMetrics’ ISS database. The sample size consist of all companies in the US and Europe, who have put Say on Pay, and the Approval of the Remuneration Report on ballot respectively for the year 2009 and 2010. Therefore, there is no random sample selection as this would include markets and companies who don’t have Say on Pay on their ballots. However, covering over 800 meetings, the sample size does give an accurate view of reality. For Europe, Say on Pay is most active in the UK currently, as such, this country will mainly represent Europe in the comparison. However, to a certain extend other European countries will be included. Due to the fact that this paper is written during the proxy season, the actual vote results of all meetings cannot be taken into account, as these results have not been released yet

First, comparing the internal guidelines as stated by RMG, no extreme differences in the approach of analyzing remuneration proposals are found. The main goal of both guidelines reports, e.g. the US and European version, is to increase pay for performance.

Say on Pay gives shareholders the chance to cast a vote on the proposed director remuneration. It has been found that Say on Pay in the US is a non-binding vote, whereas it is in some European countries evolved into binding votes, as is, among others, the case in the UK.

The UK is the early adopter of Say on Pay, dating back to 2002, whereas the US government has started the implementation as a means to fight the crisis, initially aimed at TARP recipient companies in 2008. Approximately 360 US companies have implemented Say on Pay item on their agenda, of which 83.7% are banks. In 2009, 441 European Remuneration Report have been put on vote, and it is expected that there will be only a relative increase for this year. While the UK is familiar with dissent on Remuneration, 2010 was the first in which US companies found rejection. That was in fact more rapidly than the UK, where it took about 5 years for the first Remuneration Report to fail majority support. This season, for the first time ever, at least 3 US companies have seen their Say on Pay been opposed, which is the same for Europe; however, they faced more dissents in the past years. While looking at companies who found previous dissent, which are however, only UK based entities, it has been found that they all have improved and found majority approval this year. The actual influence of RiskMetrics as proxy advisor is limited; as this study finds that many more Remuneration proposals are given a negative vote recommendation than that they are actually voted down.

As Say on Pay by itself is an increase in shareholder rights, there are both advocates and opponents of this matter. This study found that the main argument against Say on Pay is the fact that institutional shareholders do not have the skills nor the time to accurately assess all components of remuneration. The most important benefit of Say on Pay is the increase in transparency, its potential to reduce conflict and increase constructive dialogue between companies and shareholders. Unexpectedly, the recent crisis did not increase shareholder activism. The actual impact of Say on Pay is hard to measure as the history of it is limited in the US, however, as it has been implemented years before the recent crisis in the UK, it has been found that Say on Pay by itself cannot reduce the probability of the occurrence of an economic crisis. It has been stated as a way to limit and reduce the implications of it.

This study finds that there are no significant differences in the intended goal of Say on Pay for both continents. The low number of actual dissents is explained by the broker votes in the United States, which are, if uninstructed, voted in line with management. Europe faces problems with significant shareholders and the lack of fiduciary voting obligations. Ultimately, I think that the importance of Say on Pay is being overrated both by certain institutional shareholders, as also by governments who are currently tightening regulations and guidelines concerning it. I would say that the recent crisis has been the base for turning Say on Pay into a hype. In my opinion, there is indeed a future for Say on Pay; yet, it should not be treated as the ultimate means to analyze a company's risk taking.

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# Introduction

“T

he benefits of governance transcend economics” (Cadbury and Millstein, 2005, p.29) “good corporate governance will reduce the chance of financial crises” (Claessens 2003), are both phrases related to the extreme and ever increasing importance of corporate governance. Corporate governance is defined as, according to the Business Dictionary, the framework of rules and practices by which a board of directors ensures accountability, fairness, and transparency in the firms’ relationship with all its stakeholders. The most recent financial crisis, however, has proven that there is still a lot to be improved. While the corporate scandals, like Enron, Ahold and Parmalat, are still fresh in the memory, good corporate governance is still not the status quo.

A key issue in today’s corporate governance is executive remuneration. Excessive bonuses with poor or no performance criteria have resulted in strong debates between governments and the financial sector. Besides, a recent survey across Europe shows that four fifth of the people believe that directors earn too much, with Germany at the top rank, where as much as 88% feels that business leaders are overpaid. (Harris Interactive, 2009).

Nowadays, most countries within the European Union have their own Corporate Governance Codes. These codes are mainly not binding though they have an either “comply or explain” theory. This regime was introduced by the Cadbury Report and later adopted throughout Europe (Oxelheim, Wilburgh 2008). Even though these codes are voluntarily in nature, the codes do have significant influence on corporate governance, based on the investment community’s significant economic power in competitive capital markets, and the power of investor voice and share voting, according to the European Commission. The US, on the other hand, provides also several codes with the most known Sarbanes-Oxley Act from 2002. The latest update dates from October 2008, aimed at strengthening governance for publicly traded companies (ECGI). These codes are mostly also based on a comply or explain theory, although some principles that are linked to stock exchanges may actually enforce some of the principles.

Institutional shareholders, entities such as investment companies, mutual funds, pension funds etc., are the investor voice as stated by the European Commission, have been described as the “norm entrepreneurs”, which have, however, not been entirely successful, since the norms advocated in their guidelines, have not been internalized by their members, e.g. the individual institutional investors themselves. (Sheehan, 2008). However, not all institutions act upon the same guidelines. There are true advocates of Say on Pay, while others try to reduce the influence of shareholders on companies’ remuneration, whilst looking for alternative ways to make sure that pay is related to performance and to eliminate excessive bonuses. The study of this paper aims at, unless specifically stated otherwise, institutional shareholders only.

This paper will discuss and review the director remuneration issues as proposed at companies’ agenda for the Annual General Meeting, in proxy season 2010. The focus will be on the Say on Pay proposals, which are currently an upcoming trend and basis for new legislation in the US and Europe.

The aim of this paper is to analyze the differences in actual voting results, and will try to explain underlying reason for these differences. Moreover, the importance of Say on Pay as a means of good corporate governance will be evaluated.

RiskMetrics Group’s (RMG) Institutional Shareholders Services provide proxy vote recommendations for listed companies all over the world. The insight gained from working at RMG will be the base guideline for this paper.

# Methodology

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he information that is used for this paper is based on existing literature and facts derived from the internal database of the RiskMetrics’ ISS database. The gathering of voting results for all companies in the US and European market is a time consuming activity. As it turned out that the company invests time and money in the gathering of this data, it had been decided to use this set of data. The analysis of this data, however, is entirely new.

Say on Pay proposals and director remuneration is currently a hot topic, which means that there is an extensive amount of literature to be found. Based on time constraints, it has shown to be impossible to implement all existing literature into this paper. As such, the most relevant and perhaps controversial statements, ideas, and data derived from studies, have had impact on this case study. Consequently, the main part of data integrated is qualitative data. The RMG database will be used for the additional quantitative data. The quantitative data stems from the internal database of RMG. The sample size consist of all companies in the US and Europe, who have put Say on Pay, and the Approval of the Remuneration Report on ballot respectively for the year 2009 and 2010. Therefore, there is no random sample selection. The sample size consists of 360 companies incorporated in the U.S who have put Say on Pay on ballot in 2010, and 450 in Europe, however, as this paper is written during the season, there may be more Say on Pay proposals being put to vote, however, these will not be included in the sample size.

At time of this study, I was working as a Custom Research Analyst at RiskMetrics ISS governance department in Brussels. An advantage of working at the Custom Team is that insight is gained in multiple markets, and that therefore, knowledge is not restricted to one market, e.g. country. This way, practices of several European countries, the United States, and even Asian countries, have been showed through the analysis of their Annual Shareholder’s meeting Agenda. In order to go more into depth with this paper, the Asian countries are excluded from research. The main reason for this is that current corporate governance standards are far from that in the US and European markets, which means that there is no such thing as Say on Pay in the continent of Asia yet. A pitfall of this function would be the fact that, when working with customized policies, the amount of variety of governance practices to be analyzed is limited, since the custom policies that I have worked with, are mostly in line with the standard research, although only focus on specific aspects, which result in a less in depth knowledge on all aspects of Corporate Governance.

As this paper is written during proxy season, the actual outcome of the vote results cannot be implement, since the actual results are not yet provided by the companies, or due the fact that the actual meeting has not took place yet. Therefore, at some part of the study, the vote results of last year’s proxy season will be reviewed and applied in the study.

While the paper focuses on Europe and the United States, a particular focus will be on the UK as part of the EU. Reason for this is that this country has an extensive history of Say on Pay practices, whereby the other European countries are in the upcoming phase. However, these countries will be covered to a certain extend.

# Findings

## RMG Guidelines on Remuneration

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he European guidelines that RMG implements on Remuneration are based on the recommend guidelines as stated by the EU commission. The European Say on Pay proposals, is, however, analyzed on a case by case basis. RMG believes that seeking annual shareholder approval for a company’s compensation policy is a positive corporate governance provision. RMG European guidelines will generally vote against any Remuneration related proposal if there is no disclosure, or if concerns exist with respect to the disclosure or structure of the bonus or other aspects of the remuneration policy such as pensions, severance terms, and discretionary payments. Due to the high variance of both disclosure and practice, it is difficult to create a truly Pan-European compensation methodology. Standard market practice in one country may be an illegal activity in another. However, RMG developed 5 global principles on Executive Compensation for all European markets. These guidelines aim to ensure pay for performance alignment, with emphasis on long-term shareholder value, to avoid arrangements that pay for failure, to have an independent compensation committee, comprehensive disclosure, and to avoid inappropriate pay to non executive directors.( European Proxy Voting Guidelines, 2010) The US guidelines state a specific approach towards Say on Pay proposals. However, as for the European guidelines, the US analysts will cover all proposals on a case by case basis. This evaluation is based on three areas; pay for performance, problematic pay practices and board responsiveness to shareholders. Pay for performance should be based on the alignment of the company performance with the CEO's pay over time, a clear focus is therefore on companies who have performed worse than their peer group. Problematic pay practices include certain practices related to non-performance-based compensation elements, incentives that may motivate excessive risk-taking by executives, and option backdating. The latter means that options cannot be issued on a later date than they have been issued. Finally, concerning board responsiveness, RMG evaluates the boards' communication towards it shareholders concerning their pay practices, e.g. whether or not they provide sufficient disclosure, and the responsiveness towards shareholder proposals which have found majority support (U.S. Proxy Voting Manual, 2010).

## Components of remuneration

The director remuneration for executives of listed companies consists of a combination of cash and equity incentives. Furthermore, there are pension arrangements and other perquisites. The cash part is the basic salary and cash bonuses. According to the Harvard Law School, Equity-based compensation is defined as the total value of restricted stock granted and total value of stock options granted. In 2001, a study of companies with at least $ 500 million in sales revealed that 18 percent of total compensation in Europe was based on equity compensation, whereas in the US 52 percent of salary involved equity, since then, this ratio has only increased (Clark 2007). When RMG analysts analyze components of remuneration they include all of the following. Base pay (salary), variable pay, which consists of bonus and other cash incentive awards, Equity-based compensation, includes stock options, stock appreciation rights, restricted shares and units, and performance-based variations of those. Furthermore, there are perquisites, ranging from financial planning to security systems, to use of corporate aircraft and deferred compensation opportunities. In addition, remuneration includes pension plans that enhance traditional defined benefit and defined contribution programs, and severance and change-in-control payments and benefits (Ho et al 2008).

## Say on Pay proposals

### *United States*

In 2009, after the crisis has led to the need to change corporate governance practices significantly, Say on Pay came into effect for US companies. It has initially been obligatory for those companies who have received financial aid form the government, through the so called TARP program (Troubled Asset Relief Program) (Slipp and Kierem, 2009). Currently, shareholders may add an advisory vote resolution to put on vote, and if approved, the company is obliged to implement Say on Pay proposals on the following agenda.

Say on Pay proposals gives shareholders the chance to cast a vote on the proposed director remuneration. The goal of an advisory vote is to help ensure that directors pay attention to the elements of compensation that matter most to investors: goals, metrics, philosophy and links to performance and business strategy. These votes are, however, non binding and stated as advisory votes. This implies that if a company finds their remuneration proposal rejected, it is not obliged to make alternations whatsoever. On the other hand, shareholders can take it a step further by voting against directors, who may, or may not be, member of the Remuneration Committee.

During this proxy season, it is to be found that there still are quite some companies whereby RMG provides a negative vote recommendation. The main reason why shareholders vote against, or at least, why RMG states a negative vote recommendation, concerns lack of disclosure, excessive increases in basic salaries and bonuses which are not linked to performance.

For proxy season 2010, Say on Pay advisory votes are listed as second in the top 10 governance proposals. At April 24 2010, about 360 US companies have implemented Say on Pay item on their agenda. Of these company’s 83.7% are registered as banks. 2009 was the first year with widespread Say on Pay in the US. At the end of the season, 313 Management Say on Pay proposals were analyzed by RMG. As much as 80% of these proposals found support by the proxy advisor. However, even though RMG recommended several votes against, there was no actual Say on Pay proposal rejected, at least not for the meetings covered by the proxy advisor.

As such, the actual impact of the implementation of Say on Pay, so far, is hard to be accurately measured The reason behind this could be either the fact that the legislation was implemented during season, which resulted in the fact that shareholders did not have sufficient guidelines to truly asses the remuneration. Obviously, this is regarding shareholders who are not using external advisors. It is expected, however, that future implications of Say on Pay will become more apparent, as was the case in the UK after the implementation, where in 2003 first implementation of a vote on remuneration was a fact but where the first rejection did not occur until 2007. In 2009, there were many shareholder proposals aimed to implementing Say on Pay for the following year. On average, these proposals received about 46% support, although only 22 companies found approval. A proposal is approved when it receives majority support. The US companies under the TARP program, that were thus obliged to insert a Say on Pay, found, on average, 90% support for their pay practices (RMG Post Season Review 2009).

Currently, at the relative end of proxy season 2010 for the US, it is found that in fact three major companies saw their remuneration packages being rejected (May 26,2010). When looking at the nature of companies who have implemented Say on Pay this year, it would be expected that the majority of rejections is aimed at Wall Street banks, where the public concern over excessive bonuses was het highest. However, only one out of three is an actual bank, KeyCorp, however, this is not one of the major Wall Street banks. On the other hand, this bank has found assistance from the government, as it is part of the TARP program. Based on this, it is conspicuous that their Say on Pay found approval last proxy season. The other companies are Motorola and Occident Petroleum. As a matter of fact, Motorola faced the first ever U.S. no on pay with only 46% support. RMG notes that all casts below 80% support are considered low. Also, it is worth mentioning that only 1 year after the implementation of Say on Pay, the first vote against was a fact, where it took about 5 years for the U.K.

### *European Union*

In 2002, a law came into force in the UK which stated that publicly traded companies must submit reports on executive compensation to a non binding vote. A 2007 study examined the effect of this implementation and found that CEO cash compensation and CEO total compensation became more sensitive to negative operating performance (Clark 2007).

At this point, there is no single European member state rule. Some countries have implemented advisory votes, where others have increased shareholder rights by making it a binding vote. A year after the U.K. made the practice mandatory; the Netherlands took it a step further by requiring companies to submit remuneration reports to a binding vote, followed by Sweden in 2005. It is significant that each of these countries has significant requirements for pay disclosure. Since then, Norway, Spain, Portugal, Denmark and, most recently, France, have followed. Germany is now among a number of countries currently considering introducing legislation. The European Commission reacted on the crisis by implementing two additional recommendations on executive remuneration and financial services sector pay as a first step in a strategy outlined in "Driving European Recovery." A notable remark here, that it is again stated to be advisory and non binding. The recommendation on remuneration at listed companies is intended to complement recommendations adopted in 2004 and 2005 on executive pay and the role of non-executive directors and board committees, respectively. These implementations are stemming from the fact that the EC finds itself responsible for leading a wide-ranging reform to apply the lessons of the crisis and deliver responsible and reliable financial markets for the future." The first recommendation is, not unexpectedly, focused on aligning pay and performance with the center of attention variable pay. This is further underlined by the focus on strengthening remuneration committees by requiring, for instance, at least one member of the committee to have knowledge and experience in the field of remuneration policy. The second EC recommendation specifically deals with remuneration at companies in the financial services sector.

While the existing compensation recommendation is based on the idea of pay for performance through disclosure of the remuneration policy, the EC now considers it necessary to address the structural shortcomings of remuneration policies that have become evident. Even though the UK can be best describes as being an early bird in recognizing the importance of corporate governance, the fact that the total of corporate governance codes is now stated at no less than 11( European commission 2008), there is evidence that this does not equal the fact that all companies have sufficient governance practices. On the other hand, the more guidelines that are provided, the harder it gets to comply with all of them In the UK; shareholders are provided the possibility to cast a vote on the Remuneration Report. This should, normally, include bonus schemes, stock options plans, and pay for performance indicators.

Looking at proxy season 2009, the voting results concerning Remuneration were quite striking, bearing in mind the impact of the financial crisis. In Europe, only five out of a total of 441 Remuneration Proposals were actually rejected by shareholders. Even more remarkable, all of these companies are UK based. This group included, among others, the Royal Bank of Scotland as also Royal Dutch Shell. A notable fact is that all five companies are listed at the FTSE 100 index. The economic downturn has also hit the RBS, which has faced a stated bailout. The UK government has bought about 70% of the entire company. It appeared that the UK government would take its role as active shareholder seriously; including discussions with the board on remuneration packages resulting in an extensive remuneration review in 2009 and much changed performance pay structures at the bank. This approach might came a little too late for shareholders in 2009, as for 2010, their Remuneration Report has been approved.

Besides the rejection, some companies have seen their remuneration proposals withdrawn, including well known entities such as Heineken, Randstad, GDF Suez, Danone and Carrefour. Up to now, for proxy season 2010, only three companies saw their remuneration report being opposed. A positive remark is that all of the companies who faced a vote against last year, managed to improve their remuneration structures and satisfied shareholder’s concern and saw their proposal being accepted. A study conducted by RMG shows that a key point of concern remains disclosure (Herms, Tassin 2009). This is a serious case for countries such as Greece and Italy, where there is none or little disclosure concerning, among other subjects, remuneration practices. Resulting from the crisis, and increased shareholder activism towards executive remuneration, European companies showed an upcoming trend in deciding to freeze salaries and reducing annual bonuses. Some of them even paid no bonus at all.

# Discussion

## Benefits & Drawbacks

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dopting Say on Pay is not only an idea whose time has come; it is a reasonable and modest step” (Walden Asset Management, 2010). According to Wilcox (2008), the most important benefit of advisory Say on Pay is its potential to reduce conflict and increase constructive dialogue between companies and shareholders. However, due to the advisory nature of the vote, a conflict might even be augmented, as companies might not act up on the results of shareholder votes. On the other hand, failure to do so, may also work against a company, as dissatisfied shareholders may withdraw themselves, ultimately leading in a share price decrease, indicating the total value of a company decreases as such.

While the overall idea of giving shareholders a say in remuneration practices makes sense, there are also quite some opponents of Say on Pay. For example, the largest European customer of RMG, the Norges Bank Investment Bank, will vote against all proposals to implement future Say on Pay. The rationale behind this is that they claim to find that only directors of companies can truly assess remuneration practices, as the nature of these packages is complex and varies across markets. They believe that if they take responsibility of ensuring, and thus voting for an adequate board of directors, this will effectively result in the proper management of pay terms. NBIM underlines their view on Say on Pay by actively opposing the election of members of the Remuneration/Compensation Committee at companies who have problematic pay practices. Looking at the actual components of remuneration, as defined by RMG, this point of view is considered to be a rationale one. However, the implementation of an independent assessment panel could be a useful and time efficient way to provide shareholders an accurate view of the current remuneration package. On the other hand, this will increase expenses for the company, while letting shareholders analyze salary policies themselves, does not cost the company anything.

Another point of conflict is the term set for Say on Pay. Currently, most Say on Pay proposals are put on an annual vote. By doing so, a companies' pay practice is evaluated every single year. Nonetheless, as stated before, the total remuneration packages of executive directors do not change entirely every single year, even though the basic salary may be changed to reflect inflation, the package also includes Long-term Incentives Plans; these plans mainly have a term of 5 years. As a result, institutional shareholders must evaluate LTIP's on an annual basis, while these last multiple years. Not only reduces this the impact of Say on Pay, evaluating remuneration packages requires in depth knowledge concerning markets, sectors, peer groups and financial knowledge, as it also is a time consuming project. Furthermore, putting Say on Pay on annual vote might result in the fact that the evaluation of it may become a ratification process rather than an analysis. Obviously, this subject requires severe analysis rather than a "check the box" system. This will become more evident as more companies implement Say on Pay. As such, the annual Say on Pay might not be the perfect solution.

While not companies are enthusiastic about Say on Pay, it does give shareholders the opportunity to vote against the Remuneration, if they consider it necessary, rather than voting against directors of the board instead. This is found to be a less drastic step than removing a director from the board.

## RMG Recommendation and Actual Vote

As stated before, during this proxy season, a reasonable amount of negative vote recommendations concerning Say on Pay in the US and Europe. This would suggest that shareholders will actually vote against these items. In addition, this study finds an incredible small amount of actual rejections on remuneration. This difference is based on the following reasons. First, the institutional shareholders that buy these reports from RMG will mostly not have a majority shareholding in a specific company, which leads to the fact that other shareholder may still vote for a certain item, while RMG recommends voting against, as an item needs to have at least 50% support in order to be approved. The shareholding ownership structure in the UK is divided as such, that Institutional shareholders own about 39% of all shares from UK listed companies. As such, Institutional shareholders by itself will have a hard time finding majority dissent. Also, in other European countries, there are quite some significant shareholders, mainly with close ties to the company, as such they will probably not vote against management. In addition, the difference of recommendation and actual outcome is related to the fact that there is no fiduciary voting obligation in Europe. This means that institutional shareholders are not obliged to vote. If it turns out that not all voting rights have been exercised, I would argue that the quorum requirements should be lowered. Because only exercised votes indicate a shareholders opinion. In the UK, abstain vote´s are excluded, which indicates that only vote´s FOR or AGAINST are measured. This gives an accurate view of shareholder´s opinion.

In the US, on the other hand, institutional shareholders do have fiduciary voting obligations. Nevertheless, activist shareholders have to deal with brokers. As much as 85% of all shares in the US are held by brokerage firms. Retail investors generally hold their investments through brokers. The broker is typically the legal owner of the stock, and the client is the beneficial owner. As a result, the issuer’s shareholder registry will reflect the ownership position of the broker, but not the individuals who hold through that broker, which results in the high ownership stakes. The corporate law states that only the legal owners of shares may vote. Even though brokers are required to ask their clients vote instruction, often they never receive instructions. This leaves the shares “uninstructed”. The New York Stock Exchange allows brokers to vote uninstructed, however, only in the case of routine matters. It has shown that brokers tend to vote in line with the management recommendations. The case is currently, that even though Say on Pay is relatively new, it is seen as a routine matter. In other words, the retail shares increase the affirmative votes significantly. This could increase the votes FOR by as much as 20%. As such, this is a serious problem, and explains to a certain extent the low dissent at Say on Pay.

## Impact of Say on Pay

“Say on Pay importance will most likely increase in popularity in the wake of the subprime mortgage and financial institutions crisis affecting the U.S. financial markets and the federal economic stimulus plan” (Jaffari, Islam 2008). For advisory votes, is there any impact on the actual remuneration practices of the company if the shareholder decides that it does not agree with current practices? And what is the actual impact of the binding vote, how is a negative vote recommendation implemented in the policy? When looking at the companies who found their Say on Pay rejected last year, for both UK and US, we see that some are dedicated to improve. For instance, Royal Dutch Shell claimed to take the rejection very seriously and responded to it by calling a meeting with shareholders to discuss the decisions that needed to be taken, besides, they immediately implemented additional performance measures for future awards. As stated previously, the dedication from Shell towards it investors resulted in the approval of their Remuneration Report in proxy season 2010. On the other hand, not all companies waited to see their remuneration proposals being voted down, as showed by the trend in reducing annual bonuses and the lack of increasing salaries. As such, this might be seen as an indirect impact of Say on Pay, as companies decided, obviously also for economic reasoning, to give shareholders the idea that they were willing to share the pain, as shareholders felt when they saw their share prices drop down significantly. Another study on Say on Pay in the UK showed that there is, however, little evidence that Say on Pay actually materially alters the level and design of CEO compensation (Cavanagh, Sadler 2009). In addition, this study finds that shareholders in the UK mostly likely vote against remuneration reports than any other subject who is stated on the ballots. As a result, Say on Pay has more impact than any other subject. A contradicting fact is that little evidence is to be found that CEO pay is actually lowered as a result of a dissent vote. In addition, as Say on Pay has been implemented before the latest economic crisis, another study found no evidence of a change in the level or growth rate of CEO pay after the adoption of the UK Say on Pay regulations (Ferri, Maber 2009). As this seem striking, the aim of Say on Pay has never been to evidently lower executive pay, its objective is to justify pay by relating it to performance. As such, these findings do not diminish the impact of Say on Pay. Concluding, it can be stated that the impact of Say on Pay is greater in Europe than in the US. Off course, this is related to the earlier implementation in Europe, and as such, more studies are needed in the future to see if Say on Pay becomes as evident in the US. There are signs of increased legislation in the US, making it obligatory for every company to put remuneration to vote. In addition, broker votes most be cast in order to represent a fair shareholders’ voice on pay practices. Relating to the opening quote of this section, there was expected to be a severe increase in popularity of Say on Pay, at least for the US. This expectation has become the truth until so far, that there has been an significant increase in Say on Pay proposals at company’s ballots, however, the fact that only so few until now has been rejected, indicates that shareholders have used their responsibility and ability to vote down excessive pay packages, as it has been proved that there certainly are enough remuneration practices which should actually be opposed.

## The shareholder perspective

Say on Pay is at this point in time more alive in the US than in Europe, which is mainly due to the fact that the US has been implementing it as a means of resolving the crisis, whereas Say on Pay actually has a history in Europe. The question arises now whether or not this implementation has effects on the firm performance and as a whole, on the economic performance. Since Say on Pay, especially for the US, has been implemented seriously after the latest economic crisis, a positive effect towards economic development should be expected. But do shareholders have this significant impact on a company? Especially the fact that Say on Pay in the US is not binding, the effect is immediately decreased as such that even though a negative vote is stated, the company is not bound to change for example excessive bonuses or to eliminate pay for failure. Moreover, the power of institutional shareholders, who vote based on a sufficient analysis, is extremely reduced by brokers in the US.

An internal study by analysts from RMG raised the question whether or not there would be increased shareholder activism after all negative developments in the financial market concerning the crisis. In other words, do shareholders think they can have an impact on economic development, through carefully considered votes on, for example, remuneration practices? Apparently, they do not. This study showed that there was hardly any change in the participation rate. It showed that on average, participation increased by only 1%. However, there has been a prominent increase in shareholder activism towards executive remuneration with the average dissent vote (against and abstain) for remuneration-related proposals, excluding long-term incentive proposals, rose from 4.8 percent in 2008 to 5.7 percent in 2009 across Europe. The increase in average dissent votes has been more prominent in some countries, such as the U.K., where dissent increased from 6.7 percent to 10.4 percent (Herms, Tassin 2009).

While looking at the arguments provided for the dissent in the U.S. remuneration proposals, it is found that shareholders disagree on pay for performance disconnects, lack of performance result metrics, pay magnitude and pay disparity. UK shareholders oppose significant salary increases when company performance has decreased, excessive bonuses without compelling rationale, and lack of performance criteria. As such, no noteworthy contract between the European and United States shareholders have been found. This study does suggest that indeed it is the goal of shareholder to link pay to performance, however, it has also been found that according to shareholders, there is a concern with pay magnitude, this is, again, also related to the fact that the company made its performance metrics not challenging enough, making it easy to outperform, and as such, generate significant bonuses.

# Conclusion

This study finds that there are no significant differences in the intended goal of Say on Pay for both continents. Its common goal is to link pay to performance. Nevertheless, the United States decided to implement Say on Pay as a means to fight the crisis and reduce the chance of another one. I argue that Say on Pay by itself cannot reduce the happening of an economic crisis, based on the fact that the implementation of Say on Pay was introduced in the United Kingdom many years before the crisis, and was also affected by it.

The low actual dissent on salary policies in both markets, three in the U.S. and in the U.K. respectively, tell a contradicting version of the current situation, e.g. the global discussion about executives and their bonuses, and the tightening of Corporate Governance practices concerning remuneration by governments. This can however, be explained. The problem for the United States is that broker´s vote their share uninstructed in line with management. Due to the high portion of broker shares, it is hard to reach a majority oppose. In order to increase the impact of well considered votes, uninstructed broker votes should be excluded. Another possibility is to make Say on Pay a non-routine item, which it should have been in the first place. The low dissent in Europe, which is actually only in the U.K, could be explained due to the fact that institutional shareholders do not have a fiduciary obligation to vote. This would lead to an increase in registered votes; however, it does not imply that, with a sudden obligation to vote, these institutional shareholders have the capabilities of making well examined decisions. Another explanation is the existence of significant shareholders, who are often members of the founding family or otherwise have close ties with the company, who have a large, e.g. more than 5 percent, influence on voting results.

Companies feared that the aim of Say on Pay would only be to reduce levels of compensation. The findings in this study suggests otherwise. If a company’s remuneration report provides sufficient disclosure, thus making a convincing case that its compensation program is performance-based and rewards executives for solving business problems and creating long-term value, shareholders will support it even if the amounts paid seem high. Since performance-based compensation implies that exceptional performance deserves exceptional pay, companies should not fear that votes will be consistently negative. Arguably, US companies should have even less fear, as due to their significant portion of equity based pay, which is already performance related.

The actual impact of Say on Pay can be increased by changing from a merely advice towards management towards a binding vote. In addition, concerning the complicated nature of remuneration proposals, a change towards a triennial vote rather than an annual vote would increase the impact, because this would reduce the chance of Say on Pay becoming a ratification process.

Ultimately, I think that the importance of Say on Pay is being overrated both by certain institutional shareholders, as also by governments who are currently tightening regulations and guidelines concerning it. I would say that the recent crisis has been the base for turning Say on Pay into a hype. Say on Pay increases transparency, and transparency is important for shareholders, which is showed by that fact that Greece is one of Europe's worst Corporate Governance practitioners with almost zero disclosure, making it very unattractive to invest in, which is exhibited by their current economic situation. In my opinion, there is indeed a future for Say on Pay, yet, it should not be treated as the ultimate means to analyze a company's risk taking.

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