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Microsoft Adopts Triennial "Say on Pay" Policy

Microsoft's Board of Directors recently became the first U.S. company to adopt a "say on pay" policy that will enable its shareholders to cast a non-binding, advisory vote every three years on compensation programs for the company's senior executive officers. The first vote will occur at the company's annual shareholders' meeting on November 19. The United Brotherhood of Carpenters, which had previously submitted a similar triennial shareholder proposal to Microsoft, has since withdrawn its proposal. Many will closely watch this development to see if other companies will follow suit or if Microsoft's actions will reinvigorate the triennial "say on pay" movement in Congress. The House of Representatives considered but ultimately rejected the triennial approach in the "say on pay" bill it passed in August.

We continue to believe that "say on pay" votes constrain the ability of compensation committees to exercise their business judgment with respect to nuanced personnel and compensation decisions that are often driven by sensitive information. We also believe that such advisory votes represent a transfer of basic responsibility of corporate management from directors to shareholders and would subject compensation decisions to the whims of shareholders no matter how inconsistent their views may be with long-term corporate performance.

If, as some have suggested, "say on pay" is inevitable, Microsoft's triennial policy may nonetheless be a preferable alternative to the annual shareholder advisory vote. A triennial vote would help align "say on pay" with the goal of avoiding short-termism in corporate governance and executive pay arrangements. Most fundamentally, a triennial approach would permit shareholders, directors and managers to evaluate the effects of a company's pay program on long-term performance and would be less likely to subject a company's compensation plans to the whims of hedge funds and other constituencies seeking to apply pressures unrelated to long-term corporate performance. In addition, the triennial approach would allow shareholders to engage in more thoughtful analysis and voting by providing more time between votes and by causing fewer votes among public companies in any given year. Further, the three-year period between each vote would correlate more closely to the business cycle of many companies, and would provide management with the time necessary to implement improvements and changes to address concerns reflected by a negative vote.

With the Senate set to consider a "say on pay" bill in the coming months, Microsoft's adoption of the triennial approach may provide momentum towards a more moderate stance in the "say on pay" debate.

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