D.F. KING

GENERAL MEETING SEASON REVIEW

MEANINGFUL ENGAGEMENT, NOW MORE THAN EVER.

NOVEMBER 2023

UK & EUROPE EDITION

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EXECUTIVE **SUMMARY**

As we examine the UK & European 2023 AGM season, D.F. King's general assessment is that the board's corporate governance has grown stronger and is more in-tune with institutional investors' expectations.

At the same time, with quorums generally higher than 70% and growing, investors are voting more often while generally supporting the companies they are invested in.

In this context, what is driving the improved board-investor relations? For D.F. King, these improved relations have occurred because companies have learned to engage better with their investors in terms of the quality of engagement and the regularity of it. More and more, companies realize that while their AGM occurs on one day in the year, the development of quality corporate governance occurs every day.

This relative détente comes at a time when the macro-economic context in which boards and investors engage has become more challenging. 20 months of war in Ukraine, the new Middle East crisis, inflation and related higher interest rates, the heightened probability of recession, share price volatility have combined to force companies and investors to focus primarily on vital core goals: a company's performance and a shareholder's return.

Over the past four years, companies have strengthened their ESG strategies to become far more correlated to their specific ESG agenda concerning subjects such as their individual progress to stated carbon emission reduction goals in 2025, 2030, 2040 and 2050 to attain carbon neutrality or various forms of diversity at the board level and inside management. While tangible advancement has occurred, to the surprise of many, Say on Climate resolutions have stalled in the face of certain Realpolitik challenges such as the damning effects of inflation to one's economy, the demands for regular and growing returns on investment at passive investment funds that hold much of US citizens' retirement and energy sovereignty.

Within a context of general improved relations between boards and investors and lessened current focus on the immediate ESG impact on investment, in situations where shareholder activism has occurred in 2023, activist events have grown more complex where performance and governance subjects become intertwined as the protagonists struggle to convince the other shareholders which party's strategy may drive future returns best. From our recent experience, in certain cases, a given board's situation is far more complex and the problems they cope with are far more multi-dimensional than the activist may admit while in others, it may appear that the board is completely oblivious to common sense solutions about potential value creation because they have originated from an investor.

Our 2023 AGM Season Review highlights how much profitability is vital for healthy relations between boards and shareholders. This year, when boards have engaged with their investors over time on the most challenging AGM topics, such as remuneration, with detail and transparency, they have produced tremendous results. When they have encountered important resistance, whether through a poor resolution vote result or an activist campaign, the root cause has often been an inability to convince their investors that supporting the board was in their interest. In this context, a board's ability to demonstrate alignment with its shareholders becomes tantamount.

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Want to hear more from David?

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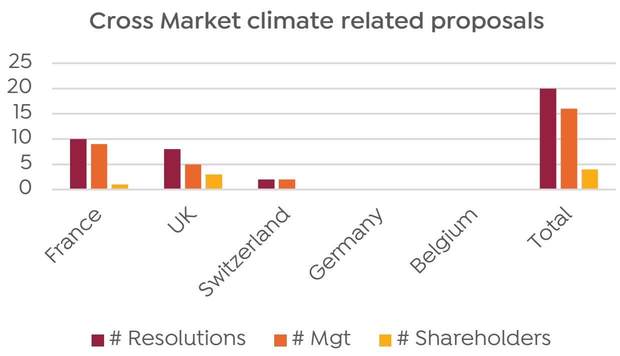
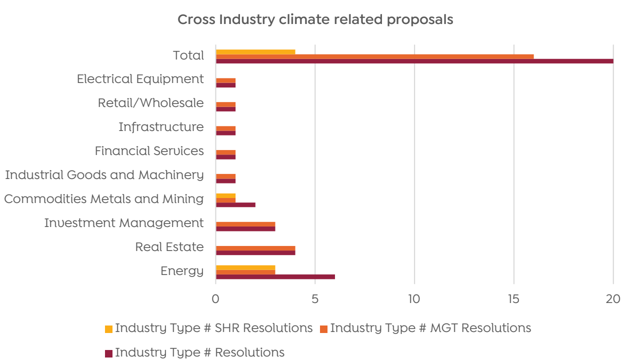
AN OVERVIEW OF THE
UK AND EUROPE

The Say On Climate movement may be running out of gas

Given last year's dedicated section on the topic it felt necessary to report on year-on-year progress, even if momentum for the Say on Climate movement is unquestionably petering out.

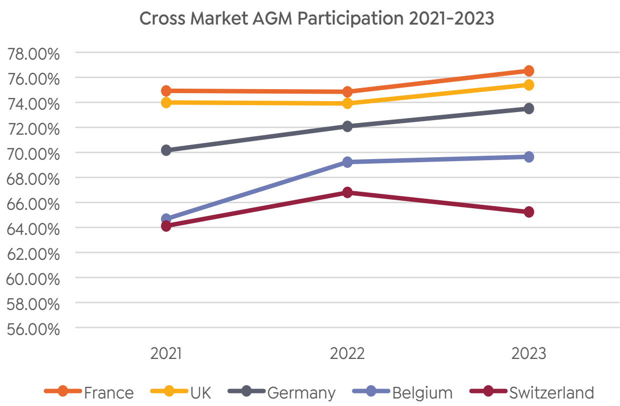


France has overtaken the United Kingdom as the top market for such proposals simply by remaining broadly consistent in the number of these items year on year. The number of resolutions in the United Kingdom has dramatically fallen from 19 proposals to 8, with very little traction outside of these two markets. As discussed in more depth in the dedicated French market chapter of our review, whilst soft law changes in the AFEP MEDEF governance code promoted dialogue with shareholders on climate strategy, potential hard law changes to enshrine compulsory Say on Climate resolutions were ultimately abandoned late this year. Interestingly, regulatory change will occur in Switzerland, with mandatory non-binding sustainability report voting due to come in to force from next year, which may ultimately further discourage the need for a separate climate dedicated item.

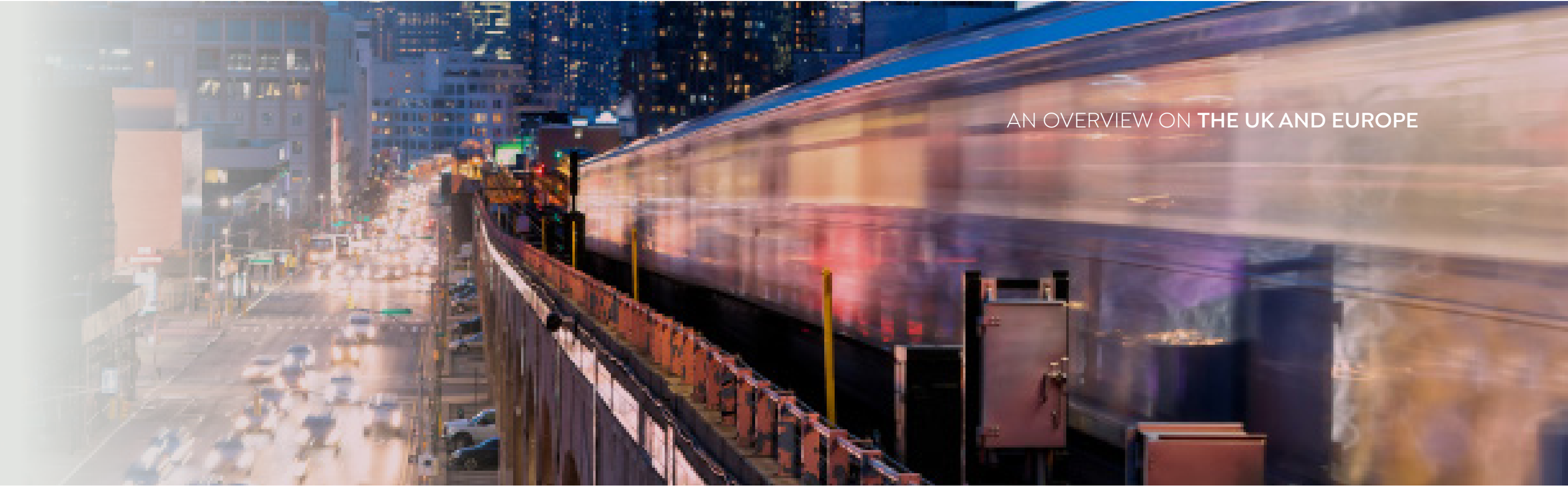


Unsurprisingly, climate related proposals remain very concentrated in industries that have the greatest impact on greenhouse gas emissions, and those that enable them.

AGM participation levels



2023 has been a year of increased shareholder voting across all core markets with the exception of Switzerland (potentially linked to the predominance of private wealth management). France leads UK & European core markets for a third year running with a healthy 76.51% average quorum. The drivers behind the vitality of shareholder democracy in France are explored in more depth in our Market Expert Interview with Caroline Ruellan, included within our report. They include the successes of the activist movement, the increasing role of listed companies within society and the decreasing average age of retail shareholders. The first two of these drivers certainly apply across most of Europe and go some way towards explaining year on year improvements in participation rates.



Executive Remuneration

Remuneration Report (average 2023 support and y-o-y change per market)	Average Support in 2023	Year-on-year change
United Kingdom	91.27%	+1.10%
France	88.20%	+0.47%
Switzerland*	87.63%	+1.94%
Belgium	83.92%	-0.40%
Germany	82.93%	+1.06%

Remuneration Policy (average 2023 support and y-o-y change per market)	Average Support in 2023	Year-on-year change
United Kingdom	91.76%	+3.54%
Germany	89.18%	+5.20%
France	88.39%	-0.22%
Belgium	81.89%	-1.14%

Overall, 2023 has been a year of strengthened alignment between issuers and investors on the topic of executive remuneration for most markets, with the United Kingdom in particular impressing. Also visible within the data, a gap exists on remuneration report votes between the markets with a history of Say On Pay frameworks (United Kingdom, France and Switzerland) and those discovering investor expectations more recently post SRDII implementation. Trailing markets would do well to not only inspire themselves in terms of content (level of transparency, stringency of performance criteria, etc…) but also in terms of engagement practices. Roadshows (France) or consultations (the United Kingdom) are imminently more common practice in top scoring markets because they are recognized to be effective tools to demonstrate how corporate boards take decisions.

* Switzerland is excluded from the remuneration policy vote table as their ex ante votes are more focused on quantum and would distort comparability.

MARKET EXPERT INTERVIEW
CAROLINE EMMET

ASSOCIATE DIRECTOR, COMPANY MATTERS, LINK GROUP

The Government recently shelved the draft Companies (Strategic Report and Directors' Report) (Amendment) Regulations 2023, which would have required enhanced corporate reporting by a new category of large public interest entities. How does this bode for the expected revisions to the UK Corporate Governance Code and other items on the audit reform agenda?

The decision was taken after 'consultation with business' and was welcomed by a range of stakeholders who were concerned that growing reporting requirements were affecting the effectiveness of companies listed in the UK and the competitiveness of the UK capital markets.

However, it was a highly unusual move. Draft regulations had been published in July and were pulled the day before they were due to be put before Parliament for approval. These had been five years in the making and widely consulted upon. There appeared to be a good element of joined-up thinking with the other elements of Government's broader audit and corporate governance reform agenda.

The decision has been taken by some parties as a further indication that Government is drawing back from the broader package of long-expected reforms previously lined up as part of its 'restoring trust in audit and corporate governance' agenda, and investor representatives have written an open letter expressing their disappointment with these developments.

We are all waiting to see what happens now to the proposed changes to the UK Corporate Governance Code, as certain elements, such as the assessment of the future prospects of the company and the audit assurance policy were predicated on the basis of these regulations being passed.

If the Code escapes a ministerial cull and is adapted to operate without reference to the ditched regulations, companies adhering to the Code will still have to comply with those requirements or provide a high-quality explanation of what they are doing instead. Time will tell how much pressure investors will want (and be able) to bring to bear on companies on these matters.

What in your view were the most noteworthy, expected revisions to the Code?

The intent behind the revisions to the Code (and those regulations) is for companies to strengthen their corporate governance framework to protect and enhance shareholder value and the company's long-term sustainability. However, they require companies to demonstrate that they have done so through their reporting.

If the 'restoring trust in audit and corporate governance' reforms get watered down to support Government's aim of "reducing the burden of red tape" by cutting back on corporate reporting, the revisions to the Code that strengthen the quality of the board become even more critical than ever.

Because it is the board that determines whether a company adopts and operates an appropriate and proportionate corporate governance framework, which enables it to pursue its strategy and deliver its objectives whilst avoiding or mitigating the associated risks. And ensures the company does so because there is value in such a framework, not just because they have to tick a box on an external corporate reporting checklist.

And for that to happen, you need a high-quality board, with the right skills, experience, and diversity (across a broad range of criteria) and directors that are not over-boarded. A board that is prepared to reflect on its performance and ensures appropriate succession plans are in place. In the absence of an external requirement to strengthen a company's internal

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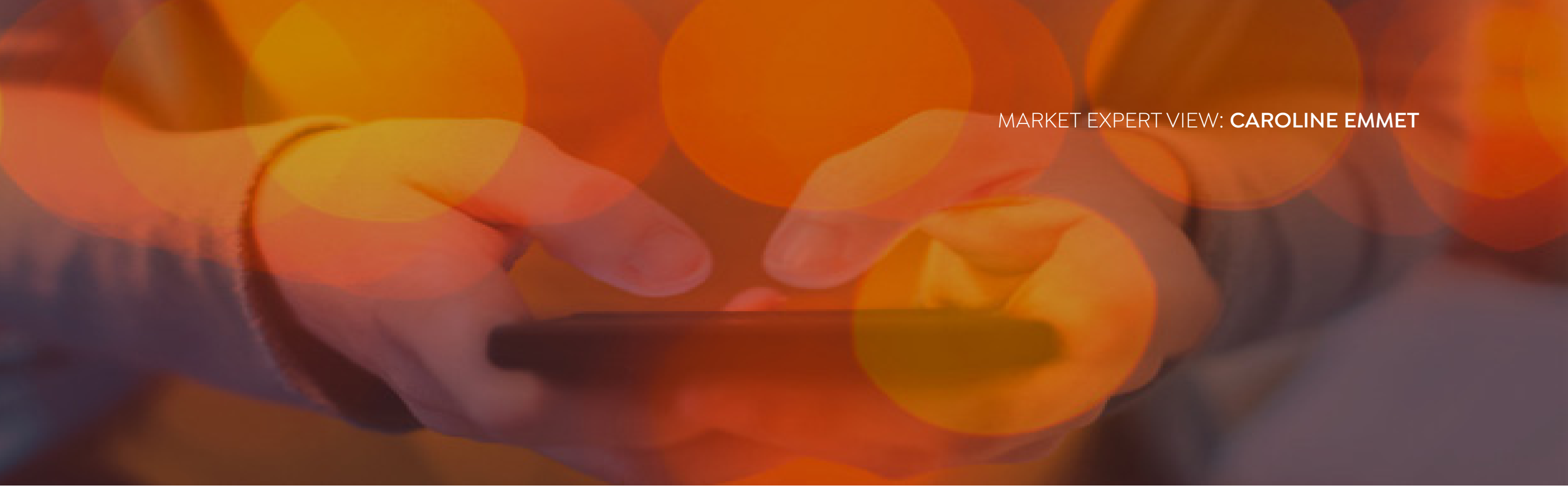


controls and risk management, the matters already set out in Sections 2 and 3 of the Code and the proposed revisions to those sections become even more important. Without a high-quality board, complying with the rest of the Code (or figuring out appropriate alternatives) is a tall order. That's when corporate governance becomes a burden, poor decisions are made to tick boxes, and reporting on it all becomes painful.

In the event revisions to the Code ultimately don't materialise, what does that mean for UK-listed companies? What changes if any should they implement to the way the Board of Directors operates and the company's annual reporting?

It is important to bear in mind that Government insists that it is committed to the wider audit and corporate governance reform. It has also stated that it intends to set out 'shortly' new options for reform that deliver a more targeted, simpler, and effective framework for non-financial reporting. Anyone involved in drafting the front end of the annual report will yearn for that Nirvana.

Unfortunately, at present, there is no timeframe for its delivery and there is a lot of scepticism as to the meaning of 'shortly' and 'when Parliamentary time allows'.

In any event, many companies, conscious of the direction of travel highlighted in Government and the Financial Reporting Council's consultations and in pressure from the investor community, have been working for some time on strengthening aspects of their corporate governance framework on a "no regrets" basis - because it was the right thing to do, to protect or create value, regardless of regulatory requirements.

I would encourage boards to use the now-shelved regulations and other publications on audit and corporate governance reform published to date to inform their oversight activities. They should be discussing with their executive teams what would prove useful from a management perspective and what would help to address the needs of the company's key investors and stakeholders, applying an appropriate materiality lens. They also need to think about what would help directors discharge their responsibilities under the Companies Act and the Code.

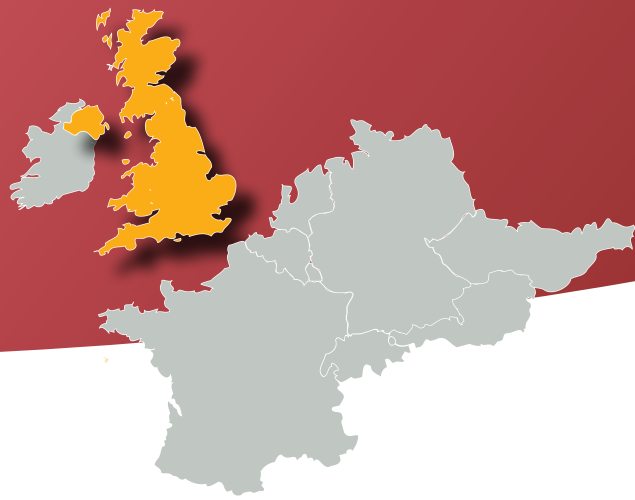
Boards should take a proportionate and pragmatic approach to corporate governance. The lack of clarity around the shape and timing of reforms and the absence of mandatory reporting requirements could present a good opportunity to make changes that support the business and its leadership, rather than just tick a box.

Since joining Company Matters in 2014, Caroline has provided a range of tailored company secretarial services to AIM, Main Market and overseas commercial and investment companies. For the past seven years, she has supported one of our largest clients with a full suite of board, corporate governance and statutory compliance services, initially as a FTSE 100 company and following its recent de-listing, as a large private company. She has also worked on a number of corporate governance projects, including two IPOs.

Caroline is also a member of our Technical Committee, which ensures that colleagues are up-to-date on legal, regulatory and corporate governance developments relevant to company secretaries and their clients. She particularly enjoys applying good practice in a tailored, proportionate way.

Caroline became Fellow of The Chartered Governance Institute UK & Ireland in 2020 and was shortlisted in October 2023 for the Institute's Corporate Governance Professional of the Year award. Prior to qualifying as a Company Secretary, she worked at Rothschild & Co, a leading investment bank, advising on mergers, acquisitions, disposals and debt and equity financings, in the UK and abroad – experiences which continue to stand her in good stead in her current career.

A SPOTLIGHT ON:
THE UNITED KINGDOM

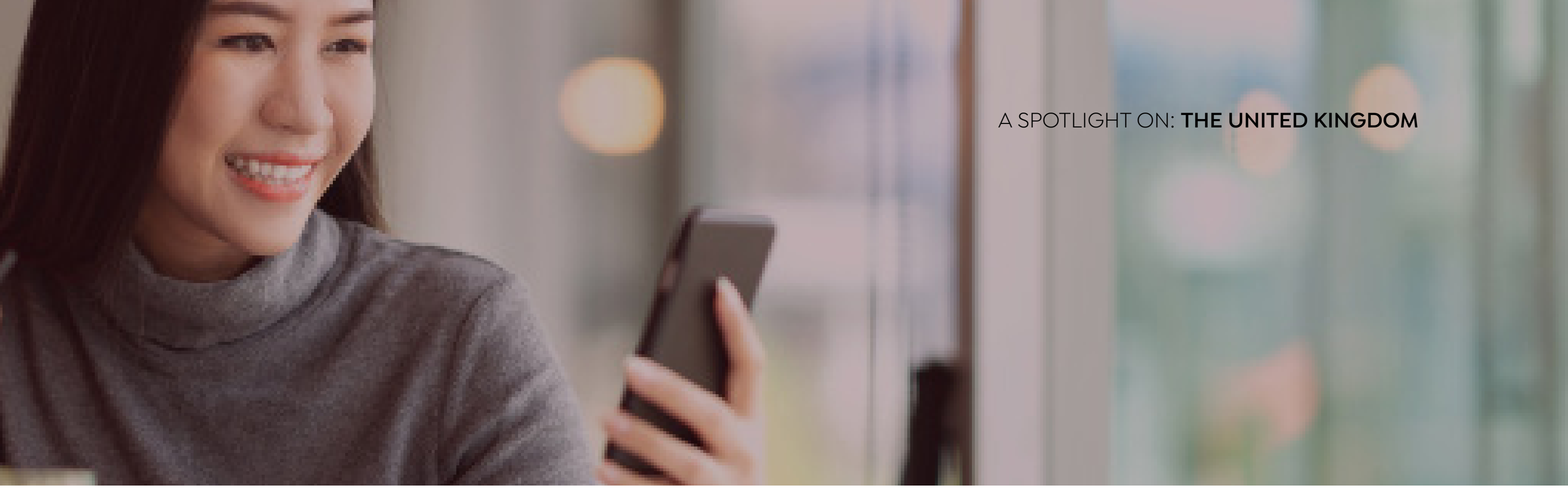


Overview

In a continuation of the recent government commissioned reviews, consultations and responses that have marked the UK corporate governance landscape over the previous five years, 2023 witnessed the launch of a public consultation by the FRC on their proposed revision to the Corporate Governance Code. Changes focused on strengthening audit functions, clawback/malus provisions in executive remuneration, improving reporting to emphasise outcomes/effectiveness and reliability of information, and overboarding among other matters. Whilst the announced timeframe aimed to finalise the new Code by the end of this year, with application commencing in 2025, recent market developments such as the axing of the draft Companies (Strategic Report and Directors' Report) (Amendment) Regulations call into question the entire revision process. There are clear concerns that the revision may diminish London's attractiveness as a capital market. This topic is explored in more depth in our Market Expert Interview with Company Matters' Caroline Emmet, included within our report.

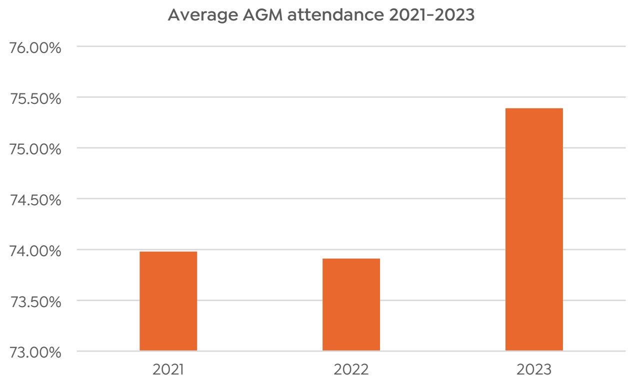
Changes to FCA Listing Rules last year and the associated additional reporting requirements on gender and ethnic diversity for companies continue to fuel progress in this field with ambitious 'comply or explain' targets, namely, 40% of women on boards, at least one senior board position held by a woman and at least one board member from an ethnic background. Influential proxy advisors ISS and Glass Lewis had acknowledged these objectives in their revisions to their voting guidelines for the 2023 AGM season and threatened non-compliance with them could lead to potential board against recommendations. The most recent updated report from the Parker Review dated March 2023, counted 96 of the FTSE 100 companies with at least one ethnic minority director (vs 47 in 2016). For the FTSE 250, 60% of companies met this 2024 target. It is expected these numbers have further improved throughout 2023. The FTSE Women Leaders Review published in February this year also provided positive news, as the FTSE 350 had already met the 40% voluntary target set for December 2025. Women's representation stood at 40.2% on boards of FTSE 350 companies (vs 9.5% in 2011). Focus now turns to improving executive committee and senior board position representation, where momentum also continues to gather.

In other news, the FTSE 100 saw impressive progress on remuneration topics in the context of a remuneration policy year, a strong boost in AGM participation, and leads UK & European rankings from both an activism perspective (explored in more depth in our Market Expert Interview with Lazard's Christopher Couvelier, included within our report) and the number of climate-related resolutions presented this year.

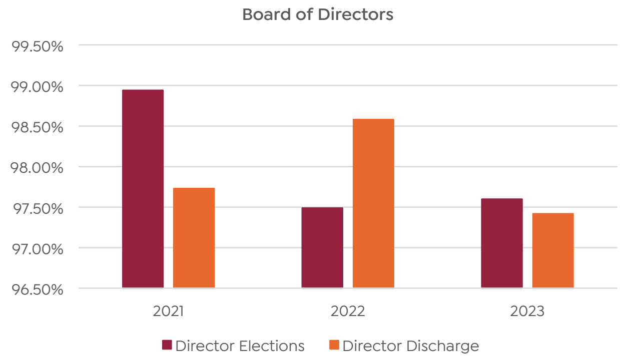


AGM Participation rates, impressive leap

Participation rates at FTSE100 AGMs have returned to healthier levels 75.39% (+ 1.48%) ending a two-year dip below 74%. This aligns with increases seen elsewhere throughout Continental Europe and positions the United Kingdom near the top of our core markets, behind France's leading 76.51%. Quorums were wide ranging from Scottish Mortgage Investment Trust plc's 29.20% all the way to Antofagasta plc's 92.65%.



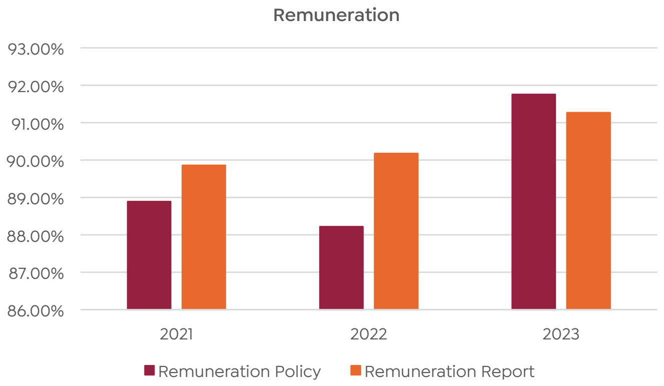
Board of Directors



Support in favour of director elections remained largely stable and massive year-on-year. Despite the background of overwhelming support for boards, the topics of availability and commitment of directors continue to be a key area of investor scrutiny with a number of companies/directors suffering dissent on these grounds. For example, Antoine de Saint-Affrique was re-elected with only 73.93% support at Burberry Group plc due to combining a CEO mandate (Danone) in addition to two non-executive director mandates. In Michael Roney's case, he received 79.16% support at Next plc due to combining two Chairmanships (Next plc and Grafton Group plc) in addition to his NED role at Brown-Formon. A final example includes Marcus Wallenberg at Astrazeneca that combined five NED mandates including two Chairmanships, receiving only 80.93% support. Other trending causes for dissent included lack of board diversity or lack of responsiveness to shareholder dissent. Charlotte Boyle, Chair of the RemCo at Coca-Cola HBC, received only 74.61% support due to lack of responsiveness on remuneration topics over a three-year period.

Whilst we provide figures on changes in approval rates for director discharge votes, these relate to a handful of companies (three this year) and are not representative of the market as a whole. Despite the year-on-year dip, support remains high.

Remuneration



'UK plc' has many reasons to be proud given improvements in remuneration approval rates and their best-in-class ranking within UK & European core markets relating to the approvals of remuneration policies and reports in 2023. In a 'policy year', in line with the three-year remuneration policy cycle, 52 such proposals were voted on vs 28 last year. Approval rates soared, increasing on average by an impressive +3.54%. Importantly, progress was not limited to policies, with remuneration reports also benefiting from an average increase of +1.10%.

Multiple factors come to mind when attempting to understand this progress. Firstly, and as heard directly from the mouths of investors, issuers got engagement right. Secondly, whilst still frequent, there were relatively less increases to executive pay quantum and those proposed were felt to be more fairly aligned with changes to wider workforce pay. An expectation had been clearly set at the start of the season; executive pay increases should be inferior to those of the wider employee base. If this expectation is not met, companies open themselves up to shareholder backlash, including votes against the policy and remuneration committee members. Finally, many issuers strengthened their remuneration policies through the implementation of several requested changes by investors, including: the reinforcement of shareholding requirements, fortifying malus/clawback provisions and better alignment of executive pensions.

The successes of the many should nonetheless not completely mask the failures of the few. Unilever saw their remuneration report rejected by shareholders, securing only 41.97% support. Investors were not convinced by the company's rationale for the incoming CEO's new pay package that exceeded his predecessor's pay, his current pay and his peers' pay.

In terms of remuneration policies, Pearson saw the most contested vote, with their proposal merely scraping over the approval bar with 53.63% support. The company proposed a significant increase in maximum bonus and LTIP opportunity that was judged not to be sufficiently justified, further aggravated by the existence of a historic significant one-off investment award that had not yet come to fruition and had been a source of contention since its grant.

Capital Increases

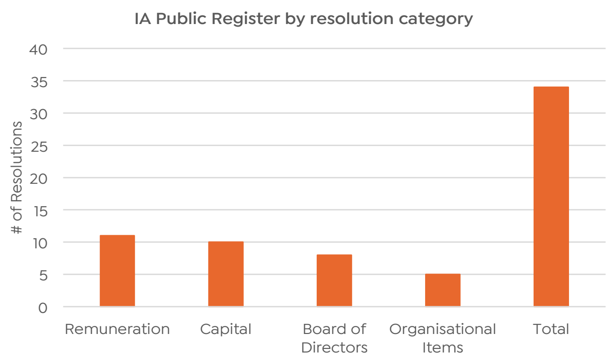
Average approval rates for resolutions relating to capital have seen a significant drop (- 1.73%) driven primarily by a fall in the capital increase without pre-emptive rights sub-category from 97.26% to 93.96% (- 3.3%). This drop coincides with significant changes this year to the Pre-Emption Group ("PEG") Principles that serve as the best practice authority for many investors on the topic of capital issuances in the UK. Indeed, prior guidance authorised up to 10% without pre-emption rights subject to any amounts above 5% being linked to an acquisition or specified capital investment. The new guidance essentially doubled those thresholds (with a further 2% now being allowed in the context of a follow-on offer) to 20% and 10%. Importantly, this increased flexibility comes with accompanying expectations around consulting with major shareholders to the extent practicable and permissible, and appropriately explaining the rationale. Whether accompanying expectations were not sufficiently met, or whether certain investors are taking a stance against this shift in the PEG guidance, it appears in their first year of adoption that these new authorities were met with increased opposition than when the thresholds were lower.

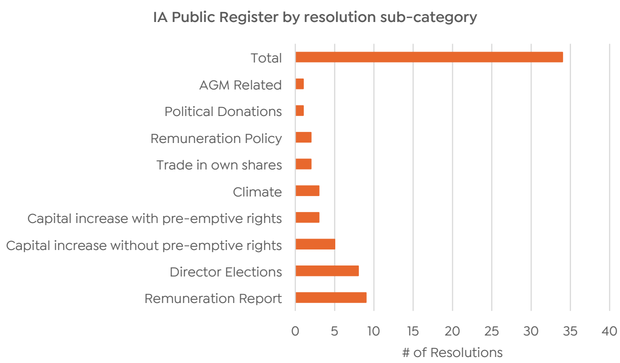
The two most contested capital authorities were presented at Beazley plc. Resolutions 22 (general disapplication of pre-emption rights) and 23 (disapplication of pre-emption rights in connection with an acquisition or specified capital investment) did not receive sufficient support to be passed (receiving votes in favour of 60.76% and 60.85% respectively). Unrelated to changes in the PEG guidance, the company was punished by investors for having recently used a cash-box placing. These methods of raising cash through the issuance of equity securities for non-cash consideration via the acquisition of a special purpose vehicle whose principal asset is cash, are widely regarded as non-shareholder friendly, loopholes that violate the spirit of shareholder approved authorizations. Interestingly, the company's "Update on 2023 annual general meeting resolution votes" statement, in accordance with Provision 4 of the UK Corporate Governance Code, does not reference any cash-box placing.

	2022		2023	
	Approval rate	Item count	Approval rate	Item count
Capital	**97.02%**	**362**	**95.29%**	**382**
Capital increase cap	99.22%	4	99.58%	3
Capital increase with pre-emptive rights	95.22%	113	94.29%	113
Capital increase without pre-emptive rights	**97.26%**	**148**	**93.96%**	**151**
Other	99.97%	1	96.64%	12
Trade in own shares	98.66%	96	98.05%	103

Investment Association Public Register

At the time of our data gathering 20 FTSE 100 companies had found their way onto the IA's public register (vs 27 at that same cut-off in 2022). A total of 34 resolutions (vs 38 last year) failed to receive the required 80% or more support to avoid the list or were withdrawn. As detailed below these centred around remuneration proposals and director elections, as every year, but also and --uniquely this year, capital increases (10 items vs 1 in 2022). Due to the changes in PER ceilings related to capital increases, the topic became almost nearly as contentious as remuneration during the 2023 AGM season in the UK.





MARKET EXPERT INTERVIEW
CAROLINE RUELLAN

FOUNDING PRESIDENT - SONJ CONSEIL

Participation levels at French AGMs, already at very healthy levels, have taken off in 2023, increasing from 74.84% on average for the SBF120 to 76.51%. This is the third year running that France tops core UK & European markets in this respect. What is the French market getting right when it comes to encouraging shareholder democracy?

First of all, this is very good news!

As the data shows, there is a strong increase in shareholder involvement and participation whilst, for a period of time, we observed disinterest from them. Shareholders had a more binary approach to shares, focused on the financial aspect, looking at the impact of votes on share valuation. Frustration from shareholders would simply lead to them selling whereas wider options were available. Shareholders have had the same toolbox for years, but they have only started using it more recently.

Several factors have contributed to this growing involvement of shareholders in organisations in France: the activist movement, the average age of retail shareholders and the role of companies in society.

As already mentioned, for a long time shareholders had considered that their contributions were directly linked to their participation in the capital of the company. A very restricted vision that has shifted with the rise of activist campaigns. Activist wins have shown the influence that shareholders can have on issuers. For example, the Lagardère file proves that an investment fund can shift the lines within an organisation. Furthermore, the choice of the "Cassa Depositi e Prestiti" to come in aid to the activist group Elliott strengthened the legitimacy of activists. Activists are not always bad; we have seen instances where activists created value with their demands. They have paved the way for other categories of shareholders. A shareholder with a low stake in a company now considers that they can exercise some kind of influence. There has been a real paradigm shift, influencing the power balance between issuers and investors, and showing that smaller investors can exist and have an influence.

We have also seen a shift in the modus operandi of shareholder participation, with general meetings becoming an opportunity to exchange: a platform for issuers to justify their decisions and for investors to express their opinions. There are more and more submissions of resolutions, written and oral questions. Even if they do not have the skills of activists, shareholders are less hesitant to put forward their views and try to exert their influence and make their agreements or disagreements known. We have seen the rise of the notion of accountability. Shareholders now consider directors are accountable and find the general meeting to be the best moment to assess performance and company strategies. The general meeting has become a privileged moment and an opportunity to exert influence. Shareholders are no longer satisfied with a purely capitalistic treatment of their stake. They expect board members and officers to be more accountable and intend to interfere into the strategy. This is a deep change of paradigm whereby companies, listed and unlisted, have entered into the transparency and accountability era.

A second important factor is that, as assessed by the *AMF, there has been a notable rejuvenation of investors. The average age of shareholders placing orders has decreased. In 2020, the median age of new investors was 46 years compared to 58 years in 2018 and 2019. Furthermore, from March 2019 to March 2021, the portion of shareholders under the age of 35 years of age increased from 11% to 18%. This is a consequence of the Covid period. This rejuvenation is very positive as the new generation of investors has a different approach to companies and a willingness to get more involved.

Finally, the role of the company has changed. It has become a multi-faceted political object. The PACTE law for example invited issuers to tackle extra-financial value creation. Nowadays, it is key for issuers to create both financial and extra-financial value whilst disclosing as much as possible. As a result, shareholder expectations have grown more vocal and oriented towards more than just financial gain.

All these factors combined favour a role for shareholders that is beyond simple wealth management and the purchasing of shares.

One of the French governance specificities often discussed at length during exchanges between certain companies and their shareholders, is the dual Chair/CEO role. Whilst many still argue it provides enhanced speed and flexibility in decision making to seize opportunities, vital in certain industries, the popularity of this combined role continues to dip (currently less than 1/3 of the CAC 40 index). What is your view on the future of this role, and are criticisms that it is sub optimal from a minority shareholder interests perspective well founded?

It is an important subject that has been around for a while and yet we still do not have the right answer today.

*https://www.amf-france.org/sites/institutionnel/files/private/2021-07/loe-43_2.pdf

There is the question of the balance of power within an organisation. From a theoretical perspective, you can only be in favour of dissociating the roles of Chairman and Chief Executive Officer. Anglo-Saxon investors are rather favourable to this dissociation. In reality, I have a more nuanced perspective. Real corporate life and the implementation of the dissociation can be challenging. Furthermore, it is important to note that the AFEP-MEDEF does not have a strict recommendation on the topic.

For the dissociation to work effectively, many conditions must be met. The concerned parties must have a good understanding of their distinct roles, knowing the limits and choosing to respect them. In practice, the dissociation usually implies the dual Chairman and CEO stepping down to become Chairman, and it is difficult to take a step back when you have been at the helm. It is often seen as an "amputated" role. Furthermore, there are situations where I continue to think that the dissociation is not the best model. It can be virtuous for power to be concentrated in one person, as long as the board of directors is fulfilling its role. In other words, there are situations where the unifying role is necessary, either because the company is going through a crisis requiring a rapid decision-making process, or because it requires embodied power or because the risks of a failed dissociation imposes to simply dismiss it. The French state understood it well by finally granting Luc Rémont with the PDG role.

We too often have an overly fixed vision of governance. It is believed that governance is a balance determined once and for all. Governance is intended to evolve. For every moment in the life of a business, it must be rewritten. It's living and new challenges will be encountered. Moments of transformation, arrival of new shareholders. All these profound changes are intended to have repercussions on the writing of governance. Considering that dissociating the functions is a guarantee for success, makes no sense. It is a solution that must be assessed on a case-by-case basis.

There is no ideal model. In reality, the board of directors must be the real counter-power.

Unequal voting rights are likely to resurface as an important topic in 2024, in part due to upcoming changes to ISS' voting policy (strong disconnects between economic interests and voting rights will be sanctioned). Do you believe it is fair to dismiss altogether the practice of loyalty shares for instance as detrimental to minority shareholder rights, when it arguably encourages long term value creation?

We cannot ignore what the other financial markets are doing such as notably the Netherlands. In fact the topic is not too dissimilar to that of accommodating SPACs, which I did not particularly favour, but there was a real need to remain attractive. We know that since the introduction of the "Florange Law", there is the widespread possibility for double voting rights. The idea is to ensure the retention of companies in the country, to encourage start-ups and unicorns to develop in the French market instead of turning towards other markets or even other forms of financing such as private equity. It is an attraction strategy.

"We have also seen a shift in the modus operandi of shareholder participation, with general meetings becoming an opportunity to exchange: a platform for issuers to justify their decisions and for investors to express their opinions."

I have no intellectual problem with a founder wanting to preserve certain protections and influence when taking a company public. I do however believe it raises sociological considerations. The founder/entrepreneur profile is rarely a good manager/steward. The skill sets are very different. Regulations must strike a balance between protecting founders, allowing them to pursue financial development of the company, whilst at the same time not hindering development by becoming repulsive to certain investors. Balance and flexibility are paramount.

There is a unique brand of French capitalism, that is certain. A reform of this type will not be interpreted in the same way in France as in the Netherlands or in the United States. There is evidence that family-owned businesses perform better when it comes to stakeholder topics. This in itself suggests double voting right type tools may have their advantages.

Are there any additional trends you have witnessed throughout the 2023 AGM season and what novelties do you anticipate for 2024?

There is a subject that is close to my heart linked to our earlier discussions around shareholder participation. The "Say On" question. We started in France with a soft law "Say On Pay", that ultimately turned into hard law, allowing shareholders to decide what they want on remuneration topics. Since then the "Say On Climate" has emerged and the question now arises around the extent to which shareholders should be determining strategy, in this case climate strategy. Whilst recent efforts to impose "Say On Climate" hard law did not come to fruition, it is interesting because sooner or later it is going to end up somewhere. A very fundamental question arises around the place of the shareholder in determining the strategy. This is a question that collides with the issue of information asymmetry. It is not possible or desirable for a company to be totally porous and open all information to shareholders. There will always be an asymmetry of information, notably between shareholders and the issuer, which is fully required to protect the company. This makes the shareholder's contribution somewhat obsolete because they do not have all the information. This is a complex reality for issuers that receive an increasing number of requests from shareholders to be involved in more decision-making. Ultimately a company's moral compass needs to be its corporate and social interest. It is not obvious to me that a "Say On Climate" is aligned with this interest.

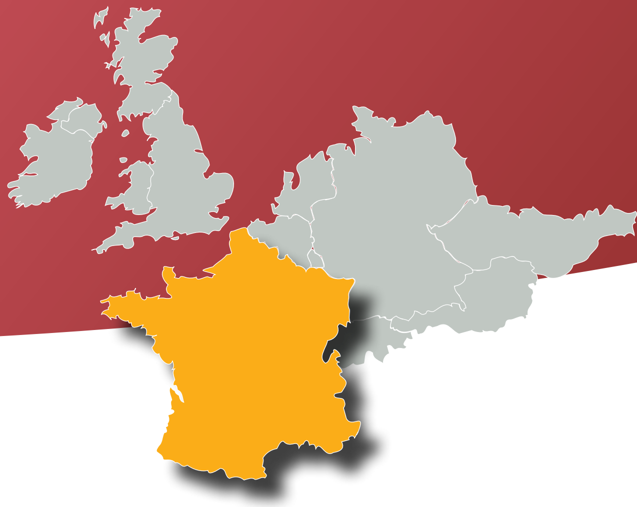
Caroline Ruellan is the founding president of SONJ Conseil, a seven-year-old independent strategy advisory firm that assists French and international economic players in matters relating to the exercise of power, strategy and governance, activism and shareholder relations.

SONJ advises listed and unlisted companies, family businesses, managers, investment funds and shareholders to design tailor-made strategies for value creation, in the context of governance and board assessments, shareholder conflicts, activist vulnerability analyses, communication and reporting issues. SONJ is at the heart of the market's reflections and provides its clients with a forward-looking view of regulatory developments and market trends.

Caroline Ruellan is also a member of the Supervisory Board of Ardian France, a member of the Retail Investors Commission of the French Financial Markets Authority (Autorité des Marchés Financiers) and a director of the Association of the defense of minority investors (Association de Défense des Actionnaires Minoritaires - ADAM). She has been an Independent Director and Member of the Nomination and Governance Committee of Atos.

She chairs and leads the Cercle des Administrateurs (CdA), an association of directors and executives sponsored by INSEAD and The Wharton School, and a partner of Euronext, EY, Casino Group, Politique Internationale, Advant Altana and Chapter Zero.

A SPOTLIGHT ON: **FRANCE**



Overview

Despite 2022 being seen by many as the 'make or break' year for the Say on Climate movement, and the number of proposals both in France and abroad not living up to the hopes of its supporters, some changes to the French governance landscape had the potential to reinject some impetus in 2023. Revisions to the AFEP-MEDEF corporate governance code in December 2022, recommended boards determine a multi-year climate strategy with precise targets and milestones, and that this strategy along with the accompanying actions undertaken to achieve it, should be presented to shareholders at the AGM every 3 years or in case of significant changes. Furthermore, up until October this year, there was a real chance that the Say on Climate could be enshrined into hard law through an amendment to the Green Industry bill. Ultimately, whilst certain associations such as the French SIF (Sustainable Investment Forum) saw the withdrawal of the Say on Climate amendment as a missed opportunity, others such as the AFEP cited a lack of consensus from issuers and investors, and the French Minister of the Economy Bruno Le Maire, considered there was no need to be the only country adding burdensome administrative red tape that has no impact on the climate transition. In the end, France saw 10 climate related proposals this year, consistent with 2022 and narrowly leading UK & European core markets ahead of the UK (8 items).

Whilst activism in France has returned to normalised levels this year, the 2023 AGM season was marked on this theme by a high-profile stand-off between Atos' Board of Directors and a small consortium of French shareholders led by Sycomore Asset Management. The dissidents requested the addition of four resolutions (A, B, C and D) at the 28 June Annual General Meeting, namely the dismissal of three directors including the Chairman Mr. Bertrand Meunier, as well as the appointment of a director Mr. Leo Apotheker. Whilst developments in the planning of Atos' corporate future continue, the company was ultimately successful in fending off the activist threat at their June AGM.

Overall, approval rates have remained extremely stable in the French market across all major resolution categories, to an extent not seen in any other UK & European core market.

AGM Attendance

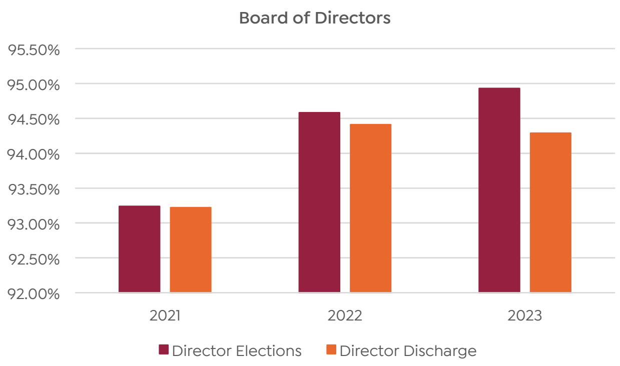
Participation levels at French AGMs, already at very healthy levels, have taken off in 2023, increasing from 74.84% on average for the SBF120 to 76.51%. This is the third year running that France tops core UK & European markets in this respect. Our Market Expert Interview with Caroline Ruellan, included within this report, explores in more depth some of the reasons behind this increase in shareholder democracy. Key drivers include the rise and successes of activist movements, the decreasing average age of retail shareholders and the greater role of companies within modern society.

Top 5 CAC 40 issuers by 2023 quorum

Thales	88.67%
Hermes International	86.68%
Dassaults Systemes	84.59%
LVMH	83.32%
Kering	82.90%

Overall, approval rates have remained extremely stable in the French market across all major resolution categories, to an extent not seen in any other UK & European core market.

Board of Directors



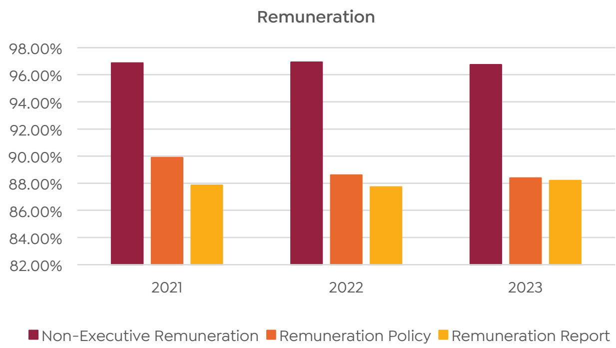
Director elections and discharge votes remained broadly stable year on year throughout the SBF 120. The topic of dual Chair/CEO roles ("PDG"), a French specificity often either misunderstood or viewed with scepticism from abroad (and even increasingly by domestic investors), remained a frequent point of investor engagement. 11 SBF120 companies proposed elections/re-elections of dual Chair/CEOs of which 2 CAC40 companies. Unsurprisingly given the misunderstanding and/or scepticism concerning such topics as the concentration of power, accountability and the protection of minority shareholder rights, the average approval rate for a dual Chair/CEO election in the SBF120 is significantly lower (circa 5%) than the average for director elections, 89.87% vs 94.93%. These approval rates are trending downwards over the last three-year period, in line with a slow but gradual decrease in the number of issuers combining the roles. 32.5% of the CAC 40 has a dual Chair/CEO as does 33.33% of the wider SBF 120.

The two most contested director elections for management endorsed candidates were at Scor SE. Ms Fields Wicker-Miurin received only 53.748% support due to her role as Chair of the remuneration committee in the context of significant historic shareholder dissent on remuneration topics and limited perceived responsiveness. Mr Augustin de Romanet, vice-chairman of the board of directors, received only 57.682% approval due to governance concerns surrounding the CEO succession process. Both directors received negative recommendations from the leading international proxy advisor ISS on these grounds.

The third most contested item of this sort, Olivier Heckenroth's re-election at Rubis SCA, received 66.44% approval despite positive recommendations from both leading proxy advisors, ISS and Glass Lewis. Mr Heckenroth's lack of independence was deemed problematic given his role as Chairman of the Supervisory Board but even more importantly given his role as member of the audit committee. Given his approval rate, Mr Heckenroth ultimately decided to step down from these roles.

A final example of controversial board composition practices can be seen in the appointments of 'censors' (non-voting members) at Eurazeo and LVMH. The four individuals in question received approval rates between 74% and 81%. Investors struggle to comprehend why such individuals are not simply appointed as directors if their expertise is required. 'Censors' do not have a vote in board deliberations, but they may be able to wield soft power and influence debates whilst often not being subject to the same accountability safeguards as normal directors.

Remuneration



Non-executive remuneration proposals remain predominantly non-controversial and stable year on year comfortably averaging almost 97%. These include a wide range (far surpassing the number seen on these topics in other markets) of resolutions covering ex ante and ex post remuneration for non-executive chairs and non-executive director fees.

Remuneration report (ex post executive remuneration) votes increased slightly year on year from 87.73% to 88.20% (+0.47%) but with their fair share of controversies. Ipsos saw the ex-post votes on the remuneration packages of two ex-Deputy CEOs rejected with only 39.77% and 40.15% support respectively. The votes were merely advisory given both individuals were paid through working contracts, this fact itself not being aligned with market practice which prefers that employee contracts are abandoned when a salaried executive is appointed by the board to become a corporate officer. The controversy centred on the size of the termination packages received by both individuals which were seemingly benchmarked on 200% of total remuneration (including LTIPs) rather than salary + bonus as is market practice. The company also remained silent on the status of ongoing LTIPs that had not yet vested, and in the case of one of the ex-Deputy CEO's, a significant new grant was made prior to departure. Stellantis NV, a Dutch incorporated automobile manufacturer listed on multiple stock exchanges including France's CAC40, also continued to battle with legacy dissent, though wisely split their remuneration report votes into two separate items, isolating pre-merger legacy matters. In a follow up from last year's failed remuneration report vote, the vote on pre-merger legacy remuneration matters received only 51.85% support. If abstentions would have been counted as opposition, the item would have failed with only 46.41% of the vote in favour.

Whilst approval rates on executive remuneration policy votes in 2023 remain stable year on year (-0.22%) at 88.39% average approval, 19 SBF 120 companies failed to secure over 80% support, 6 failed to secure over 70% support and 2 failed to achieve over 60% support. Ultimately all proposals nonetheless passed the 50% bar and were approved. Among the contested items referenced, SES met dissent (65.25% support) due to lack of disclosure in bonus targets, not fully conditioning LTIP grants to performance conditions, lack of disclosure around an ESG modifier metric for the LTIP, allowing below median vesting for a relative LTIP metric (which incidentally is common practice in the DACH region) and perceived lack of responsiveness to historic dissent. A final and telling example of difficulties met by certain issuers, was the binding Remuneration Policy vote for Francesco Milleri at EssilorLuxottica SA that received only 69.59% support. This example perfectly illustrates the limits of justifying pay increases through benchmarking exercises (the use of US peers was challenged as well as the relevance of using pharmaceutical peers, the choice of target vs maximum reference amounts potentially distorting the study, and the overall context given the company had recently increased the remuneration package). Other factors contributed to dissent primarily centred on potential termination packages (performance conditions in the severance, non-compete clause, post mandate vesting and retirement provisions). Where poor scores occur ultimately the results point to an inability of the board to demonstrate alignment with investors

Double voting rights could again create tension in the 2024 AGM season

In 2014, in an effort to address the following year's AGM season, and what may occur to the country's industrial fabric after a takeover occurs, France adopted the Florange Act, granting shares that are held in registered form for two years automatic double voting rights which may be perceived as a means to promote long-term share ownership. For more than a century, certain French companies have implemented such structures to foster long-term shareholding but only as the result of specific provisions in their articles of association. For all other companies whose articles of association remained silent on this topic, urgent action was necessary to prevent the automatic granting of double voting rights through amendment to the company by-laws (subject to shareholder approval). Fierce campaigning took place during the 2015 French AGM Season to allow shareholders to vote on the topic, under the threat (often subsequently implemented) of shareholder proposals.

Unequal voting rights are likely to resurface as an important topic in 2024, in part due to upcoming changes to ISS' voting policy (strong disconnects between economic interests and voting rights will be sanctioned). D.F. King research has found that among the SBF 120, 42% of issuers have double voting rights, of which 47% have a shareholder/group acting in concert with significant (>10%) discrepancies between holdings and voting rights. As a result, potentially as much as 20% of the SBF 120 is at risk of negative director recommendations from the leading proxy advisor on this topic. To address this risk, French boards will need to actively explain why such structures are in the interest of all shareholders and stakeholders, how they can be attained by all (i.e., through holding shares in registered form) and demonstrate clear attentiveness to the interests of their minority shareholders.

MARKET EXPERT INTERVIEW
THOMAS DENNY

HEAD OF INVESTOR RELATIONS, RWE AG

What advice would you give a German listed company trying to secure and/or maximise shareholder support for its annual general meeting? What different processes should be put in place and when?

The key advice that I would give is that getting support for the AGM does not start at the AGM. It is based on consistent communication on strategy throughout the year , and when it comes to topics relevant to the AGM it's about disclosure on governance topics and engaging with stakeholders on key governance items. For RWE, this process starts in November/December when we invite shareholders to participate in a corporate governance roadshow which we conduct in January. This roadshow is based on the draft agenda for the upcoming AGM where we discuss key items with shareholders ahead of proxy season with our Supervisory Board Chairman (Werner Brandt). After the invitation for the annual general meeting is published in March, we reach out again to ask shareholders if there are any items that caught their eye and are worthy of discussion so that we identify any problems early on. Ideally at this part of the governance roadshow or latest ahead of the AGM, so that additional engagement with management can be offered or additional disclosures can be made if needed.

Investor support for new annual non-binding remuneration reports has risen significantly from their wholesale introduction across the DAX40 in 2022 – from 83.01% to 88.51% despite the current macroeconomic climate. What is your experience discussing this topic with investors? Are investors clear on their expectations? What are the biggest challenges for issuers in perfecting their proposals on this topic? Is a certain amount of dissent inevitable?

This has been one of the most controversial topics because it is about compensation. It's about aligning shareholders with management and it's a topic where everyone has an opinion and that's part of the problem. Opinions of different shareholders may be different. Some shareholders have a very clear view on what they expect, and others have very different views. The focus from individual shareholders can vary widely, for example if they are coming from different jurisdictions.

For example, a shareholder looking at it from a UK perspective will have a different view on share ownership guidelines than an investor coming from a German perspective. RWE are well ahead of the curve compared to other German issuers but if you compare that to standards in other jurisdictions, they are very different, and all of that is interconnected. Share ownership guidelines and long-term incentive structures are very market specific and are impacted by cultural backgrounds. It is difficult to find a middle ground in designing those schemes and sometimes even if shareholders support the overall idea of the scheme hey sometimes vote against due to one particular aspect.

It's very helpful to get approval of the report and intermittently the scheme to make sure the intentions of the company align on remuneration compared to the intention of the shareholders, but sometimes We would appreciate if shareholders were able to exercise greater discretion on voting so that if we are aligned with the majority of their expectations on remuneration, they would not vote against a scheme because of deviation on only one element. Particularly as long term the greater there is deviation on particularly policy elements it could make designing a scheme in line with the majority of shareholders more difficult.

An example of when rigid interpretations do not reflect specific circumstances is when we appointed our current CEO, Dr Markus Krebber. At the time he was 46, comparatively young to become a CEO of a major company. and this has an impact on share ownership guidelines. For a CEO in their 50s who has been at board level for many years, they have already built up their personal wealth making it easier to meet share ownership guidelines very quickly. For a younger CEO or CFO they may find it more difficult to meet such guidelines quickly due to personal circumstances than a CEO or CFO who has already been at Board level for ten or fifteen years. Ultimately compensation expectations should be able to reflect the industry, the jurisdiction and sometimes personal circumstances of the individuals under scrutiny.

In 2023, 36 of the DAX 40 proposed new virtual meeting authorisations at an average approval rate of 87.73%. What do you make of this change to an issuer led rather than legislation led virtual meeting authority, and what insights have you gained from your discussions on this topic with investors both prior to introducing the item and subsequent to the vote?

We now have four years' experience of virtual meetings. Each year we have developed the design of our virtual AGM and strengthened shareholder rights. For example, this year shareholders could ask questions live at the AGM for the first time. The technology is more complicated, but its an important aspect from a shareholder rights perspective. Feedback from shareholders has been broadly rather positive both before and after the AGM with shareholders large and small. The design of our virtual AGMs was discussed extensively during the corporate governance roadshows and in shareholder engagement throughout the year. You will, of course, always have some shareholders who for specific reasons prefer the old physical AGM design with the ability to sit in front of management.

From my perspective, the current design of virtual AGM formats are a modern reflection of shareholder rights. Our vote shows that we also have strong support from shareholders regarding our virtual AGMs, so we will continue to hold them in this format in the future.

We must always remind ourselves that virtual AGMs only have legitimacy if we adequately ensure that shareholder rights are protected. As soon as we start deviating from that then we forfeit the right to hold virtual AGMs.

Are there now increased shareholder rights with the design coming from issuers rather than legislation?

Ultimately, if shareholders are not happy with the design of the AGM and the protection of shareholder rights, they will vote against such resolutions. We need to ensure that we design them in such a way that means that can continue to hold them in the future.

RWE was the subject of an activist challenge in 2022, and there have been other significant cases in Germany in 2023, most notably at Brenntag. What was your experience of facing an activist challenge, and what general advice would you provide other issuers on long term preparedness in the face of activism and shareholder engagement? Are there any specific considerations linked to the German market?

Shareholder activism is fairly new in German AGMs. For RWE, our first experience was two years ago when we first faced an activist. Linking back to the first question, this emphasises how important it is to engage with shareholders throughout the year, to convince them on the strategy and openly communicate on performance against strategy and targets. Its important to speak openly about the different topics on the AGM agenda so that you've already aligned your shareholders behind you and your agenda items ahead of the AGM. When it comes to the AGM Itself and you hear the activists arguments, it is important to listen to the arguments of the activist so that you can reflect and comment on them to your existing shareholders. The one aspect that we realised the importance of two years ago was also that your message is heard by the proxy advisors, for example ISS and Glass Lewis.

What I would stress as more important than engagement with the proxy advisors is that you constantly engage with your shareholders, make sure your shareholders understand your messaging and what is being voted upon, and that you make sure you get support from them by openly communicating and soliciting feedback from them.

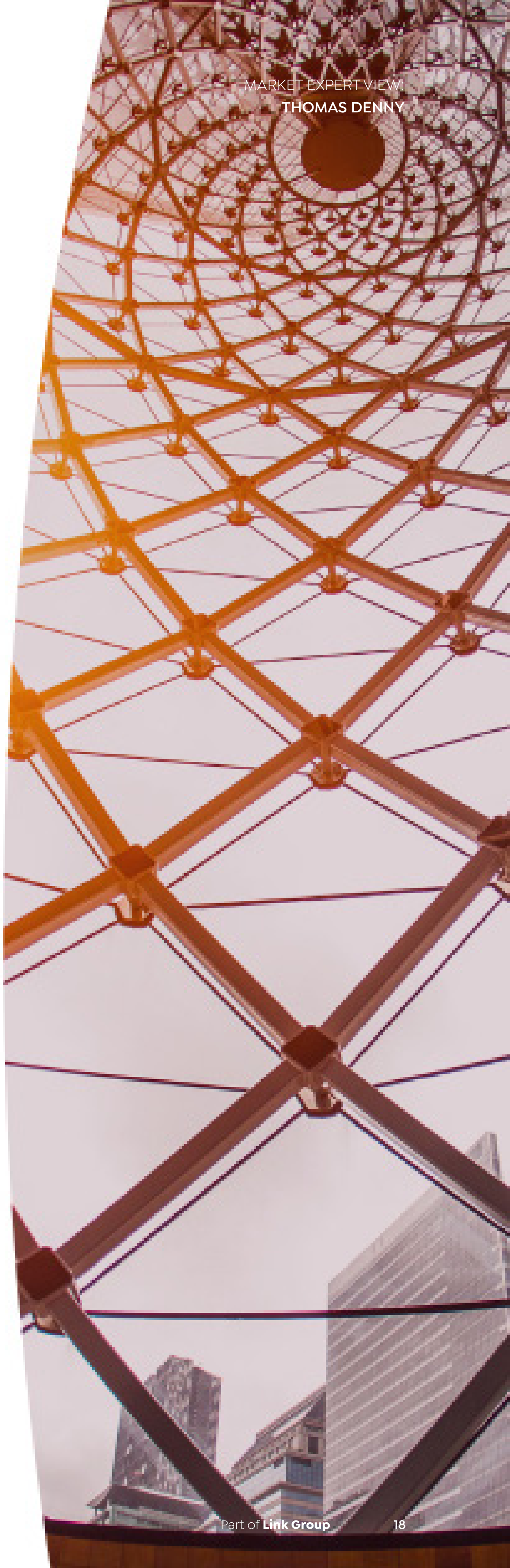
This is also the point where engaging a proxy solicitor pays off as their forecasting is important for understanding the impact of advisor recommendations and helping to understand where investors deviate from those recommendations. It's also important to consolidate the feedback on how investors intend to vote because it's only when you engage to ask the question that you will find out how they will vote. This also gives you a final opportunity to engage again to see if they would consider a vote in line with company recommendations.

What trends, if any, have you observed in the German annual general meeting season this year and what do you expect for 2024?

The main trend is on virtual AGMs which are definitely here to stay, though there are some issuers who will continue to hold physical AGMs. For some, a physical AGM may be an important experience as a marketing tool where they can showcase their product to shareholders as customers, particularly in terms of retail holders. This may be a good argument for a physical AGM rather than the more modern virtual form.

The other important point is that the AGM remains what it should be: a platform for investors to engage with companies. Examples like the pie throwing at the VW AGM has nothing to do with exchanging opinions between shareholders and management. Although one can understand those trying to create a platform to be heard, I hope the AGM model can continue to remain a place to discuss strategy, targets and remuneration. I believe AGMs are about assuring shareholder rights and nothing else.

"Getting support for the AGM does not start at the AGM. It is based on consistent communication on strategy throughout the year"



We have also all gained a lot of experience from a technical perspective. We were able to offer shareholders the chance to present questions live at the AGM for the first time this year which was more complex but worked well and was great for shareholder rights. We do not foresee any changes for the AGM in 2024.

What is also interesting is how different companies are dealing with the attendance of supervisory board members at AGMs. At RWE, we have decided that they can be onsite but in different rooms. This contributes to significant cost saving versus a physical AGM which requires a large venue. I am not convinced it is possible to have a cost effective hybrid meeting, in fact I am of the opinion that it would be more expensive, more complex, and create greater risk. If that were the only option I think it would be better to only hold physical meetings.

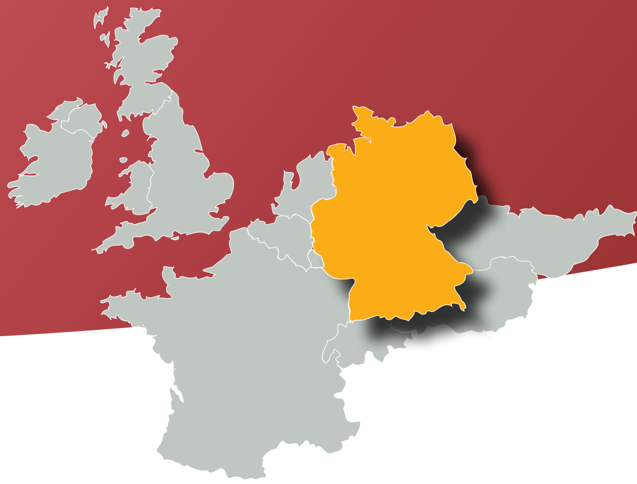
I do not believe that we are at the final stage of the AGM format. Both virtual and physical meetings will continue to evolve their format the years to come. There will always be a number of large German investment funds who are more dependent on the public and retail investors, who both prefer to have physical AGMs, which I completely understand. From a shareholders' point of view, it also doesn't help that each virtual AGM is slightly different from the next. That certainly has become more difficult for investors.

Could the virtual meeting format be standardised, perhaps by legislation rather than issuer?

If the standardisation limits the degree of freedom in an acceptable way without limiting shareholder rights, then it would be okay, but that may limit the ability of issuers to innovate. Standardisation must make it easier or better for shareholders. It's a question of whether standardisation would make it easier or better for shareholders.

Thomas Denny began his career in 2003 in Mergers & Acquisitions at RWE. As Project Manager, he was involved in several M&A projects. After his time as a consultant to the Chief Financial Officer, Thomas joined RWE AG's Controlling department as an executive in 2010. In this role he was responsible for the economic analysis of major M&A transactions as well as the innogy IPO in 2016. In October 2016, he became Head of Controlling and Risk Management at RWE AG. Since April 2020, he has headed the Investor Relations Team. Thomas studied and graduated with a degree in Business Administration.

A SPOTLIGHT ON: **GERMANY**



Overview

2023 marked a year of Deutschland AG's greater alignment with key Western European indices. AGM participation increased and, in the DAX40 at least, issuers increasingly met shareholders' expectations on transparency and best practice compliance in remuneration report votes.

The most significant change in the AGM landscape in Germany was undoubtedly the introduction of the new virtual meeting votes, which we expand upon below.

In 2022 we noted that Germany had thus far been relatively insulated from the climate resolutions proposed in France and the UK, and to a lesser extent Switzerland. Contrary to wider expectation in the early 2020's that these items would become more commonplace, outside of some issuers faced with climate related countermotions, there were none proposed in 2023 in the DAX40. Nevertheless in 2023, Alzchem Group AG (CDAX) put Germany's first say-on-climate resolution to its shareholders bucking the wider trend.

Another significant trend in 2023 was a noticeable increase in activism, where Corporate Germany was the target of a record-breaking (#2 in UK & Europe) number of activist campaigns including DAX40 companies Bayer and Brenntag. Please note the topic of activism is also explored in depth in our Market Expert Interview with Christopher Couvelier, included within our report.

Brenntag shareholder, PrimeStone, sought to replace Brenntag's Supervisory Board's candidates with two independents. Their arguments were sufficiently compelling to gain the support of both ISS and Glass Lewis, and their ability as a 2% holder to come close to ousting both the Chair elect and their fellow Director candidate has certainly rattled the cage of a corporate Germany whose dual Board structure was typically highly resistant to activist campaigns. The Supervisory Boards' nominated candidates Richard Ridinger and Sujatha Chandrasekaran only received 62.71% and 61.79% support respectively. Primestone's impact on Brenntag went beyond the AGM in 2023. In the months prior the May AGM, the investor constructively led the efforts to prevent an ill-advised and value-destructive acquisition and was instrumental in convincing Brenntag to implement a share buy-back program.

At Bayer's AGM, Bluebell Capital pushed for the break-up of Bayer and a supervisory board reshuffle with strong suggestions that this will stretch into 2024. Bayer's remuneration report continues to be a stumbling block for the shareholder base, scraping through with approval of only 52.33%, which was still a considerable improvement on 2022's 24.11% support rate.

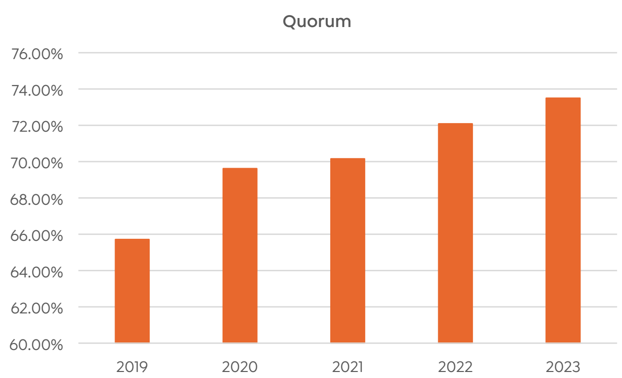
In the SDAX, Deutsche Pfandbriefbank and Deutsche Wohnen also had to defend themselves against significant activist campaigns. At Deutsche Pfandbriefbank, Petrus an over 3% shareholder wrote openly to both Supervisory and Management Boards challenging them to address 'significant strategic weaknesses' citing low return to investors from the bank and criticising the company's lack of 'cost discipline and capital efficiency.' At Deutsche Wohnen, after failing to secure sufficient support for a shareholder resolution to request a special audit on a €2bn loan DW made to its top shareholder Vonovia, Elliott has escalated its special audit request to the Berlin courts. Elliott claims that the money was used to help Vonovia repay some of the bridge loans that it had taken out to finance its multibillion-euro acquisition of Deutsche Wohnen in 2021, which amounts to illicit financial assistance.

On a macro level, the conflict in nearby Ukraine continues to have an effect on resource flows into Germany with its traditionally strong reliance on Russian natural gas and oil, moratorium on nuclear energy and the disappointing prospects of its highly touted Energiewende policies. This has certainly had an impact on the direction of travel in the market in terms of climate resolutions which have very much moved into the background in a year where stakeholders are more focussed on the cost of living than the environment.

Quorum

The average quorum across the DAX40 continued its upward year-on-year trajectory to 72.14%, an increase of 1.19% from the 2022 proxy season and an impressive 7.56% above pre-pandemic levels. German indices participation figures are coming ever closer to alignment with their Gallic and Anglo-Saxon counterparts. Indeed, the MDAX too has seen an even greater increase with average attendance for 2023 at 74.71%, up 4.72% on 2021. The lowest quorum level over both indices was at BASF SE, where the participation rate was 40.09% due to their shareholder structure.

There are likely a number of factors behind this, including larger positions held by index funds who are more governance focused alongside the embedding of the virtual meeting format.



Virtual Meetings

Indeed the inexorable rise in quorum levels across both DAX40 and MDAX is particularly significant in the year that changes in the Stock Corporation Act placed the responsibility for holding AGMs in a virtual format onto each company, requiring issuers to seek shareholder approval for virtual meeting authorities, rather than relying on emergency legislation to permit their use.

Only four DAX40 issuers opted not to put a resolution concerning the holding of virtual meetings to their shareholders.

Across 36 issuers who held resolutions regarding the virtual meeting format, the average approval rate was 87.73% with the lowest acceptance rate coming from Allianz SE (75.50%). The MDAX average support level was even higher at 88.96% with 46 of its constituents requesting this authority from their shareholders.

There was significant variance in the application of the virtual model in terms of the interpretation of how best to assure shareholder rights, for example between issuers seeking to mirror the live format and those requesting shareholder questions ahead of the meeting. There was also a wide range of logistical formats proposed and adopted, with some companies maintaining the grand venue with management and supervisory boards present, absent only investors, while others opted for a more economical model with not just shareholders but also Board members dialling in. Irrespective of format, support levels for virtual meetings were robust across the market, particularly for a 'pioneer' item in its first year, reflecting market familiarity with the format following its mandatory adoption during the pandemic.

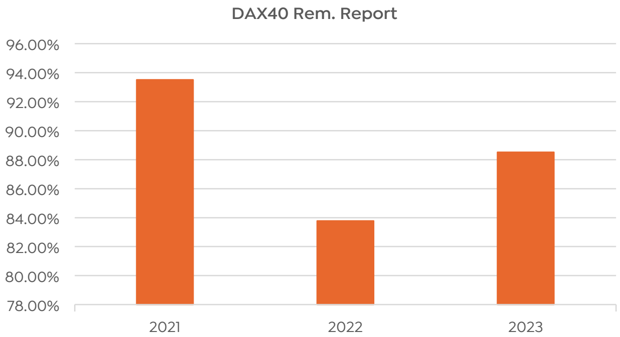
In fact, a bigger driver in determining the ultimate approval rate for issuers was the composition of their shareholder base. Virtual-only meetings items were opposed as a matter of policy by a number of German investment houses, including DWS and Deka, who sought a return to the traditional 'face the shareholders' model of an in-person event. Several international investors also oppose virtual only meetings as a matter of policy with Legal & General, Schroders and Amundi examples of institutions voting against these resolutions. Those shareholder bases populated by such investors usually had weaker voting results on such resolutions. Issuers could temper somewhat investor ire if they demonstrated a noticeable effort in the drafting to assure shareholder rights, limit the terms of the authority, and no historic abuse of the format.

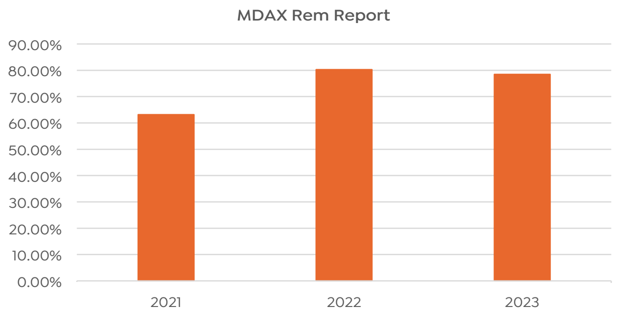
Some issuers applied a more nuanced approach such as Deutsche Telekom, who held their meeting using the traditional physical format but still put forward a resolution for future virtual meeting authorisations should this be needed in the event of any crisis or further in extremis situation. It is notable that no issuer in Germany has yet opted for a hybrid meeting format, though this is seen by many investors as a more effective compromise and is already trialled in some other European markets. We anticipate that the format of the German AGM and these authorities will continue to evolve over the coming years.

The most significant change in the AGM landscape in Germany was undoubtedly the introduction of the new virtual meeting votes

Remuneration

Overall, the remuneration category in Germany has seen marked increases in support levels driven by a sizeable jump in support for executive remuneration policy votes (up 5.20% to 89.18%), and a lesser increase in support for remuneration report votes, up 1.06% to 82.93%. While these results demonstrate clear improvements, remuneration report votes remain far below those of the United Kingdom, France or Switzerland. Given the size of the German economy, one would be tempted to wonder why Deutschland AG struggles to keep pace on applying international best practice on such an important and sensitive subject. These increases offset the 1.10% decrease in support for non-executive remuneration items which remain uncontroversial and well supported at an average 97.99%.





In the second year of mandatory non-binding remuneration report votes in Germany, there was a notable disparity in support trends for these items between Germany's two largest indices. Remuneration reporting in the DAX40 attained an average approval rate of 88.51%, an uplift of 4.74% from 2022 while in the MDAX support for remuneration report items decreased by 1.8% to 78.46%, with six issuers attaining less than 50% shareholder support. Such generally poor results are problematic on many levels for the wider index. Often poor remuneration report scores highlight problems that institutional investors find with how a given Supervisory Board interprets the remuneration policy. In addition, to have median result below the internationally established floor of 80% as an acceptable level of support means that many MDAX supervisory boards are not sufficiently aligned with the expectations of their minority shareholders and may be over reliant on more "reliable" investors, such as founding families or other anchor shareholders.

Company	Compensation Report Support Level
-Befesa S.A.	22.06%
Scout24 AG	32.15%
K+S AG	35.60%
HelloFresh SE	36.90%
TAG Immobilien AG	41.90%
PUMA SE	45.66%

The strong improvement in DAX40 issuers' pass rates reflects their success in getting to grips with investors' expectations on transparency and clarity of reporting, allied to a reduction in cases where discretion was exercised in determining pay-outs to management in 2023. The improvement was also aided by a lack of significant change in either of the main Proxy advisors' expectations around remuneration in 2023.

Supervisory Board

Overall, the Supervisory Board category has remained relatively flat with an average increase of only 0.22% across both discharge and election categories.

It is notable though that in the DAX40, support for supervisory board director elections dropped by 1.64% driven predominantly by the poor election results at Vonovia, where Chrisitan Ulbrich's re-election was opposed by 39.33% of shareholder votes due to poor attendance without adequate rationale provided by the Company; and at Brenntag, where the campaign by PrimeStone to oust two Directors and replace them with independent candidates saw the Chair elect Richard Ridinger's support fall from 99.93% at his initial election in 2020 to 62.71% in 2023. His co-elector received just 61.79% support.

Company	Item Name	Support Level
Vonovia SE	Elect Christian Ulbrich	60.77%
Brenntag SE	Elect Sujatha Chandrasekaran	61.79%
Brenntag SE	Elect Richard Ridinger	62.71%

This year, there has been an increase in the approval of board ratification across both DAX and MDAX of 1.08% to 97.14%, with high support levels demonstrating the routine nature of ratification items. Nevertheless, shareholders continue to expect international best practice to be applied and thus receive the opportunity to individually ratify each director. It is no surprise therefore that in 2023, the three lowest levels of approval on discharge items in the DAX40 all came from companies where director ratification was presented as a slate (MTU Aero Engines, Merck, BASF).

Company	Director Ratification Support Level
MTU Aero Engines AG	73.86%
Merck KGaA	78.70%
BASF SE	80.74%

Financial and Organizational

Support for financial items remained consistent at an average of 98.57%, down 0.16%, with no great waves made across auditor discharge levels following the close of legal proceedings on the Wirecard affair.

Though organizational items are typically impossible to read across and therefore defy comparison, the significant decrease this year to 94.97% down from 98.63% is largely driven by the aforementioned introduction of virtual meeting authority votes.

Conclusion

Looking ahead to 2024, there are no anticipated major structural or legislative changes on the horizon in Germany. Consequently, we anticipate a year of consolidation in the market ahead of the introduction of new EU mandated gender quotas in 2026. Given this is another area where many German issuers lag behind their French and British counterparts, this should be a point of significant focus.

The other challenge will be managing activism in a market where traditionally agreements on significant corporate change have happened behind closed doors. The impact of the Bluebell campaign at Bayer and of PrimeStone at Brenntag cannot be understated as it is unlikely that either challenge will end with the 2023 AGMs. These votes also set the stage for other actors to make such challenges in 2024.

With no end to the conflict in Ukraine in sight, and no great wave of climate related resolutions across the continent it appears that markets and shareholders have placed a renewed focus on business and inflation management ahead of moves towards greater climate accountability in the short term. The symbiotic relationship between workforce and management in terms of the prevalence of employee representatives on German Supervisory Boards places significant pressure on issuers to ensure a good employee experience, rather than focus on existential challenges like climate, especially at a time when individuals are feeling inflationary pressure in their pocket. Nevertheless, for investors, understanding companies' long term climate, governance and sustainability risk management will be a matter of ever greater focus as geopolitical events place greater stress on resource and supply chains. Ultimately though, with the German economy on the brink of a recession, Deutschland AG must ensure that their companies are profitable and aligned with their shareholders.

MARKET EXPERT INTERVIEW
DEBORAH JANSSENS

PARTNER, FRESHFIELDS BRUCKHAUS DERINGER LLP

Listed companies in Belgium regularly have significant long term strategic family holders in their capital structure and represented at board level. What unique challenges/ benefits does this bring?

Compared to other markets such as the United States of America or the United Kingdom, many of the large Belgium companies are indeed characterized by the presence of a large shareholder (also known as "reference shareholder") in their capital structure. Generally, these reference shareholders have representatives (in some cases a majority) appointed at board level, which is not always the case in other jurisdictions.

The benefits of having reference shareholders are multiple. Reference shareholder voting power can guarantee or increase the likelihood that important and strategic decisions will be approved smoothly. In addition, Belgium generally allows directors to report to the shareholder that has nominated them; this enables to prepare decision making. When key choices need to be made or decisions to be taken, shareholders can be prepared and not taken by surprise.

The presence of a reference shareholder also minimises the power of potential activist shareholders, as it becomes more difficult for activists to get sufficient majority to approve items. Activists can place items on the agenda (3% ownership minimum needed), but the presence of reference shareholders makes it more difficult to pass such items.

Finally, numerous studies have shown that reference shareholders have a longer-term horizon, especially family shareholders that have the goal to perpetuate wealth over generations. In family companies the board generally includes selected individuals representing the family. Similarly to what applies to "Stichting" or foundation structures, a long-term vision facilitates R&D and the pursuit of other long-term investments or goals. During the financial crisis, for instance, Belgium saw the important role played by reference shareholders. This is the reason that the Belgian legislator has introduced preferred shares (shares with double voting rights) so as to reward and encourage long-term reference shareholders.

Due to their voting powers, reference shareholders are also able to encourage directors to pursue the long-term interest of the company in their strategic and management decisions (through defining remuneration criteria based on long-term performance and their power to revoke directors).

Nonetheless, reference shareholding also brings challenges. Protecting minority shareholders against the risk of private transfer of benefits and misallocation or even abuse of corporate assets is important. There is a need to track and check sweetheart deals. In this respect, Belgian law has put elaborate protections in place: transaction between reference shareholders and the company are as a rule subject to an opinion from a committee of independent directors' and the directors representing reference shareholders are often not allowed to the vote on the transaction, etc…

Another disadvantage is that the presence of reference shareholders also potentially deters public takeover offers.

What related – party rules and checks and balances are in place as a result?

The legislator has given this topic a lot of thought even before SRD II was in place. The presence of independent directors is recommended under the Belgian corporate governance code and required for the purpose of applying the related-party transactions and composing the audit and remuneration committees. New legislation is also being considered to impose the presence of 3 independent directors (non-reference shareholder representatives) on the Board although statistics show that many companies already have more.

These independent directors play a great role in Belgium's related-party transaction regime, which pre-exists SRDII Under this regime, decisions in respect of transactions, as well as transactions, between a listed company (and its subsidiaries) and a related party in the meaning of IAS 24 are as a rule subject to a non-binding advice of a committee of three independent directors, which can freely decide whether or not it wishes to be assisted by an expert. The rules also apply where the board of directors decides on certain proposals, including those of mergers and contributions in kind, that must be decided upon by the shareholders' meeting. The auditor is informed of the procedure and reviews the accounting and financial data. In addition, the company must disclose any decision or transaction falling within the scope at the latest when the decision is taken or the transaction is entered into, with minimum content requirements.

Of course, in addition, Belgian law has a number of other minority protections such as the derivative claim (which requires a minimum holding of (i) 1 % of the voting rights attached to all existing securities or at least EUR 1,250,000 – for a SA/NV or (ii) a minimum holding of 10% of the shares for a SRL /BV).

It is also to be noted that the Belgian corporate governance code, the board should function as a collegial body and no individual or group of board members should dominate the board's decision-making.

In conclusion, there are strong protection mechanisms in place to protect and aid minority shareholders all while not discouraging long-term relationships especially with reference shareholders.

Could you tell us a little bit more about the Shareholder Rights Directive II (SRD II), how it is being applied in Belgium and the challenges/benefits associated?

SRD II has amended the existing related party regime in Belgium by expanding its scope to all related parties within the meaning of IAS 24. Following such change, there no longer is a discrepancy between the scope of the related party regime and disclosure in financial statements (where such discrepancy used to create confusion). Nonetheless the resulting scope is quite large and sometimes companies apply the regime where it probably was not intended, not to risk any sanctions.

Furthermore, the SRD II also impacts disclosure on remuneration with the say-on-pay principle introduced (which introduced in Belgian a binding ex ante vote on remuneration policy in addition to the existing ex post consultative vote on the remuneration report), which benefits minority shareholders.

Other rules benefit issuers. First, additional disclosure requirements apply to asset managers and proxy advisors - e.g., asset managers must publish an engagement policy and how they exercise their voting rights; and arrangements between institutional investors and asset managers must be disclosed (this helps issuers to understand future voting behaviours). Finally, SRD II has given the right to issuers to gain access to more information on their shareholder base, which is key during situations such as takeovers or to prepare for votes on sensitive topics.

SRD II can now give issuers access to a wealth of granular detail on their retail shareholder base. How are issuers adapting to this new resource and what safeguards need to be put in place to safeguard individual rights? for 2023?

Under SRD II, issuers have the right to identify their shareholders. In practice, issuers can request information on the identity of legal or natural persons from intermediaries inside and outside of the EU. The information received can only be used for purpose of engagement (not for marketing or commercial activities). Furthermore, shareholders have no obligation to engage. The information given is only regarding shareholders, not bond owners. For beneficial owners, the regulation is at the moment not clear or EU harmonised on whether the disclosure is regarding actual or legal holders.

The identification of shareholders is widely used by issuers and the product is improving. Issuers are using the additional information on shareholders for three reasons:

-For periodical communication, to share information tailored to their shareholder base.

-During key transactions, to make sure every shareholder is aware and has access to all necessary information regarding the operation.

-To identify short term funds or activists, if any, to be protected and proactive if necessary.

"There are different types of activism (hedge fund, environmental, retail, etc...) therefore there is not one singular approach. Actions and reactions must be tailored to the situation."

What general advice would you provide your corporate clients on long term preparedness in the face of activism and shareholder engagement? Are there any specific considerations linked to the Belgian market?

There are different types of activism (hedge fund, environmental, retail, etc…) therefore there is not one singular approach. Actions and reactions must be tailored to the situation. Nonetheless there are several general recommendations:

-Annually conduct an activist risk assessment exercise, testing and updating the long-term business plan.

-Monitor the company's shareholder base continuously, including examining shareholder threshold declarations (necessary when passing the 5% threshold in Belgium, or a threshold of 1 %, 2 %, 3 % and/or 4 %, if this is foreseen in the articles of association of the issuer).

-Raise awareness within the company, explaining what an activist campaign is and what an activist campaign would look like for the company and familiarising stakeholders to the jargon and methods used by activists (in particular, engage with the board and management). It is important to be aware of the company's structure and capabilities to respond to such a situation and prepare accordingly.

-Prepare a plan for reactions and escalations and assign responsibilities. Not every letter received should be sent straight to the Chairman. Have materials on board of director responsibilities, contact lists (employees, regulators, journalists), reading notes, etc… - all ready and in one place. Finally, consider at the right time, whether it makes sense to engage with the activist and, as the case may be, who will engage.

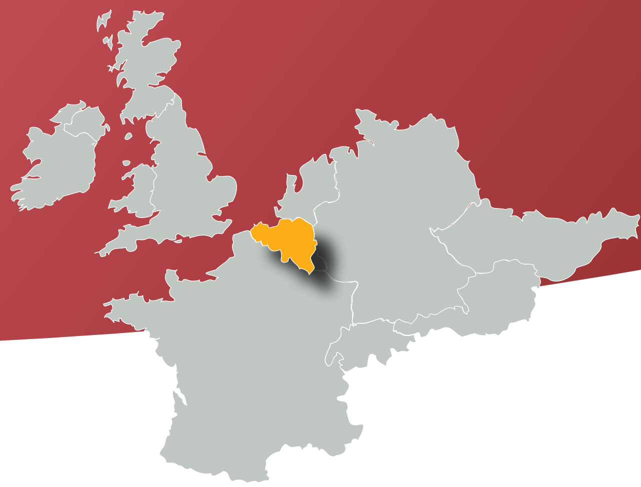
Deborah is a corporate partner with over 20 years of experience advising Belgian and international corporate listed and non-listed clients, private equity funds and financial institutions.

She specialises in cross-border and domestic M&A, finance and capital markets transactions, and provides the full spectrum of corporate and financial law advice, including market abuse, corporate governance and company law.

She works across a variety of sectors, including regulated industries, such as telecom, energy, transportation, financial services and healthcare. She is global co-head of Freshfields' Industrials sector group, which is responsible for clients in the chemicals, manufacturing, packaging, automotive, defense and other industries. In addition, as a member of the Tech, Media and Telecom (TMT) sector group at Freshfields, she also handles projects requiring tech expertise in a digital transformation context for TMT and industrial clients.

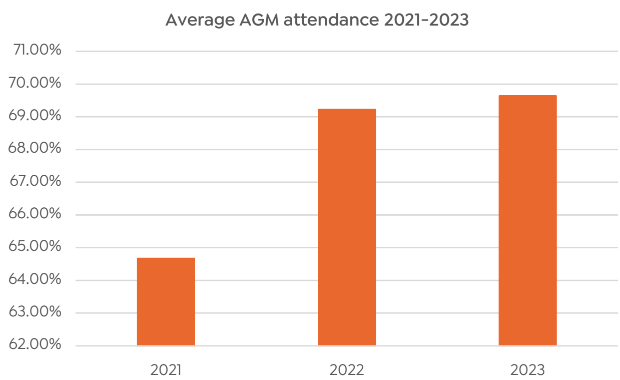
Deborah is fluent in Dutch, French, English and German.

A SPOTLIGHT ON: BELGIUM



AGM Participation

Average AGM participation at BEL20 companies has increased yet again to 69.64% (+0.42%), demonstrating that last year's momentous leap (+4.55% vs 2021) was not a one-off anomaly, but that the higher participation rates appear here to stay. Comparisons with some of Belgium's neighbours such as France (76.51%), the United Kingdom (75.39%) and Germany (72.14%) also suggest the ceiling is not yet hit. Issuers reliant on reference shareholders to approve practices not completely aligned with minority shareholder expectations, such as Belgian-specific "poison-pills", should question whether approval will continue to be secured going forward in a context of rising AGM participation rates.

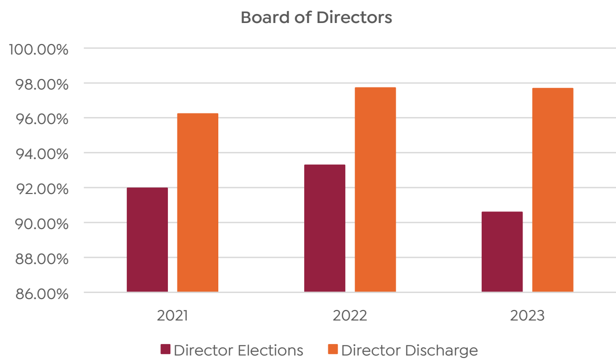


Board of directors

Average approval rates on director elections in the Belgian market have taken a hit this year dropping (-2.69%) to 90.59%. Domestic specificities in the composition of the shareholder base of many large Belgian companies, with the presence of large reference shareholders, heighten certain board composition themes in this market, in particular independence. This is explored in more depth in our Market Expert Interview with Deborah Janssens, included within our report.

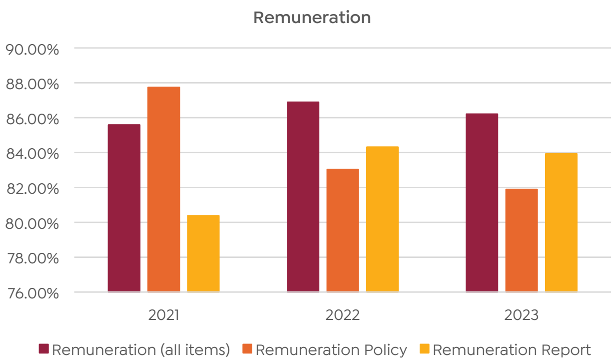
Whilst all director elections were approved, 18 proposals failed to pass the 80% approval rate bar. These proposals were spread across 5 companies (vs 7 last year), i.e., 25% of BEL20 constituents so improvement occurred. Examples include KBC Group SA/NV that proposed 6 directors considered non-independent by ISS and thus receiving negative recommendations given an overall board independence level of 19 percent according to the proxy advisor. Approval rates ranged between 57.8% and 78% for these items, securing approval thanks to a core shareholder syndicate consisting primarily of Cera, KBC Ancora and MRBB acting in concert and representing in aggregate 40.08 percent of the company's voting rights as of December 31, 2022.

Illustrating another important area of investor scrutiny, Barco's Chairman Frank Donck only received 62.25% shareholder support due to overboarding considerations. Mr. Donck held a total of 5 non-executive director mandates, two of which were board chairmanships. Interestingly, Barco also saw the best director election results in the appointment of Lord James Sassoon which received 100% approval (only 200 votes against out of over 59 million expressed).



Remuneration

Average approval rates for remuneration related proposals when accounting for all sub-categories have slightly dropped this year (-0.68%) to 86.21%. When isolating remuneration report votes, we see a similar trend, with approvals dropping (-0.40%) to 83.92%. Remuneration policy votes fell more significantly (-1.14%) to 81.89%. It is important to note nonetheless that there were only two such proposals presented this year (vs 9-10 annually between 2020-2022).



21 remuneration report type proposals were presented across the BEL20 this year and whilst the average approval rate remains somewhat stable, it continues to lag behind that of some of Belgium's neighbours such as the United Kingdom (FTSE100 average: 91.27%) or France (SBF120 average: 88.25%). Whilst some issuers such as Sofina are getting it very right (98.28% approval) others are getting it very wrong and even in one case getting it rejected such as at argenx (44.14% approval). Issues at argenx revolved around the lack of disclosure for the annual bonus (in relation to the relative weighting of the different performance criteria, specific targets, clearly defined achievement rates and pay-outs per criteria), the granting of stock options to non-executive directors (which is generally seen by non-domestic investors as a problematic practice that can endanger independence), the lack of performance criteria for the long term incentive plan and the overall quantum of the pay package. The second most contested remuneration report was at Barco (61.94%) and debates centred around the appropriateness of one-off retention bonuses. Whilst retaining top talent remains essential at any company, some investors deemed that the policy in place should have already been structured to ensure this and the fact bonuses had not been paid out in the recent past was not seen as a satisfactory argument as pay should be aligned with performance. Other problematic practices that featured throughout the market this year include but are not limited to high dilution from equity plans, excessive severance payments, excessive signing-on bonuses, short vesting periods for mong term incentive plans, pay increases without an accompanying rationale and limited response to historic shareholder dissent. In relation to this topic, Belgium SA/NV's approach to remuneration is a problematic outlier in relation to its neighbouring peers. This tendency becomes more problematic if one were to consider the high percentage of "controlled" companies in the BEL20. How supportive are their minority investors on remuneration?

In terms of remuneration policy votes, as previously mentioned the sample was exceptionally small this year. The remuneration policy vote at Elia Group received 78.34% support and the policy at Proximus received 85.43% approval. The leading global proxy advisor ISS had concerns at Elia Group due to overall poor policy design, including structures that potentially would allow uncapped one-off cash awards, an apparent lack of disclosure around the metrics/weights/targets for the bonus and LTIP, the absence of any clear ceiling on variable pay, a surprising lack of responsiveness to shareholder dissent from 2022 and too much flexibility in the derogation clause. Proximus also received a negative recommendation from ISS, on the grounds of the possibility of exceptional one-off payments without clear safeguards, insufficient disclosure/justification relation to the integration of ESG metrics in variable pay, and generally suboptimal disclosure around performance KPIs.

Capital

Approval rates for capital increases have fallen off a cliff edge this year dropping by almost 5% (-4.91%) to 90.81% in an index with so many controlled companies. It is worth noting that this is still a relatively healthy score, certainly when compared to areas such as remuneration. Seven proposals presented by Melexis (2), and D'Ieteren Group (5) dragged down average approval rates as they did not respect buyback limits (exceeding 10% best practice limit) and/or infringed on board neutrality during a takeover period as they could be used defensively and deny minority shareholders the opportunity to decide for themselves on an offer premium. Minority shareholders are generally very opinionated on such authorizations, and they rarely receive approval without the support of large reference shareholders.

MARKET EXPERT INTERVIEW
MATTEO PASSERO

INVESTMENT STEWARDSHIP ANALYST – DIRECTOR, UBS

What advice would you give a Swiss listed company trying to secure and/or maximise shareholder support for its annual general meeting? What different processes should be put in place and when?

I would argue that following global best practice on governance is key. European best practice is a great starting point and can be used as reference on most topics. It's the classic approach, to engage with shareholders and explain why you're doing something different and how it is relevant for your company. For example, if the compensation structure isn't classic, explain why you believe that a different structure works best for the company. Often companies say, "our company is different" and "our management is exceptional". Unfortunately, when everyone is special the word loses part of its value. Furthermore, just hearing from companies that they are exceptional is not meaningful for investors, what is needed is something more specific. I understand the point of view of companies, but I believe when you have an overview of a lot of issuers and hear the same things all the time, it is easy to conclude they can't all be the exception.

This was the inaugural year Swiss issuers were putting virtual meeting items to shareholders. What do you make of that change from a regulatory led item to an issuer led authority?

In Switzerland, we haven't really seen the impact of virtual meetings. Many companies have just put out the authority to hold virtual meetings, but I don't think they plan to actually make the change. Whereas in Germany, the impact has been much stronger. I think for investors it can be difficult to navigate a universe where all companies switch to virtual meetings. For example, there were a few specific days that had a very high concentration of AGMs in Germany because there was no need to book a venue, that's a Japanese style situation that I believe we need to avoid. I don't believe in Switzerland there is tendency towards that.

I trust Swiss companies to be responsible, guarantee shareholder rights and guarantee an opportunity to every investor, including retail shareholders, to have face to face contact with management and with the board. Coming out of COVID, we realized that face to face contact is really important, therefore we believe that shareholders should have that opportunity. As UBS, a large institutional investor especially in Switzerland, it's quite easy to get access to the Board of Directors or to management, but I think there are smaller investors that need the opportunity of the AGM for that contact. When you talk about shareholder rights, you should be talking about the rights of all shareholders, which we believe should be safeguarded.

Hybrid meetings would be the best of both worlds, but I still see the value of having a physical meeting and I don't think that's going to change in Switzerland.

Do you think there are concerns around hybrid meetings in terms of unequal experience for investors in the room compared to those logging in online?

I fully recognize that the virtual option allows a lot more shareholders to actually participate in the meeting. For example, this year, we worked on a virtual only AGM in Germany where there were issues with the quality of the communication nonetheless, I was able to log in for the AGM, that was particularly relevant, which wouldn't have been possible if the meeting had been in person only. So, having a virtual option is a value added. Furthermore, you probably need to create a legislative framework that allows for the AGM to be valid, even if there are some technical difficulties, as long as the company has made reasonable adjustments for the meeting to take place.

I've been dealing with the Swiss for a while now and I think they're very proud of their pragmatism, and I think that spirit can be applied to hybrid meetings as well. It's a cultural issue, and in the Swiss market, in my experience, people find ways to get things done, which is very positive. I wouldn't be surprised if they found a way to hold hybrid meetings on a regular basis and everything should work like clockwork without being scared of legal consequences.

The introduction of capital bands for issuers marks a shift from the traditional issuances/buybacks model of previous years. What do you make of that change and do you think it really is a material change or does it simply change the structure of something that would already be present in terms of buybacks and issuances?

We honestly don't think this is a major change in the market. We saw a lot of companies putting these on the agenda and the key issue here was dilution to shareholders. As we've been approving resolutions to issue shares up to a certain percentage for a long time, we basically just applied exactly the same policy. If one of the resolutions for the introduction of capital bands was within our thresholds for dilution, then we supported it. Our belief was that the key issue was dilution to shareholders which we had safeguards in place to limit so we simply applied them. Furthermore, we need to trust the companies that we invest in. If a company routinely uses dilutive issues without prior

“I think there will be a race to the top at some point, in terms of companies trying to provide the best disclosure possible. At that point, investors will be able to say “look, your competitor discloses more info on this, so you should too.”

approval, that would probably not be a company worth investing in. That’s true for any investor, if you invest in a company, you don’t want to be diluted on a routine basis.

So ultimately issuances and buybacks are opposite sides of the same coin in terms of being able to return equity to investors versus being able to raise capital to improve the business to return value in different ways?

Yes, exactly. These items have existed for a long time and as investors we have dealt with them routinely. It’s just a change in the legal form, whereas the substance remains the same.

Have you observed any interesting trends in the Swiss annual general meeting season this year and what do you expect for 2024?

It’s another year of moving closer towards international standards. Throughout the year, I’ve heard fewer companies using as an argument that they only comply with the Swiss Code of Corporate Governance. Companies are getting the message that they should strive towards international best practice, and I believe most want to. Furthermore, I think companies are giving more value to investor engagement, which is definitely positive.

I don’t believe there are any other specific issues as it’s not been an eventful year in the Swiss market specifically, but next year will be a big one because of the vote on non-financial reporting.

On the new mandatory non-financial reporting, how do you believe that will impact issuers and how do you think they will rise to the challenge?

We are currently working on determining the effects, as the change will impact a lot of companies. I can already say that I believe it will be seen by some issuers as a say-on-climate. As investors, we need to determine exactly which topics are going to be key for voting.

I think having the information disclosed in a way that can be scrutinized is very useful for investment decisions and voting. Overall, it will improve the quality of disclosure. Taking for example when compensation votes were introduced, there were different levels of disclosure in different markets. Moving towards a standardization makes it a lot easier for investors when analysing a lot of information. The overall outcome, two or three years down the line, will be better, with more standardized disclosure. So, it will probably be a learning process for us as investors as well as for issuers. Furthermore, I think there will be a race to the top at some point, in terms of companies trying to provide the best disclosure possible. At that point, investors will be able to say “look, your competitor discloses more info on this, so you should too”. Hopefully it will be a good example for the rest of Europe as well.

Talking about standardization in financial reporting, in non-financial metrics, especially in terms of climate, there are many varying different standards and benchmarks that people look at. Do you think there will be a movement towards a more regulatory driven formalized standard as these items become more commonplace to create greater alignment and make them more comparable?

There might be a common regulation. Right now, there are a few jurisdictions that mandate disclosure in line with TCFD and when ISSB comes out in its full length, maybe there will be convergence towards it. At this stage, we don’t know. From an investor perspective, having a standard of disclosure would be ideal. Which should be the same for companies in order not to have to answer five different investors asking for disclose in accordance with seven different frameworks. Hopefully we are moving towards a bit more standardization in that respect too.

You mentioned you’ll have to determine which topics will be key for voting. Do you think that this will be more sector specific?

I think that it will probably need to be sector specific. At the end of the day, there are some issues that clearly correspond to certain sectors. Lacking disclosure on a relevant topic makes it a problem for investors to make an informed decision on their investment. Therefore, clearly some degree of sector specificity should be there. What is important for us is to make sure that the factors and the topics that are relevant for the sector and the company are covered.

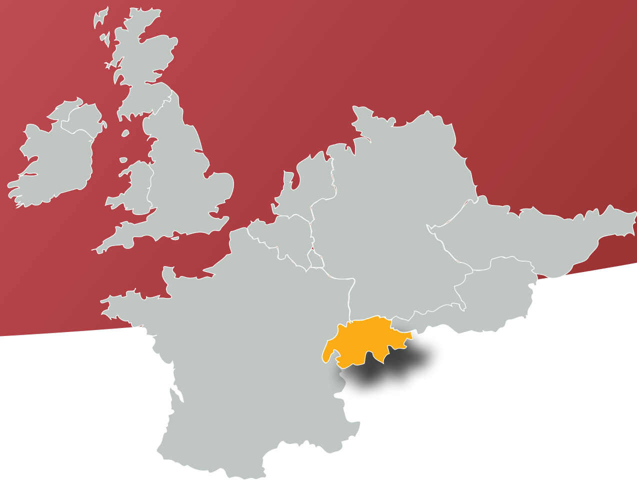
Looking forward to 2024, do you think the new Swiss stewardship code will have a big impact?

I would welcome it for two reasons. Personally, because I was part of the working group that drafted the Swiss Stewardship Code; and from the perspective of an investor working on the code, the aim was to help codify best practice that worked for Switzerland, helping Swiss investors embrace stewardship as a tool. I believe the guidelines of the Code would be helping investment performance as well as enhancing information for clients. Furthermore, there may be more pressure from Swiss based investors to engage with companies and to vote, following a code of best practice that is designed to fit their needs; in the past, I’ve often heard from Swiss companies that governance best practice comes from abroad and doesn’t apply to Switzerland very well, which to some degree I agree with. Sometimes investors, particularly smaller institutions, may perceive the same thing, that stewardship practice comes from the UK, and it becomes a bit difficult to apply on the Swiss market. With the Swiss Stewardship Code, our objective was to create something that was designed for the needs of Swiss investors. So hopefully now they will be more comfortable to follow those guidelines and start being a bit more active on the stewardship side and on active ownership more generally. We’ll try to set the example.

Steps such as the Swiss Stewardship Code are incremental although I do not believe they are revolutionary. That fits well with Switzerland, which is evolving a little bit over each year and generally in the right direction. I've been covering Switzerland for 3 years, and I've already seen notable improvements in terms of the structures of compensation, and in other areas like independence of directors, composition of the board, and diversity. I believe companies want to move in the right direction and potentially investors are pushing for the same goal. With the stewardship code, maybe investors will push a bit more. Overall, the market wants to move towards better governance and better E & S practices. Switzerland has established itself as a centre for responsible governance and stewardship, on par with European countries and even better in some respects, and it has nothing to envy to other European markets, not even the UK.

Matteo is an Investment Stewardship Analyst at UBS Asset Management, covering continental European markets, with a focus on Switzerland. He joined UBS in 2020 after three years at ISS, the leading proxy advisor. His main focus at UBS is ESG engagement and proxy voting, in close collaboration with investment teams.

A SPOTLIGHT ON: SWITZERLAND



Introduction

Following the introduction of gender quotas in Switzerland in 2022, there has been a significant upswing in female representation on Swiss Boards thus highlighting what was seen in France from 2012 to 2017, the positive impact of prescriptive measures in ensuring diversity. The average proportion of female directors increased from 26.9% in 2021 to 33% in 2022, outstripping the regulatory goal of 30%. This change saw 69% of Swiss Boards at companies in our two focus indices meeting the gender representation quota in time for the 2023 AGM season, evidenced by the increased support for discharge items in 2023. However, female representation on executive boards remains stubbornly lodged at 17%, despite the improvement in the non-executive space.

In voting terms, the two main developments in the 2023 season were the introduction of the capital bands authority to replace, or in some cases run alongside capital authorities and buybacks, and the admission to the agenda of virtual meeting authority votes, both of which we have covered in detail below.

Outside of these key points, 2023 was predominantly marked by the dramatic collapse of Credit Suisse which wiped out share and bond holders and led to its emergency takeover by its chief rival, UBS. This extraordinary event sent shockwaves through the market and brought an end to the story of one of Switzerland's best known financial institutions, in operation since 1856. Credit Suisse had been plagued by a series of scandals, management changes and significant losses in recent years, and just prior to the takeover at the issuer's AGM, investors made their views on the collapse abundantly clear with executive compensation being rejected by shareholders, horrified at the bank's rapid decline. Of note, the remuneration report still received 48.43% support from investors despite the bank's meltdown. While not binding, in the name of Switzerland's corporate governance reputation, one would hope that the Credit Suisse board would honor its shareholders and bondholders and not pay those who caused so much harm to security holders and stakeholders.

AGM Attendance

Quorum across the SMI and SMIM decreased by 1.57% to 65.23%, making Switzerland the only market of those

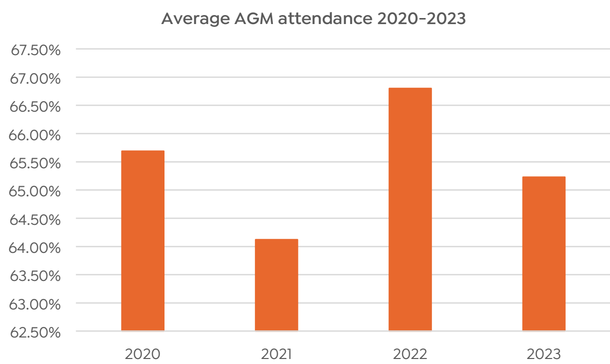
examined to have seen a decrease in average quorum in 2023. Nevertheless, quorums are broadly in line with recent years, with attendance sashaying between 64% and 66% with 2022's 66.80% average attendance appearing to be the anomaly. The gap between Swiss attendance and other European markets may be driven in part by a higher presence of domestic private wealth management in most issuers' registers. It remains to be seen whether the recently published Swiss Stewardship Code for investors will impact the participation rate of such entities in the years to come.

The code outlines nine principles for effective stewardship, including governance, voting, engagement and escalation. It also sets out a definition of stewardship and the role of asset owners, asset managers and service providers in implementing stewardship activities, emphasising the importance of effective coordination and ongoing dialogue between different parties in the stewardship processes.

The SMIM continues to outperform the SMI in terms of attendance rate with the SMIM average over 4% higher at 66.93% than the SMI's 62.89%.

The range in quorum across both the SMI and SMIM was 91.70% (EMS Chemie) to 35.31% (ams-OSRAM).

SMI + SMIM



Capital

2023 saw the introduction of the capital bands authority on the ballot. A consequence of new legislation, these authorities bundle together capital issuances and buybacks allowing the board of directors to increase or decrease share capital with the length of the authority being no more than 5 years. As a reminder, international investors tend to be weary of possible

dilutive events and have clear views of what best practice should be concerning capital increase authorisations with and without pre-emptive rights. The regulatory upper and lower limits of this authority are 50% of the current share capital, though in practice, investors continued to apply their existing expectations around maximum issuance and buyback thresholds to these new authorities.

In total, 15 issuers asked for capital band authorities of which 13 passed with over 90% support. Zurich Insurance Group AG and SIG Combibloc achieved just below 90% approval with shareholders citing the excessive potential volume of issuances requested (50%) without sufficient justification and the duration of the authority respectively. Nevertheless, across the capital category the average approval rate increased to 95.5% in 2023 up from 93.02% in2022 indicating the uncontroversial nature of this new structure.

Board of Directors

Continuing its year-on-year increase since 2020 the Board of Directors category, including discharge and election items, rose to 95.08% average support per item, up 0.76% on 2022, 1.19% on 2021, and closing in on the overall support level of 95.17% in 2020. It is worth noting that Credit Suisse is excluded from these figures following its collapse and takeover prior to the time of writing. Were this included, their six director elections would comfortably outstrip the vote on the election of Didier Lamuche at Adecco (66.56% pass rate) as the least supported elections across both SMI and SMIM.

Specifically on the question of Director Discharge, support levels have improved markedly having increased by 2.4% from 94.96% in 2022 to 97.36% in 2023. This is doubtless driven in part by the improvements made on gender equality at Board level in Switzerland, following the implementation in 2022 of the Swiss Code expectation of minimum 30% representation of the less prevalent gender at Board level.

Virtual Meetings

Another new voteable item to the market, across the SMI and SMIM, virtual AGM proposals were received similarly to its neighbour Germany with an average approval of 85.83%, an unspectacular result, but reasonably resilient for a 'pioneer' item in its first year. In contrast to Germany, which had a narrower range of pass rates on these items, there were some significant outliers in Switzerland. Seven of the 27 issuers proposing virtual meeting authorities scored below 80% support and the lowest, Swiss Prime

Company	Index	Support (excl ABS)
Swiss Prime Site AG	SMIM	59.12%
ams-OSRAM AG	SMIM	69.57%
Georg Fischer	SMIM	71.02%
Clariant Ltd	SMIM	73.53%
ABB Ltd	SMI	77.77%
PSP Swiss Property	SMIM	77.78%
UBS Group AG	SMI	79.71%

Unlike Germany, where a significant number of major issuers held virtual meetings this year, all but a handful of Swiss AGMs reverted back to the in-person format which is seen as the preferable, more traditional approach which resonates more with the typical Swiss shareholder base. It also reflects the general perception of these authorities in the Swiss market, namely as a bulwark against possible interruptions to business as usual, like the pandemic, rather than as an everyday authority to authorise the replacement of the in-person format.

Remuneration

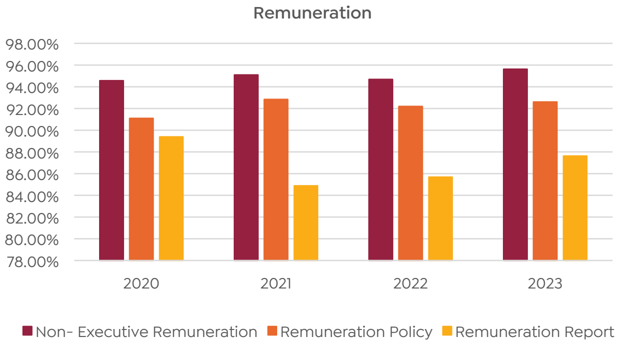
Alignment between Swiss issuers and their shareholders has continued to improve with regards to all remuneration sub-categories. The greatest positive shift has been with the remuneration report as average approval rose by 1.94% to 87.63%. This demonstrates issuers ability to meet investors expectations on providing greater transparency in reporting, and where ex-ante disclosure is impossible, giving a detailed breakdown of ex-post achievement in relation to target attainment around variable remuneration, which has resulted in increased satisfaction across the shareholder base. The lowest level of approval came from SMIM issuers with no SMI listed companies achieving less than 80% support

The topic of below median vesting for long term executive remuneration should continue to be monitored. Whilst it continues to be a common feature of remuneration systems in the Swiss market, it remains a highly controversial topic in other countries such as the United Kingdom or France. A particular sensitivity to increases in quantum of executive remuneration

continues to be prevalent in the post pandemic era, with most of Switzerland's European neighbours feeling the effects of supply chain pressures and inflation driven by the war in Ukraine, albeit the Swiss economy has remained resilient to inflationary pressures. Nevertheless. This has undeniably been a key topic of the 2023 AGM season with many investors based in markets where these effects have been felt more keenly.

Approval for uncontroversial non-executive remuneration related items has increased by 0.96% across the SMI and SMIM to 95.62%, a slight improvement across the period from 2020 to 2023.

Acceptance of the remuneration policy continues to hover above 92% with the 2023 approval rate being 92.61%, close to the high of 92.84% in 2021. Four issuers, Swatch Group, Temenos, DocMorris/Zur Rose and Richemont fell below the



Say on Climate

Switzerland remains third behind France (ten) and the UK (eight) in terms of say on climate votes with just two issuers, Holcim, and Credit Suisse, putting forward votes on say-on-climate resolutions to their shareholders. Holcim's Climate Report, in its second year, received 98.63% support up from 94.97% in 2022, whilst Credit Suisse's climate strategy attained 77.6% support, where the shareholder resolution proposed a year earlier garnered 18.52% support from investors with a further 4.27% abstaining. The low volumes of these resolutions runs counter to pre covid expectations of ever greater climate focus. Indeed, Credit Suisse's dramatic and sudden collapse this year despite their being one of the few proponents of such a vote is a poignant reminder that, irrespective of how well you tell your ESG story, share price and a strong balance sheet remain the core concerns for the majority of shareholders, with burnished ESG credentials offering little protection in the case of a significant short fall in underlying fundamentals. Ultimately, the true test of alignment with shareholders remains value creation over time.

Interestingly in 2023 UBS elected not to put another climate roadmap vote to investors as it had in 2022, but instead proposed a vote on its sustainability report, foreshadowing the mandatory non-binding sustainability report voting due to come in to force in Switzerland from 2024. It achieved 84.53% support for the proposal.

Non-Financial Reporting

Despite nominally major alterations in the Swiss governance landscape with virtual meeting and capital band items being introduced, 2023 marked more of a consolidation year than one of revolutionary change. 2024 though promises to be a year of radical shift with the introduction of a new non-binding vote on non-financial reporting covering everything from human and workers' rights to climate risk integration and anti-corruption. This new reporting framework will present unique and different challenges to issuers and investors alike as each wrestle with how best to emphasise topics of significant materiality and asses the various subjects relative importance and coverage in reporting for issuers, and in determining vote outcomes for investors. It is certainly highly likely that there will be some growing pains as issuers get to grips with what may be expected of them by the investment community.

As a mandatory voting item, these votes will implicitly serve as a de-facto say-on-climate resolution in 2024, presenting a huge test for large Swiss companies and potentially acting as a lightning rod for dissent on climate related issues. The publication of the Swiss Stewardship Code in October, if its guidance on integrating stewardship in the investment process is adopted by the Swiss investment community, also raises the prospect of heightened levels of participation in future, and by extension place a greater onus on issuers to increase their engagement activity in order secure shareholder support. 2024 is certainly set to be a year to watch in the Swiss market.

2023 was predominantly marked by the dramatic collapse of Credit Suisse which wiped out share and bond holders and led to its emergency takeover by its chief rival, UBS. This extraordinary event sent shockwaves through the market and brought an end to the story of one of Switzerland's best known financial institutions, in operation since 1856.

MARKET EXPERT INTERVIEW

CHRISTOPHER COUVELIER

MANAGING DIRECTOR
INVESTMENT BANKING, LAZARD

What trends have you witnessed in activism this calendar year, in terms of volume of activist campaigns, types of activists, types of campaigns, success of campaigns, etc…?

In Europe, activity-wise, we have really gone from strength to strength. 2022 saw very high campaign volumes, particularly towards the end of the year, and this momentum continued apace into Q1 of this year, which ended up being the busiest single quarter on record in Europe. Q2 also broke records for that quarter, making H1 the busiest ever 6-month stretch for new campaign activity. Q3 did see fewer new campaign launches, but I believe it is premature to deem this a slowdown. At least part of the explanation is seasonality – July and August are perennially slower months for activism in Europe. It also stands to reason that after multiple quarters of record-setting campaign launch activity, activists are now keenly focused on bringing those campaigns to a head rather than launching new ones. And finally, we know that there are numerous instances right now of activists taking stakes and entering discussions privately, which would not be captured in our public campaign data. This all points to activists being as busy as ever and the need for companies of all stripes to be prepared.

Aside from the robust pace of activity, drilling into Lazard's data yields a few interesting insights about activism in 2023. From a regional standpoint within Europe, the U.K. continues to be the most targeted jurisdiction. Interestingly, Germany has seen a significant increase this year, accounting for nearly a quarter of all 2023 activity, a threefold increase over its share in 2022. Last year, new activist campaigns in Germany were virtually non-existent, in large part due to the country's relative proximity to the Ukraine conflict and attendant energy crisis. Although these issues of course remain live, they have somewhat normalized from an investment perspective and this has enabled activists to return to Germany in full force. By contrast, activity in France this year is down (roughly 10% of European campaigns, vs. closer to 20% last year). But the fact that we have seen 2023 campaigns in Ireland, Spain, Sweden, Switzerland, Italy and The Netherlands really highlights that activists are not constrained by borders when it comes to seeking out opportunities to unlock value.

The bulk of campaigns (roughly half) continue to be aimed towards issuers with market capitalizations of under $5 billion. Campaigns in this market cap range tend not to attract the same level of media and investment community attention, and also feature a broader range of activists (including many smaller funds and first-time players). Alongside this significant amount of small-cap activity, 2023 has also seen a higher level of campaigns targeting mega-cap issuers, including many perceived national champions. Campaigns targeting issuers with market capitalizations in excess of $50 billion in Europe In 2023 have accounted for ~20% of all new campaigns, more than double the historical rate. This further underscores that no company is off limits.

In terms of campaign objectives, one might reasonably expect that, given the macro backdrop and broader M&A environment, M&A-related agendas might feature less prominently in activist demands this year. The data somewhat bucks this hypothesis – nearly two-third of all campaigns in Europe this year have had an M&A thrust, twice the level seen in 2022. Where we are seeing an impact is on the type of M&A demands being made. Campaigns to sell the whole company have been less frequent in 2023, due in large part to the rate and financing environment and the relatively muted presence of sponsors in dealmaking in 2023. The focus has instead shifted to demands for break-ups and non-core asset sales – basic issues of portfolio streamlining. Not only are these the most common M&A demands in 2023, but in absolute terms we've already seen more break-up attacks in 2023 than in 2022 and 2021 combined.

Finally, I'd note that the number of investors launching activist campaigns has never been higher. The number of activists responsible for all global campaigns in 2023 is already approaching full-year 2022 levels and is already in excess of full-year 2021 and 2020 levels. And interestingly, one-third of the activists waging campaigns this year are "first-timers" that have never launched a campaign before. These first-timers are a heterogeneous group, including new hedge funds founded by alumni of leading activists, long only investors deciding to pursue activism for the first time and more ESG oriented funds. When these first timers are added to the already extensive list of leading activists, one sees the very broad and diverse mix of activists at work in Europe. Activism has gone from being a discrete asset class to being a behaviour that virtually any investor can deploy.

Can you tell us more about this global "swarming" phenomenon you touch upon in the Lazard Capital Markets Advisory team's "Early Look at 2023 Trends"? Is it the case that the pool of viable targets is limited or are other considerations driving this concentration on the same companies.

The swarming phenomenon refers to multiple activists concurrently or in quick succession going after the same target. This does not necessarily mean the activists are acting as a group or even that they are asking for the same things. As you can imagine, it is extremely complex for companies to deal with these swarms as it is highly likely that

when a company takes an action or makes a concession, it will be disappointing one or more of the activists with diverging expectations. Each quarter this year in Europe we have seen three examples of swarming, whereas we never saw more than two examples in any quarter last year. We've studied closely why this might be happening, and while there doesn't appear to be a single silver-bullet explanation, I think there are a few potential explanations:

For very large cap issuers, which have seen some of the warming, it's simply maths. It is considerably more expensive for an activist to own a big ownership stake in a mega-cap issuer, so multiple activists taking smaller stakes can add up to more influence.

For all companies, the sheer magnitude and attractiveness of the possible upside can make it appealing to multiple activists, and activist "followers" are comfortable joining a situation without leading it in order to enjoy the potential value uplift.

It could also be that there is a perceived scarcity of new targets for activism right now. After multiple quarters of record-breaking new activity in Europe, perhaps there is a sense that obvious targets have been pursued and there are fewer remaining opportunities that present compelling prospects. I place slightly less stock in this explanation because each quarter sees the universe of winners and losers in the market reshuffled, presenting plenty of new ideas and themes for activists to pursue.

Do you anticipate any significant shifts in the activism space in the years ahead?

Significant shifts probably overstates it. I am not expecting any major structural reforms that will make activism more or less likely. It is an established risk of being a public company and even governments and regulators in Europe that were historically protective of their local champions are showing more openness to the idea of activism. The changes I am foreseeing are more incremental. The return of private equity as a major force is going to turbocharge activism around M&A. Sponsors are sitting on enormous amounts of dry powder that will need to be deployed, and activists and sponsors are speaking to each other all the time (even during this period in which sponsors have not been overly active). I won't offer a prediction on when exactly sponsors will fully swing back into action, but when it happens, the nexus between private equity and activism means that we are going to see many more campaigns pushing for full company sales. I also believe we are going to see a continued proliferation of the universe of activists – it's going to be much easier to keep track of the activists who are not open to activism or agitation than to identify those who are. This is the complex reality that is going to await IR at public companies, and it is growing ever more important to have a bespoke strategy for engagement with investors of all types, since most of them are capable of being activists.

"With nearly two-third of all campaigns in Europe this year have had an M&A thrust, twice the level seen in 2022."

Christopher Couvelier is Managing Director and Head of the European Shareholder Advisory at Lazard. In this capacity, he advises clients in connection with preparing for and responding to shareholder activism as well as other strategic shareholder engagement, corporate governance and takeover defense matters. Based in Paris, Mr. Couvelier covers a wide spectrum of European and U.S. clients, working closely with all of Lazard's global offices.

Prior to joining Lazard in 2014, Mr. Couvelier was a corporate lawyer at Cravath, Swaine & Moore LLP in New York, where his practice focused on mergers and acquisitions, capital markets, syndicated lending, corporate governance and shareholder activism.

Mr. Couvelier earned a B.A. with Distinction in Economics from Stanford University and a J.D. from Harvard Law School.

KEY TAKEAWAYS FOR 2024

Take-aways to prepare the 2024 AGM Season:

In preparation for your 2024 AGM, D.F. King recommends that companies remember the following:

Companies who excel at securing support will be those who regularly engage with their shareholders on key board initiatives and major governance topics.

While your AGM happens on one day in 2024, your corporate governance lives across a continuum.

Proper engagement and the presentation of resolutions that receive broad-based support should be attainable by most companies and will prevent erosion of your corporate governance capital.

Demonstrating mastery of major governance and other overarching ESG themes constitutes a basic bulwark against activist risks.

Activist events are on the rise; activists are regularly successful because more of them escalate their concerns to other investors better.

Remain fully focused on operating performance and shareholder returns.

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 and Orient Capital looked at three years of vote results for each company to find 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 identifies trends within each category and compared and contrasted approval rates across categories, paying particular attention to items that received low approval rates to investigate the causes. Finally, participation rates were taken directly from issuer 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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