Monthly Roundup

Georgeson

August 2017

Dear All,

Please find below a rundown of recent corporate governance news and developments that have taken place around the world:

Shareholder Activism

› Ethical Boardroom has published an article by Cas Sydorowitz, CEO at Georgeson Corporate Advisory, entitled **Successful activism: what does it mean?**: https://ethicalboardroom.com/ethical-boardroom-summer-2017/. "Understanding how activists get paid will enhance corporates' sensitivity to their shareholders and their ability to respond to a campaign."

› Bloomberg reports that **Akzo, Elliott Call Truce as New CEO Wins More Time for Split**: https://www.bloomberg.com/news/articles/2017-08-16/akzo-elliott-call-a-truce-as-activist-backs-break-up-plan. "Akzo Nobel NV and activist investor Elliott Management agreed to end their legal skirmishes that had dragged the two parties into acrimonious confrontations, giving new Chief Executive Officer Thierry Vanlancker some breathing space to proceed with a planned split of the Dutch paint-and-chemicals maker."

› The Economist reports that **Investor activism is surging in continental Europe**: https://www.economist.com/news/business/21727086-third-point-corvex-and-elliott-are-just-beginning-investor-activism-surging. "Leave it to the Americans to besiege European companies in August, when the entire continent is on holiday. […] Such tussles used to be relatively rare in Europe. But shareholder activism is on the rise, with restive investors demanding corporate overhauls. Armand Grumberg, a mergers lawyer in Paris, last year counted 70 such campaigns in continental Europe. He expects this year to be even livelier."

› The Financial Times reports that **Activist Corvex looks to squeeze value from Danone**: https://www.ft.com/content/191721c0-81b5-11e7-a4ce-15b2513cb3ff. "Like many of its peers the French yoghurt maker is struggling with slowing growth."

› Bloomberg reports that **Refresco Investor Wyser-Pratte to Vote Against Cott Acquisition**: http://bloombergtv.ca/2017-08-25/news/refresco-investor-wyser-pratte-to-vote-against-cott-acquisition/. "An activist shareholder in Refresco Group NV urged shareholders to vote against the soft-drink bottler's planned $1.25 billion acquisition of Cott Corp.'s soda business, putting pressure on the Dutch company to consider other options, including selling itself to the highest bidder. Investors should vote no at the shareholder meeting on Sept. 5., Wyser-Pratte Management Co. said in a statement on Friday."

› The World Economic Forum discusses **What is shareholder activism and how should businesses respond?**: https://www.weforum.org/agenda/2017/08/shareholder-activism-business-response-explainer/. "There were 758 shareholder requests against public companies in 2016. That's nearly double the number there were in 2013. How have these formerly niche campaigns gained such momentum? So-called shareholder activists, meanwhile, manage capital of more than $170 billion, compared with less than $3 billion in the year 2000. But how effective or precarious are such activist campaigns and what can firms do about them?"

- The Deal reports that **Finish Line Deploys Poison Pill to Keep U.K.'s Sports Direct Away**: http://pipeline.thedeal.com/article/14287821/index.dl. "Finish Line Inc. deployed a poison pill on Monday, Aug. 28, to fight off the U.K.'s largest sports retailer, Sports Direct International plc. Finish Line announced the adoption of a shareholder rights plan, called a poison pill – a strategy to make its stock unattractive to a potential buyer to prevent a hostile takeover. The move came after Sports Direct took a 7.9% stake, equal to 3.2 million shares, in Finish Line on Aug. 15, according to a U.S. Securities and Exchange Commission filing."

- Bloomberg reports that **Peltz, P&G Expect to Spend $60 Million on Record Proxy Fight**: https://www.bloomberg.com/news/articles/2017-08-02/peltz-and-p-g-expect-to-spend-60-million-on-record-proxy-fight. "The biggest proxy fight in history, pitting activist investor Nelson Peltz against Procter & Gamble Co., will also be one of the most expensive. The two sides expect to spend a combined $60 million on the contest for a board seat at the Cincinnati-based company, according to separate regulatory filings this week by P&G and Peltz's Trian Fund Management LP. Peltz estimated his firm will deploy $25 million to gain access to the consumer-products company's boardroom, while P&G said it budgeted an extra $35 million to keep him out."

- The Deal reports that **WPP's Sorrell Denounces Activists for Reduced Ad Spending**: http://pipeline.thedeal.com/article/14281602/index.dl. "WPP plc shares fell more than 10% on Wednesday, Aug. 23, and the firm's high-profile boss is blaming activist investors, saying their unyielding demands for corporate austerity are eating into companies' advertising budgets. According to WPP, these spending cuts are shortsighted and have 'resulted or will result in a further reduction in numbers of consumers or users, a serious warning sign'."

- Bloomberg reports that **Activist Investors Leave Company Boards More White, More Male**: https://www.bloomberg.com/news/articles/2017-08-24/activist-investors-leave-company-boards-more-white-more-male. "Shareholder activists say they shake up companies by bringing in new, better ideas. What they don't bring, it turns out, is women. Or people of color. Firms targeted by activists end up with more white men on their boards, often replacing women and minorities in the process, according to a study by proxy voting firm ISS. The researchers looked at 380 board seats spread across 93 companies in the Standard & Poor's 1500 Index targeted by activists between 2011 and 2015. A separate Bloomberg News analysis of the same period found that five of the biggest U.S. activist funds sought 174 board positions on Standard & Poor's 500 companies in the same period but nominated women only seven times." See here for the underlying report: https://irrcinstitute.org/reports/the-impact-of-shareholder-activism-on-board-refreshment-trends-at-sp-1500-firms/.

Europe…

- The Financial Times reports that **Brussels seeks tighter vetting of foreign takeovers**: https://www.ft.com/content/04fa752c-7dda-11e7-ab01-a13271d1ee9c. "Moves to strengthen EU screening process after rise in Chinese investment."

- The High-Level Expert Group on Sustainable Finance has published its **interim report on Financing a Sustainable European Economy**: https://ec.europa.eu/info/publications/170713-sustainable-finance-report_en. "This Interim Report of the HLEG identifies two imperatives for Europe's financial system. The first is to strengthen financial stability and asset pricing, by improving the assessment and management of long-term material risks and intangible factors of value creation, including those related to environmental, social and governance (ESG) issues. The second is to improve the contribution of the financial sector to sustainable and inclusive growth, notably by financing long-term needs such as innovation and infrastructure, and accelerating the shift to a low carbon and resource-efficient economy."

...and beyond

- Institutional Shareholder Services (ISS) **has launched its 2018 Annual Policy Survey**: https://www.issgovernance.com/iss-launches-2018-global-benchmark-policy-survey/. "Institutional investors, companies, corporate directors and other market constituents are invited to participate in the survey. This year, ISS's Annual Policy Survey is being undertaken in two parts, with an initial, high-level survey covering certain fundamental and high-profile topics including 'one-share, one vote,' pay ratio disclosures, the use of virtual meetings, and board gender diversity. **This part of the survey will close on August 31 at 5pm ET.** A follow-on and more expansive portion of the survey can be accessed at the end of the initial portion, allowing respondents to drill down into key issues by market and region as well as by topics such as responsible investment, takeover defences, and remuneration/compensation. **This part of the survey will remain open until Oct. 6, 2017, at 5pm ET.**" See here for a copy of the survey: https://www.issgovernance.com/file/policy/2018-iss-policy-survey.pdf.

UK

- The UK government has published their **Corporate governance reform green paper**: https://www.gov.uk/government/news/world-leading-package-of-corporate-governance-reforms-announced-to-increase-boardroom-accountability-and-enhance-trust-in-business. "For the first time listed companies will have to publish pay ratios between chief executives and their average UK worker under government reforms to boardroom accountability outlined today (29 August 2017). Business Secretary Greg Clark today set out how the government's package of corporate governance reforms will enhance the transparency of big business to shareholders, employees and the public. These will include the world's first public register of listed companies where a fifth of investors have objected to executive annual pay packages. This new scheme will be set up in the autumn and overseen by the Investment Association, a trade body that represents UK investment managers. […] The Business Secretary will seek to ensure employees' interests are better represented at board level of listed companies. He will ask the Financial Reporting Council (FRC), which sets high standards of governance through the UK Corporate Governance Code, to introduce a new requirement in the code to achieve this." See here for the full Green paper: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/584013/corporate-governance-reform-green-paper.pdf.

- The Investment Association reports that **Shareholders flex their muscles in 2017 AGM season to reduce FTSE pay**: https://www.theinvestmentassociation.org/media-centre/press-releases/2017/shareholders-flex-their-muscles-in-2017-agm-season-to-reduce-ftse-pay.html. "New analysis of the 2017 AGM season voting data by the Investment Association shows that, at a critical time for pay policy renewal, investors are effectively holding FTSE100 and FTSE250 companies and their individual directors to account on executive remuneration. Many FTSE100 companies who saw large shareholder votes against pay in 2016, have on the whole submitted more conservative pay policies in 2017 for their executive teams, which were more in line with shareholder expectations. These policies were up for their 3-year renewal this year and rebellions on all remuneration resolutions in the FTSE100 were down from 14 in 2016 to 9 in 2017. FTSE250 firms on the other hand saw dissent amongst shareholders double from 2016 levels, with 29 companies seeing votes with more than 20% dissent, up from 15 in 2016. Shareholders are also turning up the heat on individual director accountability at this year's AGMs, with votes cast against individual directors soaring 200%, from 7 directors in 2016 to 21 directors in 2017 seeing 20% or more votes against. The 2017 AGM season also saw a new trend of several FTSE350 companies withdrawing resolutions on executive pay packages ahead of shareholders voting, due to concerns over significant investor rebellion."

- The CIPD and the High Pay Centre have published a report entitled **Executive pay: Review of FTSE 100 executive pay packages**: http://highpaycentre.org/blog/reality-bites-average-ftse100-ceo-pay-package-down-17-on-previous-year. "An annual assessment of FTSE 100 CEO pay packages released today shows that rewards at the top have dropped by almost a fifth, but still remain extraordinarily high. The analysis, from the CIPD, the professional body for HR and people development, and the High Pay Centre, the independent think tank, shows that the average FTSE 100 CEO now receives an annual pay package of £4.5 million. This represents a 17% drop from £5.4 million in 2015. While this may represent a significant drop in CEO pay packages, it would still take the average UK full-time worker on a salary of £28,000 (median full-time earnings) 160 years to earn what an average FTSE 100 CEO is paid in just one year and 1,718 years to earn what Sir Martin Sorrell, CEO of WPP, received last year alone (£48.1 million)."

- The Telegraph reports that **AA chief fired for 'Clarkson moment' could lose nearly £100million in share options**: http://www.telegraph.co.uk/news/2017/08/02/aa-chief-fired-clarkson-moment-could-lose-valuable-multi-million/. "The former executive chairman of the Automobile Association who was sacked after a Jeremy Clarkson-style bust-up with a colleague faces losing share options worth nearly £100 million. Bob Mackenzie, 64, was in line for a massive payout if the company hit a series of annual targets. But, his dismissal for gross misconduct on Tuesday means the AA can now strip him of the 33 million performance related shares he was given when he floated the company on the stock exchange two years ago. Those shares could have been worth up to £95 million if the AA's stock market value reached set levels over the next few years."

Germany

- Bloomberg reports that **Ex-Deutsche Bank Executives Waive $45 Million in Outstanding Bonus Pay**: https://www.bloomberg.com/news/articles/2017-07-27/deutsche-bank-former-executives-waive-outstanding-bonus-pay. "Ten former and one incumbent executive board member of Deutsche Bank AG agreed to waive 38.4 million euros ($45 million) of bonus payments as part of a deal with the German lender related to fines it had to pay for past misconduct. The lender said it won't hold the management board members liable as part of the deal, which also includes them receiving 31.4 million euros in bonuses, according to a statement Thursday from the lender. There's insufficient evidence for actionable damage claims against the members, the bank said."

- Reuters reports that **German state conservatives take tougher line on VW oversight**: https://www.reuters.com/article/us-germany-election-lowersaxony-vw-idUSKBN1AO08Z. "The party expected to win control of the German state of Lower Saxony, which owns 20 percent of Volkswagen, will push for tougher board oversight of the scandal-plagued carmaker, its regional leader told Reuters on Tuesday. But Bernd Althusmann cautioned there would always be a conflict of interest between Lower Saxony's role as VW's second-biggest shareholder and its focus on preserving the jobs of more than 100,000 people employed by the carmaker in the region. Althusmann is the leading candidate for Chancellor Angela Merkel's conservative CDU party in an October state election it is favorite to win – a result which would make him state premier. His comments followed news at the weekend that the current Social Democrat (SPD) premier Stephan Weil, one of two Lower Saxony representatives on the VW supervisory board, allowed the company to censor a speech he gave in 2015 about the emissions-cheating scandal that had just erupted." Reuters also reports that **Germany's FDP says Lower Saxony should sell $9 billion VW stake**: https://uk.reuters.com/article/uk-volkswagen-emissions-lindner-idUKKBN1AP1UK.

- The Financial Times reports that **Asset managers ban investments in German carmakers**: https://www.ft.com/content/f187de00-841c-11e7-a4ce-15b2513cb3ff. "Three financial groups respond to investigation of alleged industry collusion."

- hkp/// group has published a memo entitled **Clawbacks and stricter rules on compensation in banks**: http://www.hkp.com/en/press/20170804-presseinformation_ivv.html. "The German Financial Supervisory Authority's (BaFin) new remuneration ordinance for financial institutions (Institutsvergütungsverordnung, InstitutsVergV) enters into force today. This ordinance implements the requirements set out by the European Banking Authority (EBA) – which have been in force since 2017 – into German law, including previously-discussed stricter requirements for compensation within financial institutions that fall under the German Banking Act (Kreditwesengesetz, KWG). These tighter regulations in particular affect the granting, payment and recovery (clawback) of variable compensation. However, under the 'principle of proportionality,' non-significant financial institutions remain exempt from the obligation to identify risk takers within their organization."

› WirtschaftsWoche has published a cover story entitled **Das Versagen der Aufsichtsräte ("The failure of supervisory boards")**: http://www.wiwo.de/inhalt-wirtschaftswoche-ausgabe-35-2017/20231428.html and http://www.wiwo.de/my/erfolg/management/aufsichtsraete-das-kontrollversagen/20233126.html. "Coddling and palling around instead of cautioning and supervising – at Air Berlin, Deutsche Börse, VW and Stada, the minders were not the managers' watchdogs, but their sympathizers. The bill will be footed by shareholders and employees."

Switzerland

› Ethos has published their **Ethos study on the 2017 annual general meetings: Increased Contestation**: https://www.ethosfund.ch/en/news/ethos-study-on-the-2017-annual-general-meetings-increased-contestation. "Increase in shareholder opposition in 2017: This is the conclusion of Ethos' annual study on the general meetings, executive remuneration and corporate governance of companies listed in Switzerland. Overall, 14% of the resolutions received less than 90% support from shareholders, compared to 12% last year. The shareholders were particularly critical when voting on the remuneration of the board and management. In parallel to the publication of its study, Ethos also communicates its expectations for the draft revision of company law which is currently being discussed in Parliament."

Norway

› The Financial Times reports that **Norway's sovereign fund reveals interventionist streak**: https://www.ft.com/content/3020e9d2-8737-11e7-bf50-e1c239b45787. "Oil-backed investor voted against management in 7 of its 10 largest equity holdings."

United States

› Bloomberg Businessweek reports that **With 'Zombie' Directors, It's the Board of the Living Dead**: https://www.bloomberg.com/news/articles/2017-08-10/with-zombie-directors-it-s-the-board-of-the-living-dead. "Nell Minow, an expert on corporate governance, calls them the zombie directors. They're board members who've failed to get a majority of shareholder votes in elections but continue to serve. From 2012 to 2016 there were a total of 225 instances where directors of public companies got less than half the votes cast, but only 44 directors, or 20 percent, left within the next election cycle, according to a Bloomberg analysis of data from ISS Corporate Solutions Inc. The directors who stayed included 30 who were snubbed by shareholders more than once."

› Reuters reports that **S&P 500 to exclude Snap after voting rights debate**: https://www.reuters.com/article/us-snap-s-p-idUSKBN1AH2RV. "The S&P 500 will start excluding companies that issue multiple classes of shares, managers of the index said on Monday, a move that effectively bars Snap Inc after its decision to offer stock with no voting rights. The decision takes effect starting Tuesday, according to a statement by the manager of the widely used benchmark, S&P Dow Jones Indices LLC. Snap did not immediately respond to a request for comment. Existing components of the S&P index with several share classes – such as Google parent Alphabet Inc and Berkshire Hathaway Inc – will not be affected."

› CalPERS has announced that **CalPERS Expands Engagement for Greater Diversity on Corporate Boards to More Than 500 U.S. Companies**: https://www.calpers.ca.gov/page/newsroom/calpers-news/2017/engagement-corporate-board-diversity. "The California Public Employees' Retirement System has sent letters to 504 companies in the Russell 3000 Index regarding diversity on their board of directors. The letters outline the growing evidence that board diversity has a positive economic impact on business performance. CalPERS requested that each company develop and disclose its corporate board diversity policy and implementation plan to address the lack of diversity. […] Over the coming months CalPERS will closely monitor the companies' progress on the matter and enter into confidential engagements when necessary. In instances where companies fail to respond appropriately, CalPERS will consider withholding votes from directors at future annual general meetings."

› Bloomberg reports that **More Investors Are Saying 'No' to Exorbitant Executive Pay Plans**: https://www.bloomberg.com/news/articles/2017-08-17/more-investors-are-saying-no-to-exorbitant-executive-pay-plans. "U.S. investors are showing a greater willingness to express their disapproval over executive compensation. Seven S&P 500 companies garnered less than 50 percent of the votes for their executive-pay plans in the most recent fiscal year, up from six in 2015 and four in 2014, according to data compiled by Bloomberg. Many of the largest institutional investors have publicly aired their views on corporate governance in recent years and taken firmer stances on compensation plans deemed to be excessive. BlackRock Inc., the world's biggest asset manager, publicly criticized drugmaker Mylan NV in June for failing to address investors' repeated complaints about executive compensation, sidestepping its usual practice of refraining from singling out companies for criticism."

Australia

› Reuters reports that **Commonwealth Bank scraps CEO bonus over money-laundering allegations**: https://www.reuters.com/article/us-australia-cba-idUSKBN1AO07H. "Commonwealth Bank of Australia on Tuesday scrapped its chief executive's bonus for damaging the bank's reputation amid allegations it broke money-laundering and counter-terrorism financing laws, but said he retained the board's confidence. […] The case is the largest of its kind in Australian corporate history, and sent Commonwealth Bank shares sliding for their biggest one-day decline in 18 months on Friday. CBA's board said on Tuesday it had cut short-term bonuses to zero for the chief executive, Ian Narev, and other top executives for the year to June 30, 2017."

New Zealand

› The New Zealand Herald reports about **What NZ's top executives are paid**: http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11898293. "Chief executives at New Zealand's biggest companies got a pay rise of 3.3 per cent last year - the lowest increase since 2011. The Business Herald's annual CEO pay survey reveals that chief executive pay for the 2016 financial year averaged $1,732,802, up 3.34 per cent from $1,676,757 the previous year. In the survey's 12-year history, the lowest CEO pay increase was recorded at just 0.4 per cent in 2011. The latest 3.3 per cent rise follows two years of double-digit increases – 12 per cent in the year to 2015 and 10 per cent in 2014 – and is more in line with the average worker's pay rise – though in dollar terms, it's still an extra $56,000."

Japan

› Bloomberg reports that **Hedge Fund Crusade Stymied as Japan Inc. Clings to Cross-Shares**: https://www.bloomberg.com/news/articles/2017-08-23/hedge-fund-crusade-stymied-as-japan-inc-clings-to-cross-shares. "The reluctance to sell is mirrored at many companies across Japan, as a push led by Abe fails to get them to unload such investments. Cross-shareholdings held by listed non-financial firms stood at 5.7 percent of the market's value last year, compared with 6.2 percent in 2002, according to Nomura Holdings Inc. The practice matters to asset managers because when they buy Japan's stocks, they have to unpick the web of cross-shareholdings to work out which companies they're actually investing in. "

› The Financial Times reports that **Tokyo Stock Exchange takes aim at Japan's corporate ghosts**: https://www.ft.com/content/80f62638-80e8-11e7-94e2-c5b903247afd. "The presence of former chief executives as special advisers is a persistent concern."

South Korea

› The Guardian reports that **Samsung heir sentenced to five years in jail after corruption conviction**: https://www.theguardian.com/world/2017/aug/25/samsung-heir-lee-jae-yong-found-guilty-of-corruption. "A bribery and cronyism scandal that has already toppled a South Korean president has claimed a major business scalp after a court sentenced Lee Jae-yong, the acting chairman of Samsung, to five years in prison for crimes including offering bribes and perjury. The billionaire, South Korea's third-richest man and heir to the sprawling Samsung empire, had been accused of making large donations to foundations run by a close friend and confidante of the deposed South Korean president, Park Geun-hye, in return for political favours. The court said Lee provided bribes anticipating support from Park, who was still president at the time, according to South Korea's Yonhap news agency."

Hong Kong

- Bloomberg reports that **Investors Wave Red Flags at Hong Kong Dual-Class Shares Plan**: https://www.bloomberg.com/news/articles/2017-08-22/investors-wave-red-flags-at-hong-kong-s-dual-class-shares-plan. "Hong Kong Exchanges & Clearing Ltd. is having trouble winning over money managers to its plans for dual-class shares in the world's fourth-largest stock market. The Council of Institutional Investors, Hong Kong Investment Funds Association and Asian Corporate Governance Association have all come out against HKEX's plans, as has Norges Bank Investment Management, the world's biggest sovereign wealth fund. The proposals would weaken corporate governance and encourage exchanges around the world to lower their standards, the three groups wrote in separate responses to a June concept paper that called for a new exchange allowing dual-class stocks. The comments suggest that HKEX's efforts to remain competitive for corporate listings may run into opposition from firms that invest trillions of dollars, whose buy and sell orders make markets. Keeping money managers happy while positioning the exchange to win the next hot initial public offering is shaping up to be one of Chief Executive Officer Charles Li's most difficult tasks."

India

- The Economic Times reports that **Performance-linked pay gets bigger for CEOs as companies go all out to lure the best**: http://economictimes.indiatimes.com/articleshow/59851944.cms. "Indian companies are getting more aggressive on performance-linked pay for CEOs than the local units of their global peers, not only holding the top executives more accountable for business performance, but also offering humungous wealth creation opportunities to those who deliver on promises. A talent crunch at the top is driving this shift away from the traditional structure where fixed components accounted for most of the pay, experts said. Companies are going all out to lure executives, who could lead their expanding businesses and steer them into the future, with great offers."

- Reuters reports that **Infosys CEO resigns after long-running feud with founders**: https://www.reuters.com/article/us-infosys-ceo-idUSKCN1AY0DH. "Vishal Sikka, the chief executive brought in to turn around India's Infosys three years ago, resigned on Friday, blaming a 'continuous drumbeat of distractions' and a long-running row with the founders over company strategy. Sikka's resignation spooked investors in India's second-biggest IT services company and sent its shares down nearly 10 percent, wiping $3.45 billion off its market value. The stock touched its lowest level since the start of Sikka's tenure. The tussle between Infosys and its founders began in February after founder and former chairman Narayana Murthy accused the company of corporate governance lapses. The Infosys board has denied the allegations repeatedly and on Friday blamed Sikka's resignation on Murthy's 'continuous assault', describing the billionaire's latest salvo questioning the integrity of the directors and management as the final nail in the coffin."

Kenya

- Business Daily Africa reports that **AG Githu rolls out tough new executive pay rules**: http://www.businessdailyafrica.com/news/AG-Githu-rolls-out-tough-new-executive-pay-rules/539546-4030976-j627ec/index.html. "Attorney-General Githu Muigai has published a new set of rules that will force companies listed on the Nairobi bourse to make public a breakdown of directors' pay in a fresh move meant to deepen transparency and strengthen corporate governance. The radical guidelines also provide that shareholders must vote to approve directors' pay, ushering in a pay-for-performance regime that may see directors of loss-making companies take a pay cut to match the dwindling fortunes of the firms they lead.

If you have any comments or questions please do not hesitate to contact me.

Kind regards,

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