Monthly Roundup
Georgeson

May 2015

Dear All,

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

Shareholder Activism

› Bloomberg reports about **The CEO Who Stared Down Nelson Peltz**: http://www.bloomberg.com/news/articles/2015-05-21/defeat-of-wall-street-legend-gives-corporate-america-a-new-hero. "After pulling off the rare defeat of an activist investor, DuPont Co. Chief Executive Officer Ellen Kullman has emerged as the new corporate champion of the value of long-term research over short-term profits. DuPont shareholders last week rejected Nelson Peltz's bid to join the board with a view to splitting up the 212-year-old chemical maker and slashing costs. His loss was far from certain: Dissidents prevail in most U.S. proxy battles, and Peltz's firm hadn't failed since it was founded a decade ago."

› Investment Week reports that **Deutsche Bank suffers shareholder revolt at annual meeting**: http://www.investmentweek.co.uk/investment-week/news/2409745/deutsche-bank-suffers-shareholder-revolt-at-annual-meeting. "Deutsche Bank shareholders voiced their lack of confidence in the company's leadership during its annual meeting yesterday, with 39% voting against [the Management Board discharge] […] One of the most vocal critics has been Hermes Investment Management, which holds almost 0.5% in the company through its Hermes EOS arm representing institutional clients. Prior to the meeting, it sent out a circular explaining its vote was a formalisation of its concerns over the management of the bank. Director Dr Hans-Christoph Hirt said: 'With this vote we formally express our strong concerns about a range of issues and our lack of confidence in the management board.' He added that Hermes EOS' key concerns included the bank's slow pace of culture change and the heavy fines it has suffered at the hands of regulators." See here for the AGM vote results: https://agm.db.com/en/docs/HV2015_Abstimmungsergebnisse_en.pdf.

› Fortune reports that **Prominent corporate lawyer waves white flag on activist investors**: http://fortune.com/2015/04/30/martin-lipton-dupont-activists/. "Martin Lipton, the most prominent of the go-to lawyers companies hire when they come under attack from hedge funds, sent a memo to clients […] saying that he thinks more companies should think out about settling early, rather than taking up a fight with activists."

› FTI Consulting have published a report entitled **Law in the Boardroom in 2015**: http://www.fticonsulting.co.uk/global2/critical-thinking/reports/law-in-the-boardroom-in-2015.aspx. "Cybersecurity leads the pack of pressing concerns, but directors and [General Counsels] are also confronting risks involving increased shareholder engagement, escalating regulatory issues, M&A, and the relative newcomer, social media. […] Specifically, increased investor scrutiny on board refreshment, diversity, and board independence, has been very prominent in the last year, as have battles over corporate restructuring, M&A, and spinoffs. Overall, 36% of directors noted they are 'extremely concerned'/'concerned' about shareholder activism and litigation this year; 43% of GCs have the same level of concern." The full report is available here: http://origin.fticonsulting.co.uk/global2/media/collateral/united-states/law-in-the-boardroom-in-2015.pdf.

Europe...

- Reuters reports that **EU lawmakers back rewards for long-term shareholders**: http://www.reuters.com/article/2015/05/07/eu-shareholders-reform-idUSL5N0XW22Z20150507. "Long-term shareholders in companies in the European Union will be rewarded with extra voting rights or loyalty dividends if a draft law backed by a panel of EU lawmakers comes into force. The 28-country bloc is revising its shareholder rights rules to combat what critics call 'short-termism' in stock markets where investors hold shares for only brief periods, making them less likely to hold company boards to account. The European Parliament's legal affairs committee narrowly backed key changes to the existing rules by 13 votes to 11 […]. Joint agreement between member states and parliament is needed for a revised law to take effect. More haggling is expected given its politically sensitive nature and narrowness of the committee's majority." The European Parliament press release (http://www.europarl.europa.eu/news/en/news-room/content/20150504IPR49621/html/Give-shareholders-more-say-on-directors%27-pay-urge-Legal-Affairs-Committee-MEPs) highlights the **three measures adopted in the context of the revision of the Shareholder Rights Directive**: 1) Shareholder say on directors' pay; 2) Country-by-country tax reporting requirement; and, 3) Additional voting rights to reward loyalty. The next vote is scheduled for 10 June: http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2014/0121%28COD%29&l=en#tab-0.

- The Financial Times's John Gapper comments on **Corporate power without responsibility on the board**: http://www.ft.com/cms/s/0/434eb9ce-ee52-11e4-98f9-00144feab7de.html#axzz3bS3FtwvB. "This has not been a salutary week for European corporate governance. At Volkswagen in Germany and at Industrivärden in Sweden, a system intended to encourage stability and long-term growth has instead created self-indulgence. At VW, Ferdinand Piëch was ejected as chairman of the supervisory board by other members, including union representatives and politicians, after he tried to destabilise Martin Winterkorn, the chief executive. Mr Piëch, a member of one of the families that control VW, had done the same to Bernd Pischetsrieder in 2006. This time, he failed. At Industrivärden, which along with the Wallenberg family controls more than half the value of the Swedish stock exchange, there was spectacular misbehaviour. Anders Nyrén was fired as chief executive on Monday after a scandal over the misuse of corporate jets by executives at SCA, the forestry and paper group, and their families. […] Short-termism is the risk of the US and UK approach, of diversified shareholders including hedge funds pressuring companies from the outside. Entrenchment is the risk of the European approach, of 'active governance' by a few powerful shareholders that influence board directors and sometimes appoint them. Placing too much power in too few hands is dangerous."

...and beyond

- Computershare, Georgeson and the Corporate Secretaries International Association (CSIA) have presented a report entitled **Shareholder engagement: practical steps for corporate secretaries**: http://www.computershare-na.com/events/csia2015/webinar.htm. "These practices are part of CSIA's commitment to improve governance standards by encouraging the adoption and application of good governance on a global basis. [...] To improve engagement between companies and shareholders CSIA has developed the following overarching recommendations and suggested practices for corporate secretaries and governance professionals." The full document is available here: http://www.computershare-na.com/events/csia2015/CSIA_Shareholder_Engagement_Corp_Secretaries_Feb_2015.PDF.

- The Global Network of Director Institutes have published their **Guiding Principles of Good Governance**: http://gndi.weebly.com/guiding-principles-of-good-governance.html. "The Global Network of Director Institutes (GNDI), founded in 2012, brings together member-based director associations from around the world with the aim of furthering good corporate governance. […] This paper describes the global perspective of the GNDI on the guiding principles of good governance. […] These Guiding Principles have been developed as part of a commitment to this goal and to guide boards in good governance beyond legislative mandates." The full document is available here: http://gndi.weebly.com/uploads/1/4/2/1/14216812/2015_may_6_guiding_principles_of_good_governance.pdf.

- The International Finance Corporation have published a report entitled **Myths and Facts about Female Directors**. "In this Private Sector Opinion, Renée Adams draws on current research truths to debunk the following six myths about boardroom gender diversity: 1) Popular boardroom surveys provide an accurate picture of women's relative underrepresentation; 2) The financial crisis would not have happened if Lehman Brothers had been Lehman Sisters; 3) Female directors are just like male directors; 4) HR directors are to blame!; 5) Adding a woman to your board will improve shareholder value; and, 6) Quotas are necessary to improve female board representation." The full document is available here: http://www.ifc.org/wps/wcm/connect/a1a8a380484aba4293f3f7299ede9589/PSO37.pdf?MOD=AJPERES.

- The Financial Times reports that **Aberdeen to contest cosy auditing relationships**: http://www.ft.com/cms/s/0/2516992a-f593-11e4-bc6d-00144feab7de.html#axzz3bS3FtwvB. "Aberdeen Asset Management has vowed to take action against companies that have had the same auditor in place for decades. The crackdown by Europe's largest listed fund house is the latest sign of rising investor intolerance of the cosy relationships that have developed between corporate clients and their accountants. […] Aberdeen's stance could cause problems for large groups that have had the same auditors in place for decades. This includes Coca-Cola, the US beverages manufacturer, which has used Ernst & Young as its auditor for 94 years, and IBM, the US technology company, which has used PwC for at least two decades."

UK

- The Investment Association have published a **Statement of Principles for Investment Managers**: http://www.theinvestmentassociation.org/media-centre/press-releases/2015/press-release-2015-04-28.html. "The Statement sets out what the responsibility of managing other people's money means in practice for corporate culture and individual mind-set." Principle 8 states: "As major investors, we engage with the companies we invest in, helping them to achieve better long-term results and, ultimately, greater returns for our clients and the economy. We use our influence to engage with management and Boards, discussing and supporting companies' strategies for sustainable value creation, promoting sound and effective corporate governance and management and helping to resolve problems when they arise. We vote in accordance with the interests of clients, and encourage ethical behaviours and culture within investee companies and markets." The full document is available here: http://www.theinvestmentassociation.org/assets/files/press/2015/20150428-statementofprinciples.pdf.

- ShareAction have published a report entitled **Asset Manager Voting Practices: In Whose Interests? - Survey of 2014's AGM season**: http://shareaction.org/shareaction-says-asset-managers-side-company-management-too-often-controversial-votes. "Many of the world's best-known Asset Managers side too often with company management on controversial votes at company AGMs, even when there is a clear case for challenging company management on a vote, says sector watchdog ShareAction, which has compared the voting records of the largest 33 UK Asset Managers on a host of controversial votes made at a year's worth of Annual General Meetings. […] Meanwhile, the asset managers who most consistently support corporate management even on the most controversial votes were as follows: Aberdeen Asset Management, BlackRock, HSBC Global Asset Management, Schroders Investment Management, Hermes Investment Management, and M&G Investment Management." The full report is available here: http://action.shareaction.org/page/-/AssetManagerVotingPracticesFinal.pdf?nocdn=1.

France

- The New York Times reports that **France Answers Hostile Bids With the Two-Vote Share**: http://www.nytimes.com/2015/05/20/business/dealbook/france-answers-hostile-bids-with-the-two-vote-share.html. "France once barred its companies from using anti-takeover defenses, known in Europe as "frustrating actions," to stop hostile bidders. But last year, with the takeover market heating up and European countries worried about losing jobs, France reversed course. The French Parliament passed a law, known as the Florange Law, to give companies the ability to fend off hostile bids. The title of the law says it all. Florange is the French town where ArcelorMittal tried to close down two blast furnaces after a successful hostile takeover. ArcelorMittal backed down after France threatened to nationalize the plant."

Germany

- The Commission of the German Corporate Governance Code has published a **revised version of the German Corporate Governance Code**: http://www.dcgk.de/en/kommission-33/die-kommission-im-dialog/details/amendements-of-the-code-published.html. "On 5 May 2015, the Regierungskommission Deutscher Corporate Governance Kodex decided on three material amendments to the Code which above all underline the increasingly significant role of the Supervisory Board. In addition, a series of adaptations were made as part of the management of the Code, in particular for the purpose of improved legibility and greater leanness. The new recommendations will not enter into force prior to their disclosure in the Federal Gazette." The new version of the Code is available here: http://www.dcgk.de/en/kommission-33/die-kommission-im-dialog/details/amendements-of-the-code-published.html?file=files/dcgk/usercontent/en/download/code/CGK_150505_Kodex_E.pdf.

Netherlands

- The Dutch Minister of Finance has published **a letter to the Dutch parliament about the IPO of ABN Amro** (in Dutch): http://www.rijksoverheid.nl/documenten-en-publicaties/kamerstukken/2015/05/22/kamerbrief-inzake-verkoop-abn-amro.html. According to the letter, the State intends to implement a number of protective mechanisms in preparation for ABN Amro's initial public offering (IPO). The Minister intends to use a depositary receipt structure under which all shares will be held and administered by the Share Trust Foundation Stichting ("STAK") against the issuance of depositary receipts representing the economic value and interests of the assets dedicated to the STAK. The depositary receipt holders will receive automatic proxies to exercise the voting rights. However, the proxies can be withdraw temporarily (for up to two years) in the case of a "hostile takeover" or of "undesirable shareholder activism". Furthermore, the company's board structure will follow the "statutory structure regime" (*strucrtuurregime*) which means that the Supervisory Board will appoint the Management Board members and that the shareholders will have no vote on the composition of the Management Board. The full letter is available here: http://www.rijksoverheid.nl/bestanden/documenten-en-publicaties/kamerstukken/2015/05/22/kamerbrief-inzake-verkoop-abn-amro/kamerbrief-inzake-verkoop-abn-amro.pdf.

United States

- The SEC have proposed rules to **Require Companies to Disclose the Relationship Between Executive Pay and a Company's Financial Performance**: http://www.sec.gov/news/pressrelease/2015-78.html. "The Securities and Exchange Commission […] voted to propose rules to require companies to disclose the relationship between executive compensation and the financial performance of a company. The proposed rules, which would implement a requirement mandated by the Dodd-Frank Act, would provide greater transparency and allow shareholders to be better informed when they vote to elect directors and in connection with advisory votes on executive compensation. […] The proposed rule would require a company to disclose executive pay and performance information for itself and companies in a peer group in a table and to tag the information in an interactive data format. A company would be required to disclose executive compensation actually paid for its principal executive officer using the amount already disclosed in the summary compensation table required in the proxy statement, making adjustments to the amounts included for pensions and equity awards. The amount disclosed for the remaining executive officers would be the average compensation actually paid to those executives. As the measure of performance, a company would also be required to report its total shareholder return (TSR) and the TSR of companies in a peer group." The full document is available here: http://www.sec.gov/rules/proposed/2015/34-74835.pdf. **The comment period closes on 6 July 2015.**

- BlackRock and Ceres have published **21st Century Engagement: Investor Strategies for Incorporating ESG Considerations into Corporate Interactions**: http://www.ceres.org/press/press-releases/blackrock-ceres-launch-investor-guide-on-us-corporate-engagement. "Showcasing dozens of real-world examples of investor engagement with companies, contributors cover issues like setting ESG standards in the marketplace, public policy engagement, collaboration, shareholder resolutions, board of director engagement, divestment, creating a focus list, strategies for international engagements, and other topics. The guide also features a set of ESG-themed questions that portfolio managers and analysts should be asking of companies in key sectors." The full document is available here: http://www.ceres.org/resources/reports/21st-century-engagement-investor-strategies-for-incorporating-esg-considerations-into-corporate-interactions/at_download/file.

› CNBC reports that **Dimon's shareholder attitude 'outdated': Advisor**: http://www.cnbc.com/id/102714990. "JPMorgan Chase Chairman and CEO Jamie Dimon's contention that some 'lazy' shareholders rely on advisory services to inform votes shows an 'outdated' attitude, a leading advisory policymaker said Thursday. 'That perspective is really outdated. That doesn't really happen any longer,' said Robert McCormick, chief policy officer at shareholder advisory firm Glass Lewis, in a CNBC 'Power Lunch' interview. At JPMorgan's annual meeting last week, only 61 percent of votes cast endorsed the bank's executive compensation. Thirty-six percent backed plans to separate Dimon's dual position into multiple posts after he leaves." See here for more background: http://www.bloomberg.com/news/articles/2015-05-27/dimon-chides-lazy-shareholders-who-blindly-heed-proxy-advisers/.

› As You Sow have published a report entitled **The 100 Most Overpaid CEOs: Executive Compensation at S&P 500 Companies**: http://www.asyousow.org/ays_report/the-100-most-overpaid-ceos/. "Our new report, The 100 Most Overpaid CEOs: Executive Compensation at S&P 500 Companies, highlights the 100 most overpaid CEOs and examines the forces behind the trend of ever-increasing CEO pay. […] Of the largest mutual funds, American and Schwab approved less than 60% of these packages, while Blackrock supported 95% of them. Some funds seem to routinely rubber-stamp management pay practices, enabling the worst offenders and failing in their fiduciary duty. One surprise: TIAA-CREF – the leading retirement provider for teachers and college professors – is more likely to approve high pay packages than almost any other institution its size."

Canada

› The Globe and Mail reports that **Quebecor will keep Lavigne as director despite lack of support**: http://www.theglobeandmail.com/report-on-business/quebecor-will-keep-lavigne-as-director-despite-lack-of-support/article24335505/. "Quebecor Inc. says it will keep businessman Michel Lavigne as a company director despite the fact 72 per cent of shareholders withheld their support for him in Thursday's board election, marking a rare circumstance in Canada where an unsuccessful director will remain on a board of a company with a majority voting policy."

› The Canadian Securities Administrators (CSA) have adopted **National Policy 25-201 Guidance for Proxy Advisory Firms**: http://www.securities-administrators.ca/aboutcsa.aspx?id=1348. "The Policy provides guidance on recommended practices and disclosure for proxy advisory firms to promote transparency in the services they provide to clients and to foster an understanding among market participants about proxy advisory activities." The full policy can be accessed here: https://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20150430_25-201-proxy-advisory.htm.

Hong Kong

› Webb-site have published their **submission to the Securities and Futures Commission's consultation on proposed Principles of Responsible Ownership**: http://webb-site.com/articles/PRR.asp. "There is an irony to this consultation. At the same time, the SFC and Stock Exchange are considering moving to a full-blown consultation on reducing investors' ability to engage in governance, by allowing companies to list second-class shares with lower or no voting rights, or what the regulators euphemistically call 'weighted voting rights'. The objective of that would be to attract companies that would not otherwise have a controlling shareholder to list in HK while giving management voting control over the company. The possibility of listing second-class low-voting or non-voting shares is contradictory to the PRO's goal of greater investor stewardship over listed companies. It would allow insecure management to entrench themselves against shareowners' interests. […] So to refocus on the key issues above, we call on the SFC, Government and HKEx to adopt the following Principles of Responsible Regulation, or PRR. […] There you go. Only six. That shouldn't be too difficult if you really believe in facilitating the PRO rather than just joining a me-too club of places with a stewardship code." The consultation document is available here: http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=15PR19.

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

Kind regards,

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