AN FTI CONSULTING REPORT — MARCH 2024

French Governance Snapshot

LESSONS FROM 2023 AND AREAS OF FOCUS FOR THE 2024 AGM SEASON

Executive Summary

As French companies finalise any potential amendments to governance and remuneration arrangements for the period ahead, we set out below our considerations on the areas most likely to draw scrutiny in 2024, including views on executive remuneration, director accountability, 'pass-through voting', ESG, shareholder activism and more.

28 SBF 120 companies experienced significant dissent (20% or more of the votes cast against the board's recommendation) on at least one say-on-pay proposal in 2023 (2022: 30 companies), including seven companies that faced opposition on both their remuneration policy for the ongoing period and the remuneration paid to their executives in title of the previous fiscal year. Pay structures and disclosure were the primary sources of dissent in France in 2023, and this is likely to remain the case in 2024. The use of environment, social and governance ("ESG") criteria is also likely to remain a controversial topic, in particular following the amendment of the AFEF-MEDEF Corporate Governance Code in December 2022 recommending the inclusion of at least one climate objective in executive pay.

Despite growing expectations on director accountability and time commitments from investors, 2023 was a quieter year in terms of shareholder dissent on director elections, with only seven companies experiencing significant opposition on one or more proposals (2022: 14). In 2024, French companies will face new expectations from proxy advisors regarding their management and oversight of climate-related issues, their responses to cybersecurity incidents, and their use of capital structures with unequal voting rights. Failing to meet these new expectations may result in these institutions recommending that investors oppose the re-election of certain directors.

In its annual review of governance and remuneration practices published in December 2023, the French Financial Market Authority also highlighted the rigour of evaluating board and director effectiveness, and disclosing those processes to investors, among areas of improvement for certain French companies.

Over the last two years, a number of asset managers have started to roll out 'pass-through' voting solutions, allowing their clients to cast their votes either in alignment with the asset manager's approach or according to different guidelines. With large asset managers potentially less influential in terms of voting at annual general meetings ("AGMs"), in the event of greater adoption of pass-through voting, companies will need to focus even greater energy on strong reporting, which will be reviewed by asset owners and proxy advisors, whose influence may be even greater as a result of these latest changes to the proxy voting landscape.

The number of say-on-climate proposals put forward by management in France remained relatively stable, with eight such proposals submitted in 2023 (2022: 10), in stark contrast with the substantial decline in the number of resolutions tabled globally (2023: 49; 2022: 26). In 2023, there were also two say-on-climate proposals submitted by shareholders at French companies, compared to nil in 2022. It remains to be seen whether this nascent trend will continue in 2024, but some of the conclusions from the report of the legal expert group "Haut Comité Juridique de la Place Financière de Paris", delivered in January 2023, may provide a platform for an increase in shareholder proposals in the year ahead.

In addition to increasing expectations on governance and ESG, French boards must also deal with a European-wide increase in traditional (value-focused) shareholder activism. Against this backdrop, taking a proactive approach to identifying any vulnerabilities (financial, governance or ESG-related), providing clear disclosures on boards' decision making, and maintaining a regular dialogue with shareholders will be key to mitigating activism risk and securing positive outcomes at 2024 AGMs.

Introduction

In 2023, 38% of SBF 120 companies headquartered in France received significant shareholder dissent on one or more management proposals.[1] Though we note an improvement compared to the previous four years, a significant proportion of French large- and mid-caps continue to receive high levels of opposition at AGMs, particularly considering the relatively high concentration of ownership in France and the widespread use of double voting rights by strategic shareholders (in contrast, only 20% of FTSE 350 companies experienced similar levels of dissent in 2023). Dissent from a significant minority of shareholders can be reflective of deteriorating relationships with shareholders and has the potential to negatively impact a company's reputation among stakeholders and the media. Likewise, failure to adequately address negative voting outcomes can result in a snowballing effect, whereby board and management freedom to pursue the strategic objectives of the business are impeded by negative perceptions in the market.

Proportion of French Companies that Received Significant Dissent in the Last Five Years

2019	2022	2021	2022	2023
43%	43%	50%	44%	38%

Source: Diligent Market Intelligence. The sample includes all SBF 120 companies headquartered in France.

In March, a number of businesses will have concluded initial engagement with shareholders and, at the same time, will be finalising any potential amendments to their governance and remuneration practices for the period ahead. Securing a strong mandate from shareholder for ongoing – or evolving – practice requires clear disclosure in annual reports and proxy materials as well as the potential to engage directly with the company's main shareholders and proxy advisors to obtain a comprehensive picture of external expectations while offering companies the opportunity to provide additional context on the board's decisions and future plans. To help companies navigate this process, the FTI Consulting team has set out a number of key considerations for the period ahead based on an analysis of 2023 shareholder meetings as well as a review of the most recent market developments.

2023 — Looking back to Plan for 2024

Executive Remuneration

As with other markets worldwide, executive remuneration has been the primary driver of dissent in France, with 28 companies (among SBF 120 companies) experiencing significant dissent on at least one say-on-pay proposal in 2023 (2022: 30). Of the 28 companies, nine experienced significant opposition on ex-ante say-on-pay proposals (remuneration policies) only, with 12 companies experiencing similar levels of dissent on ex-post say-on-pay proposals (remuneration reports) only. Notably, seven companies experienced opposition on both types of resolutions, demonstrating shareholder concerns with structures, as well as quantum and pay-outs.

Analysing Dissent on Remuneration Policies

The rationales most frequently cited by investors for voting against a company's remuneration policy are listed below, acknowledging that a proposal may receive dissent for more than one reason:

— lack of disclosure regarding performance conditions, or performance criteria perceived as insufficiently stretching (12 companies);

— potential for excessive board discretion: no limit on remuneration to be granted in exceptional circumstances, excessively broad derogation or discretion provisions, or insufficiently restrictive post-mandate vesting provisions enabling a potential disconnect between pay and performance (11 companies); and

— increase in salary or variable pay opportunity not supported by a compelling rationale (six companies).

Analysing Dissent On Remuneration Reports

Similarly, we set out below the main reasons cited by investors for opposing a company's remuneration report, acknowledging again that some proposals can be opposed for more than one reason:

— lack of disclosure (most often in relation to performance targets or achievement levels) preventing an assessment of the link between pay and performance (11 companies); and

— pay levels perceived as excessive (five companies, including three that made one-off grants).

In general, proxy advisors and institutional investors have detailed how there is a willingness to support remuneration levels or practices that depart from general market practice or their own internal expectations. However, there is higher burden on companies when electing to deviate from established best practices or market expectations. As those instances occur, and decisions need to be made in the best interests of the company, the general expectation is that companies and boards provide a compelling rationale, including the key considerations of the board and management in arriving at the decision. By focusing on strong reporting, companies can provide shareholders and proxy advisors with a clear understanding of the necessity for decisions that may, on the face of it, seem outside expected practice, but have been made in alignment with shareholder interests over the long-term, promoting greater support at AGMs and securing stronger mandates for boards.

ESG Metrics in Executive Pay

While not a major source of dissent in 2023, the use of ESG criteria in executive remuneration remains a controversial topic among investors, with no clear consensus on the appropriate means for their integration into companies' incentive structures. One area of agreement though, is that if a company elects to use ESG-related measures in incentive plans, it should demonstrate that it is appropriately aligned with the company's corporate strategy, is quantifiable and is sufficiently stretching.[2] Indeed, the inclusion of sustainability criteria in executive remuneration has been recommended by the AFEP-MEDEF Corporate Governance Code (the "Code") for several years. Most recently, the Code was amended in December 2022 and now specifies that when companies integrate ESG measures into incentive plans, at least one of these criteria should be related to the company's climate objectives.

Code Update: New Provision on Climate-related Criteria Introduced in December 2022

"The compensation of these directors must be competitive, adapted to the company's strategy and context and must aim, in particular, to improve its performance and competitiveness over the medium and long term, notably by incorporating one or more criteria related to social and environmental responsibility, of which at least one criterion related to the climate objectives of the company. These criteria, which are clearly defined, must reflect the most significant social and environmental issues for the company. Quantitative criteria should be given priority."

The Code is applied on a "comply-or-explain" basis, which means that compliance is not mandatory, but in the event of a deviation from its guidance companies should provide an explanation as to why. Indeed, in this area, a number of investors may actually prefer to see companies explain why they have not tied executive remuneration to a climate criteria rather than introducing such criterion for pure compliance reasons. Regardless of a company's approach tough, providing clear communication and disclosure to investors is a central feature of good practice, and will serve to ensure a clear understanding of companies' strategies among investors and other stakeholders.

Director Elections

2023 was a quieter year in terms of shareholder dissent on director elections, with only seven companies experiencing significant opposition on one or more proposals (2022: 14). Acknowledging the relatively small number of instances of such dissent in 2023, the most frequent driver of votes against these resolutions was a lack of independence at board or committee level, which was flagged at five companies. Poor (unjustified) meeting attendance and/or excessive time commitments (external board mandates) came next, with such issues identified at four companies. Lastly, one company saw a number of investors oppose the re-election of its vice-chairman and remuneration committee chair for perceived poor CEO succession planning and remuneration practices, respectively.

Director Accountability

While the idea of accountability among directors has been a less obvious battleground in terms of instances of significant opposition, proxy advisors and institutional investors have continued to expand evaluations of director accountability in recent years, codifying a number of issues that specific directors (often the board chair and committee members) are viewed as being responsible for. BlackRock, for example, casts a wide net in its EMEA proxy voting guidelines, reserving the right to vote against directors for a lack of responsiveness on any issue deemed material to the business' financial performance.

Investor Perspective: BlackRock's EMEA proxy Voting Guidelines on Director Accountability

"BlackRock may also consider voting against members of a board committee, or against the board chair, in a situation where we have identified a failure to address one or more relevant material issues within an appropriate time frame for which we hold those members responsible. As noted elsewhere in this document, this could include a lack of board responsiveness to board composition or executive remuneration concerns, a failure to oversee, disclose or remediate material financial weakness and/or inadequate disclosures in relation to material sustainability-related risks and the business plans supporting them. We may also consider voting against relevant board committee members or the board chair where we see evidence of board entrenchment and/or failure to promote adequate board succession planning over time in line with the company's stated strategic direction."

While proxy advisors and investors often expect that companies communicate to detail the sources of significant oppositions at previous AGMs and the actions taken in response,[3] most notably in relation to say-on-pay proposals, the increasing sophistication and variety of investor guidelines can make it challenging for companies to fully understand and disclose the reasons for dissent. Our perspective is that it is not necessarily beneficial for companies to try to please all investors (and sometimes it is just not possible). Instead, taking actions that are in the best interest of the company while simultaneously seeking to maximise support at AGMs requires clear disclosure and effective engagement with proxy advisors and investors, designed to explain how the board assessed various issues and decisions as part of generating value for stakeholders.

Director Time Commitments

Historically, investors and proxy advisors have set general limits on the external commitments of directors of investee companies as a means of ensuring they have sufficient time to discharge their responsibilities as a board member.

A number of issues (ESG, diversity, equity & inclusion, activism, shareholder engagement, political upheaval) in recent years has resulted in an increase in the demands on directors of public company boards. Consequently, with such growing demands on directors' time, investors have been more closely scrutinising directors' time capacities and meeting attendance. Notably, certain investors, including BlackRock and Amundi, the largest global and European asset managers, respectively, apply lower limits than those of proxy advisors when assessing whether directors have sufficient capacity to fully discharge their responsibilities as board members. Further, investors may count mandates differently when evaluating the work entailed by certain board roles (e.g. committee chair roles).

Proxy Voting Guidelines on Directors' Time Commitments

Example 1: Glass Lewis

"We believe that directors should have the necessary time to fulfil their duties to shareholders. In our view, an overcommitted director can pose a material risk to a company's shareholders, particularly during periods of crisis. We will generally recommend that shareholders oppose the election of a director who:

- Serves as an executive officer of any public company while serving on more than one additional external public company board; or
- Serves as a 'full-time' or executive member of the board of any public company while serving on more than two additional external public company boards; or
- Serves as a non-executive director on more than five public company boards in total.

While non-executive board chair positions at North American companies are counted as one position, we generally count non-executive board chair positions at European companies as two board seats given the increased time commitment associated with these roles. Accordingly, we would generally consider an executive officer of a public company that also serves as a non-executive chair of another European company to have a potentially excessive level of commitments."

Example 2: Amundi

“Amundi recommends that:

— the executive directors do not hold more than two other directorships outside their group,

— non-executive directors hold a maximum of four directorships. […]

We will be vigilant about the necessary availability of the chairman of the board, the chairs of the various committees – especially audit committee - and the lead director because of the growing importance of these functions and the workload they entail. We may therefore recommend that the number of mandates acceptable for a director holding more than one of these functions be further reduced.”

In contrast, State Street and Vanguard have recently developed new approaches, which ask companies to set and disclose their own policy regarding directors’ time commitments, setting the expectation that companies seriously consider and evaluate what is an acceptable number of external mandates for their board members, as opposed to simply responding to – or being led by – shifting limits set by investor guidelines. While these new requirements are currently only applied to U.S. companies, the widening of board responsibilities is a global phenomenon and it is likely that similar guidelines will be implemented by these asset managers in other markets.

Say-On-Climate

Management-Sponsored Say-On-Climate

Globally, the number of companies that submitted a management-sponsored say-on-climate to a vote decreased from 49 in 2022 to 26 in 2023 according to data from the French SIF.[4] Potential explanations for this global slowdown include:

— increased investor expectations and company reticence to experience dissent at the AGM;

— inconsistent expectations from shareholders to have such votes at portfolio companies, including active opposition for votes from certain investors; and

— a number of companies where say on climate is most relevant, having already proposed it once, waiting to propose it again in a number of years or when their climate strategy evolves.

In France, however, the number of say-on-climate proposals put forward by management remained relatively stable, with eight such proposals submitted in 2023 (2022: 10), reflecting the relatively strong interest in climate change issues in the French market, perhaps mirroring the country’s ambition to be a leader of the climate transition. We also note that in 2023 there were discussions regarding the implementation of mandatory votes on climate strategy at all French listed companies, though the legal amendment, which was initially part of France’s industry green deal, was ultimately removed from the bill.[5]

Shareholder Proposals

In 2023, there were two say-on-climate proposals submitted by shareholders, compared to nil in 2022. It remains to be seen whether this nascent trend will continue and result in more shareholder proposals being submitted in 2024, but some of the conclusions from the report of the legal expert group Haut Comité Juridique de la Place Financière de Paris (“HCJP”), delivered in January 2023, may provide a platform for an increase in shareholder proposals in the year ahead.

Legal Perspective: Important Conclusion from the Report of the HCJP Delivered in January 2023 regarding Climate-related Shareholder Proposals

“Unlike these other climate resolutions [calling for action], a simple request to add to the agenda a consultative vote on the plan determined by the board of directors (or "Say on Climate") does not seem, however, to be able to be considered as undermining the principle of hierarchy of social bodies. Such a request would not legally impose any change in the board's strategy and would therefore not disrupt the legal distribution of responsibilities. Nevertheless, it would allow for a dialogue between shareholders and directors on this subject and encourage the board to be more specific in its statements and ambitious in its objectives.”

Non-voting Discussion Points

The latest Code update from December 2022 recommends that companies present their climate strategy to the AGM at least every three years, as detailed below.

Code Update: New Provision on Sustainability and Climate Strategy Introduced in December 2022

"At the proposal of the executive management, the Board of Directors shall establish multi-annual strategic guidelines on social and environmental responsibility.

The executive management shall submit to the Board of Directors the measures implementing this strategy, with an action plan and the time frames within which these actions will be carried out. The executive management shall inform the Board of the results that were reached on a yearly basis.

On climate-related issues, this strategy is accompanied by precise objectives defined for different time frames. The Board shall review annually the results achieved and the relevance, if any, of adapting the action plan or changing the objectives in the light of, inter alia, the evolution of the company's strategy, technologies, shareholder expectations and the economic capacity to implement them.

The climate strategy referred to in § 5.3 and the main actions undertaken to this end shall be presented to the general shareholders' meeting at least every three years, or in the event of a significant change in the strategy."

In December 2023, the French Financial Markets Authority ("AMF") published its annual report on corporate governance and executive remuneration practices at listed companies (the "2023 AMF Report")[6], which noted that six companies added a non-voting discussion point on their climate strategy to the agenda of their AGM; and that the company presentation of the strategy was sometimes followed by a Q&A session at the end of the AGM. While putting climate strategies to the AGM as a non-voting issue includes less risk of opposition or dissent given the absence of votes, companies should still diligently prepare for such discussions, as they could represent a means by which ESG-related activism is considered by shareholders seeking greater action in the event of dissatisfaction at the company's overall approach and levels of engagement.

2024 Outlook

AMF Recommendations on Board Evaluation

The 2023 AMF Report included a review of the board evaluation practices of 50 companies (the 25 largest and the 25 smallest on the SBF 120). Among the areas for improvement identified in the document, the rigour of evaluating board and director effectiveness, and disclosing those processes to investors, was highlighted. As part of the review:

— 16% of companies did not say if they assessed the individual contribution of each director during the last three years (as recommended by the Code); and

— 20% of companies did not disclose what actions were taken following the board's evaluation.

The assessment of board and director effectiveness is a cornerstone of strong oversight and, specifically, plays a key role in supporting the work of the nomination committee in determining the appropriate personalities and skills needed to enhance board composition. At the same time, investors are also placing greater scrutiny on the composition of boards to ensure they possess the necessary qualifications to contribute to strategy development and oversee the growing number of risks and opportunities facing business, including experience relating to environmental and social issues, cyber, workforce, supply chain and wider sustainability issues.

As the number of issues and challenges facing boards expands, maintaining the optimal board composition has become increasingly difficult. It is therefore particularly important to be transparent about the characteristics deemed essential by the board, whether any skills or profile gaps exist, and if so, how the company intends to fill them. Regular board evaluations by independent third parties may help companies navigate this challenge while also providing a positive signal to external stakeholders. Such evaluations should also ensure that companies' diversity policies and skills matrix continue to meet investor expectations.

Proxy Advisor Expectations on Director Accountability

In 2024, French companies will face new expectations from proxy advisors regarding their management and oversight of climate-related issues, their responses to cybersecurity incidents, and their use of capital structures with unequal voting rights. Failing to meet these new expectations may result in these institutions recommending that investors oppose the re-election of certain directors. Glass Lewis will scrutinise the climate-related disclosures of a broader set of companies.

Proxy Advisor Guideline Update: Glass Lewis Expands the Reach of its Policy on Director Accountability for Climate-related Issues

"For companies with material exposure to climate risk stemming from their own operations, we believe they should provide thorough climate-related disclosures in line with the recommendations of the Task Force on Climate-related Financial Disclosures (TCFD). We also believe the boards of these companies should have explicit and clearly defined oversight responsibilities for climate-related issues. As such, in instances where we find either of these disclosures to be absent or significantly lacking, we may recommend voting against responsible directors.

While this policy was applied to the largest, most significant emitters in 2023, beginning in 2024, Glass Lewis will apply this policy to most large-cap companies operating in industries where the Sustainability Accounting Standards Board (SASB) has determined that companies' GHG [greenhouse gas] emissions represent a financially material risk."

Like Glass Lewis, Institutional Shareholder Services ("ISS") has set an expectation that significant GHG emitters provide rigorous climate-related disclosures in line with the TCFD's recommendations, alongside appropriate emission reduction targets and rigorous board oversight.

In addition to climate-related expectations, Glass Lewis' new proxy voting guidelines also provide more detail regarding its disclosure expectations in the event that a company is materially impacted by a cyber security incident.

Proxy Advisor Guideline Update: Glass Lewis Details its Expectations under its Cyber Risk Oversight Policy

"In instances where a company has been materially impacted by a cyber-attack, we believe shareholders can reasonably expect periodic updates from such companies communicating their ongoing progress towards resolving and remediating the impact of the cyber-attack. We generally believe that shareholders are best served when such updates include (but are not necessarily limited to) details such as when the company has fully restored its information systems, when the company has returned to normal operations, and what resources the company is providing for affected stakeholders, and any other potentially relevant information, until the company considers the impact of the cyber-attack to be fully remediated. These disclosures should focus on the company's response to address the impacts to affected stakeholders and should not reveal specific and/or technical details that could impede the company's response or remediation of the incident or that could assist threat actors. In such instances, we may recommend against appropriate directors should we find the board's oversight, response or disclosure concerning cybersecurity-related issues to be insufficient, or not provided to shareholders."

While ISS' European proxy voting guidelines do not include a specific provision on cyber risk oversight, their general policy regarding "voting on directors for egregious actions", which covers "material failures of governance, stewardship, and risk oversight," may allow them to sanction a situation where they perceive the company's response to a cyber incident to be inadequate.

Outside of growing accountability for ESG-related issues, from 1 February 2024, ISS will apply its new European policy on accountability for capital structures with unequal voting rights, which is particularly relevant for French companies given that more than two thirds of them have double voting shares.[7] This ownership structure allows shareholders who hold their shares in the registered form for a specified period (typically two years) to acquire a second voting right for each of these shares.

Proxy Advisor Guideline Update: ISS Starts Applying its New European Policy on Accountability for Capital Structures with Unequal Voting Rights

"At widely-held companies, generally vote against the (re)election of directors or against the discharge of (non-executive) directors, if the company employs a stock structure with unequal voting rights[1]. Vote recommendations will generally be directed against the nominees primarily responsible for, benefiting from, or affiliated with a shareholder benefiting from the unequal vote structure.

Exceptions to this policy will generally be limited to:

- *Newly-public companies[2] with a sunset provision of no more than seven years from the date of going public;*
- *Situations where the unequal voting rights are considered de minimis[3]; or*
- *The company provides sufficient protections for minority shareholders, for example such as allowing minority shareholders a regular binding vote on whether the capital structure should be maintained or a commitment to abolish the structure by the next AGM.*

[1] This generally includes control-enhancing mechanisms through classes of common stock that have additional votes per share than other shares; classes of shares that are not entitled to vote on all the same ballot items or nominees; or stock with time-phased voting rights ("loyalty shares" or "double-voting" shares).

[2] Newly-public companies generally include companies that emerge from bankruptcy, SPAC transactions, spin-offs, direct listings, and those who complete a traditional initial public offering.

[3] Distortion between voting and economic power does not exceed 10 percentage points, where this is calculated relative to the entire share capital for multiple share classes and on individual shareholder or concert level in case of loyalty share structures."

It is interesting to note that this new guideline has come into effect following the European Commission's release of a proposal for a directive requiring all EU Member States to allow multiple-vote share structures in companies that seek admission to trading of their shares on in a small and medium-sized enterprise growth market. In October 2023, the European Fund and Asset Management Association ("EFAMA") published a position paper, acknowledging that, while ensuring the competitiveness of EU capital markets is of key importance, any new rules on multiple voting share structures must maintain equilibrium between issuers' and investors' interests.

If the maximum voting rights ratio set by the directive or its local transposition (i.e. the ratio between the number of votes attached to the high-vote share class compared to that of the low vote one) is superior to 2:1, then the directive has the power to create situations where the difference between shareholders' economic and voting rights is larger than it would have been with the current double voting rights system. It is also possible that a number of companies elect to allow for double voting rights and multiple share classes raising the complexity of ownership structures in the French market.

'Pass-through Voting'

Over the last two years, certain asset managers, including the "Big 3" (BlackRock, Vanguard, and State Street), have started to roll out pass-through voting solutions, allowing their clients to cast their votes either in alignment with the asset manager's approach or according to different guidelines.

This practice, reducing the influence of the largest asset managers, is designed to empower asset owners and give them greater flexibility in how their ESG preferences impact their votes at company AGMs. While there are clear advantages to the growing democratisation of proxy voting, a number of asset owners may not possess the same voting and engagement capabilities as large asset managers, where there are a far greater experienced stewardship analysts capable of evaluating large numbers of company reports and AGM resolutions.

There may also be a growing disconnect between meaningful engagement with shareholders and the eventual outcome of AGMs, where final votes may come from asset owners despite productive and effective engagement with asset managers, create challenges for companies in terms of structuring engagement strategies. With large asset managers potentially less influential in terms of voting at AGMs, in the event of greater adoption of pass-through voting, companies will need to focus even greater energy on strong reporting, which will be reviewed by asset owners and proxy advisors, whose influence may be even greater as a result of these latest changes to the proxy voting landscape.

Shareholder Activism

Activist investors are seeking new opportunities and are showing a growing interest in European companies. With 69 new campaigns, 2023 was a record year for Europe according to Lazard's latest annual review of shareholder activism.[8] 2023 was also a record year globally in terms of investors initiating campaigns for the first time. Europe was the strongest contributor to this record with 31 new activists launching campaigns in 2023 (more than twice the number in 2022). M&A activism represented two-thirds of first timers' campaigns initiated in Europe, with requests focused on challenging announced M&A transactions or pushing for sales and divestitures.

Similarly, a survey published by law firm Skadden[9] provides a number of predictions for shareholder activism in Europe in 2024. Sixty percent of polled companies expect an increase in activism (while only 23% expect a decrease, and 17% expect no change). The UK and France represent the most attractive markets for shareholder activism in 2024: Forty percent of activist respondents identify the UK as providing the best opportunities for new campaigns, while 27% cite France.

With activism on the rise, pro-active companies will seek to continuously identify and remedy any financial or strategic vulnerabilities, while not ignoring potential governance and ESG weaknesses, which activist investors increasingly use as additional levers to support their thesis. Building strong trust relationships with shareholders through regular engagement will help secure support if an activist comes calling. Preparing for different activism scenarios may also help companies make the best decisions should one of them materialises.

Conclusion

While remuneration issues are likely to remain the primary driver of shareholder dissent in 2024, proxy advisors and institutional investors will also seek to place a greater emphasis on director accountability for a widening range of matters through votes on director elections. Updates to proxy advisor guidelines for 2024 include the application of Glass Lewis' policy on director accountability for climate-related issues to a broader set of companies, clearer expectations from the same institution regarding cyber risk oversight, and the coming into force of ISS' policy on accountability for capital structures with unequal voting rights. The heterogeneity in proxy advisor and investor expectations, combined with the growth in pass-through voting (asset managers offering various voting options to asset owners) present challenges to companies trying to impact voting outcomes, while a potential increase in ESG activism puts additional pressure on boards. Meanwhile, traditional shareholder activism is also on the rise in Europe, with France seen as a market offering attractive opportunities. Against this backdrop, taking a proactive approach to identifying any vulnerabilities, providing clear disclosures on boards' decisions, and maintaining meaningful dialogue with shareholders as a means of building trust will be key to mitigating risks of activism and securing positive outcomes at 2024 AGMs for French companies.

Notes

[1] Throughout this note, a management proposal is considered to have experienced significant dissent if 20% or more of the votes cast were against the resolution.

[2] See for example BlackRock proxy voting guidelines for EMEA securities: "Where companies chose to include sustainability-related criteria in compensation structures, the metrics should be adequately disclosed, material to the company's strategy and as rigorous as other financial or operational targets;" or Vanguard proxy voting policy for European and UK portfolio companies: "A fund does not look for nonfinancial metrics (such as ESG metrics) to be a standard component of all remuneration plans. When remuneration committees choose to include nonfinancial metrics, we look for the same qualities we do with financial metrics, including that they are measurable, reportable, rigorous and clearly linked to a company's strategy and risk mitigation efforts."

[3]See for example Institutional Shareholder Services ("ISS") Continental Europe proxy voting guidelines: "Should a company be deemed to have failed to respond to significant shareholder dissent on remuneration-related proposals, an adverse vote recommendation could be applied to any of the following on a case-by case basis: 1. The re-election of the chair of the remuneration committee or, where relevant, any other members of the remuneration committee; 2. The re-election of the board chair; 3. The discharge of directors; or 4. The annual report and accounts."

[4] These statistics include resolutions submitted in the following markets: France, the United Kingdom, Switzerland, Sapin, Canada, Portugal, Germany, the Netherlands, South Africa, Australia, The United States, Ireland, Italy, and Norway.

[5] In July 2023, members of the French National Assembly tabled a proposal to amend the Commercial Code and make say-on-climate votes mandatory for listed companies. Under this proposal, shareholders would have had the opportunity to vote on the company's climate and sustainability strategy every three years, or earlier, if a material amendment to the strategy was made. They would also have had the opportunity to vote on the implementation of the strategy every year. This proposal, which was part of France's green industry bill, has been removed from the bill at the last minute ahead of a debate and vote by the joint committee in December 2023.

[6] "Rapport 2023 sur le gouvernement d'entreprise et rémunération des dirigeants des sociétés cotées (in French only)," AMF.

[7] "Dual Class Share Structures: The European Experience," ISS, February 2023.

[8] "Annual Review of Shareholder Activism 2023," Lazard, January 2024.

[9] "Activist Investing in Europe 2024," Skadden, January 2024.

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