

THE SWISS BINDING VOTE ON EXECUTIVE COMPENSATION (SAY-ON-PAY): ITS PROS AND CONS

McLeish Ukomatimi Otuedon

DBA Scholar, SMC University, Zug, Switzerland

Vorstadt 26a, 6302 Zug, Switzerland

Email: mcleish.otuedon@student.swissmc.ch

ABSTRACT: *The subject of executive compensation seems to always generate controversy. Increasingly, it has become a very hot and politically-charged topic. This paper examined the Abzocker-Initiative (“Minder-Initiative” or “say-on-pay”), including the specific provisions that passed in the resolution and the pros and cons of the approved initiative. Say-on-pay, especially the type that has a binding effect, is a critical mechanism for shareholders to express their voice and opinion on corporate matters. For the Swiss people, the era of shareholders delegating all such matters to the Board of Directors (“BODs”) is behind them, the new order requires shareholders to have a direct say on executive compensation. Specific provisions that passed in the referendum include, among others, mandatory annual binding shareholders’ vote on the aggregate compensation of the BODs, executive management and advisory board; and prohibition of golden hellos and golden goodbyes. Finally, the paper discussed the contagion effect of the Abzocker-Initiative and its variants in other jurisdictions.*

KEYWORDS: Abzocker-Initiative, Minder-Initiative, Say-on-Pay, Rip-off Initiative, Executive Compensation, Binding-Vote, Golden hellos, Golden goodbyes

INTRODUCTION

Executive compensation is a highly controversial topic that has made headlines and attracted the attention of investors/shareholders, politicians, policy makers, the media, regulators, political figures, union leaders, consumer activists and academics for many years now. Increasingly, executive compensation has become a very hot and politically-charged topic (Hay Group, 2012) and a subject of heated debate (Bebchuk and Fried, 2006). Executive compensation has featured prominently in corporate governance codes of many countries for years (Hay Group, 2013a) and the emphasis, for a long time, was on disclosures and the design of incentives (Hay Group, 2013b). However, the scrutiny and appetite for increased control of executive compensation by government, shareholders and regulators have heightened since the 2008 global financial crisis, which has resulted in the enactment of legislations and the issuance of regulations, giving shareholders voting rights on companies’ compensation practices, commonly referred to as ‘Say-on-Pay’ (‘say-on-pay’ or ‘SoP’) votes. Voting rights are non-binding (advisory) in some countries and are binding in others.

In some countries, shareholders have had a say on executive compensation for over a decade, while some shareholders are only now getting the opportunity to vote on executive compensation. The United Kingdom was the first country to adopt a say-on-pay legislation through the enactment of the Directors Remuneration Report Regulations of 2002 (Ferri and Maber, 2013). This piece of legislation provided for a non-binding vote. The legislation mandated shareholders of UK companies to vote annually on executive compensation report prepared by the board (advisory vote). The say-on-pay vote introduced by the UK government

was aimed at increasing the transparency, accountability and performance linkage of executive compensation (Baird and Stowasser, 2002; Ferri and Maber, 2013) in response to investors' concerns with rapid growth in executive compensation and the perceived increase in US-style, 'fat cat' executive compensation practices among UK quoted companies (Ferri, 2013; Ferri and Maber, 2013). The UK bolstered its say-on-pay law through the enactment of the Enterprise and Regulatory Reform Act of 2013, which provided for a binding shareholder vote on directors' compensation policy for all quoted UK registered companies that must occur at least every three years (Greene, 2012). In addition, shareholders would continue to have an annual non-binding vote on how the compensation policy has been implemented in the previous financial year, including the actual sums paid to both Executive Directors ("EDs") and Non-Executive Directors ("NEDs") in that year (the "implementation report"). The binding shareholder vote (i.e. for the compensation policy) and the annual advisory vote (i.e. for the implementation report) would each require the support of a simple majority (50% plus one vote) to pass. The UK government emphasised that the reforms, including the binding say-on-pay shareholder vote were intended to give shareholders more power to hold companies to account over the structure and level of directors' compensation; encourage better quality engagement between companies and shareholders; and promote greater transparency in compensation reporting to provide factual information on what directors are earning and how this links to the long-term strategy and performance of the company.

In 2010, the U.S. enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act (the 'Dodd-Frank Act'), which provided for an advisory shareholder vote (non-binding) on executive compensation and "golden parachute" compensation arrangements for large U.S. public companies. Smaller public companies (emerging growth companies) were given limited exemption from say-on-pay vote by the Jumpstart Our Business Start-ups Act of 2012 ('JOBS Act').

On 28th February, 2013, officials from the 27 member-countries of the European Union ("EU") voted overwhelmingly (yes votes from 26 countries) in favour of a proposal to cap bankers' annual bonuses at a year's salary, with a proviso that the bonus could be twice as much as their annual salaries subject to the approval of majority shareholders (Shotter, 2013; Traynor, 2013). Only the UK voted against the proposal. The proposal was aimed at making banks and the banking industry less prone to risks (Jansen, 2013).

On the 3rd of March, 2013, Swiss citizens voted overwhelmingly (67.94%) in favour of the Minder-Initiative ("Abzocker-Initiative" or "rip-off initiative" or "the initiative against excessive compensation") to impose some of the world's most stringent controls on executive compensation, forcing Swiss public companies to give shareholders a binding say-on-pay vote (EurActiv, 2013). The initiative which aimed to reduce executive compensation and eliminate "golden hellos" ("golden handshakes") and "golden goodbyes" ("golden parachutes") by increasing shareholders' rights was named after its founder, the businessman cum politician, Mr Thomas Minder (Rohrbein, 2013). The overwhelming support for the initiative, which is one of the most emphatic yes-votes ever in a Swiss referendum, was driven partly by the extravagant behaviour of corporate Swiss, which is believed to be tending towards a Wall Street-style fat cat executive pay philosophy (EurActiv, 2013; Shotter and Barker, 2013), including big bonuses that encourage investment bankers to invest in risky investments (that almost felled UBS during the 2008 global financial crisis); as well as public outrage over the USD77.98 million announced as the proposed golden goodbye payment for Novartis chairman,

Mr Daniel Vasella (EurActiv, 2013). Novartis eventually succumbed to a torrent of shareholder and political anger and criticism by cutting the controversial golden goodbye plan for Mr Vasella to USD5.95 million, which was less than a tenth of the original proposed sum of USD77.98 million (Jacket et al., 2013; von Schaper, 2013). This is the author's area of focus in this paper.

Besides, on 24th November, 2013, Swiss citizens, in a bid to stretch the curb on executive compensation further, went out to the polls to vote on a proposal to cap the salary of the highest paid executive at 12 times the lowest salary paid to an employee in the same company (the so-called 1:12 initiative), but this time, voters decisively (65.3%) rejected the initiative (Copley, 2013; Ewing, 2013; Geiser, 2013; Hooper, 2013). Should the proposal had succeeded, it would have meant that the highest paid executive in any given public company in Switzerland would have been unable to earn more in a month than the company's lowest-paid employee in a year. To the proponents of the initiative and those who advocate for a fairer and more balanced pay for executives, it was a great disappointment, but for those opposed to the proposal, it was a strong defeat against radicalism and government bureaucracy (Ewing, 2013; Hooper, 2013).

Table 1: List of Countries that Give their Shareholders Say-on-Pay Vote

Country	Is Say-on-Pay Law in Place?	What is the Vote Type?	Year Say-on-Pay Law was Enacted
Australia	Yes	Non-binding	2005 (amended in 2011)
Belgium	Yes	Non-binding	2012
Canada	No	Issuers may voluntarily adopt say-on-pay with non-binding vote	
Denmark	Yes	Binding	2007
Germany	Yes	Non-binding	2010
Israel	Yes	Non-binding	2013
Italy	Yes	Binding for banks and Insurance companies. Non-binding for other Issuers	2011
Japan	No		
Netherlands	Yes	Binding	2004
Norway	Yes	Binding	2007
Portugal	Yes	Non-binding	2009
Spain	Yes	Non-binding	2011
Sweden	Yes	Binding	2006
Switzerland	Yes	Binding	2013
United Kingdom	Yes	Binding	2013
United States	Yes	Non-binding	2010

Source: Adapted from both: HayGroup (2013a) Executive reward snapshot: More shareholders are getting a say on top pay. https://www.haygroup.com/downloads/ww/HG280_Say%20on%20Pay_v05.pdf [Accessed 16 March 2014].

Correa, R. and Lel, U. (2013) Say on pay laws, executive compensation, CEO pay slice and fair value around the world. <http://www.federalreserve.gov/pubs/ifdp/2013/1084/ifdp1084.pdf> [Accessed 27 march 2014].

Some other countries such as Australia, Belgium, Denmark, Germany, Israel, Italy, Netherlands, Norway, Portugal, Spain and Sweden have also enacted say-on-pay legislations, while countries such as Canada, France and South Africa have incorporated say-on-pay recommendations into their corporate governance codes (Correa and Lel, 2013; Ferri, 2013; Hay Group, 2013a; Orsagh, 2013). Several other countries are contemplating to give their shareholders some say on executive compensation (Barrall et al., 2011; Orsagh, 2013). In other words, say-on-pay is expanding into the global corporate landscape (see above table for a list of countries that give their shareholders say-on-pay vote).

Although the manner of say-on-pay vote may vary from country to country (binding or advisory), the consequences for companies and their board of directors (the ‘board’) are the same. No board wants to receive a failed vote on executive compensation. Orsagh (2013) asserted that a negative say-on-pay has the potential to erode the reputation of a company and its board. A negative say-on-pay might also make a company more vulnerable to takeover. Due to the relatively small number of companies that do experience negative say-on-pay votes in a given country each year, a negative vote on executive compensation would be very embarrassing to the board and may send a negative message to the market and the society that the company does not care that executive compensation is perceived to be disconnected from performance, to say the least. For instance, in May 2003, after the annual advisory vote on executive compensation became mandatory, the British pharmaceutical giant, GlaxoSmithKline (GSK) suffered a sensational defeat at its Annual General Meeting (which was the first in UK history) when 50.72 percent of the total vote cast by shareholders were against the approval of the remuneration report. Specifically, shareholders objected to an estimated £22 million golden goodbye compensation arrangement for the then CEO, Jean-Paul Garnier (Ferri, 2013; Hodgson, 2009). The “no” vote made headlines around the world and was a severe embarrassment for Mr Garnier and the board. Although the vote was non-binding, the chairman of GSK at that time, Sir Christopher Hogg, responded to the vote by initiating a consultation process with shareholders, engaging Deloitte & Touche (Deloitte) to conduct a review and on the basis of the report of the Deloitte’s review, the severance compensation for Mr Garnier was adjusted downward accordingly.

The aim of this paper is to broadly and robustly discuss the Abzocker-Initiative, including the specific provisions that passed in the new resolution and the pros and cons of the approved initiative. In addition, the author would discuss some other jurisdictions with variants of say-on-pay and the contagion effect of the Abzocker-Initiative on other jurisdictions.

BACKGROUND TO THE SWISS UNIQUE POLITICAL SYSTEM

Switzerland’s political system is unique because it has some important elements of direct citizen participation (direct democracy), which allow for the creation, change and abolishment of binding legal norms. There is no other country in the world where the government is put to the test as often as in Switzerland (The Swiss Confederation, 2013). In other words, the people of Switzerland have many rights and the country is virtually the only place in the world where the electorates have extensive decision-making powers and the most frequent and constant application of direct democratic mechanisms, including the use of the referendum and the popular initiative.

Any Swiss citizen who is displeased or unhappy with a new legislation can call for a referendum (optional referendum) and any Swiss citizen wanting to amend the country's Constitution can launch a popular initiative (The Swiss Confederation, 2014). In the case of the former, a popular ballot is held if 50,000 citizens eligible to vote request it within 100 days after the official publication of the new legislation (see Article 141 of the Swiss Constitution; Serdult, 2007), while in the case of the latter, a popular ballot is held if the signatures of 100,000 citizens eligible to vote are collected in favour of the proposal within 18 months (see Articles 138 – 139b of the Swiss Constitution). For a popular initiative to pass, a double majority is required. A double majority simply means that the proposal must be accepted both by the popular majority (i.e. the majority of the valid votes cast throughout the country) and the cantonal majority (i.e. voters must accept the proposal in a majority of the cantons). In the case of optional referendum, only a popular majority is required for a proposal to pass. A popular initiative is usually requested when citizens feel strongly on an amendment they want to make to the Constitution, while optional referendum applies to the enactment of new legislations and amendments to existing legislations and similar parliamentary decisions, along with certain international treaties (The Swiss Confederation, 2013, 2014). In light of the foregoing, it is pertinent to state that popular initiatives do not originate from government or parliament, but, rather from the people. This is the very foundation and the driving force behind direct democracy as practice by the Swiss people and Switzerland. In other words, the people are the supreme political authority in Switzerland.

Besides the optional referendum and the popular initiative is the mandatory referendum. A mandatory referendum is required for all amendments to the Swiss Federal Constitution and proposals for membership to some international organisations (see Section 140 of the Swiss Constitution; The Swiss Confederation, 2013, 2014). A mandatory referendum requires a popular ballot to be held and a double majority (both popular majority and cantonal majority) is needed for such a proposal to pass.

In Switzerland, a country with four major linguistic cultures (German, French, Italian and Romansh) and huge geographical differences, direct democracy has a wide scope and the decisions taken on a ballot day are binding. Swiss citizens who are eligible to vote (18 years and above) are called to the ballot on important political matters three or four times a year and on average, these votes involve about three to four proposals that may be accepted or rejected (The Swiss Confederation, 2013). Switzerland is organised into three political levels, the communes, the cantons and the Confederation; direct democracy is practice at all three levels (The Swiss Confederation, 2014). The communes are the smallest political units and there are currently 2396 of them (The Swiss Confederation, 2014); the cantons are the second largest political units and there are currently 26 cantons (see below table for a detailed list of the cantons), each relinquishing part of its sovereignty to the Confederation (The Swiss Confederation, 2014). Under the Swiss Federal Constitution, all cantons have equal rights and a high degree of independence, however, the six cantons of Obwalden, Nidwalden, Appenzell Ausserrhoden, Appenzell Innerrhoden, Basel-Stadt and Basel-Landschaft only have one seat each in the Council of States (while the other 20 cantons each have two) and half a cantonal vote in polls to amend the Swiss Constitution. The six cantons which were once three entities (together referred to as the six former half-cantons) and then subsequently divided are still regarded as half-cantons today. The Council of States is made up of 46 representatives of the cantons. During a mandatory referendum or a popular initiative, should there be a split cantonal vote (11.5 of 23 cantonal votes), the proposal would not pass. Although there are 26 cantons,

there are 23 cantonal votes because of the half-cantonal vote held by the six aforementioned cantons. The Confederation of Helvetii ('Confoederatio Helvetica') is the name given to the Swiss State and CH is the abbreviation for Confederation of Helvetii.

Table 2: Complete List of Swiss Cantons and How they Voted on the Abzocker-Initiative

Cantons	Yes (%)	No (%)	Voter Turnout (%)
Aargau	66.8	33.2	44.4
Appenzell Ausserrhoden	66.3	33.7	51.8
Appenzell Innerrhoden	61.0	39.0	41.9
Basel-Landschaft	67.5	32.5	44.5
Basel-Stadt	67.3	32.7	49.4
Bern	70.3	29.7	42.8
Fribourg	70.3	29.7	44.5
Geneva	67.7	32.3	46.5
Glarus	69.6	30.4	36.1
Grisons	65.5	34.5	56.2
Jura	77.1	22.9	40.6
Lucerne	66.3	33.7	46.2
Neuchatel	71.9	28.1	41.7
Nidwalden	57.7	42.3	49.0
Obwalden	56.1	43.9	51.6
Schaffhausen	75.9	24.1	64.9
Schwyz	60.8	39.2	49.2
Solothurn	67.9	32.1	48.6
St. Gallen	66.4	33.6	44.0
Ticino	70.7	29.3	41.5
Thurgau	70.5	29.5	43.1
Uri	64.3	35.7	41.4
Vaud	66.5	33.5	41.4
Valais	63.7	36.3	67.8
Zug	58.2	41.8	51.9
Zurich	70.2	29.8	47.0
Switzerland	67.9	32.1	46.0

Source: Vorlage Nr. 568 Volksinitiative vom 26.02.2008 'gegen die Abzockerei' (2013). <http://www.admin.ch/ch/d/pore/va/20130303/can568.html> [Accessed 19 April 2014].

BACKGROUND TO THE MINDER-INITIATIVE

The roots of the Abzocker-Initiative can be traced back to the grounding and subsequent financial collapse of Swissair in 2002, which caused quite a number of Swiss entities, including that of Mr Thomas Minder, to lose a lot of money. Mr Minder started his campaign after his family-owned business was faced with ruin and came close to being bankrupt because it had been a supplier of assortment of goods such as mouthwash, toothpaste, toiletries and other body care products to Swissair, the airline that was once the pride of Swiss but was grounded in

October 2001 (Minder, 2013; Popham, 2013; Rohrbein, 2013; Shotter, 2013). What really angered Mr Minder was that, while Swissair was in severe financial difficulty and had reneged on a USD537,000 contract with his family firm, it still paid a huge sum of USD 9.6 million to Mario Corti (the then chairman & CEO of Swissair), who then left shortly after the collapse of the airline. Thomas Minder's family business was eventually saved when Lufthansa, the airline company which took over the debt-ridden Swissair, agreed to honour all Swissair's liabilities, including that of Trybol AG, the Minder's family business.

With the enactment of the Swiss Transparency Act of 2007, it became compulsory for all Swiss companies to disclose the compensation of the Board of Directors and the Executive Management, as well as the individual compensation of each director. According to Rohrbein (2013), the jumbo salaries that were subsequently published shocked the Swiss people and prompted Thomas Minder to launch the Abzocker-Initiative. Besides, in the peak of the global financial crisis in 2008, Thomas Minder brought his anger to the attention of the Swiss public when he stormed the podium at a shareholders' meeting of UBS (a Swiss bank that got a government bailout after losing USD50 billion in the sub-prime crisis) in Basel, while the chairman of the bank was speaking (Popham, 2013). Thomas Minder squealed and said that the directors were responsible for the biggest write-down in the history of corporate Swiss.

By February 2008, Thomas Minder had succeeded in collecting more than the 100,000 required signatures within the legal timeframe of 18 months and the Swiss people were surely going to vote on the Abzocker-Initiative, but what complicated issues for those oppose to the initiative was the sudden revelation that Novartis, the Swiss pharmaceutical giant, planned to pay its outgoing chairman, Daniel Vasella, a golden goodbye of USD77.98 million. This was the straw that broke the camel's back and the Swiss people made a clear statement by voting overwhelmingly for the Abzocker-Initiative.

SPECIFIC PROVISIONS PASSED IN THE NEW RESOLUTION

On 3rd March, 2013, Swiss voters went to the polls to cast their votes on three federal referendums in respect of city planning, family planning and say-on-pay (say on executive compensation). The proposal on city planning passed with 62.89 percent of voters voting in favour, the proposal on family planning passed with 54.33 percent of voters voting in favour and the proposal against rip-off salaries passed with 67.94 percent of voters voting in favour (IFES-ElectionGuide, 2013). In addition, all Switzerland's 26 cantons voted in favour of the citizens' initiative against rip-off salaries (see Table 2 above for details of how the cantons voted). As of 3rd March, 2013, Switzerland has a total of 5,139,055 registered voters; out of which 2,377,993 voted (i.e. 46.27 percent turn-out). The main focus here is to discuss the specific provisions that passed in the referendum against rip-off salaries (i.e. the referendum on the Abzocker-Initiative). According to the publication of IFES-ElectionGuide (2013), the provisions that passed are:

- a mandatory annual binding shareholders' vote on the aggregate compensation of the board of directors, executive management and advisory board (if any);
- a mandatory requirement for the articles of association to include bonus schemes and compensation plans for directors, executive management and advisory board (if any);
- prohibition of golden hellos (golden handshakes) and golden goodbyes (golden parachutes), including advance payments;

- a mandatory requirement for the chairman and other members of the board to be individually elected by the shareholders on an annual basis; and
- prohibition of corporate proxy (“organvertretung”) and the representation of shareholders by depository banks (“depotstimmrechtsvertretung”).

These provisions are binding on all Swiss companies that are listed on stock exchanges in Switzerland or abroad. However, foreign companies listed on any of the stock exchanges in Switzerland or having a tax residence in Switzerland would not be affected by these provisions. Furthermore, each of the aforementioned provisions would be discussed in more detail, taking into consideration the provisions of the “Ordinance against excessive compensation in listed companies,” 2013 (the “Ordinance” or the “Ordinance, 2013”) adopted by the Swiss Federal Council (the executive branch of the Swiss federal government) on 20th November, 2013 (Watter and Kagi, 2013; Wolf and Iffland, 2013). The ordinance which entered into force on 1st January, 2014, implemented the provisions of the newly introduced paragraph 3 of Article 95 of the Federal Constitution of the Swiss Confederation resulting from the affirmative vote by the Swiss people on 3rd March, 2013 on the Abzocker-Initiative. The ordinance would continue to apply until the Swiss parliament translates the Minder’s initiative into law.

The Annual Binding Shareholders’ Vote on Executive Compensation (Say-on-Pay)

One of the significant new provisions that passed in the Abzocker-Initiative was the mandatory requirement for an annual binding shareholders’ vote on the aggregate compensation of the Board of Directors (“BODs”), executive management and the advisory board, if any. However, there is no requirement for the approval of individual compensation package of members of the board, executive management and advisory board, although the individual compensation of each member of the board, executive committee and advisory board must be disclosed in a newly introduced “compensation report” (Iffland and Wolf, 2013b). The release of the final Ordinance against excessive compensation by listed companies on 20th November, 2013, has provided a temporary, but clear roadmap for the implementation of the provisions of the Abzocker-Initiative that passed at the 3rd March, 2013 referendum. The Ordinance gives Swiss companies listed in stock exchanges in Switzerland and abroad (affected companies) significant flexibility with regard to the implementation of the shareholders’ votes on the compensation of the BODs, executive management and advisory board (the Ordinance, 2013; Wolf and Iffland, 2013). The Ordinance (2013) specified the compulsory minimum requirements for the votes on compensation as follows:

- the votes must take place on an annual basis;
- there must be separate shareholders’ votes on the aggregate compensation of the BODs, executive management and advisory board; and
- the votes must have binding effects.

Within the mandatory minimum requirements, affected companies are now required to design and adopt their own specific rules in their articles of association. The Ordinance (2013) requires that the articles of association of affected companies must determine, in particular:

- whether shareholders are granted mere approval powers or whether it is permissible for shareholders to make compensation proposals, in addition, to their approval powers;
- the reference periods for which the compensation sum would be approved; and
- the consequences of a rejection of the compensation proposed by the BODs.

In addition, the Ordinance (2013) mandated the BODs to prepare, publish and submit to the shareholders on an annual basis, a compensation report. The Ordinance (2013) also requires the BODs to subject the compensation report to an annual audit in the same manner as the company's annual financial statements. The compensation report is not expected to contain information on the company's remuneration policies, processes and future compensation, but, rather on information about past compensation (Wolf and Iffland, 2013). Specifically, the compensation report is to include, amongst others, all compensation the company had paid, directly and indirectly:

- to current members of the BODs;
- to current members of the executive management;
- to current members of the advisory board, if any; and
- to former members of the BODs, executive management and advisory board, provided the compensation is related to their former activities or roles in the company. But, occupational welfare benefits are specifically excluded.

It is also important to state that prior to the endorsement of the Abzocker-Initiative by the Swiss people, Swiss companies were only required to provide information in the notes to the balance sheet on the total compensation paid to the BODs, executive management and advisory board.

The Mandatory Requirement for the Articles of Association to Contain Specific Provisions

Another key provision that passed in the Abzocker-Initiative was the mandatory requirement for the articles of association of affected companies to include, amongst others, bonus schemes and compensation plans for directors, executive management and advisory board. The Ordinance against excessive compensation by listed companies (2013) provided that the articles of association of affected companies should contain specific provisions on the following:

- the details of the shareholders' votes on the aggregate compensation and, in case of any rejection of the BODs proposals, the additional procedures that would have to be followed;
- the principles applicable to performance-based compensation of the members of the BODs, the executive management and the advisory board. The specific details on performance-based compensation are not required to be contained in the articles of association, but only the main principles and terms. This is to avoid the amendment of the articles of association every time there is an amendment to the compensation plan. In other words, amendments to the articles of association is required only when the performance-based plans go beyond the main principles and terms;
- the principles for the allocation of options, shares and other equity-linked compensation to members of the BODs, executive management and the advisory board. The specific details on equity-linked compensation are also not required to be contained in the articles of association, but only the main principles and terms;
- the amount of any loans, credit facilities and retirement benefits of members of the BODs, executive management and advisory board;
- the maximum number of outside mandates (i.e. in other companies' boards) that members of the BODs, executive management and the advisory board are allowed to take on;
- the maximum tenure of office (up to a maximum of one year) and termination period for employment agreements of the members of the BODs, executive management and the advisory board;

- The main principles of the duties, responsibilities, competencies, expertise and skills of the compensation or remuneration committee of affected companies. It is important to state that the specific duties, responsibilities, competencies, expertise and skills are not required, but only the principles are required to be stated;
- the authorisation of the BODs to delegate some of its management powers to individual members of the BODs or other individuals. It is pertinent to state that this requirement is in tandem with the requirement of the Abzocker-Initiative, which requires that management powers may be delegated only to individuals and not to an entity (a company) or group entities (group companies). However, the only exception to this delegation of authority rule relates to the delegation of asset management functions. This exception allows asset management functions to be delegated to an entity or group entities, as well as unrelated companies, which must be investment companies;
- any reserve or supplemental amount to cover the compensations of new hires at the executive management's level after the shareholders' say on compensation vote; and the compensation of members of the BODs, the executive management and the advisory board for work done for or on behalf of other companies within the same group.

Prohibited Categories of Compensation

One of the strictest provisions that passed in the Abzocker-Initiative was the prohibition of golden hellos and golden goodbyes, including advance compensation payments, severance payments and golden parachutes compensation payments (relating to merger & acquisition transactions). The Ordinance (2013) listed the specific categories of compensation prohibited as follows:

- advance payments;
- severance payments;
- payments with regard to the acquisition, merger or disposal of entities (companies). In other words, transaction incentive payments are prohibited;
- credit facilities, loans, pension benefits or performance-based compensation not specifically provided for in the affected companies' articles of association;
- allocation of shares, other equity financial instruments and options or such conversion rights not included or provided for in the affected companies' articles of association; and
- all compensations to members of the BODs, the executive management and the advisory board for work done for or on behalf of other companies (secondary companies) within the same group, provided that the compensation:
 - would have been prohibited if it was paid directly by the primary company (the company the member of the BODs, the executive management or advisory board directly works in);
 - is not provided for in the primary company's articles of association; and
 - has not been approved by the shareholders at a general meeting of the primary company.

The Ordinance (2013) stated that these prohibitions apply only to the BODs, the executive management and the advisory board (Wolf and Iffland, 2013), which was unclear in the Abzocker-Initiative.

The Ordinance (2013) clarified that sign-on bonuses would remain permissible, provided that it relates to and connected with compensation for losses suffered or lost/forfeited benefits by a new hire at his or her former place of employment (e.g. forfeiture of options). However, the Federal Council had thought about the possibility of this exception being abused and decided

to leave the final call on whether to allow or prohibit sign-on bonuses to the Swiss parliament (Nikitine et al., 2013). In addition, the prohibition on severance payments does not prevent bona fide compensation for non-compete agreements or consulting services, settlement of overtime and holiday claims and legally binding agreed payments up to the agreed payment period, but not exceeding a maximum of one year.

Mandatory Election by Shareholders of a Company's Chairman and other Board Members

Another strict provision that passed in the Abzocker-Initiative was the mandatory requirement for the chairman and other members of the BODs to be individually elected by the shareholders on an annual basis. Iffland and Wolf (2013a) posited that in the old order in Switzerland (i.e. the practice prior to the endorsement of the Abzocker-Initiative by Swiss citizens), members of the BODs were elected by shareholders, but the chairman is usually appointed by the members of the BODs. Members of the BODs were also responsible for appointing the members of the compensation/remuneration committee and the independent proxy (Iffland and Wolf, 2013a). However, with the coming into force of the Abzocker-Initiative, shareholders are now required to vote every year at a general meeting on the chairman of the BODs, each member of the BODs, the members of the compensation/remuneration committee, as well as the independent proxy.

The Ordinance (2013) against excessive compensation by listed companies provided for the compulsory annual shareholders' election of the following:

- the chairman of the BODs;
- the other members of the BODs;
- the members of the compensation/remuneration committee; and
- the independent proxy (the independent voting representative of shareholders).

The Ordinance (2013) stated that the chairman and members of the BODs, the members of the compensation/remuneration committee and the independent proxy must be elected by shareholders at a general meeting individually. However, should the position of the chairman of the BODs be vacant before a general meeting, the members of the BODs may appoint a new chairman for the remaining tenure of office. Similarly, if the compensation/remuneration committee is not complete, the BODs may fill the open positions for the remaining tenure of office. The Ordinance (2013) also stated that only members of the BODs are eligible to be members of the compensation/remuneration committee.

For the chairman of the BODs, the other members of the BODs, the members of the compensation/remuneration committee and the independent proxy, the tenure of office ends at the conclusion of the next annual general meeting (AGM). Re-election is possible.

Prohibition of Corporate and Custodian Proxies

Another important provision that passed in the Abzocker-Initiative was the prohibition of corporate proxy ("organvertretung") and the representation of shareholders by depository banks ("depotstimmrechtsvertretung"). The Ordinance (2013) prohibited the exercise of proxies by corporate entities and depository banks (custodians) that were hitherto permissible in accordance with Articles 689c and 689d of the Federal Act on the Amendment of the Swiss Civil Code (the Code of Obligations). However, the Ordinance provided that natural persons,

partnerships or legal persons may be elected as independent proxies and whosoever is elected must satisfy the same independence rules (in strict terms) as the external auditor. The independent proxy is under obligation to exercise the voting rights transferred to him or her by shareholders in accordance with shareholders' instructions, but in the absence of instructions, the independent proxy abstains from voting. The Ordinance also provided that the BODs must ensure that shareholders are allowed to issue to the independent proxy powers of attorney and instructions electronically.

In addition, the Ordinance (2013) provided that Swiss pension funds, which are subject to the Vested Benefits Act of 1993 ("VBA"), are under obligation to vote the shares held by them at the general meetings of affected companies in respect of motions contained in the invitation to the general meeting with regard to the following matters:

- election of the chairman of the BODs and other members of the BODs, members of the compensation/remuneration committee and the independent proxy;
- Vote at the general meeting on the compensation to the BODs, executive management and advisory board for work done in their primary company and , where applicable, for activities in companies within the same group but for which approval has not be given at a general meeting; and
- Provisions of the articles of association contemplated by the Ordinance.

Furthermore, the Ordinance (2013) provided that pension funds must exercise their voting rights in the interest of their insured persons, but they may abstain from voting, if doing so would be in the interest of the insured individuals. The Ordinance also mandated pension funds subject to the VBA to, at least once a year, provide a summary report to their insured individuals on how they have fulfilled their voting duty as provided for in the Ordinance. In the event that a pension fund abstained from voting or did not vote in accordance with the motions of the BODs, the pension fund is obliged to disclose in detail its voting behaviour in the aforementioned report.

Criminal Liability

Members of the BODs, the executive management and the advisory board who pay or receive severance payments, advance compensation payments or transaction incentive compensation payments "against better knowledge" or against their "better judgement" ("intentionally" or "direct intent") is criminally liable and could be punished by imprisonment of up to three years and a fine not exceeding six times the applicable annual compensation (the Ordinance, 2013). In addition, any member of the BODs who intentionally:

- delegates, wholly or in part, the management of the company to a legal entity;
- appoints a corporate or custodian proxy in accordance with Articles 689c and 689d of the Code of Obligations; or
- prevents:
 - the shareholders at a general meeting from electing, annually and individually, the chairman of the BODs and other members of the BODs, the members of the compensation committee and the independent proxy;
 - the shareholders at a general meeting from voting on the aggregate compensation of the BODs, the executive management and the advisory board, as well as the compensation report;
 - the shareholders from granting powers of attorney and instructions to the independent proxy, electronically or otherwise; and

- the articles of association from containing the provisions as defined in the Ordinance.

Similarly, members of the highest executive bodies of pension funds or individuals entrusted with the management of pension funds subject to the VBA, who against their better judgement, failed to exercise their voting rights or the duty to disclose their voting are subject to a fine of up to 180 daily penalty rates. The Ordinance further clarified that in calculating the penalty, the Court would not be bound by the maximum amount of the daily rate prescribed in Article 34 Paragraph 2 (sentence 1) of the Swiss Criminal Code; however, the capitalised amount of the penalty may not exceed six times the annual compensation.

THE PROS AND CONS OF THE ABZOCKER-INITIATIVE

The pros (or cons) of say-on-pay have been hotly debated. The significance of the Swiss people's endorsement of the Abzocker-Initiative cannot be over-emphasised. The Swiss model of say-on-pay has become the global benchmark and standard that other jurisdictions aspire to attain. Indeed, Switzerland has adopted one of the most far-reaching and most demanding corporate governance rules worldwide. According to Cai and Walkling (2011), there are three schools of thought on say-on-pay: the alignment (the proponents), the interference (the critics or the opponents) and the neutral (those that sit on the fence). Proponents of say-on-pay believe that there are overwhelming advantages in giving shareholders the opportunity to express their voice by voting on crucial corporate governance matters, including executive compensation (Cuñat et al., 2012). On the other hand, critics see through the lens that showcase the disadvantages associated with say-on-pay and they believe that it is a distraction to the BODs and executive management (Bainbridge, 2008; Deane, 2007). Those who sit on the fence believe that say-on-pay has little or no impact (Thomas and Cotter, 2007). This section would be used to discuss some of the specific advantages (pros) and disadvantages (cons) of the endorsed Abzocker-Initiative.

The Advantages of the Abzocker-Initiative

There are numerous advantages (merits) of giving shareholders binding vote on executive compensation. In particular, several studies have documented that say-on-pay significantly increases shareholders' value (Cai and Walkling, 2011; Correa and Lel, 2013; Cuñat et al., 2012). Some of the advantages of the Abzocker-Initiative include: it enhances shareholders voice; it strengthens shareholders oversight; it brings about higher transparency; it enhances accountability; it encourages greater engagement between directors and shareholders and other stakeholders; it leads to shareholders' sophistication in casting more informed votes; and it epitomises a broader movement towards a holistic shareholder democracy. These merits are further discussed in detail below.

Enhances Shareholders' Voice

Proponents of say-on-pay have argued that it enhances shareholders' voice and shareholders' view on how the company is run and on whether executive compensation policies are aligned with performance. Say-on-pay creates a clear mechanism for shareholders to express their voice and concerns (Burns and Minnick, 2013; Cuñat et al., 2012). Shareholders have been

given a tool that they could use to voice their discontent with regard to the link between compensation and performance (Cuñat et al., 2012). Thomas Minder strongly argued few days before the vote on Abzocker-Initiative that the essence of the initiative was not for shareholders to limit executive pay, but for shareholders to have the last word (say) on executive compensation (Shotter, 2013). Specifically, the compulsory annual binding shareholder vote on aggregate compensation and the compensation report and the mandatory requirement for the chairman and the other directors, as well as the members of the compensation committee to be annually and individually elected have provided critical channels for shareholders to voice their concerns about corporate matters, including executive recklessness and poor performance. Indeed, it is an annual confidence vote. Finally, the Swiss say-on-pay model is intended to, amongst others, give shareholders more power to hold directors to account over the structure and level of directors' and executive compensation.

Strengthens Shareholders' Oversight

Proponents of the Abzocker-Initiative believe that the initiative would function as a mechanism to monitor and incentivise the BODs, the executive management and the advisory board to deliver better company's performance. According to Cuñat et al. (2012), say-on-pay strengthens shareholders' oversight and has a potential to limit executive compensation excesses. Thomas Minder had argued prior to the vote on the Abzocker-Initiative that the Swiss people and Switzerland would benefit immensely if it gave shareholders control over the companies in which they invested their hard earned money in (Minder, 2013). The robust provisions of the Abzocker-Initiative and the implementation decree (the Ordinance) would empower shareholders and act as a costless mechanism through which shareholders can directly and attractively carry out their oversight responsibilities and punish members of the BODs, the executive management and the advisory board for poor performance.

Brings about Higher Transparency

The provisions that passed in the Abzocker-Initiative would bring about greater transparency and scrutiny of executive compensation. Bebchuk and Fried (2006) asserted that disclosure of executive compensation improves transparency. Transparency would provide shareholders of Swiss companies with more accurate picture of each director's compensation and aggregate compensation of the BODs, the executive management and the advisory board and the relationship of each of these categories of compensation with performance. Rohrbein (2013) argued that mandatory voting creates more transparency. Specifically, the mandatory requirement for the BODs to prepare and submit to the shareholders an annual compensation report, the prohibition of golden hellos and golden goodbyes, the mandatory requirements for the articles of association to include compensation plans and bonus schemes for directors and executive management, the prohibition of corporate and custodian proxies and the mandatory requirement for pension funds to provide a summary report to their insured individuals on an annual basis on how they have fulfilled their voting duty as provided for in the Ordinance would improve disclosure and, invariably bring about higher transparency.

Enhances Accountability

One of the highly propagated potential merits of the Abzocker-Initiative is that it would improve BODs, executive management and advisory board's accountability. Monem and Ng

(2013) posited that the Australian say-on-pay legislation was enacted to improve accountability of executive pay. The most promising path to improving executive compensation arrangements is to make directors more accountable to shareholders and more dedicated to shareholders' interests (Bebchuk and Fried, 2006). The proponents of the Abzocker-Initiative believe that giving shareholders binding votes on executive compensation would make the BODs, the executive management and the advisory board more accountable to shareholders and give investors another medium to communicate their satisfaction or displeasure with the company's leadership.

Encourages Greater Engagement

The approved Swiss binding say-on-pay initiative would encourage engagement and improve communication between directors and shareholders and strengthens the relationship between the BODs and shareholders, ensuring that BODs fulfil their fiduciary duties and obligations to their shareholders. Cai and Walkling (2011) stressed that the passage of a say-on-pay legislation has the potential to align shareholders and BODs interests and improve corporate governance and performance. Ferri (2013) argued that enhanced shareholders engagement has a potential of improving the dialogue between BODs and shareholders. When the provisions that passed in the Abzocker-Initiative are viewed from a bright lens, it becomes apparent that the comprehensive nature of the initiative would naturally humble the BODs and the executive management and cause them to seek a more cordial relationship with shareholders. The fact that the chairman and other members of the BODs are aware that they could be voted out of office by shareholders in the next general meeting is enough to put them in check.

Leads to Shareholders' Sophistication

Supporters of say-on-pay believe that it has a potential of leading to shareholders' sophistication. According to Ferri (2013), there is growing evidence that shareholders are becoming more sophisticated, especially in casting informed votes. Firstly, the overwhelming support that the Abzocker-Initiative received from Swiss voters is an attestation to this assertion. Secondly, the level of sophistication of shareholders of Swiss public companies would continue to increase as shareholders exercise their rights through annual votes.

Creates a Holistic Shareholders' Democracy

The Abzocker-Initiative goes beyond just the issue of executive compensation. Say-on-Pay epitomises a broader movement towards a holistic and more robust shareholders' democracy (Ferri, 2013). The Abzocker-Initiative deals with broader issues, which include, amongst others, the election, the tenure of office and notice period of the BODs and the executive management, the exercise of voting rights and disclosure of votes by pension funds; and the prohibition of corporate and custodian proxies.

The Disadvantages of the Abzocker-Initiative

Critics of the Abzocker-Initiative claimed that it would be disruptive, to say the least. Opponents of the Abzocker-Initiative have listed some of its potential disadvantages to include: it would undermine Switzerland's competitiveness; it would encourage short-termism, it would create huge compliance costs; it would undermine the power of the board; and it would be

driven by shareholders with special interests. These disadvantages are further discussed in detail below.

Undermines Switzerland's Competitiveness

Opponents of say-on-pay argued that it would undermine Switzerland's competitiveness and drive away business from Switzerland. In other words, companies might consider relocating to other countries because of the inconveniences of the newly introduced Abzocker-Initiative, which has the most comprehensive and strictest executive compensation rules in the world. Matlack (2013) argued that in the long run the Abzocker-Initiative has the capacity to either lower or damage Switzerland's competitiveness, thus making Switzerland less attractive for entrepreneurs, global managers and international talent. In other words, the newly introduced initiative has the capacity to scare away international talent and entrepreneurs to less stringent jurisdictions. Entrepreneurs and employees who had hitherto found the Swiss jurisdiction attractive due to its relatively low tax rates are now weighing their options amidst the strict provisions of the Abzocker-Initiative, especially, the prohibition of golden hellos and golden goodbyes, the mandatory requirement for annual vote on executive compensation and the requirement for the chairman and members of the BODs to be elected annually and individually by shareholders.

Encourages Short-termism

Critics of the Abzocker-Initiative believe that the initiative would encourage short-termism because of the relatively short tenure of the members of the BODs. In other words, the election of the chairman and other members of the BODs on a yearly basis may impact the dynamics and stability of the board, thus, potentially leading to the pursuit of short-term strategies instead of the long-term success of the company.

Creates Huge Compliance Costs

Opponents of the Abzocker-Initiative argued that some of the provisions that passed in the Abzocker-Initiative could be very costly to Swiss public companies. Say-on-Pay has the capacity to create huge compliance costs that may not be offset by its benefits (Cai and Walkling, 2011; Cuñat et al., 2012). In the immediate aftermath of the yes vote in favour of the Abzocker-Initiative, Minder (2013) was particularly worried that the initiative would add more "burden" to corporate processes. There is the direct cost associated with the implementation of the provisions that passed and there is the reputational damage that may occur should shareholders vote against BODs compensation proposals.

Undermines the Power of the Board

Opponents of the Abzocker-Initiative argued that it is intrusive and would undermine the power of the board. Cai and Walkling (2011) posited that say-on-pay if not properly handled could lead to excessive meddling by shareholders into their company's management. Cai and Walkling (2011) further stated that say-on-pay has the potential of distracting the BODs and the executive management and reduce the authority of the board. Besides, the BODs are already used to being responsible for deciding their own pay and might see this change as denying them their legitimate responsibility, thus creating a tensed environment.

Driven by Shareholders with Special Interests

Critics worry that the Abzocker-Initiative would be divisive or driven by special interests. A basic argument relating to say-on-pay is that it could be divisive or could cause rancour amongst a company's stakeholders if not effectively implemented (Cai and Walkling, 2011). Shareholders, especially institutional investors with a particular interest may try to force that interest on the company at the expense of the long-term success of the company. For instance, risk-averse shareholders would more likely vote against executive compensation that seems to encourage BODs to undertake projects with high risks, even if it is in alignment with the overall strategy of the company.

BINDING SAY-on-PAY IN OTHER JURISDICTIONS

Countries such as the UK, Switzerland, Denmark, Sweden and Netherlands already have legislations requiring mandatory and binding shareholder vote on executive compensation, while countries such as the United States, Australia, Belgium, Israel, Portugal, Spain and Germany have implemented mandatory but non-binding (advisory) shareholder vote on executive compensation (Göx, 2013; Hay Group, 2013a). Whilst the exact mechanics of each of these countries' say-on-pay legislation differ, they all operate similarly to provide shareholders with a powerful new voice in a domain once left in the exclusive hands of the corporate boardroom (Barrall et al., 2011). After the Swiss vote on 3rd March, 2013, the UK has gone ahead to enact the Enterprise and Regulatory Reform Act of 2013, giving shareholders of UK registered companies a binding vote on executive compensation. The good news is that more countries, including France are considering enacting legislations to give shareholders some say on executive compensation.

The Abzocker-Initiative is in a class of its own amongst the say-on-pay rules that have been passed across the globe, thus, other jurisdictions with existing say-on-pay legislations and jurisdictions that are planning to enact say-on-pay legislations should aspire and consider incorporating provisions that are similar to those contained in the Abzocker-Initiative. Although it might be difficult for other jurisdictions to replicate the exact provisions of the Abzocker-Initiative because they might not have the political will and the same kind of direct democratic structures that made it possible for Switzerland to pass such a broad set of rules, but the Swiss model is actually the minimum standard that all jurisdictions should benchmark their say-on-pay rules against. That is where they should be, to say the least.

In addition, some of the fears that have been put forward by critics of the Abzocker-Initiative, including the ability to make Switzerland less competitive would be neutralised if other jurisdictions also enact legislations on say-on-pay with similar far-reaching rules. In other words, if other jurisdictions pass similar far-reaching binding rules on executive compensation, then the fear that some of Switzerland's biggest companies and banks could pack up and migrate to other countries would abate.

THE CONTAGION EFFECT OF ABZOCKER-INITIATIVE ON OTHER JURISDICTIONS

The main issues that have brought about the public agitation for shareholders to have a say on pay, binding or advisory, have centred on lack of transparency, accountability and good

corporate governance, as well as poor performance of BODs and executive management, amidst the ‘fat cat’ executive compensation being allocated by members of the BODs to themselves. Göx (2013) posited that say-on-pay allows shareholders of public companies to express their dissatisfaction with inefficient pay arrangement and to demand for improvements that create shareholders’ value.

Say-on-pay, especially the type that has a binding effect, is a critical mechanism for shareholders to express their voice and opinion on corporate matters. The era of shareholders delegating all such matters to the BODs is no longer fashionable, the new order requires shareholders to have a direct say on executive compensation. In many jurisdictions, there is a huge disparity in wages of those at the top echelon of companies and those at the bottom of those companies’ corporate ladder. For instance, the head of a division or business area would be paid bonus for either poor performance or for making a loss, while those at the bottom of the corporate ladder working under him or her are told they have no bonus because their division or business area did not make profit. Sometimes, those kinds of compensation practices cannot be justified.

The Minder’s initiative is now the global benchmark on say-on-pay and only time will tell if it would have a contagion effect on the rest of the world. The author is cautiously optimistic that other jurisdictions would be inspired by the initiative and consider it, although, this would not be easy because unlike the Swiss jurisdiction that has direct democratic structures, which allow such stringent rules to pass, political systems in many jurisdictions are rather complex and full of intrigues.

CONCLUSION

This paper broadly discussed the Abzocker-Initiative, including the specific provisions that passed in the new resolution and the pros and cons of the approved initiative. In addition, the author discussed the variants of say-on-pay in other jurisdictions as well as the contagion effect of the Abzocker-Initiative.

The Abzocker-Initiative introduced an even more comprehensive set of curbs after 67.94 percent of Swiss voters passed the far-reaching provisions in the initiative, including prohibiting golden hellos and golden goodbyes; giving a mandatory annual binding shareholders’ vote on the aggregate compensation of the BODs, executive management and advisory board; requiring the chairman and other members of the BODs to be individually elected by the shareholders on an annual basis; requiring the articles of association to include bonus schemes and compensation plans for the BODs, executive management and advisory board; prohibiting corporate and custodian proxies; and threatening criminal sanctions for non-compliance. Although the aforementioned provisions have the potential to strengthen corporate governance processes in Switzerland, however, only a careful and consistent application of the provisions and the enforcement of sanctions for breaches that would guarantee the long-term success of the Abzocker-Initiative. In other words, a binding say-on-pay is not a magic wand, but only the beginning of a process that the Swiss people hope would bring about a new order that would engender greater transparency and accountability in executive compensation and executive compensation reporting.

RECOMMENDATION AND FUTURE RESEARCH

From the foregoing discussions, the author recommends that other jurisdictions should enact laws that give shareholders binding vote on executive compensation. This would likely bring about more accountability and transparency in the boardroom and encourage greater engagement between the BODs and shareholders. Furthermore, this study was theoretically oriented, thus, the author would suggest that empirical studies to explore say-on-pay on executive compensation, binding or advisory, should be conducted in jurisdictions currently requiring shareholders to have a direct say on executive compensation.

ACKNOWLEDGEMENTS

My sincere thank you goes to Professor Albert D. Widman, D.P.S, my Corporate Finance and Governance tutor at SMC University, who meticulously reviewed and provided helpful feedback on this paper. My profound gratitude also goes to my tutors in Strategic Leadership and Research Methodology at SMC University, Professor William L. Quisenberry, DBA, and Professor Ted Q. Sun, Ph.D, respectively. They both helped in sharpening my research skills.

REFERENCES

- Bainbridge, S.M. (2008) 'Remarks on say on pay: an unjustified incursion on director authority'. UCLA School of Law. *Law-Econs Research Paper No. 08-06*.
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1101688(Accessed 27 March 2014).
- Baird, J. and Stowasser, P. (2002) *Executive compensation disclosure requirements: the German, UK and US approaches*.
<http://uk.practicallaw.com/cs/Satellite?blobcol=urldata&blobheader=application%2>
 (March 27 2014).
- Barrall, J.D.C., Chung, A.M. and Greenberg, S.T. (2011) *Say-on-pay: the new world order*.
<http://www.lexology.com/library/detail.aspx?g=afbe4b8d-1626-4891-9f66-0b8cfc193f88>
 (Accessed 27 March 2014).
- Bebchuk, L.A. and Fried, J.M. (2006) 'Pay without performance: overview of the issues', *Academy of Management Perspectives*, Vol. 20, No. 1, pp.5-24.
- Burns, N. and Minnick, K. (2013) 'Does say-on-pay matter? Evidence from say-on-pay proposals in the United States', *The Financial Review*, Vol. 48, No.2, pp.233-258. doi: 10.1111/fire.12002.
- Cai, J. and Walkling, R.A. (2011) 'Shareholders' say on pay: does it create value?', *Journal of Financial and Quantitative Analysis*, Vol. 46, No.2, pp.299-339. doi:10.1017/S0022109010000803.
- Copley, C. (2013) 'Swiss voters reject proposal to limit executives' pay', *Reuters* [online] 24 November.
<http://uk.reuters.com/article/2013/11/24/uk-swiss-vote-pay-idUKBRE9AN0BO20131124>(Accessed 27 March 2014).
- Correa, R. and Lel, U. (2013) *Say on pay laws, executive compensation, CEO pay slice and fair value around the world*.
<http://www.federalreserve.gov/pubs/ifdp/2013/1084/ifdp1084.pdf> (Accessed 27 March 2014).
- Cuñat, V., Gine, M. and Guadalupe, M. (2012) *Say pays! Shareholders voice and firm performance*. <http://www.oecd.org/els/SayonPaySept72012Complete.pdf> (Accessed 27 March 2014).

- Deane, S. (2007) 'Say on pay: results from overseas', *The Corporate Board*, Vol. 28, No. 165, pp.11-18.
- EurActiv. (2013) *Swiss vote to limit top executive salaries*.
<http://www.euractiv.com/euro-finance/swiss-vote-executive-pay-curbs-news-518209>(Accessed 27 March 2014).
- Ewing, J. (2013) 'Swiss reject measure to curb executive pay', *The New York Times*, 24 November. <http://www.nytimes.com/2013/11/25/business/swiss-reject-measure-to-curb-executive-> (Accessed 27 March 2014).
- Federal Act on the Amendment of the Swiss Civil Code (the Code of Obligations). (1911, with Status as of 1 January 2014). <http://www.admin.ch/ch/e/rs/2/220.en.pdf> (Accessed 27 March 2014).
- Federal Constitution of the Swiss Confederation (Swiss Constitution) of 18 April 1999 (Status as of 3 March, 2013). <http://www.admin.ch/ch/e/rs/1/101.en.pdf> (Accessed 27 March 2014).
- Ferri, F. (2013) *Say on Pay*. <http://www.ecgi.org/tcgd/2013/documents/SOPCHAPTERsept12> (Accessed 27 March 2014).
- Ferri, F. and Maber, D. (2013) 'Say on pay vote and CEO compensation: evidence from the UK', *Review of Finance*, Vol. 17, pp.527-563.
- Geiser, U. (2013) *Salary cap fails at ballot box*.
http://www.swissinfo.ch/eng/swiss_news/Salary_cap_fails_at_ballot_box.html?cid= (Retrieved on March 27, 2014).
- Göx, R. F. (2013) *Say on pay, executive compensation, and board dependence*.
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1908592 (Accessed 27 March 2014).
- Greene, E.F. (2012) 'Binding shareholder say-on-pay vote in UK', *The Harvard Law School Forum on Corporate Governance and Financial Regulation*.
<https://blogs.law.harvard.edu/corpgov/2012/07/31/binding-shareholder-say-on-pay-vote-in-uk> (Accessed 27 March 2014).
- Hay Group (2012) *Getting it right has never been more important: top executive compensation in Europe 2012*.
[http://www.haygroup.com/downloads/ww/Top%20executive%20compensation%20in%](http://www.haygroup.com/downloads/ww/Top%20executive%20compensation%20in%20) (Accessed 29 March 2014).
- Hay Group (2013a) *Executive reward snapshot: more shareholders are getting a say on top pay*. https://www.haygroup.com/downloads/ww/HG280_Say%20on%20Pay_v05.pdf (Accessed 16 March 2014).
- Hay Group (2013b) *Charting your own course - re-evaluating reward: top executive compensation in Europe 2013*.[http://www.haygroup.com/downloads/ww/topex%202013%20summary%20report%20pre%](http://www.haygroup.com/downloads/ww/topex%202013%20summary%20report%20pre%20) (Accessed 30 March 2014).
- Hodgson, P. (2009) A brief history of say on pay. *Ivey Business Journal*.
<http://iveybusinessjournal.com/topics/leadership/a-brief-history-of-say-on-pay>(Accessed 30 March 2014).
- Hooper, J. (2013) 'Switzerland votes against cap on executive pay', *The Guardian* [online] 24 November<http://www.theguardian.com/world/2013/nov/24/switzerland-votes-against-cap-executive-pay>(Accessed 30 March 2014)
- Iffland, J. and Wolf, M. (2013a) 'Swiss voters accept say-on-pay initiative', *Lexology* [online] 11 March.
<http://www.lexology.com/library/detail.aspx?g=37783d26-2fef-4cfa-99a4-e33ba0ddc333>

- (Accessed 30 March 2014).
- Iffland, J. and Wolf, M. (2013b) 'Minder initiative: Swiss government consults on draft say-on-pay ordinance', *Lexology* [online] 27 June. <http://documents.lexology.com/ae808864-bd97-4e32-af7b-ab6466cc226d.pdf>(Accessed March 30 2014).
- Jack, A., Oakley, D. and Shotter, J. (2013) 'Novartis scraps chairman's \$78 million Payout', *Financial Times* [online] 19 February. <http://www.ft.com/intl/cms/s/0/b78ab050-7a6d-11e2-9cc2-00144feabdc0.htm>(Accessed 27 March 2014).
- Jansen, K. (2013) *Will bonus caps improve the banking industry?* <http://www.dw.de/will-bonus-caps-improve-the-banking-industry/a-16642511> (Accessed 27 March 2014).
- Matlack, C. (2013) 'Swiss limits on executive pay: less than meets the eyes', *BloomBerg Businessweek*[online] 4 March. <http://www.businessweek.com/articles/2013-03-04/swiss-limits-on-executive-pay-less-than->(Accessed 27 March 2014).
- Minder, R. (2013) 'Swiss voters approve a plan to severely limit executive Compensation', *The New York Times* [online] 3 March. <http://www.nytimes.com/2013/03/04/business/global/swiss-voters-tighten-countrys-limits-on->(Accessed 27 March 2014).
- Monem, R. and Ng, C. (2013) 'Australia's 'two-strikes' rule and the pay-performance link: are shareholders judicious?', *Journal of contemporary Accounting & Economics*, Vol. 9, No. 2, pp.237-254. doi.org/10.1016/j.jcae.2013.10.002.
- Murphy, K.J. (2012) '*Executive compensation: where we are and how we got there.*' http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2041679 (Accessed 27 March 2014).
- Nikitine, A., Gnos, U. and Vischer, M. (2013) 'Minder and federal council on the same page', *Newsletter Special Edition of Walderwyss Attorneys at Law.* <https://www.walderwyss.com/publications/1326.pdf>(Accessed 27 March 2014).
- Ordinance against Excessive Compensation with respect to Listed Stock Corporations (the Ordinance) (2013). Unofficial English Translation by Niederer Kraft & Frey (NKF). http://www.nkf.ch/wAssets-nkf2/docs/informationen/MindeOrdinance_Translation_2013-(Accessed 27 March 2014).
- Orsagh, M. (2013) *Say on pay: how voting on executive pay is evolving globally – and is it working?* <http://blogs.cfainstitute.org/marketintegrity/2013/12/26/say-on-pay-how-votes-on-executive->(Accessed 27 March 2014).
- Popham, P. (2013) 'Thomas Minder: the man who has the fat cats of Switzerland in his sights', *The Independent* [online] 28 February. <http://www.independent.co.uk/news/business/news/thomas-minder-the-man-who-has-the-fat->(Accessed 27 March 2014).
- Rohrbein, N. (2013) 'Pensions in Switzerland: rights and responsibilities', *Investment & Pensions Europe.* <http://swipra.ch/wp-content/uploads/2013/06/Pension-Europe-June-2013-on-Swiss-> (Accessed 27 March 2014).
- Serdult, U. (2007) '*Direct democracy in Switzerland and its discontents*'. Paper Presented in March at the International Conference on Direct Democracy in Latin America, Buenos Aires http://www.whatisdemocracy.net/wddm/maillist/Direct_Democracy_in_Switzerland.pdf(Accessed 27 March 2014).
- Shotter, (2013) 'Swiss set to vote on executive pay curbs', *Financial Times* [online] 27 February.

- <http://www.ft.com/intl/cms/s/0/9dd7458e-80ca-11e2-9c5b00144feabdc0.html#axzz2yu2uf5jh>(Accessed 27 March 2014).
- Shotter, J. and Barker, A. (2013) 'Swiss vote for corporate pay curbs', *Financial Times* [online] 3 March <http://www.ft.com/cms/s/0/ca90f1b4-83ff-11e2-b700-00144feabdc0.html> (Accessed 27 March 2014).
- The International Foundation for Electoral Systems (IFES- ElectionGuide) (2013). *Swiss Confederation referendum* [online]. <http://www.electionguide.org/elections/id/203/> (Accessed 3 March 2014).
- The Swiss Confederation. (2013) *The Swiss confederation: a brief guide*. St. Gallen: The Federal Administrative Court.
- The Swiss Confederation (2014). *The Swiss confederation: A brief guide* [online]. St. Gallen: The Federal Administrative Court <http://www.bk.admin.ch/dokumentation/02070/index.html?lang=e> (Accessed 11 April 2014).
- Thomas, R.S. and Cotter, J.F. (2007) 'Shareholder proposals in the new millennium: shareholder support, board response and market reaction', *Journal of Corporate Finance*, Vol. 13, No. 2/3, pp.368-391. doi: 10.1016/j.jcorpfin.2007.02.002.
- Traynor, I. (2013) 'European Union agreement to cap bankers' bonuses is setback for city', *The Guardian* [online] 28 February. <http://www.theguardian.com/business/2013/feb/28/european-union-cap-bankers-bonuses> (Accessed 27 March 2014).
- von Schaper, E. (2013) 'Novartis cuts Vasella golden parachute to \$5.95 million', *Bloomberg* [online] 17 July <http://www.bloomberg.com/news/2013-07-17/novartis-to-pay-vasella-5-2-million-for-> (Accessed 27 March 2014).
- Watter, R. and Kagi, U. (2013) 'Minder rules in their final form published today', *Lexology* [online] 20 November 20. <http://www.lexology.com/library/detail.aspx?g=9c89162a-4a62-47b7-b596-36c2baab4718>(Accessed 27 March 2014).
- Wolf, M. and Iffland, J. (2013) 'Minder initiative: Swiss government adopts ordinance against excessive remuneration. *Lexology* [online] 28 November. <http://www.lexology.com/library/detail.aspx?g=628f0656-a25a-4cd3-a460-6c160ac105c1>(Accessed 27 March 2014).