



## Federal Court Dismisses Delaware Law Compensation Disclosure Claim

Posted by David A. Katz, Wachtell, Lipton, Rosen & Katz, on Wednesday April 10, 2013

**Editor's Note:** [David A. Katz](#) is a partner at Wachtell, Lipton, Rosen & Katz specializing in the areas of mergers and acquisitions and complex securities transactions. This post is based on a Wachtell Lipton memorandum by Mr. Katz, [Warren R. Stern](#), [Jasand P. Mock](#), and [Kim B. Goldberg](#). This post is part of the [Delaware law](#) series, which is cosponsored by the Forum and Corporation Service Company; links to other posts in the series are available [here](#).

We have previously discussed a wave of “say-on-pay” lawsuits focused on allegedly inadequate proxy disclosures (in a [memo](#), [article](#), and [memo](#)). At least six courts (four state and two federal) have denied requests for injunctive relief against say-on-pay votes. Now, a federal court that had already denied preliminary injunctive relief has dismissed the complaint with prejudice. [Noble v. AAR Corp., No. 12 C 7973 \(N.D. Ill. Apr. 3, 2013\)](#).

Applying Delaware and federal law, the Northern District of Illinois held that Delaware law did not require a company soliciting proxies in advisory say-on-pay vote to disclose information beyond that specified in Regulation S-K:

Plaintiff does not dispute that Defendants have complied with the federal disclosure requirements under the Dodd-Frank Act nor does he point to any statutes, regulations, or case law that require corporations to disclose more than the federal disclosure requirements. . . . Instead, Plaintiff attempts to create additional disclosure obligations for “say on pay” votes without citing legal precedent other than case law involving the required disclosures for shareholder actions outside of the context of executive pay. Plaintiff’s bareboned arguments are without merit, especially in light of the business judgment deference accorded directors when setting executive compensation. [citations omitted]

The court also held that any disclosure violation would have injured the corporation, not the shareholders individually, and thus could only be remedied by a derivative action.

The *AAR* decision reinforces our advice that a well-drafted proxy statement minimizes the risk that a court will second-guess a board's executive compensation decisions whatever the outcome of an advisory say-on-pay vote.