SWISS REFERENDUM: SAY-ON-PAY

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Abstract

This paper examines the recent Swiss referendum on say-on-pay. The referendum was put to popular vote in March of 2013, and the Swiss citizens passed the referendum with a clear majority. This paper will explain each of the provisions of the referendum. It will then explain pros and cons of the referendum, and then further evaluate the provisions. Finally, a brief commentary will be made regarding its implication and potential application in the world's financial centers.

Keywords: Corporate Governance, Executive Compensation, Thomas Minder, Dodd-Frank Act, Compensation Committee, Board Compensation, Draft Transitional Order, OECD

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1 Introduction

Much of the world's focus on excessive executive pay gained momentum in recent corporate failures that were timed around the financial crisis of 2007-2008; however, the issues surrounding excessive executive pay goes back further than this. In the United States, through the 1990's and early 2000's, the growth of c-suite compensation packages substantially outpaced all other wage indicators. "If the minimum wage had risen at the same rate as executive pay since 1990, it would be $21.41 an hour," and CEO compensation was "431 times more than the average worker" (Monks & Minow, 2011, p. 348). The corporate crises from 2002-2008, including companies such as Enron, WorldCom, Tyco, and Global Crossing highlighted the issues and inflamed public sentiment. Across the ocean in Switzerland, Thomas Minder, an individual business owner in Switzerland was one who became infuriated over the excesses in the c-suite. He owned a privately held business supplying products to Swissair. When Swissair ran into financial trouble, he lost his contract and his business suffered, bringing him close to bankruptcy. Right when Swissair was having financial difficulties, they paid "$10 million to the chief executive, Mario Corti, who left shortly after the airline's collapse" ("Switzerland's Resounding Verdict," 2013, para. 2). This struck a chord with Mr. Minder, and it prompted him to complete a mission to bring about regulatory changes in order to help correct an apparent disparity with the perceived unfairness of executive compensation. Mr. Thomas Minder's mission reached a pinnacle in March of 2013, when the Swiss Federal Chancellery passed a say-on-pay referendum.

2 Description of the Swiss referendum: say-on-pay

The Swiss national referendum on say-on-pay relates to publicly listed corporations, and it significantly bolsters shareholder rights; it contains eight provisions ("Federal popular initiative," 2013). These are presented in sequence as they appear in the referendum. The first, and likely most important provision, requires shareholders to annually vote on all matters of compensation for the board of directors, executive board, and advisory board. This provision does not mention a restriction on the level of compensation to the listed entities, only that a shareholder vote and approval is necessary on an annual basis. Unlike the Dodd-Frank Act in the United States, which is non-binding and serves to ensure disclosure, the Swiss referendum is binding.

The presentation of compensation to the shareholders must be done for the total of the groups: board of directors, executive board, and advisory board ("Federal popular initiative," 2013; Iffland &Wolf, 2013).

The referendum stipulates that the shareholders must vote on the "sum total of all remuneration," meaning that the proposal will represent the cumulative compensation for each group versus individual compensation for each person of each group ("Federal popular initiative," 2013). Detailed individual compensation packages are not required to be voted on by the Swiss referendum (Iffland &Wolf, 2013). Furthermore, if a compensation proposal does not pass, "the board can submit a new proposal at the same meeting" (para. 8); however, if that second proposal does not pass no further proposals can be brought forth at that meeting. If this occurs, a future subsequent shareholder meeting needs to be held in order to vote on a new proposal, but that meeting must be held within three months. There are allowances that can be made in a corporation's articles of incorporation for compensation that would occur within the time where shareholder approval was pending (Nyukorong, 2013).

The second provision requires shareholders to annually approve the selection of people to key positions such as the President/Chairman of the board of directors, members of the board, members of the compensation committee, and independent voting representative/independent proxy ("Federal popular initiative," 2013). This is a departure from historical practices in Switzerland, where it was common for the board to appoint these positions (Iffland &Wolf, 2013). The requirement that all of these positions be voted and confirmed by shareholder vote on an annual basis establishes each of their respective terms to one year. The referendum places no restrictions on the number of successive or aggregate terms. There is disagreement among sources about the membership of the compensation committees. Iffland and Wolf state that "members of the remuneration committees must nonetheless be members of the board" (para. 3). Nyukorong states that the referendum "explains that the remuneration committee members are by default, not members of the board" (2013, p. 7). The referendum itself does not clarify or address the independence of the members of the compensation committees; however, the clarification from the Federal Office of Justice in the Draft Transitional Order under section 4.2, titled "Compensation Committee," does state that, "selectable only members of the Board" ("Regulation against rip-off" 2013). This will likely be a subject of much debate in the Swiss Parliament as they write the bill that will eventually become law; independence of the compensation committees fits the spirit of the referendum.

The third provision requires that pension funds vote in the interest and on behalf of their constituents within the pension, referred to in the referendum as those who are 'insured' by the pension fund. This provision also requires that the pension funds disclose how they voted. One can infer from the placement of this provision within the referendum that it is intended that voting disclosure be done annually, as the two preceding provisions on compensation and selection are both annual; although, the wording on disclosure does not explicitly state a period. The article by Iffland and Wolf corroborates this inference, where they cite an annual requirement to disclose voting positions, to include justifications to support an abstinence vote (2013). The Draft Transitional Order does not provide additional clarification.

The fourth provision allows for shareholders to participate in the voting process remotely using electronic means. Iffland & Wolf assert that the referendum does not "require companies to ensure real-time 'direct' electronic voting from remote locations" (2013, para. 17). In contrast, a plain reading of the text in the referendum itself seems to indicate differently stating, "shareholders may vote electronically from a remote location" ("Federal popular initiative," 2013, para. 3.a.). One would reasonably think that real-time voting would be implied or there would not be cause to explicitly leverage electronic means remotely. This is similar to the interpretation that Novartis has put forward in their Investor Insights publication in July of 2013 ("Minder update," 2013). Parliament will hopefully provide additional clarification on this provision when they draft the bill. As of the writing of the Draft Transitional Ordinance, no further clarification has been provided ("Regulation against rip-off," 2013).

The fifth provision provides prohibitions on special compensation and agreements for specific activities. The listed activities are golden parachutes/severance, advances, and bonuses for the purchase or sale of companies (Bahar, Malacrida & Spillman, 2013; "Federal popular initiative," 2013). Employment agreements are prohibited where such agreements are for another company within the same group. These prohibitions relate to only directors and senior managers in accordance with the referendum. The Draft Transitional Ordinance further clarifies that these prohibitions do specifically relate to the board of directors, executive board, and the advisory board ("Regulation against rip-off," 2013). It supports the prohibitions listed previously and more specifically clarifies other prohibitions such as loans, pension awards, incentive awards, securities, equities, convertible bonds, and stock options which are not otherwise allowed within articles of incorporation or statutes.

The sixth provision disallows the delegation of corporate management to another legal entity or companies ("Federal popular initiative," 2013). "This new requirement is likely to impact mostly investment companies, which typically delegate management functions to external managers" (Iffland & Wolf, 2013, para. 15). The Draft Transitional Ordinance provides no additional clarification. Parliament will need to provide additional clarification on this provision, as it is possible to infer that this provision extends to outsourced relationships at any level with the corporation, and that is likely not the intent of the provision.

The seventh provision requires that articles of incorporation address loans, retirement benefits, and incentive plans for directors and senior managers of the governing bodies ("Federal popular initiative," 2013). This again is referring to the board of directors, executive board, and the advisory board. Nothing is specified in the referendum about restrictions themselves, only that these be addressed in the articles of incorporation. By the nature of requiring that they be included in the articles of incorporation, they will need to meet with shareholder approval in order to be adopted into the articles ("Minder update" 2013). This provision ensures shareholder disclosure.

The eighth provision allows for penalties and enforcement of the referendum. According to the referendum, violation of the provisions will result in imprisonment and fines ("Federal popular initiative," 2013). Imprisonment can be a period of time up to three years. Fines can be for amounts up to six times annual compensation for the offending person(s). According to the Draft Transitional Ordinance, this provision applies to any person who is a member of the board of directors, the executive board, or the advisory board, who intentionally violates any of the provisions of the referendum ("Minder update," 2013; "Regulation against rip-off," 2013).

3 Pros and cons of the Swiss referendum: say-on-pay

The Swiss referendum can have overall positive effects of increasing disclosure and transparency, enabling additional shareholder participation, and increasing public accountability of senior executives in publically listed companies. The spirit of the Swiss referendum is in-line with guidance given in the Organisation for Economic Co-operation and Development's (OECD) "Principles of Corporate Governance" ("OECD principles of corporate governance," 2004); however, the statement 'it depends' seems to apply here. While overall increased shareholder rights correlate to increased overall performance, this does not seem to be the case regarding compensation (Cai & Walkling, 2011; Monks & Minow, 2011). In regard to executive compensation, establishing a shareholder say-on-pay provides a benefit to those corporations and shareholders where executive compensation practices were questionable (Cai & Walkling, 2011); however, in corporations where executive compensation levels were lower say-on-pay actually harmed shareholders. "When pay is measured by abnormal salary plus bonuses, we find that the market reacts positively for firms with the most highly paid CEOs…and negatively for firms with the lowest paid CEOs" (p. 312). This referendum is potentially beneficial to stakeholders, but there are also risks and issues with it, as there are with any piece of legislation. One of the less obvious risks is based on the fundamental assumption that shareholders want to be involved, or are capable of being involved, at a decision-making level regarding compensation. Share ownership in publically listed and traded companies is dispersed, which makes it difficult for shareholders to substantially participate in the discussion, negotiation, and decision processes associated with compensation and performance targets (Cai & Walkling, 2011). There is little recent research evidence or recent research studies that define shareholder attitude and perspective regarding their own duties and obligations as shareholders. There is risk in setting up legislation that requires shareholder participation in corporate decision making, when it is possible that significant populations of shareholders may be apathetic to the entire idea, preferring to function more as passive investors versus active shareholders. Transient share ownership is an issue, and the trading systems have been built over the decades to support share movement, often at the expense of in-depth involvement of shareholders in the ownership process (Monks & Minow, 2011). The opposite can be true for large institutional shareholders though. They tend to have definite opinions on compensation practices because they have staff that are dedicated to research activities including market compensation practices (Mangen & Magnan, 2012). In these cases the shareholders may be both interested and educated in the subject matter. Another potential downside to the referendum and pending legislation is that it may deter companies from locating in Switzerland and could even prompt some to move out of Switzerland. It could also create additional challenge in attracting and retaining the necessary talent at the executive level due to increased personal risk for potentially less reward. These pros and cons along with others will be explored by each provision in the referendum.

The first provision requiring an annual shareholder vote on executive compensation certainly increases disclosure and transparency to shareholders and the general public and is in-line with guidance provided by the OECD ("OECD principles of corporate governance," 2004, p. 22). It does not explicitly restrict compensation levels, and the referendum and the Draft Transitional Ordinance seem to indicate that the vote will be necessary on the aggregate of executive compensation for the group(s). There are compensation philosophy differences at stake. One philosophy ascribes to full disclosure of all compensation potential, such that people should know exactly what their total potential remuneration can be in advance of performance. Another philosophy ascribes to the ability to vary compensation potential, especially the variable component of incentive compensation, in order to derive the desired behaviors and performance on a dynamic basis (Martocchio, 2013). With the former philosophy, a full disclosure of annual compensation in advance of the performance defeats the psychological impact of variable rewards, whereas with the latter philosophy a full disclosure post performance would not compromise the psychological impact of variable rewards. Voting on aggregate compensation for groups also helps avoid the con of defeating psychological impact of variable rewards, as any one executive would not be able to determine how much of the aggregate package was related to his/her position specifically. However, visibility to the aggregate package in advance of performance and over a period of time would still allow individuals to make speculations about personal compensation packages based on trends. Those speculations could defeat the psychological impact of variable rewards. There is also the very real potential of elimination of the ability of the board to change/vary compensation dynamically during a performance period. A post-performance vote on compensation has challenges too. While it may be better by helping to retain the psychological motivation of variable rewards, it changes the authority structure of the board in relationship to executives. The board's role becomes one of recommendation subject to shareholder approval, versus one of final decision from a pool of funds that have already met with shareholder approval. In the post-performance voting scenario the negotiation of executives with boards becomes one of: if certain performance levels are delivered, then a resolution will be presented to the shareholders, but there is no guarantee. The ability of the board to provided definitive remuneration values based on performance is diluted. Whether or not this becomes a pro or a con depends on how it is implemented when the final legislation is written and enacted. Pre versus post performance voting on compensation will have an impact on compensation philosophies of publically traded corporations in Switzerland. Ultimately, this all connects to whether or not the process put in place helps to optimize pay practices at the executive level such that compensation drives performance and long term shareholder value better than the current lack of legislation in this regard (Mangen & Magnan, 2012).

The second provision, requiring an annual shareholder vote on the election of key positions, also increases disclosure and transparency to shareholders and the public. By requiring an annual vote, it has the advantage of allowing for the removal/replacement of persons who may be causing discord or undesirable outcomes. Even though there is a requirement for an annual vote, there is no limitation on terms. This is an advantage in the sense that it allows executives to serve for longer durations which can be desirable for sustainable leadership of corporations. One of the riskiest assumptions with this provision is that shareholders are assumed to have enough knowledge and information to make the best decision regarding confirmation of leadership for any given corporation. The OECD guidance actually places the responsibility of hiring/compensating executives squarely with the board stating, "the board should fulfil (sic) certain key functions…selecting, compensating, monitoring and, when necessary, replacing key executives and overseeing succession planning" ("OECD principles of corporate governance," 2004, p. 24). The ICGN's statement offers similar support regarding the board's responsibilities ("ICGN statement on global," 2005). The OECD's guidance supports disclosure, but the Swiss referendum goes one step further and places the shareholders in the role of confirmation. In addition, both the referendum and the Draft Transitional Ordinance do not address the nomination process for any of these positions. This leaves the nomination process open to definition through articles of incorporation and historical practice, which means that executives and boards could continue to nominate each other, providing shareholders with subsequently limited voting selections for candidates. A one year term for all executive and board positions is very short, and short terms can be limiting for long term growth and development of complicated commercial strategies. These terms present the risk of increased executive turnover which, if it were to occur, would introduce high levels of uncertainty and directional change within corporations. In the opposite sense, the provision does not limit total terms either, and serving in-perpetuity can be equally unhealthy and cause strategic stagnation in corporations.

The third provision, relating to the requirement of pension funds to disclose both how they vote and their rational for their voting, will prompt pension managers to exercise due diligence on behalf of their insured's and is in alignment with guidance from the OECD ("OECD principles of corporate governance," 2004). They must now publicly justify their vote and represent why their vote benefits their constituents. This provision should help to limit political voting and manipulation of large voting shareholder blocks; however, it does not restrict their ability to vote in a particular direction. One of the biggest challenges with this provision is that the language around voting on behalf and in the best interests of their insured's is a difficult one to interpret, and would be equally difficult to enforce or challenge.

The fourth provision regarding electronic voting has the potential to positively increase accessibility and participation of shareholders in the corporate governance process. Such a provision in the Swiss referendum is supported through the OECD's recommendations, where it is stated, "shareholders should be able to vote in person or in absentia, and equal effect should be given to votes whether cast in person or in absentia" ("OECD principles of corporate governance," 2004, p. 19). Corporations spend large sums of monies to coordinate, schedule, and administer annual shareholder meetings, and the ability to leverage electronic means also has the potential to ease the administration/logistics requirements of shareholder meetings. In the long run this provision could save costs. On the other hand, the disadvantage of this provision is that it makes electronic means mandatory for all publically listed corporations, which means that all will need to bear the initial cost burdens of set up. In the short run, this will represent an increase in costs. There also exists security concerns around ensuring the legitimacy of votes; however, this concern exists in all mechanisms employed for transacting votes.

The fifth provision, restricting additional compensation for executives, helps to prevent conflicts of interest where executives could personally benefit from transactions that may be undertaken for the purposes of personal benefit versus business advantage. It eliminates the ability, and consequently the temptation, to use one's position, in an executive or board role, in order to set up business arrangement for personal gain/advantage. The downside is that this provision also eliminates the ability for the board to compensate executives for the additional work that acquisitions require, which are above and beyond the normal work of running the business on a daily basis.

The sixth provision, prohibiting delegation of management to another legal entity, ensures that investment companies have an active role when they become substantial shareholders. A potential negative effect of this provision is that it may reduce investment levels, thereby restricting available funds from the capital markets for corporations. Those investment companies who desire to invest at arm's length and view themselves as either passive or in-effect a credit issuer may choose to place their funds elsewhere, where the burdens of management are less. The provision does not clearly identify only investment companies though, and it will be incumbent upon the Swiss Parliament to provide necessary clarification in the Bill when it is written.

The seventh provision regarding loans to executives ensures that these arrangements are fully disclosed. This helps to ensure transparency, but it does not actually place any restrictionson loans or the nature of loans to executives. While this provision helps to ensure knowledge of arrangements, it does not address shareholder/public concerns regarding the appropriateness of such arrangements. The provision does not give shareholders a say on these arrangements, only that they be disclosed. That being the case, the disadvantage of this provision is that it could allow for questionable arrangements which would amount to a continued abuse of positional power by executives and board members. However, the binding shareholder voting on elections would serve to mitigate this risk on a long term basis.

The eighth provision on penalties gives what will eventually become law some significant consequences. It aligns personal accountability of the provisions with personal risk and penalty for intentionally not complying. Intent would be a burden of proof in any necessary enforcement activity. A negative implication of this provision is that for a significant increase in personal risk there is also a significant decrease in personal benefit. This provision and the referendum overall may restrict the ability to attract and retain talent; however, the restrictions of the referendum overall are targeted at the reduction of improprieties, expropriation, and conflict of interest. Those who would be deterred because of the new requirements could arguably be undesirable talent anyway, even though these people are likely to be intelligent, their values may not be in alignment with the overall welfare and benefit of either shareholders, employees or the general public.

4 Evaluation of the Swiss referendum: say-on-pay

Referendums must be taken in totality when they are put to the public for vote. Citizens do not have the opportunity of dissecting a referendum and voting on each individual provision; therefore, they must evaluate the whole of the referendum and determine their vote based on an overall assessment. Some of the provisions address needed reforms and offer what will hopefully become viable solutions. Other provisions fall short of addressing past improprieties and public concern. Still other provisions actually go too far and restrict the board's ability to properly govern the management, shifting too much decision making to the shareholders.

Provisions three and four offer viable solutions to issues that have been well discussed in the collaborative forums like the OECD and the ICGN. Provision three, the requirement of pension funds to disclose and justify their votes, may help to temper situations like the one that occurred with Hewlett Packard (HP) and Deutsche Asset Management in 2001 (Monks & Minow, 2011). In the bantering back and forth over the merger of HP and Compaq, Deutsche Asset Management changed its vote. The merits of the merger and the direction of vote are not pertinent for this paper; however, had legislation been in place similar to the Swiss referendum, Deutsche Asset Management would have been required to justify its voting position. Part of that justification would have certainly required an explanation regarding a vote change, and such justification would need to clearly articulate why its change in vote benefited its represented shareholder constituents. The requirement of the Swiss referendum to not only disclose how the vote is cast but to also justify it in terms of benefits to the insured's is an improvement.

Provision four, the requirement to provide and facilitate electronic voting, should help to drive shareholder participation levels up at annual meetings; this should help facilitate additional communication and participation. The ICGN's statement supports that "corporate voting systems should be designed to enable institutional investors to discharge their fiduciary obligation to vote their shares…similarly regulations and laws should facilitate voting rights and should eliminate impediments" ("ICGN statement on global…," 2005, p. 5). The potential to enhance participation and lower costs is significant, and using electronic means can also help provide corporations with a record of voting activity (Boros, 2004).

Provisions one, two, and seven possess the potential to have significant positive impact, but in their current state they fall short due to a lack of sufficient definition. Their effectiveness is largely going to depend on how the Swiss Parliament finally defines the legislative requirements of the Bill. Provision one, shareholder voting on compensation packages, sounds like a good thing to do, but when one considers the distance from which shareholders view a corporation it becomes questionable whether or not shareholders are really in the best position to execute a binding decision on compensation and its relationship to performance. This is likely why both the OECD and the ICGN both support compensatory decisions being retained by the board ("ICGN statement on global…," 2005; "OECD principles of corporate governance," 2004). There was also little to no description in the Swiss referendum or the Draft Transitional Ordinance regarding the incentive/reward aspect of compensation tools, and no explanation of whether or not compensation packages were to be approved in advance or following performance or to even be connected to performance. The Council of Institutional Investors (CII) recommends five key components for executive compensation, which are: long term equity ownership and vesting, claw-back provisions tied to long term performance, performance based compensation, reduction of separation benefits, and open communication and use of external experts in compensation design (Monks & Minow, 2011, p. 151). None of these specific aspects are addressed by the Swiss referendum, only that the compensation package itself be presented for shareholder voting and approval.

Provision two, shareholder voting on elections, seems equally in need of the terms and conditions being further fleshed out. There needs to be consideration for the fact that corporate strategic plans are not things that are executed in annual increments. The seemingly unintended implication of the Swiss legislation would be that corporations then exist solely for short term shareholder gain. Shareholder desire for contiguous annual runs of short term gains needs to be balanced against the needs and desires of corporate enterprise to build for long term sustainability and viability in various commercial market places. The principles espoused by the Commonwealth Association for Corporate Governance (CACG) does not support short terms for directors, where they state that, "new directors should be familiarized with the corporation's operations, senior management and its business environment and be inducted in terms of their fiduciary duties and responsibilities as well as in respect of the board's expectations"

("CACG guidelines: Principles for corporate governance in the commonwealth," 1999, p. 8). The personal investment described by the CACG cannot be accomplished in a one year time frame, and one year terms will likely not provide motivation to make the necessary investment in the corporation's business. Strategic planning and execution is a collaborative process between boards and management that take multiple years to play out (Monks & Minow, 2011; Steinberg & Bromilow, 2000). The requirement for annual term limitations could yield the opposite of what was desired by the Swiss referendum and promote the ultimate in short term thinking, potentially to the detriment of long term corporate sustainability. The Swiss referendum completely avoids the issue of the roles of chief executive officer and chairman of the board, which one would expect to have been addressed in conjunction with shareholder participation in the election process. Current thinking is trending toward the separation of these two roles in order to improve checks and balances (Howells, 2013; Monks & Minow, 2011).

Provision seven, requiring the disclosure of loans, is a good first step, and it is certainly an improvement over non-disclosed arrangements. This provision stops short of addressing the concerns of improprieties and abuse of positional power. Most publically traded companies have policies against this practice that apply to all of the employee population at large; they should also apply to executives. If a c-suite executive or board member of a publically traded company requires a loan, they should go to a credit provider and not their employer. Why the referendum's provisions stopped short of prohibiting these practices is unknown.

Provision five goes too far and restricts the board's ability to use a compensatory tool. It eliminates the possibility for additional compensation related to merger and acquisitions. This provision restricts the board's ability to govern the management of a potentially very strategic business activity. By restricting the board's ability to award additional compensation, the provision eliminates the ability for compensating for extra-ordinary effort. Granted, there has been much consternation over huge bonuses paid to executives simply for getting a passing board vote on proposed acquisitions, which was the case in the Sprint acquisition of MCI (Monks & Minow, 2011). Paying for a confirmation vote is vastly different from paying for the completion of an acquisition project. Acquisitions require a tremendous amount of work and oversight, and this is always done in conjunction with the running of the business on a day-to-day basis. Monks and Minow critique the payment of transaction based compensation for acquisition and divestitures, pointing toward performance based compensation post-acquisition, yet they do not address compensation connected to divestiture (2011, p. 387). Given the inordinate amount of extra work that is required of both acquisitions and divestitures, eliminating a compensatory tool holistically seem to be tantamount to 'throwing the baby out with the bath water.' The critique is targeted at windfalls and golden parachutes, and these are certainly not warranted in the case of acquisition and divestiture activity. In addition, there is certainly room to connect performance based compensation to acquisitions, but this provision eliminates the discussion and the use of the tool completely. It would make more sense to bring these compensatory and employment arrangements to shareholder vote versus eliminating them altogether. That would at least allow them to remain as tools where used for legitimate purposes to benefit the corporation and its shareholders.

The spirit of the referendum is noble. The desire to bring additional disclosure, transparency, and accountability to executives and boards is needed in Switzerland and across all the world's financial centers. The spirit of disclosure and transparency that the Swiss referendum puts forth is supported by the recommendations and guidance given by internationally recognized bodies such as the Organisation for Economic Co-operation and Development (OECD), the International Corporate Governance Network (ICGN), and the Commonwealth Association for Corporate Governance (CACG) in publications such as the "OECD principles of corporate governance," the "ICGN statement on global corporate governance principles," and the "CACG guidelines: Principles for corporate governance in the commonwealth" respectively. It is always difficult to be among the first to step forward and try something new, and the Swiss people should be commended for being bold in such a noble endeavor. Taking all provisions into consideration, and the levels of definition and vagueness, this author would have rendered a vote against the referendum.

5 Implications of implementation in the world's financial centers

Many of the world's financial centers are considering similar legislation. The implications of implementation of legislation similar to the Swiss referendum are a very real and present phenomena. As an example, "the German government has also indicated that it would also soon introduce a bill to regulate executive pay" (Howells, 2013). Asian boards are facing similar public and global scrutiny. There are a number of countries that currently require some kind of say-on-pay by shareholder vote such as Australia, Sweden, United States, United Kingdom, and the Netherlands (Cai & Walkling, 2011). The Swiss referendum is relatively unique in the sense that it requires shareholder approval, and that the shareholder vote is binding upon the board and the corporation.

The greatest potential risk associated with this kind of legislation is the development of a 'race to the bottom.' A similar race occurred in the United States in the late 19th and early 20th centuries, and continues to this day. Companies flocked to incorporate in the State of Delaware because of fewer legislative requirements and greater protections from personal liabilities (Monks & Minow, 2011). Even today, 50% of all publicly listed corporations and 64% of Fortune 500 corporations are incorporated in the State of Delaware for these reasons ("About Agency," 2013). A similar race could occur in global market places, especially as emerging markets vie for business investment. Those financial centers with fewer legislative requirements and greater protections from personal liabilities could attract more of the world's corporations. Financial centers such as Switzerland and Germany may lose in the long run as companies chose other locations, and it is possible that companies who are listed in these markets today may actually move out.

The stakes are high in the global market place. The United States has received some criticism for passing the Dodd-Frank Act with only a disclosure requirement on executive pay. However, as far as the global market place is concerned, disclosure worldwide would be a tremendous step forward for all financial markets. If this were undertaken along with collaborative efforts to standardize financial and accounting language, procedures, and reports the playing field would begin to level out worldwide. Shareholders and creditors alike would have consistent visibility to company performance and the actions of their executives and boards.

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