D.F. KING

General Meeting Season Review

A year like no other

October 2020

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An Orient Capital Company

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INTRODUCTION

As I put pen to paper to highlight the stand-out events of the 2020 AGM season, in my son's bedroom that I converted into my 'temporary' office seven months ago, I am conscious that this year's AGM season focuses on the one thing that has consumed everyone globally, the coronavirus pandemic.

I am pleased to say we have the views of a number of key experts included in this report. I would like to thank everyone for their valuable contributions.

The impact of COVID-19 has accelerated industry trends that we highlighted in previous editions of this paper. In the financial markets, investors have clearly adopted a stakeholder model and the market has embraced the technological necessities created by the pandemic. Pragmatism has been the revolutionary factor in shareholder engagement and how general meetings are held. Like the rest of the world, they have gone virtual.

Throughout the Spring AGM season, as corporate response and steep market correction became the key topics, it was apparent that investors were testing boards' ability to manage the systemic risk created by COVID-19. Companies generally demonstrated a clear ability to focus on favourable outcomes for all in relation to employee safety, community aid, voluntarily pay-cuts and suspending dividends and buy-backs.

Our data illustrates, in several key markets including the UK, France, Germany, Switzerland and Belgium, overall quorum levels increased, for some, such as France, to record highs, despite the virtual nature of this year's AGM season. Across these markets, the major themes remain similar with investors growing increasingly demanding about their expectations of what needs to be achieved to receive their support.

The 2020 AGM season also demonstrated that shareholder activism has firmly taken root in Europe. Boards have a responsibility to prepare themselves to ward off an activist approach by analysing their investor base, evaluating their potential weaknesses and being on the front foot on how to defend themselves. When activists present compelling, clear and cohesive arguments, investors can give them their support.

Boards took difficult yet decisive decisions to protect employees and communities. 2021 should provide them a great storytelling opportunity to show that through appropriate managing of this crisis while evolving their board composition and remuneration structures, they were not only aligned with their investors but with all of us.

What a pivotal year, in so many ways.

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

The disruptive effect of COVID-19 has had a profound impact on the 2020 AGM season across all core European markets. Whilst the ramifications were complex and numerous, we have identified four key themes.

1. CASH IS KING

Firstly, investors were keen to ensure sufficiently conservative capital allocation and management policies were in place. This primarily centred on financial capital, with an effort to stabilise balance sheets through reduced or cancelled dividend policies and restraint from share buybacks. Indeed, some sectors such as banks were particularly hard hit by these expectations, with major institutions such as the ECB providing strong prohibitive 'recommendations' to not pay them. It is noteworthy that opposition to share buybacks had already started to rise pre-pandemic. Many investors were preferring alternative forms of shareholder value creation and some even fearing executive remuneration performance plans could be manipulated through the timing of these buybacks. For instance, Amundi Asset Mgt, Europe's largest asset manager by assets under management, had already flagged their dislike of share buybacks in their 2019 voting policy.

2. REMUNERATION IN FOCUS

Secondly, the pandemic has reinforced the importance of the stakeholder model. Shareholders have suffered through sharp declines in share prices and reduced dividend distributions. Workforces were also deeply affected despite government intervention with lay-offs and reduced pay packages. As such, the stakeholder model dictates that executives should "share the pain" in the same way that they traditionally "share the gain". Heightened pressures from investors, governments and the wider society across Europe led to voluntary reductions in fixed pay and bonuses. The AFEP-MEDEF, that writes the local governance code in France, even issued a formal recommendation that executives reduce their total 2020 pay package by 25%. Despite a number of reductions in executive pay, there is concern in some circles that the potential windfall gains from LTIP grants at depreciated share prices could far outweigh any sacrifices made by executives in 2020. This year's pay will be a major area of scrutiny leading into next year's AGM season.

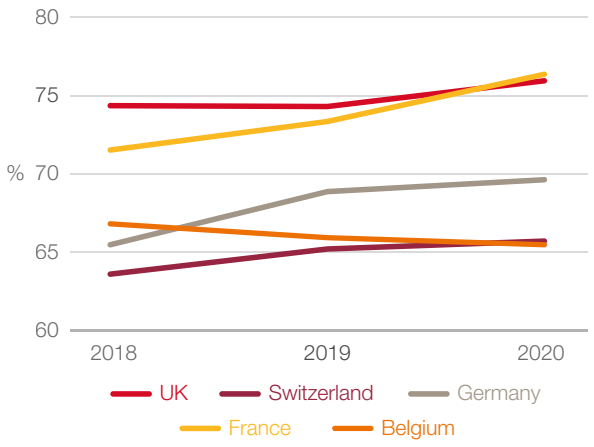
3. BOARD COMPOSITION CRITICAL

Thirdly, board composition was heavily scrutinised. Indeed, a number of good corporate governance principles had been predicated on its paramount importance in the case of a crisis. Overboarding guidelines for instance emanate from the belief that whilst a director may be able to manage a large number of mandates in listed companies in normal circumstances, there is a key risk should more than one of these companies require urgent attention. It is therefore not surprising to have witnessed investor dissent in situations where directors were not demonstrably available and committed during the pandemic. Focus was also placed on diversity of skill-sets to meet this challenge, in addition to the broader ESG agenda.

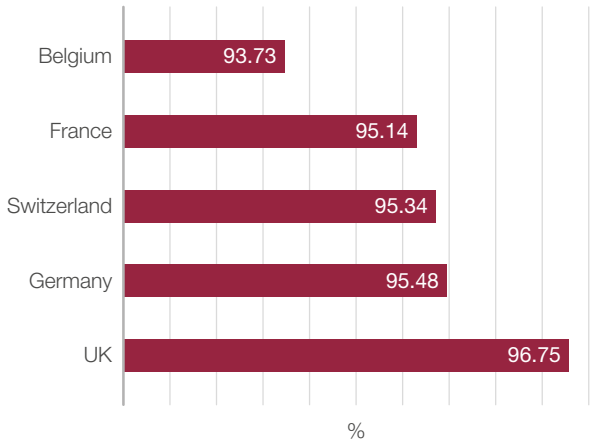
4. THE VIRTUAL MEETING

Finally, constraints on the free movement of individuals and remote working led to a profound change in the nature of shareholder engagement, on the day of the AGM in particular. The forced move to virtual-only and hybrid AGMs across the continent initially sparked fears shareholder rights would be diluted. Whilst the dust has not fully settled, it seems clear that shareholder engagement remains at a high point. This can be further illustrated by the below analysis of participation trends.

AVERAGE AGM PARTICIPATION
2018-2020



AVERAGE AGM SUPPORT
PER REGIONAL MARKET



PARTICIPATION LEVELS

Despite the rise of virtually held AGMs across the UK and the continent, overall AGM participation increased in every market except Belgium. Also of note, France now boasts the highest level of participation rate with 76.36%, overtaking the UK market, after a significant year on year increase of +3.02%.

The UK continues to lead in average support levels at AGMs with 96.75%, a slight decrease of 0.95% from 2019. Overall, a majority of the proposals presented at AGMs in each market continue to pass with very high levels of support.

Whilst a comparison of average approval rates across markets may provide useful indications about the extent of adherence to international best practices, we must be careful to factor in differences in numbers and types of items across markets. Remuneration-related items for instance, the most contested category type, represented 25.7% of total items proposed by management in France's

SBF 120 for 2020 vs less than 6% of total items for the German market. Such regional nuances clearly provide distortion.

ADDITIONAL TRENDS

Whilst COVID-19 was undeniably the key talking point of 2020, a number of other noteworthy trends or events emerged:

- SRD II implementation has occurred throughout Europe with significant impacts on shareholder disclosure of engagement/voting activities, disclosure of ownership details and for almost all concerned markets (delayed 2021 impact in the case of Germany) additional issuer requirements on remuneration related shareholder votes.
- Diversity considerations, norms and change efforts continue to widen and generate investor engagement, especially under the influence of social movements such as Black Lives Matter.
- Progress towards a more codified approach to sustainable finance is ongoing with investors remaining very vocal in their engagement on the need for improved and harmonised reporting frameworks, mainly focused on The Task Force of Climate-related Financial Disclosures (TCFD).
- Creation of the 'Best Practice Principles (BPP) Oversight Committee' to ensure proxy advisors continue to maintain high standards in their key support role to investment stewardship.

EXPERT VIEW The Energy Transition Pioneer

Ben Mathews
Company Secretary, BP plc

What trends did you notice in the UK market for 2020?

There were some UK companies that were lucky enough to complete their AGM physically and in a conventional way before lockdown at the end of March. There was then a category of companies, such as BP and others that were like a rabbit caught in the headlights, where their AGM had to be held during the lockdown period. We knew that within that window, we had to communicate to shareholders how we would hold our AGM, or at least provide them with information of how the meeting would be validly conducted given government restrictions on assemblies. There were a number of challenges to address. We considered what type of meeting we wanted to offer our shareholders and whether we could allow shareholder participation in any way. How would a closed meeting be held? Would we offer a Q&A in advance?

> "During the run-up to the AGM, we were concerned whether shareholders would bother voting."

How has the COVID-19 pandemic impacted investor voting and engagement behaviours from your perspective?

> "Additionally, a virtual session with the UK Shareholder Association was held in the run up to the AGM."

I believe the quality of our engagement with shareholders was high during that time. But you should ask them! Historically, we have held a CG event for shareholders to give them a chance to ask questions to committee chairs or to the board chair about this vital subject. However, given limited interest in an equivalent event this year, in particular on account of the pandemic, we set up an engagement process just ahead of the AGM by the board chair with individual institutional shareholders who responded to our outreach. All of this engagement was conducted virtually and worked seamlessly. Additionally, a virtual session with the UK Shareholder Association was held in the run up to the AGM. We believe these meetings went well, but during the run-up to the AGM, we were concerned whether shareholders would bother voting. We were also worried there would be lower voter turnout than in previous years. As it turned out, it was marginally down year on year.

On the topic of executive remuneration, could you share some of the challenges you or other issuers faced in light of the pandemic (modifying targets in variable remuneration mechanisms, fixing grant sizes at a time of depressed share prices, increased scrutiny of quantum, etc…)?

It's always – rightly – a sensitive area. I think this topic highlights the importance of very regular engagement with shareholders. Our most recent remuneration policy resulted from a deliberate and fulsome consultation process with shareholders which concluded at the end of November, so at the time of the 2020 AGM, there was no noise or negativity surrounding what was proposed. There is a broader issue about confidence and trust amongst shareholders, and it is something that needs to be maintained. I think the time invested to create a meaningful and sustained dialogue is generally appreciated by shareholders.

What is your view on the practice of virtual-only AGMs? Do you believe the inability for shareholders to ask live questions or lodge 'on-the-floor' proxies is a concern?

"The lockdown has reinforced our corporate purpose."

We did what we were able to do within the confines of the distancing rules and to hold the AGM such that its proceedings were valid. There are few trusted solutions for secure/encrypted participation by shareholders. From a policy perspective, we now see an opportunity for regulation makers and shareholders to allow or even encourage virtual AGMs. We should extend this thinking about how we work together with stakeholders to envision a new type AGM that is not typical.

On 12 February 2020 BP announced its ambition to become a net zero company by 2050 or sooner and help the world achieve net zero. Can you tell us a bit more about how this was received by your investors?

We set out the new corporate purpose in February and set up new leadership in our company with the appointment of a new CEO and Chair. We spoke about our ambition to be a net zero company by 2050 or sooner and we set out ten carbon aims. We have set five internal aims to deliver our ambition for our net zero goal. The lockdown has reinforced our corporate purpose. We built on our other aims based on various interactions with our shareholders. In August, we devised a strategy to become an integrated energy company, more details of which we set out in September in a fully virtual investor event.

"The prospect of TCFD's enactment in 2021 is interesting and… could be a game changer"

What is your view on the current quality and scope of non-financial reporting in the UK market?

Generally, we have seen improvements in the quality and substance in non-financial reporting across the UK over the past few years. That has in part been helped by a push from the financial reporting council, a group of investors, ESG funds becoming more transparent about non-financial metrics and targets, and their alignment. The prospects of TCFD's enactment in 2021 is quite an interesting one that could be a game changer that potentially sets a benchmark. BP's ESG reporting will conform with TCFD from 2021.

How do you see this evolving and what are the greatest challenges from an issuer perspective?

TCFD will be important in Europe, particularly as we expect it to become a mandatory reporting standard. Some common standards for ESG metrics are emerging. There is certainly an opportunity to have a more consistent approach so as to provide more meaningful reporting to stakeholders.

What topics do you think will be at the forefront of the 2021 AGM Season?

I think the AGMs in 2021 could be interesting in terms of the confidence that investors have in the way companies addressed COVID-19 issues throughout this year. The climate change agenda will continue to grow significantly. I think the outcomes from a compensation perspective will be closely scrutinised, especially the contrast between management and employee pay. I believe the DNI agenda will play a role as part of BP's strategic agenda; gender and ethnic diversity, and what targets will be set.

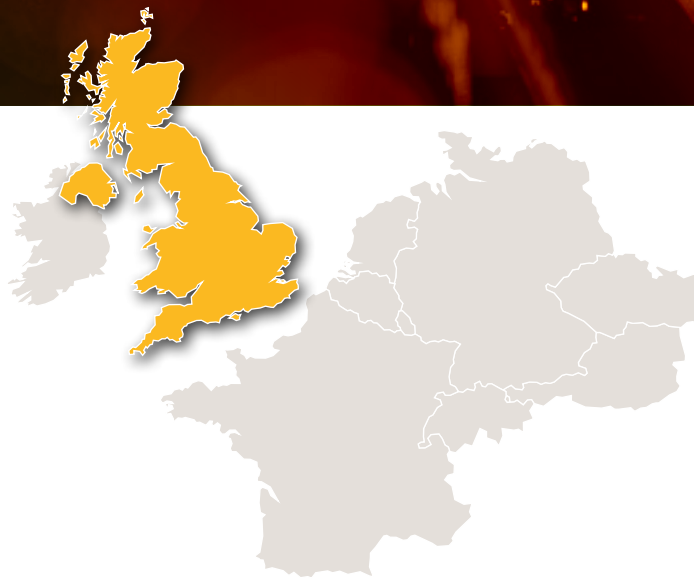
How do you envision the future of AGMs?

One of the things I am focused on is the opportunities presented by the pandemic in terms of how we connect with our institutional and retail ownership. This period showcased the mettle of capable technology. We asked ourselves how we could exploit it better in 2021. In the UK and US, it was interesting to see the appetite to hold AGMs virtually especially in contrast to the Australian market.

Ben Mathews

Ben joined BP as company secretary in May 2019. He is chairman of The Association of General Counsel and Company Secretaries of the FTSE 100 (GC100) and the co-chair of the Corporate Governance Council of the Conference Board. Ben is also a Fellow of the Institute of Chartered Secretaries and Administrators and is a director on the board of the BP Pension Trustees. Former appointments include Group Company Secretary of HSBC Holdings plc and Rio Tinto plc.

A SPOTLIGHT ON The United Kingdom



MARKET UPDATE

With one of the highest infection rates of COVID-19 globally, the UK market has suffered a massive economic downturn unlike anything seen in recent times. Parliamentary officials have intervened to lessen its impact which has been aided by the collective effort from various institutions.

In a short space of time, this unprecedented disaster has led to substantive changes to the nation's economic and societal status quo, subsequently impacting the landscape of corporate governance and stewardship. The rise in unemployment, pessimism in investor behaviour, and market volatility has enforced companies to prioritise reserving their financial assets in order to contingently safeguard against unforeseen outcomes.

REVISED SHAREHOLDER EXPECTATIONS

We have seen the Investment Association (IA) outline shareholder expectations on executive pay in light of COVID-19 with Chris Cummings, CEO of the IA, stating that, "During this exceptional period we expect companies to adopt an approach that is appropriate to their business and the specific impacts of COVID-19, being careful to ensure that executives and the general workforce are treated consistently".

Against this background, there was heightened scrutiny from investors sharing this sentiment resulting in companies such as TSB and Barclays, making cuts to executive payments. FTSE 100 constituents, including the likes of Aviva, Lloyds Banking Group, Persimmon and Rightmove have responded similarly by voluntarily withdrawing their dividend payment for the year.

BREXIT TAKES A BACKSEAT

Brexit was also a major talking point in 2020 and, prior to being overshadowed by the pandemic, was formalised at the end of January. Due to the transitional period covered in the withdrawal agreement, the UK continues to follow EU directives until the end of 31 December 2020 and navigate through the 'divorce' agreement. As such, we are yet to experience the full extent of the changes and must delay our full assessment of the outcome.

REGULATORY REFORM

These watershed events have not slowed down the UK's push in strengthening its corporate governance framework, with the FRC continuing its preparation to transition into a more powerful regulator in the form of the Audit, Reporting and Governance Authority (ARGA). A move meant to bolster audit regulation and practices in the market. The overhaul aims to loosen the monopoly held by the Big Four auditors and introduce competition whilst ensuring more effective audit processes. In addition, the UK government has committed to reporting in line with TCFD standards, possibly via mandatory legislation, reinforcing momentum in the direction of a common ESG reporting standard around Europe and further exemplifying why the UK is seen as a pioneer in the fields of ESG and stewardship.

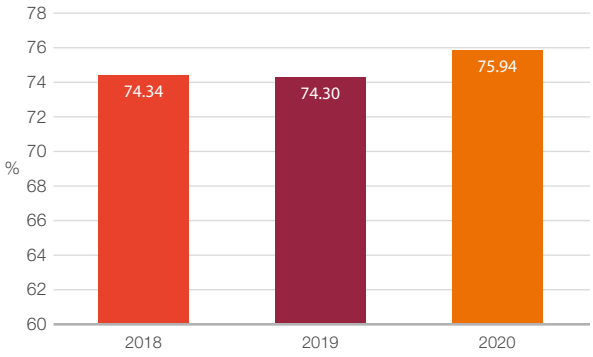
Of note, the FRC's revised UK Stewardship Code took effect at the start of 2020, placing further emphasis on the outcomes of effective engagement and activities. The Code also now extends to all asset classes and includes environmental and social issues. Reporting against these new expectations will occur in 2021.

VIRTUAL AGMS & PARTICIPATION LEVELS

One of the key concerns from our clients as a result of the COVID-19 pandemic was the potential disruptive impact on shareholder engagement. The necessary adoption of virtual-only AGMs at first sparked great concerns that shareholder rights would be diluted, for example disenfranchising them of the ability to ask live questions. This was best exemplified by Standard Life Aberdeen's rejected resolution sixteen. The proposed modification to their articles of association, allowing the company to convene meetings at which electronic facilities were available for remote participation, raised fears this would become the new status quo going forward regardless of the pandemic.

Whilst many are still weighing up the advantages and disadvantages of this new modus operandi, it seems quite apparent that the consequences of virtual-only AGMs are less drastic than some had initially anticipated. AGM participation for the FTSE 100, for example, has actually significantly increased in 2020, up to almost 76% of issued share capital on average (vs approximately 74.3% in both 2019 & 2018).

AVERAGE AGM PARTICIPATION RATES FTSE 100



REMUNERATION

2020 was a 'policy year' with a number of companies presenting binding remuneration policies in compliance with the UK Corporate Governance Code's three-year cycle. This spike in quantity (61 policies for the FTSE 100 vs 20 in 2019) coincided with a slight drop in quality.

Whilst remaining respectable, the average remuneration approval rate fell from 92.56% in 2019 to 91.32% in 2020. All remuneration policies were approved, but eight FTSE 100 companies received under 80% approval: Intertek Group (57.10%), Lloyds Banking Group (63.82%), Informa (64.87%), WM Morrison Supermarkets (65.17%), JD Sports Fashion (67.48%) and InterContinental Hotels Group (77.14%).

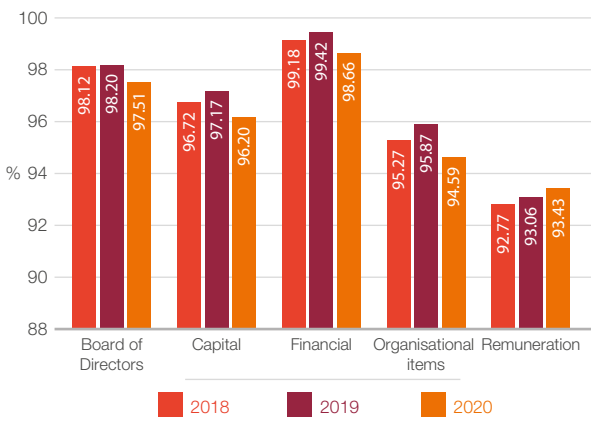
Intertek Group's shareholder discontent emanated from their CEO's pension arrangements which were deemed to exceed market levels and not be aligned with the wider workforce, thus, in the continued absence of a commitment to remedy the situation, were deemed in breach of the Investment Association's guidelines. Indeed, whilst pension arrangements were at the forefront of the 2019 AGM season and have gained prolonged media attention, a number of issuers continued to suffer in 2020 through their refusal to fully comply with market expectations around pension alignments.

Other sources of opposition to remuneration policies included but were not limited to: insufficient discounts to award sizes upon transitioning from a long-term performance plan to a restricted share plan, excessive on-target bonuses, the absence of post-mandate shareholding requirements, change in control provisions, 100% cash components, significant increases to quantum without any explanations.

Average remuneration report approval rates remained very constant year-on-year with a minor 0.1% increase to 92.54%. This is not to say there were no stand out cases of significant dissent. Tesco for example saw its remuneration report voted down by shareholders (67.29% opposition). In what some cynics may label a golden parachute to departing CEO Dave Lewis, Tesco's Remuneration Committee adjusted the peer group for the relative total shareholder return criteria of his 2017 long-term incentive plan (LTIP), triggering a significantly inflated pay-out. Ocado was removed from the peer group on the basis of its technological strategy purportedly deviating from its food business. As a result, what was previously an underperformance (-4.2% of the index) which would have triggered no pay-out, led to an outperformance (3.3% of the index) and substantial vesting (67%).

Companies should take note of the Tesco precedent when reflecting upon how they may need to adjust existing variable remuneration components as a result of COVID-19. Any such adjustments are expected to be heavily scrutinized in 2021, with focus also likely to be placed on the timing of long-term incentive plan grants and any potential windfall gains from sizeable grants at times of heavily deflated share prices.

AVERAGE APPROVAL RATES PER PROPOSAL CATEGORIES



BOARD OF DIRECTORS

In the context of the pandemic, investor scrutiny around board composition instinctively became a focal point. Investors were keen to ensure directors were fully available, dedicated and competent to tackle the crisis. This naturally led to less exceptions being made to breaches of overboarding guidelines (coupled with already tightening policies in this regard) and low attendance levels. All three FTSE 100 companies that received under 80% approval rates for one of their proposed director re-elections did so as a result of overboarding and commitment concerns. It is of interest to note that in all these cases both ISS and Glass Lewis recommended in favour of the nominees. This may be suggestive of a shift in attitudes and a change in proxy advisor policies in the foreseeable future.

Overall average approval rates for director re-elections have decreased year on year, from 98.2% in 2019 to 97.51% in 2020. As almost one out of every two items proposed by issuers was a director re-election, this has had a knock-on effect of an almost -1% reduction in the average approval rate of a FTSE 100 resolution.

INVESTMENT ASSOCIATION (IA) PUBLIC REGISTER

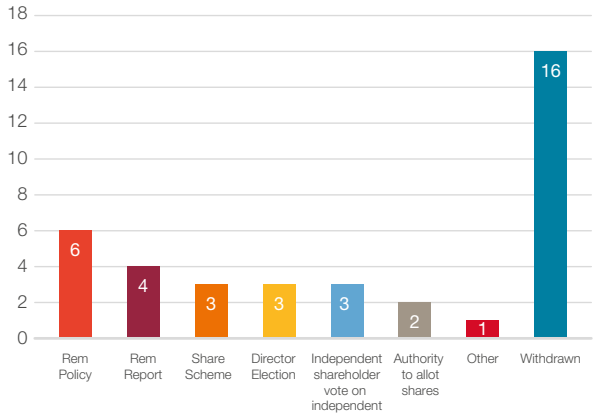
So far in 2020, 26 FTSE 100 companies (vs 16 companies at this time last year) have found their way onto the IA's public register. A total of 39 resolutions (versus 26 last year) received the required 80% or less support or were withdrawn.

The notable increase in the number of companies and items listed is not the result of increased year-on-year dissent but linked to the disruptive impact of the pandemic. 10 companies removed a total of 12 dividend related resolutions between publication of their Notice of Meeting and the end of their AGM.

Of note, only one shareholder requisitioned item in the UK FTSE All-Share index received over 20% support compared to seventeen items across five issuers in 2019. The item in question was ShareAction's climate change resolution at Barclays.

All companies listed published a statement in their results in accordance with the new corporate governance code but as of the date of this study, none have provided an update statement outlining the actions taken following the vote result.

FTSE 100 ITEMS BY CATEGORY (SOURCE IA)



EXPERT VIEW The Diversity & Sustainability Champion

Sophie L'Hélias
Lead Independent Director
Founder & President of LeaderXXchange

What trends did you notice in the French market for 2020? How has the COVID-19 pandemic shifted priorities from both an issuer and investor perspective?

The pandemic caused a sharp market decline, forcing companies to rapidly respond, repurpose their operations and adapt their supply chain. While the crisis disrupted businesses across industries worldwide, employees felt these social and economic shocks the most.

It should come as no surprise that in 2020 the conversation between investors and issuers increasingly focused on human capital management, supply chain issues and the financial health of companies. To better assess the impact the pandemic, investors sought more "social" information than what companies are required to disclose by law.

Among the chief concerns were whether companies provided paid leave and flexible working arrangements to their employees; how they ensured the physical and mental health and safety of their employees (and provided health care); how they engaged with clients and customers; how they supported their suppliers; companies' financial strength and whether they sought government financial aid.

A second trend was how quickly investor and issuer relationships went virtual. Gone were the in-person annual shareholder meetings, roadshows, investor days and investor engagements. While it is not clear at this time whether 2021 annual meetings will be in person, the pandemic showed that virtual meetings were an effective alternative. Not only do they reduce a company's carbon footprint by reducing travel, but they are also an opportunity for issuers to engage with a broader investor community.

"Not only do they reduce a company's carbon footprint by reducing travel, but they are also an opportunity for issuers to engage with a broader investor community."

A third important trend was the enormous generosity and outpouring of solidarity though financial donations and in-kind contributions by companies and their employees all over the world. It is something we must remember. In the same spirit, we saw in many markets a reduction in executive compensation and company dividend payments, as was recommended in France for example by the AFEP-MEDEF.

What topics do you think will be at the forefront of the 2021 AGM Season?

As previously mentioned, 2020 marks the formal entry of the social factor – the 'S' from 'ESG' – on the investor engagement agenda. The pandemic has proven what we all know to be true: that without people there is no business.

The "social" component of ESG will stay on the agenda for 2021 and beyond. Welfare of staff is fundamental and investors will want to understand companies' plans to get employees back to work safely. Investors ask how issuers keep talent engaged, motivated and productive, and how the pandemic has impacted the way they do business.

> "2020 marks the formal entry of the social factor – the 'S' from 'ESG' – on the investor engagement agenda"

Board oversight will also be on investors' agenda as they assess management's performance during the pandemic. Board responses varied depending on an issuer's industry and its particular circumstances. Some boards created a Covid ad-hoc committee; others consulted with outside experts; and many significantly increased the number of scheduled meetings.

What are the risks for a company that is perceived as having mismanaged the pandemic? Negative votes at the AGM, activism or even divestment?

While egregious mismanagement exposes a company to activists, a company would also have to have other underlying corporate woes that an activist could act upon. If mistakes were made during the pandemic, lessons learned would preferably be communicated with humility. Covid-19 is not an activist opportunity unless there are other fundamental issues.

How should issuers think about the inclusion of ESG metrics in executive variable remuneration and the associated difficulties? (STI vs LTI, difficulties in defining and measuring appropriate metrics/ targets…)

Executive remuneration is an important topic for investors and for society as well – not only in France but around the world.

French issuers have included extra-financial metrics in their executive compensation schemes for many years. Often, these metrics are tied to the company's corporate social responsibility efforts. Today, investors want to make sure that the selected metrics are material, measurable, verifiable and aligned with the company's long-term strategy.

As investors increasingly integrate ESG into their investment decision making process and their proxy voting, one should expect the selection of specific ESG metrics to become a topic of discussion – and possibly contention – if an investor's assessment of what constitutes a material ESG metric were to differ from that of an issuer.

Investors support remuneration packages that reward financial and extra-financial performance that are aligned with a company's strategy and its long-term sustainable health.

Have you seen an increased desire from investors to have direct access to the board?

Yes, definitely and investors are getting access to the board. Investors increasingly request to meet the board Chair, the Lead Independent Director or a Committee Chair (generally the compensation committee). The larger the company, the more requests of this type issuers receive.

Companies do not always have the time and resources to accept all investor requests. Nevertheless, I would encourage companies and their boards to meet with a broad range of investors as possible to get a diverse view of the issues at hand and possibly uncover issues that they did not identify as meaningful to their investor community.

What is your view on diversity quotas? Is the French example of board gender diversity quotas a success? Something that should be recreated in other markets? More generally how is increased diversity best achieved in listed companies?

There are so many academic studies that point to the value of diversity – and its impact in effective decision-making. Without quotas, French companies would not have rapidly increased board gender diversity to become world leaders today.

"Once one opens up the board from a gender perspective, one opens it up to diversity more generally."

Gender Diversity in the boardroom in France disrupted French boards. Not only did it trigger mandatory board refreshment, with a surge of first time board members serving on the boards of private and publicly traded companies, it also disrupted the traditional board skills matrix to include a broader range of expertise, experience and backgrounds from around the world. Once one opens up the board from a gender perspective, one opens it up to diversity more broadly.

Diversity is not a box ticking exercise: it goes hand in hand with setting strategy and effective oversight. One cannot attain the objectives of a corporate strategy with only people who think alike.

More recently, the implementation of gender quotas in the French C-Suite has led companies to mindfully focus on its composition, which in turn has driven many positive conversations on building a gender balanced leadership pipeline within the organisation.

Sophie L'Hélias

Sophie L'Hélias is an award-winning corporate governance and ESG expert who draws upon her experience as a shareholder activist, managing director of a hedge fund and M&A attorney.

Ms. L'Hélias is President of LeaderXXchange, a trusted advisory that develops value creating solutions through the integration of diversity and sustainability in governance, leadership and investment.

Ms. L'Hélias currently serves as lead independent director of a public board and non-executive director of two private boards.

Ms. L'Hélias is the recipient of the ICGN Lifetime Achievement Award in Corporate Governance; the New York Women in Asset Management Award – ESG; the Global Proxy Watch GPW 10 Award, and was ranked by Forbes in 2019 as one of the top 40 French Women Leaders.

She holds an MBA from INSEAD, and law degrees from University of Pennsylvania, University of Pantheon-Sorbonne Paris I and the European Institute of Comparative Law in Saarbrücken.

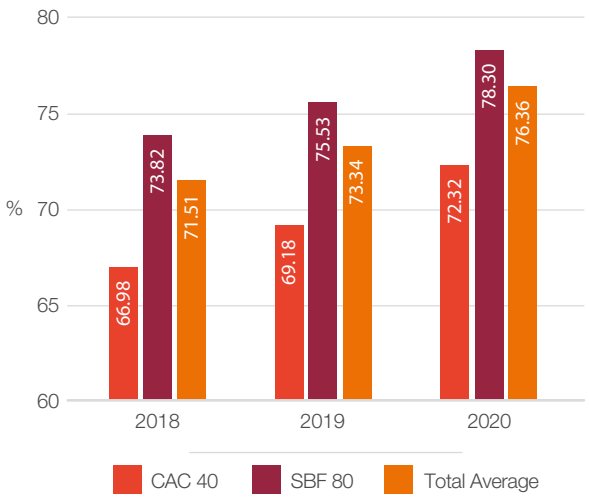
A SPOTLIGHT ON France

The French market, as with all the core markets examined within this review, was fundamentally impacted this AGM season by the effects of the COVID-19 pandemic. Key resulting ramifications included increased pressures from investors and other stakeholders to reduce/cancel dividend payments, reduce executive pay and limit share buybacks.

PARTICIPATION RATES CONTINUE TO SURGE

After a slight increase in participation levels at French AGMs in 2018, +0.42%, and a far more significant rise of +1.83% in 2019, participation rates continue to surge with a +3.02% year-on-year increase for 2020. Contrary to issuer fears, the shift from physical to virtual AGMs has not disrupted the direction of travel of participation trends. It is worth noting that the trend not only applies to the SBF 120 as a whole but also the CAC 40 (+3.14% to 72.32%). An illustration of this phenomenon is Société Générale, that recorded what is likely to be its highest participation levels since privatisation at 62.76%.

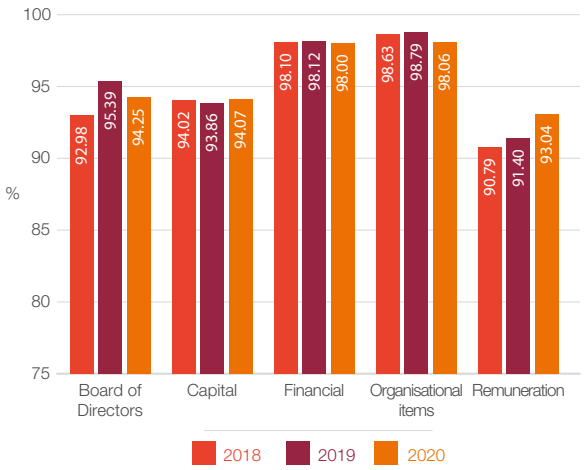
AVERAGE AGM PARTICIPATION OF SBF 120



APPROVAL RATES REMAIN HIGH

The average approval rate across all management proposed resolution types has marginally increased by 0.31% to 95.14%. This remains significant considering the continuity of this trend over the last five years: 94.83% in 2019, 94.27% in 2018, 93.12% in 2017 and 92.31% in 2016. Spectators should not be surprised by this given the annual recurrence of wide-ranging regulatory reforms over the period. Interestingly, continued improvements are occurring whilst traditional French features such as dual Chair/CEO roles, non-voting Board members ("censeurs") and double voting rights, for example, remain relatively prevalent.

AVERAGE AGM APPROVAL RATE PER CATEGORY, SBF 120



REMUNERATION

An initial glance at year on year progress in the approval rates for remuneration related items would paint a misleading picture of a significant reduction in dissent (approvals increasing over 1.6% to 93.04%). The average improvement is primarily due to the additional regulatory requirements that have led to new non-contentious resolution types around non-executive director remuneration and the remuneration report more generally (including the pay ratio).

In reality, approval rates for the ex post Say-On-Pay remain static (+0.27%) while those for the ex-ante remuneration policy vote have significantly declined (-1.59% to 88.9%). In addition to traditional concerns, new sources of opposition to remuneration policies included: weak or insufficient limitation of discretionary powers, changes to defined benefit schemes without counter measures to take into account the removal of the beneficiary presence condition and unexplained increases in LTIP grants.

Following on from last year's failed Say-On-Pay ex post binding votes at both CGG and Renault, 2020 saw the high profile shareholder rejection of Olivier Brandicourt's ex post Say-On-Pay at Sanofi's AGM (58.81% of votes cast against). Whilst some of the dissent originated from a legacy issue that many will remember, the ten-year accelerated seniority granted to the ex-CEO for his pension scheme upon his arrival in 2016, the key catalyst was the decision by Sanofi's Board of Directors to grant the ex-CEO a significant LTI package shortly before his retirement announcement and fully maintain the conditions of the grant.

One additional CAC 40 company saw its ex post remuneration vote rejected by shareholders, STmicroelectronics, but it is worth noting, as with some other CAC40 groups, the company is governed by Dutch law and therefore spared the binding nature imposed under French legislation.

BOARD OF DIRECTORS

Average approval rates for Board of Director related resolutions (primarily elections and/or re-elections) decreased year on year from 95.39% in 2019 to 94.25% in 2020 (-1.14%). As in other markets, investors were very attentive to the composition of the Board of Directors, with the goal of ensuring committed and available individuals with the right skillset were present to guide companies through the crisis. This exacerbated a pre-existing trend of tighter overboarding policies (the norm continues to shift from five public mandates to four) and a greater focus on having the appropriate skills present in the composition of a modern Board (ESG, cyber-security, etc.).

OTHER ITEMS

Within the 'Organisational Items' and the 'Amendments to Articles' sub-category, a number of issuers were met with unexpected investor opposition to what they had considered to be very routine proposals. These fell into two categories.

Firstly, a number of issuers sought shareholder approval to grant, in their by-laws, power to the Board of Directors to modify the articles of association to place them in accordance with new regulation. Indeed the idea from the issuer perspective was to actually increase transparency, by reflecting current binding regulatory requirements directly into the by-laws at the time they come into effect. Whether these amendments figured in the by-laws or not, they would still apply.

Nonetheless, certain investors and proxy advisors took a principled stance on the matter, rejecting the proposals on the basis that modifications not fully in line with regulatory updates could be implemented without immediate shareholder oversight. Companies caught out by this topic included but were not limited to Teleperformance, Orpéa, Alten, Eiffage, Valeo, Fnac Darty, Faurecia, Korian, Ipsen, TF1 and Icade.

Secondly, a number of issuers were met with hostility when attempting to tighten their shareholder disclosure procedures and thresholds to increase shareholder ownership visibility. Companies caught out by this topic included but were not limited to Orpéa, Gecina, Sodexo, Faurecia and Société Générale.

ACTIVISM

2020 saw a high-profile activist case make headlines within the French market. After repeated yet fruitless years of attempted engagement with the company to tackle their chronic underperformance and mismanagement, Amber Capital decided to propose their own slate of directors at Lagardère's 2020 AGM.

Despite overwhelming minority shareholder support for Amber's campaign, the arrival of last minute establishment figures buying into the share tipped an already disproportionately favourable capital structure in management's direction. Amber's proposed items to replace 8 board members fell just short of support, it is noteworthy that their recommendation to vote Martine Chêne's re-election as a member of the Supervisory down was successful (only 48.7% of shareholders supporting the item).

Recent headlines suggest the story involving Arnaud Lagardère, Bernard Arnault, Vincent Bolloré, Nicolas Sarkozy, Qatar and Amber Capital is far from over…

EXPERT VIEW The Active Investor

Joseph Oughourlian
Founder, Amber Capital

What can you say around the evolving relationship between activists and more traditional, long-only investors?

I have noticed a change in their approach over time, even though a number of institutional investors still have prejudices about activists. After the introduction of the Shareholder Rights Directive in particular, we have noticed that traditional long-only investors are generally becoming more willing to engage with companies and with active shareholders. It is a combination of activist investors giving more attention to long-term value creation and long-only investors becoming more accountable to their clients, therefore more active and open to sharing value-enhancement initiatives and proposals.

However, willingness to engage varies greatly depending on geographic regions. Activists are less well perceived in Europe than in the United States, probably because activists are generally identified with the more aggressive US-style activist investors. Nevertheless, there are several European activists that aim to constructively engage with companies and relevant stakeholders to implement better corporate governance, improve sustainability and unlock value through responsible active ownership. It is, however, generally easier to engage with US investors or even UK investors. This of course is a gross simplification. By way of example, in France, investors are generally open to discussion but ultimately some still end up going against us. The problem with continental Europe is that there are a lot of pressures, some political in nature, that can materialise close to the day of the AGM.

Should companies or activists engage with retail shareholders?

Activists tend to ignore retail. They vote less, are less aware and are more costly to reach out to than institutional investors. In addition, the results of such efforts are far more uncertain. Nonetheless, the approach varies depending on the country and the specific regulations and procedures that apply when contacting a retail shareholder, the track record of the company and the relative weighting of retail investors in the equity of the company.

Is there an instance where you can see an activist going straight for a proxy fight in Europe without any engagement with the company?

You can never dismiss this possibility entirely. Perhaps if there was a value-destroying deal I could see an activist doing so but otherwise I would very much advise against this course of action. Going straight into hostility without giving the company any opportunity to respond would be seen as incredibly aggressive. Such exceptional action should only be pursued when the activist has run out of other options. Proxy fights are really the last stage of escalation. They are damaging for the company and costly for the activist.

"Proxy fights are really the last stage of escalation. They are damaging for the company and costly for the activist."

Companies that are smart would consider the activists' proposals, including inviting the activists to join the board. Once on the board, activists cannot walk away after a few months because they become part of the decision making. In addition, there is rarely disagreement on everything that is being said.

The smart thing to do is often to make the activist an insider. This technique gains the company time. In France, for example, we have not really seen companies allow activists to join boards; there is still a certain reluctance. In Spain or Italy on the other hand, companies are almost compelled to do so by law, with certain board members representing shareholders and others being independent. Joining the board restricts the activist as they are involved in the decision making and it is therefore harder to vote against company initiatives. It is also easier to convince the activist.

> "Companies that are smart would consider the activists' proposals, including inviting the activists to join the board."

By way of example, if Lagardère had allowed us to join the company's supervisory board three years ago, they would have saved themselves a great deal of time and expense and we could have had an efficient and constructive dialogue with the rest of the board. On the other hand, I am very sceptical when companies offer us spontaneously to join the board as this gains them time, restricts us and limits our ability to criticise and launch media campaigns.

Is there a learning curve to activism? Why do certain activists with the right ideas end up losing?

With proxy fights, you can have the best candidate and the best idea but if you are not on the ground shaking hands and repeating your message, you can still lose. As you know, Lagardère in our view is mismanaged and yet we lost the vote during the last AGM in May 2020. Does it mean it is over? No.

In the example of Lagardère, our position now is even stronger than in May 2020. You can learn from mistakes but you can never learn without doing anything. What people on the outside see of proxy fights is just the tip of the iceberg. What they see is the press and interviews but what they do not see is the thousands of calls with investors, proxy advisors, board members, etc… Generally, it is not a single event that will decide a campaign but a series of small things.

Joseph Oughourlian

Joseph is the founder of Amber Capital and the head of the Investment Team. He specialises in event-driven investing and shareholder engagement. He founded Amber Capital in New York in November 2005. He began his career at Société Générale in Paris in 1994 and moved to New York in 1996. In 1997, he started managing proprietary money for Société Générale which led to the first Amber Fund being established in October 2001, with seed capital from the bank. Amber Capital grew and established a strong presence in Europe and he relocated to London in 2012.

Joseph graduated from HEC Paris Business School and from IEP Paris (Sciences-Po) and earned his MSc in Economics from Sorbonne in Paris. He serves on the boards of various companies and non-profit organisations.

A SPOTLIGHT ON Germany

ARUG II TAKES EFFECT

2020 saw the German market welcome the long-awaited implementation of the shareholder rights directive in the form of ARUG II, which took effect on 1st January. It introduced several key measures aimed at strengthening shareholder engagement, transparency and enhancing the corporate governance standards of the market.

Whilst stipulations around related-party transactions and shareholder stewardship obligations came into immediate effect, obligations to disclose shareholding information are more recent (September, similarly to other markets) and we are yet to witness the remuneration-related component of this reform. Indeed, the much anticipated legally required votes on remuneration systems and remuneration reports will only start to emerge at AGMs post 31st December. Whilst this year had the potential for issuers to test proposals during a transitional period, the opportunity was not seized upon by many companies.

COMPANIES UNDER THE MICROSCOPE

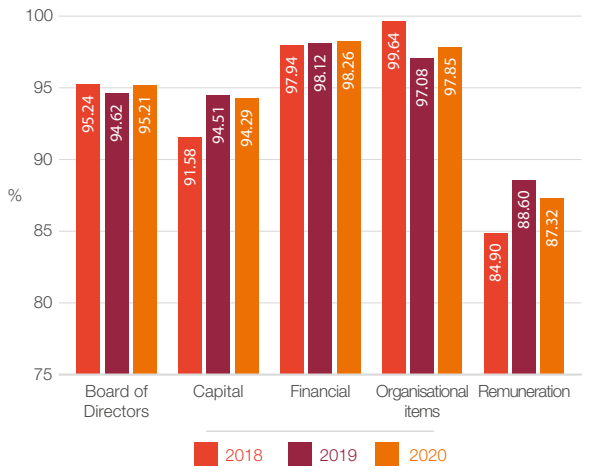
Unsurprisingly, the pandemic has also been a major issue throughout the year for companies in Germany. Many have been criticised, including the likes of BMW, Daimler and Volkswagen, for opting to pay dividends despite receiving state aid in the form of Germany's short-time work scheme, seemingly missing the memo echoed throughout European capitals.

To exacerbate matters, we continue to see a build-up of controversies, legal issues and large drops in share prices across the market. This recurring recent pattern in the market could be seen by outsiders as the result of systemic flaws within the governance framework in the market.

One of the largest indictments around financial misconduct in recent times occurred in 2020 involving Wirecard. They were accused of falsifying accounts and money laundering to name a few of the allegations and now face several lawsuits. The gravity of the matter worsened when a full parliamentary inquiry into the case was commissioned at the end of August. Wirecard has suffered a devastating loss of value, with the share price plummeting from approximately EUR 104 per share to less than EUR 1 per share in the space of three months. This case has the potential to lead to audit reform in Germany.

With ARUG II yet to take full effect, we are seeing a slow shift to internationalise regional standards and become more aligned to investor expectations. A Say-On-Pay regime will not be in full flow until the 2022 AGM, where companies must submit a vote on the remuneration report. With Say-On-Pay structures well embedded in the regulatory frameworks of neighbouring European markets, the late timing of this implementation is revealing of how far behind the market remains and the disparity between local and international standards.

AVERAGE AGM SUPPORT PER PROPOSAL TYPE



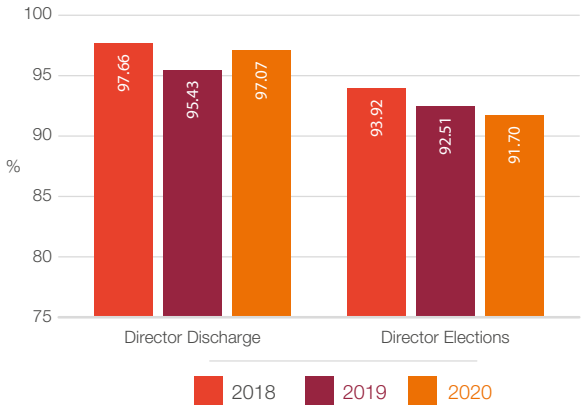
BOARD OF DIRECTORS

Discharge approval rates have risen by 1.64% since 2019, contrasting the decline exhibited between 2018 and 2019. This serves as an indicator to gauge investor confidence in the performance of the board, which is why it is seen as vitally important to secure high support levels. This vote of confidence was more relevant than ever given the need to ascertain investor confidence in the governance and management of a company during a time where various exogenous factors were adversely impacting the financial well-being of many companies. Fortunately, overall support levels for items linked to director discharge from liabilities were high in 2020, with all items passing, and only 15 of the 324 items submitted receiving below 90% support from shareholders. This represented a significant improvement on 2019 results, which saw the first ever failed discharge vote of a DAX-listed company along with two other constituents getting below 65% support.

We see a gradual descent in approval rates for items related to Director Elections since 2018. The latest revision of the Deutscher Corporate Governance Kodex (DCGK) introduces a key governance update by adding specification of the independence requirement regarding shareholder representatives on the Supervisory Board. This entails a catalogue of indicators for the purpose of identifying possible impairments to a director's independence. While concerns around non-independence were not disproportionately prevalent in Germany, the reform grants issuers clear guidance on a more stringent approach than before.

The customary lengthy five-year director terms were a continuing and growing governance frustration for many throughout the year, with a number of investors such as Aviva and Aberdeen Standard Investments voting against the election of directors based on said concerns. ISS had also applied increased stringency in their guidelines on the matter, pre-announcing that they will recommend against the election or re-election of directors whose terms exceed four years from 2021. In light of the above, it seems extremely likely German issuers will be forced to reduce proposed term lengths should they want to maximise their chances of a difficulty-free AGM.

AVERAGE APPROVAL RATES PER BOARD OF DIRECTOR ITEMS

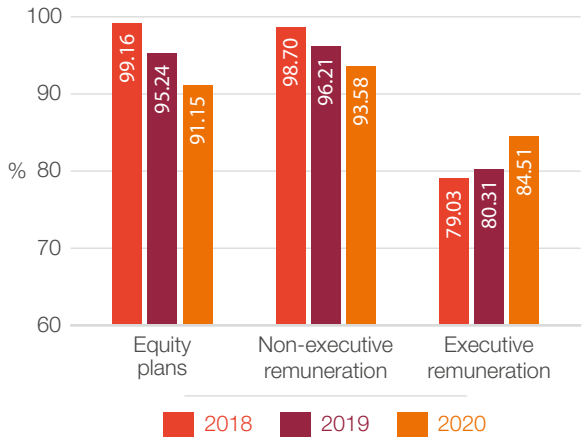


REMUNERATION

We notice significant variances in approval rates for each of the selected remuneration related sub-categories across the three-year period. From 2019 to 2020, approval rates decreased for items linked to equity plans (4.09%) and non-executive remuneration (2.63%) and increased for items linked to executive remuneration (4.20%). This level of variance could be explained by the small pool of data used to generate these results. In 2020, we recorded 21 items linked to non-executive remuneration and 22 items linked to management board prospective remuneration. In contrast there were only 8 for each sub-category in 2019. 22 companies in the DAX and MDAX proposed items in relation to executive remuneration, in contrast to 10 in 2019. The increase in the number of items submitted no doubt reflects a pre-emptive approach by some companies to experiment with the future ARUG II changes in advance. Some may wonder in frustration why early adoption was not more widespread within the market.

In adherence with the ARUG II, companies will be required to propose an advisory vote on the remuneration policy at AGMs from 31 December 2020 at least once every four years. While this is one of the lighter applications of SRD II inspired remuneration reform, it will nonetheless be a step in the right direction, and become a central point of investor focus for the 2021 AGM season.

AVERAGE APPROVAL RATES PER REMUNERATION ITEMS



EXPERT VIEW The ESG Proponents

Felix Morlock
Partner, Frankfurt
Brunswick Group

Stefanie Chalk
Director, Frankfurt
Brunswick Group

Environmental, Social and Governance (ESG) metrics have become key to companies' financial success. But who governs ESG metrics and data being disclosed to the markets?

Investors no longer only think EPS, but also ESG. As Harvard University research suggests, ESG was a critical issue for most global institutional investors in 2019. The COVID-19 pandemic further pushed this trend into the mainstream, in part by investors seeking to lower their exposure to strongly affected sectors. By end of July, global net inflows into ESG ETFs and ETPs reached roughly $39bn – a significant increase from $12.4bn in the prior-year period.[1] And while the volume of global issuance of green bonds has decreased in the first half of 2020, the Climate Bond Initiative reported that the average green bond euro oversubscription and spread compression have been the highest since 2016 and much higher than those of their plain vanilla equivalents.[2]

> "Historically ESG had a reputation as a 'feel-good' investment philosophy… today it is a data-driven business pioneered by the largest institutional investors."

The accelerating demand for ESG has triggered a sea change at big investment houses and the way they approach the issue. While historically ESG had a reputation as a 'feel-good' investment philosophy primarily marketed to retail investors, today it is a data-driven business pioneered by the largest institutional investors. This is also demonstrated by fierce competition among ESG rating providers, including MSCI and S&P and specialised providers like Sustainalytics. In today's investment world, these primarily quantitative ratings serve as gatekeeper for some of the most inflow-heavy investment vehicles, as they play a key role in classifying the vast universe of ESG funds. This drastic increase in relevance is also illustrated by leading energy companies presenting plans to achieve carbon neutrality. In fact, ESG has become a dominant topic at Capital Market Days and strategy announcements across industries.

ESG disclosure leaves much to be desired

There is no doubt that companies are putting stronger emphasis on ESG, in particular those that are publicly traded. While ESG investments have grown out of their niche, companies are still struggling to adapt to the new reality of sustainable investing. This is especially true for the governance of ESG. In some companies, ESG is split between numerous corporate functions, such as Sustainability, Health & Safety, HR, IR, Legal, and others. Others put a dedicated corporate officer in charge of sustainability, and in some instances, it's even the CEO. Similar differences can be observed in the disclosure of ESG data. A recent study by the German Investor Relations Association DIRK revealed that 54% of DAX, MDAX and SDAX companies rely on separate sustainability reports for ESG disclosure. In 2019, only one in seven published an integrated report.[3]

1 Financial Times – Assets in ESG exchange traded funds and products top $100bn (25 October 2020)
2 Climate Bond Initiative – Green bond pricing in the primary market January – June 2020
3 DIRK – Nachhaltigkeit in der Kapitalmarktkommunikation (2020)

The EU Sustainable Finance regime will set out new climate reporting guidelines and rules for companies. This might bring much needed consistency. For example, listed companies will have to provide information on CO2-free Capex. It will also be mandatory to disclose the share of carbon-neutral operating revenue in annual reports. The market for green bonds grew by 51% in 2019 according to Climate Bond Initiative and includes covenants requiring corporates to commit to carbon reductions or social value creation.[4]

"There is no doubt that companies are putting stronger emphasis on ESG."

Today, ESG reporting often falls short of the high standards of financial reporting – and thereby of investors' expectations. This is important as many companies are beginning to introduce ESG objectives and metrics into their compensation systems for management board members, and hence data accuracy, transparency and credibility are crucial. For this, organizations such as the Sustainability Accounting Standards Board (SASB) and GPI in Europe provide reliable cross-industry frameworks. We also see large companies taking matters into their own hands and investing in non-financial KPI systems to improve their ESG data base. But many smaller companies are unsure what reporting frameworks to use, how to collect data and how to ensure it is accurate and up to date.

ESG reporting and governance should be anchored in the CFO office

Investors are seeking deeper levels of engagement on the merit of robust data, and ESG metrics have become a key to financial success. Shareholders want to engage with the C-Suite – increasingly with the CFO who has access to relevant data and is in many cases also responsible for Investor Relations. There is a strong case for a concentration of all functions and responsibilities regarding ESG data, reporting and governance in the CFO office – in line with best practice for financial data, reporting and governance. CFOs need to understand and assess their companies' ESG performance, as it is critical to communicate the value proposition and to quantify the financial impact in the same way as with financial and similar metrics. Only by managing ESG to the same high standards that financial data enjoys will companies be able to inspire the same level of confidence and trust from investors.

"CFOs need to understand and assess their companies' ESG performance, as it is critical to communicate the value proposition and to quantify the financial impact."

4 Climate Bond Initiative – 2019 Green Bond Market Summary (2020)

Felix Morlock

Felix has extensive experience in advising companies on financial and corporate communication issues. His special focus is on IPO and M&A and he is part of the global Investor Engagement practice.

He joined Brunswick in 2009, transferred to London in 2011 and relocated to Frankfurt two years later. Prior to joining Brunswick, Felix worked for investment boutique Rothschild in the M&A department. Felix graduated from European School of Business (ESB) with a degree in International Business.

He has advised on a broad range of situations, including a number of major M&A projects as well as complex capital markets projects in London and Germany.

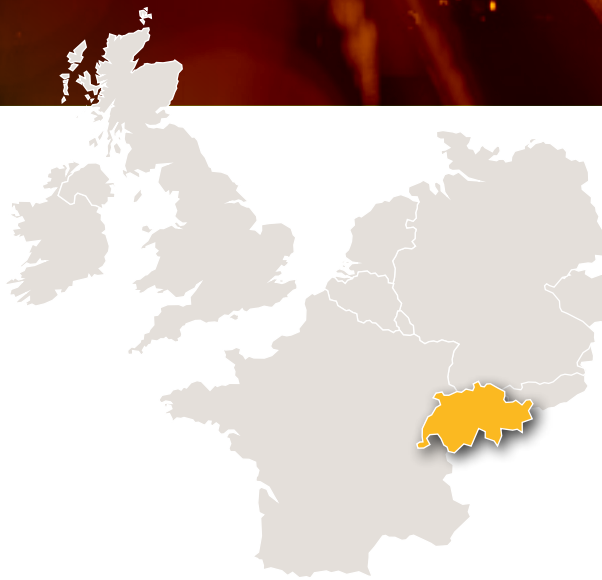
Stefanie Chalk

Before joining Brunswick in August 2017, Stefanie was Head of Group Internal Communications and then Head of Communications for Corporate Governance, HR and Legal for Deutsche Bank. Prior to her global roles at Deutsche, she has worked in leading communications positions for Morgan Stanley in Hong Kong and as an advisor to global and regional brands in Asia Pacific and Germany.

At Deutsche Bank, Stefanie helped re-shape the bank's dialogue with internal and external stakeholders and supported the transformation of the bank's corporate culture throughout a period of strategic challenges and intense public scrutiny.

Her core competencies include change management and employee engagement, senior management communications and positioning, restructuring, regulatory and crisis/special situations communication.

A SPOTLIGHT ON Switzerland



SETTING THE STANDARDS

The Swiss market continues to be a strong advocate for high standard corporate governance practices, with impending developments to their regulatory framework through the Corporate Law Reform, which is expected to take effect in 2021. The reform will impose gender diversity quotas for both management and supervisory boards at company level, add more flexibility to capital rules and corporate restructuring, and replace the historic Minder Initiative.

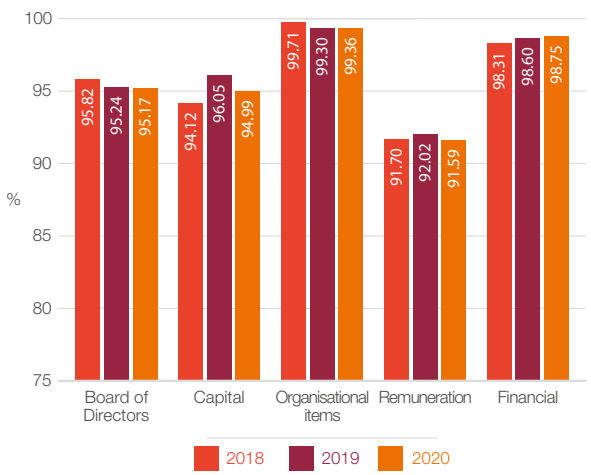
The changes made around shareholder rights could prove to be the most potent from a governance standpoint. The reform will lower the requirements necessary to request an extraordinary general meeting and ease the threshold that must be met to ask for an item or motion to be put on the agenda. In relation to this specific reform, one may wonder whether this will induce a rise in activism in Switzerland. This is further explored in our subsequent Expert View from Christine Kukan, Senior Investor Relations Manager, Sika Group.

WORKING IN ALIGNMENT

While the Swiss market is renowned for its autonomy, the pandemic has presented it with a common foe in COVID-19, inviting universal challenges faced by neighbours operating under the EU's policies. While it would be farfetched to state it has weakened its sovereignty, efforts to neutralise the impact of the pandemic have required cooperation by connected markets and those that govern them to take appropriate action in order to alleviate substantive economic damage. Provisions of the reform and increase of companies and investors conforming to ESG reporting standards have helped the market gravitate towards convergence with EU regulation and standards. These pre-pandemic shifts have also been accelerated by the demands prompted by COVID-19.

Average support levels show relative stability in comparison to previous years despite the onerous challenges generated by an unprecedented phenomenon. Maintenance of high approval and participation rates during this phase was a testament to the standard set by the market. As the situation evolved, many companies faced various unprecedented challenges and their efficacy to successfully respond to impromptu situations was tested. Matters such as dividend payments which were previously considered routine or presented less risk to the Board of Directors and management were now heavily scrutinised. As per our 2019 Season Review, the Proxy Advisory Agencies' influence on the market continues to grow with ongoing developments to their guidelines previously making up for the slow pace of regulatory updates.

AVERAGE AGM SUPPORT PER PROPOSAL TYPE



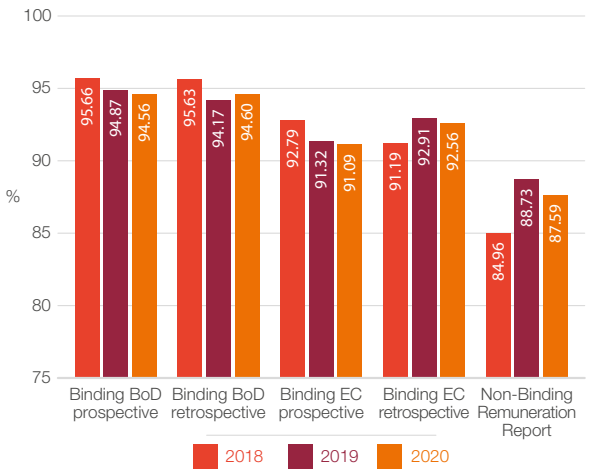
REMUNERATION

Remuneration remains as the most contentious area in corporate governance across the core markets. COVID-19 has shifted the focal point in remuneration, fuelling an agenda against high executive pay with many investors calling for a reduction in the quantum of pay or withholding annual bonus payments. With a less than 1% decrease in average approval rates for remuneration categorised items, it seems at first glance that approval levels were not impacted significantly by the pandemic, or any other market forces.

Nonetheless, whilst this is the case for almost all sub-categories, it is noteworthy that the average approval rate for non-binding remuneration reports decreased by 1.14%. Indeed, this is the item that is used as a lightning rod for shareholder discontent at remuneration-related topics. The decline can nevertheless be put into perspective when examining the two-year trend which shows a sizeable improvement of over +2.6%.

In reality, there will no doubt be a time lag between the crisis and the point in time at which investors will truly be able to assess whether remuneration related decisions are judged to be satisfactory. This topic will undoubtedly carry over into 2021 and beyond. Furthermore, approval rates for Swiss remuneration reports continue to lag behind those of other European neighbours such as France or the United Kingdom by over 3%. This highlights scope for improvement, in particular perhaps, around transparency with a sense of frustration by some investors at the opacity of remuneration related information allowed under Minder.

AVERAGE AGM SUPPORT PER REMUNERATION ITEMS



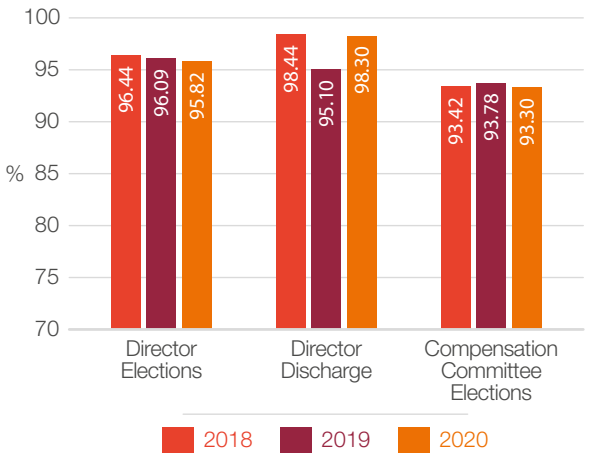
BOARD OF DIRECTORS

Whilst a significant amount of the scrutiny around corporate agendas came under items related to remuneration, Board-related items were also susceptible through the pandemic. There was also heightened scrutiny around overboarded directors with Glass Lewis explicitly stating that it presents a systematic risk by potentially spreading the virus amongst their portfolio of Boards. As represented by the graph, most subcategories retained similar support levels.

A lack of independent representation on the Board of Directors and overboarding were the two most prominent reasons for a majority of the vote recommendations cast against Director Elections from the Proxy Advisory Agencies. There was a significant increase in approval for items related to discharge of liabilities for Board members (+3.2%), similarily to that seen throughout much of the German market. Voting policies on this item are often complex and assessed holistically on a broad spectrum of variables, however, there was a certain sense of leniency from proxy advisors and investors throughout this troublesome period.

As mentioned in the remuneration section, investors are likely waiting to be in a position to properly assess the decisions that were made and the threat of consequences for severe mismanagement should still be anticipated.

AVERAGE AGM SUPPORT PER BOARD OF DIRECTOR ITEMS

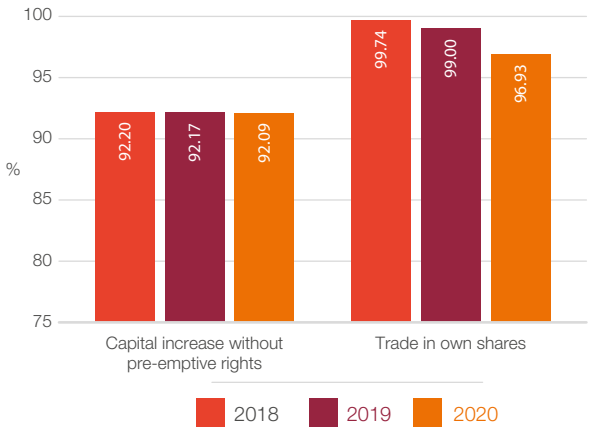


CAPITAL

One of the datapoints that stands out is the lack of visual representation for the average approval rate of capital increases with pre-emptive rights items. Of the 35 companies for whom meeting data was collected, none proposed items seeking shareholder approval for capital increase authorities exclusively with pre-emptive rights.

The other salient point from this graph can be seen in the 2.07% decrease in support of share buyback items. This fall is an embodiment of investor sentiment on the topic and their desire to see companies preserve cash to solidify the balance sheet and mitigate any damage caused by the implications of the pandemic. Many market participants across all of Europe were vocal in their scrutiny of share buybacks during the current climate with the ECB for example recommending that banks do not pay dividends or buy back shares until 2021.

AVERAGE AGM SUPPORT FOR CAPITAL ITEMS



EXPERT VIEW The IR Practioner

Christine Kukan
Senior Investor Relations Manager
Sika Group

What trends did you notice in the Swiss Market for 2020?

I believe that the Swiss market has lagged behind a bit in terms of gender diversity. In our case, it is still too low. There are clearly growing demands in this area, with many larger investors introducing gender representation minimum ratios in their voting guidelines. If at least one third of the Board is not composed of female directors, investors are prepared to vote against the chairman and/or nomination committee members. In addition to investor expectations, change is also in motion through regulatory recourse following the Swiss Corporate Law Reform which will enact, on a "comply or explain basis", gender diversity quotas for board of directors (>30%) and executive teams (>20%). It is worth noting that gender diversity is more challenging in certain industries such as engineering and chemistry. It may be easier to achieve in the retail or consumer goods sectors for example. Another key topic for 2020 was clearly the independence of the board of directors and their committees. Investors are exhibiting growing scrutiny about majority independence and with some demanding fully independent committees.

How has the COVID-19 pandemic shifted the focus from both an issuer and investor perspective?

The COVID-19 pandemic was a development that happened very quickly from mid-March. It did not have a big influence on the discussions we had with our investors or their voting behaviours as our AGM was in April. I believe investors will look at the subject when examining FY2020 and in the context of layoffs, capital allocation and executive remuneration. These are topics we are planning to address in our discussions with investors so that they can understand how we acted in our communities, we protected our employees as well as our thoughts around management compensation and capital allocation. These are all important discussion points.

"In 2021, companies will be tested as socially responsible institutions… ESG targets must show alignment with strategy."

Do you feel the Sika experience in relation to the impact of COVID-19 on investor behaviour is representative of the Swiss market?

Companies with AGMs in May or in June may have had a slightly different experience, having to address a number of these points in advance of their meetings.

What topics do you think will be at the forefront of the 2021 AGM Season?

I believe COVID-19 and its implications will be a focal point in 2021; companies will be tested as socially responsible institutions. Although I believe the key focus will remain climate change. There will be greater expectations around CO2 emission disclosure; ESG targets must show alignment with strategy and be a contributor to meeting business performance targets. Other areas such as gender diversity, board competence (specifically around ESG), overboarding and independence, will continue to be important topics.

"I believe COVID-19 and its implications will be a focal point in 2021..."

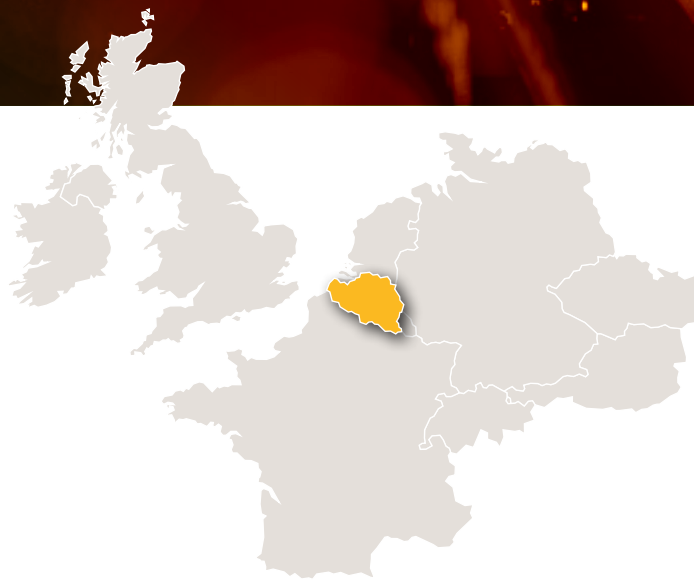
What key changes do you think will be brought about by the Swiss Corporate Law Reform and their impact for Swiss issuers? Having previously mentioned gender diversity quotas, do you believe these go far enough as there is a lengthy transition period?

On gender diversity quotas, the current legislation was chosen to leave it up to companies, on a comply-or-explain basis. Despite the transition time, I would expect companies to comply as soon as possible. In terms of the lowering of limits for shareholders to submit proposals or convene an EGM, it is possible that this will lead to a rise in shareholder activism. However, for certain key decisions such as delisting a company a qualified majority at the general assembly would be needed.

Christine Kukan

Senior Investor Relations Manager, has worked in Investor Relations at Sika since 2003 and is heavily involved in the ESG communication of the company. From 1999 until 2003 she worked in the area of corporate reporting and on digital communication projects at the Sika headquarters in Baar. Before coming to Sika she was Product Range Manager and Department Head at IKEA Switzerland for four years. Prior to that she was Relationship Manager in the World Corporation Group at Citibank in Zurich. Christine Kukan is a Swiss and Swedish citizen and has a Masters degree in Business Administration and Economics from the Stockholm School of Economics, Sweden.

A SPOTLIGHT ON Belgium



REGULATORY AMENDS

2020 was a year in which Belgian companies were required to adapt to the recent developments in the regulatory landscape, whilst simultaneously mitigating the systemic risks stemming from the pandemic.

To recap, the changes to the Belgium Corporate Governance Code and revised Companies Code came into effect in 2020. Aimed at providing clarity, simplification and flexibility to companies in the market and strengthen alignment between the Belgian market framework and international practices, this entailed a significant reduction in the number of corporate forms and governance models, optional changes to voting rights rules, and the introduction of a liability cap just to name a few of the changes incorporated.

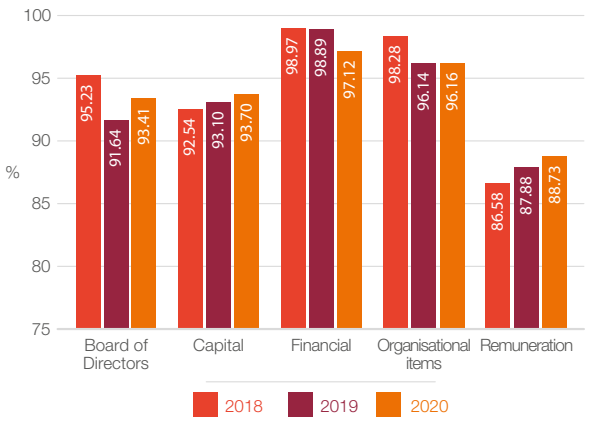
As this year begins at the end of a transitional phase for companies to meet these provisions, the BEL 20 AGM results have provided us with an overview of the market's assimilation to the regulatory updates and prevalent governance themes. Whilst it is too early to draw conclusions on the long-term prospects these changes will have, we can isolate events during this year to gain insight on the new market landscape.

ADVISORY VOTE ON REM

In anticipation of the SRD II in Belgian law, the Belgium Corporate Governance Code has included many changes focused on ensuring a seamless transition of the transposition. A key recommendation of the code is the references to an advisory vote on the remuneration policy for companies ahead of the transposition. This item became a prevalent feature throughout the ballot of many companies during this year for the first time in the market and reflects one of the many measures implemented to highlight the market's convergence towards European and broader international standards. Another interesting addendum to the code is the possible introduction of loyalty shares in a company's share capital structure via the amendment of the articles of association subject to shareholder approval.

This year, we have seen some interesting trends appear in the average approval rates across the spectrum of categories underpinning governance. Some volatility appears in the 'Board of Directors' category across the three-year span, with a significant increase of 1.76% between 2019 and 2020. There was also a 1.77% decrease in approval rates for items categorised under 'Financial', covering items related to acceptance of the financial statements, auditors appointment, related party transactions, and dividend payments. For remuneration, there was some growth compared to 2019 with data for items seeking remuneration policy approval appearing for the first time. Lastly, we have seen an increase in the number of items seeking the amendment of the company's articles of association to comply with the Companies and Associations Code (4 proposals in 2019, 22 in 2020).

AVERAGE AGM SUPPORT PER PROPOSAL TYPE

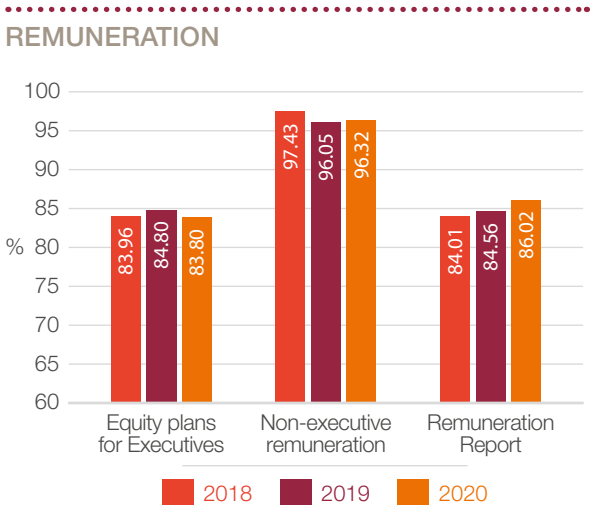


REMUNERATION

As mentioned, the advisory vote on the remuneration policy is the salient feature on the agenda list for most companies in 2020, notably for its inception. The average approval rate for items listed under the 'Remuneration Policy' sub-category was 89.46%, representing a positive response to an often-contentious item under remuneration. In comparison, the average approval rate for such items in the French market where the vote is binding but issuers have been able to fine tune their approach over many years, was 88.9%. Efforts are still required to meet the UK's comparable average approval rate of 91.32%. Another interesting observation was that approval rates for remuneration policies exceeded the scores for all other remuneration-related sub-categories bar 'Non-executive remuneration' as illustrated in the graph below.

There continues to be lower levels of support in proposals related to remuneration relative to other governance categories but a sustained growth since 2018. While limited, average approval rates for remuneration increased by 0.62% from 2019 to 2020. Common issues such as poor LTI structure, inadequate response to shareholder dissent, and unjustified increase to the quantum of pay are a few of the common concerns raised by investors and Proxy Advisory Agencies during the year.

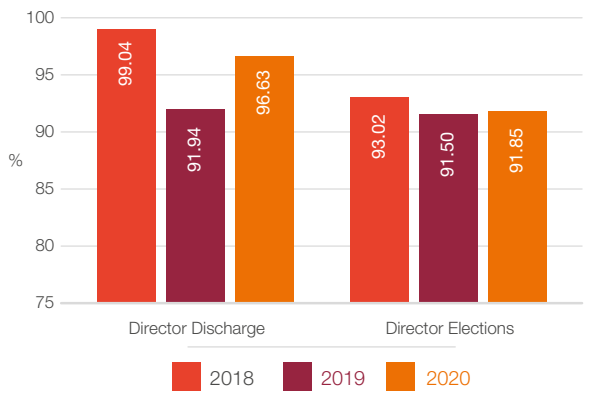
A key change in the design of some equity plans was the inclusion of Non-Executive Directors in the beneficiaries eligible to receive rewards subject to long-term service. Controversy ensued when the notion was introduced as concerns around its potency to impair a director's judgement were expressed by the market. We saw ISS and Glass Lewis recommend shareholders vote against the Galapagos remuneration report at the 2020 AGM partly due to concerns around the payment of shares without performance conditions to Non-executive Directors. As the conditions deviated from the provisions of the code, the proxy advisors flagged the matter as a significant concern. This isolated matter demonstrates the delicacy in establishing an appropriate remuneration package that retains and attracts the appropriate talent and skill-sets whilst not affecting a director's judgement.



BOARD OF DIRECTORS

In this area, we see one of the most significant increases in average approval rates for any sub-category in 'Director Discharge' with a 4.70% jump since 2019. The EUR 12 million cap on the financial liability on Directors has been a profound move in liability risk management and influencing the profile of the board. The results for 2019 could be considered an outlier given the gap between the results for 2018 and 2020.

Average approval rates for 'Director elections' has slightly increased during the year under review and still hover well above the 90% mark. Issues linked with a Director's affiliation to the company which cause conflict of interest is a prevalent matter for many Belgian companies. Across Europe, we are seeing a shift in governance standards with the growing demand for companies to weave ESG in the business model and the acceleration of stakeholder primacy. Many investors are calling for higher competency around these areas and going as far as voting against the election of nomination committee members or scrutinising the company's succession plan. It will be interesting to see how future developments in the market's regulatory framework accounts for these trends.



EXPERT VIEW The Governance Realist

Priscilla Maters
General Counsel & Company Secretary,
Groupe Bruxelles Lambert

What trends did you notice in the Belgian market for 2020? How has the COVID-19 pandemic shifted priorities from both an issuer and investor perspective?

The COVID-19 crisis is accelerating a shift from investors towards a more integrated approach to corporate governance that has been gathering force for some time. The pandemic has cast ESG practices into the spotlight. Investors have been voicing concerns about sustainability for several decades but it is not until recently that they have they translated their words into action. As the economy moves into the next stage of recovery from COVID-19, investors may start to look back at companies' performance during the earlier stages of the crisis.

Material ESG issues vary substantially across industry sectors. Good governance, workplace and product safety, non-discrimination and anticorruption, diversity, responsible waste management and cybersecurity are among them. Each company needs to establish relevant, concrete, measurable and reliable criteria that will constitute a specific commitment to shareholders and stakeholders. This information should be included as part of non-financial reporting.

"Defining a corporate purpose…. puts ESG at the core of corporate strategy."

I expect consensus should emerge around reporting frameworks such as the Task Force on Climate-related Financial Disclosures (TCFD) and Sustainability Accounting Standards Board (SASB) to guide companies when reporting on ESG criteria.

With the appearance of the first remuneration policies in Belgium this year, what is your view on the new regulatory requirements?

At GBL we are already well advanced in the implementation of this new regulation: our last AGM approved our remuneration policy for the three coming years. Nevertheless, there are still many grey areas and uncertainties, including in terms of scope and reporting. We will work with other issuers to develop a frame of reference in order to make the reporting as relevant as possible.

As GBL is one of Europe's largest holding companies, you see governance best practices at some of the companies that GBL is invested in outside of Belgium. From that experience, do you think that there are certain CG approaches found in other European markets that would benefit Belgian listed companies?

A first observation is the lack of unification of standards within the European Union: each country retains its own specificities. This makes comparison more difficult, but it does make it possible to anticipate certain trends.

"Disclosure of Board skills matrices is on the rise for me."

Key corporate governance trends in Europe include defining a corporate purpose. In France, more companies are expected to adopt a "raison d'être" (corporate purpose) which puts ESG at the core of corporate strategy.

Pressure on companies to proactively manage Board composition will also continue. Disclosure of Board skills matrices is on the rise for me.

Priscilla Maters

Priscilla Maters has a law degree from Université Libre de Bruxelles and from the London School of Economics (LLM). She began her career in 2001 with law firms in Brussels and London (including at Linklaters), where she specialised in mergers-acquisitions, capital markets, financing and business law. She joined GBL in 2012 and is now carrying the function of General Counsel and Company Secretary.

EXPERT VIEW The Corporate Warrior

Rich Thomas
Managing Director, Lazard

One of the new activism developments you mention in your Review of Shareholder Activism – H1 2020 is "private equity firms increasingly embracing public equity strategies and deploying activist-like tactics". Could you tell us a bit more about this trend?

I think this trend can be broken down into two categories. Firstly, there are private equity firms that are looking for other ways to deploy their capital that can utilise the skills and capabilities they have developed internally to create value.

"PE firms understand how activists can be a tool in creating these opportunities."

They are not doing this just to become hedge funds, they are utilising the skill sets and knowledge that they have developed in managing their portfolio companies. The second category relates to piggybacking on activists who are driving M&A. In 2019, in many cases, it was activists who drove asset disposals and sale opportunities. PE firms understand how activists can be a tool in creating these opportunities.

Your review highlights that 86 Board seats were won by activists in H1, up ~6% from the prior year period in spite of relatively lower campaign activity and that only 10 Board seats (12% of total) were won through a final proxy vote. How should we interpret the small percentage of board representation that was obtained via proxy voting? Is this result linked to the difficulty in getting such items approved or rather reflective of earlier dispute resolution?

It is the latter. Much of this data comes from the United States where the rate of board seats won through a final proxy vote has been consistently falling over the previous years (22% in 2018, 16% in 2019 and now 12%). It is important to note that 46% of board seats were won after the proxy fight was initiated. It is the threat of the fight followed by a search for a dispute resolution that explains these statistics. If proxy fights were simply hard to win, they would not be initiated so frequently, nor would settlement be so common.

What is the profile of the activists that are losing?

In Europe, there is a relatively low rate of success in gaining board seats due in part to a hesitation from the broader shareholder base to appoint activists to the board. Furthermore, some activists have little experience of proxy fights before they launch their campaigns. All of this makes it challenging to win a proxy vote in Europe.

What can you say around the evolving relationship between activists and more traditional, long-only investors?

In Europe, there are signs of an increasingly tightening relationship between shareholders and activists. The number of situations where we hear large traditional investors voicing the same talking points as activists has increased. We are even seeing more instances where these traditional investors have directly urged the activist to become involved.

"…there are signs of an increasingly tightening relationship between shareholders and activists."

Are some long investors better at being active than others?

Definitely. There is a spectrum of long-only investors, with some more skilled than others at pressuring management to undertake a change in strategy or operations. Although some investors are more aggressive in this aspect, there is a general movement toward being more involved with management. Many active managers feel it is incumbent upon them to engage with companies to bring their knowledge to the table.

Anecdotally, one CIO recently pointed out to me that many of their analysts had 20+ years of experience investing in that industry (more time in the industry than the CEO, in fact). As such, he emphasised that it would behove management to listen when they speak. While they do not have as much internal company information as management, they represent deep institutional and sector knowledge.

Increasingly investors are getting more involved in strategy. Such involvement raises a number of questions, particularly in the European stakeholder model, about the role of shareholders in determining strategy for instance.

Should companies or activists engage with retail shareholders? Do you believe that using mainstream media outlets and adverts such as tombstones in the daily financials yields positive results? Is this a case-by-case or are there any general principles?

With respect to retail investors, I believe it is a case-by-case matter. Focusing on retail should be evaluated in terms of return on investment. I have had long calls in the past with CEOs and CFOs discussing a massive workstream to achieve a potential 1.5% swing via the retail vote when there remain top institutional investors with whom they have had only limited engagement. The question should not be whether, in principle, it is worth engaging with retail but around how one should allocate their resources. The CEO, CFO and IR team are all valuable resources and their time/efforts should be optimised.

"Activists will usually try to do things without a messy fight."

To what extent is getting the sell-side community on side of benefit during a proxy fight? If a major analyst comes out in favour or against an activist's demands would you see that as a major factor in influencing investors?

I come from a military background and I think there are many ways in which the tactical thinking of the military is also relevant here. I see this question in terms of mobilising the company's advocates. It is not just about the sell-side research, but it could be governments, unions or other influencers. These are all combat multipliers in the same way that a military unit employs reconnaissance assets, air support and engineering teams to increase its effectiveness.

Is there an instance where you can see an activist going straight for a proxy fight in Europe without any engagement with the company as is sometimes seen in the USA?

It is not very common in the US and remains rare in Europe as well. I do not believe it is wise for activists to pursue a proxy fight without engagement. Public campaigns are time consuming and expensive. Activists will usually try to do things without a messy fight. To a certain extent, there are norms to engagement that activists and companies should understand. It is a matter of practicality and efficiency. In many situations, engagement reveals that there is more alignment than can be seen from the exterior.

Rich Thomas

Rich is Managing Director in Lazard's Shareholder Advisory group where he leads the European practice for advising corporate clients on preparing for, and responding to, shareholder activism, unsolicited approaches and other related matters. He joined Lazard in 2006 as part of the Industrials group and has led the European Shareholder Advisory Practice since 2017.

He graduated from the United States Military Academy (B.S. in Mathematics, B.S. in Mechanical Engineering) and was an officer in the U.S Army for six years, serving in the 173rd Airborne Brigade. During this time he served in multiple overseas deployments. After the military, he attended Harvard Business School, prior to joining Lazard.

KEY TAKEAWAYS FOR 2021

D.F. KING

As we come closer to the end of 2020 and begin preparations for the 2021 AGM season, it is useful to remember some of the key considerations for next year. It is our continued and firm belief that companies need to be able to clearly articulate why their existing Board of Directors is the right one, not just now but for the future. A key focus on the following topics is a must:

Corporate governance becoming a subset of ESG

Companies should think more holistically about their corporate governance being a subset of their over-arching ESG policy. This tendency is being promoted by most types of investors but is championed in particular by the "Big 3" index funds in the US. In particular, they are focused on companies' policies related to the climate and whether a company's board is 'climate competent'.

Investors are expressing ESG views at the AGM

The AGM provides companies with an important opportunity to weave wider ESG topics into the meeting agenda. While there will not be a 'Say-on-ESG' vote, investors will be looking for a clear understanding about board stances on the following subjects:

- Total executive remuneration vs median employee pay
- Degree to which quantifiable non-financial performance criteria is aligned with KPIs
- Does the board have a specific ESG committee? If not, why?
- Strategy to address inclusivity topics such as gender diversity, #metoo, BLM and board representation

Be prepared… to avoid an activist event

Beyond having a guide for the 'first 72 hours' after getting the call from an activist, Boards have a responsibility to ensure the company is as prepared as possible to avoid an activist event. It can take straightforward decisions to prevent an attack by leveraging disclosure rules to understand the composition of the company's shareholder base. Addressing existing challenges on governance, strategy or the business proactively can also help avoid a public confrontation with an activist at a later stage.

Covid-19 – how has your board faced the pandemic?

Investors are seeing the crisis as an example of a board's ability to manage systemic risk. It is therefore important to explain how it addressed the specific challenges that the company faced on topics such as:

- Employee protection
- Serving the community during the pandemic
- Dividend policy, share buy-backs
- Executive pay – reductions; restructuring of variable pay packages, etc.

2020 challenges may come back again

Investors and proxy advisors may have put on hold in 2020 challenging boards on key changes they are seeking in corporate governance due to COVID-19 priorities.

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 each country reviewed, in order to look for trends throughout each market and across markets. All voteable management proposals were assigned categories (Board of Directors, Financial, Remuneration, Organisational Items, and Capital Authorisations) and underpinning subcategories.

The analysis data identifies trends within each category, to compare and contrast approval rates, paying particular attention to items that received low approval rates to investigate the underlying causes. In addition 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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