The background of the entire page is a bokeh effect of city lights at night, with various colored circles (red, orange, yellow, white, blue) out of focus against a dark background.

D.F. KING

General Meeting Season Review

September 2019

Part of **Link Group**

An Orient Capital Company



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D.F. KING



INTRODUCTION



As we look back over 2019, it is evident we are experiencing a sea change across the industry which is being driven by corporate governance.

We have seen a greater emphasis, through the changes in local corporate governance codes as well as the EU Shareholder Rights Directive II “EU SRD II”, is placed on Environmental, Social and Governance (ESG) factors in the investment decisions of institutional investors. Even the US Business Roundtable’s new Statement on the Purpose of a Corporation, indicates the era of shareholder primacy may be at an end.

The corporate governance community in the UK and Europe has played a central role in this revolution. Many of the key events have occurred at AGMs across the EMEA region this past year. The market’s continued yearning for greater accountability and transparency from boards will increase in 2020 and companies need to maintain their ability and willingness to do so.

In this year’s report we are pleased to have been able to include alongside our annual research, expert views from across the boardroom, investor universe and corporate world. We would like to thank all our guest experts for their contribution.

Our five key observations for consideration in 2020 would be:

1. The movement from shareholder to stakeholder relationships will accelerate and an even more stakeholder centred strategy will be required.
2. The global convergence of corporate best practices will lead to further, but clearer, change.
3. The implementation of local codes culminating with the role out of the EU SRD II, will set out to strengthen the position of shareholders and to reduce short-termism and excessive risk taking by companies.
4. ESG will become firmly implanted into the investment strategy of long-only institutional investors. A corporate shift in focus on these areas could lead to competitive advantage.
5. Shareholder activism will become more common place across the region and having both reactive and proactive plans in place is a must.

In summary, we expect the 2020 AGM proxy season to be an exciting one across the region. Our experience and the research for this review has illustrated that most corporations have integrated corporate governance issues into their AGM and are prepared for their new responsibilities under the EU SRD II. However, while the ‘best’ make it easy for investors to understand the alignment of their strategy and even their purpose with their return, less are aware of the potential risks from activist investors, a key theme for the coming year.

Best regards,



David Chase Lopes
Managing Director, EMEA
D.F. King

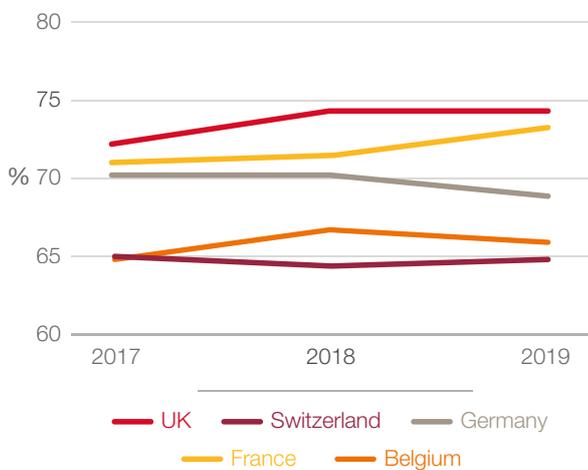
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EXECUTIVE SUMMARY

AN OVERVIEW OF THE UK AND EUROPEAN MARKET PLACE

PARTICIPATION LEVELS

AVERAGE AGM PARTICIPATION 2017-2019



AGM participation levels remained stable across all markets in 2019.

The UK continues to enjoy the highest level of average shareholder participation in the markets examined and this remained flat at around 74%.

Switzerland, which saw decreases over the previous three years, saw a small recovery for 2019.

Germany saw a slight decrease from around 70% to 68%, while France was the only country which showed a noticeable increase year on year.

STEADY SHAREHOLDER SUPPORT

The majority of AGM proposals continue to pass with high levels of shareholder support and the UK continues to have the highest average support of the markets we examined.

High support levels in the UK and Switzerland are arguably reflective of the maturity of governance practice in these markets. Furthermore, corporate

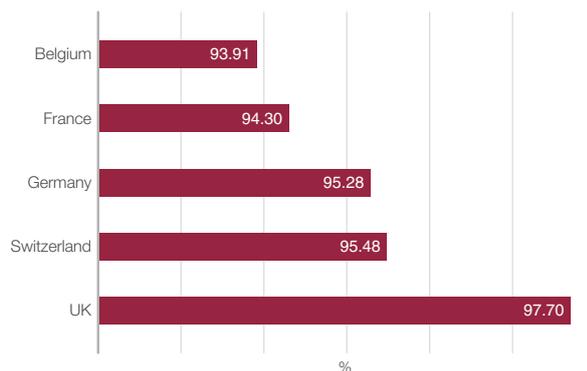
governance in these countries is broadly aligned with institutional investor expectations with fewer market specific practices which deviate from these than in the other markets we looked at.

“Homogenisation of standards... companies would do well to keep an eye on the voting behaviours and governance trends in neighbouring countries.”

That being said, the fact that only 3.7% separates the UK and the other four leading European markets shows that, overall, shareholders are continuing to support management proposals at European AGMs. How long this steady support continues for remains to be seen as regulatory changes converge with increasing pressure on investors to exercise stewardship across Europe. Furthermore, as scrutiny builds on the Environmental, Social and Governance (ESG) reporting, it is likely that shareholders will continue to integrate this into their voting strategies.

With the homogenisation of standards being driven not just by investors and the proxy advisory agencies but also through cross border regulation such as SRD II, European companies would do well to keep an eye on voting behaviours and governance trends in neighbouring countries.

AVERAGE AGM SUPPORT PER REGIONAL MARKET



“The need for companies to respond to minority opposition is also creeping up the agenda across Europe.”

KEY THEMES

Investor concerns which spanned the markets examined included a continued focus on the issue of overboarding. Reflecting this, 2019 saw several large institutional investors tighten their guidelines on the topic. BlackRock, Amundi and MFS Investment Management are among investors who have now stated that they view Directors who hold more than four Board mandates in total as potentially being overboarded.

The issue was also repeatedly mentioned by the two major proxy advisory agencies, ISS and Glass Lewis, in their supporting rationale for recommending against Director elections.

The need for companies to respond to minority opposition is also creeping up the agenda across Europe, as investors and the proxy advisory agencies are increasingly expecting to see a company pay heed to votes which fail to cross the 80% mark.

Another key theme for 2019, and one which is picked up in our Expert View sections, is that of corporate purpose. It featured heavily in the UK's updated Corporate Governance Code, the PACTE law in France as well as threading through BlackRock CEO Larry Fink's annual Letter.

Indeed, company purpose is even being questioned in the USA, home of shareholder primacy, where the influential Business Roundtable, an association of CEOs of America's largest companies, has released a statement reframing the purpose of business as being tied to stakeholder value.

Some of the issues seen in 2019 were market specific, whether executive pensions in the UK, Directors' discharge in Germany or non-compete clauses in France, each perhaps reflects the stage each market is at in its development of Corporate Governance.

REGULATORY CHANGES

Regulatory changes were apparent in most of the markets we examined, in part driven by the need for EU member states to implement the requirements of the SRD II. While the UK and France have the necessary requirements around say on pay in place for some time, Germany and Belgium's reforms in this regard still remain in draft format.

“Investors and the proxy advisory agencies are increasingly expecting to see a company pay heed to votes which fail to cross 80%.”

New Corporate Governance Codes were published in Germany and Belgium, the UK moved a step closer to releasing an updated Stewardship Code and France brought in new laws in relation to employee representation, corporate purpose and M&A law.

PROXY ADVISORY AGENCIES

Proxy Advisory Agencies have been under increasing scrutiny in recent years and 2019 saw this ramp up both in the US and Europe. In the US the SEC recently announced that proxy advisers would be subject to anti-fraud regulation in regards to false or misleading statements as well as leaving the door open to further regulation.

In Europe there have been a series of new rules introduced to try and enforce greater transparency from these organisations in the wake of the SRD II.

Recognising some of these criticisms, a group of the largest Proxy Advisory Agencies have signed up to a set of voluntary principles published by the Best Practice Principles for Shareholder Voting Research and Analysis Group (BPPG).

EXPERT VIEW The Responsible Investor



Matt Christensen

Global Head of Responsible Investment
AXA Investment Managers

What is the driving force behind the scrutiny which is placed on listed companies and its shift towards ESG?

I think here what you have is pressure being placed on the market from both the regulatory aspect and from the demand side. In Europe there is a regulation-oriented approach and much like we have seen with the reform seeking transparency and integrity around data, GDPR, the EU is seeking similar changes through initiatives like its push on sustainable finance. They're looking for ways to bolster the EU through better corporate governance and, as part of that their view is that concerns such as climate change should be brought into the system and not externalised.

At the same time, you can't ignore the fact that citizens' interests are changing overtime, so there is a demand side to this which is shifting. We can see this in the choices consumers are making on everything from travel, food, clothing, housing, transport and investing.

Therefore, we have issues like climate change creeping up from both from the regulatory side and the demand side, and companies are having to address this which in turn is leading to investors having to align themselves accordingly. That's why I believe corporate governance is shifting, because you have this double-push between the top down

“Corporate governance is shifting... I don't believe that 'ESG' is a new answer or challenge – it's just a part of the solution.”

and bottom up. I don't believe that 'ESG' is a new answer or challenge – it's just a part of the solution. In the future, the most material social and environmental issues will just be looked at as being a part of good corporate governance.

Who has greater influence over company practices, Regulators or Investors?

It's a mix and not a clear-cut trend. As I said, EU standards as a policy vehicle are in this mix and this is driving shifts in corporate behaviour. On the other side, I often hear a lot of competitors in the US saying they were having to get their heads around ESG standards because that's what their European clients want. So here this is very much client-driven, based on a minimum set of ESG standards to bring into corporate governance.

What's also interesting is that the private banking and wealth management sectors are increasingly asking for a differentiated product or for differentiated products as well. So for investors it's about considering how you do active ownership with concentrated portfolios, and thinking about what your engagement is trying to achieve. In terms of who has the greater influence I think

that this is almost a shared responsibility and naturally companies are having to listen to a host of stakeholders when reaching decisions.

How can traditional long-term investors maintain their relevance against the growth of the passive space in addition to the rise of activists?

There's no doubt in my mind that in the next five years, you are going to see consolidation among active asset managers. Those who are going to be on the winning side of it will have differentiated strategies that are well positioned for future demand.

We can't ignore the fact that asset management as an industry is under pressure. It's under pressure between passive and active, and also under pressure from clients and their increasingly bespoke demands. ESG, and how to integrate social and environmental issues into a concrete message about strategy around voting and engagement, is becoming an area where asset managers want to differentiate. If you only rely on performance, your product is not going to stand out.

“...we need to think about how we show the regulators, our clients and the media that we're owners and not just passive by-standers to management.”

I think there will also be new sets of reporting standards coming out around engagement, the UK is ahead on this with its latest Stewardship Code. At AXA we see this with our own clients and what

“We need to think about how we show the regulators, our clients and the media that we're owners and not just passive by-standers to management.”

they want us to focus on. We're shifting from just thinking about compensation, Board management or competence, and thinking more about the role of companies in society and how this interacts with their fiduciary duty. This is something that's evolving and will be a key area where we'll see change.

In terms of reporting on engagement, as investors we need to be able to show what we're doing behind the scenes. While I ask my teams to tell me how we voted on specific resolutions, it's also about looking at how we partnered with others to apply pressure and make a change.

In the next five years, we need to think about how we show the regulators, our clients and the media that we're owners and not just passive by-standers to management.

Is there a contradiction between investor returns and good corporate governance? How does AXA work to align this?

I think this is a fallacy but the time horizon of an investor can't be ignored. Traditional activists typically play off a short-term horizon, for example where they might come in and try to get a board seat there can be a longer-term benefit but ultimately that's not the intention. At AXA we're often looking at a 2-3-year horizon and we don't think of it as a return profile. We look at the issue in terms of building more resilience which will build a better company, therefore better returns overtime.

How are you ensuring that 'purpose' is factored into discussions you are having with companies?

I am fortunate to be part of a group of investors where we get together a few times a year to have an investor-director dialogue and the aim is to better understand each other's challenges. Directors often say they have time scarcity issues and want to know how can they get past the compliancy functions of the job and get to the more strategic functions.

We often discuss whether the directors talk about the purpose of the company and what the company's mission is. Do they remind themselves of this before they see the numbers and the reporting they have to get through? Mostly the answer is no and so this is an area we're trying to push, so that discussions start off at a more strategic level and so that directors feel they have more ownership of the organisations which they're leading.

What are the key indicators of a company's 'governance' health?

If I had to be pushed to name one, it would be to look at the checks and balance in place. I'm not talking about binary options like splitting off the CEO and Chairperson roles, indeed if you have a very good Senior Independent Director in place perhaps this is not always necessary.

What I am more interested in is how the Board is shaped to ensure it has meaning and is it able to have a very good discussion with management and not feel intimidated. That's the key to governance, to move away from just ticking the box to actually understanding what underpins performance.

As an investor this is tough, just examining biographies or the externally presented Board composition is not going to give the full picture and we can't be party to all the discussions going on internally.

MATT CHRISTENSEN

Matt has directed the responsible and impact investment activities of AXA Investment Managers (AXA IM) since joining in 2011. His key recent projects include the implementation of an ESG integration approach across AXA's asset classes as well as the development of impact investment fund strategies.

He has been a leading voice in the fields of responsible and impact investment and was a member of the European Commission's Co-ordination Committee to explore the future of sustainability policy and legislation in the EU.

He previously held the position of Founding Executive Director of the research institute Eurosif from 2002 until his appointment at AXA IM. Prior to that, Matt advised European clients as a strategy consultant with Braxton Associates/Deloitte Consulting, before becoming business development director of the Motley Fool, a multimedia financial services company.

He holds MBA and MA degrees from the University of Pennsylvania through the Wharton/Lauder programme. Matt resides in Paris with his wife and three children and was born and raised in the United States.

A SPOTLIGHT ON The United Kingdom



MARKET UPDATE

The past few years has seen the UK implement a raft of regulatory changes around corporate governance, culminating in the 2018 UK Corporate Governance Code. 2019 therefore was somewhat of a transitional year as companies began to implement the necessary changes to reflect these new expectations. That did not, however, mean that this year was an entirely peaceful AGM season, and while it is unsurprising that the dominant issues continued to focus on composition, what is interesting is how the debate is evolving.

The role of the external auditor dominated headlines with repeated suggestions of failure and an increase in interventions from the regulator. On the topic of the FRC, an independent review led by Legal & General Chairperson, Sir John Kingman, published a series of recommendations which amounted to a suggestion that the FRC be disbanded and reformed as a newly empowered regulator named ARGA (the Audit, Reporting and Governance Authority). Most of the suggested powers which ARGAs will have focus on Audit and Reporting. What Directors may find more concerning is the greater remit to involve itself in a company's governance.

Meanwhile, the impact of the Investment Association public register, which is expanded upon later, continues with companies needing 80%+ support to avoid being 'named and shamed'. This pressure is only likely to increase as responding to such opposition becomes a component of Code compliance. While there is a growing need for Boards to respond to significant minority opposition in other European markets, the UK is the first to hardwire it into a corporate governance code.

Looking ahead to 2020 and how the Code is reported on, while attention will no doubt be on workforce engagement and Chairperson independence, what will be interesting is how companies deal with the more intangible requirements of the Code. Company purpose was prominent in the new version of the Code but Boards may struggle with the meaningful implementation and reporting.

Finally, no comment on the UK can escape mention of Brexit and, whatever ends up happening, this will have profound implications for the market. Some companies could feel the need to evaluate the suitability of a UK listing once the UK leaves the EU and regulators will likewise be assessing how to maintain competitiveness and retain business.

AVERAGE APPROVAL RATES PER PROPOSAL CATEGORIES



“The introduction of a nine-year cap for Chairperson independence...will require many companies to start thinking about succession sooner.”

REMUNERATION

The remuneration issue which garnered the most attention in 2019 was undoubtedly that of executive pensions, driven by the greater focus the new Code pays to this, in addition to a public campaign on the matter by The Investment Association. FTSE banks came off worst from media perspective and while the likes of HSBC were quick to react by bringing their executive pensions in line with the new expectations, others were less responsive.

Standard Chartered suffered a bruising AGM over the issue with their remuneration policy receiving almost 40% opposition over the CEO’s pension contribution which amounted to 20% of his total salary. Following the vote, one of the largest votes against a UK bank’s pay policy in several years, CEO Bill Winters described investors as ‘immature and unhelpful’ in an outburst that led one investor to describe him as ‘tin eared’.

Meanwhile, software company Micro Focus saw its vote on the remuneration report fail to gain sufficient support, receiving just 49.67% approval. Investor concern focused on both the annual bonus and the LTIP and proxy advisory firm Glass Lewis laid blame at the remuneration committee’s door, recommending against the committee Chairperson and several other members.

Overall support for remuneration items fell by around 2%, fuelled by drops in support for both remuneration reports and even more so by a 4% decrease in support for remuneration policy items.

DIRECTOR ELECTIONS

While the overall data suggests relative stability in support for Director elections, this could be the calm before the storm. As the changes in the Code bed in, nominations committees will be racing to ensure their Board composition is up to scratch with the new rules.

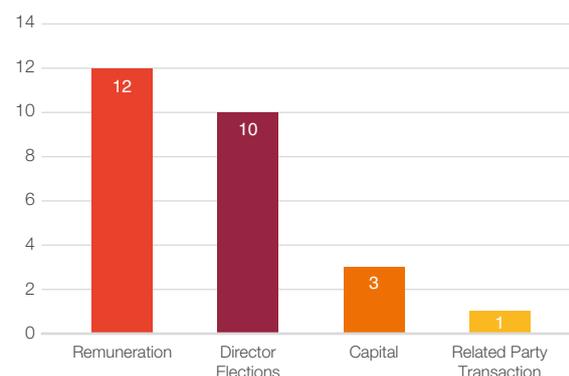
The introduction of a nine-year cap, inclusive of time served as a Non-Executive, for Chairperson independence will require many companies to start thinking about succession sooner than they may have hoped.

Staying with Board composition and shifting to the debate around diversity, relative success has been made in gender diversity with 30.2% of FTSE 100 Board members being women. While there is still more progress to be made, attention is now moving onto diversity beyond gender as well as diversity beyond the Board. The UK Code now tasks Nomination Committees with succession planning which promotes diversity of gender, social and ethnic backgrounds, in addition to reporting on the gender balance of those in the senior management and their direct reports.

IA PUBLIC REGISTER

Sixteen FTSE 100 companies found their way onto the IA’s public register in 2019 with a total of twenty-six resolutions receiving the required 80% or less support. Of the resolutions which made the list only once did the company publish both a statement in their results and provide an update statement outlining the actions taken following the vote result, as per the Code. Ten companies published a statement in their result but as of yet have not followed up with an actions statement, four companies did neither and one company withdrew the resolution entirely.

FTSE 100 RESOLUTIONS RECEIVING <80%



EXPERT VIEW Boardroom Insight



Charlotte Valeur
Chair of the Institute of Directors

Every board faces countless forks in the road. Maps are useful, setting out which steps you should take, with an answer for whatever dilemma might crop up. Such plans are hard to come by, however, and never perfect. The world is too complex to predict in its entirety. No strategy survives contact with the enemy.

What boards need most of all is a compass. They need something that can provide a rough sense of direction over a long period of time, something that can indicate the way forward no matter how complex the circumstances.

The question is then, what can serve as that compass? When a strategic decision is in the balance, what north star can boards rely upon to guide them? In the UK, the stock response might have been shareholder value. The Companies Act states that our legal duty is to act in a way that promotes the success of the company 'for the benefit of its members', providing a touchstone for directors to fall back on in times of uncertainty.

Increasingly in the UK, however, this yardstick is seen as insufficient for the board's decision-making. Financial performance is being viewed less as a starting-point for deliberations, and more as an intended consequence of broader actions.

For the starting-point, boards are beginning to look beyond the bottom line, and asking what their company is for in a deeper sense.

I would argue that this trend, more than anything else, defines the current period of UK corporate governance. Auditing controversy, increasing demands for personal director accountability, and the growing influence of passive funds all constitute significant developments. But the question over companies' purpose cuts deeper than them all.

The UK's 2018 Corporate Governance Code explicitly reflects the shift in emphasis. The Code introduced a new principle for firms to adhere to: that 'the board should establish the company's purpose', and how this filters down into strategy and culture. This new requirement is only beginning to filter down into reporting. In many cases, it is one of the most difficult stipulations for a company to meet.

This broader view of a company's role has also been displayed through the greater prominence being given to so-called 'softer' elements of governance. Listed firms based in the UK for instance face a range of new requirements to report on their engagement with stakeholders, and in particular the workforce.

“The ability to define company purpose is becoming paramount.”

Action in areas like sustainability and diversity can be difficult to justify from the immediate perspective of shareholder returns. However, they often fall naturally as a result of taking a more purpose-centric approach.

To survive, boardrooms must be ready to grasp this new approach. Setting aside the burgeoning influence of the millennial generation, more and more established investors are pointing the way forward in this regard. In his letter to CEOs this year, Larry Fink made clear the ‘intrinsic link’ between profit and purpose. Purpose ‘unifies’ the company, and is its ‘animating force’.

Perhaps, however, this brave new way of viewing boardroom decisions isn’t so new after all. Looking to the origins of the company, quite often these organisations were created with a very limited but clear purpose, for instance mining one particular part of land, or building one specific road. As companies have developed, becoming larger and more complex, their underlying purpose has come under greater risk of being lost.

Now UK company directors are waking up to this. The ability to define company purpose is becoming paramount.

CHARLOTTE VALEUR

Charlotte Valeur was appointed Chairperson of the Institute in September 2018. As Chairperson, Charlotte is responsible for championing the IoD’s values, promoting its objectives and providing leadership to the Institute, ensuring it delivers maximum impact for its members and stakeholders.

Over the last decade, Charlotte has been a director of seven public companies, including three appointments as Chairperson. During that period she has taken part in a complete restructuring of NTR Plc, the sale of REG to BlackRock and, as Chairperson, overseen a \$8bn Merger of Kennedy Wilson Europe Real Estate Plc with its US NYSE listed parent. Charlotte also has a range of unlisted board experience with companies including international engineering firm Laing O’Rourke. She has been a member of the IoD for over a decade.

Charlotte is a corporate governance expert and a keen advocate for diversity in the boardroom, underpinning this advocacy with action by founding Board Apprentice. This not-for-profit organisation provides individuals hands-on experience at the very top of business, and has been cited in the Government’s recent reviews on ethnic and gender diversity in UK boardrooms as a resource for bringing about real change.

Before entering the field of governance, Charlotte worked in finance, where she has over 30 years’ experience. Her career included stints with Société Générale, BNP-Paribas, and S.G. Warburg. Charlotte grew up and studied in Copenhagen, and is conversant in six languages.

A SPOTLIGHT ON France

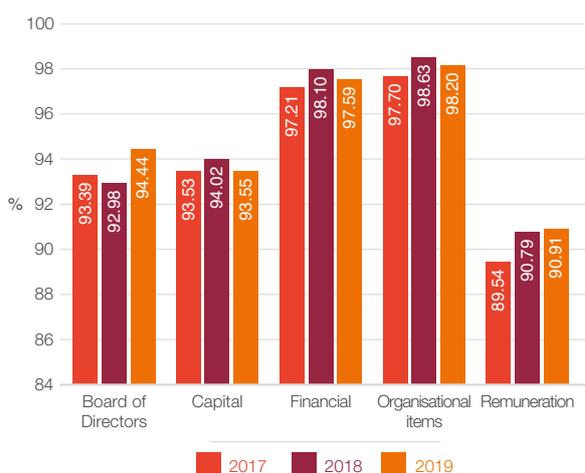


SIGNIFICANT INCREASE IN PARTICIPATION LEVELS

After a slight increase in participation levels at French AGMs in 2018, +0.42%, the 2019 season has seen a far more significant surge in participation levels of +1.83%, with an average of 73.34% of ISC voting at SBF 120 companies.

This is not surprising in the context of an ever-increasing need for asset managers to demonstrate to their clients they are responsible stewards. In parallel to this trend, certain outliers strongly contribute to this movement from a statistical point of view with strong increases due to capital structure changes and high profile meetings at EssilorLuxottica (+16.90%), Renault (+12.10%), Air France-KLM (+11.67%), Scor Se (+9.66%), Dassault Aviation (+9.32%) and Genfit (9.24%), for example.

AVERAGE APPROVAL RATE BY PROPOSAL TYPE



HIGH AND INCREASING YEAR ON YEAR APPROVAL RATES

Whilst France's Corporate Governance landscape has been healthy for a number of years, recent regulatory changes and regular updates to the AFEP-MEDEF governance code continue to push issuers in the direction of international best practice, even taking a leading role in a number of instances such as shareholder oversight of executive remuneration, gender diversity on boards and employee representatives on boards. This continuous improvement is evident in approval rate data with an average approval rate of 94.30% across all resolutions vs 94.27% in 2018, 93.12% in 2017 and 92.31% in 2016. In terms of resolution type, board of director related resolutions saw a significant increase in support of +1.46% and remuneration related items of +0.12%. Capital, financial and organisational items saw small decreases in their average approval rates of less than 0.60%.

REMUNERATION

REMUNERATION – AVERAGE APPROVAL RATES



A SPOTLIGHT ON France

Whilst we noted a slight increase in the overall average approval rate of remuneration related items of 0.12%, a further breakdown of the category nonetheless reveals that all sub-categories have on average seen their support levels decrease: -0.58% for remuneration policies, -0.78% for non-executive remuneration, -0.97% for ex post Say on Pay items and -2.91% for other items (pension schemes, severance payments, executive equity plans and unemployment and health insurance). The increase at the category level despite the decrease in each sub-category driver is due to variations in the number of proposals year on year. Overall, issuers should take away that what may have been tolerated in previous years will not necessarily be adequate going forward. Investor standards continue to push for clearer alignment between executive remuneration and shareholder returns.

“...what may have been tolerated in previous years will not necessarily be adequate going forward.”

The almost 1% average decrease in ex post Say On Pay approval rates, two years after the implementation of binding votes on the matter following the Sapin II law, is revealing of greater investor scrutiny and the end of a transitional year. Indeed, this season will also be remembered for producing the first ever binding rejection on an ex post Say-On-Pay proposal. The binding vote on the remuneration due to the former CEO of geophysical services company CGG, Jean-Georges Malcor, for fiscal year 2018, garnered just 44.3% support. This rejection came as a surprise as the payment was fairly modest and the award had been clearly disclosed as part of Mr. Malcor's

forward-looking binding remuneration policy, which received 96.90% support at the 2018 meeting.

At Renault, the binding vote on Carlos Ghosn's pay was rejected with only 11.29% supporting the item. This nonetheless has to be put into the context of the scandal surrounding the ex-Chairperson/CEO's arrest in Japan and corresponding allegations. In fact, rather than implementing a claw back under the circumstances, the Board of Directors of Renault cleverly decided to recommend AGAINST this item, ensuring it failed and blocking the payment of Ghosn's annual variable remuneration. In an environment where a growing number of investors continue to push for claw back mechanisms in a market where employment law renders such practices difficult, the possibility of such pragmatic alternatives should be kept in mind.

BOARD OF DIRECTORS

DIRECTOR ELECTIONS



Surprisingly, 2019 has seen a significant increase in average approval rates for director elections (+1.59%), despite a cross-market movement towards stricter overboarding guidelines (see

executive summary) and despite increased disclosure around individual board attendance following the revision of the AFEP-MEDEF code in June 2018. The enhanced disclosure on individual board attendance provided investors with an additional motive to vote against directors with low attendance. It is worth noting nonetheless that a number of companies already provided such transparency and overall, as the data suggests, issuers seem to be converging more and more towards investor expectations on the themes of independence, board diversity (gender, internationalisation and skills) and director availability. Furthermore, the numbers also suggest progress is being made towards greater dissociation of powers, with a decrease in the number of dual Chairperson/CEO structures in the SBF120.

Figures examined earlier in the year revealed 51 SBF 120 companies had separated Chairperson/CEO roles and 21 companies had dual Board structures (supervisory and management boards).

REGULATORY CHANGE 1: THE PACTE LAW ADOPTED ON THE 22 MAY 2019.

This eagerly anticipated legislative change brings about a wide range of new measures. The figurehead change, article 169, allows companies to enshrine a company purpose (“raison d’être”), above and beyond generating profit to shareholders, into the company by-laws. If implemented by a company, failing to adhere to this purpose could have legal consequences for the company’s corporate officer(s). Alternatively, companies could choose to adopt a new legal form « société à mission » that would allow them to integrate alternative non-financial objectives into their by-laws whilst remaining shielded from shareholder legal action. During the 2019 season a number of companies devised a company purpose but only two submitted a resolution to enshrine these principles in their by-

laws: Atos (99.9% approval) and Carrefour (97.7% approval). As the PACTE Law only came into effect late in the proxy season it is reasonable to expect further companies will take this step in 2020. The high approval rates and positive reception given to Atos and Carrefour’s proposals suggest this would be a popular move among shareholders.

Other important consequences of this law include but are not limited to:

- Increased transparency on executive remuneration and the relationship between executive pay and median employee pay;
- Increase in the number of employee representatives on Boards required for large companies (it is believed the majority of companies concerned are already aligned with these requirements, leaving roughly 50 Boards seeking 75 new employee representatives);
- Further incentivisation of employee shareholding;
- Increased government powers on foreign investment in strategic domestic industries;
- Reduction in M&A squeeze-out thresholds to 90% of issued share capital and voting rights (previously 95%).

REGULATORY CHANGE 2: THE LAW ON THE SIMPLIFICATION, CLARIFICATION AND UPDATING OF THE CODE OF COMMERCE ADOPTED ON THE 10 JULY 2019.

At first glance, most propositions seem intuitively reasonable and in no way revolutionise current practices. Article 27, for example, suppresses the requirement to present a share capital increase authorisation every three years, reserved for employees in situations where they currently hold less than 3% of the issued share capital. In reality,

this requirement did not lead to an increase in employee shareholdings at companies that did not wish to implement such a mechanism.

“...companies can enshrine a company purpose, above and beyond generating profit.”

One measure, however, stands out and could have drastic consequences for companies that are not prepared. Article 21 shakes up the current approval rate calculation methodology at the AGMs of SAs (*Sociétés anonymes*). Indeed, abstentions will no longer count as negative votes but will simply be extracted from the calculation. This is already the case for French SEs (*Societas Europaea*) and aligns France with the United Kingdom and Germany. Nevertheless, there are French specific features within voting submission at general meetings that warrant a more tailored framework for the French market.

Under certain conditions, shareholders have the right to table new resolutions or request amendments to the existing proposals on the day of the general meeting. The paper ballot (AFNOR) therefore enables non-attending shareholders to express their views on this possibility ahead of the general meeting (giving power of attorney to the Chairperson, abstaining or giving power of attorney to a third party).

A few years ago, issuers that envisaged the threat of a resolution being tabled on the day of the general meeting would fiercely campaign with the help of their advisors, to ensure that every investor, custodian, and voting platform defaulted to the abstention box on the AFNOR paper ballot. Indeed, without any proactive or intense communication efforts, voting ballots would predominantly return without any instructions for this circumstance, leaving the door wide open for activists to impose their will at the general meeting. Since then, a real market-wide effort has resulted in voting platforms typically ticking the abstention box by default, making the approval of a resolution submitted on the day of the AGM practically impossible for most ownership structures within the SBF 120.

The door will henceforth be re-opened to activists. Abstentions will no longer weigh into the debate. Issuers that foresee a risk on the day of the AGM will have to lead a proactive solicitation campaign, to ensure that the number of votes physically represented at the meeting in favour of management are sufficiently abundant to counterbalance any potential “attack”.

In this context, careful preparation, strategic advice and on-going support become even more essential in the build up to 2020 AGMs.

EXPERT VIEW The Corporate Purpose Pioneer



Alexandre Menais

Executive Vice-President and
General Secretary, Atos SE.

Atos' company purpose: "Atos's mission is to help design the future of the information technology space. Its services and competences are underpinned by excellence in the advance of scientific and technological knowledge and research and in its commitment to learning and education. Across the world Atos enables its customers and all who live and work in the industry, to grow and prosper in a safe, secure and sustainable environment."

Atos is one of the first CAC 40 listed companies to enshrine a sense of purpose. What were the different factors that drove you in this direction?

There was a fertile ground for the enshrinement of the sense of purpose into the company by-laws as we have been implementing CSR initiatives for the past ten years with programmes such as "well-being at work", recently renamed "One Atos". The different Human Resources, CSR and Compliance departments had already put a lot of efforts into developing a CSR policy. The Board of Directors enhanced the company's commitment to CSR by creating a CSR committee effective since January 2019. We see the enshrinement of the company's sense of purpose into the company by-laws as a logical sequel to the processes we already had in place.

Some companies decided to draw up a sense of purpose without incorporating it into their by-laws and submitting it to a shareholder vote. What do you think of this choice and what do you imagine were the reasons behind it? Some investors have questioned whether there are legal risks associated with the enshrinement of a sense of purpose into the company by-laws. Do you think these risks are real?

Each company is free to choose the process it sees fit. Atos is the first big group to incorporate the company's sense of purpose in its articles of association, and this is a source of pride for us. This represents a powerful act. It shows the impact and the commitment of our shareholders. This is not solely a verbal commitment. It demonstrates a strategic and legal commitment of the group. This will shake things up internally in our employees' perception of the group and in the setting of the group's strategy in the long term.

I cannot foresee any negative legal consequences from this incorporation. On the contrary, by incorporating our vision into the by-laws, it enables us to truly set a direction which makes it much more beneficial and it goes well above and beyond a standard legal entity status. In addition, on a legal side towards our shareholders, it is a way also for

Atos in its CSR' activities including pro bono events to be more aligned with our articles of association. The incorporation is also a pledge of confidence we have towards our clients and shareholders.

How can companies ensure that their sense of purpose is vertically integrated across the organisation?

We are currently assessing and evaluating our corporate purpose i.e. how can we ensure an effective implementation across our various activities and footprint. Currently, our management follows this closely. Additionally, it is worth saying that we are one of the first big groups to include our good CSR practice results within our integrated reporting. We report internally but also externally which again will be followed closely by the Board of Directors and its CSR committee.

Do you believe that a company's corporate purpose can impact recruitment and talent retention?

Yes, I strongly believe so. There is a real war of talents between companies nowadays. For big companies such as Google, Amazon and other technology companies, the search for new talent is crucial. Our services at Atos rest on talents with more and more required expertise. We must notably position ourselves on current trends such as cyber security and artificial intelligence.

“Our company’s sense of purpose...is a pledge of confidence towards our clients and our shareholders.”

By integrating the corporate purpose into the company by-laws, we show that Atos is committed to ethical, environmental and educational issues. Studies show that 70% of the young population look for a company and framework that aligns with their personal values (which was not necessarily the case with the previous generation); therefore, companies must adapt. I believe that CSR, corporate purpose and engaging on environmental issues for instance are essential for recruitment.

Do you have any further comments or messages you wish to get through?

Our clients are very attentive to what we do, and we are convinced that the company's purpose and our CSR commitments will shift Atos towards a stronger focus on cyber security, privacy, adding value and monetising on this. It's the challenge of the century for Atos. We are at a turning point today in our contribution to the information technology space and its regulation.

Our approval rate of 99.93% for the company purpose at the 2019 AGM shows that there is a real change underway. In the past, such approval rates would only be seen for financial accounts and results. The trend is changing, and it is a very strong signal. This proves that there is a real expectation from investors on these topics.

ALEXANDRE MENAIS

Alexandre Menais is Group General Secretary of Atos. Member of the Group Executive Committee, he is currently head of Group M&A, Strategy and Corporate Development, as well as Legal, Compliance and Contract Management. Alexandre graduated from both the University of Strasbourg

and HEC. He started his career at Hogan Lovells and then joined eBay and Accenture as general counsel, before joining Atos in 2011 as Group General Counsel. Alexandre Menais has been member of the College of the Autorité de la Concurrence since March 2019.

A SPOTLIGHT ON Germany



MARKET UPDATE

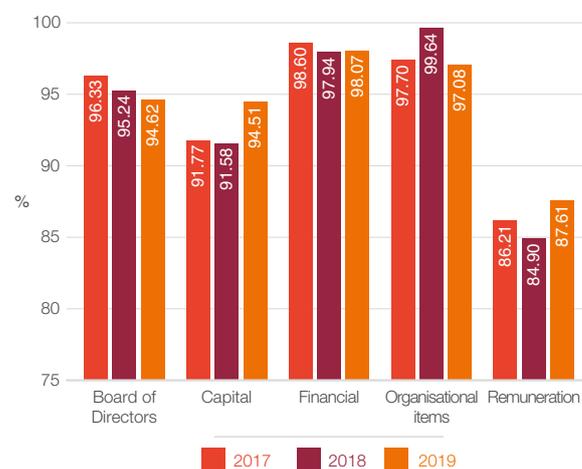
The 2019 AGM Season in Germany has been labelled something of an ‘annus horribilis’ by the international press and while several companies certainly felt the fury of shareholders, the broader picture is less extreme.

From a regulatory perspective, long awaited changes to both corporate law and the Corporate Governance Code have yet to be implemented. The Act for Implementing the Second EU Shareholder Rights Directive (“ARUG II”) is still at draft stage and it looks highly likely that Germany will opt for one of the least rigorous applications of remuneration reform of the markets we have examined. Likewise some investors will bemoan a ‘missed opportunity’ for radical improvement from the Corporate Governance Code, which has dropped several of the bolder reforms from its final version which will not come into effect until ARUG II is passed.

In Germany, therefore, we are starting to see a chasm emerge between the regulatory expectations placed on issuers and those coming from the growing institutional investor presence. As the Chairperson of the Association of Supervisory Boards in Germany (Vereinigung der Aufsichtsräte in Deutschland, VARD), Peter Dehnen, puts it, institutional investors are “more dynamic and more flexible as far as guiding the future of governance is concerned”: he would not be surprised if they have a “greater impact on corporate decisions and strategies than national Codes”.

Indeed, this appears to be recognised by one of the architects of the Code itself, Rolf Nonnenmacher, who in the press release accompanying the Code’s publication warned issuers that they “should make use of this opportunity more actively than they have been doing until now, before others set the standards for German enterprises.” 2019 is emblematic of this and has shown that Code compliance does not necessarily mean an easy AGM.

AVERAGE AGM SUPPORT PER PROPOSAL TYPE



A SPOTLIGHT ON Germany

SPOTLIGHT ON DIRECTORS

The headline grabbing issue for 2019 was the vote on Directors' discharge, typically a routine agenda item which is essentially a vote of confidence in the management or supervisory board; there has been an overall decrease of 2.23% in the last year. 2019 saw the first ever failed discharge vote of a DAX-listed company along with two other constituents getting below 65% support.

While it's worth bearing in mind that these companies were all facing legal issues or a significant loss of shareholder value, the discharge item could also be emerging as a lightning rod for broader investor concerns. With infrequent director elections and low shareholder rights around remuneration items, investors have fewer options to express concern on the AGM agenda in Germany than in other European markets.

Note that ISS in its annual policy survey, where it gathers market sentiment on potential changes to its guidelines, has in its 2020 edition included the suggestion that it could expand its approach to recommending against discharge resolutions to include a wider set of circumstances.

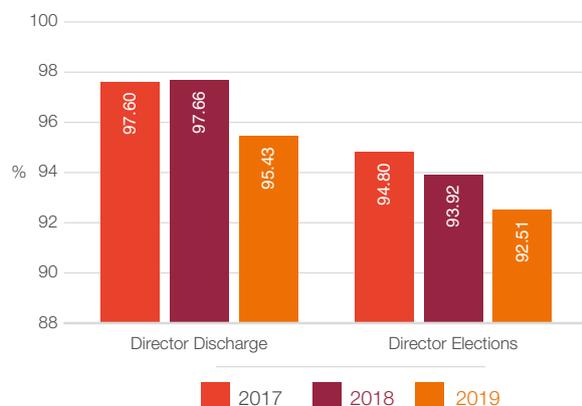
On the election of Directors, while 2019 saw over 80 director election items put to investors it is worth noting that almost two-thirds of these were for incumbents. Opposition across the DAX and MDAX focused on the same areas of concern as seen across all markets, namely independence of the supervisory board and/or its committees.

The new Corporate Governance Code, when it comes into effect, will no doubt give nominations committees something to think about. With greater specificity on what could impact on a Director's independence and a reduction in the number of mandates Directors can hold there could be some Director turnover as Boards reconstitute to remain compliant.

“Code compliance does not necessarily mean an easy AGM.”

VW, who also received against recommendations on the discharge vote, saw all three directors up for election in 2019, get against recommendations from ISS and Glass Lewis as the fallout from the 'dieselgate' scandal continued. That said, it appears to have insulated from this leading to any meaningful opposition at its AGM all items presented received over 98% support.

AVERAGE APPROVAL RATES PER BOARD OF DIRECTOR ITEMS



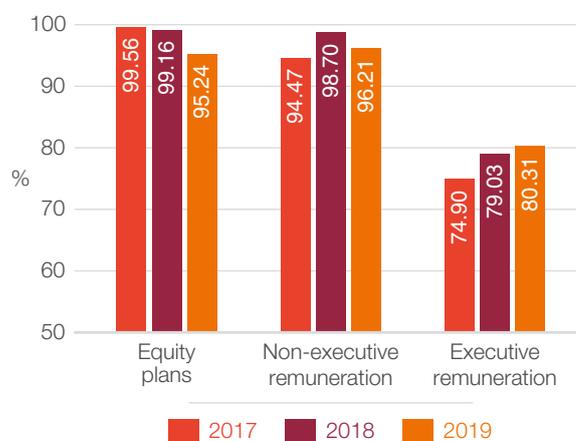
REMUNERATION

The total number of remuneration-related items presented to shareholders in 2019 across the DAX and MDAX was down by almost a third from 2018. Many issuers will undoubtedly have one eye to the future given the regulatory changes which are inbound requiring a greater degree of shareholder scrutiny of how German companies pay their Directors. The current draft of ARUG II, which is expected to be largely what passes into law, will give shareholders a non-binding vote on Management Board remuneration. In addition, there is a requirement to produce a remuneration report which will be examined by the auditor.

The Corporate Governance Code broadly picks up from the specifications outlined in ARUG II, specifying that the Supervisory Board should devise a clear and comprehensible remuneration system which defines the target and maximum pay for each Management Board member and the split between fixed pay and Long and Short-term variable pay.

For 2019 the biggest upset on remuneration votes fell to Norma Group, who last year lost their Supervisory Chairperson after shareholders voted against his re-election. They suffered another defeat with only 22.9% support for their remuneration system. ISS and Glass Lewis both recommended against this resolution, citing a lack of disclosure on the targets underpinning both the annual bonus and the LTIP in addition to a significant increase in the CEO's base salary without sufficient justification.

AVERAGE APPROVAL RATES PER REMUNERATION ITEMS



EXPERT VIEW The Governance View



Hendrik Schmidt

Assistant Vice President, Corporate Governance Center, DWS

The 2019 AGM season in Germany has shown several records for the DAX-segment: the participation rate increased to an all-time high of 67%, the dividends distributed amounted to more than €36bn and the shareholders continued to criticize management and board resulting in a historic non-discharge of a management board.

Despite record-high dividend distribution, shareholders used their vote on the discharge of boards and management as a mean to express their discontent. It seems that the well-established acceptance rates of 90% and above have gone. Management and boards have to engage more with their shareholders to secure votes for the discharge – otherwise 75 is the new 90.

Directorships have become more time-consuming and complex; they require further attention. We expect directors to fulfill their mandate(s) by applying thorough care and diligence because they are accountable for each of their mandates. A special focus is on Chairpersons of the board and of the Audit Committee, as their roles require even more attention and independent assessment and judgement. To account for their extended responsibilities, DWS attributes Chairpersons of boards and Audit Committees an additional

mandate. Looking at the boards, their composition and the (re-)elections in 2019, we still see overboarding situations leading to votes against qualified but overboarded candidates.

Consequently, this also poses questions about the work of nominating committees. In one case all shareholder representatives' mandates terminated – most of them completed a second term. The Corporate Governance report mentions that the nomination committee did not convene at all during the last fiscal year; it was therefore no surprise that all directors were nominated for re-election. Such a case illustrates that the nomination committee should apply due care and diligence and could have used this opportunity to search for new candidates that enrich the Board and its discussions with new outside perspectives. Instead, the board decided to stay among themselves. The consequences of such "continuity" will become apparent.

Remuneration was again a hot-topic. Although several companies decided to wait until next year following full implementation of SRD II, some took the courage and asked their owners for a "say-on-pay". Although intense discussions between issuers and investors took place, crucial

elements such as missing claw-back provisions or insufficient (ex-ante) transparency also for extra-financial KPIs resulted in low acceptance rates.

With the transposition of the SRD II into national law, any form of say-on-pay vote will increase the number of such proposals. In case boards are not delivering a convincing remuneration system, they will be held accountable by the shareholders too.

Besides the increased participation of institutional investors with interventions, this year's AGMs also saw some new attendees: activists from "Fridays for Future" quite clearly made sustainability a topic and delivered partially very emotional speeches calling management and boards to action.

These developments show that the emphasis on sustainability needs to be driven even further by investors.

In addition, the improvements with regard to shareholder identification and vote confirmation should lead to a higher transparency along the voting chain. However, the technical implementation bears some problems, especially regarding the information flow between custodians.

“...the Code fails to reflect internationally well-accepted standards...or to set ambitious and demanding targets.”

Last not least: the revision of the German Corporate Governance Code has shown some drastic changes after nearly two years of discussion. The first draft was heavily criticized and more than 140 consultation papers from a wide variety of respondents answered the call for comment. As the revised draft was published by end of May this year, changes were not effective for 2019. The Code gave up some well-established elements, i.e. a D&O-insurance for non-executive directors, thereby changing “national best practice” reference. The newly introduced criteria for independence of non-executive directors was a promising step forward, but the Code fails to reflect internationally well-accepted standards (compared to the UK Corporate Governance Code) or to set ambitious and demanding targets.

Consequently, such developments will lead to stricter and more explicit governance expectations by investors as they are bound to fulfil their stewardship obligations by being transparent about their voting guidelines following SRD II.

HENDRIK SCHMIDT

Hendrik Schmidt is Analyst in the Corporate Governance Center of DWS Investment GmbH and responsible for the regions: Germany, Austria, Switzerland and the UK. He represents DWS regularly at Annual General Meetings of portfolio-companies and publishes on corporate governance topics. Mr Schmidt is member of several corporate governance bodies, among the DVFA-Commission on Governance & Stewardship and the BVI Working Group Corporate Governance.

Formerly the Executive Assistant to the Supervisory Board member Prof. Christian Strenger,

Mr Schmidt graduated as Master of Science from HHL – Leipzig Graduate School of Management in 2016.

In 2014, Hendrik Schmidt successfully completed the first German class of EFFAS/DVFA Certified ESG Analysts.

Before joining Deutsche Asset Management, Mr Schmidt worked in the Acquisition Finance Department of BHF-Bank AG where he completed a dual traineeship as bank clerk (IHK-Bankkaufmann) and parallel received his Bachelor of Science from Frankfurt School of Finance & Management.

A SPOTLIGHT ON Switzerland



MARKET UPDATE

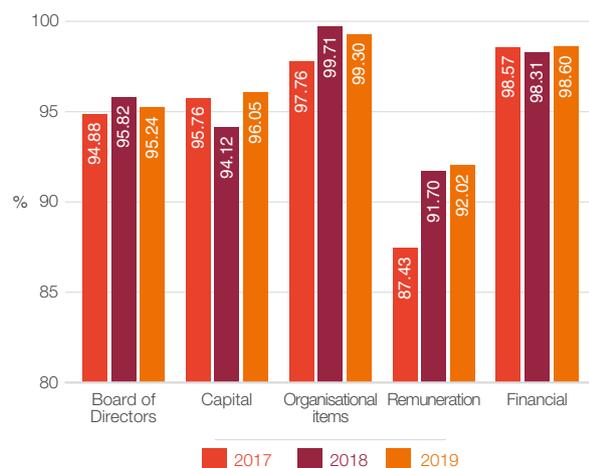
The relative consistency in support levels for AGM agenda items over the past three years is perhaps reflective of the continuing maturity of corporate governance practice in the Swiss market. While not party to the changes effected across Europe through the implementation of SRD II, Swiss investors already benefit from binding votes on remuneration in addition to annual Director elections, putting them ahead of several EU jurisdictions on shareholder rights.

Regulatory upheavals such as the introduction of the Minder initiative have bedded in and the light touch approach of the Swiss Code of Best Practice for Corporate Governance continues unamended since 2016. While the full incorporation of the Minder initiative into the Swiss Federal Code of Obligations will introduce further changes, for example the introduction of gender diversity quotas (likely to be non-mandatory), this is not expected until 2021.

Change in best practice, therefore, is being driven by reforms to the guidelines imposed from external

It is worth noting that the SIX Swiss Exchange has paid notice to the increased importance of Proxy Advisors and has started work to introduce transparency rules, mirroring what has been seen in the EU.

AVERAGE AGM SUPPORT PER PROPOSAL TYPE



“...the ability for companies to practice governance ‘the Swiss way’ is arguably shrinking.”

sources, namely international institutional investors who continue to grow in presence in the Swiss market and from the influence of the Proxy Advisory Agencies. As such the ability for companies to practice governance ‘the Swiss way’ is arguably shrinking as the more homogeneous approach put forth by such external parties takes hold.

CAPITAL INCREASES – LESS TO PLAY WITH

While it's easy to understand the gap between investor support for capital increases with and without pre-emptive rights, one development in the Swiss market for 2019 was the stricter guidelines brought in by ISS on the issue. This saw the 'accepted' levels for increases with pre-emptive rights falling to 50% (previously 100%) and for increases without pre-emptive rights reduced to 10% (previously 20%). Though some issuers expressed discomfort with the lower amounts going into the season, especially in the financial and insurance sectors, the steady support levels suggest that companies planned accordingly.

AVERAGE AGM SUPPORT FOR CAPITAL ITEMS



SUPPORT FOR REMUNERATION PRACTICES

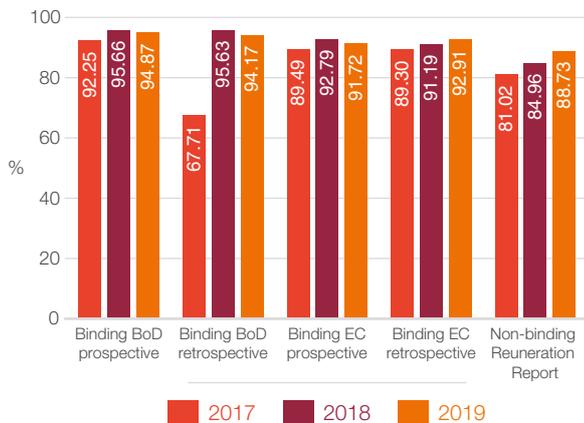
The increase in support for binding, retrospective, Board of Directors remuneration from 2017 to 2018 has tailed off for 2019 with a 1.46% decrease in support. Likewise, from a binding perspective, Board of Directors and Executive Committee remuneration saw incremental decreases in support.

What perhaps paints the most interesting picture of the state of investor perceptions when it comes to remuneration in Switzerland is the year on year increase in support for the non-binding remuneration report, increasing a total of 7.71% since 2017. While its non-binding nature may suggest unimportance, many investors and both the major proxy advisory agencies have a publicly stated practice of directing opposition to remuneration frameworks to this agenda item where one is presented, which can also explain its lower level of support compared to other remuneration items. Increasing support for this item suggests a growing acceptance for the post-Minder frameworks which have been put in place.

A SPOTLIGHT ON Switzerland

That is not to say that some Swiss corporates did not face the ire of investors: after all, remuneration is the eternal hot topic in corporate governance. Those companies who did receive slaps on the wrist for their pay practices in 2019 (bearing in mind no resolutions failed) did so for reasons such as discounted strike prices on option awards, LTIP metrics vesting under median performance, increases without justification and the usual protests over insufficient disclosure.

AVERAGE AGM SUPPORT PER REMUNERATION ITEMS 2017-2019



COMPOSITION IS KEY

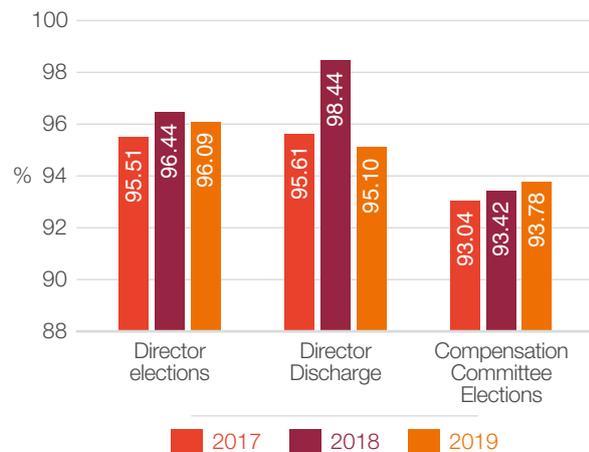
While investor support for items related to the Board of Directors, 2018's discharge outlier aside, remained stable, this masks increased scrutiny from shareholders on Board composition.

Overboarding was the main rationale provided by ISS and Glass Lewis for a recommendation against a Director in the Swiss market for 2019, with Independence also featuring prominently. Investors are also paying more attention to the skills composition of Boards across Europe with a desire to see a diversity of talent sets around the table.

While Compensation Committee Elections have seen a gradual increase in support over the three years measured, these items continue to poll lowest of the Board of Director related items at Swiss AGMs. Here independence, or rather a lack of, was the prevailing rationale behind opposition highlighting the importance which investors place on this issue for Directors in charge of remuneration.

Similar to what has been seen in the German market in 2019, several Swiss companies performed poorly on the Discharge vote as a result of shareholder value destruction or legal issues. Potential changes to proxy advisory guidelines in addition to an appetite from investor for additional areas to express discontent could see this agenda item increase in importance. UBS saw a dramatic turnaround in fortunes on the discharge vote, shareholders who had waded through the item with 89% support, voted against in 2019 with less than 42% supporting the item.

AVERAGE AGM SUPPORT PER BOARD OF DIRECTOR ITEMS 2017-2019



EXPERT VIEW The Company Secretary



Felix Horber
Group Company Secretary at Swiss Re

The 2019 AGM season in Switzerland was relatively steady with broadly high levels of investor support. The critical focus has shifted from remuneration to board independence topics. That being said there were some interesting developments in the Swiss market which the voting data doesn't show.

A prominent topic raised by shareholders at Swiss AGMs this year was the voting secrecy of the shareholders in the context of the independent proxy. There was fear that an exchange of proxy voting data prior to the AGM provides the company with an opportunity to influence the outcome of a vote. While this view point is understandable it misses two key points.

First, the independence of the proxy is of paramount importance. In listed companies with a high free-float independent proxies often represent more than 90 percent of the votes at the AGM. This requires an information flow between the company and the independent proxy. For its part, the company must make the necessary arrangements for the determination of voting rights with the share register and supervise the independent proxy in its role. The independent proxy has to notify the company of the shares represented before the AGM. At the point this data

is received by the company the share register is already closed and the period for issuing voting instructions has expired.

Second, a company focussing on proper shareholder engagement and dialogue throughout the year should know a long time before an Annual General Meeting if and why large shareholders agree or disagree on a particular issue. In the more recent past, there was a strongly increased investor interest to engage on ESG and other non-financial topics with their portfolio companies.

To further deepen the understanding of the various stakeholder interests Swiss Re and the University of St.Gallen (HSG) have entered into a strategic research cooperation, setting up the Network for Innovative Corporate Governance. The Network's purpose is to integrally develop a modern corporate governance from a theoretical as well as practical perspective. It provides companies with solutions for the implementation of its insights. Swiss Re also has a partnership with the ETH Swiss School of Public Governance, in a program that brings talented government representatives from emerging economies in Africa, Asia and Eastern Europe to the Swiss Federal Institute to learn about issues such as climate change adaptation or natural catastrophe risks.

“a company...should know a long time before an AGM if and why large shareholders agree or disagree on a particular issue.”

I do however believe that caution also needs to be exercised when we're talking about the regulatory expectations and the demands of stakeholders which publicly listed companies are facing. Corporate transparency, while desirable, has its limits: a system which forces every decision to be made under a microscope might result in a lack of ingenuity and might constrain the entrepreneurial spirit.

This threat to the dynamism of companies is not a Swiss only problem, indeed one can see this from the decline in IPOs around the world. There is a global recognition of this issue. It is essential that issuers and investors work together in order to strike

a balance which enforces high standards but also allows for company specific needs and nuances.

Last but not least, I would like to mention the revision of the Swiss stock corporation law which has reached its final stage. For “Corporate Switzerland” this revision may bring a number of improvements such that it modernizes and introduces greater flexibility to Swiss stock corporation law in a number of areas. As it looks now, the final vote and adoption by Swiss Parliament could take place as early as next spring. If that is the case, the new provisions could enter into force on 1 January 2022.

FELIX HORBER

Felix Horber has been Group Company Secretary and Managing Director at Swiss Re since February 2007.

He started his professional career at UBS in 1993. Felix Horber was the Head of Policy & Corporate Governance of UBS from 2005. Between 1998 and 2005, he was corporate legal counsel in the Group General Counsel's area and senior adviser for corporate legal matters and corporate transactions. From 1994 to 1998, he was legal adviser for the corporate finance department. From the beginning of 1993 to 1994, he was legal counsel in the areas of compliance and litigation management.

Felix Horber is the author of several books and articles, namely in the field of Swiss corporate law and Swiss stock exchange law. He was a member of the Admission Board of the SWX Swiss Exchange and currently represents Swiss Re at *economiesuisse* in the group of experts for corporate governance and corporate law as well as in the Council on Corporate Governance of the

Conference Board. From 1986 to 1998, he was a member of the local parliament of Zug, presiding in 1997 and 1998.

Felix Horber studied law at the University of Zurich, from which he graduated in 1983 and received a doctorate in 1986. He was admitted to the Bar of Canton of Zug in 1988 and qualified as public notary in the Canton of Zug. In 2001, he graduated as an Executive Master of European and International Business Law (M.B.L.-HSG) from the University of St. Gallen. In 2017, he qualified as a Certified Director for Board Effectiveness (VR-CAS HSG). Felix Horber is a regular guest lecturer at the University of St. Gallen and at symposia and conferences on the topic of Corporate Governance. He is a founder member of the Network for Innovative Corporate Governance (NICG), a strategic research cooperation between the University of St. Gallen and Swiss Re.

Since 1998, he has been serving as an additional judge at the Superior Court of the Canton of Zug.

A SPOTLIGHT ON Belgium



MARKET UPDATE

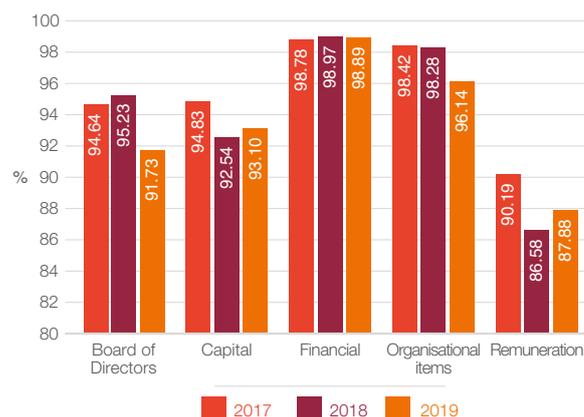
2019 saw widespread changes to the regulatory framework in Belgium with the introduction of a revised Belgian Companies Code in addition to an updated Belgian Corporate Governance Code. Both are scheduled to come into effect in 2020 and therefore their impact is yet to be measured, it is likely, however, given the scale of the changes, that both will have a profound impact on corporate Belgium.

The headline changes to the Companies Code, which are explored further in our External View section for Belgium, include fundamental changes to the governance of Belgian companies in addition to the rights of shareholders.

With respect to the Corporate Governance Code we see a greater emphasis on long term value creation in addition to more specific developments, such as the recommendation that Board Members receive part of their remuneration in shares. The Code has also been altered to reflect the possibility of two-tier boards.

Another interesting development is in regards to the relationship which a company has with its shareholders. Here the new Code builds on what is expected of a company with one or more significant or controlling shareholders, stating that the Board should debate whether it would be appropriate for the company to enter into a relationship agreement with said shareholder. How these changes are implemented by issuers, the reaction from investors and the interactions between the various reforms means that Belgium is a market to watch in 2020.

AVERAGE AGM SUPPORT PER PROPOSAL TYPE



“...opposition stemmed from the company failing to address prior dissent.”

REMUNERATION CONCERNS

Once again Remuneration remains the issue garnering the lowest support across all resolution types and the current 2019 average AGM support level remains lower than the 2017 level (1.81%) though slightly up on 2018. Underpinning this are continued low levels of support (relative) for both executive equity plans and for the non-binding vote on the remuneration report.

Concerns expressed by investors and the proxy advisory agencies in relation to remuneration this year included Non-Executive participation in equity plans (especially interesting given the Corporate Governance Code change suggesting that NEDs receive shares). Also of interest was the high frequency of instances where opposition stemmed from the company failing to address prior dissent, showing that the need for Boards to recognise minority opposition is growing in importance in Belgium, as in other European markets.

Insufficient response to such opposition was a feature in the failure of BEL 20 company, Ontex, to obtain approval for its Remuneration Report at the 2019 AGM. 56.5% voted against this non-binding item in 2019, up from 54% the previous year. This year on year failure to win shareholder support shows significant concern with the underlying remuneration framework and investor concern appears to stem largely from disclosure issues with the company’s LTIP.

AVERAGE AGM SUPPORT PER REMUNERATION ITEM



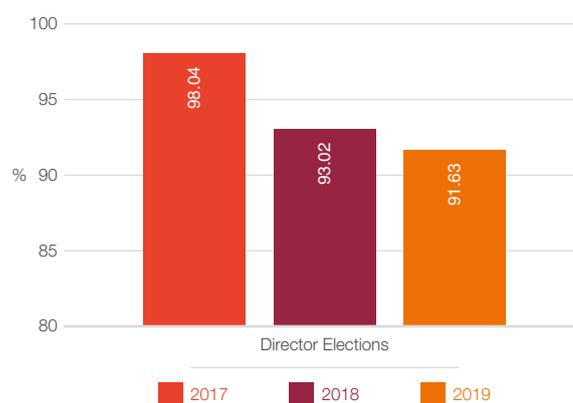
DIRECTOR ELECTIONS

Board of Director elections (NED and Exec) have seen a decrease of 6% of support during the three years tracked. This has been driven by independence concerns at a number of BEL 20 companies in addition to low support for Directors who are perceived to be overboarded.

Linked to the issue of independence is the concern from some institutional investors that some Boards had disproportionate representation of large shareholders. In one BEL 20 firm where this was an issue, that was flagged by both ISS and Glass Lewis, the Directors still received high levels of support as a result of a low free float.

What will be interesting to observe in the coming years is where companies, with majority shareholders, implement the option to award loyalty double voting rights shares which the revised Companies Code allows. Where these are then utilised by majority shareholders to maintain voting power while reducing their financial stake could lead to clashes with minority shareholders, especially where disproportionate board representation remains.

AVERAGE AGM SUPPORT PER BOARD OF DIRECTORS ITEM



EXPERT VIEW The Governance Innovator



Aminata Kaké

General Counsel and Member of the Management Committee of Befimmo SA

What are the regulatory changes we've seen in the Belgian market in 2019?

The 1st May 2019 saw the introduction of a brand new Belgian Companies Code, which will apply to existing companies as of the date on which they opt in or, at the latest, 1st January 2020, with a transitional period for some provisions. I think we will see some companies call EGMs towards the end of the year to make the relevant Articles of Association amendments ahead of time.

The new Companies Code represents a significant change and the intended aim is to give clarity, simplification and flexibility to companies in Belgium and to better align the Belgian structure to international practices.

There is a lot to say about the new Code, but I would like to focus on five important changes:

1. The number of corporate forms will be drastically reduced – from seventeen different types of companies, down to just four:
 - Private limited company
 - Public limited liability company

- Cooperative company
- Partnerships for entities without any legal personality.

Many of the now abolished corporate forms can be achieved through the remaining options and there is a lot of flexibility in these new categories.

2. The current application of the real-seat theory will be replaced by the incorporation theory which reflects other leading markets. Previously, the nationality of a company was defined by the location of its main operational activities (real-seat theory) but Belgium will now start to follow the incorporation theory meaning the location of the registered office will be the only relevant factor in determining the applicable corporate law. It will now be easier to transfer a company from one country to another and companies operating from Belgium can now follow the governance structure of another country if they choose. Likewise, Belgian companies can have the flexibility to have their headquarters abroad, while still being governed by Belgian company law.

3. Three types of governance models for public limited companies:
 - One tier system with one corporate body (the board of directors with at least three members, and some of those members can be part of the management)
 - Two-tier system (optional, with a clear separation in terms of composition and duties between the supervisory board and the management board)
 - One director – the limited company can choose one sole director but this must be a legal entity.

“Understanding the key values...how do you make profit whilst integrating your impact on society?”

4. Voting rights: one share, one vote has become a default rule and is no longer a mandatory one. Companies may change their Articles of Association to allow shareholders holding shares in registered form for a minimum of two (consecutive) years to benefit from double voting rights. The change will require a two-thirds majority vote of approval at a shareholder meeting. While it remains to be seen how many companies will seek to introduce this, loyalty shares are notoriously unpopular with most

institutional investors, this has been introduced in a bid to encourage longer term ownership and also to entice family and founder led businesses to Belgium’s public markets.

5. A liability cap for directors’ liability has been introduced for the first time. For large corporations it will be €12m, though the cap would not apply to negligence or serious breaches/fraud. This change is important as liability risk is steadily increasing as company activities internationalise and diversify so the move will help companies to attract and retain the best Directors.

2020 will also see the new Corporate Governance Code come into effect, talk us through some of the major changes here.

The Code was last revised in 2009 with the aim to restore trust after the financial crisis. Naturally a lot has changed in the subsequent years and so this is about bringing the Corporate Governance Code up to speed with these developments as well as reflecting the new Companies Code areas.

The Corporate Governance Code encourages companies to focus far more on long-term value creation and also has significant references to responsible behaviour, diversity, talent development, succession planning, non-financial reporting (CSR, KPIs).

Understanding the key values of the corporation. How do you make profit whilst integrating your impact on society? What are you putting in place to ensure that you will continue to make profit even as the economy evolves? These themes are not specific to Belgium but part of a growing international awareness of what society requires of business.

Which of the requirements from this new Code will, in your opinion, have the greatest impact on the BEL 20?

Two things:

1. Non-executive directors are now encouraged to receive remuneration in the form of shares from the company. This is a pivotal change in Belgium as previously there was a desire not to

mix interests due to the fear non-execs could then be driven by short-term expectations. It's however worth noting that non-execs will have to hold the shares throughout their mandate and for an additional year following their departure. It will be interesting to see how companies and investors will respond to this. Currently at least two companies in the BEL 20 are following this recommendation.

2. The recommendation for companies to consider entering into a relationship agreement with controlling and significant shareholder(s) is another novelty. Although companies have no obligation to conclude such an agreement, they are still expected to explain the considerations underlying their decision.

AMINATA KAKÉ

Ms. Aminata Kaké is the General Counsel and a Member of the Management Committee of Befimmo SA, a Real Estate Investment Trust based in Belgium and listed on Euronext.

Among other activities, Ms. Kaké is also Non-Executive Director of the Belgian Association of Listed Companies and a Member of several professional and governance bodies, such as the Advisory Council of European Issuers, the European Real Estate Public Association, the Belgian Institute of Directors, the European Risk Management Association and the Institute of Company Lawyers. She contributes regularly to publications, public lectures and discussion panels regarding Company and Financial Law, Regulatory issues, Governance, CSR, Leadership, etc.

Before joining Befimmo, Ms. Kaké was Deputy General Counsel for the financial holding company Dexia SA, with global responsibilities (overseeing a.o. Belgium, France, Luxembourg, UK and US). Ms. Kaké holds a Master of Laws from the Free University of Brussels (ULB - 2000), a Postgraduate Certificate in Business Administration (2014), a Master in Real Estate (2016) from the Solvay Brussels School of Economics & Management and a Postgraduate Certificate in Law, Cognitive Technologies and Artificial Technologies from the Brussels School of Competition (2019).

EXPERT VIEW The Challenges Ahead



Darren Novak

Executive Director, Mergers and Acquisitions Group, UBS Investment Bank

What do you think has driven the increased activity in the activist sphere in Europe over the past couple of years?

There are a few reasons. Many of the better-known Activists now have a substantial amount of assets under management and this has led them to require bigger targets so as to sufficiently 'move the needle'. The true way of moving the needle is to seek companies that can easily be sold in a change of control transaction, as the ultimate way of maximising value, but that can't be as easily done with large caps. As a result, breakup plays are the favoured value-unlocking path at large caps. Looking at this, the region that has the least opportunities on the break-up play front is the US given current market valuations. It doesn't work from an activist perspective especially when the total upside is 10-15%. Europe provides a greater opportunity for this and that's what's really driving activism in Europe from a financial perspective.

A necessary component for this approach is having a shareholder base that is amenable to the activist message. When I'm looking at the shareholder base of companies in EMEA, a significant portion are large institutional investors that are familiar with the leading activists, are comfortable with their credibility and are open to

dialogue with them. They see activists as smart investors – not always fully correct in their views – but definitely smart. As a result, companies should be willing and prepared to engage in constructive dialogue with the activists in order to explore the underlying ideas. Shareholders don't expect the company to follow exactly what an activist is saying, but companies should engage in the discussion and fully consider activist proposals.

Finally, in Europe you have a number of tools available which can apply a tremendous amount of pressure on companies. The ability to call special meetings at relatively low ownership thresholds, for instance, is incredibly powerful and these meetings can be used to force a change on a company which would otherwise be locked up. We haven't seen this used in any high profile way yet, but it is a tactical lever that could be used.

What operational and governance indicators could potentially make a company a target for activism?

Valuation – where you're operating at a discount of 20% or more to your intrinsic value and there are apparent routes to unlocking this value then this will be a flag. As a company, you need to evaluate and consider whether this is truly a vulnerability

“Companies need to do a deep-dive activist review... you can then start to prepare – what you can do now and what you can hold in reserve.”

and whether it is actionable on the part of the activist. Poor valuation or performance does not in and of itself make a company an activist target.

In terms of governance, long-tenured directors continue to be a weak spot but additional vulnerabilities right now include companies with issues around remuneration votes or, on the Continent, issues around members of the Board meeting their fiduciary duties. These are prime areas of weakness as shareholders' satisfaction (or dissatisfaction) is reflected in the approval rates. When a disconnect between pay and performance is being highlighted, an activist is able to come to the forefront and say that the company has underperformed compared to its peers using valuation and operational benchmarking analysis. This can easily be utilised to channel the message that executives are being paid too much for the performance they have achieved.

What should companies be doing in response to the threat of activism?

Companies need to do a deep-dive activist review. Granted, it takes a lot of time and effort to do this properly but you can then start to prepare your proactive defence (proactively what you can do now) and your reactive defence (reactively what

you can hold in reserve). Ultimately, the company needs to appreciate and address undervaluation. The activist is going to address undervaluation in one way. Companies are likely to have a different route to address undervaluation. What advisors such as ourselves are trying to do is help companies to bridge that gap and explain to shareholders why there is that gap and how best to provide companies with sufficient runway in order to pursue their value creation plans.

Shareholder primacy is being questioned like never before – what does this mean for activists and is this an opportunity or a challenge for their business model?

It's not really going to affect activism one way or another, it will simply change the narrative. When you take a look at the larger activists, they're already sensitive to the issues of different stakeholder groups. Their interests may align even if their objectives are different. It will of course be important for companies to effectively use PR to defend the wider stakeholder front. Until the time that shareholders are no longer the primary party to elect directors and vote/opine on remuneration at companies globally, it won't materially change the game. Ultimately, it won't change much but each side will begin using a different language.

How do you see activism evolving in the next 5-10 years?

I think it's going to be an increasingly sophisticated game and a game that's going to be played out less in public and more behind the scenes. There will be discrete moments of publicity and defences will become increasingly sophisticated as a result. The activist will go public to increase pressure or to move the market in terms of the price. This will be the case for larger scale activists. For other activists, things will remain the same and will depend on what the interest rate environment is like and what the broader economic environment is like. But the fundamental basics like how activists are incentivised will remain the same and the ultimate governance of companies will remain the same. There will always be companies that are underperformers, that exhibit undervaluation in comparison to their intrinsic value and the activist exists to catalyse events to try and eliminate this. Until there is a time that companies are valued perfectly in the market, the activist will

“What activism forces companies to do is to be more proactive and do more to address issues concerning undervaluation.”

continue to exist and I don't think changes in the legislative environment would materially affect how activism is played.

Is activism a healthy component of the market?

What activism forces companies to do is to be more proactive and do more to address issues concerning undervaluation. It also encourages greater transparency regarding what the company is doing to unlock that valuation. If you believe that greater transparency is a good thing for capital markets then this would be seen as a benefit. Fundamentally, it remains fact and circumstance based; it depends on the activist involved, what their value unlocking thesis is and how they go about that.

DARREN NOVAK

Mr. Darren Novak is an Executive Director in the Mergers & Acquisitions Group of UBS Investment Bank.

Prior to joining UBS Investment Bank, Darren co-lead the Activist Situations Team at Houlihan Lokey. He has advised in many of the leading activist situations since 2010, including campaigns with respect to BHP, CSX, Darden, MetroPCS and NXP.

Prior to Houlihan Lokey, Darren was an M&A attorney for a dozen years, most recently as a partner at Davies Ward specializing in contested situations, and before that as an associate in the M&A department of Simpson Thacher.

Mr. Novak received a JD and MBA from the University of Toronto. He graduated with distinction with a Bachelor of Commerce (Finance) from the University of Alberta.



1. SHAREHOLDER TO STAKEHOLDER

The metamorphosis from shareholder relations to stakeholder relations will accelerate next year. With more and more companies contemplating or even implementing a corporate Purpose, whose scope spans beyond increased profits, boards need to demonstrate more clearly how they contribute to the common good. Not only do investors expect superior returns, but they expect their investments to make a meaningful contribution to their other stakeholders including their customers, employees and the communities they serve.



2. LOCAL CODES REINFORCE BEST PRACTICE

For a number of years, the EMEA region has experienced regular and significant changes in local governance and stewardship codes and regulations. The era of greater transparency and accountability continues, with major changes occurring this year in Belgium, France, Germany and the UK, the full impact of which will be felt in the 2020 AGM season. Some of these national changes will better prepare companies to comply with the EU SRD II (Germany and Belgium) while others, such as France's PACTE Law has created a legal framework for companies to create a corporate purpose, if desired. The recent changes to the UK corporate governance and stewardship codes reinforce what is an already robust foundation for meaningful dialogue between boards and investors.



3. GLOBAL IMPACT OF CG CODE CHANGES

The corporate governance expectations of international investors have led to greater convergence between global best practice and local norms. It has become increasingly harder to maintain local practices that stray from international expectations. With a greater concentration of investment in index funds and sovereign wealth funds, coupled with a market wide dependence on proxy advisory firms for AGM voting decisions, we anticipate this trend will accelerate.



4. ESG CONTINUES TO DOMINATE

The corporate governance revolution is occurring in part due to the growing importance of ESG considerations for investing at long-only investment funds. The effort from corporations to align their corporate governance with investors' growing ESG requirements is happening at a time when shareholder activism is expanding across the region. While there is not yet a "Say on ESG" vote at AGMs, long-only investors, for example, are using ESG as an investment criterion and expect ESG to be part of the performance criteria for short and long-term executive remuneration. In a context where investors want to understand a company's ESG strategy, where stakeholders want to see how a company is "making a difference" and corporations are contemplating a purpose beyond core profitability, a more formal approval from shareholders on a company's ESG is only a matter of time.



5. ACTIVISM BECOMES COMMON PLACE

The wave of shareholder activism in Europe has remained robust in 2019. We predict that activism will grow further in 2020. Activists are seen as savvy investors by the wider investment community, who can implement change at underperforming companies and can challenge boards around poor governance choices that may hinder value creation. Essentially, activist investors leave very little room for corporate governance practices that are not aligned with the interests of all. As our corporate clients can attest, building "corporate governance capital" over time through direct investor engagement can help to fulfil as fundamental a component of a corporate preparedness initiative as delivering on group strategy.

METHODOLOGY

The data used in this General Meeting Season Review is built on the voting results published by issuers in each market.

D.F. King looked at three years of vote results for each company, in order to uncover trends throughout each market and across markets. All voteable management proposals were assigned categories (Board of Directors, Financial, Remuneration, Organisational Items, Formalities, and Capital Authorisations) and underpinning subcategories.

The analysis identifies trends within each category and compared and contrasted approval rates across categories, paying particular attention to items that received low approval rates to investigate the causes. Finally, participation rates were taken directly from issuers disclosure or calculated by summing the number of For, Against and Abstain votes for each item at a meeting, taking the maximum of those sums from the meeting, and then dividing that sum by the number of voting rights at that company as of the meeting date.

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