D.F. KING

GENERAL MEETING SEASON REVIEW

AN UNCERTAIN CLIMATE

OCTOBER 2021

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We are passionate about setting and being 'The Standard' in our fields of expertise.

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EXECUTIVE SUMMARY

Moving toward greater alignment, inclusiveness and accountability in the face of global concern about the role of the corporation in our planet's future.

Last year's AGM season underscored the accelerated transformation from a shareholder to stakeholder model due to the initial impact of the global pandemic. Whilst 2021 heralded the primacy of ESG in almost every aspect of shareholder relations with listed companies, including AGMs at an astounding pace.

When examining the key topics from the 2021 season such as; executive compensation, climate, diversity, the AGM format or shareholder activism, companies were scrutinised on their board's individual ability to become more aligned, more inclusive and more accountable to shareholders and stakeholders. The focus was not just in terms of value creation but on their impact on the environment and society, with the second year of the global pandemic clearly a catalyst of this accelerating trend.

For almost a decade, the subject of remuneration has been a vital point of discussion and debate between boards and investors. A combination of alignment between international best practice and local legislation plus greater scrutiny from investors on 2020 remuneration made it particularly challenging for issuers to receive broad-based support from investors on remuneration reports and policies. Whatever the individual performance of a given company, shareholders and stakeholders expected boards to be measured in their 2020 variable remuneration awards to executives due to the Pandemic.

In a year where proxy advisors and investors demanded that executives "share the pain", companies needed to explain with clarity and transparency why their remuneration decisions were equitable, aligned and appropriate in relation to shareholder and wider stakeholder interests now and into the future.

More surprising was the pace at which the vital subject of ESG seemed to impact how investors now analyse companies. The most obvious example of the predominance of ESG this year was the advent of Say on Climate resolutions. While the high-profile examples were led by certain active investors such as TCI, there were many examples of companies proposing them independently, such as Atos in France.

Also, ESG was addressed in more indirect ways such as quantifiable non-financial criteria in variable remuneration directly linked to a company's ESG strategy and board-level expertise on ESG topics such as climate, carbon emissions and biodiversity. Investors actively used the AGM to foster increased forms of diversity in the boardroom but also to the wider company. There is a progressive effort from investors to help companies become overall more inclusive beyond gender diversity.

Activism remains a major concern and this year went beyond classic subjects to address specific ESG ones too. Engine No. 1's successful campaign to refresh the ExxonMobil board with greater ESG competencies as it develops its future strategy underscores the willingness of traditional investors to support activist events related to the environment. The Danone case illustrates too that shareholder return remains vital and as companies develop their ESG strategy they ultimately still remained tasked with providing investors with a clear path to sustainable value creation over time.

In 2021, the companies that explained clearly how their resolutions were aligned to the evolving concerns of their investors demonstrated how they were positively contributing to addressing the pandemic and wove their ESG strategy into their AGM preparation earned wide support from their shareholders. Moving ahead, those who progress further in demonstrating how their board is working to create a more aligned, inclusive and accountable company while creating sustainable value to shareholders/stakeholders should thrive.

Best regards,

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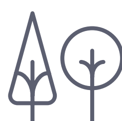
AN OVERVIEW OF THE **UK AND EUROPE**

As we reflect on the 2021 AGM season, a period of transition comes to mind – one in which the corporate agenda moved forward towards the themes of the future, such as attaining net-zero carbon emissions, whilst at the same time there was reflection on past acts and decisions, such as the handling of the second year of the global pandemic. Whilst a wide array of rich and varied themes pervaded the landscape, we have focused on the main themes:

Executive compensation must reflect the wider stakeholder experience

Executive compensation unsurprisingly remained at the forefront of 2021's heated AGM topics. The message had already been sent by investors in 2020 – the "share the gain, share the pain" mantra must now incorporate wider stakeholders. In the face of a prolonged pandemic that has caused havoc to so many, sustained dividend pay-out policy or share price recovery and gains were not sufficient to unlock typical executive pay-outs if other considerations were not met. Attention was given to reliance on state aid/grants/schemes, treatment of the workforce and other wider ESG factors.

Even issuers that seemingly met all the widely communicated preconditions sometimes ran into difficulties when attempting to increase pay packages given social acceptability concerns during the pandemic backdrop. The greatest cause for dissent across markets was the discretionary adjustment of targets or pay-outcomes (unless of course this was done to make the awards more challenging) of ongoing variable remuneration mechanisms. These were often considered to have eroded the negative impact of the pandemic too significantly and the market truly demanded perceived sacrifice from executives on their pay.



Say on Climate, shareholders demand accountability

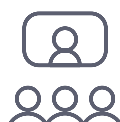
Pressure has increased on publicly-listed companies to develop credible climate action plans and allow shareholders to vote on the topic. This is under the impetus of legislative and market initiatives such as EU and US legislation or the similar Glasgow Financial Alliance for Net Zero to attain net zero carbon emissions by 2050 or Sir Chris Hohn's TCI sponsored Say on Climate campaign. 54 investor members ($14trn AUM) of the Institutional Investor Group on Climate Change, major French Investors (EUR 4.5trn) via Forum Pour L'Investissement Responsible, the Australian Council of Superannuation Investors (ACSI, $1trn), the UK Local Authority Pension Fund Forum (£300bn) and the UK Investor Forum have all come out with public statements of support towards the initiative.

As a result, 2021 has seen the emergence of a number of Say on Climate resolutions – particularly throughout Europe. These items may become a new compulsory feature of tomorrow's AGM agendas as issuer responses to repeated calls for TCFD-aligned reporting, the integration of ESG and climate metrics within executive remuneration, and the presence of objective and explicit ESG competency at board level, have not seemingly gone far enough to convince investors that appropriate action will be taken. Whether the threat of such a vote ever manifests itself directly to all issuers, it is clear that companies should henceforth be prepared to present and justify their climate strategy during engagement with their shareholder base.

Gender diversity and beyond

There has been, and will continue to be, great impetus for gender diversity improvements at all echelons of the workforce – whether through regulatory updates such as the Corporate Law Reform in Switzerland, the Second Leadership Positions Act (FüPoG II) in Germany, or through voluntary business led initiatives such as the Hampton-Alexander Review in the UK. Issuers that fail to satisfy best practice will quickly discover, in particular, the chairperson of the nomination committee, the increasingly significant steps investors and proxy advisors will undertake to signal discontent.

Conversations and engagement are increasingly turning to wider forms of diversity, including but not limited to ethnic, cultural and non-visual aspects. Issuers should expect to be increasingly challenged on these topics moving forward.



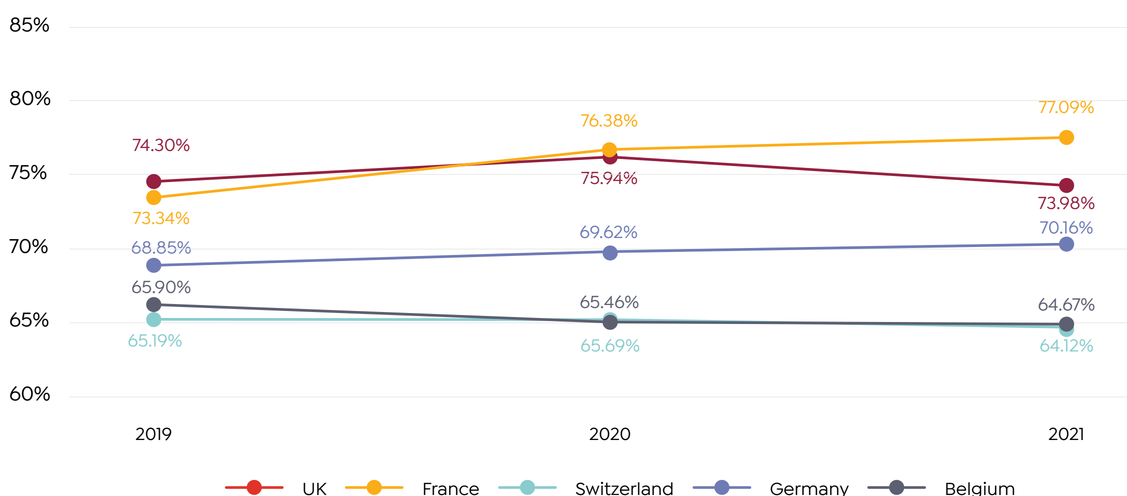
Virtual, hybrid or physical meetings?

The debate around the ideal AGM format remains as lockdowns and physical restrictions continue even 18 months after the genesis of the global pandemic. Whilst virtual and hybrid solutions may initially have been heralded as a way of unlocking additional shareholder participation, the data now casts some doubt on this theory with participation rates falling below pre-pandemic levels in the UK, Belgium and Switzerland. Other factors may of course be at play as France and Germany continue to see a growth in participation and remain far above 2019 levels.

Ultimately, the ideal AGM format should seek to seize on the upsides provided by interim technological solutions whilst not eroding what for many was a safeguarding of shareholder democracy through physical accountability. Direct interaction between shareholders and their board, and not simply through the vote itself, is of paramount importance to many traditional day of the AGM stakeholders.

Average AGM Participation 2019 - 2021

Participation rates falling below pre-pandemic levels in the UK, Belgium and Switzerland



MARKET EXPERT VIEW THE STAKEHOLDER ALLY LOREN WULFSOHN

One of the key developments this year, primarily across Europe, has been the appearance of Say On Climate resolutions, either submitted proactively by management or as a result of shareholder pressure. HSBC was an interesting example in the UK of an issuer that submitted a management proposal outlining commitments to support 2050 net-zero ambitions following engagement with ShareAction. Can you share some of your experience engaging with shareholders on this topic?

There is an increased focus on climate in the UK as in other jurisdictions. Climate is a key strategic focus for both boards and shareholders. At this year's AGM we passed our first resolution on climate change.

We were pleased that ShareAction and a number of shareholders who had originally proposed a separate shareholder resolution on climate change, agreed to withdraw this and support HSBC's resolution. This followed constructive and positive discussions based on a common goal of helping to build a net zero global economy.

In October 2020, HSBC set out its ambition to reduce emissions in its operations and supply chain to net zero by 2030, and to align the bank's financed emissions at a portfolio level to net zero by 2050 or sooner. The HSBC resolution outlined the next phase of the bank's net zero strategy, with a particular emphasis on how it will support its customers on their own transition journeys.

The resolution and supporting statement put to shareholders at the AGM set out the detail of HSBC's plan to pursue its ambition and proposed approach for constructive engagement with customers, while also helping to ensure progress on aligning our financing activities at a sector and portfolio level with the goals of the Paris Agreement.

"The climate transition journey is unique to each company and will be different across different sectors"

There was a significant amount of engagement both with ShareAction and the co-filers, as well as a broader group of shareholders and other stakeholders. Our Board was actively involved from the beginning and we engaged shareholders both individually as well as through institutional investor industry groups.

This was very helpful to achieve a quick and clear understanding of stakeholder expectations. This informed our engagement to get to a single climate resolution proposed by HSBC and supported by ShareAction and the co-filing shareholders.

The resolution passed with the support of 99.7% of voting shareholders.

A key learning in regard to engagement was the importance of building relationships with shareholders as well as other stakeholder groups through ongoing dialogue.

In your opinion, do you believe shareholders have the necessary incentives and ability to judge an issuer's climate strategy and performance?

Shareholders are increasingly being challenged in their stewardship role to hold companies to account in relation to climate strategy and performance. This is a clear incentive to act.

Another learning from the last AGM season was the increasing levels of engagement we had from institutional investors, proxy advisors and other key stakeholder on climate related matters and their growing expertise in this area. This will be key to meaningful engagement going forward.

Do you believe there is a regulatory void when it comes to climate change?

More countries are passing climate change targets into law. What is not as clear is the use of regulation to turn those targets into meaningful change both for the economy as well as for individual sectors and companies. Care is needed to ensure that sector-specific regulation is aligned with broader climate targets to facilitate their delivery. Since the climate transition journey is unique to each company and will be different across different sectors, individual companies must set out their net zero commitments and a credible strategy for their delivery. There is no single blueprint but we should expect to

see individual sectors setting out an approach for the companies in those sectors to achieve net zero.

What changes and trends do you foresee in the near future around sustainability and climate change in particular?

The focus on climate change and performance against net zero targets will continue. The attention on natural capital will grow with discussions on biodiversity likely to increase.

The pandemic has also highlighted other aspects of sustainability, with a focus on employee wellbeing as well as diversity and inclusion.

Ensuring increased diversity both at board level but also within the wider workforce continues to be a key engagement topic for many investors. Can quotas deliver diversity?

We saw an increase in engagement on diversity and broader workforce matters over the past AGM season.

There are other ways of delivering diversity without quotas – including setting aspirational targets, tracking data, and ensuring transparency and accountability.

This is currently the subject of debate with the Financial Conduct Authority, Prudential Regulation Authority and the Bank of England having recently published a joint discussion paper on how firms and regulators can accelerate the pace of meaningful change on diversity and inclusion in the financial services sector.

Are there any additional trends or themes for the 2021 AGM season?

As indicated, the key trends coming out of this AGM season included climate change, diversity and inclusion, employee wellbeing and the ongoing focus on remuneration.

Also highlighted during the pandemic is the format of the AGM and its impact on shareholder engagement. During lockdown, opportunities to engage were curtailed.

This year, we held a "hybrid" meeting – with physical attendance as well as providing the ability for shareholders to attend, vote and ask questions online. Many other companies also held hybrid meetings, however there was generally low physical attendance due to health concerns.

Subject to the public health situation, the 2022 AGM season is likely to see more active engagement with shareholders at AGMs as they return to physical meetings whilst also enabling geographically dispersed shareholders to participate online in a hybrid meeting format.

What are your expectations for the 2022 AGM season, more of the same, or have you already identified new topics that will emerge or grow in importance?

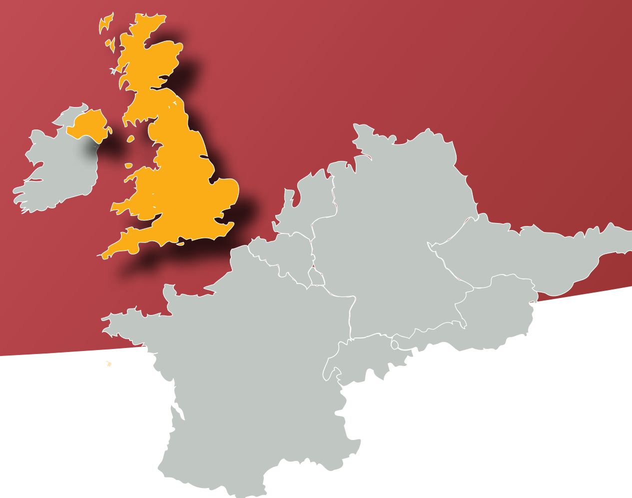
The themes are likely to remain the same with climate change receiving more attention, particularly post COP 26.

Loren Wulfsohn is currently global head of Policy and Stakeholder Engagement at HSBC. Her previous roles at HSBC include Regional Company Secretary, Europe and company secretary for HSBC Bank plc.

She has over 20 years experience in Financial Services and was formerly group secretary and head of governance at Standard Bank Group from 2002 to 2012. Loren spent some time in Australia where she consulted on governance and board practice to a range of both financial services and not-for profit entities in various jurisdictions including Australia, the US and Africa.

Loren has Bachelors degrees in Commerce and Law, a Masters in Banking & Stock Exchange Law and is an admitted attorney in South Africa.

A SPOTLIGHT ON: THE UNITED KINGDOM



Overview

With the pandemic's novelty wearing off in 2021, the UK, like most other markets, was coming closer to finding a new sense of normalcy. Much of the developments in institutional investor and proxy advisor voting policies were centered around persisting issues both regional and across markets such as gender diversity, environmental accountability and remuneration adjustments resulting from the pandemic.

The annual publication of the Hampton-Alexander review outlined the progress the FTSE 350 have reached in meeting established targets (33% of board positions by end of 2020 for 350 companies) and their report recommendations have been cited as sources behind policy changes. ISS and Glass Lewis adopted tighter policies around diversity in line with the recommendations of the Hampton-Alexander Review, where against recommendations will be made to the election of the chair of the nomination committee should the board of a FTSE 350 constituent fail to have 33% female representation. Whilst ethnic diversity has featured more prominently in discussions in shareholder engagement, there is the sense that the agenda is still at an early phase and requires further development before it becomes a serious focal point for boards.

The Investment Association (IA) continued their focus on aligning executive pension contributions and the use of post-cessation shareholding requirements, whilst ISS added wording around both subjects. Glass Lewis amended their guidelines to clarify their expectation around remuneration committee discretion and stakeholder alignment. Companies were pushed to consider the stakeholder experience more widely, with an expectation this should be visible in executive pay outcomes through adherence to the "share the gain, share the pain" mantra.

Shareholders' appetites for companies' response around environmental challenges, particularly those linked to climate change, have rekindled with a vengeance following slower progress at the heart of the pandemic disruption. An increase in the number of items that could be deemed Say on Climate grew from last year and is explored further in our Say on Climate dedicated section.

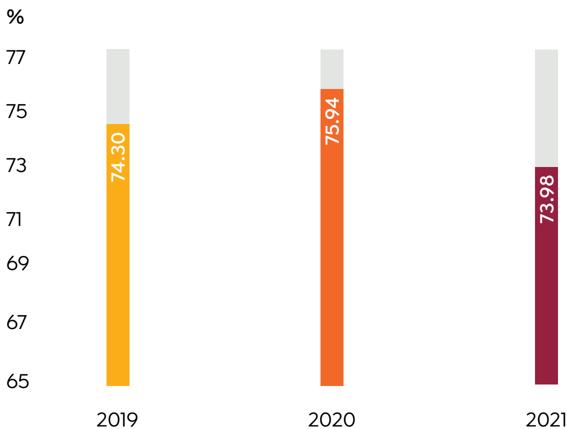
Lastly there were no ground-breaking regulatory developments in 2021. Much of the UK is still anticipating the transition to Audit, Reporting and Governance Authority ("ARGA") and what the new regime entails for the corporate governance landscape. Spurred by accounting scandals, ARGA aims to raise auditing standards in the UK and reduce the dominance held by the big four auditing firms. Whilst full confirmation is yet to be made, ARGA is expected to come into force at some point in 2023.

Attendance rates dipped substantially in 2021, falling below 2019 levels.

AGM participation drops

Average attendance rates in the UK market dipped substantially in 2021, falling below levels from 2019. One key driver arises from the major settlement changes in the Irish market (where many of its companies are also listed in the UK) following the implementation of Euroclear's solution which replaced that created by CREST before Brexit. Euroclear requires that votes are cast in a specific, new procedure that does not mesh with the Broadridge voting system used by most investors. For example, investors are no longer notified now when their votes are rejected for reasons such as inconsistency of information on shares voted, errors or late voting instructions. Quorums at Irish meetings have consequently plummeted vis-à-vis previous years, thus impacting overall UK quorum results.

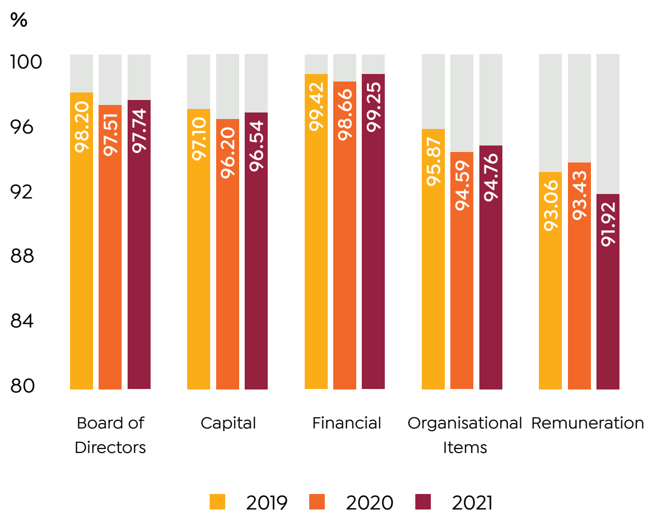
Average AGM Attendance Rates 2019 - 2021



The debate continues around the ideal format in which to conduct AGMs moving forward, with many companies allowing virtual participation. Last year, this approach appeared to be a temporary solution to stabilise shareholder participation rates. In 2021, this has evolved to a more hybrid archetype, where AGMs are now configured to allow physical and virtual participation. Engagement with shareholders has also been challenged by the pandemic as issuers explore new solutions to sustain meaningful dialogue with the wider shareholder base.

The UK market led in average approval rates across most themes relative to other core markets examined in this review. Remuneration continued to be the most contentious topic, and securing shareholder support proved more difficult following a series of developments in shareholder expectations primarily driven by the pandemic. Results for share capital and board-related items remained relatively stable showing minimal year-on-year change. Much of the development in approval rates for the organisational items category can be attributed to the increased amount of amendment of articles items, with 46 proposed in 2021 vs 21 in 2020.

Average approval rates per category



Remuneration

In light of similar trends in neighbouring European markets, average approval for remuneration related items dropped in 2021. The graph below depicts the averages of the results for remuneration related items and illustrates the developments that have contributed to this overall decline.

Average approval for the remuneration policy (-2.86%) and remuneration report (-2.68%) suffered the largest reduction. The deterioration in support for the remuneration policy can be explained by looking at the number of proposals submitted in 2021 and 2020, a 'policy year' (24 in 2021 and 61 in 2020). The number of items with largely significant dissent was similar between each season (four items for each period received less than 70% in support) whilst the number of items that received 90% support or above vastly differed (17 in 2021, and 49 in 2020) which is a primary factor behind the extent of this decline.

Whilst the change in approval for the remuneration report can be partly attributed to the cross-market trend which is linked to investors' heightened scrutiny triggered by the pandemic, the data also suggests that certain outliers in the results have skewed the outcome. Rio Tinto and Informa were two issuers that failed to secure majority support for their remuneration report,

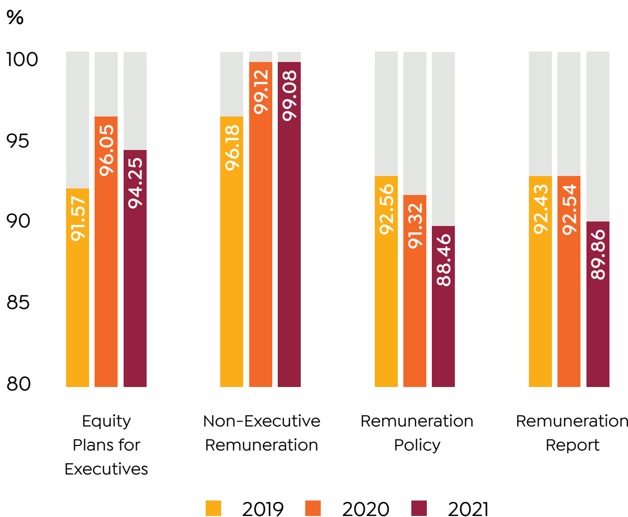
with 38% and 39% for the former (Rio Tinto submitted two items seeking approval of the remuneration report UK and Australian jurisdiction) and 38% for the latter.

In the case of Rio Tinto, many investors and the two main proxy advisors, ISS and Glass Lewis, opposed the significant payments made to the former CEO despite the environment-related catastrophe caused by the company (sacred indigenous caves blast scandal), which led to severe reputational damage.

With Informa, the dissent against the approval of the remuneration report is linked to less specific events, with the proxy advisors citing concerns around adjustments made to intra-year performance conditions and controversy around a newly implemented LTIP which met significant dissent. Indeed, investors had made it very clear to issuers that modifications to ongoing variable pay schemes would not be tolerated if they eroded the negative consequences of the pandemic's impact and did not account for the wider stakeholder experience.

Overall, for UK issuers, particular attention around the remuneration report was paid to if they had benefited from government aid, furlough schemes, changes to dividend policy and the share price, treatment and safety of the workforce, and other wider ESG considerations. Several companies also discovered that a positive stakeholder experience for them during the pandemic did not guarantee acceptability of increased overall quantum at a time of unprecedented scrutiny.

Remuneration sub-categories

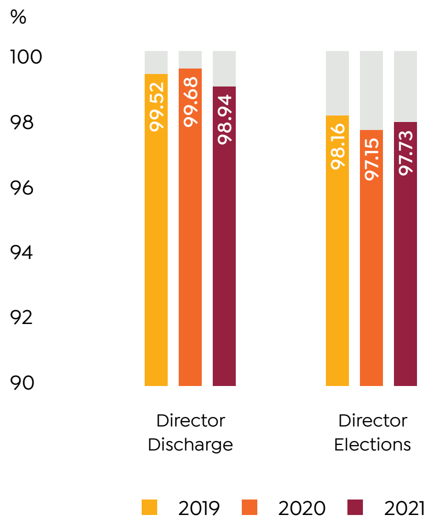


Board of directors

We observe a slight improvement in the average approval rates for director elections in 2021, following a period where investors increased their expectations around director availability. Out of 888 items seeking approval for director (re) election, only 8 received below 80% support which is a slight improvement year-on-year (13 out of 884 proposals in 2020).

Average approval rates for director discharge related items saw a 0.57% year-on-year drop although the sample for 2021 and 2020 is minute (5 items in 2021 and 2 in 2020). The size of the sample reflects a limited number of FTSE 100 constituents not domiciled in the UK and proposing such resolutions (Coca-Cola HBC AG, Consolidated Airlines Group SA, Just Eat Takeaway.com NV, and B&M European Value Retail SA).

Board of directors sub-categories 2019 - 2021



Say on Climate

One of the prominent and more novel trends to gain momentum during the season is the Say on Climate agenda. This was exemplified through an increased presence of Say on Climate and climate-related proposals at UK AGMs in 2021, with companies seeking to requisition measures to help reach climate change goals. HSBC, for example, proposed their own climate related item following constructive engagement with the ShareAction and other stakeholders, as is explained in more detail in our **UK market expert interview with Loren Wulfsohn**. In another example, Barclays faced a shareholder-requisitioned proposal related to climate change for a second year running despite management proposing a separate item at the 2020 AGM of a similar nature.

During the year under review, there were 11 items related to a form of climate change commitment, with eight of those proposed by management. This compared to only three items of a similar nature the previous year put forward by FTSE 100 constituents, with shareholders being the proponent of two. This year-on-year development illustrates the evolution of the agenda, particularly how companies are integrating climate change to their strategy and corporate purpose whilst ensuring their vision is aligned with shareholder expectations.

The UK came closer to finding a new normalcy with developments centered on persisting issues; gender, environment and remuneration.

MARKET EXPERT VIEW SEASONED HEAD OF IR **CECILE COMBEAU**

We've seen an increase in the year on year average opposition on the ex post Say on Pay in France resulting from a large number of companies modifying their ongoing variable remuneration structures due to COVID-19. Suez was one of the few examples of a company that made certain adjustments to ongoing annual variable remuneration but seemingly found the appropriate balance achieving over 91.47% support for the CEO's Say On Pay. What has your experience been discussing this topic with investors?

Firstly, I would like to cover this topic from a more general and broad perspective. We believe maintaining good regular dialogue with shareholders in any circumstance is key. In that spirit, Suez organises each year corporate governance roadshows which we view as a great opportunity to share our views and gather feedback. Feedback from last year was used to enhance disclosure standards of the qualitative component in the CEO's variable remuneration and to incorporate the vesting scale for long-term variable compensation. This year, we chose to engage on topics around corporate governance early on, with the presence of the chairman of the board which was appreciated by the shareholders. Due to the pandemic and regulatory changes in France on disclosure and transparency, we felt it was critical to have specific discussions on said changes so that all shareholders can hear from the board. More specifically, we focused our dialogue on clarifying and illustrating two critical aspects: Firstly, the adjustments proposed by the board were supportive to long-term, sustainable value creation as they aimed at ensuring both that the company navigates the environment appropriately and the management team executes against the SUEZ 2030 strategic plan. Secondly, these adjustments were commensurate with the experience of our shareholders and other stakeholders.

Do you think investors and proxy advisors were clear enough from the start on their expectations following COVID-19 implications?

We noticed continuity in general voting behaviour from shareholders. As in previous years, shareholders have requested stronger alignment on pay with long term company strategy, including financial performance and ESG indicators. I believe that issuers were aware of such expectations from investors, but the equation was more complex this year due to the pandemic and its impacts on the performance of companies. In addition, there was leeway for companies to decide what was appropriate for them, given their own specific context. We also understood that proxy advisors expected remuneration practices to be reasonable and aligned with company stakeholders. How alignment was measured was not entirely clear at the beginning but became clearer as the AGM season progressed and proxy advisors were more vocal on the topic.

Average approval rates for director elections/re-elections have dropped by over 2% this year in France. Do you have any theories on what could have caused this drop? For example, what were the main considerations investors brought up during engagement on this topic?

This is not necessarily linked to our own engagement with shareholders, but what we have seen is that themes such as overboarding persist in France. We have noticed an increased demand for directors' availability from shareholders. I believe this availability is becoming more critical with the increased complexity of decisions that need to be made. For example, when it comes to zero-carbon transition, a company must make profound transformations in its operation, which implies series of unprecedented decisions to be made. I believe investors pay attention to the composition of the board from this perspective. Other than directors' availability, I believe adequate director competency is also scrutinised especially in terms of ESG.

One of the key developments in the French market this year has been the appearance of Say On Climate resolutions, either submitted proactively by management or as a result of shareholder pressure. Do you have a view on this new trend? Does it make sense to submit such a vote to shareholders?

I think that is a very interesting question. The terminology "Say on Climate" suggests a comparison with the Say on Pay requirement. In my view, there is a straightforward logic for investors to vote on remuneration: they own the company but they do not run it directly, therefore they need a mean to ensure the interests of the management remain aligned with theirs at all times. However, Say on Climate is possibly different. The company's management should be in the best position to contextualise the climate related challenges of the firm. So a Say on Climate could be a contradiction against the mandate that shareholders entrust to management. It makes more sense if shareholders are

generally not content with the strategic direction of their company. Attention should also be paid to the expertise that shareholders need to develop to carry out such a vote. In addition, we see that in many cases, shareholders already delegate their voting decision to proxy agencies, so it might not be realistic to ask for an advisory vote on something very specific to the company's management. Shareholders have alternative options to express discontent and ultimately, they are also free to withdraw their capital from the company. Conversely, the company's management should target shareholding that is aligned with business and climate strategy. Finally, my last concern on this topic is the aspect of agreeing on a common framework which potentially may not be sufficiently demanding. And it is not immediately obvious that a Say on Climate will prevent companies from adopting unambitious targets.

More and more we are hearing investors bring up within the discussion around gender diversity, the topic of racial diversity at Board of Director level but also within the wider workforce. Is this a topic you often encounter? Do you feel investor expectations are appropriately aligned with the legal limitations on disclosure for this topic imposed in France?

Shareholders are quite aware of the legal limits in France, but the discussions do exist. Even in the absence of specific disclosure requirements, shareholders have access to ask us how diversity is managed within the company. SUEZ actively promotes gender diversity and is committed to having 25% women in its ranks by 2022 and 33% women managers by 2023. With regards to board diversity, shareholders are also responsible for it. At SUEZ, 45% of Board members are women Directors and 36% are non French-nationals Directors.

Are there any additional trends/themes you have noticed in the French market this year that you wish to discuss?

Perhaps changes around the perception of the lead independent director role. It has become more frequent in recent years, even for companies with separate chairmen and CEOs. The addition of a lead independent director on the board is viewed as a healthy sign of the company's corporate governance. In my position, shareholders are very much welcome to directly contact the board especially ahead of an AGM. A more systematic reference point might also be something shareholders request more frequently and find helpful in building their relationship.

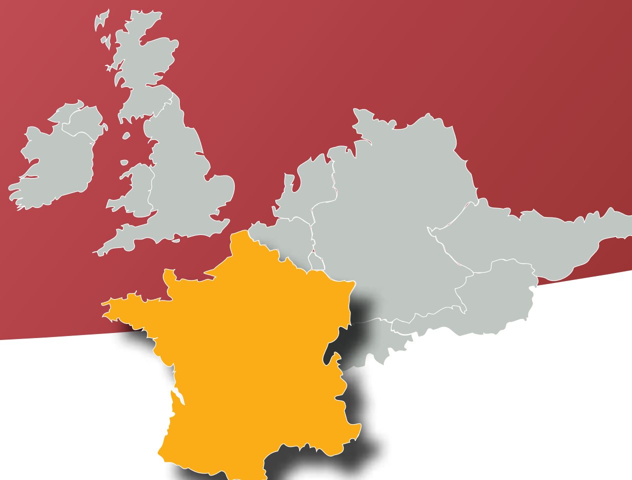
What are your expectations for the 2022 AGM season, more of the same, or have you already identified new topics that will emerge or grow in importance?

I do not necessarily expect new topics but instead further emphasis on everything around sustainability and climate change. I am anticipating that we continue to see more requirements around disclosure in investors' voting policies. Investors are working on ways to link sustainable KPIs with measurements of value creation because they are obligated to explain it to their underlying investors. They are already requesting for stronger links between sustainability management of the company and executive pay policy. As an issuer, we will be more challenged going forward on this issue and the other topics referenced earlier during this call (board diversity, adequate board competency, overboarding, size and independence of the board).

"Say on Climate could be a contradiction against the mandate that shareholders entrust to management."

Cécile Combeau was appointed Head of Investor Relations of SUEZ Group in January 2021. Since joining SUEZ in 2018, she had acted as Deputy Head of Investor Relations. In this position, she notably contributed to grow the Group's ESG communication and engagement with capital market audiences. Previously, she was Investor Relations Manager at Coface, where she was in charge of Financial Communication for the IPO of the credit insurer in 2014 and set up the Investor Relations function. During her 8 years' experience in IR, Cécile has managed investor relations in a broad range of situations including change of top management, launch of new strategy, shareholder activism and unsolicited takeover. She holds a Master's degree in Finance from the IAE Paris - Sorbonne Business School.

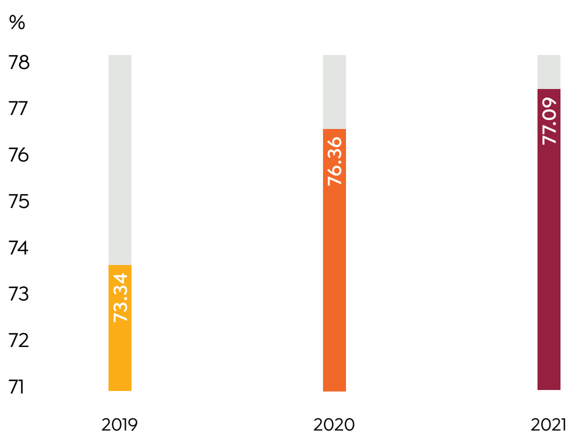
A SPOTLIGHT ON:
FRANCE



Overview

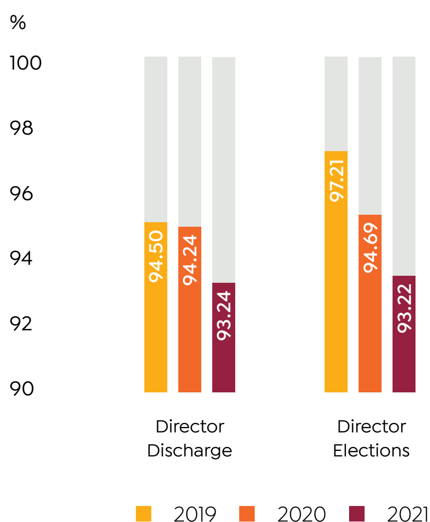
2021 was a calm year for the French market in terms of regulatory or governance code transformations. Much of the AGM-related focus centered on executive remuneration and whether it reflected an acceptable outcome in the context of each company's specific stakeholder experience during the pandemic. Climate risk mitigation came back to the forefront of investor engagement, after a 2020 year more focused on the "S" and the "G" from ESG in the immediate aftermath of the pandemic disruption. As in other countries, France saw the emergence of a number of new Say on Climate resolutions. High-profile activism remained present in the market with the removal of Danone's Chairman & CEO, Emmanuel Faber, for example, generating profound questions around the sustainability versus profitability debate.

Average AGM Attendance 2019 - 2021



Average participation rates continued to improve year on year, albeit less radically than the shift experienced in 2020, now surpassing 77% on average for the SBF 120 companies we researched. Given the mixed and diverse changes to participation rates across Europe, it seems plausible to conclude voting behaviours remain relatively stable year-on-year and other factors such as changes to the indices and shareholder bases explain variation. It is nonetheless clear that French issuers should now expect a greater portion of their shareholder base to vote compared to pre-pandemic levels.

Board of directors sub-categories 2019 - 2021



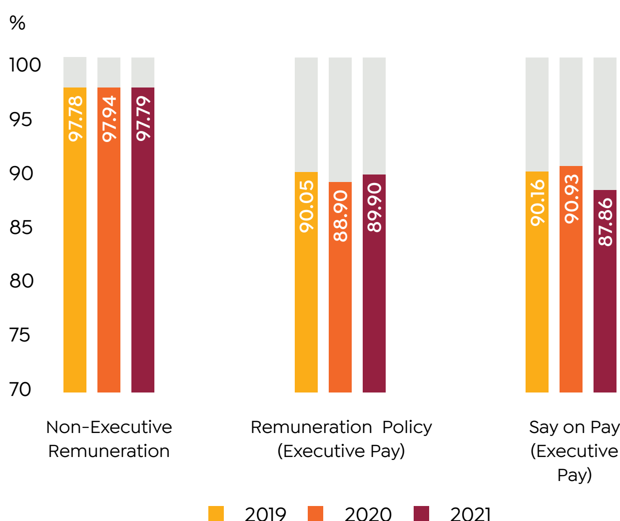
Approval rates for board of director resolutions (overwhelmingly consisting of elections and/or re-elections) dipped (-1.01) this year from 94.25% in 2020 to 93.24% in 2021. This decline now forms a three-year trend, as approval rates were as high as 95.39% in 2019. As highlighted in this report last year, investors are increasingly attentive to the composition of the board of directors, with the goal of ensuring committed and available individuals with the right skillset are present to guide companies through systemic risk as exemplified by the pandemic.

This preference continues to combine a pre-existing trend towards tighter overboarding policies as many large institutional investors such as Blackrock now cap the number of mandates in publicly-listed companies to four per individual (tighter restrictions applying to executive and non-executive chairmanships). Other market specific features such as combined Chair/CEO roles and censor (non-voting member) positions create added tensions at French AGMs.

Much of the AGM-related focus centered on executive remuneration and climate risk mitigation came back to the forefront of investor engagement.

Remuneration

Remuneration sub-categories 2019 - 2021



Remuneration was at the centre of this year's AGM season and approval rates unsurprisingly dipped in the aftermath of the pandemic's disruption to the prior fiscal year and continuing uncertainty. It's no surprise that the areas most impacted were the retrospective votes, namely the binding ex-post say on pay votes for executive officers (-3.07%) and the remuneration report (-1.0%) which covers this population as well as board members.

The key area of focus for ex-post executive pay was the extent to which ongoing variable remuneration mechanisms were adjusted due to the pandemic's impact and the related disclosure/justifications. Whilst it was understood by investors that the exogenous shock of COVID-19 had the potential to make certain pre-set targets completely unachievable for executives, it was imperative in their view that pay outcomes aligned with the wider stakeholder experience. The extent to which issuers relied on the state for grants or other benefits, made use of partial unemployment or redundancies, cut dividend pay-outs, witnessed share price depreciations, and various other ESG considerations, strongly shaped investor decision-making on the topic.

Many within the investment community required a perceived sense of sacrifice from executives, a sharing of the pain. As a result, the most successful companies were those that did not use board discretion to change metrics, lower targets or increase pay-outs for the annual bonus or ongoing long-term incentive plans. Best practice examples include Albioma (99.76%), Ubisoft (98.5%) and Orange (96.8%). It was still achievable to receive exemplary support whilst making certain adjustments in-flight if issuers were prepared to dedicate significant time and resources to thoroughly engage with their shareholders and if they were fortunate enough to find the adequate balance. Suez is a good example, achieving 91.5% support for Bertrand Camus' 2020 remuneration package. Further insight into Suez's story can be read in our market expert interview with Cecile Combeau.

Within the SBF 120 companies we researched, 31 say on pay ex-post resolutions for executives received less than 80% support. Paradoxically, in a year of heightened scrutiny, there were no rejected ex-post say on pays compared to both 2020 and 2019. The lowest scores were achieved by Scor SE (55.57%), Ipsos (58.79%), Edenred (60.73%) and Veolia (60.89%).

Dissent at Scor SE was primarily generated by the lack of stringency in variable pay and the lack of clarity around post-departure pro-rata policy for the departing CEO. In the other three examples listed above, adjustments to variable pay components due to the pandemic were the key contributors and the only major cause at Veolia. Interestingly, Veolia presented separate resolutions to shareholder vote solely on the proposed amendments to past variable remuneration plans. It was presumably hoped this would act as a lightning rod for potential dissent and spare the binding ex-post say on pay. This was clearly unsuccessful and the separate vote on adjustments to the 2018 performance share plan also received high dissent securing only 62.59% support.

In a perhaps unfair contrast of fortunes, this very same strategy was successful at Thales. Both separate resolutions specific to adjustments to past LTI plans received significant opposition, securing only 59.27% of the vote each, whilst the Chairman and CEO's ex-post say on pay was spared, receiving an impressive 99.7% support. This contrast is likely due to the voting behaviour of Thales' strategic investors.

It should be noted that the remuneration report vote in France differs greatly from other markets as separate individual votes exist for executives. As a result it is primarily used by investors to highlight discontent with the CEO pay-ratio methodology/output or transparency/disclosure practices more holistically.

Forward-looking remuneration policy votes for executives actually saw an increase (+1.0%) in year-on-year support, from 88.90% in 2020 to 89.90% in 2021, just shy of the 90% mark. Non-executive remuneration votes (including dissociated Chairman remuneration) remained stable year on year (-0.15%) and pre-dominantly uncontroversial with an average approval rate of 97.79%.

Other than pandemic related aspects, the primary talking points around remuneration centred on the introduction of clawback/malus provisions, the introduction of climate-related metrics in variable pay and improving both ex-ante and ex-post target transparency.

Say on Climate

As referenced throughout this report, Say on Climate resolutions also emerged this year across the AGM landscape with a high proportion of French companies among the early adopters. TotalEnergies SE presented a consultation on the company's ambition with respect to sustainable development and energy transition to towards carbon neutrality and its related targets by 2030 to shareholder vote, receiving 1,460,599,166 votes in favour (91.88%) and 129,136,215 votes against (8.12%). It is noteworthy that a sizeable 174,666,861 votes abstained (1.09% when accounting total amount of votes) on the resolution, with a portion of institutional investors not necessarily having a formalised policy position yet.

The debate on the meaningfulness of such a vote also continues, with many rich insights to be found among the market **Expert Interviews included in our report.** Vinci's opinion regarding the company's environmental transition plan received 98.41% approval and Atos' opinion on the company's decarbonisation ambition "Net Zero" received 97.10% support. An alternative form of gauging investor support on these aspects can be found in Safran's approach of designating a specific director responsible for monitoring climate issues and presenting his re-election as an "opportunity to express support of the climate approach adopted by Safran". Patrick Pélata's renewal at Safran received 93.66% approval.

MARKET EXPERT VIEW THE EUROPEAN BOARD MEMBER **DANIELA WEBER-REY**

Germany, France and the United Kingdom are three countries with very different models when it comes to employee board representation. Given your extensive first-hand experience with the corporate governance landscape across these three regions:

What is your general view on employee board representation? Is it successful in ensuring employee interests are accounted for in corporate decision making?

I personally have a positive view of employee board representation, but I think it is important to clarify its definition, specifically the distinction between the work council and employees on the supervisory board. The advantage of employee representation on the supervisory board is that they assist in taking responsibility towards ensuring business matters do not harm the company or employees. They are in a strong position to make decisions for the sake of all employees. They help balance the interests on the supervisory board taking full account of the employee's interests such that their cooperation is fully ensured and an economically viable solution can be found. At the same time they are fully aware of economic challenges the company has to deal with. Recently, a lot of emphasis has been placed in employee stakeholders across European markets, especially in those that conventionally operate two-tier board systems. Overall, I think it provides us with great advantages which was evident e.g. during the pandemic, where businesses had to transition to work from home. These pandemic related topics were much easier to handle when there was already an institutionalised approach to the employees and their representation.

Does it create conflicts of interest? hinder board effectiveness?

Whenever you have directors with a specific high degree of competence, you run into potential risks of conflict of interests. That is a natural consequence. If you have never seen companies from the inside you won't have a conflict but you will lack the competence. This issue has to be dealt with carefully but not at the cost of stopping employee board representation. At times, it may hinder board effectiveness as employees may not keep internal issues confidential. Regrettably, some conversations sometimes must occur without their presence. However, at the companies where I have served as an advisor, board member or executive officer, the presence of employees on the board has always worked to the benefit rather than the detriment of effectiveness and well-being of the company.

What is your view on enlarging stakeholder board representation even further (independent advocate for the environment for example)?

I am not for increasing stakeholder board representation further, there needs to be a limit somewhere. It is common for events to trigger calls for specialists to join company boards such as remuneration consultants following the financial crisis, auditors following the incident at Wirecard or more recently environmental advocates. Boards in Germany are already too large. With a true crisis what is lacking is generally the ability to take a step back and view the issue from a different angle rather than a lack of knowledge. Specialisation can be brought in when and as needed from the outside.

Do you favour one of the aforementioned (geographic) models over another?

I don't believe any of the different models exhibited by the aforementioned markets is ideal as every market has their own struggles. Looking at France, companies generally employ a 1-tier structure and have their own challenges around the combination of the Chair & CEO role. However, the presence of executive board members can be extremely helpful because you get knowledgeable inside information. But then it makes it more difficult to achieve adequate independent representation. All systems come with their unique set of challenges. One thing I wonder is the effectiveness of the annual re-elections for directors common in the Swiss market for example. Whilst it facilitates change and refreshment on the board, it may prevent that closeness from developing if members are constantly stepping down. Trustful co-operation is just as important. I thought it was positive that the EU commission suggested the 3-4 year rule with a 12 year limit as I believe a rolling system with longer terms on the board is ideal. But I wouldn't be able to say the system in the UK, France, or Italy is the best system as we all have different ways of practicing governance, each with advantages and disadvantages. We have seen an alignment of the systems via the EU since the dot.com crisis around the turn of the century. Ultimately, if you don't have the right chairman, then you can forget about the governance system.

How would you compare the current state of German corporate governance to that of its European neighbours? What can it learn from abroad, and how do you see it evolving in the near future?

I believe Germany's corporate governance system is less strict than the UK's. It is also different from France where they have more naming and shaming procedures which we don't have institutionalised. An area of criticism for us is that we are more resistant to change mainly due to the landscape of federal state where each state has different industry focuses and our strong Mittelstand. In the long

“Ultimately, if you don’t have the right chairman, you can forget about the governance system.”

run, Mittelstand companies may have better governance with less rules because they think more long-term. We also have unions with strong powers which they can use to apply pressure to companies to make change. Certainly, our authorities in regulated industries have too little powers as was exemplified by the Wirecard event. What we need to deal with is that authorities are often too close to politics and did not have enough policing powers. However whilst important, these issues are not directly linked to corporate governance, they are parallel to it.

Ensuring increased diversity both at board level but also within the wider workforce continues to be a key engagement topic for many investors. What is your view on diversity quotas? Is the French example of board gender diversity quotas a success? Something that should be recreated in other markets? More generally how is increased diversity best achieved in listed companies?

I think the system in France has helped accelerate diversity to the board. However in Germany, it is now obligatory to have women on the management board for some companies and it is perhaps France that is interested in copying this aspect. Initially I was not supportive of quotas, but I saw first hand when I began sitting on the boards of foreign companies how much more open they were to diversity. I recall a period in Germany, where it may have been a big event to see a woman showing up to meetings. According to statistics, Germany is still way behind France and UK in terms of diversity on the board. In fact, it is behind Turkey, where many women occupy leadership positions. Countries such as Germany, Austria, South Korea and Japan continue to lag behind. Germany still has much to overcome to get to a point where it is not a big topic for women taking leading positions. Looking at diversity more broadly, I was surprised age diversity wasn’t discussed more in Germany, it was at board level in France. With regards to international diversity, the presence of non-natives on the boards of global companies makes a lot of sense as they are obligated to ensure the composition reflects their markets. Essentially there must be trustful cooperation amongst board members. It is always necessary to take a step back and not treat diversity as a tick boxing exercise.

One of the key developments this year in the AGM landscape, primarily across Europe, has been the appearance of Say On Climate resolutions, either submitted proactively by management or as a result of shareholder pressure.

Does it make sense to submit such a vote to shareholders? Do you believe shareholders have the necessary incentives and ability to judge an issuer’s climate strategy and performance? Do you believe there is a regulatory void when it comes to climate change?

It is difficult in Germany due to law. The supervisory boards are responsible for hiring executive officers, deciding their compensation, and deciding conditions of their termination. If you give more responsibilities to the AGM, this weakens the supervisory board, so I am not personally sure this is the right answer. We as individuals try to ensure we buy green and live green but in tandem to that, we also want to maximise returns for our pensions. Time horizons also influence how the relationship between sustainability and returns is perceived. When looking at sustainability issues, if we focus on quarterly returns as investors commonly do, then it is hard to notice a short-term advantage to thinking green and in fact this may be costly. Sustainability in my view needs more thinking, in particular around metrics. So, let’s focus on developing these metrics to know what to look for and not accept green washing. Specialists need to find more clarity in that jungle of metrics and reporting, then obligations must be imposed on boards. Ultimately I believe in Germany the regulator will have to step in to impose climate considerations. I have children and grandchildren whom I want to see have a pleasant future.

What changes and trends do you foresee in the near future around sustainability and climate change in particular?

I think biodiversity will grow in importance and be discussed in line with climate change as it is interconnected. There are also many issues related to infrastructure in dense countries for example. These are all matters for the chairman and board to decide but we should force them to take them into consideration.

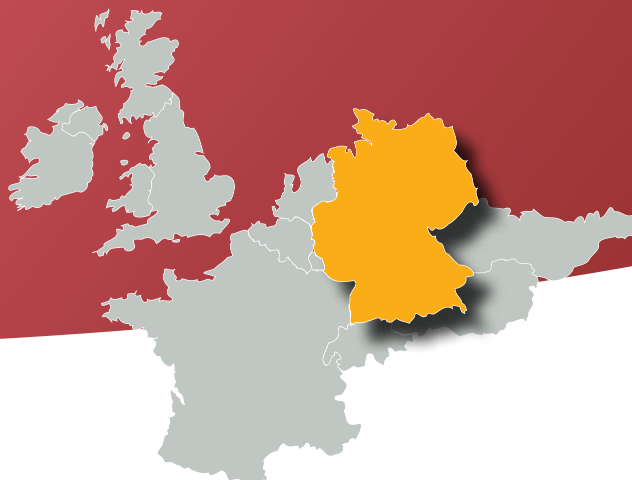
Lawyer and Non-Executive Board Member, ia HSBC Trinkaus & Burkhardt, Fnac Darty, European Corporate Governance Institute (ECGI), member of the Board of Trustees of the Leibniz Institute of Financial Research SAFE e.V. and of the Université Franco-Allemande (DFH/UFA) as well as Corporate Advisor to the British Academy in the project ‚The Future of the Corporation‘. She was for 12 years until March 2020 a member of the German Government Commission for the German Corporate Governance Code.

The business lawyer Daniela Weber-Rey was for 3 years (2013-2016) in charge of Corporate Governance at Deutsche Bank (Chief Governance Officer), part of this time also as Deputy Global Head Compliance.

For almost 30 years Daniela Weber-Rey was an attorney and partner at Clifford Chance (formerly: Pünder Volhard Weber) in various management functions, acting also for 3 years as a member of its Partnership Council (2010-2013). She was also a non-executive board member of the BNP Paribas, Paris (2008-2013).

In 2010 Daniela Weber-Rey was awarded the French Légion d‘honneur for her engagement for the German-French relationship.

A SPOTLIGHT ON: **GERMANY**



Overview

2021 marked the first year of compulsory prospective remuneration system (remuneration policy) votes in Germany following the 2020 implementation of ARUG II. As will be further examined in this chapter, the results were undeniably a success.

Another noteworthy change to the corporate landscape on the horizon is the upcoming introduction of quotas for women on management boards impacting a number of public, state-controlled and private companies. It is hoped this will stimulate impetus in Germany's catch-up efforts as it continues to underperform other large European economies such as France, the UK and Italy from a gender diversity ranking perspective.

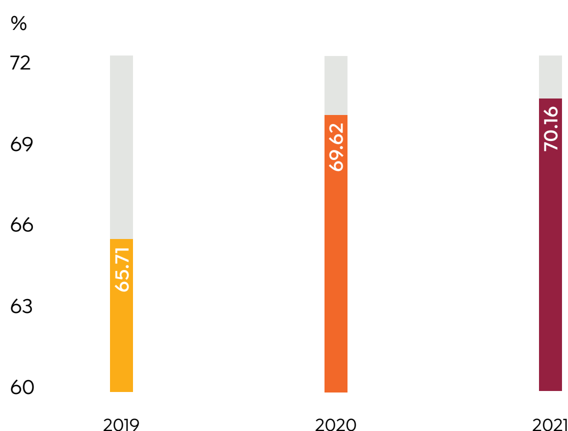
A final transformation worthy of mention is the enlargement of the DAX 30 index to 40 constituents, with changes to the rules including a strengthening of corporate governance requirements (primarily conformity with sections of the German Corporate Governance Code) and timeliness of annual financial statements and quarterly updates. Aside from the aforementioned market specific context, 2021 was, as for all markets, a year in which companies were expected to demonstrate their continued corporate resilience in light of the pandemic. Particular focus was on how decisions by companies were equitable from a wider stakeholder perspective.

Directors are increasingly being held accountable in cases of failures linked to their positions and committee responsibilities on topics as varied as climate-risk, diversity, executive remuneration practices and audit.

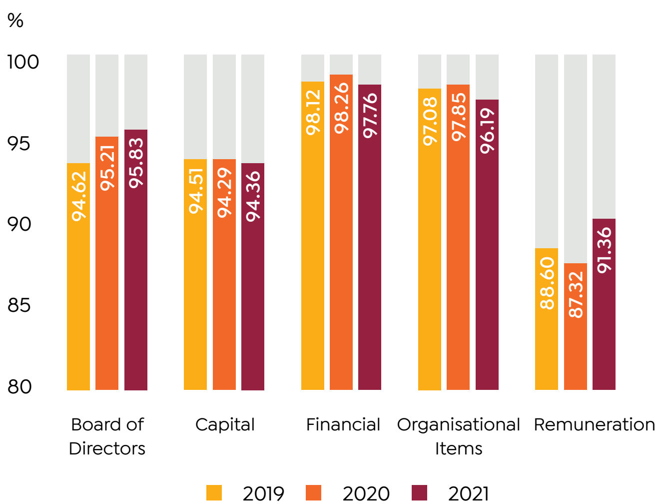
Participation rates remain significantly higher than the pre-pandemic era

Average participation rates continued to improve year on year, albeit less radically than the shift experienced in 2020, now surpassing 70% on average for our sample of 77 DAX + MDAX companies. It cannot be excluded that changes to the composition of the indices and subsequent changes to our samples could have played a part, with companies experiencing low historical quorums such as Aareal Bank (49% in 2020) no longer appearing and companies with high participation rates making a new appearance such as GEA Group (80.85% in 2021). Given the mixed and diverse changes to participation rates across Europe, it seems plausible to conclude voting behaviours remain relatively stable year-on-year and other factors explain the variation. It is nonetheless clear that German issuers should now expect a greater portion of their shareholder base to vote compared to pre-pandemic levels.

Average AGM Attendance 2019 - 2021



Progress made on remuneration and board composition



Average approval rates for board of director related items continued their three-year climb rising by 0.62%. This trend was entirely driven by an increase in support for individual director elections which increased on average by 1.41%. It is likely that reduced term lengths pushed for by investors and imposed by certain proxy advisors has too played a role in making these items less contentious as the use of five-year terms decrease in popularity. This improvement in approval rates should not be confused with a relaxation in investor scrutiny on the topic as they continue to pay significant and increasing attention to independence and overboarding considerations. Directors are also increasingly being held accountable in cases of failures linked to their positions and committee responsibilities on topics as varied as climate-risk, diversity, executive remuneration practices and audit. Approval rates for discharge items remain relatively constant with a minor drop of 0.11% in support.

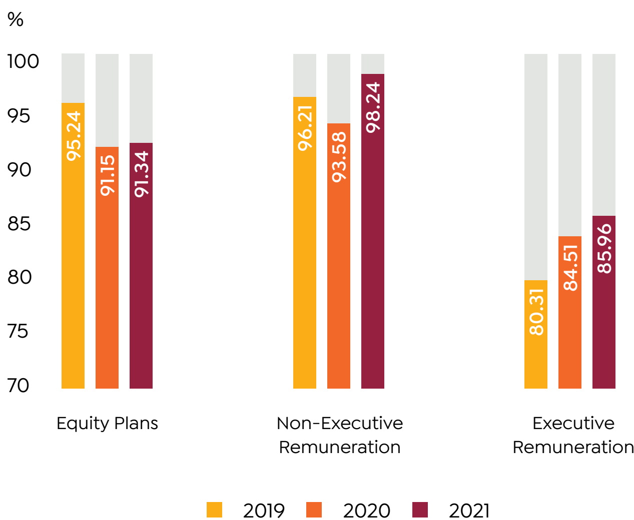
Approval rates for items linked to share capital remain stable across the three-year cycle in focus. Investors continue to judge such items in a fairly automated way based on dilution thresholds, potential discounts, duration of authorisations, potential use during takeover periods, and preservation or not of pre-emption rights. Particular attention has also been given during the pandemic to the ability to guarantee the financial stability of the company and a more conservative approach has been adopted towards share-buyback type authorisations. Interestingly, share-buyback resolutions have not seen their approval rates suffer in Germany (+0.35%) demonstrating that investor expectations on the topic have been understood and largely met.

Support levels have decreased for the financial category which covers approval of financial statements, dividends, affiliation agreements and auditor appointments. Approval of auditor appointments fell by 0.70% likely linked to heightened scrutiny following the seismic reverberations of the audit scandal at Wirecard. It is noteworthy that out of the four audit appointments/renewals that received below 90% support, Aixtron (79%), Bechtle (80%), CompuGroup Medical (87%) and Merck KGAA (88%), only one involved the appointment of Ernst & Young GmbH, the auditors currently embroiled in controversy due to their failure to identify accounting irregularities at an earlier stage at Wirecard. The top concern around audit involves the excessive length of service of the auditor.

Approval rates for remuneration-related items overall, as touched upon earlier, has shot through the roof in Germany (+4.04%) marking positively the first compulsory year of prospective remuneration system shareholder votes. On average these items received 91.36% approval. Let us examine this in more depth in the subsequent section.

The upcoming introduction of quotas for women on management boards is hoped will stimulate Germany's catch-up efforts as it continues to underperform other large European economies from a gender diversity ranking perspective.

Remuneration



The key driver behind the substantial increase in average remuneration approval rates was the increase (+4.66%) in support for supervisory board remuneration related votes from 93.58% in 2020 to the remarkable 98.24% in 2021. It is important to remember that non-executive remuneration is typically far less contentious a topic than executive remuneration. The only potential stumbling blocks generally involve excessive or abruptly increasing quantum or the presence of a variable component linked to performance. With a large portion of issuers converging closely towards 100% approval, the noticeable outlier was HelloFresh that received only 84.16% approval. Whilst proxy advisors supported the proposal, ISS did flag concerns given the large increase in fees and the lack of transparently disclosed explanations.

Improvements in approval rates for management board remuneration systems were also noticeable progressing (+1.45%) from 84.51% in 2020 to 85.96% in 2021 but remained well below 90% approval levels. Four issuers nonetheless failed to secure majority support in 2021: freenet (34%), Morphosys (36%), HelloFresh (46%) and Aroundtown (47%). Reasons for dissent primarily included the excessive scope for discretion, insufficiently challenging performance targets, insufficient disclosure around weightings and targets, absence of explicit limits to variable pay components, absence of performance metrics and/or excessive aggregate caps on remuneration.

2021 marked the start of the new era of remuneration related votes and reporting in style – but will this continue into 2022? All eyes will be on the new compulsory (non-binding) remuneration report votes. If results for this year's remuneration reports are any indication, this second and final step of the process will be a far greater challenge as the six remuneration report related votes in our sample averaged a concerning 68.70%. In fact, without Linde's stellar results, the average would have been significantly lower. Qiagen and Aroundtown both failed to secure majority support receiving 32% and 47% support respectively. Nonetheless, these concerns are heavily mitigated by the fact the reports within our sample were presented by companies adhering to governance codes and company law of foreign countries due to their capitalistic structures. Furthermore, given the small sample size, the low approval rates for remuneration reports this year can hardly be seen as reflective of the new German model and there is therefore still cause to remain optimistic.

MARKET EXPERT VIEW THE ATTENTIVE HEAD OF IR **PHILIP LUDWIG**

2021 was a year of significant positive change for Belgian-listed, personal hygiene manufacturer, Ontex SA on the remuneration front, with the approval of the 2020 remuneration report and the new remuneration policy achieving overwhelming approval (97.9% in favour). Could you share your experience on the different steps undertaken by Ontex to achieve this success?

To start with, it was clear that we needed to engage more intensively with a cross-section of our long-term shareholders to gain a better understanding of their views and concerns. We recognised that our remuneration approach had to evolve from the one established under private-equity ownership before our listing. The Board was committed to making improvements to remuneration, however we concluded that information from reviewing proxy advisor reports was not sufficient: we needed to find the required input another way.

In my opinion, our process to overhaul remuneration began last year when we launched our inaugural corporate governance roadshow (CGRS) - despite the outcome not being noticeable in the voting last year. However, we started to grow our "corporate governance capital" through the 2020 CGRS because shareholders with whom we engaged appreciated our efforts and provided rich inputs for reworking our policy. We recognise how challenging a full-scale overhaul of the remuneration framework in a short space of time.

At the 2020 AGM, shareholders approved a new independent director with a view to be appointed chairman. Following the AGM, the remuneration committee immediately started working on the revamp of the remuneration policy, and itself underwent changes in committee members enabling a fresh approach. The committee took into account the issues raised by shareholders, as well as trends in international practices, and incorporated a broad range of proposed solutions raised by board members. This entire process resulted in going through several remuneration policy iterations before reaching an outcome we felt was appropriate for Ontex and all stakeholders. Examples included separating performance metrics in the short-term and long-term schemes incentive plans, as well as simplifying the instruments used in the long-term scheme.

We then presented our proposal to shareholders via roadshow sessions which resulted in further adjustments where necessary. All these steps helped in securing the overwhelming level of support for the remuneration policy, which at 98% was approximately 10% higher than the market average approval rate. Ultimately, this very satisfying voting result on such a sensitive topic was the consequence of extensive and meaningful discussions to understand shareholders' expectations to help in the design of a clear and appropriate remuneration policy.

Ontex engaged in a series of corporate governance roadshows throughout the year, some with the presence of board members. What are your takeaways from this engagement process? What were the primary objectives? How did investors respond to the inclusion of board members?

The corporate governance roadshows were a critical part in preparing and achieving approval for all proposals put to shareholders at the 2021 AGM. Our efforts to improve remuneration could be seen in the wider context of important developments at our board of directors and our general management. The main takeaway we gathered from our corporate governance roadshows is that they are highly effective for gaining insight into shareholder views, including those that differ from ours. For example, we learned the extent to which many investors now expect ESG metrics to be included in remuneration, yet their views on which metrics are important and their weighting in total compensation vary. Our primary objective was to gain investor insight around remuneration to help us develop a policy framework that was simpler to see the alignment between shareholder, stakeholder and company interest. Through director participation in the CG roadshows, they understood how important it was for investors to be able to understand the remuneration report and remuneration policy in a clear, plain and direct manner. As a result, we moved from a more traditional legalistic presentation to a straight-forward communication style that allowed investors to understand how much corporate officers may be awarded and under what specific performance conditions. Investors particularly appreciated the opportunity to interact with the board, and the insightful dialogue provided them with sufficient detail on key issues that helped investors understand more clearly how directors made decisions, challenged management and were working in the interest of shareholders and stakeholders.

The Belgian corporate governance landscape has changed significantly over recent years (Corporate Law, Code, SRD II). Are there any specific features that you feel required significant adaptation from issuers? Do you believe the say-on-pay regime is positive for the market?

I think the say-on-pay mandate is the change that required the biggest adaptation for most issuers. During discussions

"The main takeaway we gathered from our corporate governance roadshows is how effective they are for gaining insight into shareholder views, including those that differ from ours."

with company secretaries and investor relation teams, there is limited mention of local legal provisions such as double voting rights and equity compensation for non-executive directors, which gives me the impression they are not high on most investors' wish lists.

Whilst most companies were able to receive adequate support levels for remuneration related items, the need for more transparency in the remuneration report was a common theme. It will be interesting to see how this develops moving forward. Overall, I believe that say-on-pay can be positive for the market as it should ensure alignment between the views of institutional shareholders and the remuneration policies proposed by Belgian boards.

The average approval rate for remuneration related items in the Belgium market dropped by over 3.0% since last year. What are your general thoughts and what do you believe could have triggered this?

While there may be specific explanations for some companies, I can think of a couple potential over-arching reasons. Indeed, the pandemic was significant as it triggered several changes to existing trends. For example, as some companies needed support from government state aid, remuneration was more closely scrutinized, particularly from social standpoint. Overall, companies were encouraged to reconsider how they allocate among different stakeholders – shareholders and employees but in some cases also suppliers and even customers – all while ensuring their balance sheets were sufficiently robust to safeguard their financial wellbeing. And as mentioned earlier, adaptation to meet new remuneration regulatory requirements was likely also as factor and may have influenced this 2021 AGM results.

Could you expand on changes you have noticed in the way remuneration is examined by shareholders due to the pandemic?

The changes we saw were more linked to our new policy which was previewed by shareholders. I think that shareholders tend to focus on remuneration holistically against what is paid to shareholders through dividends and share buyback.

In our CG roadshow and in the description of the 2020 remuneration report and the 2021 remuneration policy in the annual report, we make a considerable effort to detail how the pandemic impacted our 2020 remuneration report and the decisions made by the board in relation to salary, bonus and long-term incentives of our corporate officers and board members.

Do you feel there is a divide between local market standards and international best practice?

I do think that local market standards differ in some ways from international best practices. Historically, Belgium practices reflect their home market. Factors such as the different tax regimes in Belgium as compared to its European and UK neighbours in relation to variable long-term incentives. For example, over the past two years, we decided to move from LTIPs influenced by Belgian standards to those that comply with international best practices. As a result, they became fully performance-based, with quantifiable criteria over a minimum of three years. An example like this illustrates how the gap with foreign contemporaries is closing due to cross-market regulation, as well as input from international investors.

Do you believe the year-on-year development suggests that the Belgian market constituents are still at an early phase of understanding shareholder expectations around remuneration?

I wouldn't necessarily say we are at an early phase of understanding, especially when shareholder expectations around remuneration have evolved so much over the past year as discussed. Whatever the reasons are for this year's results, issuers need to ensure that they understand their broader shareholder base and avoid relying mainly on the views of anchor shareholders.

Over the last year Ontex went through a thorough board refreshment which resulted in increased approval at the 2021 AGM and was commended by ISS. Could you describe the events that triggered this board refreshment and what Ontex aimed to achieve with board refreshment? Was there a specific set of profiles the board sought?

At the time of the IPO in mid-2014, the board of directors was composed of representatives of the private equity investors, and three new independent directors. Since that time the board evolved to become more suited to a publicly listed company. At the May 2021 AGM shareholders were presented with several new candidates to better reflect our current shareholder structure, and the mix of skills and competencies needed to support management in turning around the company's performance. To that end, directors with significant experience in procurement, food retail and sustainability were elected, all areas which are highly relevant to Ontex. Beyond that, the overarching objective was to integrate new dynamics to the board. We believe that we have accomplished that.

We have seen many investors and proxy advisors call for shorter director terms, with an annual term being the preference from said investors. What are your thoughts around annual re-elections for directors in the context of the Belgium market? Do you see a shortening of director terms as a likely scenario in the future?

At this stage I do not foresee any fundamental changes to the Belgian Corporate Governance Code. It is likely that Belgium will observe the experience of other markets and see whether there is a wider consensus on term duration. Apart from this, I am unclear as to the potential

benefits of changing annually: there seems to be an unavoidable tension around how this would improve company performance for the mid and long term, and how shareholders would evaluate short-term board performance.

What trends did you notice in the Belgian market for 2021? To follow up, which trends do you envision will emerge during the 2022 season?

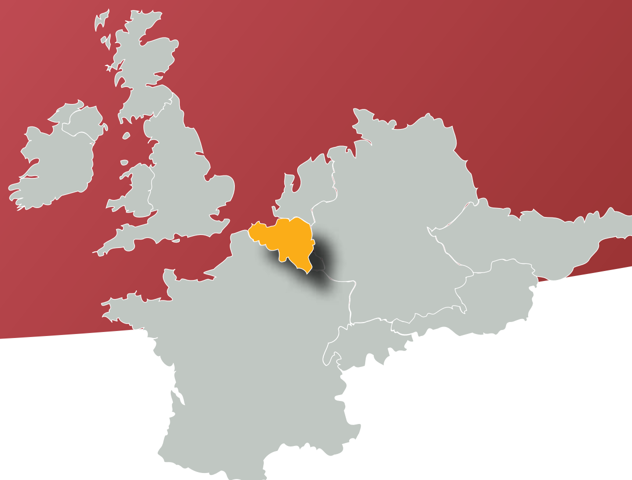
ESG and sustainability were noticeably more prevalent in conversations in 2021 and will be themes to monitor moving forward. Diversity in companies is a theme that has broadened, with shareholders actively encouraging companies to take a stance on the matter. Remuneration will continue to be an important theme, with more people becoming vocal around integrating ESG in company's remuneration framework in more clearly quantifiable performance that is directly linked to the company's ESG strategy. I believe we have been forced to review matters in the last 18 months that were taken for granted in the past. There are many debates emerging around greenwashing and what it constitutes. Previously, people tended to trust information from the outset but nowadays, people get involved in matters with more scepticism from the very beginning. Trust has been placed under pressure in all aspects of society, and only through engagement and actions will we be able to earn shareholder trust.

Philip Ludwig is Vice President Investor Relations and Financial Communications of Ontex Group nv, a leading international provider of personal hygiene solutions, with expertise in baby care, feminine care and adult care with headquarters in Belgium. He joined Ontex in 2014 as its first Head of Investor Relations to create the IR program shortly after the Group's IPO on Euronext Brussels that year. Prior to Ontex Group, he has worked for more than 9 years in Investor Relations leadership roles, including at Tessenderlo Group as the company's first-ever Investor Relations Officer, and at InBev, where he started his IR career in 2004 and was promoted shortly afterwards to Vice President Investor Relations to lead the function up to and including the successful acquisition of Anheuser-Busch.

Philip continues to serve as a director on the board of BelIR, the Belgian Investor Relations Association, a position he has held since 2011, and is a past member of the UK Investor Relations Society.

He graduated from Northwestern University (B.S. Industrial Engineering) and holds an MBA from London Business School, as well as completing executive education programs at ESSEC, INSEAD and the Wharton School.

A SPOTLIGHT ON: **BELGIUM**



Overview

Overall this year we saw no substantial developments in regulation following the full enactment of the revised Companies Code and latest edition of the Belgium Corporate Governance Code in 2020. Companies maintained their focus on adapting to this new landscape whilst confronting the continuing pressures from the pandemic. As already observed last year and as described throughout this report, investors continue to challenge companies on how they have dealt with the pandemic from a broad-spectrum of ESG perspectives. Perception on this topic helped shape voting decisions on a wide range of different resolution types at 2021 Belgian AGMs.

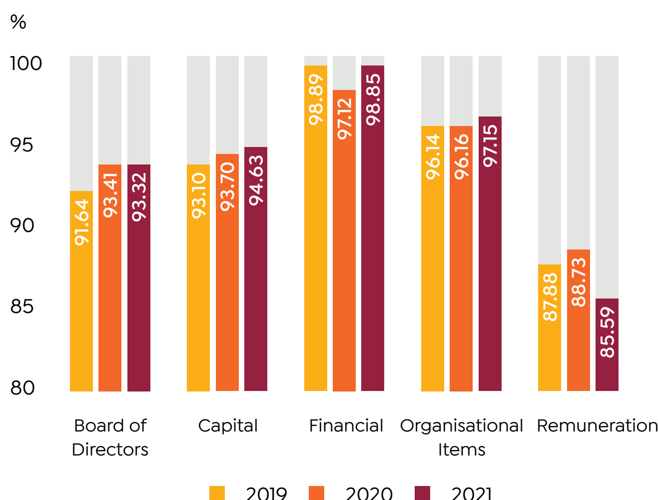
This year was key for binding say on pay proposals, with 10 companies within BEL20 submitting their remuneration policy to shareholder vote. With the SRD II transposition now in full effect, Belgium has moved closer towards convergence with international standards and best practice. Despite this convergence, instances of arguable deviation continue to also exist.

With recent changes to the law allowing for the introduction of share structures with double voting rights, 2021 provided us with a new pertinent scenario, which saw NV Bekaert SA propose an addendum to their articles of association, allowing for the existence of double voting rights. Bekaert secured 61% of votes in favour which was sufficient for approval, despite dissent from many recognised international institutional investors such as Allianz Global Investors and against vote recommendations by ISS and Glass Lewis, both citing concerns around the potential impact to shareholder rights. We note that a substantial amount of Bekaert's shares are held by an anchor shareholder who supported this proposal and without which approval for this item would have been impossible. Of note, strategic shareholders are common within the Belgian market. Could this result be the impetus to elicit a trend in the Belgium market for issuers with anchor shareholder support?

2021 was a landmark year to demonstrate the corporate resilience of Belgian companies. Looking at AGM results across the BEL20, average approval rates per category generally moved in a positive direction, with an increase or stability on all but one facet. Financial related resolutions (accounts, dividends, auditor, etc.) saw a substantial 1.73% increase following an exceptional 2020 where these items were heavily scrutinised. Whilst scrutiny remained high in 2021, with investors still attentive to the sustainability of dividend pay-outs for instance, expectations were now widely understood. Issuers had to ensure both the financial stability of the company and equality of the stakeholder experience. Capital related items also experienced an increase in average approval rates by 0.93%.

More interestingly, no individual capital related item received below 80% support in the market which demonstrates a growing understanding of investor expectations when it comes to dilution thresholds, discounts and potential utilisation during takeover periods. The most significant and unsurprising trend relates to remuneration, where the average approval rate dropped by a substantial 3.16%. This is aligned with global non-market specific trends and is examined more deeply in the following section.

Average approval rates per category



Remuneration

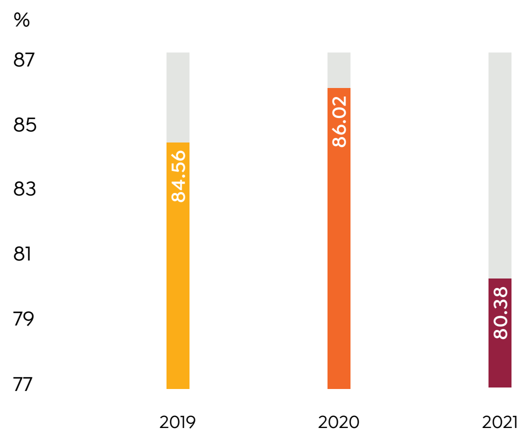
In line with the trend we have highlighted across other countries this year, results for the average approval rates for remuneration-related items were turbulent across all markets. Following the nascent say on pay regime in the Belgium market, 2021 further showcased the issuers' response to a new era of binding proposals and corporate reporting.

As illustrated in the following graphs, year-on-year average approval rates for both the remuneration report and remuneration policy fell significantly. The standout result is the average approval rate for the remuneration report, which dropped by 5.64% year-on-year. Out of the 18 issuers to submit their remuneration report to vote within our sample, only three received above 90% votes in favour (8 in 2020), whilst seven received below 80% (4 in 2020).

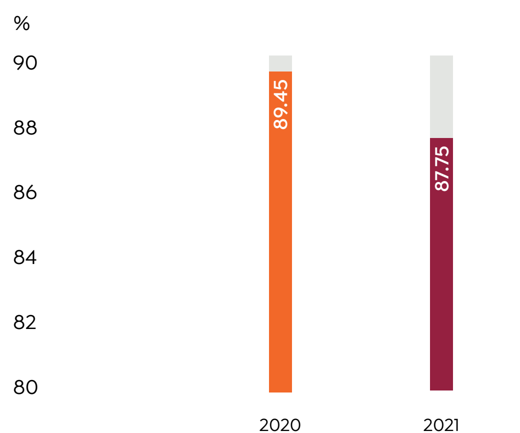
This is primarily driven by the backdrop of the pandemic and heightened investor attentiveness to quantum, fairness and stakeholder equilibrium, but another factor must be mentioned. As the market continues to improve its standards through convergence with international best practice, investors and proxy advisors' expectations around remuneration grow in stringency in tandem. Issues around retrospective disclosure of performance awards, inadequate response to shareholder dissent and poorly structured LTI schemes were some of the commonly raised concerns amongst investors and proxy advisors. These issues are similar to those raised by investors in the past and referenced in our review last year.

This AGM season comes at the back of another which saw many issuers adapt their remuneration framework with ad-hoc adjustments to counterbalance the impact of exogenous factors caused by the pandemic. Thanks to an increased volume of remuneration report items year on year, we were able to better gauge investor's sentiments behind these adjustments. The "share the gain, share the pain" mantra was widely applied by investors and proxy advisors with unjustified use of board discretion on pay outcomes sanctioned and any increases to pay outcomes expected to account for the stakeholder experience.

Average approval rates for Remuneration reports 2019 - 2021



Average approval rates for Remuneration policy 2020 - 2021



Issuers had to ensure both the financial stability of the company and equality of the stakeholder experience.

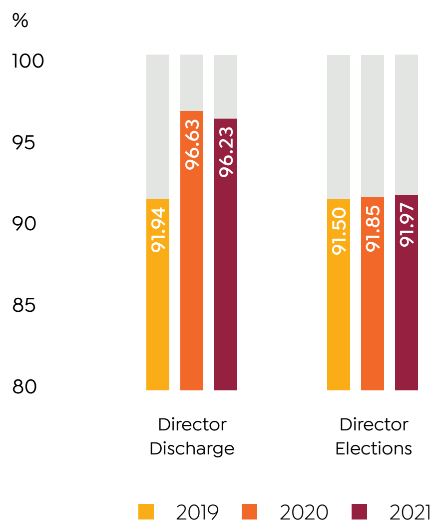
Board of directors

Items related to the board of directors remained relatively stable compared to 2020, where we noted a large year-on-year spike in the average approval rate of items linked to director discharge. This consistently high level of approval illustrates content from shareholders with the board's actions during the year under review, which is symbolic following a period where companies' corporate governance as a whole faced unprecedented challenges.

11% of the board-related items received less than 80% support, with a majority of those items related to director elections. Issues linked with a director's affiliation to the company with the potential to cause a conflict of interest continue to be prevalent for many Belgian companies. In recent years, we have seen many investors develop their voting policy with an emphasis on director accountability. This entails policies around director term lengths, committee related matters, and overboarding limits.

An example of this increased emphasis is the re-election of Pierre Demuelenaere at the Proximus AGM, where investors BlackRock, British Columbia Investment Management Corporation and Legal & General Investment Management all voted against the election for rationales linked to the aforementioned accountability principles. Despite the concerns expressed by the voices of leading international minority investors, Pierre Demuelenaere managed to receive over 90% votes in support of his re-election, which is largely due to the influence of the anchor shareholder, the Belgian state. It will be vital to monitor how the market continues to evolve in this respect as minority investors develop more stringent policies on director accountability.

Board of directors sub-categories 2019 - 2021



Year-on-year average approval rates for both the remuneration report and remuneration policy fell significantly.

MARKET EXPERT VIEW THE ACTIVE INVESTOR **ERIC SIBBERN & PAUL MCNULTY**

How has M&A activity fared in Switzerland during the recovery phase of the pandemic?

M&A recovered strongly in 2021 although we have not yet seen large scale public transactions.

This has been partially driven by companies resuming transactions postponed at the beginning of the Corona pandemic in 2020. Another key driver is the disruption triggered by the pandemic exposing weaknesses of certain companies and showing growth opportunities (e.g., through digitalization) for others. This led companies to portfolio reviews and divestments of weaker divisions and a focus on add-on acquisitions in the core business. In our portfolio we have for example supported Aryzta and Calida, both announcing larger divestments of non-core divisions to focus on stronger division and growth opportunities.

Finally, SPACs have gained traction in Europe both by way of inbound acquisition through European SPACs and outbound acquisitions through US SPACs. The most recent example is the acquisition of Swiss Roivant Sciences Ltd through Monte Archimedes Acquisition Corp in a USD 7.3 Bio SPAC deal. Swiss regulators are working on a framework for Swiss SPACs which is expected to be released in the coming months opening new opportunities for inbound Swiss SPACs M&A.

What would you say are the most important prerequisites for an active shareholder expecting to engage in a proxy contest?

Before we enter into a contested situation, a shareholder should develop a clear and compelling investment case based on a fundamental analysis of the relevant company and industry aimed to create long term value. In addition, the shareholder should discuss their investment analysis with the company listening to alternatives to implement the shareholder's view in a constructive way. If change is required and cannot be implemented in agreement with the company a reasonable proposal should be submitted to be voted on by shareholders. Absent these factors it will likely not be possible to persuade other shareholders to vote for change. This requires a team with a diverse know-how comprising industrial, legal and M&A and capital market skills.

What are the general conditions that would drive an active shareholder to enter into a contested situation rather than actively engage with the company to reach a commonly agreed outcome?

If the relevant company is not open to engage with shareholders but rather tries to delay meaningful discussion, alternatives need to be considered. The urgency for change and the extent of the required change (business/strategy related disagreements or more profound governance issues requiring also fundamental leadership changes) are factors to be considered before entering a contested situation.

We have seen a rise in ESG related shareholder proposals. To what extent are these considerations examined when making investment decisions and would you consider activism purely based on ESG concerns?

The ESG philosophy of VERAISON is centered on the following convictions. Based on our concentrated portfolio approach, we are able to conduct an in-depth analysis and due diligence of the target company, its products, and markets – including ESG factors to fully assess relevant risks and opportunities. VERAISON is further convinced that impact on ESG topics is most effectively achieved through active ownership rather than exclusion. As engaged shareholder, we aim to proactively mitigate ESG risks and promote ESG related initiatives in constructive discussions with the board of directors and management or through shareholder proposals. Finally, we appreciate ESG related initiatives as a driver for long-term value creation and not as a simple check the box assessment. Based on this approach we see ESG as a topic to be addressed based on our value enhancement agenda.

How would you describe the overall impact of the corporate law reform, specifically the changes around shareholder rights, in the activism space? The reform will lower the requirements necessary to request an extraordinary general meeting and ease the threshold that must be met to ask for an item or motion to be put on the agenda

The reform is aimed at strengthening the rights of minority shareholders to further implement "shareholder democracy". In particular, the threshold for requesting an extraordinary shareholder meeting will be lowered from 10% to 5% of capital or voting rights and shareholder holding 0.5% of capital or voting rights have the right to add agenda items with inclusion of explanatory notes in the company's proxy card. In addition, the reform will introduce the right of shareholders to request the inclusion of a proposal to an existing agenda item on the proxy card. Finally, the board of directors will need to grant shareholders a period of at least ten days between the distribution of the annual report before closing the agenda and convening the General Meeting.

The improved rights will strengthen the options of shareholders to engage actively in relation to Swiss companies. However, as before, a sound rationale of

"We expect active shareholders to remain a driving force behind change to more effective and diverse boards."

the relevant shareholder proposal will remain key for successful engagements both in constructive cases as well as in contested situations. In fact, we expect the increased engagement of larger institutional investors to have a more material impact on the success of shareholder proposals than relaxed shareholder rights.

The Corporate Law Reform introduces minor changes to the Minder Initiative which was already robust framework for executive remuneration in Switzerland. Some may say there is leeway to improve standards to converge with neighbouring countries. Do you think the changes around remuneration should have gone further? What are your thoughts on the current state of remuneration in terms of corporate governance in the Swiss market.

Regulation alone is not enough to address compensation issues. Shareholder engagement and control remains key for such purposes and regulation should primarily focus on enhancing related shareholder rights. We have seen a positive trend in Switzerland with respect to shareholder engagement on compensation topics with dissenting or tight "say-on-pay" votes on the rise in 2020 and 2021.

A related topic of at least the same concern for us is the over-boarding topic. Although limits on external mandates are mandatory in articles of incorporation, such limits are generally very broadly drafted and leave room for directors to have a large number of public and private mandates. We welcome that the corporate reform provides for more transparency on this topic requesting disclosure on all (private and public) mandates of board members in the remuneration report.

We have seen the corporate law reform impose gender diversity quotas in company hierarchies. Have these triggered essential improvements in terms of gender diversity and if not, do you believe they will in the near future? Have you noticed any Swiss companies develop their gender diversity standards since this implementation?

The corporate law reform requires large, listed companies to have at least 30% of board seats and 20% of executive seats held by women. However, the quotas have to be implemented only over the next five and ten years respectively and failure to achieve the minimum targets requires only to provide a justification with no sanctions for non-compliance.

As is the case for the subject of compensation, we expect active shareholders to remain a driving force behind change to more effective and diverse boards. Most of the institutional shareholder and proxy advisers are already implementing their own requirements. The latest figures from the Schilling Report 2021, which examines the composition of management bodies at the largest Swiss employers, show that the proportion of women on executive committees has risen on average from 4% to 13% and on boards of directors from 10% to 27% since 2010. We expect the trend to continue and that most companies reach regulatory thresholds prior to the regulatory deadlines.

What trends did you notice in the Swiss market for 2021? To follow up, which trends do you envision will emerge during the 2022 season.

The focus on ESG was a key topic in 2021 and is here to stay. In 2021 we have seen the first "Say-on-Climate" proposals made by shareholders. Our portfolio company, Calida, has introduced as the first Swiss company, a yearly consultative vote on its CSR report in their articles of incorporation. New Swiss legal requirements expected to enter into force in 2022/2023 will make the vote on CSR Report mandatory. In line with this trend, we expect a convergence of sustainability reporting standards allowing investors to gather a comparable view of a company's material ESG risks.

We also expect boards to face increasing pressure to become more ESG competent. ESG topics adding to the increasingly broad range of issues that a board must deal with will further increase pressure on boards to become more effective and in particular limit the number of external mandates.

VERAISON acquires significant ownership stakes in high-quality, but undervalued public companies, where sustainable value can be enhanced through active engagement. Veraison works constructively with its portfolio companies and, if necessary, exercise its shareholder rights to execute strategic, financial or governance changes to generate long term revenue and earnings growth for the benefit of the company and its stakeholders.

Eric Sibbern, Senior Partner

Prior to joining Veraison Capital Eric Sibbern was a director in the M&A/Corporate Development team at Credit Suisse. Further he worked at a lawyer at Homburger AG (Switzerland/Zürich) and at Kirkland & Ellis LLP (USA/New York). In these roles, he was responsible for a broad range of strategic transformations of private and listed companies.

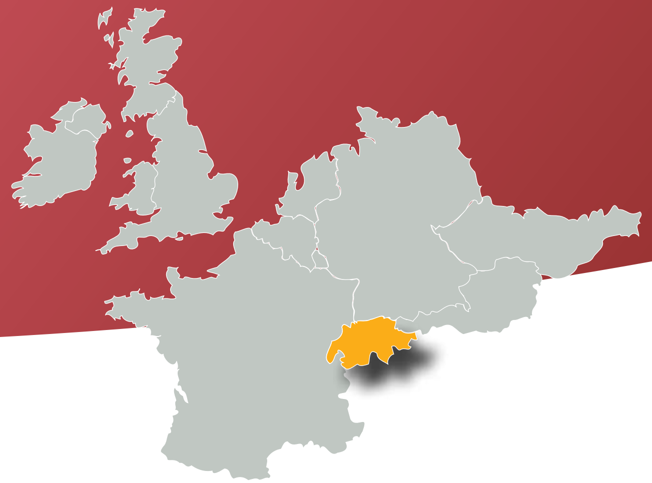
Eric Sibbern holds a master's degree in law from the University of Zurich and Geneva (Switzerland). Further he attended the University of St. Gallen (Switzerland) and Michigan, Ann Arbor (USA) and holds a masters degree in Banking and Finance.

Paul McNulty, Senior Partner

Prior to joining Veraison Paul was a Senior Analyst with Sterling Strategic Value in Monaco. Sterling takes an activist approach to investment with the aim to sustainably improve the company and generate value for shareholders. From 2000 until 2015 Paul was Senior Fund Manager at Setanta Asset Management. Setanta is an active global value oriented investment manager. Paul was responsible for the Income Funds and the Global Equity Fund alongside further colleagues. Prior to Setanta Paul was a consultant with PricewaterhouseCoopers.

Paul is a CFA Charterholder and holds both a BSc and MSc in Finance (with distinction) from Queens University Belfast.

A SPOTLIGHT ON:
SWITZERLAND



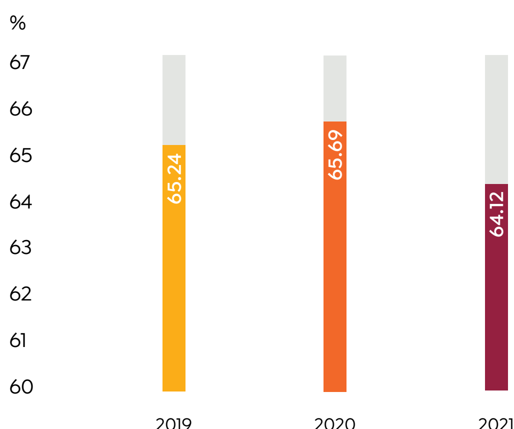
Overview

In 2021, once again average approval results reflected impressive outcomes for the majority of Swiss companies and highlighted the robustness of the corporate governance framework in Switzerland.

Following a year that introduced many unprecedented challenges globally, companies continued to be under heavy scrutiny to protect shareholder value throughout 2021. Like last year, the “S” & “G” from ESG continued to heavily influence voting outcomes, with the workforce and wider stakeholder experience exemplifying societal considerations and availability and competency being among the key director related governance factors. Of note, environmental considerations continue to grow in importance across all markets. This was perhaps best exemplified in Switzerland by Nestlé’s decision to propose an advisory climate roadmap or Say on Climate resolution at their 2021 AGM.

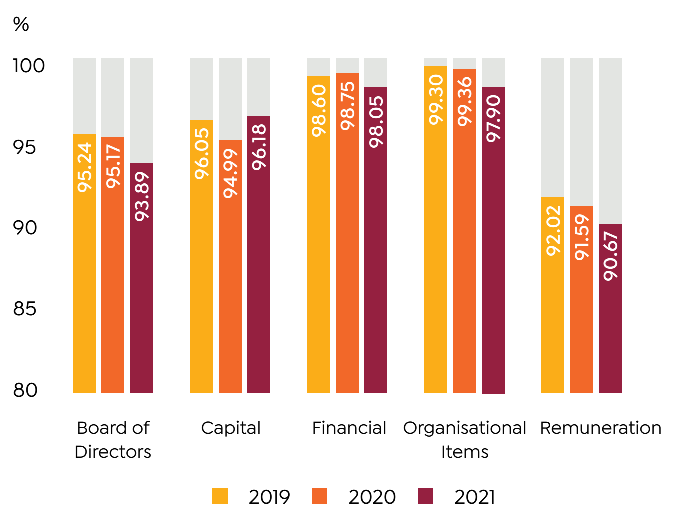
Average AGM participation rates dropped in 2021 by 1.57%. In 2021, the companies we researched included several new issuers such as Cembra Money Bank AG, Galenica and SIG Combibloc. Certain issuers experienced significant year-on-year drops in their AGM participation rates such as but not limited to AMS AG (40% to 24%), Credit Suisse (-7.73%), Partners Group (-15.49%) and Temenos (-8.34%). It is noteworthy that across our core European markets we have seen mixed and diverse changes to year-on-year participation rates, perhaps suggesting these are primarily driven by case-by-case changes to index compositions and shareholder bases rather than reflective of underlying trends in voting behaviours.

Average AGM Participation rates 2019 - 2021



Shifting to average approval rates, the illustrated results depict year-on-year developments across most categories, particularly when compared to the 2020 and 2019 year-on-year change. Average approval rates for remuneration prove once again the contentious nature of the topic for shareholders, and in 2021 it proved especially challenging to secure shareholder support. This will be further examined below. Approval rates for capital related items returned to levels displayed in 2019 signalling an improved understanding from issuers on new investor expectations around share buybacks and dilution that emerged in 2020.

Average approval rates per category 2019 - 2021



Companies continued to be under heavy scrutiny to protect shareholder value throughout 2021.

Remuneration

Overall, average approval rates for remuneration related items experienced a drop of 0.92% year-on-year. This is driven by substantial drops in the level of support for items related to the approval of the remuneration report (-4.56%) and retrospective executive compensation (-3.39%). The fact retrospective votes have deteriorated whilst prospective votes have improved is telling of the heightened scrutiny applied by investors and proxy advisors on remuneration outcomes for the period most rocked by the arrival of the pandemic.

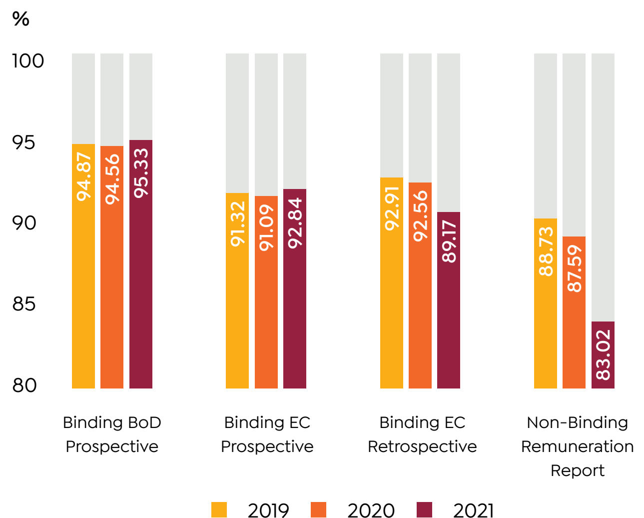
As with the other countries presented in our report, there was a clear consensus by institutional investors that executives must share the pain of wider stakeholders. Even in cases where issuers had provided solid performance and protected their workforce, the appetite to sign off on big pay cheques was limited.

The advisory vote on the remuneration report is generally recognised as a means for shareholders to express discontent over remuneration holistically meaning the decrease could encompass a wide range of drivers. To illustrate the development, eight of the 32 items proposed for the approval of the remuneration report received under 80% support (3 in 2020) with two failing to secure majority support overall (none in 2020). The first of the two resolutions come from the AMS AG AGM where approval of the advisory report received 32% votes in favour and failed to acquire sufficient support to pass. ISS and Glass Lewis raised issues around short vesting periods for LTI awards and inadequate disclosure to allow for an appropriate assessment of remuneration practices being key to their recommendation outcome.

Results for the ex-post remuneration for executives also suffered significant declines. The average overall figure is nonetheless skewed by two proposals presented at the Swatch Group AGM, both of which received approximately 65% support, the only two items under this sub-category to receive below 80% support. Common issues behind investors that voted against these items were highlighted, including poor overall disclosure, lack of performance based LTIPs and short vesting periods.

The drop in approval for the remuneration report (and remuneration votes more generally) is in line with a trend observed across most markets in 2021 and can largely be put down to an increased emphasis on alignment between executive pay and the wider stakeholder experience. But it will come as a concern to some that Switzerland is on a three-year downward trend. As neighbouring markets rapidly improve their remuneration practices following the implementation of SRD II which does not apply to Switzerland, there may be growing pressures for Switzerland to reverse the current direction of travel.

Remuneration sub-categories



Average approval rates for remuneration proved once again to be contentious and especially challenging to secure shareholder support.

Board of directors

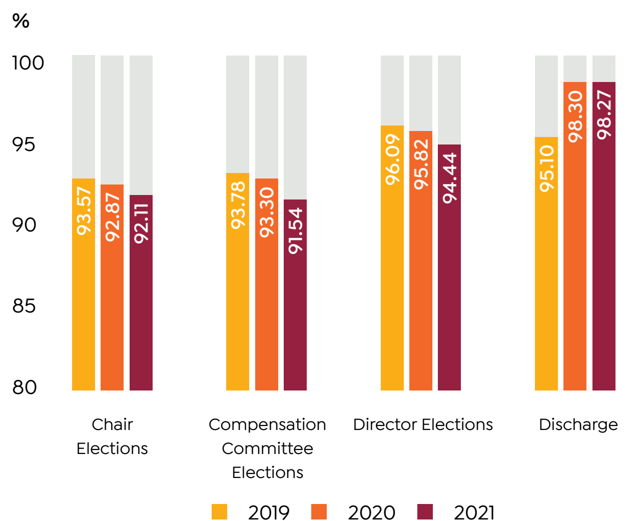
Three out of the four sub-categories represented in the following graph illustrate significant year-on-year drops. It is key to note that in 2021, proxy advisors ISS and Glass Lewis continued to sharpen their expectations around the board of directors, with amendments to their policy focused on board of director oversight of environmental and social risks and increased clarity around the minimum threshold in female board representatives of SMI and SMIM companies. Importantly ISS declared 2021 a transition year and confirmed that stricter sanctions in cases of insufficient gender diversity will only be effective from 2022. Blackrock, Fidelity, State Street Global Asset Management, and Norges also outlined new policies concerning the board, especially around diversity. With the Swiss corporate law reform set to come in full enactment during mid-2022 and the push from investors to see improved diversity, there is diminishing tolerance for issuers diverging from best practice.

Average approval rates for director (re)elections dropped by 1.38%. Out of 319 director (re)election items, 20 received less than 80% support. Chair elections continue to underperform standard director elections on average and this year saw three Swiss companies fall under the dreaded 80% mark: Straumann Holding AG (70%), Swatch Group (76.44%) and Swiss Prime Site AG (76.69%).

Whilst there is certainly heightened scrutiny towards a chairman due to his/her responsibilities, it is also quite a nuclear reaction to single out the individual at the helm. Based on the data we have reviewed, investors are nonetheless increasingly willing to do so. This was exemplified by the Swiss Prime Site AGM, where Ton Buchner's term was subject to shareholder approval, both as a director and chairman of the board separately.

Despite support from both ISS and Glass Lewis, his re-election received 85% votes in favour whilst his appointment as the chair of the board received 77% votes in favour. Blackrock disclosed retrospectively that they "vote(d) against for serving on over an excessive number of public company boards which we believe raises substantial concerns about the director's ability to exercise sufficient oversight on this board". Average approval rates for director discharge items were high and similar to those in 2020, which indicates an absence of egregious or abusive practices from boards of companies.

Board of Directors sub-categories 2019 - 2021



MARKET EXPERT VIEW THE STRATEGIC ADVISORS ALLISON BENNINGTON & BRIAN KELLY

Support for shareholder submitted E&S proposals is at an all-time high in 2021 (14% of all proposals passing in H1 2021 according to Lazard's H1 2021 Review of Shareholder Activism vs ~6% three-year average). Do you feel this trend is likely to continue?

Allison: In March, data showed that the equivalent of 80% of the global GDP was committed to Net-Zero policies. There is a governmental drive to Net-Zero, therefore many aspects in our society are bound to change by 2050. If companies are not able to meet these challenges, they face existential business model risks in 10-15-30 years. When you marry that with the shareholder drive to allocate capital to ESG aligned equity and credit, there is a convergence from both sides. Ultimately, this is the macro view of why proposals and activism are at an all-time high and why it won't change.

Brian: Agreed. We see a concerted regulatory push to make capital allocators agents of change driving companies to align with Countries' Net-Zero ambitions. Central Banks, for example, are incorporating climate risks into stress testing forcing banks to consider these factors in lending decisions. Equity and credit investors are looking for structural growth and reduced risk in investments based on their perceived alignment with a Net-Zero future. It is important for companies to understand this shift. Active fund managers have identified the incorporation of ESG factors into the investment process as one of the best opportunities to stem the outflow of AUM to passive investments. There is a clear direction of travel shown by market participants, and this puts the onus on companies to explain how they will generate consistent profits in a low carbon future. Failure to probably prepare for and report on this strategic shift will leave companies vulnerable to shareholder pressure.

2021 has seen the emergence of Say-On-Climate resolutions, often as a result of shareholder pressure. Do you have a view on this practice? Does it make sense for shareholders to vote on this item? Do you believe shareholders have the necessary incentives and ability to judge an issuer's climate strategy and performance?

Brian: Firstly, shareholders increasingly recognise that risks related to transition are associated with operational and financial risks and can impact cash flows and access to capital. Successfully transitioning to address the low carbon economy creates opportunities for companies. Secondly, there is the pace of growth in AUM allocated to ESG-aligned strategies. If investors are not incorporating ESG criteria into their investment process and reporting on this they are disadvantaged when it comes to asset raising. This reminds me of a statistic produced by Bloomberg that states that by 2025, 53 trillion dollars of global AUM will be ESG linked, and in the 2030s, we will see roughly 90% of AUM committed to such strategies. While there are diverging views between investors we speak to on whether they should vote directly on the climate strategy or not, the key takeaway for companies should be that whether directly, or indirectly through a vote on the Board or Remuneration, investors are going to express their view on the climate strategy, its execution and the Board's oversight.

In terms of the ability to judge a company's performance, this is evolving. Companies are trying to understand investors' expectations around data and reporting. Are they concerned with emissions? Is it the potential impact from carbon pricing? Investors themselves are trying to understand the most relevant metrics to measure company performance across industries. Investors are also developing their own in house expertise around climate change and decarbonisation. This is an evolving area but relatedly, we are seeing an increase in engagement by investors to educate companies on what their ESG expectations are and how they can articulate their climate strategy more clearly.

Do you believe there is a regulatory void when it comes to climate change?

Allison: Once again, I think we have to view things broadly. First, this is a global issue requiring a solution that starts at a governmental level. We are seeing multiple levels of regulatory guidance with no clear global set of standards that permeates across international, national and local rules and regulations in a hierarchical manner. Essentially, we are witnessing a massive patchwork varied legal frameworks which complicates progress on this vital topic. I think the UK is working hard to establish comprehensive, multi-stakeholder legislation. I also believe the SEC in the US is doing yeoman's work in being very responsible in making sure they get this highly complex effort right despite having no prior expertise in climate change. They are aiming to establish a long-term and robust framework that will not create market distortion or leave a negative ripple effect. We have also seen regulators allow the movement of capital to dictate the market. However, this more passive approach has created some negative unintended consequences, such as asset price distortions and green washing.

Brian: I fully agree. Europe is clearly further ahead than other markets. The Sustainable Finance Disclosure Regulation ("SFDR") is going to push the investment community to adapt to changes. One thing that

regulators will be acutely sensitive to is inadvertently causing the migration of public assets to the private setting where progress will be more opaque.

What changes and trends do you foresee in the near future around sustainability and climate change in particular?

Allison: I have strong views on this matter overall. I do believe there is going to be a shift in focus. Right now we have this tremendous concern on climate change, and in particular the impact of global emissions and greenhouse gas. We are going to see another shift towards biodiversity and the biosphere, and the impact that our industrial economies have had on the planet. 50% of Global GDP is connected to the biosphere and these impacts are enormous for the entire planet and worldwide population, which is on an alarmingly accelerated pace. The UN is already looking at ways to address this massive problem on a global scale. Given all this I think we will see more attention towards these issues from governments and investors. The shift in focus will help us realise that we face a multi-faceted problem that goes beyond carbon emission; some of these challenges, such as biodiversity, are actually approaching us more rapidly.

Danone is an interesting example of a market leader from an ESG perspective (though it did combine the roles of Chair/CEO) that nonetheless fell victim to a high-profile activist campaign. Do you have any takeaways from this case? Does it in some way illustrate that short/medium term financial performance is always vital even if long term sustainability is secured?

Brian: For Management teams and Boards it cannot be a case of either leading ESG credentials or profitable growth. Investors are increasingly focused on the ESG characteristics of their portfolios but ultimately their mandate is to generate alpha for their investors.

For issuers, the ESG strategy needs to align the business to structural growth drivers which reduce risk and can drive sustainable profitable growth. There are lots of examples of sectors and themes which can play on this, for example water conservation, recycling, renewables, natural ingredients, plant based foods etc. Even a strategy to run-off carbon intensive resources can be ESG compliant and very lucrative for investors.

The key for Management teams and for Boards is to ensure that their communication of the strategy is clear and that it resonates with their investors. If the issuer's capital allocation strategy is only going to generate an attractive return over a longer horizon then it is usually higher risk for investors. There can be no gaps in messaging and investors need to have confidence in strong, shareholder friendly oversight or any execution missteps will be heavily penalised.

Are there any particular recent activist campaigns that we have not yet discussed that stand out to you in their significance for capital markets?

Allison: It's difficult to have this conversation without mentioning the ExxonMobil / Engine No. 1 battle at the company's AGM this past spring; Engine No. 1's victory was a game changer in a few ways. It was interesting to see how EN1 turned one of ExxonMobil's most recognized strengths (its "string of pearls" board) on its head. EN1 was ultimately successful in highlighting that although the board had significant global business experience, it did not have the expertise in climate-change that would be required to help navigate the challenges inherent in Exxon's future climate change business solutions. The four individuals on the EN1 slate clearly had expertise in this area and the shareholder base backed them up. As a result, we are seeing companies evaluate board refreshment through a different lens. They are coming to grips with the fact that investors hold high expectations around adequate competencies at the board level to provide the oversight necessary to help companies fulfil their ESG strategy. That is not to suggest that boards need to be fully populated with climate change experts but the board does need some expertise to be equipped to address such issues with a greater general understanding.

Brian: Yes, I think board composition is the most important point. While there is room in a board for varied profiles, skills, expertise and experience, investors need to understand what each member contributes to the overall board and what other skills may be required overtime. In the Suez case this past year, the company's independent strategy, "Suez 2030", benefited from a board of directors that understood sustainability-linked long-term themes and how management would need to address them to be successful in creating sustainable value for investors.

"Investors need to understand what each member contributes to the overall board and what other skills may be required overtime."

Allison Bennington is a Partner, Global Head of ESG and Chairman of Activist Defense Practice, at PJT Partners, based in London. Ms. Bennington has extensive experience in global corporate strategy, ESG business strategy and solutions, activism campaigns, and corporate governance.

Prior to joining PJT Partners, Ms. Bennington was a Partner and the Chief Global Relations Officer of ValueAct Capital, a $14 billion investment fund that works constructively with its portfolio companies to build sustainable value for the long-term. Over her 17 year tenure, Ms. Bennington led ValueAct's global strategy and engagement efforts with a diverse set of stakeholders, as well as many of its ESG efforts. Ms. Bennington helped to found the ValueAct Spring Fund, a $1.5 billion impact investment fund that invested in companies solving social and environmental problems.

Prior to joining ValueAct, Ms. Bennington was the General Counsel and helped to found Atriax Ltd., an institutional electronic foreign exchange trading platform formed by Deutsche Bank, JP Morgan Chase, Citibank, and Reuters. Before joining Atriax, Ms. Bennington was a Managing Director and ran the legal department for Robertson Stephens, a full service investment bank.

Ms. Bennington was appointed by former SEC Chairman Jay Clayton to the SEC's Investor Advisory Committee and is on its Investor as Owner Subcommittee, and she continues to act as an informal advisor on ESG matters. She is a member of the American Legal Institute and the Advisory Board of the Berkeley Center for Law, Business and Economics as well as the Business in Society Institute at the University of California Berkeley School of Law. Ms. Bennington is a former member of the Advisory Board of the Sustainability Accounting Standards Board (SASB). Ms. Bennington received her undergraduate degree from the University of California Berkeley and her J.D. from the University of California Hastings College of the Law.

Brian Kelly is a Director in the Strategic Advisory Group at PJT Partners, based in London.

Mr. Kelly has 13 years of strategic advisory and hedge fund investing experience focused on active event-driven and merger-arbitrage investing.

Prior to joining PJT Partners, Mr. Kelly was an investor at Highbridge Capital Management where he was involved in investment origination, strategy and execution. The investments included multiple M&A and contested situations.

Mr. Kelly advises clients on issues relating to ESG, activism and contested M&A. Most recently he has advised the Board of Directors of Suez on its defence against Veolia and PPG on its acquisition of Tikkurila in spite of a counteroffer by Akzo Nobel.

Previously Mr. Kelly worked at Nevsky Capital and Morgan Stanley.

Mr. Kelly has a BA in Business and Law from the University College Dublin.

MARKET EXPERT VIEW
THE DEFENCE SPECIALIST
EMMANUEL GUEROULT

M&A remains the number one objective for activists in Europe and within that objective, the primary focus for 2021 has been opposing deals and/or improving the conditions of a deal.

What are the main challenges for an issuer in your view when a shareholder comes out publicly against a deal they have launched? What can be done to maximise support?

In the last 12 months, we have seen a lot more public deals with activism. We saw themes emerge similar to the situation at Unibail-Rodamco-Westfield, where a non-traditional (long term shareholder specialised in Real Estate) launched a successful campaign. A taboo has been broken, the largest market capitalisation in its sector was criticised for an acquisition and its implications. The opportunity to launch or not a rights issue and under which conditions became an existential point for the management and the short-term future of the company.

We also saw activism from many European long-only funds and foreign institutional funds, which would not have been normal several years ago. Danone is another interesting example where the accumulation of issues raised by a couple of funds with a dysfunctional governance led to another change in management.

In both of these cases, the process was violent and not amicable between the company and its active shareholder and revealed frictions between the management and the board.

Active shareholders are successful when they target vulnerable management teams. In many cases, management was not able to generate demonstrable value to the company's shareholders.

In Continental Europe, there is still a general lack of attention around the board composition and its ability to analyse in real time the vulnerabilities of the company. Every board member should think about their ability and experience in dealing with shareholders. When faced with an activist challenge European boards are becoming more heavily scrutinised.

Currently the market is liquid and active, and active investors are becoming more independent and vocal with their views. This sort of activism has accelerated over the last 12 months as success begets success.

How can issuers distinguish between investors that are making noise to attempt to improve offer conditions (whilst they plan to ultimately tender nonetheless) and investors that are likely to hold on to their shares should the price not be sweetened?

Experience shows that it is tough to distinguish between investors. One attempts to assess the credibility and legitimacy of the investors. A board's potential reaction depends on whether an active shareholder is likely to get traction with other investors for its ideas or strategy based on the credibility of the ideas and of the investor.

We will also look to see if the shareholder expression of dissent has an impact on the share price and whether this impact is purely speculative or has fundamental drivers. That is the first way to make the distinction between these two categories of investors, albeit somewhat harsh and clinical.

The second way is through examining the arguments put forward by the dissenting shareholders to the board. From our experience, issuers should pay a good deal of attention and apply a degree of humility to letters addressed by professional shareholders. Ideally, the topics addressed in these letters are already familiar to the board so that it can analyse them appropriately by avoiding a binary analysis and assessing the usefulness of the shareholder's ideas in helping to create shareholder value.

Therefore, the real conundrum for the board is to assess with sufficient gravitas and perspective shareholders' feedback even if it is different from the feedback they had heard so far from the management. Playing devil's advocate from time to time has its benefits and is healthy from a pure governance point of view.

> *"Management and the board need to talk about valuation regularly"*

"Every board member should think about their ability and experience in dealing with shareholders."

It could be argued that large index investors through their passive and often very secretive approaches to M&A transactions fuel opportunities for activist 'bumpitrage' campaigns. Do you feel this concentration of ownership in a few very large passive shareholders is detrimental to the proper functioning of capital markets?

Institutional investing has changed greatly over the last fifteen years. I do not really have a judgement about index funds' impact on deals, but I must highlight how important it is to have solid engagement with their corporate governance teams given their active voting. This is something many issuers are starting to pay attention to but usually they are doing it too late or under too much pressure.

At this stage, index investing dominates large cap ownership and provides considerable economies of scale. Their growth and strength reflect the structural changes that have occurred in the investment world. Passive investors' behaviour in deal situations, the nature of their ticket size allows them to be more reserved in relation to deciding on whether to accept a given takeover bid.

Ultimately, I do not think they are more secretive with their approach behind M&A transactions. Before the advent of index investing, the leading US mutual fund companies were regularly reluctant to reveal their decisions relating to a deal. It has always been natural for large investors to keep this information confidential.

In addition, the offer price goes back to basic intrinsic and market value of the company. Once a deal is launched, investors have a view on the initial level and what they are aiming for.

Management and the board need to talk about valuation regularly, throughout their tenure before there are issues so that investors understand their view on the company's worth. If the company's valuation is debated for the first time during an offer or at the time of an activist attack, the company's management and board speak from a position of weakness. In such a deal scenario, there are no general rules but rather a game of chicken which pits one side's negotiation and valuation power against the others. Long-term and credible communication about valuation is better for a company.

Emmanuel Gueroult is a Partner in the Strategic Advisory Group at PJT Partners. Mr. Gueroult joined PJT Partners in March 2017 after two years on the investment side. At PJT Partners, Mr.Gueroult has advised on some of the largest recent contested situations such as Unibail Rodamco Westfield and Suez/Veolia.

Previously, he spent most of his career at Morgan Stanley (22 years), most recently as Chairman of Global Capital Markets and Co-Head of Equity Capital Markets for Europe Middle East and Africa. Under his 10-year leadership of the European Equity Capital Market Practice, Morgan Stanley was systematically a top ranked bookrunner.

Mr. Gueroult has personally led more than 100 IPOs. He advised on a broad array of capital markets transactions from the most complex balance sheet repairs for European banks to the restructuring of large industrial conglomerates, spin-offs, sub-IPO, pre-IPO anchor investors and has advised on the capital market aspects of large M&A transactions across the globe.

Mr. Gueroult graduated with an MSc European Studies from the London School of Economics and is also a graduate from the EDHEC Business School.

A SPOTLIGHT ON: **AUSTRALIA**

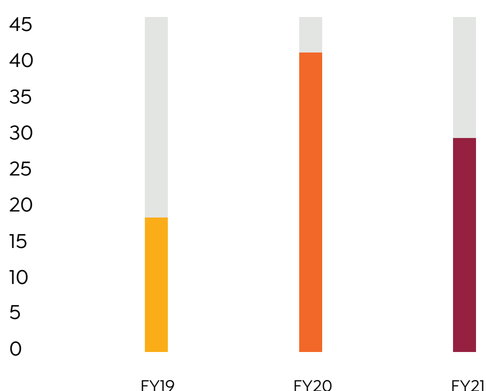
Overview

Despite continuing Covid-19 disruptions and uncertainties, investors in Australia remain committed to holding boards and management accountable to higher levels of responsibility and transparency. Indeed, as witnessed across the globe, the Pandemic has created an opportunity for investors to gauge company boards' ability to manage systemic risk. 2021 has been marked by greater scrutiny by investors on executive remuneration and a renewed effort to pressure companies on climate action. These trends have brought together major stakeholders behind shared governance and stewardship concerns, encouraging investors to take more proactive roles in their stewardship duties.

ESG on the agenda

Investors are increasingly vocal about how ESG outcomes should be tackled both in Australia and further afield. In 2021, shareholders submitted 30 ESG related resolutions in Australia compared to just 16 in 2018. This growth in the number of these resolutions has also been accompanied by a corresponding increase in voting support among the register. In 2021, ESG related shareholder resolutions received 17.8% aggregate voting support compared to 8.4% in 2018.

Shareholder ESG Resolutions



This notable growth in volume and support for ESG proposals is a tangible indication that investors are increasingly becoming aware that enhanced ESG outcomes are both critical to improving corporate effectiveness, and crucial to safeguarding long-term wealth development.

In a year, where social issues (particularly those associated with Diversity, Equity and Inclusion (DEI)) dominated corporate agendas in North America and resonated in the EU, Australia was reasonably quiet, with only 1 of the 30 aforementioned ESG resolutions being directed at social issues in 2021.

One explanation for this divergence is that Australian companies generally score well on social issues, but less so on environmental matters. In a 2021 study on gender equality by Equileap, Australia dominated the top 100 rankings for female executive leader roles with 22 companies compared to 13 for the US and zero for Japan. At board level the results are similar. According to the Australian Council of Superannuation Investors (ACSI), over a quarter of ASX200 companies have 40% or more women directors, and in the ASX300 greater than 60% of companies have 30% or more female representation at the board level. While stronger than the US or Japan, Australian companies might take inspiration from EU countries such as France where its SBF 120 for the past five years, has successfully had at least 40% gender diversity on boards. In contrast, in July, a UN report ranked Australia last out of 170 member nations for its response to climate change.

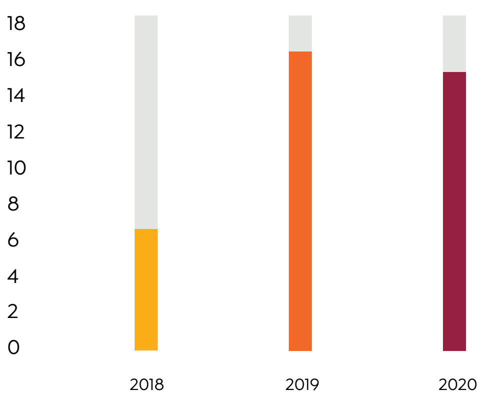
In keeping with lessons learned, key management in most Australian companies have taken steps to voluntarily defer elements of compensation, or take pay cuts to offset financial underperformance due to the pandemic.

Climate Change in focus

2021 saw a renewed focus by institutional and activist shareholders on the issue of climate change across the globe, including in Australia. However, the refusal by the federal government to commit towards a Net-Zero strategy by 2050 has contributed to corporate Australia lagging behind other regions in tackling climate change who have already legislated on this major subject, including the United States and the E.U.

In Australia, the number of climate-based shareholder resolutions has climbed from 6 in 2018 to 15 in 2020. Notably in 2021, for the first time, a shareholder submitted climate resolution garnered the support from the management of a major Australian company. For their 2021 AGM, Rio Tinto endorsed a pair of shareholder proposals related to climate lobbying and emissions targets, which secured an unprecedented 99% support from shareholders at their annual general meeting.

Shareholder Resolutions on Climate



This year also saw the emergence of a new type of shareholder proposal, the "say-on-climate" resolution. Endorsed by Chris Hohn of TCI Fund Management or independently presented by boards of corporations, these "say-on-climate" resolutions request companies to disclose how they plan to assess climate risk and outline their climate action plans in relation to 2050 net zero goals as well as interim 2030 targets. Dovetailing with successes seen in other parts of the world, the 4 major Australian mining and energy companies (Rio Tinto, Oil Search, Woodside Petroleum, & Santos) were all approached by activists in 2021 with these types of resolutions and have all agreed to hold "say-on-climate" resolutions in their 2022 annual general meetings.

With the recent release of the sixth assessment report from The Intergovernmental Panel on Climate Change (IPCC), which warns of a 'code red for humanity', a further shift in investor alignment on the need for climate action is expected to accelerate. Beyond the "say-on-climate" activist resolutions, there is a general need for companies to weave in their ESG story across several types of resolutions, including board elections and remuneration. As evidenced by several examples seen in the first half of the year, investors both large and small will continue to put pressure on Australian boards & management to extract commitments on more substantive emission targets, transition planning and tangible strategies towards Net-Zero in the absence of federal leadership.

...in-person shareholder meetings to largely hybrid or virtual has led to a corresponding increase in participation.

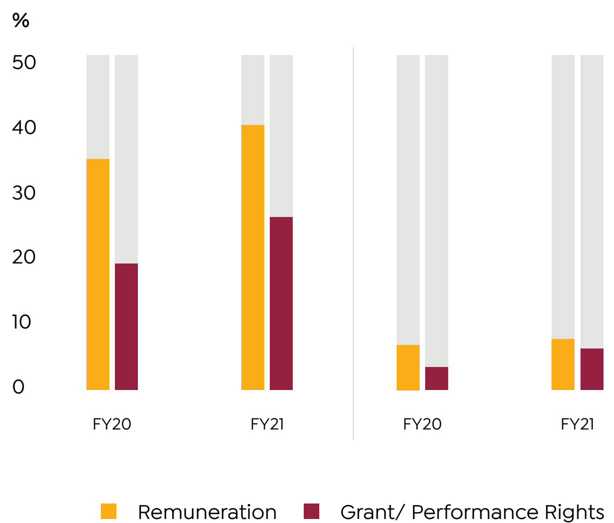
COVID-19 implications for executive pay

The ongoing disruption and uncertainty due to the global pandemic continue to present unique challenges for executive remuneration in 2021. In Australia, as in the rest of the world, boards are deciding compensation plan outcomes on the back of a year where the economic performance of most companies was unevenly affected by the pandemic. Investors and proxy advisors were placed in the difficult position of having to vote on remuneration reports within a context of distorted financial outcomes. Ultimately, they had to express a view on whether pay outs were equitable in the context of the wider stakeholder experience. Over time it became apparent that investors and the proxy advisory community had clear expectations that real and impactful financial sacrifices should be made on executive compensation, regardless of individual company performance.

In keeping with the lessons learned from the early stages of the pandemic, key management personnel in most Australian companies have taken steps to voluntarily defer elements of their compensation or take pay cuts to offset financial underperformance due to the pandemic. However, because of the need to readjust business strategies due to Covid 19 impacts, many have deferred significant structural reforms of their remuneration practice.

Instead, they have adopted the wide use of discretion to ensure that company remuneration outcomes reflect performance whilst aligning with shareholder expectations. The reliance on the use of discretion to justify remuneration among companies in 2021 has added to the complexity faced by investors and proxy advisors when evaluating if incentives are appropriately aligned or if bonuses are warranted based on outstanding results. Due to the timing of the Covid-19 impact in the region, investors in Australia were more accommodating than other markets to adjustments in executive compensation, provided said adjustments were accompanied by robust justification and full disclosure.

Accordingly, the voting data we have researched for Australia has reflected these concerns and found that dissident voting has increased meaningfully amongst ASX300 companies. In 2021, superannuation funds voted against 40% of remuneration reports up from 34% in 2020. In terms of long-term awards such as performance rights & grants, dissident voting also proportionally rose 6% to 25% in FY2021 from 19% in FY2020. This trend is also reflected in the voting record of investment managers. In FY2021, investment managers voted against 8.3% of remuneration reports up from 7.4% in FY2020, and against 7.4% of grants & rights in 2021, compared to 3.9% in 2020.



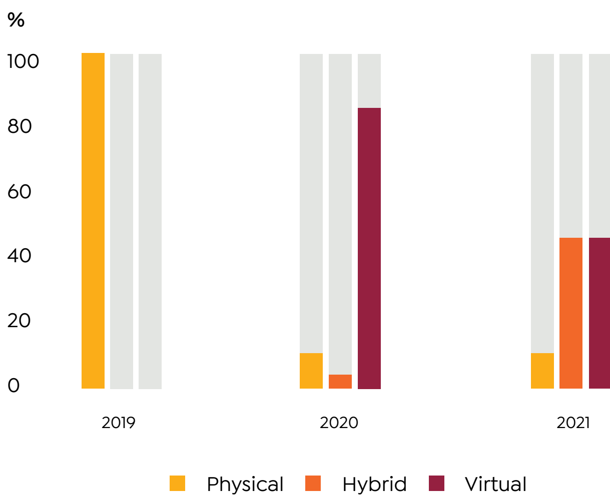
These trends were heralded by a corresponding increase from proxy advisors recommending against the remuneration practices among the ASX300. ISS for example, made recommendations against 13.9% of remuneration reports in the first half of 2021, compared to just 10.8% during the same period in 2020. Based on an examination of voting rationales and advisor recommendations, this increase in dissident voting and negative sentiment were the result of failures by many companies to provide the level of disclosure expected on executive compensation this season.

In particular, the increased use of time-based awards (as alternatives to traditional performance-based awards), subjective criteria for vesting, and the inadequate disclosure on the rigour of performance metrics used in the determination of awards and grants were highlighted for scrutiny. Thus, to ensure support from shareholders and proxy advisors for future remuneration proposals, boards should commit to providing robust disclosure, especially in the context of greater discretion, that enables investors to confidently determine that remuneration decisions are fully aligned with investor and wider-stakeholder interests.

Going virtual

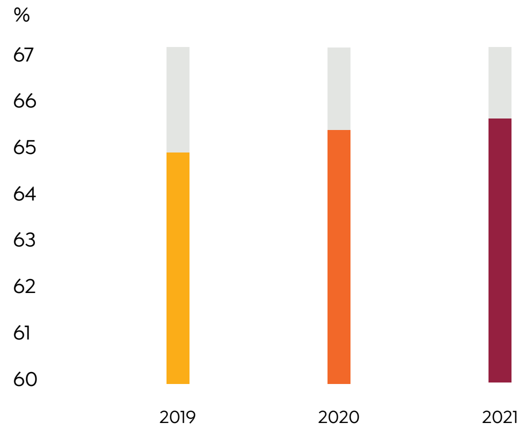
As was the case last year, 2021 was another year where snap lockdowns, social distancing and travel restrictions saw an unprecedented number of Australian companies adopt virtual only or hybrid AGMs. In 2021, 87% of Australian issuers held virtual or hybrid meetings compared to 95% in 2020, and zero in 2019.

Meeting Type



The transition from traditional in-person shareholder meetings to those that are largely hybrid or virtual in nature, has also led to a corresponding increase in shareholder participation in Australia. Our research shows that share voting in Australian companies increased to an average of 66% in 2020, up from 64% in 2019. Whilst a 2% increase is notable, the adoption of a virtual solution not only prevented shareholder participation from falling, but also created the opportunity for companies to harness improvements in technology to facilitate this.

Average AGM Participation rates 2019 - 2021



As companies plan their shareholder meetings, they should be cognisant of the proxy adviser guidance from 2020 ISS and Glass Lewis, who were both supportive of virtual only meetings. In 2021, they clarified their support for virtual meeting by introducing guidelines that require greater transparency, participation, or access to how companies conduct their meetings. The interpretation is that as normality begins to return, companies will be encouraged to move away from virtual only meetings at the earliest opportunity.

With the future of in-person meetings still remaining uncertain, the trend towards greater acceptance of virtual and/or hybrid meetings as a viable method for shareholder interaction is expected to continue into the foreseeable future.

MARKET EXPERT VIEW THE ENERGY SPECIALIST **NIK BURNS**

In 2021, ESG considerations remain a prominent issue for corporates. With institutional investors increasingly weighing in on ESG matters, how do you see Australian listed companies navigating this development heading into the AGM season?

My view is through an Energy company lens given my background and experience. In the two years I was at Beach Energy, ESG matters went from a very low consideration to a very large consideration. Partly, there is a market cap function. Beach increased in size during my tenure, entering the ASX 100 and as companies get larger there is an implicit view that there is a bigger balance sheet and more capacity to start taking action on ESG matters. The expectation around that market cap level is declining over time and companies outside the ASX 100 are in a similar spotlight that the large caps were in maybe two or three years ago so the landscape has changed rapidly.

In terms of navigating the development, there are a number of actions companies can take. Internally there is a larger focus on ESG issues and so what that means is that where you may not have had an ESG team, you now have one and if you did have a small ESG team before you've probably bulked that up. Chances are the ESG team have a more direct reporting line to the C-Suite, probably even more dialogue with the CEO. A couple of years ago that would not have been the case.

ESG advisors are well utilised by investors to quickly compare and contrast companies on different ESG metrics. The problem is how those metrics are generated can differ between these firms, they have different methodologies they work through. Having a larger ESG team allows more time to be invested into understanding how each agency generates their rankings and ratings and what areas are checked. Many companies get black marks because they haven't disclosed policies on, for example, modern slavery or gender equality, addressing these can help get the company's ranking up quite quickly. That's important on both an absolute basis but also on a relative basis, if all your peers are already doing this you don't want to be left behind.

There is a lot of work to understand how ESG advisors are actually generating their ratings, understanding these can ensure you can address their concerns. For example I've looked at how ESG advisors look at emissions. Some report metrics based on gross operated emissions while others use equity emissions. They don't necessarily outline which method they use. Having resources to gain access to reports and delve deeply into the data will help ensure they are accurate and up to date.

Experience dealing with the ESG advisors is that most of the surveys are backwards looking. Being aware of how often they update and incorporate the new sustainability report data and annual report data is important, often the information they are using is considerably out of date. Investors are then factoring that information into their decisions making. Ensuring regular dialogue with the rating agencies is important and that will likely increase over time. Having an understanding of which of the major agencies cover your company is necessary but the key is knowing who the investors actually use.

One of the trends is to think about what issues are being raised in other companies. Given there are two main AGM seasons, understanding what happened in the previous season can be beneficial. What were the main issues then, who were the key players, what were the questions that were asked? There is a lot of sharing of information that happens behind the scenes. Often the Chairman and CEO are speaking to their peers to find out what to expect.

On the proxy advisors, ensuring you have early engagement to understand the types of concerns and types of questions they will be asking. What you will find is that future Board appointments will have experience and skills on their resume that help cover certain themes and issues that investors are increasingly wanting addressed. For example in oil & gas, going forward it will be a critical requirement that companies start to add people on the board with experience in renewables, hydrogen or clean energy. You can then demonstrate to investors and proxy advisors that you are looking to increase the level of engagement around ESG and are outlining a future energy focus.

Since the start of 2021, activist and institutional investors have increased pressure on listed companies to make more substantive commitments on climate change. In Australia, major mining and energy companies have vowed to hold Say-on-Climate resolutions. Do you feel that 2021, will be a 'watershed' year for Australian companies on the issue of climate change?

It is an ongoing evolution. I expect next year there will be more resolutions that will be more strict to try and push the companies in a certain direction. In terms of accountability, is it going to cause a change in strategy or just add additional reporting requirements and compliance or is it going to launch another round of green washing to say what people want to hear but without actually deploying much capital to achieve those outcomes? Having management targets built into LTIs that relate to ESG and having that as an increasing

focus is going to be important, so that management bonuses are linked to achieving these outcomes and the level of compliance will strengthen over time.

Companies are already under pressure, they are already taking action. You look at the Woodside, Santos and Oilsearch investor day presentations, almost one in three slides content was used to address something to do with climate, in terms of transition, to reduce emissions, move to hydrogen or some other ESG platform so that's quite significant. Companies want to be seen to be doing the right thing.

In terms of what's being said and what's being done, you look at the capital that is actually being deployed to date on emissions reduction among these companies. The answer is very little. They are talking about it but not doing much about it. For me, the watershed moment is when we start seeing companies actually deploying material capital towards emission reduction activities and that hasn't happened yet.

I think there will be increasing support for compulsory climate resolutions. If you look at the resolutions that some of the companies have addressed, it is Market Forces who have been proactive and organised at putting forth resolutions. There is certainly a view that those resolutions to date are what a lot of the investors and companies would consider extreme in nature and they are still gaining 5-10% support. The view is if they put something forward that was more middle ground, you would see far more support coming through. The question is do these groups then actually have issues with their own members if they are seen to be putting forward watered down resolutions that are not really what they want to see as the end outcome. They end up drawn to extreme resolutions which have less chance of succeeding. However, you see groups like Engine No. 1 putting up a pretty slick marketing campaign together and many investors pile in to support, then you get meaningful action and change. With the climate resolutions, depending on what exactly the wording is going to be, if they don't get support this year, I'm sure at some point we will see that coming through but it is hard to predict exactly when.

"...the watershed moment is when we start seeing companies deploying material capital towards emission reduction activities."

In challenging circumstances where the Covid-19 Pandemic continues to disrupt business activities, discretion becomes key in how boards exercise judgment on remuneration outcomes. What insights are you able to offer in how discretion could be applied in this area?

In FY20, Covid hitting in March meant there was some of the most difficult challenging circumstances that boards and management teams have had to face. It was like nothing ever seen before leading up to the end of that year and even through FY21.

There was significant effort to get an outcome, keeping staff safe, being able to continue operations successfully and executing on work programmes to either maintain or achieve growth. Many felt like without looking at the profitability of businesses, if bonuses are rewarded on effort and keeping the lights on and keeping everything going then most management teams probably more than earnt their bonuses they would have received the year before. The issue was that there was a question mark around profitability.

Jobkeeper added another layer of uncertainty. If you take Jobkeeper, can you justify giving a bonus at all? How can you justify taking Jobkeeper on one hand and then paying large bonuses on the other hand? That led to very difficult conversations. I imagine it was very difficult for Boards to work through that because there would be implicit acknowledgement that the management teams in a lot of companies did a sterling job in navigating through Covid. However, can you be seen to be rewarding when profits are down, you may have taken Jobkeeper, you probably lost people during the period. I suspect what would have been seen in bonuses were probably nowhere near what the effort probably should have justified but that is the natural circumstances.

The past AGM season, saw an extraordinary rise in the numbers of virtual and hybrid meetings to accommodate restrictions imposed by Covid-19. What advice would you give to companies looking at another year of virtual meetings and investor engagements?

Our view is that virtual meetings are safer. I think safety and security is paramount. Virtual meetings have huge advantages from that perspective.

It was interesting going through the process with Beach last year, we spent a lot of time making sure we had the technology right. We also looked at as many virtual meetings as possible to try and get takeaways about the right order, for example when to have a Q&A session.

The meetings are generally run by the Chairman and on occasion we saw Chairman that weren't quite on the same page, particularly with Q&A. The Chairman at Beach was fantastic but I've seen a number of Chairman who are clearly not talking to the market or investors often. They are used to engaging with proxy advisors and other board members but they don't have the same level of engagement with the day-to-day holders of the stock.

You want to make sure the Chairman is properly prepped ahead of time with all the likely questions and what the appropriate responses are to those questions. We certainly saw a few where the Chairman goes a little bit off-piste, you can hear everyone on the ground, holding their breath, gritting their teeth, while listening to answers that they wish the Chairman wouldn't provide. They don't know they were giving the wrong answer or something that was inconsistent with what the CEO said previously. The advice is more prep, prep, prep and practice, practice, practice.

"Safety and security is paramount. Virtual meetings have huge advantages from that perspective."

Nik brings a wealth of knowledge and experience to his role as Head of Energy, including 10 years as a sell side research analyst and 18 years in the Australian upstream oil and gas sector.

Nik returned to research after 2 years as Head of Investor Relations at Beach Energy, an ASX100 oil and gas company. Prior to his role at Beach, Nik was a highly rated energy and utilities research analyst at UBS Australia for almost 6 years. His industry experience includes roles at Santos, Woodside and RISC.

After commencing his career as a reservoir engineer, Nik's career diversified into roles encompassing valuation, M&A, business development and strategy advice. Nik has a unique combination of technical, commercial, financial and equities experience in the energy sector.

KEY TAKEAWAYS FOR 2022

The pace of change at AGMs over the past two years has been rapid, extensive and multi-faceted. Companies have adapted well to ensure that investors understand how their boards assess systemic risks, take decisions on key topics that impact their investment (such as board composition or remuneration) and ultimately how they are challenging management on their strategy to create sustainable value to shareholders and wider stakeholders.

This change has occurred under the tremendous and continuing challenges caused by the COVID-19 pandemic.

Companies have improved their ability to convey to shareholders why their boards are the right ones and why the resolutions that they are seeking investor support for are in the interest of shareholders and stakeholders.

We encourage companies to weave their greater ESG story – how their strategy is creating sustainable value for shareholders and stakeholders through alignment, accountability and inclusion – into their overall 2022 AGM preparation. This effort will create the support from investors necessary to approve your resolutions at your next general meeting and further the trust that they have in your board.

Looking ahead to 2022, outlined are key takeaways to focus on to secure shareholder support:

Alignment with shareholder and stakeholder interests

Demonstrate an understanding of investor concerns on key recurring AGM topics:

- Development of your ESG strategy and its focus
- Evolution of board composition
- Clear, transparent and challenging remuneration reports and policies
- Honest evaluation on diversity progress at board level and beyond

Accountability to shareholders and stakeholders

- Engage early and regularly on key topics/concerns
- Become more transparent on key reporting metrics, including performance criteria targets and outcomes
- Address and cure any resolution votes with results below 80% support
- Identify and resolve potential activist risks
- Explain how ESG strategy will progress to 2030 and provide a path to Net Zero in 2050

Sustainable value creation

- Efforts to improve alignment, become more accountable and foster inclusion do not diminish the expectation that a company's strategy will create sustainable value
- Companies that focus on the ESG narrative but fail to marry it with its actual performance will face sanction from investors and activists
- Profitability still matters

Inclusion

- Explain your inclusion strategy from the board on down
- Listen and understand investor expectations in your progression
- Highlight any specific sectoral, geographical or legal challenges that may impact progress

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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