

# Georgeson's 2015 Proxy Season Review

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# Contents

## Introduction **Page 5**

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## UK **Page 6**

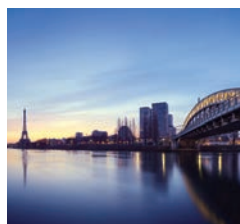
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1.	Voting in the United Kingdom	8
1.1	Quorum overview	8
1.2	Rejected resolutions	10
1.3	Contested resolutions	12
2.	Proxy Advisors	16
3.	Corporate Governance Developments	21

## France **Page 22**

---



1.	Voting in France	26
1.1	Quorum overview	26
1.2	Rejected resolutions	28
1.3	Contested resolutions	31
2.	Proxy Advisors	36
3.	Corporate Governance Developments	41

## Netherlands **Page 46**

---



1.	Voting in the Netherlands	48
1.1	Quorum overview	48
1.2	Rejected resolutions	52
1.3	Withdrawn resolutions	53
1.4	Contested resolutions	55
2.	Proxy Advisors	61
3.	Corporate Governance Developments	63

## Germany **Page 66**

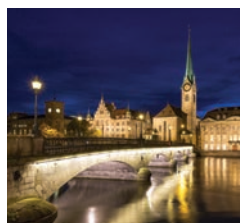
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1.	Voting in Germany	68
1.1	Quorum overview	68
1.2	Rejected resolutions	72
1.3	Contested resolutions	73
2.	Proxy Advisors	77
3.	Corporate Governance Developments	80

## Switzerland **Page 84**

---



1.	Voting in Switzerland	86
1.1	Quorum overview	86
1.2	Rejected resolutions	88
1.3	Contested resolutions	89
2.	Proxy Advisors	93
3.	Corporate Governance Developments	96

## Contact Us **Page 98**



# Introduction



In 2015 Georgeson has seen and successfully encouraged an increased focus on early preparation and engagement between companies and their investors and other stakeholders.

As the AGM season continues to expand beyond the traditional spring months, 2015 has been characterised by companies' determination to extend their shareholder engagement programmes and - in markets such as the UK, France and Switzerland - to adapt to the new regulatory environments introduced in 2014 and to the heightened investor expectations they have engendered. More generally we have seen and encouraged an increased focus on early preparation and engagement between companies and their investors and other stakeholders.

We are presenting here a thorough analysis of five markets where Georgeson has a widespread client base, and where we are privileged to work closely with many of the leading companies. Our local client support, thorough investor engagement and deep market expertise allow us to highlight many of the issues and trends which will be of interest to both companies and investors. As a proxy solicitor, Georgeson works hard to ensure that our clients understand the critical issues, trends and personalities which affect and motivate their shareholders, so that they do not become a statistic highlighted in this or any other report.

Vote turnouts across the main indices of the five markets covered in this report remain relatively strong with Germany attaining an average quorum below 60%, Switzerland and France coming in at under 70%, and the UK and the Netherlands reaching just above 70%. Other than in the Netherlands and Switzerland, where voting levels increased compared to 2014, the participation levels elsewhere have remained stable.

Executive remuneration remains a lightning rod issue in many European markets, as well as authorisations to issue shares and director elections. Board independence and the proper functioning of the board has received greater attention and we expect the issue to continue to grow in importance.

Proxy advisors have been recognised by issuers as significant stakeholders which they have to engage with, alongside their main investors, prior to an AGM. Whilst they are not shareholders, the increase in the number of resolutions proposed at the average AGM and the intensifying pressure on a wider variety of investors to cast shareholder votes, are likely to ensure that proxy advisors remain influential stakeholders whom companies will seek to engage with.

We hope that our report will give you greater insight into these markets both in terms of the general trends and of the particular issues that have come up during the last AGM season. Georgeson remains available to help you with any more specific queries. For any support needed at your next general meeting, please do not hesitate to let us apply our market intelligence, which will help you avoid any possible pitfalls raised both by local developments and complex international trends that can affect a dispersed shareholder base.

A special thank you to Daniele Vitale, our Corporate Governance Manager, for editing this report. The result was only possible due to his exacting standards and tireless work.

**Cas Sydorowitz**

CEO, Corporate Advisory Europe  
Georgeson



UK





# UK Highlights

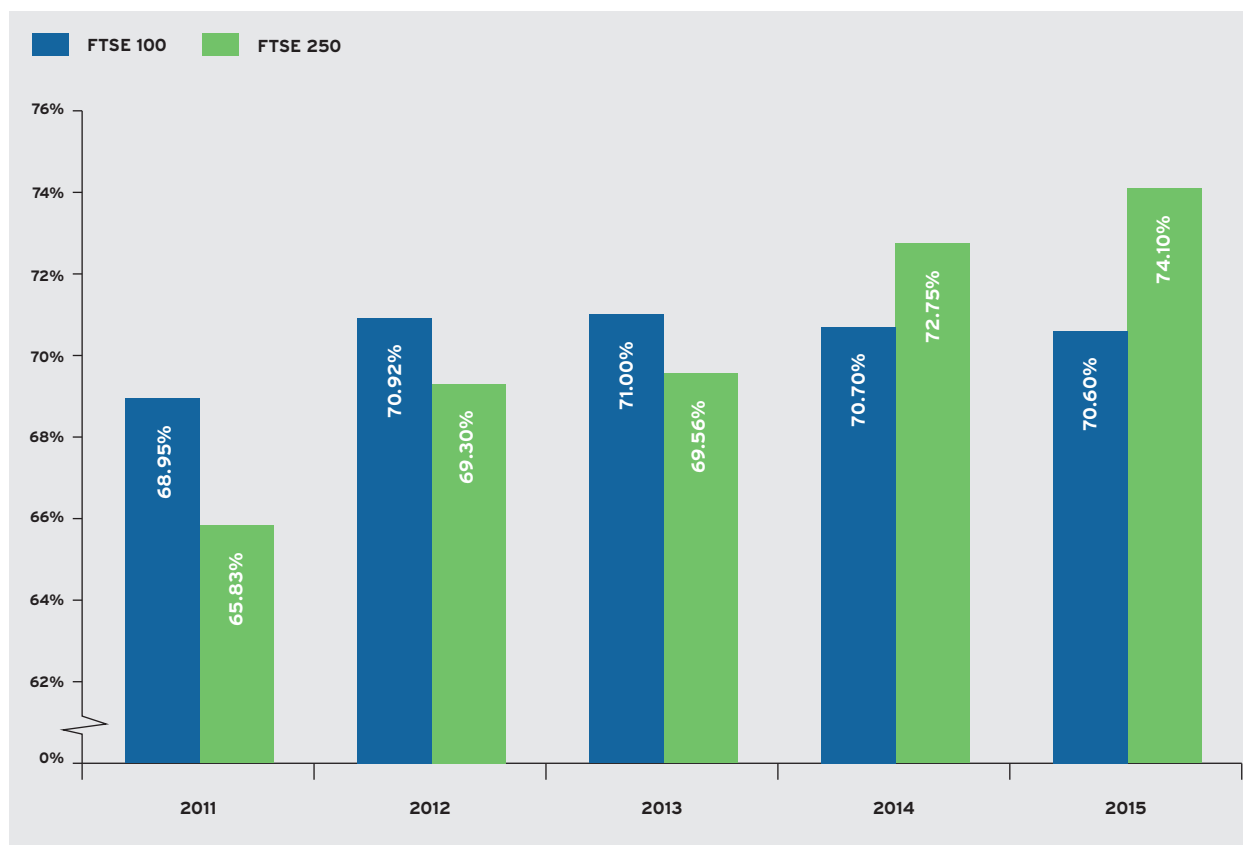
- The average quorum for FTSE 100 companies during the 2015 proxy season was 70.60%, compared to 70.70% in 2014.
- In our FTSE 100 sample one company saw a board-proposed resolution rejected by shareholders during the 2015 proxy season: Intertek Group.
- In the FTSE 250 two companies saw a board-proposed resolution rejected by shareholders during the 2015 proxy season: John Laing Infrastructure Fund and SVG Capital.
- In our FTSE 100 sample, the most commonly contested resolutions were proposals to allow companies to call EGMs on 14 days' notice, followed by authorities to issue shares with and without pre-emptive rights. The third most commonly contested resolutions were remuneration report and remuneration policy votes.
- During the 2015 proxy season 18 companies out of our FTSE 100 sample received at least one negative recommendation from Institutional Shareholder Services (ISS) and 85 companies received at least one negative recommendation from Glass Lewis (due to their standard opposition to short notice periods for EGMs).

# 1. VOTING IN THE UNITED KINGDOM

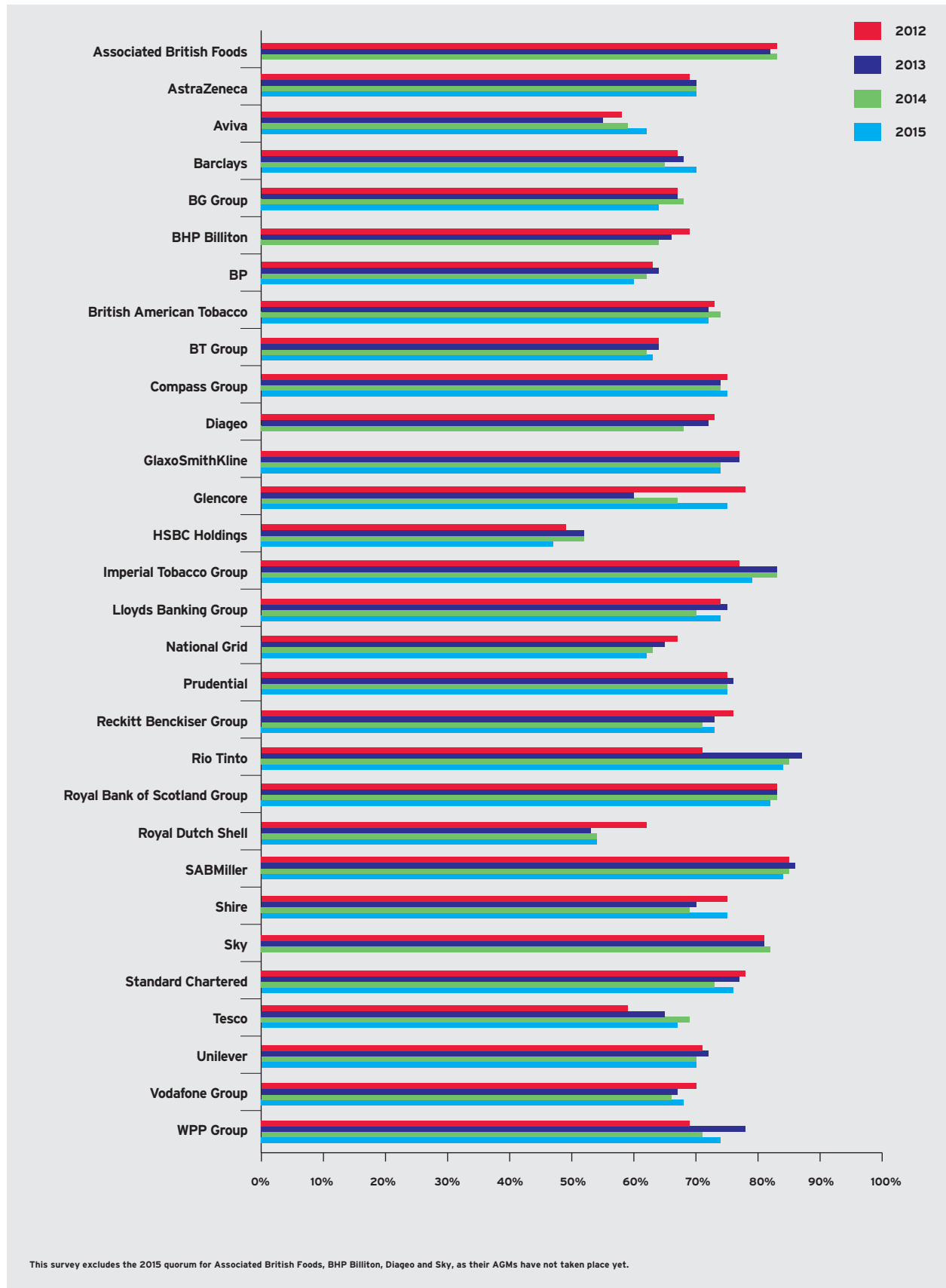
## 1.1 Quorum overview

Georgeson has reviewed the quorum levels of FTSE 100 companies for a number of years. This year's review includes the 99 companies that are part of the index as of 31 July 2015, and which have held their AGM between 1 August 2014 and 31 July 2015. The average quorum for FTSE 100 companies during the 2015 proxy season has been 70.60%. This is similar to the average 2014 quorum, which amounted to 70.70%, and the average 2013 quorum, which amounted to 71%.

Graph 1: Shareholder attendance levels: comparison of FTSE 100 and FTSE 250 between 2011 and 2015



Graph 2: Shareholder attendance levels at the top 30 FTSE 100 companies by market capitalisation between 2012 and 2015 (displayed alphabetically)



## 1.2 Rejected resolutions

### FTSE 100

We have reviewed the meeting results for 99 FTSE 100 companies which held their AGMs between 1 August 2014 and 31 July 2015. Within this sample one company had one management-proposed resolution rejected by shareholders: Intertek Group.

#### **Intertek Group**

Intertek Group<sup>1</sup> is a multinational inspection, product testing and certification company founded in 1885, which first listed on the London Stock Exchange in May 2002.

At their 2015 AGM the advisory vote on the Directors' Remuneration Report failed to achieve support from shareholders, with 51.68% of shareholders voting against the resolution.

Following the meeting the board stated<sup>2</sup>: "Noting the outcome of the vote on the Remuneration Report (Resolution 2) this year, the Remuneration Committee has engaged with major shareholders and has taken into account their feedback. We value and respect the views of our shareholders and, as a result, the Board, in consultation with the incoming CEO, has determined that his 2015 Bonus will now be subject to the usual performance criteria and a compensatory award in this regard will no longer be made."

According to the Guardian<sup>3</sup> "the £560,000 handout was part of the package offered to Lacroix to compensate him for share awards he lost after resigning from Inchcape. However, he is still being granted 183,149 in two tranches of shares over two years - worth about £5m - with no performance conditions attached."

We note that both ISS and Glass Lewis recommended a vote against the remuneration report.

### FTSE 250

Among FTSE 250 companies two companies each saw one management-proposed resolution rejected by shareholders: John Laing Infrastructure Fund and SVG Capital.

#### **John Laing Infrastructure Fund**

John Laing Infrastructure Fund<sup>4</sup>, is one of Europe's largest listed infrastructure funds.

At their 2015 AGM they proposed a resolution to amend their articles of association, which failed to achieve support from shareholders, with 43% of shareholders voting against the resolution.

Following the meeting the board stated<sup>5</sup>: "In accordance with Article 7 of the Articles of Incorporation, an allotment of equity securities may not be made unless the Company has made an offer to the existing holders on a pre-emptive basis (unless the allotment is pursuant to Resolution 13, below). As this Resolution 11 has not been passed, the Directors will not be able to seek the ability to apply exclusions or variations of these pre-emption rights in limited circumstances, including where the regulatory requirements would be overly burdensome."

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<sup>1</sup> <http://www.intertek.com/about/>

<sup>2</sup> <http://cdn.intertek.com/www-intertek-com/media/investors/2015/Summary-of-2015-AGM-Voting.pdf>

<sup>3</sup> <http://www.theguardian.com/business/2015/may/15/incoming-intertek-chief-forgoes-bonus-shareholder-rebellion>

<sup>4</sup> [http://www.jlif.com/index.php/overview/who\\_we\\_are/](http://www.jlif.com/index.php/overview/who_we_are/)

<sup>5</sup> [http://www.jlif.com/files/jlif/announcements/150508\\_-\\_JLIF\\_Results\\_of\\_AGM\\_announcement\\_-\\_Final.pdf](http://www.jlif.com/files/jlif/announcements/150508_-_JLIF_Results_of_AGM_announcement_-_Final.pdf)

According to Quoted Data<sup>6</sup> the resolution “would have made it easier to issue new shares in the company without first offering them to existing shareholders (in technical terms, disapplying pre-emption rights). To get it through they needed 75% of those voting to vote in favour but, in the end, 186m shares were voted against and 243m shares voted for – not enough to get the resolution through. Shareholders also voted against another resolution in large numbers. This resolution allows the company to issue an unlimited number of new shares. 236m shares were voted in favour of this resolution and 184m shares against but this vote only needed 50% of those voting to approve it to pass and so it was approved.”

We note that both ISS and Glass Lewis recommended a vote against resolution 11.

### **SVG Capital**

SVG Capital is a leading international private equity investor which listed on the London Stock Exchange in 1996<sup>7</sup>.

At their 2015 AGM<sup>8</sup> they proposed a resolution to disapply pre-emption rights in compliance with the Pre-emption Group Principles<sup>9</sup> (see section 3.2). The resolution failed to obtain approval from shareholders, with 69.74% of shareholders supporting the resolution.

Following the meeting the board stated<sup>10</sup>: “Resolution 15 was proposed as a special resolution, which required a 75% majority of the votes to be cast in favour and was defeated with 69.74% of votes cast voting in favour. The resolution was a standard resolution to give the Directors the general power to disapply pre-emption rights on the issue of new shares for cash of up to 5% of the Company’s issued share capital.”

According to Reuters<sup>11</sup> “a number of investors, including top shareholder Coller, with a 23 percent stake, have been unhappy with management strategy and resolved to oppose the re-election of Chief Executive Lynn Fordham and Sykes at Friday’s meeting, according to a Sky News report. ‘SVG Capital has a diverse shareholder base and inevitably this brings some element of differing views and investment objectives,’ Sykes said in a statement following the meeting. ‘One of the company’s largest shareholders has been open about the fact that they were not supportive of the strategy that shareholders approved in 2012. The wider shareholder base is supportive of the strategy that management is following.’”

We note that both ISS and Glass Lewis recommended a vote in favour of resolution 15.

<sup>6</sup> <http://quoteddata.com/2015/05/john-laing-infrastructure-shareholders-defeat-resolution/>

<sup>7</sup> <http://www.svgcapital.com/about-us/overview>

<sup>8</sup> [http://www.svgcapital.com/system/files/uploads/financialdocs/SVG\\_AR2015-FINAL.pdf#94](http://www.svgcapital.com/system/files/uploads/financialdocs/SVG_AR2015-FINAL.pdf#94)

<sup>9</sup> [http://www.svgcapital.com/system/files/uploads/financialdocs/SVG\\_AR2015-FINAL.pdf#100](http://www.svgcapital.com/system/files/uploads/financialdocs/SVG_AR2015-FINAL.pdf#100)

<sup>10</sup> [http://www.svgcapital.com/sites/default/files/attachments/announcement-poll-and-proxy-results-of-agm-2015-05-01\\_0.pdf](http://www.svgcapital.com/sites/default/files/attachments/announcement-poll-and-proxy-results-of-agm-2015-05-01_0.pdf)

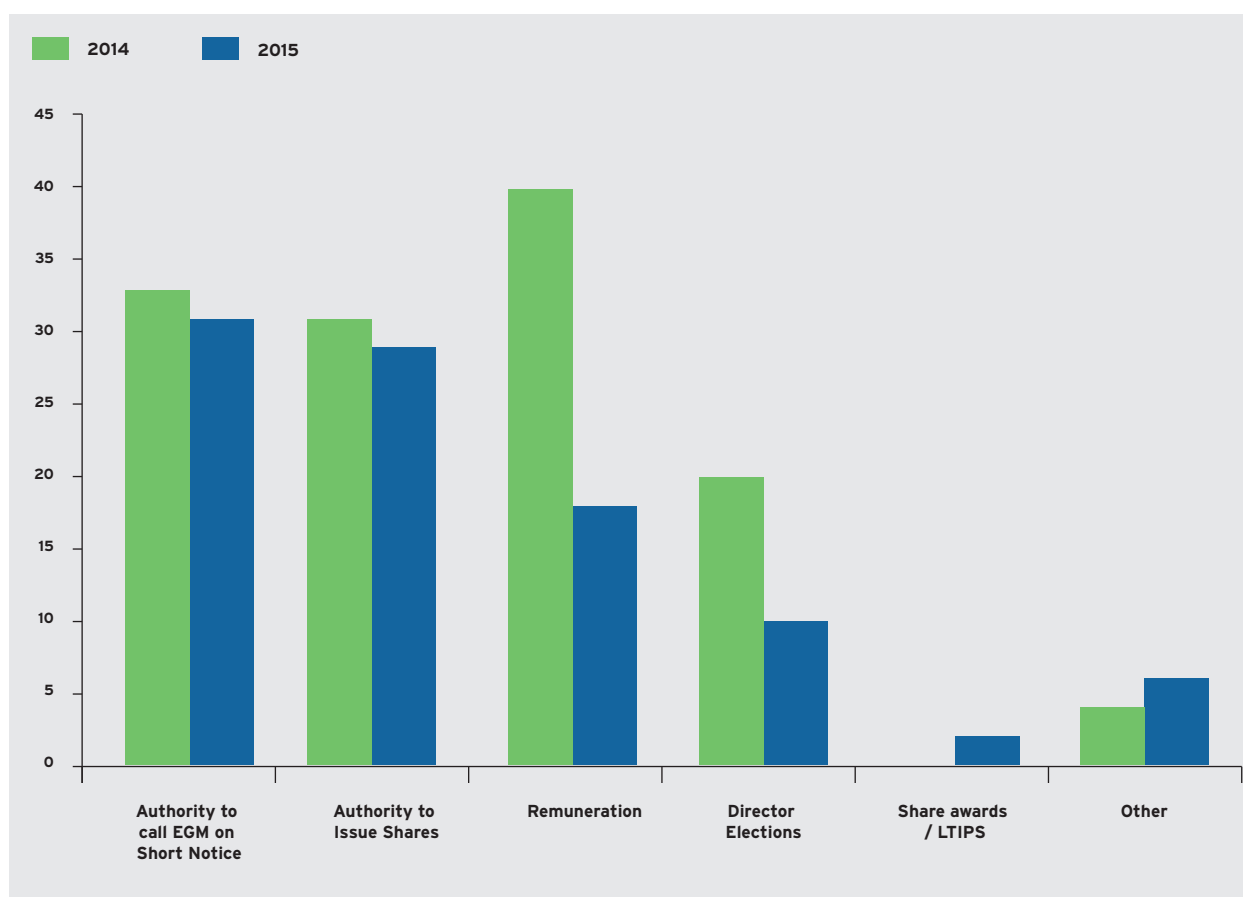
<sup>11</sup> <http://www.reuters.com/article/2015/05/01/svg-capital-agm-idUSL4N0XS3EB20150501>

### 1.3 Contested resolutions

Among our sample of 99 FTSE 100 companies that held their AGM between 1 August 2014 and 31 July 2015, 52 companies saw at least one management-proposed resolution receive more than 10% shareholder opposition (compared to 60 in 2014). The total number of resolutions that received over 10% opposition amounted to 95 (including the rejected resolution discussed in section 1.2), compared to 127 resolutions in 2014.

The graph below summarises the subjects of all resolutions that received more than 10% opposition from shareholders.

**Graph 3: Resolutions which received more than 10% against votes in the FTSE 100 (by resolution type)**



In our FTSE 100 sample, the most commonly contested resolutions were proposals to allow companies to call EGMs on 14 days' notice, which are proposed as special resolutions. The level of support for special resolutions is particularly important, as they require 75% approval. The second most commonly contested resolutions were authorities to issue shares with and without pre-emptive rights. Authorities with pre-emptive rights are proposed as ordinary resolutions (requiring a simple majority) while authorities to issue shares without pre-emptive rights are proposed as special resolutions. The third most commonly contested resolutions were remuneration report and remuneration policy votes.

### 1.3.1 Short notice period for EGMs

At the time of enactment, the Companies Act 2006 enabled listed companies to call a general meeting (other than an AGM) on 14 clear days' notice<sup>12</sup>. However, article 5.1 of the 2007 European Shareholder Rights Directive<sup>13</sup> requires listed companies to call such general meetings on at least 21 clear days' notice. The Directive allows EU members to permit a shorter notice period of at least 14 days on two conditions: that a company provides "the facility for shareholders to vote by electronic means accessible to all shareholders", and that the company's general meeting has approved such a course of action by "a majority of not less than two thirds of the votes". Therefore the Companies Act 2006 now states<sup>14</sup> that a general meeting that is not an AGM may be called on 14 days' notice if the company "offers the facility for members to vote by electronic means accessible to all members" and if this has been approved by the previous AGM (or a subsequent general meeting) as a special resolution (requiring 75% approval).

It should be noted that - unlike ISS and others - Glass Lewis has routinely recommended a vote against all requests for a shortened notice period.

Among our sample, the companies with the lowest level of support on these types of resolutions were:

- ARM Holdings (80.4% in favour)
- The British Land Company (81% in favour)
- CRH (81.5% in favour)
- Anglo American (82.4% in favour)

In each of these cases ISS recommended a vote in favour, while Glass Lewis recommended opposition.

### 1.3.2 Authorities to issue shares

Authorities to issue shares with pre-emptive rights<sup>15</sup> are proposed as ordinary resolutions (requiring a simple majority), while authorities to issue shares without pre-emptive rights<sup>16</sup> are proposed as special resolutions (requiring 75% approval). Most UK-based investors and the main proxy advisors refer to the Investment Association's Share Capital Management Guidelines<sup>17</sup> to assess authorities with pre-emptive rights, and to the Pre-emption Group Principles<sup>18</sup> (also see section 3.2) to assess authorities without pre-emptive rights.

Among our sample, the companies with the lowest level of support on these types of resolutions were:

- Mondi (with pre-emptive rights: 81.6% in favour; without pre-emptive rights: 80.9% in favour)
- Old Mutual (with pre-emptive rights: 81.4% in favour)
- Anglo American (with pre-emptive rights: 81.7% in favour; without pre-emptive rights: 85.6% in favour)
- British American Tobacco (with pre-emptive rights: 82.2% in favour)

We note that ISS and Glass Lewis had recommended in favour of each of these resolutions.

<sup>12</sup> Companies Act 2006, s. 307: <http://www.legislation.gov.uk/ukpga/2006/46/section/307/enacted>

<sup>13</sup> Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:184:0017:0024:EN:PDF>

<sup>14</sup> Companies Act 2006, s. 307A: <http://www.legislation.gov.uk/ukpga/2006/46/section/307A>

<sup>15</sup> Companies Act 2006, s. 551: <http://www.legislation.gov.uk/ukpga/2006/46/section/551>

<sup>16</sup> Companies Act 2006, s. 570: <http://www.legislation.gov.uk/ukpga/2006/46/section/570>

<sup>17</sup> Published by the Investment Association (IA) and previously by the Association of British Insurers (ABI): <https://www.ivas.co.uk/media/9777/Share-Capital-Management-Guidelines-30-July-2014-.pdf>

<sup>18</sup> <http://www.pre-emptiongroup.org.uk/getmedia/655a6ec5-fec5-47e4-80a0-7aea04433421/Revised-PEG-Statement-of-Principles-2015.pdf.aspx>

### 1.3.3 Remuneration Policy and Remuneration Report

Since 2002<sup>19</sup> quoted companies in the UK have been required to prepare a Directors' Remuneration Report and to offer shareholders an opportunity to vote on an advisory ordinary resolution approving this report.

In 2013 the UK Government introduced regulations<sup>20</sup> requiring a binding vote on executive remuneration. Under the regulations, remuneration reporting is comprised of three elements:

- **Annual Statement:** The remuneration report must contain an annual statement from the chairman of the remuneration committee summarising, for the financial year, the major decisions on directors' remuneration, any substantial changes made and the context in which those changes occurred.
- **Annual Remuneration Report:** The explanatory memorandum<sup>21</sup> states: "The DRR will continue to include information on an annual basis explaining how much directors have been paid in the reporting year, and how the pay policy will be implemented in the current financial year. The most substantive introduction is the requirement for companies to disclose the amount each director has been paid and to express this as a single figure taking account of all elements of remuneration. The company must also explain the director's actual performance, and the basis on which it has made decisions on the level of variable pay that is received."
- **Directors' Remuneration Policy:** "The 2013 Act (section 79) introduces a new part to the DRR: the directors' remuneration policy. These regulations set out the minimum requirements for disclosure of this policy. The pay policy must explain how each element of a directors' remuneration package supports the short and long-term strategy of the company, its potential value, and explain any performance measures relating to it. It must also set out a policy for paying newly recruited directors and a policy for loss of office payments."

The Annual Remuneration Report continues to be subject to an annual advisory vote. The Directors' Remuneration Policy is subject to a binding vote at least once every three years.

As the new requirement came into force for the 2014 proxy season virtually all companies in the FTSE 100 proposed both a Remuneration Report and a Remuneration Policy vote in 2014. During the 2015 proxy season, among our sample, 96 companies proposed a Remuneration Report vote while 26 companies proposed a Remuneration Policy vote.

It should be noted that the Directors' Remuneration Reporting Guidance<sup>22</sup> published by the GC100 and Investor Group<sup>23</sup> states: "It is generally expected that companies will put forward their remuneration policy for approval every three years, unless the company needs to change the policy, or fails to obtain approval of the annual remuneration report, and therefore puts forward an amended policy for approval before the end of the three-year period. Investors would generally not find it helpful if companies put forward their policy for approval annually as a matter of standard practice."

<sup>19</sup> The requirement was introduced in the UK by the Directors' Remuneration Report Regulations 2002 (SI 2002/1986) (see here: <http://www.legislation.gov.uk/uksi/2002/1986/contents/made>), amending the Companies Act 1985 (Companies Act 1985, s. 241A: <http://www.legislation.gov.uk/ukpga/1985/6/section/241A>). This requirement was re-enacted in the subsequent "consolidating" act covering company law, the Companies Act 2006, s. 439: <http://www.legislation.gov.uk/ukpga/2006/46/section/439>

<sup>20</sup> The Large and Medium-sized Companies and Groups (Accounts and Reports) (Amendment) Regulations 2013 (SI 2013/1981): <http://www.legislation.gov.uk/uksi/2013/1981/contents/made>

<sup>21</sup> [http://www.legislation.gov.uk/uksi/2013/1981/pdfs/uksem\\_20131981\\_en.pdf](http://www.legislation.gov.uk/uksi/2013/1981/pdfs/uksem_20131981_en.pdf)

<sup>22</sup> <http://uk.practicallaw.com/6-540-9731> (see pg 25)

<sup>23</sup> <http://uk.practicallaw.com/groups/uk-gc100-investor-group>

The companies with the lowest level of support on the Remuneration Report among our sample were (excluding the rejected resolution mentioned in section 1.2):

- Wm Morrison Supermarkets (62.1% in favour)
- Centrica (66.9% in favour)
- ARM Holdings (67.9% in favour)
- Ashtead Group (69.8% in favour)

ISS recommended a vote against each of these resolutions, while Glass Lewis recommended a negative vote only at Wm Morrison Supermarkets, and supported the other proposals.

The only company in our sample proposing a Remuneration Policy vote and receiving more than 10% opposition was:

- Sports Direct (87.5% in favour)

Both ISS and Glass Lewis recommended opposition on this resolution.

#### 1.3.4 Director elections

The companies with the lowest level of support on director elections among our sample were:

- International Consolidated Airlines Group (Cesar Alierta Izuel: 81% in favour)
- RSA Insurance Group (Hugh Mitchell: 82.7% in favour)
- Reed Elsevier (Robert Polet: 83.9% in favour)
- RSA Insurance Group (Johanna Waterous: 86.4% in favour)

We note that ISS recommended a vote in favour of each of these resolutions, while Glass Lewis recommended a negative vote on the re-elections of Cesar Alierta Izuel and Robert Polet, and supported the re-elections of Hugh Mitchell and Johanna Waterous.

At both International Consolidated Airlines Group and Reed Elsevier the low support for the re-election of Cesar Alierta Izuel and Robert Polet is likely to be related to their rate of attendance at board meetings, which was below 75% according to Glass Lewis.

## 2. PROXY ADVISORS

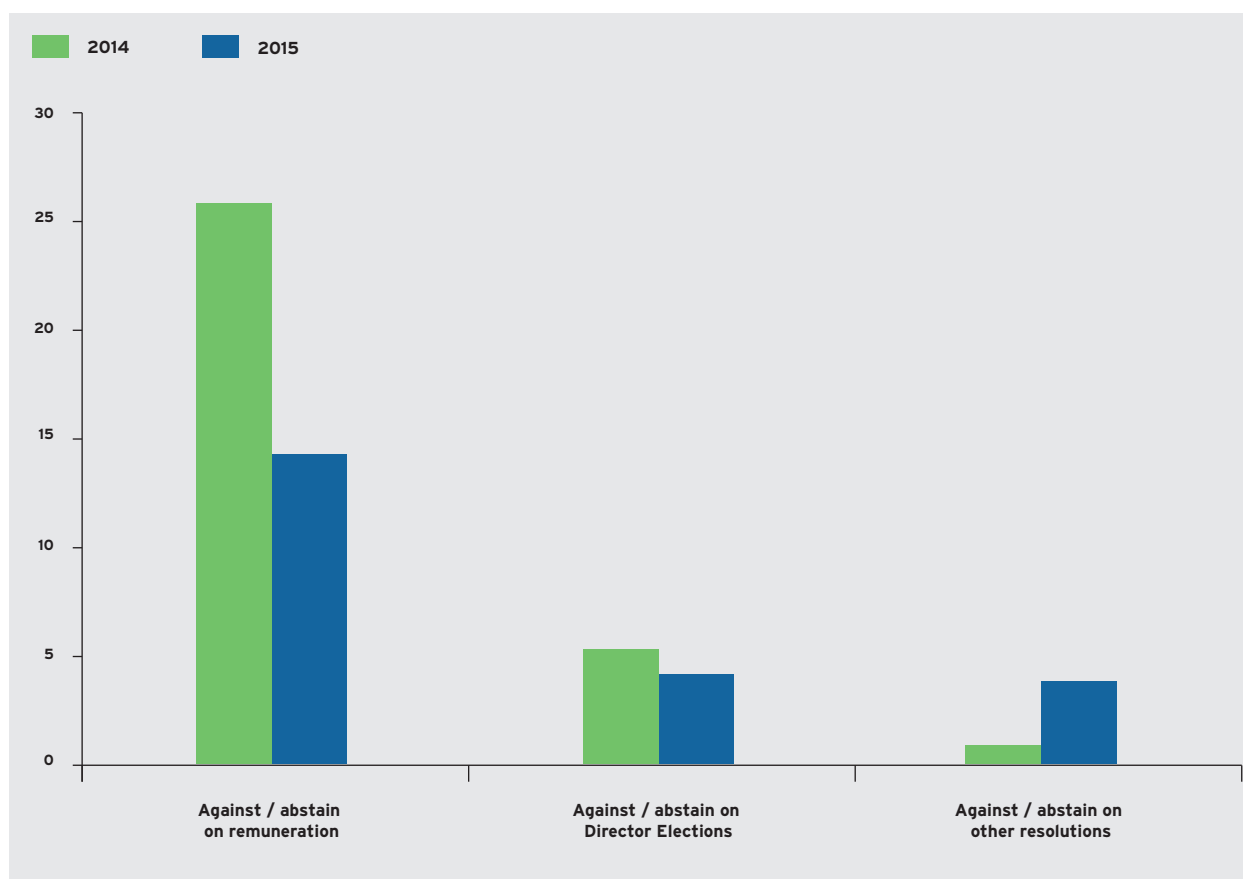
Many institutional investors rely on proxy advisory firms, such as ISS, Glass Lewis and IVIS for meeting agenda analysis and vote recommendations to inform their voting decisions. A negative recommendation from a proxy advisor can have an adverse impact on the vote outcome of a given resolution.

### 2.1 Institutional Shareholder Services (ISS)

Institutional Shareholder Services<sup>24</sup> (ISS) is a leading provider of corporate governance solutions for asset owners, hedge funds, and asset service providers. ISS has over 1,600 clients, and more than 800 employees spread across 15 offices in 10 countries and covers approximately 38,000 companies in 115 countries. They were acquired by Vestar Capital Partners in March 2014. In Europe they have offices in London, Paris and Brussels.

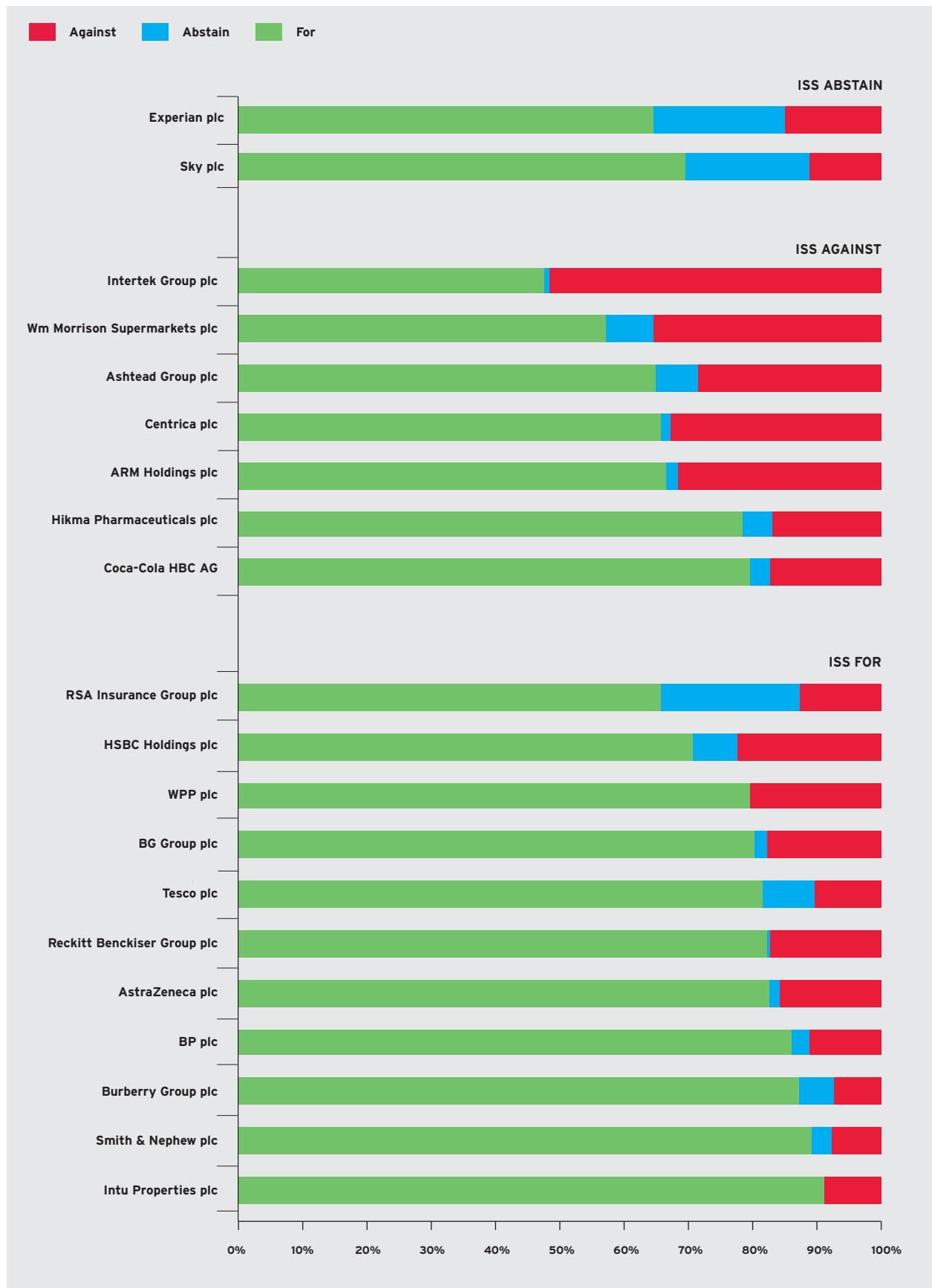
Between 1 August 2014 and 31 July 2015, 18 companies out of the FTSE 100 received at least one against or abstain recommendation from ISS, for a total of 23 resolutions. Below is an overview of the types of resolutions that have received a negative recommendation from ISS at FTSE 100 AGMs over the past two years.

**Graph 4: Overview of the number of negative recommendations by ISS at FTSE 100 AGMs over the past two years**



<sup>24</sup> <http://www.issgovernance.com/about/about-iss/>

**Graph 5: The 20 remuneration report votes receiving the lowest level of support in the FTSE 100 grouped by ISS recommendation.**  
The bars include the abstain votes, which are not counted towards the vote result but nevertheless indicate negative shareholder sentiment.

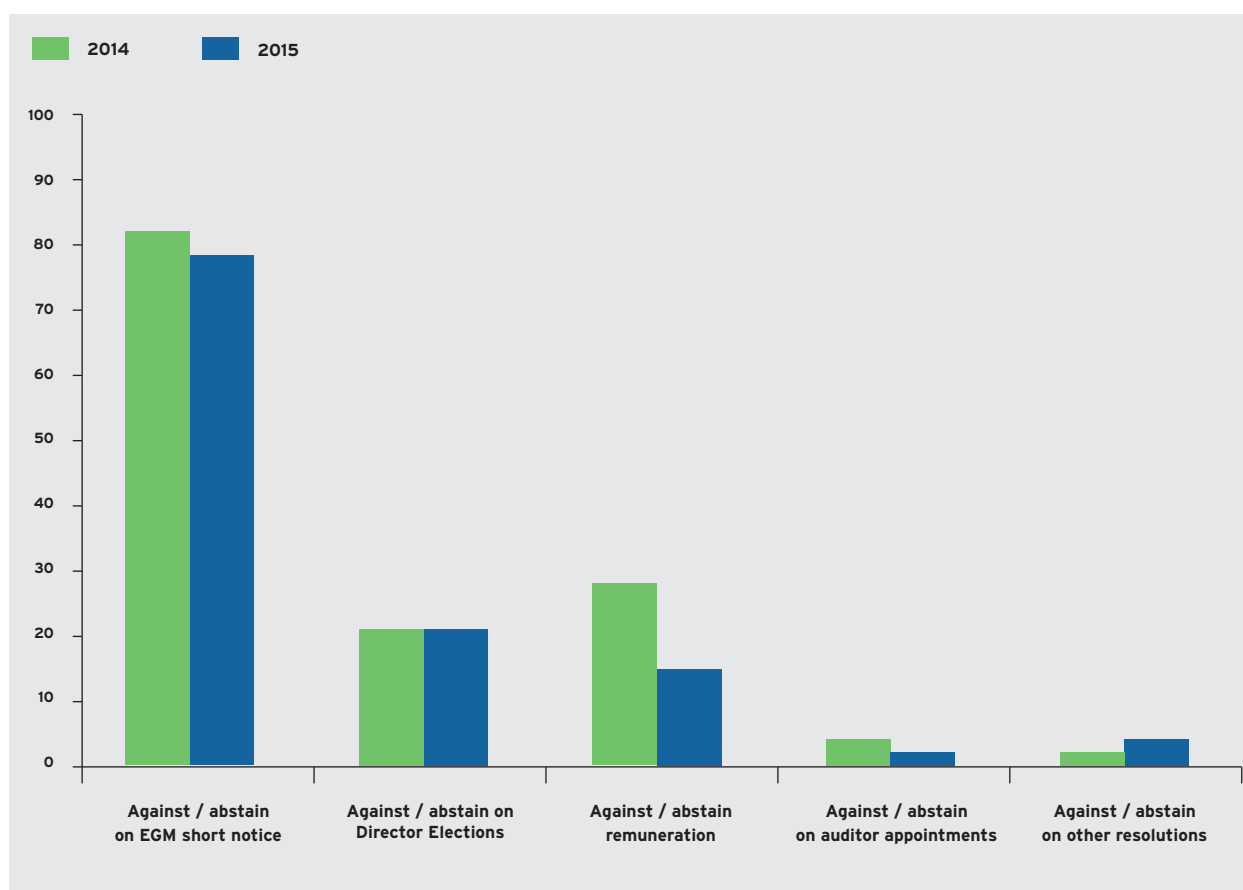


## 2.2 Glass Lewis

Glass Lewis<sup>25</sup> is a leading provider of governance services that support engagement among institutional investors and corporations through its research, proxy vote management and technology platforms. Glass Lewis has over 1,200 clients, and more than 360 employees. They cover more than 20,000 meetings in 100 countries. They are owned by the Ontario Teachers' Pension Plan Board and the Alberta Investment Management Corporation. In Europe they have offices in Limerick, Ireland, and - with the acquisition of IVOX in June 2015 - in Karlsruhe, Germany.

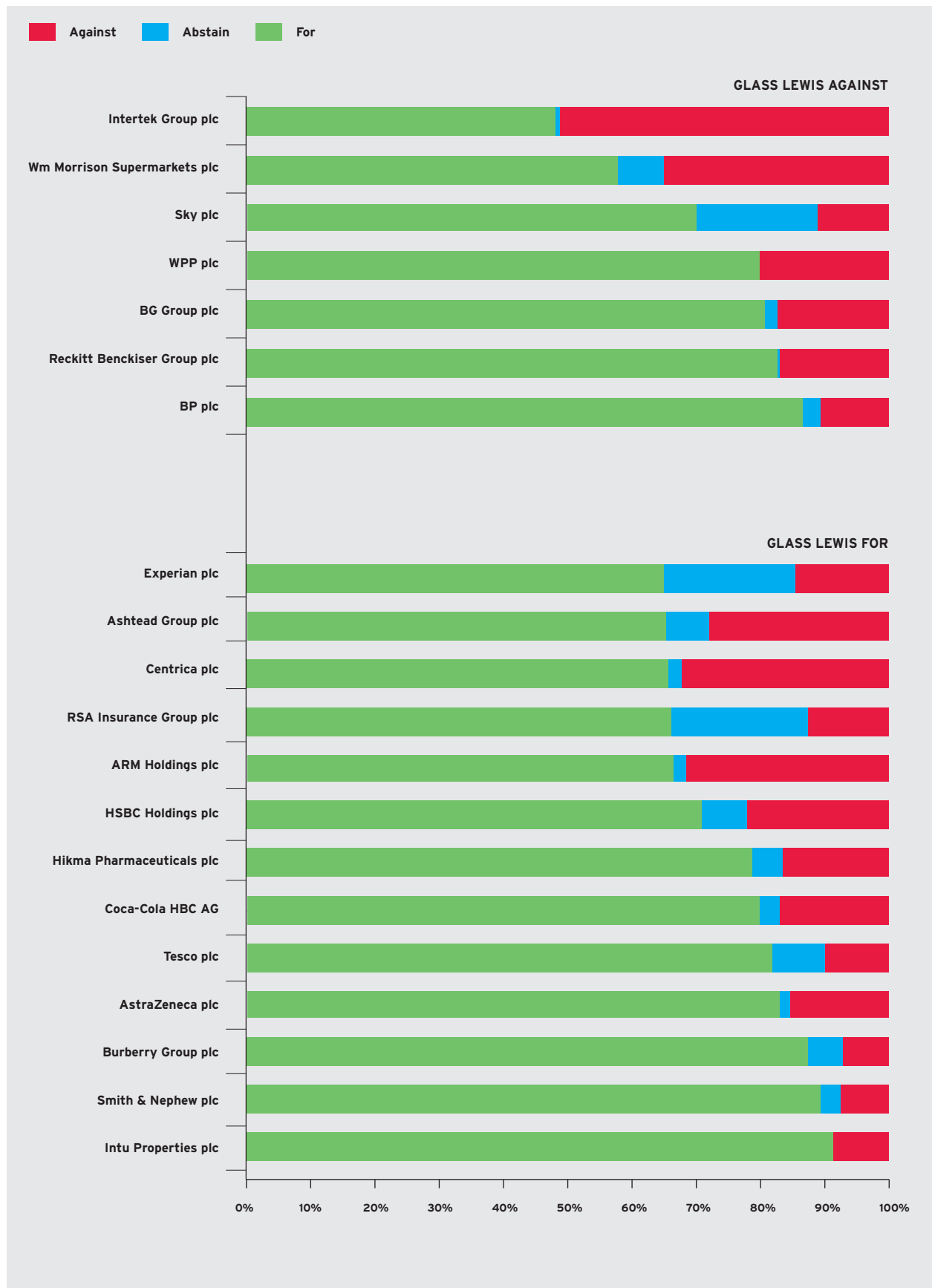
Between 1 August 2014 and 31 July 2015, 85 companies out of the FTSE 100 received at least one against or abstain recommendation from Glass Lewis, for a total of 120 resolutions. It should be noted that the bulk of these negative recommendations depend on the fact that Glass Lewis routinely recommends against short notice periods for EGMs, which are proposed by most FTSE 100 companies. Below is an overview of the types of resolutions that have received a negative recommendation from Glass Lewis at FTSE 100 AGMs over the past two years.

**Graph 6: Overview of the number of negative recommendations by Glass Lewis at FTSE 100 AGMs over the past two years**



<sup>25</sup> <http://www.glasslewis.com/about-glass-lewis/>

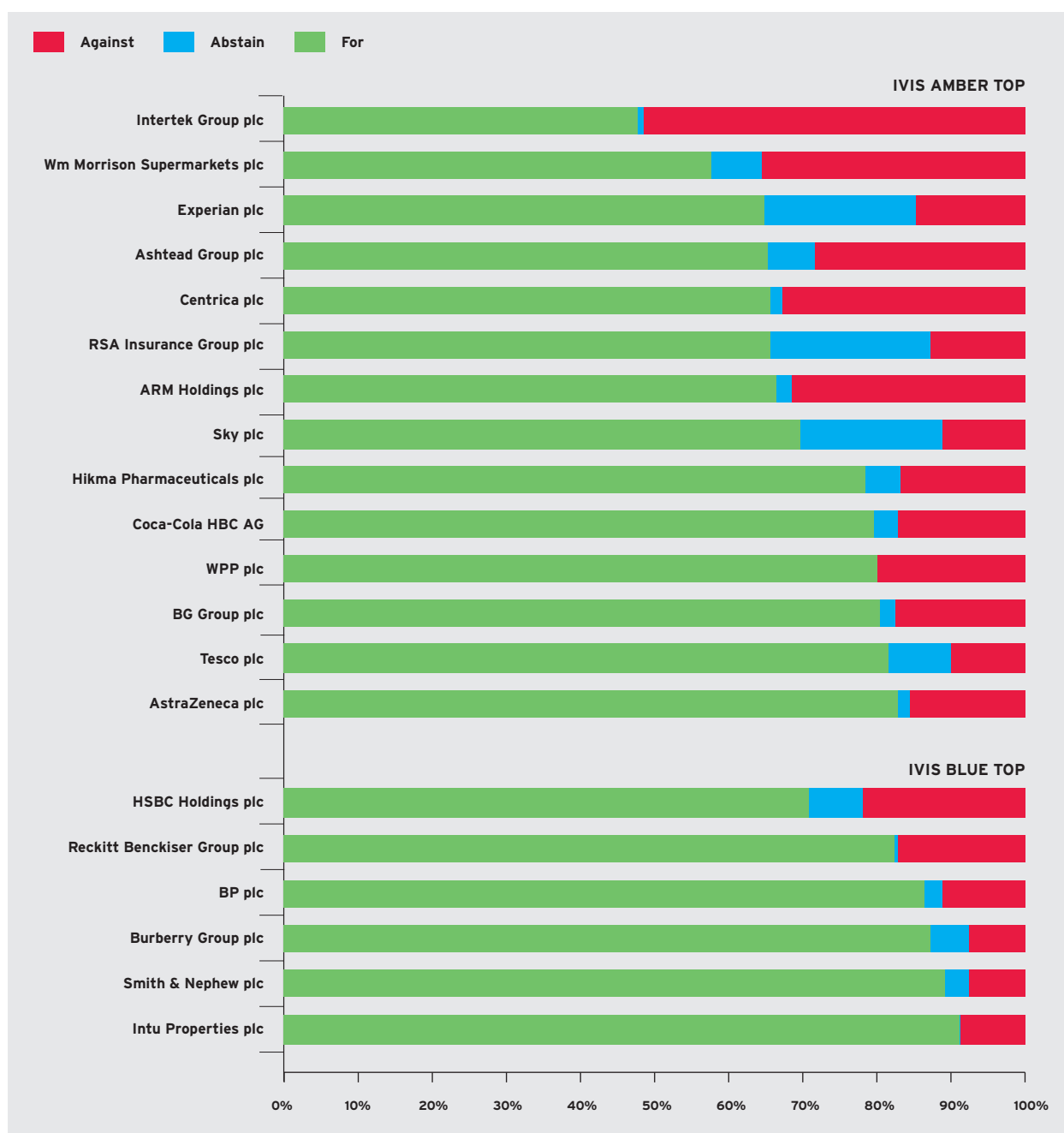
Graph 7: The 20 remuneration report votes receiving the lowest level of support in the FTSE 100 grouped by Glass Lewis recommendation. The bars include the abstain votes, which are not counted towards the vote result but nevertheless indicate negative shareholder sentiment.



## 2.3 Institutional Voting Information Service (IVIS)

The Institutional Voting Information Service<sup>26</sup> (IVIS) was founded by the Association of British Insurers (ABI) in 1993. Following the merger of the ABI's Investment Affairs division with the IMA (former name of the Investment Association) in June 2014, IVIS is now part of the Investment Association. IVIS does not issue explicit vote recommendations. However, they use a colour coded system which some investors will use as guidance on whether to vote negatively. The colour showing the strongest concern is Red, followed by Amber which raises awareness to particular elements of the report. A Blue Top indicates no areas of major concern, while a Green Top indicates an issue that has now been resolved.

**Graph 8: The 20 remuneration report votes receiving the lowest level of support in the FTSE 100 grouped by IVIS alert level. The bars include the abstain votes, which are not counted towards the vote result but nevertheless indicate negative shareholder sentiment.**



<sup>26</sup> <https://www.ivis.co.uk/about-ivis/>

### 3. CORPORATE GOVERNANCE DEVELOPMENTS

#### 3.1 Corporate Governance Code

The current UK Corporate Governance Code has its roots in the Cadbury Report<sup>27</sup> which was issued on 1 December 1992, by the Committee on the Financial Aspects of Corporate Governance, chaired by Sir Adrian Cadbury<sup>28</sup>. The UK Corporate Governance Code<sup>29</sup> “sets out standards of good practice in relation to board leadership and effectiveness, remuneration, accountability and relations with shareholders. All companies with a Premium Listing of equity shares in the UK are required under the Listing Rules<sup>30</sup> to report on how they have applied the Code in their annual report and accounts. [...] The Code contains broad principles and more specific provisions. Listed companies are required to report on how they have applied the main principles of the Code, and either to confirm that they have complied with the Code’s provisions or - where they have not - to provide an explanation.” The latest version of the UK Corporate Governance Code<sup>31</sup> was published by the Financial Reporting Council (FRC)<sup>32</sup> in September 2014 and applies to reporting periods beginning on or after 1 October 2014.

In the September 2014 edition of the Code the FRC<sup>33</sup> “has confirmed proposals for boards to include a ‘viability statement’ in the strategic report to investors. This will provide an improved and broader assessment of long-term solvency and liquidity. It is expected that this statement will look forward significantly longer than 12 months. The Code has also been changed in relation to remuneration. Boards of listed companies will now need to ensure that executive remuneration is designed to promote the long-term success of the company and demonstrate how this is being achieved more clearly to shareholders.”

#### 3.2 Pre-emption Group Principles

The Pre-emption Group<sup>34</sup> was initially set up in 1987<sup>35</sup> to produce a Statement of Principles to be taken into account when considering the case for disapplying pre-emption rights. Their most influential guideline provides that “listed companies will continue to require annual approval by shareholders of a resolution to disapply in advance pre-emption rights for the following year. Any non-rights issues made will be limited to a maximum in any one year of 5% of the fully diluted issued capital of the company, but with a further restriction limiting such issues to one-and-a-half times each year’s entitlement [i.e. 7.5%] in any rolling three-year period.”

The Pre-emption Group Principles have had almost universal acceptance among the UK institutional investor community and are applied by most proxy advisors when analysing UK AGM resolutions.

<sup>27</sup> [http://www.ecgi.org/codes/code.php?code\\_id=132](http://www.ecgi.org/codes/code.php?code_id=132)

<sup>28</sup> <http://www.icaew.com/en/library/subject-gateways/corporate-governance/codes-and-reports/cadbury-report>

<sup>29</sup> <http://www.frc.org.uk/Our-Work/Codes-Standards/Corporate-governance/UK-Corporate-Governance-Code.aspx>

<sup>30</sup> <https://www.handbook.fca.org.uk/handbook/LR/9/8.html>

<sup>31</sup> <https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-2014.pdf>

<sup>32</sup> “The Financial Reporting Council is the UK’s independent regulator responsible for promoting high quality corporate governance and reporting to foster investment.” See here: <https://www.frc.org.uk/About-the-FRC.aspx>

<sup>33</sup> <https://www.frc.org.uk/News-and-Events/FRC-Press/Press/2014/September/FRC-updates-UK-Corporate-Governance-Code.aspx>

<sup>34</sup> <http://www.pre-emptiongroup.org.uk/About-Us.aspx>

<sup>35</sup> <http://www.bankofengland.co.uk/archive/Documents/historicpubs/qb/1987/qb87q4545549.pdf>

In March 2015 the Group published<sup>36</sup> a revised version of their Statement of Principles<sup>37</sup>. "Key amendments to the 2008 Statement of Principles include:

- Clarification of the scope of the Statement, making it clear that it applies to both UK and non-UK incorporated companies whose shares are admitted to the premium segment of the Official List of the UK Listing Authority. Companies whose shares are admitted to the standard segment of the Official List, to trading on AIM, or to the High Growth Segment of the London Stock Exchange's Main Market are encouraged to adopt the Statement.
- Clarification that the Statement applies to all issues of equity securities that are undertaken to raise cash for the issuer or its subsidiaries, irrespective of the legal form of the transaction, including, for example, 'cashbox' transactions.
- Flexibility to undertake non-pre-emptive issuance of equity securities in connection with acquisitions and specified capital investments, consistent with existing market practice.
- Greater transparency on the discount at which equity securities are issued non-pre-emptively.

No changes have been made to the key thresholds for general disapplication of pre-emption rights."

### 3.3 PRA and FCA Remuneration Rules

In June 2015 the Prudential Regulation Authority (PRA) and the Financial Conduct Authority (FCA) published Policy Statement PS15/16<sup>38</sup> which introduces new rules for remuneration of banking staff<sup>39</sup>.

"The new framework aims to further align risk and individual reward in the banking sector to discourage irresponsible risk-taking and short-termism, and to encourage more effective risk management. [...] The primary changes are:

- Extending deferral (the period during which variable remuneration is withheld following the end of the accrual period) to seven years for senior managers, five years for PRA designated risk managers with senior, managerial or supervisory roles, and three to five years for all other staff whose actions could have a material impact on a firm (material risk takers). The FCA is introducing clawback rules (where staff members return part or all of variable remuneration that has already been paid to the institution under certain circumstances) for periods of seven years from award of variable remuneration for all material risk takers, which were already applied by the PRA. Both the PRA and the FCA clawback rules will be strengthened by a requirement for a possible three additional years for senior managers (10 years in total) at the end of the seven year period where a firm or regulatory authorities have commenced inquiries into potential material failures.
- Prohibiting variable pay for Non-Executive Directors.
- Making explicit that no variable pay including all discretionary payments should be paid to the management of a firm in receipt of taxpayer support.
- Strengthening the PRA requirements on PRA dual-regulated firms to apply more effective risk adjustment to variable remuneration.

The clawback and deferral will apply to variable remuneration awarded for performance periods beginning on or after 1 January 2016, while other requirements will apply from 1 July 2015."

<sup>36</sup> <https://frc.org.uk/News-and-Events/FRC-Press/Press/2015/March/The-Pre-Emption-Group-publishes-a-revised-Statement.aspx>

<sup>37</sup> <http://www.pre-emptiongroup.org.uk/getmedia/655a6ec5-fec5-47e4-80a0-7aea04433421/Revised-PEG-Statement-of-Principles-2015.pdf.aspx>

<sup>38</sup> <https://www.fca.org.uk/your-fca/documents/policy-statements/ps15-16>

<sup>39</sup> <https://www.fca.org.uk/news/pr-a-fca-announce-new-rules-on-remuneration>

### 3.4 The Investment Association's Principles of Remuneration

In October 2014 the Investment Association, which took over the Investment Affairs division of the ABI in June 2014<sup>40</sup>, published<sup>41</sup> an amended version of its Principles of Remuneration<sup>42</sup> accompanied by an introductory letter<sup>43</sup>. "The Principles of Remuneration set out members' views on the role of shareholders and directors in relation to remuneration and the manner in which remuneration should be determined and structured. The Principles are updated annually to take into account the events of the previous AGM season. The only change following the 2014 season surrounds the use of 'allowances' as a part of fixed pay. IMA Members generally consider the payment of 'allowances' to be inconsistent with the spirit of simplicity, clarity and pay for performance. If a Remuneration Committee considers that the payment of an allowance is necessary, it should be clearly justified and explained in the context of the overall remuneration package."

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<sup>40</sup> <http://www.theinvestmentassociation.org/media-centre/press-releases/2014/press-release-2014-06-18.html>

<sup>41</sup> <http://www.theinvestmentassociation.org/media-centre/press-releases/2014/press-release-2014-10-20.html>

<sup>42</sup> <https://www.ivis.co.uk/media/10277/Principles-of-Remuneration-2014.pdf>

<sup>43</sup> <https://www.ivis.co.uk/media/10280/Introductory-letter-2014.pdf>



France





# France Highlights

- The average quorum for the 37 CAC40 in our sample (excluding companies whose registered office is outside France) increased slightly from 64.40% in 2014 to 65.34% in 2015.
- Amongst the CAC40 companies surveyed a total of 13 resolutions were rejected by shareholders at the AGMs of eight companies: GDF Suez, Kering, Orange, Pernod-Ricard, Renault, Veolia, Vinci and Vivendi.
- Eight shareholder proposals (including two filed by PhiTrust to maintain single voting rights) were filed at the AGMs of EDF, Orange, Safran, Total and Vivendi. All eight failed to gather sufficient support from shareholders and were therefore rejected.
- The most commonly contested resolutions were authorities to issue shares with and without pre-emptive rights.
- The second most commonly contested resolutions were say-on-pay resolutions. On average, shareholder support for this second year of advisory vote on executive remuneration decreased from 92% in 2014 to 86.5% in 2015.
- Amongst the CAC40 companies surveyed, 28 companies received at least one negative recommendations from ISS and 22 companies received at least one negative recommendation from Glass Lewis. The AFG also raised at least one alert at the AGMs of 22 companies in our CAC40 sample.
- Following the 2015 proxy season, only eight companies out of the 37 CAC40 companies surveyed successfully opted out of the "Florange Act" and restored the one share - one vote principle.

# 1. VOTING IN FRANCE

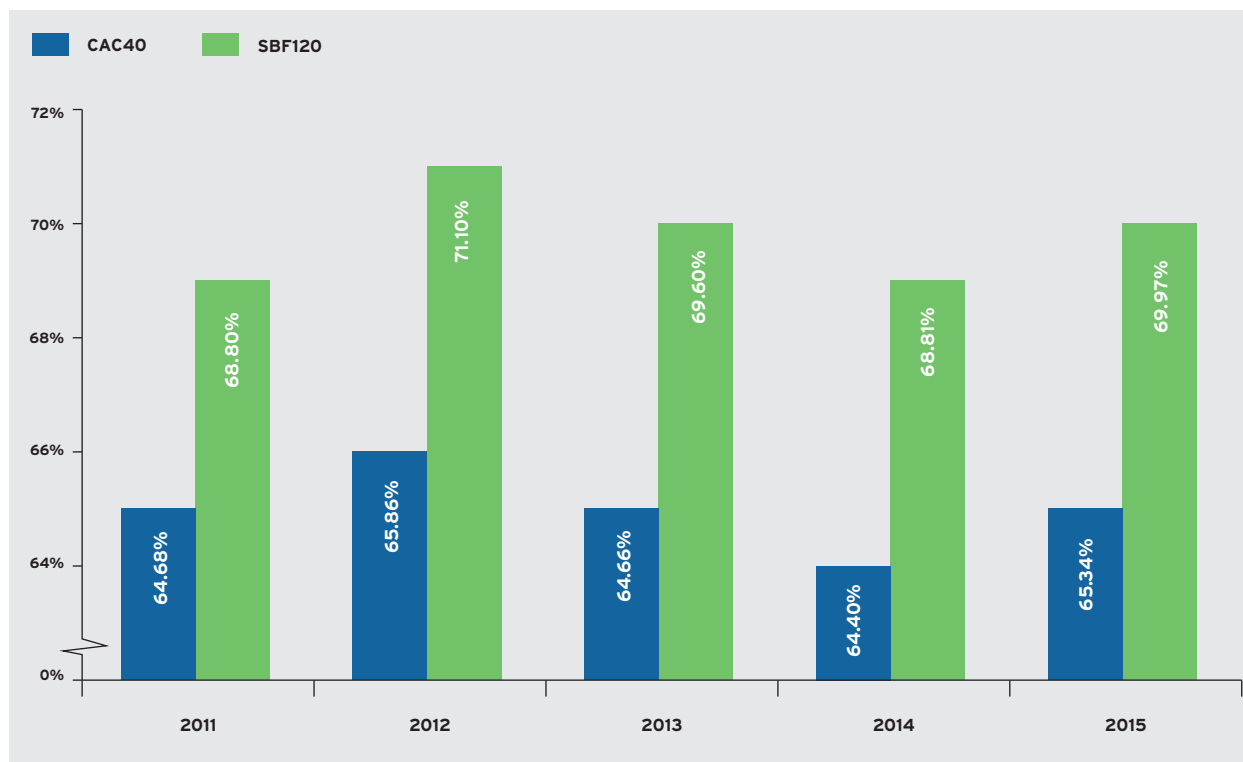
## 1.1 Quorum overview

We have reviewed the quorum levels of the CAC40 index<sup>1</sup> over the past five years. Our survey includes the 37 CAC40 companies with their corporate headquarters located in France and having held their shareholder meetings between 1 August 2014 and 31 July 2015. Therefore our analysis excludes Airbus Group, ArcelorMittal and Solvay, as their corporate headquarters are located outside France.

The average shareholder vote participation at the AGMs of our CAC40 sample during the 2015 proxy season increased slightly from 64.40% in 2014 to 65.34% in 2015. The below graph illustrates the evolution of the average of CAC40 and SBF120<sup>2</sup> quorums over the past five years.

Looking at the change in quorum from 2014 to 2015, five companies saw an increase of five or more percentage points. The highest increase in shareholder vote participation was recorded at the AGM of Peugeot, with 72.45% attendance versus 52.19% in 2014. The change in Peugeot's quorum is attributable to the completion in April 2014 of the share capital increases reserved to Dongfeng Motor International and SOGEPA (controlled by the French State) which enabled them to each acquire a 14.13% stake in Peugeot's share capital. Other significant increases were seen at Carrefour (+8.23% points), Renault (+8.14% points), Kering (+6.79% points) and Alcatel-Lucent (+5.9% points). Four companies saw a decrease in their quorum of three or more percentage points: Accor, GDF Suez, Safran and Unibail-Rodamco. The largest decrease in vote participation occurred at Accor where the AGM voting level decreased from 72.33% to 65.98%.

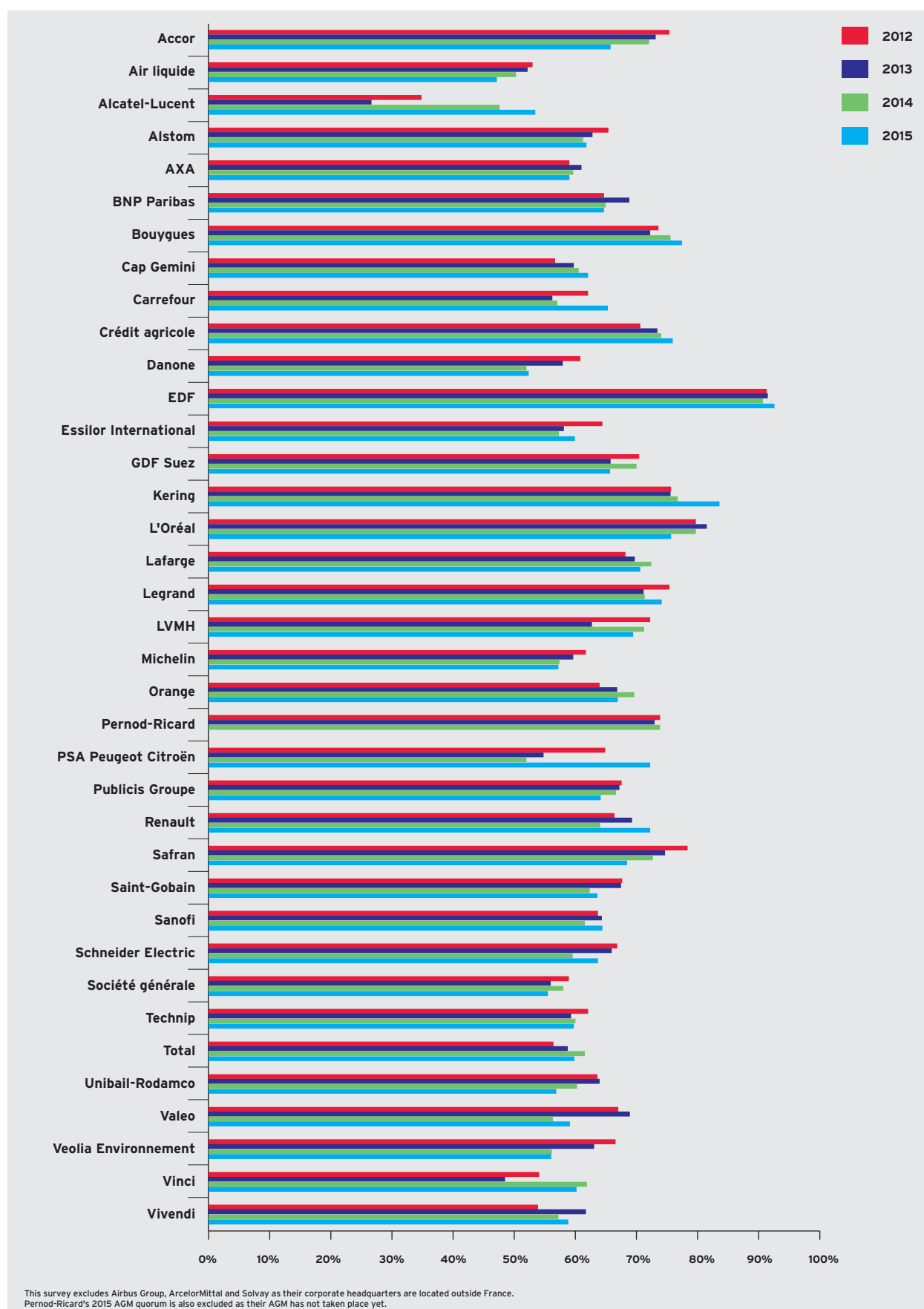
Graph 1: Shareholder attendance levels: comparison of CAC40 and SBF120 between 2011 and 2015



<sup>1</sup> The CAC40 is a benchmark French stock market index which comprises the 40 largest and most liquid stocks trading on the Euronext Paris. See here: <https://indices.euronext.com/en/products/indices/FRO003500008-XPAR>

<sup>2</sup> The SBF 120 is a French stock market index which comprises the 120 most actively traded stocks listed in Paris. It includes all 40 stocks in the CAC40 index and a selection of 80 additional stocks listed on the Premier Marché and Second Marché trading on the Euronext Paris. See here: <https://indices.euronext.com/en/products/indices/FRO003999481-XPAR>

Graph 2: Shareholder attendance levels at the 37 CAC40 companies surveyed between 2012 and 2015 (displayed alphabetically)



## 1.2 Rejected resolutions

Amongst the 37 CAC40 companies that held their AGM between 1 August 2014 and 31 July 2015, a total of 13 resolutions proposed by the board were rejected by shareholders at the AGMs of eight companies: GDF Suez, Kering, Orange, Pernod-Ricard, Renault, Veolia, Vinci and Vivendi.

## BOARD PROPOSALS

### **Florange Act (GDF Suez, Renault and Veolia)**

The Florange Act automatically grants double voting rights to registered shareholders who hold shares for more than two years, unless the articles of association state otherwise. Three companies that proposed such article amendments had their resolutions rejected by shareholders: GDF Suez, Renault and Veolia.

The resolutions failed to achieve the required two-thirds majority of the voting rights cast and were rejected with 40% votes in favour at GDF Suez, 61% at Renault and 51% at Veolia. A full overview of the impact of the enactment of the "Florange Act" will be further discussed in section 3.1 "Florange Act" - Double voting rights.

### **Orange**

Five resolutions were rejected at Orange's AGM where the five authorities to increase capital without pre-emptive rights failed to achieve the minimum required two-thirds majority of the voting rights cast and were rejected by shareholders with over 38% against votes. It should be noted that the proxy advisors, ISS, Glass Lewis and Proxinvest, had recommended an against vote and that the AFG had raised an alert on these five resolutions. They noted that these authorities could be used for anti-takeover purposes without shareholders' approval as the company failed to explicitly exclude their use during a public offer period.

### **Kering**

At Kering's AGM, the authority to issue capital for use in an employee equity purchase plan was rejected with 77.9% negative votes.

### **Vinci**

Vinci's proposal to amend their articles of association regarding shareholding disclosure thresholds was rejected with over 71.7% negative votes. It should be noted that ISS and Glass Lewis had recommended an against vote on this resolution and the AFG had raised an alert.

### **Pernod-Ricard**

At Pernod-Ricard's 2014 AGM, the proposed stock option plan received 63.97% votes in favour instead of the 66.67% required for the resolution to pass. It should be noted that both ISS and Glass Lewis issued an against recommendation on this resolution and noted that the performance targets were not sufficiently challenging in their view.

## SHAREHOLDER RESOLUTIONS

Additionally, eight shareholder proposals (which were not supported by the board) were filed at the AGMs of EDF, Orange, Safran, Total and Vivendi. All eight failed to gather sufficient support from shareholders and were therefore rejected.

### EDF

At EDF's AGM, the supervisory board of the "EDF Shares" FCP<sup>3</sup> proposed to reduce the dividend amount to be distributed and to fix the dividend at €0.80 per share. The proposal was rejected by shareholders with over 98.1% negative votes.

### Orange

At Orange's AGM, four shareholder proposals were filed. The Cap'Orange mutual fund proposed three resolutions which were rejected with dissent at over 91%. The Cap'Orange mutual fund proposed:

- To reduce the dividend amount to be distributed to €0.50 per share (compared to the €0.60 per share proposed by the board);
- To modify the method of payment of the dividend so that shareholders could opt for a share dividend instead of a cash dividend;
- To authorise the board to participate in the repurchase of shares sold by the French State.

The fourth shareholder resolution was put forward by PhiTrust Active Investors<sup>4</sup>, a French activist investment fund, and proposed to amend the company's bylaws to block the automatic grant of double voting rights introduced by the "Florange Act" and to maintain single voting rights. The resolution failed to achieve the required two-thirds majority of the voting rights cast and was rejected with 43.3% votes in favour. It should be noted that at Orange the French State (which has been fully supportive of the Florange law) holds 13.45% of the share capital directly and has a further indirect holding, via Bpifrance Participation<sup>5</sup>, of 11.6%, for a total of 25.04%. Both ISS and Glass Lewis had issued a for recommendation on this resolution.

### Safran

At Safran's AGM, a shareholder resolution was put forward by the Safran Investissement corporate mutual fund which proposed to reduce the dividend amount to €1.12 per share. The resolution was rejected by shareholders with over 82.4% negative votes. It should be noted that both ISS and Glass Lewis had issued an against recommendation on this resolution.

### Total

At Total's AGM, the UES Upstream Total's Workers Group Council proposed a resolution which constituted a recommendation to the board of directors for fairer profit-sharing between shareholders and employees. The resolution was rejected with 92.12% negative votes. It should be noted that both ISS and Glass Lewis had issued an against recommendation on this resolution.

<sup>3</sup> An FCP (which stands for fond commun de placement) is an employee collective investment fund used in France.

<sup>4</sup> PhiTrust Active Investors proposed the resolution with the support of eight other shareholders representing a total of 1% of the capital.

<sup>5</sup> Bpifrance Participation, formerly known as Strategic Investment Fund (FSI), is held 50% by the French State and 50% by Caisse des Dépôts et Consignation, which is controlled by the French State.

<sup>6</sup> The resolution was proposed by PhiTrust, the Railways Pension Trustee Company Ltd (UK), PGGM Investments (Netherlands), Amundi AM and CPR AM (France), CalPERS (US), Edmond de Rothschild AM, OFI AM, OFI Gestion Privée (France), Aviva Investors, DNCA Finance and Proxinvest (France).

## **Vivendi**

At Vivendi's AGM, PhiTrust Active Investors supported by 11 other shareholders<sup>6</sup> representing 1.96% of the capital filed a proposal to amend the company's bylaws to block the implementation of the "Florange Act" and maintain single voting rights. The resolution was rejected with 50% votes in favour. It should be noted that Vincent Bollore, Vivendi's chairman and largest shareholder, increased his holding from just over 10% to 14.52% of the capital ahead of the 17 April AGM, to reinforce his control over the group<sup>7</sup>.

Additionally, in March 2015, Schoenfeld Asset Management (PSAM), a US hedge fund which held 0.55% of Vivendi, proposed the following two resolutions:

- To increase the dividend amount to be distributed to €2.11 per share (compared to the €0.80 per share proposed by the board)
- To pay an exceptional dividend by distributing €6 billion from the "share issue premium, merger premium and contribution premium" accounts.

PSAM argued that Vivendi was significantly undervalued due its excessive cash holdings, inadequate capital return policy and the uncertainty over Vivendi's future use of its capital<sup>8</sup>.

On 8 April 2015, Vivendi issued a press release<sup>9</sup> informing that the Management Board of Vivendi as well as the Chairman of its supervisory Board had engaged with PSAM. Following these discussions, Vivendi committed to returning a total of €6.75 billion (€5.00 per share) to shareholders. Furthermore, Vivendi committed to reviewing the possibility of proposing additional distributions if its acquisition strategy were to require less cash than anticipated over the next two years.

As a result of these commitments, PSAM withdrew their resolutions and informed the company that they would vote in favour of all the resolutions submitted by the management board and against the shareholder resolution proposed by PhiTrust aimed at blocking the double voting right rule (which they had initially supported).

## **SBF120**

### **Altamir**

A notable AGM among SBF120 companies was the AGM of Altamir. Moneta Asset Management (which holds 9.97% of the capital) in conjunction with the Association for the Defence of Minority Shareholders (ADAM) submitted written questions<sup>10</sup> to the company in relation to the lack of transparency of the remuneration over the General Manager, Maurice Tchenio. Furthermore, Moneta and the ADAM urged shareholders to vote against the say-on-pay of the General Manager (resolution nine), to underline concerns over the global remuneration structure and the absence of basic disclosure. ISS, Glass Lewis and Proxinvest, all issued a negative recommendation on this resolution. The resolution narrowly passed with 53.8% of positive votes. It should be noted that Maurice Tchenio holds 26.97% of the capital.

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<sup>7</sup> <http://www.ft.com/fastft/305763/bollore-ups-stake-vivendi-14.5>

<sup>8</sup> [http://www.vivendi.com/wp-content/uploads/2015/03/20150327\\_VIV\\_PDF\\_Management\\_Boards\\_Report\\_Addendum.pdf](http://www.vivendi.com/wp-content/uploads/2015/03/20150327_VIV_PDF_Management_Boards_Report_Addendum.pdf)

<sup>9</sup> <http://www.vivendi.com/investment-analysts/press-releases/vivendi-press-release-08-04-2015-01/>

<sup>10</sup> <http://www.moneta.fr/en/notre-actualite/altamir/index.php>

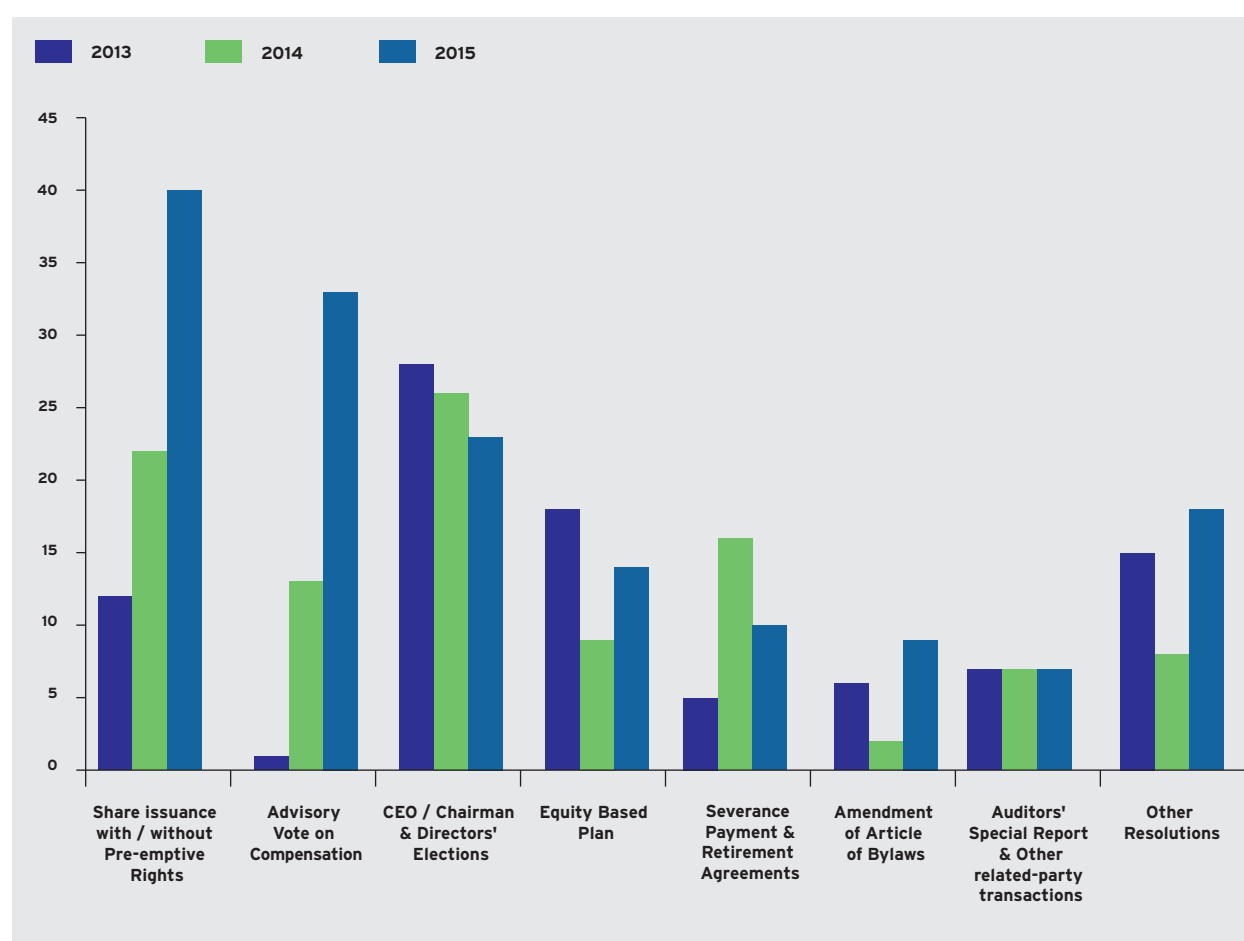
### 1.3 Contested resolutions

Amongst the 37 CAC40 companies that held their AGM between 1 August 2014 and 31 July 2015, 29 companies saw at least one resolution receive more than 10% shareholder opposition. The total number of resolutions that received over 10% dissent amounted to 146 (including the rejected resolutions discussed in section 1.2).

The graph below summarises the main categories of the resolutions that received more than 10% opposition from shareholders.

The most commonly contested resolutions were authorities to issue share capital with 40 resolutions receiving more than 10% negative votes. The second most commonly contested resolutions were the advisory votes on compensation.

**Graph 3: Resolutions which received more than 10% against votes in the CAC40 (by resolution type)**



### 1.3.1 Authorities to issue shares

This year, at CAC40 AGMs, 40 authorities to issue shares, including 28 without pre-emptive rights, received more than 10% negative votes. Although capital dilution remains a significant concern for investors who are keen to protect their shareholder rights, the main issue this year was the possible use of these authorities as anti-takeover devices.

A new French law, the “Florange Act”, adopted on 29 March 2014<sup>11</sup>, enables the board of directors to adopt provisions to oppose a public offer without shareholder approval unless the articles of association of a company state that shareholders’ approval is required. These provisions include the use of all share issuance authorities. Institutional investors and proxy advisors tend to be strongly opposed to instruments which may be used as anti-takeover devices. This is considered to disadvantage shareholders (who may benefit from an offer on the shares they hold), and is also perceived to protect the current management, which may become entrenched and complacent if the potential for a hostile takeover is no longer applicable.

In response to the “Florange Act”, ISS, Glass Lewis, Proxinvest and the AFG indicated that they would recommend against general share issuance authorities unless the company specifies in their notice of meeting that these authorities cannot be used for anti-takeover purposes. Among the 40 authorities to issue shares which received more than 10% negative votes, 21 authorities could be used for anti-takeover purposes without shareholders’ approval as the companies failed to explicitly exclude their use during a public offer period.

Among the 37 CAC40 companies surveyed, the resolutions with the lowest level of support on share issuance authorities were (excluding the rejected resolutions discussed in section 1.2):

- Vivendi (Authority to issue capital for contributions in Kind: 63.9% in favour)
- Vivendi (Capital increase with pre-emptive rights: 65.3% in favour)
- Safran (Authority to issue capital for Private Placements: 68.15% in favour):
- Safran (Greenshoe<sup>12</sup> authorisation: 68.39% in favour)

Each one of these resolutions could be used as anti-takeover devices. ISS and Glass Lewis recommended an against vote on them.

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<sup>11</sup> <http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006224989&cidTexte=LEGITEXT000005634379>

<sup>12</sup> In the event of exceptional public demand, the company will authorise additional shares to be issued. Under French law, the maximum number of shares that could be issued is limited to up to 15% of the initial issuance request and must be made at the same price as the initial issuance.

### 1.3.2 Executive compensation

In June 2013, the AFEP-MEDEF<sup>13</sup> in the latest edition of their Corporate Governance Code for listed Corporations<sup>14</sup> recommended that issuers introduce an annual advisory vote on executive remuneration starting from the 2014 AGM season.

The executive compensation recommendations of the AFEP-MEDEF Code apply to the chairman, CEO, and deputy CEO of French companies with a board of directors, to the chairman and members of the management board of companies with a two-tier board, and to the manager of a listed partnership (société en commandite par actions). Shareholders vote on the fixed and variable elements of the compensation due, received or awarded during the fiscal year under review.

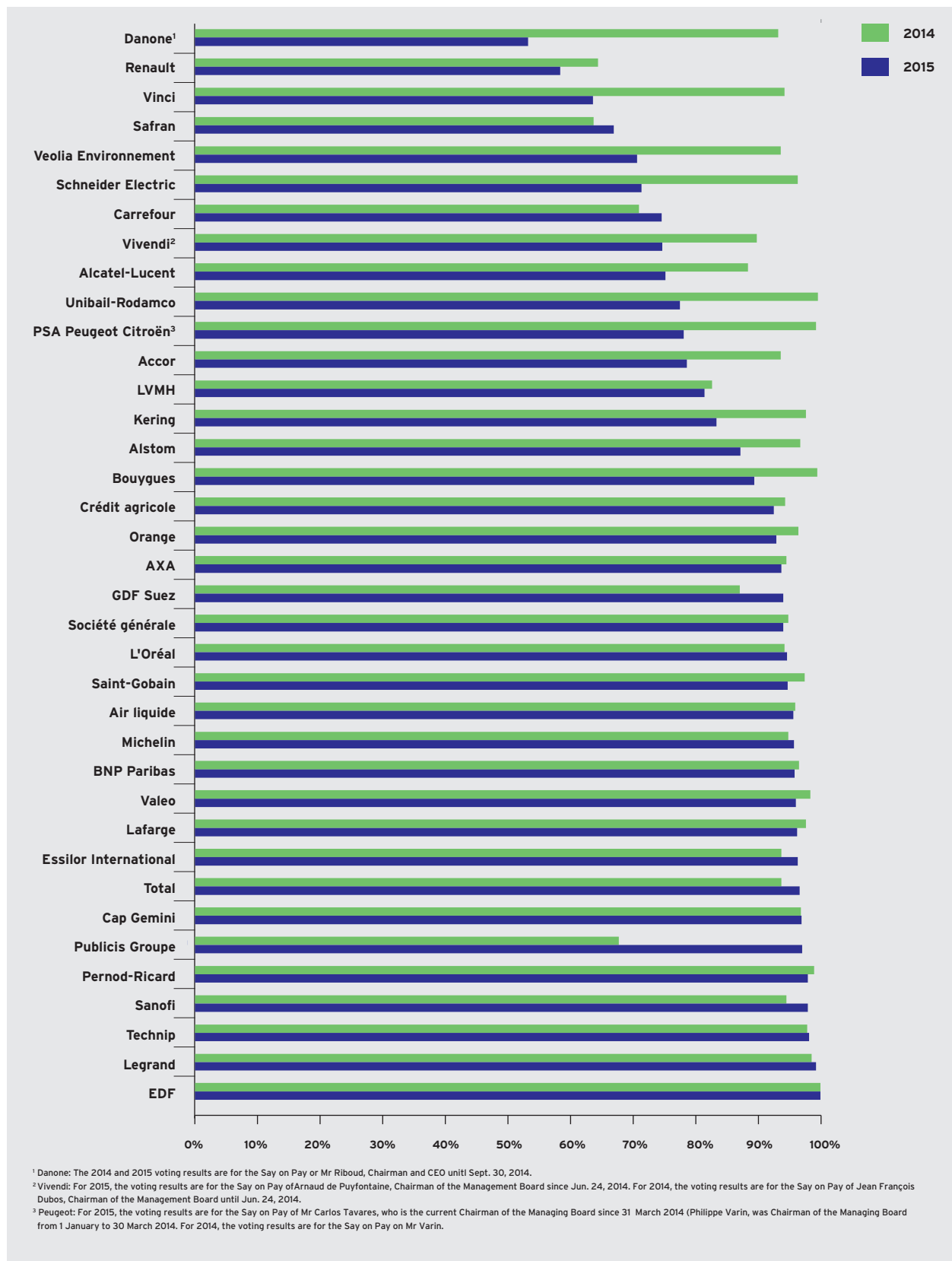
All 37 CAC40 companies that held their AGM between 1 August 2014 and 31 July 2015, refer to the AFEP-MEDEF code and proposed an advisory vote on their executive remuneration at their AGM. On average, we registered a decrease in the level of support for the say-on-pay resolutions at the 2015 CAC40 AGMs (86.5% on average) compared to the relatively high level of support (92% on average) recorded in 2014, which was the first year shareholders were asked to vote on these resolutions. This year, institutional investors and proxy advisors took a tougher stance on advisory remuneration resolutions (expecting a higher level of disclosure and compliance) compared to the 2014 proxy season, when they took a somewhat more lenient approach. Nonetheless, twelve companies registered an increase in the level of support for their say-on-pay resolutions at their 2015 AGM compared to their 2014 vote results, notably Publicis and GDF Suez.

On the following page is a graph showing the levels of shareholder approval for the advisory vote on CEO remuneration of the 37 CAC40 companies surveyed.

<sup>13</sup> The AFEP and the MEDEF are two employers' associations which jointly publish the main corporate governance code in France.

<sup>14</sup> <http://www.medef.com/medef-corporate/publications/fiche-detaillee/categorie/economie-1/back/110/article/revision-du-code-de-gouvernement-dentreprise-des-societes-cotees-1.html>

Graph 4: Vote results for the advisory vote on CEO remuneration among the 37 companies surveyed over the past two years



### 1.3.3 Board (re)elections

In 2015, director elections continued to register significant dissent votes. The lack of independence of directors remains one of the main factors in negative shareholder votes. However, several CAC40 companies also faced significant levels of criticism for the excessive number of directorships held by some nominees. In their 2013 amended corporate governance code the AFEP-MEDEF recommend that "... executive directors should not hold more than two other directorships in listed corporations and a non-executive director should not hold more than four other directorships, including at foreign corporations, not affiliated with his or her group."

Among the 37 CAC40 companies surveyed, the resolutions with the lowest level of support on director elections were:

- BNP Paribas (Re-election of Denis Kessler: 71.3% in favour)
- Alcatel Lucent (Appointment of Laurent du Mouza as Censor: 75.9% in favour)
- Société Générale (Election of Gerard Mestrallet: 76% in favour)
- Saint-Gobain (Election of Denis Ranque: 76.5% in favour)
- Veolia (Re-election of Maryse Aulagnon: 77% in favour)

We note that ISS recommended against the re-election of Denis Kessler, but Glass Lewis recommended in favour of the resolution. Both ISS and Glass Lewis recommended against the other resolutions.

## 2. PROXY ADVISORS

Many institutional investors rely on proxy advisory firms, such as ISS, Glass Lewis and the AFG for meeting agenda analysis and vote recommendations to inform their voting decisions. A negative recommendation from a proxy advisor can have an adverse impact on the vote outcome of a given resolution.

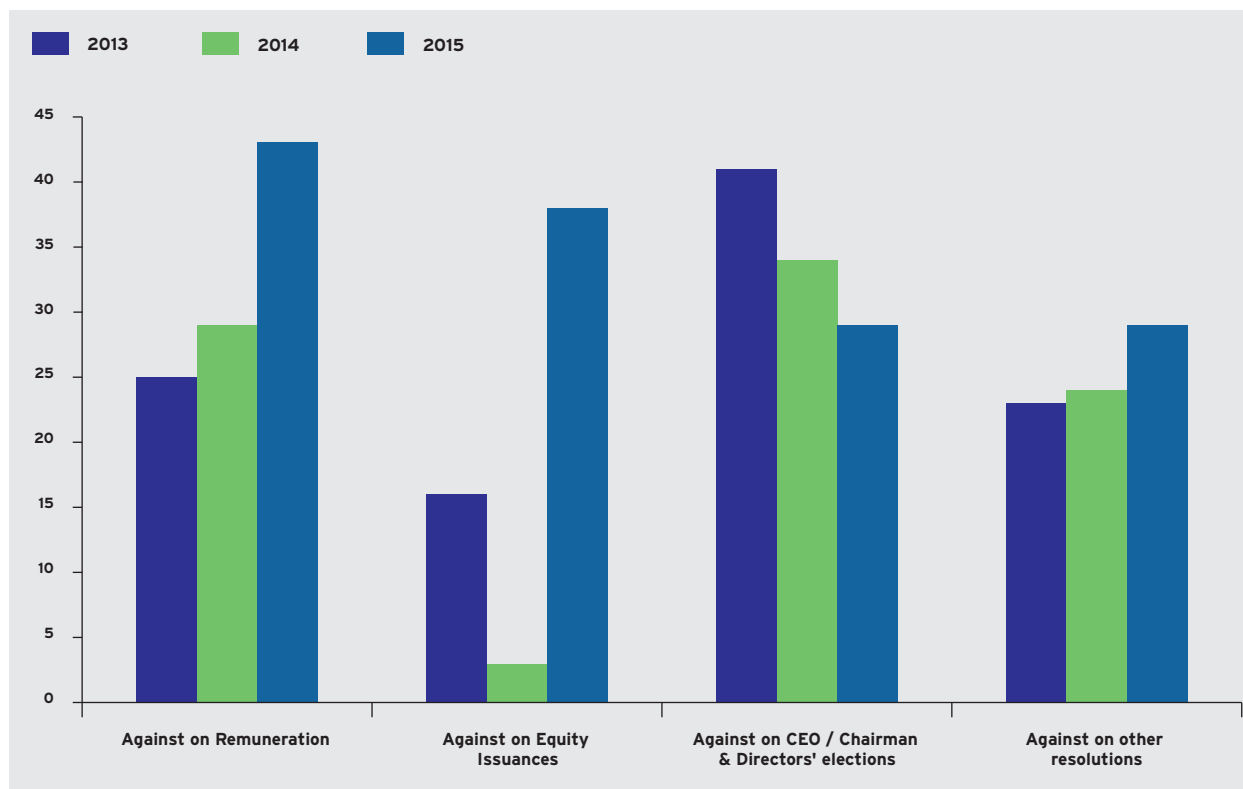
### 2.1 Institutional Shareholder Services (ISS)

Institutional Shareholder Services<sup>15</sup> (ISS) is a leading provider of corporate governance solutions for asset owners, hedge funds, and asset service providers. ISS has over 1,600 clients, and more than 800 employees spread across 15 offices in 10 countries and covers approximately 38,000 companies in 115 countries. They were acquired by Vestar Capital Partners in March 2014. In Europe they have offices in London, Paris and Brussels.

Between 1 August 2014 and 31 July 2015, 28 companies out of the 37 CAC40 companies surveyed received at least one against recommendation from ISS. The approval of remuneration resolutions (which include executive say-on-pay, equity incentive plans and benefits agreements) are the resolutions which have received the highest number of against recommendations (43 resolutions). This is followed by the approval of share issuance authorities (38 resolutions).

Below is an overview of the number of negative recommendations by ISS at the 37 CAC40 AGMs we surveyed over the past three years. The graph shows that overall, the 2015 proxy season saw the highest number of negative recommendations from ISS in the last three years. The total number of against recommendations has increased from 90 in 2014 to 139 in 2015.

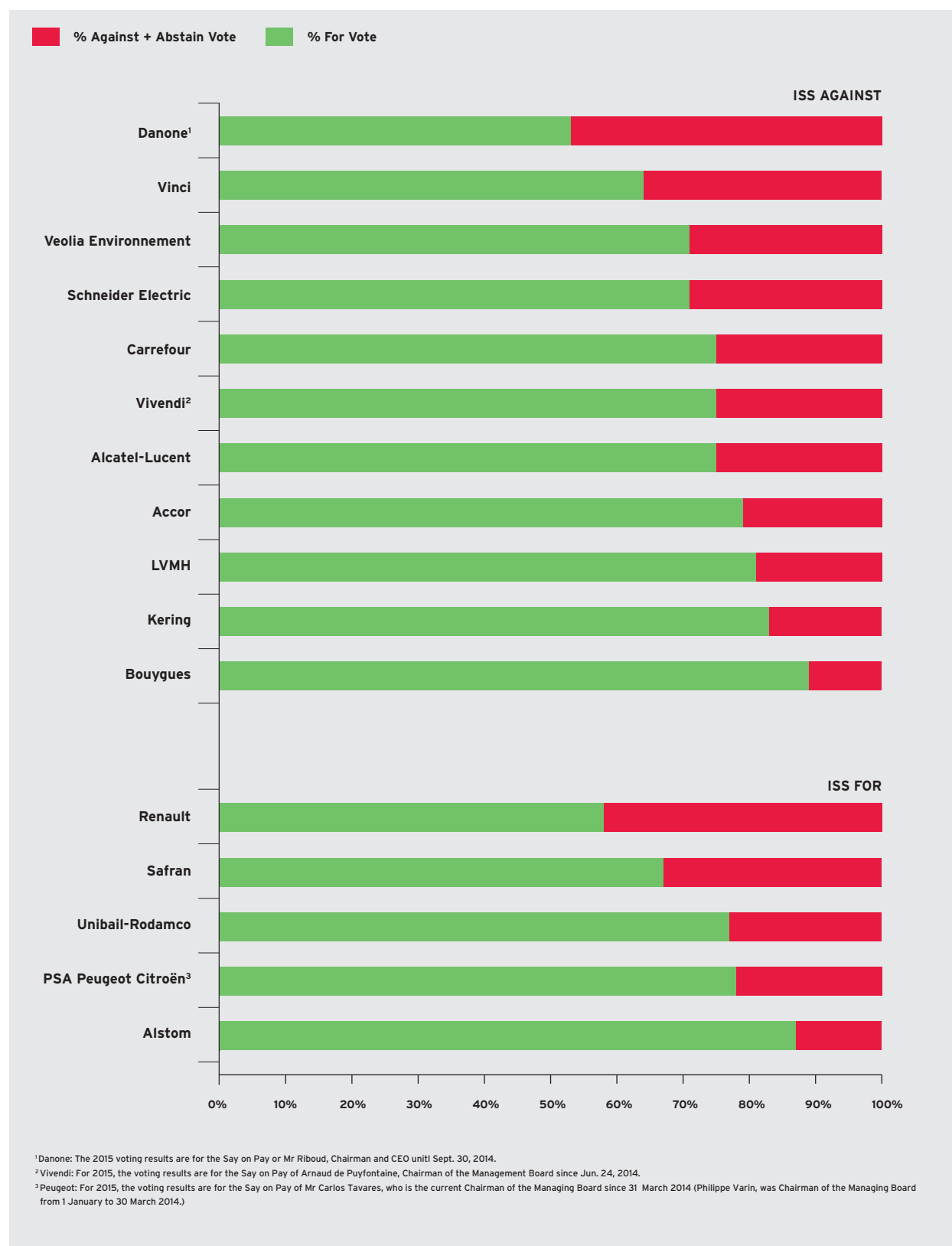
**Graph 5: Overview of the number of negative recommendations by ISS at the CAC40 AGMs over the past three years**



<sup>15</sup> <http://www.issgovernance.com/about/about-iss/>

Below is an overview of the CAC40 companies surveyed whose Say on Pay resolution received less than 90% shareholder support categorised by ISS recommendation.

**Graph 6: Say on Pay resolutions with less than 90% support categorised by ISS recommendation**



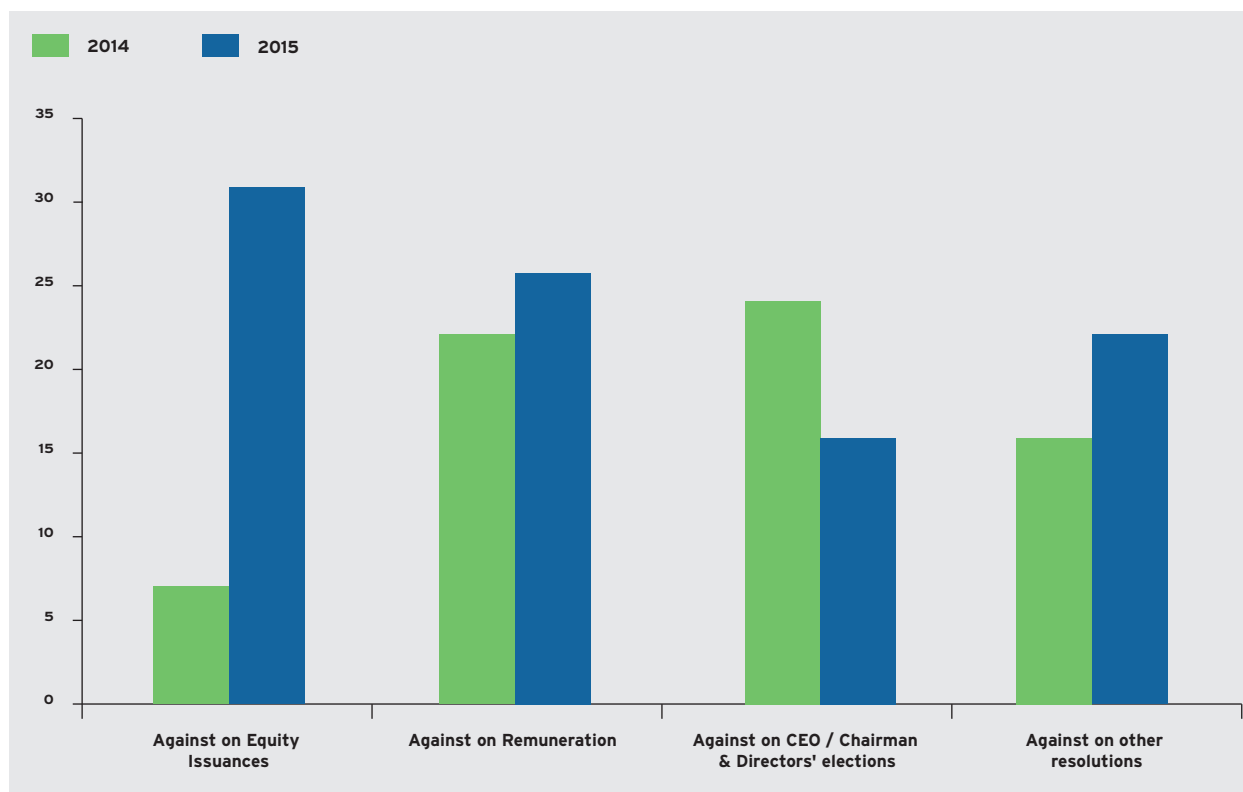
## 2.2 Glass Lewis

Glass Lewis<sup>16</sup> is a leading provider of governance services that support engagement among institutional investors and corporations through its research, proxy vote management and technology platforms. Glass Lewis has over 1,200 clients, and more than 360 employees. They cover more than 20,000 meetings in 100 countries. They are owned by the Ontario Teachers' Pension Plan Board and the Alberta Investment Management Corporation. In Europe they have offices in Limerick, Ireland, and - with the acquisition of IVOX in June 2015 - in Karlsruhe, Germany.

Between 1 August 2014 and 31 July 2015, 22 companies out of the 37 CAC40 companies surveyed received at least one against or abstain recommendation from Glass Lewis. The approval of share issuance authorities is the resolution which has received the highest number of against or abstain recommendations (31 resolutions). This is followed by the approval of remuneration resolutions which include executive say-on-pay, equity incentive plans and benefits agreements (26 resolutions).

Below is an overview of the number of negative recommendations by Glass Lewis at the 37 CAC40 AGMs we surveyed over the past two years. The graph shows that overall, the 2015 proxy season saw the highest number of negative recommendations from Glass Lewis in the last two years. The total number of against or abstain recommendations has increased from 69 in 2014 to 95 in 2015.

**Graph 7: Overview of the number of negative recommendations by Glass Lewis at the CAC40 AGMs over the past two years**



<sup>16</sup> <http://www.glasslewis.com/about-glass-lewis/>

Below is an overview of the CAC40 companies surveyed whose Say on Pay resolution received less than 90% shareholder support categorised by Glass Lewis recommendation.

**Graph 8: Say on Pay resolutions with less than 90% support categorised by Glass Lewis recommendation**



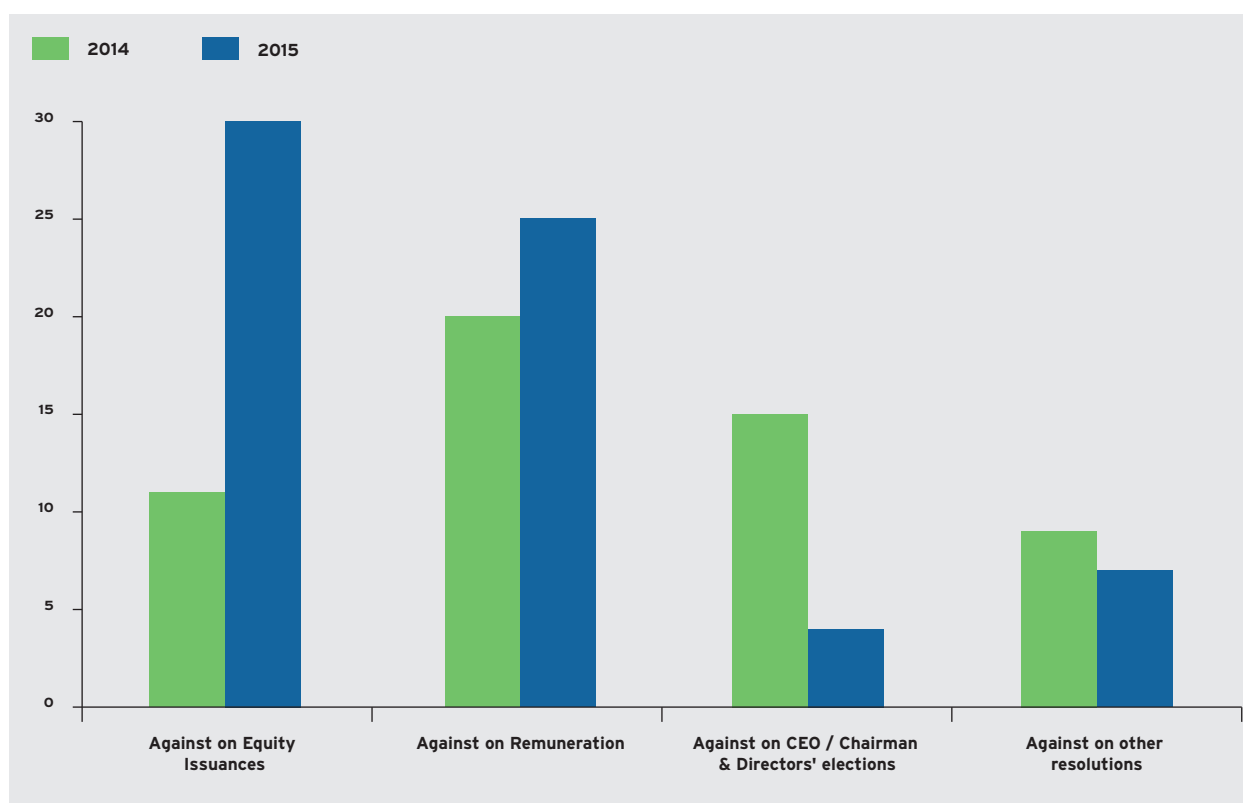
## 2.3 AFG (Association Française de la Gestion financière)

The AFG (Association Française de la Gestion financière), the French asset management association, represents and promotes the interests of the French asset management industry. Its members include all market participants working for individual investors or collective investment schemes. As of 30 April 2014, the AFG has 961 members, including 416 management companies. Since 1998, the AFG has published a Corporate Governance Code<sup>17</sup>. The code is intended as guidelines for its members' exercise of their voting rights and deal with the AGMs of publicly listed French companies. The AFG, via its alert programme, issues a report for each AGM in the SBF120 index which either highlights resolutions that do not comply with their code or states that all resolutions are in line with their code.

Between 1 August 2014 and 31 July 2015, 22 companies out of the 37 CAC40 companies surveyed received at least one alert from the AFG. The approval of share issuance authorities is the resolution which has received the highest number of alert (30 resolutions). This is followed by the approval of remuneration resolutions, which include executive say-on-pay, equity incentive plans and benefits agreements (25 resolutions).

Below is an overview of the number of alerts raised by the AFG at the 37 CAC40 AGMs we surveyed over the past two years. The graph shows that overall, the 2015 proxy season saw the highest number of alert from the AFG in the last two years. The total number of alert has increased from 55 in 2014 to 66 in 2015.

**Graph 9: Overview of the number of alerts raised by the AFG at the CAC40 AGMs over the past two years**



<sup>17</sup> [http://www.afg.asso.fr/index.php?option=com\\_content&view=article&id=5999%3Agouvernement-dentreprise-lafg-reaffirme-le-principe-une-action-une-voix-et-limportance-du-role-des-assemblees-generales&catid=549%3A2014&lang=fr](http://www.afg.asso.fr/index.php?option=com_content&view=article&id=5999%3Agouvernement-dentreprise-lafg-reaffirme-le-principe-une-action-une-voix-et-limportance-du-role-des-assemblees-generales&catid=549%3A2014&lang=fr)

### 3. CORPORATE GOVERNANCE DEVELOPEMENTS

#### 3.1 “Florange Act” - Double voting rights

The French law of 29 March 2014 “aimed at recapturing the real economy” (known as the “Florange Act”), was adopted by the French Parliament on 24 February 2014. Among other things, the final version of the law has amended Article L225-123 of the Code de Commerce<sup>18</sup> to automatically offer double voting rights from 2016 onwards to shareholders of listed companies who hold shares in registered form for at least two years, unless a company’s articles of association stipulate otherwise. Prior to this new law, companies had to expressly choose to introduce double voting rights in their articles of association.

This provision was opposed by the four proxy advisors, ISS, Glass Lewis, Proxinvest and the AFG. Many proxy advisors and institutional investors are supporters of the “one share - one vote” principle, under which voting rights match economic interest. There is a perception that the use of multiple voting rights introduces distortions which allow certain entities to maintain a degree of control despite not holding commensurate economic interests. Some investors also fear it will strengthen the control of the French State, which has large holdings in several French companies.

Furthermore, the introduction of double voting rights appears likely to disadvantage many international and institutional investors, as they usually do not hold shares in registered form in the French market, and therefore will not receive double voting rights even if they have held the shares for two years.

PhiTrust Active Investors, a French activist investment fund, stated in July 2014 in their shareholder engagement programme for the 2014-2015 season<sup>19</sup> that they will introduce a number of initiatives aimed at re-establishing the principle of proportionality between capital and voting rights (“one share - one vote” principle) which it considers vital to ensure equal treatment for shareholders. They launched a shareholder engagement campaign promoting the principle of one-share, one-vote. In January 2015, a letter drafted by PhiTrust Active Investors and co-signed by 19 institutional investors<sup>20</sup> was sent to the chairman of each of the 13 CAC 40 companies that still maintained single voting rights asking them to opt out of the implementation of the “Florange Act” provisions.

Consequently, PhiTrust filed a proposal to maintain single voting rights at the AGMs of Orange and Vivendi, as these two companies did not propose a resolution to opt out of the “Florange Act”. The resolutions did not gather enough shareholder supports and were rejected, with 43.3% votes in favour at Orange and 50% in favour at Vivendi. These resolutions are discussed in section “1.2 Rejected resolutions” of this review.

At the start of the 2015 proxy season, 13 CAC 40 companies still had single voting rights: Air Liquide, BNP Paribas, Cap Gemini, Crédit Agricole, EDF, GDF Suez, L’Oréal, Orange, Renault, Unibail-Rodamco, Veolia Environnement, Vinci and Vivendi.

In 2015, ten CAC40 companies<sup>21</sup> proposed a resolution to amend their articles of association in order to exempt them from the application of the “Florange Act” and restore the one-share, one-vote principle: Air Liquide, BNP Paribas, Cap Gemini, Crédit Agricole, GDF Suez, L’Oréal, Renault, Unibail-Rodamco, Veolia Environnement and Vinci. Seven of these companies successfully opted out of the Florange Act’s provisions.

<sup>18</sup> <http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006224989&cidTexte=LEGITEXT000005634379>

<sup>19</sup> [http://www.phitrustactiveinvestors.com/data/file/communiqués\\_de\\_presse\\_2014/Presse\\_release\\_Governance\\_campaign\\_2015\\_PROXY\\_AI.pdf](http://www.phitrustactiveinvestors.com/data/file/communiqués_de_presse_2014/Presse_release_Governance_campaign_2015_PROXY_AI.pdf)

<sup>20</sup> From Canada, France, Germany, Italy, Luxembourg, Netherlands, Switzerland, the United Kingdom, the United States.

<sup>21</sup> It should be noted that Alstom had already proposed a resolution to maintain single voting rights at their 2014 AGM. Therefore, the company is not included in this 10 CAC40 companies’ list.

However, at the AGMs of GDF Suez, Renault and Veolia Environnement, the resolutions failed to achieve the minimum required two-thirds majority of the voting rights cast and were rejected. At Renault, the French State raised its stake from 15% to 19.7% of the capital prior to the AGM to ensure the implementation of the "Florange Act"<sup>22</sup>.

It should be noted that Legrand, whose articles of association already allowed double voting rights to be granted to its long-term registered shareholders, proposed at its May 2015 AGM, to remove the double-voting rights and revert to the "one-share one-vote" principle. The resolution was overwhelming approved with 99.8% votes in favour.

Following their 2015 AGMs, six companies that still had single voting rights prior to the start of this proxy season, will automatically grant double voting rights (following the enactment of the "Florange Act") to their shareholders who hold shares in registered form for at least two years. Only eight companies out of the 37 CAC 40 companies surveyed successfully restored the one-share, one-vote principle.

Below is an overview of the CAC40 companies with double voting rights and an overview of CAC40 companies with passive adoption of double voting rights in 2016 following the enactment of the "Florange Act".

**Graph 10: CAC40 companies with passive adoption of double voting rights in 2016 following the enactment of the "Florange Act"**

Companies	Automatic grant of Double Voting rights post "Florange Act"	Double Voting Rights in place before "Florange Act"	Stake held by French State July 2015 <sup>1</sup>	2015 AGM Quorum	Notes
<b>Alstom*</b>	Yes	No	-	62.1%	Alstom proposed a resolution to maintain single voting rights at their 2014 AGM. The resolutions failed. It should be noted that as per an agreement with the French State, Bouygues, Alstom's largest shareholder with 29%, had agreed to oppose the resolution to maintain single voting rights.
<b>EDF</b>	Yes	No	84.49%	92.9%	
<b>GDF Suez</b>	Yes	No	33.24%	65.9%	
<b>Orange</b>	Yes	No	13.45%	67.2%	At the 2015 AGM, Phitrust Active Investor, a French activist investment fund, filed a shareholder proposal to maintain single voting rights. It failed with 43.3% vote in favour.
<b>Renault</b>	Yes	No	19.74%	72.5%	The French State raised its stake from 15% to 19.7% ahead of Renault's 2015 AGM.
<b>Veolia Environnement</b>	Yes	No	-	56.2%	Core holders CDC and Groupe Industriel Marcel Dassault held respectively 8.6% and 5.7% of the capital at December 2014 +.
<b>Vivendi</b>	Yes	No	-	59.0%	At the 2015 AGM, PhiTrust with other shareholders + filed a shareholder proposal to maintain single voting rights. It failed with 50.05% vote in favour.

<sup>1</sup> Source: Agence des Participations de l'Etat

<sup>2</sup> Source: Veolia's website.

<sup>3</sup> The resolution was proposed by PhiTrust, the Railways Pension Trustee Company Ltd (UK), PGGM Investments (Netherlands), Amundi AM and CPR AM (France), CalPERS (US), Edmond de Rothschild AM, OFI AM, OFI Gestion Privée (France), Aviva Investors, DNCA Finance and Proxinvest (France).

**In Blue:** At Orange and Vivendi a shareholder proposal was filed by Phitrust to amend the companies' bylaws to maintain single voting rights.

<sup>22</sup> <http://www.wsj.com/articles/french-state-to-raise-its-stake-in-renault-1428486008>

Graph 11: Overview of double voting rights across our CAC40 sample

Companies	Double Voting rights in place post "Florange Act"	Double Voting Rights in place before "Florange Act"	Was there a Board proposal to maintain Single voting rights	Voting Result	Stake held by French State July 2015 <sup>1</sup>	2015 AGM Quorum	Notes
Accor	Yes	Yes	-	-	-	66.0%	
Air liquide	No	No	Yes	Passed (93,08% FOR)	-	47.3%	
Alcatel-Lucent	Yes	Yes	-	-	-	53.6%	
Alstom	Yes	No	Yes at the 2014 AGM	Failed (52.01% FOR)	-	62.1%	Alstom proposed a resolution to maintain single voting rights at their 2014 AGM. The resolutions failed. It should be noted that as per an agreement with the French State, Bouygues, Alstom's largest shareholder with 29%, had agreed to oppose the resolution to maintain single voting rights.
AXA	Yes	Yes	-	-	-	59.2%	
BNP Paribas	No	No	Yes	Passed (78,23% FOR)	-	64.9%	
Bouygues	Yes	Yes	-	-	-	77.7%	
Cap Gemini	No	No	Yes	Passed (95,27% FOR)	-	62.3%	
Carrefour	Yes	Yes	-	-	-	65.5%	
Crédit agricole	No	No	Yes	Passed (99,8% FOR)	-	76.2%	
Danone	Yes	Yes	-	-	-	52.5%	
EDF	Yes	No	No	-	84.49%	92.9%	
Essilor International	Yes	Yes	-	-	-	60.2%	
GDF Suez	Yes	No	Yes	Failed (39,96% FOR)	33.24%	65.9%	
Kering (PPR)	Yes	Yes	-	-	-	83.8%	
Lafarge	Yes	Yes	-	-	-	75.9%	
Legrand	No	Yes	Yes	Passed (99,8% FOR)	-	70.8%	Legrand proposed to its shareholders at its May 2015 AGM to remove double-voting rights for long-term registered shareholders and revert to the "one-share one-vote" principle.
L'Oréal	No	No	Yes	Passed (99,8% FOR)	-	74.4%	
LVMH	Yes	Yes	-	-	-	69.7%	
Michelin	Yes	Yes	-	-	-	57.4%	
Orange	Yes	No	No	-	13.45%	67.2%	At the 2015 AGM, Phitrust Active Investor, a French activist investment fund, filed a shareholder proposal to maintain single voting rights. It failed with 43.3% vote in favour.
Pernod-Ricard	Yes	Yes	-	-	-	74.1%	This is the November 2014 AGM Quorum.
PSA Peugeot Citroën	Yes	Yes	-	-	14.13%	72.4%	
Publicis Groupe	Yes	Yes	-	-	-	64.4%	
Renault	Yes	No	Yes	Failed (60,53% FOR)	19.74%	72.5%	The French State raised its stake from 15% to 19.7% ahead of Renault's 2015 AGM.
Safran	Yes	Yes	-	-	18.03%	68.7%	
Saint-Gobain	Yes	Yes	-	-	-	63.8%	
Sanofi	Yes	Yes	-	-	-	64.6%	
Schneider Electric	Yes	Yes	-	-	-	63.9%	
Société générale	Yes	Yes	-	-	-	55.7%	
Technip	Yes	Yes	-	-	-	60.0%	
Total	Yes	Yes	-	-	-	60.0%	
Unibail-Rodamco	No	No	Yes	Passed (99,99% FOR)	-	57.1%	
Valeo	Yes	Yes	-	-	-	59.3%	
Veolia Environnement	Yes	No	Yes	Failed (51,19% FOR)	-	56.2%	Core holders CDC and Groupe Industriel Marcel Dassault held respectively 8.6% and 5.7% of the capital at December 2014 +.
Vinci	No	No	Yes	Passed (99,34% FOR)	-	60.4%	
Vivendi	Yes	No	No	-	-	59.0%	At the 2015 AGM, PhiTrust with other shareholders + filed a shareholder proposal to maintain single voting rights. It failed with 50.05% vote in favour.

<sup>1</sup> Source: Agence des Participations de l'Etat<sup>2</sup> Source: Veolia's website.<sup>3</sup> The resolution was proposed by PhiTrust, the Railways Pension Trustee Company Ltd (UK), PGGM Investments (Netherlands), Amundi AM and CPR AM (France), CalPERS (US), Edmond de Rothschild AM, OFI AM, OFI Gestion Privée (France), Aviva Investors, DNCA Finance and Proxinvest (France)..

In Blue: At Orange and Vivendi a shareholder proposal was filed by Phitrust to amend the companies' bylaws to maintain single voting rights.

### 3.2 AFG Recommendations

The AFG (Association Française de la Gestion financière), the French investment management association, published an updated version of their Corporate Governance Code<sup>23</sup> in January 2015. The main changes for 2015 relate to the following points:

- The reaffirmation of the 'one share-one vote' principle, requiring companies affected by the Florange Act to amend their articles of association to maintain single voting rights;
- The maintenance of board neutrality during a public offer period and a clarification of the board's responsibility with regards to risk management and the avoidance of conflicts of interest;
- A reinforcement of the powers of the general meeting (with regard to asset disposals, electronic voting and the quality and timeliness of reporting in the annual report - which they now expect to be published 28 days before the AGM); and,
- Additional provisions on executive remuneration, in particular with regard to the level of disclosure and reiterating the AFG's support for forward looking (ex ante) votes, as well as the more common backward looking (ex post) ones.

The AFG also published in March 2015 their *Exercice des droits de vote par les sociétés de gestion en 2014*<sup>24</sup> ("The exercise of voting rights by asset management companies in 2014"). The AFG surveyed its members in early 2015 about their voting at general meetings of shareholders held in 2014." The main findings include:

- The "international scope and increase in the number of participations to general meetings;
- Voting practices point to stronger engagement by asset managers;
- General meetings highlight gaps between issuers' strategies and management companies' voting policies;
- And, broader dialogue and a more favourable assessment of issuer governance."

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<sup>23</sup> [http://www.afg.asso.fr/index.php?option=com\\_content&view=article&id=5999%3Agouvernement-dentreprise-lafg-reaffirme-le-principe-une-action-une-voix-et-limportance-du-role-des-assemblees-generales&catid=549%3A2014&lang=fr](http://www.afg.asso.fr/index.php?option=com_content&view=article&id=5999%3Agouvernement-dentreprise-lafg-reaffirme-le-principe-une-action-une-voix-et-limportance-du-role-des-assemblees-generales&catid=549%3A2014&lang=fr)

<sup>24</sup> [http://www.afg.asso.fr/index.php?option=com\\_docman&task=doc\\_download&gid=4527&Itemid=231&lang=fr](http://www.afg.asso.fr/index.php?option=com_docman&task=doc_download&gid=4527&Itemid=231&lang=fr)





Netherlands





# Netherlands Highlights



- The average quorum for the AEX and AMX companies increased in 2015. The average AEX quorum reached 70.4% (from 68.4% in 2014) and the average AMX 62.7% (from 59.7% in 2014).
- Amongst our sample of AEX and AMX companies, no company had a resolution rejected by shareholders. Fagron (an AMX constituent which was not part of our sample, as their corporate headquarters are located in Belgium) did record three rejected resolutions and Advanced Metallurgical Group (AMG), a constituent of the AScX index, saw two rejected resolutions.
- This year five resolutions in the AEX and AMX were withdrawn as opposed to two resolutions in 2014.
- The most commonly contested resolutions were authorities to issue shares and authorities to restrict or exclude pre-emptive rights. The second most commonly contested resolutions were remuneration related proposals followed by director elections.
- Six companies out of the AEX and AMX companies surveyed received at least one negative recommendation from ISS and eleven companies received at least one negative recommendation from Glass Lewis.

# 1. VOTING IN THE NETHERLANDS

## 1.1 Quorum overview

Since 2010 Georgeson has reviewed the quorum levels of AEX<sup>1</sup> and AMX<sup>2</sup> companies<sup>3</sup>. For this year we have taken into account companies that were part of the above-mentioned indices on 31 July 2015 and had their AGM between 1 August 2014 and 31 July 2015. For 2015 this includes 22 companies in the AEX and 21 companies in the AMX.

Since 2011 the quorum levels increased each year, until 2013 when the quorum levels of both AEX and AMX companies stagnated. In 2014 the quorum levels increased significantly and although there was a further increase in 2015 for both the AEX and AMX companies, the increase was not as significant as last year. The average AEX quorum reached 70.4% (from 68.4% in 2014) and the average AMX quorum reached 62.7% (from 59.7% in 2014).

The graph below displays an average of the quorum levels of the AEX and AMX indices.

In the AEX<sup>4</sup> index ten companies experienced an increase in quorum and eleven companies experienced a decrease in quorum compared to 2014. The companies that saw the biggest drop in their quorum between 2014 and 2015 were Wolters Kluwer (from 71.2% to 54.8%), OCI (from 89.8% to 77.8%), and Delta Lloyd (from 67.2% to 58.6%). The companies that saw the largest increase in their quorum between 2014 and 2015 were Vopak (from 57.0% to 82.1%), ASML (from 56.1% to 73.3%) and RELX Group (from 68.0% to 84.6%).

In the AMX<sup>5</sup> index eleven companies experienced an increase in quorum and nine companies experienced a decrease in quorum compared to 2014. The companies that saw the biggest drop in their quorum between 2014 and 2015 were BAM Group (from 36.1% to 20.2%), Binckbank (from 53.0% to 39.3%) and Nieuwe Steen Investments (from 54.1% to 47.2%). The companies that saw the largest increase in their quorum between 2014 and 2015 were Imtech (from 16.7% to 51.9%), Wereldhave (from 46.1% to 59.7%) and Vastned Retail (from 46.5% to 53.6%).

<sup>1</sup> The AEX reflects the performance of the 25 most actively traded shares listed on NYSE Euronext Amsterdam. See here: <https://www.euronext.com/en/products/indices/NL0000000107-XAMS/market-information>

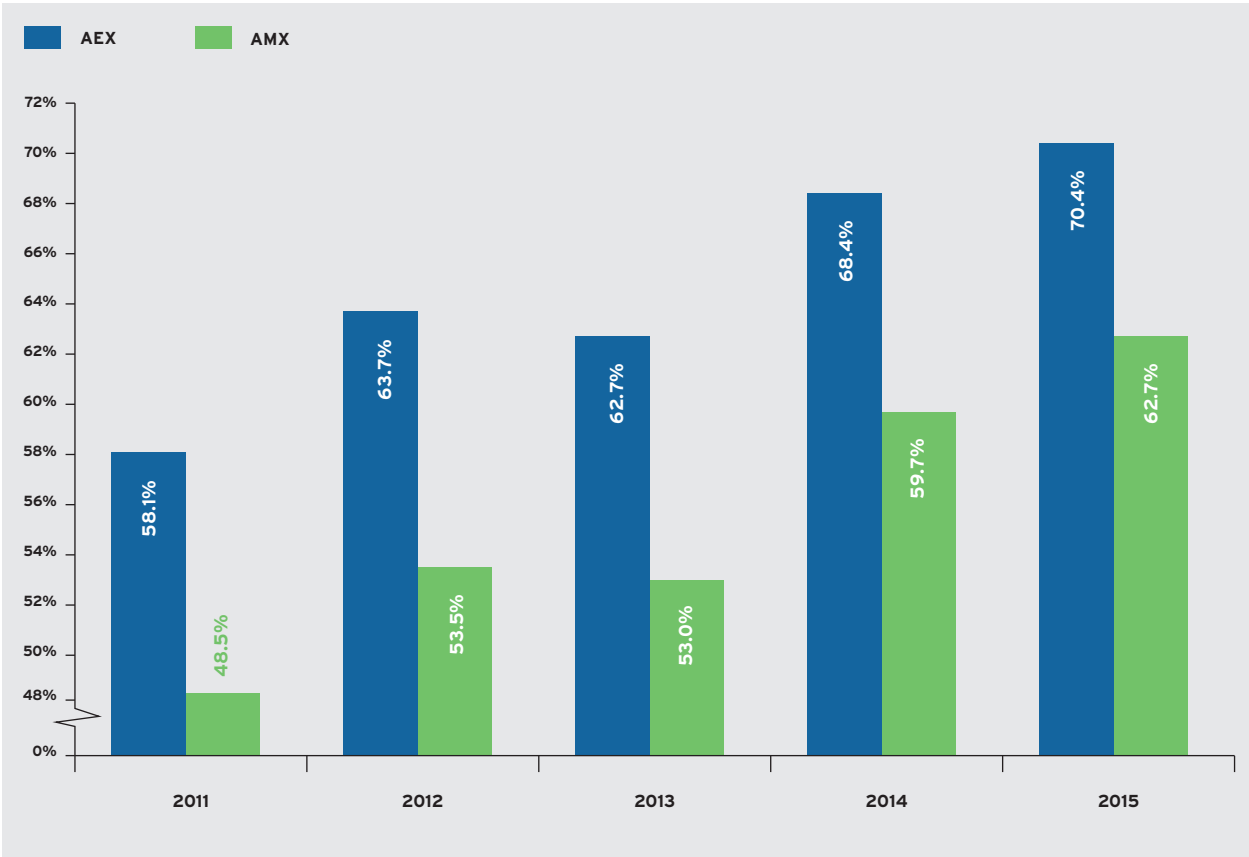
<sup>2</sup> The AMX reflects the performance of the next 25 most actively traded shares listed on NYSE Euronext Amsterdam. See here: <https://www.euronext.com/en/products/indices/NL0000249274-XAMS/market-information>

<sup>3</sup> We have included Dutch-incorporated companies only. For the AEX this excludes Altice, ArcelorMittal and Unibail-Rodamco. For the AMX it excludes Air France-KLM, Aperam, Fagron and Galapagos.

<sup>4</sup> NN Group was not included in the comparison because they held their first AGM in 2015.

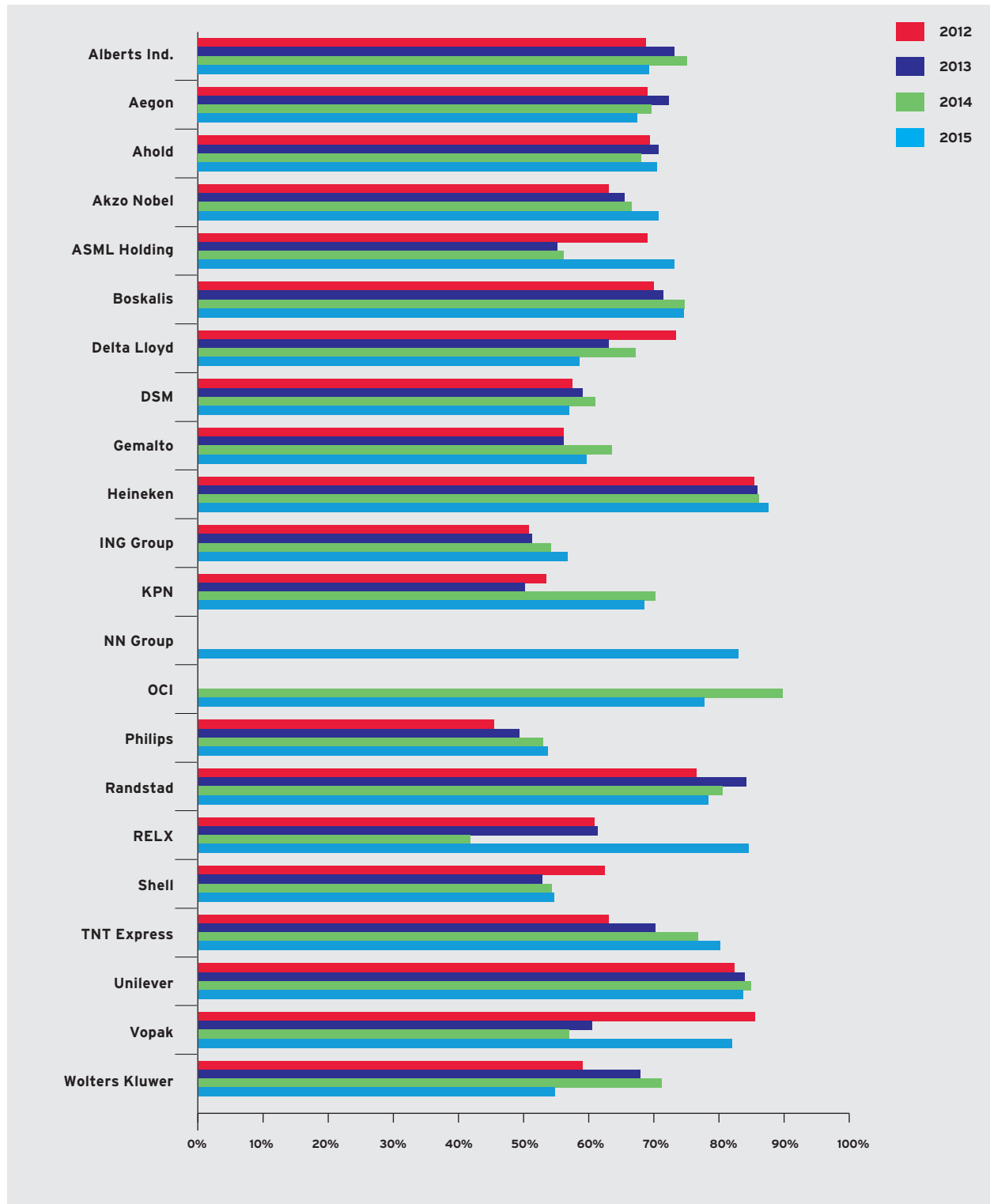
<sup>5</sup> IMCD was not included in the comparison because they held their first AGM in 2015.

Graph 1: Shareholder Attendance Levels comparison AEX and AMX 2011 - 2015



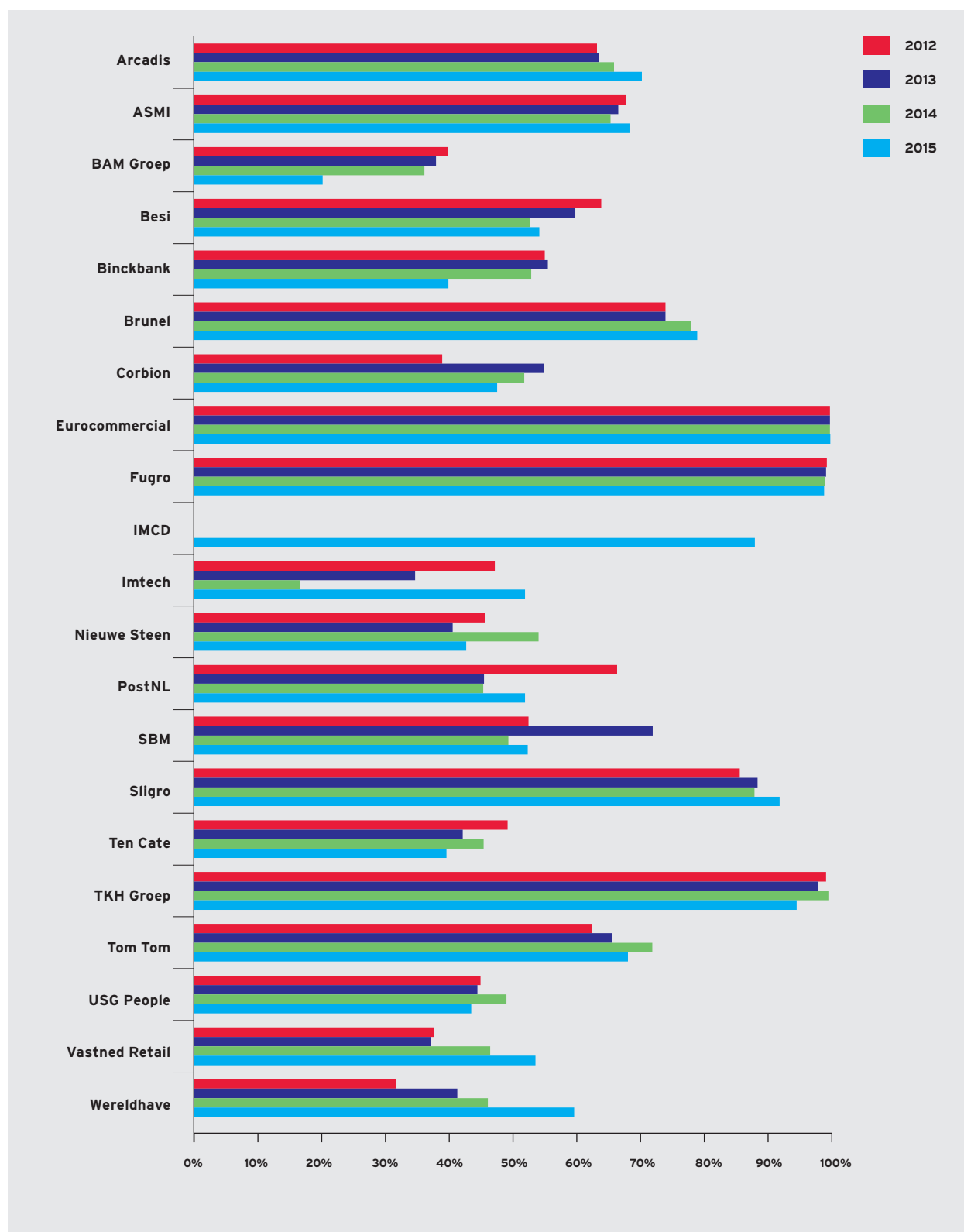
The below graphs show the quorum developments of the individual AEX and AMX companies since 2012<sup>6</sup>.

**Graph 2: Shareholder attendance levels: comparison since 2012 of the AEX companies surveyed (displayed alphabetically)**



<sup>6</sup> The overview shown is limited to companies that were part of the AEX and AMX indices on 1 July 2015.

Graph 3: Shareholder attendance levels: comparison since 2012 of the AMX companies surveyed (displayed alphabetically)



## 1.2 Rejected resolutions

We have reviewed the meeting results of the 43 AEX and AMX constituents' AGMs held between 1 August 2014 and 31 July 2015. During the 2015 proxy season no company within our sample recorded a resolution rejected by shareholders.

However, Fagron (an AMX constituent which was not part of our sample, as their corporate headquarters are located in Belgium) did record three rejected resolutions. Furthermore, Advanced Metallurgical Group (AMG), a constituent of the AScX<sup>7</sup> index, had two resolutions voted down at the AGM.

### Fagron

Fagron NV<sup>8</sup>, formerly the professional health division of Omega Pharma, became an independent entity via an IPO on 5 October 2007. The Belgian company Fagron NV (from 2007 until 2015 under the name of Arseus NV) is located in Waregem and is listed on NYSE Euronext Brussels and NYSE Euronext Amsterdam. The operational activities of Fagron NV are driven by the Dutch subsidiary Fagron BV. The head office of Fagron BV is located in Rotterdam.

At their 2015 AGM<sup>9</sup>, which took place in May, one proposed resolution, the approval of the Remuneration Report, was rejected by shareholders. The resolution received 45.3% of votes in favour. In 2014 the same resolution was also rejected, together with resolutions for the approval of the 2014 Stock Option Plan and the Change of Control Clause of said plan<sup>10</sup>.

It should be noted that ISS had recommended an against vote on this resolution.

At the AGM the Chairman of the meeting stated<sup>11</sup> that, already in the past, the company has explained that based on company-specific reasons it wished to deviate from the guidelines of the Belgian Corporate Governance Code<sup>12</sup>, which are also included in the Annual Report. It was also mentioned that one of the challenges of the new shareholder structure is that some of the new shareholders follow the advice of external companies who decide not to support certain proposals solely based on the fact that they do not comply with the Belgian Corporate Governance Code.

### AMG

AMG NV<sup>13</sup> "creates and applies innovative metallurgical solutions to the global trend of sustainable development of natural resources and CO2 reduction". AMG was incorporated in the Netherlands in November 2006 and resulted from a combination of specialty metals businesses. AMG is listed on NYSE Euronext Amsterdam and part of the AScX index.

At the 2015 AGM<sup>14</sup>, which took place in May, one proposed resolution was not voted on and two proposed resolutions were rejected by shareholders. The resolution that was not voted on was the amendment of the articles of association. This resolution required a quorum of at least 50% and this was not achieved<sup>15</sup>. The amendment of the articles was again voted on at an EGM which was held in June 2015, and the resolution was duly passed with 98.2% of votes in favour<sup>16</sup>.

<sup>7</sup> The AScX is made up of the 25 shares issued by the highest ranking companies in terms of free float market capitalization immediately following the AEX and AMX. See here: <https://www.euronext.com/en/products/indices/NL0000249142:XAMS/market-information>

<sup>8</sup> <http://investors.fagron.com/fagron-company-profile>

<sup>9</sup> See here for the 2015 AGM agenda and minutes (including the vote results): <http://investors.fagron.com/shareholders-meetings>

<sup>10</sup> See here for the 2014 AGM minutes (including the vote results): <http://investors.fagron.com/sites/arseus.com/files/languages/12%20May%202014%20Minutes%20Annual%20General%20Meeting%20of%20Shareholders%20%28%20Dutch%20only%29.pdf>

<sup>11</sup> See pg 10 of the 2015 AGM minutes: <http://investors.fagron.com/sites/arseus.com/files/Notulen%20AVA%2011%20mei%202015.pdf>

<sup>12</sup> <http://www.corporategovernancecommittee.be/en/home/>

<sup>13</sup> <http://www.amg-nv.com/About-Us/Overview/default.aspx>

<sup>14</sup> [http://www.amg-nv.com/files/doc\\_downloads/Agenda%20&%20Explanatory%20Notes%20AGM%202014.pdf](http://www.amg-nv.com/files/doc_downloads/Agenda%20&%20Explanatory%20Notes%20AGM%202014.pdf)

<sup>15</sup> [http://www.amg-nv.com/files/doc\\_financials/2015/Voting-Results-AGM-May-2015.pdf](http://www.amg-nv.com/files/doc_financials/2015/Voting-Results-AGM-May-2015.pdf)

<sup>16</sup> [http://www.amg-nv.com/files/doc\\_downloads/2015/June/Voting-Results-EGM-June-2015.pdf](http://www.amg-nv.com/files/doc_downloads/2015/June/Voting-Results-EGM-June-2015.pdf)

The two resolutions that did not receive shareholder approval were the authority to restrict or exclude pre-emptive rights (for both the first 10% tranche, reserved for general corporate purposes and the second 10% tranche, reserved for the financing of a takeover or merger). The resolutions received 56.28% and 56.60% votes in favour<sup>17</sup> respectively. Although the resolutions received the support of a simple majority of the votes cast, as the quorum was below 50% of the issued share capital the resolutions required the support of a two-thirds supermajority in order to pass. These resolutions were not put up for a shareholder vote at the June 2015 EGM.

### 1.3 Withdrawn resolutions

In comparison to last year we have seen an increase in the number of resolutions that were withdrawn prior to the AGM. This year five resolutions in the AEX and AMX were withdrawn as opposed to two resolutions in 2014.

#### Ahold

The Ahold Management and Supervisory Board announced prior to the AGM that they had decided to withdraw agenda item 12b, amendment of the articles of association<sup>18</sup>. Agenda item 12b included a proposal to amend Ahold's articles of association that would entitle the Supervisory Board to designate a temporary replacement for a member of the Management Board.

Ahold issued the following statement prior to the AGM: "The Management Board and Supervisory Board have considered there is no pressing need to have this amendment implemented at short notice and will further assess the proposed amendment as part of Ahold's governance structure".

At the AGM the Chairman stated that some aspects in respect to the proposed changes remain uncertain and the fact that there is no pressing need for the amendment the decision was made to withdraw it from the agenda<sup>19</sup>.

It should be noted that ISS had recommended an against vote on the resolution while Glass Lewis recommended a for vote.

#### TNT Express

Two resolutions were withdrawn from the TNT Express AGM agenda. TNT withdrew the proposed amendments to the remuneration policy for the members of the Management Board as well as the proposal to grant additional rights on performance shares to the Management Board members in 2015<sup>20</sup>. The resolutions were withdrawn in connection with the announced recommended cash offer for TNT Express by FedEx<sup>21</sup>. The offer was announced one day before the AGM.

It should be noted that ISS had recommended an against vote on the amendments to the remuneration policy for the members of the Executive Board while Glass Lewis recommended a for vote.

<sup>17</sup> [http://www.amg-nv.com/files/doc\\_financials/2015/Voting-Results-AGM-May-2015.pdf](http://www.amg-nv.com/files/doc_financials/2015/Voting-Results-AGM-May-2015.pdf)

<sup>18</sup> See "Notice withdrawal agenda item 12b": <https://www.ahold.com/Media/Annual-General-Meeting-2015.htm>

<sup>19</sup> See pg 2 of the 2015 AGM minutes: <https://www.ahold.com/Media/Annual-General-Meeting-2015.htm>

<sup>20</sup> <http://www.tnt.com/corporate/en/data/press/2015/04/TNT-AGM-adopts-2014-financial-statements.html>

<sup>21</sup> <http://www.tnt.com/corporate/en/data/press/2015/04/FedEx-and-TNT-Express-agree-on-recommended-all-cash-public-offer-for-all-TNT-Express-shares.html>

### **Wereldhave**

Wereldhave announced a few weeks prior to the AGM that it had decided to withdraw the resolutions relating to the amendments to the remuneration policy for the members of the Management Board and Supervisory Board. The company stated that this was following the feedback it had received from several shareholders<sup>22</sup>.

The changes that Wereldhave was intending to make included a raise of the base salary for the CEO (23.5% increase) and CFO (16% increase) as well as amendments to the performance measures<sup>23</sup>.

On the 9 June 2015 Wereldhave announced it was holding an EGM<sup>24</sup> on 23 July and was proposing to amend the remuneration for the Board of Management and the Supervisory Board. The proposals received high levels of support: 92.27% and 93.99% in favour respectively<sup>25</sup>.

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<sup>22</sup> <http://www.wereldhave.com/update-agenda-agm>

<sup>23</sup> See agenda of the 2015 AGM: <http://www.wereldhave.com/general-meeting-shareholders-documents>

<sup>24</sup> See agenda of the 2015 EGM: <http://www.wereldhave.com/extraordinary-general-meeting-shareholders-23-July-2015>

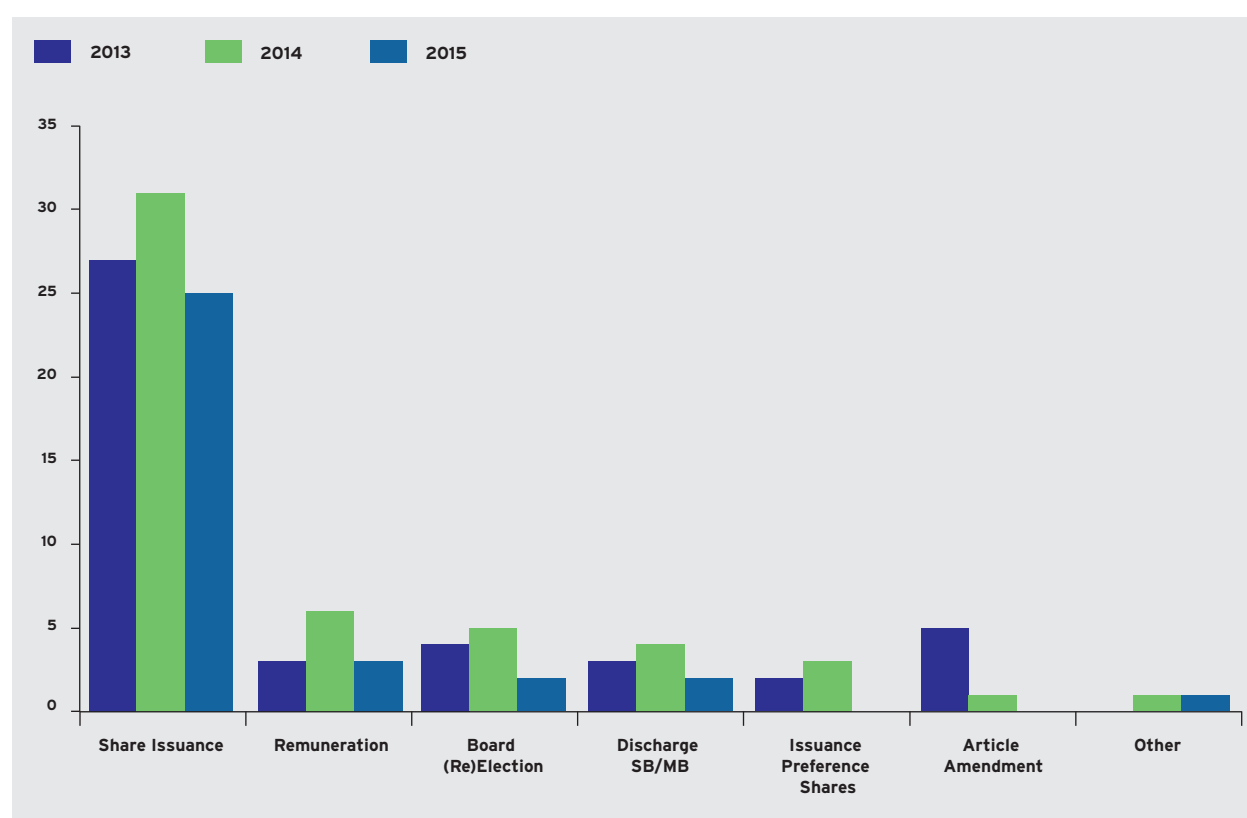
<sup>25</sup> See pg 5 of EGM minutes <http://www.wereldhave.com/extraordinary-general-meeting-shareholders-23-July-2015>

## 1.4 Contested resolutions

Among our sample of 43 AEX and AMX companies that held their AGM between 1 August 2014 and 31 July 2015 we saw a decrease in the number of companies and number of resolutions that received more than 10% shareholder opposition. In 2015 20 companies (excluding the rejected resolutions mentioned in section 1.2) saw at least one resolution receive more than 10% shareholder opposition, compared to 25 companies in 2014. The total number of resolutions that received more than 10% opposition amounted to 31, compared to 51 resolutions in 2014. The graph below summarises the subjects of all resolutions that received more than 10% opposition from shareholders.

The most commonly contested resolutions were authorities to issue shares and authorities to restrict or exclude pre-emptive rights. Remuneration related proposals were the second most contested resolutions. The third most contested resolutions were elections of Board members.

**Graph 4: Resolutions which received more than 10% negative votes in the AEX and AMX (broken down by resolution type)**



#### 1.4.1 Authorities to issue shares with or without pre-emptive rights

Authorities to issue shares with pre-emptive rights are proposed as ordinary resolutions (requiring a simple majority). Authorities to issue shares without pre-emptive rights require a majority of two-thirds of the votes cast when less than 50% of the issued share capital is represented at the meeting. The Dutch general market practice is to request authorities of up to 20% of issued share capital without pre-emptive rights (10% for general purposes and 10% for mergers and acquisitions).

Over the years we have seen increased levels of negative votes on share issuance proposals. This is mainly because an increased number of international investors only allow lower dilution thresholds than Dutch market practice. As a result we have seen four AEX and AMX companies starting to request lower share issuance levels.

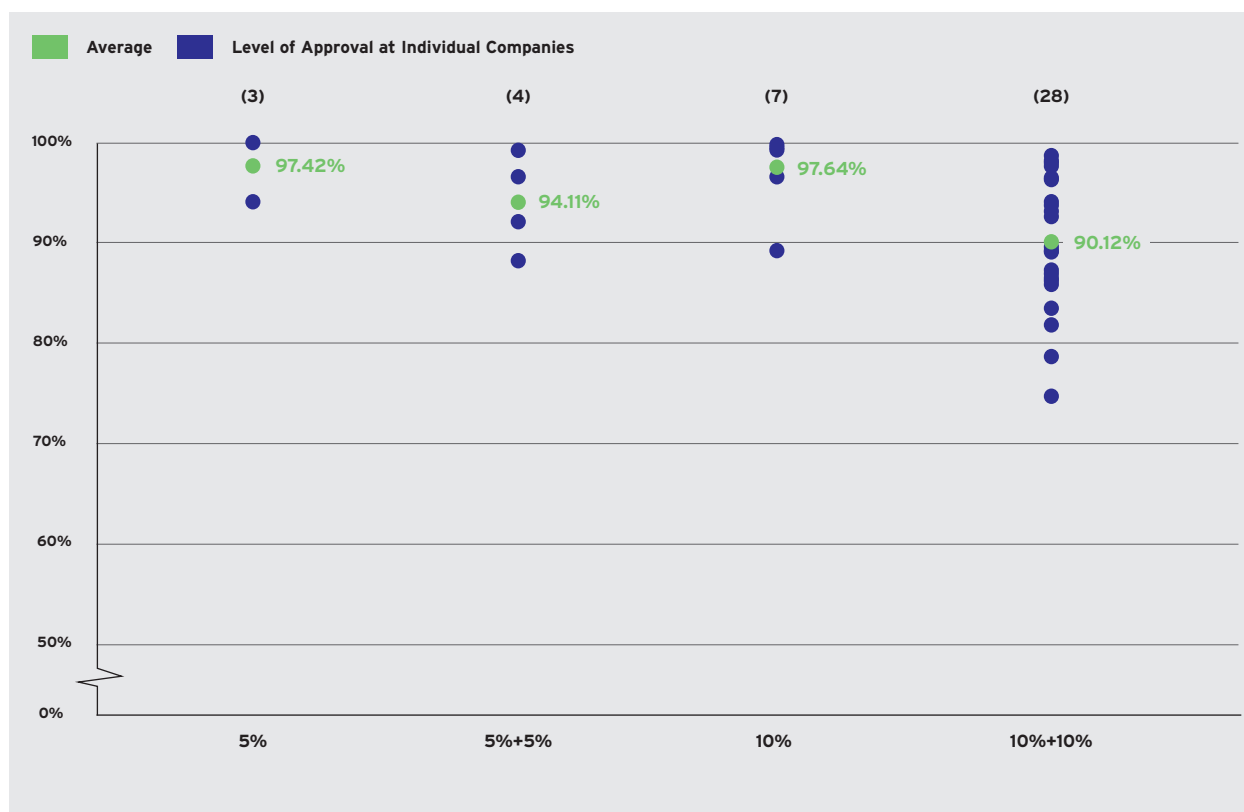
The graphs below shows the relation between the requested level of dilution and the level of support received. The graphs also shows that fewer companies have requested the general Dutch market practice (authorities of up to 20% of issued share capital without pre-emptive rights) in 2015 compared to 2014 and that the average support level for these type of resolutions increased.

Among our sample, the companies with the highest level of opposition on this type of resolution were:

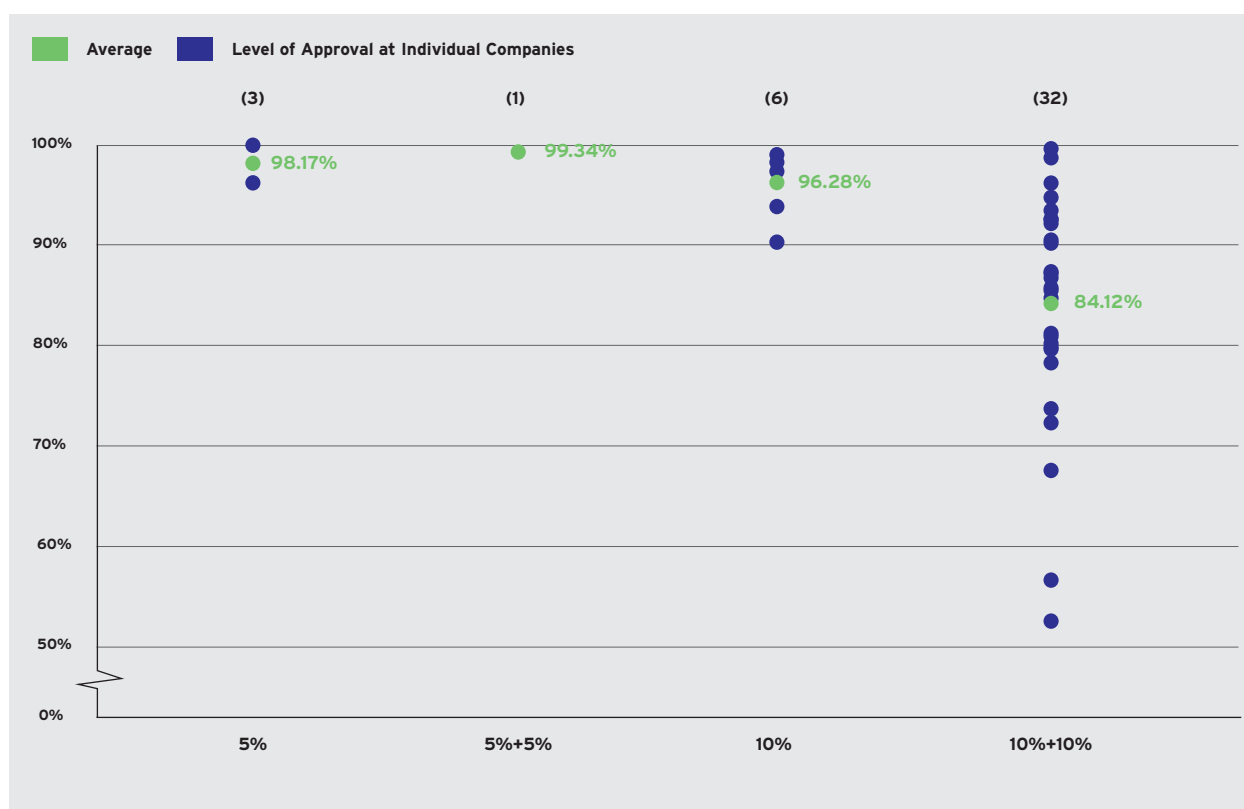
- PostNL (without pre-emptive rights: 25.13% negative votes - passed);
- Binckbank (without pre-emptive rights: 21.41% negative votes - passed);
- Fugro (without pre-emptive rights: 17.96% negative votes - passed);
- Wereldhave (without pre-emptive rights: 13.27% negative votes - passed);
- IMCD (without pre-emptive rights: 12.80% negative votes - passed).

We note that all of the aforementioned companies are included in the AMX index, and ISS and Glass Lewis had recommended in favour of each one of these resolutions.

Graph 5: Level of support for 2015 share issuance resolutions by requested dilution level at AEX and AMX companies



Graph 6: Level of support for 2014 share issuance resolutions by requested dilution level at AEX and AMX companies



### 1.4.2 Remuneration

Current legislation in the Netherlands requires listed companies to put remuneration up for a vote if there is a change in the remuneration policy<sup>26</sup>. In January 2014 new 'claw back' legislation<sup>27</sup> came into force. One element of this legislation requires listed companies to add the remuneration report as a discussion item to the AGM agenda before the approval of the Annual Accounts<sup>28</sup>. The remuneration report is not voted on, unless there is change in the remuneration policy, and only shareholders that attend the AGM can participate in the discussion. Additionally, pursuant to the Decree on Restrained Remuneration Policies<sup>29</sup>, which came into effect on 1 January 2011, financial institutions that have received exceptional State support are prohibited from paying variable awards to their directors. A new law<sup>30</sup> which came into force on 1 January 2015 caps the variable pay for financial institutions in the Netherlands at 20% of fixed remuneration. This change in legislation is discussed in more detail in chapter 3 (Changes in Corporate Governance).

Remuneration related issues were the cause of intense debates surrounding certain AGMs. Several companies have been discussed in section 1.3. Two additional companies that stood out in this regard are Ahold and USG People.

#### Ahold

Ahold proposed an amendment to the remuneration policy for the Management Board. The amendments included an increase in the possible bonus pay-out for the CEO from 185% to 220% of base salary<sup>31</sup>. The rationale provided by the company for this proposed amendment contained limited information. A reference was made to the peer group, which mainly includes US companies.

This led to negative feedback from the investors, Eumedion and an against recommendation from ISS. Ahold decided to publish additional information<sup>32</sup> relating to the amendment of the remuneration policy in advance of the AGM, in which it also apologised for the confusion caused. In the same statement Ahold also committed to "take 2015 to evaluate the current remuneration policy with specific focus on the peer group currently used to benchmark the remuneration mix and levels. The adjusted policy will be presented in the 2016 AGM."

Following the publication of the additional information ISS changed its recommendation and published an amendment to their report with a favourable recommendation.

During the meeting the Chairman explained that a majority (60%) of the Ahold operations are in the US. Ahold also stated that the intention is to keep Ahold as a strong company with good management and that Ahold is absolutely not trying to lead the way in its payment practices and the intention is to continue to pay at median level compared to its peers<sup>33</sup>.

The proposal was adopted with about 98% of votes being cast in favour.

<sup>26</sup> Article 2:391 of the Dutch Civil Code.

<sup>27</sup> <https://zoek.officielebekendmakingen.nl/Kst-32512-2.html>

<sup>28</sup> Article 2:135 §5a of the Dutch Civil Code.

<sup>29</sup> [http://wetten.overheid.nl/BWBR0029246/geldigheidsdatum\\_30-10-2013](http://wetten.overheid.nl/BWBR0029246/geldigheidsdatum_30-10-2013)

<sup>30</sup> <https://zoek.officielebekendmakingen.nl/dossier/33964/h-ek-20142015-18-3?resultIndex=0&sorttype=1&sortorder=4>

<sup>31</sup> See Agenda and Explanatory notes 2015 AGM: <https://www.ahold.com/Media/Annual-General-Meeting-2015.htm>

<sup>32</sup> See Additional explanation agenda item 11: <https://www.ahold.com/Media/Annual-General-Meeting-2015.htm>

<sup>33</sup> See pg 29 of the 2015 AGM minutes: <https://www.ahold.com/Media/Annual-General-Meeting-2015.htm>

### USG People

The previous remuneration policy was valid until 2014 and therefore a new remuneration policy was put up for a shareholder vote. The changes included an increase of 8% of base salary for the Management Board over four years and a shift to long-term for the variable part of the remuneration<sup>34</sup>. In addition the Supervisory Board set a goal for the Management Board to build up a holding in shares of at least the value of two annual gross salaries over the next five years.

During the meeting several shareholders expressed their dissatisfaction relating to disclosure of performance targets and the threshold of financial results that could lead to certain pay-out levels, including the short term cash bonus<sup>35</sup>. In addition, shareholders also expressed criticism relating to the pay-outs in case of dismissal and change of control and the fact that these deviate from the Dutch Corporate Governance Code.

The proposed changes were divided over two resolutions which were put up for a shareholder vote. The proposals were adopted with about 24% of votes being cast against.

### 1.4.3 Discharge

The discharge of the Management and Supervisory Board are common items on Dutch agendas and represent a vote of confidence for the decisions made during the financial year. Under normal circumstances these agenda items generally receive high levels of votes in favour. Not receiving shareholder approval does not have any direct consequences and receiving shareholder approval does not affect the shareholders' right to bring legal action against directors for breaches of their duties. Voting against these items is a way for shareholders to express their lack of trust or dissatisfaction with the decisions made by Management or Supervisory Board.

### Delta Lloyd

On 22 December 2014 Delta Lloyd announced that De Nederlandsche Bank (DNB) had fined a subsidiary, Delta Lloyd Levensverzekering NV, and that the DNB had asked Delta Lloyd to "dismiss" its CFO by 1 January 2016 at the latest<sup>36</sup>. According to the DNB Delta Lloyd had acted in order to gain an advantage from confidential information when Delta Lloyd lowered its interest rate in 2012<sup>37</sup>. Delta Lloyd announced that its Supervisory Board reached different conclusions based on their own investigations and Delta Lloyd decided to request a court ruling on the matter.

The discharge of the Management Board was adopted with about 67% of votes being cast in favour.

On Friday 3 August 2015 Delta Lloyd announced that the administrative court in Rotterdam delivered a ruling endorsing the view taken by DNB and, as a result, upheld the fine that DNB imposed on Delta Lloyd Levensverzekering NV. The court allowed Delta Lloyd's appeals against the dismissal of CFO Emiel Roozen, suspended the instruction and ordered DNB to come up with a new decision on the objections filed by Delta Lloyd<sup>38</sup>. Following this ruling the CFO decided to resign. The Supervisory Board Chairman Jean Frijns has also announced his resignation and will step down on 1 October 2015.

### PostNL

At PostNL the discharge of the Supervisory Board was adopted with about 85% of votes being cast in favour.

We note that Causeway Capital Management LLC, holding 7.91% of the voting rights according to the latest AFM filing<sup>39</sup>, reported<sup>40</sup> it had voted against the Supervisory Board discharge.

<sup>34</sup> See agenda and explanatory notes of the 2015 AGM: <http://investor.usgpeople.com/phoenix.zhtml?c=139415&p=irol-annualshareholder>

<sup>35</sup> See pg 23 of the minutes of the 2015 AGM: <http://investor.usgpeople.com/phoenix.zhtml?c=139415&p=irol-annualgeneralmeet>

<sup>36</sup> <http://www.deltalloyd.com/en/newsroom/news/delta-lloyd-requests-court-ruling-on-dnb-measures-ip1882552/>

<sup>37</sup> <http://www.dnb.nl/nieuws/nieuwsoverzicht-en-archieff/nieuws-2014/dnb316704.jsp>

<sup>38</sup> <http://www.deltalloyd.com/en/newsroom/news/delta-lloyd-seeks-to-resolve-legal-dispute-with-dnb-ip1943101/>

<sup>39</sup> <http://www.afm.nl/en/professionals/registers/alle-huidige-registers/substantiele-deelnemingen.aspx?q=postnl&id=19979>

<sup>40</sup> <http://www.sec.gov/Archives/edgar/data/1156906/000113542815000587/causeway-npx.txt>

#### 1.4.4 Board elections

The companies with the highest level of opposition on director elections among our sample were:

- RELX (Mr Robert Polet - 18.70% negative votes)
- TNT Express (Mr Antony Burgmans - 16.94% negative votes)

##### **RELX**

The relatively high level of opposition from shareholders for Mr Polet's re-election at RELX is likely related to fact that he attended less than 75% of the Supervisory Board meetings in 2014<sup>41</sup>. This was also the reason Glass Lewis decided to recommend against his re-election.

##### **TNT Express**

The relatively high level of opposition from shareholders for Mr Burgmans's re-election at TNT Express are likely related to several issues which were raised during the 2015 AGM.

During the AGM some shareholders stated that considering the fact that TNT Express is subject to takeover bid from FedEx it would be more suitable to re-elect the Chairman for a period of one year rather than the proposed four years<sup>42</sup>.

Certain shareholders also asked questions about the composition of the Supervisory Board after the takeover by FedEx and whether there would be sufficient independence to safeguard the interests of minority shareholders. In addition, concerns were expressed over the fact that if between 65% and 80% of the shares were tendered TNT and FedEx would still consider proceeding with the takeover<sup>43</sup>. These shareholders view a tender level of 65% as very low and could potentially jeopardise the interest of minority shareholders.

Some shareholders also expressed their dissatisfaction over the pay-out of variable remuneration for the Management Board while according to them the company's performance was below median in comparison to its peers<sup>44</sup>.

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<sup>41</sup> See page 71 of the 2014 Annual Report: [http://www.relx.com/investorcentre/reports%202007/Documents/2014/relxgroup\\_ar\\_2014.pdf](http://www.relx.com/investorcentre/reports%202007/Documents/2014/relxgroup_ar_2014.pdf)

<sup>42</sup> See page 4 of the 2015 AGM draft minutes: [http://www.tnt.com/content/dam/corporate/pdfs/Archive/Investors/2015/AGM/tnt-express-nv-ava2015\\_notulen-concept.pdf](http://www.tnt.com/content/dam/corporate/pdfs/Archive/Investors/2015/AGM/tnt-express-nv-ava2015_notulen-concept.pdf)

<sup>43</sup> See page 10 of the 2015 AGM draft minutes: [http://www.tnt.com/content/dam/corporate/pdfs/Archive/Investors/2015/AGM/tnt-express-nv-ava2015\\_notulen-concept.pdf](http://www.tnt.com/content/dam/corporate/pdfs/Archive/Investors/2015/AGM/tnt-express-nv-ava2015_notulen-concept.pdf)

<sup>44</sup> See page 49-50 of the 2015 AGM draft minutes: [http://www.tnt.com/content/dam/corporate/pdfs/Archive/Investors/2015/AGM/tnt-express-nv-ava2015\\_notulen-concept.pdf](http://www.tnt.com/content/dam/corporate/pdfs/Archive/Investors/2015/AGM/tnt-express-nv-ava2015_notulen-concept.pdf)

## 2. PROXY ADVISORS

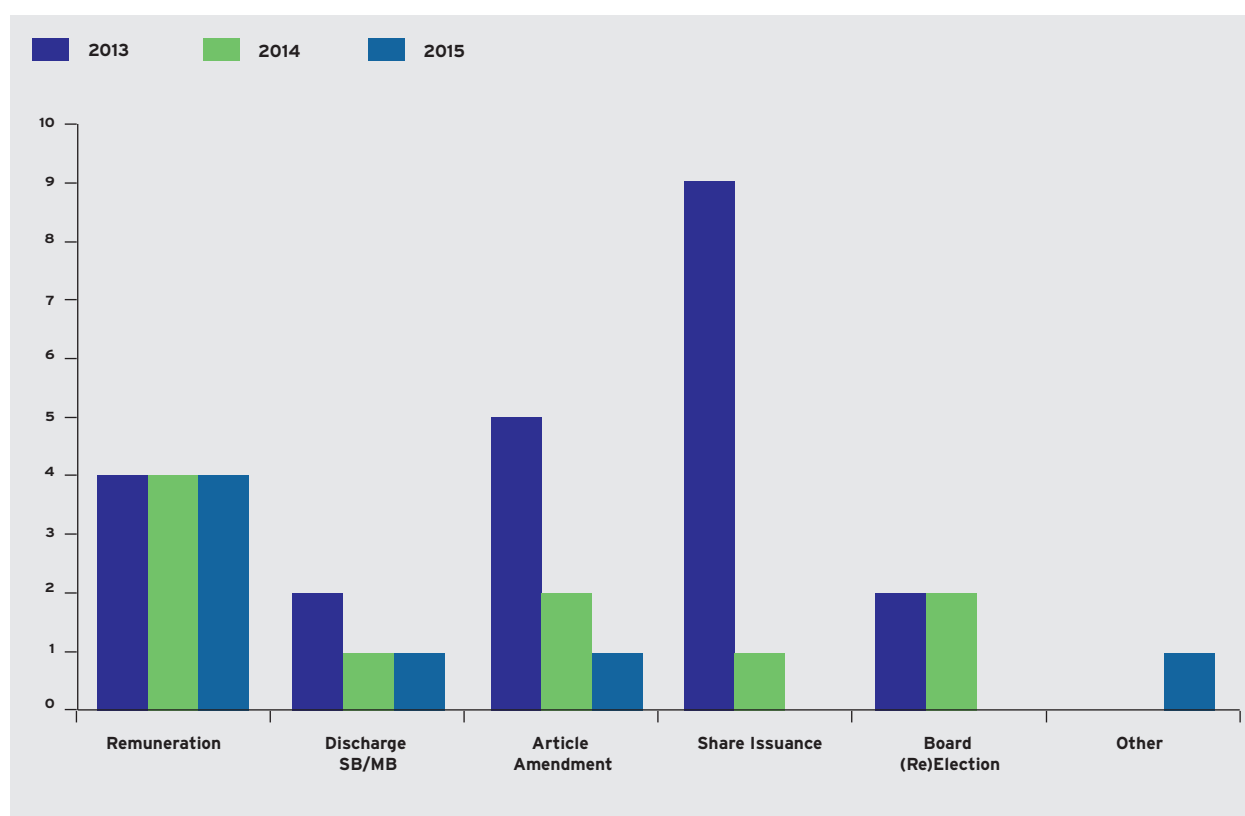
Many institutional investors rely on proxy advisory firms, such as ISS and Glass Lewis for meeting agenda analysis and vote recommendations to inform their voting decisions. A negative recommendation from a proxy advisor can have an adverse impact on the vote outcome of a given resolution.

### 2.1 Institutional Shareholder Services (ISS)

Institutional Shareholder Services<sup>45</sup> (ISS) is a leading provider of corporate governance solutions for asset owners, hedge funds, and asset service providers. ISS has over 1,600 clients, and more than 800 employees spread across 15 offices in 10 countries and covers approximately 38,000 companies in 115 countries. They were acquired by Vestar Capital Partners in March 2014. In Europe they have offices in London, Paris and Brussels.

During the 2015 proxy season, six companies out of the AEX and AMX companies surveyed, received at least one against recommendation from ISS. Below is an overview of the number of companies in our sample that have received negative recommendations from ISS at AEX and AMX AGMs over the past three years. The table shows that the 2015 proxy season saw the lowest number of negative recommendations from ISS in the last three years. Remuneration-related resolutions received the highest number of negative recommendations in the last two years.

Graph 7: Overview of the number of negative recommendations by ISS at AEX and AMX AGMs over the past three year



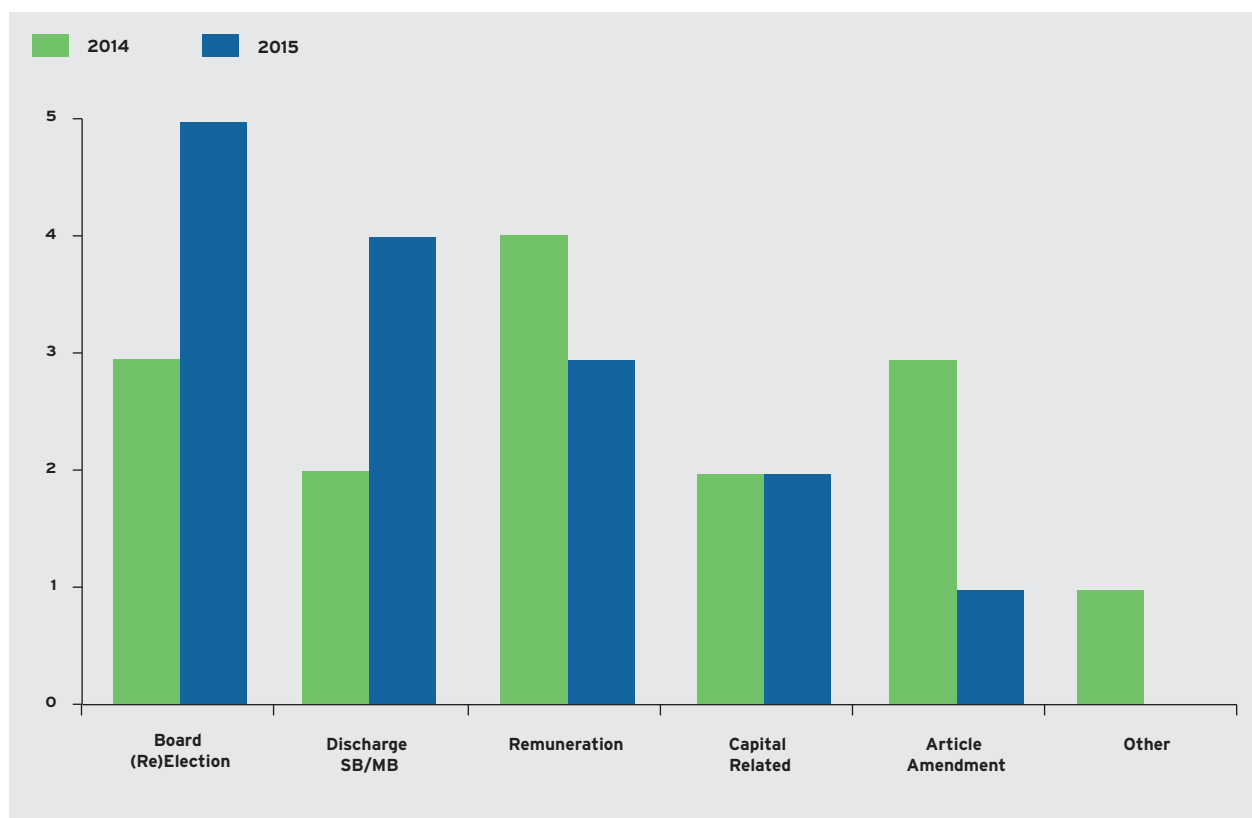
<sup>45</sup> <http://www.issgovernance.com/about/about-iss/>

## 2.2 Glass Lewis

Glass Lewis was founded in 2003 and is owned by the Ontario Teachers' Pension Plan Board and Alberta Investment Management Corp. They have 300 employees, two-thirds of whom are dedicated to research. They provide research report and proxy voting services. They cover 17,000 meetings globally. They have analysts who focus on Europe based in Limerick (Ireland), New York and San Francisco.

During the 2015 proxy season, eleven companies out of the AEX and AMX companies surveyed received at least one against recommendation from Glass Lewis. Below is an overview of the number of companies in our sample that have received negative recommendations from Glass Lewis at AEX and AMX AGMs over the past two years. The table shows that the 2015 and 2014 proxy season received the same number of against recommendations from Glass Lewis. In 2015 the (re-)election of Board members received the highest number of negative recommendations while in 2014 remuneration related resolutions received the highest number of negative recommendations.

**Graph 8: Overview of the number of negative recommendations by Glass Lewis at AEX and AMX AGMs over the past two years**



### 3. CORPORATE GOVERNANCE DEVELOPEMENTS

#### 3.1 Bill on the Remuneration Policy of Financial Undertakings

The EU Capital Requirement Directive<sup>46</sup> (CRD IV) caps variable pay at 100% of the annual fixed remuneration for employees in the financial sector in the EU. This bonus cap can be increased to 200% percent of fixed remuneration with shareholder approval.

On 26 November 2013, the Dutch government published a Bill on the Remuneration Policy of Financial Undertakings<sup>47</sup>, in the form of a consultation document. The proposal seeks to cap variable pay at 20% of the fixed remuneration for employees of financial institutions incorporated in the Netherlands. The Bill includes a number of exceptions, among others relating to staff working outside the EU and staff in branch offices of institutions based in an EU Member State under special conditions. The exceptions mean that the applicable bonus cap is 100% of fixed remuneration for staff working outside the EU or 200% with shareholders' approval. The same bonus cap applies to staff based in an EU Member State under special conditions. The Bill was adopted by the Dutch Second chamber on 16 October 2014, received approval from the Dutch First Chamber on 27 January 2015 and came into force on 7 February 2015<sup>48</sup>.

Following the adoption of this new legislation several Dutch financial institutions submitted amendments to their remuneration policies to offset impact of the 20% cap bonus cap. These proposed changes led to heated debates on executive pay in the Netherlands.

##### **ABN Amro**

To compensate the Managing Board for the reduced potential in variable remuneration of 20% of base salary, six members of the Management Board were paid €100,000 for 2014. On 29 March 2015 ABN Amro announced that these six members of the Management Board renounced the additional payment due to the public commotion over the fact that this allowance in addition to the fixed salary had been granted<sup>49</sup>.

The Management Board felt that the fact that their remuneration became the subject of discussion and threatened to affect the future of ABN AMRO, it was in the interests of the bank and the public first to renounce the allowance<sup>50</sup>.

On 22 May the Dutch Minister of Finance announced his plans to privatise ABN AMRO. In a letter to the Dutch Parliament, the Finance Minister stated that an IPO would be the best option for divesting ABN AMRO<sup>51</sup>.

##### **ING Group**

ING put two remuneration-related proposals up for a shareholder vote. These were an amendment of the remuneration policy, which included an increase in the base salary of the Management Board to compensate for the decrease in variable pay as well as a bonus cap increase to 200% of fixed remuneration for select global staff<sup>52</sup>.

ING had initially been of the opinion that the legal requirement to increase the variable remuneration cap would apply to individual subsidiaries (which would therefore need to obtain approval from the parent company) and that therefore a shareholder vote on the variable remuneration cap would not be necessary at the Group level. However, a consultation document<sup>53</sup> published by the European Banking Authority (EBA) recommended that, in such cases, the ultimate parent company should submit the variable remuneration cap vote at its General Meeting<sup>54</sup>.

<sup>46</sup> [http://ec.europa.eu/internal\\_market/bank/regcapital/legislation-in-force/index\\_en.htm](http://ec.europa.eu/internal_market/bank/regcapital/legislation-in-force/index_en.htm)

<sup>47</sup> <http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2013/11/26/wbfo-wetsvoorstel.html>

<sup>48</sup> [http://www.eerstekamer.nl/wetsvoorstel/33964\\_wet\\_beloningsbeleid](http://www.eerstekamer.nl/wetsvoorstel/33964_wet_beloningsbeleid)

<sup>49</sup> <https://www.abnamro.com/en/newsroom/newsarticles/members-of-abn-amro-managing-board-renounce-100000-euros.html>

<sup>50</sup> <https://www.abnamro.com/en/newsroom/newsarticles/members-of-abn-amro-managing-board-renounce-100000-euros.html>

<sup>51</sup> <https://www.abnamro.com/en/newsroom/newsarticles/response-abn-amro-on-intention-to-sell.html>

<sup>52</sup> See 2015 AGM Convocation: <http://www.ing.com/Investor-relations/Shareholders-meeting/Annual-General-Meeting/Archive.htm>

<sup>53</sup> <http://www.eba.europa.eu/-/eba-reviews-guidelines-on-remuneration-policies>

<sup>54</sup> See pg 16-17 of the ING Group AGM draft minutes: <http://www.ing.com/Investor-relations/Shareholders-meeting/Annual-General-Meeting/Archive.htm>

ING ultimately decided to act in the spirit of CRD IV, the Dutch Act and in line with the EBA recommendation and therefore the increase in the variable pay cap for identified staff was proposed for a shareholder vote at the ING Group AGM.

Both resolutions were adopted with at least about 98% of votes being cast in favour.

#### **NN Group**

NN Group put two remuneration-related proposals up for a shareholder vote. These were an amendment of the remuneration policy, which included an increase in base salary of the Management Board to compensate for the decrease in variable pay as well as a bonus cap increase to 200% of fixed remuneration for select global staff<sup>55</sup>.

Both resolutions were adopted with at least about 97% of votes being cast in favour.

#### **Aegon**

For Aegon subsidiaries in Europe, excluding the Netherlands, the maximum variable pay has become 100% of base salary. Outside Europe, the new maximum has become 200% of base salary. This was not put up for a shareholder vote. Aegon was of the opinion that the legal requirement to increase the variable remuneration cap would apply to individual subsidiaries (which would therefore need to obtain approval from the parent company) and that therefore a shareholder vote on the variable remuneration cap would not be necessary at the Group level.

#### **Delta Lloyd**

Delta Lloyd pre-empted the change in legislation and an amendment to the remuneration policy was put up for a shareholder vote in 2013. Therefore the fixed remuneration of the Delta Lloyd Management Board was increased and the variable remuneration has been capped at 20% of fixed remuneration.

### **3.2 Audit Profession Act**

On 11 December 2012 the Dutch Second Chamber adopted the Dutch Audit Profession Act<sup>56</sup> which has been effective from 1 January 2013. From 1 January 2016 the Act will impose a mandatory rotation of audit firms for listed companies once every eight years. By adopting this Act the Netherlands have implemented the EU Statutory Audit Directive<sup>57</sup>. Member States were given until 17 June 2016 to implement the new requirements, when the Directive and the Regulation become applicable.

After a significant number of Dutch companies received shareholder approval for the appointment of a new auditor firm during the 2014 AGM season, a majority of the companies followed suit this year. Out of our sample, RELX and Vastned Retail are the only two remaining companies who still have to implement the appointment of a new auditor.

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<sup>55</sup> See 2015 AGM Convocation: <https://www.nn-group.com/Investors/Annual-general-meeting-3.htm>

<sup>56</sup> [https://www.eerstekamer.nl/wetsvoorstel/33025\\_wet\\_op\\_het\\_accountantsberoep](https://www.eerstekamer.nl/wetsvoorstel/33025_wet_op_het_accountantsberoep)

<sup>57</sup> See text of Directive 2014/56/EU amending Directive 2006/43/EC: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32014L0056>

### 3.3 Monitoring Commission Corporate Governance

On 11 December 2013, the new Monitoring Committee Corporate Governance Code was installed. The Committee, chaired by Professor J.A. van Manen, was tasked with improving the relevance and usability of the Dutch corporate governance code and to monitor compliance by Dutch listed companies<sup>58</sup>.

On 29 January 2015 the Monitoring Committee Corporate Governance Code published their “Rapport Monitoring Boekjaar 2013”<sup>59</sup>. The report includes an evaluation of compliance with the Corporate Governance Code, an evaluation of the effectiveness of the Code and an assessment of next steps, including a recommendation to update the Code, which was last amended in 2008.

Following the publication of the monitoring report in January this year, several stakeholders (including VNO-NCW<sup>60</sup>, VEUE<sup>61</sup>, Eumedion<sup>62</sup>, VEB<sup>63</sup>, FNV<sup>64</sup>, CNV<sup>65</sup> and Euronext<sup>66</sup>), have requested that the Monitoring Committee Corporate Governance Code make proposals for updating the Code. The Committee stated that it will soon take the first steps in the review process. They expect to publish a consultation document with concrete proposals for revision before the end of 2015<sup>67</sup>.

<sup>58</sup> <http://commissiecorporategovernance.nl/>

<sup>59</sup> <http://commissiecorporategovernance.nl/?page=2522>

<sup>60</sup> VNO-NCW is the largest employers' organisation in the Netherlands: <http://www.vno-ncw.nl/english/Pages/default.aspx#.VehouJRdVaQ>

<sup>61</sup> VEUE is the Association of Securities -Issuing Companies: <http://www.veuo.nl/>

<sup>62</sup> Eumedion represents institutional investors' interests in the field of corporate governance and related sustainability performance: <http://www.eumedion.nl/en>

<sup>63</sup> VEB is the association of retail investors in the Netherlands: <https://www.veb.net/>

<sup>64</sup> FNV is the largest union in the Netherlands: <http://www.fnv.nl/>

<sup>65</sup> CNV is the second largest union in the Netherlands: <https://www.cnv.nl/>

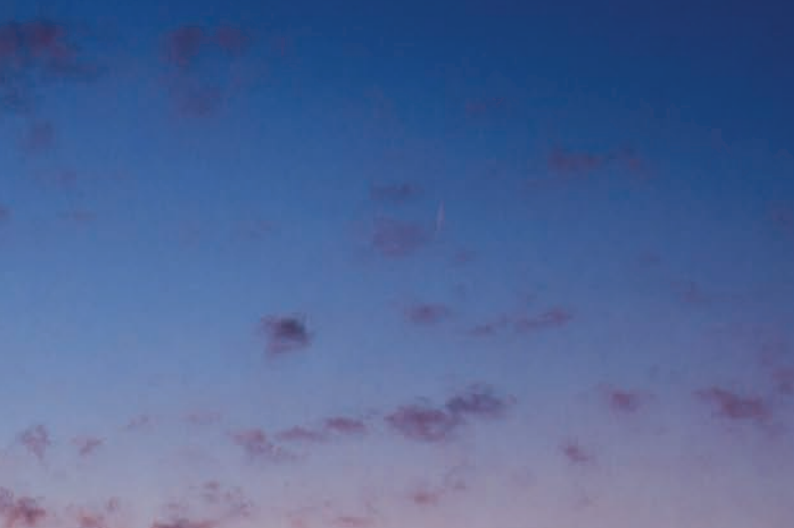
<sup>66</sup> Euronext is a European stock exchange: <https://www.euronext.com/>

<sup>67</sup> <http://commissiecorporategovernance.nl/nieuws/2652/Schragende-partijen-doen-verzoek-tot-herziening-Code>



Germany





# Germany Highlights



- The average shareholder vote participation at the AGMs of DAX companies decreased slightly from 55.05% in 2014 to 54.88% in 2015, while the average shareholder vote participation level at the AGMs of MDAX companies increased from 65.44% in 2014 to 67.99% in 2015.
- In the DAX one company saw a board-proposed resolution rejected by shareholders during the 2015 proxy season (Commerzbank AG).
- In the DAX, 14 companies saw at least one resolution receive more than 10% shareholder opposition in 2015. Among these, the most commonly contested resolutions related to supervisory board elections followed by authorities to issue shares.
- During the 2015 proxy season, five companies out of the 30 DAX companies received at least one negative recommendation from Institutional Shareholder Services (ISS). In comparison, seven companies in the DAX index received a negative recommendation from Glass Lewis and five companies received a negative recommendation from DSW (Deutsche Schutzvereinigung für Wertpapierbesitz).

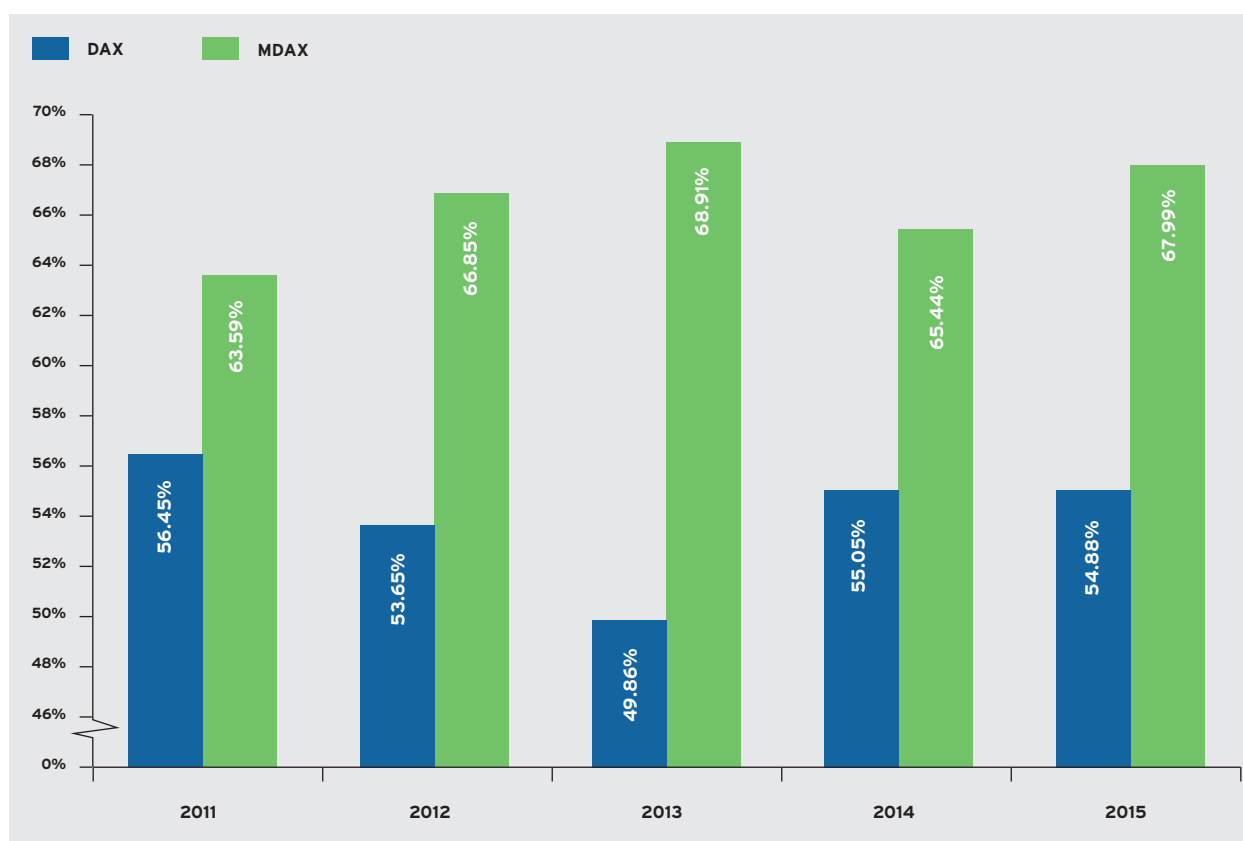
# 1. VOTING IN GERMANY

## 1.1 Quorum overview

Georgeson has reviewed the quorum levels of the 30 companies which comprise the DAX Index<sup>1</sup> and the 50 companies which comprise the MDAX Index<sup>2</sup> over the past five years.

The average participation level for the DAX decreased slightly by 0.17 percentage points from 55.05% in 2014 to 54.88% in 2015, while the average participation level in the MDAX increased by 2.55 percentage points from 65.44% in 2014 to 67.99% in 2015.

**Graph 1: Shareholder attendance levels: comparison of DAX and MDAX between 2011 and 2015**



<sup>1</sup> The DAX Index tracks the segment of the largest and most important companies on the German equities market. It contains the shares of the 30 largest and most liquid companies admitted to the FWB Frankfurt Stock Exchange in the Prime Standard segment. The DAX represents about 80% of the aggregated prime standard's market cap. See here: [http://www.dax-indices.com/EN/MediaLibrary/Document/Factsheet\\_DAX.pdf](http://www.dax-indices.com/EN/MediaLibrary/Document/Factsheet_DAX.pdf)

<sup>2</sup> The MDAX tracks the segment of mid-sized industrials. It contains the shares of the 50 companies listed in the Prime Segment of Deutsche Boerse, which follow the 30 DAX companies with regard to market cap and stock exchange turnover. See here: [http://www.dax-indices.com/EN/MediaLibrary/Document/Factsheets/FS\\_MDAX.pdf](http://www.dax-indices.com/EN/MediaLibrary/Document/Factsheets/FS_MDAX.pdf)

### 1.1.1 Registered shares vs. bearer shares

While the average participation level of all 30 DAX companies only slightly decreased from 2014 to 2015, the participation level for the 15 DAX companies with registered shares decreased by 1.69 percentage points from 43.95% in 2014 to 42.26% in 2015 after having seen a significant increase of 9.25 percentage points from 2013 to 2014 (which was a partial recovery from an even steeper decline over the previous year).

An initial plunge in average quorum amongst companies with registered shares took place in 2013, as a result of the interpretation by custody banks and voting service providers of a 2012 ruling of the Higher Regional Court (OLG) in Cologne<sup>3</sup> which implied that not only the beneficial owner of shares but also the registered nominee (such as a custodian bank) had a co-responsibility to ensure that the issuer and subsequently the market would be notified of crossing disclosure thresholds. This led to the imposition of temporary registration requirements in the issuers' share register for shareholders who wanted to vote at an upcoming shareholder meeting.

As processes differed and manual intervention was required in most cases, some share positions were unavailable for settlement while the holder of the voting rights appeared on the register (instead of the custodian bank). The fear of share blocking led a number of foreign shareholders not to exercise their voting rights for their full share position in German companies with registered shares.

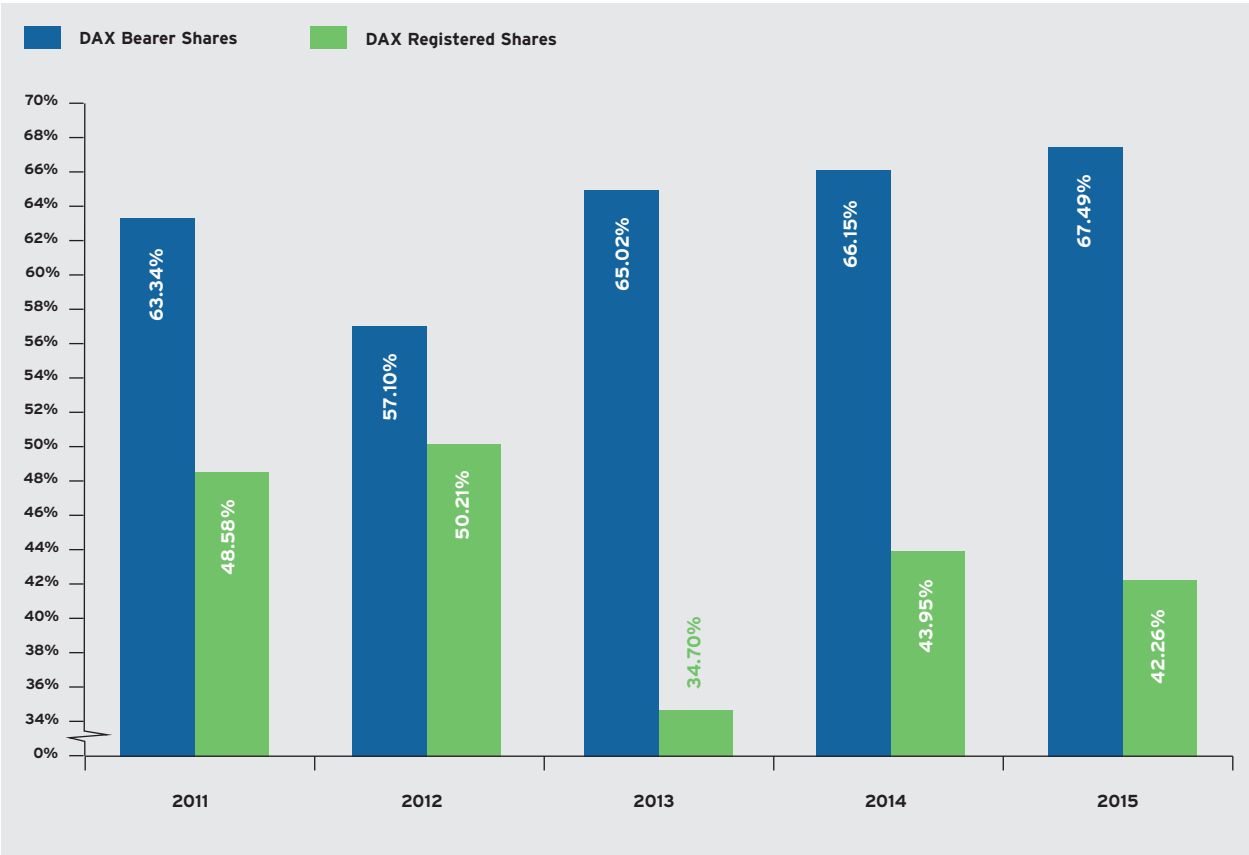
In our experience, the partial recovery of quorum levels in 2014 was mainly driven by clearer communication between market participants and changes in the way registrations and votes were handled by intermediaries. However the stagnation between 2014 and 2015 shows that there is an ongoing problem.

Going forward two legal developments appear likely to resolve the underlying uncertainty:

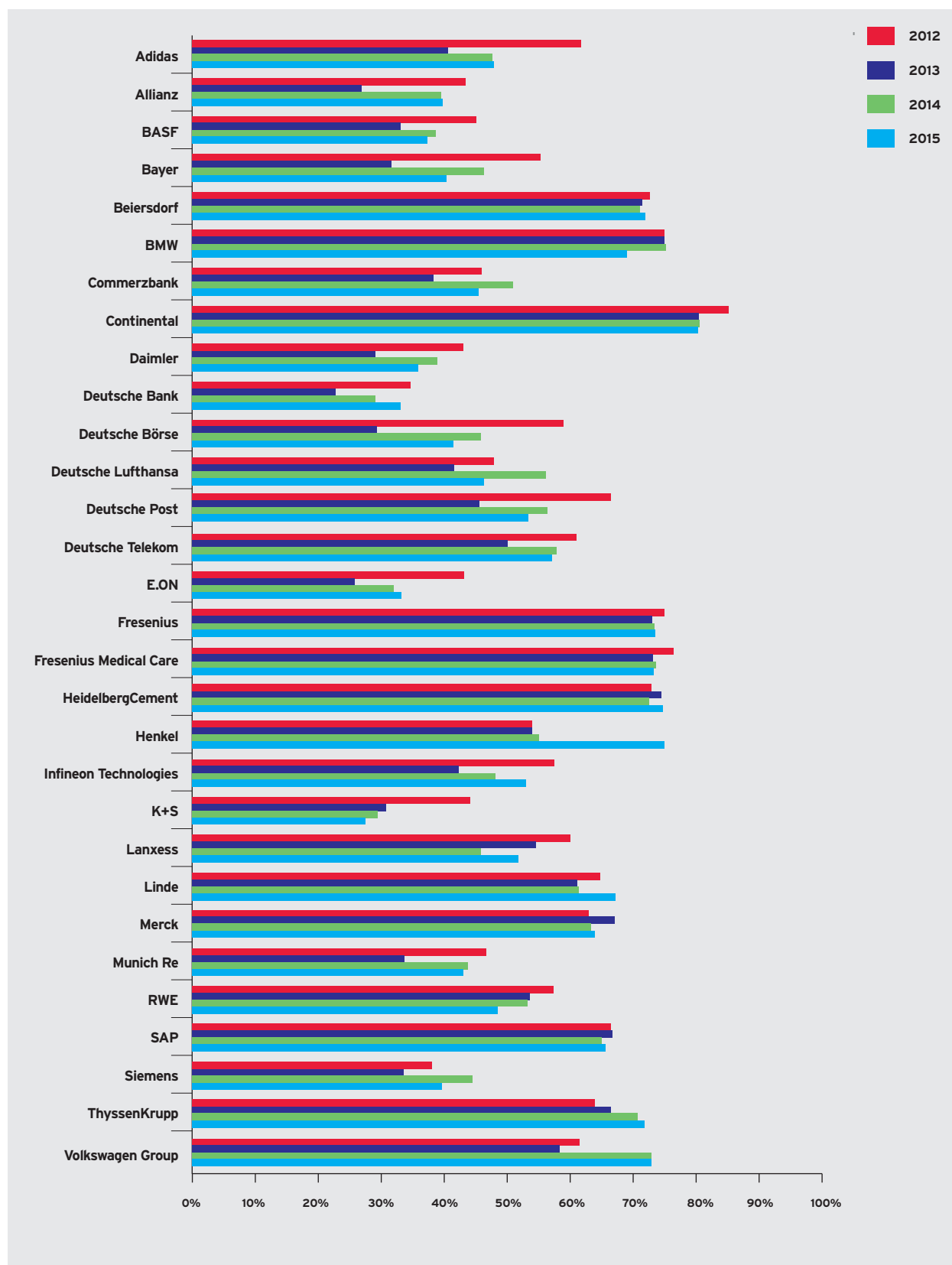
- The German "Kleinanlegerschutzgesetz" (see section 3.4) now clarifies that the beneficial owner is responsible for the notification of crossing ownership thresholds (and not the registered bank or custodian holding the shares on behalf of a client). This is expected to eliminate the requirement imposed by many banks of registering on the share register as a beneficial owner in order to be able to vote.
- The introduction of a record date for registered shares has been widely discussed in connection with draft legislation known as the "Aktienrechtsnovelle 2014" (see section 3.5). A record date is expected to eliminate any outstanding concerns in connection with voting at shareholder meetings of companies with registered shares.

<sup>3</sup> Az. 18 U 240/11: <http://openjur.de/u/455730.html>

Graph 2: Shareholder attendance levels: comparison between DAX companies with registered shares vs. bearer shares between 2011 and 2015



Graph 3: Shareholder attendance levels: comparison since 2012 of the 30 DAX companies surveyed (displayed alphabetically)



## 1.2 Rejected resolutions

We have reviewed the meeting results of the 30 DAX and 50 MDAX constituents' AGMs held between 1 August 2014 and 31 July 2015.

In the DAX, one resolution was rejected by shareholders during the 2015 Proxy Season:

### Commerzbank

German law<sup>4</sup>, in implementation of the EU Capital Requirements Directive (CRD IV)<sup>5</sup>, provides that any bonus payments to "material risk takers" (i.e. management board members and other senior managers) must not exceed 100% of fixed salary. This cap may be increased to up to 200% of fixed salary, subject to shareholder approval (requiring a majority of at least 66% if the AGM quorum is above 50% and a majority of at least 75% if the quorum is below 50%).

At their 2015 AGM<sup>6</sup>, Commerzbank proposed two resolutions to increase the bonus cap:

- Resolution 8 requested approval for an increase in the maximum bonus cap for members of the management board from 100% to 140% of fixed salary.
- Resolution 9 requested shareholder approval to raise the cap for other "material risk takers" from 100% to 200% of fixed salary.

Shortly before the start of the shareholder meeting, scheduled for 10 a.m. on 30 April 2015, the leading German financial newspaper Handelsblatt<sup>7</sup> reported that the German Government, holding 15.6% of the share capital, was likely to oppose the proposed increase in bonus caps.

Resolution 8 received 98.88% votes in favour, while resolution 9 only received 64.66 % votes in favour<sup>8</sup>. As the AGM quorum was 45.78% both resolutions required a 75% majority to pass. As a result resolution 8 was approved, while resolution 9 was rejected.

Reuters<sup>9</sup> reported that the German Government voted in favour of resolution 8 (the 140% bonus cap for the management board) and opposed resolution 9 (the 200% bonus cap for other "material risk takers")

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<sup>4</sup> [http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger\\_BGBI&jumpTo=bgbl113s3395.pdf#\\_bgbl\\_\\_%2F%2F\\*%5B%40attr\\_id%3D%27bgbl113s3395.pdf%27%5D\\_\\_1441644813426](http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBI&jumpTo=bgbl113s3395.pdf#_bgbl__%2F%2F*%5B%40attr_id%3D%27bgbl113s3395.pdf%27%5D__1441644813426)

<sup>5</sup> [http://ec.europa.eu/internal\\_market/bank/regcapital/legislation-in-force/index\\_en.htm](http://ec.europa.eu/internal_market/bank/regcapital/legislation-in-force/index_en.htm)

<sup>6</sup> [https://www.commerzbank.com/media/aktionaere/haupt/2015\\_3/20150320\\_HV\\_300415\\_Tagesordnung\\_en\\_pp.pdf](https://www.commerzbank.com/media/aktionaere/haupt/2015_3/20150320_HV_300415_Tagesordnung_en_pp.pdf)

<sup>7</sup> <http://www.handelsblatt.com/my/unternehmen/banken-versicherungen/hauptversammlung-commerzbank-zoff-um-die-neuen-bonus-regeln/11712048.html>

<sup>8</sup> [https://www.commerzbank.com/media/aktionaere/haupt/2015\\_3/Abstimmungsergebnisse\\_2015\\_englisch.pdf](https://www.commerzbank.com/media/aktionaere/haupt/2015_3/Abstimmungsergebnisse_2015_englisch.pdf)

<sup>9</sup> <http://uk.reuters.com/article/2015/04/30/commerzbank-agm-idUKL5N0XR2HU20150430>

### 1.3 Contested resolutions

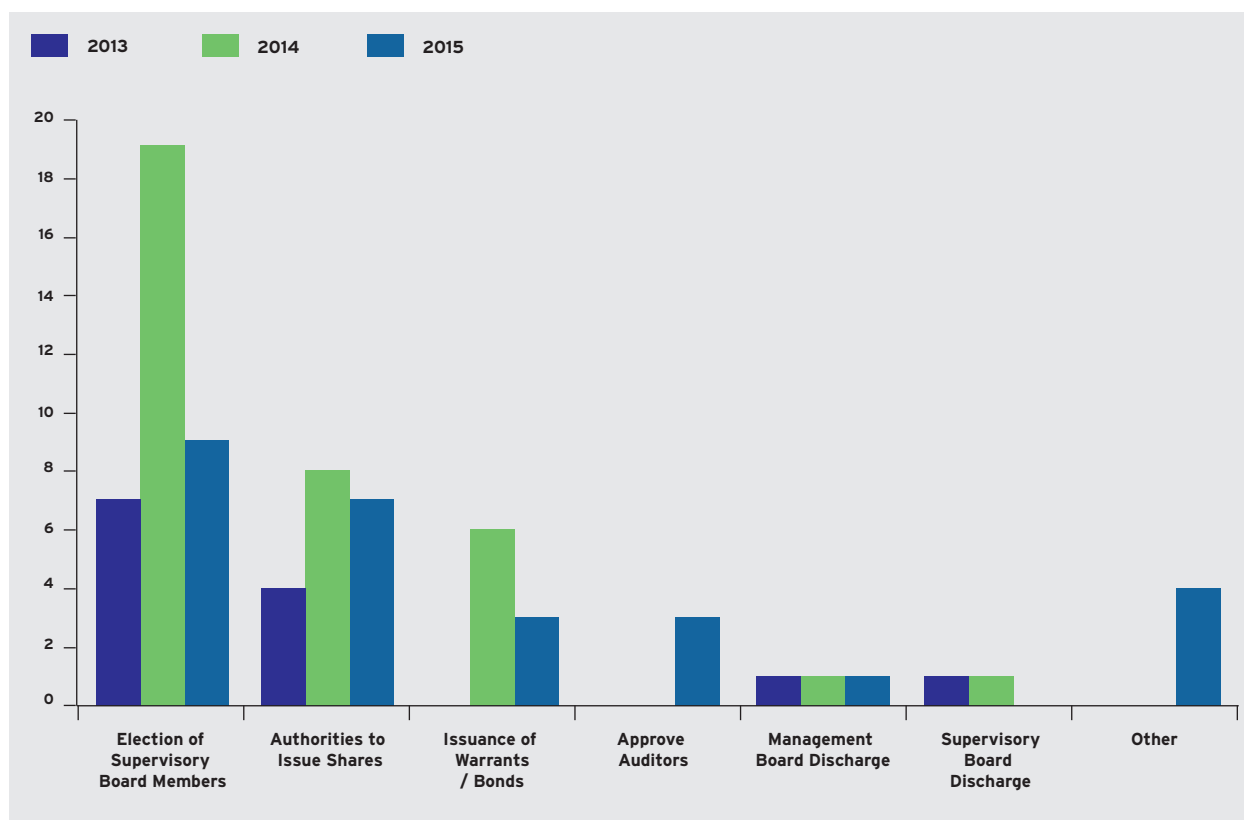
Among our sample of 30 DAX companies that held their AGM between 1 August 2014 and 31 July 2015, we saw a decrease in the number of companies and number of resolutions that received more than 10% shareholder opposition.

In 2015, 14 companies saw at least one resolution receive more than 10% shareholder opposition, compared to 16 companies in 2014. The total number of resolutions that received more than 10% opposition amounted to 27, compared to 35 resolutions in 2014.

The most commonly contested resolutions related to the (re-)election of supervisory board members, with 9 resolutions receiving more than 10% negative votes. The second most commonly contested resolutions were authorities to issue shares, followed by authorities to issue warrants and bonds, approval of auditors and discharge of management and supervisory boards.

The graph below summarises the main categories of the resolutions that received more than 10% opposition from shareholders.

**Graph 4: Main resolutions which received more than 10% negative votes at the 30 DAX AGMs surveyed (broken down by resolution type)**



### 1.3.1 Supervisory Board member elections

During the 2015 proxy season, 16 of the 30 DAX companies had supervisory board member elections on their agenda, which accounted for a total of 51 individual resolutions. This compares to 20 companies in 2014 and a total of 59 individual resolutions relating to the election of supervisory board members.

Based on feedback Georgeson has gathered from investors and proxy advisors, the main reasons to vote or recommend against the (re-)election of supervisory board members in Germany are either concerns relating to the overall independence of the supervisory board, tenure of individual board members or overboarding concerns.

As up to 50% of the supervisory board in Germany is required by law<sup>10</sup> to comprise employee representatives (elected separately by employees of the company) many institutional investors require 1/3 of the full supervisory board and/or half of the shareholder-elected members to be independent.

Overboarding concerns are generally raised for supervisory board candidates who have a significant number of other board seats or serve as executives at other companies. Shareholders are also likely to consider poor attendance or undisclosed attendance records for board members as reasons to vote against the re-election of a supervisory board member.

Among all DAX AGMs, five companies recorded a total of nine supervisory board candidates receiving more than 10% opposition on their election.

The companies with the highest level of opposition on supervisory member elections among our sample were:

- Infineon (Wolfgang Mayrhofer - 79.7% in favour)
- K+S (Philip von dem Bussche - 82.7% in favour)
- Lanxess (Matthias Wolfruber - 84.8% & Friedrich Janssen 85.4% in favour)
- Deutsche Börse (Erhard Schipporeit - 85.4% in favour)

### 1.3.2 Authorities to issue shares

German companies routinely request shareholder authority to issue shares up to 50% of the current issued share capital, generally over a period of up to 5 years. These authorities are split between “authorised” and “conditional” capital, but are subject to the same overall dilution limits.

Even though a supermajority of 75% is required to pass this kind of resolution, most issuers passed these resolutions comfortably, in particular when the exclusion of pre-emptive rights was limited to 20% of the issued share capital.

It has been common practice in the past to disregard any outstanding authorizations which may have only been used partially, potentially allowing the accumulation of several authorities over a number of years. However, this trend has been reversed and it is now common practice to either cancel any outstanding authorities or to incorporate them as part of the new authority. Some issuers have even gone to the length of proposing a separate resolution to cancel any unused authorities rather than including the cancellation in the new authorization.

While the main proxy advisors continue to accept the exclusion of pre-emptive rights for up to 20% of the issued capital over a period of 5 years in the German market, in recent years investor attitudes towards share issuance authorities (in particular without pre-emptive rights) have become significantly stricter. Additionally, investors increasingly consider 5-year terms to be excessive for this kind of proposal.

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<sup>10</sup> <http://www.gesetze-im-internet.de/mitbestg/>

Among DAX AGMs seven share capital authorizations received more than 10% opposition during the 2015 proxy season.

The companies with the highest level of opposition on share issuance authorities among our sample were:

- Infineon (76.4% in favour)
- Adidas (82.8% in favour)
- Lanxess (84.3% in favour)
- Deutsche Lufthansa (87.0% in favour)
- Deutsche Börse (88.3% in favour)

### 1.3.3 Issuance of warrants and bonds

Although the issuance of warrants and bonds are proposed as separate resolutions, they are generally reviewed by investors in conjunction with other resolutions to issue shares, as investors want to take a overall view of all possible dilution mechanisms.

In addition to the resolution allowing companies to issue convertible instruments, companies are required to propose a separate linked resolution to issue conditional capital in order to fund those convertible instruments.

While examining the conditions under which these instruments can be issued, investors tend to apply the same overall dilution guidelines to the maximum number of shares that could be issued through the proposed conversion rights.

Among DAX AGMs three conditional capital resolutions received more than 10% opposition in 2015:

- Lanxess (85.2% in favour)
- Munich RE (87.2% in favour)
- Commerzbank (88.0% in favour)

### 1.3.4 Approval of auditors

The BVI (the German Asset Management association) published their 2015 proxy voting guidelines in January. One of the main amendments introduced more stringent evaluation of resolutions to appoint the external auditor<sup>11</sup>.

The BVI considers that a vote against the re-appointment of auditors is warranted if additional consulting agreements are not disclosed in the annual report or the name of the lead auditor is not explicitly mentioned. They also require audit and non-audit related fees to be disclosed separately and that non-audit fees should not be excessive compared to audit fees paid to the same firm. Finally, the BVI requires regular rotation of the lead audit partner.

The companies with the highest level of opposition on this type of resolution among our sample were:

- Bayer (Ratify PWC AG as Auditors for Fiscal 2015 - 86.8% in favour)
- Adidas (Ratify KPMG AG as Auditors for Fiscal 2015 - 89.3% in favour)
- Adidas (Ratify KPMG as Auditors for the 2015 Half Year Report - 89.4% in favour)

<sup>11</sup> [http://www.bvi.de/fileadmin/user\\_upload/Regulierung/Branchenstandards/ALHV/Vgl\\_ALHV\\_2014\\_-\\_ALHV\\_2015.pdf](http://www.bvi.de/fileadmin/user_upload/Regulierung/Branchenstandards/ALHV/Vgl_ALHV_2014_-_ALHV_2015.pdf)

### 1.3.5 Discharge of the Management and Supervisory Boards

It is a legal requirement in Germany for companies to propose a discharge vote on the Supervisory Board and on the Management Board. The vote is largely symbolic as the legal position of shareholders and board members do not change based on the results of this vote.

#### Deutsche Bank

At Deutsche Bank's 2015 AGM, some shareholders expressed significant concerns about the discharge of the management board due to legal proceedings against the bank, including fines and settlements<sup>12</sup>.

The German shareholder association DSW submitted a shareholder proposal<sup>13</sup> for a special audit in advance of the AGM to seek clarification that the bank has set aside enough legal provisions to handle expected fines and settlements<sup>14</sup>.

While the shareholder proposal submitted by DSW was rejected with 85.65% against votes, the discharge vote for each individual management board member only passed with between 61.02% and 61.18% in favour. This was seen as a signal of discontent from shareholders regarding the action taken by members of the management board in past financial years and beyond.

Not long after the AGM, both Co-CEOs of Deutsche Bank, Anshu Jain and Jürgen Fitschen announced their resignation following an extraordinary meeting of the bank's supervisory board<sup>15</sup>. Anshu Jain stepped down on 30 June 2015, with Jürgen Fitschen remaining in his role until May "to ensure a smooth transition". Their contracts were due to run through to 31 March 2017.

At the same time, the bank named John Cryan, a member of its supervisory board since 2013, to be co-CEO with Fitschen for the transitional period. John Cryan will become sole CEO after Jürgen Fitschen's departure.

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<sup>12</sup> <http://www.ft.com/cms/s/0/78c14c60-ff97-11e4-8c46-00144feabdc0.html#axzz3l8fPfvSD>

<sup>13</sup> [https://agm.db.com/en/docs/HV2015\\_Agenda\\_Extension.pdf](https://agm.db.com/en/docs/HV2015_Agenda_Extension.pdf)

<sup>14</sup> <http://www.reuters.com/article/2015/04/15/deutsche-bank-audit-idUSFWNOXB08020150415>

<sup>15</sup> [https://www.db.com/medien/en/content/5060\\_5197.htm](https://www.db.com/medien/en/content/5060_5197.htm)

## 2. PROXY ADVISORS

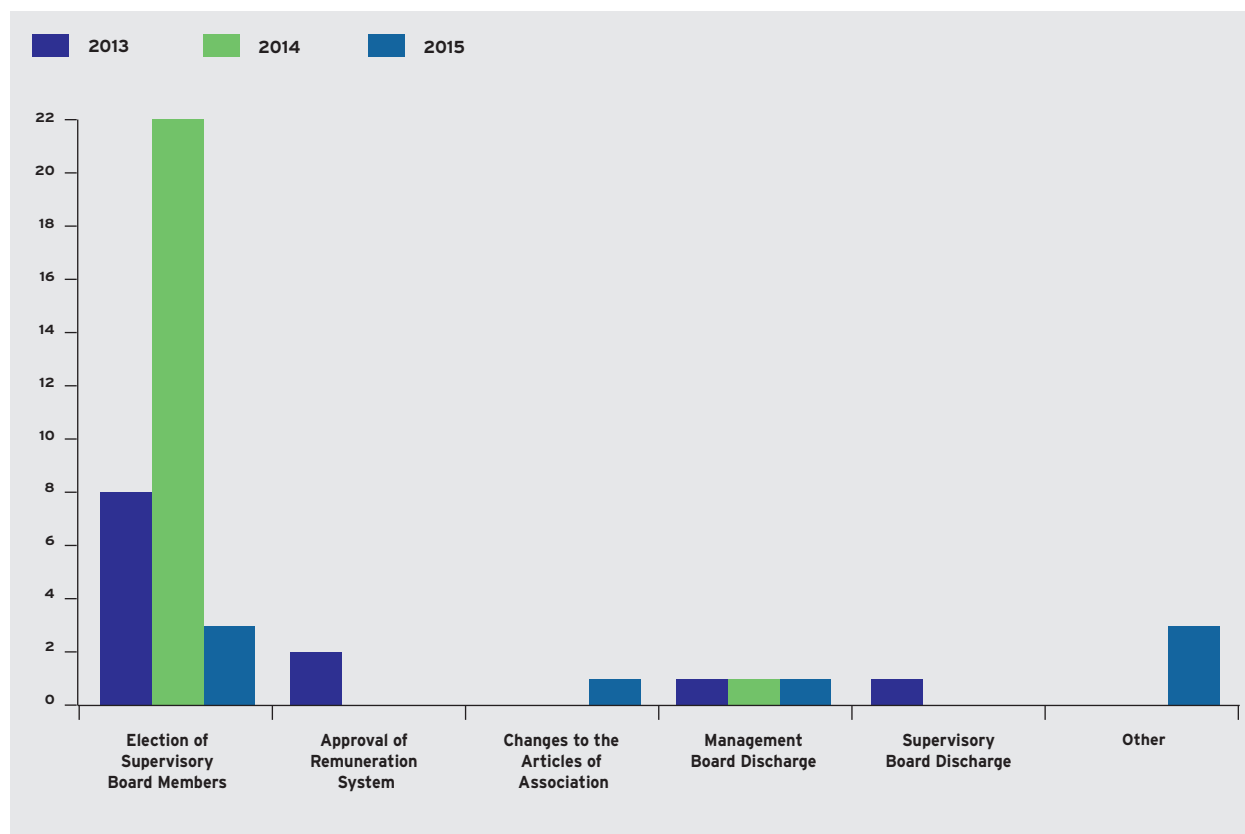
Many institutional investors rely on proxy advisory firms, for meeting agenda analysis and vote recommendations to guide their voting decisions. A negative recommendation from a proxy advisor can have an adverse impact on the vote outcome of a given resolution.

### 2.1 Institutional Shareholder Services (ISS)

Institutional Shareholder Services (ISS)<sup>16</sup> is a leading provider of corporate governance solutions for asset owners, hedge funds, and asset service providers. ISS has over 1,600 clients, and more than 800 employees spread across 15 offices in 10 countries and covers approximately 38,000 companies in 115 countries. They were acquired by Vestar Capital Partners in March 2014. In Europe they have offices in London, Paris and Brussels.

During the 2015 proxy season, five companies out of the DAX index received at least one against recommendation from ISS. Below is an overview of the negative recommendations by ISS at DAX AGMs in 2013, 2014 & 2015. The graph shows that the 2015 proxy season saw the lowest number of negative recommendations from ISS in the last three years.

**Graph 5: Overview of the number of negative recommendations by ISS at DAX AGMs over the past three years**



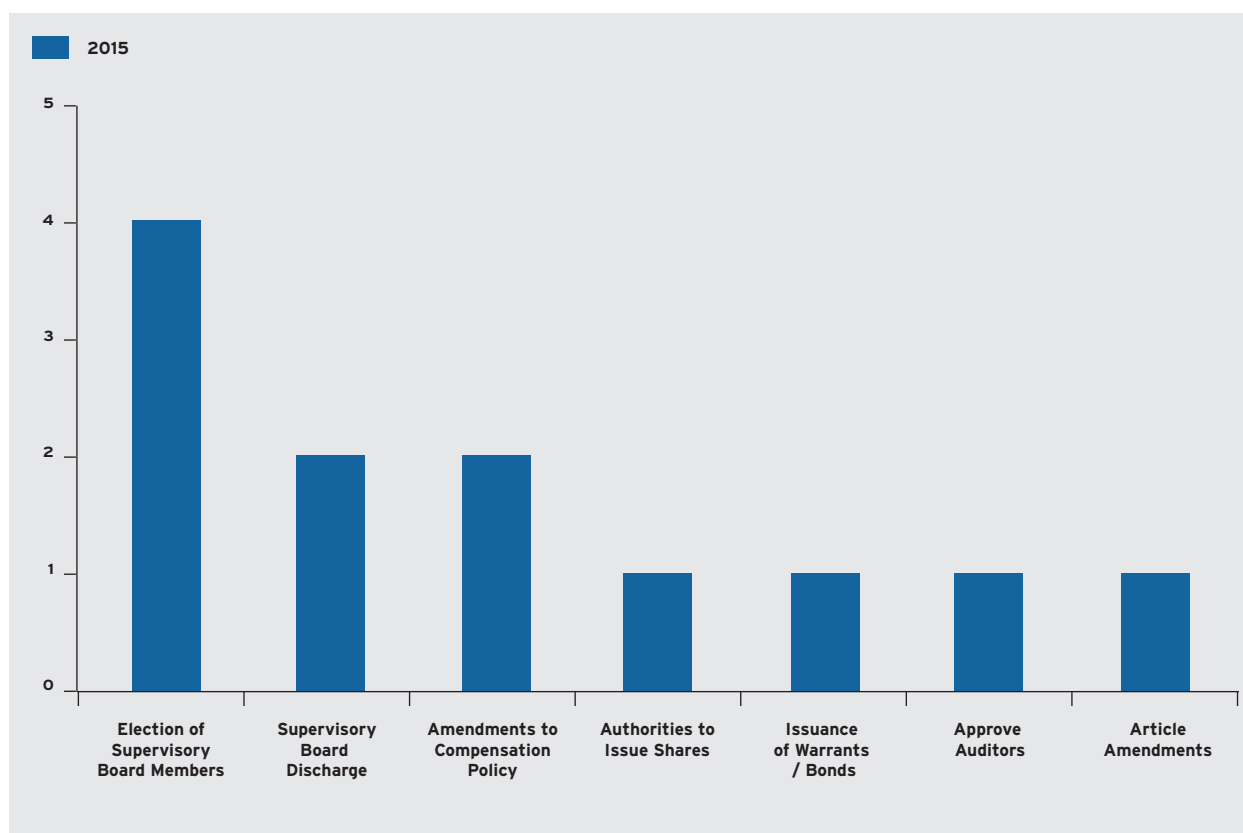
<sup>16</sup> <http://www.issgovernance.com/about/about-iss/>

## 2.2 Glass Lewis

Glass Lewis<sup>17</sup> is a leading provider of governance services that support engagement among institutional investors and corporations through its research, proxy vote management and technology platforms. Glass Lewis has over 1,200 clients, and more than 360 employees. They cover more than 20,000 meetings in 100 countries. They are owned by the Ontario Teachers' Pension Plan Board and the Alberta Investment Management Corporation. In Europe they have offices in Limerick, Ireland, and - with the acquisition of IVOX in June 2015 - in Karlsruhe, Germany.

During the 2015 proxy season, 7 companies out of the DAX index received at least one against recommendation from Glass Lewis. Below is an overview of the negative recommendations by Glass Lewis at DAX AGMs in 2015. In 2015 the (re-)election of Board members received the highest number of negative recommendations, followed by recommendations against the discharge of the supervisory board and proposed amendments to the compensation policy.

**Graph 6: Overview of the number of negative recommendations by Glass Lewis at DAX AGMs in 2015**



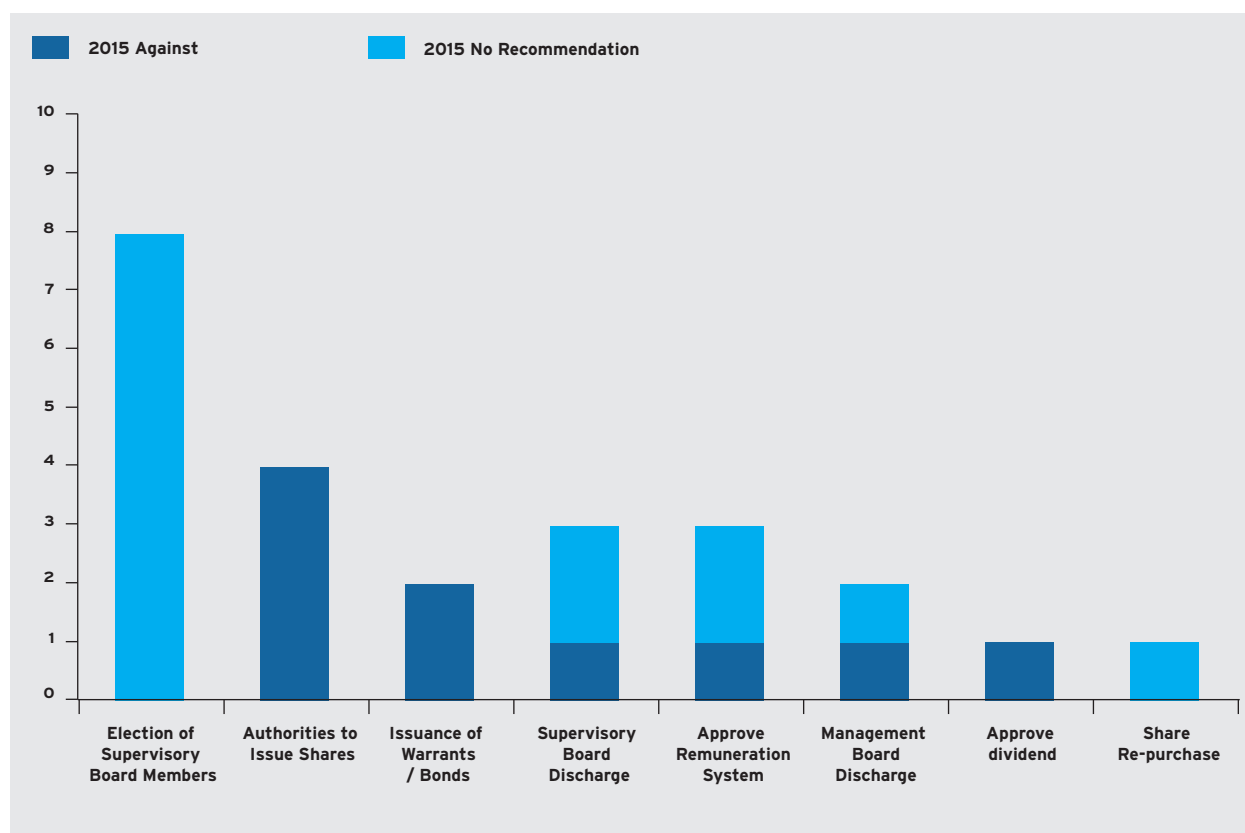
<sup>17</sup> <http://www.glasslewis.com/about-glass-lewis/>

## 2.3 DSW

The Deutsche Schutzvereinigung für Wertpapierbesitz e.V. (DSW) is Germany's oldest and largest shareholder association<sup>18</sup>. Founded in 1947, DSW now has about 25,000 members, which includes institutional and retail investors. DSW represents its members at approximately 650 annual general meetings per year and aims to publish voting recommendations for all AGM resolutions. However, in a limited number of cases, where they plan on requesting additional information at the AGM itself, they issue a "no recommendation" alert in advance and then decide on how to vote on behalf of their members at the AGM itself.

During the 2015 proxy season, five companies out of the DAX index received at least one against recommendation from DSW and a further five companies at least one "non-recommendation". The majority of against recommendations was relating to authorities to issues shares. On the subject of the election of supervisory board members, the most "non-recommendations" were issued in advance of shareholder meetings.

**Graph 7: Overview of the number of negative & non-recommendations issued by DSW per resolution type at DAX AGMs in 2015**



<sup>18</sup> <http://www.dsw-info.de/Englisch.943.0.html>

### 3. CORPORATE GOVERNANCE DEVELOPMENTS

#### 3.1 The German Corporate Governance Code

The Commission of the German Corporate Governance Code published a revised version of the German Corporate Governance Code on 5 May 2015<sup>19</sup>.

The “Regierungskommission Deutscher Corporate Governance Kodex” decided on three material amendments to the Code which above all underline the increasingly significant role of the Supervisory Board, alongside minor changes to the text of the code.

The main amendments are:

1. The Supervisory Board of a listed company should define the maximum period of office for its members on a company-specific basis.
2. When making proposals to the Shareholders’ Meeting concerning the election of new members of the Supervisory Board, the Supervisory Board should satisfy itself that the respective candidates can devote the expected amount of time to their office.
3. Going forward, the report of the Supervisory Board should note whether a member of the Supervisory Board has participated in only half or less of its meetings and of any meetings of the committees to which the member belongs to in the past financial year. Participation via telephone or video conference can be counted towards the participation figures, but should not be the rule.

In general, the Code Commission states that a supervisory board should also pay attention to a good mix in the various areas of expertise, age and gender as well as to the terms of tenure, i.e. number of years already served on the board.

In addition, the new statutory provisions on equal participation of men and women in private-sector and public-sector management positions that came into effect on 1 May 2015 were also incorporated into the Code.

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<sup>19</sup> <http://www.dcgk.de/en/kommission-33/die-kommission-im-dialog/details/amendments-of-the-code-published.html>

### 3.2 Gender quota

On 6 March 2015, the German Bundestag passed a law<sup>20</sup> for the equal participation of women and men in leadership positions in the private sector and the public sector on 6 March 2015:

1. From 1 January 2016, listed companies have will be required to comply with a gender quota of 30% for their supervisory board and have to gradually comply with this rule when proposing new members. Non-compliance will lead to companies having to void elections that are not in line with the new law.
2. In the public sector, boards of governors will have to apply the same rule as long as the German government is entitled to a minimum of three seats on such a board.
3. In addition, listed companies will have to announce by 30 September 2015 their binding goal in terms of increasing the female participation in the management and supervisory board together with their goals for their two highest management level tiers.

### 3.3 Acquisition of IVOX by Glass Lewis

Glass Lewis, a leading proxy advisory firm, announced the acquisition of German proxy advisor IVOX on 11 June 2015<sup>21</sup>. Glass Lewis and IVOX “are currently working on the integration of their technology and research offerings in order to provide their combined clients with the best both firms have to offer, in a seamless way.” Following the acquisition, IVOX Glass Lewis GmbH became a subsidiary of Glass Lewis Europe, and will be supported by the research, vote agency, and IT resources of the parent company.

The IVOX Glass Lewis team will continue to be based in Karlsruhe, Germany, working under the leadership of Dr. Alexander Juschus, co-founder of IVOX and General Manager of Glass Lewis Europe’s new German office. IVOX was founded in 2005 to address the specific proxy voting requirements in Europe, especially in Germany. IVOX provides corporate governance research for more than 2,500 companies.

### 3.4 Retail Investor Protection Act (“Kleinanlegerschutzgesetz”)

While intended to mainly protect retail investors from non-transparent financial products, the German Retail Investor Protection Act clarifies who is responsible for disclosing significant shareholdings.

Most of the legislation deals with protective measures in relation to crowdfunding and what is known in Germany as the “grey” capital market. The new law was initiated following the Prokon Scandal<sup>22</sup> where over 10,000 smaller retails investors lost significant amounts of money due to the bankruptcy of the issuer.

A specific amendment to article 21 of the German Securities Trading Act (Wertpapierhandelsgesetz; WpHG)<sup>23</sup> now clarifies that the beneficial owner is responsible for the notification of crossing ownership thresholds previously already set out by the law, with 3% being the lowest. This is expected to end the confusion about who is ultimately responsible for ownership threshold notifications and is expected abolish complicated manual registration processes for shareholders who wish to vote at German AGMs of companies with registered shares (see section 1.1.1).

<sup>20</sup> <http://www.bmfsfj.de/BMFSFJ/gleichstellung,did=213364.html>

<sup>21</sup> <http://www.glasslewis.com/blog/glass-lewis-acquires-ivox/>

<sup>22</sup> <http://panteres.com/2015/05/27/prokon-bankruptcy-investors-should-be-protected-by-law/>

<sup>23</sup> [http://www.gesetze-im-internet.de/wphg/\\_21.html](http://www.gesetze-im-internet.de/wphg/_21.html)

### 3.5 Shareholder Rights Bill ("Aktienrechtsnovelle 2014")

The German Government started debating new draft legislation relating to shareholder rights in March 2015<sup>24</sup>. The aim of the draft legislation is to make amendments to the German "Aktiengesetz" and its bylaws.

Elements of the draft legislation include, amongst others, the introduction of a record date for issuers with registered shares. A record date for issuers with bearer shares was introduced in Germany in September 2005<sup>25</sup> and fixes the vote entitlement to the amount of shares held at the beginning of the 21st day before any shareholder meeting.

Even though the German Bundesrat (second chamber) did not see an immediate need for the introduction of a record date for registered shares, it would set a uniform standard in the German Market. This would especially be welcomed by foreign investors who have been exposed to share blocking due to the absence of a record date and the utilization of a vote cut off / closing date of the share register before the AGM instead.

The Bundesrat argued that the share register would already give issuers good insight into who holds the unofficial shares and the voting rights on an ongoing basis and would allow them to communicate with shareholders well in advance of the AGM.

Considering the magnitude of problems shareholders have been exposed to in recent years to vote at German AGMs for companies with registered shares, a consistent record date for all share classes may be introduced in Germany soon.

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<sup>24</sup> <http://dip21.bundestag.de/dip21/btd/18/043/1804349.pdf>

<sup>25</sup> [http://www.bgbl.de/xaver/bgbl/start.xav?start=%2F%2F%5B%40attr\\_id%3D%27bgblI05060.pdf%27%5D#\\_\\_bgbl\\_\\_%2F%2F%5B%40attr\\_id%3D%27bgblI05060.pdf%27%5D\\_\\_1441713651840](http://www.bgbl.de/xaver/bgbl/start.xav?start=%2F%2F%5B%40attr_id%3D%27bgblI05060.pdf%27%5D#__bgbl__%2F%2F%5B%40attr_id%3D%27bgblI05060.pdf%27%5D__1441713651840)





# Switzerland





# Switzerland Highlights



- The average shareholder vote participation at the AGMs of SMI companies increased from 58% in 2014 to 64.2% in 2015, an increase of 6.2 percentage points.
- In the SMI no companies saw resolutions rejected by shareholders during the 2015 proxy season.
- In the SMI two companies did not provide detailed voting results on their website: Compagnie Financière Richemont SA and Swatch Group SA (however, they confirmed that all resolutions were approved).
- In the SMI, 11 companies saw at least one resolution receive more than 10% shareholder opposition in 2015. The most commonly contested resolutions were director elections. The second most commonly contested resolutions were advisory votes on compensation, followed by shareholder approval of the maximum remuneration to be paid to the board of directors, and compensation committee elections.
- During the 2015 proxy season, nine out of the 20 SMI companies received at least one negative recommendation from Institutional Shareholder Services (ISS). In comparison, 10 SMI companies received a negative recommendation from Glass Lewis and 18 companies received a negative recommendation from Ethos.

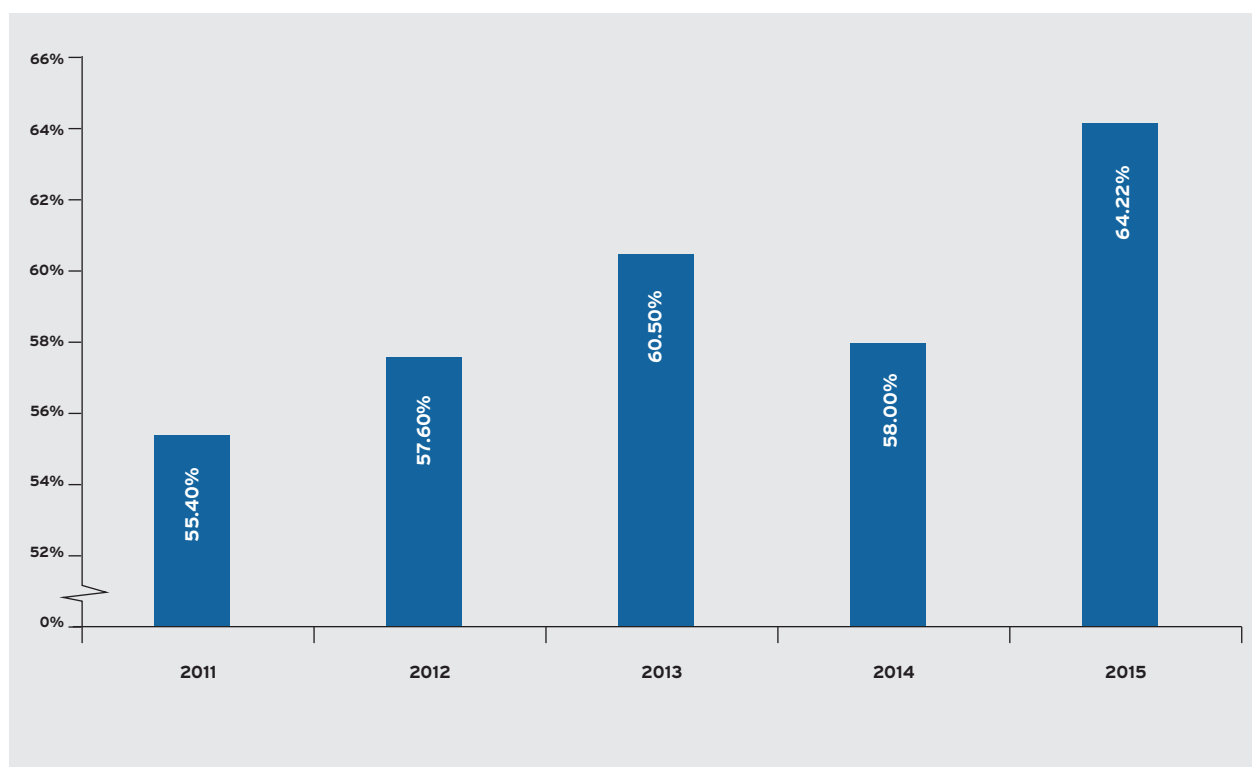
# 1. VOTING IN SWITZERLAND

## 1.1 Quorum overview

Georgeson has reviewed the quorum levels of the 20 companies which comprise the SMI index<sup>1</sup> over the past five years. For this year we have taken into account companies that held their AGM between 1 August 2014 and 31 July 2015.

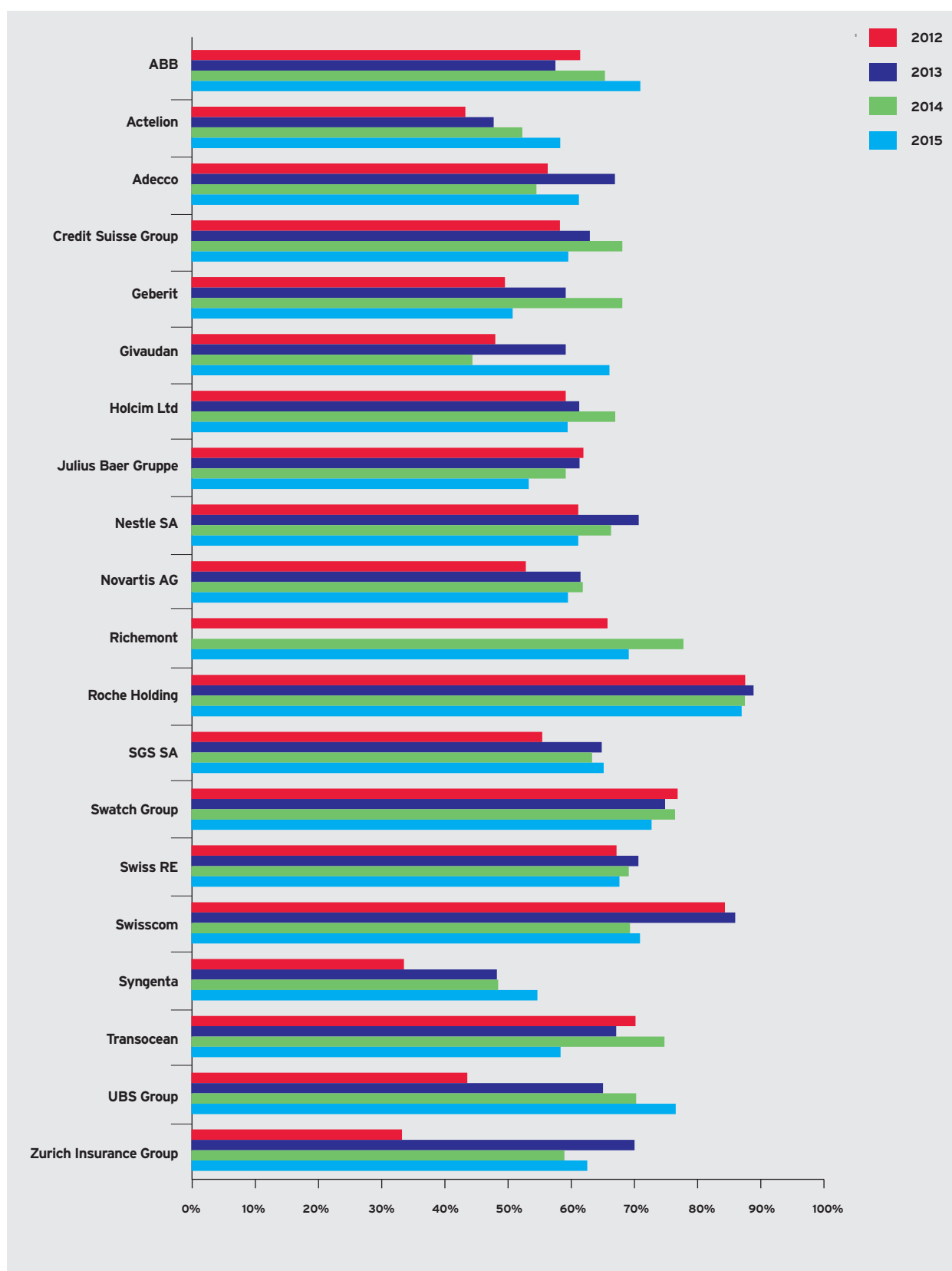
The average participation level for the SMI increased by 6.2 percentage points from 58.0% in 2014 to 64.2% in 2015.

**Graph 1: Shareholder attendance levels of the SMI between 2011 and 2015**



<sup>1</sup> The SMI is Switzerland's most important stock index and comprises the 20 largest equities in the SPI (a selection of companies which includes all Swiss companies listed on the SIX Swiss Exchange). The SMI represents about 85% of the total capitalisation of the Swiss equity market. See here: [http://www.six-swiss-exchange.com/indices/data\\_centre/shares/smi\\_en.html](http://www.six-swiss-exchange.com/indices/data_centre/shares/smi_en.html)

Graph 2: Shareholder attendance levels at the 20 SMI companies surveyed since 2012



## 1.2 Rejected resolutions

### SMI

Among SMI companies, no management-proposed resolutions were rejected by shareholders during the 2015 proxy season. In comparison, in 2014 two resolutions did not meet the required shareholder approval to be ratified.

### SMI (MID)

#### Sika

Among SMI (MID)<sup>2</sup> companies, Sika suffered a defeat of several management-proposed resolutions at their April 2015 AGM<sup>3</sup>. The AGM was the first shareholder meeting following the December 2014 announcement by founding Burkard-Schenker family of their intention to sell their entire ownership stake to Compagnie de Saint-Gobain<sup>4</sup>, which would in effect become the new controlling shareholder.

The articles of association provide for a voting rights ceiling of 5%, from which the Burkard-Schenker family had been exempted by the board.

Before the 2015 AGM took place, the board argued that the shares were now effectively under the control of St. Gobain and therefore the exemption would no longer be applicable.

Following the board decision to limit the voting rights of the Burkard-Schenker family (Schenker-Winkler Holding AG) to 5% on certain key resolutions, Sika was able to defeat a board takeover and won shareholder support to foil a sale of the majority stake to St. Gobain<sup>5</sup>.

The limitation of voting rights enabled Sika to secure the re-election of the incumbent board members and to defeat the nominee of the Burkard-Schenker family, Max Roesle.

As the voting rights were not capped for all resolutions, the discharge of six members of the ten member supervisory board failed. In addition, the advisory vote on the remuneration report and the binding vote on the board of directors' fees did not receive the required majority to pass.

The shareholder meeting received shareholder and media attention in connection with a potential takeover and dispute over controversial anti-takeover devices, such as dual-class shares with unequal voting rights. In the spotlight were also the specific "opting out" clause found in the articles of association of Sika, waiving the legal requirement to make a mandatory takeover once a holding threshold of 1/3 of the share issued is reached.

In advance of the subsequent EGM in July 2015, the voting rights of the Burkard-Schenker family continued to be limited to 5% and the proposal to remove three incumbent directors, alongside the election of the family's nominee Max Roesle as chairman, were defeated.

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<sup>2</sup> The SMI (MID) comprises the 30 largest mid-cap stocks in the Swiss equity market that are not included in the blue chip SMI index. See here: [http://www.six-swiss-exchange.com/indices/data\\_centre/shares/smi\\_mid\\_en.html](http://www.six-swiss-exchange.com/indices/data_centre/shares/smi_mid_en.html)

<sup>3</sup> [http://www.sika.com/content/corp/main/en/group/investors/generalversammlung-2015/dokumente/\\_jcr\\_content/parRight/download/file.res/150414-Protokoll-47-ordentliche-GV-signed.pdf](http://www.sika.com/content/corp/main/en/group/investors/generalversammlung-2015/dokumente/_jcr_content/parRight/download/file.res/150414-Protokoll-47-ordentliche-GV-signed.pdf)

<sup>4</sup> [https://www.saint-gobain.com/sites/sq\\_master/files/cp\\_dec8\\_2014\\_va.pdf](https://www.saint-gobain.com/sites/sq_master/files/cp_dec8_2014_va.pdf)

<sup>5</sup> <http://www.reuters.com/article/2015/04/14/us-sika-m-a-cie-saint-gobain-idUSKBN0N51QE20150414>

### 1.3 Contested resolutions

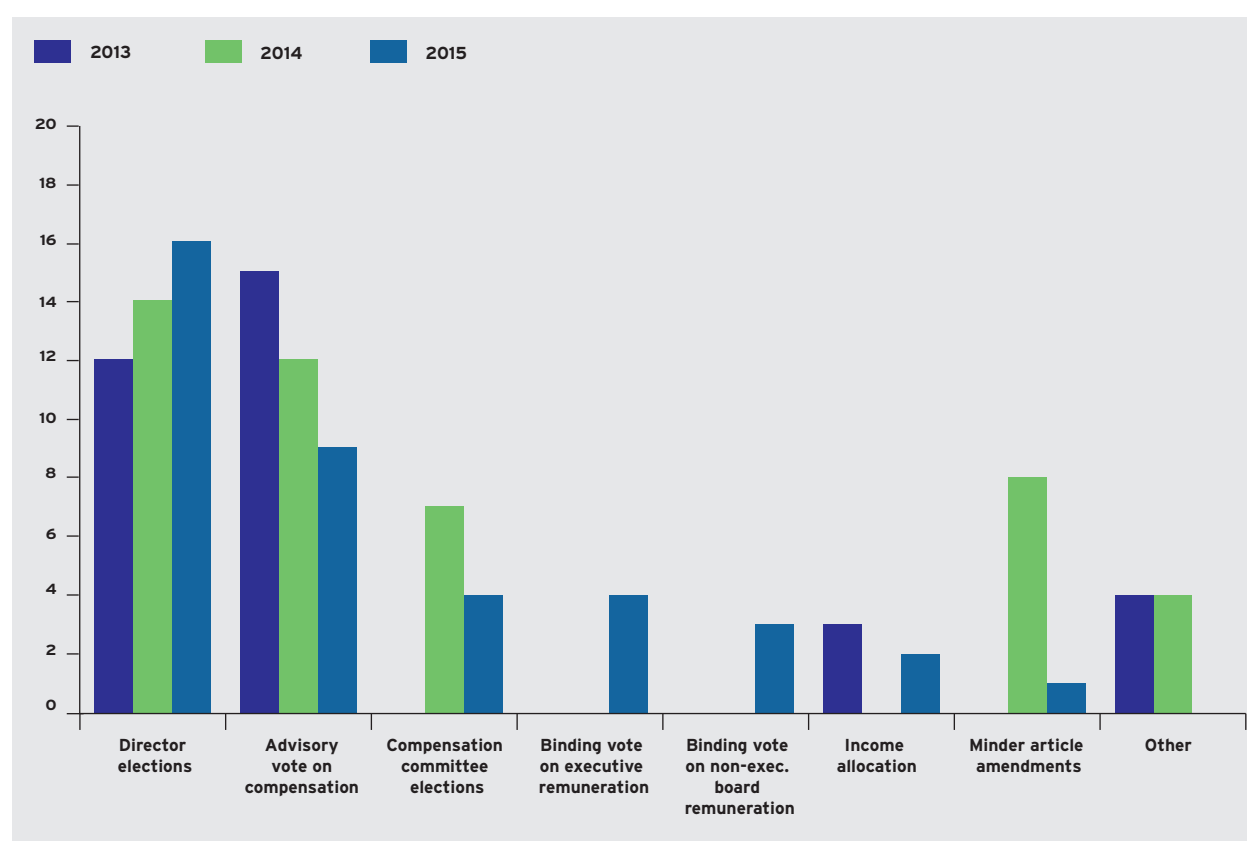
The number of SMI companies who saw at least one resolution receive more than 10% shareholder opposition, dropped from 16 in 2014 to 11 in 2015. The total number of resolutions that received over 10% opposition amounted to 39 in 2015, compared to 45 in 2014.

It should be noted that all vote results in this section exclude Compagnie Financière Richemont SA<sup>6</sup> and Swatch Group SA<sup>7</sup>, which only confirm that all their resolutions were approved by shareholders but do not provide detailed voting results in the minutes available on their website, as other Swiss companies do.

The most commonly contested resolutions were director elections with 16 resolutions receiving more than 10% against votes. The second most commonly contested resolutions were relating to the approval of the remuneration report for the past financial year. These were followed by shareholder approval of the maximum remuneration to be paid to the board of directors, and compensation committee elections.

The graph below summarises the main categories of resolutions that received more than 10% opposition from shareholders.

**Graph 3: Main resolutions which received more than 10% against votes at 20 SMI AGMs surveyed (broken down by resolution type)**



<sup>6</sup> [https://www.richemont.com/images/investor\\_relations/agm/2014/com\\_%20fin\\_richemont\\_sa\\_minutes\\_of\\_agm\\_held\\_17092014.pdf](https://www.richemont.com/images/investor_relations/agm/2014/com_%20fin_richemont_sa_minutes_of_agm_held_17092014.pdf)

<sup>7</sup> [http://www.swatchgroup.com/en/content/download/5342/210781/file/2015\\_05\\_28\\_swatchgroup\\_zusammenfassung\\_beschluesse\\_der\\_generalversammlung\\_de.pdf](http://www.swatchgroup.com/en/content/download/5342/210781/file/2015_05_28_swatchgroup_zusammenfassung_beschluesse_der_generalversammlung_de.pdf)

### 1.3.1 Director elections

As required under the “Minder” Ordinance<sup>8</sup>, Swiss companies introduced annual director elections in 2014, which led to an increased number of AGM resolutions. Previously, members of the supervisory board were usually elected for multi-year terms.

As in 2014, it appears that the main reasons for investors to vote against the election of directors were related to the overall independence of the board and the number of external positions held by individual board members.

The challenge Swiss issuers continue to face is that neither the Swiss Code of Best Practice for Corporate Governance nor Swiss law define when board members can no longer be considered independent based on the number of years they have been serving on a board. It has however become common practice amongst institutional investors to draw a line at 12 years of board membership for a board member to no longer be considered independent. As a consequence, a number of investors voted against board members they did not deem independent.

Further challenges arose from the maximum number of board seats allowed by the articles of several Swiss companies vs. the guidelines of a number of international investors. One of the requirements of the “Minder” Ordinance is that the articles of association must limit the external positions that a director may hold, which in a number of cases are higher than the thresholds allowed by some institutional investors.

The companies with the highest level of opposition on director elections among our sample were:

- SGS SA (Gerard Lamarche - 68.10%, August von Finck- 69.35%, Paul Desmarais - 71.39% & Ian Gallienne - 72.07% of votes in favour)
- Swiss RE (Raymond Ch'ien - 70.10% of votes in favour)

### 1.3.2 Advisory vote on compensation

Even though a binding vote on remuneration was introduced under the “Minder” Ordinance, the majority of Swiss issuers continue to voluntarily offer shareholders an advisory vote on the remuneration report. This practice is in line with the Swiss Code of Best Practice for Corporate Governance<sup>9</sup>.

This practice allows shareholders to express their satisfaction or dissatisfaction retrospectively about the payments made to executives and non-executives and the disclosure provided in the remuneration report of the past financial year (see also section 1.3.5).

Of the 20 SMI companies, 18 companies submitted a vote on their remuneration report during the 2015 proxy season. The only exceptions were Roche and Swatch, which did not put their remuneration report up for an advisory shareholder vote in connection with their 2015 AGM.

Out of the 18 SMI companies who held an advisory shareholder vote on the remuneration report, 9 received opposition in excess of 10%.

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<sup>8</sup> Verordnung gegen übermässige Vergütungen bei börsenkotierten Aktiengesellschaften (Ordinance against excessive compensation with respect to listed corporations): <http://www.admin.ch/opc/de/classified-compilation/20132519/index.html>.

<sup>9</sup> [http://www.economiesuisse.ch/en/Documents/swisscode\\_e\\_web.pdf](http://www.economiesuisse.ch/en/Documents/swisscode_e_web.pdf)

The companies with the lowest level of support on the remuneration report were:

- Credit Suisse (69.00% of votes in favour)
- Holcim (78.80% of votes in favour)
- ABB Ltd. (86.60% of votes in favour)
- Zurich Insurance Group (86.90% of votes in favour)
- Nestle (87.40% of votes in favour)

### 1.3.3 Amendments to the articles of association

Due to the implementation timeframe of the “Minder” Ordinance, which allowed the required article changes to be ratified over a two-year period, 12 issuers in the SMI proposed the Minder-related article amendments for a shareholder vote in 2014. The remaining 8 companies did so in 2015.

Out of the 8 companies in the SMI that submitted their article changes at their 2015 AGM, only one company received less than 95% support: SGS SA, where 72.27% of the shareholders supported the changes. In comparison, out of the 12 companies proposing Minder-related article amendments in 2014, 8 received more than 10% opposition.

It appears likely that in 2015 the issuers took on some of the concerns raised by investors and proxy advisors in 2014. The main concerns related to the possibility of granting loans to non-executives, providing pension payments to non-executives and allowing certain flexibility in terms of variable compensation or severance payments being paid to executives under the new articles. Shareholders had also criticised companies for allowing non-executives too many external directorships in their articles.

### 1.3.4 Compensation committee elections

One of the requirements imposed by the “Minder” Ordinance is the annual election of the members of the compensation committee.

Until 2014, shareholders were only able to vote on the election of directors but not their membership on a board committee. Since the implementation of the “Minder” Ordinance, shareholders have the opportunity to vote on the election of directors to serve on the compensation committee.

As this represents a separate voting item since 2014, investors are able to support the election of a candidate to the Board but oppose their election to the compensation committee.

The companies with the highest level of opposition on compensation committee member elections in the SMI were:

- SGS SA (August von Finck - 66.99% and Ian Gallienne - 70.68% of votes in favour)
- Transocean (Vincent J. Intrieri - 88.50% and Tan Ek Kia - 88.80% of votes in favour)

### 1.3.5 Binding vote on compensation

Under the provisions of the “Minder” Ordinance, the general meeting of shareholders has to vote on an annual basis on the compensation of the board of directors, of the executive management, and of the advisory board.

The articles of association must define the details of the vote and the steps to take in case the proposals are rejected. The votes have a binding effect and advisory votes do not fulfil the requirements of the ordinance, which came into effect starting with the 2015 proxy season. The ordinance allows companies to implement either prospective or retrospective binding votes on the quantum of fixed and variable remuneration, while votes on the remuneration report or policy are not required.

In order to comply with the ordinance, most SMI companies opted for a forward looking binding vote on an overall budget covering both, fixed and variable executive remuneration, and a forward looking binding vote on a budget for non-executive fees. Many companies consider this to be the least risky option as a failed binding retrospective vote may involve a legal obligation to claw back remuneration to an extent that is not practicable.

However, as noted in section 1.3.2 above, in order to complement the binding votes required by the ordinance, 18 out of 20 SMI companies have continued to propose a voluntary advisory vote on their remuneration report. This allows shareholders to express a backward-looking view on the way companies have used the budget and the level of disclosure provided on their remuneration decisions.

The companies with the lowest level of support on the binding vote on non-executive board compensation in the SMI were:

- Geberit (67.40% of votes in favour)
- Swiss RE (87.50% of votes in favour)
- Transocean (88.00% of votes in favour)
- Credit Suisse (88.70% of votes in favour)

The companies with the lowest level of support on the binding vote on executive compensation in the SMI were:

- Holcim (81.50% of votes in favour)
- Transocean (82.40% of votes in favour)
- Zurich Insurance Group (89.90% of votes in favour)

## 2. PROXY ADVISORS

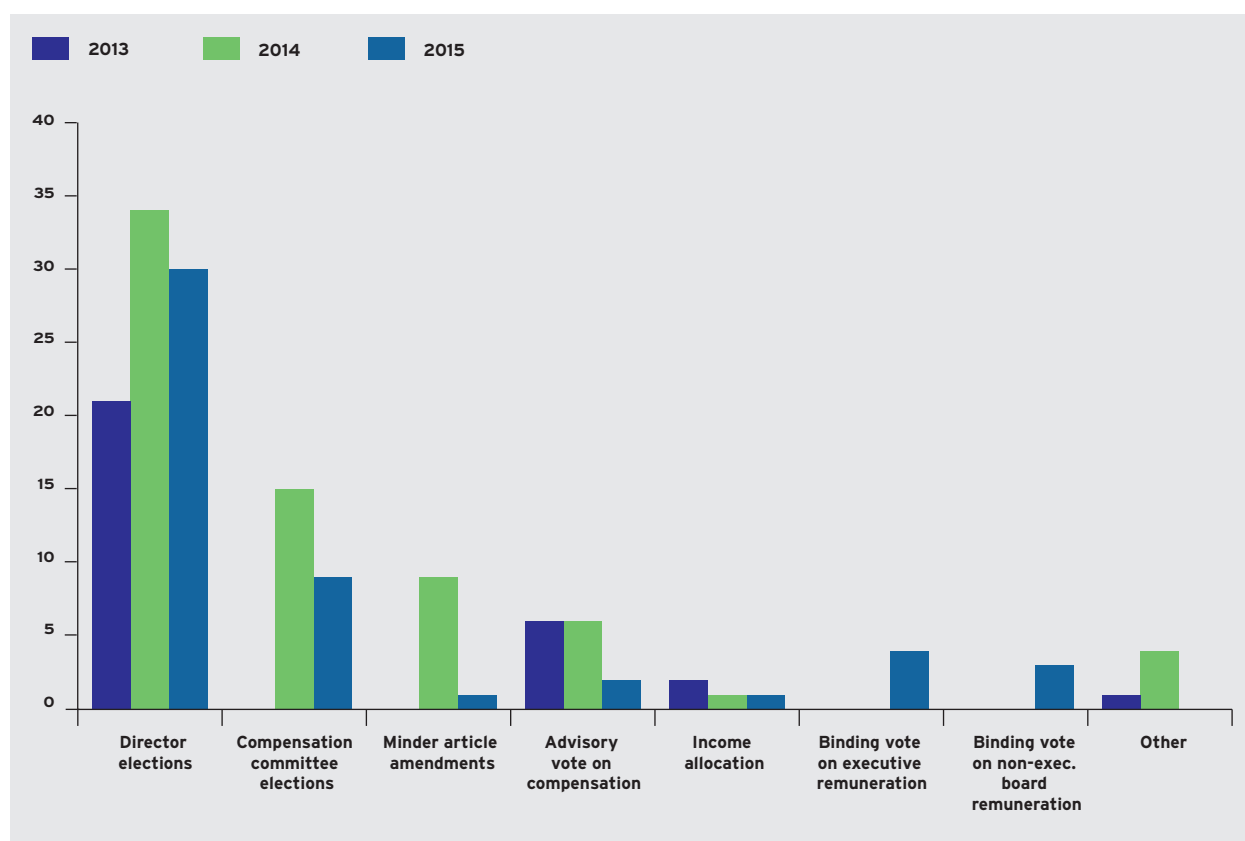
Many institutional investors rely on proxy advisory firms, for meeting agenda analysis and vote recommendations to guide their voting decisions. A negative recommendation from a proxy advisor can have an adverse impact on the vote outcome of a given resolution. In Switzerland the most influential proxy advisors are: Institutional Shareholder Services (ISS), Glass Lewis and Ethos.

### 2.1 Institutional Shareholder Services (ISS)

Institutional Shareholder Services (ISS)<sup>10</sup> is a leading provider of corporate governance solutions for asset owners, hedge funds, and asset service providers. ISS has over 1,600 clients, and more than 800 employees spread across 15 offices in 10 countries and covers approximately 38,000 companies in 115 countries. They were acquired by Vestar Capital Partners in March 2014. In Europe they have offices in London, Paris and Brussels.

During the 2015 proxy season, 9 companies out of the SMI received at least one against recommendation from ISS. The graph below shows the number of resolutions which received against recommendations by ISS in 2013, 2014 & 2015 (grouped by resolution type).

**Graph 4: Overview of the number of negative recommendations by ISS at SMI AGMs over the past three years**



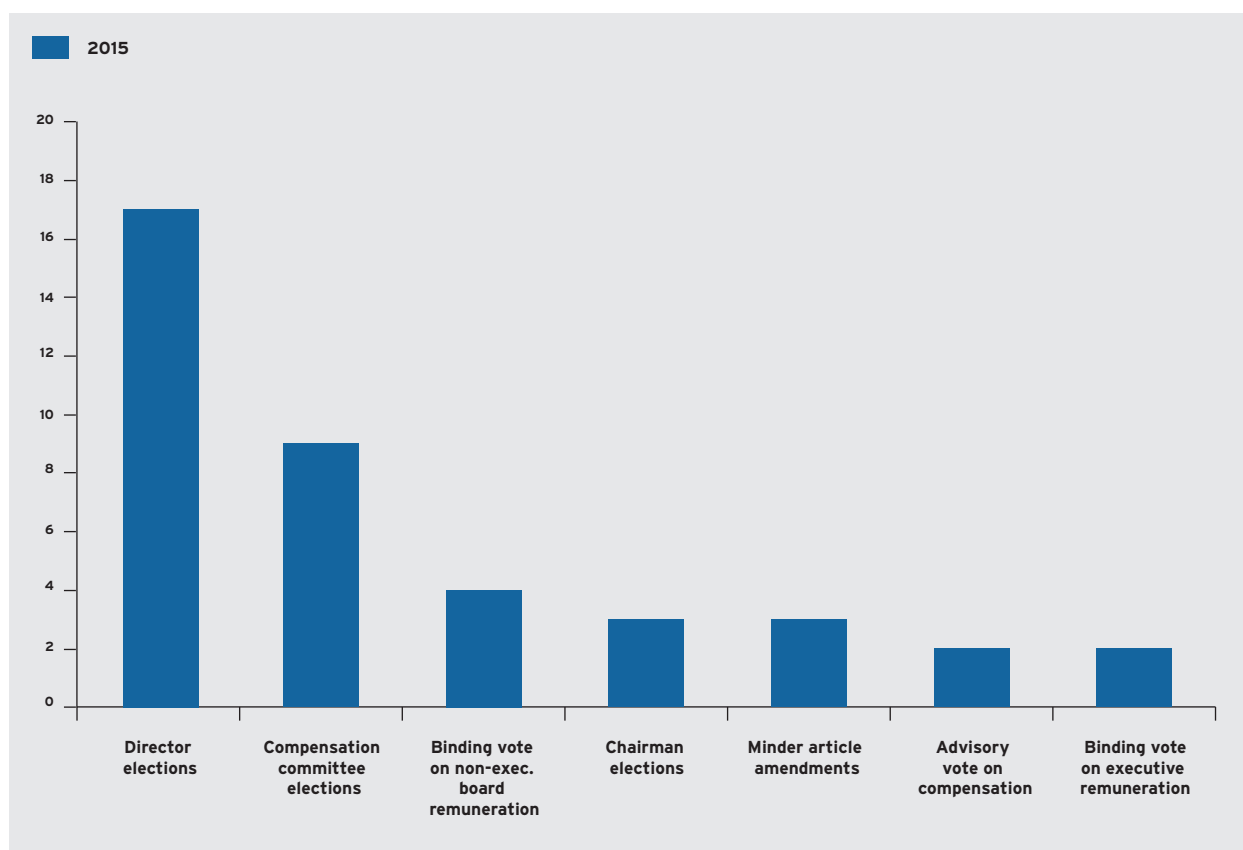
<sup>10</sup> <http://www.issgovernance.com/about/about-iss/>

## 2.2 Glass Lewis

Glass Lewis<sup>11</sup> is a leading provider of governance services that support engagement among institutional investors and corporations through its research, proxy vote management and technology platforms. Glass Lewis has over 1,200 clients, and more than 360 employees. They cover more than 20,000 meetings in 100 countries. They are owned by the Ontario Teachers' Pension Plan Board and the Alberta Investment Management Corporation. In Europe they have offices in Limerick, Ireland, and - with the acquisition of IVOX in June 2015 - in Karlsruhe, Germany.

During the 2015 proxy season, 10 companies out of the SMI received at least one against recommendation from Glass Lewis.

**Graph 5: Overview of the number of negative recommendations by Ethos at SMI AGMs in 2015**



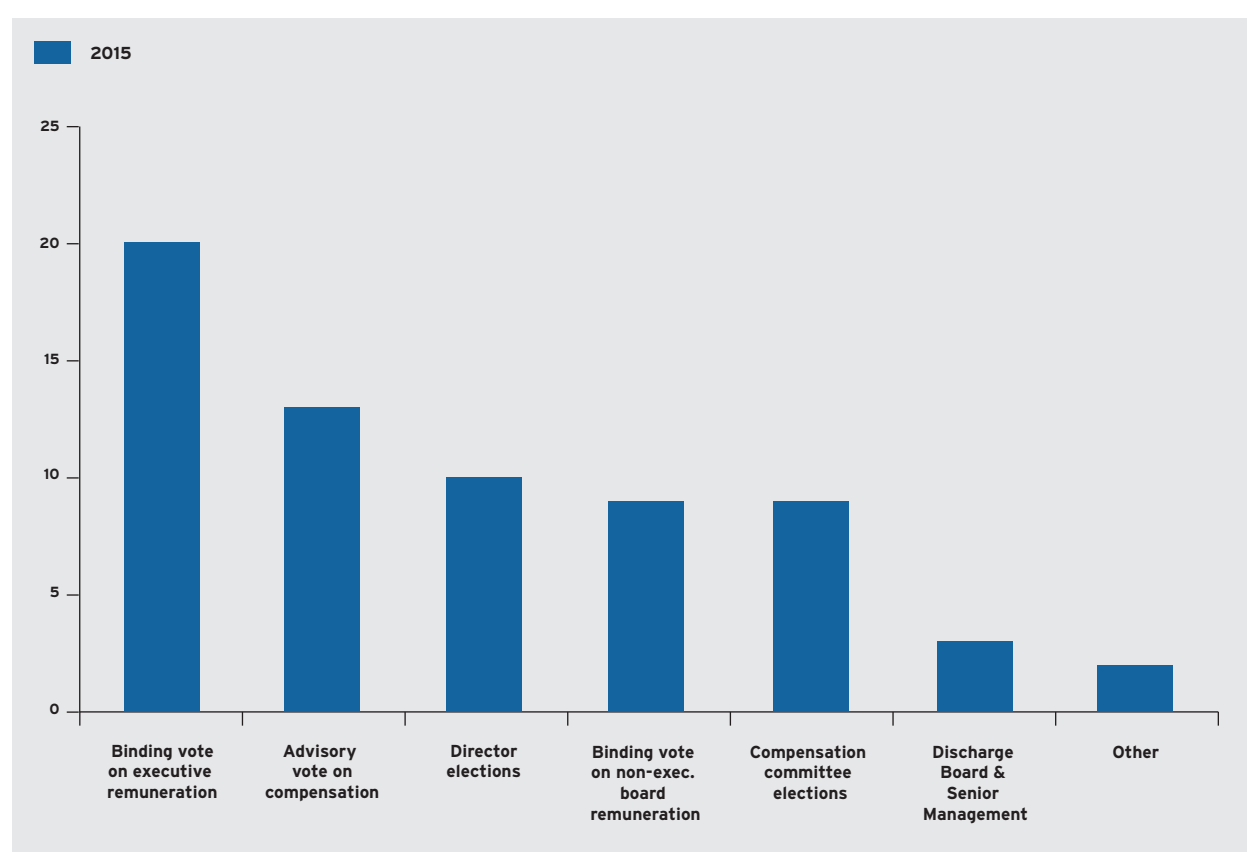
<sup>11</sup> <http://www.glasslewis.com/about-glass-lewis/>

## 2.3 Ethos

Ethos<sup>12</sup>, the Swiss Foundation for Sustainable Development was founded in 1997. It is composed of 219 Swiss pension funds and other tax-exempt institutions and aims at promoting socially responsible investment (SRI). Ethos offers a wide range of SRI-funds, provides analyses of general meeting agendas including voting recommendations, a shareholder engagement programme as well as sustainability and corporate governance ratings and analyses of listed companies. All activities of Ethos Services are based on the concept of sustainable development and the Charter of the Ethos Foundation.

During the 2015 proxy season, 18 companies out of the SMI received at least one against recommendation from Ethos.

**Graph 6: Overview of the number of negative recommendations by Ethos at SMI AGMs in 2015**



<sup>12</sup> <http://www.ethosfund.ch/e/ethos-foundation/ethos-foundation.asp>

### 3. CORPORATE GOVERNANCE DEVELOPMENTS

#### 3.1 Revision of Swiss company law

On 28 November 2014, the Swiss Federal Council presented draft legislation<sup>13</sup> relating to a comprehensive reform of Swiss corporate law. This was followed by a consultation period which ended on 15 March 2015. The draft aims to change a number of Swiss laws, including the Swiss "Obligationsrecht", which largely relates to shareholder rights. The proposed legislation "specifies more clearly defined responsibilities for the supervisory and executive board in relation to compensation matters. It also includes guidance on golden hellos and non-compete payments. The aim is to differentiate between severance and non-compete payments which are both prohibited under the 'Minder' Ordinance."

According to Homburger<sup>14</sup>, the draft legislation largely reflects the "Minder" Ordinance as currently in force, but also proposes certain deviations that are stricter than the ordinance. Companies shall for example be required to set a maximum ratio of fixed compensation to total compensation in their articles. Also, the compensation of members of executive management must be disclosed individually, rather than on an aggregate basis. Finally, "the prospective approval of variable compensation (budget votes) is to be prohibited and a binding retrospective vote required."

The proposals by the Swiss Parliament were welcomed by Ethos<sup>15</sup> which states that they "especially welcome the following points in the preliminary draft of the revision of Swiss company law:

- the provisions proposed in the framework of the Minder initiative, in particular that the voting modalities foresee that variable remunerations may not be voted on prospectively.
- the various improvements to the rules of Corporate Governance, especially the lowering of the requirements for filing restitution claims, the lowering of the threshold entitling shareholders to submit a resolution or to call a general meeting as well as the introduction of an additional dividend for shareholders voting their shares at the general meeting."

The final legislation is expected to become effective later this year.

#### 3.2 Corporate Governance Code

In September 2014, Economiesuisse (the Swiss Business Federation) published a revised version of the Swiss Code of Best Practice for Corporate Governance<sup>16</sup>. The revised version of the Code<sup>17</sup> "takes into account the changes that have resulted from Article 95 (3) of the Federal Constitution. It emphasises in particular the concept of sustainable corporate success as the lodestar of sensible 'corporate social responsibility'. It also prescribes specific modifications to the composition of the Board of Directors (including representation of women) and to risk management (incl. compliance). [...] Each company should retain the option of putting its own ideas on structuring and organisation into practice. However, if their corporate governance practices deviate from the recommendations of the 'Swiss Code', they now have to provide a suitable explanation (principle of 'comply or explain')."

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<sup>13</sup> <https://www.news.admin.ch/message/index.html?lang=de&msg-id=55451>

<sup>14</sup> <http://whoswholegal.com/news/features/article/32338/corporate-law-reform-switzerland/>

<sup>15</sup> <http://www.ethosfund.ch/e/news-publications/news.asp?code=312>

<sup>16</sup> German version: [http://www.economiesuisse.ch/de/PDF%20Download%20Files/swisscode\\_d\\_20140926.pdf](http://www.economiesuisse.ch/de/PDF%20Download%20Files/swisscode_d_20140926.pdf); French version: [http://www.economiesuisse.ch/fr/PDF%20Download%20Files/swisscode\\_f\\_20140926.pdf](http://www.economiesuisse.ch/fr/PDF%20Download%20Files/swisscode_f_20140926.pdf); and English version: [http://www.economiesuisse.ch/en/Documents/swisscode\\_e\\_web.pdf](http://www.economiesuisse.ch/en/Documents/swisscode_e_web.pdf).

<sup>17</sup> [http://www.economiesuisse.ch/de/PDF%20Download%20Files/MM\\_SwissCode\\_DE\\_20140929.pdf](http://www.economiesuisse.ch/de/PDF%20Download%20Files/MM_SwissCode_DE_20140929.pdf)



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