

Georgeson's 2014 Proxy Season Review

Bridging the gap between
issuers and investors



UK



France



Netherlands



Germany



Switzerland

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It has been a busy AGM season, with new regulations and an increased commitment to better shareholder engagement resulting in an intense season extending well beyond the usual four months over the spring. The UK, France and Switzerland experienced the first year with more stringent remuneration-related regulations or recommendations, and we have seen and encouraged a significant increase in the prevalence of early engagements 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 issuers. 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 and Switzerland attaining quorums just below 60%, France and the Netherlands coming in at under 70%, and the UK reaching once more just above 70%. Other than in Germany and the Netherlands, where voting levels increased compared to 2013, the participation levels elsewhere seem to have levelled off.

Executive remuneration remains a lightning rod issue in many European markets, often followed by authorisations to issue shares as the next most hotly contested issue. Board independence and the proper functioning of the board has received greater attention recently 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 Sydorowicz

CEO, Corporate Advisory Europe
Georgeson



HIGHLIGHTS

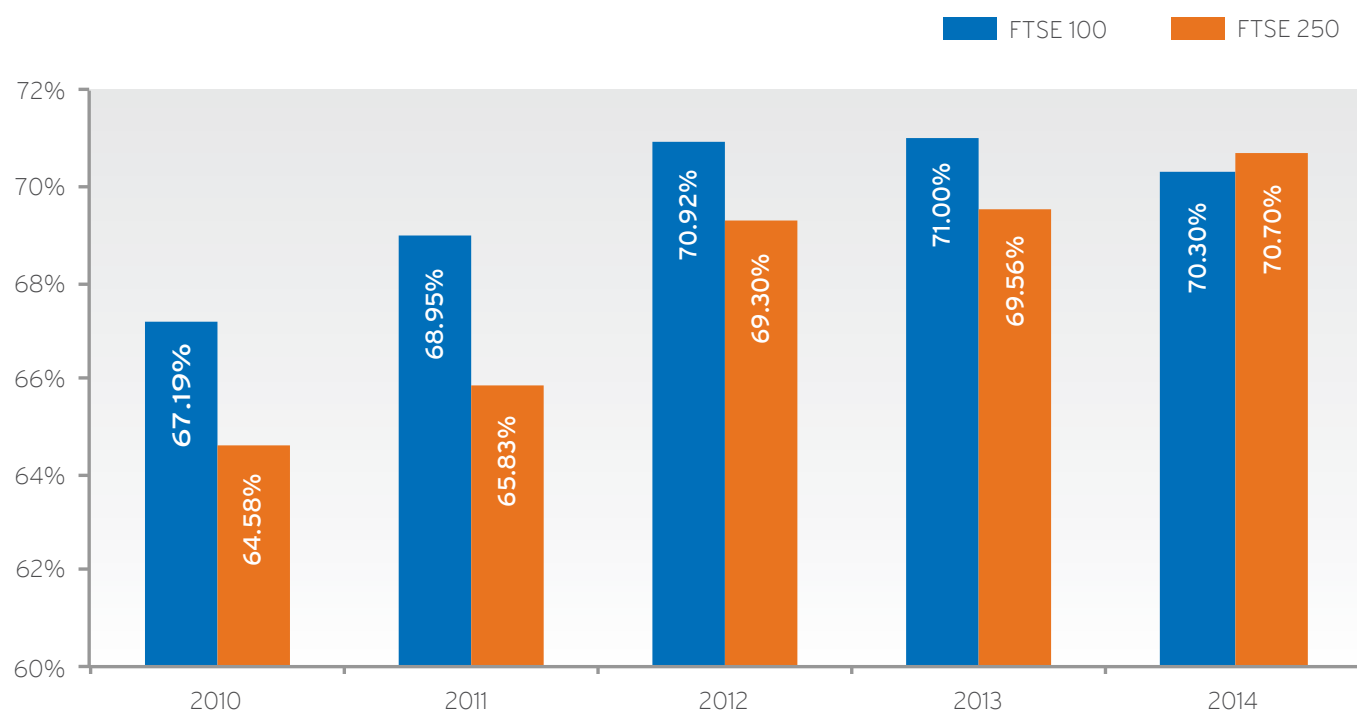
- The average quorum for FTSE 100 companies during the 2014 proxy season (up to 30 September) has been 70.30%. This is similar to the average 2013 quorum, which amounted to 71%, but also marks the first decrease in average quorum in the past five years.
- In the FTSE 100 two companies saw resolutions rejected by shareholders during the 2014 proxy season: Burberry Group and Easyjet.
- In the FTSE 100 sample, the most commonly contested resolutions were remuneration report and remuneration policy votes.
- In the FTSE 100 sample, the second most commonly contested resolutions were authorities to issue shares with and without pre-emptive rights.
- The companies among our sample which recorded the lowest level of support on director elections were EasyJet and AstraZeneca.
- During the 2014 proxy season, 23 companies, out of the 94 FTSE 100 companies surveyed, received at least one "Against" or "Abstain" recommendation from Institutional Shareholder Services Ltd (ISS).

1. VOTING IN THE UNITED KINGDOM

1.1 Quorum Overview

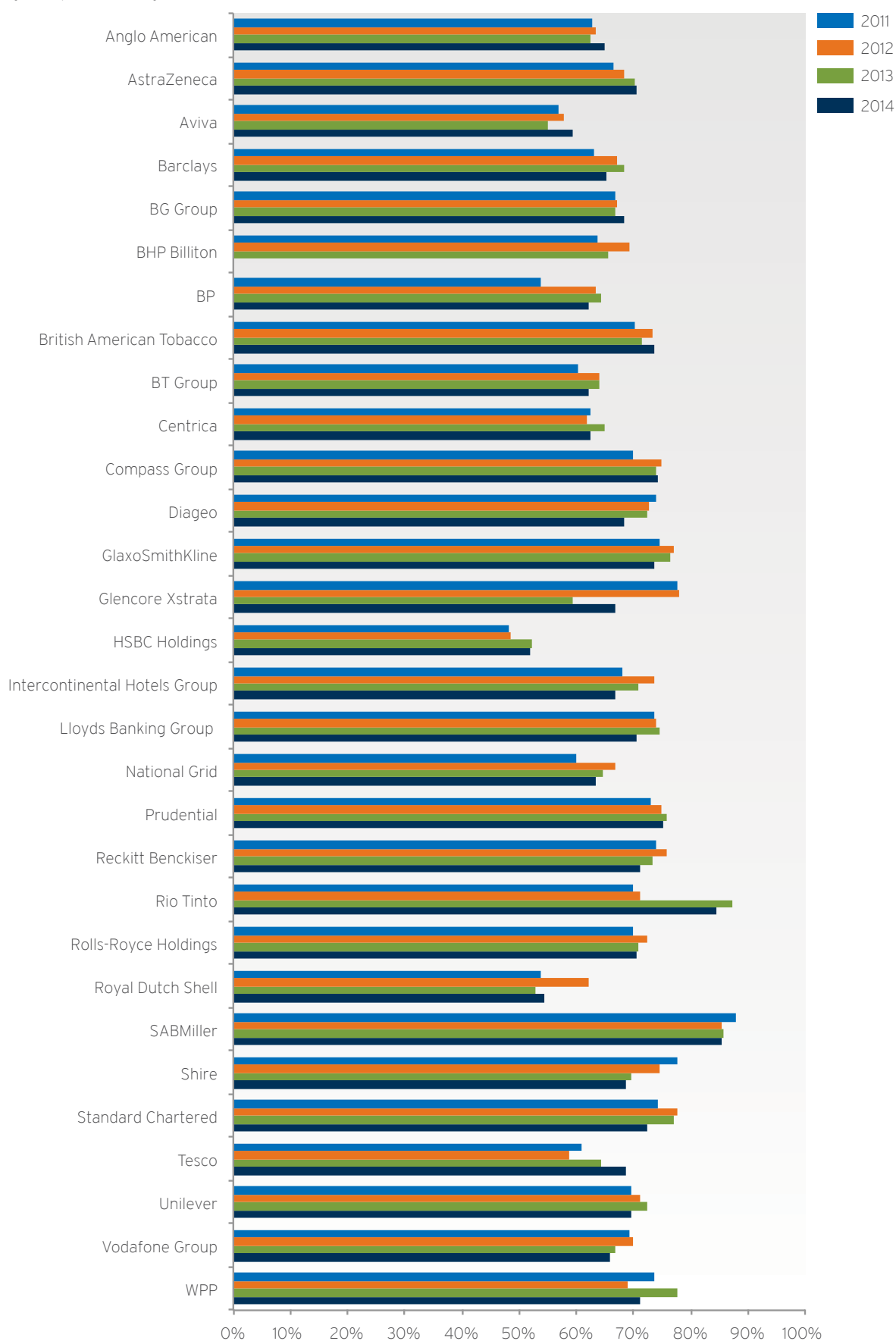
Georgeson has reviewed the quorum levels of FTSE 100 companies for a number of years. This year's review includes the 94 companies that are part of the index as of 30 September 2014, and which have held their 2014 AGM prior to 30 September 2014. The average quorum for FTSE 100 companies during the 2014 proxy season so far has been 70.30%. This is similar to the average 2013 quorum, which amounted to 71%, and the average 2012 quorum, which amounted to 70.92%.

Graph 1: Shareholder attendance levels comparison FTSE 100 and FTSE 250 between 2010 and 2014.



(Source for FTSE 250 quorum data 2010-2013: Manifest)

Graph 2: Shareholder attendance levels at the top 30 FTSE 100 companies by market capitalisation between 2011 and 2014 (displayed alphabetically)



1.2 Rejected resolutions

We have reviewed the meeting results for 94 FTSE 100 companies with AGMs held between January and September 2014. Within the sample, during the 2014 proxy season two companies saw resolutions rejected by shareholders (for a total of three resolutions). The companies who saw resolutions rejected were Burberry Group and EasyJet.

Burberry Group

Burberry Group is a global luxury brand¹ founded in 1856 which first listed on the London Stock Exchange in July 2002².

At their 2014 AGM³ the advisory vote on the Directors' Remuneration Report failed to achieve support from shareholders, with 52.68% of shareholders voting against the resolution. According to the NAPF⁴ the main issues for concern were "a generous pay package awarded to the new CEO Christopher Bailey despite a lack of previous [Executive Director] experience and included a one-off award worth nearly £15m." It should be noted that ISS had recommended an "Against" vote on this resolution.

EasyJet

EasyJet is a British airline carrier⁵ whose largest shareholder (holding 36.23%⁶ of the share capital), Sir Stelios Haji-Ioannou, has had a contentious relationship with the company's management⁷. This provides some context for the high levels of opposition recorded at their AGM.

At their 2014 AGM⁸ two special resolutions failed to achieve 75% support from shareholders. Resolution 20, which proposed an authority to issue shares without pre-emptive rights, and resolution 22, which proposed an authority to call EGMs on no less than 14 clear days' notice, were therefore rejected by shareholders. It should be noted that ISS had recommended in favour of both resolutions.

1.3 Contested resolutions

Among our sample of 94 FTSE 100 companies that held their AGM between January and September 2014, 61 companies saw at least one resolution receive more than 10% shareholder opposition. The total number of resolutions that received over 10% opposition amounted to 128 (including the rejected resolutions discussed in section 1.2).

The graphs opposite summarise the subjects of all resolutions that received more than 10% opposition from shareholders.

In our FTSE 100 sample, the most commonly contested resolutions were remuneration report and remuneration policy votes. 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 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.

1 http://www.burberryplc.com/about_burberry/group-overview

2 http://www.burberryplc.com/media_centre/press_releases/2002/2002-05-29

3 See here for the vote results: http://www.burberryplc.com/documents/results/2014/agm_2014_poll_results.pdf.

4 See pg 10 of the NAPF 2014 AGM Season Report: http://www.napf.co.uk/PolicyandResearch/DocumentLibrary/~media/Policy/Documents/0398_2014_NAPF_AGM_report_DOCUMENT.pdf.

5 <http://corporate.easyjet.com/about-easyjet.aspx>

6 See pg 89 of the 2013 Annual Report: <http://corporate.easyjet.com/~media/Files/E/Easyjet-Plc-V2/pdf/investors/result-center-investor/annual-report-2013.pdf>.

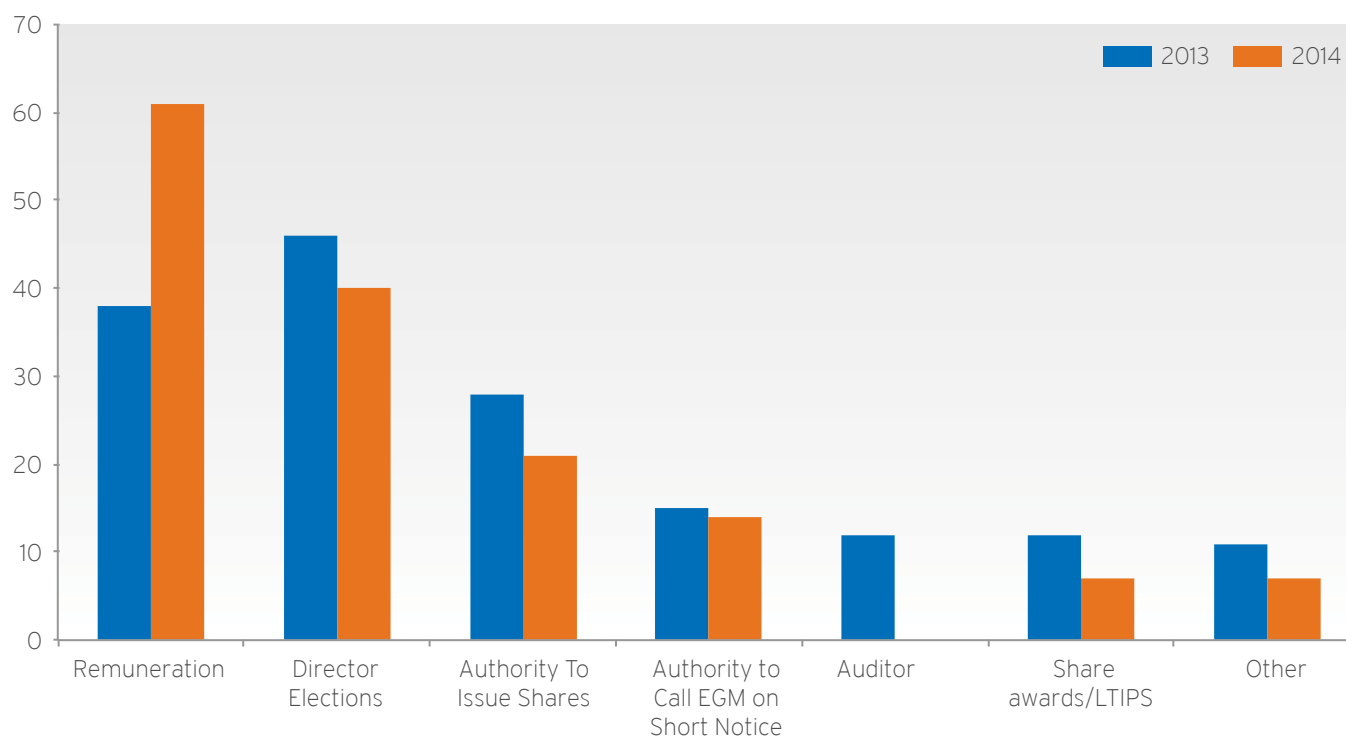
7 <http://www.ft.com/cms/s/0/3fe33742-9192-11e3-8fb3-00144feab7de.html#axzz3FY2N4rqp>

8 See here for the vote results: <http://easyjet-event.production.investis.com/~media/Files/E/Easyjet-Event/Attachments/result-of-AGM-2014.pdf>.

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



Graph 4: Resolutions which received more than 10% against votes in the FTSE 250 (broken down by resolution type)



1.3.1 Remuneration Policy and Remuneration Report

Since 2002⁹ 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 regulations¹⁰ 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 memorandum¹¹ 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.

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):

- EasyJet (55.5% in favour)
- Carnival (58.6% in favour)
- AstraZeneca (61.5% in favour)

The companies with the lowest level of support on the Remuneration Policy among our sample were:

- EasyJet (55% in favour)
- Standard Chartered (59.2% in favour)
- Carnival (61.9% in favour)

We note that ISS recommended in favour of the Remuneration Report and Remuneration Policy at EasyJet, but recommended against the other resolutions.

1.3.2 Director elections

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

- EasyJet (David Bennett – 55.8% in favour)
- EasyJet (Rigas Doganis – 55.9% in favour)
- AstraZeneca (Jean-Philippe Courtois – 57% in favour)

As noted above, the contentious relationship which EasyJet has had with its largest shareholder, Sir Stelios Haji-Ioannou, provides some context for the high levels of opposition recorded at their AGM. In the case of AstraZeneca, the low support for Jean-Philippe

⁹ The requirement was introduced in the UK by the Directors' Remuneration Report Regulations 2002 (SI 2002/1986) (see here: <http://www.legislation.gov.uk/uksgi/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>.

¹⁰ The Large and Medium-sized Companies and Groups (Accounts and Reports) (Amendment) Regulations 2013 (SI 2013/1981): <http://www.legislation.gov.uk/uksgi/2013/1981/contents/made>.

¹¹ http://www.legislation.gov.uk/uksgi/2013/1981/pdfs/uksiem_20131981_en.pdf

Courtois's re-election is likely to be related to his rate of attendance at board meetings, which was below 65%.

We note that ISS had recommended in favour of the candidates at EasyJet and against the re-election of Jean-Philippe Courtois at AstraZeneca.

1.3.3 Authorities to issue shares

Authorities to issue shares with pre-emptive rights¹² are proposed as ordinary resolutions (requiring a simple majority), while authorities to issue shares without pre-emptive rights¹³ are proposed as special resolutions (requiring 75% approval). Most UK-based investors and the larger proxy advisors refer to the Share Capital Management Guidelines¹⁴ to assess authorities with pre-emptive rights, and to the Pre-emption Group Principles¹⁵ to assess authorities without pre-emptive rights.

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

- EasyJet (with pre-emptive rights: 55.8% - passed; without pre-emptive rights: 55.9% - failed)
- Meggitt (with pre-emptive rights: 65.1% - passed)
- Mondi (with pre-emptive rights: 77.5% - passed; without pre-emptive rights: 79.2% - passed)
- Prudential (with pre-emptive rights: 77.9% - passed)
- WM Morrison Supermarkets (with pre-emptive rights: 73.7% - passed).

We note that ISS had recommended in favour of each one of these resolutions.

1.3.4 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' notice¹⁶. However, article 5.1 of the 2007 European Shareholder Rights Directive¹⁷ requires listed companies to call such general meetings on at least 21 clear days' notice. The Directive allows EU states 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 states¹⁸ 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).

The NAPF Corporate Governance Policy and Voting Guidelines 2014¹⁹ state: "E.2.2. Therefore, the flexibility afforded by the Shareholder Rights Directive to call a meeting at 14 days' notice should only be used in limited circumstances. The shorter notice period should not be used as a matter of routine for such meetings, but only where the flexibility is merited by the business of the meeting and is thought to be to the advantage of shareholders as a whole. E.2.3. If the proposals at a given meeting are not time-sensitive, they should not use the shorter notice period. E.2.4. Companies are encouraged to outline the circumstances in which a short-notice meeting may be called when tabling the enabling resolution."

It should be noted that – unlike ISS – Glass Lewis, another leading proxy advisor, 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 this type of resolution were EasyJet (52.3% - failed), WM Morrison Supermarkets (76.9% - passed), Admiral Group (81.6% - passed) and British Land (81.8% - passed).

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

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

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

15 <http://www.pre-emptiongroup.org.uk/pre-emptiongroup/media/Documents/Statement-of-Principles-July-2008.pdf>

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

17 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>.

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

19 http://www.napf.co.uk/PolicyandResearch/DocumentLibrary/~media/Policy/Documents/0352_%20NAPF_corp_governance_policy_and_voting_guidelines_2014.pdf

2. RECOMMENDATIONS FROM ISS

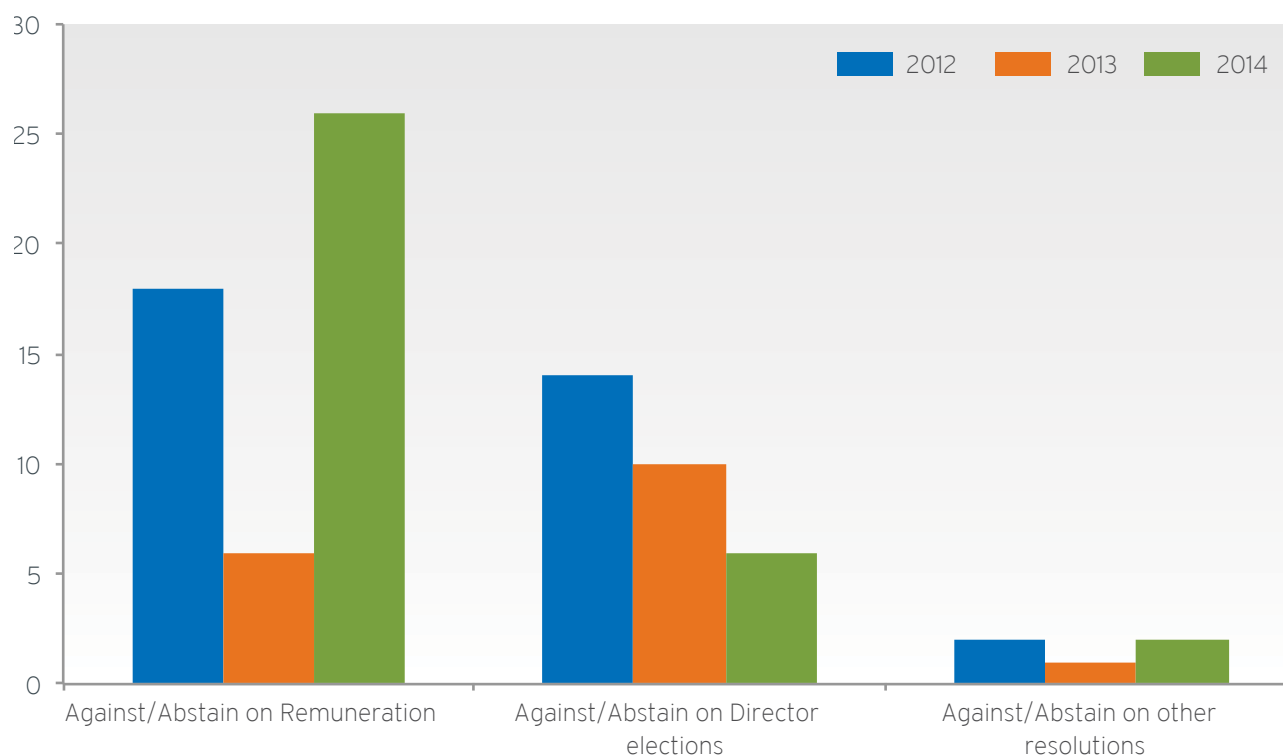
During the 2014 proxy season, 23 companies out of the 94 FTSE 100 companies surveyed received at least one “Against” or “Abstain” recommendation from Institutional Shareholder Services Ltd (ISS), a leading proxy advisor. Many institutional investors rely on proxy advisory firms, such as ISS, for meeting 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.

Below is an overview of the negative recommendations by ISS at FTSE 100 AGMs in 2014. The approval of the Remuneration Report is the resolution which has received the highest number of “Against” or “Abstain” recommendations (14 resolutions). This is followed by the Remuneration Policy (10 resolutions).

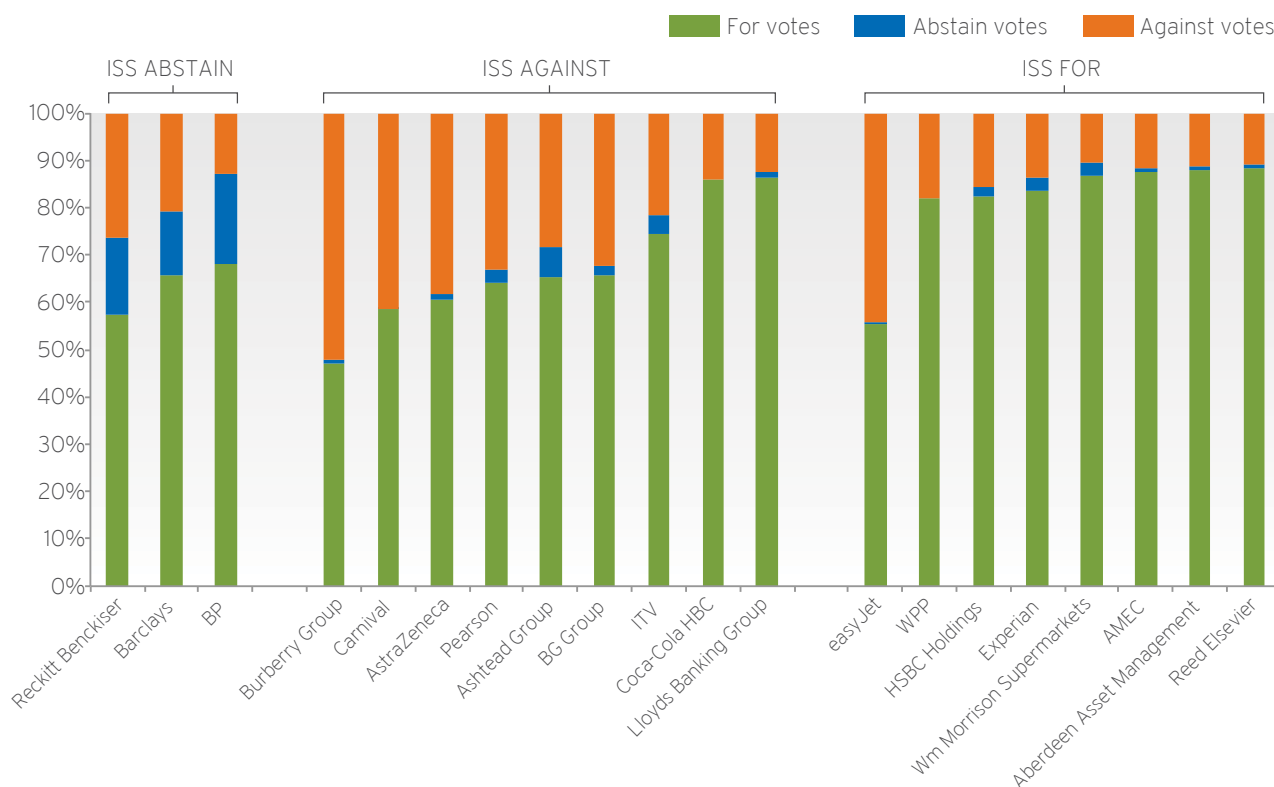
Table 1: Overview of Against or Abstain recommendations by ISS at FTSE 100 AGMs during 2014

Remuneration Report	Ashtead Group plc, AstraZeneca plc, Barclays plc, BG Group plc, BP plc, Burberry Group plc, Carnival plc, Coca-Cola HBC AG plc, ITV plc, Lloyds Banking Group plc, Pearson plc, Reckitt Benckiser Group plc
Remuneration Policy	AstraZeneca plc, Carnival plc, Coca-Cola HBC AG, Melrose Industries plc, Petrofac Ltd, Sports Direct International plc, Standard Chartered plc
(Re-)election of Directors	AstraZeneca plc, Experian plc, TUI Travel plc
Share Awards	Ashtead Group plc

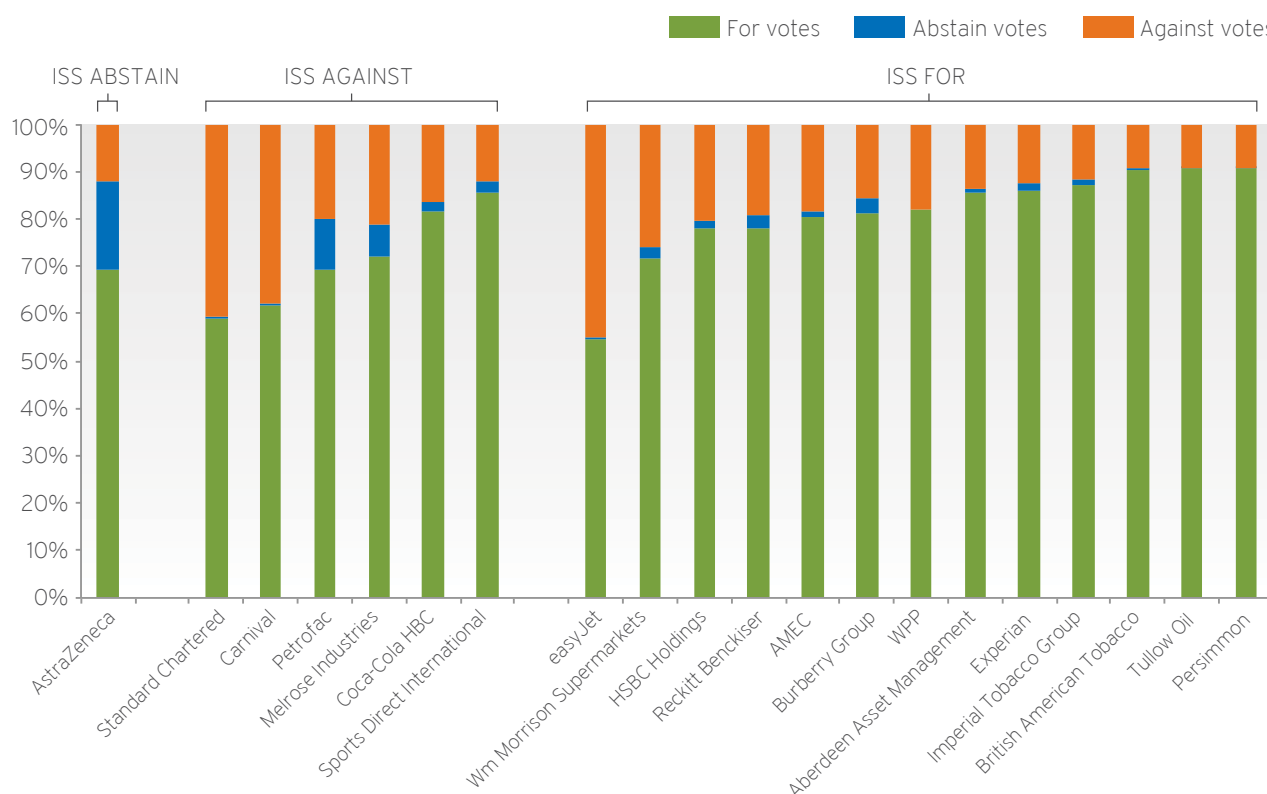
Graph 5: Overview of the number of negative recommendations by ISS at FTSE 100 AGMs over the past three years



Graph 6: 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.



Graph 7: The 20 remuneration policy 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.



3. CORPORATE GOVERNANCE DEVELOPMENTS

3.1 Corporate Governance Code

The current UK Corporate Governance Code has its roots in the Cadbury Report²⁰ which was issued on 1 December 1992, by the Committee on the Financial Aspects of Corporate Governance, chaired by Sir Adrian Cadbury²¹. The UK Corporate Governance Code²² “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 Rules²³ 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 Code²⁴ was published by the Financial Reporting Council (FRC)²⁵ in September 2014²⁶ and applies to reporting periods beginning on or after 1 October 2014. According to the FRC²⁷, “companies with reporting periods beginning before 1 October 2014 should continue to report against the September 2012²⁸ edition of the Code, although they are encouraged to consider whether it would be beneficial to adopt some or all of the new provisions in the revised code earlier than formally expected.”

In the September 2014 edition of the Code the FRC²⁹ “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 Statutory Audit Services

Competition and Markets Authority Order

In September 2014 the Competition and Markets Authority (CMA) published new regulations³⁰ on the statutory audit market. The changes³¹ “follow the Competition Commission’s report³² into the market published last year which set out changes to open up the UK statutory audit market to greater competition and ensure that audits better serve the needs of shareholders in future. The order includes: 1) a requirement for FTSE 350 companies to put their statutory audit engagement out to tender at least every 10 years, and 2) measures to strengthen the accountability of the external auditor to the Audit Committee and reduce the influence of management.”

Financial Reporting Council Audit Quality Inspections

In May 2014 the Financial Reporting Council (FRC) published its Audit Quality Inspections Annual Report 2013/14³³, as well as individual reports on each of the four largest firms³⁴ and a separate report on its overseas inspections³⁵. According to the FRC³⁶ “the quality of auditing in the UK is generally good, 60 per cent of audits were good or required only limited improvements, maintaining the significant improvements observed last year. The proportion of audits with the highest grade in the FRC’s inspections continues to

20 http://www.ecgi.org/codes/code.php?code_id=132

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

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

23 <http://fsahandbook.info/FSA/html/handbook/LR/9/8>

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

25 “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>.

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

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

28 <https://www.frc.org.uk/Our-Work/Publications/Corporate-Governance/UK-Corporate-Governance-Code-September-2012.pdf>

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

30 The Statutory Audit Services for Large Companies Market Investigation (Mandatory Use of Competitive Tender Processes and Audit Committee Responsibilities) Order 2014. See here: https://assets.digital.cabinet-office.gov.uk/media/54252eae40f0b61342000bb4/The_Order.pdf.

31 <https://www.gov.uk/government/news/cma-finalises-audit-changes>

32 <http://webarchive.nationalarchives.gov.uk/20140402141250/http://www.competition-commission.org.uk/media-centre/latest-news/2013/Oct/cc-finalises-measures-to-open-up-audit-market>

33 <https://www.frc.org.uk/Our-Work/Publications/Audit-Quality-Review/Audit-Quality-Inspections-Annual-Report-2013-14.pdf>

34 Deloitte LLP (<https://www.frc.org.uk/Our-Work/Publications/Audit-Quality-Review/Audit-Quality-Inspection-Report-May-2014-Deloitte.pdf>); Ernst & Young LLP (<https://www.frc.org.uk/Our-Work/Publications/Audit-Quality-Review/Audit-Quality-Inspection-Report-May-2014-Ernst-You.pdf>); KPMG LLP (<https://www.frc.org.uk/Our-Work/Publications/Audit-Quality-Review/Audit-Quality-Inspection-Report-May-2014-KPMG-LLP.pdf>); and, PricewaterhouseCoopers LLP (<https://www.frc.org.uk/Our-Work/Publications/Audit-Quality-Review/Audit-Quality-Inspection-Report-May-2014-PricewaterhouseCoopers.pdf>).

35 <https://www.frc.org.uk/Our-Work/Publications/Audit-Quality-Review/Inspections-of-Third-Country-Auditors-Annual-Report.pdf>

36 <https://www.frc.org.uk/News-and-Events/FRC-Press/Press/2014/May-2014/FRC-publishes-Audit-Quality-Inspections-Annual-Rep.aspx>

increase and this is a high bar to pass. 86 per cent of the audits inspected of FTSE 100 companies were good or required only limited improvements.”

3.3 Gender diversity

Davies Review Annual Report

In March 2014 the Department for Business, Innovation & Skills (BIS) published a report entitled Women on boards: Davies Review Annual Report 2014³⁷. According to the report³⁸ “There are now only two all male boards in the FTSE 100, Glencore Xstrata and Antofagasta. This is a great achievement considering there were 21 all male boards in February 2011.” Since the publication of this report both Antofagasta³⁹ and Glencore Xstrata⁴⁰ have nominated women directors to their boards.

UK Equality and Human Rights Commission Report

In August 2014 the UK Equality and Human Rights Commission published a report entitled Appointments to Boards and Equality Law⁴¹. The guide⁴² “sets out the legal framework within which appointments to boards must be made. It is intended to help companies, nomination committees, search firms and recruitment agencies understand what steps are permitted in order to increase the representation of women at board level. The guidance covers the requirements of both domestic law (specifically the Equality Act 2010), and relevant European Union law. Although this guide specifically covers the issue of women on boards, much of its content is also relevant to the consideration of wider objectives to increase the diversity of boards”.

3.4 Listing Rules

In May 2014 the Financial Conduct Authority (FCA) published the Listing Rules (Listing Regime Enhancements) Instrument 2014⁴³. The main requirement of the new rules is that⁴⁴ “if a premium listed company has a controlling shareholder and wishes to apply for a cancellation it would have to both: 1) Obtain a majority of at least 75% of the votes attaching to the shares of those voting on the resolution; and, 2) Gain approval by a majority of the votes attaching to the shares of independent shareholders.” The rules and the feedback received on the preceding consultations⁴⁵ are presented in FCA Policy Statement PS14/8⁴⁶.

3.5 Fiduciary Duties of Investment Intermediaries

In July 2014 the Law Commission⁴⁷ published a report entitled Fiduciary Duties of Investment Intermediaries⁴⁸. This report⁴⁹ “follows on from the Kay Review into UK Equity Markets and Long-Term Decision Making. The Department for Business, Innovation and Skills and the Department for Work and Pensions asked the Law Commission to consider how fiduciary duties currently apply to those working in financial markets, and to clarify how far those who invest on behalf of others may take account of factors such as social and environmental impact and ethical standards. [...] We conclude that trustees should take into account factors which are financially material to the performance of an investment. Where trustees think ethical or environmental, social or governance (ESG) issues are financially material they should take them into account. We also conclude that, whilst the pursuit of a financial return should be the predominant concern of pension trustees, the law is sufficiently flexible to allow other, subordinate, concerns to be taken into account. The law permits trustees to make investment decisions that are based on non-financial factors, provided that: 1) they have good reason to think that scheme members share the concern, and 2) there is no risk of significant financial detriment to the fund.”

3.6 ABI, IMA and Investor Forum

In June 2014 the Association of British Insurers (ABI) and the Investment Management Association (IMA) announced⁵⁰ the merger between the IMA and the investment affairs division of the ABI, including the Institutional Voting Information Service (IVIS). According to the announcement “the IMA will change its name to The Investment Association with effect from the beginning of 2015. Helena

37 <https://www.gov.uk/government/publications/women-on-boards-2014-third-annual-review>

38 See pg 10: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/320000/bis-women-on-boards-2014.pdf.

39 <http://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/11907572.html>

40 <http://www.londonstockexchange.com/exchange/news/market-news/market-news-detail/11995959.html>

41 http://www.equalityhumanrights.com/sites/default/files/publication_pdf/Appointments%20to%20Boards%20and%20Equality%20Law%202022-07-14%20final.pdf

42 <http://www.equalityhumanrights.com/publication/appointments-boards-and-equality-law>

43 http://media.fshandbook.info/Legislation/2014/FCA_2014_33.pdf

44 <http://www.fca.org.uk/news/fca-set-to-implement-new-listing-rules-in-may-2014>

45 <http://www.fca.org.uk/news/cpl3-15-enhancing-the-effectiveness-of-the-listing-regime>

46 <http://www.fca.org.uk/news/ps14-08-enhancing-the-effectiveness-of-the-listing-regime>

47 The Law Commission is the statutory independent body created by the Law Commissions Act 1965 to keep the law under review and to recommend reform where it is needed. See here: <http://lawcommission.justice.gov.uk/index.htm>.

48 http://lawcommission.justice.gov.uk/docs/lc350_fiduciary_duties.pdf

49 http://lawcommission.justice.gov.uk/publications/fiduciary_duties.htm

50 <http://www.investmentfunds.org.uk/press-centre/2014/press-release-2014-06-18/>

Morrissey CBE, CEO of Newton Investment Management, is to become the new Chairman on 30 June 2014, replacing the existing chairman of the IMA, Douglas Ferrans, who steps down after four and a half years in the role.”

In July 2014 the IMA announced⁵¹ the formal launch of the Investor Forum⁵² with the appointment of Simon Fraser as Chairman, and Andy Griffiths as Executive Director. According to the announcement “the Investor Forum is being formed following the recommendations of the Collective Engagement Working Group (a group established by the ABI, IMA and NAPF) and the Kay Review, it is an investor-led organisation, whose governance is independent of any trade association. Its participants will be asset managers and asset owners such as pension funds, life insurers and sovereign wealth funds. The Forum will be open to all investors who have an interest in UK companies, whether based in the UK or overseas.”

In August 2014 Legal & General announced⁵³ that it “informed the Association of British Insurers (ABI) that it will cease to be a member of the organisation at the end of 2014. [...] Following the recent change in the constitution and mandate of the ABI as a result of the transfer of investment business to the IMA, we have given considerable thought to the question of our continuing membership.”

51 <http://www.investmentfunds.org.uk/press-centre/2014/press-release-2014-07-02/>

52 <http://www.investorforum.org.uk/>

53 <http://www.legalandgeneralgroup.com/media-centre/press-releases/2014/lg-to-withdraw-from-membership-of-the-association-of-british-insurers.html>



HIGHLIGHTS

- The average shareholder vote participation at the AGMs of CAC 40 companies (excluding companies whose registered office is outside France) decreased slightly for the first time in five years, from 65.71% in 2013 to 64.50% in 2014.
- Amongst the 36 CAC 40 companies surveyed only one company, Alstom, saw a resolution proposed by the board rejected by shareholders.
- All shareholder resolutions proposed this year at CAC 40 AGMs were filed by employee groups or the French State.
- The most commonly contested resolutions were authorities to issue shares without pre-emptive rights, followed by director elections and compensation-related resolutions (the latter received the highest level of shareholder opposition).
- On average, shareholder support during the first year of say-on-pay resolutions at CAC 40 AGMs was relatively high with an average support of 92% across the 36 CAC 40 surveyed.
- However, shareholders were more critical of other compensation-related resolutions such as severance pay agreements and executive retirement agreements.
- During the 2014 proxy season, 27 companies out the 36 CAC 40 companies surveyed received at least one "Against" recommendation from Institutional Shareholder Services Ltd (ISS).

1. VOTING IN FRANCE

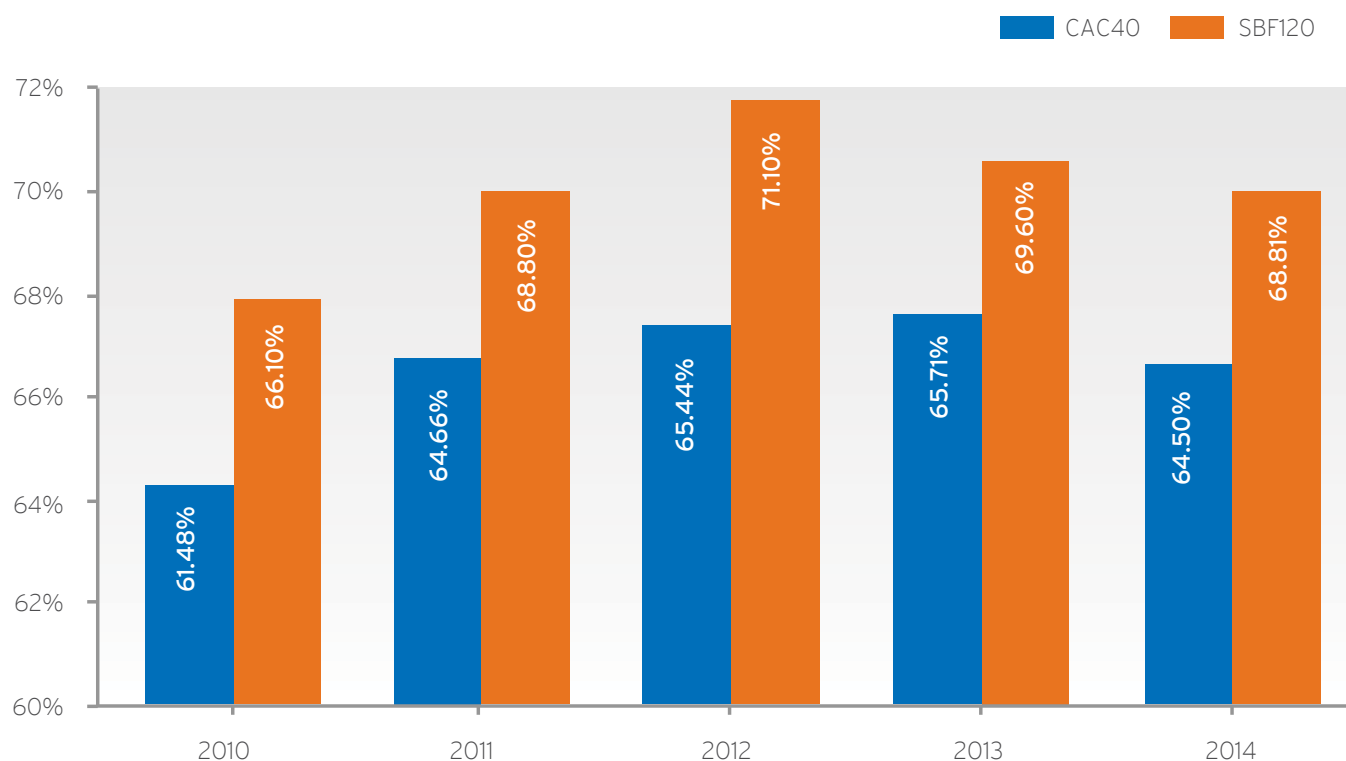
1.1 Quorum overview

We have reviewed the quorum levels of the CAC40 index¹ over the past five years. Our survey includes the 36 CAC40 companies with their corporate headquarters located in France and having held their shareholder meetings by September 2014. Therefore our analysis excludes Airbus Group, ArcelorMittal, Gemalto and Solvay, as their corporate headquarters are located outside France.

It should be noted that Pernod-Ricard is not included in the average CAC40 quorum for 2014 as their 2014 AGM has not taken place yet. However, we have included their November 2013 AGM vote results in our analysis in the sections 1.2 and 1.3 of this document.

The average shareholder vote participation at the AGMs of our CAC40 sample decreased slightly for the first time in five years, from 65.71% in 2013 to 64.50% in 2014. The below graph illustrates the evolution of the average of CAC40 and SBF120² quorums over the past five years.

Graph 1: Shareholder attendance levels: comparison of CAC40 and SBF120 between 2010 and 2014

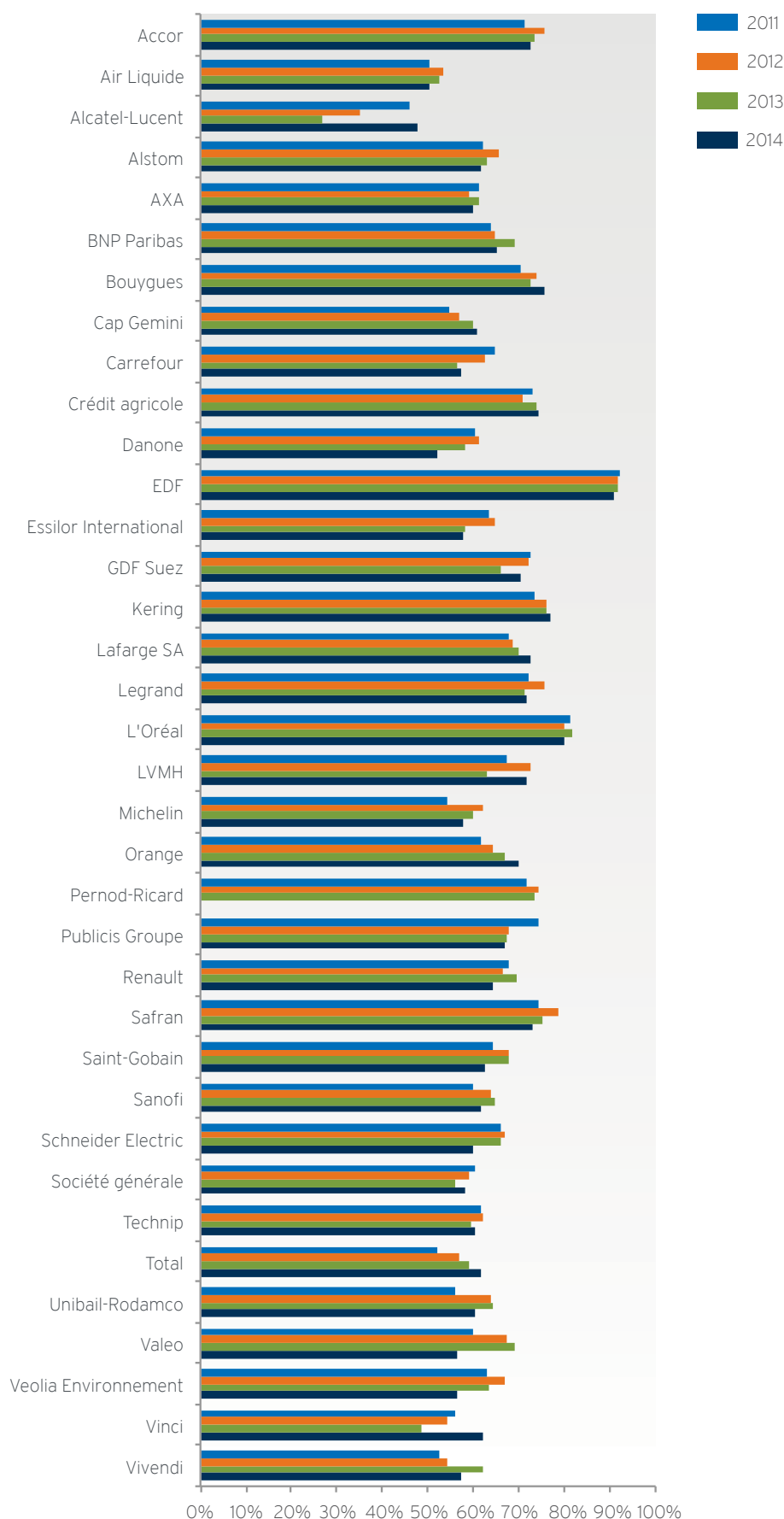


Looking at the change in the voting levels from 2013 to 2014, six companies saw a decrease of five or more percentage points. Valeo saw the largest decrease with the voting level at its AGM decreasing from 69.11% to 56.47%, followed by Veolia Environnement (from 63.29% to 56.35%) and Schneider Electric (from 66.18% to 59.77%). Three companies saw an increase of five or more percentage points. By far the largest increase occurred at Alcatel-Lucent where the AGM voting level increased by 21 percentage points (from 26.72% to 47.73%), followed by Vinci (from 48.68% to 62.08%) and LVMH (from 62.94% to 71.48%).

¹ 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>.

² 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: comparison of the 36 CAC40 companies surveyed since 2011



1.2 Rejected resolutions

Amongst the 36 CAC40 companies surveyed during the 2014 proxy season only one company, Alstom, saw a resolution proposed by the board rejected by shareholders.

Alstom

At Alstom's 2014 AGM, one resolution failed to achieve the minimum required two-thirds majority of the voting rights cast. Resolution 20, which proposed to amend Article 15.3 of the company's bylaws in order to maintain single voting rights, was rejected with 52.01% of votes cast in favour.

On 22 June 2014, Bouygues, Alstom's largest shareholder (holding 29% of the share capital and voting rights), announced that it had concluded an agreement³ with the French State allowing the French government to buy a part of the stake they owned in Alstom. This agreement was made conditional on the effective completion of plans⁴ announced by Alstom and General Electric. Alstom stated⁵ that, as per this agreement, Bouygues had agreed to the French law principle which generalised double voting rights and therefore, to oppose resolution 20. It should be noted that ISS had recommended in favour of the resolution.

Shareholder resolutions

Additionally, eight shareholder proposals not approved by the board of directors were filed at the AGMs of EDF, Safran and Total. All eight failed to gather sufficient support from shareholders and were therefore rejected. Interestingly, none of the eight shareholder resolutions was proposed by an activist investor. All shareholder resolutions proposed this year at CAC40 AGMs were filed by employee groups or the French State.

EDF

At EDF's AGM, the supervisory board of the 'EDF Shares' FCP⁶ requested the addition of one resolution to the agenda which proposed to reduce the dividend amount to be distributed at €0.80 per share (compared to the €1.25 proposed by the board). The proposal was rejected by shareholders with over 97.5% negative votes.

Safran

At Safran's AGM, two shareholder proposals were filed. The French State, which holds a 22.4% stake in the company, filed a resolution proposing to amend resolution 8 which sought to set the level of attendance fees to be allocated to the board of directors at €868,000. The French State proposed instead to set the total maximum amount of attendance fees at €759,333. The resolution was rejected by shareholders with 61% negative votes.

The second shareholder resolution was put forward by the Safran Investissement corporate mutual fund and proposed to reduce the dividend amount to be distributed at €0.98 per share (compared to the €1.12 proposed by the board). The resolution was rejected by shareholders with over 82.8% negative votes.

Total

Five shareholder proposals were filed at Total's AGM by the UES Upstream Total Group Workers' Council but were rejected with dissent at over 83%. The Workers' Council proposed:

- To amend internal board rules regarding the publication of a quarterly newsletter written by employee shareholder representatives and employee representatives
- To amend the social criteria that are currently linked to executive compensation from negative safety indicators to be awarded to positive safety indicators
- To allow loyalty dividends to long-term registered shareholders
- To approve the nomination of employee representatives to the Board Committees
- To amend the bylaws regarding the remuneration of directors.

It should be noted that ISS had recommended an "Against" vote on all eight resolutions proposed by shareholders at this year's CAC40 AGMs.

3 <https://europeanequities.nyx.com/en/content/bouygues-agreement-between-french-government-and-bouygues-allowing-french-government-acquire>

4 Alstom had agreed to a \$17bn deal to sell off most of its power generation business to General Electric. In turn Alstom would buy GE's railway signalling system division. In addition GE and Alstom would create three joint ventures, equally owned, for power grid, renewable energy and nuclear power businesses.

5 http://www.alstom.com/Global/Group/Resources/Documents/Investors%20document/AGM/2014/2014-06-30_Presentation%20AG_GB-update%2020140731.pdf

6 An FCP (which stands for *fond commun de placement*) is a collective employee investment fund used in France.

SBF120

A notable AGM among SBF120 companies was the AGM of Nexans. The hedge fund Amber Capital filed a resolution at Nexans' AGM proposing to dismiss the Chairman/CEO Frédéric Vincent as Chairman of the board and consequently to split the roles of Chairman and CEO within the company. Amber Capital, which held a stake of 5.5% in Nexans, expressed concerns about the deterioration of the company's performance and argued that combining the role of Chairman and CEO had proven detrimental to the company and its shareholders.

Although Amber Capital's resolution was not approved by the board and failed to pass, it received over 35% of shareholder support and the three main proxy advisors in France, ISS, Glass Lewis and Proxinvest, recommended in favour of Amber Capital's proposal. Amid pressure from shareholders and proxy advisors, Nexans' board announced ahead of the AGM that it had decided to split the duties of Chairman and CEO, with Frédéric Vincent staying as Chairman and replaced as CEO by Arnaud Poupart-Lafarge.

1.3 Contested resolutions

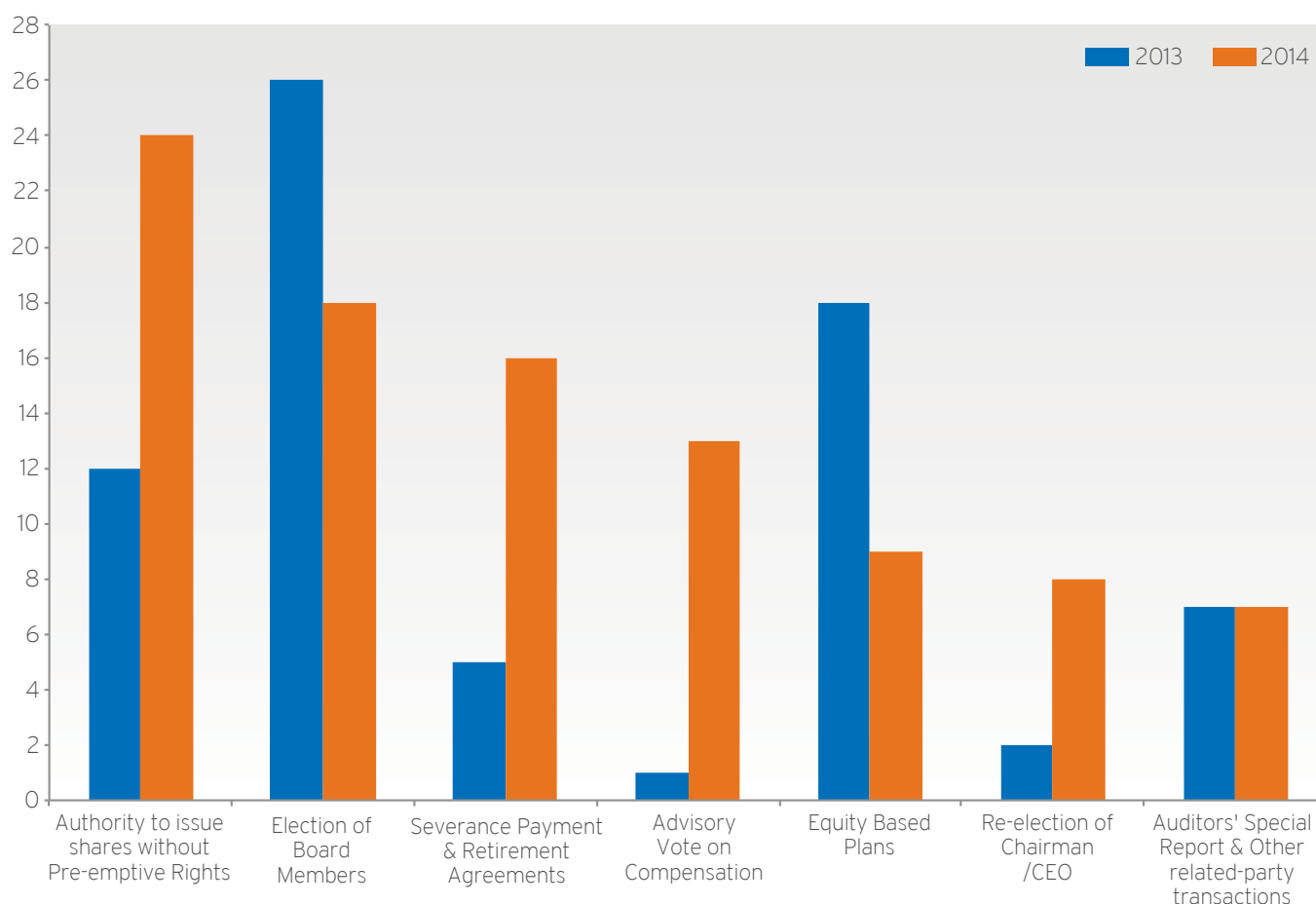
Among the 36 CAC40 Companies we surveyed in 2014, 29 companies saw at least one resolution receive more than 10% shareholder opposition. The total number of resolutions that received over 10% dissent amounted to 105 (including the rejected resolution discussed in section 1.2).

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 without pre-emptive rights with 22 resolutions receiving more than 10% negative votes. The second most commonly contested resolutions were director elections.

However, the resolutions receiving the highest level of opposition mostly related to remuneration issues, such as severance packages, equity-based award plans and advisory votes on compensation.

Graph 3: Main resolutions which received more than 10% negative votes at the CAC40 AGMs surveyed (by resolution type)



1.3.1 Authorities to issue shares

In January 2013, the AFG⁷ published their new Corporate Governance Recommendations⁸ stipulating a threshold for the issuance of share capital without pre-emptive rights of 10% of the share capital (compared to the previously recommended 15%). The following year, leading proxy advisors ISS and Glass Lewis followed suit and also limited such authorities to 10% of the share capital. Since 2014, all major proxy advisors in the French market recommend that share capital increases without pre-emptive rights should not represent more than a total of 10% of the issued share capital.

However, there are an increasing number of investors who apply an even stricter dilution limit of 5% of share capital or who systematically vote against any general authorities to issue shares without subscription rights if a company does not state the specific use of the authority or if a priority subscription period is not guaranteed, as shareholders are increasingly attentive to the issue of excessive dilution of capital. Consequently, despite most CAC40 companies complying with French best market practice and proxy advisors' dilution guidelines, 22 resolutions to issue shares without pre-emptive rights received more than 10% negative votes in 2014.

Among the 36 CAC40 companies surveyed, the companies with the highest level of opposition on this type of resolution were:

- Pernod-Ricard⁹ (Greenshoe¹⁰ authorisation: 18.5% negative votes)
- Capgemini (Authority to issue capital for private placements: 18% negative votes)
- Capgemini (Greenshoe authorisation: 17.6% negative votes)
- Société Générale (Greenshoe authorisation: 16.6% negative votes)

ISS had recommended in favour of each one of these resolutions.

1.3.2 Re-election of Chairman/CEO

Twelve Chairman/CEO mandates were set to be renewed via shareholder approval in 2014 among the 26 companies in our sample which have a combined Chairman/CEO: Accor, Air Liquide, Axa, Capgemini, Essilor International, l'Oréal, Legrand, Orange, Renault, Compagnie de Saint Gobain, Veolia Environnement and Vinci. Over 90% of the CAC40 Chairmen/CEOs who were up for re-election in 2014 received a higher level of dissent than at their previous election.

ISS recommended to vote against the re-election of eleven out of the twelve CAC40 Chairman/CEO mandates to be renewed in 2014 as under current ISS policy in Europe (which became more restrictive as of 1 February 2011) the only reason for which combined Chairman/CEO roles may be acceptable is if the company provides assurances that this is an interim arrangement, i.e. for less than two years.

ISS made a rare exception to its policy this year in the case of the re-election of the Chairman/CEO of Veolia Environnement. ISS recommended a qualified support to the re-election of Antoine Frérot citing the instability and uncertainty which could have resulted from his removal from the board. According to the newspaper Les Echos¹¹ ISS decided to deviate from its European policy to avoid being seen as supporting Veolia's top three shareholders in their attempt to oust Antoine Frérot from the company's board and therefore to maintain their neutrality.

The graph below compares the 2014 voting results of eleven out of the twelve CAC40 chairman/CEO mandates that were voted on this year and compare them to the voting results of their previous re-election. The voting result of the re-election of Accor's Chairman/CEO, Sébastien Bazin, is not included in the chart below as at the time of his previous election as director of the board he was not serving as either Chairman or CEO of the company. As noted in the chart, five Chairmen/CEOs served only as CEO at their previous election: Veolia Environnement, L'Oréal, Orange, Essilor International and Capgemini.

⁷ The AFG (Association Française de Gestion financière) is the French investment management association.

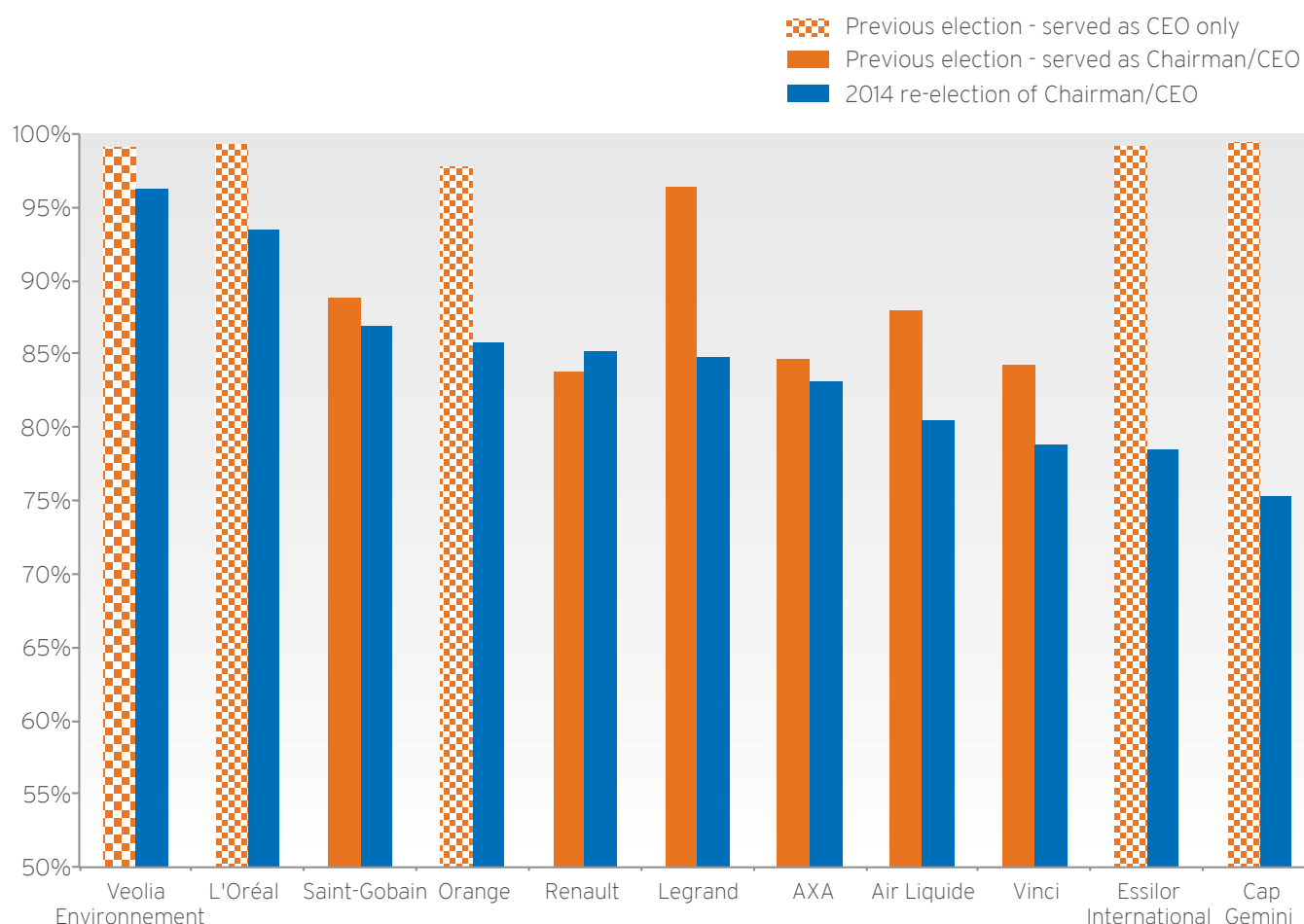
⁸ http://www.afg.asso.fr/index.php?option=com_docman&task=doc_download&gid=1411&Itemid=82&lang=fr

⁹ As noted above this refers to their 2013 AGM vote results as their 2014 AGM takes place later in the year.

¹⁰ This refers to an over-allotment option in the event of exceptional public demand for an issuance of shares. 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. See here for the origin of the term: <http://books.google.co.uk/books?id=HThWziPOX08C&lpg=PA67&dq=%22Green%20Shoe%20Manufacturing%20Company%22&pg=PA67#v=onepage&q=%22Green%20Shoe%20Manufacturing%20Company%22&f=false>.

¹¹ http://www.lesechos.fr/10/04/2014/LesEchos/21666-138-ECH_veolia---en-soutenant-antoine-frerot-iss-garantit-sa-reconduction.htm?texte=Pdg%20de%20veolia

Graph 4: Level of support for Chairman/CEO re-election in 2014 compared to the level of support for the same individual's previous election



1.3.3 Executive compensation

In June 2013, the AFEP-MEDEF¹² in the new edition of their Corporate Governance Code of Listed Corporations¹³ 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 36 CAC40 companies we surveyed this year refer to the AFEP-MEDEF code and proposed an advisory vote on their executive remuneration at their 2014 AGM.

On average, shareholder support for this first year of say-on-pay resolutions at CAC40 AGMs was relatively high with an average support of 92% across the 36 CAC40 we surveyed. However, it should be noted that some institutional investors as well as ISS, a leading proxy advisor, made it clear that for the French market, during the 2014 proxy season they would take a somewhat more lenient approach (compared to the rest of Europe) on these advisory remuneration votes. This suggests that investors and proxy advisors may take a tougher stance on executive remuneration resolutions in 2015 and will expect a higher level of disclosure and compliance.

¹² The AFEP and the MEDEF are two employers' associations which jointly publish the main corporate governance code in France.

¹³ <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>

France

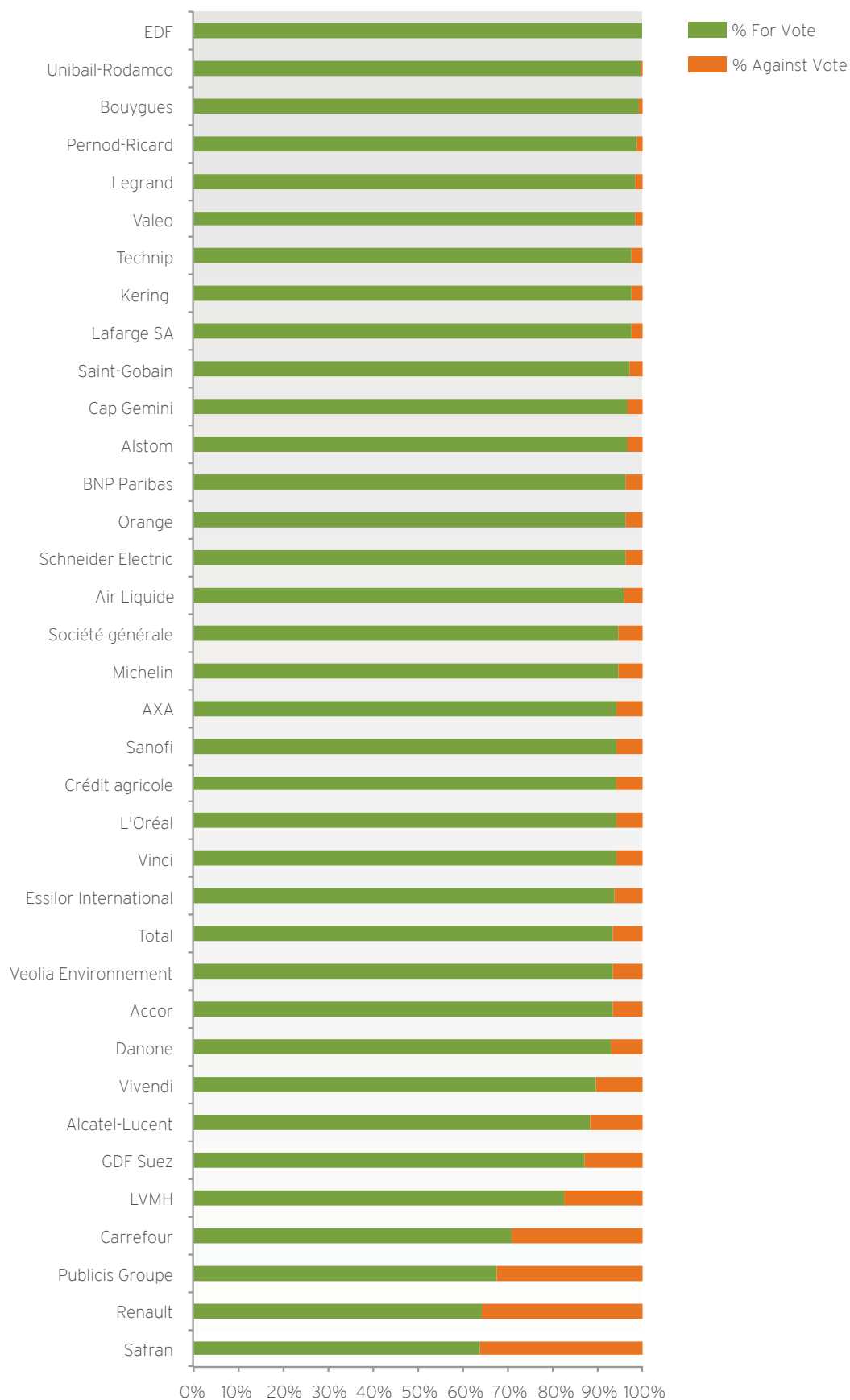
The highest level of shareholder opposition on executive say-on-pay votes was registered at Safran (36.3%) and Renault (35.7%) where the French State played an active role in trying to limit executive remuneration. At Safran's AGM, the French State which holds a 22.4% stake in the company, voted against the compensation of Jean-Paul Herteman, the Chairman/CEO as well as the remuneration of the vice-CEOs of the company. At Renault's AGM, the French State which holds a 15% stake, voted against the compensation of Carlos Ghosn, the Chairman/CEO.

Although support on say-on-pay resolutions was relatively high, shareholders were more critical on other compensation-related resolutions such as severance pay and retirement agreements benefiting executives.

The highest level of shareholder dissent for severance pay agreements was registered at Accor's AGM where the severance packages for the former Chairman/CEO, Denis Hennequin, and the former CEO, Yann Caillère, both received over 45% negative votes. Strong shareholder opposition was also recorded at Safran's AGM where the additional pension scheme agreement with the Chairman/CEO, Jean-Paul Herteman, and the three Vice-CEOs received over 34% negative votes.

On the following page is a graph showing the levels of shareholder approval for the advisory vote on CEO remuneration of the 36 CAC40 companies surveyed.

Graph 5: Vote results for the advisory vote on CEO remuneration among the 36 companies surveyed



2. RECOMMENDATIONS FROM ISS

During the 2014 proxy season, 27 companies out of the 36 CAC40 companies surveyed received at least one "Against" recommendation from Institutional Shareholder Services Ltd (ISS), a leading proxy advisor. Many institutional investors rely on proxy advisory firms, such as ISS, 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.

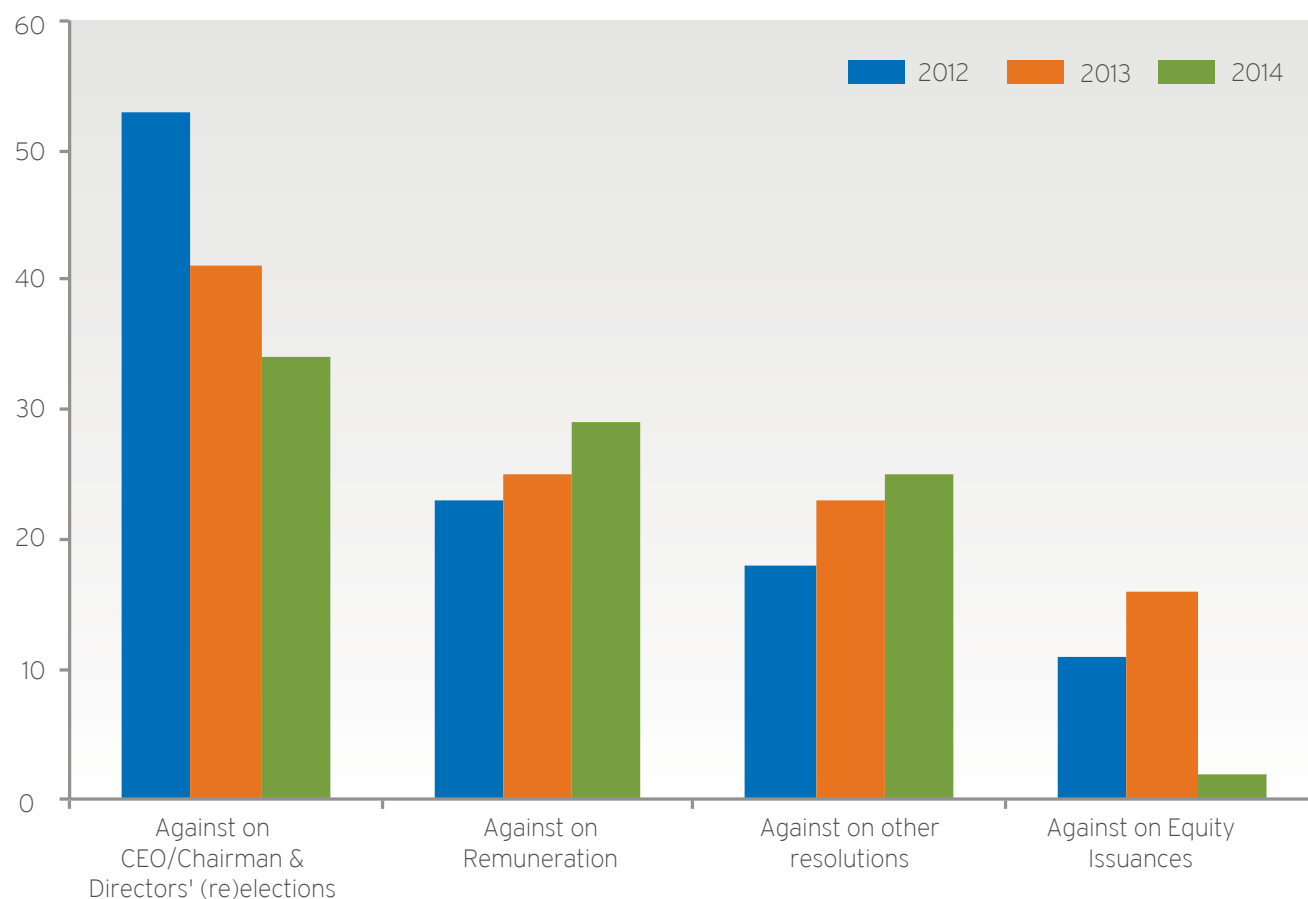
Below is an overview of the negative recommendations by ISS at the 36 CAC40 AGMs we surveyed in 2014. The re-election of CEO/Chairman is the resolution which has received the highest number of "Against" recommendations. This is followed closely by the re-election of other board members (directors or censors) and the approval of severance pay agreements.

Table 1: Overview of "Against" recommendations by ISS at CAC40 AGMs during 2014

Re-election of Chairman/CEO	Accor, Air Liquide, AXA, Capgemini, Essilor International, L'Oréal, Legrand, Orange, Renault, Saint-Gobain, Vinci
Re-election of Board Members	Bouygues, Crédit Agricole, EDF, Kering, LVMH, Orange, Publicis Groupe, Renault, Total
Severance Pay Agreement	Accor, Air Liquide, AXA, Saint-Gobain, Schneider Electric, Veolia Environnement, Vinci
Auditors' Special Report & Other Related-Party Transactions	Bouygues, Carrefour, Crédit Agricole, Kering, LVMH, Schneider Electric, Veolia Environnement, Vinci
Equity Based Plans	AXA, Bouygues, Michelin, Publicis Groupe, Saint-Gobain, Société Générale, Technip, Total
Advisory Vote on Compensation	GDF Suez, Kering, LVMH, Publicis Groupe
Shareholder Proposals	EDF, GDF Suez, Safran, Total
Amendment of Article of Associations	EDF, GDF Suez
Employee Equity Purchase Plans	Société Générale, Vinci
Share Repurchases	Bouygues, Pernod-Ricard
Poison Pill	Bouygues
Authority to issue shares without Pre-emptive Rights	Crédit Agricole

Below is an overview of the number of resolutions in our sample that have received negative recommendations by ISS at CAC40 AGMs over the past three years. The graph shows that overall, the 2014 proxy season saw the lowest number of negative recommendations from ISS in the last three years. The (re)election of Chairman/CEOs and Directors consistently received the highest number of negative recommendations followed by the remuneration resolutions which include equity incentive plans, benefits agreements and the advisory votes.

Graph 6: Overview of the number of negative recommendations by ISS at the CAC40 AGMs over the past three years

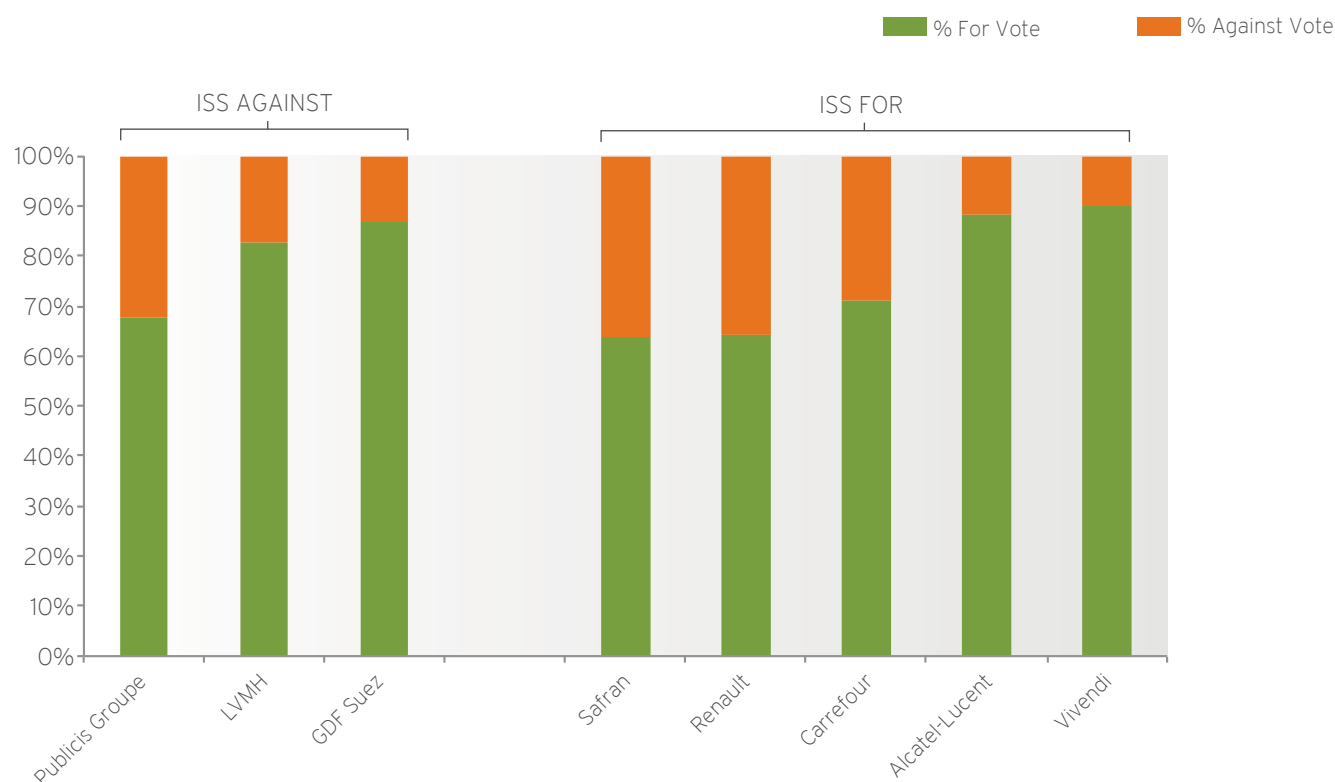


France

In February 2014, ISS published its guidance "Say-on-Pay Remuneration Changes France 2014"¹⁴. The ISS guidelines make clear that, for the French market, during the 2014 proxy season ISS would take a somewhat more lenient approach (compared to the rest of Europe) to advisory remuneration votes. They did this in recognition of the fact that this is the first year that the AFEP-MEDEF Code recommends the implementation of such a vote. In 2014, their analysis focused on two factors: a) The quality of disclosure (seeking to point out levels of disclosure that are below French market standards); and, b) The absence of egregious practices (referring to compensation-related practices that ISS has consistently opposed in the French market over the past several years). Following the 2014 proxy season ISS indicated that they will review French compensation practices and voting outcomes.

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 7: Say on Pay resolutions with less than 90% support categorised by ISS recommendation



14 <http://www.issgovernance.com/files/ISSFranceRemunerationFAQ.pdf>

3. CORPORATE GOVERNANCE DEVELOPMENTS

3.1 Florange law - Double voting rights

The French law of 29 March 2014 "aimed at recapturing the real economy" (known as the "Florange" law), 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 Commerce¹⁵ to automatically offer double voting rights to shareholders of listed companies who hold shares in registered form for at least two years, unless the articles of association stipulate otherwise.

This provision appears likely to disadvantage many international and institutional investors (who 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) and has been opposed by, among others, the AFG¹⁶ and the French proxy advisor Proxinvest¹⁷.

Additionally, Phitrust Active Investors, a French activist investment fund, stated in July 2014 in their shareholder engagement programme for the 2014-2015 season¹⁸ that they will introduce a number of shareholder proposals aimed at re-establishing the principle of proportionality between capital and voting rights (the "one share - one vote" principle) and the principle of board neutrality for listed companies during takeover bid periods which it considers vital to ensure equal treatment for shareholders and freedom for takeover bids to progress.

This suggests a possible future push by investors to encourage French companies to amend their articles of association to reaffirm the "one-share one-vote" principle.

3.2 Board representation of employees

Under Law n°2013-504 of 14 June 2013¹⁹, larger companies will be required to nominate one or, on boards with 12 or more directors, two employee representatives to the board of directors. The companies concerned by this law are:

Companies with a head office in France where their direct and indirect subsidiaries employ at least 5,000 permanent employees on average;

Or companies where their direct and indirect subsidiaries together employ at least 10,000 employees (regardless of whether the registered office is in France or overseas), and are under an obligation to put in place a works council in France.

The election process for employee representatives should be set out in a company's articles of association which must be amended by a shareholders' meeting. The employee representatives must be elected to the board no later than six months after the shareholders' meeting amending the articles of association. This meeting must be held in 2014.

3.3 Ordinance n°2014-948 - Governance at State-owned companies

Ordinance n°2014-948 dated the 20 August 2014²⁰ was promulgated in line with article 10 of Law n°2014-1 dated 2 January 2014²¹ which enables the French government, by way of ordinances, to "simplify and secure the life of companies" in which the French State holds a majority or minority stake. Ordinance n°2014-948 sets forth several measures to simplify and modernise the governance rules at state-controlled and state-owned companies as well as the legislation regarding the acquisition and disposal operations by the French state. Among others, the main measures outlined in the ordinance appear to be:

- The ordinance puts an end to the special governance rules outlined in law n°83-675 dated 26 July 1983²² which required that boards at state-controlled companies be composed of 18 members and that directors be elected for a five-year term;
- The ordinance also allows the possibility for companies, where the States holds more than 50% of the capital, to split the roles of Chairman of the board and CEO;
- The ordinance states that the mandatory appointment of State representatives will be limited to only one director at companies where it holds more than 50% of the capital;

¹⁵ <http://www.legifrance.gouv.fr/affichCodeArticle.do?idArticle=LEGIARTI000006224989&cidTexte=LEGITEXT000005634379>

¹⁶ http://www.afg.asso.fr/index.php?option=com_docman&task=doc_download&gid=3967&Itemid=82&lang=fr

¹⁷ <http://www.agefi.fr/articles/proxinvest-recommande-des-bons-de-fidelisation-pour-conserver-un-actionnariat-stable-1315012.html>

¹⁸ http://www.phitrustactiveinvestors.com/data/file/communiqués_de_presse_2014/Presse_release_Governance_campaign_2015_PROXY_A1.pdf

¹⁹ <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000027546648>

²⁰ <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000029391551&categorieLien=id>

²¹ http://www.legifrance.gouv.fr/affichTexte.do?sessionid=520562B6F40F845D72694CB4608C34E8.tpdjo17v_2&dateTexte=?cidTexte=JORFTEXT000028424785&categorieLien=id

²² <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000320196&fastPos=1&fastReqId=1571416476&categorieLien=id&oldAction=rechTexte>

- The last part of the ordinance amends the legislation regarding acquisition and disposal operations made by the French state. All disposal operations involving state-owned companies' assets will be controlled by a committee, "*la commission des participations et transferts (CPT)*", which is composed of seven independent members who are nominated by decree for five years and are chosen based on their competence and their economic, financial or legal experience.

3.4 Gender diversity

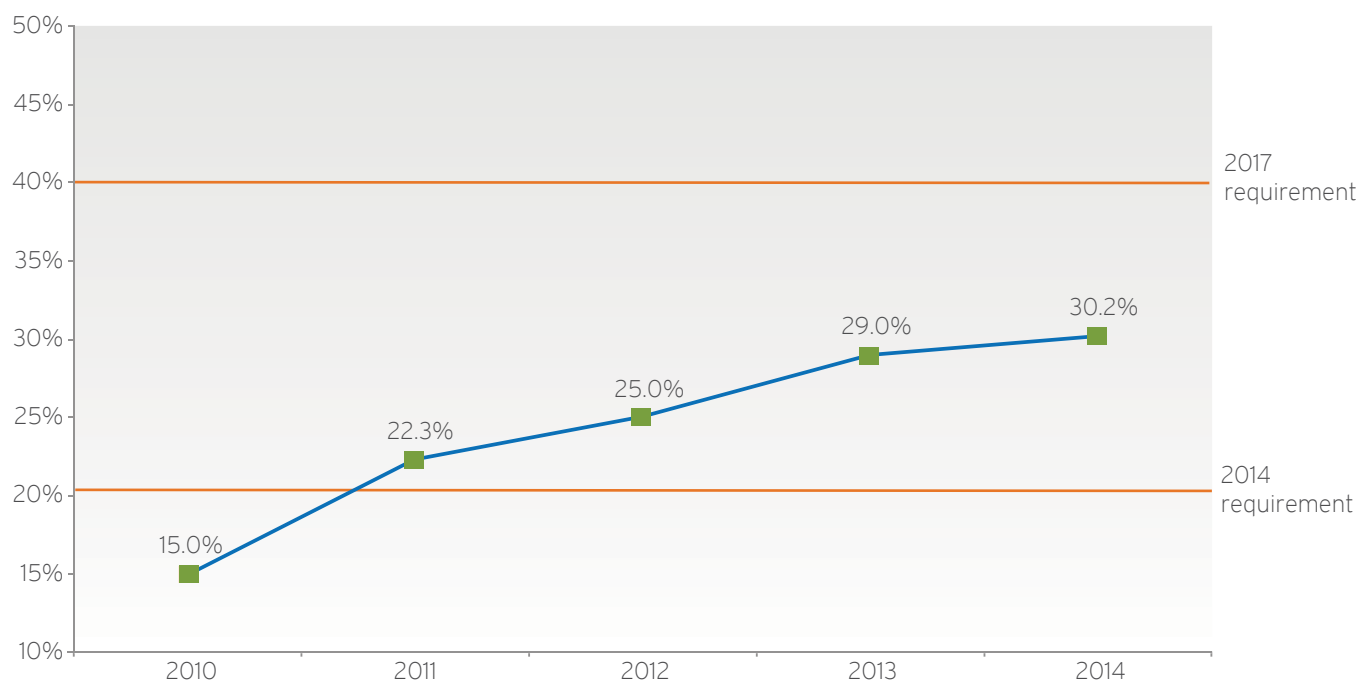
The "Copé-Zimmermann" law²³ came into force in January 2011 and provides for balance of men and women on companies' executive and supervisory boards. The law requires that companies listed on the stock exchange and non-quoted companies with at least 500 employees and a €50 million turnover over the previous three consecutive years must have at least 20% women on their board by 2014 and 40% by 2017.

If these thresholds are not reached:

- Irregular appointments will be deemed null and void but will not invalidate any collective decision taken with the participation of the null and void appointee(s);
- Directors' remuneration will be suspended and that fact will require mention in the directors' report.

Following the 2014 proxy season, the boards of directors at CAC40 companies are now composed on average of 30.2% women versus 15% in 2010. The graph below shows the evolution of the average number of women on CAC40 boards over the past five years.

Graph 8: Evolution - Women on CAC40 boards



²³ <http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000023487662>

3.5 AFG Recommendations

The AFG (Association Française de Gestion financière), the French investment management association, published an updated version of their Corporate Governance Code²⁴ in January 2014. The main changes to the Code include:

- A recommendation that the boards of non-controlled SBF120 companies should comprise at least 50% independent directors (the Code previously recommended 33%);
- A statement welcoming the introduction by an increasing number of companies of an advisory vote on executive remuneration; and
- A statement reiterating the “one share - one vote” principle and encouraging companies to enshrine this in their articles of association (in response to the ‘Florange’ law of 29 March 2014 which offers double voting rights to shareholders who hold shares in registered form for at least two years).

The AFG also published in March 2014 their *Exercice des droits de vote par les sociétés de gestion en 2013*²⁵ (“The exercise of voting rights by investment managers in 2013”). The findings include a 23% increase in the exercise of voting rights by asset managers, and a rate of opposition of at least one resolution on the agenda of 80% for French AGMs and 60% for international AGMs.

3.6 AFEP-MEDEF High Committee

In June 2013, the AFEP-MEDEF published a new edition of their Corporate Governance Code of Listed Corporations and formed a High Committee responsible for monitoring the implementation of their revised Code.

The High Committee on Corporate Governance of the AFEP-MEDEF published in January 2014 its *Guide d'application du code de gouvernement d'entreprise*²⁶ (“Guide on the application of the Corporate Governance Code”). This guide provides details on how issuers are intended to implement the AFEP-MEDEF’s Corporate Governance Code, and in particular the advisory vote on executive remuneration. Companies are required to explain any non-compliance of the AFEP-MEDEF Code to the AFEP-MEDEF High Committee and publish the explanation in their annual report. The High Committee shall publish its 2014 activity report by the end of the year.

²⁴ http://www.afg.asso.fr/index.php?option=com_docman&task=doc_download&gid=3964&Itemid=231&lang=fr

²⁵ http://www.afg.asso.fr/index.php?option=com_docman&task=doc_download&gid=4023&Itemid=82&lang=en

²⁶ http://www.afep.com/uploads/medias/documents/Guide_application_du_code_de_gouvernement%20entreprise_Janvier_2014.pdf



HIGHLIGHTS

- The average shareholder vote participation at the AGMs of AEX and AMX companies (excluding companies whose registered office is outside the Netherlands) increased significantly. For AEX companies it changed from 62.7% in 2013 to 68.4% in 2014, and for AMX companies it went from 53.0% in 2013 to 58.8% in 2014.
- Amongst our sample of AEX and AMX companies, no company had a resolution rejected by shareholders. Arseus (an AMX constituent which was not part of our sample as their registered office is located in Belgium) did see three resolutions proposed by the board rejected by shareholders.
- The most commonly contested resolutions were authorities to issue shares without pre-emptive rights (which also received the highest level of shareholder opposition), followed by remuneration related resolutions and director elections.
- During the 2014 proxy season, seven companies out the 45 AEX and AMX companies surveyed received at least one "Against" recommendation from Institutional Shareholder Services Ltd (ISS).

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1. VOTING IN THE NETHERLANDS

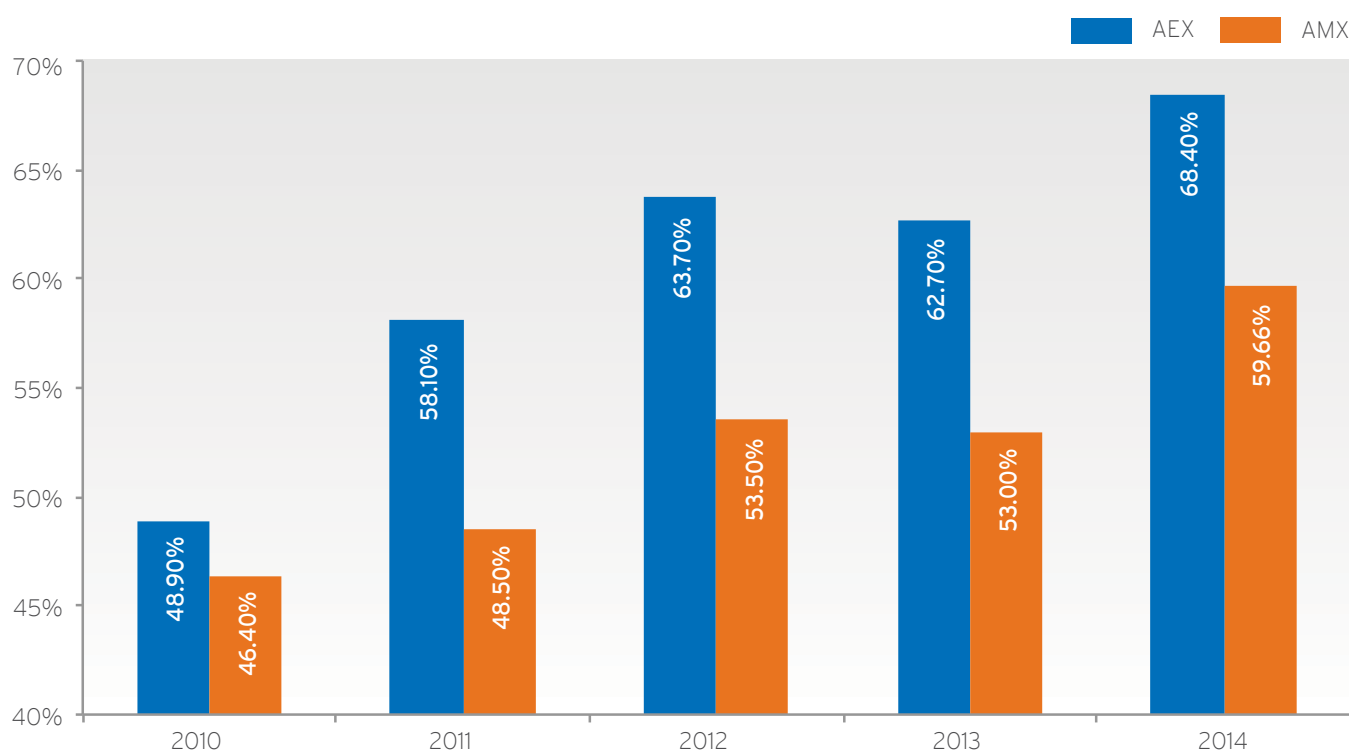
1.1 Quorum overview

Since 2010 Georgeson has reviewed the quorum levels of AEX¹ and AMX² companies³. For this year we have taken into account companies that were part of the above-mentioned indices on 1 July 2014 and had their AGM before 1 July 2014. For 2014 this includes 23 companies in the AEX and 22 companies in the AMX.

Since 2010 the quorum levels were increasing each year, until last year when the quorum levels of both AEX and AMX companies were stagnating. This year we have again seen a significant increase compared to last year in both indices. The average AEX quorum went up to 68.4% (from 62.7% in 2013) and the average AMX went up to 58.8% (from 53.0% in 2013).

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

Graph 1. Shareholder Attendance Levels comparison AEX and AMX 2010 - 2014



In the AEX index fifteen companies experienced an increase in quorum and seven companies experienced a decrease in quorum compared to 2013. The companies that saw the biggest drop in their quorum between 2013 and 2014 were SBM Offshore (from 72.00% to 49.31%), Reed Elsevier (from 61.45% to 41.77%) and Ziggo (from 74.98% to 63.92%). The companies that saw the largest increase in their quorum between 2013 and 2014 were KPN (from 50.15% to 70.29%), Gemalto (from 56.19% to 63.61%) and TNT Express (from 70.31% to 76.83%).

In the AMX index twelve companies experienced an increase in quorum and nine companies experienced a decrease in quorum compared to 2013. The companies that saw the biggest drop in their quorum between 2013 and 2014 were Imtech (from 36.72% to 16.65%), Arseus (from 46.32% to 41.22%) and Vopak (from 60.57% to 57.01%). The companies that saw the largest increase in their quorum between 2013 and 2014 were Nieuwe Steen Investments (from 40.60% to 54.10%), Vastned Retail (from 37.10% to 46.46%) and TomTom (from 65.61% to 71.94%).

The graphs opposite show the quorum developments of the individual AEX and AMX companies since 2011⁴.

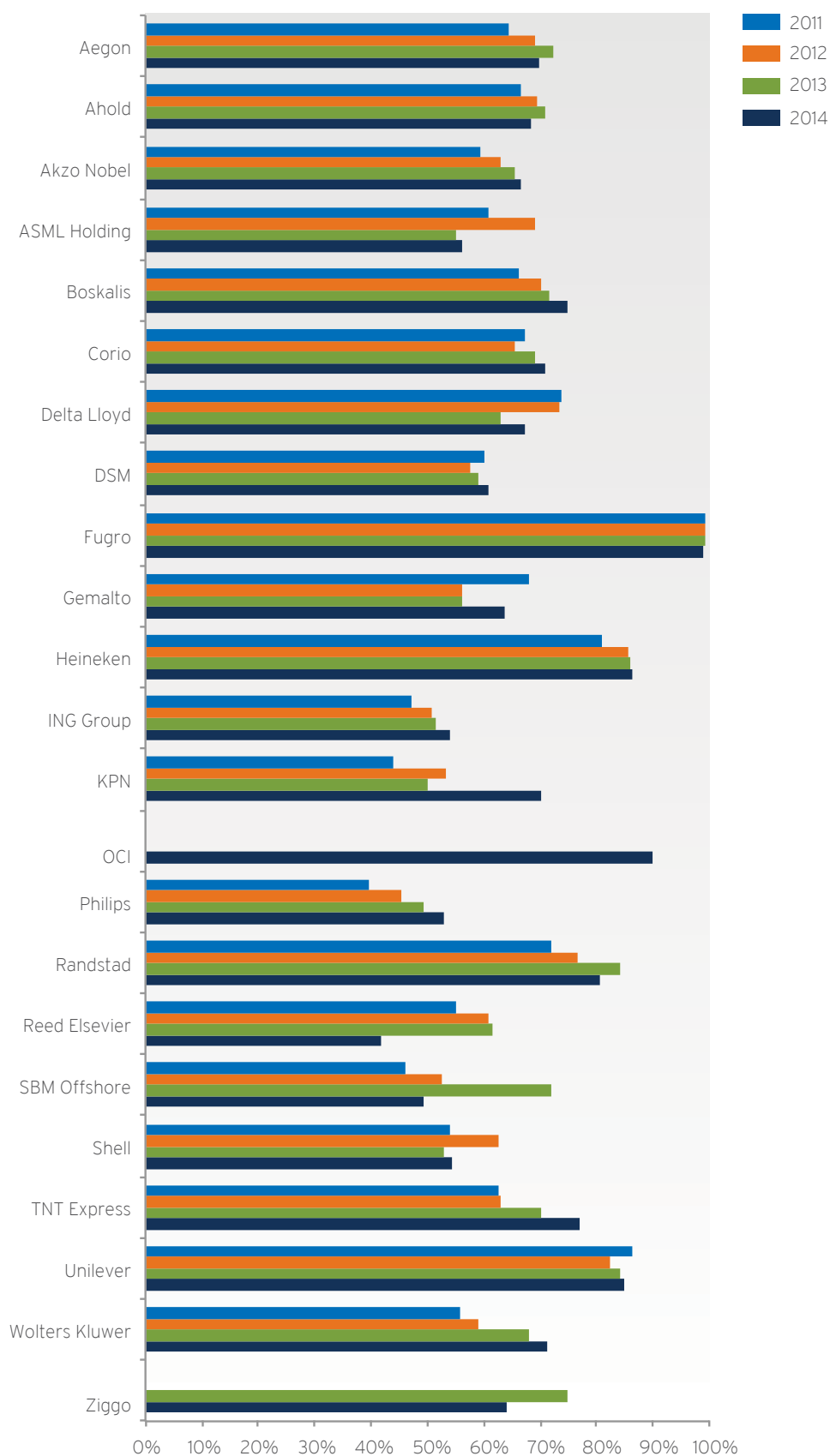
¹ The AEX reflects the performance of the 25 most actively traded shares listed on NYSE Euronext Amsterdam. See here: <https://indices.euronext.com/en/products/indices/NL0000000107-XAMS>.

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

³ We have included Dutch-incorporated companies only. For the AEX this excludes ArcelorMittal and Unibail-Rodamco. For the AMX it excludes Air France-KLM, Aperam and Arseus.

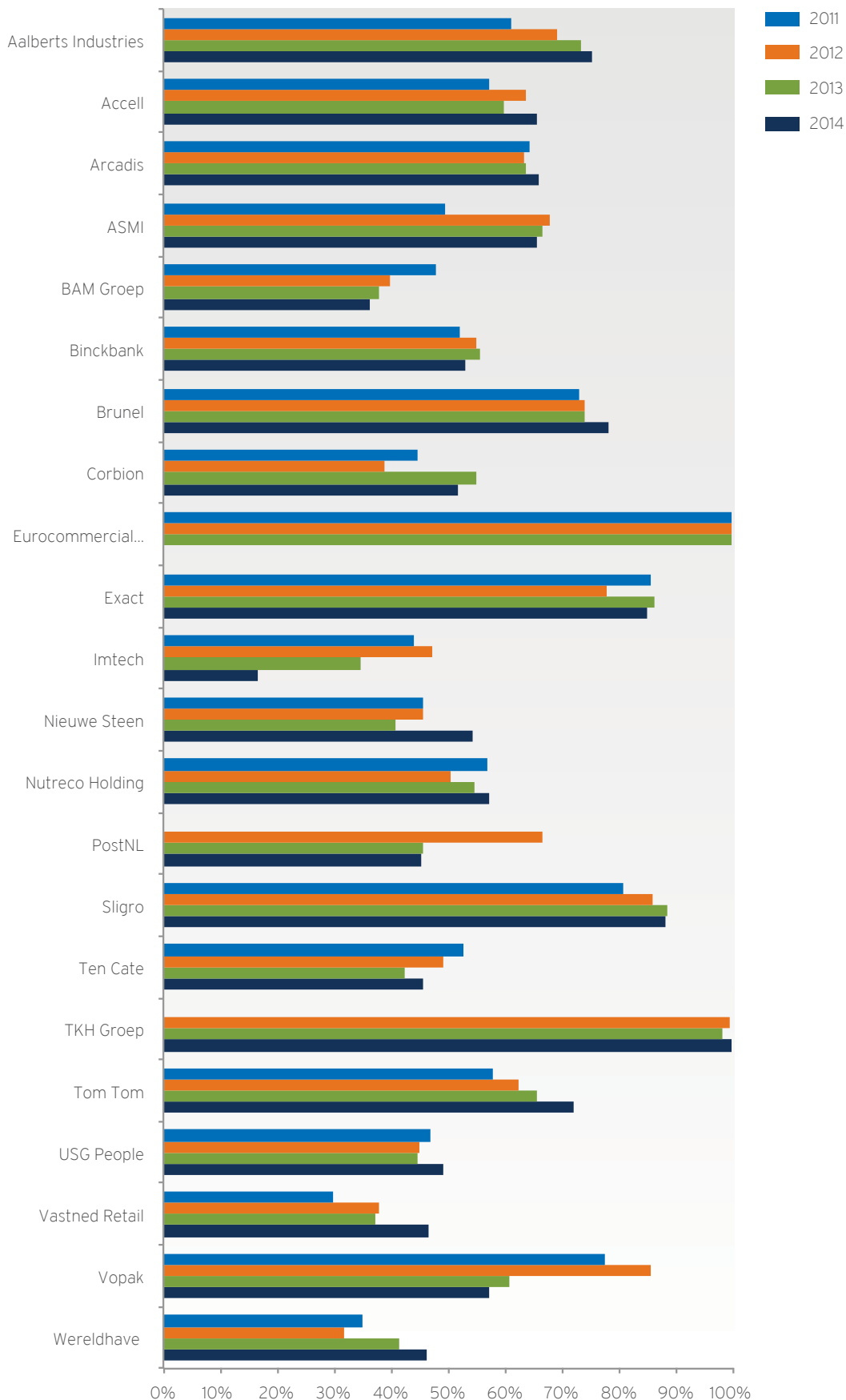
⁴ The overview shown is limited to companies that were part of the AEX and AMX indices on 1 July 2014.

Graph 2. Shareholder attendance levels: comparison since 2011 of the AEX companies surveyed (displayed alphabetically)



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Graph 3. Shareholder attendance levels: comparison since 2011 of the AMX companies surveyed (displayed alphabetically)



1.2 Rejected resolutions

We have reviewed the meeting results of the 45 AEX and AMX constituents' AGMs held between January and July 2014. During the 2014 proxy season no company within our sample recorded a resolution rejected by shareholders.

However, Arseus (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 ASX⁵ index, had a resolution voted down at the AGM. Finally, Sligro Food Group withdrew a resolution from the agenda prior to their AGM.

Arseus

Arseus NV⁶, formerly the professional health division of Omega Pharma, became an independent entity via an IPO on 5 October 2007. The Belgian company Arseus NV is located in Waregem and is listed on NYSE Euronext Brussels and NYSE Euronext Amsterdam. The operational activities of the Arseus Group are driven by the Dutch company Arseus BV. The head office of Arseus BV is located in Rotterdam.

At their 2014 AGM⁷, which took place in May, three proposed resolutions were rejected by shareholders. The three rejected resolutions related to the approval of: the remuneration report; the 2014 Stock Option Plan; and, the change-of-control clause of the Stock Option Plan. The votes in favour of these proposals were 44.0%, 32.9% and 32.7% respectively.

It should be noted that ISS had recommended an "Against" vote on all three resolutions.

At the time the Chairman stated⁸ at the AGM 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 Code⁹, 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.

With regards to the Stock Option Plan the Chairman noted¹⁰ that Arseus allows for stock options to be exercised two years after they have been awarded instead of after three years, which is not in line with the Belgian Corporate Governance Code. The chairman indicated that the company will try to align future stock option plans with the Belgian Corporate Governance Code, if that is also in line with the interests of the company.

AMG

AMG NV¹¹ "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 ASX index.

At the 2014 AGM¹², which took place in May, one proposed resolution was rejected by shareholders. The resolution in question was an authority to restrict or exclude pre-emptive rights (the first 10% tranche was reserved for general corporate purposes). This resolution received 57.14% votes in favour¹³. Although the resolution received the support of a simple majority of the votes cast, as the quorum was below 50% of the issued share capital the resolution required the support of a two-thirds supermajority in order to pass.

Sligro Group

Sligro Group proposed to amend their articles of association to raise the holding threshold required to propose items on the general meeting agenda from 1% to 3% of issued share capital. This change would have made it more difficult for smaller shareholders to propose items on the agenda of a general meeting. At the beginning of the AGM the Chairman made an announcement that the Executive Board had decided to withdraw this resolution and that it would not be put up for a vote¹⁴. According Eumedion¹⁵ a number of long-term shareholders had expressed their dissatisfaction with this proposal prior to the AGM.

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

5 The ASX 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://indices.euronext.com/en/products/indices/NL0000249142-XAMS>.

6 <http://www.arseus.com/en/profile>

7 See here for the 2014 AGM agenda and minutes (including the vote results): <http://www.arseus.com/en/65>.

8 See pg 11 of the 2014 AGM minutes (in Dutch only): <http://www.arseus.com/en/65>.

9 <http://www.corporategovernancecommittee.be/en/home/>

10 See pg 13 of the 2014 AGM Minutes (in Dutch only): <http://www.arseus.com/en/65>.

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

12 http://www.amg-nv.com/files/doc_downloads/Agenda%20&%20Explanatory%20Notes%20AGM%202014.pdf

13 http://www.amg-nv.com/files/doc_financials/Voting%20results%20AGM%20-%2008-05-2014.pdf

14 See pg 1 of the 2014 AGM minutes: <http://www.sligrofoodgroup.nl/investor-relations-1/agm-information/general-meeting-of-shareholders.htm>.

15 <http://www.eumedion.nl/nl/public/kennisbank/ava-evaluaties/2014-ava-evaluatie.pdf>

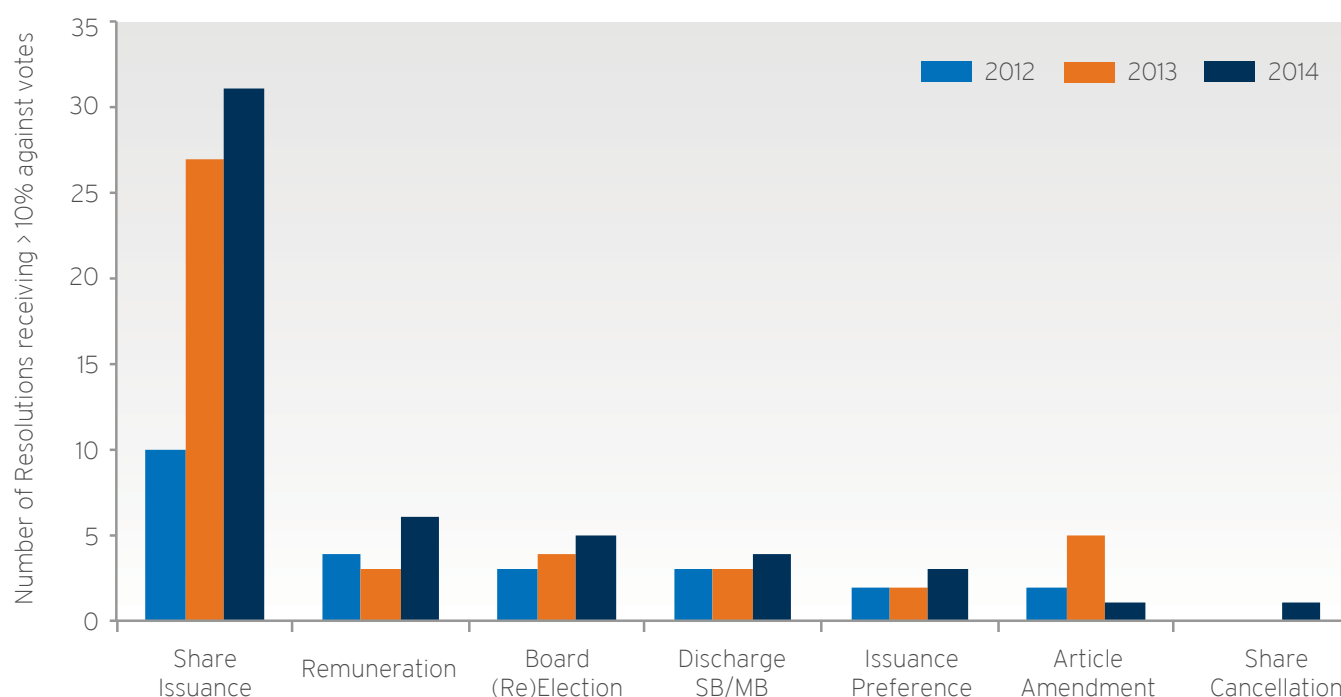
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1.3 Contested resolutions

Among our sample of 45 AEX and AMX companies that held their AGM between January and July 2014, 25 companies saw at least one resolution receive more than 10% shareholder opposition. The total number of resolutions that received over 10% opposition amounted to 51 (excluding the rejected resolutions discussed in section 1.2). 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. The second most commonly contested resolutions were remuneration related proposals. The third most commonly contested resolutions were board member elections.

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



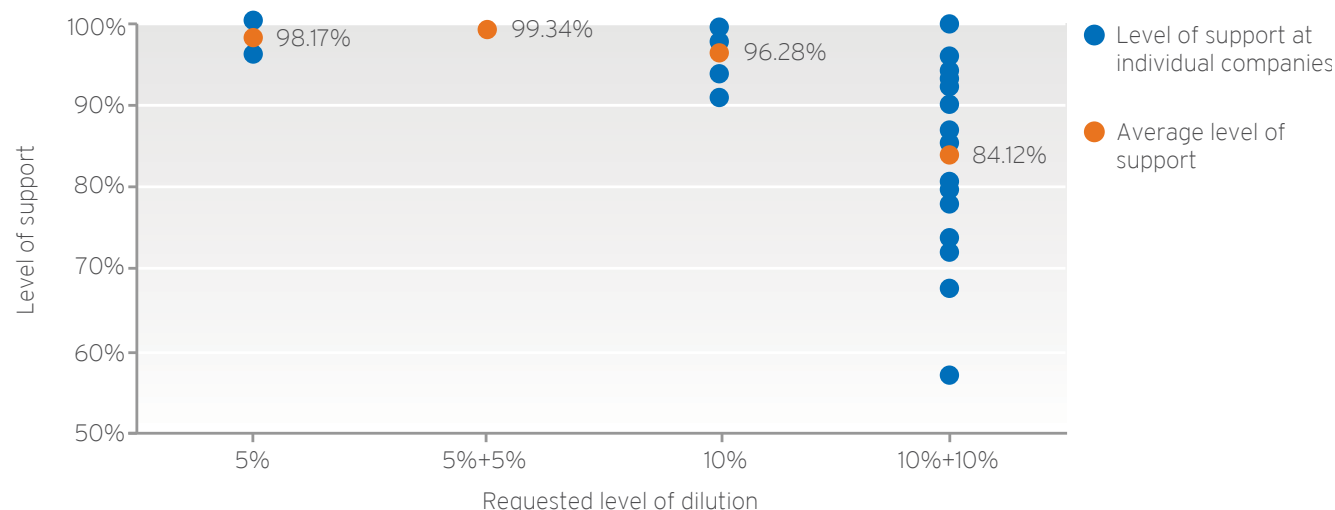
1.3.1 Authorities to issue shares with or without pre-emptive rights

Authorities with pre-emptive rights are proposed as ordinary resolutions (requiring a simple majority) while authorities to issue shares without pre-emptive rights 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 an increase in the levels of negative votes on share issuance proposals. This is mainly because some international investors only allow lower dilution thresholds than Dutch market practice. As a result some AEX and AMX companies are starting to request lower share issuance levels.

The graph opposite shows the relation between the requested level of dilution and the level of support received.

Graph 5: Level of support for 2014 share issuance resolutions by requested dilution level at AEX and AMX companies.



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

- KPN (without pre-emptive rights: 47.39% negative votes - passed);
- Wolters Kluwer (without pre-emptive rights: 43.18% negative votes - passed);
- Corbion (without pre-emptive rights: 32.26% negative votes - passed);
- PostNL (without pre-emptive rights: 27.29% negative votes - passed);
- SBM Offshore (without pre-emptive rights: 26.20% negative votes - passed).

We note that ISS had recommended in favour of each one of these resolutions.

1.3.2 Remuneration

Current legislation in the Netherlands requires listed companies to put remuneration up for a vote if there is a change in the remuneration policy¹⁶. In January 2014 new 'claw back' legislation¹⁷ 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 Accounts¹⁸. Additionally, pursuant to the Decree on Restrained Remuneration Policies¹⁹, 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 law²⁰ is expected to come into force on 1 January 2015, which will cap the variable pay for financial institutions in the Netherlands at 20% of fixed salary.

Remuneration related issues were the cause of intense debates surrounding certain AGMs. Two AGMs that stood out in this regard were the ones held by Heineken and Corbion.

Heineken

At Heineken the Supervisory Board used its discretionary powers to "recalibrate" the performance targets set previously for two long-term incentive plans (LTIPs) in order to safeguard a certain level of pay-out with regard to long-term variable pay for the entire senior management population²¹. The main reason given for this recalibration was to ensure that a total of 750 senior managers worldwide remain motivated²². As the remuneration policy was not a voting item on the Heineken AGM agenda, and there was no vote on the remuneration report, shareholders appear to have expressed their dissatisfaction by voting against the discharge of the Supervisory Board. Votes in favour from Heineken Holding (which holds 50.05% of Heineken NV) and FEMSA (which holds 12.53%) ensured that

¹⁶ Article 2:391 of the Dutch Civil Code.

¹⁷ <https://zoek.officielebekendmakingen.nl/Kst-32512-2.html>

¹⁸ Article 2:135 §5a of the Dutch Civil Code.

¹⁹ http://wetten.overheid.nl/BWBR0029246/geldigheidsdatum_30-10-2013

²⁰ <https://zoek.officielebekendmakingen.nl/kst-21501-07-1048.html>

²¹ See pg 54 of the Heineken NV 2013 Annual Report: <http://www.theheinekencompany.com/investors/reports-and-presentations?tab=financials>.

²² See pg 18 of the Heineken NV 2014 AGM minutes: <http://www.theheinekencompany.com/investors/governance/agm>.

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this resolution passed. However approximately 77% of the remaining shareholders voted against the discharge of the Supervisory Board²³. We note that ISS had recommended a vote against the discharge of the Supervisory Board.

After several shareholders in attendance at the AGM stated that they would be voting against the discharge of the Supervisory Board, the Heineken NV Chairman stated that he thought it was “inappropriate” and “disproportionate” for shareholders to vote against this resolution solely based on one part of the remuneration report²⁴.

Corbion

In the case of Corbion, the Supervisory Board used its discretionary powers to award a transaction bonus to the Management Board (to be paid out in shares) for the successful sale of one of the company's divisions. Because of the complexity of the transaction the Supervisory Board set a number targets to ensure the successful conclusion of the divestment. The Supervisory Board determined, after the close of the transaction, that these targets had been fully achieved and consequently decided to grant shares to both members of the Management Board²⁵. Prior to the 2014 AGM, following discussions with certain shareholders, Corbion announced that the transaction bonus would be put up for a shareholder vote and that the EGM to vote on this resolution would be held in July 2014²⁶. At the EGM this resolution was voted down with about 89% of the votes being cast in opposition²⁷.

1.3.3 Board elections

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

- Corbion (Mr R.H.P. Markham - 30.48% negative votes)
- Vopak (Mr C.J. van den Driest - 22.21% negative votes)
- DSM (Mr Tom de Swaan - 21.04% negative votes)
- Corbion (Mr E.E. van Rhede van der Kloot - 17.76% negative votes)
- PostNL (Mr J. Wallage - 16.74% negative votes).

We note that ISS had recommended against the re-election of the above mentioned candidates at Vopak and DSM, while recommending in favour of the re-election of the other directors.

Corbion

The relatively high level of opposition from shareholders for Mr Markham's re-election at Corbion was related to the remuneration issues mentioned in paragraph 2.3.2, as he is a member of the remuneration committee. A possible reason for the relative high level of against votes for Mr. van Rhede van der Kloot at Corbion was the €100,000 one-off time-restricted share award to compensate for the cancellation of an entitlement to a commitment award²⁸. In addition some investors stated at the AGM that they had voted against all proposed candidates due to the fact that the Management and Supervisory Board solely consisted of male board members and no female candidates had been proposed²⁹.

PostNL

The relatively high level of opposition from shareholders for Mr Wallage's re-election at PostNL was - according to the Chairman of the Supervisory Board³⁰ - due to the fact that some “Anglo-Saxon” investors do not agree with the lack of a shareholder vote on the Management Board members, and therefore express their dissatisfaction by voting against Supervisory Board members. In the case of PostNL the Management Board is appointed by the Supervisory Board, while a majority of Dutch firms put their Management Board up for a shareholder vote.

23 See the Heineken NV 2014 AGM voting results: <http://www.theheinekencompany.com/investors/governance/agm>.

24 See pg 29 of the Heineken NV 2014 AGM minutes: <http://www.theheinekencompany.com/investors/governance/agm>.

25 See pg 50 of the Corbion 2013 Annual Report: http://www.corbion.com/_sana_/handlers/getfile.ashx/9627524c-93d9-4bd0-a826-92a06925192c/Corbion_AR2013_20.pdf.

26 http://www.corbion.com/_sana_/handlers/getfile.ashx/c713d756-f81d-48d3-b4b6-5119456e0f0e/Important+information+for+shareholders+in+relation+to+the+AGM+on+12+May+2014+and+the+EGM+in+July+2014.pdf

27 [http://www.corbion.com/_sana_/handlers/getfile.ashx/fe64048f-7cd4-41a1-8c47-cb49a7b9ed71/Stemresultaten+\(Engels\).pdf](http://www.corbion.com/_sana_/handlers/getfile.ashx/fe64048f-7cd4-41a1-8c47-cb49a7b9ed71/Stemresultaten+(Engels).pdf)

28 See pg 10 of the Corbion 2014 AGM Agenda and Explanatory notes: http://www.corbion.com/_sana_/handlers/getfile.ashx/c9a41322-14d7-4bab-87a7-49a3fd8f41bb/Agenda+with+explanation.pdf.

29 See pg 17 of the Corbion 2014 AGM minutes: http://www.corbion.com/_sana_/handlers/getfile.ashx/35a672b8-c940-4e20-89a1-e096d8142139/Notulen%2c+concept+2014+website.pdf.

30 See pg 34 of the PostNL 2014 AGM minutes: https://www.postnl.nl/en/Images/20140416-postnl-2014-ava-concept-notulen_tcm9-17353.pdf.

2. RECOMMENDATIONS FROM ISS

During the 2014 proxy season, seven companies out of the AEX and AMX companies surveyed, received at least one “Against” recommendation from Institutional Shareholder Services Ltd (ISS), a leading proxy advisor. Many institutional investors rely on proxy advisory firms, such as ISS, for meeting agenda analyses 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.

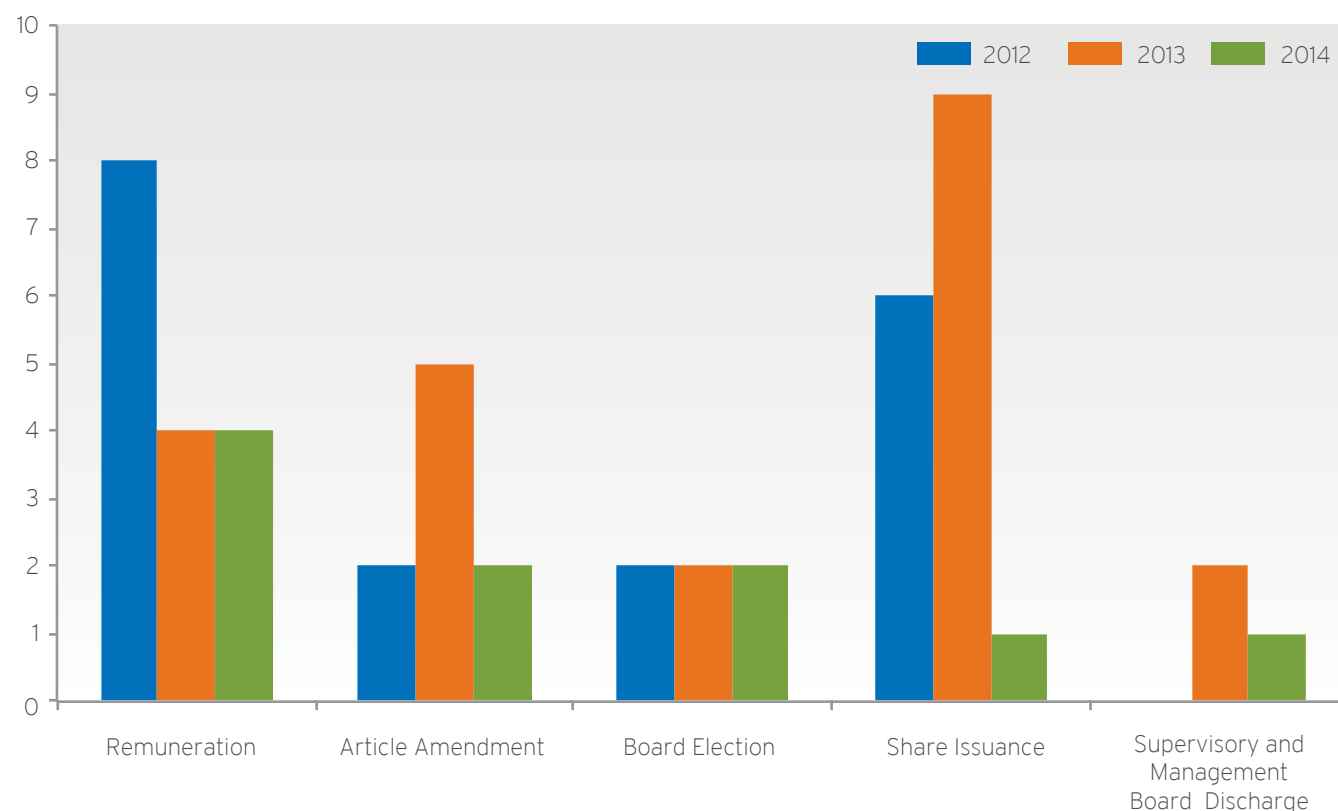
Below is an overview of the negative recommendations by ISS at AEX and AMX AGMs in 2014.

Table 1: Overview of “Against” recommendations from ISS at AEX and AMX AGMs during 2014

Remuneration	Arseus, TomTom
Director elections	DSM, Vopak
Amendments of the articles of association	Arseus, Sligro
Discharge	Heineken

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 four years. The table shows that, overall, the 2014 proxy season saw the lowest number of negative recommendations from ISS in the last three years. Remuneration and Share Issuance related resolutions consistently received the highest number of negative recommendations.

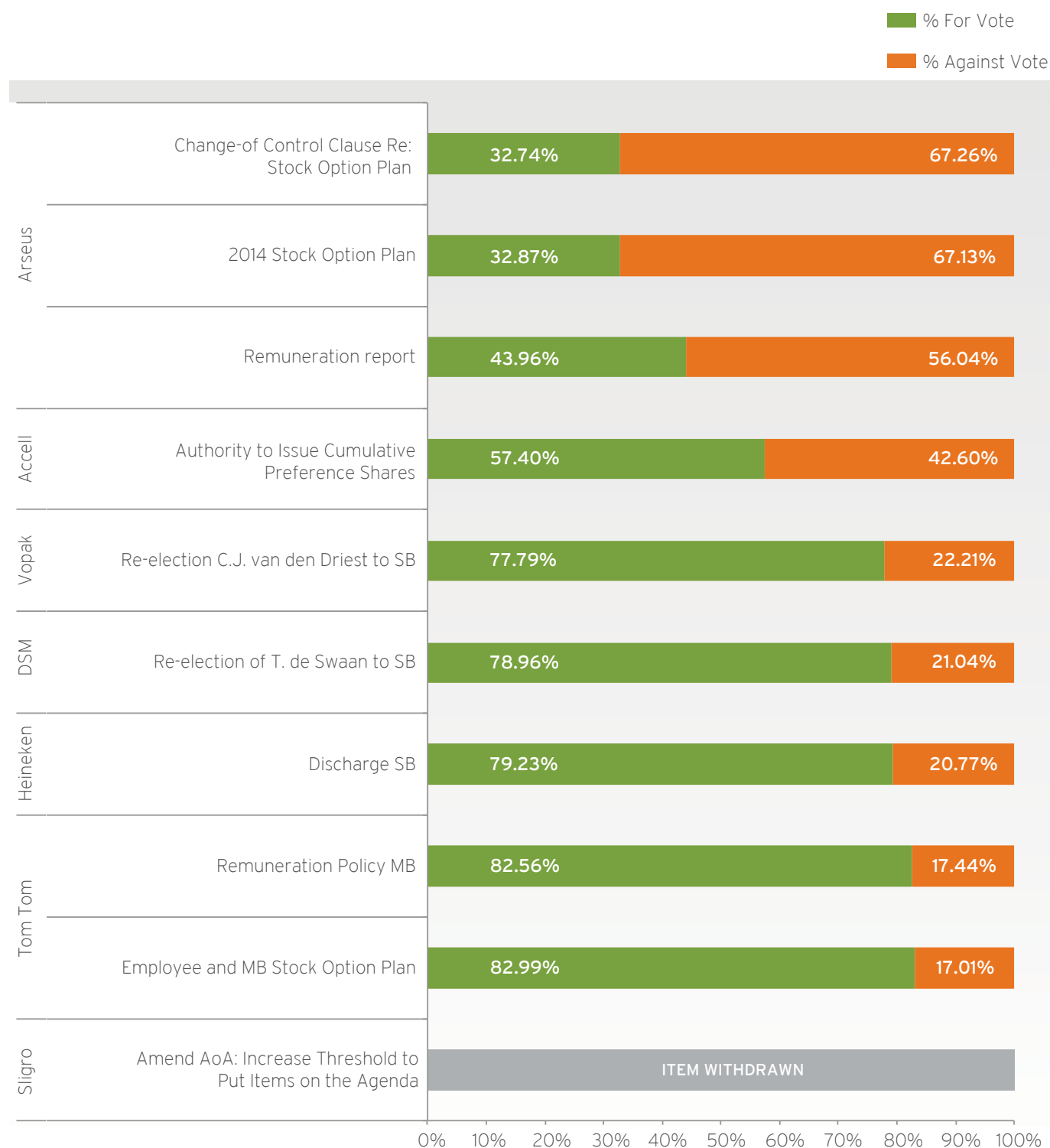
Graph 6: Overview of the number of negative recommendations by ISS at AEX and AMX AGMs over the past three years



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Below is an overview of all resolutions in the AEX and AMX that received an "Against" recommendation from ISS with the voting outcome for that resolution.

Graph 7: Overview of "Against" recommendations by ISS and voting outcomes at AEX and AMX AGMs during 2014



3. CORPORATE GOVERNANCE DEVELOPMENTS

3.1 Clawback Legislation

On 18 December 2012, the Dutch Second Chamber adopted so-called 'claw back' legislation³¹ which came into force on 1 January 2014. The bill makes the following changes to Book 2 of the Dutch Civil Code:

- Introduce a cap on gains realised on company shares as a result of a change of control, i.e. an acquisition or a legal merger or demerger.
- Require listed companies to add the execution of the remuneration policy as a discussion item to the AGM agenda before the approval of the Annual Accounts.

This new legislation includes a rule requiring a Management Board member of a listed company to pay back part of the gain derived from shares granted to them as a remuneration element, if it is the result of a change of control. Legislation that makes it possible to recover bonuses awarded based on 'incorrect information' is already in place, therefore the new legislation is expected to make it simpler for the Supervisory Board to assess whether there is sufficient basis for a recovery.

According to Eumedion³² the changes introduced by the 'claw back' legislation will not make a significant difference, as they apply to bonuses awarded in shares and not cash bonuses.

Furthermore, while companies have included the execution of the remuneration policy on the agenda as required by the law, as most institutional investors vote their shares by proxy this only allows a limited number of investors to actually raise questions or concerns.

3.2 Bill on the Remuneration Policy of Financial Undertakings

The EU Capital Requirement Directive³³ (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 the fixed remuneration with shareholder approval.

On 26 November 2013, the Dutch government published a Bill on the Remuneration Policy of Financial Undertakings³⁴, 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 Dutch Minister of Finance intended for the law to come into force on 1 January 2015, however the proposal is still in the process of being approved by the Dutch Second Chamber, following which it must be sent for approval to the First Chamber³⁵.

3.3 Monitoring Commission Corporate Governance

On 11 December 2013, the new Monitoring Commission Corporate Governance Code was installed. The Monitoring Commission, chaired by Prof. JA van Manen, is tasked with improving the relevance and usability of the Dutch corporate governance code and to monitor compliance by Dutch listed companies³⁶.

On 5 May 2014 the new Monitoring Commission publish its working plan for 2014³⁷. The Monitoring Commission intends to evaluate the Corporate Governance Code by:

- identifying gaps or ambiguities in the Code;
- expanding its knowledge of national and international developments and customs regarding corporate governance to encourage convergence of national codes;
- at least an annual evaluation of in which way, and to what extent, the provisions of the Code are met.

Because the effectiveness of the Code depends on the support of market participants, the Monitoring Commission intends to include parties that represent (Supervisory) Board members, shareholders, and employees, in its evaluation process.

31 http://www.eerstekamer.nl/wetsvoorstel/32512_bevoegdheid_aanpassing

32 http://eumedion.nl/nl/blog/afroomregeling_wetsvoorstel_claw_back_zo_lek_als_een_mandje

33 http://ec.europa.eu/internal_market/bank/regcapital/legislation-in-force/index_en.htm

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

35 http://www.eerstekamer.nl/wetsvoorstel/33964_wet_beloningsbeleid

36 <http://commissiecorporategovernance.nl/>

37 <http://commissiecorporategovernance.nl/nieuws/2370/werkprogramma-2014>



HIGHLIGHTS

- The average shareholder vote participation at the AGMs of the DAX companies increased from 49.86% in 2013 to 55.05% in 2014, while the average shareholder vote participation level at the AGMs of MDAX companies decreased from 68.91% in 2013 to 65.44% in 2014.
- In the DAX one company saw a board proposed resolution rejected by shareholders during the 2014 proxy season (Merck KGaA), while the MDAX saw two companies with rejected resolutions (GEA Group and Rhoen Klinikum).
- In the DAX, 16 companies saw at least one resolution receive more than 10% shareholder opposition in 2014. Among these, the most commonly contested resolutions related to supervisory board elections followed by authorities to issue shares.
- During the 2014 proxy season, nine companies out of the 30 DAX companies received at least one "Against" recommendation from Institutional Shareholder Services Ltd (ISS).



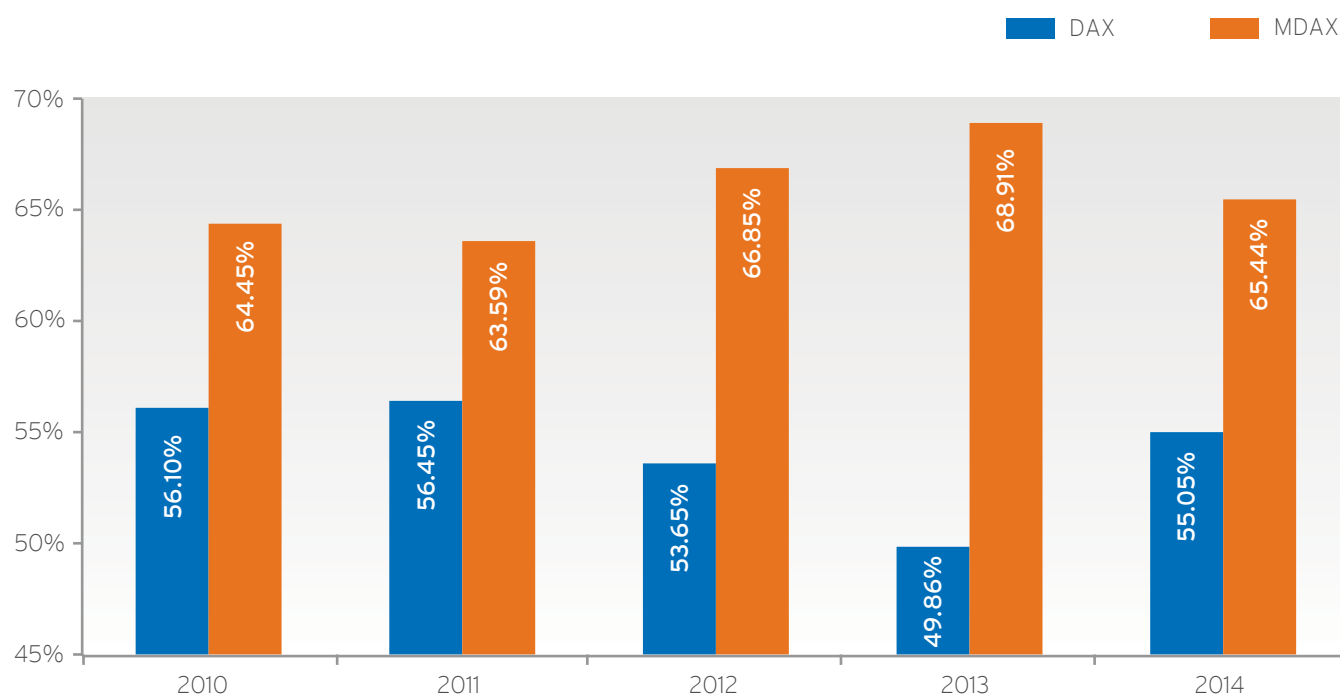
1. VOTING IN GERMANY

1.1 Quorum overview

Georgeson has reviewed the quorum levels of the 30 companies which comprise the DAX Index¹ and the 50 companies which comprise the MDAX Index² over the past five years.

The average participation level for the DAX increased by 5.19% from 49.86% in 2013 to 55.05% in 2014, while the average participation level in the MDAX decreased by 3.47% from 68.91% in 2013 to 65.44% in 2014.

Graph 1: Shareholder attendance levels: comparison of DAX and MDAX between 2010 and 2014



1.1.1 Registered shares vs. bearer shares

In 2013, the DAX recorded a decrease in participation levels from 53.65% in 2012 to 49.86% due to share blocking concerns raised by foreign shareholders, in connection with the interpretation by custody banks and voting service providers of a 2012 ruling of the Higher Regional Court (OLG) in Cologne.

While the legal requirement to disclose threshold crossings has long been applied to the holders of the voting rights (whether they be investment managers or beneficial owners) a ruling of the Higher Regional Court (OLG) in Cologne made on 6 June 2012³ found that for companies with registered shares the registered nominee (such as a custodian bank) also has a co-responsibility to ensure that such announcements have been made.

As a result of this ruling custodian banks, to ensure that they were in full compliance with the OLG Cologne ruling, applied to their nominee holdings additional registration requirements when one of their clients requested to vote at a shareholder meeting. In some cases this led to individually-registered share positions being unavailable for settlement while the holder of the voting rights appeared on the register (instead of the custodian bank).

The decrease in participation levels mainly affected the 15 companies of the DAX whose share capital is issued in registered form and

¹ 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.

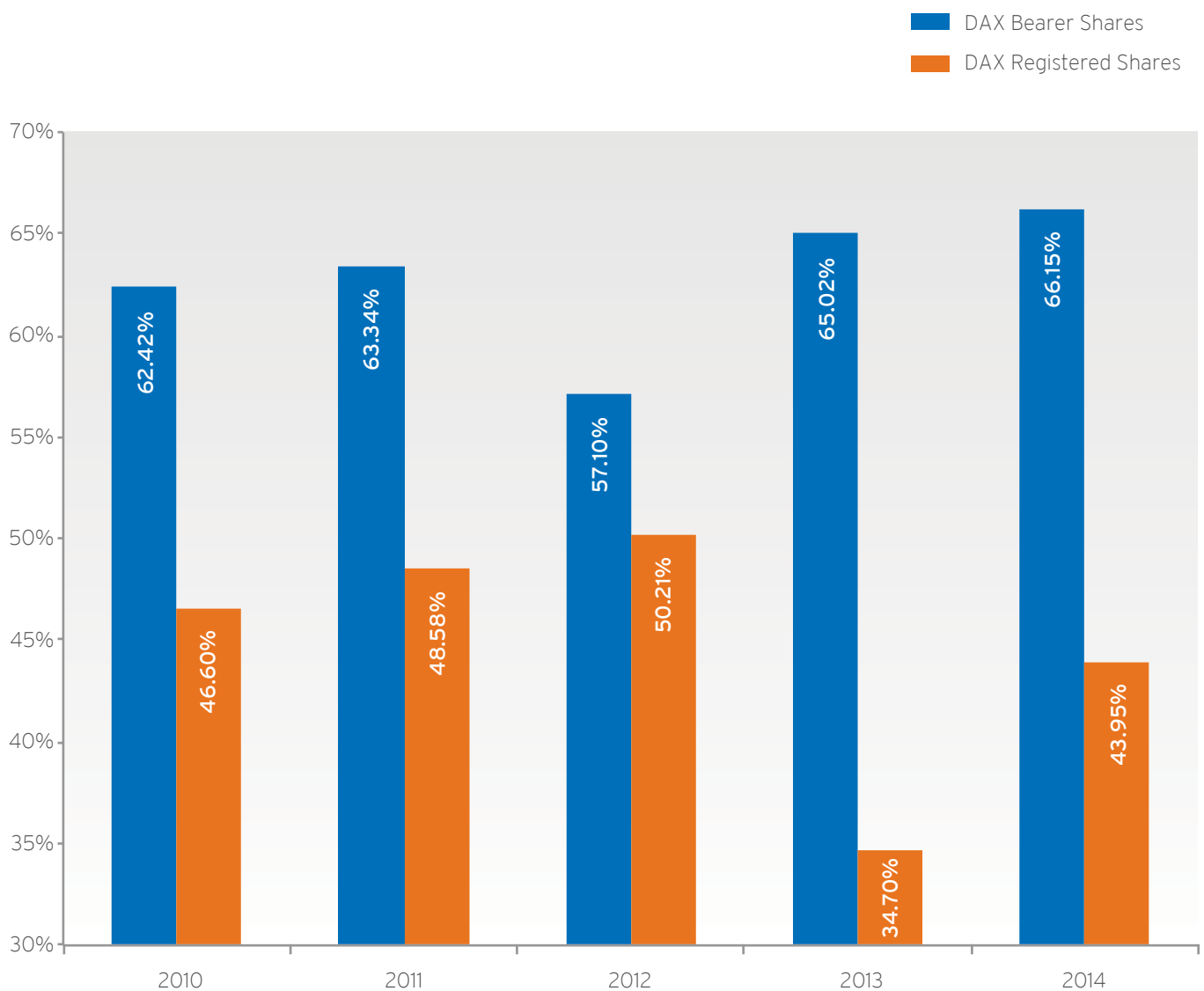
² The MDAX tracks the segment of mid-sized industrials. It contains the shares of the 50 companies listed in the Prime Segment of Deutsche Boerse, which follow the 30 DAX companies with regard to market cap and stock exchange turnover. See here: http://www.dax-indices.com/EN/MediaLibrary/Document/Factsheets/FS_MDAX.pdf.

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

amounted to an average decrease of 15.51 percentage points. Issuers with a large foreign shareholder base were more affected than companies with a large proportion of shares held by domestic shareholders.

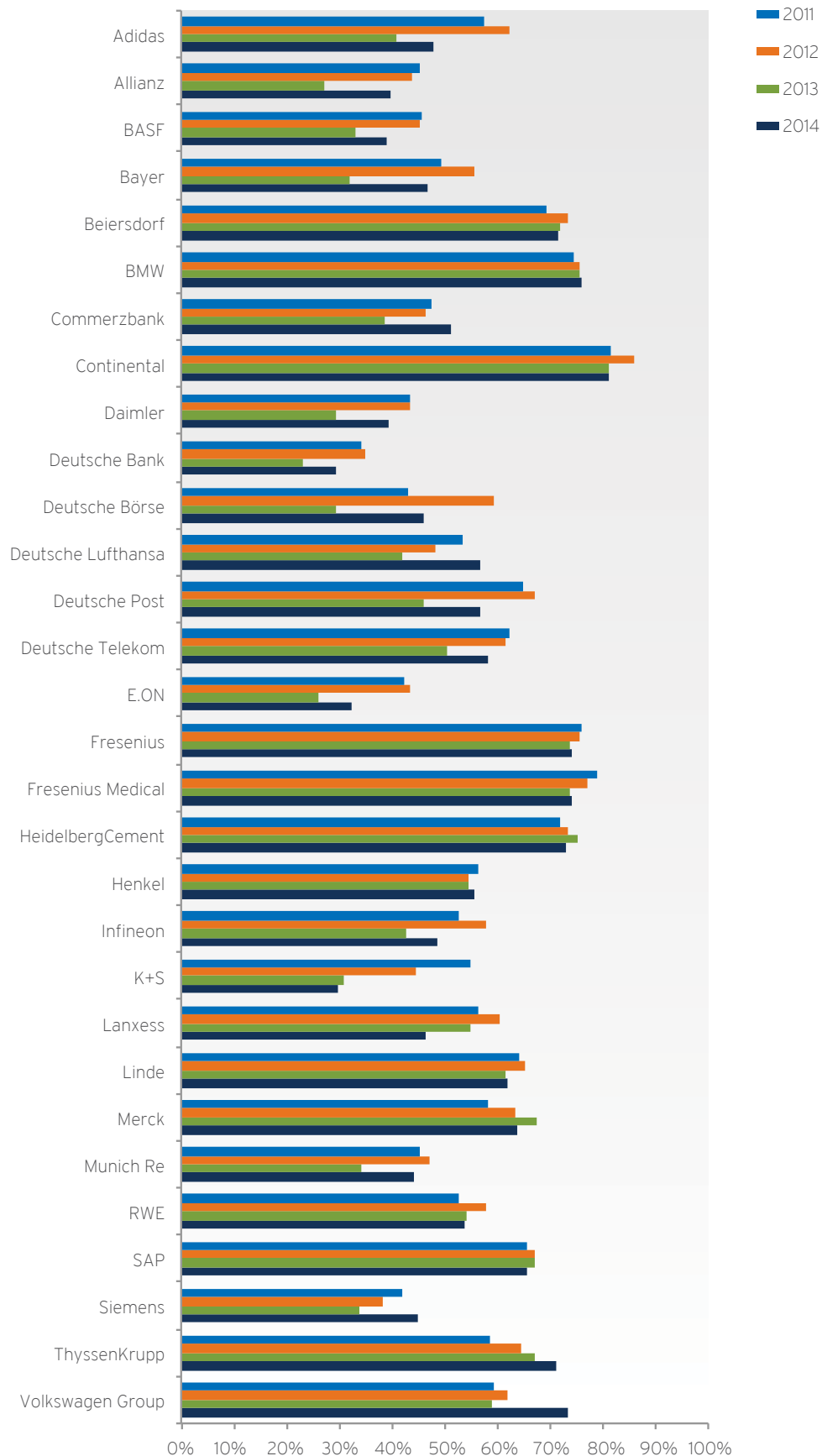
This trend was partially reversed in 2014 with an average increase of 9.25 percentage points for those same 15 DAX companies. In our experience the increase was mainly driven by clearer communication between market participants and changes in the way registrations and votes were handled by intermediaries.

Graph 2: Shareholder attendance levels: comparison between DAX companies with registered shares vs. bearer shares between 2010 and 2014



Germany

Graph 3: Shareholder attendance levels: comparison since 2011 of the 30 DAX companies surveyed (displayed alphabetically)



1.2 Rejected resolutions

In the DAX only one resolution was rejected by shareholders during the 2014 Proxy Season:

Merck

At Merck KGaA's AGM they proposed to amend an existing share capital authority to issue up to 20% of the issued share capital without pre-emptive rights for contributions in kind. The resolution failed to receive the required 75% shareholder approval with 66.48% votes in favour.

While this level of potential dilution received approval at most DAX AGMs, the result suggests that shareholders are starting to take a more critical view of resolutions proposing to exclude pre-emptive rights (see section 1.3.2)

In comparison, the MDAX saw two rejected resolutions:

GEA Group

At their AGM GEA Group proposed a resolution for the creation of a pool of capital without pre-emptive rights of up to €99m (equivalent to 20% of issued capital). The resolution failed to receive the required 75% shareholder approval with 74.6% votes in favour. It should be noted that 28.63% of the issued share capital was represented at the 2014 AGM, compared to 61.24% at the 2013 AGM.

Rhoen Klinikum

At their 2014 AGM, Rhoen Klinikum put forward a proposal to repeal a resolution that was voted on at the 2013 AGM, as the passing of that resolution was the subject of a legal dispute. The resolution in question had sought to amend the articles of association to remove a 90% + 1 share supermajority requirement imposed on certain types of resolutions. In order to avoid a lengthy legal dispute over whether the 2013 article amendment had received sufficient votes to pass, the company proposed in 2014 to repeal the article amendment. This proposal was opposed by 81.73% of the shares voted at the June 2014 AGM.

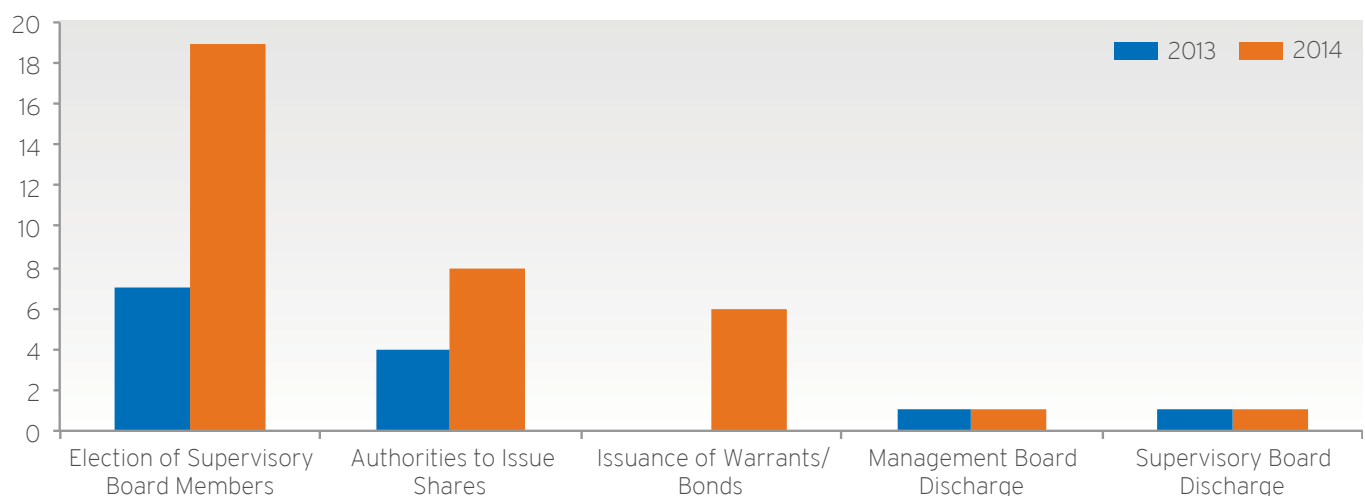
1.3 Contested resolutions

Among all DAX companies, 16 companies saw at least one resolution receive more than 10% shareholder opposition in 2014. The total number of resolutions that received over 10% opposition amounted to 35.

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

The most commonly contested resolutions were Supervisory Board member elections with 19 resolutions receiving more than 10% negative votes. The second most commonly contested resolutions were authorities to issue shares.

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

In Germany, up to 50% of the Supervisory Board is required by law to comprise employee representatives (elected by employees of the company), and Supervisory Board members are typically elected for five year terms. While the German Corporate Governance

Germany

Code does not set a required level of Supervisory Board independence, many institutional investors either require 1/3 of the full Supervisory Board or half of the shareholder-elected members to be independent.

The 2013 proxy season recorded a large number of Supervisory Board members up for re-election or replacement. Even though there were fewer Supervisory Board elections in 2014, German companies saw more shareholder opposition especially on the re-election of existing Supervisory Board members (mainly driven by concerns about independence levels and excessive time commitments).

Among all DAX AGMs, seven companies recorded a total of 19 Supervisory Board elections receiving more than 10% opposition. In the case of five candidates opposition exceeded 30%, but all Supervisory Board candidates were elected.

1.3.2 Authorities to issue shares

It is common market practice in Germany for companies to request shareholder authority to issue up to 50% of issued share capital with pre-emptive rights for a period of five years. Exclusions of pre-emptive rights are typically proposed for up to 20% of issued share capital. This is in line with the recommendations of the BVI⁴, the German investment management association.

In the past it has been common practice for German issuers to request five-year share capital authorities on a regular basis, often before the expiration of previously approved authorities and without cancelling the unused portions thereof. This has resulted in growing shareholder scrutiny into the conditions under which shares can be issued, and has led to more companies regularly cancelling any outstanding capital authorities.

Additionally, there are an increasing number of investors who apply a stricter dilution limit than the BVI guidelines, often set at 10% of issued share capital. Consequently, despite most DAX companies complying with the BVI guidelines, since the 2013 proxy season we have witnessed increased shareholder opposition to share capital authorisations.

Among DAX AGMs eight share capital resolutions received more than 10% opposition (including the above-mentioned proposal, which was rejected).

1.3.3 Issuance of warrants and bonds

In addition to basic authorities to issue shares, German companies typically also request an authority to issue warrants and convertible bonds. Such authorities are typically included in the dilution thresholds proposed for the issuance of shares without pre-emptive rights, however a separate resolution is required to issue conditional capital which may only be used for convertible instruments.

In recent years shareholders have increasingly considered such resolutions in terms of their dilutive effect, and therefore in conjunction with the authorities to issue shares. The BVI guidelines now explicitly state⁵ that their dilution thresholds apply to both share issuance authorities and conditional capital authorities overall.

Among DAX AGMs six conditional capital resolutions received more than 10% opposition in 2014, compared to none in 2013.

1.3.4 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, however the vote is largely symbolic as the legal position of shareholders and board members do not change based on the results of this vote.

While it is common practice to propose the discharge of the Supervisory Board as a single resolution, and the discharge of the Management Board as a separate single resolution, in many cases the vote is split into individual discharge votes on each board member at the AGM itself. This happens when a shareholder present at the meeting requests it, and the request is either automatically approved by the chairman of the meeting, or put to a vote of those present by the chairman.

A primary example of this was the ThyssenKrupp 2014 AGM. The company's notice of meeting⁶ proposed the discharge as single resolutions, one on the Supervisory Board and one on the Management Board. The meeting results⁷ however show that individualised discharge votes were cast on the day of the AGM and that a high percentage of against votes were recorded for most board members (the highest opposition being 30.51%). This also happened at their 2013 AGM, at which the highest opposition recorded reached 37.19%.

4 See here for the *BVI-Analyse-Leitlinien für Hauptversammlungen 2014* ("BVI Guidelines for the Analysis of General Meetings 2014"): <http://www.bvi.de/regulierung/branchenstandards/analyseleitlinien-fuer-hauptversammlungen-alhv/>.

5 http://www.bvi.de/fileadmin/user_upload/Regulierung/Branchenstandards/ALHV/Synopse_ALHV_2013_2014_Final.pdf

6 http://www.thyssenkrupp.com/documents/hv_2014_01_17_en/Einladung_HV_2014_E.pdf

7 http://www.thyssenkrupp.com/documents/hv_2014_01_17_en/ThyssenKrupp_Voting_results_HV_2013.pdf

2. RECOMMENDATIONS FROM ISS

During the 2014 proxy season, nine companies out of the DAX index received at least one “Against” recommendation from Institutional Shareholder Services Ltd (ISS), a leading proxy advisor. Many institutional investors rely on proxy advisory firms, such as ISS, 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.

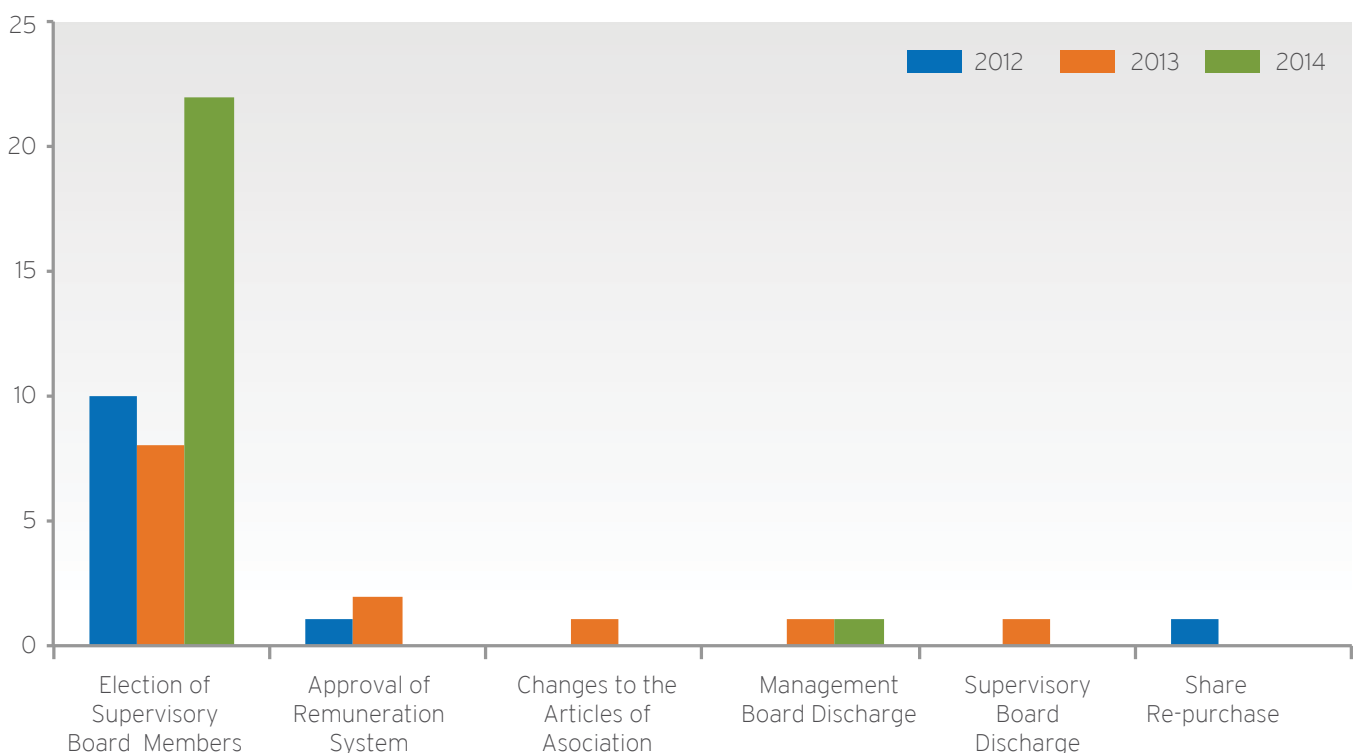
Below is an overview of the negative recommendations by ISS at DAX AGMs in 2014.

Table 1: Overview of “Against” recommendations from ISS at DAX AGMs during 2014

Election of Supervisory Board Members	Merck, BASF, SAP, Munich RE, Continental, Deutsche Telekom, BMW, VW Group
Management Board Discharge	Thyssen Krupp

This graph shows a comparison of the number of resolutions which received “Against” recommendations by ISS in 2013 vs. 2014.

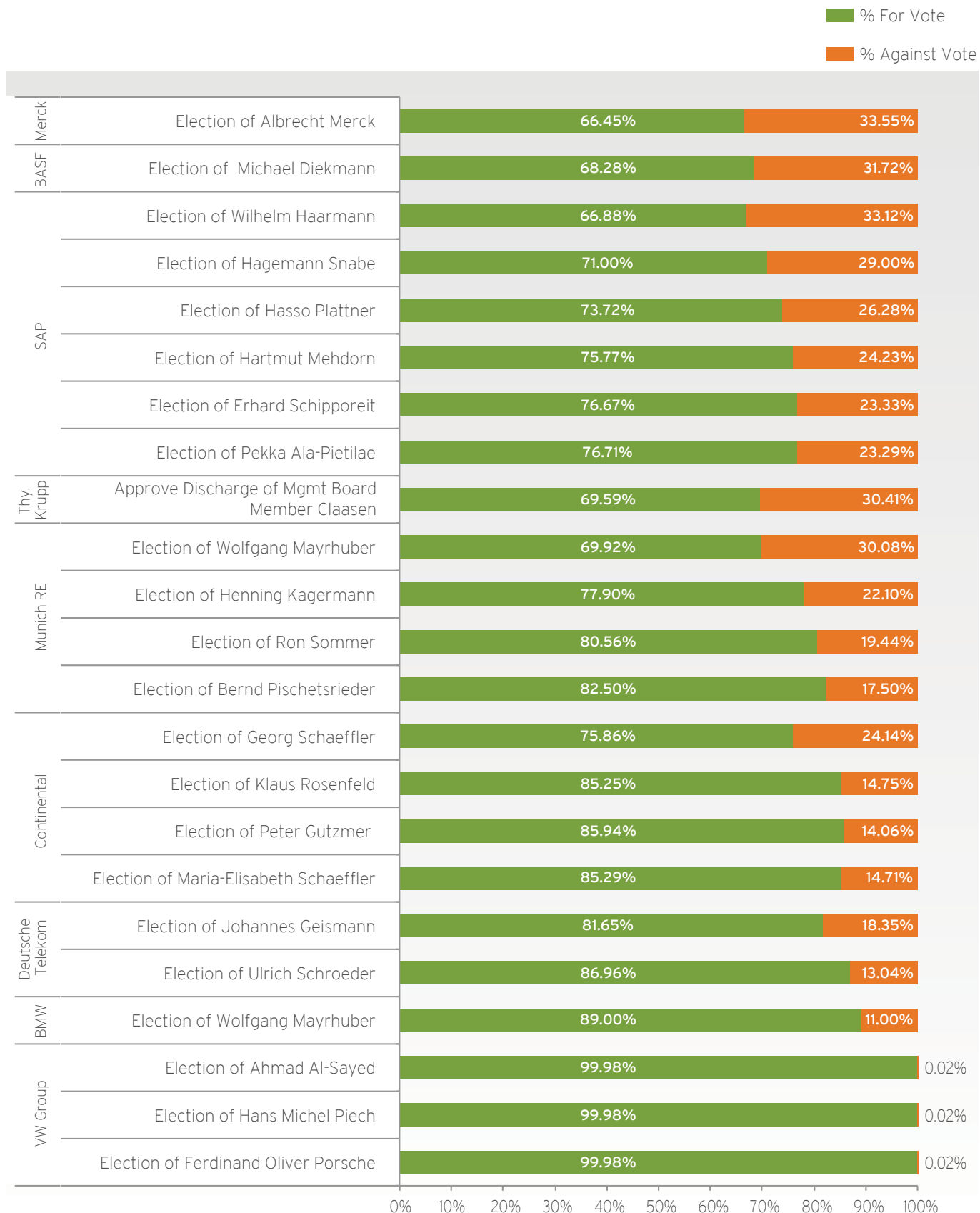
Graph 5: Overview of the number of negative recommendations by ISS at DAX AGMs over the past three years



On the following page is an overview of the negative vote recommendations issued by ISS in advance of the AGMs of the DAX companies in 2014 together with the voting outcome of the resolutions in question.

Germany

Graph 6: Overview of "Against" recommendations by ISS at DAX AGMs during 2014 and their voting results



3. CORPORATE GOVERNANCE DEVELOPMENTS

3.1 The German Corporate Governance Code

Following the 13th German Corporate Governance Code conference held in Berlin on 24 and 25 June 2014 the Government Commission on the German Corporate Governance Code published an announcement⁸ entitled “Fewer new recommendations, more explanations and comments.”

The German Corporate Governance Commission confirmed that no changes for the code are planned for 2014 and that it will focus less on developing new recommendations and suggestions, but rather on critically reviewing and commenting on regulatory initiatives made by third parties, especially on a European basis, where the German Government Commission has no direct influence.

The commission confirmed that the topic of proxy advisors remained current, and that the Commission will continue to have a dialogue with proxy advisory firms to achieve a better mutual understanding. No effort to regulate proxy advisors are currently considered necessary by the Commission.

Finally, the Commission stated that they will review the existing recommendations for the maximum number of external board mandates for Supervisory Board members.

3.2 Executive Remuneration

Draft legislation, known as “*Gesetz zur Verbesserung der Kontrolle der Vorstandsvergütung und zur Änderung weiterer aktienrechtlicher Vorschriften*” (VorstKoG) which had been approved by the Bundestag (the lower chamber of the German Parliament) and which would have introduced a binding shareholder vote on executive remuneration, was voted down in the Bundesrat (the upper chamber) in September 2013.

Following the parliamentary election later that month, the new Coalition Government agreed on introducing a mandatory “say-on-pay” vote on Executive Remuneration of listed companies during the new legislative period which runs from 2013 to 2017. Experts however believe that the German Government will wait to draft such a law until the new proposed EU Shareholder Rights Directive is adopted. It also appears likely that some form of gender quotas could be included in the new draft legislation, as a part of a raft of corporate reforms.

8 <http://www.dcgk.de/en/press/details/press-release-fewer-new-recommendations-more-explanations-and-comments.html>



HIGHLIGHTS

- The average shareholder vote participation at the AGMs of the SMI companies decreased from 60.5% in 2013 to 58% in 2014. This is the first decrease recorded in the past five years.
- In the SMI two companies saw resolutions rejected by shareholders during the 2014 proxy season: ABB and Transocean.
- 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).
- The most commonly contested resolutions in the SMI were director elections. The second most commonly contested resolutions were advisory votes on compensation, followed by article amendments relating to the "Minder" Ordinance.
- During the 2014 proxy season, 14 companies out of the 20 SMI companies received at least one "Against" recommendation from Institutional Shareholder Services Ltd (ISS).

Switzerland

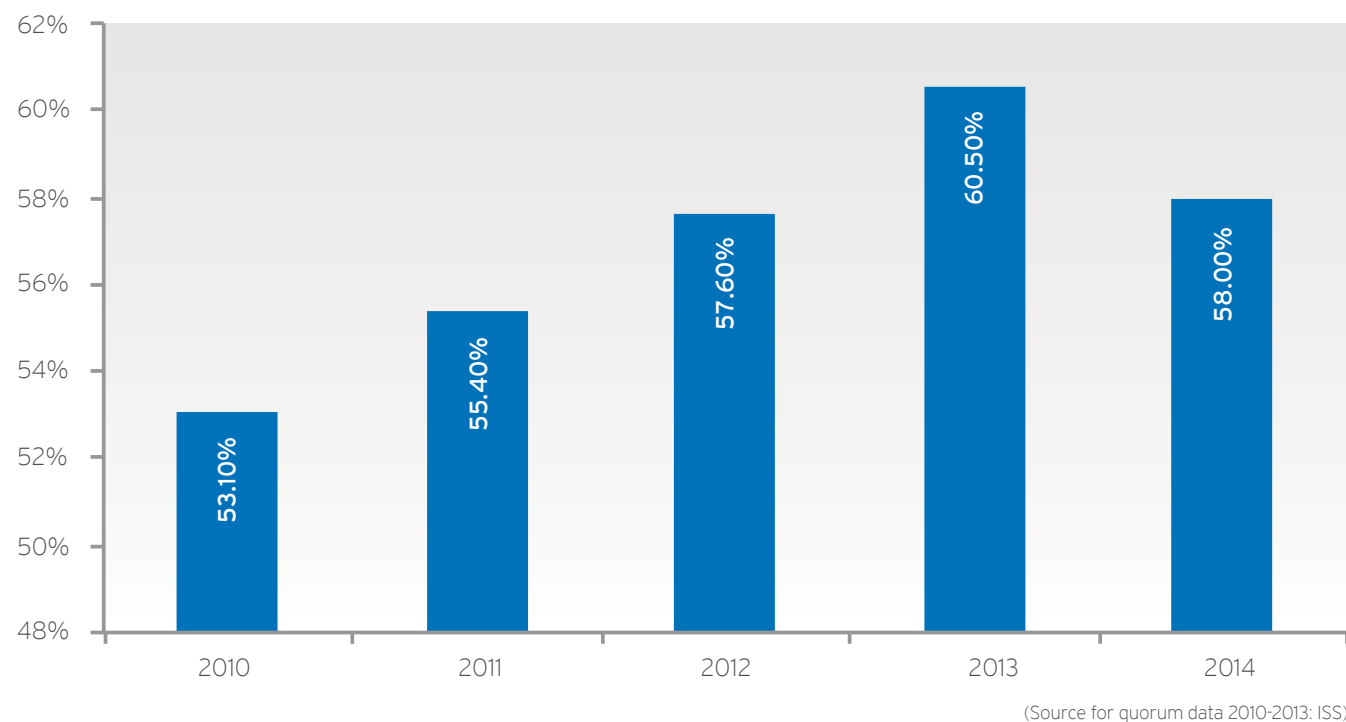
1. VOTING IN SWITZERLAND

1.1 Quorum overview

Georgeson has reviewed the quorum levels of the 20 companies which comprise the SMI¹ over the past five years.

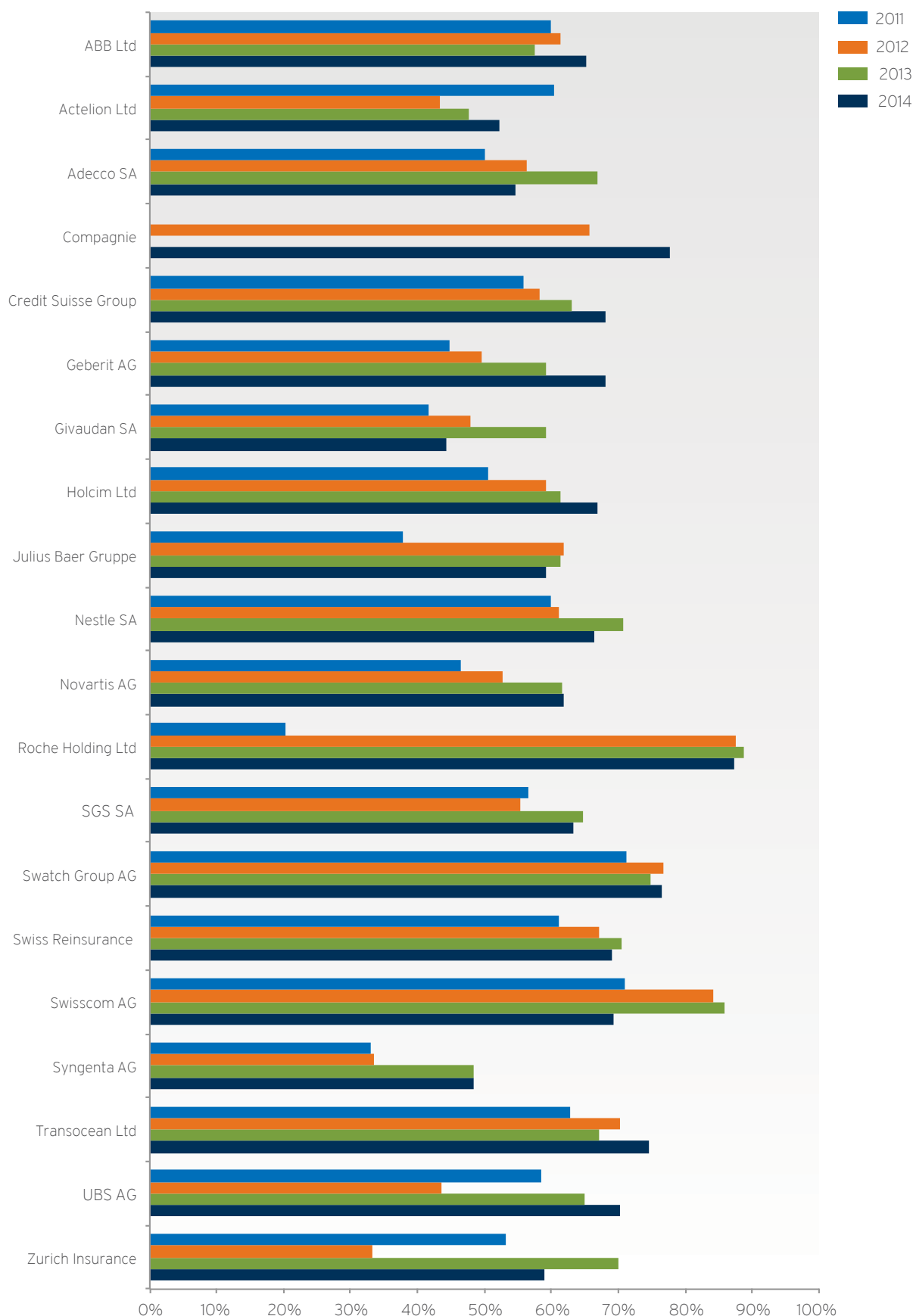
The average participation level for the SMI decreased by 2.5 percentage points from 60.5% in 2013 to 58.0% in 2014.

Graph 1: Shareholder attendance levels of the SMI between 2010 and 2014



¹ 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.

Graph 2: Shareholder attendance levels at the 20 SMI companies surveyed since 2011



1.2 Rejected resolutions

In the SMI only two management proposed resolutions were rejected by shareholders during the 2014 Proxy Season:

ABB

At their AGM, ABB requested that shareholders not only approve the remuneration report in a non-binding vote, but additionally that they approve the creation of a pool of conditional capital of CHF 154.5m to fund future equity compensation to employees.

While the non-binding vote on the remuneration report narrowly passed with 51.7% support from shareholder, the additional vote on the pool of conditional capital failed to meet the required 2/3 approval from shareholders and was rejected with 58.6% of all votes cast supporting this resolution.²

It appears that in connection with the advisory vote on the remuneration report, concerns were raised over the discretion of the board to increase bonuses to executives of ABB by up to 50%, and the perceived lack of performance criteria under the long-term incentive plan. Additionally ABB had made a non-performance based retention award in 2013.

With regard to the creation of the pool of additional capital for future equity compensation payments, the main concern seems to have been the level of potential dilution for existing shareholders. Under the proposal, shareholders could have been diluted by up to 6.08% based on the currently issued share capital. Considering best market practices, this threshold seems to have been deemed excessive by a number of shareholders.

Transocean

At Transocean's AGM, three resolutions to amend the articles of association failed to obtain sufficient shareholder support³. The proposals of the Board related to: reducing the maximum number of Board members to 11, implementing a majority vote standard for uncontested Board elections, and, clarifying the non-binding version of the English translation of Transocean's articles of association.

Even though these resolutions were approved with an average majority of 99% of all votes represented at the shareholder meeting, they failed to receive the required 2/3 approval of the entire issued share capital, which was not represented at the meeting. In terms of total issued share capital, the three resolutions received approximately 61% approval.

1.3 Contested resolutions

Among SMI companies, 16 companies saw at least one resolution receive more than 10% shareholder opposition⁴ in 2014. The total number of resolutions that received over 10% opposition amounted to 45.

It should be noted that all vote results in this section exclude Compagnie Financière Richemont SA⁵ and Swatch Group SA⁶, which only confirm that all their resolutions were approved by shareholders but do not provide detailed voting results on their website.

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

The most commonly contested resolutions were Director elections with 14 resolutions receiving more than 10% negative votes. The second most commonly contested resolutions were advisory votes on compensation. These were followed by article amendments relating to the "Minder" Ordinance, and compensation committee elections.

2 <http://www.abb.com/cawp/seitp202/a352f730ac0f4d5cc1257cca0044705e.aspx>

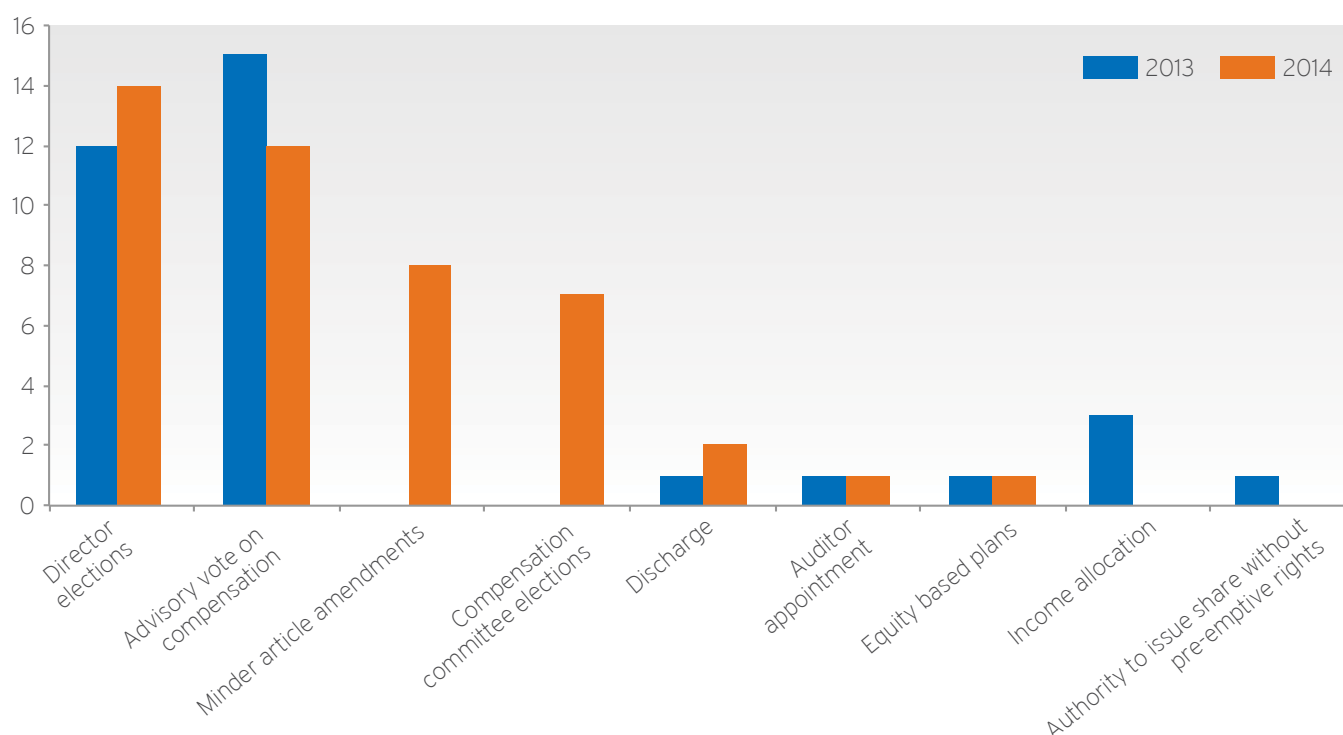
3 <http://phx.corporate-ir.net/phoenix.zhtml?c=113031&p=irol-newsArticle&ID=1932019>

4 This figure includes both against and abstain votes.

5 https://www.richemont.com/images/investor_relations/agm/2014/com_%20fin_richemont_sa_minutes_of_agm_held_17092014.pdf

6 http://www.swatchgroup.com/en/services/archive/2014/ordinary_general_meeting_of_shareholders_2014

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



1.3.1 Director elections

As required under the "Minder" Ordinance⁷, issuers introduced annual Director elections in 2014. Therefore, there was an increase in the number of Director election resolutions in the SMI. In the past, Directors at Swiss companies were commonly elected for multi-year terms.

External positions

One of the issues that affected the results of Director elections was an increased focus on the part of investors and proxy advisors on the number of external positions held by Directors⁸. One of the requirements of the "Minder" Ordinance is that the articles of association must limit the external positions that a Director may hold. In this context, ISS, a leading proxy adviser, announced that although they had not been applying their guideline regarding external positions to Swiss companies (because up until that point this issue was not addressed in local law or governance codes), they would begin applying their limits on external positions for the 2014 proxy season (both when assessing director elections and article amendments).

Board independence

Beside the issue of the external positions held by individual Directors, the overall independence of the Board played a key role for investors in deciding whether to support the elections of certain Directors. The 2014 proxy season continues to show that investors are willing to vote against all non-independent candidates if they assess that the Board comprises insufficient independent representation (often set at 50%).

Tenure

While the Swiss Code of Practice does not specify a maximum period under which a non-executive Director can still be deemed independent, it has become common practice amongst for institutional investors to draw a line at 12 years of Board membership. In addition some investors apply additional (more stringent) criteria than the issuer when assessing the independence of individual Directors.

⁷ 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>.

⁸ This phenomenon is sometimes referred to as "overboarding".

1.3.2 Advisory vote on compensation

As the Swiss Code of Practice continues to recommend a non-binding vote on the remuneration report, it is likely that issuers will continue with the practice of having such a vote as part of their AGM agenda, despite the additional requirements introduced by the "Minder" Ordinance (see section 3.1).

Of the 20 SMI companies 19 companies submitted a vote on their remuneration report or on remuneration awards during the 2014 proxy season. The only exception was Swatch, which did not propose any remuneration-related voting items at their 2014 AGM.

Out of the 18 SMI companies who held an advisory shareholder vote on the remuneration report, 12 received opposition in excess of 10%. ABB (as detailed under paragraph 1.2) received 43.03% against votes, as well as 5.28% abstain votes.

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

- Givaudan (60.9% in favour)
- SGS (67.59% in favour)
- Syngenta (71.55% in favour)

1.3.3 Amendments to the articles of association

Of the companies that submitted article changes at their 2014 AGM, in line with staggered requirements imposed by the "Minder" Ordinance (see paragraph 3.1), significant opposition was recorded in the vote outcomes at the following companies:

- Geberit (47.5% and 43.6% negative votes)
- Adecco (28.8% against votes)
- UBS (26.1% against votes)
- Julius Baer (21.5% against votes)
- Swisscom (14% against votes)

In the majority of the cases, the reasons for the negative votes were due to remuneration-related features that were considered by some investors to be contrary to shareholders' best interests.

The main concerns raised by institutional investors in connection with proposed article amendments, included proposed articles which appeared to allow:

- granting loans to non-executives
- providing pension payments to non-executives
- allowing for excessive severance terms on non-compete arrangements
- granting of performance-related or variable pay to non-executives
- allowing for time-vesting on the granting of stock options to executives

Concerns unrelated to remuneration were also highlighted. The most commonly noted issues included provisions that would allow companies to resubmit any rejected say-on-pay proposal to the same AGM in amended form.

Apart from the concerns noted above, the next most common reason for a negative vote appeared to be in connection with companies which allowed their Directors too many external mandates (in the articles of association). Even though most companies specified a range that they considered reasonable in terms of the time commitment required to fulfil their duties, outliers to the maximum of four outside directorships at listed companies have generally been flagged by proxy advisers and institutional investors.

1.3.4 Compensation committee elections

A further requirement imposed by the "Minder" Ordinance is the annual election of members of the compensation committee.

While shareholders in the past were only able to vote on the election of Directors, they now have the opportunity to vote on the election of Directors to serve on the compensation committee. This is proposed as a separate vote, and therefore an investor could support the election of a candidate to the Board but oppose their election to the compensation committee.

2. RECOMMENDATIONS FROM ISS

During the 2014 proxy season, 14 companies out of the SMI received at least one “Against” recommendation from Institutional Shareholder Services Ltd (ISS), a leading proxy advisor. Many institutional investors rely on proxy advisory firms, such as ISS, 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.

Below is an overview of the negative voting recommendations issued by ISS in advance of the AGMs of the SMI companies in 2014.

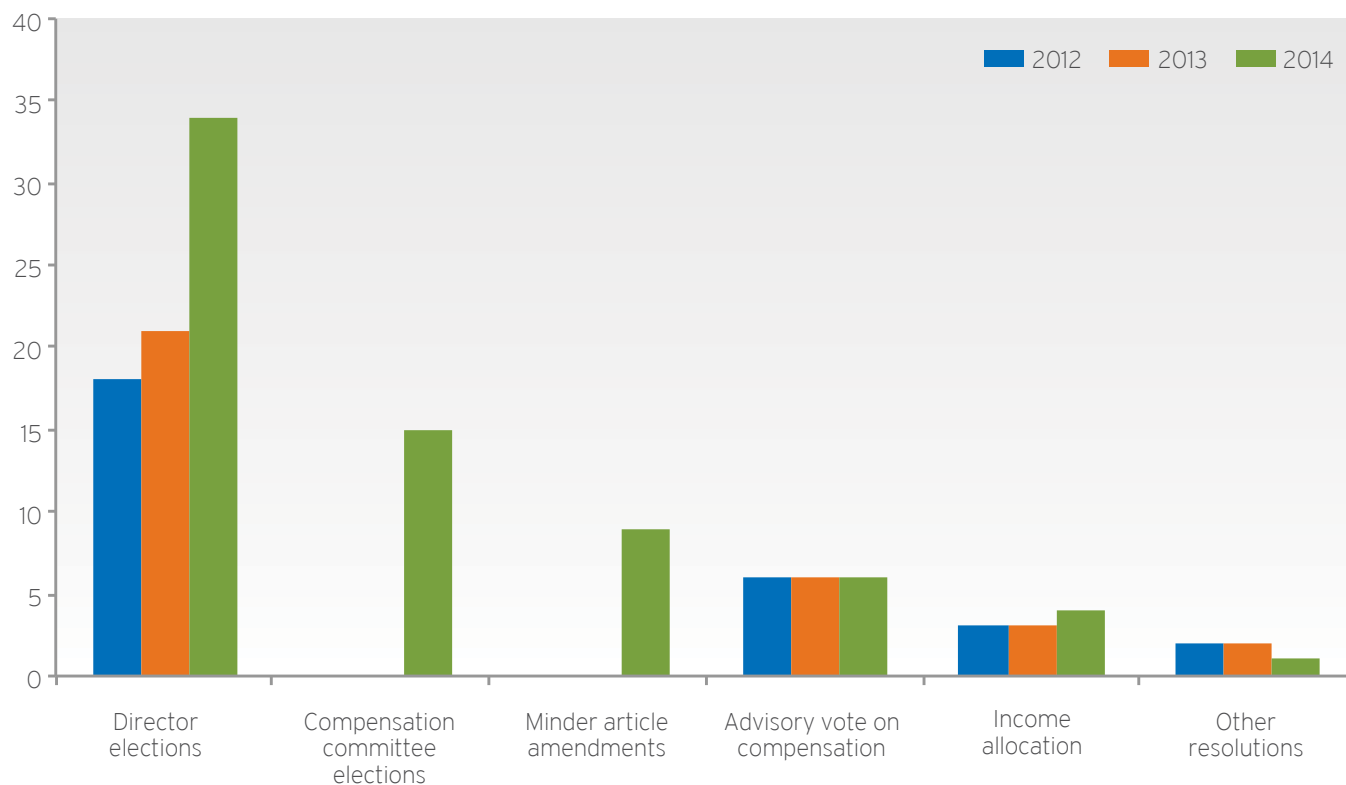
Table 1: Overview of “Against” recommendations by ISS at SMI AGMs during 2014

Director elections	ABB Ltd, Compagnie Financière Richemont SA, Roche Holding Ltd, SGS SA, Swatch Group AG
Compensation committee elections	Compagnie Financière Richemont SA, Novartis AG, Roche Holding Ltd, SGS SA, Swatch Group AG
“Minder” article amendments	Adecco SA, Geberit AG, Julius Baer Gruppe AG, Roche Holding Ltd, Swisscom AG, UBS AG
Advisory vote on compensation	ABB Ltd, Givaudan SA, Novartis AG, Roche Holding Ltd, SGS SA
Income allocation	Swatch Group AG
Equity based plans	ABB Ltd
Discharge	Novartis AG
Auditor appointment	Geberit AG
Authority to issue share without pre-emptive rights	Credit Suisse Group AG

Switzerland

The graph below shows the number of resolutions which received against recommendations by ISS in 2013 and 2014 (grouped by resolution type).

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



3. CORPORATE GOVERNANCE DEVELOPMENTS

3.1 “Minder” Initiative and Ordinance

Following the March 2013 referendum⁹ on the so-called “Minder Initiative”¹⁰, in November 2013 the Swiss Federal Council published the final Ordinance¹¹ implementing the initiative. Under the Ordinance, issuers are required to implement the new requirements in a two-year phased approach, with the introduction of annual director elections as of 2014 and the first binding remuneration votes to take place no later than 2015. While a trend towards more demanding transparency and accountability requirements can be observed in many European countries since the financial crisis, the Swiss changes are considered to be amongst the most stringent and demanding for listed companies in Europe.

The explanatory memorandum¹² on the Ordinance highlights the following provisions:

Shareholder vote on compensation

Under the new provisions, the general meeting of shareholders will vote on an annual basis on the compensation of the members of the board, management, and advisory board. The votes will have a binding effect and advisory votes are not permitted. The articles of association will define the details of the vote and the steps to take in case the proposal is rejected.

Certain payments are prohibited

Severance payments, advance payments and commissions for internal restructuring will be prohibited. All these allowances are also inadmissible if the beneficiary receives them for activities in other group companies. Sign-on bonuses will remain permissible.

The criminal sanctions follow a gradation according to the seriousness of the violation (which had not been the case in the draft ordinance). Prison sentences of up to three years and fines only apply to members of the board of directors, management or advisory board who award or receive unlawful payments. Offenders must also be shown to have acted with intent.

Pension funds to disclose voting

Pension funds will be required to vote on the matters covered by the ordinance. They must exercise their voting rights in the interests of the insured. They cannot renounce their voting rights before a general meeting, but may abstain on certain resolutions. The pension funds must also provide a certain level of transparency regarding their voting activity. However, detailed disclosure will only be required if they vote against or abstain on a proposal of the board.

Transitional provisions

The provisions of the ordinance will come into force on 1 January 2014. However, several aspects affecting listed companies and pension funds will be subject to a transitional period. This will give them time to adapt their procedures, articles of association, regulations and contracts to the requirements of the ordinance. For instance, listed companies are required to amend their articles of association by the second annual general meeting which takes place following the entry into force of the ordinance.

⁹ <http://www.admin.ch/ch/d/pore/va/20130303/det568.html>

¹⁰ *Eidgenössische Volksinitiative “Gegen die Abzockerei”* (“Federal popular initiative ‘against rip-off salaries’”); <http://www.admin.ch/opc/de/official-compilation/2013/1303.pdf>. See here for an English translation: <http://www.lexology.com/library/detail.aspx?g=2e16da79-6be1-4517-8be1-38f39f4f6a4d>.

¹¹ *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>.

¹² <http://www.ejpd.admin.ch/ejpd/de/home/aktuell/news/2013/2013-11-20.html> (our translation)

Table 2: Summary of SMI “Minder” Ordinance implementation during the 2014 proxy season

	2014 rem vote	2014 vote (binding or non-binding)	Future advisory remuneration vote	Prospective vote on BoD pay	Prospective vote Mgmt fixed pay	Is vote on Mgmt variable remuneration prospective?	Is there an extra pool for Mgmt remuneration?
ABB Ltd	Yes	Non-binding	No information	Yes	Yes	Yes	Yes, 30%
Actelion Ltd	Yes	Non-binding	Yes	Yes	Yes	Yes	CEO: 40% Other: 25%
Adecco SA	Yes	Non-binding	Yes	Yes	Yes	Yes	Yes, 40%
Cie Fin. Richemont	Yes	Non-binding	No information	No information	No information	No information	No information
Credit Suisse AG	Yes	Non-binding	Yes	Yes	Hybrid	Hybrid	Yes, 30%
Geberit AG	Yes	Non-binding	Yes	Yes	Hybrid	Hybrid	Yes, 40%
Givaudan SA	Yes	Non-binding	No information	Yes	Hybrid	Hybrid	Yes, 40%
Holcim	Yes	Non-binding	No information	No information	No information	No information	No information
Julius Baer Gruppe	Yes	Non-binding	No information	Yes	Yes	No	CEO: 40% Other: 25%
Nestle AG	Yes	Non-binding	Yes	Yes	Yes	Yes	Yes, 40%
Novartis AG	Yes	Non-binding	No information	Yes	No	No	No information
Roche Hldg	Yes	Binding	No information	Yes	Yes	No	CEO: 20% Other: 15%
SGS SA	Yes	Non-binding	No information	No information	No information	No information	No information
Swiss Re	Yes	Non-binding	No information	Yes	Yes	Hybrid	Yes, 20%
Swisscom	Yes	Non-binding	No information	Yes	Yes	Yes	CEO: 30% Other: 20%
Syngenta	Yes	Non-binding	No information	Yes	Yes	Yes	Yes, 40%
Swatch Group	No	n/a	No information	No information	No information	No information	No information
Transocean	Yes	Non-binding	No information ¹	Yes	Yes	Yes	Yes, 40%
UBS AG	Yes	Non-binding	No information	Yes	Yes	No	Yes, 40%
Zurich Insurance	Yes	Non-binding	No information	Yes	Yes	Yes	Yes, 30%

(Source: Julia Wittenburg)

¹ By virtue of Transocean's listing on the NYSE, an advisory vote on remuneration is required for executive officers.

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 Governance¹³. The revised version of the Code¹⁴ "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')."

¹³ German version: 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; and English version: http://www.economiesuisse.ch/en/Documents/swisscode_e_web.pdf.

¹⁴ http://www.economiesuisse.ch/de/PDF%20Download%20Files/MM_SwissCode_DE_20140929.pdf

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