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Director Remuneration and Say-on-Pay: Fairness Opinions as an Instrument of Transparency in Corporate Governance

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Abstract

This study examines directors' remuneration in listed companies by connecting three mechanisms that are often discussed separately: say-on-pay, transparency, and fairness opinions. Its central claim is that shareholder voting has limited value unless shareholders can understand the remuneration decision before voting. For that reason, the thesis treats transparency not as a formal reporting duty, but as the condition that gives say-on-pay practical meaning.

The theoretical framework draws on agency theory, behavioral agency theory, and stewardship theory. These perspectives show that directors' remuneration creates a specific governance problem, since those responsible for monitoring corporate decisions may also influence the terms of their own compensation. Say-on-pay gives shareholders a formal voice, but the thesis argues that this vote is meaningful only when shareholders receive clear, complete, and understandable information before voting.

Transparency is therefore treated as a necessary condition for effective shareholder participation. The analysis of the European Union, Italian, and United States frameworks shows that formal compliance does not always ensure substantive disclosure. In particular, the exclusion of stock-based compensation from certain non-GAAP performance metrics can obscure the real economic cost of remuneration plans and weaken shareholder oversight.

The thesis also examines fairness opinions as tools that may help shareholders interpret complex remuneration arrangements. Their governance value depends on advisor independence, transparent methodology, timely use, and disclosure of issues such as market positioning, performance rigor, incentive design, and dilution. However, current practice often gives fairness opinions a stronger evidentiary function for boards than an informational function for shareholders.

A comparative case study of Tesla Inc. and Intesa Sanpaolo S.p.A. tests these arguments in two different governance environments. The Tesla case shows that a shareholder vote may fail to represent genuine informed consent where proxy disclosure is materially deficient. The Intesa Sanpaolo case shows that structured EU disclosure improves the information available to shareholders, but also reveals limits where the reasoning behind the fairness opinion remains insufficiently visible.

It concludes that say-on-pay, transparency, and fairness opinions operate as a conditional system rather than as separate governance tools. Future reform should therefore strengthen the informational obligations surrounding fairness opinions, especially regarding advisor independence, methodology, peer-group selection, and non-GAAP treatment, while integrating these assessments into the regular remuneration governance process.

Abstract (Italiano)

La presente tesi analizza la governance della remunerazione degli amministratori nelle società quotate, concentrandosi sul rapporto tra meccanismi di say-on-pay, requisiti di trasparenza e fairness opinions. L'obiettivo principale è comprendere in che modo tali strumenti possano contribuire a ridurre i conflitti di agenzia tra amministratori e azionisti, soprattutto nei casi in cui le decisioni retributive comportano un elevato grado di discrezionalità e potenziali interessi personali.

Il quadro teorico si basa sull'agency theory, sulla behavioral agency theory e sulla stewardship theory. Queste prospettive evidenziano come la remunerazione degli amministratori rappresenti un problema specifico di governance, poiché coloro che sono incaricati di monitorare le decisioni societarie possono anche influenzare, direttamente o indirettamente, le condizioni della propria remunerazione. Il say-on-pay attribuisce agli azionisti una voce formale in materia retributiva; tuttavia, la tesi sostiene che tale voto sia realmente significativo solo quando gli azionisti ricevono informazioni chiare, complete e comprensibili prima di esprimersi.

La trasparenza viene quindi considerata una condizione necessaria per un'effettiva partecipazione degli azionisti. L'analisi dei quadri normativi dell'Unione Europea, dell'Italia e degli Stati Uniti mostra che la conformità formale agli obblighi di disclosure non garantisce sempre una trasparenza sostanziale. In particolare, l'esclusione della stock-based compensation da alcune metriche non-GAAP utilizzate per determinare la remunerazione variabile può rendere meno visibile il reale costo economico dei piani retributivi e indebolire la capacità di controllo degli azionisti.

La tesi esamina inoltre le fairness opinions come strumenti potenzialmente utili per aiutare gli azionisti a interpretare strutture retributive complesse. Il loro valore di governance dipende dall'indipendenza del consulente, dalla trasparenza della metodologia, dal momento in cui vengono richieste e dalla disclosure di elementi quali il posizionamento rispetto al mercato, il rigore degli obiettivi di performance, la struttura degli incentivi e gli effetti diluitivi. Tuttavia, nella prassi attuale, le fairness opinions sembrano svolgere più spesso una funzione probatoria a favore dei consigli di amministrazione che una funzione realmente informativa per gli azionisti.

Un caso di studio comparato tra Tesla Inc. e Intesa Sanpaolo S.p.A. consente di verificare tali argomentazioni in due contesti di governance differenti. Il caso Tesla mostra come un voto degli azionisti possa non rappresentare un consenso realmente informato quando la disclosure contenuta nella proxy statement risulta materialmente carente. Il caso Intesa Sanpaolo, invece, evidenzia come il quadro europeo, più prescrittivo e strutturato, migliori il livello informativo disponibile agli azionisti, pur lasciando emergere alcune criticità laddove il ragionamento alla base della fairness opinion non risulta sufficientemente visibile.

La tesi conclude che say-on-pay, trasparenza e fairness opinions non devono essere considerati strumenti di governance separati, ma elementi di un sistema condizionale. Il valore di ciascun meccanismo dipende dalla solidità di quello che lo precede. Per questo motivo, eventuali riforme dovrebbero rafforzare gli obblighi informativi relativi alle fairness opinions, in particolare per quanto riguarda l'indipendenza del consulente, la metodologia adottata, la scelta dei peer group e il trattamento delle metriche non-GAAP,

integrando tali valutazioni nel normale ciclo di governance della remunerazione.

1. Introduction

1.1 Background and Relevance of the Topic

Over the past few decades, corporate governance systems around the world have undergone a profound transformation. Firms are no longer evaluated solely based on financial performance; they are increasingly expected to operate in a transparent, accountable, and stakeholder-oriented manner. This evolution reflects a broader shift in the institutional and economic environment, in which governance is understood not merely as a technical framework but as a fundamental condition for long-term corporate legitimacy and value creation (Shleifer & Vishny, 1997).

The concept of corporate governance itself has evolved considerably. Traditionally understood as the set of mechanisms through which shareholders exercise control over management, it has progressively expanded to encompass a broader system of accountability involving regulators, courts, institutional investors, and civil society. International bodies such as the OECD and the G20 have played an important role in promoting convergence around shared governance principles, emphasizing transparency, board accountability, and the protection of shareholder rights as foundational standards (OECD, 2015; Claessens & Yurtoglu, 2013).

Within this evolving framework, the board of directors occupies a central position in the governance architecture. As the body entrusted with monitoring management, safeguarding shareholder interests, and ensuring the integrity of corporate decision-making, the board serves as the primary internal mechanism of control. Yet despite this pivotal role, one of the most persistently controversial dimensions of corporate governance continues to be the remuneration of directors (Fama & Jensen, 1983).

Director compensation has increased substantially in both absolute and relative terms over recent decades. Compensation packages have grown in complexity, incorporating fixed cash retainers and equity-based incentives (Murphy, 2013). Empirical evidence from the NACD (2020) indicated that the median total direct compensation for directors in the largest 200 S&P 500 firms reached approximately $342,000 in 2020. More recent data suggests this upward trend has stabilized but remains at elevated levels; according to the Spencer Stuart S&P 500 Snapshot (2024), the average total compensation for independent directors in the S&P 500 was approximately $327,000, with some sectors like Technology and Healthcare exceeding this average. These figures continue to raise questions about proportionality, particularly given that board service generally involves a part-time commitment rather than a full-time managerial role (NACD, 2024; Spencer Stuart, 2024).

The rapid growth of equity-based compensation has attracted particular scrutiny (Core et al., 2003; Hall & Murphy, 2003). According to industry data, the aggregate value of stock-based compensation (SBC) among large U.S. public enterprises has expanded dramatically; for instance, the total SBC expense for firms in the Russell 3000 index rose from approximately $25 billion in 2006 to over $200 billion by 2020 (Mauboussin & Callahan, 2023; Equilar, 2021). This shift fundamentally alters the structure and perceived fairness of remuneration packages. While originally conceived to align managerial interests with shareholders, this evolution introduces significant complexities: equity grants dilute existing ownership, and their exclusion from non-GAAP metrics can obscure the true economic cost of labor (Black et al., 2018).

High-profile controversies have amplified this debate and brought it to the attention of a global audience. The remuneration plan granted to Tesla's CEO Elon Musk, a stock option package potentially worth tens of billions of dollars, was initially approved by shareholders, subsequently challenged before the Delaware Court of Chancery, and ultimately became a landmark case in the ongoing discussion about the governance of executive pay. The court's scrutiny focused not merely on the size of the award, but on the process through which it was designed, approved, and presented to shareholders. The case raised fundamental questions about the role of shareholders, the independence of boards, the adequacy of disclosure, and the use of independent evaluations to validate compensation decisions. These questions are placed at the center of the analysis developed in this thesis.

The Tesla case (Tornetta v. Musk, Del. Ch. 2024) is not an isolated episode. Similar debates have arisen across different jurisdictions and sectors, reflecting a systemic governance challenge rather than a series of individual failures. In Europe, the implementation of the Shareholder Rights Directive II has prompted listed companies to revisit their remuneration policies and disclosure practices. In Italy, regulatory reforms have strengthened the requirements for listed companies to publish detailed remuneration reports and submit them to shareholder votes. These developments indicate a shared recognition that existing governance mechanisms need to be strengthened to address the persistent tensions surrounding executive and director pay.

1.2 The Agency Problem: Directors as Agents of Shareholders

To understand why directors' remuneration has become such a critical governance concern, it is necessary to consider the underlying structural dynamics of the modern corporation. In large listed companies, ownership and control are effectively separated: shareholders own the firm but delegate day-to-day management and strategic oversight to directors and executives. This delegation creates the conditions for what agency theory identifies as the principal-agent problem (Jensen & Meckling, 1976).

The problem arises because agents, namely directors and managers, may pursue their own interests rather than those of the principals they represent. Information asymmetry amplifies this risk: agents typically possess superior knowledge about the firm's internal affairs, performance prospects, and decision-making processes, while shareholders must rely on disclosed information to monitor and evaluate managerial behavior. This asymmetry creates opportunities for opportunistic conduct, particularly in areas where monitoring is difficult and discretion is broad (Eisenhardt, 1989).

In the context of remuneration, this risk takes a particularly acute form. Directors are frequently involved, directly or indirectly, in determining their own compensation. This institutional feature creates a structural conflict of interest commonly referred to as self-dealing (Bebchuk & Fried, 2004), in which the monitoring body and the monitored entity partially coincide. The consequence is that governance mechanisms can be undermined from within, as the very actors responsible for exercising oversight have a personal stake in the decisions under review.

Legal practice has explicitly recognized this risk. In the landmark Delaware case of Seinfeld v. Slager (2012), the court examined a shareholder challenge against a compensation plan that granted directors broad discretion in awarding themselves equity compensation without meaningful limits. The court declined to apply the business judgment rule, which ordinarily protects directors' decisions from judicial second-guessing, and instead subjected the compensation plan to the stricter "entire fairness" standard. Under this standard, directors must demonstrate that both the process by which remuneration was determined and the resulting amount are fair to the company and its shareholders. The court also emphasized that shareholder ratification is insufficient as a defense when the plan itself lacks clear and binding constraints.

Empirical research confirms that director pay is often only weakly linked to firm performance metrics, and that compensation levels may reflect internal negotiation dynamics and social ties rather than objective criteria (Core, Holthausen & Larcker, 1999). The phenomenon of 'mutual back-scratching', in which boards of interlocked companies award each other generous compensation packages, has likewise been documented in both the academic literature and journalistic investigations (Core, 1999).

Agency theory provides the foundational explanatory framework for this thesis, but it is worth acknowledging its limitations. The classical model assumes rational actors pursuing measurable financial goals, but behavioral research suggests that both directors and shareholders are also influenced by perceptions of fairness, social norms, and reputational concerns. This behavioral dimension, established in the literature as behavioral agency theory (Wiseman & Gomez-Mejia, 1998), suggests that agent risk-taking and motivation are context-dependent. Subsequent refinements of this framework (Wiseman, 2012) further emphasize how governance mechanisms must address the perception of fairness as well as its economic substance, explaining why disproportionate compensation plans often face shareholder opposition despite their technical efficiency.

Additionally, stewardship theory offers a complementary perspective. Under this view, directors are not necessarily self-interested actors but individuals motivated by a genuine commitment to organizational success and long-term value creation (Davis, Schoorman & Donaldson, 1997). This perspective is relevant because it suggests that governance mechanisms should not be designed solely around distrust and control, but should also create conditions that support directors in fulfilling their responsibilities with integrity. The challenge, therefore, is to design governance structures that are robust against opportunism without being so restrictive that they impede effective leadership.

1.3 Say-on-Pay: A Governance Response to Agency Conflicts

In response to the growing concern about executive and director compensation, a number of jurisdictions have introduced the "say-on-pay" mechanism as a key instrument of corporate governance reform. Say-on-pay grants shareholders the formal right to vote on a company's remuneration policy, thereby establishing a direct channel of accountability between the board and the owners of the firm (Ferri & Maber, 2013).

The historical development of say-on-pay reflects the progressive recognition that shareholder voice should extend beyond the election of directors and approval of major transactions to encompass the fundamental question of how the firm's leadership is compensated. In the United Kingdom, advisory votes on directors' remuneration reports were introduced as early as 2002, making the UK one of the first jurisdictions to formally institutionalize shareholder participation in pay governance. In the United States, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 introduced mandatory say-on-pay votes for publicly listed companies, though these votes are generally advisory and non-binding. In the European Union, Directive (EU) 2017/828, the revised Shareholder Rights Directive, introduced binding votes on remuneration policy across Member States, including Italy, signaling a more interventionist regulatory approach and reflecting the EU's broader commitment to long-term shareholder engagement.

The theoretical rationale for say-on-pay is well-established. By giving shareholders a formal voice on pay, the mechanism is intended to reduce the information and power asymmetry between boards and owners, create a reputational check on potentially excessive packages, and generate governance feedback that boards are expected to consider. When a significant proportion of shareholders votes against a proposed remuneration policy, the resulting negative publicity and pressure to engage can prompt boards to revise their approach, even in jurisdictions where the vote is technically non-binding (Edmans, 2017).

Empirical evidence on the effectiveness of say-on-pay is mixed but instructive. Studies have found that companies receiving high levels of shareholder dissent on pay proposals tend to modify their remuneration policies in subsequent years, suggesting that boards do respond, at least partially, to shareholder pressure (Ferri & Maber, 2013; Ertimur, Ferri & Muslu, 2011). However, the magnitude of these changes is often modest, and some companies have been observed to maintain controversial pay arrangements despite repeated shareholder opposition. The non-binding nature of advisory votes in the U.S. system has attracted particular criticism: since boards are not legally required to act on negative votes, the practical impact of shareholder dissent depends on the willingness of directors to voluntarily engage and respond (Dodd-Frank Act, 2010).

Furthermore, say-on-pay faces several structural limitations. Collective action problems, where individual shareholders lack the incentive to invest the time and resources needed for meaningful engagement, can reduce the practical significance of voting (Olson, 1965; Gillan & Starks, 2000). Institutional investors, who hold large blocks of shares in most listed companies, have the capacity to engage more substantively, but their voting behavior is often significantly influenced by the recommendations of proxy advisory firms, whose standardized analytical models may not fully capture the specific circumstances of individual companies (Iliev & Lowry, 2015; Malenko & Shen, 2016). Finally, and most importantly for the purposes of this thesis, the effectiveness of any shareholder vote depends entirely on the quality of information available to those who cast it. Without access to clear, comprehensive, and reliable information about how remuneration is structured and determined, shareholders are unable to exercise their rights in any substantive sense. This is where transparency becomes not merely desirable, but necessary (European Commission, 2017).

1.4 Transparency as a Necessary Condition for Effective Governance

Transparency is widely recognized as a cornerstone of effective corporate governance. The OECD Principles of Corporate Governance emphasize that disclosure and transparency are essential not only for investor protection but for the overall efficiency and credibility of capital markets. In the specific domain of directors' remuneration, transparency plays a dual role: it is both a disclosure requirement and an active governance mechanism (OECD, 2015).

As a disclosure requirement (Healy & Palepu, 2001), transparency obliges companies to communicate information about the level, structure, and rationale of compensation. This includes the distinction between fixed and variable components, the performance criteria used to determine variable pay, the presence of equity-based incentives and their dilutive effects on shareholder value, and the process by which compensation decisions are made within the board or its remuneration committee. In the European context, the Shareholder Rights Directive II has significantly expanded these requirements, mandating that listed companies publish annual remuneration reports that explain, in clear and comprehensible terms, how the company's remuneration policy has been implemented and how it links to corporate performance.

As a governance mechanism, transparency reduces information asymmetry between insiders and external stakeholders, thereby constraining opportunistic behavior. When compensation practices are clearly disclosed and publicly scrutinized, directors face both reputational and legal incentives to avoid excessive or unjustified awards. Empirical evidence supports this view: studies suggest that greater transparency in remuneration reporting is associated with lower levels of excess compensation and higher shareholder engagement. Companies that provide more detailed and accessible disclosures tend to receive fewer dissenting votes on remuneration proposals and face lower levels of shareholder opposition (Bushman, Piotroski & Smith, 2004; Ferri & Maber, 2013).

However, the relationship between transparency and governance effectiveness is more nuanced than a simple linear connection. A growing body of evidence suggests that formal compliance with disclosure requirements does not necessarily translate into substantive clarity. Companies may provide extensive documentation that technically meets regulatory standards while remaining complex, technical, and difficult for ordinary shareholders to interpret. This phenomenon has sometimes been described as 'transparency theater' (Christensen, 2021). In such cases, disclosure formally satisfies regulatory requirements while failing to provide meaningful informational clarity to shareholders.

A particularly significant transparency challenge in contemporary remuneration practice concerns the widespread use of non-GAAP (Black, Christensen, Ciesielski & Whipple, 2018) reporting adjustments. Many publicly listed companies, particularly in the technology and communications sectors, present adjusted earnings figures that exclude stock-based compensation from reported results. Since equity grants have real economic costs, most notably through the dilution of existing shareholders' ownership stakes, their systematic exclusion from reported performance metrics can distort the true economic picture of the firm. Research indicates a substantial majority of S&P 500 companies estimated at over 95% regularly report non-GAAP figures that exclude stock-based compensation expense, creating a systematic divergence between the numbers presented to shareholders and the economic reality of firms' remuneration practices (FactSet, 2022).

These limitations underscore a key point that runs throughout this thesis: transparency, to be effective, must be substantive rather than merely formal. It must enable shareholders to genuinely understand and evaluate the compensation decisions placed before them. This requires not only that information is disclosed, but that it is presented in a manner that is accessible, meaningful, and oriented toward the questions shareholders actually need to answer when casting their votes. Achieving this standard of transparency is considerably more demanding than technical compliance with disclosure rules, and it is in this gap between formal and substantive transparency that many governance failures originate. This is also where additional governance tools, in particular, independent fairness assessments, become relevant.

In the European legal context, the principle of transparency in corporate governance finds its normative foundation in a broad and well-established body of EU legislation and scholarly doctrine. One framework that is particularly relevant in this regard, and that has been explicitly invoked in Italian academic and legal discourse, is the European Acquis on Company Law. As noted by Enriques and Volpin (2007), this framework represents a unified body of principles emerging from the progressive harmonization of EU directives. This 'Europeanization' of corporate law, which Mucciarelli (2012) also discusses, refers to the system of harmonized rules across Member States that aims to reduce legal fragmentation and ensure a consistent level of protection for shareholders and creditors within the Internal Market.

Under this framework, transparency is not treated as a mere procedural requirement but as a substantive governance principle with legal force. It imposes on listed companies not only the duty to disclose information, but the obligation to ensure that such disclosure is complete, intelligible, and genuinely oriented toward enabling shareholders to exercise informed judgment. Applied to the domain of directors' remuneration, this principle demands that compensation policies be presented to shareholders in a manner that goes beyond technical compliance, that the information provided is clear enough to allow a meaningful assessment of whether remuneration is justified, proportionate, and aligned with the company's long-term interests. This normative standard reinforces the argument developed throughout this thesis: that transparency in remuneration governance is a substantive obligation, not a formality, and that its effective implementation is a precondition for the meaningful exercise of say-on-pay rights.

1.5 Fairness Opinions and the Legal Dimension of Remuneration Decisions

The concept of a fairness opinion originates in U.S. corporate law, where it became established practice following the landmark Delaware Supreme Court decision in Smith v. Van Gorkom (1985). In that case, the board of directors of Trans Union Corporation approved a merger transaction after only a brief presentation from the company's chief executive, without commissioning any independent valuation of the company. The Delaware Supreme Court held that the board had breached its duty of care by approving the transaction without adequately informing itself of the company's intrinsic value. The decision was significant not only because it imposed substantial personal liability on the directors involved, but because it prompted a fundamental reconsideration of the process standards required for major corporate decisions.

In the years following Smith v. Van Gorkom, the practice of obtaining independent fairness opinions became standard procedure for boards facing major corporate transactions (Davidoff, 2006). Financial advisors, typically investment banks or specialized consulting firms, were engaged to provide written assessments certifying that the financial terms of a proposed transaction were fair, from a financial point of view, to the company's shareholders. These opinions subsequently became an important component of the disclosure materials presented to shareholders in proxy statements, serving as evidence that the board had exercised due diligence in evaluating the proposed transaction (Cain & Davidoff, 2012).

In the context of directors' remuneration, a fairness opinion is an independent assessment, typically provided by an external compensation consultant or financial advisor, that evaluates whether a proposed compensation arrangement is fair and reasonable from a financial standpoint. By seeking such an assessment, boards can demonstrate that their remuneration decisions are not the product of self-interest or uninformed judgment, but rather of a deliberate and documented process informed by objective expert analysis. The opinion typically addresses questions such as whether the proposed pay levels are competitive with market benchmarks, whether the performance conditions attached to variable pay are meaningful and challenging, and whether the overall compensation structure is aligned with the company's strategic objectives and shareholder interests (Cain & Davidoff, 2012).

The legal significance of this practice is tied to the business judgment rule, under which courts generally refrain from second-guessing business decisions made by directors in good faith, on an informed basis, and in the honest belief that the action serves the corporation’s best interests (Aronson v. Lewis, Del. 1984; Easterbrook & Fischel, 1991). A fairness opinion can strengthen a board's position by providing evidence that directors acted with due diligence and relied on independent expert advice, conditions that courts tend to respect when assessing whether the business judgment rule applies. In this sense, fairness opinions serve as a bridge between the governance and legal dimensions of remuneration decisions: they translate the concept of informed decision-making into a documented, verifiable process.

However, the relationship between fairness opinions and effective governance is not straightforward. Critics argue that these assessments can function as 'safe harbor' instruments, providing formal legal protection for directors rather than serving as genuine tools of transparency for shareholders (Davidoff, 2006; Cain & Davidoff, 2012). Several concerns have been raised in this regard. First, the quality and independence of the advisors providing these opinions may be compromised where those advisors maintain existing commercial relationships with the company or its management. Second, the methodologies used to assess fairness may rely on benchmarking practices that themselves reflect broader market trends toward escalating compensation levels. Third, and most critically, the conclusions and assumptions underlying fairness opinions are not always disclosed to shareholders in sufficient detail to permit meaningful scrutiny of the assessment process (Cain & Davidoff, 2012).

The Tesla litigation brought these concerns into sharp focus. At the heart of the judicial inquiry was whether the board had provided "full transparency" about the process through which the CEO's compensation plan was designed, the identity and independence of the advisors involved, and the basis on which the plan was deemed fair. The court found that the process was deficient in important respects, highlighting that the mere existence of expert endorsement does not substitute for substantive transparency when the integrity of that endorsement is itself in question.

Although fairness opinions are well established in transactional practice, their application to remuneration decisions remains less developed. This thesis therefore treats them not simply as legal documentation, but as a possible transparency instrument in remuneration governance.

1.6 The Regulatory Framework: A Comparative Overview

The governance of directors' remuneration is shaped not only by internal board mechanisms but also by a complex web of legal and regulatory requirements that vary significantly across jurisdictions. Understanding this regulatory landscape is important for contextualizing the governance mechanisms examined in this thesis and for appreciating the differences between the U.S. and Italian corporate governance environments.

In the United States, the primary regulatory framework for executive and director compensation is established through a combination of federal securities law, state corporate law, and stock exchange listing standards. At the federal level, the Securities and Exchange Commission (SEC) requires listed companies to disclose detailed information about executive compensation in their annual proxy statements. The Dodd-Frank Act added several important layers to this framework, including mandatory say-on-pay votes, disclosure of CEO pay ratios, and enhanced requirements for the independence of compensation committees. At the state level, Delaware corporate law, which governs the internal affairs of most major U.S. corporations, provides the judicial framework for evaluating the legality of compensation decisions, with key principles including the business judgment rule and the entire fairness standard (SEC Regulation S-K, Item 402).

In Italy, the governance of directors' remuneration is regulated through a combination of EU-derived legislation, national company law, and CONSOB (the Italian financial markets regulator) regulations. The implementation of the Shareholder Rights Directive II through Legislative Decree 49/2019 introduced binding votes on remuneration policy and mandatory publication of detailed remuneration reports for listed companies. The Italian Corporate Governance Code, issued by the Corporate Governance Committee and voluntarily adopted by the majority of Italian listed companies, provides additional recommendations on the structure of remuneration committees, the use of performance conditions, and the principles of transparency and accountability. These provisions reflect a broader European commitment to stakeholder-oriented governance and long-term value creation (CONSOB Regulation No. 11971/1999, as amended).

A comparative perspective between the U.S. and Italian frameworks reveals both convergences and divergences. Both systems have moved toward greater shareholder participation in remuneration governance and more extensive disclosure requirements. However, they differ in important respects: the U.S. system relies more heavily on market mechanisms and litigation as enforcement tools, while the Italian and European systems tend toward more prescriptive regulation and binding requirements. These differences have practical implications for how transparency and fairness opinions function in each context, and they inform the comparative case analysis developed in the later chapters of this thesis (European Commission, 2017).

1.7 Research Gap and Motivation

The academic literature on directors' and executive remuneration is extensive. Scholars have examined the relationship between compensation and firm performance, the determinants of CEO pay, the effects of equity-based incentives on managerial behavior, and the impact of say-on-pay on compensation levels. Legal scholars have analyzed fiduciary duties, the business judgment rule, and shareholder rights in the context of remuneration governance. However, several important gaps remain.

First, relatively little attention has been devoted to the specific governance problems associated with non-executive directors' compensation, as distinct from executive pay. While CEO remuneration has attracted enormous scholarly and public interest, the compensation of board members, whose role as monitors creates a structurally distinct governance challenge, has been comparatively neglected. The self-dealing concerns that arise when directors determine their own pay represent a governance problem with unique characteristics that deserve dedicated analysis (Murphy, 2013).

Second, while transparency and say-on-pay have each been studied independently, their interaction, and the extent to which one reinforces or conditions the effectiveness of the other, has received limited systematic treatment. The assumption that say-on-pay automatically produces meaningful shareholder engagement is frequently challenged by evidence of low participation, uninformed voting, and boards that disregard dissent. A more careful analysis of the informational preconditions for effective say-on-pay, and the extent to which current disclosure practices meet those conditions, is needed.

Despite the growing practical relevance of fairness opinions, their role in the specific governance domain of directors' remuneration remains largely underexplored in academic literature. Most existing research focuses on their application in merger and acquisition transactions, where the legal and financial stakes are more immediately visible (Davidoff, 2006; Cain & Davidoff, 2012). The application of fairness opinion principles to the remuneration context, and the conditions under which such opinions can genuinely enhance governance rather than merely providing legal cover, represents a significant gap in current knowledge, which this thesis aims to address.

This thesis is motivated by the need to address these gaps through an integrated analysis that brings together corporate governance theory, legal analysis, and institutional perspectives. The central claim developed in this work is that say-on-pay represents an important, but not sufficient, governance mechanism; that its effectiveness is critically dependent on the quality of transparency; and that fairness opinions, if properly designed and deployed, can constitute a meaningful tool for bridging the information gap between boards and shareholders. The validity of this claim is examined through both theoretical analysis and practical illustration.

1.8 The Analytical Logic of This Thesis: A Three-Stage Framework

Before setting out the specific research questions, it is important to make explicit the internal logic that organizes this thesis and gives it its distinctive focus. This logic was identified as central to the research at its outset: rather than offering a general survey of executive pay, corporate governance, or shareholder rights, this work advances a precise and sequential argument structured around three mutually reinforcing propositions.

The first proposition is that say-on-pay is a necessary governance response to the agency problem created by directors' self-dealing in the setting of their own remuneration. As argued in sections 1.2 and 1.3, the separation of ownership and control in listed companies creates structural conditions under which directors may act in their own interest rather than that of shareholders. Say-on-pay addresses this by giving shareholders a formal voice in remuneration decisions, thereby introducing an external check on a process that would otherwise be entirely internal. In this sense, say-on-pay is not merely a regulatory tool, it is a foundational governance mechanism that reflects a principled commitment to shareholder participation in decisions that directly affect their interests.

The second proposition is that say-on-pay cannot function effectively without substantive transparency. A shareholder vote is only as meaningful as the quality of the information on which it is based. If remuneration policies are presented in ways that are complex, opaque, or misleading, whether through non-GAAP adjustments, technical language, or selective disclosure, the voting right becomes largely symbolic. Transparency is therefore not an independent governance objective: it is the enabling condition that determines whether say-on-pay delivers on its promise. This dependence relationship is central to the argument of this thesis and explains why transparency receives sustained analytical attention in chapters 4 and 5.

The third proposition is that fairness opinions, when properly designed and disclosed, can serve as a concrete instrument for achieving substantive transparency. By providing an independent external evaluation of the reasonableness and fairness of a proposed compensation arrangement, a fairness opinion translates complex financial and contractual information into an assessable judgment that shareholders can use. In this role, the fairness opinion is not simply a legal shield for directors, it is a governance tool that, if made fully transparent in its methodology, independence, and conclusions, can bridge the information gap between boards and shareholders and materially strengthen the quality of shareholder decision-making.

These three propositions form a logical chain: agency conflict → say-on-pay as a response → transparency as a precondition → fairness opinion as an instrument of substantive transparency. This chain is the backbone of the thesis. Each chapter contributes to one or more links in this chain, and the comparative case study in Chapter 6 illustrates how the chain holds or breaks down, in practice. By maintaining this focused analytical structure throughout, the thesis aims to make a specific and original contribution to the governance of directors' remuneration, rather than covering the field in general terms.

1.9 Research Objectives and Questions

The primary objective of this thesis is to examine the governance of directors' remuneration by analyzing the interplay between say-on-pay mechanisms, transparency requirements, and fairness opinions. The study aims to assess whether these mechanisms, individually and in combination, can effectively mitigate agency conflicts and improve the alignment of interests between directors and shareholders.

Building on the three-stage analytical framework outlined above, the thesis addresses the following specific research questions:

> RQ1: How does the say-on-pay mechanism contribute to addressing agency conflicts in corporate governance, and what are its structural limitations as a tool of remuneration governance?
>
> RQ2: To what extent is transparency a necessary condition for the effective functioning of say-on-pay, and what are the key obstacles to substantive transparency in remuneration reporting, including the challenges posed by non-GAAP disclosure practices?
>
> RQ3: What role do fairness opinions play in supporting transparency and improving remuneration decision-making, and under what conditions can they genuinely enhance shareholder participation rather than serving merely as legal protection for directors?
>
> RQ4: How do these governance mechanisms interact in practice, as illustrated by comparative reference to major listed companies in the United States and Italy?

1.10 Scope and Methodological Approach

This thesis adopts a qualitative and conceptual approach, combining insights from corporate governance theory, legal analysis, and institutional comparative perspectives. The primary focus is on understanding the mechanisms that shape directors' remuneration, how they function, how they interact, and under what conditions they succeed or fail, rather than on quantitative measurement of compensation levels or econometric analysis. This choice reflects the nature of the research questions, which are primarily concerned with the quality of governance processes and the substantive content of disclosure, rather than with statistical relationships between variables.

For the purposes of this thesis, the expression directors' remuneration is used in a governance-oriented sense. It includes compensation awarded to members of the board and, where relevant, compensation arrangements granted to executive directors or chief executive officers when those arrangements are approved, monitored, or disclosed through board-level governance processes. The thesis therefore does not treat CEO compensation as a separate managerial topic, but as relevant where it raises the same governance concerns examined throughout the study: board independence, shareholder approval, transparency, and the fairness of the decision-making process.

The analysis draws on academic literature in corporate governance, law and economics, and organizational theory, as well as on regulatory documents, proxy statements, and judicial decisions. The scope covers listed companies, with primary reference to the legal and institutional frameworks of the United States and Italy. This comparative focus reflects both the global relevance of U.S. corporate law doctrines, particularly the Delaware jurisprudence on fiduciary duties, and the specific regulatory context of the Italian and European market, where recent legislative reforms have significantly reshaped the governance of remuneration.

A comparative case analysis is incorporated as an illustrative component of the study. The case of Tesla Inc. and Intesa Sanpaolo, a major Italian listed banking group, provides two contrasting governance contexts in which the mechanisms analyzed in the thesis can be observed in practice. The Tesla case is particularly instructive given the extensive judicial scrutiny to which its CEO remuneration plan has been subjected, offering rich material for the analysis of transparency, board process, and the governance value of independent assessments. Intesa Sanpaolo, as one of Italy's largest listed companies and a prominent adopter of the Italian Corporate Governance Code, provides a useful reference point for the European regulatory approach. The purpose of this comparison is not to produce statistically generalizable findings, but to ground the theoretical arguments in concrete governance contexts and to highlight the practical implications of the conceptual framework developed in the thesis.

1.11 Structure of the Thesis

The remainder of this thesis is organized as follows. Chapter 2 develops the theoretical foundations of the study, providing a detailed discussion of agency theory and its behavioral and stakeholder-oriented extensions, as well as an overview of the principal governance mechanisms designed to address the agency problem in the context of directors' remuneration. Chapter 3 examines the say-on-pay mechanism in depth, tracing its regulatory development across key jurisdictions, assessing the empirical evidence on its effectiveness, and identifying its principal structural limitations. Chapter 4 analyzes the concept of transparency in directors' remuneration, exploring the distinction between formal and substantive disclosure, the challenges posed by non-GAAP reporting practices, and the conditions under which transparency can effectively support shareholder participation. Chapter 5 examines fairness opinions, their origins in Delaware jurisprudence, their legal significance under the business judgment rule, their methodological dimensions, and their potential and limitations as governance tools in the remuneration context. Chapter 6 presents a comparative case analysis, drawing on the governance experiences of Tesla and Intesa Sanpaolo to illustrate how the mechanisms discussed in the thesis operate in practice and to identify key differences between the U.S. and Italian governance environments. Finally, Chapter 7 concludes the study by summarizing the main findings, drawing implications for governance theory and regulatory practice, and identifying directions for future research.

2. Theoretical Framework

This chapter establishes the conceptual foundations on which the remainder of the thesis is built. Its purpose is not to describe the governance mechanisms, such as say-on-pay, transparency requirements, and fairness opinions, that are examined in detail in Chapters 3, 4, and 5. Instead, it clarifies the structural problem that makes those mechanisms necessary. This requires developing three connected elements: the agency theory framework that identifies the origins and nature of the conflict, the corporate governance system designed to address it, and the specific characteristics of directors' remuneration that make it a particularly acute and persistent governance concern. Together, these elements explain why director pay is not merely a technical question of compensation design but a governance problem involving conflicts of interest, information asymmetry, and the legitimacy of corporate decision-making.

The analytical logic follows directly from the three-stage framework introduced in Chapter 1. If the separation of ownership and control creates a structural agency problem, and if directors occupy an institutional position in which they may influence decisions affecting their own remuneration, then two consequences follow. First, the standard governance prescription of independent oversight does not straightforwardly apply, because the oversight body is the same as the body being overseen. Second, the effectiveness of any governance response depends critically on the quality of information available to shareholders. These two consequences motivate the entire analytical structure of the thesis and explain why the chapter proceeds as it does.

One terminological point requires clarification before the theoretical analysis proceeds. In this thesis, the expression “director remuneration” refers to the compensation awarded to members of the board of directors, including executive directors where the governance structure gives them board-level responsibilities. Some of the academic literature discussed in this chapter focuses specifically on executive compensation, particularly CEO pay. This literature is used because the underlying governance concerns are closely related: conflicts of interest, information asymmetry, pay-performance alignment, benchmarking, and shareholder oversight. Beyond these shared concerns, however, director remuneration also raises a distinctive problem, because directors may participate directly or indirectly in the process through which their own compensation is determined.

2.1 Agency Theory: Origins, Core Assumptions, and Application to Remuneration

Agency theory is the dominant analytical framework in corporate governance scholarship. Its central insight is that the modern publicly traded company is characterized by a structural separation between ownership and control: shareholders provide capital and bear the residual economic consequences of corporate performance, but they delegate the authority to manage and oversee the firm to directors and executives. This delegation is necessary for the efficient operation of large and complex organizations, but it also creates a structural risk. Those who control corporate resources may not always act in the best interests of those who own the firm (Berle & Means, 1932).

Jensen and Meckling conceived the agency relationship as a contractual arrangement in which principals delegate decision-making authority to an agent who is expected to act on their behalf — a structure that is efficient but inherently fraught, because the agent's interests and information need not align with the principal's (Jensen & Meckling, 1976). In the corporate setting, shareholders are the principals and directors and executives are the agents. The difficulty arises because principals and agents may have divergent objectives, different levels of information, and different risk preferences. Shareholders generally seek the maximization of long-term firm value and risk-adjusted returns, while directors and executives may be influenced by personal financial interests, career concerns, reputational considerations, and the pursuit of private benefits. This divergence does not require the assumption that directors are dishonest; it arises from the institutional structure of delegation itself.

Information asymmetry makes the problem more serious. Directors and executives have continuous access to internal performance data, strategic assessments, and decision-making processes that shareholders cannot directly observe without incurring substantial monitoring costs. This asymmetry gives rise to two related problems: adverse selection, which is the difficulty of identifying in advance agents whose interests and capabilities align with those of principals; and moral hazard, which is the tendency of agents to take self-interested actions once the relationship is in place, exploiting the gap between what they know and what shareholders can verify. In the context of remuneration, moral hazard can manifest as excessive pay, weak performance conditions, generous benchmarking, or the design of equity-based packages whose true economic cost is not clearly communicated (Eisenhardt, 1989).

Jensen and Meckling formalized the economic consequences of this structure as agency costs, comprising three components: monitoring expenditures incurred by principals to observe and control agent behavior; bonding expenditures voluntarily borne by agents to credibly commit to acting in principals' interests; and a residual loss representing the welfare reduction that persists despite these efforts (Jensen & Meckling, 1976). The recognition that agency costs are real, substantial, and reducible but never entirely eliminable laid the groundwork for corporate governance as a discipline. Table 2.1 applies these categories to the specific context of director remuneration.

Table 2.1 — Agency Cost Categories Applied to Director Remuneration

Agency Cost Category	Definition	Application to Director Remuneration
Monitoring Expenditures	Costs incurred by principals to observe and control agent behavior.	Independent audit committees, remuneration committees, shareholder votes, and regulatory disclosure requirements.
Bonding Costs	Costs voluntarily borne by agents to reassure principals they will not act opportunistically.	Clawback provisions, share ownership guidelines, performance-vesting schedules, and voluntary disclosure of benchmarking methodology.
Residual Loss	Remaining welfare reduction despite monitoring and bonding efforts.	Persistent pay-performance decoupling, ratchet effects in benchmarking, and residual information asymmetry in equity grant valuation.

Source: Adapted from Jensen & Meckling (1976); Fama & Jensen (1983).

In the context of director remuneration, the agency problem takes a form that is structurally distinct from the conventional principal-agent dynamic. In the standard model, shareholders monitor management through an intermediary namely the board of directors. In the remuneration context, however, the board is simultaneously the monitoring body and the subject of the decisions under review. Directors are, in effect, setting or influencing the terms of their own compensation. This structural feature, commonly described as self-dealing, removes the standard external check and heightens the risk of opportunistic extraction (Bebchuk & Fried, 2004). This specific structural conflict loop, along with its attendant key governance risks, is conceptually mapped out in Figure 2.1 It is this feature that makes the governance of director remuneration analytically distinctive and that motivates the regulatory and legal responses examined in the following chapters.

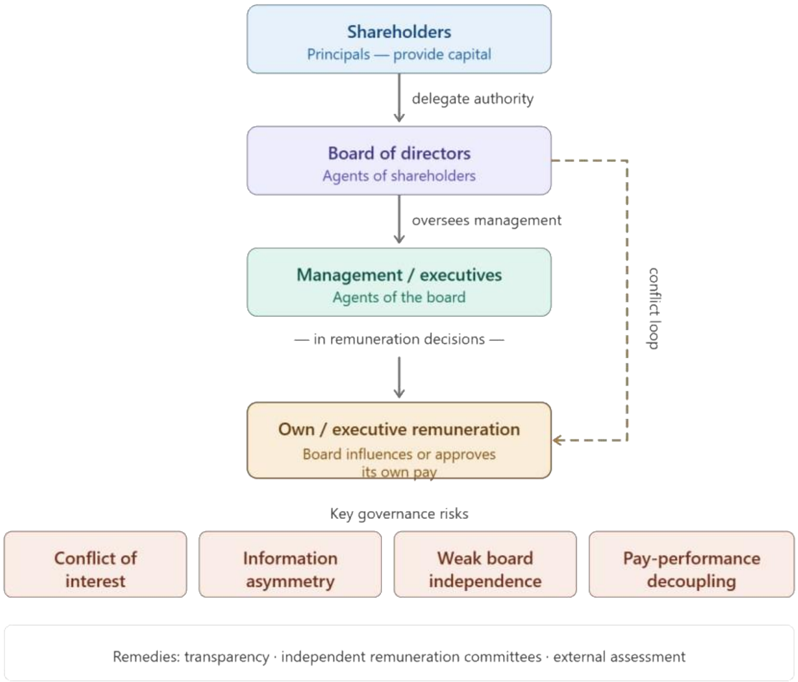


Figure 2.1 — The Agency Problem in Director Remuneration

Classical agency theory proposes three categories of response to these risks. The first is incentive alignment: structuring compensation to link agents' financial interests to outcomes shareholders value, which is the theoretical justification for performance-related pay and equity-based compensation. The second is monitoring: establishing formal oversight systems (including board committees, regulatory disclosure requirements, external audits, and shareholder voting) that increase the visibility of agent decisions and raise the cost of deviation from principal interests. The third is bonding: institutional arrangements through which agents voluntarily commit to constraints that reassure principals of their good faith, such as vesting schedules, clawback provisions, and transparency of methodology. Each of these categories is reflected in the governance architecture examined in this thesis, with the analytical focus falling primarily on monitoring, specifically on transparency and independent assessment as tools for making director remuneration decisions visible and evaluable by shareholders (Fama & Jensen, 1983).

This distinction is important for the thesis because the executive compensation literature is used only where its underlying governance logic is transferable to director remuneration.

2.2 Limits of Classical Agency Theory and Its Extensions

Despite its foundational status in corporate governance scholarship, classical agency theory rests on assumptions that constrain its descriptive accuracy. The most significant is the assumption of rational self-interest: that agents systematically and predictably pursue their own material interests, and that behavior can be modeled as the product of rational calculation in response to incentives. This assumption is analytically tractable but empirically limited. Research in psychology and organizational behavior has demonstrated repeatedly that human decision-making is shaped not only by material incentives but also by perceptions of fairness, social norms, cognitive biases, and reputational concerns. In the governance context, this means that both directors and shareholders may respond to remuneration decisions in ways that classical agency theory cannot fully explain (Thaler & Sunstein, 2008).

Behavioral agency theory, developed principally by Wiseman and Gomez-Mejia, offers an important corrective by incorporating insights from behavioral economics and prospect theory into the analysis of managerial risk-taking and compensation (Wiseman & Gomez-Mejia, 1998). Drawing on Kahneman and Tversky's foundational work on loss aversion, it argues that agents evaluate outcomes not in terms of absolute wealth levels but relative to reference points, and that losses relative to those reference points are experienced more acutely than equivalent gains. Applied to director remuneration, this framework explains phenomena that classical theory struggles to account for. Directors may resist the introduction of more demanding performance conditions even when expected compensation is unchanged, because the increase in downside risk is experienced as a loss. Shareholders may oppose a compensation plan not because they can calculate that it destroys value but because they perceive the process as unfair or the amounts as disproportionate relative to executive peers in other companies. Compensation committees may anchor pay decisions to peer medians, creating an upward ratchet effect even in the absence of deliberate collusion.

The practical relevance of behavioral agency theory for this thesis is significant. It suggests that the perception of fairness in remuneration decisions matters independently of their financial efficiency. Governance mechanisms cannot be assessed only by asking whether they produce efficient incentives; they must also be evaluated by asking whether the decision-making process is credible, understandable, and legitimate in the eyes of shareholders. This insight connects directly to the role of transparency: not only as a tool for enabling informed calculation, but as a means of demonstrating procedural fairness in a way that sustains the legitimacy of compensation arrangements. A pay plan that is technically appropriate but opaquely presented will attract greater opposition than one that is clearly explained, because shareholders respond to the quality of the governance process and not only to its outcome.

Stewardship theory, developed by Davis, Schoorman and Donaldson, offers a complementary perspective that qualifies the adversarial framing of classical agency theory (Davis, Schoorman & Donaldson, 1997). Under this view, directors are not inherently self-interested actors who must be controlled; they are intrinsically motivated stewards whose professional identity and personal sense of purpose are linked to the long-term success of the organization they serve. Governance structures built exclusively on the assumption of opportunism risk being unnecessarily punitive and may, in fact, undermine the intrinsic motivation of directors who are already inclined to act loyally. Excessive control can produce compliance-oriented behavior rather than responsibility-oriented leadership.

Stewardship theory does not, however, eliminate the need for governance safeguards. Even directors motivated by genuine organizational commitment may hold mistaken judgments about what constitutes appropriate compensation, or may be subject to social pressures (such as from management, from professional peers, or from prevailing industry norms) that compromise their independence without deliberate intent. The most analytically productive approach is therefore to treat agency and stewardship theories not as competing but as complementary frameworks, providing the poles of a motivational continuum. Real corporate boards are likely to contain directors whose motivations span this range. Governance mechanisms, including transparency requirements and fairness opinion procedures, must be designed to function effectively across this continuum: robust enough to constrain opportunism when it arises, but not so restrictive that they damage the operation of boards that are acting in good faith. Table 2.2 summarizes the comparative implications of all three theoretical frameworks.

Table 2.2 Theoretical Frameworks: Comparative Implications for Remuneration Governance

Dimension	Classical Agency Theory	Behavioral Agency Theory	Stewardship Theory
Core Motivation	Extrinsic, financial, self-interested reward maximization.	Loss aversion, perceived fairness, social comparison, normative rewards.	Intrinsic motivation, self-actualization, organizational success.
Model of Man	Rational actor (Homo Economicus).	Bounded rationality; socio-psychological actor.	Trustworthy, loyal, and collective-minded steward.
Governance Approach	Strict monitoring, control, and performance-based metrics.	Balanced incentive design tailored to risk profiles and fairness perceptions.	Empowerment, autonomy, trust-building, and goal alignment.
Remuneration Implication	Pay must be linked to shareholder value to curb opportunism.	Pay design must account for behavioral responses and perceived legitimacy.	Excessive control through pay may undermine intrinsic motivation.

Source: Adapted from Jensen & Meckling (1976); Wiseman & Gomez-Mejia (1998); Davis, Schoorman & Donaldson (1997).

2.3 Corporate Governance: Definition, Evolution, and the Role of the Board

Brief as it is, the formulation carries a built-in tension: direction requires giving those who run the firm enough discretion to lead effectively, while control requires ensuring that discretion is exercised in shareholders' interests rather than against them. It is the management of that tension — not the elimination of either pole — that corporate governance as a discipline is organized around. The tension between these two functions, namely giving those who run the firm sufficient discretion to lead effectively while ensuring they exercise that discretion in shareholders' interests, is the central organizing problem of corporate governance as a field.

Historically, corporate governance frameworks were shaped by the shareholder-centric paradigm associated with Friedman's proposition that the primary social responsibility of business is to increase profits for shareholders. Under this model, the board of directors was conceived as a monitoring body whose principal function was to align managerial behavior with shareholder value, and governance reforms focused on board independence, audit structures, and performance-based compensation (Fama & Jensen, 1983). Over the past three decades, however, this model has been progressively challenged by a stakeholder-oriented conception of governance, which holds that companies have responsibilities to a wider set of constituents, such as employees, creditors, customers, and communities, and that long-term value creation requires balancing these interests rather than pursuing narrow short-term returns (Freeman, 1984).

This evolution is reflected in the G20/OECD Principles of Corporate Governance, revised in 2023, which represent the global benchmark for evaluating governance structures in listed companies. The Principles identify six foundational pillars: the basis for an effective governance framework; shareholder rights and equitable treatment; institutional investors and market intermediaries; stakeholder roles; disclosure and transparency; and board responsibilities (OECD, 2023, Principles I–VI). The revision reflects a growing recognition that formal structures are insufficient: effective governance requires substantive transparency and genuine board accountability. As Principle V in particular emphasizes, disclosure must be material, timely, and accessible rather than merely voluminous or technically compliant (OECD, 2023, Principle V). This thesis therefore treats transparency not as a formal disclosure duty, but as a condition for meaningful shareholder judgment.

Within this framework, the board of directors occupies a structurally unique position: it is simultaneously a decision-making body with authority over major strategic and governance questions, and an accountability mechanism responsible for overseeing management in the interests of shareholders and, in the broader stakeholder model, in a manner consistent with the company's wider obligations (Adams, Hermalin & Weisbach, 2010). This dual role creates inherent tensions. The board must provide strategic guidance and support management, but it must also exercise independent oversight and challenge management when necessary. These tensions are not easily resolved, and they are particularly acute in the context of director remuneration.

The governance of director remuneration illustrates what may be described as a reflexive governance problem: the body expected to impose discipline on corporate decision-making must itself be disciplined. Boards commonly address this through procedural safeguards, such as establishing remuneration committees composed predominantly of independent non-executive directors, engaging external compensation consultants, and disclosing the criteria used to assess performance. This architecture is explicitly required by leading governance codes: the UK Corporate Governance Code, for example, specifies that the remuneration committee should comprise at least three independent non-executive directors and should have formal terms of reference governing its procedures and the scope of its authority (Financial Reporting Council, 2024, Provision 32). However, the existence of these structures does not guarantee substantive independence. Directors may share professional networks, social ties, or reputational incentives with management that influence their judgment. Peer benchmarking exercises may normalize upward pay trends rather than critically evaluating them. And formal committee deliberations may occur within a culture of deference that weakens the independence they are designed to protect. These observations motivate the later analysis of fairness opinions as a potential instrument for enhancing substantive rather than merely formal accountability.

This is where say-on-pay becomes relevant. If director remuneration creates a situation in which those responsible for governance may also influence the terms of their own compensation, shareholder voting can operate as an external accountability mechanism. In the European Union, the Shareholder Rights Directive II (Directive (EU) 2017/828) formalises this mechanism by requiring listed companies to submit their remuneration policy to a binding shareholder vote at least every four years and their remuneration report to an annual advisory vote (European Parliament and Council, 2017). However, the vote is meaningful only if shareholders receive information that allows them to evaluate not merely the amount of remuneration, but also the process through which it was determined. For this reason, say-on-pay cannot be separated from transparency.

2.4 Director Remuneration: Structure, Concerns, and Governance Implications

The theoretical and institutional context developed above makes it possible to examine the specific structural features of directors' remuneration that account for its persistence as a governance problem. Director compensation in listed companies typically comprises several components, each designed to address a distinct temporal horizon and risk profile. The fixed annual retainer provides a stable baseline income to compensate directors for their time, preparation, and fiduciary responsibilities. Variable fees, including meeting attendance fees and performance bonuses, aim to link financial rewards to active engagement and short-term performance outcomes. Equity-based compensation, which comprising stock options, restricted stock units, and performance-vested shares — provides the long-term incentive layer intended to align directors' wealth with shareholder value. Committee-specific fees compensate directors for the additional regulatory responsibility and expertise required in audit, risk, and remuneration committees. Table 2.3 summarizes these components and their associated governance concerns.

Table 2.3 Components of Director Remuneration: Structure, Objectives, and Governance Concerns

Component	Form	Governance Objective	Key Concern
Fixed Retainer	Annual cash payment	Attract and retain qualified directors regardless of short-term volatility.	Risk of over-reliance creating financial dependence on board position.
Variable Pay	Meeting fees; attendance fees; additional responsibility fees; in some cases performance-linked elements for executive directors.	Compensate additional time, responsibility, and involvement in governance functions.	May compromise independence if directors become financially dependent on board service or if pay is linked to short-term outcomes.
Equity Awards	Stock options; RSUs; performance shares	Long-term alignment; encourages owner-mentality among directors.	Dilution of shareholders; short-termism risk; obscured in non-GAAP reporting.
Committee Fees	Supplementary cash fees	Compensate for additional responsibility and expertise on Audit/Rem committees.	Potential accumulation creating over-boarding and independence concerns.

Source: Adapted from Core, Holthausen & Larcker (1999); Bebchuk & Fried (2004).

The most significant structural shift in recent decades has been the increasing reliance on equity-based compensation. Equity awards have become a core component of remuneration structures in listed companies, particularly in the United States, on the theory that linking pay to share value aligns directors' and executives' interests with those of shareholders. Whether that alignment is achieved in practice depends on the design of the award, the vesting period, and the transparency of its economic cost (Core, Holthausen & Larcker, 1999; Bebchuk & Fried, 2004; Bhagat & Black, 2002).

However, equity-based compensation also introduces governance concerns that classical agency theory's standard prescriptions do not resolve. The first is the risk of short-termism. Equity incentives, particularly stock options with short vesting periods, can encourage directors to prioritize near-term share price performance over long-term value creation. This might manifest, for example, by supporting management decisions that inflate reported earnings, deferring necessary investments, or failing to challenge strategies that boost the stock price at the expense of sustainable growth (Bolton, Scheinkman & Xiong, 2006). This risk is especially acute when options are designed with exercise prices or vesting conditions that can be met through short-term market movements rather than fundamental performance improvements.

The second concern is dilution. When companies grant directors shares or options, they create new claims on the firm's equity that reduce the proportionate ownership stake of existing shareholders. This economic cost, which is real, quantifiable, and ultimately borne by shareholders, is frequently obscured in financial reporting through the widespread use of non-GAAP earnings adjustments that exclude stock-based compensation expense from reported results (Leung & Veenman, 2018). As a consequence, shareholders may approve equity grants to directors without fully understanding their true economic cost. From the perspective of this thesis, this transparency failure is fundamental: a say-on-pay vote on an equity-based compensation plan cannot constitute genuine shareholder participation if the dilutive effects of that plan are not clearly communicated.

The third and most foundational concern relates to the process by which director remuneration is determined. In most listed companies, the level and structure of compensation is recommended by a remuneration committee (which is itself composed of directors) and submitted to the full board for approval before being put to a shareholder vote (Financial Reporting Council, 2024, Provision 32; OECD, 2023, Principle VI). This architecture is designed to introduce independence into the process, but its effectiveness depends on the genuine independence of committee members, the quality of the information and advice available to them, and the rigor of the process they follow. Evidence suggests these conditions are not always met. Directors appointed through networks with close ties to management, or who sit on each other's remuneration committees, may lack the independence to make genuinely arm's-length assessments (Core, Holthausen & Larcker, 1999).

Empirical research has consistently documented a troubling pattern: director and executive compensation levels appear more strongly associated with company size, industry membership, and peer group selection than with firm-specific performance. Core, Holthausen and Larcker (1999) found that weaker governance structures, including CEO dominance of the board and limited director independence, were positively associated with excess compensation even after controlling for performance and firm characteristics. More recent research confirms that director pay is highly sensitive to peer group construction: when companies benchmark against peers that are larger, more profitable, or drawn from higher-paying industries, pay levels rise predictably without a corresponding increase in director contribution, a phenomenon known as the well-documented ratchet effect in executive and director compensation (Bizjak, Lemmon & Naveen, 2008).

A specific manifestation of this problem is the phenomenon of mutual back-scratching in interlocked board networks. Directors of interconnected companies may exhibit reciprocal leniency in compensation decisions, approving generous packages for each other with the implicit expectation that the favor will be returned. While explicit collusion is rarely documented, the structural conditions that facilitate it are widespread: overlapping board memberships, shared professional ties, social pressures to avoid conflict, and the normalization of peer compensation benchmarks within closed elite networks (Bebchuk & Fried, 2004). Behavioral agency theory helps explain why such dynamics are resilient: they are sustained not by deliberate wrongdoing but by social comparison, loss aversion relative to peer standards, and the gradual normalization of practices that become difficult to challenge.

Director remuneration also raises a concern that is frequently underemphasized: the relationship between pay level and board independence. Compensation must be sufficient to attract qualified individuals and compensate them for the responsibilities, time demands, and reputational risks of board service. However, where remuneration becomes a significant component of a director's total personal income, it may create a subtle financial dependence on continuation of the board position that compromises the willingness to challenge management or controlling shareholders. Independence is therefore not solely a legal category; it is an economic and behavioral condition. Remuneration structures should be designed to support genuine independent judgment rather than create incentives for deference.

2.5 Synthesis: Theoretical Framework for the Thesis

The theoretical analysis developed in this chapter converges on three foundational conclusions that organize the analytical structure of the thesis. Each conclusion connects directly to one of the three propositions that constitute the thesis's core argument.

The first conclusion is that director remuneration creates genuine agency problems that cannot be resolved by market mechanisms alone. The separation of ownership and control, combined with the self-referential structure of director pay decisions, creates conditions of potential self-dealing that require external governance responses. The market for director talent does not function as a competitive price-setting mechanism. Instead, pay levels are shaped by benchmarking practices, board networks, and social dynamics as much as by genuine economic value assessment (Bebchuk & Fried, 2004; Bizjak, Lemmon & Naveen, 2008). This conclusion justifies say-on-pay as a necessary governance intervention: without a formal mechanism for shareholder participation, the agency problem in director remuneration would be managed entirely by the parties who have an interest in its resolution.

The second conclusion is that the effectiveness of any governance response to this problem depends critically on the quality of information available to those exercising oversight. Agency theory identifies information asymmetry as the mechanism through which agents exploit their positional advantage. Behavioral agency theory extends this by showing that shareholders' responses to remuneration decisions are shaped not only by financial calculations but by perceptions of fairness, procedural legitimacy, and the credibility of the process. Corporate governance theory, as reflected in the OECD Principles and the Cadbury framework, treats transparency not as an optional enhancement but as a structural condition for genuine accountability. These convergent perspectives establish transparency as the enabling condition that determines whether say-on-pay is substantively effective or merely formally compliant.

The third conclusion is that formal governance structures are necessary but not sufficient. The existence of a remuneration committee, a shareholder vote, and regulatory disclosures does not guarantee that shareholders receive the quality of information they need to exercise meaningful judgment. The gap between formal and substantive governance, representing the division between technical compliance and genuine accountability, is the space in which the governance failures documented in empirical research occur, and it is also the space in which fairness opinions may play a constructive role. Research on compensation consultants suggests that external advice can improve the informational basis of remuneration decisions, although its value depends on the adviser’s independence and the absence of conflicts of interest (Murphy & Sandino, 2010). This supports the thesis’s argument that a properly designed fairness opinion could serve a similar transparency-enhancing function. If such an assessment is properly conducted, fully disclosed, and genuinely informative, it can bridge the information gap in a way that formal disclosure requirements alone cannot.

Taken together, these three conclusions support the central argument of this thesis: that say-on-pay is a necessary but not sufficient governance response to the agency problem in director remuneration; that its effectiveness is critically dependent on the quality of transparency; and that fairness opinions, properly designed and disclosed, can serve as an instrument for achieving the standard of substantive transparency that remuneration governance requires. The chapters that follow develop and examine this argument in depth, moving from the regulatory architecture of say-on-pay (Chapter 3) to the principles and challenges of transparency (Chapter 4) and the legal and governance analysis of fairness opinions (Chapter 5) before arriving at the comparative case study that tests these arguments in practice (Chapter 6).

3. Say-on-Pay and Shareholder Participation

The theoretical framework developed in Chapter 2 established that director remuneration generates structural agency problems that market mechanisms and internal governance arrangements alone cannot resolve. The separation of ownership and control, combined with the institutional capacity of directors to influence the terms of their own compensation, creates the conditions for self-dealing. This represents a domain in which the interests of the agents who design pay packages may systematically diverge from those of the shareholders who bear their cost. This chapter examines the primary governance response to this problem: the say-on-pay mechanism, understood as the formal right of shareholders to vote on the remuneration of directors and senior executives at the annual general meeting.

To evaluate this mechanism, the analysis is structured into four core dimensions. Section 3.1 establishes the definition and theoretical rationale of say-on-pay, situating it within the agency theory framework and distinguishing its principal design variants. Section 3.2 traces its regulatory evolution across key jurisdictions, namely the United Kingdom, the United States, and the European Union (with specific emphasis on the Italian implementation), to map the changing legal landscape. Section 3.3 evaluates the practical operation of shareholder participation, encompassing investor base dynamics, proxy advisory firms, collective action constraints, and empirical evidence on board responsiveness. Finally, Section 3.4 exposes the structural limitations of say-on-pay as a standalone governance tool.

Ultimately, this chapter argues that while say-on-pay introduces an external accountability check into an otherwise insulated board process, its practical efficacy remains structurally dependent on the ex-ante information available to the market. This dependency provides the analytical bridge to Chapter 4, which positions transparency as the enabling condition for effective say-on-pay governance.

Two foundational perspectives anchor this analysis. Thomas and Van der Elst (2015) provide the comparative legal baseline, demonstrating that say-on-pay is not a homogeneous rule but a diverse family of regulatory mechanisms that vary in legal effect, timing, scope, and object. Nuancing this view, Barry (2023) uncovers the internal logic of non-binding votes, demonstrating that advisory resolutions discipline compensation even amid low formal failure rates because boards internalize reputational and career costs prior to the actual ballot. Together, these insights frame say-on-pay not as a discrete voting event, but as a continuous governance process operating through voice, reputation, disclosure, and strategic engagement.

3.1 The Say-on-Pay Rule: Definition and Rationale

Say-on-pay is conceptually defined as the statutory or regulatory right of listed company shareholders to vote on executive and director compensation frameworks, though its scope and legal consequences are jurisdiction-dependent (Thomas & Van der Elst, 2015). Exercised primarily at the annual general meeting, this mechanism generally targets either the forward-looking remuneration policy (governing future pay structures and performance conditions) or the retrospective remuneration report (disclosing actual payouts from the preceding financial year). The legal gravity of this vote falls into two categories: advisory regimes, which leverage reputational and institutional pressure without legally binding the board, and binding regimes, where shareholder approval operates as a strict legal precondition for implementing pay structures.

Critically, Thomas and Van der Elst (2015) caution against treating disparate shareholder compensation votes as functional equivalents. True say-on-pay requires a recurring, mandatory, and legally mandated shareholder vote that directly or indirectly governs the broader remuneration system, policy, or collective executive packages, rather than narrow, isolated approval rights over specific stock option plans or individual severance agreements. This distinction is vital for this thesis: the mechanism under review evaluates the systemic legitimacy of the corporate remuneration architecture as a whole.

The theoretical justification for say-on-pay is rooted in agency theory, directly extending the structural critique developed in Chapter 2. Traditional internal monitoring mechanisms, such as independent remuneration committees, compensation consultants, and audit oversight, offer incomplete remediation for self-dealing risks because they operate within the very board structures they are meant to police. Behavioral agency theory highlights that committee independence is frequently compromised by professional networks, social ties, and dynamics of collective deference endemic to boardroom culture (Bebchuk & Fried, 2004; Core, Holthausen & Larcker, 1999). Say-on-pay bypasses this internal insulation by placing a direct accountability mechanism in the hands of the ultimate principals (the shareholders), thereby establishing a formal external constraint on executive rent-extraction.

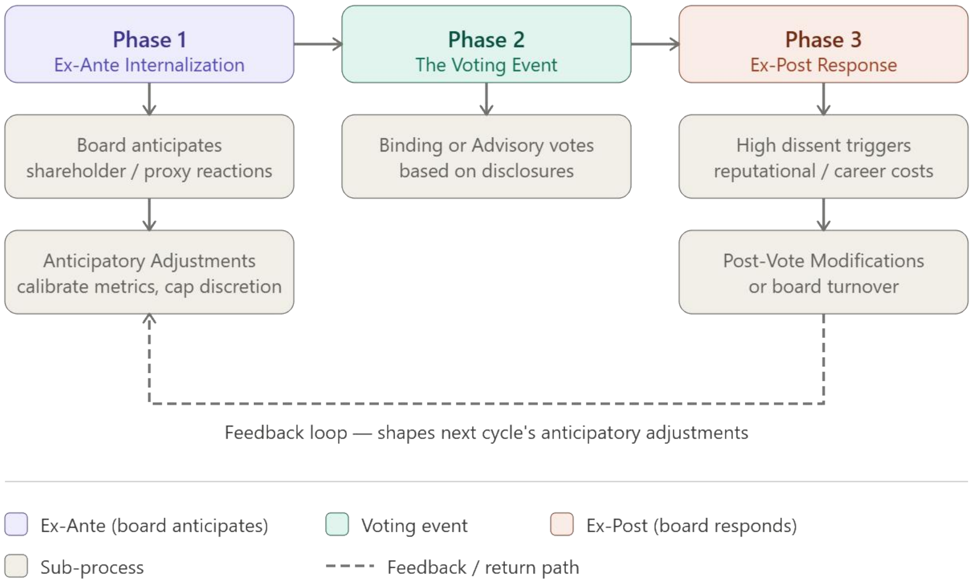
Empirical evidence validates this corrective function. Ferri and Maber's (2013) seminal study of the UK market reveals that while say-on-pay did not systematically depress the absolute quantum of CEO pay, it significantly enhanced pay-for-performance sensitivity, particularly within firms experiencing high voting dissent or exhibiting excessive historical compensation. The primary objective of say-on-pay is not to cap compensation or micromanage board expertise, but to compel boards to justify and align pay practices with observable performance. It functions as a mechanism of disciplined dialogue, where the most consequential outcomes occur through ex-ante engagement and anticipatory adjustments.

This anticipatory dynamic reshapes the traditional distinction between advisory and binding votes. While advisory regimes leave boards legally free to ignore shareholder dissent, Barry's (2023) structural model demonstrates that boards aggressively anticipate the career and reputational costs of a failed vote. Consequently, high observable approval rates do not signal shareholder passivity or mechanism failure; rather, they reflect the mechanism's ex-ante disciplining force. Boards routinely calibrate performance metrics, constrain committee discretion, or enhance peer-group disclosure prior to the annual meeting precisely to neutralize public dissent.

However, say-on-pay is neither an absolute remedy nor a substitute for robust internal governance. It does not empower shareholders to directly dictate dollar figures, nor can it compensate for weak board-level oversight. Most fundamentally, its efficacy is entirely bounded by the quality of information that precedes it. An uninformed vote, or one based on opaque and strategically managed disclosure, offers only a veneer of accountability while leaving underlying information asymmetries intact. This structural vulnerability cements the analytical dependency between the voting rights examined here and the transparency frameworks analyzed in Chapter 4.

Figure 3.1

The Dynamic Governance Cycle of Say-on-Pay (The Shadow Effect)



3.2 Regulatory Development: A Comparative Overview

The global adoption of say-on-pay over the past two decades represents one of the most significant regulatory developments in remuneration governance. While specific institutional designs vary across borders, the overarching trajectory exhibits consistency: moving toward heightened shareholder rights, increasingly prescriptive disclosure mandates, and direct board accountability. Thomas and Van der Elst (2015) demonstrate that the global dispersion of say-on-pay did not follow a single institutional path. In dispersed ownership systems like the United States and the United Kingdom, the primary justification centers on mitigating traditional manager-shareholder agency costs. Conversely, in the concentrated ownership landscapes of continental Europe, the rationale is more nuanced; while controlling shareholders maintain direct oversight, minority shareholders still require robust disclosure and formal channels to exercise their voice against potential insider expropriation.

3.2.1 The United Kingdom: The First Mover

The United Kingdom pioneered corporate remuneration reform by introducing the world's first formal, statutory say-on-pay mechanism, initially through an advisory vote on the directors' remuneration report, which subsequently evolved into a dual advisory-binding framework. In response to escalating public and institutional backlash against executive compensation hikes, particularly within privatized utility firms where compensation increases triggered intense 'fat cat' controversies, the UK government enacted the Directors' Remuneration Report Regulations 2002. This framework required listed companies to submit their annual remuneration report to an advisory shareholder vote at the annual general meeting, a mandate subsequently codified under sections 420–422 and 439 of the Companies Act 2006.

The structural boundaries of a purely advisory model became starkly visible following several high-profile corporate standoffs where boards sustained controversial pay arrangements despite intense shareholder opposition. The watershed moment occurred during the 2003 GlaxoSmithKline annual general meeting, where a majority of shareholders rejected the proposed executive remuneration report due to concerns over generous severance clauses (Maher & Andersson, 2005). Although legally non-binding, the reputational fallout forced the board to fundamentally restructure its executive contracts and initiate deep institutional consultations with major shareholders. To prevent future board non-responsiveness, the UK legislature stepped in via the Enterprise and Regulatory Reform Act 2013, which amended the Companies Act 2006 by introducing a mandatory binding vote on the forward-looking remuneration policy at least once every three years (s. 226B). Under this modernized dual regime, payments made to directors that violate the approved policy are legally invalid and recoverable by the firm.

This institutional evolution captures what Ferri and Maber (2013) identify as the 'shadow effect' of say-on-pay: the reality that boards proactively restructure executive contracts in anticipation of shareholder pushback, rather than merely responding post-vote. This ex-ante adjustment dynamic confirms that the regulatory value of the mechanism cannot be accurately captured by looking solely at how often a vote formally fails.

3.2.2 The United States: Dodd-Frank and the Advisory Model

In the United States, mandatory say-on-pay arrived via Section 951 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, forged in the wake of the 2008 financial crisis and the resulting political scrutiny over Wall Street pay structures. The Act amended the Securities Exchange Act of 1934, compelling listed firms subject to SEC proxy rules to integrate a non-binding, advisory resolution on named executive officer (NEO) compensation within their proxy statements, as disclosed under SEC Regulation S-K, Item 402. Additionally, Dodd-Frank introduced a mandatory 'say-on-frequency' vote, requiring shareholders to determine every six years whether the advisory vote should occur annually, biennially, or triennially. In practice, annual voting quickly consolidated as the absolute corporate norm across large listed firms.

This regulatory framework marked a shift from shareholder-driven precatory proposals under Rule 14a-8 to an explicit federal mandate (Thomas & Van der Elst, 2015). Structurally, however, the U.S. vote remains a rigid up-or-down ballot on the entire executive compensation package as a single unit. Shareholders cannot isolate individual problematic components, such as specific performance metrics, equity vestings, or golden parachutes. Consequently, a negative vote signals broad institutional discontent without identifying the exact underlying driver, which places an immense premium on proxy disclosure clarity and subsequent investor dialogue.

While section 14A of the Exchange Act explicitly states that the vote is advisory and does not alter traditional director fiduciary duties, empirical trends show that boards treat these ballots with high gravity. Modern proxy season data reveals that even though average failure rates hover around 2% to 3% annually, a drop below the 80% approval threshold triggers immediate board intervention to prevent proxy advisor downgrades in subsequent cycles. Furthermore, Barry (2023) demonstrates that a formal say-on-pay failure correlates significantly with increased director turnover, committee reassignment, and the loss of outside board seats, proving that reputational mechanisms provide the teeth that the advisory law lacks.

3.2.3 The European Union: Shareholder Rights Directive II

Corporate Europe reshaped its pay governance architecture through Directive (EU) 2017/828, commonly known as the revised Shareholder Rights Directive (SRD II). Adopted to catalyze long-term shareholder engagement, the Directive's regulatory impact assessment identified chronic opacity in executive pay structures as the single greatest barrier to effective institutional stewardship across Member States (European Commission, 2014).

Rather than enforcing a monolithic voting template, SRD II constructed a hybrid governance architecture combining prospective and retrospective oversight. Article 9a mandates that listed firms submit their forward-looking remuneration policy to a binding shareholder vote at least once every four years, or upon any material revision. This policy must explicitly delineate fixed and variable components, clear performance criteria, and core contractual terms. Complementing this prospective control, Article 9b requires an annual advisory vote on the retrospective remuneration report. Crucially, the Directive imposes a formal 'feedback loop,' forcing companies to explicitly explain in each annual report how they integrated and addressed the feedback from the previous year's shareholder vote.

3.2.4 Italy: Legislative Decree 49/2019 and the Italian Corporate Governance Code

Italy transposed the mandates of SRD II via Legislative Decree no. 49 of 10 May 2019, which amended Article 123-ter of the Consolidated Law on Finance (Testo Unico della Finanza, TUF), creating a rigorous two-tier voting system. Under this modernized framework, Section I of the annual remuneration report (containing the forward-looking policy) is subject to a strict binding vote, while Section II (detailing individual compensation outcomes from the prior year) is subject to an advisory vote. CONSOB regulates the granularity of these disclosures through Article 84-quater of CONSOB Regulation No. 11971/1999, which forces firms to release these reports prior to the AGM using standardized models to ensure market comparability.

This statutory regime is reinforced by the voluntary Italian Corporate Governance Code.

The Code provides prescriptive benchmarks for remuneration committee composition, the alignment of variable pay with long-term sustainability, and the deployment of independent consultants. Data from CONSOB's annual corporate governance reports reveals that while compliance with the Code's structural recommendations is high among large-cap companies, a structural gap persists: smaller listed firms frequently treat these transparency mandates as a checklist exercise, resulting in highly boilerplate reports that obscure the underlying economic realities of executive contracts. As Chapter 4 will establish, this formalistic compliance often undercuts the very accountability that the two-tier vote was designed to achieve.

Table 3.1 — Say-on-Pay Regulatory Frameworks: Comparative Overview

Jurisdiction	**Instrument**	**Vote Character**	**Scope**
United Kingdom	Companies Act 2006; Enterprise & Regulatory Reform Act 2013	Advisory (annual report); Binding (policy, at least every 3 years)	Remuneration report (advisory, annual); Remuneration policy (binding)
United States	Dodd-Frank Act 2010, s. 951; SEC Rule 14a-21; Reg. S-K Item 402	Advisory, non-binding	Named executive officer compensation; frequency vote
European Union	Directive (EU) 2017/828 (SRD II), Arts. 9a–9b	Binding (policy); Advisory (annual report)	Remuneration policy (binding, at least every 4 years); annual remuneration report (advisory)
Italy	Legislative Decree 49/2019; TUF Art. 123-ter; CONSOB Reg. 11971/1999	Binding (Section I: policy); Advisory (Section II: outcomes)	Two-section annual remuneration report: Section I (policy, binding); Section II (implementation, advisory)

Source: Author's compilation from Companies Act 2006 (UK); Enterprise and Regulatory Reform Act 2013 (UK); Dodd-Frank Act 2010 (US); Directive (EU) 2017/828; Legislative Decree 49/2019 (Italy); CONSOB Regulation No. 11971/1999.

A comparative synthesis of these frameworks highlights a global convergence toward enhanced shareholder engagement, with an increasing statutory preference for giving binding legal effects to policy design. However, significant divergence persists regarding the immediate legal consequences of shareholder dissent and the depth of disclosure required to facilitate an informed vote. The European model relies heavily on rigid, ex-ante binding legal constraints, whereas the U.S. paradigm continues to place its faith in market forces, proxy advisor intervention, and retrospective disclosure standards. These structural variations carry heavy practical consequences for how say-on-pay operates in reality, as fully developed in the comparative analysis of Chapter 6.

3.3 Shareholder Participation in Practice

The formal architecture of say-on-pay does not, by its mere statutory existence, dictate how the mechanism operates in corporate reality. The efficacy of shareholder oversight depends on an array of institutional, informational, and behavioral contingencies that corporate regulations can influence but never fully control. Shareholders do not constitute a homogeneous body. Institutional investors, retail shareholders, activist hedge funds, proxy advisors, and controlling insiders all navigate the voting process with vastly disparate incentives, resource allocations, and structural constraints.

3.3.1 The Investor Base: Retail and Institutional Shareholders

Modern listed corporations are characterized by the structural dominance of institutional investors, who hold the definitive majority of equity capital across developed capital markets. In the United States, this concentration is particularly visible within the S&P 500, where the “Big Three” index fund managers, consisting of BlackRock, Vanguard, and State Street, collectively hold a substantial share of equity and voting power. Recent estimates place their combined median stake in S&P 500 companies at slightly above 20 percent, while their share of votes cast at annual meetings is closer to one quarter. This concentration does not mean that the Big Three own these companies in a conventional sense, since they vote shares held through funds on behalf of underlying investors; nevertheless, their stewardship policies and voting decisions make them central actors in say-on-pay outcomes (Bebchuk & Hirst, 2022; Coates, 2023). In theory, these institutional players possess the economies of scale and professional analytical capacity required to substantively interrogate executive remuneration policies. In practice, however, the sheer diversification of their portfolios, which routinely encompass thousands of investee companies, creates severe operational bottlenecks, rendering independent, firm-specific analysis of every compensation package economically impractical.

Conversely, retail investors embody the stark friction between formal legal empowerment and practical apathy, a phenomenon Kastiel and Nili (2016) conceptualize as the problem of 'absent shareholders.' Their empirical diagnostics reveal that institutional turnout regularly exceeds 90 percent, whereas retail voting participation languishes at approximately 30 percent, contributing to an average non-voting equity block of 21.7 percent in large-cap firms. Consequently, while say-on-pay theoretically democratizes corporate oversight, the systemic absenteeism of retail holders effectively concentrates functional voting power in a tight cluster of institutional asset managers and third-party proxy advisors. Furthermore, when retail investors do cast ballots, they frequently rely on highly simplified heuristic cues, such as trailing stock performance or sensationalized media coverage, rather than a granular evaluation of complex incentive structures. Lacking the sophistication to unpack how adjustments to non-GAAP metrics or multi-tiered equity vestings distort the true quantum of pay, the retail base cannot easily distinguish between genuine performance-driven rewards and insider rent-extraction.

3.3.2 The Role of Proxy Advisory Firms

Due to the resource constraints plaguing diversified institutions, proxy advisory firms, spearheaded by Institutional Shareholder Services (ISS) and Glass Lewis, have consolidated a powerful position as information intermediaries. Operating an effective duopoly, their voting recommendations exert a definitive independent impact on ballot outcomes. Regression-discontinuity analyses by Malenko and Shen (2016) confirm that an adverse say-on-pay recommendation from ISS triggers an immediate, statistically significant drop of approximately 25 percentage points in shareholder support.

Thomas and Van der Elst (2015) emphasize that this cross-jurisdictional reliance on third-party advisors fundamentally alters the dynamics of say-on-pay, transforming private advisory checklists into de facto corporate standards. This systemic influence introduces severe governance distortions. To mitigate the risk of a catastrophic negative recommendation, compensation committees frequently engage in 'governance optimization' by structuring executive pay packages to mechanically satisfy the standardized, one-size-fits-all templates applied by proxy advisors, rather than tailoring incentives to the company’s unique long-term strategic needs (Gordon, 2009). This creates a culture of superficial compliance where form trumps substance. As Iliev and Lowry (2015) observe, smaller institutional investors exhibit the heaviest, most uncritical reliance on these advisory templates due to budgetary constraints, effectively shifting fiduciary decision-making authority away from the actual owners of equity to private, unregulated intermediaries.

3.3.3 Collective Action Problems

The operational friction of shareholder voice is deeply rooted in classic collective action failures, first articulated by Berle and Means (1932), formalized by Olson (1965), and applied to modern oversight by Gillan and Starks (2000). Because the financial benefits of defeating a poorly aligned compensation policy accrue equally to all shareholders regardless of who financed the proxy evaluation, rational minority holders face intense incentives to free-ride on the monitoring efforts of others. Barry (2023) uncovers a further strategic dimension to this passivity: the institutional fear of failure. Outspoken opposition to a board's proposal carries friction; a failed say-on-pay vote can trigger severe market uncertainty, depress short-term stock value, and demand extensive ex-post management engagement. Consequently, institutional asset managers often opt for strategic passivity or private concession, treating a vote for a sub-optimal pay package as a rational cost-avoidance mechanism.

3.3.4 Empirical Evidence: Do Boards Respond to Say-on-Pay Dissent?

The normative utility of say-on-pay ultimately hinges on a key empirical question: do boards substantively adjust executive pay in response to shareholder dissent, or do they merely engage in impression management? The empirical literature yields a conditionally positive view of board responsiveness, though with critical caveats.

Landmark assessments in the UK by Ferri and Maber (2013) demonstrate that firms hit with high levels of voting dissent systematically restructured their subsequent remuneration models, downscaling fixed salaries, ratcheting up the rigor of performance conditions, and expanding disclosure transparency. Similarly, Ertimur, Ferri, and Muslu (2011) confirm comparable disciplinary patterns in the U.S. market, noting that high shareholder opposition strongly correlates with subsequent reductions in absolute CEO compensation and the elimination of controversial perks, with the velocity of adjustment heavily amplified by media exposure and institutional activism.

Crucially, Barry (2023) maps the explicit personal channels through which this discipline operates, proving that say-on-pay failures significantly escalate director turnover, accelerate the removal of compensation committee members, and diminish those directors' capacity to secure lucrative outside board seats. Yet, the governance response is not uniformly substantive. Parallel research by Larcker, McCall, and Tayan (2013) alongside Brunarski, Campbell, and Harman (2015) cautions that post-dissent adjustments frequently amount to cosmetic presentation overhauls. Instead of reducing economic quantum or tightening targets, boards often weaponize boilerplate disclosures, adding sophisticated pay-for-performance charts and rhetorical justifications tailored specifically to placate proxy advisors' algorithms without modifying the underlying economic windfall. This trend underscores the risk of tactical gaming and highlights the fragility of voting outcomes when executed within an inadequate informational environment.

Table 3.2 — Main Actors in Say-on-Pay Voting

Actor	Main Governance Contribution	Main Limitation
Retail investors	Democratic legitimacy and potential outcome influence in close votes	Rational apathy, low turnout, limited capacity to assess complex disclosures
Institutional investors	Professional engagement, stewardship, and pressure for board responsiveness	Agency problems, portfolio-wide capacity constraints, reliance on standardized policies
Proxy advisory firms	Lower information costs; identify problematic remuneration practices	One-size-fits-all models; risk of mechanical investor reliance
Boards and remuneration committees	Can adapt policies and improve engagement before or after the vote	May treat voting as formal compliance or respond only superficially
Regulators and courts	Create the framework within which shareholder voice operates	Cannot by themselves guarantee informed voting or substantive transparency

Source: Author's compilation from Kastiel & Nili (2016); Malenko & Shen (2016); Ferri & Maber (2013); Barry (2023); Thomas & Van der Elst (2015).

3.4 Limitations of Say-on-Pay as a Governance Tool

While the empirical and regulatory trajectories documented in the preceding sections confirm that say-on-pay has structurally modified executive remuneration, a critical assessment reveals inherent boundaries that prevent the mechanism from independently resolving agency conflicts. These limitations are embedded within the structural design of shareholder voting and cannot be engineered away through incremental, checklist-based regulatory revisions. Shareholder voting cannot operate as an insulated panacea; effective governance requires complementary transparency instruments and ex-ante fairness evaluations to address what voting alone cannot reach.

3.4.1 The Advisory Vote Problem

In regulatory regimes where say-on-pay resolutions maintain a purely advisory character, the corporate translation of shareholder voice into substantive policy changes depends entirely on voluntary board internalization. In the absence of binding statutory enforcement, board responsiveness is conditioned on a variable reputational calculus. Consequently, companies insulated by concentrated ownership blocks, dominated by entrenched chief executives, or characterized by passive institutional investor bases face significantly weaker capital market incentives to modify highly extractive compensation arrangements.

Even within binding voting regimes, structural power asymmetries persist. Barry's (2023) model confirms that binding mandates still preserve the board's monopoly over prospective policy design, leaving shareholders with a reactive, binary choice to either approve or reject the board's pre-packaged proposal. Shareholders possess a negative veto rather than constructive design authority. This structural dependency on board-driven frameworks means that highly controversial, rent-extracting compensation structures can endure across multiple proxy cycles, a vulnerability vividly illustrated by protracted executive pay litigations in complex corporate environments.

3.4.2 Informational Constraints: Shareholders Cannot Evaluate What They Cannot Understand

The most formidable barrier impeding say-on-pay is not statutory or procedural, but fundamentally informational. A shareholder vote can only mirror the quality of the disclosure upon which it is predicated. When a remuneration policy is structurally obscured by dense technical terminology, when the performance hurdles attached to multi-tiered equity incentives defy cross-sectional evaluation without specialized econometric modeling, or when the true economic costs of stock-based grants are systematically masked behind opportunistic non-GAAP earnings metrics, the formal execution of the ballot is rendered functionally blind.

This core vulnerability is empirically demonstrated by Li and Zhang (2022), whose diagnostics reveal that when the SEC forces firms to remediate compensation disclosure deficiencies through its formal comment letter process, the target firms experience an immediate, statistically significant increase of approximately 3.21 percentage points in subsequent favorable say-on-pay votes. This finding establishes a direct, causal nexus between the objective informational quality of a disclosure and the efficiency of shareholder oversight. It proves that say-on-pay cannot be evaluated in isolation from the prevailing transparency architecture; without substantive clarity, the voting right is reduced to a rubber-stamping ritual that legitimizes asymmetric rent-extraction.

3.4.3 Behavioral Biases in Voting

Cognitive constraints within the investor base further compound these informational frictions. Behavioral governance literature indicates that even sophisticated institutional portfolio managers are highly susceptible to cognitive anchoring on peer-group medians, availability biases that disproportionately overweight isolated, high-profile media controversies, and intense herding dynamics that favor blind adherence to dominant proxy advisory checklists.

Anchoring is particularly distortionary in remuneration architecture. When compensation committees strategically construct highly opportunistic peer groups to benchmark executive pay, shareholders frequently accept the resulting median figures as an objective baseline. This dynamic creates an upward inflationary ratchet, where successive say-on-pay ballots systematically validate structurally engineered compensation expansion. Behavioral agency theory confirms that these investor-level biases run parallel to courtroom and boardroom distortions (including social comparisons among corporate elites and severe loss aversion in performance metric design), thereby validating inflationary compensation patterns without requiring an explicit, malicious intent to extract value.

3.4.4 The Fundamental Dependency: Say-on-Pay and Transparency

The limits discussed above point to one conclusion: say-on-pay cannot work on its own. Its value depends on whether shareholders receive information that is clear enough to support a real judgment. A dissenting vote cast on the basis of a fundamentally distorted or incomplete understanding represents corporate governance noise rather than a precise governance signal. This dynamic risks penalizing optimal, performance-aligned pay designs while failing to penalize sophisticated rent-extraction. Conversely, an entirely compliant board may suffer unwarranted institutional dissent simply because its communication framework lacked the clarity required to convey its economic alignment.

This regulatory co-evolution, where the expansion of voting rights is systematically paired with more prescriptive disclosure mandates, is explicit within global policy frameworks. The European Commission's (2014) structural impact assessment for SRD II explicitly positioned widespread opacity in remuneration reporting as the primary institutional barrier to effective shareholder engagement. Similarly, the SEC's (2022) Pay Versus Performance mandates reflect an urgent regulatory recognition that voting rights remain unviable unless markets are supplied with highly comparable data mapping executive compensation actually paid against objective financial performance metrics. Absent substantive transparency, corporate voting rights operate merely as a legitimacy-conferring ritual.

Figure 3.2

The Vicious Cycle of Information Asymmetry in Say-on-Pay Governance

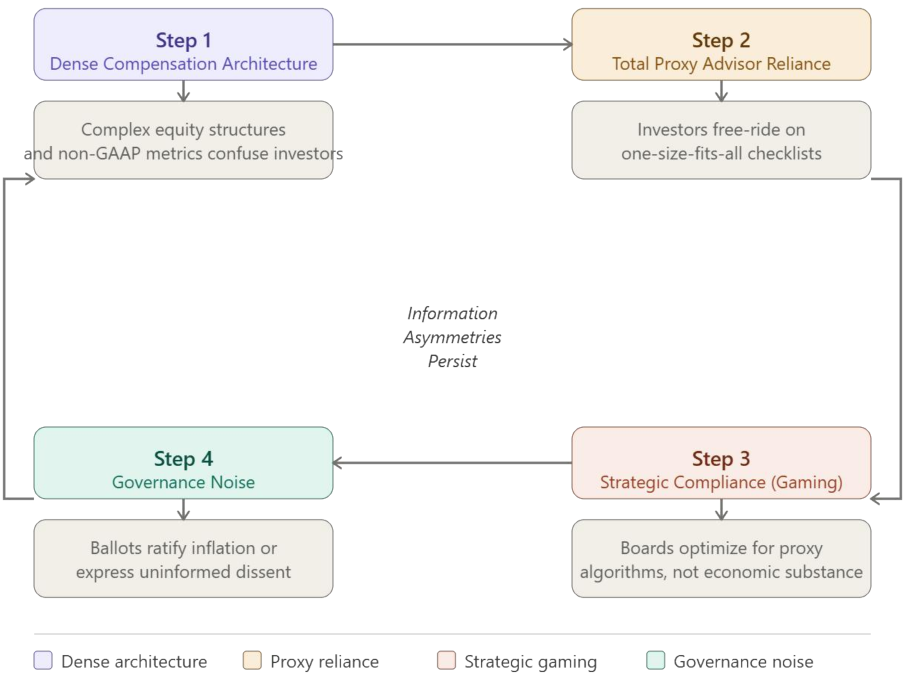


Table 3.3 — Structural Limitations of Say-on-Pay as a Governance Tool

Category of Limitation	Nature of the Constraint	Governance Implication
Non-binding legal effect	In advisory regimes (notably the U.S.), boards are under no legal obligation to modify remuneration practices following a negative vote, even when dissent is substantial.	Governance discipline depends entirely on reputational incentives and voluntary board responsiveness, which are weakest in companies with concentrated ownership or limited institutional engagement.
Collective action problems	Dispersed shareholders face rational apathy; institutional investors face capacity constraints and may rely on proxy advisors; shareholder costs of failure may induce strategic passivity.	Participation concentrates among large institutional investors, whose engagement is itself partly driven by proxy advisory models that may not capture firm-specific circumstances.
Proxy advisory dependence	A negative ISS recommendation reduces support by 25 percentage points (Malenko & Shen, 2016). Boards may design policies to satisfy proxy advisor criteria rather than to serve shareholders.	Governance optimization for form over substance: compliance with standardized templates may substitute for genuine compensation design (Gordon, 2009).

Behavioral biases	Shareholders are subject to anchoring on peer medians, availability bias, and framing effects driven by selective disclosure (Kahneman, 2011).	Voting outcomes reflect contextual perceptions rather than systematic evaluation; boards may manage optics rather than substance.
Informational constraints	Remuneration reports are often lengthy, technically dense, and strategically assembled; non-GAAP adjustments routinely exclude stock-based compensation costs.	Shareholders cannot evaluate what they cannot understand. The governance quality of the vote is a direct function of disclosure quality, which serves as the enabling condition examined in Chapter 4.

Source: Author's compilation from Ferri & Maber (2013); Malenko & Shen (2016); Barry (2023); Brunarski, Campbell & Harman (2015); Larcker, McCall & Tayan (2013); Li & Zhang (2022).

3.5 Say-on-Pay and the Bridge to Transparency

The weakness is therefore not the vote itself. It is the informational setting in which the vote takes place. While shareholders are empowered to vote on remuneration policies and retrospective reports, the diagnostic utility of that vote is entirely bounded by their capacity to accurately decode complex equity awards, long-term incentive structures, peer-group selection criteria, and non-GAAP accounting adjustments.

Consequently, this thesis does not position independent fairness opinions as an institutional replacement for say-on-pay. Rather, they are developed as a critical, informational support mechanism. An independent fairness opinion could provide the market with an objective, expert valuation that contextualizes the financial and procedural alignment of a remuneration package, provided its underlying methodologies, peer-group assumptions, and potential conflicts are explicitly disclosed. In this capacity, fairness opinions could optimize the informational ecosystem of say-on-pay, transforming the ballot from an uninformed corporate ritual into an effective, data-driven accountability check. This analytical bridge leads directly to Chapter 4’s interrogation of the structural mechanics of transparency.

3.6 Conclusion

Say-on-pay does introduce an external check, but the chapter’s discussion shows that this check remains fragile when shareholders lack usable information. The regulatory deployment of this mechanism across the UK, the US, the EU, and Italy underscores a global corporate governance migration toward institutional shareholder participation and formalized board accountability. Empirical evidence confirms that significant voting dissent can generate real reputational penalties, accelerate director turnover, and compel boards to restructure poorly aligned contracts.

Nevertheless, the mechanism remains constrained by advisory legal frameworks, portfolio-wide collective action failures, uncritical proxy advisor reliance, and cognitive anchoring biases. Most fundamentally, these boundaries confirm that shareholder voting cannot generate efficient governance outcomes unless it is anchored by a complete, understandable, and strategically unmanaged informational environment. To explore how corporate disclosure frameworks can be restructured to facilitate this level of accountability, the next chapter shifts the analytical focus to the structural dimensions of transparency in director remuneration governance.

4. Transparency and disclosure

Chapter 3 established that say-on-pay is a necessary but structurally circumscribed governance response to the agency conflict inherent in directors' remuneration. It provides shareholders with a formal mechanism through which approval or dissent can be expressed, but it cannot, by itself, guarantee that the vote reflects informed judgment. Shareholders can meaningfully discipline remuneration decisions only when they are able to understand what they are asked to approve: the economic structure of the pay arrangement, its relationship to performance, the process by which it was designed, and the costs it imposes on existing owners. The practical value of say-on-pay is therefore conditional on the quality of the informational environment in which shareholders exercise their rights (Healy & Palepu, 2001).

This chapter examines transparency and disclosure as that enabling condition. The analysis does not treat transparency as a decorative governance value or as a purely procedural reporting obligation. Rather, it treats transparency as the informational infrastructure without which shareholder participation remains largely symbolic.

The central distinction developed throughout is between formal transparency (technical compliance with regulatory disclosure requirements) and substantive transparency (the provision of information that shareholders can actually understand, evaluate, and use when casting their votes). These two are not equivalent, and the gap between them is where most governance failures in remuneration reporting originate (Bebchuk & Fried, 2004; Bushman, Piotroski & Smith, 2004).

The chapter proceeds in five stages. Section 4.1 develops transparency as a governance principle, grounding it in agency theory, the OECD Principles of Corporate Governance, and the European company law framework. Section 4.2 examines the regulatory standards governing remuneration disclosure in the European Union, Italy, and the United States. Section 4.3 analyses the systematic gap between formal compliance and substantive clarity, documenting the forms this gap takes in contemporary remuneration reporting. Section 4.4 addresses the non-GAAP problem: The widespread exclusion of stock-based compensation from adjusted earnings metrics carries severe governance consequences for informed shareholder voting. Section 4.5 explains why transparency, even when improved, remains insufficient for the most complex remuneration arrangements, thereby establishing the analytical bridge to Chapter 5's examination of fairness opinions.

The overarching argument is threefold. First, transparency is a governance principle because it reduces information asymmetry and exposes remuneration decisions to reputational, market, and legal scrutiny. Second, it is a regulatory standard: EU, Italian, and U.S. law require companies to disclose remuneration policies, realised pay, performance criteria, and governance processes in a form designed to permit shareholder evaluation. Third, extensive disclosure can still fall short of substantive transparency when it is excessively technical, strategically framed, or built around adjusted metrics that obscure the true economic cost of equity-based pay. This tripartite structure mirrors the analytical logic of the thesis as a whole: governance mechanisms are necessary, but their effectiveness depends on the quality of the conditions under which they operate (Fisch, Palia & Solomon, 2017).

4.1 Transparency as a governance principle

4.1.1 Theoretical Foundations: Transparency against information asymmetry

The theoretical justification for transparency as a governance instrument is rooted directly in the agency theory framework developed in Chapter 2. The structural separation of ownership and control does not only create divergent interests between principals and agents; it generates an information gap that renders the pursuit of self-interest largely invisible to shareholders. Directors and executives possess continuous, privileged access to internal performance data, strategic deliberations, and compensation processes that shareholders depend on being disclosed to them. Without transparency, the agency problem cannot be monitored; without monitoring, it cannot be controlled. Transparency is therefore not ancillary to governance—it is the mechanism through which governance becomes operative (Healy & Palepu, 2001).

The economic rationale for mandatory disclosure is well established. In the absence of a regulatory obligation, market dynamics would systematically favor secrecy: directors and executives possess private information, and their financial interests do not always align with openness. The legal requirement to disclose corrects a market failure, imposing costs on the company while generating external benefits for shareholders and—through the efficiency of capital markets—for the broader economy (Bushman, Piotroski & Smith, 2004).

In the domain of directors' remuneration, this logic applies with particular intensity. The structural conflict of interest inherent in self-dealing, where the body responsible for oversight simultaneously determines the terms of its own compensation, creates strong incentives against voluntary disclosure of information likely to invite scrutiny or resistance.

4.1.2 Two Roles of Transparency: Disclosure Requirement and Governance Mechanism

Transparency performs two distinct but interconnected functions in remuneration governance. The first is a disclosure role: at this level, transparency refers to the legal obligation to publish information about who was paid, in what amount, in what form, under what conditions, and by reference to what performance criteria. This is the minimum level, where the company supplies the data required by law or listing rules. The second function is an active governance mechanism: here, transparency means more than simply making data available. It serves as an instrument that actively shapes behavior by exposing board decision-making to the discipline of market scrutiny and external accountability.

It means organising and presenting information in a way that enables shareholders to form a meaningful, independent judgment about whether the proposed remuneration is justified, proportionate, and aligned with the company's long-term interests. A remuneration report can be formally complete and yet substantively opaque if it contains dense technical language, unexplained formulas, selective performance metrics, and cross-references that ordinary shareholders cannot reasonably process.

When remuneration practices are genuinely transparent—when the true structure, cost, and rationale of compensation are clearly communicated and widely understood—directors face stronger reputational and market incentives to ensure their pay is defensible on objective grounds. Empirical evidence supports this relationship: Bushman, Piotroski, and Smith (2004) demonstrate that greater corporate transparency is associated with lower excess compensation and stronger pay-for-performance sensitivity. This is consistent with the hypothesis that disclosure disciplines remuneration behavior not merely by satisfying a legal formality, but by altering the incentive structure of compensation decision-making itself. Conversely, a remuneration report that discloses a final figure without explaining the deliberative basis behind it does not allow shareholders to evaluate whether the decision was reached through an arm's-length process. Transparency must therefore cover not only the final amount of pay, but also the rigorous process through which that amount was determined.

4.1.3 The OECD principles: Disclosure and transparency as foundational standards

The G20/OECD Principles of Corporate Governance, revised in 2023, provide the leading international normative framework for assessing governance structures in listed companies. Chapter IV identifies disclosure and transparency as a central pillar of an effective governance framework, while Chapter V links board responsibilities to accountability, integrity, objective judgment, and the management of conflicts of interest. The OECD framework does not treat transparency as an isolated reporting exercise but situates disclosure within the broader system of governance: information must enable shareholders and markets to evaluate the company and the conduct of its governing bodies (OECD, 2023, Principle V.D.5).

Applied to directors' remuneration, this principle requires answers to several shareholder-relevant questions. What is the total remuneration awarded or due to each director? Which portion is fixed, and which is variable? What performance conditions determine variable pay, and are those conditions genuinely demanding? How does remuneration support long-term strategy rather than short-term stock price management? What is the economic cost of equity awards, including dilution? Were external advisors used, and were they independent? How did the company respond to prior shareholder dissent? Unless these questions are addressed clearly and directly, say-on-pay cannot function as an informed accountability mechanism.

4.1.4 The EU company law framework and the substantive obligation of transparency

In the European legal context, the normative foundation for transparency in directors' remuneration is better understood as part of the broader harmonised framework of EU company law and shareholder-rights regulation, rather than as a purely national corporate governance issue. (Enriques & Volpin, 2007; Mucciarelli, 2012) Under this framework, transparency is treated not as a procedural formality but as a substantive governance obligation with legal force. The obligation is not satisfied merely by the publication of information; it requires that disclosure be complete, intelligible, and genuinely oriented toward enabling shareholders to exercise informed judgment. Applied to directors' remuneration, this normative standard demands that compensation policies be presented in a manner that permits a meaningful assessment of whether remuneration is justified, proportionate, and aligned with the company's long-term interests. The analytical distinction between formal and substantive transparency, which structures the remainder of this chapter, is grounded in this normative standard: the question posed in Sections 4.3 and 4.4 is not whether companies comply with EU and national disclosure rules, but whether that compliance delivers the quality of information the legal framework is designed to produce.

4.1.5 Behavioral dimensions: Transparency as a legitimacy condition

Behavioral agency theory, introduced in Chapter 2, adds a further dimension to this analysis. Shareholders do not respond to remuneration decisions solely through financial calculation; they also respond on the basis of perceived procedural fairness and the credibility of the governance process (Wiseman & Gomez-Mejia, 1998). Transparency is therefore not merely an informational requirement but a legitimacy condition. A compensation arrangement that is economically defensible but opaquely presented will attract greater opposition than one that is clearly explained and subject to rigorous independent scrutiny. This insight carries forward into the analysis of fairness opinions in Chapter 5: independent expert assessments contribute to substantive transparency not only by providing analytical information but by demonstrating the integrity of the governance process itself. The perception of fairness depends on process visibility, not only on financial outcome.

Table 4.1 — Formal and Substantive Transparency in Remuneration Governance

Dimension	Formal Transparency	Substantive Transparency	Governance Significance
Disclosure objective	Satisfy statutory or regulatory reporting obligations.	Enable shareholders to understand and evaluate remuneration decisions.	Determines whether say-on-pay is meaningful rather than symbolic.
Information style	Technical tables, legal cross-references, compliance language.	Clear narrative, plain-language explanation, accessible structure for non-specialist readers.	Reduces information-processing costs and increases genuine shareholder engagement.
Content focus	Amounts paid and required categories of compensation.	Amounts, rationale, performance link, process integrity, advisor independence, dilution, and fairness of	Allows evaluation of both economic outcome and decision-making quality.

		design.	
Comparability	Company-specific presentation satisfying formal rules.	Consistent metrics, prior-year comparison, peer-group explanation, employee pay comparison.	Supports monitoring across time and across firms.
Voting effect	Shareholders vote with limited ability to interpret disclosed data.	Shareholders vote with informed understanding of pay structure, cost, and governance process.	Transforms say-on-pay from a formal ritual into a genuine accountability mechanism.

Source: Author's compilation based on OECD (2023); Directive (EU) 2017/828; Enriques & Volpin (2007); Bushman, Piotroski & Smith (2004); Hemmings, Hodgkinson & Williams (2020).

4.2 What must be disclosed: Regulatory standards

The normative importance of transparency becomes operational through specific regulatory requirements. Modern remuneration disclosure regimes are not uniform, but they share a common objective: to ensure that shareholders receive sufficient information to evaluate the structure, rationale, and implementation of directors' pay. The European Union, Italy, and the United States have each developed distinct models, reflecting different regulatory philosophies and corporate governance traditions. The EU model is the most prescriptive, explicitly linking policy approval to long-term shareholder engagement. The Italian model implements the EU framework through detailed statutory and CONSOB requirements. The U.S. model relies on extensive proxy statement disclosure and market scrutiny, while retaining a more advisory conception of shareholder voting (Thomas & Van der Elst, 2015).

4.2.1 EU requirements under shareholder rights Directive II

SRD II establishes one of the most prescriptive EU-level frameworks for remuneration disclosure and shareholder engagement in listed companies. Under Article 9a, listed companies are required to publish a remuneration policy covering all elements of directors' remuneration, including fixed pay, variable pay, share-based instruments, pension provisions, and severance arrangements. The policy must explain how it contributes to the business strategy and long-term interests of the company, specify maximum ratios between fixed and variable components, and identify the specific, pre-defined, and measurable performance criteria on which variable pay is contingent, along with deferral periods and clawback mechanisms. It must be submitted to a shareholder vote at least every four years and whenever a material revision is proposed. Under SRD II, the vote on the remuneration policy is binding as the default rule, although Member States may provide that the vote is advisory (Directive (EU) 2017/828, Art. 9a). Article 9b complements the forward-looking policy with a retrospective annual remuneration report. The report must provide a comprehensive overview of remuneration awarded to individual directors during the preceding financial year, broken down by component, and must show the annual change in remuneration relative to average employee pay and company financial performance over at least five years. Critically, the Directive introduces a formal feedback loop: companies must explain in each annual report how they have responded to the results of the previous year's shareholder vote. This requirement transforms say-on-pay from a discrete annual event into a continuing governance dialogue, imposing on boards a documented obligation to engage with and respond to shareholder concerns rather than treating the vote as a box to be ticked (Directive (EU) 2017/828, Art. 9b).

4.2.2 Italian implementation: Legislative decree 49/2019 and Consob

Italy transposed SRD II through Legislative Decree No. 49 of 10 May 2019, which amended Article 123-ter of the Consolidated Law on Finance (Testo Unico della Finanza, TUF). The Italian framework adopts the EU two-vote model while adding significant prescriptive detail. Section I of the annual remuneration report, containing the forward-looking remuneration policy, is subject to a binding vote; Section II, reporting on the implementation of the policy in the preceding year, is subject to an advisory vote. CONSOB reinforces these statutory requirements through Article 84-quater of its Regulation No. 11971/1999 (the Issuers' Regulation), which specifies the content and format of the remuneration report in considerable detail and requires the use of standardised disclosure models to facilitate comparability across companies and markets (Legislative Decree No. 49/2019; TUF, Art. 123-ter; CONSOB Regulation No. 11971/1999, Art. 84-quater).

The Italian Corporate Governance Code (2020 edition), issued by the Corporate Governance Committee on a comply-or-explain basis, supplements the statutory framework through soft-law recommendations. The Code recommends that the remuneration committee be composed exclusively of non-executive directors, the majority of whom should be independent. It also provides that remuneration policies must clearly identify the link between pay and performance, specify the metrics used for assessment, and give shareholders sufficient information to evaluate the rationale and design of variable elements (Italian Corporate Governance Code, 2020, Principle 15; Recommendation 38). In practice, however, CONSOB's supervisory reports have documented a distinct gap in implementation: while large-cap Italian companies strictly comply with these structural requirements, a significant proportion of disclosures—particularly among smaller listed issuers—rely on boilerplate language that reproduces the regulatory template without providing company-specific analytical content (CONSOB, 2022).

4.2.3 U.S. SEC Requirements: Proxy statement disclosures and Pay Versus Performance

In the United States, the regulatory framework for remuneration disclosure is primarily established through the Securities Exchange Act of 1934 and the SEC rules issued under it. The principal disclosure instrument is the proxy statement (Schedule 14A). Item 402 of Regulation S-K requires a Compensation Discussion and Analysis (CD&A) providing a narrative explanation of the company's compensation philosophy and the factors considered in pay decisions, accompanied by a Summary Compensation Table and supplementary tables covering option grants, equity award vesting, pension benefits, and potential payments on termination (SEC Regulation S-K, Item 402).

The most significant recent development is the SEC's Pay Versus Performance rule, finalised in 2022, which requires companies to provide a tabular disclosure comparing compensation actually paid to named executive officers with specified financial performance measures, including total shareholder return, net income, and a company-selected financial measure. This rule reflects an explicit regulatory acknowledgment that existing disclosures did not provide shareholders with a sufficiently direct comparison between executive pay and company performance (SEC Release No. 34-95607, 2022). The U.S. model is extensive but more market-oriented than the EU approach, relying on detailed narrative disclosure, advisory voting, proxy advisor analysis, and reputational discipline. The result is a system that potentially allows richer company-specific explanation but may also produce remuneration reports that are strategically framed and difficult for most shareholders to read.

Table 4.2 — Comparative Regulatory Standards for Remuneration Disclosure

Jurisdiction	Main Instrument	Core Disclosure Content	Vote Type	Governance Logic
European Union	Directive (EU) 2017/828, Arts. 9a–9b	Remuneration policy; annual report; individual pay; performance criteria; pay-performance comparison; employee pay comparison; shareholder feedback loop.	Binding (policy); advisory (report)	Long-term shareholder engagement and harmonised transparency across Member States.
Italy	Legislative Decree 49/2019; TUF Art. 123-ter; CONSOB Reg. No. 11971/1999, Art. 84-quater; Italian CG Code 2020	Two-section report: Section I (policy) binding; Section II (implementation) advisory. Standardised CONSOB tables.	Binding (Section I); advisory (Section II)	EU harmonisation combined with national standardisation and comply-or-explain governance recommendations.
United States	SEC Regulation S-K Item 402; Dodd-Frank Act; SEC Release No. 34-95607 (2022)	Proxy tables; CD&A narrative; director compensation; CEO pay ratio; Pay Versus Performance tabular disclosure; advisory say-on-pay vote.	Advisory, non-binding	Relies on detailed disclosure, market scrutiny, proxy advisory firms, and reputational discipline rather than binding approval.

Source: Author's compilation from Directive (EU) 2017/828; Legislative Decree 49/2019; CONSOB Regulation No. 11971/1999; SEC Regulation S-K Item 402; SEC Release No. 34-95607 (2022).

4.3 The gap between formal and substantive transparency

The regulatory frameworks described in Section 4.2 represent a substantial improvement over earlier disclosure standards. Yet a significant body of empirical evidence and regulatory observation indicates that technical compliance with these requirements frequently fails to produce the quality of transparency that effective shareholder oversight requires. The gap between formal and substantive transparency takes several analytically distinct forms, each of which affects the quality of say-on-pay in different ways.

4.3.1 Boilerplate disclosure and transparency theater

The most pervasive manifestation of this gap is the use of standardised, formulaic language to satisfy regulatory requirements without communicating meaningful information. When a remuneration report states that variable pay is subject to "performance conditions linked to the long-term success of the company" without specifying what those conditions are, how they will be measured, what would constitute failure to meet them, or how targets were calibrated relative to internal forecasts, the formal requirement is satisfied while its substance is entirely hollowed out. Regulatory bodies have documented this pattern consistently: CONSOB's annual corporate governance reports have repeatedly noted that a substantial proportion of Italian listed companies provide remuneration disclosures that comply with the letter of the applicable requirements while falling short of the informational standard needed for shareholders to form a genuinely informed view (CONSOB, 2022). A comparable pattern was documented in UK companies by Alissa (2015), whose study of boards' responses to say-on-pay dissent found that many companies provided procedural acknowledgements of shareholder concerns without making substantive changes to the underlying pay practices that had generated opposition.

A related but analytically distinct phenomenon is what the literature describes as strategic opacity in disclosure: the deliberate design of remuneration reports to create the appearance of transparency while limiting genuine informational clarity. Unlike simple boilerplate, which may reflect institutional inertia, this involves active management of the informational environment to shape shareholder perceptions in ways favourable to board preferences. Bebchuk and Fried (2004) term this dynamic 'camouflage', the use of complex, diffuse, or selective disclosure to reduce the reputational and political costs of pay arrangements that would otherwise attract shareholder resistance. The selective emphasis on favourable metrics, the framing of pay against carefully selected peer groups, and the extensive narrative description of governance processes that create an impression of rigour without substantive support are all manifestations of this dynamic.

The Tesla compensation litigation provides a particularly useful illustration, although it must be treated with care because the case later developed on appeal. In the 2024 Court of Chancery decision in Tornetta v. Musk, the court criticised the process and proxy disclosures surrounding Tesla's 2018 CEO compensation plan, including the presentation of board independence and shareholder approval. Although the Delaware Supreme Court later reversed the rescission remedy and reinstated the 2018 compensation package, the litigation remains relevant for the purposes of this chapter because it shows how even extensive proxy disclosure can become contested when shareholders are asked to evaluate a highly complex equity-based remuneration plan under conditions of disputed independence and strategic framing. The case therefore illustrates the difference between the formal availability of information and the more demanding standard of substantive transparency (Tornetta v. Musk, Del. Ch. 2024; In re Tesla, Inc. Derivative Litigation, Del. 2025).

4.3.2 Information overload: Volume without accessibility

A structurally distinct failure mode arises not from insufficient disclosure but from excessive volume without corresponding accessibility. In the United States, proxy statements from major corporations regularly exceed one hundred pages, with CD&A sections in large-cap companies frequently extending across thirty pages or more of dense narrative, supplementary tables, and technical footnotes (Equilar, 2023; The Conference Board, 2024). In Europe, the requirements of SRD II have significantly increased the length and complexity of remuneration reports. While greater disclosure is generally preferable to less, volume without accessibility does not constitute substantive transparency. Research on investor behaviour consistently demonstrates that the capacity of most shareholders (including many institutional investors) to process extensive, technically complex disclosures is limited, and that cognitive overload increases reliance on simplified decision cues (Gabaix & Laibson, 2006; Blankespoor, deHaan & Marinovic, 2020).

The practical consequence is that increasing required disclosure volume, without also ensuring that the most material information is clearly and accessibly communicated, can worsen substantive transparency by burying key facts in extensive documentation. Companies can satisfy formal requirements while making it harder, not easier, for shareholders to identify the information that matters most for their governance decision. As Chapter 3 established, this scarcity of attention reinforces reliance on proxy advisory firms and standardised voting recommendations, transferring the interpretive role from shareholders to intermediaries whose analytical models may not capture firm-specific circumstances.

4.3.3 Strategic disclosure: Selective emphasis and benchmarking manipulation

Companies retain significant discretion over how required information is presented, organised, and framed, and the exercise of that discretion is not always neutral. A particularly revealing example is peer-group selection in compensation benchmarking. Companies typically disclose that pay levels were set by reference to a comparator group of companies, but the selection of that peer group involves substantial discretion. Research by Bizjak, Lemmon and Naveen (2008) documented that companies systematically select peer groups composed of companies that are larger, more profitable, or drawn from higher-paying industries than themselves, thereby generating benchmarks against which their own pay packages appear to be at or below the median. Faulkender and Yang (2010) confirmed this pattern, finding that the peer companies most commonly selected for benchmarking are those that earn higher compensation, independent of other characteristics.

Harvey, Maclean and Price (2020) provide empirical evidence that executive remuneration disclosures, rather than moderating pay levels, have contributed to their escalation through precisely this benchmarking mechanism. Their study finds that the widespread adoption of transparency requirements has, contrary to their stated governance objectives, created a ratchet effect in which companies use disclosed peer data to justify upward adjustments, each round of disclosure informing the next cycle of benchmarking and escalation. This finding does not argue against transparency as a governance principle, but it underscores the limitation of formal disclosure requirements in addressing strategic information management. Disclosure of pay is not the same as justification of pay.

The empirical literature connects disclosure quality directly to the quality of shareholder voting. Research on SEC comment letters concerning executive compensation disclosure indicates that when companies are required to improve deficient compensation disclosures, subsequent say-on-pay support increases significantly (Li & Zhang, 2022). This finding does not imply that better disclosure always leads to higher approval rates; it suggests that disclosure quality affects the informational efficiency of voting decisions. When information is clearer, shareholders are better able to distinguish between defensible and problematic pay arrangements and to signal their assessment accordingly.

Table 4.3 — Causes of the Gap Between Formal and Substantive Transparency

Problem	**How It Appears in Remuneration Reports**	**Effect on Say-on-Pay**
Boilerplate disclosure	Generic descriptions of performance criteria that do not explain how targets were set or how challenging they are in context.	Satisfies the letter of regulatory requirements while leaving shareholders unable to assess the substance of the pay design.
Transparency theater	Selective emphasis on favourable metrics; minimisation of failed targets; presentation of independence without substantive support.	Legitimises pay decisions without subjecting them to genuine evaluation; may mislead shareholders about process integrity.
Information overload	Long reports, numerous tables, scattered cross-references, and complex incentive-plan descriptions dispersed across documents.	Raises information-processing costs and encourages mechanical reliance on proxy advisory firms and their standardised models.
Strategic benchmarking	Peer groups systematically include larger, more profitable, or higher-paying companies to justify elevated pay levels.	Creates an inflationary ratchet where successive votes validate structurally engineered compensation expansion.
Process opacity	Limited explanation of committee deliberation, advisor independence, management influence, or response to prior shareholder dissent.	Prevents shareholders from assessing whether the board acted independently and on an adequately informed basis.

Source: Bebchuk & Fried (2004); Bizjak, Lemmon & Naveen (2008); Faulkender & Yang (2010); Li & Zhang (2022); CONSOB Annual Reports (2019–2022); Abdelfattah et al. (2021).

4.4 The Non-GAAP Problem

4.4.1 Stock-Based compensation as an economic cost

Among the transparency challenges in directors' and executive remuneration, the systematic exclusion of stock-based compensation (SBC) from adjusted earnings metrics warrants particular attention. This practice constitutes one of the most significant and empirically documented information failures in contemporary remuneration governance — one that directly undermines shareholders' ability to assess the true economic cost of compensation arrangements they are asked to approve.

Stock-based compensation is a genuine economic cost to companies and their shareholders. When directors or executives receive shares, RSUs, or options, they acquire claims on equity that existing shareholders previously held exclusively, representing a transfer of economic value that is real regardless of whether any cash changes hands. Accounting standards on both sides of the Atlantic recognise this by requiring the cost to be expensed at grant-date fair value: FASB ASC 718 governs U.S. practice and IFRS 2 its international equivalent. As Mauboussin and Callahan (2023) observe, stock-based compensation can be analysed either as an operating expense or as an employee claim on equity, but treating it as neither, such as by adding it back to show higher adjusted earnings while ignoring the resulting dilution, creates a transparency gap that shareholders cannot easily detect from published materials alone. Despite this unambiguous accounting treatment, the vast majority of large listed companies in the United States exclude stock-based compensation from their non-GAAP or adjusted performance metrics. These adjusted metrics are precisely the figures most prominently presented to shareholders and most commonly used by compensation committees to assess whether variable pay targets have been met. The scale of this exclusion is material: the aggregate SBC expense in the Russell 3000 index grew from approximately $25 billion in 2006 to over $200 billion by 2020 (Mauboussin & Callahan, 2023; Equilar, 2021). The significance of this growth for governance is not merely quantitative. As the cost excluded from adjusted earnings has expanded eightfold, the gap between what shareholders are shown and what they bear as owners has widened proportionally — making the non-GAAP problem not a marginal reporting quirk but a structural feature of contemporary remuneration governance.

4.4.2 The justifications and their limitations

Companies and their advisors typically offer several justifications for excluding SBC from non-GAAP metrics. The most common is that stock-based compensation is a non-cash expense and should therefore be excluded from measures of cash-generating ability. A second argument is that the fair value charge under GAAP reflects market-based estimates that may not correspond to the compensation ultimately received, since options may expire out of the money and RSUs may be forfeited. These justifications have merit in specific and limited contexts, but none of them supports the systematic exclusion of SBC from the performance metrics used to determine whether variable pay conditions have been achieved.

The "non-cash" argument conflates the accounting treatment of an expense with its economic significance: dilution of existing shareholders' ownership is a real economic transfer, regardless of whether it involves a cash outflow. The non-recurring argument is transparently inapplicable to companies that grant stock-based compensation annually as a routine and expected component of their remuneration policy. Black, Christensen, Ciesielski and Whipple (2018) provide compelling evidence that the exclusion of SBC from non-GAAP metrics is associated with higher compensation levels and lower pay-for-performance sensitivity. Their analysis shows that when SBC is excluded from the performance metrics used to evaluate executive pay, executives receive full variable compensation even in years when the company's reported financial performance, measured on an economically comprehensive basis, would have generated materially lower payouts (Black et al., 2018).

Dechow, Loh and Wang (2025) construct a comprehensive rating system to evaluate the quality of individual non-GAAP exclusions, classifying adjustments based on their persistence and serial correlation. Their findings confirm that exclusions of highly persistent, recurring operational expenses. Specifically, including stock-based compensation — constitute low-quality non-GAAP adjustments that create a structurally inflated baseline of corporate performance. Mauboussin and Callahan (2023) further emphasise that SBC can be analysed either as an expense or as an employee claim on equity, and that treating it as neither by adding it back to show higher adjusted earnings while not accounting for the resulting dilution creates a transparency gap that shareholders cannot easily detect from the face of published materials.

4.4.3 Non-GAAP adjustments and executive overcompensation

The governance-significant dimension concerns the direct link between non-GAAP adjustments and the level of executive pay. Guest, Kothari and Pozen (2019), analysing S&P 500 companies from 2010 to 2015, find that non-GAAP earnings are on average 23% higher than GAAP earnings. Using a standard academic compensation model, they find that CEOs of firms in the top quartile of non-GAAP adjustments receive an average of $1.9 million more than their predicted compensation, which represents an approximate 16% increase. This result holds true even after controlling for board independence, the presence of compensation consultants, and institutional ownership levels. This persistence suggests that the effect runs directly through the behavior of compensation committees rather than through other corporate governance factors.

The mechanism identified is straightforward. Compensation committees are required to disclose the criteria they use to set pay, and proxy statement analysis confirms that non-GAAP earnings figures are among the most widely used performance metrics in compensation decisions. When management reports non-GAAP earnings that substantially exceed GAAP earnings and presents those figures as the appropriate measure of core performance, compensation committees treat them as the relevant benchmarks. The result is that executives are rewarded for achieving non-GAAP targets that were partly reached by excluding charges representing real economic costs borne by shareholders. When shareholders vote on a remuneration report that presents this logic, they may approve performance-based pay without understanding that the performance metrics themselves remove a significant cost category (Black et al., 2018).

4.4.4 Implications for Say-on-Pay: Shareholder approval without full understanding

The implications for the say-on-pay mechanism are direct. When the performance metrics used to determine whether variable pay conditions have been met systematically exclude stock-based compensation, shareholders who vote on a remuneration policy based on those metrics do so without a complete understanding of the true economic cost of the package they are approving. They are, in effect, consenting to compensation arrangements whose full cost has been structurally obscured from the informational environment in which their vote takes place.

This problem is compounded by the interaction between non-GAAP disclosure practices and the structure of proxy materials. Many remuneration reports present adjusted earnings figures as the primary measure of company performance and explain variable pay outcomes by reference to achievement against adjusted targets. When shareholders read that variable pay was earned because the company "exceeded its adjusted earnings per share target," they receive a performance narrative that excludes the very expense whose award creates the dilution they bear as owners. Leung and Veenman (2018) document that investors systematically underestimate the economic cost of equity-based compensation, consistent with the hypothesis that non-GAAP practices create a persistent informational distortion in the market for corporate control over compensation.

Brosnan, Duncan, Hasso and Hollindale (2023) provide experimental evidence that when non-GAAP earnings are used to determine executive remuneration, participants assign a higher evaluation of financial performance and invest more capital. The mechanism appears to be attributional: investors may interpret the internal use of non-GAAP metrics for compensation purposes as a credible signal of management's assessment of underlying performance. This demonstrates both the decision-relevance of disclosure about non-GAAP use and the governance risk it creates: shareholders may approve packages they would otherwise question, because the adjusted metrics misrepresent the alignment between pay and economic value creation.

4.4.5 Regulatory responses and their limits

Regulatory bodies on both sides of the Atlantic have recognised the non-GAAP problem, but their responses have been partial and do not address its core governance dimension. In the United States, Regulation G and Item 10(e) of Regulation S-K require companies to present the most directly comparable GAAP measure alongside any non-GAAP figure and to provide a quantitative reconciliation. In 2016, SEC guidance clarified that non-GAAP measures may not be presented with greater prominence than GAAP measures (SEC, 2016). Despite these interventions, the use of non-GAAP metrics in executive compensation decision-making remains largely unregulated. The SEC's 2022 Pay Versus Performance rule improves contextual disclosure but does not prohibit the use of non-GAAP benchmarks within compensation committee deliberations.

Guest, Kothari and Pozen (2019) recommend that compensation committee reports prominently disclose the difference between non-GAAP criteria used in compensation decisions and the corresponding GAAP figures, with a detailed justification for any adjustments. This reform has not been implemented. The European framework addresses the issue more indirectly: SRD II requires explanation of the performance criteria used for variable remuneration but does not explicitly require disclosure of whether those criteria are adjusted, or how adjustments affect payout outcomes. The gap between regulatory aspiration and disclosure practice in this area remains one of the most significant outstanding governance challenges in remuneration transparency.

Table 4.4 Non-GAAP Exclusion of Stock-Based Compensation: Governance Implications for Say-on-Pay

Issue	Transparency Risk	Governance Consequence	Disclosure Response Needed
Exclusion of SBC from adjusted earnings	Performance appears stronger because a major compensation cost is removed from reported results.	Shareholders may approve pay based on overstated economic performance relative to actual value creation.	Show GAAP measure, non-GAAP measure, reconciliation, and the effect of SBC exclusion on the relevant metric.
Equity dilution	New shares or options reduce existing shareholders' proportional claim on the company.	The true cost of remuneration is systematically underestimated by shareholders casting the say-on-pay vote.	Disclose potential maximum dilution, vesting scenarios, and share reserve impact under different performance scenarios.
Adjusted metric used for payout	Variable pay depends on a measure that excludes the cost of equity compensation itself.	The compensation system rewards performance after removing the cost of remuneration from the measure used to assess it.	Explain why the adjusted metric is appropriate and quantify payout sensitivity to the SBC exclusion.
Non-GAAP as credible signal	Investors may interpret use of adjusted metrics for compensation as a management endorsement of that figure.	Shareholders systematically overestimate performance alignment and approve packages they might otherwise question.	Provide payout sensitivity analyses showing how outcomes would differ under GAAP-based performance measures.

Source: Author's compilation from Black et al. (2018); Guest, Kothari & Pozen (2019); Leung & Veenman (2018); Mauboussin & Callahan (2023); Brosnan et al. (2023); Dechow, Loh & Wang (2025)

4.5 The limits of transparency alone

4.5.1 The complexity threshold

The analysis developed in the preceding sections establishes that formal disclosure requirements, as currently structured, do not reliably produce the quality of substantive transparency that effective say-on-pay oversight requires. Boilerplate language, strategic information management, information overload, and the non-GAAP problem collectively create an informational environment in which shareholders are formally notified but not genuinely equipped to exercise meaningful judgment. Even if these deficiencies were fully corrected, and disclosure became genuinely clear, comprehensive, and accessible, a deeper structural question would remain: whether transparency alone can be sufficient for the most technically complex remuneration arrangements (Fisch, Palia & Solomon, 2017).

There is a class of remuneration arrangements whose inherent complexity is such that even a well-informed, diligent shareholder without specialist expertise cannot fully assess their fairness and reasonableness from disclosure alone. These complex structures include large-scale equity compensation plans with multi-year performance vesting conditions tied to technical financial metrics. They also involve option packages whose final value depends heavily on assumptions about share price volatility, expected exercise behavior, and long-term company strategy. Furthermore, many modern remuneration structures combine fixed pay, annual bonuses, long-term incentive plans, pension provisions, and severance arrangements in a way that prevents their aggregate value from appearing in any single summary figure. The Tesla CEO compensation plan serves as an extreme but illustrative example of this issue. This arrangement consisted of a stock option grant potentially worth tens of billions of dollars, structured around twelve distinct operational and financial milestones. Assessing a plan of this magnitude requires a deep economic analysis to determine whether it represents fair compensation for the services provided, whether the performance conditions are genuinely demanding, and whether the dilutive cost to shareholders is proportionate. This type of evaluation requires financial modeling capabilities and specialized industry expertise that are well beyond the reach of most ordinary shareholders and many institutional investors. Consequently, the mere disclosure of a plan's terms, no matter how complete and clear it may be, does not by itself enable the evaluative judgment that genuine governance participation requires.

4.5.2 Shareholders need not only information but also interpretation

This observation points to a structural limitation of transparency as a governance mechanism: it addresses the informational asymmetry problem by increasing the quantity and quality of information available to shareholders, but it does not address what this thesis terms the interpretive asymmetry. This concept refers to the gap between the information disclosed and shareholders' capacity to derive meaningful conclusions from it. The distinction matters because regulatory frameworks are designed to correct the former, not the latter; increasing disclosure volume does not automatically increase interpretive capacity, particularly for the technically complex equity structures described in Section 4.5.1. In complex remuneration arrangements, this interpretive gap can be as governance-significant as the informational one.

The parallel with financial audit is instructive. Audit is a well-established governance mechanism that addresses precisely this limitation: shareholders lack the expertise to assess the accuracy and completeness of financial statements, so the accounts are subjected to independent expert examination, and the auditor's opinion is provided to shareholders as a basis for their assessment. The auditor does not merely increase the quantity of information available; the auditor interprets and evaluates that information on shareholders' behalf, providing an expert judgment that can be used without performing the underlying analysis. An analogous mechanism for complex remuneration arrangements is the subject of Chapter 5.

The limits of transparency are also visible in the role of proxy advisory firms. Proxy advisors reduce information costs by translating complex disclosures into voting recommendations. However, as Chapter 3 established, this creates a dependence on standardised models: boards may design remuneration packages to satisfy proxy advisor criteria rather than to serve the company's specific strategy, and shareholders may follow recommendations without independently evaluating underlying assumptions. Proxy advice partially fills the interpretation gap, but it does not provide a company-specific, independent assessment of financial fairness. The critical difference is that a proxy advisor applies a model; a properly designed fairness opinion applies an analysis. It is the latter that is examined in Chapter 5 (Iliev & Lowry, 2015; Malenko & Shen, 2016).

4.5.3 The credibility problem

A further limitation concerns credibility. Remuneration disclosure is produced by the company whose compensation decisions are being evaluated. Even if the report is detailed and accessible, shareholders may reasonably question whether the board has selected favourable assumptions, framed peer comparisons strategically, or minimised weaknesses in the policy design. This credibility concern is especially acute where the board or remuneration committee has structural incentives to defend its own decisions. In such cases, the issue is not lack of information but lack of independent validation. Shareholders need not only data but also an external assessment of whether the board's analysis is objectively reasonable.

This credibility problem has a behavioral dimension as well. Even shareholders who are motivated to evaluate remuneration proposals face a cognitive asymmetry: they must assess a report written by insiders to justify insider decisions, using metrics selected by the same insiders. Independently of whether any specific information is withheld or distorted, this structural feature of remuneration reporting creates a systematic bias toward over-acceptance (Wiseman & Gomez-Mejia, 1998). A properly designed fairness opinion, produced by an independent expert with a disclosed methodology and identified conflicts, can directly address this credibility gap. But, as Chapter 5 will show, this potential is conditional on the conditions under which the opinion is produced and disclosed. An opinion that merely endorses a predetermined board decision, without genuine independence or methodological transparency, may reinforce the opacity it is meant to remedy (Davidoff, 2006; Cain & Davidoff, 2012).

4.5.4 A shareholder-oriented test for remuneration transparency

The analysis developed in this chapter can be translated into a practical evaluative framework — one that derives directly from the regulatory standards examined in Section 4.2 and the specific deficiencies documented in Sections 4.3 and 4.4. A shareholder-oriented remuneration report should enable the reader to reconstruct five elements: the amount of pay, the structure of pay, the performance justification for pay, the process through which pay was approved, and the economic cost borne by shareholders. These five elements are not a novel checklist; they are the informational minimum that the OECD Principles (2023), SRD II, and the SEC's disclosure regime collectively require. As the preceding analysis shows, existing practice frequently fails to provide these elements in a substantively meaningful form. If any of these elements is missing or insufficiently explained, the report may satisfy formal regulatory requirements while remaining substantively deficient.

The first element is amount: shareholders must know not only total remuneration but its composition, since different components carry different governance meanings. For instance, fixed cash reflects compensation for board service, annual bonuses reveal short-term performance incentives, and equity awards create alignment but also dilution. The second element is structure: shareholders must understand vesting periods, holding requirements, performance thresholds, clawback and malus rules, and the relationship between fixed and variable components. The third element is the performance justification: if pay is described as performance-related, the company must explain the metrics used, their rationale, weighting, target range, and level of challenge. The fourth is process: because remuneration decisions are vulnerable to conflicts of interest, shareholders need information about who designed the policy, who advised the committee, whether conflicts existed, and how prior dissent was addressed. The fifth is economic cost: shareholders should understand the potential dilution from equity awards, expected value under different scenarios, and the accounting treatment of stock-based compensation in performance metrics. This framework is deliberately functional — it focuses not on checklist completion but on whether the disclosure enables shareholders to make the governance decision the law assigns to them.

Table 4.5 Why Transparency Alone May Be Insufficient: Implications for Fairness Opinions

Limit of Disclosure	**Nature of the Constraint**	**Implication for Independent Assessment**
Information without interpretation	Disclosure can describe a pay plan’s terms without assessing whether those terms are financially fair or proportionate.	An independent expert opinion provides an evaluative judgment based on disclosed benchmarks and transparent methodology.
Complex equity structures	Options, RSUs, performance shares, dilution effects, and multi-year vesting scenarios require technical expertise most shareholders do not possess.	Expert assessment translates structural complexity into shareholder-relevant conclusions without requiring specialist knowledge.
Credibility concerns	Remuneration reports are prepared under board authority and may reflect strategic framing favourable to incumbent directors.	Independence and disclosed conflicts of the opinion provider can increase the credibility of the assessment, if properly designed and disclosed.
Non-GAAP adjustments	Reconciliations may exist but do not answer whether adjusted measures are appropriate for use in compensation decisions.	A fairness review can test whether adjustments are recurring, economically symmetrical, and genuinely aligned with value creation.
Peer-group discretion	Benchmarking can be used to justify upward pay escalation through selective comparator selection that appears objective but is not.	An external review can independently assess the appropriateness of peer selection and the company’s positioning within it.

Source: Author’s compilation from Cain & Davidoff (2012); Davidoff (2006); Bizjak, Lemmon & Naveen (2008); Ferrarini & Ungureanu (2014)

4.6 Transparency as a necessary but insufficient condition

This chapter has argued that transparency is the enabling condition for effective say-on-pay. The formal right to vote on remuneration does not, by itself, resolve the agency problem in director pay. Shareholders can exercise that right meaningfully only when they receive information that is complete, understandable, comparable, and connected to the decision before them. Transparency is therefore not a secondary feature of remuneration governance; it is the infrastructure that allows shareholder participation to acquire substantive meaning.

Transparency operates in two distinct but connected ways. As a disclosure requirement, it obliges companies to publish remuneration policies, annual reports, compensation tables, performance criteria, and related governance information. As an active governance mechanism, it shapes board behaviour by exposing remuneration decisions to shareholder, market, and regulatory scrutiny, and thereby creates incentives for genuinely defensible pay practices rather than merely compliant ones. Both dimensions are recognised in the OECD Principles, the EU Shareholder Rights Directive II, Italian law and CONSOB regulation, and the U.S. SEC disclosure framework.

The comparative regulatory analysis showed that the EU and Italian models are the most prescriptive, combining binding policy approval with standardised report templates and a formal shareholder feedback loop. The U.S. model relies more heavily on narrative disclosure, market scrutiny, and reputational discipline. These differences matter for how transparency functions in practice, and they provide important context for the comparative case study in Chapter 6. However, the core limitation is shared: none of these regulatory frameworks prevents the gap between formal and substantive transparency from opening.

The analysis of specific deficiencies, including boilerplate language, transparency theater, information overload, strategic benchmarking, and the non-GAAP problem, confirmed that technically compliant remuneration reports frequently fail to provide shareholders with the quality of information they need to form a genuine governance view. The non-GAAP case is particularly concrete: when stock-based compensation is excluded from adjusted earnings metrics used to justify and determine variable pay, shareholders may approve compensation arrangements without understanding their true economic cost or the circularity embedded in the performance assessment. This is not a marginal or occasional failure; it is a systemic feature of contemporary remuneration reporting in the major jurisdictions examined.

The chapter therefore arrived at a conclusion that is both theoretically grounded and practically relevant: transparency is necessary but not always sufficient. In relatively straightforward remuneration structures, improved disclosure may allow shareholders to evaluate pay without further analytical support. In complex equity-based plans, which represent an increasing share of director and executive compensation in major listed companies, shareholders need not only disclosure but also interpretation, comparison, and independent validation. This is the analytical bridge to Chapter 5, which examines whether fairness opinions can serve as genuine instruments of substantive transparency in remuneration governance, or whether they tend to function as legal protection for directors and boards.

5. Fairness Opinions and Legal Analysis

Chapter 4 closed by identifying a limit that disclosure regulation, however well designed, cannot overcome on its own. Once a remuneration arrangement reaches a certain level of structural complexity, multi-year vesting schedules, performance conditions tied to several metrics, dilution effects that depend on share-price scenarios, an ordinarily diligent shareholder may possess every relevant fact and still be unable to judge with confidence whether the arrangement is fair. Table 4.5 described this as a gap between information and interpretation: disclosure can describe a plan's terms without assessing whether those terms are proportionate, and no amount of additional data fully closes that gap by itself. This chapter takes up the instrument that corporate practice has developed specifically to address it, the fairness opinion, and asks what work that instrument actually performs once it exists.

The fairness opinion is not a new invention. It has been a fixture of merger and acquisition practice for four decades, and its legal significance in that setting is well established (Davidoff, 2006). Its extension to director and executive remuneration is far more recent and far less settled, both in market practice and in the academic literature, which has continued to treat compensation as a secondary application of doctrine built for a different purpose. This asymmetry is itself revealing: a governance concern structurally identical to the one mergers raise, an interested party benefiting from a decision that an outside expert is asked to evaluate, has attracted comparatively little sustained analysis when the benefiting party is a board setting its own pay rather than a company negotiating a sale. Closing part of that gap is the task this chapter sets for itself.

Two different readings of the fairness opinion are therefore possible. The first treats it as a useful interpretive device: an expert assessment that helps shareholders understand whether a complex remuneration arrangement is financially defensible. The second is more sceptical. It sees the opinion mainly as part of the board's defensive record, showing that directors consulted an outside advisor even if the analysis behind the opinion was limited. This chapter does not assume in advance that one reading is always correct. Instead, it argues that the practical value of a fairness opinion depends on a small number of observable conditions: who appoints and pays the advisor, how much of the analysis is disclosed, and whether the opinion is designed primarily to inform shareholders or to protect the board in later litigation.

Section 5.1 defines the fairness opinion and distinguishes it from instruments with which it is sometimes confused. Section 5.2 traces the instrument to its doctrinal origin in Smith v. Van Gorkom, since its present form cannot be understood apart from the liability crisis that produced it. Section 5.3 examines the business judgment rule and the entire fairness standard that displaces it once self-dealing is at issue, a distinction with direct bearing on remuneration because directors who set their own pay are rarely disinterested in the ordinary legal sense. Section 5.4 turns to the remuneration setting directly and asks what a genuine compensation fairness opinion would need to examine. Sections 5.5 and 5.6 then build the chapter's analytical core, presenting in turn the strongest case that fairness opinions function as instruments of substantive transparency and the strongest case that they collapse into a safe harbor for the boards that commission them. Section 5.7 closes by proposing a practical test for distinguishing the two outcomes and by returning the analysis to the three-stage logic that organizes this thesis as a whole.

5.1 What Is a Fairness Opinion?

A fairness opinion is the written conclusion of an independent financial advisor, stating that the consideration offered, or the terms proposed, in a specified corporate decision are fair, from a financial point of view, to a designated party. The qualifying phrase is doing real work rather than functioning as boilerplate. An advisor opining on financial fairness is not pronouncing on whether the decision was strategically wise, whether a better alternative existed, or whether the approval process satisfied directors' fiduciary duties; those are separate questions reserved for the board itself and, ultimately, for a reviewing court. Boards and the lawyers who advise them police this boundary deliberately. An advisor who strayed into legal conclusions would be issuing a legal opinion without the professional standing to do so, while a board that treated a favourable financial conclusion as resolving the broader question of fairness would be mistaking a narrow assurance for a comprehensive one (Davidoff, 2006).

Two types of provider have historically dominated the market. Investment banks supply the large majority of opinions issued in connection with mergers and comparable corporate transactions, drawing on an existing advisory relationship with the company and on valuation expertise developed across many similar deals. Specialised compensation consultants occupy an adjacent space that is more directly relevant to this thesis, since their ordinary work already concerns pay structures rather than transaction prices, even though their engagements rarely take the conclusory, fairness-opinion form this chapter is concerned with (Cain & Davidoff, 2012). Both categories of advisor share a structural feature worth noting at the outset: the party whose proposal is being evaluated is also the party that selects and pays the evaluator. That engagement structure does not by itself disqualify the resulting opinion from having genuine analytical value, but it is the seed of the independence concerns examined in detail later in this chapter.

The substantive analysis behind a fairness opinion typically follows a recognisable methodology, even where the specific techniques vary with the transaction. Discounted cash-flow analysis estimates the present value of projected future cash flows. Comparable-companies and comparable-transactions analysis infers value from the trading multiples of similar firms or the prices paid in similar deals. Where relevant, a liquidation or break-up analysis supplies a further reference point. None of these methods produces a single defensible number; each generates a range, and there is no settled convention for where within that range a price or arrangement must fall to count as fair. Fairness is treated as a zone rather than a point, which grants the advisor considerable interpretive latitude before any conclusion is even reached (Rosenbaum & Pearl, 2022). The detailed analysis supporting the conclusion is usually disclosed not in the opinion letter itself, which tends to be a short and conclusory document, but in the accompanying proxy statement, where the methodology and the resulting valuation range are described at greater length (Rohrbacher & Zeberkiewicz, 2008). The Delaware Court of Chancery has emphasised that the real evidentiary value of an advisor's work lies less in the bare fairness conclusion than in the underlying analysis that supports it (In re Pure Resources, Inc. Shareholders Litigation, Del. Ch. 2002). It follows that most shareholders who encounter a fairness opinion at all see only the conclusory paragraph; the analysis behind it, where it exists in adequate detail, is what gives that paragraph any independent weight.

A fairness opinion is formally addressed to the board, or to the committee that commissions it, rather than to the shareholders who will eventually vote on the arrangement it concerns. Financial advisors typically state this expressly, disclaiming any intention that shareholders rely on the opinion directly (Davidoff, 2006). Shareholders encounter it, if at all, only indirectly, through a summary in proxy materials prepared by the company rather than by the advisor. This addressee structure does not by itself determine whether a given opinion functions as a transparency tool or a safe harbor, a question examined at length in Sections 5.5 and 5.6, but it establishes from the moment the instrument is created whose interests it is principally designed to serve.

It is useful, before moving on, to separate three functions a fairness opinion can perform, because the tension this chapter develops turns on which function dominates in a given case. The informational function is the most visible: the opinion supplies an analysis that the board, and ideally shareholders, would otherwise have to reconstruct on their own. The governance function operates earlier and less visibly: the prospect of external review can discipline how a package is designed in the first place, since directors who expect their assumptions to be tested tend to choose more defensible assumptions before any document is produced. The evidentiary function belongs to litigation rather than to ordinary governance: the opinion becomes part of the written record a court will examine if the underlying decision is later challenged. These three functions need not conflict, but they are not automatically aligned either. A document optimised to perform well evidentially, cautious, heavily qualified, narrow in stated scope, is not the same document as one optimised to inform a shareholder vote, and the gap between the two is where much of the remainder of this chapter is located.

Table 5.1 places the fairness opinion alongside three instruments with which it is sometimes confused, two of which, the audit opinion and the legal opinion, were already introduced in Chapter 1, and one of which, the proxy advisory recommendation, was examined at length in Chapter 3.

Table 5.1 — Fairness Opinions Compared with Adjacent Governance and Advisory Instruments

Instrument	Primary Question Addressed	Typical Provider	Main Limitation
Fairness opinion	Are the financial terms of the proposed decision fair, from a stated financial point of view, to the relevant shareholders?	Investment bank, valuation boutique, or compensation consultant.	Scope and rigor vary considerably; conclusions may rest on management-supplied information without independent verification; methodology and conflicts are not always disclosed.
Audit opinion	Do the financial statements present fairly, under the applicable accounting framework, the company's historical financial position and results?	Statutory auditor operating under a licensing regime and codified professional standards.	Retrospective and concerned with reporting reliability; offers no view on whether a prospective decision, such as a remuneration award, is economically reasonable.

Instrument	Primary Question Addressed	Typical Provider	Main Limitation
Legal opinion	Was a given act validly authorised, and does it comply with applicable legal requirements?	External legal counsel bound by professional conduct rules.	Addresses authority and compliance rather than financial substance; says nothing about whether a pay package is proportionate.
Proxy advisory recommendation	Should shareholders vote for or against this proposal under the advisor's general voting policy?	Proxy advisory firm such as ISS or Glass Lewis.	Built on standardised, cross-company criteria rather than a company-specific financial analysis of the terms actually proposed.

Source: Author's compilation based on the functional distinctions developed in Davidoff (2006) and Cain & Davidoff (2012).

Table 5.1 also clarifies why the fairness opinion deserves separate treatment in this thesis. Unlike an audit opinion, it is not limited to historical financial reporting. Unlike a legal opinion, it does not stop at formal validity or compliance. And unlike a proxy advisory recommendation, it should not simply apply a general voting policy to every company in the same way. Its potential value lies in the fact that it can examine the specific remuneration package before shareholders: the company's strategy, the chosen peer group, the performance conditions, and the expected dilution. For a shareholder voting on say-on-pay, this is a more useful question than whether the package merely satisfies a generic policy. The difficulty, however, is that this potential is often stronger in theory than in practice.

5.2 Origins in U.S. Corporate Law: Smith v. Van Gorkom (1985)

Chapter 1 introduced Smith v. Van Gorkom briefly, in motivating this thesis's research questions. The case deserves a closer look here, because its specific reasoning, more than its general reputation, explains why fairness opinions took the institutional form they still have today.

The facts are a familiar episode in American corporate law, but the detail remains instructive. Jerome Van Gorkom, the long-serving chief executive of Trans Union Corporation, privately settled on a sale price of $55 per share and proposed a cash-out merger to Jay Pritzker, a figure representing a substantial premium over the prevailing market price of $38. Van Gorkom derived this number not from any valuation of the company's intrinsic worth but from a feasibility calculation, worked out with the company's controller, about what price a leveraged buyout could support. He shared the figure with almost no one inside Trans Union before opening negotiations, and he brought the proposal to the board for substantive discussion for the first time at the same meeting at which directors were asked to approve it. That meeting lasted under two hours. The directors received no written summary of the merger agreement's terms, commissioned no independent valuation, and obtained no fairness opinion before voting in favour (Smith v. Van Gorkom, Del. 1985).

The Delaware Supreme Court held that the board had breached its duty of care. The decisive failure was not the price itself: a premium over the pre-announcement market price does not, on its own, establish an informed decision, particularly where the board made no effort to test whether that market price reflected the company's underlying value. The court's reasoning turned on process. The directors had not informed themselves of all material information reasonably available before committing the company to an irreversible transaction, and a board cannot rely on its own collective business experience as a substitute for that effort. Because the board's process fell short of what the business judgment rule requires, the presumption that ordinarily shields director decisions from judicial second-guessing was unavailable, and the directors faced personal liability for a transaction a fully informed board might still have approved.

The aftermath extended well beyond Trans Union itself. The litigation eventually settled for $23.5 million, of which $10 million was covered by directors' and officers' insurance; Pritzker personally paid most of the remainder even though he had never been a party to the suit, a detail that registered across American boardrooms with unusual force (Manning, 1985). Two institutional responses followed in close succession. In 1986, the Delaware General Assembly added Section 102(b)(7) to the General Corporation Law, permitting charter provisions that exculpate directors from monetary liability for breaches of the duty of care, though not for breaches of loyalty, bad faith, or transactions yielding an improper personal benefit, a provision that has since become standard in corporate charters. Independently of that statutory change, boards facing major transactions began routinely commissioning fairness opinions, since an outside expert assessment offered contemporaneous, documentary proof of precisely the kind of informed process that Van Gorkom's board had failed to undertake. One contemporary commentator described the surge in demand for these opinions, only half in jest, as something close to an unintended subsidy for the investment banking profession (Manning, 1985). Premiums for director and officer liability coverage rose sharply across the industry in the years that followed, as insurers priced in a level of exposure that had previously seemed remote (Manning, 1985).

The Section 102(b)(7) exception matters for this chapter in a way that is easy to overlook. Because the exculpation it permits covers only the duty of care and not the duty of loyalty, it leaves director compensation in a structurally different position from the ordinary process failure Van Gorkom itself involved. A director who simply failed to inform herself adequately, with no personal stake in the outcome, can today be shielded from personal liability where the company's charter contains the standard exculpatory clause. A director who sets her own pay, by contrast, is exercising self-interested judgment in a matter implicating loyalty rather than care alone, and no charter provision can exculpate that. This is precisely why entire fairness, examined in the next section, rather than a simple negligence inquiry, becomes central in compensation disputes involving self-dealing: the legislature's 1986 response to Van Gorkom narrowed the practical stakes of ordinary process failures considerably, but it left loyalty-based conflicts, above all director compensation and executive compensation shaped by a conflicted or controlled approval process, exactly where Delaware case law had already placed them.

Commentators have long debated whether the rapid post-1985 adoption of fairness opinions solved the problem Van Gorkom identified or simply relocated it. The frequency of opinions increased markedly in the years immediately following the decision, suggesting that boards absorbed the lesson quickly (Davidoff, 2006). Whether the quality of the resulting opinions kept pace with their frequency is a separate question, and Section 5.6 returns to it directly: a board that commissions an opinion because Van Gorkom requires evidence of an informed process has an obvious incentive to obtain that evidence at the lowest available cost, which is not the same incentive as obtaining the most rigorous analysis available. The legacy of Van Gorkom is best understood, in other words, not as a rule about price but as a standard about process. A board's decision earns judicial deference only when it rests on an informed basis, and informing oneself adequately, for a major and irreversible decision, requires something more than the unverified word of an interested executive. The fairness opinion exists in its present form because it answers this specific institutional demand: it is, before it is anything else, evidence directed at courts applying the business judgment rule, not necessarily information directed at the shareholders who must live with the consequences of the decision it supports. Understanding that distinction in full requires a closer look at the rule itself.

5.3 The Business Judgment Rule and Its Limits

5.3.1 The Rule and Its Rationale

The business judgment rule is the default standard of judicial review for decisions made by a corporation's board of directors. Following Aronson v. Lewis, Delaware law presumes that directors have acted with adequate information, good faith, and a belief that their decision serves the corporation's interests, unless that presumption is rebutted, in good faith, and in the honest belief that the action taken serves the company's best interests (Aronson v. Lewis, Del. 1984). Where the presumption holds, courts decline to second-guess the substance of the decision however unwise it may appear with the benefit of hindsight. The rule reflects a deliberate judicial choice not to convert every disappointing business outcome into a basis for liability: directors must remain free to take ordinary commercial risk, and judges working after the fact are poorly positioned to relitigate decisions that depended on contemporaneous, often incomplete, information (Easterbrook & Fischel, 1991).

Three conditions sustain the presumption: good faith, an adequately informed basis, and the absence of a disqualifying conflict of interest. Smith v. Van Gorkom intervened on the second of these, establishing that an informed decision requires the board to have considered all material information reasonably available before committing the company to the choice at hand. The third condition is where director remuneration departs most sharply from an ordinary business decision, because a board approving its own compensation is, by definition, interested in the outcome it approves.

5.3.2 Entire Fairness and the Loss of Deference

Where a director stands on both sides of a transaction, or otherwise derives a personal financial benefit not shared proportionately by shareholders generally, the business judgment presumption is unavailable from the outset. This is the self-dealing structure that Chapter 2 identified as the feature making director remuneration analytically distinct from the ordinary principal-agent problem: the body responsible for monitoring is, in this one respect, also the body being monitored. Courts respond by withdrawing deference rather than extending it, applying instead the entire fairness standard, the most demanding standard of review in Delaware corporate law.

Entire fairness has two components, fair dealing and fair price, and once a conflict triggers the standard, the burden shifts to the defendant directors to prove both (Weinberger v. UOP, Inc., Del. 1983). Fair dealing examines process: when the transaction was initiated, how it was negotiated and structured, and what was disclosed to the board and to shareholders. Fair price examines economic substance, drawing on the valuation methodologies discussed in Section 5.1. The two components are not assessed independently, since a defensible price reached through a compromised process does not on its own satisfy the standard; the court's concern runs as much to the integrity of the decision-making procedure as to its arithmetic outcome. The practical stakes are considerable even before the merits are reached. Because the burden of proof shifts to the defendant directors once entire fairness is triggered, a claim subjected to that standard ordinarily survives a motion to dismiss and proceeds to discovery and, frequently, trial, exposing directors to years of cost and reputational burden regardless of whether the underlying compensation turns out to have been reasonable; Section 5.3.3 traces a representative example of exactly this dynamic. A claim protected by the business judgment presumption, by contrast, is typically dismissed at the pleading stage. Securing that earlier dismissal is valuable to a board in itself, and this is precisely the incentive that gives a fairness opinion much of its practical appeal: it is sought, in no small part, for what it does to a company's litigation posture, a motivation that need not coincide with what it does for shareholders' understanding of the package under review.

5.3.3 Self-Dealing in Compensation: Seinfeld v. Slager and Its Progeny

Chapter 1 introduced Seinfeld v. Slager briefly. The decision merits a fuller account here, since it is the case that first applied entire fairness directly to a board's decision to award itself equity compensation. Stockholders of Republic Services, Inc. had approved an omnibus incentive plan that set only a generic, company-wide ceiling on the shares available for issuance, leaving the allocation among individual non-employee directors to the directors' own discretion from year to year. When the directors awarded themselves restricted stock units substantially exceeding what directors of comparable companies received, a stockholder challenged the awards as a breach of fiduciary duty, and the directors argued that the earlier shareholder vote approving the plan ratified the subsequent awards, which would have restored the business judgment presumption (Seinfeld v. Slager, Del. Ch. 2012).

The Court of Chancery rejected the argument. A stockholder-approved plan ratifies the specific awards later made under it only if the plan itself imposes a meaningful, individualised limit on what any one director may receive; a generic, plan-wide ceiling that leaves the allocation entirely to directors' own discretion does not suffice. Because

Republic's plan gave its directors what amounted to a free hand over their own awards, the earlier vote approving the plan's general parameters could not be read as approval of the specific amounts the directors later granted themselves. The claim survived dismissal and proceeded under entire fairness, with the burden of proving fairness resting squarely on the directors.

Two later decisions extended this reasoning rather than narrowing it. In Calma v. Templeton, the Court of Chancery applied the same logic to non-employee director compensation at Citrix Systems, holding that a stockholder-approved plan authorising several million shares for the board as a whole, without any director-specific limit, did not impose the kind of meaningful constraint that could support a ratification defense (Calma v. Templeton, Del. Ch. 2015). The Delaware Supreme Court then tightened the doctrine further in In re Investors Bancorp, Inc. Stockholder Litigation, holding that ratification requires stockholder approval of the specific awards themselves, not merely of the general parameters within which directors retain discretion over their number, type, and terms. Even a plan containing what Seinfeld would have regarded as a meaningful limit no longer suffices on its own; where directors retain genuine discretion over individual awards, they must demonstrate the fairness of those awards directly (In re Investors Bancorp, Inc. Stockholder Litigation, Del. 2017). Read together, this line of authority shows the ratification defense in director-compensation cases narrowing steadily since 2012, leaving boards that want business judgment protection for their own pay decisions with a progressively harder standard to meet.

The contrast with In re Walt Disney Co. Derivative Litigation sharpens the boundary this section has been tracing. There, shareholders challenged Disney's board for approving a severance package that ultimately paid former president Michael Ovitz approximately $130 million after little more than a year in the role, on terms many observers considered the product of a perfunctory and poorly documented process. The Delaware Supreme Court nonetheless found no breach of fiduciary duty: the committee had been informed of the material terms, had relied, however imperfectly, on outside compensation advice, and had acted without self-interest in the specific severance decision, since the directors approving it were not themselves receiving the payment (In re Walt Disney Co. Derivative Litigation, Del. 2006). The court was candid that the process fell well short of best practice, but it drew a sharp line between governance that is merely imperfect and governance that breaches a legal duty. Read together, Seinfeld and Disney mark out the distinction this chapter is concerned with: a flawed but disinterested process, even one a court openly criticises, can still receive business judgment deference, whereas a process tainted by the structural self-interest inherent in setting one's own pay cannot, regardless of how procedurally tidy it appears on paper.

5.3.4 Restoring Deference and the Limits of Ex Post Correction

Delaware law offers one structured route back to deferential review for transactions involving a controlling stockholder. Under Kahn v. M&F Worldwide Corp., such a transaction is reviewed under the business judgment standard, rather than entire fairness, only if it is conditioned from the outset on approval by both a fully empowered, genuinely independent special committee and an informed, uncoerced vote of a majority of the minority stockholders (Kahn v. M&F Worldwide Corp., Del. 2014). Both conditions must hold; satisfying only one leaves the transaction subject to entire fairness and the burden-shifting consequences already described.

This framework, designed for freeze-out mergers, became unexpectedly central to executive compensation when the Court of Chancery confronted Tesla's 2018 equity grant to its chief executive, Elon Musk. In Tornetta v. Musk, decided in January 2024, Chancellor McCormick found that Musk's combination of board influence, operational control, and standing as what the court termed a superstar chief executive was sufficient to treat him as a controlling stockholder for purposes of reviewing his own award, notwithstanding an equity stake of only 21.9 percent. The award had not been conditioned on the dual MFW protections from inception: the compensation committee, in the court's assessment, lacked the independence and bargaining posture the framework requires, and the proxy disclosures supporting the subsequent stockholder vote were not sufficiently complete to render that vote fully informed (Tornetta v. Musk, Del. Ch. 2024). The court ordered rescission of the entire package.

Tesla's board did not let the matter rest there. After the post-trial ruling, the company resubmitted the unaltered 2018 plan to a second stockholder vote in June 2024, accompanied by additional disclosure that included the Court of Chancery's own opinion, and a majority of disinterested shares again approved it. Chancellor McCormick declined to treat this second vote as curing the defects already found, reasoning that resubmitting an unchanged plan after the fact is not equivalent to designing a new one through a genuinely independent process from the outset, and separately awarded plaintiff's counsel a fee of $345 million, a record sum that itself became contested on appeal.

The Delaware Supreme Court reversed in December 2025, but the basis for the reversal matters more to this chapter's argument than the outcome itself. In a per curiam decision, the court held that rescinding an already-vested, multi-year compensation arrangement was an improper remedy at that remove in time: Musk had performed six years of service that could not be undone, and the parties could not realistically be restored to their pre-2018 negotiating positions. The court reinstated the 2018 package, awarded the plaintiff only $1 in nominal damages, and cut the fee award from $345 million to approximately $54 million, calculated on a lodestar rather than a percentage-of-recovery basis (In re Tesla, Inc. Derivative Litigation, Del. 2025). Crucially, the court did not hold that the compensation committee had in fact acted independently, and it did not hold that the original process or disclosure had satisfied entire fairness on the merits; it held only that rescission was the wrong remedy for whatever defects the trial court had found, leaving those underlying findings formally undisturbed. A process the trial court found wanting therefore produced an outcome that stood anyway, not because the process was vindicated, but because a reviewing court, working years after the fact, found no adequate remedy left to apply. The episode is among the clearest illustrations available of why this thesis treats litigation-based, after-the-fact correction as an unreliable backstop for remuneration governance, and why the ex ante mechanisms examined throughout, transparency, say-on-pay, and a genuinely independent fairness assessment, matter most precisely in the cases large enough to attract years of litigation before any court reaches a final answer.

The doctrinal trajectory did not end with Tornetta. Partly in response to the uncertainty the litigation generated, the Delaware General Assembly enacted Senate Bill 21 in March 2025, amending Section 144 of the General Corporation Law to create statutory safe harbors for transactions involving interested directors, officers, and controlling stockholders. The amended statute does not operate identically across all conflicted transactions. For interested director or officer transactions, and for controlling-stockholder transactions that do not constitute going-private transactions, the statute creates procedural routes through approval by disinterested directors or, alternatively, approval by disinterested stockholders. For going-private transactions involving a controlling stockholder, however, the statute preserves a more demanding structure: committee approval and disinterested stockholder approval are both required. Senate Bill 21 therefore relaxes aspects of the judicially developed MFW framework, but it should not be read as replacing all dual-protection requirements in every conflicted transaction. The Delaware Supreme Court upheld the constitutionality of these amendments in February 2026, rejecting arguments that the statute improperly divested the Court of Chancery of its equitable jurisdiction or that retroactive application violated due process (Rutledge v. Clearway Energy Group LLC, Del. 2026). Section 5.6 returns to this legislative trajectory directly, because it illustrates, at the level of an entire statutory regime, the same asymmetry this chapter traces at the level of an individual fairness opinion: when controversies of this kind reach Delaware's institutions, the consistent response has been to expand the procedural routes by which boards obtain protection, not to expand what shareholders are actually told.

Table 5.2 summarises the standards of review this section has traced and the role each accords to independent expert assessment.

Table 5.2 — Standards of Judicial Review and the Role of Fairness Opinions in Director Compensation

Legal Standard	Triggering Condition	Core Inquiry	Role of a Fairness Opinion
Business judgment rule	Directors are disinterested, act in good faith, and inform themselves before deciding.	Did the board act with due care and in the honest belief that the decision served the corporation?	Can support the informed-basis element by evidencing engagement with independent analysis; cannot substitute for good faith or disinterestedness.
Entire fairness, ordinary self-dealing	Directors set or materially influence their own pay without a meaningful, pre-set limit on individual awards.	Were both the process (fair dealing) and the economic terms (fair price) fair to the company and its shareholders?	May contribute evidence toward the fair-dealing inquiry by showing that outside analysis was obtained and tested; does not by itself establish fair price.
Entire fairness, controlling-stockholder compensation	The recipient exercises controlling influence over the approval process and the MFW protections are absent or incomplete.	Was the recipient's influence neutralised by a genuinely independent committee and an informed minority vote?	Largely absent in practice to date; its absence in Tornetta v. Musk was itself treated as evidence of an inadequately tested process.

Legal Standard	Triggering Condition	Core Inquiry	Role of a Fairness Opinion
Restored business judgment review	A conflicted transaction satisfies the applicable procedural requirements for restored deference, including the relevant Section 144 safe harbor where available.	Were the procedural conditions for restored deference met before the transaction was finalised?	Can strengthen the committee's negotiating record but does not itself satisfy either statutory or judicially developed safe harbor on its own.

Source: Author's compilation from the cited decisions.

5.4 Fairness Opinions in the Remuneration Context

5.4.1 An Underexplored Application

The doctrinal machinery surveyed in Section 5.3 notwithstanding, the fairness opinion has been applied to director and executive remuneration far less systematically than to mergers, acquisitions, and going-private transactions. The academic literature on fairness opinions addresses the M&A setting almost exclusively (Davidoff, 2006; Cain & Davidoff, 2012). Compensation committees more commonly retain compensation consultants to benchmark proposed pay against a peer group and advise on plan design, but these engagements typically produce an open-ended advisory report rather than a short, conclusory statement that the proposed pay is, or is not, fair from a financial point of view. The formal remuneration fairness opinion, in the sense this thesis develops, remains more a normative possibility than an established market practice, which is precisely the gap this chapter is designed to address. Although remuneration does not involve a single transaction price in the way a merger does, the same governance problem appears in a different form. Shareholders are still asked to decide whether insiders have allocated corporate value to themselves on terms that can be justified financially.

Part of the asymmetry is structural rather than a mere gap in scholarly attention. A merger has a single negotiated price that can be compared against alternative valuations and that closes on a discrete date. A compensation policy has no equivalent single figure, because its economic content is distributed across vesting schedules, performance conditions, accounting treatments, and dilution effects that unfold over several years. The absence of a settled methodology for this dynamic structure is not, however, a reason to abandon the project; it is a reason to specify with some care what a remuneration-specific opinion would actually need to examine, which is the task the rest of this section undertakes.

5.4.2 What a Remuneration Fairness Opinion Should Assess

A remuneration fairness opinion would have to do more than state that the proposed pay is broadly in line with the market. To be useful, it should examine at least four connected issues: the peer group used for comparison, the difficulty of the performance targets, the internal logic of the incentive structure, and the real economic cost of the award for shareholders.

The first is market competitiveness: whether the proposed pay level is consistent with a properly constructed peer group rather than one assembled, consciously or not, to justify an upward result. Chapter 4 documented how companies systematically select comparator groups composed of larger, more profitable, or more generously compensated peers, generating a ratchet effect in which each round of disclosure feeds the next round of escalation (Bizjak, Lemmon & Naveen, 2008; Faulkender & Yang, 2010). An opinion that simply re-certifies the comparator group a company would have used in any case adds no independent check; its value depends on whether the advisor constructs, or at minimum critically interrogates, the peer set rather than accepting it as given.

The second dimension is the rigor of performance conditions: whether the metrics attached to variable pay are genuinely demanding relative to the company's own internal forecasts and prevailing industry trends, or calibrated, deliberately or not, to be reliably achievable. This requires more than reading the stated targets; it requires modelling the probability of meeting them under a range of plausible scenarios, to distinguish a performance condition that exposes an executive to real downside from one structured to deliver a payout under almost any outcome.

The third dimension concerns the coherence of the incentive structure as a whole, including its strategic alignment. Vesting periods, holding requirements, malus and clawback provisions, and payout caps determine whether a package rewards durable value creation or merely short-term share-price movement, and the metrics selected should correspond to what actually matters for the specific company rather than to a generic template. This dimension addresses directly the short-termism risk Chapter 2 identified in equity-based incentives: an award confined to whether headline pay is large or small, without asking whether its structure points toward the outcomes the board claims to want, leaves the strategic-alignment question unanswered.

The fourth dimension is the economic cost of the award itself, including its realistic dilutive impact under a range of vesting and price scenarios, a dimension that connects directly to the non-GAAP transparency problem Chapter 4 documented in detail. An opinion silent on dilution addresses only part of what fair from a financial point of view should mean when the consideration in question is the company's own equity, and an opinion should state explicitly whether the metrics used to determine payout exclude stock-based compensation, and what the payout would have been under a measure that did not (Black et al., 2018). Table 5.3 sets out these four dimensions alongside the question each is meant to answer and the reason it matters to the shareholders who bear the cost of the award.

Table 5.3 — What a Remuneration Fairness Opinion Should Assess

Assessment Dimension	Key Question	Why It Matters for Shareholders
Market competitiveness	Is the proposed pay level consistent with a properly constructed, non-self-serving peer group?	Prevents the upward ratchet effect documented in benchmarking research.
Performance rigor	Are the attached performance conditions genuinely challenging relative to internal forecasts and industry trends?	Distinguishes performance-based pay from pay that is fixed in substance but variable in form.
Incentive structure and strategic alignment	Do vesting periods, malus and clawback provisions, and the metrics selected reward durable value creation rather than short-term movement?	Addresses the short-termism risk identified in Chapter 2.
Dilution and economic cost	What is the realistic dilutive impact of the award under different vesting and price scenarios, and is it consistent with a GAAP-based performance measure?	Connects directly to the non-GAAP transparency gap identified in Chapter 4.

Source: Author's compilation based on Bebchuk & Fried (2004); Bizjak, Lemmon & Naveen (2008); Faulkender & Yang (2010); Black et al. (2018).

Assessing these four dimensions competently is necessary but not sufficient for a remuneration opinion to carry genuine evidentiary or informational weight, since process matters as much as content. The advisor's independence from the management and directors whose pay is under review must be more than nominal: an advisor that simultaneously provides other paid services to the company, or that was selected and instructed by the same executives whose compensation it evaluates, occupies a compromised position regardless of the technical quality of its analysis. The methodology, assumptions, and rationale for any comparator group should be documented contemporaneously rather than reconstructed after the fact to justify a conclusion already reached, and the compensation committee should engage the advisor actively, posing questions, testing assumptions, requesting alternative scenarios, rather than commissioning an opinion only once the substantive pay decision has, in practical terms, already been made.

5.4.3 Process, Disclosure, and Timing

Something resembling a remuneration fairness opinion already exists in practice, though it rarely takes the formal shape described above. Remuneration committees at most major listed companies retain external compensation consultants to benchmark proposed pay and advise on incentive design, consistent with survey evidence that the substantial majority of compensation committees at large firms engage such advisors (Cadman, Carter & Hillegeist, 2010), and these engagements perform much of the analytical work a genuine fairness opinion would require without adopting its characteristic features: a defined scope of reliance, an explicit conclusory statement of fairness, and disclosure of that conclusion, together with its supporting methodology, to shareholders in the proxy materials that accompany their vote. The consultant's report typically remains an internal input to committee deliberations rather than a disclosed assessment addressed, in substance, to shareholders.

The independence of these consultants is itself a documented governance concern that closely tracks the conflict-of-interest critique long directed at M&A fairness opinion providers. Murphy and Sandino, using a U.S. sample, found that chief executive pay was systematically higher at companies whose compensation consultant also provided other, more lucrative services to the same company, a pattern consistent with consultants softening their benchmarking advice to protect a broader and more profitable client relationship (Murphy & Sandino, 2010). The pattern is not, however, universally confirmed: a separate study of U.S. firms found no comparable association once a broader set of conflict-of-interest proxies was considered, and a comparative analysis of UK and U.S. firms reached the same conclusion on both sides of the Atlantic (Cadman, Carter & Hillegeist, 2010; Conyon, Peck & Sadler, 2009). These conflicting findings, including disagreement within the same jurisdiction, suggest that whatever distortion multi-service consulting introduces depends on how the conflict is measured and on firm-specific bargaining dynamics rather than on a fixed, universally observable feature of the consulting relationship itself, a caveat this chapter carries forward when it turns, in Section 5.6, to the broader empirical record on fairness opinion quality.

Closing the gap between existing consultant practice and a genuine remuneration fairness opinion would require at least three commitments largely absent from current practice. The advisor would need to be demonstrably independent of management, retained directly by the committee rather than by the executives whose pay is being evaluated, and free of other, more lucrative service relationships with the company. The methodology, the peer group selected and the rationale for selecting it, the weight given to each benchmarking metric, the treatment of dilution, would need to be disclosed in enough detail for shareholders, or sophisticated proxy advisors acting on their behalf, to evaluate whether the analysis is sound rather than simply accepting a conclusory assurance that it is. And the resulting opinion would need to be addressed, in substance, to the interests of the shareholders bearing the cost of the award, rather than functioning purely as comfort for the committee that commissioned it.

Timing raises a design question with no settled answer in current practice. A one-time, unusually large equity grant of the kind at issue in the Tesla litigation might reasonably warrant a dedicated fairness assessment at the moment it is proposed, much as a merger does. A conventional annual compensation cycle, by contrast, might call for a recurring assessment tied to the say-on-pay vote itself and refreshed each year, rather than a one-off engagement that grows stale as performance conditions are met, missed, or renegotiated. Neither model has been tested at scale, and the choice between them carries its own governance consequences for cost, for advisor independence over a sustained relationship, and for the freshness of the comparator data on which any assessment ultimately rests.

What, finally, should shareholders be told about such an engagement? At minimum: that it occurred; the identity of the advisor; any material prior or contemporaneous relationship between the advisor and the company's management; the fee arrangement, including whether any portion is contingent on a particular outcome; and a summary of the methodology and comparator group employed. In the M&A context, FINRA Rule 5150 mandates disclosure of exactly these conflict-related facts whenever a fairness opinion is provided to public shareholders in a change-of-control transaction. No comparable rule exists for remuneration fairness opinions. The disclosure regime the M&A market eventually built, however incomplete, has no counterpart in the compensation context, leaving the question of what shareholders are told entirely to voluntary practice, a regulatory vacuum that bears directly on why fairness opinions, examined next, so often function as protection for boards rather than information for shareholders.

5.5 Fairness Opinions as a Tool of Transparency

The case for treating a properly designed fairness opinion as a genuine transparency instrument rests on the audit analogy Chapter 4 introduced at the close of its own analysis. An auditor does not merely add to the volume of information available about a company's financial statements; the auditor evaluates that information on shareholders' behalf and certifies a conclusion they can rely upon without independently re-performing the underlying analysis. A fairness opinion, on this reading, could do for a complex remuneration package what an audit opinion does for a set of financial statements: translate a technically demanding judgment into a conclusion shareholders can use directly, closing the gap Table 4.5 described between information being available and a shareholder being equipped to draw a conclusion from it.

The practical effect can be seen most clearly in the information given to shareholders before the vote. If the opinion explains the peer group, the level of difficulty of the performance targets, and the possible dilution under different scenarios, shareholders are no longer asked simply to trust the board's own description of the package. They can see the assumptions on which the conclusion rests. Proxy advisors would also be in a stronger position, because their assessment would start from disclosed company-specific analysis rather than from the company's general benchmarking narrative alone.

This function matters with particular force precisely where shareholder participation is weakest. Chapter 3 documented that retail investors rarely possess the technical capacity to evaluate multi-tiered equity incentive structures, and that even sophisticated institutional investors often default to the standardised recommendations of proxy advisory firms rather than conducting firm-specific analysis. A fairness opinion, disclosed with sufficient methodological detail, offers something the proxy advisor models examined in Table 5.1 structurally cannot: a company-specific assessment grounded in this company's particular circumstances rather than a template applied uniformly across the market. The vote itself is also binary in a way that magnifies the value of synthesis: investors cannot amend a performance target or substitute a different peer group on the ballot, so a meaningful vote requires shareholders to assess the package as a coherent whole rather than to redesign any of its individual components, which is exactly the kind of synthesis a properly built opinion is positioned to provide.

The opinion's value is not confined to what it tells shareholders after a package has already been designed. Knowing that an external advisor will test peer selection, performance rigor, and dilution before the plan reaches a vote gives the remuneration committee a reason to avoid weak targets, an inflated comparator group, or unexplained adjustments at the design stage, when correction is far less costly than it becomes after disclosure. This anticipatory effect mirrors the mechanism Chapter 3 identified in the say-on-pay literature itself, where boards adjust pay practices not only in direct response to shareholder dissent but in anticipation of the scrutiny a vote will eventually invite (Ferri & Maber, 2013; Barry, 2023). A credible commitment to obtaining a substantive opinion can shape board behaviour well before any document is disclosed, in much the same way that a credible say-on-pay vote does.

This potential connects to evidence Chapter 4 already discussed on the relationship between disclosure quality and voting outcomes: where regulators compelled firms to remedy deficient compensation disclosures, subsequent shareholder support for say-on-pay resolutions improved measurably (Li & Zhang, 2022). If disclosure quality affects voting outcomes in that way, a well-disclosed, methodologically transparent fairness assessment, itself a form of disclosure, though an evaluative one rather than a purely descriptive one, has no obvious reason to behave differently, improving the informational efficiency of the vote rather than simply its approval rate.

The behavioural dimension introduced in Chapter 2 adds a further layer to the positive case. Shareholders respond to remuneration proposals not on the basis of financial calculation alone; the perceived fairness of the process that produced a decision shapes the reaction independently of its underlying economics (Wiseman & Gomez-Mejia, 1998). A disclosed, substantive opinion signals that the package was not simply constructed by insiders and presented for ratification, and that signal can affect the legitimacy of the outcome even among shareholders who never engage with the technical detail of the analysis itself.

Realising this potential, however, depends on conditions that are demanding to satisfy together. The first is full disclosure of methodology and assumptions: the peer group, the benchmarking approach, the treatment of dilution, and the reasoning connecting these inputs to the stated conclusion must be available for scrutiny rather than compressed into a single conclusory sentence. The second is genuine independence of the advisor from the management and directors under review, in fact and not merely in form, an independence that, as the next section shows, is considerably harder to verify than to assert. The third is accessible communication: the opinion, or an adequate summary of it, must reach shareholders through proxy materials in language that does not require specialist financial training to interpret, echoing the standard Chapter 4 developed for remuneration disclosure more generally.

None of these three conditions is exotic; each has a direct counterpart in existing disclosure regimes for other forms of expert assurance. In current market practice, however, they are rarely satisfied together. It is precisely because methodology so often remains undisclosed, because independence is frequently compromised by the same commercial relationships that created the engagement in the first place, and because the resulting opinion is communicated, if at all, as a brief and conclusory statement, that an opposing reading of the fairness opinion has accumulated substantial support in the legal and financial literature. That critique is the subject of the next section.

5.6 The "Safe Harbor" Critique: Fairness Opinion as Legal Shield

5.6.1 Protecting Directors, Not Shareholders

An opposing view, associated most prominently with Davidoff (2006) and Cain and Davidoff (2012), holds that fairness opinions function chiefly as legal protection for the directors who commission them rather than as a genuine source of information for the shareholders who receive them. On this account, what the opinion principally accomplishes is not the production of information but the creation of a documentary record: a dated, signed letter that can be produced in subsequent litigation as evidence that the board sought and relied upon independent financial advice, regardless of how searching that advice actually was. This is a safe harbor in the colloquial rather than the statutory sense, distinct from the formal protections Section 144 now provides for certain controlling-stockholder transactions, but it draws its force from the same doctrinal weight Delaware courts have repeatedly given to the presence or absence of an opinion when assessing whether a board acted on an informed basis.

This asymmetry of scrutiny compounds the underlying conflict of interest. A fairness opinion is typically tested rigorously, if at all, only after the fact, in litigation, by plaintiffs' counsel and their own retained experts working with the benefit of hindsight and, through discovery, far fuller access to the advisor's models than shareholders ever obtain. At the moment the opinion is actually relied upon, when the board approves the arrangement and, where applicable, when shareholders cast their vote, no comparable scrutiny is available. Shareholders generally see only the opinion's letter and a brief summary of its methodology in the proxy statement; they do not see the underlying model, its sensitivity to small changes in assumptions, or the advisor's internal deliberations. Whatever discipline the instrument imposes therefore operates largely in retrospect, through the threat of litigation, rather than at the moment shareholders are actually deciding how to vote. A subtler risk follows from the same dynamic: the mere presence of an external opinion can reduce shareholder scrutiny even where the underlying process remains weak, because many investors reasonably treat an independent review as a quality signal without verifying whether the independence is real. Where that signal is unreliable, the opinion does more than fail to inform; it can actively suppress the scrutiny that would otherwise have occurred, which is a materially worse outcome than providing no opinion at all.

5.6.2 Conflicts of Interest and the Empirical Record

The empirical literature on M&A fairness opinions, though concentrated outside the remuneration setting, supplies the most direct evidence available on how the instrument behaves under realistic incentive conditions. An early and still influential analysis by Bebchuk and Kahan identified the structural source of the problem: financial advisors are frequently retained by the same management that wants a transaction to close, are paid contingent fees tied to completion rather than to the rigor of the underlying analysis, and have an interest in preserving a continuing advisory relationship that can outweigh the comparatively modest reputational cost of an opinion that later proves to have been generous (Bebchuk & Kahan, 1989). Subsequent empirical work has largely substantiated this concern, though not always in the same direction. Kisgen, Qian, and Song found that acquirer announcement returns were measurably lower in transactions where the acquirer itself obtained a fairness opinion, a pattern consistent with boards seeking opinions to entrench a deal, and themselves, rather than to test whether it served shareholders well (Kisgen, Qian & Song, 2009). Cain and Denis, examining the accuracy of the valuation estimates underlying fairness opinions, found that errors were significantly larger for opinions from lower-tier advisors than from the most reputable investment banks, suggesting that the quality of the underlying analysis depends considerably on who performs the work (Cain & Denis, 2013). A further line of research on advisors competing for visibility in merger league tables found that opinions issued under pressure to protect or improve a bank's ranking were measurably lower in quality than opinions issued without that pressure (Derrien & Dessaint, 2018).

Market participants appear to price some of this risk in already. Makhija and Narayanan find that markets discount the credibility of advisor-provided fairness opinions where conflicts are plausible, that advisor reputation can partially offset this discount, and that the contingent structure of advisory fees does not appear to reassure investors at all (Makhija & Narayanan, 2008). A related and perhaps more revealing pattern is that unfavourable opinions are almost never observed in practice: negotiations tend to continue, or engagements are quietly terminated, until a structure can honestly be described as fair, with the consequence that the bare conclusion of fairness carries little independent information once shareholders understand that an unfavourable conclusion would rarely have reached them in the first place (Bebchuk & Kahan, 1989). What shareholders are left to evaluate, in other words, is not the opinion's verdict but the process and independence that produced it, and a formula such as fair from a financial point of view, unaccompanied by the methods and assumptions that produced it, functions well as litigation insulation precisely because it avoids exposing anything that could later be challenged in detail, which is also why it performs poorly as shareholder disclosure. Not every study points in the same direction, and the weight of this evidence should be read with the same caution applied earlier to the consulting literature in Section 5.4: some research finds a more limited or context-dependent relationship between fairness opinion use and the outcomes that follow. Even allowing for that caveat, the balance of the evidence supports treating fairness opinions much as this thesis has treated remuneration disclosure more generally: useful in principle, unreliable in practice unless the conditions Section 5.5 identified are actually met. Table 5.4 summarises the relevant studies.

Table 5.4 — Empirical Evidence on Fairness Opinion Quality and Independence

Study	Setting	Key Finding
Bebchuk & Kahan (1989)	Fairness opinions in mergers and acquisitions generally.	Identifies contingent fees and repeat-engagement incentives as structural sources of advisor bias.
Kisgen, Qian & Song (2009)	Buy-side opinions in completed mergers.	Acquirer returns are lower where a buy-side fairness opinion was obtained, consistent with a board-entrenchment motive.
Cain & Denis (2013)	Fairness opinions by advisor tier.	Valuation errors are significantly larger for lower-tier than for top-tier investment bank advisors.
Derrien & Dessaint (2018)	Advisors competing in M&A league tables.	Opinion quality is measurably lower where advisors face pressure to protect their league-table ranking.

Study	Setting	Key Finding
Makhija & Narayanan (2008)	Market reaction to advisor-provided fairness opinions.	Markets discount opinion credibility where conflicts are plausible; contingent fee structures do not reassure investors.

Source: Author's compilation from the cited studies.

5.6.3 The SPAC Parallel: Addressing the Wrong Party

A structurally similar critique, developed entirely outside the remuneration setting, supplies an unusually direct analogy. A comprehensive study of fairness opinions used in mergers between special purpose acquisition companies and private operating companies between 2019 and 2023 found that the large majority of opinions addressed whether the transaction consideration was fair to the SPAC itself, rather than to the SPAC's public, unaffiliated shareholders, even though it is the position of those public shareholders that the relevant regulatory and judicial scrutiny is actually designed to protect (Tuch, 2023). Among the smaller number of opinions that did purport to address fairness to public shareholders directly, most failed to perform the specific analysis, accounting for the structural dilution built into the SPAC's own share structure, that fairness to those shareholders actually required. The opinions imported the conventional M&A valuation template wholesale into a setting that needed a materially different analysis, answering a question almost no one had actually asked.

The parallel to director and executive remuneration is close enough to be instructive. A remuneration fairness opinion that benchmarks proposed pay against a peer group and concludes that the level is competitive has answered a real question, but not necessarily the one that matters most to the shareholders bearing the award's cost: whether the award is proportionate to the value it is designed to create once its dilutive cost is taken into account, rather than merely typical of what other companies pay. Just as a SPAC fairness opinion addressing fairness to the SPAC, rather than to its public shareholders, can be entirely accurate on its own narrow terms while offering those shareholders no real assurance, a compensation benchmarking exercise that confirms market competitiveness can be accurate on its own terms while leaving the question that actually matters to shareholders, whether the award is, on balance, a good use of shareholder value, effectively unaddressed. In both settings, the formal machinery of a fairness assessment can be satisfied while a more tractable, less threatening question is substituted for the one that matters.

5.6.4 The Tesla Litigation Revisited

Section 5.3.4 traced the doctrinal path of the Tesla litigation; this section returns to it for what it reveals about the safe-harbor critique specifically. Tornetta v. Musk did not turn on a fairness opinion at all, since none was obtained for the 2018 grant, and the absence is itself revealing. Tesla's compensation committee relied instead on competitive benchmarking from its compensation consultant, analysis that performed something resembling the function described in Section 5.4.2 without the independence safeguards, explicit fairness conclusion, or disclosed methodology that would distinguish a genuine fairness opinion from ordinary benchmarking advice. The Court of Chancery pointed specifically to the absence of adversarial negotiation over the size of the award and to the lack of any persuasive explanation for why benchmarking had been omitted given the grant's unprecedented scale. Its finding that the underlying process did not satisfy the independence and disclosure standards the MFW framework requires can be read as a finding that the available substitute, whatever benchmarking work informed the committee's deliberations, did not perform the safeguarding function this chapter has argued a properly designed fairness opinion is positioned to perform.

What followed on appeal reinforces this conclusion through the back door. The Delaware Supreme Court's 2025 disposition, traced in full in Section 5.3.4, reversed only the remedy and left the trial court's findings on process and disclosure undisturbed. Read for what it implies about the safe-harbor critique specifically, the result shows that an inadequately tested compensation process need not be vindicated to survive: it can simply outlast the litigation that challenges it. A defect serious enough to defeat a board's claim to deference at trial proved insufficient, once six years had passed, to support the only remedy capable of correcting it. That asymmetry between the speed of litigation and the speed of vesting is itself a structural advantage for whichever side commissioned the inadequate process in the first place, and it operates independently of whatever role, if any, a fairness opinion played in the underlying dispute.

5.6.5 Regulatory Trajectory and Reform

The broader regulatory trajectory in Delaware, prompted in part by the Tornetta litigation itself, points in a direction this chapter's framework would predict but should not be read as encouraging. Senate Bill 21 strengthens the procedural routes by which boards can secure protection from judicial second-guessing in conflicted transactions; it imposes no corresponding disclosure obligation running toward the shareholders affected by those transactions. The Delaware Supreme Court's decision upholding the amendment's constitutionality in Rutledge v. Clearway Energy Group LLC confirms that boards may now rely on these statutory safe harbors with considerably more legal certainty than the pre-2025 case law provided. Read together with the Supreme Court's narrow, remedy-focused disposition of the Tesla appeal, this legislative trajectory confirms at the level of an entire statutory regime what the preceding sections have traced at the level of a single fairness opinion: Delaware's institutions have repeatedly chosen to widen the procedural avenues through which boards secure protection, while leaving largely untouched the question of what shareholders are actually told before they vote.

Existing federal regulation addresses part of this gap, though not by design. Section 952 of the Dodd-Frank Act, implemented through SEC Rule 10C-1 in 2012, requires national securities exchanges to adopt listing standards under which compensation committees must be composed of independent directors, must have the authority and funding to retain their own advisors rather than relying on advisors selected by management, and must consider a defined set of independence factors before engaging any such advisor, including the proportion of the advisor's revenue derived from the company and any other services the advisor's firm provides to it. This regime was designed around the ongoing, year-to-year relationship between a committee and its regular advisors, however, not around the kind of one-off, unusually large equity award the Tesla litigation involved, and it says comparatively little about what a sufficiently rigorous benchmarking exercise must actually contain once an advisor is in place. In the M&A context, FINRA Rule 5150 at least requires disclosure of an advisor's conflicts, contingent fees, and material prior relationships whenever a fairness opinion reaches public shareholders, even if it stops well short of requiring disclosure of the underlying methodology or valuation range. No equivalent rule extends to remuneration fairness opinions at all, leaving the compensation context with neither the judicially developed MFW safeguards in their original, more demanding form nor the disclosure obligations that govern the comparable M&A instrument.

None of this argues for abandoning fairness opinions, and a blanket mandate requiring one for every remuneration policy would likely make matters worse by encouraging exactly the kind of boilerplate this chapter has already criticised. A more defensible reform agenda is targeted rather than universal: it would require companies that choose to rely on a fairness opinion to disclose the advisor's other services to the company, summarise methodology and key assumptions rather than the conclusion alone, explain how the peer group was selected and why alternatives were excluded, and present dilution and non-GAAP adjustments as explicit fairness factors rather than burying them in technical appendices the narrative never engages with directly. None of these obligations would dictate any particular pay outcome; they would make the board's underlying justification considerably easier to test. Table 5.5 draws together the conditions for genuine transparency developed in Section 5.5 alongside the failure modes that convert the same instrument into a safe harbor.

Table 5.5 — Fairness Opinions as Transparency Instrument or Safe Harbor: Competing Conditions

Dimension	Conditions Supporting Genuine Transparency	Conditions Producing a Safe Harbor
Advisor independence	No material commercial relationship between the advisor and the company or its executives beyond the engagement itself.	Advisor depends on the company for other, more lucrative business.
Methodology	Full disclosure of assumptions, comparators, and reasoning.	Peer group selected to support a predetermined outcome; methodology undisclosed.
Timing	Opinion obtained before the structure of the award is finalised.	Opinion, or endorsement, obtained or invoked only after the decision is made or already challenged.
Disclosure to shareholders	Conclusions and methodology communicated in accessible proxy language.	Existence of an opinion disclosed; its substance left unexamined.

Source: Author's compilation, synthesising the analysis developed in Sections 5.5 and 5.6.

5.7 The Conditional Value of Fairness Opinions

The preceding sections should not be read as describing two entirely separate instruments. They describe the same fairness opinion under different conditions. When the advisor is independent, when the methodology is disclosed, and when the opinion is framed around the interests of shareholders, the document can help translate a complex pay arrangement into an assessment that shareholders can use. When those conditions are missing, the same document performs a much narrower role. It may still help the board show that a process was followed, but it does much less to help shareholders understand whether the award is actually fair.

Measured against this standard, current practice in director and executive remuneration falls considerably short, for the straightforward reason that almost none of it takes the form of a disclosed, addressed-to-shareholders fairness opinion at all. What exists instead is compensation consultant benchmarking, performed for the committee rather than for shareholders, assessed against competitiveness rather than fairness, and documented, where documented at all, in language too general for shareholders to evaluate the underlying analysis. Section 5.4 outlined what would need to change for that practice to approximate a genuine remuneration fairness opinion; Section 5.6 showed, by analogy to both the M&A and SPAC settings, why none of those changes can be assumed to occur simply because the formal instrument becomes more widely used.

This conclusion does not undermine the broader argument this thesis has developed since Chapter 1; it refines it. A fairness opinion remains, in principle, the instrument best positioned to close the interpretive gap Chapter 4 identified as the limit of disclosure alone, because no other governance mechanism examined in this thesis is designed specifically to translate complex financial and structural detail into an assessable, expert judgment on shareholders' behalf. The chapter's central finding is that this potential is conditional rather than automatic, and that the conditions required to realise it, independence, disclosed methodology, and a genuine orientation toward shareholder rather than board interests, are precisely the conditions that empirical practice, across the M&A, SPAC, and remuneration settings examined here, has most often failed to satisfy together.

The analysis developed across this chapter can be translated into a practical evaluative framework, summarised in Table 5.6, that the comparative case study in the next chapter applies directly to Tesla and Intesa Sanpaolo. Rather than asking only whether a fairness opinion was obtained, the relevant inquiry asks whether the opinion gives shareholders the information needed to evaluate the board's underlying fairness rationale.

Table 5.6 — A Shareholder-Oriented Test for Remuneration Fairness Opinions

Criterion	Shareholder Question	Governance Implication
Independence	Who selected and paid the advisor, and what other relationships or contingent fees exist?	Determines whether the opinion can be trusted as an external check rather than management validation.
Methodology	Are peer groups, valuation models, performance tests, assumptions, and sensitivity ranges disclosed?	Shows whether the conclusion is analytically reviewable rather than merely conclusory.

Criterion	Shareholder Question	Governance Implication
Timing	Was the opinion obtained before the decision was effectively finalised and before the shareholder vote?	Indicates whether the opinion could influence the design of the plan, not merely defend it.
Scope	Does the opinion address market positioning, performance rigor, incentive structure, and dilution together, or only headline pay?	Prevents a narrow benchmarking exercise from being presented as a complete fairness assessment.
Disclosure to shareholders	Can an informed but non-specialist shareholder follow the key reasoning without reconstructing the underlying model?	Connects expert analysis to substantive transparency and meaningful say-on-pay participation.

Source: Author's compilation based on the analysis developed in Sections 5.4 through 5.7.

Whether these conditions hold in a given case is, in the end, an empirical question rather than a doctrinal one, which is why the chapter that follows turns from legal analysis to a comparative case study. Examining how Tesla and Intesa Sanpaolo each navigated the choice between formal compliance and substantive fairness assessment, one within the Delaware litigation framework just examined, the other within the more prescriptive disclosure architecture of European and Italian law described in Chapter 4, offers the most direct available test of whether the conditional account developed here, rather than either of the two unconditional positions it is built to mediate between, best describes how fairness opinions actually function in practice. The three-stage logic introduced in Chapter 1 depends on each link holding in turn: agency conflict creates the need for shareholder voice, say-on-pay supplies that voice in formal terms, transparency determines whether the resulting vote carries substantive content, and a fairness opinion, when it satisfies the conditions this chapter has identified, supplies the interpretation that transparency alone cannot always provide. An opinion lacking independence or disclosed methodology does not substitute for either of the earlier links; it simply adds another layer of apparent process without the substance that process is meant to guarantee. Whether Tesla and Intesa Sanpaolo bear out this conditional account, or instead reveal a chain that breaks down in practice regardless of the jurisdiction in which it operates, is the question to which the thesis now turns.

6. Comparative Case Study: Tesla Inc. and Intesa Sanpaolo S.p.A.

Chapter 5 concluded that the governance value of a fairness opinion is not inherent but conditional. It depends on whether the advisor is genuinely independent, whether the methodology is disclosed to shareholders in a reviewable form, whether the assessment occurs before the remuneration decision is effectively final, and whether the scope addresses the questions shareholders actually need answered: market proportionality, performance rigor, incentive structure, economic cost, and dilution. These conditions can be satisfied or violated in any institutional setting, regardless of whether the underlying legal architecture is more prescriptive or more principle-based. The practical question of whether the conditions are in fact met requires moving from abstract criteria to actual corporate governance choices. This chapter performs that movement by examining two cases that represent different governance ecologies and that place pressure on the thesis's analytical chain in characteristically different ways.

The two cases are Tesla Inc. and Intesa Sanpaolo S.p.A. Tesla was the site of the most consequential executive compensation litigation of the last two decades. Its 2018 CEO Performance Award, which was a ten-year, all-equity grant offering Elon Musk options over approximately 20.3 million shares with a maximum theoretical value of approximately $55.8 billion, was approved by a majority of disinterested shareholders in March 2018, challenged in court, rescinded by the Delaware Court of Chancery in January 2024, submitted to a second shareholder vote in June 2024, refused re-ratification by the same court in December 2024, and ultimately reinstated by the Delaware Supreme Court in December 2025 on remedy grounds that left the process and disclosure findings formally undisturbed. Intesa Sanpaolo, Italy's largest banking group by total assets, has produced no comparable governance controversy. Its annual remuneration framework is embedded in a dense multi-layered architecture combining EU directive requirements, Italian regulatory rules, banking supervisory provisions, and the Italian Corporate Governance Code. The comparison is useful because it tests the thesis's three-stage logic — agency conflict → say-on-pay → transparency → fairness opinion, against two different institutional environments, and because the contrast between the cases helps isolate which features of governance architecture actually determine whether the chain holds.

This chapter does not evaluate whether Elon Musk deserved his compensation or whether Intesa Sanpaolo's CEO is paid at the right level relative to peers. The comparison axis throughout is transparency quality and fairness assessment practice, not pay quantum. A package can be large and still be disclosed fairly; a package can be moderate and still be presented in a way that denies shareholders the information they need. The case study therefore asks a practical question: did shareholders receive enough information, and enough independent assessment, to evaluate the remuneration decision before voting? The chapter is organised as follows: Section 6.1 explains the methodology; Section 6.2 analyses the Tesla case; Section 6.3 analyses the Intesa Sanpaolo case; and Section 6.4 draws the comparative findings together and connects them to the thesis's main argument.

6.1 Methodology of the Case Study

This chapter employs a qualitative comparative case-study method. The choice reflects the nature of the inquiry rather than a preference for qualitative over quantitative work. The central questions, specifically whether governance processes were sufficiently independent, whether proxy disclosures enabled informed judgment, and whether external expert assessments were conducted and disclosed in a way that served shareholders rather than boards, are inherently process questions. They require attention to document content, institutional sequence, and judicial or regulatory response, not measurement of variables across a large sample. This approach is consistent with the case-study tradition described by Yin (2014), which recommends the method for contemporary governance phenomena where the boundaries between phenomenon and context cannot be drawn in advance, and by Eisenhardt (1989), who argues for its particular value in theory-refinement work where within-case analysis is combined with cross-case comparison. The two cases were selected on the basis of theoretical rather than random or convenience sampling. Tesla was chosen because its 2018 compensation arrangement generated judicial scrutiny that is unusually detailed and publicly available. The post-trial opinion in Tornetta v. Musk (Del. Ch. 2024) reconstructed, from a trial record, the sequence of board decisions, the nature of advisor engagements, and the specific proxy deficiencies that rendered the shareholder vote inadequate, thereby providing precisely the information that shareholders lacked at the moment of voting. This makes Tesla a case study in what a principle-based disclosure system failed to ensure, even when substantial formal disclosure was provided. Intesa Sanpaolo was chosen for the contrasting reason. It operates under one of the densest remuneration disclosure regimes applicable to a listed company in any European jurisdiction, combining EU-level SRD II requirements, Italian CLF provisions, CONSOB regulations, Bank of Italy prudential rules, and the Italian Corporate Governance Code. Examining it provides a test of whether prescriptive disclosure achieves what principle-based disclosure failed to achieve in the Tesla case, and whether structural differences in governance architecture close the interpretive gap identified in Chapter 5.

Although the Tesla case concerns a CEO compensation award, it is included because the governance issue examined is not the identity of the recipient alone, but the board-level process through which the award was designed, approved, disclosed, and submitted to shareholders. The case therefore directly tests the thesis's central concern: whether say-on-pay can operate as informed shareholder consent when the underlying remuneration decision depends on board independence, disclosure quality, and the availability or absence of an independent fairness assessment.

The case selection creates a useful form of polarity. Tesla is a litigation-shaped case: much of what is known about the governance process behind the 2018 grant is known because it was contested in court. Intesa Sanpaolo is a regulation-shaped case: its disclosure is structured by mandatory rules that apply before any controversy arises. This asymmetry is itself analytically instructive, as the thesis's structure document notes: it reveals what each system makes visible and what each system leaves in shadow. For Tesla, the litigation exposed what the proxy had omitted. For Intesa Sanpaolo, the regulatory framework mandates the disclosure, but what shareholders actually receive depends on how the mandated categories translate into evaluative clarity. The chapter examines both cases through this lens.

Primary sources for the Tesla case include the 2018 definitive proxy statement filed with the SEC, the Form 8-K recording the shareholder vote results, the 2024 ratification proxy and vote materials, the Court of Chancery opinion in Tornetta v. Musk (Del. Ch. 2024), the December 2024 opinion denying revision, and the Delaware Supreme Court's per curiam opinion in In re Tesla, Inc. Derivative Litigation (Del. 2025). For Intesa Sanpaolo, the primary sources are the annual Reports on Remuneration Policy and Compensation Paid for 2022 through 2026, CONSOB analytical remuneration tables, aggregate compensation disclosures, and the official shareholder meeting press releases recording voting outcomes up to 2025. The voting analysis deliberately closes with the 2025 AGM in order to maintain a consistent 2023–2025 comparison window; the 2026 remuneration report is used only to confirm the continuity of Intesa Sanpaolo's disclosure structure, not to extend the voting dataset. The analysis is limited to publicly available documents, which is consistent with the thesis's focus: the relevant question is what shareholders and the market could see at the moment of decision, not what might have been known internally.

The framework for comparing the two cases is the five-criterion test developed in Table 5.6 of the preceding chapter: independence of the advisor, methodology disclosed to shareholders, timing of the assessment relative to the compensation decision, scope of the assessment, and quality of shareholder communication. For each criterion, the chapter asks what the available evidence shows, how it measures against the conditions Chapter 5 identified as necessary, and what the gap between actual practice and the standard implies for the thesis's argument. Table 6.1 summarises the key features of both cases and their analytical role.

Table 6.1 — Case Study Design and Analytical Role

Analytical Dimension	**Tesla Inc.**	**Intesa Sanpaolo S.p.A.**
Governance & regulatory context	Delaware corporate law; Dodd-Frank Act (2010); SEC proxy disclosure rules; NASDAQ listing standards.	Italian Civil Code; EU SRD II (2017/828/EU); Legislative Decree 49/2019; Bank of Italy Circular 285/2013; CONSOB Regulation; Italian CG Code 2020; ECB/SSM supervision.
Remuneration arrangement examined	2018 equity grant to Elon Musk (12 tranches, ~20.3 million options, up to $55.8bn maximum value); re-ratification vote June 2024.	Annual remuneration policy and compensation paid framework; CEO Carlo Messina; Group Risk Takers; Performance Share Plan 2022–2025.
Primary sources	Tesla DEF 14A (2018); Form 8-K (March 2018); 2024 ratification proxy; Tornetta v. Musk (Del. Ch. 2024); In re Tesla, Inc. Derivative Litigation (Del. 2025).	Reports on remuneration policy and compensation paid (2023–2026); CONSOB analytical tables; shareholder meeting press releases; Italian CG Code 2020.
Main governance issue	Whether majority-of-the-minority shareholder approval can legitimate a conflicted compensation process when proxy disclosure is materially deficient.	Whether a dense prescriptive disclosure regime gives shareholders an evaluative fairness assessment or primarily a compliance document.
Fairness opinion practice	Absent: compensation consultant benchmarking provided but no formal fairness opinion obtained or disclosed.	External benchmarking by named peer group; annual fairness opinion on performance management approach disclosed; full methodology not reproduced for shareholders.
Relation to thesis logic	Tests failure modes: process independence gap, absent fairness opinion, deficient process disclosure, ex post litigation as governance backstop.	Tests partial success: recurring annual disclosure, binding SRD II policy vote, external advisory practice, but residual interpretive gap.

Source: Author's compilation based on Tesla, Inc. (2018a = DEF 14A Proxy Statement; 2018b = Form 8-K, March 2018; 2024a = Ratification Proxy Statement; 2024b = Form 8-K, June 2024), Tornetta v. Musk (Del. Ch. Jan. 2024), In re Tesla, Inc. Derivative Litigation (Del. 2025), and Intesa Sanpaolo Remuneration Reports (2022–2026).

6.2 Case 1: Tesla Inc. The Musk Compensation Plan

6.2.1 Background and Structure of the 2018 Award

On 21 January 2018, Tesla's board of directors approved a CEO Performance Award for Elon Musk and submitted it to shareholder approval at a special meeting held on 21 March 2018. The grant consisted of ten-year stock options over 20,264,042 shares, representing approximately 12 percent of Tesla's then-outstanding equity, divided into twelve equal tranches of approximately 1,692,337 options each. The exercise price was $350.02 per share, fixed at the closing market price on the grant date. Musk received no salary, no cash bonus, and no time-vested equity, making the award, in Tesla's own description, 100 percent at-risk (Tesla, Proxy Statement 2018).

Each of the twelve tranches vested only upon the simultaneous satisfaction of two independent performance conditions. The first was a market-capitalisation milestone: Tesla's six-month trailing average market cap had to reach or exceed a specified threshold, beginning at $100 billion and rising in $50 billion increments to $650 billion. At the time of grant, Tesla's market capitalisation stood at approximately $53–59 billion, making the first threshold a roughly doubling requirement. The second condition drew on sixteen operational targets, including eight revenue milestones ranging from $20 billion to $175 billion in annualised revenue and eight adjusted EBITDA milestones ranging from $1.5 billion to $14 billion, with any of these operational targets eligible to pair with the corresponding market-cap milestone. The grant-date fair value was approximately $2.6 billion, estimated using a Monte Carlo option-pricing model. The theoretical maximum, if all twelve tranches vested at the $650 billion market-cap level, reached approximately $55.8 billion, a figure that the Delaware Court of Chancery later described as 250 times larger than the contemporaneous median peer compensation plan and over 33 times larger than Musk's own prior 2012 award (Tornetta v. Musk, Del. Ch. 2024).

The award's design had an intuitive governance appeal. Musk would profit only if Tesla's shareholders also profited, and profited substantially. The alignment narrative was genuine in structural terms: there was no salary that would be paid regardless of performance, and the options had no value at all unless the company's market capitalisation increased dramatically. This framing dominated the proxy statement's presentation and informed the shareholder vote that followed. What the proxy did not give shareholders was the analytical foundation to assess whether the package's scale was proportionate to its incentive rationale, whether the performance conditions were genuinely demanding in light of Tesla's own internal projections, or whether the board process had been conducted with the independence that a grant of this magnitude required. These questions, which a fairness opinion would have been designed to address, were left entirely to the board's unreviewed judgment.

6.2.2 Board Process and the Independence Problem

The Court of Chancery's reconstruction of the approval process, built from a trial record of exceptional depth, identified a series of overlapping independence deficiencies that proved fatal to the defendants' entire-fairness defence. The most fundamental concerned the origins of the proposal itself. Musk raised the question of a new long-term incentive package in April 2017 conversations with compensation committee chair Ira Ehrenpreis and proposed the broad parameters, which featured an all-or-nothing structure with ambitious market-cap milestones that remained the basis of the final award. Four successive draft versions of the proxy statement contained a passage acknowledging this initiating role; the passage was removed from the final proxy filed with the SEC, creating the impression that the grant had emerged from a board-driven process rather than one in which the CEO himself had proposed the essential terms (Tornetta v. Musk, Del. Ch. Jan. 2024).

The committee's independence was further compromised by the personal and professional ties between its members and Musk. Ehrenpreis had known Musk for approximately fifteen years, had co-invested with him in prior ventures, and had received personal benefits from that relationship including introductions and collaborative projects outside Tesla. A second committee participant, General Counsel Todd Maron, had previously served as Musk's personal divorce attorney. The court found that neither director had the adversarial posture that arm's-length bargaining with a controlling-influence figure required. The committee's own testimony described the process as cooperative: directors viewed their role as helping Musk design a package he would find satisfying, rather than negotiating as counterparties representing shareholder interests. The court described this as a process in which 'barely any evidence of negotiations' existed for an award reaching up to $55.8 billion in potential value (Tornetta v. Musk, Del. Ch. Jan. 2024).

These findings triggered the entire-fairness standard of review. The court held that Musk's combination of equity ownership (approximately 21.9 percent), CEO and effective chair status, operational centrality, and influence over the board process constituted transaction-specific control sufficient to displace the business judgment rule (Tornetta v. Musk, Del. Ch. 2024). Once that standard applied, the defendants bore the burden of proving both fair dealing and fair price. They failed on both: the process lacked independence and arm's-length negotiation, and the scale of the award was never independently tested against the question of whether it was necessary to retain or incentivise Musk given his existing equity stake. As the court noted, the board never meaningfully asked what would later become the central governance question: whether a grant of unprecedented scale was actually necessary, or whether it reflected Musk's bargaining power rather than a genuine assessment of the incremental incentive value at the margin.

6.2.3 Disclosure Practices in the Proxy Statement

Tesla's 2018 proxy statement was not a minimal disclosure document. It described the twelve tranches, the market-capitalisation milestones, the operational targets, the exercise price, the holding period, and the theoretical maximum value. It disclosed that the grant could increase Musk's beneficial ownership from approximately 21.9 percent to approximately 28.3 percent if all tranches vested. It acknowledged the involvement of Compensia, Inc. as an independent compensation consultant. In formal terms, it satisfied many of the categories that a remuneration disclosure framework would require (Tesla, Proxy Statement 2018).

The court's analysis nonetheless found the disclosure materially deficient in three respects. First, the proxy characterised the operational milestones as extremely challenging and unlikely to be achieved without extraordinary performance. Tesla's own December 2017 financial projections, available to the board at the time of the grant, indicated that several of the lower milestones were expected to be reached within the plan's first few years under base-case assumptions. This information was not provided to shareholders. Second, the proxy described several directors as independent in its standard independence analysis without disclosing the specific personal, professional, and financial ties that the court later found compromised their independence for purposes of evaluating a grant in which Musk had a direct financial interest. Third, the proxy described the grant as the product of a board-driven process without disclosing Musk's initiating role, a fact that the court treated as material because it went directly to whether shareholders could rely on the committee's recommendation as an arm's-length assessment (Tornetta v. Musk, Del. Ch. Jan. 2024).

The adjusted EBITDA component of the operational milestones illustrates a further transparency dimension examined in Chapter 4. The metric excluded stock-based compensation from its calculation. The award itself was stock-based, and its economic cost to existing shareholders was the dilution resulting from the options' potential exercise. A performance condition that excludes the cost of the compensation whose payout it triggers creates a circularity: the arrangement can pay out while the metric used to justify the payout is defined in a way that systematically excludes the award's own economic burden. A fairness opinion oriented toward shareholders would have identified this circularity. The proxy did not (Tesla, Proxy Statement 2018).

Against the Chapter 5 framework, the disclosure problem is not simply one of quantity. Tesla provided substantial factual information about the award's mechanics. The gap was interpretive: shareholders received the plan's terms without receiving the analysis is needed to assess whether those terms were proportionate, whether the milestones were genuinely demanding, whether the committee had negotiated in their interests, or what the true economic cost of the award was under realistic vesting scenarios. That interpretive gap is precisely what a fairness opinion is designed to fill.

6.2.4 The 2018 Shareholder Vote and Re-Ratification Attempt

At the special meeting of 21 March 2018, approximately 73 percent of disinterested shares, excluding those held by Elon and Kimbal Musk, voted in favour of the CEO Performance Award. On an all-shareholders basis, the approval rate was approximately 81 percent (Tesla, Form 8-K, March 2018). Tesla had structured the vote to exclude the interested shareholder's holdings, which gave the result the formal character of a majority-of-the-minority approval. Under ordinary Delaware governance analysis, such a vote, if fully informed, could have carried significant weight in shifting the standard of review.

The Court of Chancery held that it could not perform this function because the proxy was materially deficient. A shareholder vote can legitimate a conflicted transaction only if shareholders receive the information necessary to make an informed choice. Where the proxy misrepresents director independence, omits the CEO's role in initiating the grant's terms, and fails to disclose the internal projections that would allow shareholders to assess milestone difficulty, the vote reflects confidence in the company and its leadership, not an informed assessment of the board's fairness rationale (Tornetta v. Musk, Del. Ch. Jan. 2024). This conclusion is directly relevant to the thesis's argument in Chapter 3: say-on-pay is a necessary governance mechanism, but its effectiveness is entirely conditional on the quality of the information that precedes the vote.

Following the January 2024 rescission order, Tesla resubmitted the unaltered 2018 award to shareholders at the June 2024 annual meeting, accompanied by supplemental disclosure that included the court's opinion as an exhibit and a retrospective review by a one-member special committee. A majority again supported the ratification. The court declined to treat this second vote as curing the original defects, reasoning that presenting an unchanged plan after a judicial rescission order, and after the economic and organisational reality of the award had already unfolded over six years, was not equivalent to designing a proper independent process from inception. One cannot ratify, ex post, a transaction whose process the reviewing court has found deficient, without restarting the process that produced the deficiency (Tornetta v. Musk, Del. Ch. Dec. 2024).

6.2.5 The Delaware Supreme Court Reversal and What It Leaves Intact

On 19 December 2025, the Delaware Supreme Court reversed the rescission remedy in an unsigned per curiam opinion. The reversal rested on equitable-remedy doctrine, not on a reappraisal of the trial court's substantive findings. The Supreme Court held that rescission was an extreme and inappropriate remedy because the parties could not be restored to their positions as of January 2018: Musk had expended six years performing against aggressive milestones, Tesla had achieved extraordinary growth, and the options had fully vested. Unwinding a completed performance arrangement after the fact would produce an inequitable windfall for the corporation and leave the executive uncompensated for six years of delivered results. The court awarded $1 in nominal damages and reduced the plaintiff's counsel fee from $345 million to approximately $54.5 million on a quantum meruit basis (In re Tesla, Inc. Derivative Litigation, Del. 2025).

The Supreme Court expressly declined to address the controller-status finding, the independence analysis, or the adequacy of the proxy disclosures. The Justices noted that they held varying views on those questions and chose a narrow remedial path that left the merits undisturbed. For this thesis, the significance of the appellate outcome is precisely what it does not do: it does not vindicate the 2018 process or characterise the proxy as adequate. The Chancery Court's findings on transparency and independence survive as governance analysis, even as the remedial consequence was limited to nominal damages. This is important because it means the substantive critique of the process, including the absence of arm's-length negotiation, the inaccurate independence description, the failure to disclose Musk's initiating role, and the omission of internal projections, remains a detailed judicial reconstruction of what the Court of Chancery found problematic in the 2018 process, even though the Delaware Supreme Court ultimately reversed the rescission remedy (In re Tesla, Inc. Derivative Litigation, Del. 2025). It may be objected that a reversal on remedy grounds, without Supreme Court endorsement of the underlying merits, reduces the precedential force of the Chancery findings. That objection has limited weight for the purposes of this thesis: the analysis here draws on those findings not as binding legal authority but as a uniquely detailed factual reconstruction of a governance process, the evidentiary value of which is unaffected by the appellate court's choice of a narrow remedial path.

The outcome also demonstrates the structural asymmetry between ex ante and ex post governance corrections. A governance process can be found materially deficient and yet produce a result that proves impractical to unwind after years of performance. This asymmetry is not incidental to the Delaware model; it is a predictable consequence of a litigation-based system in which judicial review arrives years after the original decision. The Tesla case therefore makes the ex ante argument for fairness opinions in unusually concrete terms: the only moment at which a genuine fairness assessment could have changed the governance dynamics was before the shareholder vote in March 2018, not after vesting, ratification attempts, or appellate proceedings.

6.2.6 Assessment Against the Chapter 5 Criteria

Measured against the five criteria in Table 5.6, the Tesla case produces a consistent pattern of failure across all dimensions. The assessment is summarised in Table 6.2.

Table 6.2 — Tesla Assessed Against the Shareholder-Oriented Fairness-Opinion Criteria

Criterion (from Table 5.6)	**Evidence in the Tesla case**	**Assessment**
Independence	Compensation committee chair had a 15-year relationship with Musk and financial ties through his venture funds. The Court found Musk proposed the key terms and the committee did not negotiate adversarially. Four successive proxy drafts disclosed Musk's initiating role; the passage was removed from the final filing.	Fails. External advice existed but the overall process lacked independence from the beneficiary.
Methodology	The proxy disclosed milestones and potential value but provided no disclosed probability-weighted scenario analysis, no traditional peer-group benchmarking for a grant of this scale, and no independent assessment of whether milestones were genuinely demanding relative to internal projections.	Fails. Shareholders received plan terms, not a reviewable fairness methodology.
Timing	Advisor engagement post-dated Musk's April 2017 formulation of the essential terms. By the time the compensation committee formally deliberated, the plan's scale and structure had already been effectively decided.	Fails. Expert input validated a predetermined structure rather than informing its design.
Scope	The proxy covered performance milestones and equity mechanics but did not address the necessity of the award given Musk's pre-existing ~22% ownership stake, alternative structures, or probability-adjusted dilution under multiple vesting scenarios.	Incomplete. Financial description without proportionality assessment.
Disclosure to shareholders	The Court found the proxy inaccurately described key directors as independent and omitted the origins of the proposal. Shareholders voted on plan mechanics without the process information needed to evaluate the board's fairness judgment.	Fails. Formal disclosure did not achieve substantive transparency.

Source: Author's compilation based on Tesla, Inc. (2018a = DEF 14A Proxy Statement; 2018b = Form 8-K, March 2018; 2024a = Ratification Proxy Statement; 2024b = Form 8-K, June 2024), Tornetta v. Musk (Del. Ch. 2024), and In re Tesla, Inc. Derivative Litigation (Del. 2025).

The most important missing element was not a label. Calling Compensia's work a fairness opinion would not have changed the analysis if the report remained undisclosed, narrow, and controlled by the same governance process the court found deficient. The missing element was a shareholder-facing assessment: an expert analysis, disclosed with its methodology, peer group, assumptions, and conclusions, that allowed shareholders to evaluate whether the board's recommendation deserved their deference. Without that, the formal machinery of disclosure and approval was complete, but its substantive content was not.

6.3 Case 2: Intesa Sanpaolo — Italian Governance Standards

6.3.1 Institutional and Regulatory Framework

Intesa Sanpaolo S.p.A. is Italy's largest banking group by total assets, with approximately €1 trillion in consolidated assets, around 13.9 million Italian customers, and a market capitalisation placing it alongside the major European banking groups (Intesa Sanpaolo, 2025b). The bank reported record net income of €8.7 billion in 2024, an increase of 12 percent relative to 2023 (Intesa Sanpaolo, 2025b). As a significant institution supervised directly by the European Central Bank under the Single Supervisory Mechanism, and as a listed company on Borsa Italiana, it operates under a multi-layered regulatory architecture that combines general company law, capital market rules, banking supervisory provisions, and self-regulatory codes applied through the Italian Corporate Governance Code.

The regulatory framework applicable to Intesa Sanpaolo's remuneration governance draws on several overlapping instruments. At the EU level, the Shareholder Rights Directive II (Directive (EU) 2017/828) imposes a binding vote on the remuneration policy and an advisory vote on the annual remuneration report. In Italy, these requirements were transposed through Legislative Decree 49/2019 and embedded in Articles 123-ter and 123-bis of the Consolidated Law on Finance (TUF). CONSOB's Issuers' Regulation (Art. 84-quater) specifies the format and content of the annual remuneration report. The Italian Corporate Governance Code 2020 adds a comply-or-explain layer with specific recommendations on remuneration committee composition, variable-to-fixed pay ratios, performance conditions, and disclosure methodology. For banks, Bank of Italy Circular 285 (updated to its 37th amendment) and the EU Capital Requirements Directive impose additional prudential constraints: caps on variable-to-fixed pay ratios, mandatory deferral for senior risk takers, partial payment in shares or share-linked instruments, and malus and clawback provisions tied to risk-adjusted performance outcomes (Intesa Sanpaolo, Remuneration Report 2025a).

The effect of this layered architecture is a disclosure environment substantially more prescriptive than the one Tesla operated within. Where the SEC's principle-based framework leaves the selection and framing of remuneration information largely to management's judgment about materiality, the Italian and EU framework mandates specific disclosure categories, including individual pay components, peer group identity, performance scorecard detail, gateway conditions, Risk Taker classification, and deferral schedules, in standardised formats that enable year-on-year comparability. The governance floor is higher, and the scope for selective disclosure is narrower. This starting position already addresses some of the transparency failures the Tesla case illustrated.

6.3.2 Remuneration Structure and CEO Pay

Intesa Sanpaolo structures its executive remuneration around a balanced fixed-to-variable pay mix with ex ante caps and multi-year risk adjustment. The bank's policy distinguishes between fixed remuneration and variable remuneration composed of short-term (annual) and long-term (performance share plan) components. For the Managing Director and CEO, and for Group Top Risk Takers more broadly, variable pay is subject to a maximum ratio of 200 percent of fixed remuneration, approved by shareholders by qualified majority. A significant portion, amounting to at least 50 percent, is deferred over multiple years, with the longest deferral periods applying to Top Risk Takers, and a substantial share of variable pay is delivered in financial instruments rather than cash, creating a holding period that aligns management interests with long-term shareholder outcomes.

CEO Carlo Messina's fixed remuneration was €2.62 million per year from 2016 through 2023, a figure that remained unchanged despite substantial growth in the bank's profitability, reflecting a deliberate commitment to stability in the fixed component. For financial year 2022, his variable remuneration accrued at approximately 175 percent of fixed remuneration, reflecting a performance outcome approximately 120 percent of target, resulting in a total variable amount of approximately €4.585 million. Total realised compensation, comprising fixed pay, cash variable, and shares delivered from prior plans, was approximately €4.95 million (2022), €5.75 million (2023), and €6.42 million (2024). In December 2024, the board raised the CEO's fixed remuneration to €3.5 million effective 1 December 2024, reflecting competitive positioning relative to the European banking peer group benchmarked by the Remuneration Committee's external consultants (Intesa Sanpaolo, CONSOB Analytical Tables 2025c; Remuneration Report 2026a).

The long-term incentive component is the 2022–2025 Performance Share Plan, which covers approximately three thousand staff across the Group (Intesa Sanpaolo, Remuneration Report 2025a) and links vesting to a combination of absolute financial KPIs, such as Operating Income to RWA, the Cost-to-Income ratio, and the NPL ratio, alongside a relative total shareholder return measure benchmarked against a sixteen-bank European peer group including BNP Paribas, Santander, UniCredit, Deutsche Bank, Crédit Agricole, BBVA, Lloyds, Barclays, and ING (Intesa Sanpaolo, Remuneration Report 2025a). ESG de-multipliers apply to the vesting outcome through a composite indicator covering environmental, social, and governance factors. Gateway conditions, specifically minimum regulatory capital and liquidity ratios at the Group level, must be satisfied annually before any variable remuneration can be activated.

6.3.3 Disclosure Practices and the Annual Remuneration Report

Intesa Sanpaolo's annual Report on Remuneration Policy and Compensation Paid is a single structured document, running to over ninety pages, divided into Section I (forward-looking policy, subject to binding vote) and Section II (compensation paid in the prior year, subject to advisory vote). The report discloses pay mix, bonus pool funding methodology, gateway condition verification, deferral schedules, Risk Taker identification criteria, malus and clawback provisions, peer group benchmarking, individual pay figures for the CEO and Key Managers, and aggregate compensation tables. An internal audit assessment of actual remuneration practices against approved policies is conducted annually and the findings are presented to the board and shareholders.

On the question of external advisors, the report discloses that the Remuneration Committee engaged leading external consulting firms for benchmark analyses of CEO, Group Top Risk Taker, and board member remuneration; for analysis of market trends in performance management systems; for benchmarking of long-term incentive plans; and, most significantly for this thesis, for the annual preparation of the Fairness Opinion on the Performance Management approach adopted by the Group for the CEO and Group Top Risk Takers (Intesa Sanpaolo, Remuneration Report 2025a; 2026a). This last disclosure is notable. It shows that the concept of a fairness opinion has travelled into the Italian banking context and is institutionalised as part of the regular annual governance cycle, not reserved for extraordinary transactions.

The strength of this disclosure architecture is visible in areas where it is most developed. The PSP's peer group is publicly identified and has remained consistent across plan cycles. The Credit Suisse adjustment, which was adopted when Credit Suisse was delisted following its 2023 acquisition by UBS, was explicitly disclosed, with the formula applied stated in the report, allowing shareholders to verify that the adjustment was methodologically principled rather than opportunistic. Gateway condition verification is documented annually. The pay-for-performance analysis links CEO variable remuneration to Group net income over a three-year horizon, providing a temporal perspective that is unusual in remuneration reports and directly addresses the concern, raised in Chapter 3, that shareholders often vote on single-year pay without access to a longitudinal view.

The remaining weakness lies not in the absence of external assessment, but in the limited public visibility of that assessment. The report states that an annual Fairness Opinion on the Performance Management approach was prepared by external consultants. However, the publicly available remuneration materials do not reproduce the opinion itself, identify the advisor in a way that would allow shareholders to assess potential conflicts, disclose the fee arrangement, or present the assumptions and evaluative steps on which the conclusion rests. The appropriate conclusion is therefore not that the opinion lacks quality, but that its quality is not fully reviewable by shareholders from the public record. Shareholders are informed that an external fairness assessment exists; they are not given enough methodological detail to evaluate independently whether it provides the type of shareholder-oriented proportionality assessment developed in Chapter 5.

6.3.4 Say-on-Pay Outcomes and Shareholder Participation

Under the SRD II framework implemented in Italy, Intesa Sanpaolo submits a binding vote on the forward-looking remuneration policy (Section I) and an advisory vote on the compensation paid in the prior year (Section II) at each annual general meeting. This dual-vote structure is more demanding than the single advisory vote model prevailing in the United States. A negative binding vote on Section I would prevent the new policy from operating as an approved shareholder-endorsed framework and would require the company to rely on the previously approved or otherwise applicable remuneration framework until a revised policy is submitted. For this reason, the Italian model creates a more concrete ex ante accountability mechanism than a purely advisory vote.

Voting outcomes over the period covered by this analysis show a consistent pattern with analytically significant variation. In 2022, the incentive plan and LTI resolutions received support in the range of 96 to 98 percent. The 2023 AGM produced 88.07 percent support for the binding Section I vote and 93.84 percent for the advisory Section II vote. In 2024, the corresponding figures were 88.63 percent and 93.02 percent. At the April 2025 AGM, support softened meaningfully: the binding Section I vote fell to 69.67 percent and the advisory Section II vote to 86.81 percent. This 2025 result is sufficient for the purposes of this chapter because the aim is not to provide a complete longitudinal voting history, but to show that even within a highly regulated remuneration framework, shareholder support can vary meaningfully when investors perceive issues in the proposed policy. (Intesa Sanpaolo, Shareholder Meeting Press Releases, 2023–2025). Table 6.5 summarises these outcomes alongside the Tesla voting record.

Several features of this pattern are analytically significant. The consistent gap between the binding policy vote and the advisory compensation vote, where the advisory vote consistently receives higher support, suggests that shareholders distinguish between the two resolutions, accepting compensation already paid while applying greater scrutiny to forward-looking policy. The stable dissent of approximately 12 percent in consecutive Section I binding votes implies a principled minority position rather than random variation. Moreover, the notable softening to 69.67 percent on the 2025 binding policy vote, which fell well below prior years, demonstrates that the mechanism can register genuine dissent when shareholders are concerned about specific features of the proposed framework. High overall approval rates, in other words, are not evidence that the mechanism is merely formal; they coexist with meaningful variation that tracks real shareholder concerns.

6.3.5 Assessment Against the Chapter 5 Criteria

Measured against the five criteria in Table 5.6, Intesa Sanpaolo presents a more institutionally mature picture than Tesla on most dimensions, though a residual gap remains. The assessment is summarised in Table 6.3.

Table 6.3 — Intesa Sanpaolo Assessed Against the Shareholder-Oriented Fairness-Opinion Criteria

Criterion (from Table 5.6)	**Evidence in the Intesa Sanpaolo case**	**Assessment**
Independence	The Remuneration Committee engaged leading external consultancy firms for benchmarking and an annual fairness opinion on the performance management approach. Committee comprises non-executive directors, majority independent. However, the advisor's identity and any potential conflicts of interest are not publicly disclosed.	Moderate. Process independence stronger than Tesla but not fully reviewable by shareholders from

		public materials.
Methodology	Reports disclose remuneration principles, performance scorecards, risk-adjustment mechanisms, named peer groups for PSP benchmarking, gateway conditions, malus/clawback, and the Credit Suisse adjustment formula. The specific methodology of the Fairness Opinion on Performance Management is not reproduced in the public remuneration materials, limiting shareholders' ability to review the reasoning behind the external assessment.	Partial. Strong on quantitative framework; fairness opinion reasoning remains opaque.
Timing	External review and fairness opinion are integrated into the recurring annual governance cycle, not invoked only in response to controversy. Binding SRD II vote occurs prospectively before the policy applies.	Strong. Annual and ex ante, which is superior to the Tesla case.
Scope	Framework covers fixed and variable pay, LTI plans, risk-taker rules, gateway conditions, deferral, malus, clawback, sustainability, and hedging prohibitions. The disclosed fairness opinion is limited to performance management rather than the whole economic package.	Moderate to strong. Scope is broad but the fairness opinion itself is narrower than a full shareholder-oriented assessment.
Disclosure to shareholders	Annual reports, CONSOB analytical tables, aggregate disclosures, and voting outcomes are public and detailed. Separate SRD II votes distinguish policy from implementation. The report remains technically dense and does not provide a concise fairness conclusion accessible to non-specialist shareholders.	Strong formal transparency with a remaining interpretive burden.

Source: Author's compilation based on Intesa Sanpaolo Remuneration Reports (2022–2025), CONSOB Analytical Tables, and Shareholder Meeting Press Releases (2022–2025).

The comparative lesson at this stage is instructive. Intesa satisfies the timing criterion substantially better than Tesla, because external assessment is integrated into the annual governance cycle rather than triggered by a one-time extraordinary grant. It satisfies the scope criterion at a moderate-to-strong level because the framework covers fixed and variable pay, LTI plans, risk alignment, and prudential constraints. Where it falls short, particularly regarding the methodology and shareholder disclosure of the fairness opinion itself, the gap is narrower than in Tesla but is structurally analogous: the opinion exists, but its reasoning is not made available in a form that allows shareholders to assess its quality rather than its existence.

6.4 Comparative Analysis

6.4.1 Transparency Quality: Principle-Based vs. Prescriptive Approaches

The first and most fundamental comparative finding is that transparency quality cannot be measured by volume or by formal compliance status. Tesla's 2018 proxy disclosed a large amount of information about the award's mechanics. The deficiency was not informational scarcity; it was the absence of the specific information shareholders needed to assess the board's fairness judgment: the origins of the proposal, the real independence of the committee, and the internal trajectory data that put the milestones in context. A proxy can be formally extensive while being substantively incomplete on the questions that matter most for informed voting (Tesla, Proxy Statement 2018; Tornetta v. Musk, Del. Ch. 2024).

Intesa Sanpaolo presents the reverse pattern. Its disclosures are highly structured, recurring, and mandated by regulation. Shareholders receive policy narratives, performance scorecards, quantitative tables, peer group information, aggregate disclosures, and Risk Taker identification. The report is not a one-off persuasive document; it is part of a continuing supervisory and governance framework. This makes Intesa substantially stronger on formal and procedural transparency. The remaining challenge is different: a remuneration report can become so technically dense that the information is present but difficult to synthesise into a fairness judgment. The question shareholders need answered, namely whether the arrangement is proportionate and fair from their perspective as shareholders, is not the same question the regulatory framework was designed to answer (Intesa Sanpaolo, Remuneration Report 2026a).

This comparison maps directly onto the distinction between formal and substantive transparency developed in Chapter 4. Tesla's formal transparency was undermined by omitted process information. Intesa's formal transparency is stronger, but the interpretive burden remains substantial. What each system discloses well reflects its architecture's strengths: the U.S. principle-based model, once litigated, produces unusually deep process facts; the EU prescriptive model produces structured, comparable, risk-aligned disclosure. What remains opaque also reflects each architecture's limits: in the U.S., the process narrative absent litigation; in the EU, the reasoning behind the fairness opinion itself. Both confirm the thesis's argument that disclosure is a necessary but not sufficient condition for effective say-on-pay.

6.4.2 Fairness Opinion Practices: Absence, Partial Presence, and Shareholder Orientation

The most direct difference between the cases lies in fairness opinion practice, and it is instructive because it reveals two distinct failure modes. In Tesla's case, no formal fairness opinion was obtained at any stage of the 2018 process. The compensation consultant Compensia provided benchmarking work, but this was not structured as an independent opinion addressed to the proportionality of the award from the shareholders' perspective, was not disclosed with reviewable methodology, and was conducted in a process the court subsequently found lacked the independence to substitute for genuine arm's-length assessment (Tornetta v. Musk, Del. Ch. Jan. 2024).

In Intesa's case, the situation is subtly different and more instructive for the thesis. The bank expressly discloses the annual preparation of a Fairness Opinion on the Performance Management approach for the CEO and Group Top Risk Takers. This is a notable governance practice: it shows that fairness-oriented external assessment can be incorporated into the ordinary annual governance cycle rather than reserved for extraordinary transactions. It also suggests that the concept of a fairness opinion in the remuneration context, which Chapter 5 argued remains largely unexplored in academic literature, has already found institutional expression in the European banking environment (Intesa Sanpaolo, Remuneration Report 2025a; 2026a).

The limitation is that the disclosed opinion is not a full shareholder-oriented remuneration fairness opinion in the sense Chapter 5 developed. Its scope is limited to the Performance Management approach rather than the entire economic fairness of the remuneration arrangement to shareholders. Its methodology is not publicly reproduced. Its conclusions are not presented in a form that allows shareholders to verify the advisor's reasoning rather than simply accept the fact of its engagement. In Chapter 5's terms, the opinion satisfies timing and partial scope better than Tesla, but leaves independence and methodology only partially visible.

This comparison helps refine the safe-harbor critique developed in Section 5.6. Tesla demonstrates the risk of absent or non-independent assessment. Intesa demonstrates a softer risk: treating the fact that a fairness opinion was prepared as sufficient transparency without disclosing the reasoning that would make that opinion genuinely informative. Both risks matter. A fairness opinion improves governance only when shareholders can evaluate the analysis, not merely know that an analysis occurred. The distinction is between fairness as a documented conclusion and fairness as a transparent analytical process.

6.4.3 Say-on-Pay Effectiveness and the Condition of Transparency

The two cases confirm, from different directions, the central proposition of Chapter 3: say-on-pay is a necessary governance mechanism, but its effectiveness is entirely conditional on the quality of the information that precedes the vote. Tesla's 2018 majority-of-the-minority approval rate of approximately 73 percent appeared to satisfy the formal requirements for informed disinterested approval. The court's subsequent finding, that the vote was not fully informed because the proxy omitted material process and independence information, demonstrates that formal approval and substantive informed consent are not the same thing. Shareholders expressed a preference, but they did so without the information that would have allowed them to vote differently on principled grounds. The mechanism functioned procedurally while failing functionally. (Tesla, Form 8-K 2018; Tornetta v. Musk, Del. Ch. Jan. 2024).

The 2024 re-ratification sharpens this lesson further. An extraordinary level of supplemental disclosure, which included the court's own 201-page opinion as an exhibit, accompanied the second vote, and a majority again supported the award. Yet this outcome occurred after the economic and organisational consequences of the award had already materialised, after Musk had delivered performance against all twelve tranches, and after the governance controversy had been publicly litigated for six years. A second vote in these circumstances cannot perform the same function as a properly informed first vote: it confirms shareholder preference under fundamentally changed conditions rather than providing ex ante legitimacy for a governance process that begins with a clean slate (Tornetta v. Musk, Del. Ch. Dec. 2024).

Intesa Sanpaolo's voting pattern over the 2023–2025 period offers a different illustration of the same principle. The binding Section I policy votes at 88 percent, combined with a consistent twelve percent dissent minority, suggest that shareholders are exercising genuine judgment rather than ratifying a management recommendation reflexively. The softening to 69.67 percent on the 2025 Section I vote is the clearest evidence: the binding mechanism can register real dissent when shareholders have concerns about specific features of the proposed framework. This is a stronger functional performance of the say-on-pay mechanism than Tesla's votes achieved, and it correlates with the higher quality of structured disclosure that precedes each Intesa vote. The comparison thereby confirms the conditioning relationship the thesis identified: transparency determines whether the vote is substantive, not merely formal.

6.4.4 The Role of Legal Enforcement

The two governance environments rely on fundamentally different enforcement mechanisms, and the contrast reveals why ex ante transparency matters more than ex post correction in both systems. Delaware's model is litigation-centric: shareholders or derivative plaintiffs challenge governance failures through fiduciary-duty claims, and courts evaluate the adequacy of the process in retrospect. This model can produce extraordinarily detailed factual records, as demonstrated by the Tesla trial generating a post-trial opinion of more than two hundred pages, and it can identify governance deficiencies that ex ante regulatory oversight would never surface. Its limitations are equally structural: litigation is slow, expensive, and arrives after the vesting that inadequate transparency enabled has already occurred. The Tesla litigation cycle spanned eight years from grant to Supreme Court decision, and the final remedy was $1 in nominal damages (In re Tesla, Inc. Derivative Litigation, Del. 2025).

Italy's enforcement model is predominantly administrative and ex ante. CONSOB exercises ongoing supervisory oversight of remuneration disclosure compliance and retains sanctioning powers for non-compliance. The Bank of Italy monitors remuneration practices in the banking sector as part of prudential supervision. The ECB's direct supervision of significant institutions through the Single Supervisory Mechanism provides a further layer. The combined effect is an enforcement architecture that front-loads governance pressure: regulatory compliance is assessed continuously, and non-compliance carries administrative consequences that apply without the transaction costs and procedural delays of litigation. The limitation is that administrative oversight is process-oriented rather than substantive: it monitors whether required disclosure categories have been provided, not whether the disclosed information enables shareholders to assess proportionality. CONSOB can require that a peer group be named; it does not assess whether the peer group is independently constructed (Ferrarini & Moloney, 2005).

Both enforcement models therefore leave the same structural gap: neither reliably corrects substantive pay proportionality once an inadequate process has produced a decision and the economic consequences have begun to materialise. The Tesla litigation corrected the process finding in theory while failing to provide a practical remedy for the shareholders who voted in 2018. The Italian administrative model can ensure that required disclosures are made but cannot guarantee that those disclosures constitute a genuine fairness assessment rather than regulatory compliance. This confirms the thesis's argument throughout: ex ante mechanisms that improve the quality of shareholder information before the vote are more effective governance instruments than ex post correction mechanisms that address deficiencies after the fact.

6.4.5 Governance Implications: What Each Case Reveals About the Three-Stage Thesis Logic

Both cases confirm the three-stage analytical chain at its first two links and reveal characteristic weaknesses at its third and fourth links, though the nature of those weaknesses differs. The agency conflict is structurally present in both cases, though its intensity differs: in Tesla it is concentrated and acute, with a founder-controller exercising influence over a board that nominally oversaw his own compensation; in Intesa it is diffuse and partially mitigated by the regulatory architecture, but structurally unavoidable wherever executives participate in designing the frameworks that govern their own pay. Say-on-pay is operative in both cases: Tesla provided shareholder approval and later ratification votes over the CEO award in 2018 and 2024. The first two links hold.

The chain weakens at the transparency link in both cases, though differently. In Tesla, the weakening is acute and was later characterised as a material deficiency by a court: material process and independence information was withheld, the proxy misrepresented director independence, and shareholders were denied the internal trajectory data that would have allowed them to assess milestone difficulty. In Intesa, the transparency is substantially stronger across most dimensions but falls short of completeness on the specific question that matters most for Chapter 5: the fairness opinion on performance management is disclosed as existing but not as a reviewable analysis. Shareholders receive information that the mechanism was used without receiving information that allows them to assess whether the mechanism produced a genuine fairness conclusion. The chain breaks at the fourth link, specifically the fairness opinion, in both cases, though again in different ways. Tesla had no formal fairness opinion. Intesa has an annual fairness opinion on performance management that is disclosed but not reproduced with methodology. In neither case does the available evidence show a shareholder-facing assessment that satisfies all five criteria in Table 5.6 simultaneously. The cases therefore confirm the thesis's central proposition not as an abstract theoretical claim but as a concrete observation about governance practice: the instruments exist, individually or partially, but the conditions under which they can perform their full governance function remain unrealised in both institutional settings.

Table 6.4 consolidates the comparative findings across the five analytical dimensions.

Table 6.4 — Comparative Findings: Tesla and Intesa Sanpaolo

Dimension	Tesla Inc.	Intesa Sanpaolo	Thesis Implication
Transparency model	Principle-based proxy disclosure supplemented by extensive post-hoc litigation record.	Prescriptive EU/Italian remuneration report; binding SRD II vote; supervisory oversight.	Both systems can leave shareholders without a complete fairness assessment, though the floor differs significantly.
Primary weakness	Material process and independence omissions undermined the majority-of-the-minority vote.	Extensive disclosure may remain descriptive and technically dense, without an explicit fairness conclusion for shareholders.	The problem can be omission or information overload; neither is resolved by volume alone.
Advisor role	Consultants present but no disclosed remuneration fairness opinion that tested	External benchmarking and annual fairness opinion on performance management	Benchmarking is not equivalent to a shareholder-oriented fairness

	proportionality for shareholders.	disclosed at a high level; methodology not reproduced.	assessment.
Say-on-pay function	Shareholder approval and later ratification votes existed; the Court held that the 2018 vote could not cleanse the process because the proxy disclosures were materially deficient.	Binding and advisory votes provide recurring, granular accountability across separate agenda items.	Shareholder voice depends entirely on the information architecture around the vote.
Legal enforcement	Ex post Delaware fiduciary litigation; detailed but slow; remedy constrained after vesting.	Ex ante regulatory and supervisory framework (CONSOB, Bank of Italy, ECB); raises compliance floor.	Neither model reliably corrects substantive pay proportionality ex post; ex ante assessment is critical.
Fairness opinion potential	Could have disciplined a conflicted, extraordinary award if obtained early by a genuinely independent advisor.	Could synthesise complex disclosure and convert it into a reviewable fairness rationale for shareholders.	The same instrument performs different governance functions depending on the institutional setting.

Source: Author's compilation based on the comparative analysis developed in Sections 6.2 through 6.4.

Table 6.5 — Say-on-Pay Voting Outcomes: Tesla and Intesa Sanpaolo (2018–2025)

Meeting / Resolution	**Vote type**	**Result**	**Governance significance**
Tesla — Special Meeting, 21 March 2018	Shareholder approval of equity award / majority-of-the-minority approval condition	~73% disinterested shares; ~81% all shares	Plan adopted; Court of Chancery later found disclosure deficiencies rendered the vote not fully informed.
Tesla — Annual Meeting, 13 June 2024 (re-ratification)	Post-judgment stockholder ratification vote	~72% disinterested shares	Court of Chancery rejected: ratification of an unchanged plan after judicial rescission does not substitute for a properly structured ex ante process.
Intesa Sanpaolo — AGM 28 April 2023 (2023 Policy — binding)	Binding (Art. 123-ter TUF, Section I)	88.07%	2023 remuneration and incentive policies formally approved; legally binding under Italian law.
Intesa Sanpaolo — AGM 28 April 2023 (FY2022 paid — advisory)	Advisory (Art. 123-ter TUF, Section II)	93.84%	Non-binding approval; the higher rate for the advisory vote relative to the binding vote suggests shareholders distinguish policy approval from retrospective disclosure acceptance.
Intesa Sanpaolo	Binding (Art. 123-ter	88.63%	Consistent pattern: ~12% minority dissent in

— AGM 24 April 2024 (2024 Policy — binding)	TUF, Section I)		consecutive binding votes indicates the mechanism registers genuine shareholder scrutiny.
Intesa Sanpaolo — AGM 24 April 2024 (FY2023 paid — advisory)	Advisory (Art. 123-ter TUF, Section II)	93.02%	Non-binding approval; near-identical to 2023, suggesting stable institutional support for disclosure format rather than uncontested pay quantum.
Intesa Sanpaolo — AGM 29 April 2025 (2025 Policy — binding)	Binding (Art. 123-ter TUF, Section I)	69.67%	Notable softening: confirms that the binding vote can register real dissent and is not merely a formality.

Source: Author's compilation based on Tesla, Inc. (2018a = DEF 14A Proxy Statement; 2018b = Form 8-K, March 2018; 2024a = Ratification Proxy Statement; 2024b = Form 8-K, June 2024); Tornetta v. Musk (Del. Ch. 2024); In re Tesla, Inc. Derivative Litigation (Del. 2025); Intesa Sanpaolo Shareholder Meeting Press Releases (2023–2025).

6.5 Lessons from the Comparison

The comparison between Tesla and Intesa Sanpaolo shows that shareholder voting cannot be evaluated simply by looking at approval percentages. In both cases, shareholders formally participated in the remuneration process, and in both cases the relevant resolutions received majority support. Yet the meaning of that support was not the same. Tesla's 2018 vote appeared strong on the surface, but the later litigation showed that shareholders had not been given several pieces of information that were essential to evaluating the board's recommendation. Intesa's voting outcomes, by contrast, were embedded in a more structured disclosure environment, where shareholders could distinguish between forward-looking remuneration policy and compensation already paid. The difference suggests that say-on-pay only becomes meaningful when the information surrounding the vote allows shareholders to understand not only what they are approving, but also why the board considers the arrangement fair.

A related point concerns the difference between disclosure that is formally adequate and disclosure that is genuinely useful for shareholder judgment. Tesla illustrates this difference in a particularly sharp way. The proxy gave shareholders many details about the structure of the award, but it did not give them the process information and internal context that later became central in the Delaware litigation. Intesa Sanpaolo stands in a stronger position because its remuneration reports are recurring, detailed, and shaped by a more demanding regulatory framework. Still, even there, the existence of a fairness opinion is disclosed more clearly than the reasoning behind it. The comparison therefore does not support the simple view that more disclosure automatically means better transparency. What matters is whether the disclosed information helps shareholders form an independent judgment about proportionality, process, and fairness.

The comparison also clarifies why the mere presence of external advisors should not be treated as equivalent to a fairness assessment. Tesla had compensation-consultant involvement, but that involvement did not operate as an independent, shareholder-facing review of the award's proportionality. The advice entered a process in which the essential structure had already been shaped by Musk's own proposal, and the analysis was not disclosed to shareholders in a way that allowed them to test the board's judgment. Intesa Sanpaolo presents a more developed practice, since external consultants are integrated into the annual remuneration cycle and a Fairness Opinion on the Performance Management approach is expressly mentioned. However, the public disclosure stops short of reproducing the opinion's reasoning, assumptions, and evaluative method. The concern is therefore not that the opinion is necessarily deficient, but that shareholders cannot independently assess its quality from the disclosed materials alone. The two cases therefore point to different versions of the same governance concern: expert involvement can support shareholder accountability only when it is independent, timely, and sufficiently transparent to be reviewed rather than merely trusted.

The timing of governance review is another lesson that emerges from the comparison. Tesla shows the limits of relying on litigation after the compensation decision has already been approved, implemented, and partly performed. By the time the Delaware courts reconstructed the defects in the 2018 process, the award had become extremely difficult to unwind without creating new fairness problems. Intesa Sanpaolo avoids this particular litigation problem because its remuneration policy is submitted to shareholders prospectively each year, under a binding vote. Yet even in that system, the retrospective advisory vote on compensation already paid cannot repair weaknesses in the information provided before the policy vote. In both settings, therefore, the decisive moment is the period before shareholder approval, when disclosure, advisor independence, and methodological clarity can still shape the decision rather than merely explain it after the fact.

The broader implication is that neither regulatory model, by itself, guarantees the type of fairness assessment developed in Chapter 5. Tesla shows the governance cost of proceeding without a genuinely independent and shareholder-facing assessment at the moment when the award was designed and approved. Intesa Sanpaolo shows a more advanced but still incomplete version of the same instrument: the fairness opinion is integrated into the annual remuneration process, yet shareholders are not given enough of its reasoning to evaluate it independently. This suggests that the value of a fairness opinion does not depend simply on whether the surrounding legal regime is principle-based or prescriptive. It depends on how the opinion is produced, how early it enters the decision-making process, how independent the advisor is, and how much of the reasoning is made available to shareholders. In that sense, a fairness opinion is not automatically a governance safeguard. It becomes one only when it helps shareholders move from receiving remuneration information to evaluating the fairness of the board's judgment.

That question must be answered case by case, against the criteria this thesis has developed. One limitation of this analysis should be acknowledged. For Intesa Sanpaolo, the chapter is entirely dependent on publicly available documents. The content of the annual fairness opinion on performance management, specifically its underlying assumptions, peer comparisons, and conclusions, remains inaccessible, which means the assessment of that opinion's quality is necessarily indirect. A fuller evaluation would require access to the opinion itself, which the current disclosure framework does not provide.

7. Conclusions

The analytical work of this thesis is complete by the end of Chapter 6. What remains is to state, without retracing the argument step by step, what that work has actually established. Chapter 1 organised the inquiry around a three-stage chain: agency conflict creates the need for shareholder voice, say-on-pay supplies that voice in formal terms, and transparency determines whether the resulting vote carries substantive content, with fairness opinions serving, under conditions specified in Chapter 5, as the instrument capable of closing the interpretive gap that disclosure alone leaves open. Each transition in that chain was defended on its own terms across Chapters 2 through 5. The comparative case study in Chapter 6 then asked a different question: not whether the chain is theoretically coherent, but whether it survives contact with two governance environments built on almost entirely different legal foundations.

It does not, at least not completely, and the way it fails is itself the most informative finding this thesis produces. Tesla and Intesa Sanpaolo operate under legal architectures that share almost nothing at the level of doctrine: one is shaped by Delaware fiduciary litigation and the entire fairness standard, the other by EU directive transposition and continuous prudential supervision. Despite this, both cases expose, in different forms, a weakness at the point where external assessment should become reviewable by shareholders, for reasons that the surrounding law in each jurisdiction explains rather than obscures. What follows draws that conclusion out in full, answers the research questions Chapter 1 posed, states what the thesis contributes that did not exist in the literature before it, and sets out what its qualitative method permits and what it does not.

7.1 Summary of Main Findings

The analysis first shows that say-on-pay functions as a necessary, but not self-sufficient, response to the self-dealing structure that Chapter 2 identified as the distinguishing feature of director remuneration. Where the body responsible for oversight is also, in this one respect, the body being overseen, internal monitoring cannot resolve the conflict on its own; some external check is required, and say-on-pay supplies it by giving shareholders a formal channel through which to approve or oppose a board-designed proposal. The empirical record across the United Kingdom, the United States, and the European Union confirms that this channel carries real disciplinary weight. Boards that face high dissent restructure subsequent pay practices, and directors who preside over failed votes experience measurable career consequences, including reduced access to other board seats (Ferri & Maber, 2013; Barry, 2023). What the mechanism cannot do is design the proposal it asks shareholders to judge. Even in binding regimes, the board retains a near-monopoly over the architecture of the policy; shareholders hold what amounts to a negative veto rather than a constructive role in shaping the package (Barry, 2023). Say-on-pay narrows the agency problem. It does not, on its own, resolve it.

Transparency emerges from the thesis not as a secondary improvement to say-on-pay, but as the condition that gives the vote substantive meaning. Without it, the vote does not function as an accountability mechanism in any substantive sense, regardless of how decisive the approval margin looks on paper. Tesla supplies the clearest illustration available. Approximately 73 percent of disinterested shares supported the 2018 CEO Performance Award at the time it was put to a vote, a result that would ordinarily carry considerable weight in shifting the standard of judicial review (Tesla, Inc., Form 8-K, Mar. 21, 2018; Tornetta v. Musk, Del. Ch. 2024). The Delaware Court of Chancery later found that this apparent endorsement could not perform that function, because the proxy materials had mischaracterised the independence of key committee members, omitted Musk's role in proposing the award's essential terms, and withheld internal projections that bore directly on whether the performance milestones were genuinely demanding (Tornetta v. Musk, Del. Ch. 2024). Formal approval and informed consent diverged sharply in that case, and the divergence is what the Court of Chancery's subsequent application of the entire fairness standard was designed to address. A high approval rate did not establish that shareholders had judged the package; it established only that they had voted on a description of it that the court later found materially incomplete.

The problem becomes most concrete in the treatment of stock-based compensation, especially where it is excluded from the metrics used to determine whether variable pay targets have been met. This is not an occasional reporting choice. The practice is associated with measurably higher compensation outcomes, an effect that survives controls for board independence, consultant involvement, and institutional ownership, which suggests the distortion operates directly through the calibration of performance targets rather than through some broader governance weakness (Black et al., 2018; Guest, Kothari & Pozen, 2019). Tesla's own proxy materials reproduced this circularity in an unusually direct form: the adjusted EBITDA component of the award's operational milestones excluded stock-based compensation, even though the award itself was stock-based and its cost to existing shareholders was precisely the dilution those options would eventually create. A performance condition built this way can be satisfied while the metric used to certify that satisfaction is defined in a way that structurally excludes the award's own economic burden. No reconciliation table corrects that circularity, because the problem is not arithmetic; it is the choice of what counts as performance in the first place.

Fairness opinions occupy a more ambivalent position in the thesis: they have genuine governance potential in the remuneration context, but only where conditions that current practice rarely satisfies jointly. Chapter 5 distilled those conditions into five criteria: independence of the advisor from the management whose pay is under review, disclosed methodology, timing that precedes rather than ratifies the substantive decision, scope broad enough to cover proportionality and dilution rather than headline competitiveness alone, and communication accessible to a non-specialist shareholder. The doctrinal stakes of this gap are not abstract. A fairness opinion satisfying these conditions is precisely the kind of evidence that supports the business judgment rule's informed-basis requirement and that can help discharge the fair-dealing prong once entire fairness applies; an opinion that satisfies none of them does neither, however confidently its cover letter states a conclusion. Tesla had no formal fairness opinion at any stage of the 2018 process (Tornetta v. Musk, Del. Ch. 2024). Intesa Sanpaolo's remuneration reports state that a Fairness Opinion on the Performance Management approach was obtained, but the public reports do not reproduce the underlying methodology, assumptions, or analytical reasoning in a form that shareholders can independently assess (Intesa Sanpaolo Remuneration Reports, 2023–2025).

The comparative method brings this point into sharper focus and connects it directly to the doctrinal analysis developed in Chapter 5. The three-stage chain does not operate fully at its third and fourth links in both cases, but the legal mechanisms that expose the break are almost entirely unrelated. In Tesla, the break is what triggered entire fairness in the first place. Once the Court of Chancery found that Musk's influence over the board process amounted to transaction-specific control, the business judgment presumption was unavailable from the outset, and the MFW framework's dual requirement of a genuinely independent committee and an informed minority vote was the only structured route back to deference. Neither condition was met: the committee lacked the adversarial posture the framework requires, and the proxy that should have informed the minority vote did not (Kahn v. M&F Worldwide Corp., Del. 2014; Tornetta v. Musk, Del. Ch. 2024). The doctrine did not fail to catch this defect. It caught it precisely, years later, after the award had already vested and after a remedy capable of correcting it had become, in the Delaware Supreme Court's own reasoning, inequitable to apply. Intesa Sanpaolo never approaches this terrain at all, because Italian and EU law route enforcement through prospective administrative supervision rather than ex post fiduciary litigation. CONSOB mandates the disclosure categories; the Bank of Italy and the ECB monitor compliance continuously; the binding SRD II vote operates before the policy takes effect rather than after a controversy has already crystallised (Directive (EU) 2017/828, Arts. 9a–9b; CONSOB Regulation No. 11971/1999, Art. 84-quater; Bank of Italy Circular 285/2013; see Chapters 3 and 6). This raises the disclosure floor well above what Tesla's proxy provided. It does not, on its own, force the fairness opinion's underlying reasoning into public view. The two systems differ completely in how they would catch a defect at the fourth link, should one occur. Neither, on the evidence developed in Chapter 6, currently makes that defect visible to the shareholders who would need to act on it before the decision is made.

7.2 Answers to Research Questions

RQ1 asked how the say-on-pay mechanism contributes to addressing agency conflicts in corporate governance, and what its structural limitations are as a tool of remuneration governance. The mechanism addresses the conflict by introducing an external accountability check on a process that would otherwise remain entirely internal to the board, and the empirical evidence confirms that boards anticipate this check and adjust behaviour accordingly, not only in reaction to a failed vote but in advance of one (Ferri & Maber, 2013; Ertimur, Ferri & Muslu, 2011; Barry, 2023). Its limitations are structural rather than incidental. The vote is binary where the underlying governance question is multidimensional; shareholders approve or reject a board-designed proposal but cannot redesign performance conditions, reconstruct the peer group, or revalue the equity component. Even where the response to dissent is genuine, research also documents instances where it amounts to better presentation rather than altered economic substance (Larcker, McCall & Tayan, 2013; Brunarski, Campbell & Harman, 2015). Say-on-pay is therefore a necessary external check on a structurally self-interested process. It is not, by itself, sufficient to determine whether the pay it approves is proportionate.

RQ2 asked to what extent transparency is a necessary condition for the effective functioning of say-on-pay, and what the principal obstacles to substantive transparency are, including those created by non-GAAP disclosure practice. The answer is unambiguous in the strict sense the question invites: without substantive transparency, the vote cannot perform an accountability function regardless of its formal approval rate, because shareholders are then approving a description of the package rather than the package itself. The obstacles documented across Chapter 4 are not failures of regulatory ambition. Boilerplate language, strategically constructed peer groups, and sheer informational volume can each leave a technically compliant report substantively opaque, and the structural credibility problem, that the report is written by the insiders whose decisions it defends, compounds all three (Bizjak, Lemmon & Naveen, 2008; Christensen, 2021). The non-GAAP exclusion of stock-based compensation is the most concrete of these obstacles because it is the most quantifiable: it does not merely complicate the reading of a remuneration report, it misstates the cost shareholders are actually being asked to bear when they cast their vote (Black et al., 2018; Guest, Kothari & Pozen, 2019; Leung & Veenman, 2018).

RQ3 asked what role fairness opinions play in supporting transparency and improving remuneration decision-making, and under what conditions they can genuinely enhance shareholder participation rather than serving primarily as legal protection for directors. The role is, in principle, the one an audit opinion performs for a set of financial statements: translating a technically demanding judgment into a conclusion a non-specialist can rely on without reconstructing the underlying analysis. Whether that role is actually performed depends on the five conditions developed in Chapter 5, and the chapter's account of why fairness opinions so often fail to satisfy them together is not a claim about bad faith on the part of any single advisor. It follows from the instrument's structure. A fairness opinion serves an evidentiary function directed at courts, an informational function directed at shareholders, and a governance function that operates earlier and less visibly by disciplining how a package is designed in anticipation of review; these functions are not automatically aligned, and a document optimised for the first, conclusory, narrow in scope, heavily qualified, is not the document that would serve the second. Current practice favours the first function by a wide margin, which is precisely what the safe-harbor critique developed in Section 5.6 predicts and what Tesla's absence of any fairness opinion, and Intesa's undisclosed one, both confirm in different ways.

RQ4 asked how these governance mechanisms interact in practice, as illustrated by comparative reference to major listed companies in the United States and Italy. They interact conditionally rather than additively: the value each mechanism contributes depends on whether the mechanism preceding it in the chain has already supplied a sound foundation, and a defect at any one link compromises the legitimating value of the formal steps that follow it. Tesla shows what happens when that defect is severe and the surrounding enforcement model is reactive: a procedurally complete vote, an extensively documented proxy, and a years-long litigation record that reconstructs precisely what went wrong, arriving only after the award had vested and a corrective remedy had become impractical to apply. Intesa Sanpaolo shows a materially different failure mode operating inside a stronger architecture: prospective administrative supervision raises the disclosure floor substantially and embeds external assessment in the ordinary governance cycle, yet the same interpretive gap reappears in softer form, because the existence of a fairness opinion is not the same disclosure as its reasoning. Comparing the two cases reveals that legal architecture changes how a defect at the fourth link becomes visible, and to whom, far more than it changes whether the defect is likely to exist in the first place.

Table 7.1 — Research Questions, Answers, and Primary Evidence

Research Question	Core Answer	Primary Evidence
RQ1: How does say-on-pay address agency conflicts, and what limits it?	Necessary external check on self-dealing; structurally binary and board-designed, so effective only within an adequate informational environment.	Ch. 2 self-dealing analysis; Ferri & Maber (2013); Barry (2023); Larcker, McCall & Tayan (2013)
RQ2: Is transparency a necessary condition for say-on-pay?	Yes, in the strict sense; formal compliance routinely falls short of substantive clarity, and the non-GAAP treatment of stock-based pay is the clearest instance.	Ch. 4; Black et al. (2018); Guest, Kothari & Pozen (2019)
RQ3: What role do fairness opinions play?	Genuine potential, conditional on five jointly-satisfied criteria; current practice satisfies the evidentiary function far more often than the informational one.	Ch. 5, Table 5.6; Davidoff (2006); Cain & Davidoff (2012)
RQ4: How do the mechanisms interact in practice?	Conditionally, not additively; a defect at one link compromises the others regardless of jurisdiction. Tesla and Intesa fail at the same link through unrelated legal mechanisms.	Ch. 6; Tornetta v. Musk (Del. Ch. 2024); Intesa Sanpaolo Remuneration Reports (2023-2025)

Source: Author's compilation based on the analysis developed in Chapters 2 through 6.

7.3 Theoretical Contributions

One contribution of the thesis lies in integrating Delaware fiduciary doctrine with the agency-theoretic account of director remuneration developed in Chapter 2, treating them as one analytical object rather than two adjacent literatures. Agency theory predicts, in the abstract, that a self-dealing structure of this kind will generate opportunistic outcomes absent some external constraint. The business judgment rule's three preconditions, good faith, an informed basis, and the absence of a disqualifying conflict, specify exactly when courts will treat that abstract risk as serious enough to withdraw their ordinary deference, and the third precondition is almost never satisfied where directors are setting their own compensation. This is why entire fairness, rather than an ordinary negligence-style inquiry, becomes the operative standard in compensation disputes once self-dealing is established, and it is why the line of authority running from Seinfeld v. Slager (Del. Ch. 2012) through Calma v. Templeton (Del. Ch. 2015) to In re Investors Bancorp (Del. 2017) matters to a governance thesis and not only to a doctrinal one: each decision narrows, empirically and progressively, how far a board's discretion over its own pay can extend before deference is withdrawn. Read this way, legal standards are not background constraints that matter only once litigation begins. They function as a second channel, alongside the say-on-pay vote itself, through which boards anticipate scrutiny and adjust their behaviour in advance of it. The Senate Bill 21 episode shows that this channel can move independently of the governance logic this thesis develops, and in the opposite direction: the 2025 amendment widened the procedural routes by which boards secure deference for conflicted transactions without adding any corresponding shareholder-facing disclosure obligation, a divergence the Delaware Supreme Court's 2026 ruling in Rutledge v. Clearway Energy Group LLC (Del. 2026) left undisturbed. A purely doctrinal account would record this as a statutory amendment. A purely economic account would likely miss it altogether. Read together, the two literatures show that Delaware's institutions, when given the choice, have consistently expanded the means by which boards obtain protection rather than what shareholders are told before they vote.

A more structural contribution is the thesis's treatment of say-on-pay, transparency, and fairness opinions as a conditional system rather than as three separate governance tools. Say-on-pay, transparency, and fairness opinions have each attracted substantial independent attention in the literature, but rarely as a sequence in which each element is the precondition for the next functioning as intended rather than simply a complementary input alongside it. This thesis built that sequence around two concepts already introduced earlier and now drawn together as a single analytical architecture: interpretive asymmetry, the gap between information being disclosed and a shareholder's capacity to draw a defensible conclusion from it, which Chapter 4 distinguished from ordinary information asymmetry; and the audit analogy, which frames a properly designed fairness opinion as the instrument capable of closing that gap in the way an audit opinion closes the corresponding gap for financial statements. The conditional framing carries a normative implication that an additive one would not. Reform directed at a single link, more disclosure volume, a binding rather than advisory vote, a blanket mandate that every remuneration policy be accompanied by a fairness opinion, is unlikely to produce the systemic improvement the underlying agency problem requires, because each link's value is contingent on the soundness of the one before it. The framework developed here, and tested twice in Chapter 6 against governance environments that share almost no institutional features, offers an account of why incremental, single-mechanism reform has so often disappointed its proponents.

The thesis also extends the fairness opinion literature, which has developed almost exclusively around mergers and acquisitions (Davidoff, 2006; Cain & Davidoff, 2012; Cain & Denis, 2013; Bebchuk & Kahan, 1989), into the remuneration context, where it had received comparatively little sustained treatment despite raising a structurally similar problem: an interested party benefiting from a decision that an outside expert is asked to evaluate. The extension is not a simple transposition. An M&A opinion addresses a single negotiated price that closes on a discrete date; a remuneration opinion must assess a multi-year structure whose economic content unfolds across vesting schedules, performance conditions, and dilution effects that no single figure can capture. Chapter 5 specified what such an opinion would need to examine, market positioning, performance rigor, incentive coherence, and economic cost including dilution, and built the five-criterion test that Chapter 6 then applied, without modification, to two cases that could hardly differ more in their institutional setting. That the same framework discriminated between them, finding uniform failure in Tesla and a narrower, more specific failure in Intesa Sanpaolo, is itself evidence that the framework functions as an evaluative instrument rather than as a general expression of scepticism toward external advisors. A parallel drawn from the SPAC literature reinforces the point: opinions that answer a technically accurate but practically irrelevant question, fairness to the wrong party in that setting, fairness measured against competitiveness rather than proportionality net of dilution in this one, satisfy the formal requirement of a fairness assessment while leaving the substantive question unaddressed (Tuch, 2023).

7.4 Practical and Policy Implications

For boards and remuneration committees, the central implication is that engaging an external advisor is not, in itself, a governance safeguard, and the distance between ordinary consultant benchmarking and a genuine fairness opinion is considerably wider than committees often treat it as being. A substantial majority of compensation committees at large firms already retain external consultants (Cadman, Carter & Hillegeist, 2010), but that practice produces an internal advisory input rather than a disclosed, shareholder-facing conclusion, and Tesla illustrates precisely how that gap operates in practice: Compensia's benchmarking work entered a process in which the award's essential structure had already been set by Musk's own proposal, was never disclosed with reviewable methodology, and addressed competitiveness rather than the proportionality question the court ultimately found dispositive (Tornetta v. Musk, Del. Ch. 2024). Closing that gap requires committees to treat the five Chapter 5 criteria as a single standard rather than a menu: an advisor genuinely independent of the management under review, methodology and peer-group rationale documented and disclosed, engagement that precedes rather than ratifies the substantive decision, scope that reaches dilution and non-GAAP treatment rather than headline pay alone, and conclusions communicated in language a non-specialist shareholder can actually follow.

For regulators, the most direct gap concerns advisor independence standards. Dodd-Frank Section 952 and SEC Rule 10C-1 govern the committee's relationship with its advisors but say little about what a rigorous fairness analysis must contain once an advisor is engaged, and FINRA Rule 5150, which requires disclosure of conflicts, contingent fees, and material prior relationships whenever a fairness opinion reaches public shareholders in the M&A context, has no counterpart that extends to remuneration. A defensible reform agenda is targeted rather than universal: requiring companies that choose to rely on a fairness opinion to disclose the advisor's other commercial relationships with the company, summarise methodology and key assumptions, explain peer-group construction, and treat dilution and non-GAAP adjustments as explicit factors in the stated conclusion rather than technical appendices the narrative never engages. On the European side, the EBA remuneration guidelines and the CRD VI Banking Package implementation extending from them are the natural vehicle for an equivalent standard applied to significant institutions, and Intesa Sanpaolo's practice shows that the institutional appetite for an annual fairness assessment already exists in this sector; what current regulation does not yet require is that its reasoning be made public.

For shareholders, particularly institutional investors with the analytical capacity to engage substantively with proxy materials, the practical standard this thesis develops looks beyond the headline approval percentage to the informational conditions that produced it. The relevant questions are who selected and paid the advisor, what other relationships exist between the advisor and the company, whether peer-group construction and methodology are disclosed in a reviewable form, and whether dilution and non-GAAP treatment are addressed directly rather than left to a technical appendix. Tesla's 73 percent disinterested approval shows why approval rate alone answers none of these questions (Tesla, Inc., Form 8-K, Mar. 21, 2018), and proxy advisory recommendations, built on standardised models applied across large company populations rather than company-specific analysis (Table 5.1), cannot substitute for asking them directly.

For policymakers engaged in comparative reform, the divergence this thesis documents between the U.S. and EU models carries a specific lesson rather than a verdict in favour of either. Delaware's litigation-centric model can produce an extraordinarily detailed factual record once a dispute reaches trial, as the more than two-hundred-page Tornetta opinion demonstrates, but the record arrives years after the decision it scrutinises, and the corrective remedy available by then may already be difficult to apply without producing a different inequity, as the Delaware Supreme Court's later reversal of rescission in the Tesla litigation illustrates (In re Tesla, Inc. Derivative Litigation, Del. 2025). The Italian and EU model raises the disclosure floor prospectively through CONSOB, the Bank of Italy, and ECB supervision, and embeds external assessment in the ordinary governance cycle rather than reserving it for moments of crisis, but its enforcement remains oriented toward whether the required categories were disclosed rather than whether the disclosed reasoning is analytically sound. Neither model, on its own, currently produces the shareholder-facing fairness assessment this thesis has argued the governance problem requires. The more promising reform path imports the EU's ex ante mandate into a system like Delaware's that currently lacks one, while specifying, with the analytical precision that litigation outcomes like Tornetta eventually supply but that prescriptive disclosure rarely demands in advance, exactly what that mandated disclosure must contain.

7.5 Limitations of the Study

The main methodological limitation follows from a deliberate research choice rather than from a constraint discovered after the fact. This thesis adopts a qualitative, process-tracing approach consistent with the case-study tradition described by Yin (2014) and Eisenhardt (1989), because the research questions concern the quality of governance processes and the substantive content of disclosure rather than statistical relationships between variables. The framework developed in Chapters 5 and 6 is therefore analytical rather than predictive: it specifies the conditions under which a fairness opinion functions as a genuine transparency instrument, but it does not, and was not designed to, estimate how frequently those conditions are jointly satisfied across the broader population of listed companies.

The second limitation concerns case selection. Tesla and Intesa Sanpaolo were chosen through theoretical rather than random sampling, precisely because each places pressure on the analytical chain in a different way, and neither is representative of companies generally. Tesla is an extreme case by almost any measure: a founder-controlled company, an unprecedented grant scale, and a litigation record of unusual depth. Intesa Sanpaolo is, in a complementary sense, a best-in-class observation within its own regulatory environment, operating under one of the densest remuneration disclosure regimes applicable to any listed European company. This polarity is what makes the comparison analytically productive, and it is also the source of its representativeness limitation: the findings cannot be transposed to the broader population of U.S. or Italian listed companies without the kind of large-sample validation this thesis does not attempt.

A further limitation concerns source availability, which follows directly from the thesis's own framing of the research question. The analysis relies on publicly available documents because the relevant inquiry is what shareholders could see before voting, not what existed in internal committee files. For Tesla, the trial record substantially closed this gap, since litigation forced internal materials into public view. For Intesa Sanpaolo, no equivalent process has occurred, and the actual content of the disclosed Fairness Opinion on Performance Management remains unavailable. This thesis cannot conclude that the opinion itself is deficient; it can conclude only that its quality is not reviewable from the public record. That this limitation exists at all is, in a small way, illustrative of the thesis's central argument: the existence of an assessment and the reviewability of an assessment are not the same thing, and the constraint on this research reproduces, at the level of method, the same gap the thesis identifies at the level of governance practice.

Finally, the thesis is necessarily limited by the pace of regulatory change during the research period. Delaware Senate Bill 21, enacted in March 2025 and upheld by the Delaware Supreme Court in February 2026, altered the statutory backdrop to part of the doctrinal analysis in Chapter 5 even as this thesis was being completed, and the full implementation record of SRD II across EU Member States, including whether post-implementation disclosure practice has actually improved in substance rather than merely in form, remains an open empirical question that Section 7.6 returns to directly. The conclusions developed in this thesis are framed around conditions, independence, disclosed methodology, timing, scope, and shareholder communication, rather than around fixed institutional facts, in part for this reason: conditions of this kind remain a valid standard for evaluating governance practice even as the surrounding statutory and regulatory detail continues to move beneath them.

7.6 Directions for Future Research

The most direct extension would be an empirical test of whether disclosed, methodologically detailed remuneration fairness opinions are associated with reduced say-on-pay dissent or higher pay-for-performance sensitivity, a relationship Chapter 5 argues for on analytical and comparative grounds but does not itself measure. The M&A literature offers a methodological template: valuation-error comparisons across advisor tiers (Cain & Denis, 2013) and announcement-return analysis around buy-side opinions (Kisgen, Qian & Song, 2009) could each be adapted to a sample of European banking institutions operating under SRD II and the EBA remuneration guidelines, where, unlike in the United States, the practice already has some institutional foothold. Intesa Sanpaolo provides a useful illustration of what such a study might examine, but a meaningful empirical test would require a far larger sample than a single case can supply.

Another useful line of research would examine the comparative regulation of advisor independence. This thesis has identified a clear gap between the M&A context, where FINRA Rule 5150 requires disclosure of conflicts, contingent fees, and prior relationships, and the remuneration context, where no equivalent rule exists on either side of the Atlantic. The existing empirical literature on compensation-consultant conflicts is itself unresolved: Murphy and Sandino (2010) find that multi-service consulting relationships are associated with higher CEO pay, while subsequent work using different conflict measures finds no comparable association in either the U.S. or U.K. samples examined (Cadman, Carter & Hillegeist, 2010; Conyon, Peck & Sadler, 2009). A systematic comparative study, examining how different jurisdictions define and verify advisor independence and whether divergent standards produce measurably different advisory behaviour, would help resolve this disagreement and provide the empirical foundation the regulatory proposals in Section 7.4 currently lack.

Non-executive director compensation also deserves separate attention. This thesis has drawn primarily on executive-pay cases because that is where the litigation record and empirical literature are richest, but the self-dealing concern Chapter 2 identified is, if anything, more acute when directors set their own pay rather than an executive's: the body responsible for independent oversight is then determining how it will be compensated for exercising that oversight. The Seinfeld v. Slager (Del. Ch. 2012) line of authority has tightened the legal standard applicable to non-executive compensation plans considerably since 2012, yet the academic governance literature has largely continued to treat the topic as a secondary application of principles developed for executive pay rather than as a governance problem with its own structural logic deserving dedicated research.

A final direction follows from the regulatory backdrop against which the thesis is framed. SRD II has now been in force across EU Member States for several years, and whether mandatory binding votes on remuneration policy and standardised reporting have produced a measurable improvement in substantive disclosure quality, rather than simply higher structural compliance, remains an open question. Chapter 3 documented that implementation has so far been uneven: high compliance with formal requirements among large-cap companies, weaker substantive clarity among smaller issuers. A systematic before-and-after comparison across jurisdictions that adopted different implementation approaches, using indicators such as readability, performance-target specificity, peer-group rationale disclosure, non-GAAP treatment, and advisor-independence disclosure, would test directly whether Intesa Sanpaolo's relatively strong practice generalises across the EU framework or stands as an outlier within it.

This thesis set out to determine whether say-on-pay, transparency, and fairness opinions, individually and as a connected system, can produce an effective governance framework for directors' remuneration. They can, but only under conditions considerably more demanding than current practice in either jurisdiction examined here satisfies, and the comparative case study shows that this shortfall is not an artefact of one legal tradition's particular weaknesses. Delaware's entire fairness doctrine and Italy's prescriptive disclosure regime arrive at the same gap, between an external assessment's existence and its reviewability, from opposite institutional directions, which suggests the gap reflects something about how the fairness opinion functions as an instrument rather than something correctable by importing one jurisdiction's rules into the other. A vote does not prove legitimacy if the information behind it was incomplete. A remuneration report does not prove transparency if its length substitutes for an evaluative conclusion shareholders can actually use. An external opinion does not prove fairness if its methodology cannot be examined by the people who are asked to rely on it. The standard this thesis arrives at is accordingly a demanding one, but it is also a precise one: remuneration arrangements may be large, complex, and genuinely value-creating, and the governance question this thesis has pursued is never whether they are, only whether their justification is visible, independently tested, and intelligible to the shareholders who are asked to approve them before that approval is sought.

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